



ANNOUNCEMENT

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

ADVANCE NOTICE OF PROPOSED RULEMAKING

REGISTRATION OF CLAIMS TO COPYRIGHT IN THE GRAPHIC ELEMENTS INVOLVED IN THE DESIGN OF BOOKS AND OTHER PRINTED PUBLICATIONS

The following excerpt is taken from Volume 44, No. 158 of the Federal Register for Tuesday, August 14, 1979 (pp. 47555-47557).

[37 CFR Part 202]

[Docket RM 79-2]

Registration of Claims to Copyright in the Graphic Elements Involved in the Design of Books and Other Printed Publications

AGENCY: Library of Congress, Copyright Office.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This advance notice of proposed rulemaking is issued to advise the public that the Copyright Office is considering adoption of regulations concerning the registration of claims to copyright in the graphic elements involved in the design of books, periodicals, pamphlets, brochures, and other printed publications. This notice announces and invites participation in a public hearing intended to elicit comments, views, and information to assist the Copyright Office in considering all aspects of the question and in drafting regulations to be issued as proposed rules for additional comment at a later time.

DATES: The hearing will be held on October 10, 1979, commencing at 9:30 a.m. Written requests to testify at the hearing must be submitted on or before September 28, 1979.

Ten copies of written statements must be received by the Copyright Office by 4 p.m. on October 5, 1979.

Supplemental statements will be entered into the record until November 12, 1979. Ten copies of all comments should be submitted.

ADDRESSES: The October 10 hearing will be in Room 910, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

Written requests to present testimony should be submitted to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Arlington, Va. 22202.

Ten copies of written statements or of supplemental statements should be submitted as follows:

If sent by mail: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Caller No. 2999, Arlington, Virginia 22202.

If delivered by hand, the copies should be brought to: Office of the General Counsel, Room 519, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

All requests to testify should clearly identify the individual or group requesting to testify and the amount of time desired. The Copyright Office will undertake to contact all of the witnesses to confirm the times of their appearances.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (703) 557-8731.

SUPPLEMENTARY INFORMATION: (1) General. The Copyright Office is considering the formulation of regulations governing our policies and practices in cases where claims to copyright registration are asserted in the graphic elements involved in the design of books and other printed publications. We believe our regulations on this question could have considerable impact on a number of persons and organizations, including: graphic artists and designers; authors; publishers of books, newspapers, periodicals, and a variety of other types of publications; and various segments of the book manufacturing and printing industries. We are therefore urging wide representation at the hearing and broad testimony on all aspects of the problem.

(2) *The Statutory Framework of the Problem.* Section 410(a) of title 17 of the United States Code (as amended by Pub. L. 94-553, 90 Stat. 2541), which became effective on January 1, 1978, authorizes the Register of Copyrights to issue a certificate of registration, after determining that the deposited material constitutes copyrightable subject matter and that the other legal and formal requirements for copyright registration

have been met. The scope of copyrightable subject matter is governed by section 102, which generally provides copyright protection for "original works of authorship fixed in any tangible medium of expression." Section 102 enumerates seven broad categories of copyrightable subject matter, including "literary works," and "pictorial, graphic, and sculptural works." These terms are defined by section 101 as follows:

"Literary works" are works, 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, film, tapes, disks, or cards, in which they are embodied.

"Pictorial, graphic, and sculptural works" include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams, and models. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

It is also clear under the statute that the categories listed in section 102 are "illustrative and not limitative"; and the legislative reports on the Copyright Act of 1976 (S. Rep. No. 94-473, H.R. Rep. No. 94-1476) state:

* * * The definition of "pictorial, graphic, and sculptural works" carries with it no implied criterion of artistic taste, aesthetic value, or intrinsic quality. The term is intended to comprise not only "works of art" in the traditional sense but also works of graphic art and illustration, art reproductions, plans and drawings, photographs and reproductions of them, maps, charts, globes, and other cartographic works, works of these kinds intended for use in advertising and commerce, and works of "applied art."

Subsection (b) of section 102 seeks to make clear, in express language, that copyright protection for an original work of authorship does not extend to any ideas, systems, or concepts that are "described, explained, illustrated, or embodied in such work." In commenting on this provision, the legislative reports say this:

Copyright does not preclude others from using the ideas or information revealed by the author's work. It pertains to the literary, musical, graphic, or artistic form in which the author expressed intellectual concepts.

(3) *The Present Regulatory Framework.* On January 5, 1978, the Copyright Office published interim regulations (43 FR 965) establishing the essentials of the registration system. At that time some portions of the existing Copyright Office regulations concerning registration were repealed, while other

provisions were allowed to remain in effect for the time being. One provision not repealed was Copyright Office Regulation 202.1(a) prohibiting registration of "mere variations of typographic ornamentation, lettering, or coloring."

