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Doctrine of Fair Use in Light of the Decision in Google LLC V. Oracle America Inc. (2021)

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ABSTRACT

In the year 2021, for the field of Intellectual Property Rights [IPR], the decision by the Supreme Court of the United States [SCOTUS] in the tussle between Google and Oracle, two of the most growing businesses in the world became very important. The reason why this judgment was long awaited by software industries and scholars of IPR is that the doctrine of fair use was being discussed and adjudicated upon in the instant case. The case comment will thus analyse the judgment, the arguments thereon as well and the analysis and way forward for the world.

I. INTRODUCTION

Intellectual property rights are our legal rights governing the use of creations of the human mind legal protection is granted to the owner or creator of the intellectual property under different Acts.

One of them is Copyright which is a very significant protection granted to the original owner of a literary or artistic work as given under the statutes of each country, but it is mostly universal. The rationale of providing Copyright protection to the owner of the work is to enable him to reap the benefits of his labour and investment to the exclusion of others. There are certain exceptions to the infringement which are laid under every statute.

II. CONCEPT OF FAIR USE

Normally, any unauthorized use of the Copyright in our work amounts to infringement of the Copyright in that work. However, some unauthorized uses of Copyright work for certain precise reasons are allowed by law and they are not considered as an infringement. The basis of law for this unauthorized use is the reproduction of some portion of the Copyright work for purposes such as research, private study, criticism etc. Thus, fair use is a doctrine that permits some copying of a copyrighted work without holding the copier as an infringer even though the Copyright holder has not authorized the same.

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In the United States of America, fair use is dealt under Section 107 of the Copyright Act, under this reasonable unauthorized use is based upon the user's judgement on whether he is he has satisfied the four factors employed when analysing fair use. The four factors according to Section 107 of the US Copyright Act are as follows:

- The purpose and character of the use including whether such use is of a commercial nature or is for non-profit educational purpose.
- The nature of the copyrighted work.
- The amount of work that is copied in relation to the copyrighted work as a whole.
- The effect of the use upon the potential market for or value of the copyrighted work.

Thus, if the copyright owner believes that his Copyright has been infringed by a person, then the Court will ultimately decide whether the users copying was reasonable according to section 107 of the said Act.

In the case of *Authors Guild v. Google Inc.*², Google scanned more than 20 million library books from various libraries under its Google Books Library Project. The work scanned included copyrighted material. There was no permission take from the rightful owners by Google before scanning them and making snippets of them available through its search engine. The users could search for a term in the full text of a book, they were only able to access fragments of it. Thus, the Court concluded that Google's unauthorized digitising of copyright protected works come under the doctrine of fair use and hence Google was not liable for anything.

In a recent judgment, in the case of *Warhol Foundation v. Goldsmith*³, Goldsmith was a professional photographer having main focus on celebrities. She has been active for a very long time and it is also well-known in the country. Andy Warhol was an artist recognized for his significant contributions to contemporary art in a variety of media. Warhol is particularly known for his silkscreen portraits of contemporary celebrities. A foundation was opened after Warhol died and they hold the copyright over the work of Warhol and generate revenue by doing so. One day, goldsmith had the opportunity to take photos of Prince, she did the light set up and make up to enhance the photos that she takes of the Prince, and eventually took 23 photographs. Out of which one is the centre of dispute matter. Goldsmith licensed the photograph for art reference to a vanity fair magazine. Now, Vanity magazine in turn commissioned Warhol to make portrait of the image and thereafter it was all published in the

² *Authors Guild v. Google Inc.* 804 F.3d 202 (2d Cir. 2015).

³ *Warhol Foundation v. Goldsmith*, (2d Cir. 2021).

magazine. Vanity Fair did not inform Goldsmith that Warhol was the artist for whom her work would serve as a character reference, and she did not see the article when it was initially published. The Court decided that all four factors of fair use were against Warhol and that it does not pass the fair use test.

III. GOOGLE LLC. V. ORACLE AMERICA INC⁴. - AN ANALYSIS AND THE WAY FORWARD

This judgment has to be one of the most awaited judgments for all the companies in the United States as it was pertaining to a computer program in question.

Facts of the case:

Oracle America, Inc., owns a copyright in Java SE, a computer program that utilizes the prevalent Java computer programming language. In 2005, Google purchased Android and sought to build a new software platform for mobile gadgets. To allow the millions of programmers familiar with the Java programming language to work with its new Android platform, Google copied nearly 11,500 lines of code from the Java SE program. Hence, Oracle filed an infringement suit against Google in the lower court, and the Court held that the program was copyrightable, and the act Google was not under the ambit of fair use, thus the Hon'ble Supreme Court of the United States agreed to review the same.

Issues raised:

- Whether the copy of declaring code of the software by Google amount to copyright infringement?
- If so, whether the copying falls under the defence of 'fair use'?

Decision:

The Court analysed the four-ingredient test for a doctrine of 'fair use' to be established by noting that copyright protection is narrower, and the applicability of fair use is greater. The Court held and observed the following:

- Google's copying of the Java SE API, which included only those lines of code that were needed to allow programmers to put their accrued abilities to work in a new and transformative program, was a fair use of that material as a matter of law.
- The Act provides that a copyright holder may not preclude another person from making a "fair use" of a copyrighted work.

⁴ Google LLC v. Oracle America Inc, (SCOTUS 2021).

- The doctrine of “fair use” is flexible and takes account of changes in technology. Computer programs differ to some scope from many other copyrightable works because computer programs always serve a functional objective. Because of these variations, fair use has an important role to play for computer programs by providing a context-based check that keeps the copyright monopoly afforded to computer programs within its lawful limits.
- Applying the four-ingredient test the Court looks at each one and draws a rationale for the instant case:
 - a) **Purpose and character of the alleged infringer’s use**- The purpose to copy the declaring code was to foster the creation of ‘new products’ and to ‘expand the use and usefulness of Android-based smartphones’. Thus, it is in line with the objective of copyright law and is thus ‘transformative’ since it is a creative ‘progress’.
 - b) **Nature of copyrighted work**- The declaring code that is copied is functional in nature and is intertwined with ‘uncopyrightable ideas and new creative expression’ it has a weak copyrightable nature and thus the declaring code taken from Oracle does not harm any copyright of the original author.
 - c) **Amount of copying**- The percentage of Java as a whole and the percentage of work Google copied is extremely insignificant and small. Moreover, the ‘substantiality’ aspect will favour more towards fair use since the objective of copying was creative progress and transformative.
 - d) **Impact on potential market**- The licensing market of Java and android were distinct and hence the impact on Oracle by Google’s actions is very mild. The impact must therefore be weighed against the ‘public benefits’ of the copying and not just the owner’s perspective.

IV. ANALYSIS AND WAY FORWARD

This decision was definitely one of the most awaited judgments for all the software companies and other stake holders. As already understood, this doctrine came into picture to ensure that the monopoly rights should not be detrimental to the larger interests of general public. The seeds of what would become the fair use doctrine in the United States were planted in English law beginning in the mid-18th century. For most of its history, fair use was an entirely judge-made doctrine. That modified in 1976 when Congress revamped the copyright statute. When codifying fair use however, Congress made explicit, but it did not intend to “freeze” the

doctrine, but instead expected it to continue to evolve particularly in order to accommodate rapid technological changes.

Thus, this decision by the SCOTUS is a win for all the software companies in the world who wish to transform existing technologies in order to provide better services to their customers who largely depend on these technological advancements these days. Further, it has also laid a broader horizon for all the Courts across the world to look at fair use doctrine in a manner that balances out monopoly and the public interest.
