

Abstract**A Study on the Creative Expression of Computer Programs**

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Although it has been established that the literal elements as described in the programming language are expressions of the program, there have been controversies over whether the comprehensive non-literal elements, namely, the structure, sequence, and organization (hereinafter referred to as “SSO”) of the program are expressions and what creative expressions as such are meant to be. Therefore, this paper looks through the problems pertaining to the expression of the program with regard to the copyrightability of the program, access and substantial similarity between programs, and what the creative expressions among the expressions in the literal elements and the comprehensive non-literal elements tell about.

In principle the Copyright Act protects creative expressions according to the idea-expression dichotomy, and thus it applies to both the literal elements and comprehensive non-literal elements of the program. In this sense, when it comes to the comprehensive non-literal elements, the creative expressions therein are the object of the copyright protection. Since the program is a literary work and simultaneously has an attribute of functional works, it is difficult to apply the theories as applied to the literary works to the program as they stand, when to determine the substantial similarity.

On the other hand, in order to decide the expressions that are not protected by the copyright in the literal elements of the program, the principles such as the doctrine of merger, the short phrases, scènes à faire, expressions taken from the public domain, etc. are applied. However, as to the comprehensive non-literal elements of the program, a three-step test of abstraction, filtration, and comparison has been introduced, which presupposes that the SSO of the program can establish themselves as a creative expression. And, in the filtering

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process of this test, all of unprotected parts such as the elements dictated by efficiency and external factors, and the elements taken from the public domain including the elements corresponding to ideas, are excluded, when decisions on these elements are based on the principles aforesaid rather than entirely new ones.

Even though there exists a perception that merely protecting the literal elements of a program is not sufficient to protect the copyright of programs, it seems quite difficult to set specific standards which protect the SSO of the program. However, academic as well as judicial circles need to keep discussing the SSO of the program and set up any course of criterion of its kind.

Keywords

Computer Program, Idea-expression Dichotomy, Literal Elements, Comprehensive Nonliteral Elements, Substantial Similarity, Fragmented Literal Similarity, Comprehensive Nonliteral Similarity, The Doctrine of Merger, Scènes à Faire.

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