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Supreme Court limits recoverable fees and costs in copyright litigation

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On 4 March 2019 the Supreme Court unanimously held that a prevailing party's recoverable costs in a copyright infringement case are limited to the specific categories of cost permitted under the general federal statute authorising the award of costs by federal district courts (*Rimini Street, Inc v Oracle USA, Inc*). The ruling reversed the Ninth Circuit Court of Appeals' affirmance of a $12.8 million award of costs to Oracle for litigation expenses, including for expert witnesses, e-discovery and jury consulting.

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Oracle had successfully sued Rimini Street for infringing a variety of its copyrights. A jury awarded damages and the district court awarded fees and costs, including the disputed $12.8 million. The Ninth Circuit recognised that this award covered expenses that were not specified in the general statute, but split with other circuit courts of appeal and held that the award was proper because Section 505 of the Copyright Act grants district courts the discretion to award "full costs" to a prevailing party in copyright cases.

The Supreme Court disagreed, holding that the term 'costs' in the Copyright Act is limited to the six categories specified in the general costs statute (codified at 28 USC §§ 1821 and 1920). The six categories are:

- fees for clerks and marshals;
- fees for printed or electronically recorded transcripts;
- fees for printing and witness;
- fees for exemplification and copying any material necessary for the case;
- certain docket fees; and
- fees for interpreters and court-appointed experts.

Any award of general costs is limited to those listed unless the subject matter of a specific federal statute authorises specific fees (eg, expert witness fees) beyond these categories.

The Supreme Court rejected the argument that the use of the word 'full' before 'costs' authorises the award of additional expenses and held that the adjective 'full' does not alter the meaning of the word 'costs', but simply means all the costs otherwise available under law. The court also rejected Oracle's argument that 'full costs' is a historical term of art with a broader meaning under prior copyright statutes in the United States and England. The court found that case law since 1831 and historical usage did not in fact support Oracle's position.

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