No. 18-956

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 FOR RESPONDENT

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QUESTIONS PRESENTED

The Copyright Act protects "literary works," 17 U.S.C. §102(a), expansively defined as "works … expressed in words, numbers, or other verbal or numerical symbols or indicia," §101. Computer programs are protected as literary works under the Act. Google copied 11,330 lines of Oracle's original and creative computer code, as well as the intricate organization of its computer program, into a competing software platform, Android. The questions presented are:

1. Under §102(a), computer programs, like all "works of authorship," have "[c]opyright protection," as long as they are "original." The merger doctrine does not make any expression unprotectable except in the rare circumstance where there were very few ways to express the idea. Does the Copyright Act protect the code and organization that Google concedes were original and creative and that Oracle could have written in countless ways to perform the same function?

2. Was the Court of Appeals correct in holding that Google's copying was not fair, where Google conceded it copied for commercial purposes and that the code it copied serves the same purpose and has the same meaning, and Google did not dispute the evidence that Android competes directly with Oracle's work, harming its actual and potential markets?

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