Announcement

from the Copyright Office, Library of Congress, Washington, D.C. 20559

REGISTRATION OF ORIGINAL TYPEFACE DESIGNS

LEGISLATIVE CONSIDERATION

The Copyright Office conducted a public hearing on November 6, 1974, and requested written comment through January 15, 1975, on the question of amendment of its regulations to permit registration of original typeface designs. At the hearing and in written comment, the point was forcefully made that the question should be handled as a legislative matter. While the Register of Copyrights has not reached a final decision on amendment of the regulations, she has written to the Honorable Robert W. Kastenmeier, Chairman of the Subcommittee [on Courts, Civil Liberties, and the Administration of Justice of the House Committee on the Judiciary] currently holding hearings on the copyright revision bill, H. R. 2223, Title II of which is the proposed Design Protection Act, to bring the typeface design question to his attention and to recommend a legislative hearing.

Mr. Kastenmeier has tentatively scheduled July 17, 1975 to receive testimony on the question of protection for typeface designs, either under the proposed copyright revision or under the Design Protection Act.

The following is the text of the Register's letter of June 6, 1975, to Representative Kastenmeier:

> In the course of my testimony before your Subcommittee on May 7, 1975, I was able to comment only briefly on questions concerning works of art and designs, including Title II of H. R. 2223.

I believe that Title II, the so-called Design Protection Act, is an important and much-needed piece of legislation, and I hope you will be able to schedule testimony on it during the current hearings. As you know, design legislation has been pending in Congress even longer than Title I, the copyright revision bill itself, but no House hearings have been held on the question since 1947 and the last Senate hearings were in 1967.

Equally important is the related question of protection for the designs of typefaces, which has become a major point of concern for the Copyright Office. To the best of my recollection, no issue of protection for typeface designs as works of art under the copyright law was raised during the early part of the revision program, including the period during which the bill was under consideration by your Subcommittee. I first became aware of typeface design as a major domestic copyright issue in the early 1970's when the widespread introduction of photomechanical processes for reproducing the printed word promised to alter the typographic industry radically.

In the Copyright Office, my predecessor, Mr. Kaminstein gave serious consideration to industry arguments that we should register claims to copyright in typeface designs as works of art. We had, and still have, a regulation [37 C.F.R. 202.1 (a)] that has been interpreted to prohibit copyright registration for typeface designs, and the Copyright Office was urged either to change the regulation or to interpret it differently. Following Mr. Kaminstein's retirement the issue was reserved, but has been raised again during the past two years, both in the Copyright Office and in the courts.

Meanwhile, the technological developments in this field were being felt throughout the world, and resulted in a movement to obtain better international protection for typeface designers. The United States participated in the development of, but did not sign, the Vienna Typeface Convention of 1973, which would obligate members to protect original typeface designs for a minimum of 15 years under one or another form of law, specifically including copyright protection.

Shortly after I became Register of Copyrights, I was once more presented with the petition and arguments of domestic proponents of copyright protection for typeface designs, some of whom had been active in formulating the international treaty. However, I was also

made aware of considerable opposition to any change in the Copyright Office Regulations to permit registration of typeface designs. To provide an opportunity for both sides to present their arguments openly, I held a public hearing on November 6, 1974, the first rulemaking hearing ever held by the Copyright Office, and received testimony on the issues implicit in any change in the regulations affecting typeface designs. We specifically requested comment on five points. Written comments were received through January 15, 1975.

In my closing statement at the conclusion of a highly informative all-day hearing, I had to say that I felt I was "between a rock and a hard place." A strong case was made by each side. Proponents of a change in the regulation sought to demonstrate the significance of artistry in designing typefaces -- a "beautiful group of letters," and the differences between the typefaces of different designers. Opponents of any change raised the issues as to the scope of my regulatory authority, and the practical ramifications of an administrative change in this case.

Among others, Irwin Karp, Counsel for the Authors' League, insisted that protection for typeface designs should be dealt with solely as a legislative matter. He said:

> We also believe that if any change ultimately ought to be made in the status of publishing typography -- font and face -- it should certainly not be done by the inflexible method of change in your registration regulations. Neither you or the regulations have the capacity to cope with multitudinous problems that would be created, . . .
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> You are not a legislator. You can only say yes or no. Register or not register. And you can't mediate or modify the impact of that absolute judgment on many industries and the whole process of disseminating information and culture in this country.
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> [Transcript of Typeface Hearing, November 6, 1974, pages 83-84.]

As I indicated at the Office's hearing, I take this argument very seriously. I also believe that, implicit in the provisions of H. R. 2223, is the hitherto unexplored question of whether and to what extent typeface designs would be protected under the language of your revision bill, including the design legislation of Title II. At the Office's hearing I asked proponents and opponents to reflect on the design bill as a possible solution to the question of protection for typefaces.

From the written comments, two primary issues emerged. First, the term of protection in the design bill is considered by many to be too short for typeface designs; enactment in its present form would not enable us to join the Vienna Typeface Convention. Some doubt was also expressed as to whether typeface designs are within the subject matter of the design bill, since the bill protects "ornamental designs of useful articles," and the various physical embodiments of typeface designs might not come within the bill's definition of "useful articles."

Under the circumstances, I believe it would be highly appropriate for you to schedule time at your hearings to receive testimony from both sides on the question of protection for typeface designs under either Title I or Title II of your bill.

Finally, I call to your attention the recent, very strong, movement among individuals and groups of artists (painters, sculptors, and creators of fine, graphic, and applied art) for more effective protection. Proposals have been advanced for amendments to the copyright law for this purpose, including registry schemes and opportunities for artists to share in the profits from later sales of their works. I believe these proposals deserve to be heard by your subcommittee, and that the current hearings would be enriched by testimony on them.