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Research Paper

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For the last decade in the world of tech, one question has been dominant over all others as it could greatly affect tech as we know it. That question is “Can you copyright building blocks of a coding language, and if so, is borrowing that code for interoperability purposes fair use?”. One side argues that you can copyright a coding language while borrowing from it for interoperability purposes under fair use. The other side argues that while you can copyright, you can’t borrow from it for interoperability purposes under fair use. They believe that one has to pay to be able to use it in such a capacity. In the court case of Google vs Oracle America, the question of copyright and fair use is being challenged. Google’s side of copyrighting a coding language and being able to use it for interoperability purposes under fair use is the correct answer to such a question.

For some context around the Google vs Oracle America case, the case started back in August of 2010. The original case was on copyright and patent infringement against Google. Oracle America originally said that Google acknowledged the fact they were using Java A.P.I.’s without consent or a license to do so. The case was brought into First District Court and Second District Court. Both times, the courts ruled in favor of Google, which would later be repealed to be in favor of Oracle after the Second District Court case. Soon after though, Google filed a writ of certiorari (a review of a lower court’s decision by a higher court) to the Supreme Court and was approved (Wikipedia Contributors, 2020). As of April 2020, the hearing in March was

moved to the October 2020 term due to the COVID-19 pandemic reaching the United States (Supreme Court of the United States, 2019).

There are multiple tech companies that believe that you should be able to copyright coding languages and use the code in fair use for interoperability purposes. In many copyright cases, laws aren't exactly always kept up-to-date with the times. This may be due to technological advancements not being caught up with technological understand or just a fundamental way of thinking about such laws that haven't been thought of yet. This makes cases harder to navigate legally but can also sometimes benefit one side due to such a conundrum. Given that the case is between two tech giants, there is an especially good reason for both sides and the court to take a look at the case. In the case of Google vs Oracle America, it has been found that "the basic contours of that law were established a quarter century ago. At that time, both Oracle and its predecessor Sun lauded the benefits of interoperability" (Gratz and Lemley, 2018, p. 2). This statement shows that while there is ground for Google to stand on in this case due to outdated laws, it also reveals something more interesting. The statement shows that at the establishment of the laws a little over 25 years ago, Oracle was actually on Google's side of the case. What is meant by that is that Oracle in the past actually agreed with Google and wanted interoperability (especially under fair use) to exist. Ergo, one can gather that with outdated copyright laws, among other points, give way to Google's side of copyright and interoperability under fair use being the right side to be on.

In addition to companies believing that you should be able to copyright coding languages and have interoperability under fair use, some believe the case itself is overly exaggerated. While the case is undoubtedly one of the biggest cases in the world of tech and programming, some do

see that the case is a bit over-exaggerated. It isn't out of the ordinary for legal cases, in general, to be over-exaggerated to an extent, especially with high-profile cases. However, those over-exaggerations are usually caught early on in most cases. It is a bit trickier with copyright cases and especially tricky with one like this as the laws aren't exactly up-to-date. However, it wouldn't be surprising if one side over-exaggerated or the entire case was over-exaggerated. To no one's surprise, that's exactly what happened with this case. Hurst (2018) concludes that Oracle America in their case against Google has gone a bit farther than they really should've. She claims that

> Oracle v. Google is not about the Java programming language. It is not about the virtual machine. It is not about a type of basic electronics communication protocols, sometimes also called interfaces, which enable computer devices to communicate with one another. Instead, the case is about computer programs that Sun and Oracle developers wrote using the Java programming language, which they called the Java Application Programming Interface, or 'Java API'. (p. 4)

It is clear that Oracle has very much exaggerated their side of the case when the case is truly focused on a program type made by Oracle called the "'Java API'" (Hurst, 2018, p. 4). Oracle has blown their side out of proportions and is, in turn, overreaching in the case trying to get more out of the case than they really need to. Oracle needs to step down on their stance in the case and rethink what they're trying to do. If they are found to be overreaching and get called out for it, they will be in a very tight spot to explain their way out. According to Parloff (2019) "to put in modern-day terms: Even if Marie Kondo copyrights a book on organizing, she can't sue you for rolling your clothes". Parloff (2019), in regards to the case, believes that while Oracle can copyright their A.P.I., they cannot control how such an A.P.I. is used in other programs for interoperability purposes. In turn, that means that Oracle can control, at most, the distribution of

the A.P.I. they copyrighted and owned, but that is as far as they can go. They have no control over its use in other programs after its distribution to others (consumers and companies alike). Consequently, this shows that Google is within its rights to stand against Oracle America and win. Oracle America is exaggerating its side in the case and they are overreaching the copyright law of what is and isn't against copyright and fair use laws for code and programs.

