

The U.S. Supreme Court Declined to Review *Oracle v. Google*, but the Billion-Dollar Case is Just Booting Up

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On June 29, 2015, the Supreme Court denied Google's petition for certiorari, refusing to review the long-running battle over the scope of software copyright protection. The suit began almost five years ago when Oracle sued Google for infringing Oracle's copyright on portions of the popular Java software that allowed Java to communicate with other programs. After licensing negotiations over the software failed, Google copied portions of the Java code for use in its Android operating system. While Google independently recreated much of the implementing code, it allegedly copied Java's declaring code that provided the taxonomy system Java used to name routinely-used functions. For example, the declaring code "java.lang.Math.max(1,2)" refers to a method for returning the greater of two numbers.

A jury found that Google infringed Oracle's copyright, but was unable to return a verdict on whether Google's copying was fair use. The district court, however, found that Oracle's declaring code, including its organization and structure, was a system or method of operation excluded from copyright protection under Section 102(b) of the Copyright Act. Oracle appealed the district court's decision that the declaring code was not copyright eligible. On appeal, the United States Court of Appeals for the Federal Circuit² reversed the district court, finding that Section 102(b) merely codifies the idea/expression dichotomy that is the foundation of copyright protection. An idea itself is not copyrightable, but the expression of that idea is. In the Federal Circuit's view, Oracle's Java declaring code was expression and deserved copyright protection.

Google then asked the Supreme Court to review the decision, arguing that courts were "deeply divided" about how to apply Section 102(b). The Supreme Court asked the United States Solicitor General's office for input. Historically, the Supreme Court has deferred to the Solicitor General's judgment about whether certiorari should be granted, and this case was no different. The Solicitor General urged the Supreme Court not to take the case because the Federal Circuit had correctly decided it. The Solicitor analogized declaring code to a book that explained how to build a bicycle. While the expression embodies a method, the expression of that method itself is copyrightable. The Court denied certiorari.

While many in the software industry were disappointed in the Court's refusal to clarify this aspect of software copyright law, the case is not over. On remand, the trial court will determine whether Google's use of the declaring code constituted fair use and will determine damages. With potentially a billion dollars at stake, there are still important issues to be resolved in the case. The extent of copyrightability for different aspects of software may still be uncertain, but this decision will likely have a far-reaching impact as industry and society increasingly rely on the interoperability between computing devices, software applications, and software services, particularly in mobile and cloud computing.

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² The Federal Circuit had appellate jurisdiction over the case because Oracle brought claims for patent infringement in the district court litigation. Neither side appealed the district court's disposition of the patent-related claims, and because the issues that were ultimately appealed involved only copyrights, the Federal Circuit applied Ninth Circuit law.