

No. 18-956

In the Supreme Court of the United States

GOOGLE LLC,

Petitioner,

v.

ORACLE AMERICA, INC.,

Respondent.

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

**BRIEF OF AMICUS CURIAE SOFTWARE
INNOVATORS, STARTUPS, AND INVESTORS
IN SUPPORT OF PETITIONER**

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TABLE OF AUTHORITIES

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<i>Lexmark Int’l, Inc. v. Static Control Components, Inc.</i> , 387 F.3d 522 (6th Cir. 2004).....	13
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<i>Sega Enterps. Ltd. v. Accolade, Inc.</i> , 977 F.2d 1510 (9th Cir. 1992).....	13

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Digital Millennium Copyright Act, 17 U.S.C. § 1201(f)(1).	11
Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, 112 Stat. 2827, § 102(b) (1998).....	15
17 U.S.C. § 102(b)	9, 11

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Other Authorities:

- Kevin Ashton, *That ‘Internet of Things’ Thing*,
RFID Journal (June 22, 2009),
<<https://bit.ly/2V0SBJJ>>..... 5
- Jonathan Band, *Interfaces on Trial 2.0* (2011). 5
- Michael A. Carrier, *Copyright and Innovation: The Untold Story*, 2012 Wis. L. Rev. 891 (2012) 16
- Adam DuVander, *7,000 APIs: Twice as Many as This Time Last Year*, ProgrammableWeb (Aug. 23, 2012), <<https://bit.ly/2EkDnRh>> 7
- Ewing Marion Kauffman Found., *The Importance of Startups in Job Creation and Job Destruction 4* (Jul. 2010),
<<http://bit.ly/1eODvIy>>. 18
- Deborah Gage, *The Venture Capital Secret: 3 Out of 4 Start-ups Fail*, Wall St. J., Sept. 20, 2012 15
- Urs Gasser & John Palfrey, *Interop: The Promise and Perils of Highly Connected Systems* (2012) 5
- Paul Goldstein, *Goldstein on Copyright § 2.3.11* 9
- Fern Halper, Judith Hurwitz, & Marcia Kaufman, *A Web API Study: The Benefits of APIs in the App Economy* (2011),
<<https://bit.ly/2XleWDv>> 8

Other Authorities—continued:

- J. Haltiwanger et al., Ewing Marion Kauffman Found., *Declining Business Dynamism in the U.S. High-Technology Sector* 7 (Feb. 2014), <<http://bit.ly/1OWNUPp>> 18
- J.D. Harrison, *More businesses are closing than starting. Can Congress help turn that around?*, Wash. Post, Sept. 17, 2014, <<http://wapo.st/1Parrns>> 18
- Darian M. Ibrahim, *The (Not So) Puzzling Behavior of Angel Investors*, 61 Vand. L. Rev. 1405 (2008)..... 8
- Tim Kane, Ewing Marion Kauffman Foundation, *The Importance of Startups in Job Creation and Job Destruction* (2010), <<https://bit.ly/2xxx0GE>> 2
- Ariel Katz, *Copyright and Competition Policy in Handbook of the Digital Creative Economy* (Christian Handke and Ruth Towse, eds. 2013)..... 9
- Samuel Kortum & Josh Lerner, *Assessing the Contribution of Venture Capital to Innovation*, RAND Journal of Economics (2000)..... 8
- Gary Lauder, *Venture Capital: “The Buck Stops Where?”*, 2 Med. Innovation & Bus. 14 (2010), <<http://bit.ly/2xzoAhi>> 16
- Nat’l Sci. Bd., Nat’l Sci. Found., *Science and Engineering Indicators* (2016), <<http://1.usa.gov/1m7gkxG>> 18

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