APPENDIX

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ORACLE USA, INC., a Colorado corporation; ORACLE AMERICA, INC., a Delaware corporation; ORACLE INTERNATIONAL CORPORATION, a California corporation, *Plaintiffs-Appellees,* v. RIMINI STREET, INC., a Nevada corporation; SETH RAVIN, an individual, *Defendants-Appellants.*	Nos. 16-16832 16-16905 D.C. No. 2:10-cv-00106-LRH-VCF OPINION

Appeals from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Argued and Submitted July 13, 2017
San Francisco, California

Filed January 8, 2018

Before: Susan P. Graber and Michelle T. Friedland, Circuit Judges, and Jeremy D. Fogel,* District Judge.

Opinion by Judge Fogel

SUMMARY**

Copyright

The panel affirmed in part, reversed in part, and vacated in part the district court's judgment after a jury trial in favor of Oracle USA, Inc., on its copyright infringement and California and Nevada state law claims against Rimini Street, Inc., a provider of third-party support for Oracle's enterprise software, and Seth Ravin, Rimini's CEO.

Oracle licenses its software and also sells its licensees maintenance contracts. The maintenance work includes software updates. In order to compete effectively with Oracle's direct maintenance services, Rimini needed to provide software updates to its customers. With Oracle's knowledge, Rimini copied Oracle's copyrighted software in order to provide the updates. Rimini obtained software from Oracle's website with automated downloading tools in direct contravention of the terms of the website.

* The Honorable Jeremy D. Fogel, United States District Judge for the Northern District of California, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel affirmed the district court's partial summary judgment and partial judgment after trial on Oracle's claims that Rimini infringed its copyright by copying under the license of one customer for work performed for other existing customers or for unknown or future customers, rather than restricting such copying to work for that particular customer. The panel concluded that Rimini's activities were not permissible under the terms of the licenses Oracle granted to its customers. The panel rejected Rimini's argument that holding it accountable for its alleged conduct would condone misuse of Oracle's copyright.

The panel reversed the district court's judgment after trial with respect to Oracle's claims under the California Comprehensive Data Access and Fraud Act, the Nevada Computer Crimes Law, and California's Unfair Competition Law. The panel held that taking data from a website, using a method prohibited by the applicable terms of use, when the taking itself generally is permitted, does not violate the CDAFA or the NCCL. Accordingly, Rimini did not violate these computer abuse statutes by using automated tools to take data in direct contravention of Oracle's terms of use. Because the district court granted judgment in favor of Oracle on Oracle's Unfair Competition Law claim based on its finding that Rimini violated the CDAFA, the panel reversed the district court's determination that Rimini violated California's Unfair Competition Law.

The panel reduced the district court's award of damages by the amount based on Rimini's alleged violation of the CDAFA and NCCL. The panel affirmed the district court's award of prejudgment interest on the copyright claims.

The panel reversed the district court's permanent injunction based on alleged violations of the CDAFA. The panel vacated the district court's permanent injunction based on copyright infringement because the district court assessed the relevant factors by reference to both the copyright and the CDAFA claims, without considering separately the propriety of issuing an injunction as to the copyright claims alone.

The panel reversed the district court's judgment with respect to Ravin's liability for attorneys' fees. As to Rimini, the panel vacated the fee award and remanded for reconsideration in light of Oracle's more limited success at litigation in view of the panel's conclusion that there was no violation of the state computer laws.

The panel reduced the district court's award of taxable costs and affirmed its award of non-taxable costs.

COUNSEL

Mark A. Perry (argued) and Jeremy M. Christiansen, Gibson Dunn & Crutcher LLP, Washington, D.C.; Blaine H. Evanson, Joseph A. Gorman, and Joseph C. Hansen, Gibson Dunn & Crutcher LLP, Los Angeles, California; for Defendants-Appellants.

Paul D. Clement (argued), Erin E. Murphy, and Matthew D. Rowen, Kirkland & Ellis LLP, Washington, D.C.; William A. Isaacson and Karen L. Dunn, Boies Schiller & Flexner LLP, Washington, D.C.; Thomas S. Hixson and John A. Polito, Morgan Lewis & Bockius LLP, San Francisco, California; David B. Salmons, Morgan Lewis & Bockius LLP, Washington, D.C.; for Plaintiffs-Appellees.

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