

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 THE COMMITTEE FOR JUSTICE
AS AMICUS CURIAE IN SUPPORT OF RESPONDENT**

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Other Authorities

1 Melville B. Nimmer & David Nimmer, <i>Nimmer on Copyright</i> (2019)	13
2 Patry on Copyright	10, 19
Adam D. Moore, <i>A Lockean Theory of Intellectual Property</i> , 21 Hamline L. Rev. 65 (1997)	6
Antonin Scalia & Bryan Garner, <i>Reading Law: The Interpretation of Legal Texts</i> 56 (West 2012)	21
B. Bailyn, <i>The Ideological Origins of the American Revolution</i> (1967)	5

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