IN THE

Supreme Court of the United States

GOOGLE LLC,

PETITIONER,

v.

ORACLE AMERICA, INC.,

RESPONDENT

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF AMICI CURIAE
SMALL, MEDIUM, AND OPEN SOURCE TECHNOLOGY
ORGANIZATIONS IN SUPPORT OF PETITIONER

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A. Successful software development requiplatform SSO compatibility	
B. Clear copyright rules contribute meaningfully to open source and SME sof development.	
III. Reversing the Federal Circuit's Decis Would Preserve Bedrock Copyright Precede That Software Engineers Have Relied upon Decades.	ents for
A. Open source and SME software devel benefit from this Court's rule that functio aspects of copyrighted works, including SAPI packages, are not protected by copyrilaw.	onal SOs of ght
B. Even if this Court does not reverse the copyrightability ruling, it should nonethed reverse the Federal Circuit's rejection of Confair use defense.	less Google's
1. This Court should reverse the Federa Circuit's overly-narrow construction of transformative use, which inappropriat	



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2. This Court should reaffirm its analysis of	
the third fair use factor in Campbell, where it	ī.
held that amount and substantiality of the	
original work taken need only be "reasonable"	,
in light of the purpose, not "necessary," as the	9
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TABLE OF AUTHORITIES

Cases

A.V. ex rel. Vanderhye v. iParadigms, LLC, 562 F.3d 630 (4th Cir. 2009)22
Authors Guild v. Google, Inc., 804 F.3d 202 (2d Cir. 2015)22
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Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994)21, 22, 23, 24
Comput. Assocs. Int'l, Inc. v. Altai, Inc., 982 F.2d 693 (2d Cir. 1992)17, 19, 21
Lotus Dev. Corp. v. Borland Int'l, Inc., 49 F.3d 807 (1st Cir. 1995), aff'd by an equally divided court, 516 U.S. 233 (1996)17, 19, 20, 21
Oracle Am., Inc. v. Google Inc., 750 F.3d 1339 (Fed. Cir. 2014) (Oracle I)18, 20, 21, 22
Oracle Am., Inc. v. Google Inc., 872 F. Supp. 2d 974 (N.D. Cal. 2012)20
Oracle Am., Inc. v. Google LLC, 886 F.3d 1179 (Fed. Cir. 2018) (Oracle II)23, 24
Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146 (9th Cir. 2007)21, 22
Sega Enters. Ltd. v. Accolade, Inc., 977 F.2d 1510 (9th Cir. 1992)passim
Sony Comput. Entm't, Inc. v. Connectix Corp., 203 F.3d 596 (9th Cir. 2000)passim



Statutes

17 U.S.C. § 102(b)	. passim	
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Other Authorities		
Browser Extensions, MDN Web Docs	12	
Chris Riley, Mozilla Files FTC Comments Cal Interoperability to Promote Competition, Mo Open Pol'y & Advoc. (Aug. 21, 2018)	zilla:	
H.R. Rep. No. 94-1476 (1976)	19	
Letter from Chris Riley, Dir., Pub. Policy, Moz Corp., to Office of the Sec'y, Fed. Trade Com (Aug. 20, 2018)	nm'n	
Microsoft Edge (EdgeHTML) extensions, Microsoft Docs	12	
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S. Rep. No. 94-473 (1975)	19	
Steven Weber, The Success of Open Source (2006)	11	



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