

SAP Hit With Record \$1.3B Copyright Infringement Suit

Jordan Robertson, AP Technology Writer

SAN FRANCISCO (AP) — On the losing end of a \$1.3 billion jury verdict for stealing a rival's intellectual property, SAP AG is facing the difficult decision about whether to double down — by appealing — or folding.

Either route is going to cost the German company dearly, and will have implications for how other technology companies approach copyrights.

A jury in U.S. District Court for the Northern District of California on Tuesday found that SAP's behavior in plundering software and documents from archenemy Oracle Corp.'s secured websites was so egregious that it awarded Oracle nearly all of the damages it was seeking.

If SAP appeals, it will have to endure several more years of disastrous publicity, a jackpot for Oracle.

"I'm not sure what the grounds for an appeal are — I'm not sure what the argument would be," said Patrick Walravens, an analyst with JMP Securities. "It's not like this was a trial that was done in a quick and dirty manner. It was three years and hundreds of millions in legal fees — things were pretty well vetted."

The judge in the case still has to formally affirm the jury's verdict, and could reduce the award. An order could come sometime in the next week.

Many analysts suspect that SAP will stand down and try and figure out a way to pay one of the biggest software piracy penalties on record. Doing so would put the \$10 million acquisition of the tiny, now-shuttered company called TomorrowNow that landed SAP in this mess that much farther in the rearview mirror.

SAP would only say that its legal team is "currently assessing all options available to us after this disappointing verdict," including post-trial motions and appeals.

"Unfortunately, this is a process that we expect to last a while. We continue to hope that an appropriate resolution can be reached without years of additional litigation."

Oracle has already reaped a windfall by damaging SAP's reputation, and will likely hammer on the verdict in negotiations to try and steal SAP customers in its quest to dethrone the German company as the world's biggest maker of business applications. Oracle has spent more than \$40 billion on acquisitions over the past half decade to muscle into that business, building a sideline to its core database software.

Oracle's public relations blitzkrieg during the trial also ensnared another rival,

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Published on Industrial Maintenance & Plant Operation (<http://www.impomag.com>)

Hewlett-Packard Co. Its new CEO, Leo Apotheker, was previously at SAP, and Oracle tried to force him to testify in the case. Apotheker stayed out of the public eye for the three weeks the case was going on, leading Oracle to believe he was dodging the subpoena.

HP repeatedly said that Apotheker had limited knowledge of the matter, and accused Oracle of harassing its new executive.

While Oracle succeeded at stoking controversy about Apotheker's absence from the trial, investors ultimately didn't seem that concerned. HP's stock rose after Apotheker appeared this week on HP's quarterly earnings call and he articulated a strategy that apparently satisfied shareholders.

HP and SAP have maintained that Oracle's interest in Apotheker was a sideshow. Oracle argued that Apotheker was a key player in the scheme.

If SAP decides to pay, coming up with the money is going to hurt. The \$1.3 billion that the jury awarded Oracle is more than half of SAP's total profit from last year. But Ross MacMillan, an analyst with Jefferies and Co., noted that SAP could easily pay for the verdict with cash on hand. At the end of September, SAP's cash stockpile stood at about \$4.1 billion, at current exchange rates.

MacMillan said the verdict wouldn't likely harm SAP in the long term.

"It has no real bearing on either company's product portfolios or customer relationships, in our view," he wrote in a note to clients Wednesday.

SAP had set aside just \$160 million to pay a judgment against the company, and has already spent \$120 million of that paying Oracle's legal fees.

One reason that SAP's courtroom drama might not damage its prospects is that it's expensive and time-consuming for companies to change back-office software. Another is that SAP is the market leader in business applications that companies already rely on for some of their most vital tasks, including managing payroll and human resources.

"Customers are sophisticated. They buy software that solves problems, and SAP solves a lot problems," said Walravens. "The implications from this are more around the way people do business, which is, you have to be really careful about infringing people's copyrights. Even if you think the damages from that behavior aren't very big, you can end up having to pay a lot of money."

If the verdict is allowed to stand, it will set the tone for other technology copyright cases. Few cases can match Oracle vs. SAP for scandal and star power, but the size of the award is a warning shot for others embroiled in similar disputes, and an incentive for plaintiffs to push more cases through to trial instead of settling.

While SAP can decide whether to let the lawsuit die, it's powerless in another key element of the case that has yet to play out: the company has acknowledged an

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ongoing investigation by the U.S. Department of Justice into the matter, and criminal charges are a possibility.

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