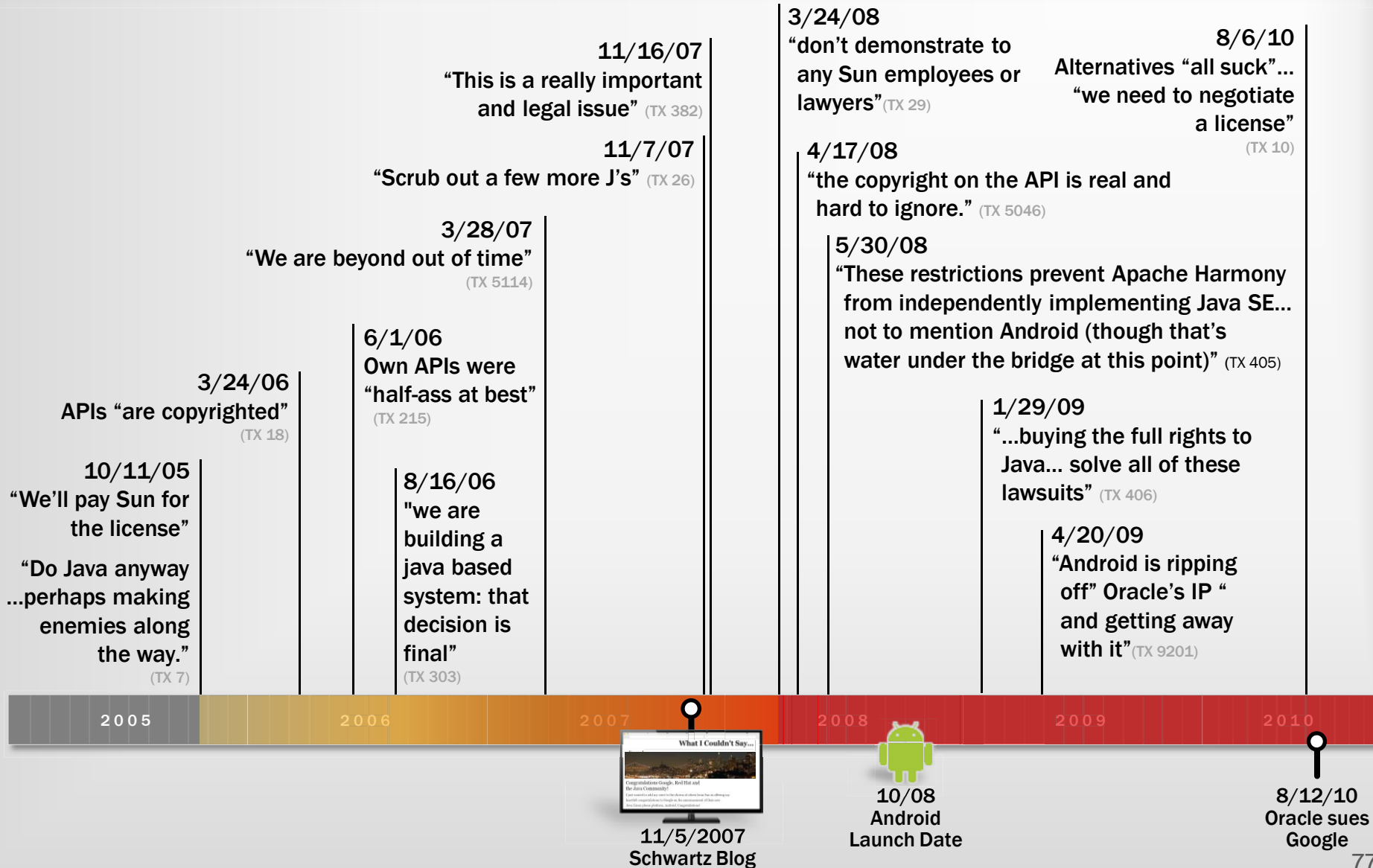


# Google Acted in Bad Faith



# The Two Faces of Jonathan Schwartz

1



COMMERCIALITY



TRANSFORMATIVE



GOOD FAITH



## PUBLIC

11/5/07

SCHWARTZ BLOG

“I just wanted to add my voice to the chorus of others from Sun in offering **my heartfelt congratulations to Google** on the announcement of their new Java/Linux phone platform, Android. Congratulations!”

TX 2536

## PRIVATE

3/8/07

“The Google thing is really a pain. They are **immune to copyright** laws, good citizenship, they don't share.”

TX 563

# The Two Faces of Jonathan Schwartz

1



COMMERCIALITY



TRANSFORMATIVE



GOOD FAITH



## PUBLIC

11/5/07

SCHWARTZ BLOG

“I just wanted to add my voice to the chorus of others from Sun in offering my heartfelt congratulations to Google on the announcement of their new Java/Linux phone platform, Android. Congratulations!”

TX 2536

## PRIVATE

11/05/07

“They’re claiming developers are undeserved – which is **crap**.”

TX 2353

# The Two Faces of Jonathan Schwartz

1



COMMERCIALITY



TRANSFORMATIVE



GOOD FAITH



## PUBLIC

11/5/07

SCHWARTZ BLOG

“I just wanted to add my voice to the chorus of others from Sun in offering my heartfelt congratulations to Google on the announcement of their new Java/Linux phone platform, Android. Congratulations!”

TX 2536

## PRIVATE

11/07/07

“I have no [sic] clue what they’re up to – my sense is **they’re playing fast and loose with licensing terms,** and they’re going to start pissing people off...”

TX 2368

# The Two Faces of Jonathan Schwartz

1



COMMERCIALITY



TRANSFORMATIVE



GOOD FAITH



## PUBLIC

11/5/07

SCHWARTZ BLOG

“I just wanted to add my voice to the chorus of others from Sun in offering my heartfelt congratulations to Google on the announcement of their new Java/Linux phone platform, Android. Congratulations!”

TX 2536

## PRIVATE

3/26/08

“They also take Java for Android, without attribution or contribution. This is why I love scroogle”

TX 1056

# The Two Faces of Jonathan Schwartz

1



COMMERCIALITY



TRANSFORMATIVE



GOOD FAITH



## PUBLIC

11/5/07

SCHWARTZ BLOG

“I just wanted to add my voice to the chorus of others from Sun in offering my heartfelt congratulations to Google on the announcement of their new Java/Linux phone platform, Android. Congratulations!”

TX 2536

## PRIVATE

4/20/09

“[T]he battles with...  
Google Android.”

TX 2362

# Google Admits: Would Not Make Decisions Based on an Announcement

1



COMMERCIALITY



TRANSFORMATIVE



GOOD FAITH



**ANDY RUBIN**

Head of Android



**Q.** All right. And when you heard that Sun was planning to release an open source implementation of Java, did you tell the Google engineers, *Stop working, Sun's about to release an implementation of a Java platform and APIs?*

**A.** No. I mean, that wouldn't make business sense to bet our whole project on an announcement, so I had my engineers stay the course. They asked me the same questions when they read the announcement and I continued to hedge, as I had done throughout the entire project.

# Google Knew Copying Java API Packages Was Wrong

1 ✓ COMMERCIALITY ▪ TRANSFORMATIVE ▪ GOO X FAITH



**ERIC SCHMIDT**  
Executive Chairman

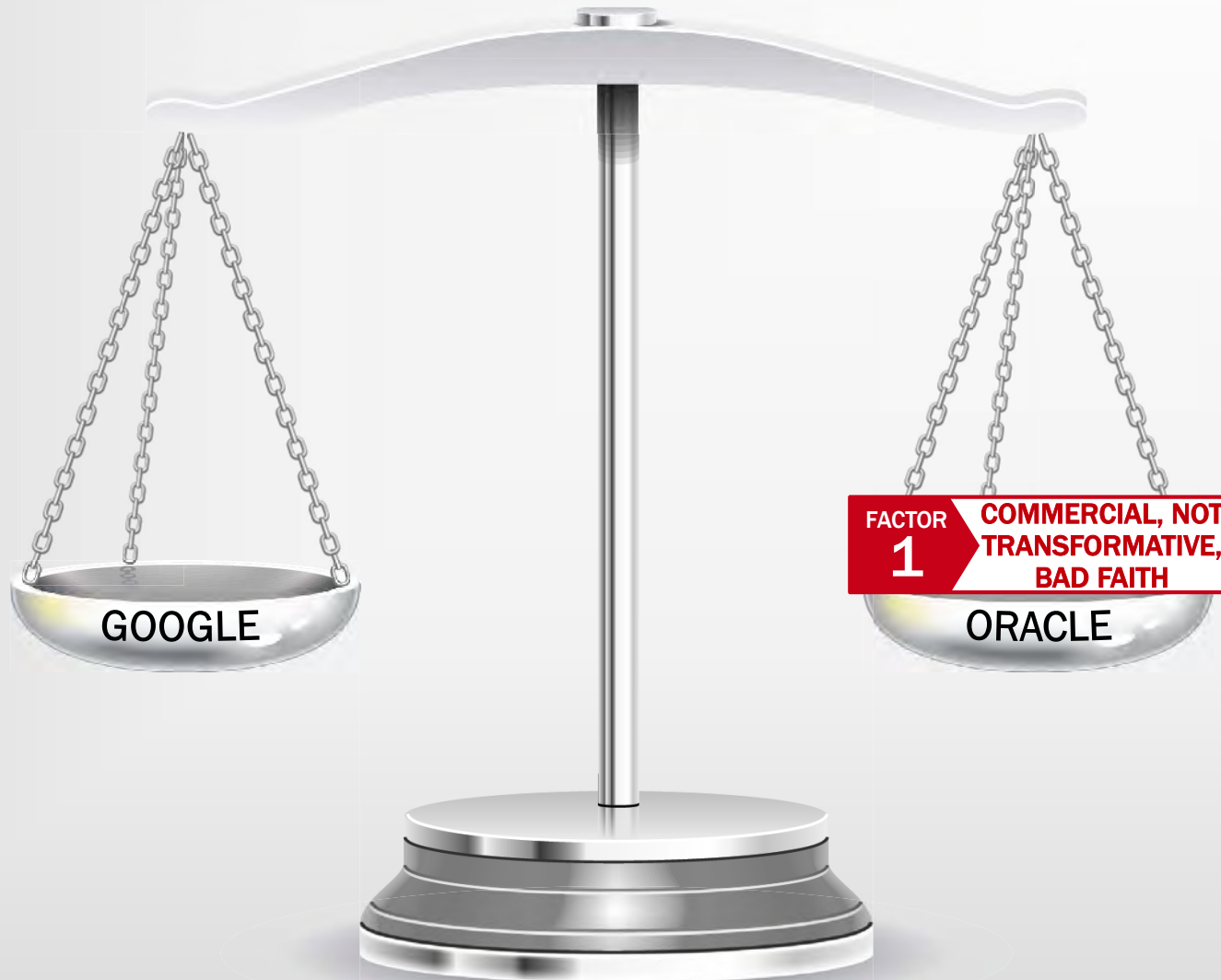


Q. Now, there came a time when Google was sufficiently worried about being sued that it thought about buying all the rights to Java; correct, sir?

