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 91-41]

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 digitization process may be registered, if original, but the registration does not extend to the data existing 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 comments 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.

DATES: 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 5 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.

ADRESS: The public hearing will be held in the East Dining Room (LM-629: red core) of the James Madison Building, 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 20559. All requests to testify should clearly identify the individual or group desiring to testify.


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 typefaces, typefont, and letterforms. 53 FR 39110. That decision was the result of a Notice of Inquiry published on October 10, 1988. 51 FR 36410.

The Policy Decision, based on the 1988 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, typefonts, 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, typefonts, or letterforms. After reviewing these claims, the Office became concerned that these claims represented a significant technological advance from the record before the Office when the Office was 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 notes,
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.

Ralph Oman,
Register of Copyrights.
Approved:
Rhoda W. Canter,
Acting Librarian of Congress.
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