

OPEN CHAIN PROJECT	
OPEN CHAIN CURRICULUM	
1	<p>What is the "Subject Matter of Copyright Law"?.</p> <p>Works of Authorship. Exclusion of Copyright Protection (ideas, procedure, process, systems, method of operation, etc.)</p>
2	<p>Could it be asserted under Copyright Law that "originative works or preexistence works" (*) and "derivatives works" (**) are protected? (*) is stated "originative" instead of "original", because both works, originative or preexisting works and derivative works must be "original" to obtain copyright protection) (**) in a sense that derives from pre-existing works.</p>
3	<p>How could it be classified the works of authorship by its "origin or source" and by its "legal nature"?.</p>
4	<p>Does Copyright Law provides legal definitions regarding the categorization of the different kind of works of authorship? If not, What about legal doctrine or case law definition?</p>

5

Subject Matter of Copyright Law in Derivatives Works and Compilations". Does the copyright in a compilation or derivative work extend only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material?. And, Is the copyright in such work independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material?

6

What would it be the legal requirements of a "Derivative Work" and "Compilation"?

7

Is the literal copying of a significant portion of "source code" always sufficient to establish that a second work is a derivative work of an original program?. Can a second work be a derivative work of an original program even though absolutely no copying of the literal source code of the original program has been made?.

8

Are there a "Test" developed by Courts to analyze software derivatives works?

US COPYRIGHT LAW

The **Section 102, US Code Title 17** defines the "**Subject matter of copyright**" establishing in subsection a) the following: *General.(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. **Works of authorship** include the following categories:(1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.* In subsection b) is regulated about the exclusion of copyright protection for ideas, procedure, etc, establishing to this respect that: *(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.*

Yes, both form of works are protected under copyright law.

A possible classification: **A.) Classification of "works of authorship" by its origin or source:** (i) Originatives Works (as synonymous of preexistence work (ii) Derivatives Works (as synonymous of derivation from pre-existing works); **B.) Classification of "works of authorship" by its nature:** (i) Derivatives Works, (ii) Compilations: (ii.a) Collectives Works Compilations (only copyrightable works) (ii.b) Non-Collectives Works Compilations (may consist entirely of non-copyrightable material)

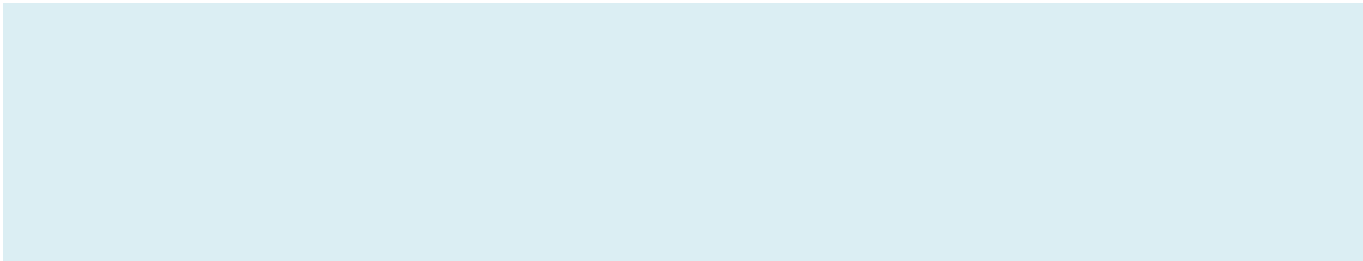
Yes. The US Code Title 17, Section 101, provides a legal definition of "**Derivatives Works**" "**Compilations**" and "**Collective Works**" applicable to any kind of works of authorship. Pursuant to US Code Title 17, Section 101. **(Derivatives Works/Compilations and Collective Works: Subject Matter and Scope of Copyright. Definitions.)** the definition provided by law are as follow: "**Compilation**": A "**compilation**" is a work formed by the collection and assembling of preexisting *materials or of data* that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works. "**Collective Work**": A "**collective work**" is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole. "**Derivative Work**": A "**derivative work**" is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a "derivative work".

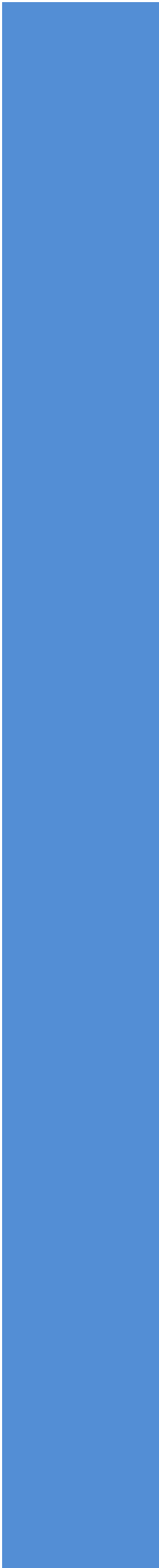
Yes. The subject matter of Copyright Law in: **(i) Derivative Works, (ii) Compilations: (ii.a) Collectives Works Compilations (only copyrightable works) (ii.b) Non-Collective Works Compilations (non-copyrightable material)** pursuant to **Section 103 (b)** extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material. Those who prepare (i) Derivative Works, (ii) Compilations: (ii.a) Collectives Works Compilations (only copyrightable works) (ii.b) Non-Collective Works Compilations (non-copyrightable material) can only claim to their own material, and cannot claim exclusive right in the pre-existing material.