A. Yes.



# The Factors Overwhelmingly Favor Oracle



# The Factors Overwhelmingly Favor Oracle



# Fair Use Factors

2

## CREATIVITY

The nature of the copyrighted work;

### JUDGE ALSUP'S INSTRUCTION

“It is undisputed that the declaring code and the structure, sequence, and organization of the 37 API packages at issue were sufficiently creative and original to qualify for copyright protection.”

# API Design Is “Intensely Creative”

## 2

## CREATIVITY



**MARK REINHOLD**

Chief Architect of  
Java Platform Group

**ORACLE**

**Q.** And you testified you've been working for 20 years in this field designing APIs. Do you consider the process of designing APIs to be creative?

**A.** Oh, it's intensively creative.  
That's why I like the *Harry Potter* analogy so much. It really is a lot like writing a book. You have to keep a lot of stuff in your head, and the end result is -- is very, very rich and complex.

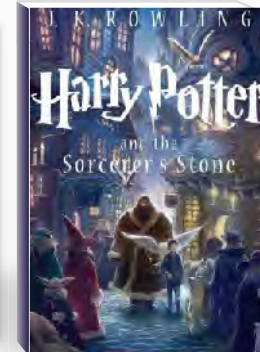
# The Java API Package Design Is Like a Book Series

## 2

## CREATIVITY



Contents	
ONE	The Boy Who Lived . 1
TWO	The Vanishing Glass . 18
THREE	The letters from No One . 34
FOUR	The Keeper of the Keys . 46
FIVE	Dragon Village . 61
SIX	The Journey from Platform Nine and Three-quarters . 85
SEVEN	The Sorting Hat . 103
EIGHT	The Potions Master . 131



## The Journey from Platform Nine and Three-quarters

```
public final int sign(byte[] outbuf, int offset, int len)
    throws SignatureException
{
    if (outbuf == null) {
        throw new IllegalArgumentException("No output buffer given");
    }
    if (offset < 0 || len < 0) {
        throw new IllegalArgumentException("offset or len is less than 0");
    }
    if (outbuf.length - offset < len) {
        throw new IllegalArgumentException
            ("output buffer too small for specified offset and length");
    }
    if (state != SIGN) {
        throw new SignatureException("object not initialized for signing");
    }
    return engineSign(outbuf, offset, len);
}
```

## METHOD

Harry's last month with the Dursleys wasn't fun.

True, Dudley was now so scared of Harry he wouldn't stay in the same room, while Aunt Petunia and Uncle Vernon didn't shut Harry in his cupboard, force him to do anything, or shout at him -- in fact, they didn't speak to him at all. Half terrified, half furious, they acted as though any chair with Harry in it were empty. Although this was an improvement in many ways, it did become a bit depressing after a while.

# Fair Use Factors

2

## CREATIVITY

The nature of the copyrighted work;

“When there are many possible ways to structure, sequence, and organize a program, the particular way chosen for a copyrighted program and individual lines of declaring code may be (or may not be) highly creative.”

# Declaring Code is “Extremely Expressive”

2

## CREATIVITY



**MARK REINHOLD**

Chief Architect of  
Java Platform Group

**ORACLE**

**Q.** In what way is declaring code expressive, if at all, Dr. Reinhold?

**A.** Declaring code is extremely expressive. There are an infinite number of creative choices necessary to design it well.



# Reinhold: Infinite Number of Creative Choices

How many packages should there be?

Which classes do we want?

How should our classes and interfaces relate to each other?

Is one class a subclass of this one or is it a subclass of that one over there?

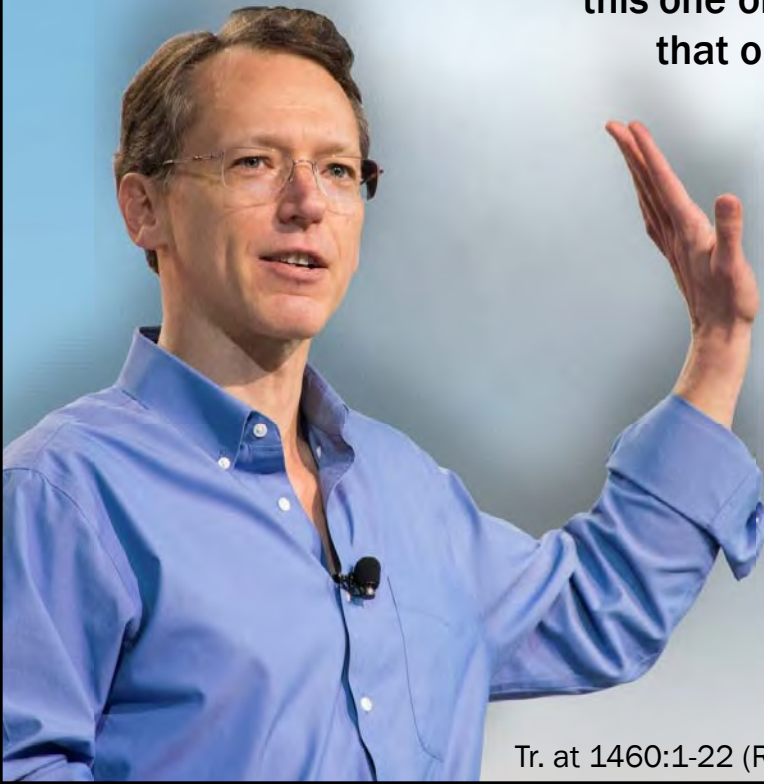
Does a class implement some interface in this API?

How do the methods relate?

For every method, what kinds of inputs does it take?

What kind of outputs does it produce?

What kind of errors can it report?

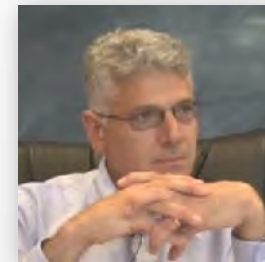
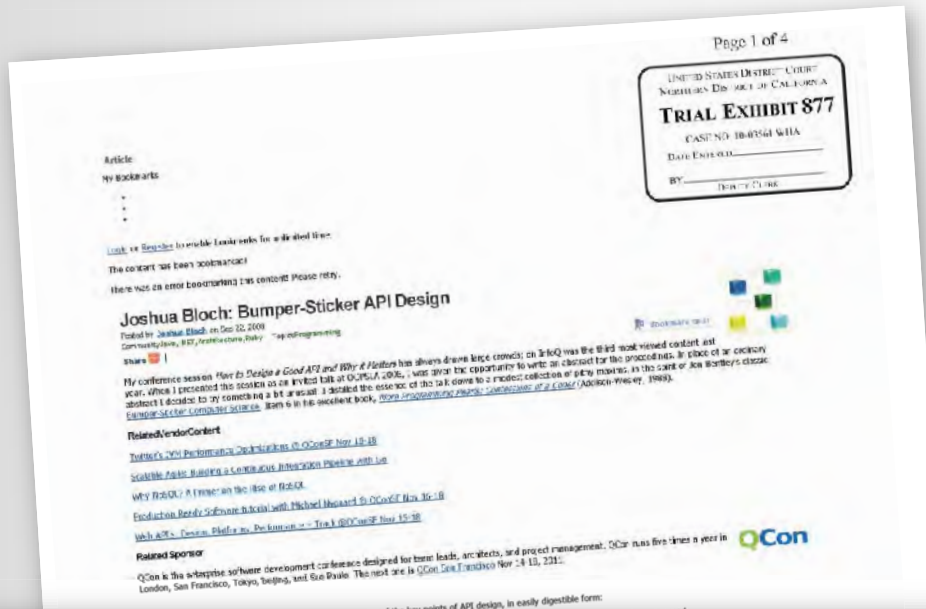




# The Design of Java API Packages Is Creative

## 2

## CREATIVITY



**JOSHUA BLOCH**  
Former Chief Java Architect



**API design is an art, not a science. Strive for beauty, and trust your gut.**

When designing an API, you are solving a set of underlying problems and finding the best solutions. Structure requirements as use-cases: they are the yardstick against which you'll measure your API. Early drafts of APIs should be short, typically one page with class and method signatures and one-line descriptions. This makes it easy to restructure the API when you don't get it right the first time. Code the use-cases against your API before you implement it, even before you specify it properly. This will save you from implementing, or even specifying, a fundamentally broken API. Maintain the code for use-cases as the API evolves. Not only will this protect you from future surprises, but the resulting code will become the examples for the API, fundamentally broken API. Example code should be exemplary. If an API is used widely, its examples will be the archetypes for thousands of programs. Any mistakes will come back to haunt you as a thousand fold. You can't please everyone so aim to displease everyone equally. Most APIs are overconcentrated. Expect API design decisions due to failure of imagination. You can't reasonably hope to imagine everything that everyone will do with an API, or how it will change with every other part of a system. Don't design an API in a solitary activity. Show your design to as many people as you can, and take their feedback seriously. Realities that shape your imagination may change with every other part of a system.

# The Design of Java API Packages Is Creative

## 2

## CREATIVITY



**JOSHUA BLOCH**

Former Chief Java Architect




OGAOOGLE0100219557

**JAVAPOLIS 2005**  
**JAVA POLIS 2005 PATTENBERG**

### Conclusion

- API design is a noble and rewarding craft
  - Improves the lot of programmers, end-users, companies
- This talk covered some heuristics of the craft
  - Don't adhere to them slavishly, but...
  - Don't violate them without good reason
- API design is tough
  - Not a solitary activity
  - Perfection is unachievable, but try anyway

[www.javapolis.com](http://www.javapolis.com)

# The Design of Java API Packages Is Creative

2

## CREATIVITY

### JUDGE ALSUP'S INSTRUCTION:

“Creative writing and **expression** lie at the very heart of copyright protection”

Jury Instruction 28 at p 15



**JOSHUA BLOCH**

Former Chief Java Architect



**Q.** And are some APIs harder to write than others?

**A.** Because of the complexity of figuring out how best to **express** what it is that the programmer wants done. Some tasks are more complicated than others.

