

Open Source: Copyrightability, Fair Use and Due Diligence

Navigating IP Protection for Application Programming Interfaces

WEDNESDAY, MAY 27, 2015

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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Protection of Interfaces, Reach of Open Source

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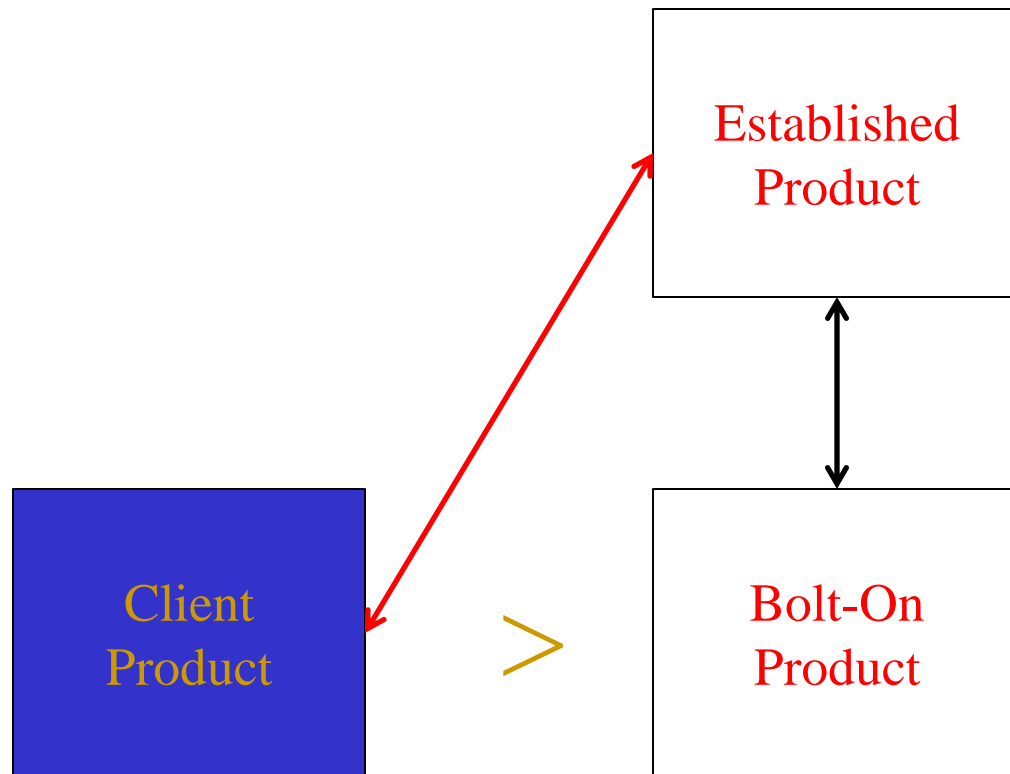
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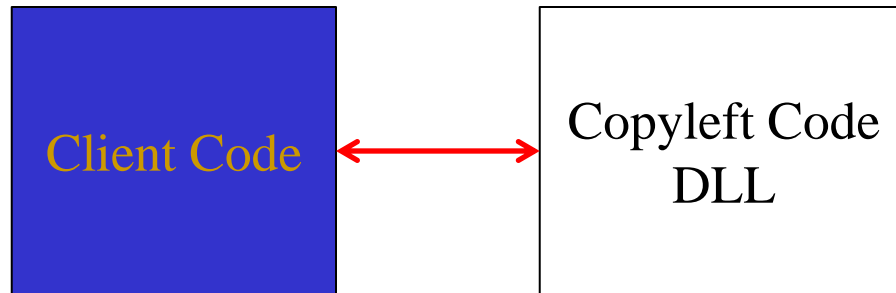
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Issue #1: Interface Protection



Issue #2: Open Source Reach



Agenda, #1

- ◆ Copyright
 - Copyright 101
 - Idea/Expression
 - Derivative works
 - Other important copyright stuff
- ◆ Special Cases
 - Taxonomies
 - Non-literal (SSO)
- ◆ Copyleft: open source

Agenda, #2

- ◆ Java Programming
- ◆ Oracle v. Google
 - Facts
 - Holdings
 - RangeCheck
- ◆ Modern Programs
- ◆ Interface implications
- ◆ Open source implications

Copyright 101

§102(a):

“Copyright protection subsists ...
in original works of authorship
fixed in any tangible medium of
expression....”