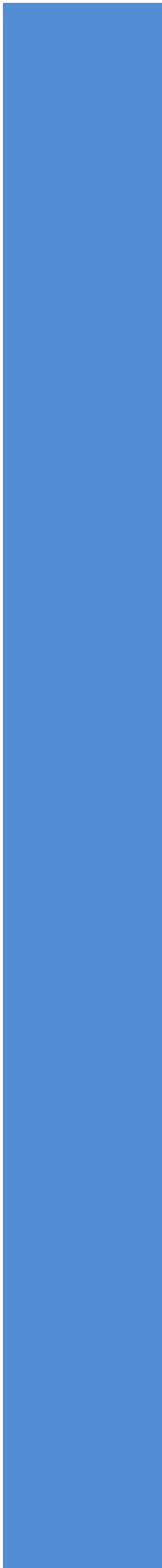
(i) Permission of the Copyright's Owner: A Derivative Work are built on pre-existence work (which may be owned by another party) and creates a new, separate work, owned by the new author but incorporating elements from the earlier work. If the use of the elements from the earlier work is not authorized, it violates the exclusive rights to make the derivatives works. Pursuant to Section 103 US Code, Title 17, **the copyright owner need not grant the right to prepare Derivative Works**, once she does so the owner of the copyright to the Derivative Work is the author of that Derivative Work. This copyright in the Derivative Work is independent of the underlying copyright, but extends only to the portions of the whole work created by the Derivative Work author. In other hand, in both Compilations and Collectives Works the authorship involves selecting and/or arranging material into a new, combine work. The Collective Work author holds the copyright to the expressive compilation -the selection and arrangement-. In contrast, if the work collects works of authorship by others authors with their permission, those original authors hold the copyright to their original works and control of those whose other than as part of the authorized collection or revision thereof. [in apparent disagreement: L.Determann holds that the Copyright Act **treats very differently derivatives works and compilations with respect to the "scope of exclusionary rights"**. He states that a copyright owner has the exclusive right to prohibit or authorize (i.e license) the preparation of derivatives works (Pursuant to 17 USC & 106 (1) (2) (3)). And in other hand, the copyright owner does not, however, have an exclusive right to prohibit or authorize the preparation of "compilations or non-creative arrangements of works", since as stated above according to section 106 (1) (2) and (3) mention only **derivative works, but not collective works or other type of compilations**. ("*Dangerous Liasons Software Combinations as derivatices works*" (*Exclsuive Rights to Derivatives Works vs. Compilations*")) **(ii) Substantial copied protected material from the pre-existing work-Infringing work:** A work cannot be a derivative work unless it has substantially copied proected material from a prior work. That's to say, a work will not be a derivative work unless it is also an infringing work because of the material copied from the pre-existing work. (Literal copying of a significant portion of "source code" is not always sufficient to establish that a second work is a derivative work of an original program, since copyright protection does not always extend to all portions of a program's code. As stated in (ii) the source code material copied must be protectable under Copyright Law) **(iii) The material copied must be subject to copyright protection:** If a subsequent work copies material from a pre-existing work that is not subject to copyright protection, then that subsequent work cannot be a derivative work of the pre-existing work. **(iv) Literal and Non-Literal Copying.** A work come become a derivative work by copying the structure, sequence and organization of another work.

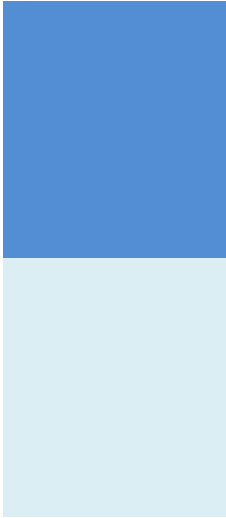
No. The literal copying of a significant portion of source code is not always sufficient to establish that a second work is a derivative work of an original program. Conversely, a second work can be a derivative work of an original program even though absolutely no copying of the literal source code of the original program has been made. This is the case because copyright protection does not always extend to all portions of a program's code, while, at the same time, it can extend beyond the literal code of a program to its non-literal aspects, such us its architecture, structure, sequence, organization, operational modules, and computer-user interface".

