

Oracle v. Google Update: Federal Circuit Reverses on Fair Use

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In March 2018, the U.S. Court of Appeals for the Federal Circuit found that Google’s use of 37 Java API packages in the Android smartphone software platform was not fair use.

The ruling reversed the decision of a jury in the District Court for the Northern District of California, which had found fair use. In its opinion, the Ninth Circuit considered the following four statutory fair use factors: interpreted this clause in two ways.

1. Purpose and Character of the Use

The Federal Circuit concluded that Google’s use of the API packages was highly commercial, as the company stood to profit from using them. Moreover, the Court found that Android neither added new expression nor used the Java API packages in a new context; other smartphone manufacturers already used licensed Java API packages in other smartphone software platforms for the same purpose as Google.

2. Nature of the Copyrighted Work

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manufacturers already used licensed Java API packages in other smartphone software platforms for the same purpose as Google.

3. Amount and Substantiality of the Portion Used

The Federal Circuit concluded that, although Google used only a small percentage of the code in the Java SE libraries, it copied the structure, sequence, and organization of the 37 API packages in their entirety, which was more than was reasonable or necessary. The court also found that Google copied the API packages to capitalize on the knowledge and experience of an existing community of software developers, “even though Google also conceded that it could have written the APIs differently to achieve the same functions.” The Court found that this factor is “at best, neutral,” and arguably weighs against a finding of fair use.

4. Effect Upon Potential Market

The court found that Oracle successfully licensed Java SE in smartphones and tablets made by Blackberry, Nokia, and Amazon, among others, and that Google’s Android platform competed directly with Java SE in the mobile device market. The Court found that “the record contained substantial evidence that Android was used as a substitute for Java SE,” and that having Android as a free alternative provided Java SE licensees with leverage to negotiate significant discounts from Oracle. The Court concluded that the fourth factor weighed heavily against a finding of fair use.

Conclusion

After balancing the statutory fair use factors, the Federal Circuit found Google’s use of the Java API packages not fair use as a matter of law and remanded the case to the District Court for the Northern District of California for further proceedings on damages.

Read our previous blogs about the Oracle v. Google litigation [here](#) and [here](#).

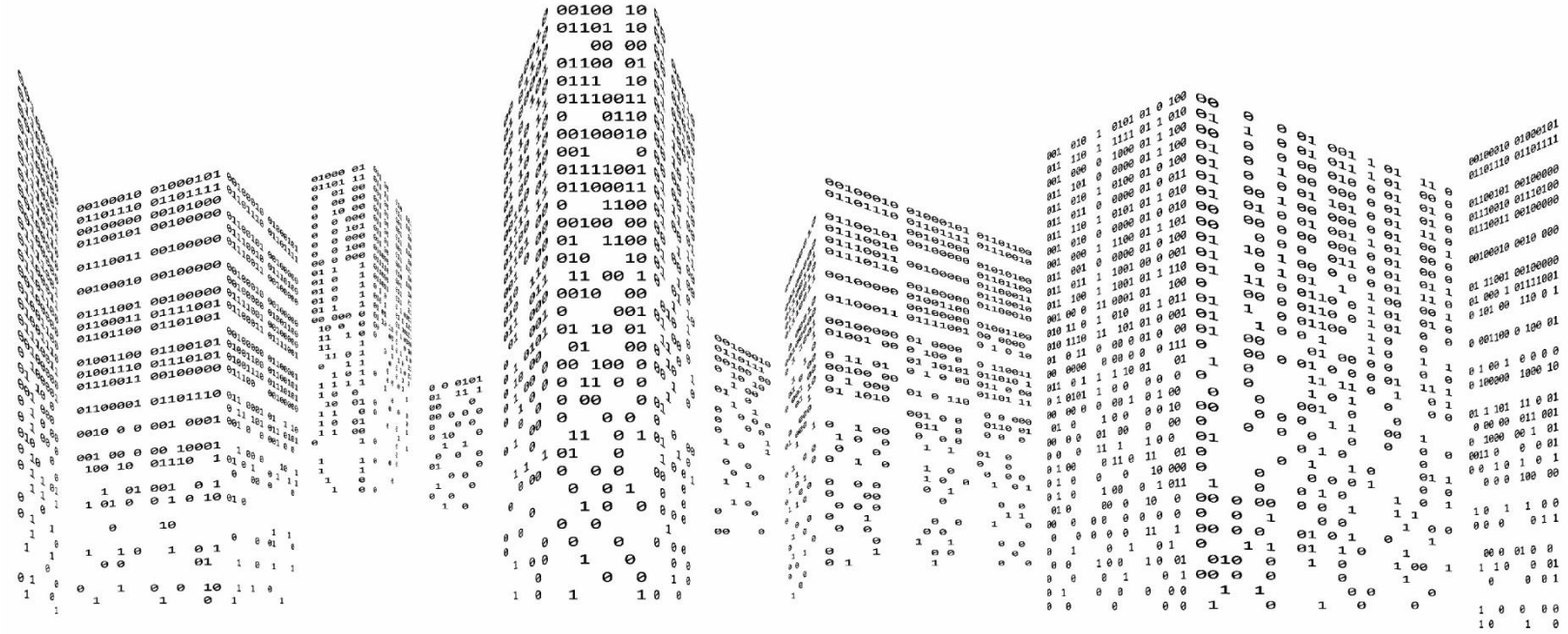
Read the [Federal Circuit's opinion](#)

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Since joining DisputeSoft in 2016, T.J. Wolf has consulted for clients on a variety of software related matters, including breach of contract disputes, software implementation failure matters, and intellectual property matters involving allegations of copyright infringement and trade secret misappropriation. By researching and analyzing documentation to produce content and support for expert reports, T.J. has become deeply involved in analyzing the root causes of many IT failure cases and assessing misappropriation in intellectual property matters.



If you are an attorney in need of an intellectual property expert, we invite you to consider [DisputeSoft](https://www.disputesoft.com).

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