Copyright 101

§102(b):

Copyright protection does not extend to “any idea, procedure, process, system, method of operation, concept, principle, or discovery....”

Filters

- ◆ Public domain
- ◆ Facts
- ◆ Names
- ◆ Short phrases
- ◆ Scenes à faire
- ◆ External factors
- ◆ Standards for efficiency

Exclusive Rights in Copyright

- ◆ Copy
- ◆ Distribute
- ◆ Create Derivative Works

What's a Derivative?

- ◆ What you started with, then changed
- ◆ Must start with something that is copyrighted: I/E dichotomy
- ◆ One work or two?
- ◆ Book Analogy

Copyright Infringement

- ◆ Copying
- ◆ In lieu of copying:
 - Access and
 - Substantial Similarity

Taxonomies

- ◆ Kingdom, domain, ..., genus, species
- ◆ Dewey decimal system
- ◆ CPT Codes – medical services/procedures

Literal v. Non-Literal

```
<!DOCTYPE html><html><body>  
<center><h2 style="color:red">I am  
Red</h2><h2 style="color:blue">I am  
Blue</h2></center></body></html>
```

I am Red

I am Blue

Early Treatment of SSO: Whelan v. Jaslow, 797 F.2d 1222 (1986)

- ◆ Similarities:
 - File structures
 - Screen outputs
 - 5 Subroutines
 - “Overall structural similarities”
- ◆ Idea: Operation of dental lab

CA v. Altai, 982 F. 2d 693 (2d Cir. 1992)

◆ Abstraction

➤ “[A] court should dissect the allegedly copied program’s structure and isolate each level of abstraction contained within it.”

◆ Filtration (scenes à faire, efficiency, etc.)

◆ Comparison

Lotus v. Borland, 49 F.3d 807 (1st Cir. 1995)

- ◆ Emulation: 469 commands in 50 menus and submenus
- ◆ Accepting the district court's finding that the **Lotus developers made *some expressive choices*** in choosing and arranging the Lotus command terms, we nonetheless hold that that **expression is not copyrightable** because it is part of Lotus 1-2-3's "method of operation."

Copyleft

- ◆ If:
 - create derivative, plus
 - distribute (usu.),
- ◆ then copyleft applies
- ◆ Copyleft means
 - Give source code **of whole** for free
 - Can't stop further modification
 - Can't stop further distribution

Java Language

- ◆ Methods
 - Functional Code
- ◆ Classes
- ◆ Packages
- ◆ Headers/Declarations

Oracle v. Google

Java

- ◆ Google wanted Java programmers to be able to program in Android
- ◆ Google kept names, syntax, etc.
- ◆ Google rewrote all functional code (except RangeCheck)

Oracle v. Google (Android)

- ◆ 37 Java packages (166)
- ◆ 616 Classes (677)
- ◆ 6,088 Methods (6,508) (***but not functional code***)
- ◆ 21 packages: same number of classes & methods

About Interoperability



Dist. Ct.: Oracle v. Google

[N]o matter how creative or imaginative a Java method specification may be, the entire world is entitled to use the same method specification (inputs, outputs, parameters) so long as the line-by-line implementations are different.

Dist. Ct.: Oracle v. Google

Yes, it is creative. Yes, it is original. Yes, it resembles a taxonomy. **But it is nevertheless a command structure, a system or method of operation....** For that reason, it cannot receive copyright protection....

Federal Circuit

[W]e conclude that Section 102(b) does not bar the packages from copyright protection just because they also perform functions.


Federal Circuit

Fair use is still an open question.



RangeCheck: 9 Lines of Code?





