**Apple Inc. v. Corellium, LLC**
**Case No. 21-12835, 2023 U.S. App. LEXIS 22252 (11th Cir. 2023)**

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| Year | 2023 |
| Court | United States Court of Appeals for the Eleventh Circuit |
| Key Facts | Plaintiff Apple Inc. ("Apple") owns the copyright in various versions of iOS, the mobile operating system that runs many Apple devices, including the iPhone. In addition to their consumer devices, Apple "also offers some services to developers and researchers." Defendant Corellium, LLC ("Corellium") is a technology company that develops and licenses virtualization software known as "CORSEC" that "emulates various operating systems," including iOS, and permits users to create virtual phones. CORSEC enables security research through added features and modifying iOS to run on non-Apple platforms, but lacks many standard iOS features, including the ability to make phone calls, send text messages, and navigate with GPS. Corellium sells two versions of its security research testing system at significantly different prices. After a potential deal to acquire Corellium fell through, Apple filed suit alleging that Corellium infringed Apple's copyrights in iOS and its Icon-and-Wallpaper. Corellium moved for summary judgment, asserting fair use. The district court granted Corellium's motion, but only substantively addressed the iOS claim. Apple appealed. |
| Issue | Whether the use of a copyrighted operating system to create a simulated security research and testing environment is fair use. |
| Holding | For the first factor, the purpose and character of the use, the panel concluded the use was "moderately transformative" because CORSEC "alters iOS in meaningful ways" by adding several features that serve a different purpose: enabling improved security research that "furthers the progression of technology through research and development." The court noted CORSEC's virtual phone "does not supersede iOS running on iPhones" because it "isn't geared towards the same consumer-oriented function as iOS," and cannot be used for most of the "crucial features" that lead customers to purchase an iPhone. The court rejected Apple's three arguments that Corellium's use was not transformative: it involved verbatim copying into a new format, iOS was already used for some types of security research, and CORSEC could be used for purposes other than research. Although Corellium's use was commercial, that was not dispositive "in light of [CORSEC's] inherently transformative role." The second factor, the nature of the work, favored fair use because iOS was "primarily functional" and "meant to run consumer electronic devices." The third factor, the amount and substantiality of the portion used, favored fair use because Corellium needed to use all of iOS to achieve its transformative purpose as "[s]ecurity research requires the use of the entire work because flaws may be found anywhere in the code" and rejected as "infeasible" Apple's proposal that Corellium should limit access to each researcher to only the portion of iOS they are testing. The fourth factor, the effect on the potential market for or value of the original, favored fair use as the panel concluded that Corellium's transformative research tools did not substantially harm the relevant market for the original copyrighted work: iOS or iOS derivatives. The court observed that "CORSEC makes for a poor substitute for iOS on a real iPhone" and that CORSEC's modest sales of forty devices in contrast to two billion iOS devices sold suggested Corellium's use had not "materially impair[ed] Apple's incentive to innovate." Although the panel acknowledged that the effect on the derivative market for security products presented a "somewhat closer question," it concluded that "Apple doesn't have a monopoly over transformative research tools that supply information |

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| | *about* its operating system." Finally, the panel rejected speculative arguments about potential harm to the public and CORSEC's competition with Apple's iPhone market, noting that Apple's iPhone market was different from the relevant market for iOS. Weighing the factors, the court affirmed the district court's finding that Corellium's use was fair "by creating an innovative product that advances scientific progress without superseding iOS," but remanded for substantive consideration of Apple's other claims. The Eleventh Circuit subsequently denied a petition for an *en banc* hearing, determining that the Supreme Court's *Warhol* decision did not alter the panel's fair use analysis. |
| Tags | Computer Program; Education/Scholarship/Research; Internet/Digitization |
| Outcome | Fair use found |

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