Fair Use Copyright Intellectual Property Law Oracle vs Google Case Study

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Abstract
Intellectual property (IP) is a kind of intellectual property that has been remarkably difficult to classify as a specific form of IP subject matter because its dual nature presents particular difficulties for those trying to draw analogies with existing legal categories. With the development of technology there was a new challenge for Intellectual property concept and it was about position of software in the world of intellectual Property. With now era of technology begin, there was new legal issue regarding intellectual property was rises. This case will inloved how google use Oracle copyrighted material the Java programing language especially the regarding the Application programming interface which created a 9 year long legal battle. From the back story this case actually was reveal that Google loan some of Java program Asset to uses in the Google Android Development Kits especially the API. By means of observing, studying and testing the behavior of SAS Institute's program, WPL reproduced the functionality of that program by using the same programming language and the same format of data files.

***Keyword** : intellectual Property, Oracle vs Google Case Study, Software*

Introduction

Tech Industry today was become a multi-billion dollar company. One of the uniqness of this industry was very tight competition between the tech to company in each field of tech Industry. When talked about Game Industry, people will talked about Valve, Electronic Arts, Garena and Etc. When talked about Operating system there are Microsoft, Apple, Unix and Open-Source based Operating system like Linux, Ubuntu and many more. In terms of search engine market Google was monopolized the market followed by global competitor Bing and some local or regional competitor like Naver and Baidu in East Asia market. Then the competition of tech industry touch the smart handphone or smartphone market.

According to Mobile Industry Review the history of smartphone was started by IBM in 90's by introducting Simons to public, this trend then followed by Nokia that publish Nokia 9000 Communicator, Ericsson that publish R380 in 1999 and introduction of Symbian Os that domminated the market until around 2010 after that Smartphone industry was dominate by 2 OS and it was Android and Ios.[2]

The story of Ios and Android started in the nearly same time according to mobileindustryreview.com Ios was developed in 2007 and in 2008 Andy Rubin introduce the Android system.[3] Android and Ios become common operating system today with the diffrent was Ios was exclusive to Iphone and Android was used by many Smartphone trademark like Samsung, Xiaomi, Huwai, HTC and many more, even according to Mobileindustryreview.com HTC was the first user of the Android Os.[4]

Around 2010 Tech industry was schocked by legal lawsuit between Oracle as the holder of Java and Google as the developer of Android, because Oracle accuse google using

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[2] Adam Pothitos, The History of the Smartphone, October 31, 2016, http://www.mobileindustryreview.com/2016/10/the-history-of-the-smartphone.html acess November 20 2023

[3] Ibid

[4] Ibid

Java asset in the development of Android and until today legal battle between this two was still on going until today. The legal battle between the two had many impication, legal decision and legal prespective in every circuit and make this important to tech industry in the future.

One of the key element of this case was about how to use copyrighted material in the process of creating a copyrighted creation, because this case will inloved how google use Oracle copyrighted material the Java programing languange especially the regarding the Application programming interface which created a 9 year long legal battle.

Problem Formulation

1) How actually use Fair use policy in copyright material according to international law and Google vs Oracle Case?

Research Methode

The objective of this research is to analyse the usage of fair use policy according to international law and its implication in Google vs Oracle case, with that, aims the research will be conducted with the Normative-Juridical method, Focusing on studying law or legislation regulating the issue as primer sources, another same research in the past as secondary resources, and legal or religious scholar doctrine and view as the tertiary resources.

History of legal battle and Court Decision in Google Vs Oracle

Google Vs Oracle were started in 2010, but the histroy of this legal battle was started before that. According to Jonathan Bailey from plagiarimtoday.com he was stated that back in 2003 when Sun Microsystem the previous owner of Java programming languange asked by Google to help the devolpment of Android system.[5]

When the two nearly agree about the price of Java programming languange license around $40 Billion until $50 Billion dollar, Google decide to only use Java Application programming interface or API to create their own development kits, the simple way to define API was set of definitions and instructions, for example an API might say that protocol "Calculate" is used to access the calculator with parameters for the calculation to be performed.[6] Sun Microsystem did not care about this and still support Google to develop Android sytem, but diffrent matter happen when Oracle bought Sun Microsystem in 2009, Oracle thinks that Google was infringe Oracle copyright material and in 2010 legal battle was happen.[7]

According to Timeline event made by Upperedge.com, in 2011 Oracle and Google CEOs, Larry Ellison and Larry Page, are ordered to hold mediation and settlement talks