so much depends
upon

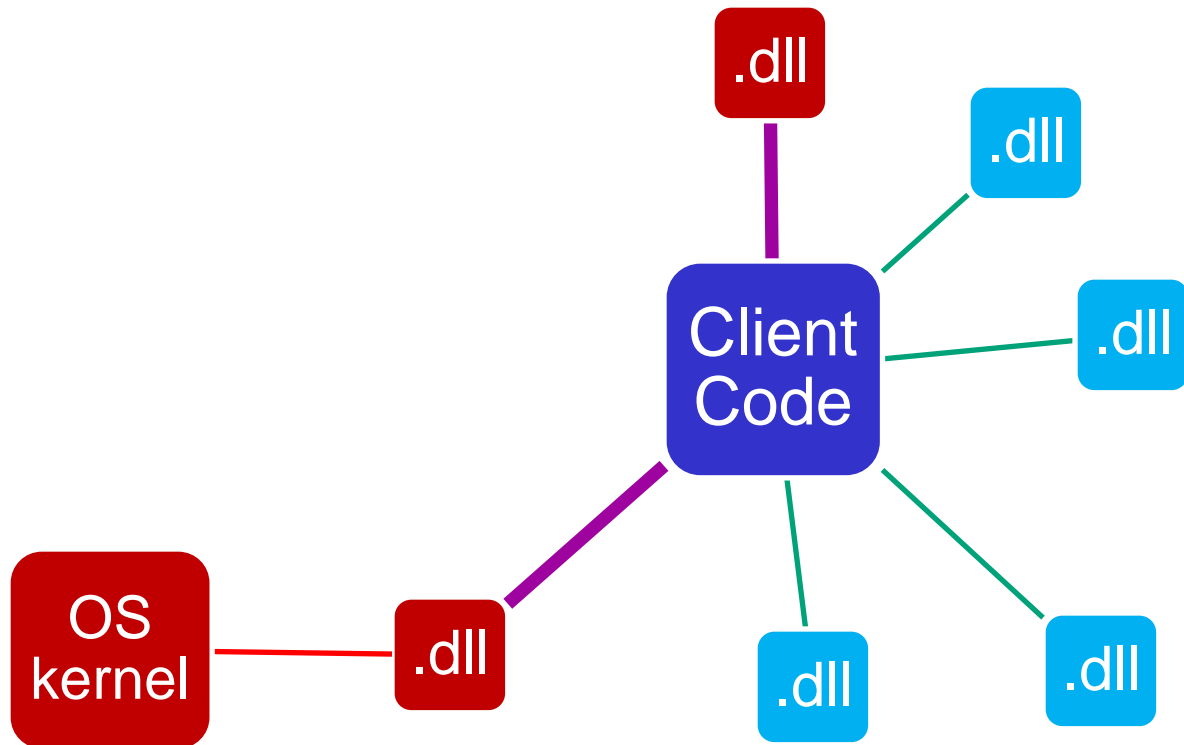
a red wheel
barrow

glazed with rain
water

beside the white
chickens

Copyright © 1962 William Carlos Williams

Software These Days



Oracle/Google vs. Interfaces Generally

◆ Both

- Don't copy functional code
- Share interface information
 - Name of file
 - Commands
 - Syntax of I/O
 - Data
 - Metadata?

Difference of Opinion?

FSF:

“Linking a GPL covered work statically or dynamically with other modules is making a **combined work based on the GPL covered work**. Thus, the terms and conditions of the GNU General Public License cover the whole combination.”

Difference of Opinion?

Eclipse Foundation:

“Some free software communities say that linking to their code automatically means that your program is a derivative work. Is this the position of the Eclipse Foundation?”

No, the Eclipse Foundation interprets the term ‘derivative work’ in a way that is consistent with the definition in the U.S. Copyright Act, as applicable to computer software.”

