

Presenting a live 75-minute webinar with interactive Q&A

Open Source: Implications of Oracle v. Google

Understanding the Complexities When Assessing the Software Copyright Options

WEDNESDAY, APRIL 3, 2013

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

Today's faculty features:

Paul H. Arne, Partner, **Morris Manning & Martin**, Atlanta

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Open Source & Interfaces: Oracle v. Google

Paul H. Arne

Morris, Manning & Martin, L.L.P.

3343 Peachtree Rd.

1600 Atlanta Financial Center

Atlanta, GA 30326

parne@mmmlaw.com

www.mmmlaw.com



MORRIS, MANNING & MARTIN, LLP
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Hard Question

- ◆ Can I use this open source (GPL, LGPL, Affero) product in connection with my proprietary product?
- ◆ Is the client creating a derivative work of software licensed under the GPL, LGPL, Affero? (FSF depends on copyright law)

FSF Copyright Dependence

To “modify” a work means to copy from or adapt all or part of the work in a fashion **requiring copyright permission....**

To “propagate” a work means to do anything with it that, without permission, would make you **directly or secondarily liable for infringement under applicable copyright law....**

Copyright Infringement Primer

- ◆ Making a copy
- ◆ Access and Substantial Similarity
- ◆ CA v. Altai
 - abstraction
 - filtration
 - comparison

Idea/Expression

- ◆ Expressions are protected
- ◆ No copyright protection for:
 - idea, procedure, process, system, method of operation, concept, principle, or discovery
- ◆ Aside: EU protection

Idea/Expression Dichotomy

Idea

Expression

Filters

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



Book Metaphor



Derivatives and the FSF

- ◆ [I]n many cases you can distribute the GPL-covered software alongside your proprietary system. To do this validly, you must make sure that the free and non-free programs **communicate at arms length**, that they are **not combined in a way that would make them effectively a single program**.
- ◆ [I]f the two programs are combined so that they become effectively two parts of one program, then you can't treat them as two separate programs. So the GPL has to cover the whole thing.
- ◆ If the two programs remain **well separated**, like the compiler and the kernel, or like an editor and a shell, **then you can treat them as two separate programs**—but you have to do it properly.

Derivatives and the FSF

Where's the line between two separate programs, and one program with two parts? This is a legal question, which ultimately judges will decide.

We believe that a proper criterion depends both on the **mechanism of communication** (exec, pipes, rpc, function calls within a shared address space, etc.) and the **semantics of the communication** (what kinds of information are interchanged).

Derivatives and the FSF

If the modules are included in **the same executable file**, they are definitely combined in one program. If modules are designed to **run linked together in a shared address space**, that almost surely means combining them into one program. **By contrast, pipes, sockets and command-line arguments** are communication mechanisms normally used between two separate programs. So when they are used for communication, the modules normally are separate programs.

Derivatives and the FSF

But if the semantics of the communication are **intimate** enough, **exchanging complex internal data structures**, that too could be a basis to consider the two parts as combined into a larger program.

Java Generally

- ◆ Statements: separators, operators, keywords, identifiers, etc.
- ◆ Methods – subroutines
- ◆ Classes
- ◆ Packages

Interface Contents?

- ◆ Names (calls) of programming structures (e.g., class, packages)
- ◆ Syntax of statements, methods, classes, packages
- ◆ Syntax of inputs, outputs
- ◆ XML
- ◆ Not functionality itself

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

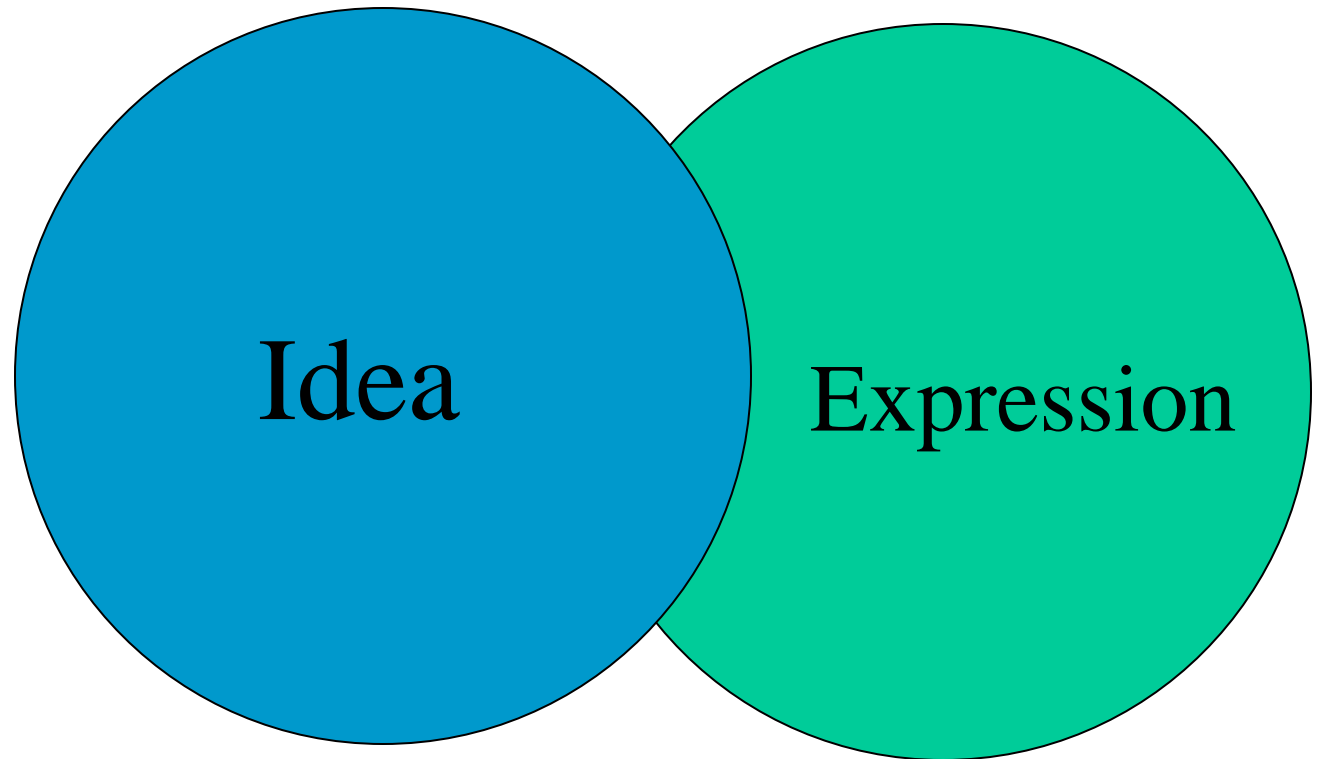
Oracle v. Google

[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.

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....

Idea/Expression Dichotomy



Client Question

Is the client creating a derivative work of software licensed under the GPL, LGPL, Affero?

Conclusion?

Oracle v. Google

- ◆ Creative, “expressive” information may still be an idea and not protected
- ◆ Scope of GPL family of licenses may be narrowing.

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