[5] Jonathan Bailey, A Brief History of Oracle v. Google, March 29, 2018, https://www.plagiarismtoday.com/2018/03/29/a-brief-history-of-oracle-v-google/ acess November 22 2019

[6] Ibid

[7] Ibid

but are unable to reach an agreement.[8] In 2012 a jury fails to unanimously decide whether Google's use of the thirty-seven Java APIs as part of the Android APIs constitute fair use.[9] Afterwards, Google demands a mistrial and Oracle motions for a judgment as a matter of law that Google's fair use defense cannot be used in this case.[10] US District Judge, William Alsup, denies Oracle's motion. Later that month, Judge Alsup ruled that APIs can't be copyrighted and that Google's use of Java APIs in Android is not infringement.[11]

The district court entered final judgment in favor of Google on its claim for copyright infringement, except with respect to the rangeCheck function and the 8 decompiled security files.[12] As to rangeCheck and the 8 decompiled security files, the court entered judgment in favor of Oracle.[13] Oracle appeals and Google cross-appeals with respect to rangeCheck and the 8 decompiled files.[14]

In 2014 the case was continued in Appeal Court, The Apple Court itself was in favor of Oracle Claim that 37 development kits uses in Android was indeed uses API that indeed was a copyright material and in the same year google was started petition to Supreme Court to reviw the Federal Circuit Decision but in 2015 the supreme court rejected it.[15]

Then in 2016 Google restarted the case in the trial court which Google won again and decided Google Uses of API was fair use but Oracle Appeal again in 2017 and in 2018 Federal Circuit rule that Google action was not a fair use.[16] Today this case was finally will be decided in the Supreme Court after sucess petition by Google.[17] Which was in 2021 the Supreme Court of United States decided that Google did not infringement any copyright against Oracle when it copied snippets of programming language to build its Android operating system.[18]

Theory Review

Protection of Intellectual property was started for long time ago and it was started with Berne Convention 1886 as starting point for international legal formal to protected Intellectual property in the world. But what is inttelectual property? According to WIPO official website Inttectual Property was[19]:

[8] Jeff Lazarto, Unraveling The Oracle Vs Google Lawsuit, August 21, 2018, https://upperedge.com/oracle/unraveling-the-oracle-vs-google-lawsuit/ acess November 22 2023

[9] Ibid

[10] Ibid

[11] Ibid

[12] Ibid

[13] Ibid

[14] Ibid

[15] Ibid

[16] Ibid

[17] Timothy B.Lee, Supreme Court agrees to review disastrous ruling on API copyrights, November 16, 2023, https://arstechnica.com/tech-policy/2019/11/supreme-court-will-review-high-stakes-google-v-oracle-ruling/ acess November 22 2023

[18] Brian Fung, Supreme Court hands Google a victory in a multibillion-dollar case against Oracle, https://edition.cnn.com/2021/04/05/tech/google-oracle-supreme-court-ruling/index.html acecced 1 December 2023

[19] WIPO, What is Intellectual Property?, https://www.wipo.int/about-ip/en/, Access, November 21 2023

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

With now era of technology begin, there was a new challange for Intellectual property concept and it was about postion of sofware in the world of inttelectual property. According to Andrés Guadamuz González who write paper for The WIPO Latin America and Caribbean (LAC) Regional Seminar on Intellectual Property and Software in the 21st Century: Trends, Issues, Prospects back in 2008 said that[20]:

Software has been remarkably difficult to classify as a specific form of IP subject matter because its dual nature presents particular difficulties for those trying to draw analogies with existing legal categories

Another subject regarding to software issue was sofware was not a one man work but a combination of multiple Intellectual property elements.[21] But it does not mean it was not protected by any law. Andrés Guadamuz González stated atleast there was some law that protected that and it was Article 4 of the WIPO Copyright Treaty (WCT), Article 10 of the World Trade Organization's TRIPS Agreement and Article 1 of the European Council Directive 91/250/EEC on the Legal Protection of Computer Programs all define software as literary works subject to copyright protection.[22]

What are stated in those convention?, Article 4 of the WIPO Copyright Treaty (WCT) stated that[23]:

Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression.

