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9th Circ. Mostly Sides With Oracle In Rimini Copyright Suit

By **Bill Donahue**

Law360, New York (January 8, 2018, 6:28 PM EST) -- The Ninth Circuit ruled Monday that Rimini Street Inc. violated copyright law by offering unauthorized support services for Oracle software, though it also rejected claims that the smaller firm breached state computer fraud laws by using automated tools to download files en masse.

The mixed ruling means that Rimini — a so-called third-party support service for Oracle's popular enterprise software — could still be on the hook for tens of millions in damages, but it shaved more than \$20 million from a lower court damages award that had **totaled a whopping \$124 million.**

In affirming lower court **findings of copyright infringement**, the appeals court rejected Rimini's argument that the licenses held by Oracle subscribers gave the smaller company the right to copy the software giant's code.

"The licensees may hire a third party such as Rimini to maintain their software for them, but nothing in the licenses permits them to grant a non-party to the license a general right to copy proprietary software," U.S. District Judge Jeremy Fogel, sitting by assignment, wrote for a three-judge panel.

But in a reversal of the lower court, the panel ruled that Rimini did not violate California's Comprehensive Data Access and Fraud Act by using automated "scrapers" to mass-download Oracle files.

Just because the practice violated Oracle's terms of service did not make it illegal, Fogel wrote.

"We hold that taking data using a method prohibited by the applicable terms of use, when the taking itself generally is permitted, does not violate the CDAFA," the judge wrote. "Oracle obviously disapproved of the method — automated downloading — by which Rimini took Oracle's proprietary information. But the key to the state statutes is whether Rimini was authorized in the first instance to take and use the information that it downloaded."

Oracle charges companies that buy its popular enterprise software like PeopleSoft and J.D. Edwards additional fees for updates and technical support services. Rimini and others offer a competing service, without the updates, usually for a lower price.

Oracle sued in 2010, claiming Rimini had vastly exceeded customer's licenses to Oracle's software by copying material to offer it to other customers. Jurors sided with Oracle in October 2015, eventually awarding the company more than \$124 million in damages.

Monday's ruling erased \$20 million that had been tied to the state-law claims, and reduced an award of costs by \$1.75 million. The ruling also vacated an award of attorneys' fees so that a lower court could reassess in light of "Oracle's more limited success at litigation," and vacated an injunction for the same reason.

The decision also reversed a finding that Rimini CEO Seth Ravin was personally liable for attorneys' fees, since he had only been personally liable for the now-reversed state-law violations.

Following Monday's ruling, Oracle celebrated the affirmance of the copyright claims, which it called the "core" of the dispute.

"We look forward to the trial court issuing a permanent injunction against Rimini for its egregious and illegal conduct," said Oracle spokeswoman Deborah Hellinger.

In a statement, Rimini said the reductions in damages, counting future reductions in attorney's fees on remand, should reach "nearly \$50 million."

"Rimini Street will continue to prosecute its pending claims against Oracle for, amongst other claims, what Rimini Street believes are illegal anticompetitive practices," the company wrote.

In addition to Judge Fogel, the panel was made up of U.S. Circuit Judge Susan P. Graber and U.S. Circuit Judge Michelle T. Friedland.

Oracle is represented by Paul D. Clement, Erin E. Murphy, and Matthew D. Rowen of Kirkland & Ellis LLP; William A. Isaacson and Karen L. Dunn of Boies Schiller & Flexner LLP; Thomas S. Hixson, David B. Salmons and John A. Polito of Morgan Lewis & Bockius LLP; and in-house attorneys Dorian Daley, Deborah K. Miller and James C. Maroulis.

Rimini is represented by Mark A. Perry, Blaine H. Evanson and Joseph A. Gorman of Gibson Dunn; W. West Allen of Howard & Howard PLLC; and in-house attorneys Daniel B. Winslow and John P. Reilly.

The Electronic Frontier Foundation, which filed an amicus brief in support of Rimini on the issue of state computer fraud statute, is represented by Jamie Williams and Aileen Nguyen.

The case is Oracle USA Inc., et al. v. Rimini Street Inc., et al., case number 16-16832, at the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Kelly Duncan.

Update: This story has been updated with a statement form Rimini Street.