



Legal Issues
in
Copyrightability of APIs vis-a-vis the Merger Doctrine



OVERVIEW OF PRESENTATION



Research Question: *Whether Application Programming Interfaces [APIs] are entitled to receive protection under the Copyright Act, 1957?*

❖ Application Programming Interface



❖ Google vs. Oracle



❖ Idea-expression dichotomy and the merger doctrine

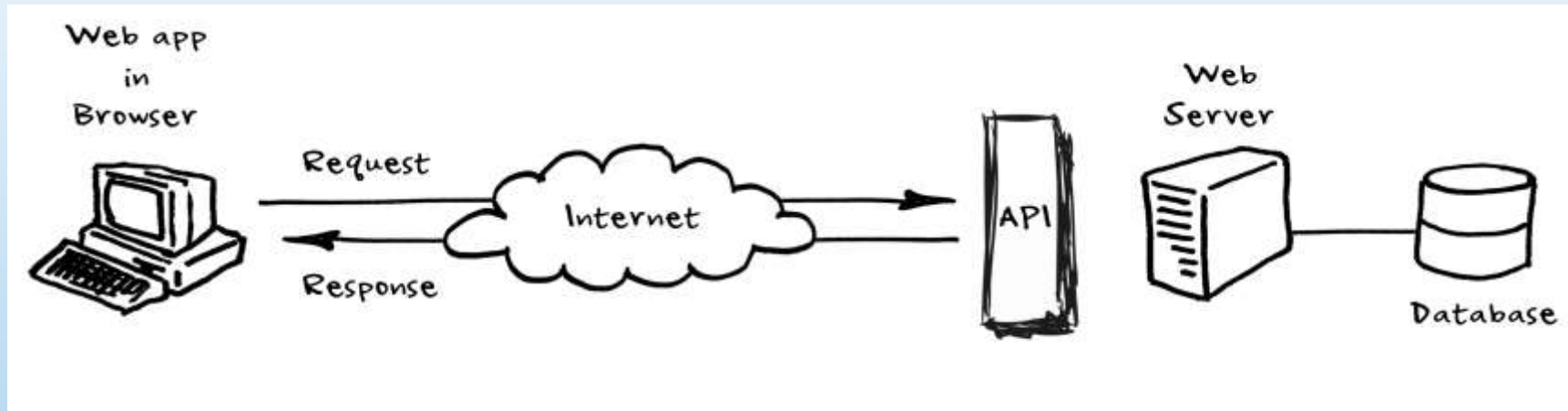


❖ Advantages and disadvantages of extending copyright protection to APIs



❖ Examining possible outcomes from an Indian perspective

APPLICATION PROGRAMMING INTERFACE



[1]

- ❖ An API is a set of rules or code built into applications to enable software to communicate with each other. In other words, it is a software intermediary that allows applications to access data and interact with external software components, operating systems, or microservices.
- ❖ Example: Travel sites use third-party APIs to collect flight and hotel availabilities from providers. When a booking through one of these services, API is used to confirm the trip with the provider they sourced it from.
- ❖ As a programming code, it would derive copyright protection as a 'literary work' as defined under Section 2(o) of the Copyright Act, 1957.

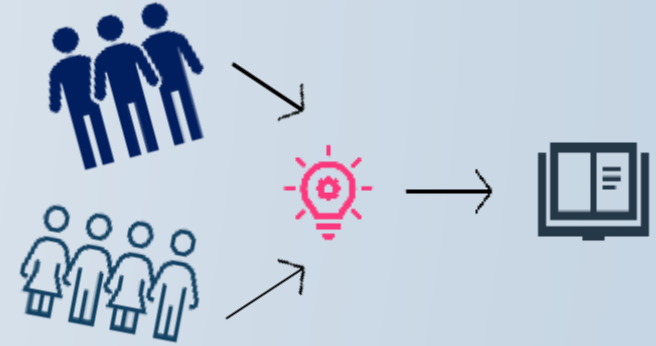
GOOGLE vs. ORACLE

- ❖ When Google first developed Android, it sought to make Android competitive by making the platform interoperable with Java - a popular programming language.
- ❖ Google reimplemented 37 APIs (11,500 lines of code) directly from the Java Standard Edition, which is owned by Oracle.
- ❖ **2012**: District Court ruled that APIs are not subject to copyright.
- ❖ **2014**: Federal Circuit Court finds that Java APIs are copyrightable
- ❖ **2016**: Jury agrees that Google's use of Java APIs is fair use.
- ❖ **2019**: SC asked to review case.
- ❖ **2020**: Heard oral arguments
- ❖ June 2021: Decision expected