(4) *The Scope of the Present Inquiry.* What we are interested in exploring at the hearing are those elements going into the production of a book or other printed publication that, taken together, could be considered a copyrightable "work of applied art." We are not speaking here of the text as such or the illustrations as such—including ornamental illustrations and embellishments such as chapter headings and illuminated initial letters. We are inquiring about less obvious design elements such as the arrangement or juxtaposition of text matter, pictorial matter, or combinations of text and pictorial matter on a page or a group of pages, and typography in a narrower sense, including selections of typefaces and sizes, margins, spacing, color, and a range of other choices having design consequences. The problem is sometimes loosely referred to as "book design," but we are also interested in the graphic or design elements involved in all types of printed publications—hardcover books, paperbacks, catalogs, newspapers, magazines, pamphlets, leaflets, folders, booklets, card sets, broadsides, and advertisements, among a host of others. We are interested in finding out what goes into elements variously known as "layout," "format," "typography," "composition," "arrangement," "makeup," and "color schemes," and in exploring whether these elements should be regarded as uncopyrightable ideas or concepts, or whether, alone or in combination, they can be considered copyrightable "works of authorship."

(5) *Specific Questions to be Considered.* In receiving testimony and written comments, the Copyright Office is particularly interested in information on the following questions:

(a) *Terminology.* We are anxious to find out what applicants mean when they use terms like "typography," "format," "book design," "makeup," "color combinations," "layout," "composition," and "typographical arrangement" in their applications for copyright registration. Do these terms have settled meanings and, if so, are they used in the same way by artists and by publishers of various types of works?

(b) *Copyrightable Elements.* What, if any, of the graphic elements in the design of a book or other printed publication can be identified as an "original work of authorship"? Assuming copyrightability, in theory at least, what would infringement of a copyrighted book design by another publication consist of? Assuming

copyrightability in some cases, what standards should the Copyright Office use in distinguishing between standard public domain, or minimal elements and elements consisting of original, creative authorship? What is the dividing line between the idea or concept for a book design and its copyrightable expression in tangible form?

(c) *Typeface design and color combinations.* Note that this hearing is *not intended* to reopen issues concerning the copyrightability of the designs of individual type faces or type fonts. However, we are interested in exploring whether choices of type faces or combinations of them, or choices of colors or combinations of them, can ever constitute copyrightable elements.

(d) *Applicability of Definitions.* How do the definitions under section 101 of the terms "compilation," "derivative work," and "joint work" apply, if at all, to designs of books and other printed publications? Assuming these definitions to be applicable in at least some cases, what are the consequences with respect to ownership, termination rights, the definition of "works made for hire," and term of copyright?

(8) *Book jackets and cover designs.* The inquiry to which this hearing is addressed does not include a consideration of the whole range of copyright problems presented by "book jackets"—the detachable dust jackets of hard-bound books. We plan to focus on these questions in a separate proceeding—whether or not the jacket should be considered an integral part of the book as part of a "unit of publication" or whether it should be treated as a separate work (such as a label or container of an article of merchandise; whether the copyright notice in the book covers copyrightable material on the jacket; the effect of a separate notice on the jacket; whether the authorship of the jacket can or should be reflected in an application for the book proper; questions of separate ownership; questions of separate registration, deposit, and record-keeping, and so forth. We should prefer not to go into all of these questions here. However, it is true that when people speak of "book design" they are often thinking of the contents of the jacket as part of the over-all design; and in the case of paperbacks the cover, with its design, is physically a part of the book. We therefore should like information and comments as to the circumstances under which the designs of book jackets and book covers should be considered a part of the graphic elements involved in the book as a whole, and the circumstances under which they should be considered separate and independent works.)

(7) *Format Copyright.* Representatives of the information industry have strongly urged the creation or clear-cut recognition of

copyright protection for the arrangement or "formatting" of factual data not copyrightable in itself. While this issue may be somewhat different from that of the design of books and other printed publications by artists, the problems of copyrightability have common factors. We therefore invite comments on this question for consideration in connection with revision of our regulations on registrability.

(8) *Notice of Copyright.* Assuming, for the sake of argument, that some designs of books and other printed publications are potentially copyrightable, how should the notice requirements of Chapter 4 of the copyright law be observed? Could a notice in the name of the author of the text ever cover the design elements in the book? Could a

simple notice in the name of the publisher cover both the text and the design elements where the designer was an employee for hire? Where the designer was not an employee for hire but had transferred all rights? Where the designer was not an employee for hire and had transferred only certain publication rights?

(9) *Relation Between Protection for Design and Protection for Contents of Books or Other Publications.* In earlier debates concerning the possible copyrightability of typeface designs, representatives of authors and, to some extent, publishers, expressed concern that the adding of protection for the design of the actual printed characters reproducing the author's work—the "clothing" in which the author's work is

garbed—could impair protection for the basic work itself. Are the same arguments applicable in the case of the design elements of a book or other publication? Could, for example, a designer's copyright limit an author's ability to license the basic work freely, or give rise to claims of rights by the designer in the basic work?

(17 U.S.C. 408,702).

Dated: August 8, 1979.

Barbara Ringer,
Register of Copyrights.

Approved:

Daniel J. Boorstin,
The Librarian of Congress.

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