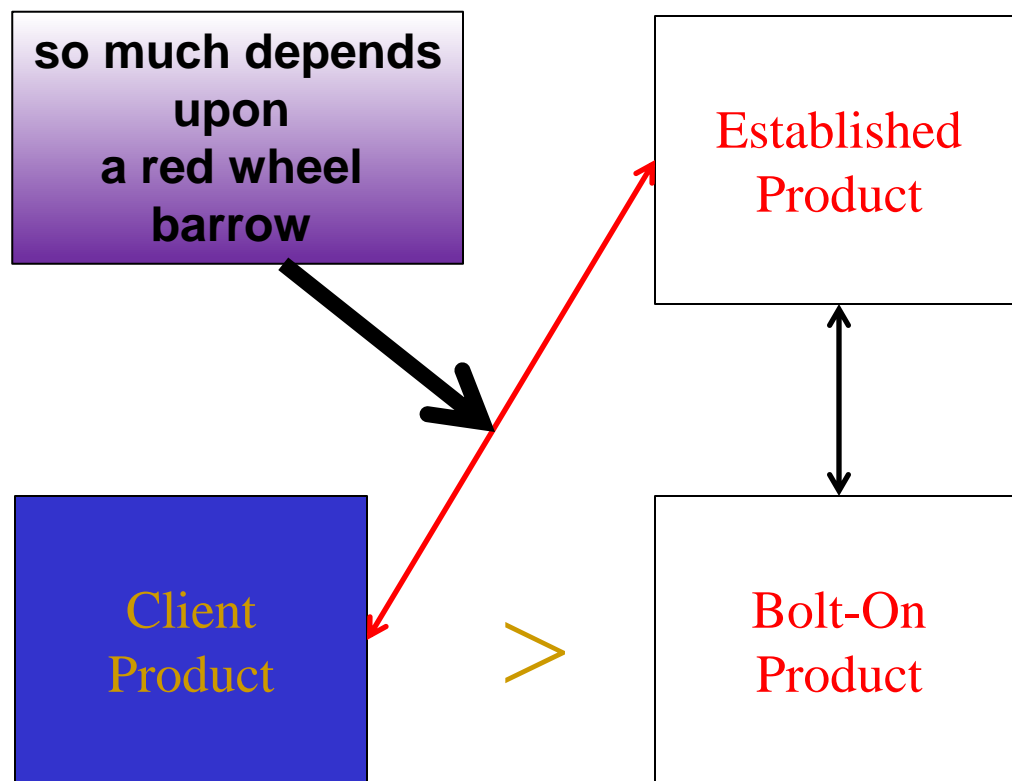
Technology Community Reaction

“In an **unusual decision**, an appeals court in Washington ruled on Friday that Oracle can copyright application programming interfaces (APIs) for the Java programming language. The ruling ... has implications for **the technology industry as a whole, where APIs** — which let computer programs speak to each other — **are considered to be a basic building tool and *outside the scope of copyright.*”**

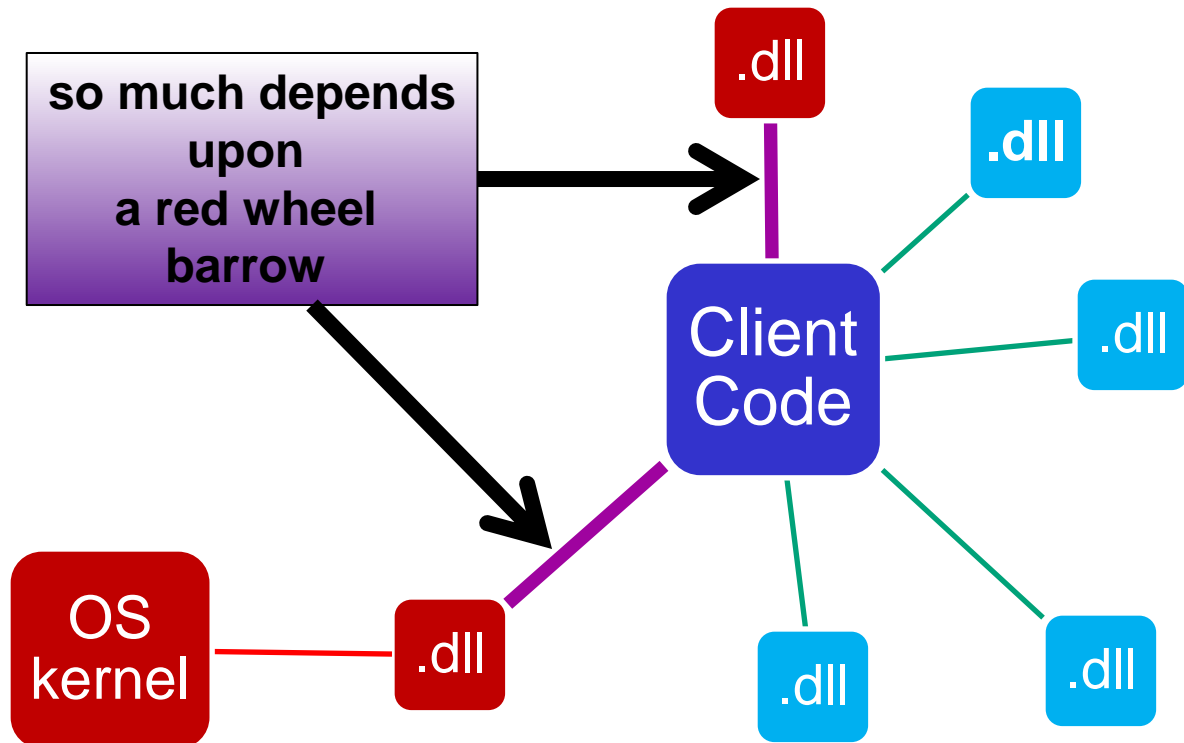
Obama Admin?

The Obama administration has been locked in internal wrangling over what position to take in high profile litigation between ...
Google and Oracle....

Interface Protection



Conclusions, if Fed. Cir. Opinion Upheld



Open Source after Oracle v. Google

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