Tr. at 1004:21-24

# The Java API Packages Are Creative

2

## CREATIVITY



**DOUG SCHMIDT**

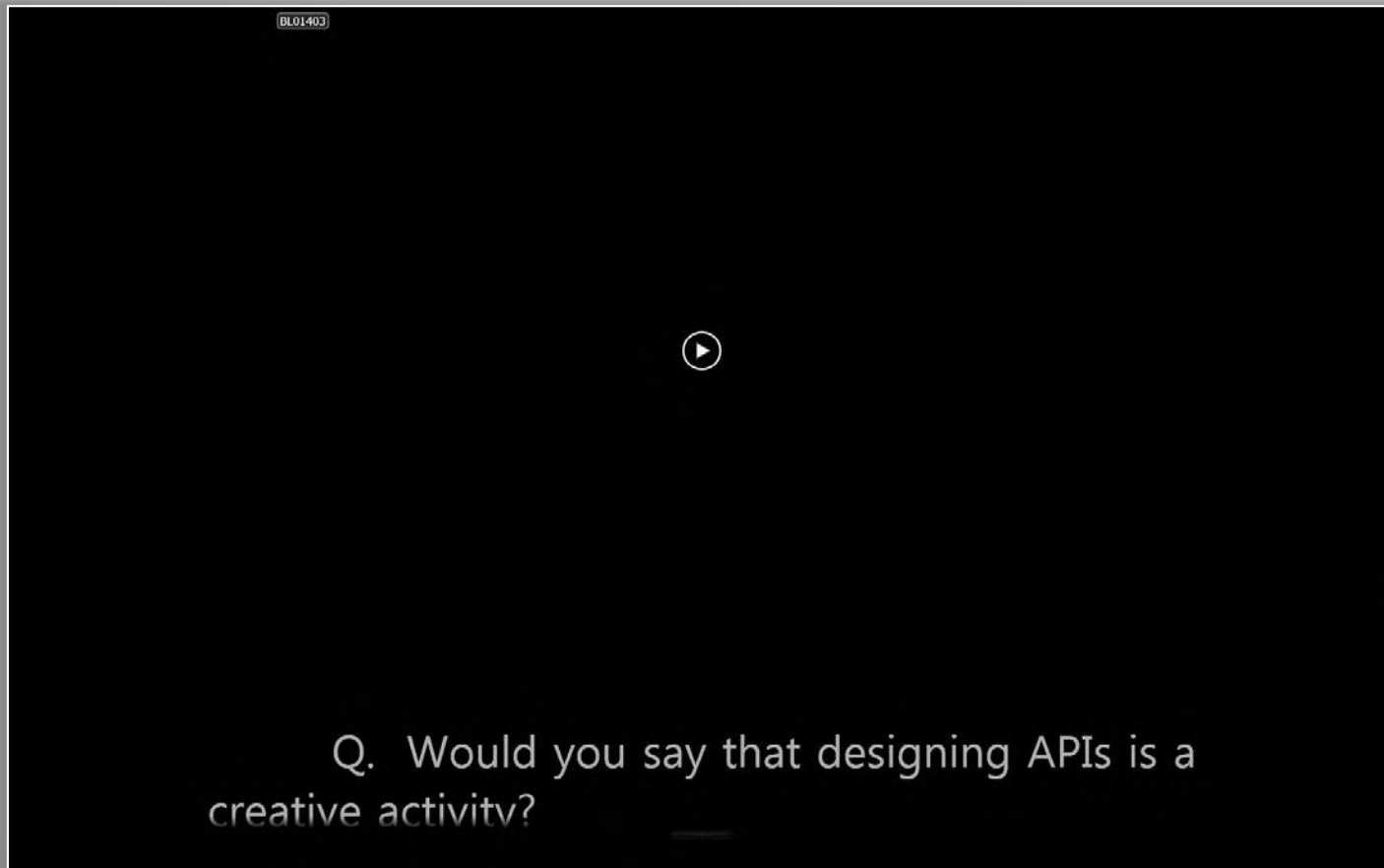
Oracle Expert

The only thing that made it look the way it did was the degree of creativity and experience of the developers who wrote those classes.

# Designing Java API Packages is a Creative Activity

2

CREATIVITY



Bob Lee, Android Core Library Lead

# Placeholder – Reinhold Labels Callout

2

## CREATIVITY



**MARK REINHOLD**

Chief Architect of  
Java Platform Group

**ORACLE**

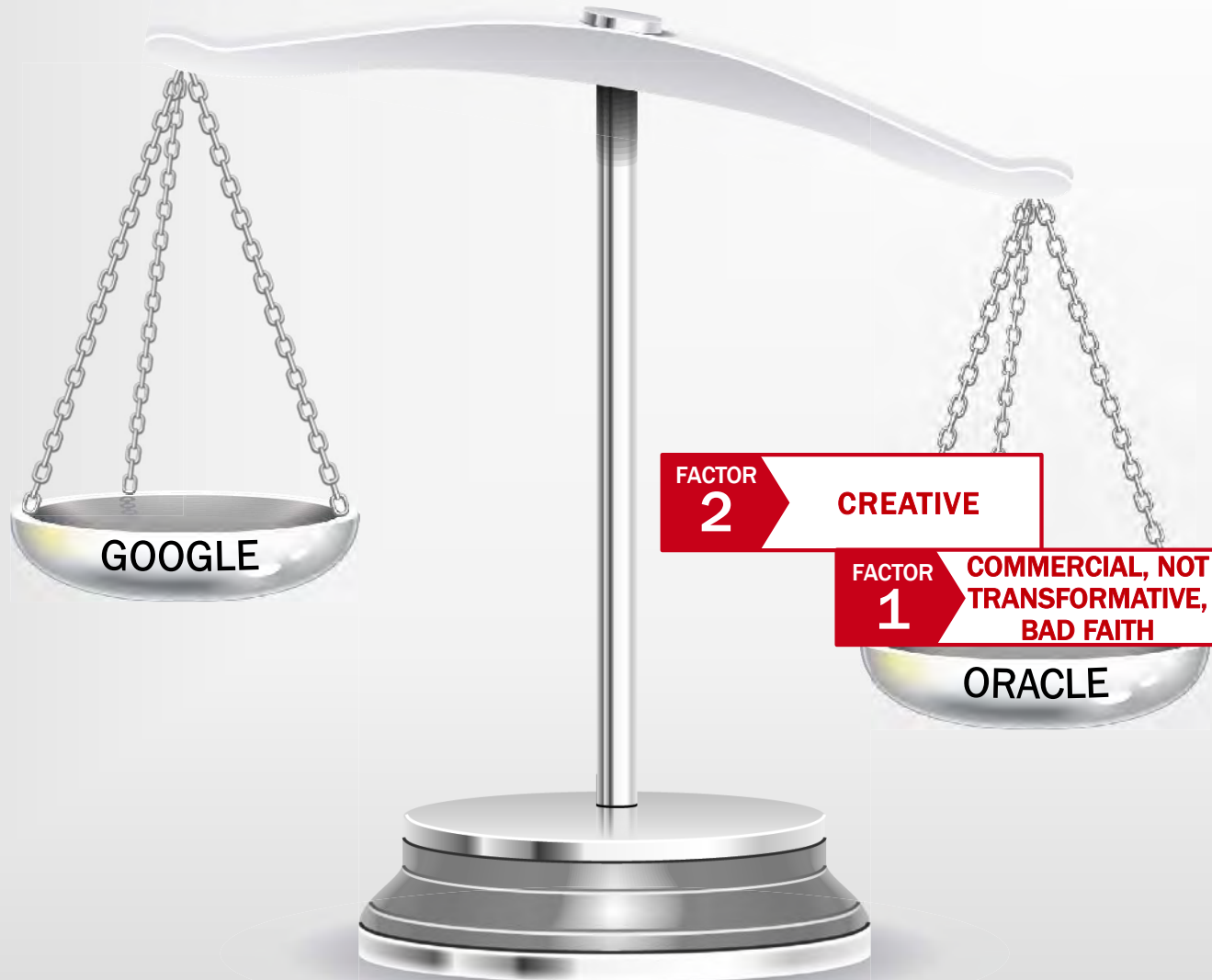
**Q.** Do you think it's accurate to describe the Java APIs as labels?

**A.** As labels? I think that's laughably simplistic.

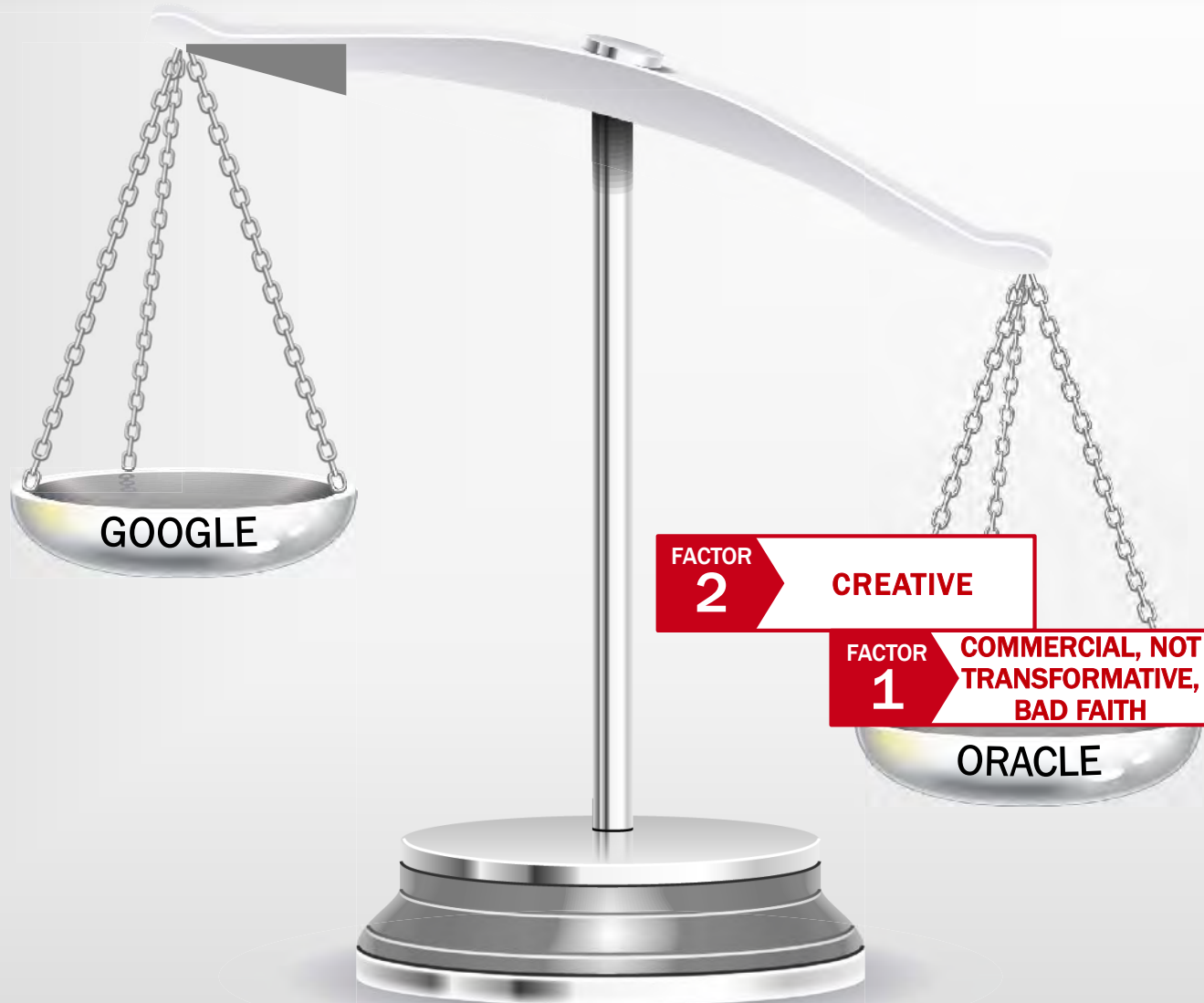
**Q.** Why do you say that?

