

## Jason Bloom Provides Insights on SCOTUS Fair Use Ruling

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**PRACTICES** Intellectual Property, Copyright

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Haynes Boone Partner [Jason Bloom](#) spoke with several publications, including *Bloomberg Law*, *IP Law Daily*, *Managing IP* and *World IP Review*, about the implications of the recent U.S. Supreme Court copyright ruling, which may unlock some arguments in fair use cases.

Here is an excerpt from *Bloomberg Law*:

The Supreme Court's decision that Alphabet Inc.'s Google made fair use of Oracle Corp.'s programming code promises to have a broader impact on how courts decide many fair use cases.

The justices ruled that Google's copying of a software application programming interface to tailor its Android operating system to smartphones was fair use.

The court's ruling was focused on Google's use of the code. But the opinion provides widely applicable guidance on the factors that courts consider in a fair use analysis, attorneys and legal scholars said.

In a dissent, Justice Clarence Thomas said he would hold that the code is protected by copyright. Haynes Boone attorney Jason Bloom said had the court thought there was a good argument that it wasn't copyrightable, that would've been a natural way to decide the case.

"By assuming without deciding, I think that weighs pretty strongly in favor of copyrightability even though they didn't say it," Bloom said.

To read the full article, click [here](#).

Here is an excerpt from *IP Law Daily*:

Jason Bloom, partner and chair of the Copyright Practice Group at Haynes Boone, told Wolters Kluwer, "I find it interesting that the Court bypassed the copyrightability ground and focused on a defense. Ordinarily, a court would first determine if there is a claim before addressing defenses to that claim."

Bloom explained, "I think the Supreme Court intentionally dodged the copyrightability question in order to narrow the scope of the holding. By deciding the case on fair use, the Court was able to create a relatively narrow holding that, by design, will not likely have far-reaching impacts beyond this case and these parties." Pointing out that fair use always involves a fact-intensive inquiry, Bloom said, "The Court did go out of its way to say that it was not modifying any of its prior fair use precedent, so I do not think it intended to change the body of law. But fair use is such a fact intensive (and inconsistently applied) inquiry that outcomes are rarely predictable, even at the Supreme Court."

However, he pointed out that the Court's opinion could be read to expand the meaning of transformative use to include uses that have traditionally been thought of as derivative and violative of copyright rights. "Rather than a use that transforms the work itself, which has been the traditional test, the majority's opinion could expand the transformative use doctrine to any use that exploits the work in a different setting or format, or potentially to a different audience," Bloom said. "Here, the argument was not that Google transformed Oracle's code, but rather that it used it in a different environment—smartphones."

In Bloom's view, the decision's broader effects on the software engineering field are difficult to gauge. "I think the ruling will make it much easier in future software cases to mount a successful fair use defense," said Bloom. "On one hand, that could discourage innovators like Oracle from creating open source languages, but it could encourage innovators like Google and programmers to create new applications and platforms."

To read the full article, click [here](#). (Subscription required)

Here is an excerpt from *Managing IP*:

Jason Bloom, partner and chair of the copyright practice group at Haynes Boone in Dallas, says he would advise clients not to rely on fair use and instead to seek a license before attempting to exploit someone else's work.

He points out that the justices did not all agree on the outcome (Justice Clarence Thomas dissented, and Justice Samuel Alito joined the dissent). "That just furthers the argument that fair use is not something to hang your hat on."

To read the full article, click [here](#).

Here is an excerpt from *World IP Review*:

Jason Bloom, chair of the copyright practice group at Haynes Boone, said the court had tried to minimise the far-reaching implications of its ruling.

"I think the court did its best to write an opinion that would address the immediate dispute without having far-reaching impacts on IP law or technology industries," he said.

But he predicted that the ruling would have significant ramifications for arguments around "fair use".

Noted Bloom: "The court also explicitly stated that it was not modifying its existing fair use precedent. That being said, I think the opinion will have the effect of making fair use a more viable defence in the software context going forward, especially as applied to declaring code."

To read the full article, click [here](#).

Bloom was also featured in a *Westlaw Today* Q&A about the ruling. To read the full article, click [here](#). (Subscription required)