Google v. Oracle: Issues & Analysis

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Google v. Oracle: Issues & Analysis

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The Constitution grants copyright owners the "exclusive right to their respective writings and discoveries"[1] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn1) by limiting the rights of others to reproduce, publicly perform or display, distribute, or create derivations of the copyrighted expression.[2] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn2) As stated in the Copyright Act, copyright protection extends to "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either director or with the aid of a machine or device."[3] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn3)

Section 102(b) of the Copyright Act also limits copyright protection, barring protection for original works of authorship as to "any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described explained, illustrated, or embodied in such work."[4] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn4) Even almost 150 years after *Baker v. Selden*,[5] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn5) the prohibition on protection of abstract ideas remains elusive, mainly because it is hard to define what the scope of an idea really is.[6] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn6) Comparison of an idea to the expression of that idea in the work of authorship is useful in determining this scope.

This limitation on copyright protection, that is, the protection of a single, particular expression of which there are many examples of possible expressions, is referred to as the idea-expression dichotomy.[7] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn7) That particular expression is protected, but the "facts or general ideas expressed" are not.[8] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn8)

On October 7, the Supreme Court heard oral arguments over whether copyright protection extends to a software interface, which basically allows software developers to write a code for some application using Oracle's coded "software interface" on a computer with one operating system, for example, IBM's, and run it on a computer with a totally different operating system, say Apple's.[9] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn9)

Petitioner Google argued that the idea of Oracle's work on their application programming interface (API), the software interface that is the subject of the suit, was literally synonymous with Oracle's expression of the idea—that is, there is only one way to write Oracle's declaring code, which is the way Oracle wrote it.[10] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn10)

Respondent Oracle argued that section 102(a) of the Copyright Act protects computer programs if they are original because section 101 of the Act defines literary works expansively as those "expressed in words, numbers, or other verbal or numerical symbols or indicia.[11] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn11) That is to

say, if Google liked Oracle's API so much, instead of stealing they should have spent the money—which other tech giants like Apple and Microsoft actually did—to code their own.

Over 80 amicus briefs have been submitted by some of the largest tech companies in the world, including IBM and Microsoft. Regarding the copyrightability issue, IBM argued the Federal Circuit's decision in favor of copyright protection of Oracle's API is "contrary to longstanding industry practice and harmful to innovation."[12] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn12) IBM likens Oracle's software interface to IBM's own Fortran, a computer program that allows computer programs to be executed on and by and computer processor having a Fortran compiler, which enabled many competitors, including Oracle, to "bring out their own systems and methods for creating, maintaining, and using software."[13] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn13)

The Court seemed ready to affirm, based on oral arguments. One particularly salient analogy among those of brief organization patterns, restaurant menu food group arrangements, and songs was that of a mathematical proof offered by Justice Kagan as she questioned Google.[14] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_edn14) The analogy was that of students writing proofs in math class, that is, different ways to solve a math problem. Some students might write elegant solutions. Others might write clunkier solutions that accomplish the same purpose. But what if the proofs could only be read by machine? In this comparison, the proofs represent code written by software developers that might run an app or solve a complex math problem, and the machine represents Oracle's software interface that reads the code. Can Google copy Oracle and build an identical machine while avoiding infringement because that machine can only be built that way? Can Google use parts from Oracle's machine to build their own machine while avoiding infringement? The Court seemed ready to answer no to these questions, considering developers like Apple and Microsoft already spent the money to develop their own.

Citations:

[1] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref1) U.S. Const. art. I, § 8, cl. 8.

[2] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref2) *See* Lydia Pallas Loren & Joseph Scott Miller, Intellectual Property Law: Cases & Materials 321 (6th ed. 2018).

[3] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref3) 17 U.S.C. §102.

[4] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref4) 17 U.S.C. §102(b).

[5] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref5) Baker v. Selden, 101 U.S. 99 (1897).

[6] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref6) *See* 1 Melville Nimmer, *Nimmer on Copyright* §2A.06 (2019).

[7] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref7) Loren & Miller, *supra* note 2, at 340.

[8] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref8) *Id.*

[9] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref9) Dorothy R. Auth & Howard Wizenfeld, *Google v. Oracle: Will Software Be Free?*, Nat'l L. Rev.(Feb. 27, 2020), https://www.natlawreview.com/article/google-v-oracle-will-software-be-free.

[10] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref10) Brief for Respondent at 18, Google LLC v. Oracle America, Inc., No. 18-956 (U.S. argued Oct. 7, 2020), 2020 WL 832871.

[11] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref11) *Id.* at 21.

[12] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref12) Brief for Int'l. Bus. Machs. Corp. and Red Hat, Inc. as Amici Curiae Supporting Petitioner, Google LLC v. Oracle America, Inc., No. 18-956 (U.S. argued Oct. 7, 2020), 2020 WL 242499.

[13] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref13) *Id.* at 13-15.

[14] (file:///C:/Users/zlose/Documents/KLJ/KLJ%20Vol%20109%20(3L)/Blogs%20and%20Website/Weiland%20Blog%20Post.docx#_ednref14) Oral Argument, Google LLC v. Oracle America, Inc., No. 18-956 (U.S. argued Oct. 7, 2020), https://www.c-span.org/video/?469263-1/google-v-oracle-america-oral-argument.

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