

# Jury Deadlocks On Key Issue In Google-Oracle Trial

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SAN FRANCISCO (AP) — A federal jury failed to agree on a pivotal issue in Oracle's copyright-infringement case against Google, blunting the impact of its finding that Google relied on another company's technology to build its popular Android software for mobile devices.

The impasse reached Monday in San Francisco hobbles Oracle Corp.'s attempt to extract hundreds of millions of dollars from Google on grounds that the Internet search leader pirated parts of Android from Oracle's Java programming system.

Although the jury decided Android infringes on some of Java's copyrights, the five men and seven women on the panel were divided on whether Google's actions were permissible under "fair use" protections of U.S. law. The fair-use provision allows excerpts of copyrighted work to appear in other creative expressions, such as books, movies and computer software.

With the fair-use question still dangling, Oracle now appears to have little hope of emerging from the trial with a windfall.

Oracle, a business software maker, had been seeking up to \$1 billion in damages and a court order that might have forced Google to reprogram Android if a licensing agreement couldn't be worked out.

U.S. District Judge William Alsup advised lawyers on both sides Monday that there is "zero finding of copyright liability" without a fair-use verdict.

The jury also found that Android infringes on nine lines of Java coding, but that claim probably won't be worth more than \$150,000 in damages, based on statements made earlier in the trial. When an Oracle lawyer suggested Monday that the infringement verdict on the nine lines could be worth substantially more, Alsup said the idea "borders on the ridiculous."

The same jury will decide on damages later. After issuing its partial verdict on the copyright claims, the jury began listening to opening arguments in the next round of the trial, covering Oracle's allegations that Android violates two Java patents. Those claims are believed to be worth considerably less than what Oracle might have gotten had it prevailed on all of its allegations of copyright infringement.

"At the end of the day, this looks like more of a victory for Google than it does for Oracle," said software analyst Mark Driver of Gartner Inc.

Investors seemed to agree. Google shares surged \$10.58, or nearly 2 percent, to

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close Monday at \$607.55, while Oracle shares fell 49 cents, or nearly 2 percent, to finish at \$27.92.

Android now powers more than 300 million smartphones and tablet computers, with another 6 million people activating the software on a mobile device each week. Google has driven its adoption by giving the software away to manufacturers of phones and tablets — a strategy that would have squeezed its profit margins even more if Java's technology had to be licensed.

Oracle's best hope now may be to persuade Alsup himself to issue a judgment concluding Android's reliance on Java isn't protected by fair use.

Alsup indicated that isn't likely to happen. "I could do that at any time, but I may never get there," he said. "I think there are arguments that go both ways on that."

The partial verdict came after five days of deliberation and two weeks of evidence that included testimony from three technology tycoons who rank among the world's richest people — Oracle CEO Larry Ellison, Google CEO Larry Page and Google Executive Chairman Eric Schmidt.

Although it wasn't a complete victory for Google, the outcome comes as a relief. Besides facing the prospect of a huge bill for damages, Google would have suffered a blow to its carefully cultivated image as a business that always strives to do the right thing.

Even so, Google will still try to set aside the jury's verdict of infringement on the broadest copyright claim. Google's lawyers intend to seek a mistrial on that issue, arguing that the verdict has no legal standing without an answer on the question of fair use.

Google is still hoping Alsup will rule that the Java technology in question for that part of the verdict can't be copyrighted anyway. Alsup has said he intends to decide that question. If he finds that copyrights do not apply, then there's nothing for Google to infringe.

That part of the case revolves around 37 of Java's "application programming interfaces," or APIs, that provide the blueprints for making much of the software work effectively. Other major companies, including IBM Corp, have licensed some of Java's APIs, but Google never did.

Sun Microsystems, which Oracle bought along with Sun's Java technology two years ago, had made most of Java freely available to computer programmers. Sun also sold licenses to companies that made significant alterations, known as forks, as Google did.

Oracle contended Google's changes violated a promise to maintain Java so it works on any technology platform — a concept known as "write once, run anywhere."

"The overwhelming evidence demonstrated that Google knew it needed a license

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and that its unauthorized fork of Java in Android shattered Java's central write-once-run-anywhere principle," Oracle said in a Monday statement.

Oracle, which is based in Redwood Shores, California, pointed to internal emails indicating Google's executives realized they needed a Java license shortly after work began on Android in 2005. Google eventually broke off talks with Sun. When Android was released a few years later, Sun Microsystems CEO Jonathan Schwartz publicly applauded it.

Google framed its initial discussions about a possible Java license as part of negotiations to develop Android in partnership with Sun. When those talks fell apart, Page testified, Google made sure Android relied on the free parts of Java combined with more than 15 million of its own unique computer coding.

Google, which is based in Mountain View, California, also tried to depict Oracle's lawsuit as a desperate grab for money after Ellison realized his company wouldn't be able to develop its own software for the rapidly growing mobile computer market. Oracle makes most of its money from selling database software and applications that automate a wide range of administrative tasks.

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