**A.** Well, a label is just a name. If all we had were names, then we wouldn't need any of the - of the structure and organization that you actually find in the API packages.

# The Factors Overwhelmingly Favor Oracle



# The Factors Overwhelmingly Favor Oracle





## Factor 3: The Java API Packages Are Important

3

### **SUBSTANTIALITY**

The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

“The third statutory factor is the amount and substantiality of the portion used in relationship to the copyrighted work as a whole, which concerns how much of the overall copyrighted work was used by the accused infringer.”

“Even a small part may be qualitatively the most important part of a work.”

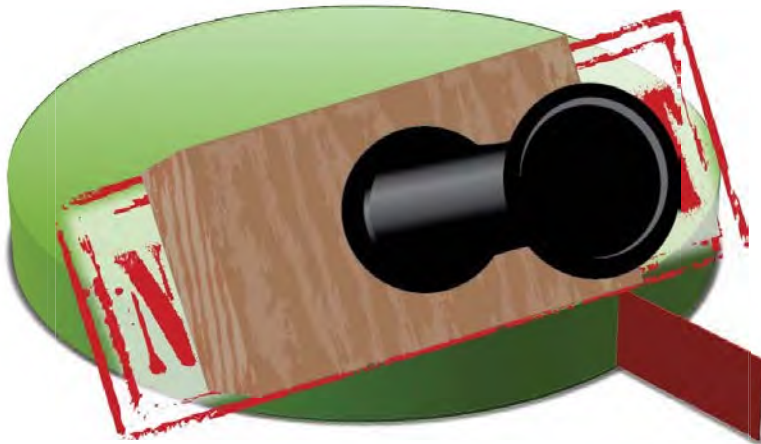
# The Total Amount of Android Code Is Not Relevant

## 3 SUBSTANTIALITY

### GOOGLE'S ARGUMENT

**"1/10 OF 1% OF ANDROID CODE"**

■ Lines of Code in Android



■ Java API labels: 0.08%

Google

### JUDGE ALSUP'S INSTRUCTION

**"For this factor, the total number of lines in Android is irrelevant."**

Jury Instruction 33 at p. 17

### 3 SUBSTANTIALITY



# Schmidt: Copied Java APIs Were Substantial

## 3 SUBSTANTIALITY



**DOUG SCHMIDT**

Oracle Expert

The final point I would like to make is that the portions of the Java APIs that were copied are substantial.

# Reinhold: Google's Copying Was Substantial

3

## SUBSTANTIALITY




**MARK REINHOLD**

Chief Architect of  
Java Platform Group

**ORACLE**

You could think of that - in the *Harry Potter* analogy, it would be the titles of the books, the headings on each chapter, the topic sentences of every paragraph, but not just that.

It's also all of the connections drawn between those elements over time.



**If it wasn't important,  
why did Google copy it?**



**If it wasn't important,  
why didn't Google write their  
own declaring code?**

# Importance: Using Java APIs Save “a pretty crazy amount of time”

## 3 SUBSTANTIALITY

From: Brian Swetland  
To: (-) Mathias Agopian  
Cc: (-) tendin@google.com, ar.bina@google.com, jroa@google.com  
Bcc: (-)  
Subject: For: new java world  
[Mathias Agopian <mathias@google.com>]  
> Has this decision been taken already or are we talking/arguing about it?

### >Reasons to shift to a primarily Java API

>>Reasons to shift to a primarily Java API  
>>  
>> single language massively simplifies the application development  
>> story: "you write android apps in java, native code is brought in  
>> as a standalone module, instead of as an extension to the system"

- >- even on a system with processes / mmu / etc, java provides a nice
- > safety net and faster app development and debuggability. (this
- > is based on experience developing hiptop -- java saved us a
- > pretty crazy amount of time).

>> the tremendous java world map which we have not  
>> compatibility  
>> with "legacy" phone apps, but not much in the way of more powerful  
>> environments. We can fill this gap "and" avoid a lot of the  
>> "why didn't you just use gb / qtopa / etc" questions.  
>>  
>> using java allows us to take advantage of a modern, garbage  
>> collected memory model for applications without having to worry  
>> about integration with C++ allocation, reference counting, etc.  
>> The same goes for synchronization.  
>>  
>> having one primary language environment allows us to focus all our



HIGHLY CONFIDENTIAL - A TO KEY'S EYES ONLY

Oracle America v. Google, 5:10-cv-00587-WHA

CDCCLE-01-00019511

Trial Exhibit 13, Page 1 of 3



# Google's Actions Prove How Important the Java API Packages Were

## 3 SUBSTANTIALITY

BenQ


TATA  
DOCOMO

htc

 CHINA MOBILE

QUALCOMM

orange™

 cingular  
WIRELESS

T-Mobile

Sprint 

 at&t

Telefonica

 LG

 vodafone



# Google's Actions Prove the Java API Packages Were Important to the Market

## 3 SUBSTANTIALITY

### What Google Privately Tells Prospective Partners

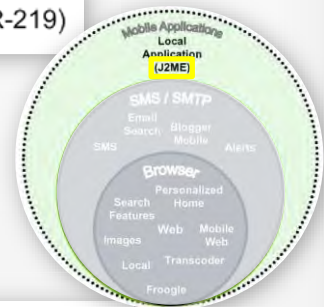
Java compatible, capable of hosting other languages

Runs standard Java .class/.jar files

Java J2ME and CDC1.1 (JSR-218), foundation profile (JSR-219)

Google  
AT&T / Google Android  
Collaboration  
September 2008

Standard Java class libraries



Java application framework and model implemented and sufficient for app development

6M Java developers worldwide.

Java API for application access to SQLite backend

The wireless industry has adopted Java, and the carriers require its support.

Strategy: Leverage Java for its existing base of developers.



# Language Does Not Equal APIs

3

## SUBSTANTIALITY



**MARK REINHOLD**

Chief Architect of  
Java Platform Group

**ORACLE**

**Q.** Are the Java APIs part of the Java programming language?

**A.** No, they're not. The APIs – the APIs and the language are distinct parts of the Java platform.

Tr. at 1462:25 - 1463:2



**OWEN ASTRACHAN**

Google Expert

**Q.** The Java programming language is different from the APIs; is that correct?

**A.** Yes, I think the programming language and the APIs are used together, but they're different. Yes. That's reasonable, yes.

