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**The Distinction and Merger Between Expression
and Idea and the Steps to Decide the
Infringement of Computer Program
— An Analysis of the Supreme Court Criminal
Judgment No. 94-Tai-Shang-Tze-1530, 2005**

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Abstract

The dichotomy and merger between idea and expression is highly related to the judgment of the infringement of computer program. Shall the expression be limited to literal element of work? Can the non-literal element of computer program possibly be categorized as expression? If it is possible, then what is the criterion for drawing such a distinction? Under what kind of circumstances, can the expression be regarded as having been merged with idea? And what is the process to make such a judgment of infringement?

In this regard Taiwan judicial decisions have submitted different opinions. Based upon Supreme Court Criminal Judgment No. 94-Tai-Shang-Tze-1530, 2005, this article analyze the criterion for the distinction between idea and expression, and then analyze the contents of the three-step procedure by which judges in Altai applied the principle of the dichotomy and merger between idea and expression to

decide the infringement. Finally, in conclusion, this article makes some comments on relevant mentioned above cases, serving as a reference for readers to have a panoramic observation.

Keywords: Whelan, Lotus, Altai, SSO, Structure-Sequence-Organization, Idea and Expression, Dissection-Filtering-Abstraction, Three-Part Test, Three-Pronged Test, Non-Literal Elements