

IN THE SUPREME COURT OF THE UNITED STATES

---

No. 18-956

GOOGLE LLC, PETITIONER

v.

ORACLE AMERICA, INC.

---

ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

---

MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

---

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in oral argument in this case as amicus curiae supporting respondent and that the United States be allowed ten minutes of argument time. Respondent has consented to the allocation of ten minutes of argument time to the United States.

This case concerns the copyrightability and re-use of computer code. The Copyright Act of 1976, 17 U.S.C. 101 et seq., protects "original works of authorship," 17 U.S.C. 102(a),

including "computer program[s]," 17 U.S.C. 101. The Act specifies, however, that copyright protection does not "extend to any idea, procedure, process, system, [or] method of operation" described or expressed in such a work. 17 U.S.C. 102(b). Under the "merger" doctrine, copyright protection also does not apply when an idea can be expressed in only a limited number of ways, such that the expression and idea "merge." Finally, the Copyright Act provides that "the fair use of a copyrighted work \* \* \* is not an infringement of copyright." 17 U.S.C. 107. The questions presented in this case are (1) whether respondent's Java Standard Library is uncopyrightable under Section 102(b) or the merger doctrine, and (2) whether petitioner's verbatim copying of respondent's original computer code into a competing commercial product was fair use.

The United States has a substantial interest in the resolution of those questions. The Copyright Office is responsible for, among other things, determining whether a work is copyrightable before registering a copyright for the work, 17 U.S.C. 410(a), and for advising Congress, agencies, the courts, and the public on copyright matters, 17 U.S.C. 701. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

The United States regularly presents oral argument as amicus curiae in cases concerning copyright law. See, e.g., Georgia v.

Public.Resource.Org, Inc., No. 18-1150 (argued Dec. 2, 2019); Star Athletica, L.L.C. v. Varsity Brands, Inc., 137 S. Ct. 1002 (2017); Kirtsaeng v. John Wiley & Sons, Inc., 136 S. Ct. 1979 (2016); Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663 (2014). Oral presentation of the views of the United States is therefore likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

FEBRUARY 2020