

Copyright in Computer Programs: A Sea Change or Business As Usual?

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1980s Copyright Cases

First Generation

- *Stern Elecs., Inc. v. Kaufman*, 669 F.2d 852 856-57 (2d Cir. 1982)
- *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240 (3d Cir. 1983)
- *Apple Computer, Inc. v. Formula Int'l, Inc.*, 725 F.2d 521 (9th Cir. 1984)

Second Generation

- *Whelen Assocs., Inc. v. Jaslow Dental Lab, Inc.*, 797 F.2d 1222 (3d Cir. 1986)
- *Johnson Controls, Inc. v. Phoenix Control Sys., Inc.*, 886 F.2d 1173 (9th Cir. 1989)

1990s Copyright Cases

Scope of Protection

- *Atari Games Corp. v. Nintendo of Am. Inc.*, 975 F.2d 832 (Fed. Cir. 1992)
- *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 982 F.2d 693 (2d Cir. 1992)
- *Autoskill Inc. v. Nat'l Educ. Support Sys., Inc.*, 994 F.2d 1476 (10th Cir. 1993)
- *Gates Rubber Co. v. Bando Chemical Indus., Ltd.*, 9 F.3d 823 (10th Cir. 1993)
- *Eng'g Dynamics, Inc. v. Structural Software, Inc.*, 26 F.3d 1335 (5th Cir. 1994)
- *Lotus Dev. Corp. v. Borland Int'l, Inc.*, 49 F.3d 807 (1st Cir. 1995)
- *Bateman v. Mnemonics, Inc.*, 79 F.3d 1532 (11th Cir. 1996)
- *Softel, Inc. v. Dragon Med. & Scientific Commc'ns, Inc.*, 118 F.3d 955 (2d Cir. 1997)
- *Mitel, Inc. v. Iqtel, Inc.*, 124 F.3d 1366 (10th Cir. 1997)

Patent Cases

1990s Cases

- *In re Lowry*,
32 F.3d 1579 (Fed. Cir. 1994)
- *In re Alappat*,
33 F.3d 1526 (Fed. Cir. 1994)
- *In re Beauregard*,
53 F.3d 1583 (Fed. Cir. 1995)
- *State Street Bank & Trust v. Signature Fin.
Grp., Inc.*, 149 F.3d 1368
(Fed. Cir. 1998)

Modern Cases

- *Bilski v. Kappos*, 130 S. Ct. 3218 (2010)
- *Alice Corp. v. CLS Bank Int'l*,
134 S. Ct. 2347 (2014)

The Modern Day: *Oracle Am., Inc. v. Google Inc.*

Declaring Code

- “Declaring code is the expression that identifies the prewritten function and is sometimes referred to as the ‘declaration’ or ‘header.’”
 - `public abstract void verify (PublicKey key, String sigProvider) throws CertificateException, NoSuchAlgorithmException, InvalidKeyException, NoSuchProviderException, SignatureException`

Implementing Code

- “The expressions used by the programmer from the declaring code command the computer to execute the associated implementing code, which gives the computer the step-by-step instructions for carrying out the declared function.”

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Declaring Code

- Merger
 - “[M]erger cannot bar copyright protection for any lines of declaring source code unless Sun/Oracle had only one way, or a limited number of ways, to write them.”
 - “[T]he district court erred in focusing its merger analysis on the options available to Google at the time of copying.”

The Modern Day: *Oracle Am., Inc. v. Google Inc.*

Declaring Code

- Merger
- Scènes à Faire
- “[T]he scenes a faire doctrine is a component of the infringement analysis.”
- “Google failed to make a sufficient factual record to support its contention that the groupings and code chosen for the 37 Java API packages were driven by external factors or premised on features that were either commonplace or essential to the idea being expressed.”