Tr. at 1267:25 - 1268:4

# Language Does Not Equal APIs

3

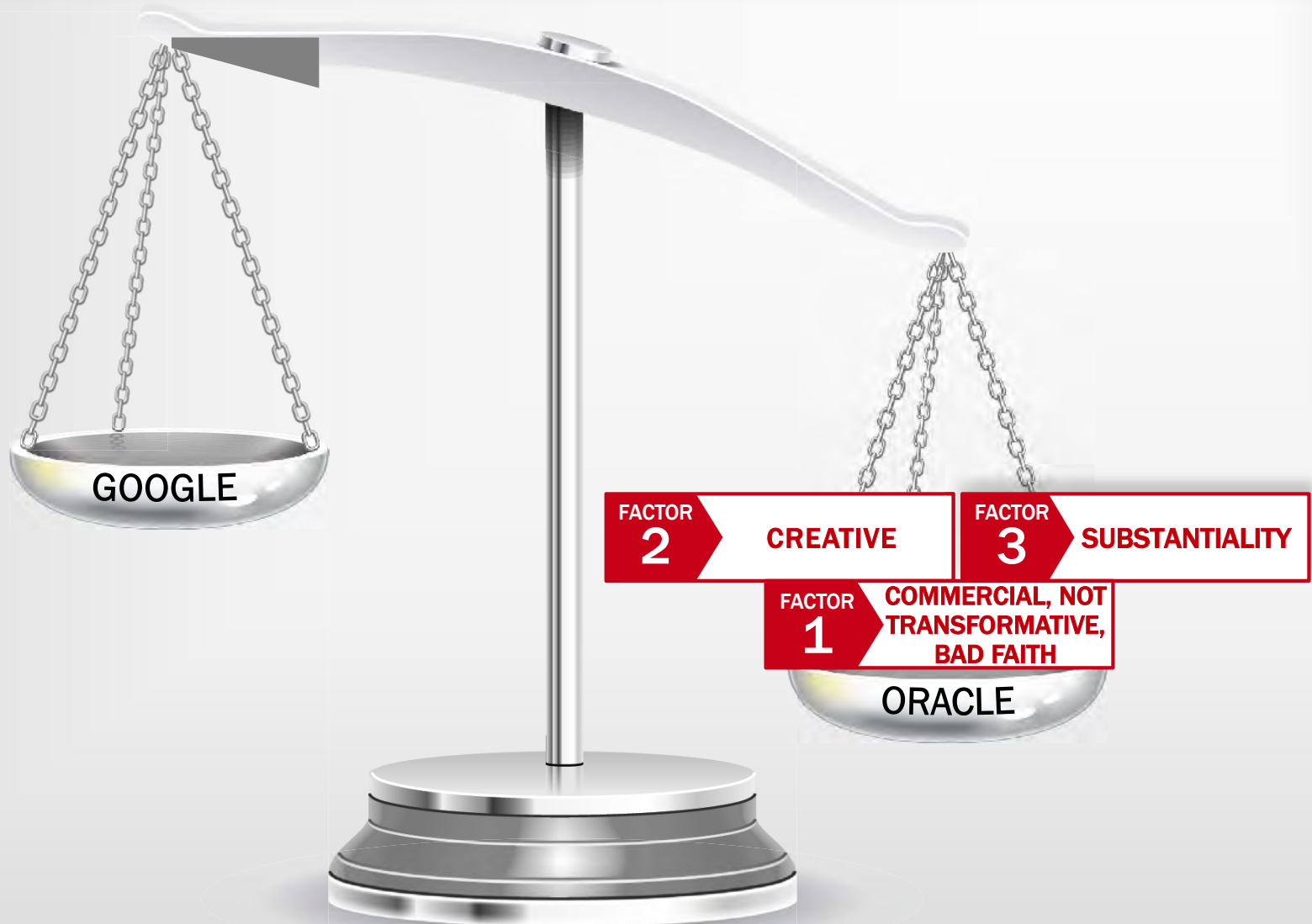
## SUBSTANTIALITY



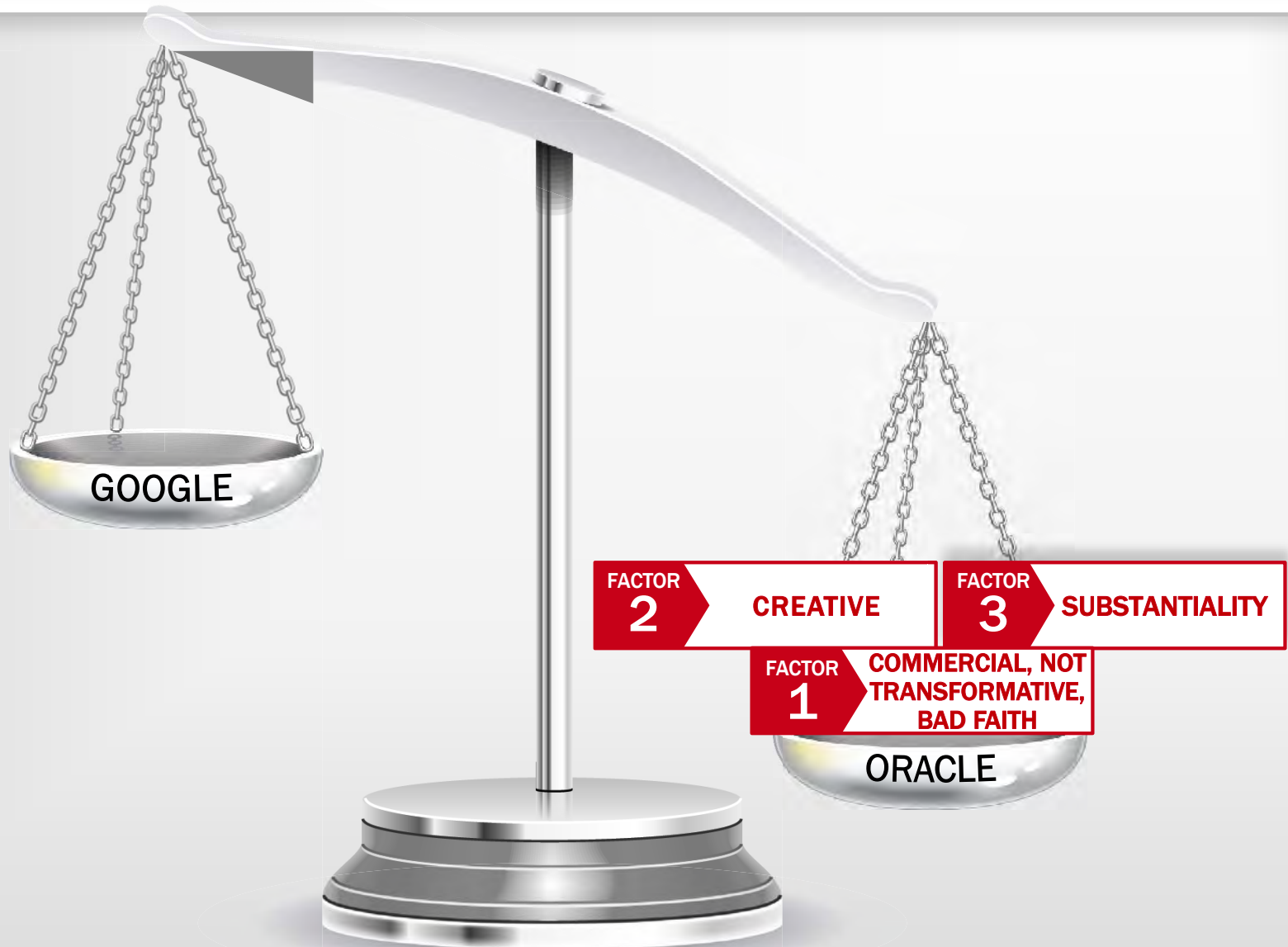
**Urs Hölzle**

Senior Vice President, Google

# The Factors Overwhelmingly Favor Oracle



# The Factors Overwhelmingly Favor Oracle



# Android Harmed the Potential Licensing Market of Both Java SE and ME

4

## MARKET HARM

The effect of the use upon the potential market for or value of the copyrighted work.

“The fourth and final factor is the effect of the accused infringer’s use on the potential market for or value of the copyrighted work”

“The term ‘potential market for or value of’ refers to the value of the entire copyrighted work itself and licensing opportunities for the copyrighted work and its derivatives”

# Java ME Is a Derivative Work of Java SE

## 4

## MARKET HARM



**EDWARD SCREVEN**  
Chief Corp. Architect

So Java ME is a subset of Java SE, a standard subset that allows people to have write once, run anywhere on smaller devices.

Tr. at 1438:2-7



**MARK REINHOLD**  
Chief Java Architect

Java ME is the Java Micro Edition Platform. You can think of it as Java SE's little sibling.

Tr. at 1449:6-7



**ALAN BRENNER**  
Sr VP, Sun Client Systems Grp

We selected classes from SE. Java ME was essentially derived from Java SE

Tr. at 1668:21-22



**OWEN ASTRACHAN**  
Google Expert

Q. Is it true that most of Java ME is a subset of something in SE?  
A. I think that is reasonable.

Tr. at 1273:6-8

# Java ME Is a Derivative Work of Java SE

4

## MARKET HARM



**MARK REINHOLD**

Chief Java Architect

Java ME 1.1 was derived from Java SE 1.4

Tr. at 1449:22-24



**ALAN BRENNER**

Sr VP, Sun Client  
Systems Group

Java SE would be regularly updated. ...And in practice, as a policy, ...We regularly would update Java ME to track the development of Java SE.

Tr. at 1669:9-16

**Q:** You mentioned Java SE 1.4. What, if any, changes to Java ME did you make following the release of Java 1.4?

**A:** We went through all the components of Java ME and included or added to Java ME the new material.

Tr. 1669:18-22



**OWEN ASTRACHAN**

Google Expert

**Q:** That indicates, as you understood when you filed your report, that there were 11 of the Java SE packages at issue in this case in the ME CDC, right?

**A:** Yes. That's my understanding.

Tr. at 1940:21-24 116



# By 2006, Phones Had Evolved and Java SE Was Licensed for and Used in Smartphones

## 4

### MARKET HARM



**ALAN BRENNER**

Sr VP, Sun Client  
Systems Group

Over time, Java ME absorbed more and more of the Java SE functionality. And that became possible because devices were rapidly increasing in CPU capability, computational capability, memory, and battery, that allowed us to take on more of the scope of SE.

Tr. at 1670:9-13



**OWEN ASTRACHAN**

Google Expert

Having a smartphone that you walk around with the power of what used to be a server has kind of changed the landscape of how we live with our digital devices.

Tr. at 1932:8-10

**DANGER**

SavaJe

**NOKIA**

# Factor 4: Google's Copying of the Java API Packages Caused Actual and Potential Harm to Oracle

4

## MARKET HARM

The effect of the use upon the potential market for or value of the copyrighted work.

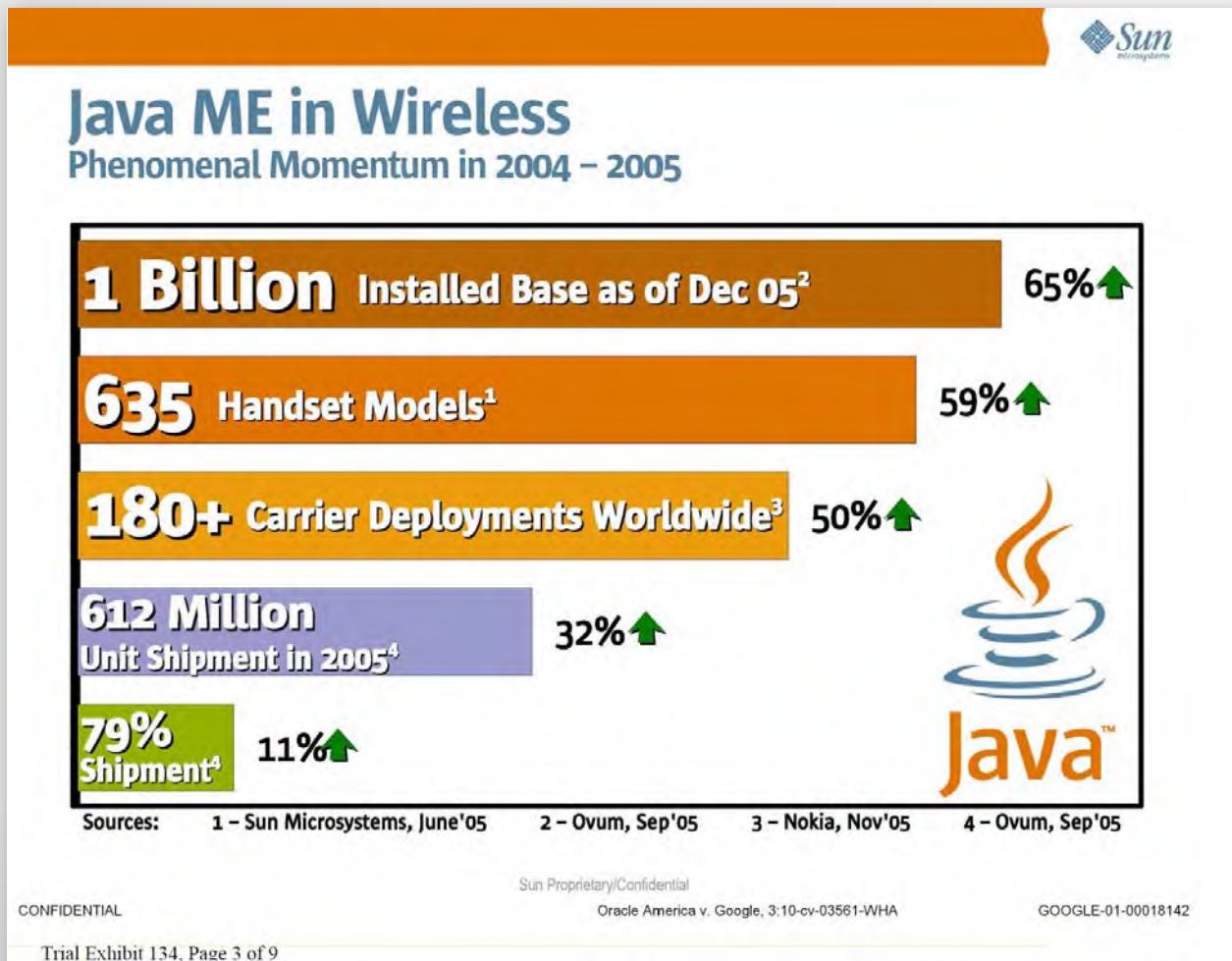
“This is the single most important statutory factor, but it must be weighed with all other factors and is not necessarily dispositive.”

“Actual present harm need not be shown. Nor is it necessary to show with certainty that future harm will result so long as some meaningful likelihood of future harm exists.”

