

Jason Bloom in Law360: Google v. Oracle Decision Will Show Breadth of 'Fair Use' Defense

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Continuing to top any list of copyright cases to watch is Google Inc. and Oracle America Inc.'s battle over Android and Java, a seven-years-running, \$9 billion epic dealing with tough questions of how copyright covers software.

Oracle sued in 2010, accusing Google of copying some of its Java code and incorporating it into its hugely lucrative Android platform. The two spent years wrangling over whether the bits of copied code — application programming interfaces, or APIs — were even eligible for copyright protection, but the Federal Circuit ruled they were protected in 2014.

That set up a high-profile jury trial last spring over whether Google's use of the code was nonetheless legal under the fair use doctrine — a trial Google won, clearing the company of liability that could have reached \$8.8 billion. That outcome is now up on appeal before the Federal Circuit again, setting the stage for a blockbuster decision later this year or early next on how fair use applies in the context of software.

“Courts have recently been expanding the applicability of fair use — especially with respect to emerging technologies — and many are watching this case to see if that trend will continue or whether courts will begin to limit the applicability of fair use to its more traditional, noncommercial contexts,” said [Jason Bloom](#), a partner at Haynes Boone.

Excerpted from *Law360*. To read the full article, click [here](#) (subscription required).