THE MERGER DOCTRINE

The fundamental rule of Copyright law is that ideas are not copyrightable, it is only the creative expression of such ideas that is rewarded by law.



The Delhi High Court, in ***Mattel, Inc. and Ors.. vs. Jayant Agarwalla and Ors.***[3], explained the doctrine of merger in following words:

“The doctrine is applicable where the idea and expression are so inextricably connected, that it wouldn’t be possible to distinguish between two. In applying this doctrine courts have refused to protect the expression of an idea which can be expressed in a very limited manner, because doing so would confer monopoly on the ideas.”



Point of discussion: Google has argued that the programming code was standard form and that the engineers had “no other option” but to utilize the code for the desired results. Conversely, Oracle states that other businesses (such as Apple and Microsoft) developed dissimilar codes for same functions, and that Google should have done the same.

ADVANTAGES AND DISADVANTAGES OF EXTENDING COPYRIGHT PROTECTION TO APIs



- ❖ The making of software requires a considerable amount of human, technical, and financial resources; it can be copied within seconds, at infinitesimal cost. Thus, there is a need to protect APIs with the strongest available intellectual property protections.
- ❖ Programmers, like any other creators, are entitled to protection and economic benefits that may arise out of licensing, etc.



- ❖ Extending copyright protection to APIs would limit improvements in their tracks and restrict innovation scope in the long run.
- ❖ APIs are functional, and copying software interfaces enables developers to create products that function on multiple platforms
- ❖ This will hinder the development of applications that could otherwise benefit the public.
- ❖ Enforcement will be expensive and complex – smaller businesses likely to be adversely affected.

EXAMINING POSSIBLE OUTCOMES VIA AN INDIAN PERSPECTIVE



- ❖ Software programs excluded as patentable subject matter. S. 3(k) - “a mathematical ... or a computer programme per se or algorithms” are ineligible for patent – unlike American jurisprudence, patent option unavailable.
- ❖ Robust set up of merger doctrine – S.13 of Copyright Act, 1957 – Courts have accepted ratio of **Baker vs. Selden** [5] – have recognised merger doctrine in **R.G. Anand vs Delux Films** [6].
- ❖ Current Indian outlook seeks to foster innovation and entrepreneurship – since these are in early stages, a more progressive and inclusive approach expected.
- ❖ Under the Digital India initiative, government has mandated an open API policy for 5 key programmes-Aadhaar, e-KYC, e-Sign, proposed privacy-protected data sharing, and UPI.
- ❖ Data from these programmes is to be made accessible for similar creative use, the aim of which is financial inclusion and reduction in complexities of transactions.

THANK YOU!



ANY QUESTIONS?

Sources:

- [1] <https://medium.com/@perrysetgo/what-exactly-is-an-api-69f36968a41f>
- [2] <https://www.techyourchance.com/shocking-truth-about-oracle-vs-google-android-lawsuit/>
- [3] 2008 (38) PTC 416 (Del); <https://indiankanoon.org/doc/107853771/>
- [4] <https://timesofindia.indiatimes.com/blogs/toi-edit-page/digital-india-comes-of-age-under-the-modi-government-it-is-giving-rise-to-employment-entrepreneurship-and-empowerment/>
- [5] 101 U.S. 99 (1879); <https://www.law.cornell.edu/supremecourt/text/101/99>
- [6] AIR 1978 SC 1613; <https://indiankanoon.org/doc/1734007/>
- [7] <https://www.dreamstime.com/illustration/robot-question.html>