# Java Had Phenomenal Momentum (Pre-Android)

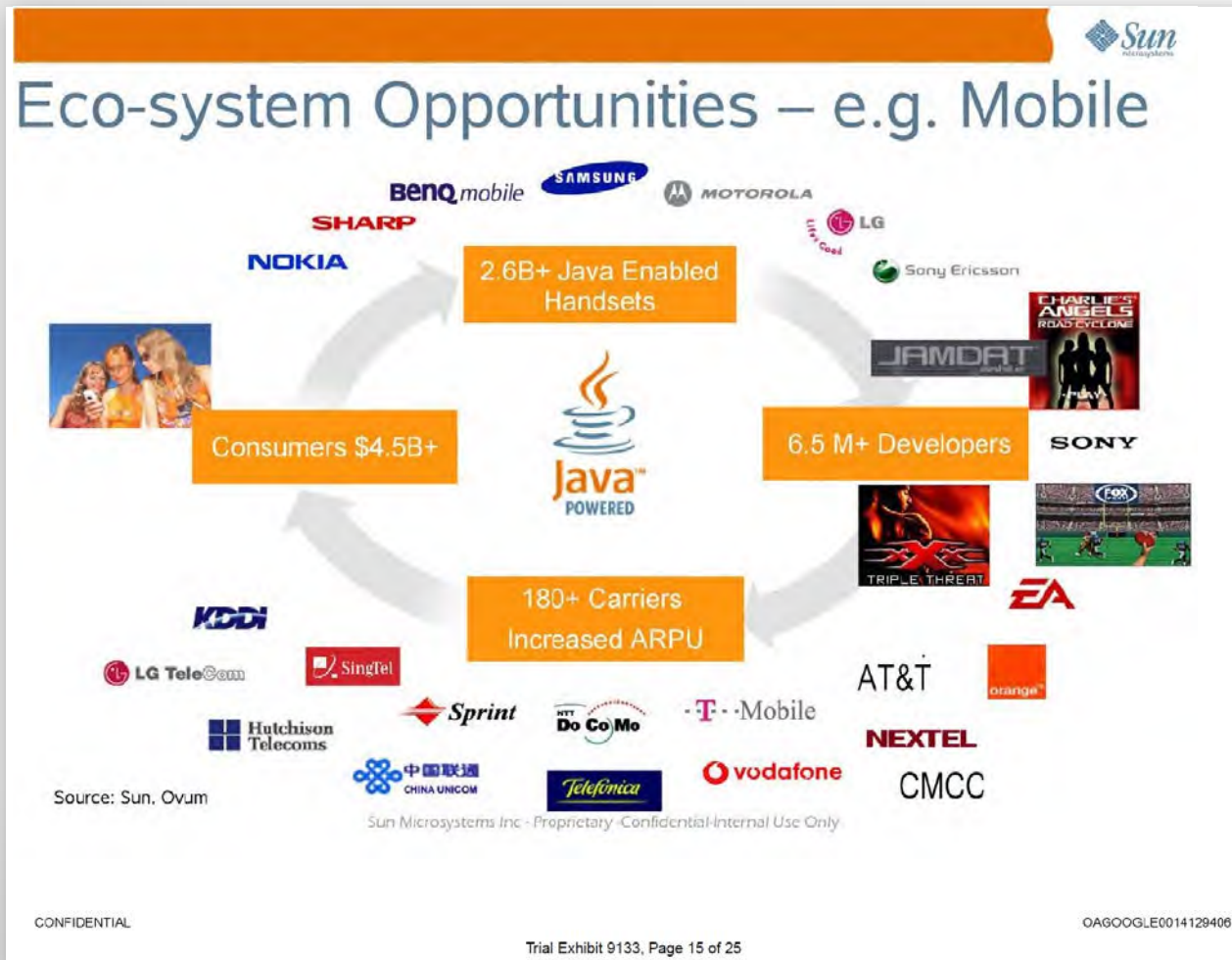
4

## MARKET HARM



# Sun Was Well Positioned to Maintain Its Strong Market Share (Pre-Android)

## 4 MARKET HARM



# Android Has Harmed Oracle

4

## MARKET HARM



**SAFRA CATZ**

Chief Executive Officer

**ORACLE**

**Q.** In the course of your business at Oracle, have you learned to what extent, if any, Android has had an effect on Sun and Oracle?

**A.** Well, Android's had a very negative effect on Sun Oracle in a number of ways.

# Android Has Harmed Oracle

4

## MARKET HARM



**SAFRA CATZ**

Chief Executive Officer

**ORACLE**

First, it's - it's basically forked the Java whole principle, the whole Java community has been forked, meaning split into two because the whole idea of Java, as I mentioned yesterday, is write once, run on any platform. That's really the - the bottom line.

# Google “locks programmers into Android”

4

## MARKET HARM



**EDWARD  
SCREVEN**

Chief Corporate  
Architect

**ORACLE**

Q. What, if anything, is your understanding of the consequence of Android's failure to be an independent implementation as defined by the spec license?

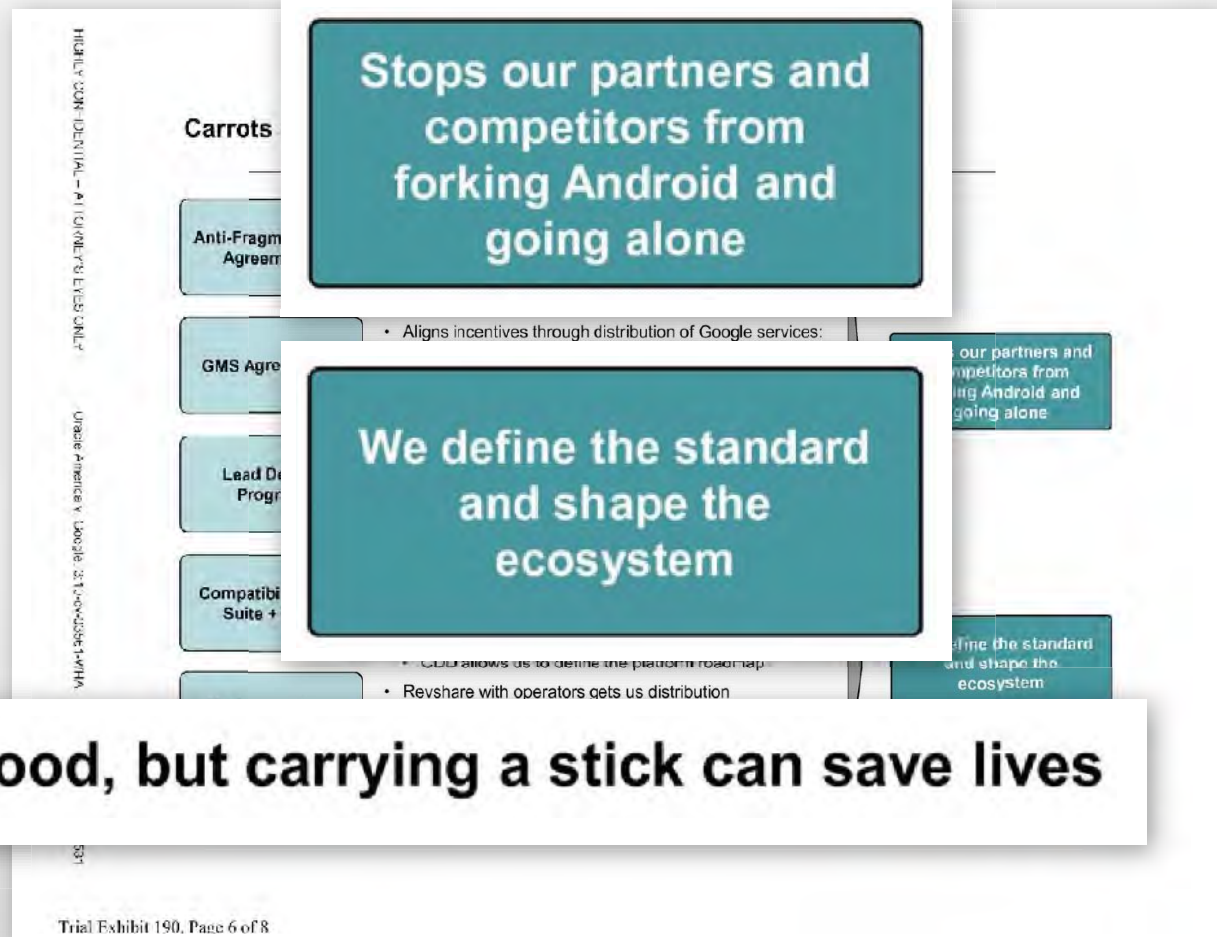
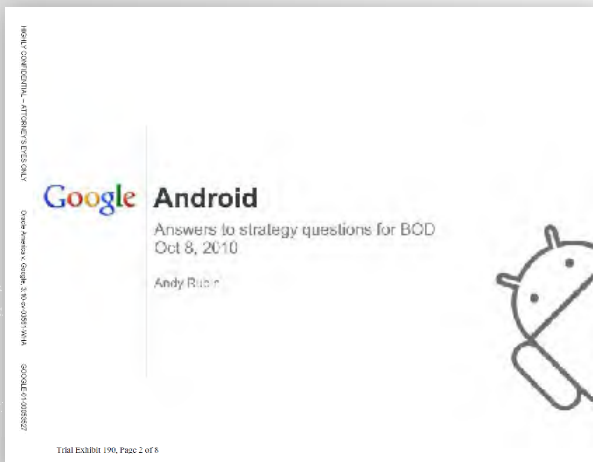
A. It locks programmers into Android. It means that they can't - their applications can't run in other environments, other than Android.



# Google's Control of the Android Platform

4

## MARKET HARM



**Carrots are healthy food, but carrying a stick can save lives**



# Android Has Harmed Oracle

4

## MARKET HARM



**SAFRA CATZ**

Chief Executive Officer

**ORACLE**

Secondly, many of those customers that we used to license to take a copy, to take a licensed copy like Samsung or ZTE or Motorola, just different licensees, BlackBerry, etc., they don't need a license -- they don't take a license from us anymore because they use Android, which is free, and they end up using Android instead of actually paying us for a copy of -- of our software.

# Android's Effect on Samsung License: \$40 Million Down to \$1 Million

4

## MARKET HARM



**SAFRA CATZ**

Chief Executive Officer

**ORACLE**

**Q.** And how, if at all, did that affect the profitability of the Java business?

**A.** It had a very negative impact. Companies like Samsung that would license a \$40 million contract were down to – would be licensing a million dollars.



# Android Was “Devastating”

4

## MARKET HARM



**NEAL CIVJAN**

Former VP Worldwide  
OEM Software Sales



Q. All right. Can you tell us, sir, in one word the impact of Android on Java?

A. It was devastating.

# Android Had a “Massive Impact Very Quickly”

4

## MARKET HARM



**NEAL CIVJAN**

Former VP Worldwide  
OEM Software Sales



**Q.** And can you describe to our jury the impact that Android had on your licensing business.

**A.** Well, Android was very – came on very quickly, very strong. It was free. We were licensing for royalties, and it was being adopted in terms of new design wins for phones across the board and displacing Java on those phones and having a massive impact very quickly.

# Customers Affected by Android

4

## MARKET HARM



**NEAL CIVJAN**

Former VP Worldwide  
OEM Software Sales



**50 to 60%**  
OF MOBILE PHONES USING  
ANDROID INSTEAD OF JAVA

**MASSIVE LOST REVENUE**  
PROJECTED OVER A THREE-YEAR PERIOD

# Android “Hijacked” Java

4

## MARKET HARM



**NEAL CIVJAN**

Former VP Worldwide  
OEM Software Sales



**Q.** Just tell us the impact of Android on the morale of your team.

**A.** It was devastating to me personally and my team because we put our heart and soul into making this as successful- I mean, you guys have probably all heard of Java and it's a huge success story in the industry, and it was hijacked. You know, they took our technology and they gave it away for free and they took our customers, and it was devastating.