Yes, the AFC Test (Abstraction, Filtration and Comparative Test)









ARGENTINA COPYRIGHT LAW

Section 1, Copyright Law 11.723 establishes the following: *Article 1 - For the purposes of this law, scientific, literary and artistic works shall comprise writings of all types and scope, and include source and object computer programs; compilations of data or other materials; dramatic works, musical compositions and dramatico-musical works; cinematographic, choreographic and pantomime works; works of drawing, painting, sculpture and architecture; models and works of art or science applied to trade or industry; printed matter, plans and maps; plastics, photographs, recordings and phonograms; and finally any scientific, literary, artistic or didactic production, irrespective of its reproduction procedure.* Copyright protection shall cover the expression of ideas, procedures, methods of operation and mathematical concepts, but not those ideas, procedures, methods and concepts per se. Furthermore, and despite the enumeration given by article 1, there are further sections in the Copyright Law 11.723 that refers to protected works, such as article 10 (collections, anthologies), section 25 and 26 (translations and parodies), section 27 (conferences, political speeches, literal speeches, parliamentary speeches).

Yes, both form of works are protected under copyright law.

A possible classification: **A.) Clasification of "works of authorship" by its origin or source:** (i) Originatives Works (as synonymous of preexistence work) (ii) Derivatives Works (as synonymous of derivation from pre-existing works); **B.) Clasification of "works of authorship" by its nature:** (i) **Derivatives Works** (i.a) **"Derivatives Works by Modification"** of the originative work/preexistence work, (ii.a) **"Derivatives Works by Incorporation"** of the "originative work/preexistence work" into a new work, thus forming a (ii.a.i) **"Composites Works or Compilations of Copyrighted Works"** and (ii.a.ii) **"Composites Works or Compilations of Non-Copyrightable Works/Material"**.

No. There are no legal definitions of **"Derivatives Works: (i) Derivatives Works by Modifications, (ii) Derivatives Works by Incorporations, (ii.a) "Composite Works or Compilations of Copyrighted Works" (ii.b) "Composite Works or Compilations of Data/Materials Non-Copyrightable Works"**. In the absence of legal definitions, the *legal doctrine* defines **"derivative works"** as works that are based on preexisting works. It's considered as *"derivatives works"* the adaptation, translations, actualizations, compilations, anthologies, excerpts, and any kind of transformation of a preexistence work. As stated above a possible classification of "works of authorship" by its nature shall be: (i) **Derivative Works (i.a) "Derivative Work by Modification"** of the originative work/preexistence work, (ii.a) **"Derivative Work by Incorporation"** of the "originative work/preexistence work" into a new work, thus forming a (ii.a.i) **"Composite Works or Compilations of Copyrighted Works"** and (ii.a.ii) **"Composite Works or Compilations of Data/Materials Non-Copyrightable Works"**. The term **"Compilations of Copyrighted Works"** represents the same meaning provided by the Berne Convention in article 2 subsection 5) to the term *"Collections"* that the Convention defines as follows: *"Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections"*.

Yes. Even though there is not an explicit language in the Copyright Law 11.723 it could be affirmed that the copyright principle asserted in Section 103 (b) US Code Title 17, shall be interpreted in an equal sense in Argentina, hence, pharsed in another way, "the copyright in a (i) **"Derivatives Works by Modification"**, (ii) **"Derivatives Works by Incorporation"** (a) **"Composite Works or Compilations of Copyright Works"** (b) **"Composite Works or Compilations of Data/Materials Non-Copyrightable"** extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material. Those who prepare (i) "Derivatives Works by Modification", (ii) "Derivatives Works by Incorporation" (a) "Composite Works or Compilations of Copyright Works" (b) "Composite Works or Compilations of Data/Materials Non-Copyrightable" can only claim to their own material, and cannot claim any exclusive right in the pre-existing material.

(i), (ii), (iii) and (iv) would be applicable under Argentina Copyright Law. In other hand, the *sine qua non conditio* to create (i) Derivatives Works by Modifications, (ii) Derivatives Works by Incorporations, (ii.a) "Composite Works or Compilations of Copyrighted Works" (ii.b) "Composite Works or Compilations of Data/Materials Non-Copyrightable Works" is the authorization of the author of the originative work. Pharsed in other way, regardless of the kind of work (derivative by modifications or by incorporations), to create second work based in a prior work it must exist the copyright's owner permission.

Despite the facts that there are no law cases in Argentina, but taking into consideration the principles described all above it is asserted that the rules established in US are acceptable under the Argentina Copyright Law, since: (i) Literal copying of a significant portion of source code is not always sufficient to establish that a second work is a derivative work of an original program: it would be about quality code and not quantity lines of codes (copyright protection does not always extend to all portions of a program's code) (ii) A second work can be a derivative work of an original program even though absolutely no copying of the literal source code of the original program has been made: the non-literal aspects such as architecture, structure, sequence, organization are protected under the copyright law act 11.723.

No. there is no AFC Test or similar in Argentina developed by Courts. Furthermore there are no law cases where courts have reviewed and concluded about software components that may conform a software source code and its copyright protection neither have analyzed and concluded if some kind of interaction between computer programs (i.e. linking) could be construed as vehicle for to modify or to transform a pre-existence work and so being able to create a derivative software work.