While there is much support for Google in the case, there are others who oppose this point of view and say that Oracle has ground to stand on. Admittedly, there is much rationale and basis for Google to be the favorable side to stand with for this case. However, when looking a bit deeper into the situation, there are some reasons to favor Oracle America over Google. While most might brush that off and stick with Google and make a very ignorant claim of something like "Google wouldn't be here without Oracle", there are legitimate reasons to back Oracle in the situation. In fact, there are some that believe that Oracle has grounds to pursue a legal case on Google for one specific reason: licensing for use of Oracle's software. It was reported that "Google had violated copyrights on 37 Java A.P.I.'s," and that "Oracle's lawyers argued that while other programmers and companies negotiated open-source and commercial licenses to use Java, Google purposely sought none" (Hardy & Perlroth, 2012, p. 2). What this report shows is that Google violated 37 copyrights filed by Oracle America on their Java A.P.I.'s and purposely did not seek or talk to Oracle America about doing so. If this is truly so, then Oracle America does have ground to stand on. Simply put, Oracle's intellectual property (IP) has been stolen in a sense and used for the gain of others. If they have no control over how Google uses their A.P.I.'s, then they are completely in the right of taking legal action on Google as there are no regulations in place between the two companies on the use of the software.

In defense of Google on the previous point, Oracle doesn't realize the ramifications that they could have on the entire tech industry. As mentioned prior, this case between Google and Oracle America is a huge deal in the tech industry. There is a very good reason that it is a big deal. It will have a massive effect on the tech industry in the way of payment for not only companies but consumers as well. What is meant by that is if Oracle wins, companies and consumers using the A.P.I will be quite literally paying the price. Sprigman (2015) states that "keeping copyright away from APIs will help keep the software industry healthy and competitive. On the other hand, allowing companies like Oracle to use copyright to close APIs will block a lot of future software development". This meaning to this quote is a very simple either-or situation for the tech industry. If Google wins, the tech industry survives to see another day, and development is easy, simple, and free (for the most part). However, if Oracle America wins, the tech industry will descend into chaos as the development of code and software with interoperability purposes will become more difficult and less simple to create as paywalls will likely be at every step or turn. What is meant by this is that if Oracle wins, every step you take during development, if you're using Oracle's Java A.P.I at least, will have paywalls for use and licensing that will ruin the open-source environment the tech industry has grown into. While Oracle does have some ground to stand on, the costs are too high and too risky to let them win, giving Google more ground for their interpretation of the case (the answer) being correct.

Continuing onwards, some viewing the situation from the outside believe Google is in the right and has ground to stand on as it is within legal standings. Google's ground to stand on is that they are within legal standings and limits to using Oracle America's code as they do in the Android operating system. Most codes and programs that are copyrighted are usually made with

the intent to be used elsewhere and with other programs/codes. Simply put, when creating programs and code, one thing that most developers take into account is functionality and expressiveness between software. When talking about this part of copyright, there is a section dedicated to specifically this idea of functionality and expressiveness. Sameulson (2016) states that "Google's confidence that it could lawfully use command structures derived from the Java API was built partly on the Borland decision's interpretation of § 102(b) and partly on the Ninth Circuit's ruling that the Sega interface was unprotectable under § 102(b)" (p. 37). In its simplest form, Section 102(b) is a code under copyright law that states that when making something with the capability of copyrighting, it has to be able to be functional and expressive in nature. In turn, that means that code needs to be able to function with other types of coding languages for interoperability purposes. This is extremely beneficial on Google's side of the case as it gives them more ground to stand on and allows for further interpretation of the legality of the case as the law has been in the copyright laws since before the case began.

Continuing on the point of legal standings, there are those who view that Google still has much ground for their side of the case. When looking at the case and considering the previous point made, it is hard to deny that Google doesn't have ground to stand on. In fact, there are people who believe that with Section 102(b), Google has the right point of view on the case and is in the clear. As stated before, most software and code is built to be functional and expressive in nature. With that, there are those who believe that being functional and expressive in nature is one of the most important parts of understanding copyright for software. Oman (2017) believes that "the most important principle for purposes of understanding copyright protection for computer software is that a literary work can be both functional and expressive" (p. 6).

Considering the severity of the case, it is completely relevant and correct to bring up the importance of understanding copyright protection and how it relates to the use of software from one company (Oracle) being used in another company's software (Google). While the quote can be taken in different ways and be put towards the support of Oracle America, there is more support to Google's side with the quote. What is meant by that is that in simple terms, Google beats Oracle America in arguments as they followed the laws in place. In return, Google is getting pulled into and stuck in a case with Oracle that doesn't really need to happen as everything legally was done properly by Google.