# Android Caused Price Erosion for Oracle

4

## MARKET HARM



**SAFRA CATZ**

Chief Executive Officer

**ORACLE**

Q. What was the situation with respect to Amazon licensing?

A. So for Amazon for the Kindle - it's a reader. For the Kindle Reader had used Java to create the Kindle Reader for many years. And then they had another product called the Kindle Fire and that one they used Android so they didn't license Java at that time.

Q. And what happened?

A. Well, in order to compete with them, we ended up giving them like a 97 and a half percent discount for the Paperwhite. So instead of what we would have historically charged them, because our competition was free, they - they - we had to offer them a 97 plus basically couple cents on the collar price from list price.

# Android Significantly Harmed Oracle

4

## MARKET HARM



**ADAM JAFFE**

Oracle Economics Expert

When we look at the actual evidence, what we find is that [Android] did, in fact, significantly harm Oracle.

htc

amazon.com.  
kindle

SAMSUNG

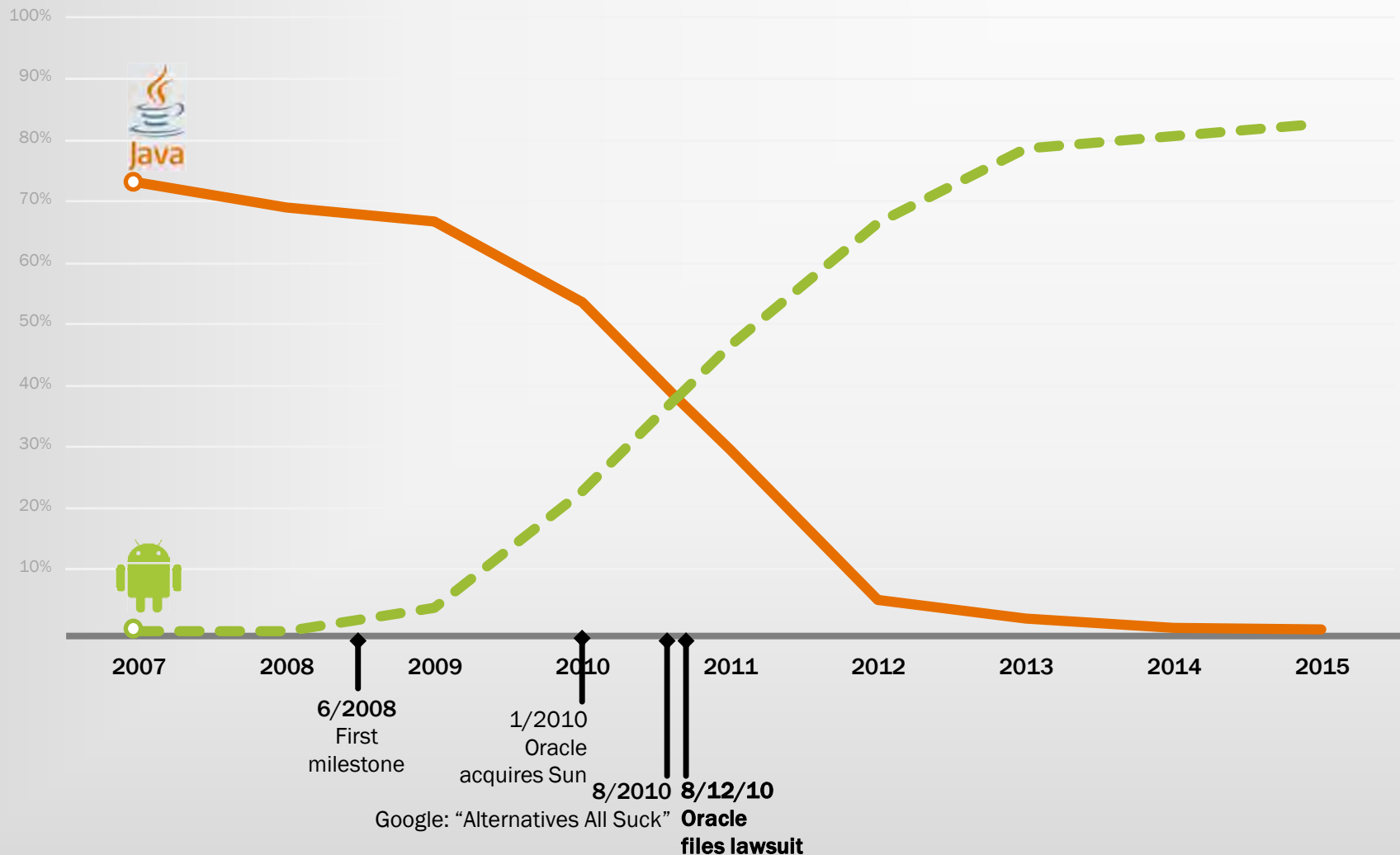


Sony Ericsson



# Java-Based Android vs. Licensed Java Smartphone Market Share

## 4 MARKET HARM



# Android Closed the Door to the Smartphone Market

4

## MARKET HARM



**SAFRA CATZ**

Chief Executive Officer

**ORACLE**

**Q.** And what about more advanced phone software?

**A.** Well, as far as a phone platform, we looked at that very hard and realized that Android was just too far out ahead in the market and that it would be very difficult to compete with free, especially since they were using our software in it.

# Android Closed the Door to the Smartphone Market

4

## MARKET HARM



**LARRY ELLISON**  
Chairman of the Board

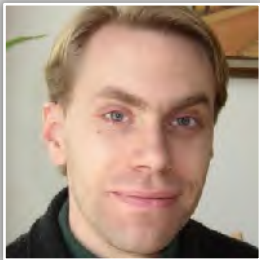
**ORACLE**

We never made an effort to enter the smartphone market. We analyzed whether we had a reasonable likelihood of success if we entered the smartphone market and decided, you know, that Android had already - there already was a Java smartphone with a lot of momentum, and, therefore, we could not enter the smartphone market.

# Android Closed the Door to the Smartphone Market

4

## MARKET HARM



**HENRIK STAHL**

VP Product Management

**ORACLE**

Those decisions were based on the simple observation that we didn't think there was any market left after Android appeared and got dominance, and no investments have been made since, as far as I'm aware.

# OPEN SOURCE **≠** OPEN SEASON



Andy Rubin

**Q.** But you looked at it, you understood it, and you decided the OpenJDK license was unacceptable to you; true?

**A.** I believe so, yes.

Tr. at 844:19-21

# OpenJDK License Not a Viable Alternative Back Then

4

## MARKET HARM



**JOSHUA BLOCH**

Google Chief Java Architect

Using OpenJDK in Android was a "verboten topic"

TX 9211, Tr. 1010:13



**DAN BORNSTEIN**

Google Chief  
Software Engineer

The licensing that Sun is using for both SE and ME are incompatible with Android's needs.

TX 5048



**BRIAN SWETLAND**

Google Sr. Staff Engineer

Using the API libraries would be "incompatible with our policy of not using GPL for core libraries."

Depo. at 139:1-2

# Civjan: OpenJDK Didn't Harm Business

4

## MARKET HARM



**NEAL CIVJAN**

Former VP Worldwide  
OEM Software Sales



**Q.** Now, as – as Sun and then Oracle's Vice President of worldwide sales, you knew that opening sourcing Java through **OpenJDK** could reduce the company's competitive advantage from licensing the software, didn't you?

**A.** **It didn't really impact the business.**

# Google Executives Admit Harm From Unauthorized Copying

4

## MARKET HARM



**ERIC SCHMIDT**  
Executive Chairman



**Q.** Any increase in the unauthorized use of your intellectual property could make it more expensive to do business and harm your operating results; correct?

**A.** Yes.

Tr. at 392:18-21



**LARRY PAGE**  
CEO



**Q.** And the same would apply to Oracle. You would agree with me that any increase in the unauthorized use of Oracle's intellectual property could make it more expensive to do business and harm Oracle's results. Would you agree with that statement?

**A.** I mean, yes, it could make it more expensive.

Tr. at 1828:21-1829:1 140



# A “Free” License Still Has Restrictions

4

## MARKET HARM



**ERIC SCHMIDT**

Executive Chairman



**A.** There is a license that allows you to use it without having to pay for it.

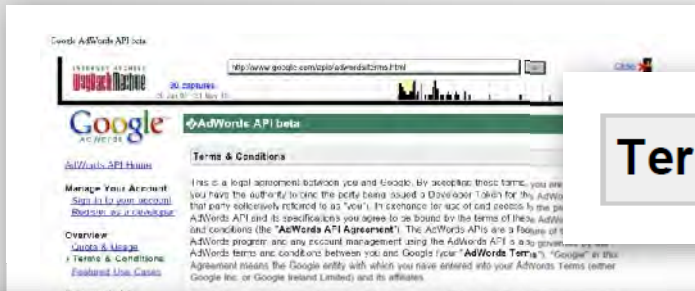
**Q.** So when you don't pay for it, can we agree that's for free?

**A.** Subject to the terms of the license, yes.

# Google Protects Its Own Intellectual Property

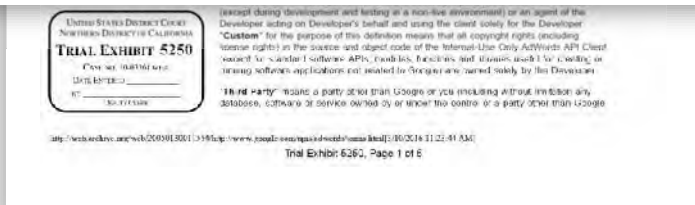
4

## MARKET HARM



### Terms & Conditions

The AdWords API and the AdWords Specifications are, as applicable, the intellectual property and proprietary information of Google. Your right to use, copy and to retain your copy of the AdWords API and the AdWords API Specifications is contingent on your full compliance with this AdWords API Agreement. If you violate all or part of this AdWords API Agreement, your access to the AdWords API may be suspended or terminated without notice. If you decide to terminate your agreement to all or part of this AdWords API Agreement, you must cease all use of the AdWords API and destroy any copies of the AdWords API Specifications, and if requested by Google, certify to Google such destruction.



# A “Free” License Still Has Restrictions

4

## MARKET HARM



**ERIC SCHMIDT**  
Executive Chairman



Q. And it says here that the Adwords API and AdWords specifications – do you see those words?

A. I do.

Q. And it says those are the intellectual property and proprietary information of Google. Do you see that?

A. I do.

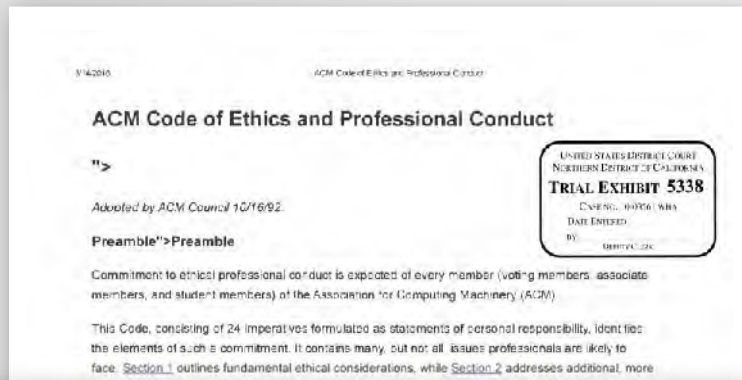
Q. And you do expect people with these contracts to honor them, do you not?

