



ANNOUNCEMENT

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

NOTICE OF INQUIRY

COPYRIGHTABILITY OF DIGITIZED TYPEFACES

The following excerpt is taken from Volume 51, number 197 of the Federal Register for Friday, October 10 1986 (pp.36410-36412)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

Docket No. RM86-4

Notice of Inquiry; Copyrightability of Digitized Typefaces

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The Copyright Office of the Library of Congress has received applications to register claims to copyright in digitized information or material that represents typeface designs and is used to print texts. These claims present unique legal and policy issues regarding the nature of the alleged "works" and of the "authorship", if any, that is present in the typical digitized typeface. The Copyright Office seeks public comment about the copyrightability of digitized typeface apart from the uncopyrightable typeface design to assist the Office in establishing general registration practices or issuing regulations governing such registrations.

DATE: Comments should be received on or before December 9, 1986.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. (202) 287-8380.

SUPPLEMENTARY INFORMATION: Under section 410(a) of the Copyright Act, title 17 of the United States Code, the Register of Copyrights determines whether the material submitted for registration "constitutes copyrightable subject matter and that the other legal and formal requirements" have been met before issuing a certificate of registration.

To be copyrightable, a work must constitute an "original work of authorship." 17 U.S.C. 102. The degree of original, creative effort required does not rise to the level of novelty, but neither does the copyright law protect merely trivial variations of public domain material. The courts have defined the necessary quantum of authorship using terms such as "a modicum," "a minimum," or "an appreciable amount" of original, creative expression.

The Copyright Office has received applications to register claims to copyright in material variously described as "data," "database", "computer program," "compilation of data," and typefont data set." The claims seek registration of elements comprising digitized versions of typeface designs. The regulations of the Copyright Office provide that "mere variations of typographic ornamentation [or] lettering" are not copyrightable. 37 CFR 202.1(a). In *Eltra Corp. v. Ringer*, 579 F.2d 294 (4th Cir. 1978), the Fourth Circuit upheld the Copyright Office's refusal to register a claim to copyright in typeface design on the ground of 37 CFR 202.10(c) (1978) [now codified in the Copyright Act in the definition of

"pictorial, graphic, or sculptural works"]. That regulation prohibited, and the current Copyright Act now prohibits, copyright in useful articles, except to the extent the articles contain artistic features that are capable of existing separately and independently of the overall utilitarian shape. In the *Eltra* case the court held the regulation valid and correctly applied to deny copyright registration for typeface designs: "it is patent that typeface is an industrial design in which the design cannot exist independently and separately as a work of art." 579 F.2d at 298.

A typeface was defined in the 1976 House Report accompanying the Copyright Bill later enacted as—

A set of letters, numbers, or other symbolic characters, whose forms are related by repeating design elements consistently applied in a notational system and are intended to be embodied in articles, whose intrinsic utilitarian function is for use in composing text or other cognizable combinations of characters. H.REP. 1476, 94th Cong., 2d Sess. 55 (1976).

The Report continued that the "Committee does not regard the design of typeface, as thus defined, to be a copyrightable 'pictorial, graphic, or sculptural work' within the meaning of this Bill . . ." *Ibid.*

In the present set of applications, registration is purportedly sought for the encoded "information," if any, underlying digital typeface design—whether it is data, instructions, or a combination of both—which, it has been argued, is distinct from the noncopyrightable typeface. See *Eltra Corp. v. Ringer*, 579 F.2d 294 (4th Cir. 1978).

Digital typography, or the designing of typeface by a digitized process, has become a revolution in the printing industry. "The advantages of digital

typography are substantial: Once letterforms are represented as discrete elements they can be efficiently encoded as discrete and distinguishable physical properties in any convenient medium, processed as bits of "data" or "instructions" by a computer, transmitted over great distances as pulses of current and decoded to reconstitute the letterforms for the person receiving the message. Indeed, once type is digitized it is effectively encoded in the binary language of the computer, and so the size, shape and subtler characteristics of letters can be readily modified by a computer program." Bigelow and Day, *Digital Typography*, Vol. 249 Sci. Am. p. 106 (Aug. 1983). This process of digitizing an analogue letterform and its subsequent decoding results in an approximation of the analogue letterform. The typeface "is made up of discrete elements. These elements can be line strokes, pixels, colors, shades of gray or any other graphic unit from which a letterform can be constructed." *Id.*

It is entirely unclear, however, where the human authorship, if any, lies in the creation of these underlying "data" or "instructions." Is it a literary work, a compilation, a computer program, or some hybrid of one or more of the above? Or, is the "database" devoid of any authorship, apart from the computer program used to create the typeface? The Copyright Act of 1976, 17 U.S.C. 101 *et seq.* (1976), defines a literary work as one "other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, films, tapes, disks, or words, in which they are

embodied. 17 U.S.C. 101. A compilation, in turn, 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." *Id.* Finally, a computer program "is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." *Id.*

The Copyright Office requests public comment on the general questions of the nature and extent of any copyrightable authorship in digitized typography, apart from the typeface design itself. Specifically, we seek comment on the following questions:

Questions

1. *Idea/Expression:*

(a) Is it possible to express in a variety of ways any instructions utilized in creating or reproducing the same digital typeface design? If so, discuss the nature and kind of technical or creative judgments that result in different instructions?

2. *Copyrightable Elements:*

(a) Apart from the uncopyrightable design of the typeface characters, what other elements of a digitized typeface comprise the "original work of authorship", if any, in which copyright could be claimed?

(b) What are the process(es) involved in the creation of the "original work of authorship," if any?

3. *Nature and Extent of Claim:*

(a) Where the copyright claim is described as a "computer program" or "typefont program:" Where and how does the "information" or "instructions" or "data" alleged to be represented by

digitized typefaces fit into this frame of reference? Are they "computer programs" within the meaning of the section 101 definition? Do the instructions satisfy the copyright standard and qualify as "origin of authorship," or are the instructions minimal and routine?

(b) Where the copyright claim is described as a "compilation of data," a "typefont database" or a "typefont data set":

(1) What are the elements of human selection and/or arrangement, if any?

(2) Are the data predetermined by the ultimate shape of the typefont character or letter? If not, how significant is any subjective judgment involved in the choice of coordinates or other data?

4. If registration were made for the "data" or "instructions" used to form digitized typefaces, what form of deposit would be most appropriate to represent the alleged authorship?

5. *Terminology:*

(a) What do the following terms mean: "bitmap", "bytemap", "bit/bytemapping technique", "bit/bytemapping code?" Do these terms have similar meanings when they are used by the digital printing and microcomputer software industries?

[17 U.S.C. 410, 702]

List of Subjects in 37 CFR Part 202

Copyright Registration.

Dated: September 30, 1988.

Ralph Oman,

Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 88-22973 Filed 10-9-88; 8:45 am]

BILLING CODE 1410-07-M