

## SCOTUS Opinion: Google Allowed Fair Use Of Oracle's Java Code

5 Apr 2021

After Google acquired Android, it copied about 11,500 lines of Oracle's Java SE code without Oracle's permission so that programmers could use it to develop apps for Android phones. Oracle filed suit arguing that Google violated its copyrights over that code. The Federal Circuit held that the copied lines were copyrightable under the Copyright Act, and reversed a jury's determination that Google's copying constituted fair use.

Google appealed both determinations, and the Court, in a 6-2 decision by Justice Breyer (Justice Barrett recused) reversed, holding that Google's copying constituted fair use while assuming that the Java code was copyrightable. First, the majority agreed that a determination of fair use is a mixed question of law and fact which allows de novo judicial review of a jury's determination, rejecting Google's argument that the jury's determination in its favor was entitled to extra weight. The Court then considered the four prongs of whether Google's copying was fair use—the nature of the work, the purpose and character of the use, amount of the portion used, and market effects—and found that each prong weighed in Google's favor. In particular, the majority found that Google copied only the portion of Oracle's Java code that was necessary to allow programmers to work on its Android platform—a mere 0.4% of all the potential Java code it could have copied.

Justice Thomas, joined by Justice Alito, dissented, arguing that the Court should have squarely addressed whether the Java code was copyrightable, and that bypassing that analysis allowed the Court to erroneously conclude that Google's use was fair.

A link to the opinion in *Google, LLC v. Oracle America, Inc.* is here:

[https://www.supremecourt.gov/opinions/20pdf/18-956\\_d18f.pdf](https://www.supremecourt.gov/opinions/20pdf/18-956_d18f.pdf)

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