A. We do.

# Google's Own Expert: Unauthorized Duplications Must Not Be Condoned

4

## MARKET HARM

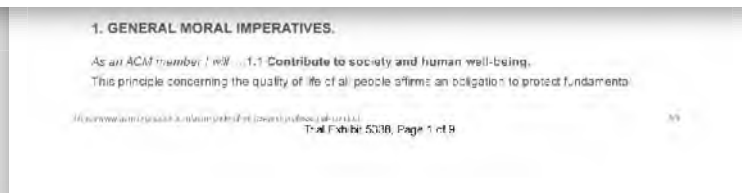


**OWEN ASTRACHAN**

Google Expert

### 1.5 Honor property rights including copyrights and patent.

Violation of copyrights, patents, trade secrets and the terms of license agreements is prohibited by law in most circumstances. Even when software is not so protected, such violations are contrary to professional behavior. Copies of software should be made only with proper authorization. Unauthorized duplication of materials must not be condoned.



# Factor 4: Google's Copying of the Java API Packages Caused Actual and Potential Harm to Oracle

4

## MARKET HARM

The effect of the use upon the potential market for or value of the copyrighted work.

“This factor considers not only the extent of any market harm caused by the accused infringer’s actions but also whether unrestricted and widespread use of the copyrighted materials of the sort engaged in by the accused infringer would result in a substantially adverse impact on the potential market for the copyrighted work.”

# Other Oracle Markets at Risk

4

## MARKET HARM

What would happen if there was  
**“unrestricted and widespread use of the copyrighted materials of the sort engaged in by” Google?**

MOBILE PHONES

TABLETS/E-READERS

AUTOMOTIVE

INTERNET OF THINGS

VOICE OVER INTERNET  
PROTOCOL (VoIP)

CAMERAS

HOME ENTERTAINMENT  
(Televisions/Set-top boxes/  
Blu-ray/Gaming)

GPS SYSTEMS

HOUSEHOLD  
APPLIANCES

VENDING MACHINES

PRINTERS

PAYMENT TERMINALS  
& POINT OF SALES  
SYSTEMS

WEARABLES

MEDIA PLAYERS  
(Including set-top boxes)

GAME CONSOLES

WEB BROWSERS



# If Everyone Did What Google Did “We Wouldn’t Have a Business”

4

## MARKET HARM



**SAFRA CATZ**

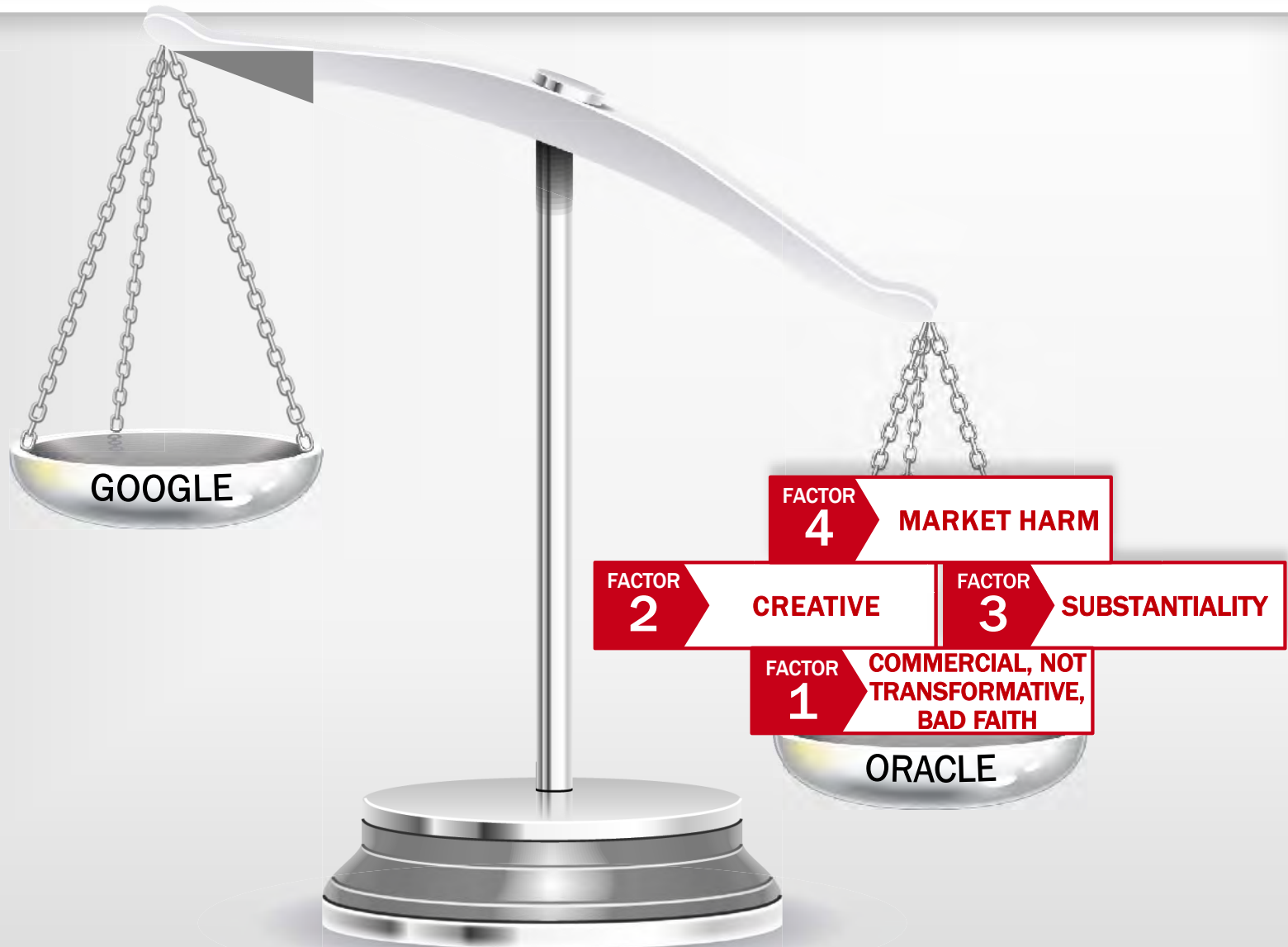
Chief Executive Officer

**ORACLE**

Q. Ms. Catz, one of the considerations that the judge has instructed the jury is relevant to fair use is what would happen if everyone could do what Google is doing. What are your thoughts with respect to Oracle’s business, if that were the case?

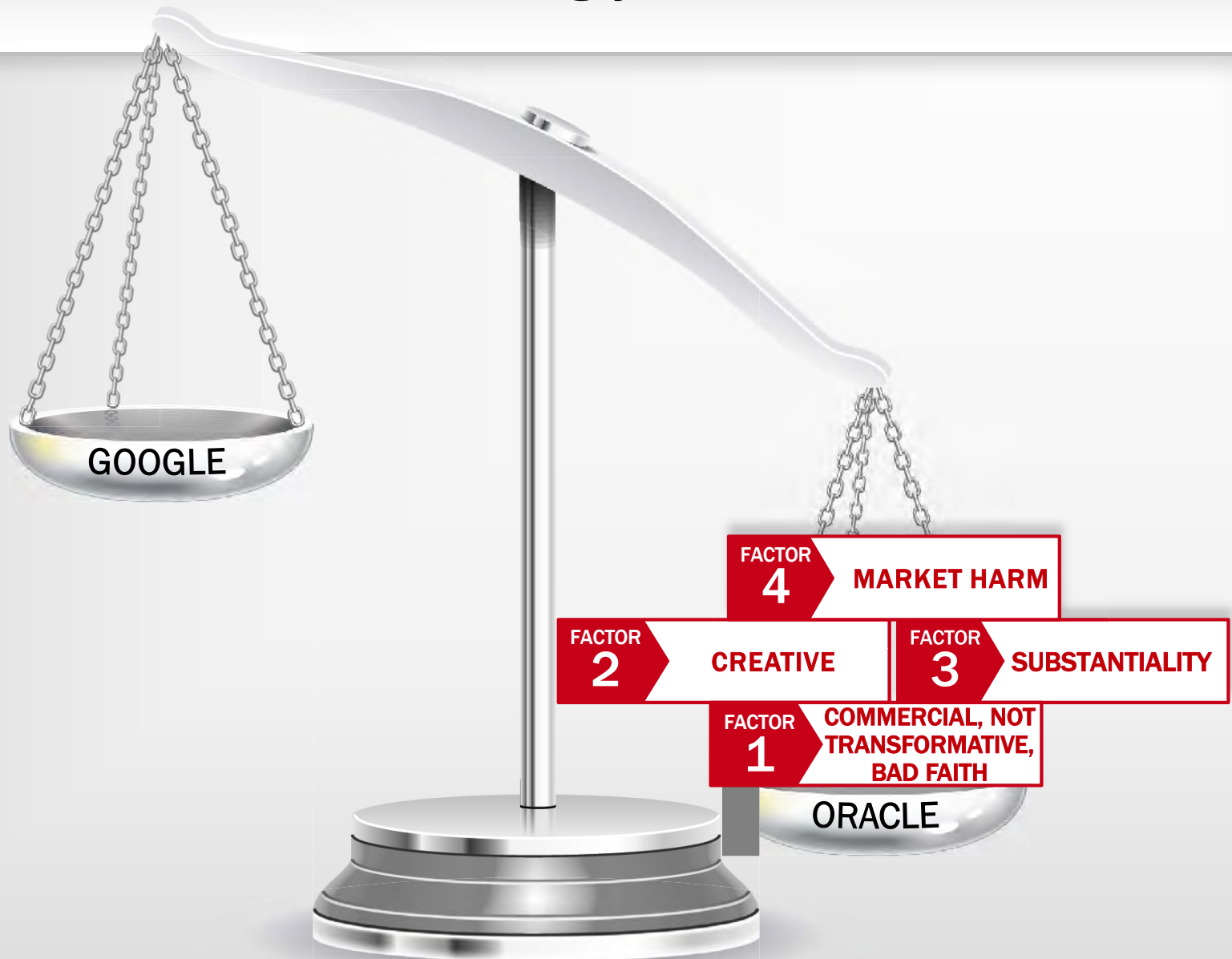
A. If everyone took a copy of our software without actually licensing it, we wouldn’t have a business any more. We simply wouldn’t be able to afford to invest...

# The Factors Overwhelmingly Favor Oracle





# The Factors Overwhelmingly Favor Oracle



## What This Case Is About

**D**ecisions

**C**onsequences

# Verdict Form

Has Google shown by a preponderance of the evidence that its use in Android of the declaring lines of code and their structure, sequence, and organization from Java 2 Standard Edition Version 1.4 and Java 2 Standard Edition Version 5.0 constitutes a “fair use” under the Copyright Act?

Yes \_\_\_\_\_ (finding for Google)

No \_\_\_\_\_ (finding for Oracle)



