

ABSTRACTS

This paper discusses the scope of copyright protection for video games by analyzing “copyrightability” of game contents. It analyzes which copyrights can be derived from game contents by examining “idea/expression dichotomy” and “substantial similarity” which limit the subject matter of copyright and the scope of protection. At first, where various contents are organically combined, it is not reasonable to uniformly treat game contents as a type of works. Rather, they need to be protected by various kinds of copyrights.

With regard to application of idea/expression dichotomy, the determination of similar materials need to precede that of a protectable subject matter. Only after removing materials unsuitable for protection by applying merger doctrine or scènes à faire doctrine, protectable subject matter should be delineated through policy determination of whether the material has strong idea nature or not. Substantial similarity is the criterion to decide whether copyright infringement can be shown by comparing originals and accused infringing works. Substantial similarity regarding parts of game contents should employ the same method as a work in question. That copyright infringement is shown in such a subject matter does not mean there is a infringement in a work as whole, too, because the former needs to be differentiated from the latter. In addition, if the game contents as a whole qualify as a compilation, substantial similarity also needs to be decided. This decision may derive useful and meaningful results for game contents of which elements are not protectable subject matters.

Keywords : video game, idea/expression dichotomy, non-literal expression, inneren Form, merger doctrine, scènes à faire, substantial similarity, compilation theory, scope of copyright protection