In support of Oracle, they are doing what they believe is right to avoid any legal action being taken against them by the government or even Google itself. When going through the case, most people are taking all the current news or anything within the lifespan of said case. While Section 102(b) is definitely important to the case currently, what people do not take into account is the previous history with both companies and previous cases relating to copyright with either. While Google has had cases in the past relating to some deal of copyright, Oracle takes the cake. In this case specifically, though, Oracle actually has a history when it comes to copyright cases similar to the one they are fighting in comparison to Google. Back in July 2005, Oracle America was part of a debate about "whether or not to pass the Software Patent Bill" (Yang, 2012, p. 4). Now while the company is called Oracle America, this debate did happen across the ocean in Europe with the European Parliament. At the time in 2005, this bill was a pretty big deal for software companies, Oracle America included. Yang (2012) states that "as Oracle reports, many companies who are not supporters of the argument nevertheless feel forced to patent their software in order to avoid litigation" (p. 5). Litigation, in the context of the 2005 case, was being

pursued by the European Parliament in lieu of fines and further prosecution on Oracle (and other companies who did not support the case). In return, while not exactly the same case, the idea of copyright protection and patenting does carry over. It shows that Oracle has had past experience with cases in the field of protecting themselves against copyright-related issues, which in turn shows that Oracle may be in the clear for a better part of the case. The 2005 case gives credibility to Oracle in its legal right to pursue a case in the vein of copyright protection against Google.

When it comes to being in their legal rights, while Oracle is within theirs, what they want in return vis-a-vis to damages for Google's use of their A.P.I.'s are crazy. In legal cases, depending on what type of case it may be, people or companies can sue for damages to their person or products. Now while most cases are within reasonable standards, it is more the opposite when looking at this case. With the case between Google and Oracle, the latter is going a bit far in the amount of money for damages that they want to be paid back. To put in simple turns, Oracle is trying to dig into Google's bank and funds to make up for the use of their A.P.I.'s. As Vijayan (2016) concludes on the matter, "in a court filing, Google lawyers describe Oracle's argument demand for as much as $9.3 billion in damages for Java copyright violations". However, Vijayan (2016) also states that "predictably, Google has pushed back strongly on the damage estimates by Ocean Tomo arguing in its court filings that it 'fails to offer anything resembling an expert analysis'". Google knows that Oracle is overreaching in damages. They admittedly know that they did use the A.P.I.'s without permission, but they also realize that the number was also pulled out of thin air and not calculated properly. With that, they are pushing back against Oracle due to their overzealous request of an extremely large sum of money and countering with the reasoning that they are using chicanery. Chicanery, by definition, is basically

using tricks on one side of a platform to achieve a political, financial, or legal purpose. With Google and Oracle, the latter is using chicanery by making an overzealous estimate for damages to convince the jury into their favor even though the estimated damages given is misleading without actual analysis of the real damages. This, in turn, would've given Oracle an extreme advantage and upper hand… except for one thing. Google caught on to what they were trying to do. Since Google caught on, they took the advantage away from their opponent, Oracle. In turn, Google took the true edge away from them even though it would still be a long legal battle ahead.

In continuation of support for Google, there is more leeway legally for them to have much more endorsement on their side of the case. While it has been talked about multiple times already, there is always something new or something more to give Google the upper hand in this case. With this mindset, Google actually gets a bit of leeway due to how copyright rules work. To put it in layman's terms, the tech industry is ever-growing and that laws and rules will have to change as technology advances. This can be seen as a definite positive to Google's side as they are also making many advances in the tech industry. It is known that "in computer technology have strained many areas of the law, but copyright law is one particular area in which the courts and Congress have struggled to adapt to these technological developments, especially changes in the practice of writing computer software" (Harrington, 2017, p. 3). While Oracle has had ground to stand on, due to courts and Congress never truly being able to get up-to-date and just not being able to adapt in time, Google has leverage. With this leverage, Google can use it to their advantage to win the case when it does come to a conclusion. Yes, Oracle definitely did have legal standing because of being in previous cases relating to similar topics and yes, they

have every right to sue Google for what they did. However, what they forgot to take into account is that simply put, Google has the advantage of the literal law on its side due to it not always adapting to the current technological standards at the time.

There are many different points of view and opinions on the effect that this case will have on how copyright and fair use come into play with it. It is evident and clear though that there is more support to Google's side and their idea of how the law should be updated and properly used. The issue is of extreme importance due to the fact that it is between two tech giants and can have a major and long-lasting effect on the tech industry as a whole depending on the side that wins the legal battle. If the issue is not resolved, the battle could go on for longer than the decade it has already taken to get as far as it has, meaning it can last a quarter of a century or more. However, considering how big the case is in its current state, it most likely won't go on for too much longer.

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