Google Could Owe Oracle Over $9 Billion For Use of Java Code

A few years back, Oracle sued Google for using its Java software code in its Android smartphone operating system. Oracle owns copyrights in pre-written packages of source code called Application Programming Interfaces (APIs). This code provides step-by-step instructions that allow websites and other apps to talk to each other. In 2016, a jury found that Google's use of 37 Java package names and 11,000 lines of declaring code in its Android operating system constituted permissible fair use.

On appeal, the Federal Circuit reversed, holding that Google's use was not fair and sent it back for trial to determine how much Google must pay in copyright infringement damages. The decision may have a chilling effect on software innovation since software developers use APIs to enable programs, apps and websites to talk to each other. APIs also help developers avoid the expense of writing new code. In rejecting the fair use defense, the Court emphasized that Google could have developed its own APIs or licensed Oracle's for use in developing a new platform. Instead, they chose to copy Oracle's creative efforts. "There is nothing fair about taking a copyrighted work verbatim and using it for the same purpose and function as the original in a competing platform." Android's release effectively replaced Java as the supplier of Oracle's copyrighted works and prevented Oracle from participating in these developing markets, which the Court found inherently unfair.

Google will likely owe in excess of $9 billion in damages since this is the amount Oracle originally sought and its general counsel says the value has only increased.

Oracle America, Inc. v. Google LLC, 2018 WL 1473875 (Fed. Cir. March 27, 2018).

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Embedding Tweets Into Websites May Be Copyright Infringement!

Plaintiff Goldman took a photo of Patriots quarterback, Tom Brady, and Boston Celtics General Manager, Danny Ainge, on the streets of East Hampton and posted it to his Snapchat. The photo then went viral and ended up on Twitter. A number of online news outlets and blogs prominently featured the photo by "embedding" the tweet into articles they wrote about whether the Celtics could persuade basketball player Kevin Durant to come to Boston and whether Brady could seal the deal. Goldman sued the defendant websites for copyright infringement, claiming he never publicly released or licensed his photo.

The Opinion begins by noting that when the Copyright Act was amended in 1976, the words tweet, viral and embed invoked thoughts of a bird, a disease and a reporter. While the Act did not contemplate these new technologies, long-standing copyright principles still apply. The online news outlets embedded tweets featuring the photo using HTML code to retrieve the tweets from Twitter's servers. The websites argued they should not be liable because they did not download, copy or store the photo on their own servers. Rather, a function directed users' browsers who accessed their websites to retrieve images of the embedded tweets from Twitter and place them alongside text. The Court rejected this rationale, holding that defendants put in place a process by including a code in the overall design of their webpages, that is, embedding. While its grant of partial summary judgment held that defendants' actions could subject them to copyright infringement, it emphasized they may have other defenses to liability which will be addressed as the case progresses.

This decision has shocked the copyright community since in-line linking is widespread, especially on social media.

Goldman v. Breitbart News Network, LLC, et al., 2018 WL 911340 (S.D.N.Y. Feb. 15, 2018).

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