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In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-12835

APPLE INC.,

Plaintiff-Counter Defendant-Appellant,

versus

CORELLIUM, INC.,

Defendant-Counter Claimant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:19-cv-81160-RS

Before BRANCH and LUCK, Circuit Judges, and SANDS,* District Judge.

PER CURIAM:

This is a copyright case. Apple Inc. owns copyrights for iOS—the operating system that the company uses for devices like iPhones, iPads, and iPod Touches—and for some of that operating system’s icons and wallpapers. Corellium, Inc. is a technology company. It created a virtualization software—basically a virtual phone—that can run various operating systems (like Android and iOS). The virtualization software includes tools that enable security researchers to gain deeper insights into these operating systems. Looking to stop Corellium from selling its product, Apple sued Corellium alleging copyright infringement.

The district court granted summary judgment for Corellium on Apple’s three copyright claims: (1) direct infringement of iOS (count one), (2) direct infringement of Apple’s icons and wallpapers (count two), and (3) contributory infringement (count three). As to count one, the district court found that Corellium was not liable for copying iOS because Corellium was shielded by the fair use doctrine. As to counts two and three, the district court entered summary judgment for Corellium without separately addressing those claims.

* Honorable W. Louis Sands, United States District Judge for the Middle District of Georgia, sitting by designation.

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We agree in part. The U.S. Constitution enshrines the purpose of copyright: “to promote the progress of science and useful arts.” U.S. Const. art. I, § 8, cl. 8 (cleaned up). The Copyright Act achieves this “utilitarian goal” by protecting a creator’s rights in its original creation while also allowing others to make fair use of the original by creatively building on it. *Cambridge Univ. Press v. Patton*, 769 F.3d 1232, 1238 (11th Cir. 2014).

As to count one, we agree that Corellium is shielded by the fair use doctrine. First, Corellium’s virtualization software is transformative—it furthers scientific progress by allowing security research into important operating systems. Second, iOS is functional operating software that falls outside copyright’s core. Third, Corellium didn’t overhelp itself to Apple’s software. And fourth, Corellium’s product does not substantially harm the market for iOS or iOS derivatives—so Apple’s own incentive to innovate remains strong. As to counts two and three, we remand for the district court to independently consider those claims in the first instance.

FACTUAL BACKGROUND

The iPhone

Apple introduced the iPhone in 2007. The iPhone was one of the world’s first smartphones and remains one of the most popular consumer electronic devices in the world. The iPhone’s operating system—the software that manages the phone’s basic functions—is called “iOS.” iOS runs the built-in applications, or “apps,” that come with the iPhone (like mail, maps, and music). It also

runs the phone's graphical user interface (the virtual display iPhone users have become familiar with). Here's what that display looks like:



Apple has sold more than two billion iOS devices. Those devices include iPhones, iPads (until 2019), and iPod Touches.

To improve its product, Apple periodically releases new versions of iOS. When it does, Apple registers each successive version with the U.S. Copyright Office. Apple has also secured separate copyright registrations for its graphic icons and background wallpapers. With each new iOS, Apple bundles its update into what's known as an IPSW file (basically a zip file). Apple then makes that IPSW file available to the public for free. While anyone can download the software for free, Apple has made it somewhat difficult to use iOS on non-Apple devices.

Beyond consumer products, Apple also offers some services to developers and researchers. First, Apple offers a program called

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“iOS Simulator,” which “allows app developers to create and test iOS apps” on a “virtual iOS device.” Second, Apple has announced what it calls the “iOS Security Research Device Program.” Through this program, Apple plans to provide custom iPhones to “legitimate security researchers” in exchange for a contractual commitment to “find and report bugs to Apple.” Third, Apple is developing Xcode Cloud, a program that will allow developers “to remotely access” iOS via “physical devices in an Apple device farm” to help with building and testing apps. Xcode Cloud “is not specifically designed for security research” but it can be used “to test iOS for bugs.”

Corellium

Corellium was founded in 2017. It created a virtualization software—CORSEC—that emulates various operating systems like Android, iOS, and Linux. Virtualization is the ability to run software on hardware that the software is not ordinarily able to run on. So, while iOS, for example, is designed to run on Apple devices, CORSEC (the virtualization software) simulates on non-Apple hardware an environment that can run the iOS operating system (the software being virtualized). In effect, CORSEC “enables users to create a virtual iPhone.”

Corellium’s founders each testified that “[t]he purpose of [CORSEC was] to create a good environment for security researchers to do their work.” One founder, for instance, described CORSEC as a “security research platform for mobile devices.” Another said that “the purpose[] that Corellium was built for . . . was

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