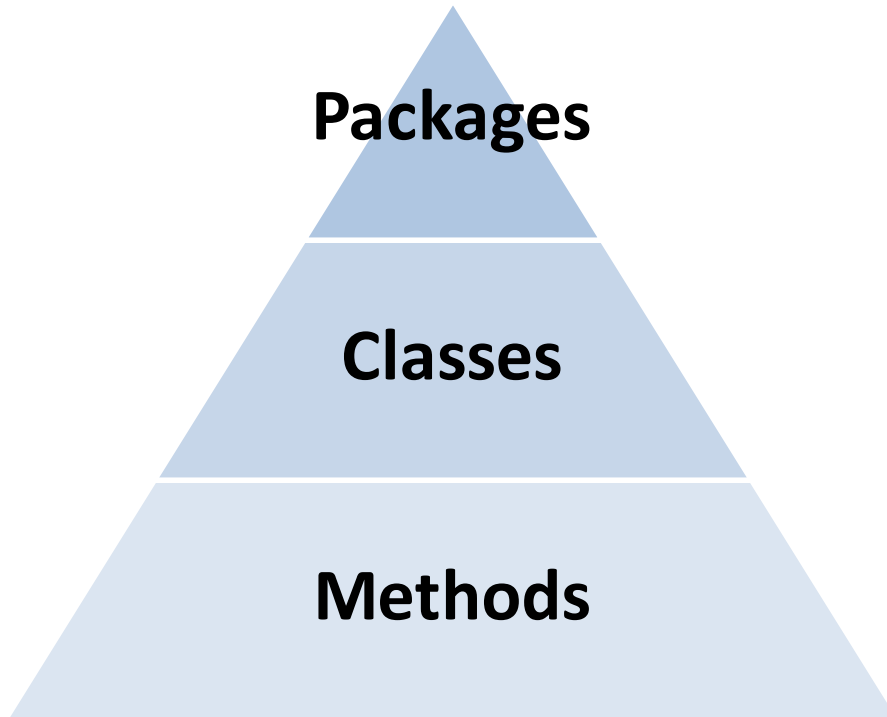
The Modern Day: *Oracle Am., Inc. v. Google Inc.*

Declaring Code

- Merger
- Scènes à Faire
- “[T]he focus of the scenes a faire doctrine is on the circumstances presented to the creator, not the copier.”

The Modern Day: *Oracle Am., Inc. v. Google Inc.*

The Structure, Sequence, and Organization of the API Packages



- “To organize the classes for users, . . . [Sun] grouped classes (along with certain related ‘interfaces’) into ‘**packages**.’”
- “[E]ach **class** consists of specified methods plus variables and other elements on which the methods operate.”
- “Sun called the code for a specific operation (function) a ‘**method**.’”

The Modern Day: *Oracle Am., Inc. v. Google Inc.*

The Structure, Sequence, and Organization of the API Packages

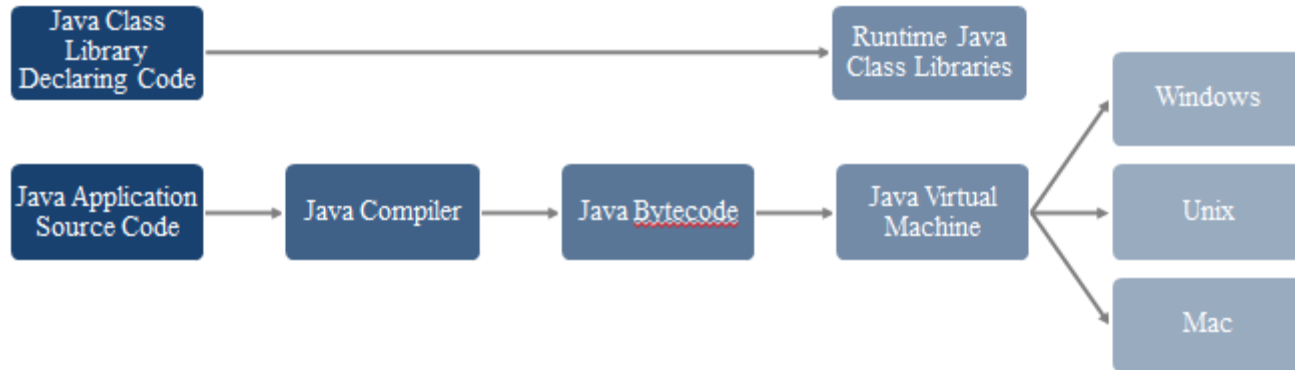
- “A ‘computer program’ is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.”
— 17 U.S.C. § 101
- “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, . . . regardless of the form in which it is described, explained, illustrated, or embodied in such work.”
— 17 U.S.C. § 102(b)
- “Section 102(b) codifies the idea/expression dichotomy and the legislative history confirms that, among other things, Section 102(b) was ‘intended to make clear that the expression adopted by the programmer is the copyrightable element in a computer program.’”

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