GOOGLE LLC v. ORACLE AMERICA, INC. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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Copyright is considered to be the genesis of Intellectual Property, as it is the foundation on which any further development of Intellectual Property Rights happens. It is rare to find cases that put giants like Google LLC and Oracle America Inc. at such defining moments of law, it is rare to find cases that are so consequential in nature, which would have consequences whichever way the case would have been decided.

Sun Microsystems created the infamous and widely used computer programming software Java in 1996, the same company was acquired by Oracle America Inc. in the year of 2010, the elements of Java included primarily the following –

- *"Programming Language*
- *Virtual Machine*
- *Application Programming Interface (API)"*

Application Programming Interface or API is a shortcut used in software coding, which is used for basic or specific tasks as it is programmed to perform, it is also important that APIs can be considered as the ground work f writing any code of software, it is essential that such API is available so that the code can be evolved to perform more complex tasks, making the completion of complex tasks in short time.

In the initial days, Sun Microsystems only had 8 APIs in the year 1996, and by the year 2008 the number of APIs generated by Sun Microsystems had reached 160+ all this was being done by the use of Java. Parallel to the same timeline google acquired Android, which was functioning in parallel to the software programme Java due to contractual obligations created by the companies.

The interesting turn of events starts with the acquisition of Sun Microsystems by Oracle America Inc. which had been a giant in the field of software and data sectors, after acquiring the target company, Oracle brought Google to the courts, alleging that Google LLC had infringed the copyright of Sun Microsystems (now acquired by Oracle) by using 37 APIs which

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were generated by Sun Microsystems. These 37 APIs were written in 11,500 lines of code, Oracle had valued the damages for the infringement at $9 Billion, which brings every line of the code priced at $800,000.

The case[1] first went to the trial court where Google contended that no copyright can be granted for APIs as they are mere shortcuts used in coding, making them a subject of copyright will make further evolution of coding difficult, it will harness the growth of information technology. The reason that we have platforms like Chat GPT, and other Artificial Intelligence tools is because of such freedom that is there because of APIs not being a subject of Copyright.

Google further contented that it has only indulged itself in fair use, which means that Google has not violated the moral rights of Oracle, Sun Microsystems, or Java, It is interesting to consider the fact that Google had not copied the code generated earlier, it had created its own code to serve and perform the same tasks as in those 37 APIs, it had not duplicated them, it had just creatively re-engineered the code which was similar not same, but performed the same action.

It is important to understand Fair use, in the landmark case of "*Folsom vs Marsh"* the court introduced the first-ever case of "Fair Use" in the United States of America. The following four factors to determine whether a work is of Fair use or not –

- "*The nature and objects of the selections made".*
- *"The nature of the original work*
- *"The amount is taken; and"*
- *"The degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work."*[2]

"Civic Chandran vs Ammini Amma" - In this case, the Court considered that a parody did not constitute an infringement of copyright as long as it has not been misused or misappropriated. In consonance with this case, the Court established the following three tests which are to be taken into consideration to determine work to be an infringement of copyright:

- *"The quantum and value of the matter taken in relation to the comments or criticism.*
- *The purpose for which it is taken; and*

[1] *No. 18–956. Argued October 7, 2020—Decided April 5, 2021*
[2] Folsom vs Marsh

- *The likelihood of competition between the two works."*

The United States Copyright Law specifies several factors in order to determine whether the acts fall within the ambit of fair use, the Indian courts have accepted these factors too in order to determine whether an act constitutes a fair dealing as provided under Section 52 of the Copyright Act, 1957 or else it amounts to infringement of a Copyright.

The factors are as follows:

- *"The purpose and character of the use of such work has to be determined whether the work is of a commercial nature or for a non-profit/educational purpose.*
- *Nature of the Copyrighted work.*
- *The portion used as a part of the copyrighted work as a whole.*
- *The effect of the use of such work on the market or value of the copyrighted work.*
- *Not a substitute for the original work.*
- *Also, is transformative in nature that is, adds new meaning and message to the original.*
- *If these factors are present in a work, it can be dealt with under the scope of fair dealing, and in a Copyright litigation the defence would have to prove how his/her work has incorporated all the above-mentioned factors so as to not result in infringement of a copyrighted work."*[3]

The factors are thoroughly considered by the courts before determining whether the work can be considered within the scope of fair dealing. It can be safely concluded that the test to determine a copyrighted work as a Fair Use of such work indeed differs from case to case since such facts are to be given higher priority than the law itself. Though the legislature has attempted to make law on this concept more flexible but precise, in the Indian scenario, section 52 of the Copyright Act, 1957 makes a legitimate stand for the public to rely upon this provision for now. As mentioned under Article 13 of the TRIPS (Trade-Related Aspects of Intellectual Property Rights) which reads as follows:

"Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rights holder".[4]

[3] Section 52 of the Copyright Act, 1957
[4] Article 13 of the TRIPS (Trade-Related Aspects of Intellectual Property Rights)

The trial court ruled in favour of Google LLC and dismissed the claims of Oracle America Inc. Further Oracle took the case on appeal to the Federal Court challenging the judgement passed by the court of trial, the federal court after following the due process in April 2020 upheld the judgement of the trial court, it was done to protect the interest of software developers, in case the ruling would have been in favour of Oracle America Inc. we would have not seen the development of multiple software in the last 1 decade, and especially within the last couple of years.