Then Article 10 verse 1 and 2 of WTO's TRIPS Agreement stated that[24]:

> Computer programs, whether in source or object code, shall be protected as literary works underthe Berne Convention (1971) (1). Compilations of data or other material, whether in machine readable or other form, which byreason of the selection or arrangement of their contents constitute intellectual creations shall be protectedas such. Such protection, which shall not extend to the data or material itself, shall be without prejudiceto any copyright subsisting in the data or material itself.(2)

And Article 1 verse 1 until 3 of the European Council Directive 91/250/EEC stated that:

> In accordance with the provisions of this Directive, Member States shall protect computer programs, by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. For the purposes of this Directive, the term 'computer programs` shall include their preparatory design material.(1)Protection in accordance with this Directive shall

[20] Andrés Guadamuz González, Software Patentability: Emerging Legal Issues publish by WIPO magaize in December 2008, https://www.wipo.int/wipo_magazine/en/2008/06/article_0006.html access November 21, 2023

[21] Ibid

[22] Ibid

[23] Article 4 WIPO Copyright Treaty

[24] Article 10 verse 1 and 2 of WTO's TRIPS Agreement

apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under this Directive.(2)A computer program shall be protected if it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine its eligibility for protection.(3)

It could be said that until today the biggest instrument to protected software was copyright law, but first before talked the issue more further, what is the definition of copyright? According to World Intellectual Property Organization or WIPO copyright was[25]:

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.

According to Simon Stokes Solicitor and Patner in Blake Morgan stated copyright was[26]:

copyright is the property right the law gives author/creator and those taking ownership from them to control the copying and other forms of exploitation of their creation or 'works'.

Another opinion about copyright was stated by Sang jo Jang, he was stated that copyrighted work was a creative production of human ideas or emotion.[27] From the opinion above can be conclude that copyright was right of the author about its creation of idea and expression.

According to WIPO, there are some international treaty regarding protection of copyright law and it was Beijing Treaty on Audiovisual Performances, Berne Convention for the Protection of Literary and Artistic Works, Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite, Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, WIPO Copyright Treaty (WCT), WIPO Performances and Phonograms Treaty (WPPT).[28]

Back to the computer program topic, some country and regional actually already try to step further in computer program protection by using Patent messurement as a protection for example USA and EU. It does not mean that copyrighted material was could not be used for any reason by another person.

[25] WIPO, Copyright, https://www.wipo.int/copyright/en/ acess November 20, 2023

[26] Simon Stokes, Digital Copyright Law and Practice: Fifth Edition,New York:Hart Publishing 2019, P 1

[27] Sang Jo Jang (edited by Byung Il Kim & Christopher Heath), Max Planck Series on Asian Intellectual Property Law :Intellectual Property Law in Korea Second edition, The Netherland: Kluwer Law International BV, 2015 P 175

[28] WIPO, *Op.cit*

There are ways to use copyrighted material and they are Fair Uses and Use by License.

For starter what is Fair Use and Use by License? According to Rich Stim Fair Uses is[29]:

> a fair use is any copying of copyrighted material done for a limited and "transformative" purpose, such as to comment upon, criticize, or parody a copyrighted work. Such uses can be done without permission from the copyright owner

Furthermore in Berne Convention amandement 1979 could not be found the terms of Fair Uses, but similiar meaning could be found in Article 10 of Berne Convention amandement 1979 about Certain Free Uses of Works, The article stated that:

1. It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.
2. It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.
3. Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.

Another free uses of a copyrighted material then citated in Article 10bis of Berne Convention Amandement 1979 about Further Possible Free Uses of Works that stated:

1. Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:
    a. the public performance of their works, including such public performance by any means or process;
    b. any communication to the public of the performance of their works.
2. Authors of literary works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

It was what Berne Convention rule, but how the practice in every country are really depend on the nationals legislation. For this case, US law will be suitable

[29] Rich Stim, What Is Fair Use?, Date Unknown, https://fairuse.stanford.edu/overview/fair-use/what-is-fair-use/ acess November 22, 2023

to talked about. According to Copyright Law of the United States Chapter 1 Article 107 about Limitations on exclusive rights: Fair use stated that:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Conclusion

With development of technology new legal issue regarding with intellectual property was rises. One of the case was long battle between Oracle and Google. Started from talked and join cooperation to develop Android it was turned to become 9 years old legal battle from distric court, federal court and Supreme Court with 2 Series of Distric Court and Appeal court with 4 diffrent decision in each court. One of the issue surfaced was about Fair Uses especially in Second Distirct Court and Appeal court of Google vs Oracle legal battle. Althought the term and definition about fair uses was relatively clear the court in diffrent circuit had diffrent opion regarding this issue finally the Supreme Court take step and will ended this long term legal battle ended with Google didnt infrigate any copy right law according to fair use policy

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