



ANNOUNCEMENT

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

NOTICE OF PUBLIC HEARING

RECONSIDERATION OF 1988 POLICY DECISION ON COPYRIGHTABILITY OF DIGITIZED TYPEFACES

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 91-6]

Notice of Public Hearing: Reconsideration of 1988 Policy Decision on Copyrightability of Digitized Typefaces

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public hearing.

SUMMARY: The Copyright Office will reconsider its September 29, 1988 Policy Decision regarding registration of claims in digitized typefaces and computer programs used to create or control the generation of digitized typefaces. Under the 1988 Policy Decision, the master computer program used to control the generic digitization process may be registered, if original, but the registration does not extend to the data fixing or depicting a particular typeface or to any algorithms created as an alternative means of fixing the data. If the computer program includes data that fixes or depicts a particular typeface, typefont, or letterform, the Office requires an appropriate disclaimer to exclude the uncopyrightable data.

The Office invites comment or participation in the public hearing from individuals and groups in the fields of publishing, computer software, printing, and typography, as well as the general public.

DATE: The public hearing will be held on October 4, 1991 in the East Dining Room (LM-629; red core) of the James Madison Memorial Building, 101 Independence Ave., SE., Washington, DC from 9:30 a.m. to 6 p.m., depending

on the requests for participation. Anyone desiring to testify should contact the Office of General Counsel, Copyright Office, by telephone (202) 707-8380 or fax transmission (202) 707-8386 no later than September 27, 1991. Ten copies of written statements should be submitted to the Copyright Office, Madison Building, room 407 by September 30, 1991. Written comments are also invited from persons who do not wish to testify, and should be submitted by September 30, 1991.

ADDRESSES: The public hearing will be held in the East Dining Room (LM-629; red core) of the James Madison Building, 6th floor, Library of Congress, 101 Independence Ave., SE., Washington, DC beginning at 9:30 a.m. Ten copies of written statements or comments should be submitted as follows: If sent by mail, the address is Library of Congress, Department 17, Washington, DC 20540. If delivered by hand, the address is Office of the General Counsel, Copyright Office, Madison Building, room 407, 101 Independence Ave., SE., Washington, DC 20558. All requests to testify should clearly identify the individual or group desiring to testify.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20558. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION: On September 29, 1988, the Copyright Office published a Policy Decision regarding registration of claims in digitized typefaces and computer programs used in conjunction with digitized typeface, typefont, and letterforms. 53 FR 38110. That decision was the result of a Notice of Inquiry published on October 10, 1988. 51 FR 36410.

The Policy Decision, based on the 1986 Notice of Inquiry, reiterated a number of previous registration decisions made by the Office. First, under existing law, typeface designs are not registrable. Second, original computer programs are registrable, regardless of whether or not the functional result achieved is the generation of unregistrable typeface, typefont, or letterforms.

The Policy Decision then went on to state the Office's position that neither "data that merely represents an electronic depiction of a particular typeface or individual letterform" nor "any algorithms created as an alternative means of fixing the data" are registrable. Based on this rationale, and based furthermore on then-existing technology, the Policy Decision concluded that, where a "master computer program includes data that fixes or depicts a particular typeface, typefont, or letterform, the registration application must disclaim copyright in that uncopyrightable data."

Recently, the Copyright Office has received a considerable number of applications for computer programs used in conjunction with typeface, typefont, or letterforms. After reviewing these claims, the Office became concerned that these claims represented a significant technological advance from the record before the Copyright Office in reaching the 1988 Policy Decision. Several Copyright Office staff also visited the facilities of a company involved in computer-aided typeface design.

In light of the possible technological advances of the last five years, the Copyright Office will reconsider its earlier Policy Decision. The Copyright Office will hold a public hearing and

also receive written comment on the general policies expressed in the 1988 Policy Decision and seeks information about new technological developments in order to determine whether or not these developments mandate an alteration of the Policy Decision. Specifically, we seek comment and information relating to the following questions or points.

Questions: 1. The Policy Decision made a distinction between a "master computer program used to control the generic digitization process" and the portion of a "computer program . . . that includes data that fixes or depicts a particular typeface, typefont, or letterform." In light of the current practices of either purchasing or licensing already digitized typeface, or having different teams within one company develop typeface designs as well as the computer program that digitizes them, is this distinction still viable? If not, how does this affect the use of a disclaimer?

2. For registration purposes, is there a practical way to separate out the data or code used for generating a typeface design from the set of statements or

instructions that constitutes an otherwise original computer program? If not, how does this affect the use of a disclaimer?

3. Explain your understanding of the terms "data" and "code," as they are used in connection with digitized typefaces. Do these terms have distinct meanings or are they sometimes used interchangeably?

4. Describe the process used in creating computer program instructions or statements as part of the digitization of typefaces, either from pre-existing analog or digitized typefaces or in the creation of original typefaces.

5. Explain the possible range of creative expression in writing two computer programs using the same computer language (for example, PostScript) to define a typeface from the same start-point on the typeface character of the letter "S" in Times Roman (or discuss the range of creative expression for another specified letter and typeface).

6. Describe or explain the general process of digitizing typefaces and note, especially, any changes in technology in the last five years. Discuss the

significance, if any, of these changes regarding the creation of original computer programs used in the digitization of typefaces.

7. Is there a difference between a computer program that generates a particular typeface and one that generates other uncopyrightable subject matter, e.g., a program that merely generates the Copyright Office application forms? For registration purposes, should a program for a typeface be treated differently than a program that generates other uncopyrightable material? Explain your responses.

8. Is there a difference between the digitized fixation of a particular typeface or font design and the computer program which generates such a typeface or font design? Explain your response.

Dated: August 12, 1991.

Ralph Oman,

Register of Copyrights.

Approved:

Rhoda W. Canter,

Acting Librarian of Congress.

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