UNITED STATES COPYRIGHT OFFICE * THE LIBRARY OF CONGRESS *

ANNOUNCEMENT

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

FINAL REGULATION

REGISTRABILITY OF COMPUTER PROGRAMS THAT GENERATE TYPEFACES

The following excerpt is taken from Volume 57, Number 35 of the Federal Register for Friday, February 21, 1992 (p. 6201)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 91-6]

Registrability of Computer Programs That Generate Typefaces

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: The purpose of this Final Regulation is to clarify the Copyright Office's practices regarding registration of claims to copyright in computer programs used in the generation of digitized representations of typeface designs. This regulation amends 37 CFR 202.1 to state the Office's existing practice in this respect. Pursuant to Congress's judgment in the 1976 Act [1] and case law,[2] the Copyright Office does not register claims to copyright in typeface designs as such, whether generated by a computer program, or represented in drawings, hard metal type, or any other form.

The Office does, however, register claims in original computer programs whether or not the end result or intended use of the computer program involves uncopyrightable elements or products. In the past, the Office has required a disclaimer for computer programs containing data depicting digitized representations of typeface designs. Due to changes in the industry and the administrative burden caused by correspondence, the Office will no longer require such disclaimers. Instead,[1] in order to avoid any confusion about the scope of certificates of registration for computer programs used in the generation of digitized representations of typeface, the Office will not accept a nature of authorship statement of "entire work," "entire computer program," "entire text," or the like. Only descriptions such as "computer program" should be used. The scope of the copyright will be, as in the past, a matter for the courts to determine.

EFFECTIVE DATE: February 21, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: On September 29, 1988, the Copyright Office published a Notice of Policy Decision regarding registration practices for 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, 1986. 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 as such is not registrable. The Policy Decision then went on to state the Office's position that "data that merely represents an electronic depiction of a particular typeface or individual letterform" is also 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 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."

The Copyright Office has received a number of applications stating claims for computer programs used in conjunction with the generation or design of typeface, typefonts, or letterforms. In 1991, the Office became concerned that these claims indicated there had been a significant technological advance since the 1986 Notice of Inquiry. Of particular interest was the fact that some companies now license typeface in digitized form before they write a computer program permitting users to generate the typeface on low resolution and other printers.

In order to gain information, the Copyright Office held a Public Hearing on October 4, 1991 and received 21 written submissions. The majority of those testifying and submitting comments favored abandoning the disclaimer requirement. After a careful review of the testimony and the written comments, the Copyright Office is persuaded that creating scalable typefonts using already-digitized typeface represents a significant change in the industry since our previous Policy Decision. We are also persuaded that computer programs designed for generating typeface in conjunction with low resolution and other printing devices may involve original computer

[1] See H.R. REP. NO. 94-1476, 94th Cong., 2d Sess. 55 (1976): "Congress has considered, but chosen to defer, the possibility of protecting the design of typefaces." Thus Congress could protect typeface designs under the Copyright Act if it chose.

[2] See *Eltra Corp.* v. *Ringer*, 579 F.2d 294 (4th Cir. 1978).

[1] Error; line should read: "longer require such disclaimers. Instead,"

instructions entitled to protection under the Copyright Act. For example, the creation of scalable font output programs to produce harmonious fonts consisting of hundreds of characters typically involves many decisions in drafting the instructions that drive the printer. The expression of these decisions is neither limited by the unprotectible shape of the letters nor functionally mandated. This expression, assuming it meets the usual standard of authorship, is thus registrable as a computer program.

The Office has also gained considerable administrative experience in the last three years with the use of disclaimers. A large amount of correspondence has been necessitated by the requirement of disclaimers. The public has also been confused about the effect, if any, of variants in the language of particular disclaimers. We are persuaded that the usefulness of disclaimers is outweighed by these drawbacks, and, thus, we will no longer require a disclaimer where the applicant does not state a claim in uncopyrightable material.

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In light of the heavy administrative burden imposed by disclaimers, the Copyright Office has concluded that the best course is to amend its regulations to state its opinion that digitized typeface as typeface is unregistrable, and to delete the disclaimer requirement. The term "typeface" is intended to encompass typefonts, letterforms, and the like. As part of the deletion of the disclaimer requirement, in order to avoid public confusion regarding the scope of certificates of registration issued for computer programs containing original instructions as well as digitized representations of typeface, applicants should not describe the nature of authorship as "entire work," "entire computer program," "entire text" or the like. Instead, descriptions such as "computer program" should be used. This preference regarding the nature of authorship statement will be included in Compendium II of Copyright Office Practices, but not in the Code of Federal Regulations. Because this regulation does not represent a substantive change in the rights of copyright claimants, claimants possessing already-issued certificates cannot submit a supplementary application for an already registered work for the purpose of removing the disclaimer.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant negative impact on small businesses.

List of Subjects in 37 CFR Part 202

Registration of claims to copyright, Claims to copyright, Copyright registration.

Final Regulations

In consideration of the foregoing, the Copyright Office is amending part 202 of 37 CFR, chapter II in the manner set forth below.

PART 202—REGISTRATION OF CLAIMS—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702.

§ 202.1 [Amended]

2. Section 202.1(e) is added to read as follows:

* * * * *

(e) Typeface as typeface.

Dated: February 4, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 92-4008 Filed 2-20-92; 8:45 am]

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