Understood. I'll investigate the extent to which fonts and typefaces are protected under U.S. copyright law, including distinctions between typeface designs and font software. I'll also cover key statutory and case law limitations, relevant agency guidance, and include any notable recent legal developments. I'll let you know once the full findings are ready.

Copyright Protection of Fonts and Typefaces in U.S. Law

Introduction

Fonts and typeface designs occupy a unique position in U.S. intellectual property law. While they are creative visual works, the extent of their protection under U.S. copyright law is highly limited. Generally, the **design of a typeface (the shapes of letters and characters)** is *not* protectable by copyright, but the **digital font software** that generates those shapes *can be* protected. This report provides a comprehensive legal analysis covering relevant statutes, case law, U.S. Copyright Office policy, the distinction between typeface design and font software, and other forms of intellectual property protection for fonts. A summary table at the end outlines the types of protection and their limitations.

Statutory Framework Under Title 17

U.S. copyright law (Title 17 of the U.S. Code) defines protectable subject matter and explicitly or implicitly excludes certain designs, including typefaces, from copyright protection.

- **Subject Matter of Copyright (17 U.S.C. § 102)**: Section 102(a) lists categories of works protected by copyright, including *"pictorial, graphic, and sculptural works."* However, Congress **excluded typeface designs** from this list. The House Report for the 1976 Copyright Act defines *"typeface"* as a set of letters, numbers, or characters with repeating design elements intended to be used in composing text. The House Report then **explicitly states** that *"[t]he 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"*. In other words, even though typeface designs are visual, Congress chose *not* to include them as protected graphic works under §102. This legislative decision was driven by policy concerns – lawmakers feared that giving a few font owners exclusive rights could hinder the ability to communicate using common lettering.

- **Useful Article Doctrine (17 U.S.C. § 101)**: The Copyright Act's definitions reinforce why typeface designs are unprotected. A *"useful article"* is an object with an intrinsic utilitarian function (other than portraying its appearance). **Letterforms (typefaces)** are considered utilitarian: their function is to convey text. Under §101, the design of a useful article is only copyrightable if it incorporates features that can be *"identified separately from, and are capable of existing independently of, the utilitarian aspects"* of the article (the **conceptual separability** test). Because a letter's artistic shape cannot be separated

from its function of representing a letter, a typeface design is deemed an uncopyrightable `**infringement**. The court noted that font software designers make **creative choices** in selecting points and implementing the outlines, choices *"not dictated by functional concerns only"*. In sum, *Adobe* stands for the principle that while the *shape of letters* is uncopyrightable, a **computer program or digital file that generates those shapes can be copyrighted** as a software work.

These two cases together establish the legal dividing line: **typeface designs per se cannot be copyrighted (Eltra)**, but **font software is eligible for copyright (Adobe)**. Notably, beyond *Adobe*, there have been few reported decisions on font copyrights. For years after 1998, font foundries enforced their rights through cease-and-desist letters and settlements, relying on the *Adobe* precedent without further court rulings. Every infringement lawsuit against end-users (companies using fonts without a license) settled before judgment, so *Adobe* remains the primary case upholding font software protection. On the flip side, *Eltra* remains the leading authority on typeface design exclusion (and has not been challenged by any subsequent court or Congress).

U.S. Copyright Office Guidance and Policy

The U.S. Copyright Office's interpretations are crucial in this area. The Office has consistently maintained that typeface designs are uncopyrightable, with only narrow exceptions, and its registration practices have evolved with technology:

- **Copyright Office Compendium and Circulars**: The Office's Compendium of Practices and public circulars explicitly confirm that *"copyright law does not protect typeface or mere variations of typographical ornamentation or lettering."* Typeface and lettering are considered the basic *"building blocks of expression"* – akin to uncopyrightable words or short phrases. The Compendium (Third Edition, §906.4) instructs that as a general rule **typeface, typefont, lettering, calligraphy, and typographic ornamentation are not registrable**. No matter how novel or creative a font's design may be, the Office will refuse registration because *"a typeface character cannot be analogized to a work of art"* when its artistic elements cannot be separated from its utilitarian function. For example, a new font with unique Western-"Wanted poster" style letter shapes would be refused as an unprotectable *"utilitarian method of writing"*.
- **Limited Exceptions – Separably Artistic Elements**: The Copyright Office recognizes extremely limited scenarios where something associated with a font might be protected. Specifically, if a design includes **pictorial or graphic elements that are separable from the letter shapes**, those elements can be copyrighted. For instance, if each letter of an alphabet is drawn as or within a **distinct pictorial artwork** (an oak tree shaped like "A", a rose forming "B", etc.), that *illustrative art* can be *"conceptually separable"* from the letters' function. Similarly, ornamental flourishes or decorations added to letters (borders, scrollwork, small illustrations at the ends of characters) may be protected *to the extent that they represent original pictorial authorship* independent of the letter shape. The Office cautions, however, that simple calligraphic flair or common effects (chalk style, neon glow, etc.) are *de minimis* and not enough for protection. In practice, to register any artwork that is part of a font, the applicant must carefully describe the **surface decorations or illustrations** and explain how they are separable from the utilitarian font

characters. Outside of such ornamentation, **standard typeface and lettering styles – no matter how unique or aesthetically pleasing – remain unprotected**.

- **Font Software Registration Policy**: Historically, the Copyright Office was reluctant to register digital fonts. Prior to the 1990s, it even required applicants to **disclaim any portion of a computer program that depicted a typeface**. This changed in 1992 when the Office issued a policy recognizing that **scalable font programs** (fonts defined by mathematical curves and instructions rather than static bitmaps) contain enough original computer code to be treated as protectable software. Following that 1992 policy (57 Fed. Reg. 6201 (Feb. 12, 1992)), the Office began registering font software, aligning with the view later adopted in *Adobe v. Southern Software*. The Compendium confirms that the Office *"may register a computer program that creates or uses certain typeface designs,"* but **"the registration covers only the source code that generates these designs, not the typeface … itself."* In other words, a font file can be registered as a computer program (a form of literary work), but that registration does not extend to the appearance of the printed characters.
- **2018 Policy Reversal**: A recent development suggests the Copyright Office has become more restrictive again. In 2018, the Office reportedly began **refusing to register some font software** submissions. Internal correspondence (later made public) indicated that examiners rejected applications where the deposit was an *XML-based font file*, reasoning that it was merely a **markup/data file, not a program of instructions**. Examiners also noted that if a font was created using a third-party font editor (rather than hand-coded), the file might consist only of coordinate data for letterforms – essentially just the design in digital form – and thus not qualify as protectable software authorship. This signals a concern that **modern font design tools automate much of the "authorship"** of the font file, potentially undermining the creativity in the code. The Office's apparent shift has not yet been fully tested in court, but it has major implications. It casts uncertainty on whether **all** font files are still registerable, especially those produced by common design software. The font design industry is closely watching this issue, and it may spur further litigation or even legislative clarification. For now, designers seeking protection are advised to ensure any registration emphasizes the original code or programmatic aspect of the font (if possible), and to be aware that the Office might scrutinize font applications more strictly in light of new technology.

Typeface Design vs. Font Software – The Legal Distinction

There is a crucial legal distinction between a **typeface's design (its visual aesthetics)** and **font software (the digital code or file that renders the typeface)**:

- **Typeface Design (Visual Glyphs)**: *Unprotected by copyright.* The law treats the shapes of letters and characters as utilitarian symbols, akin to uncopyrightable ideas or useful articles. No matter how creative or distinctive a typeface's look, U.S. copyright will **not** cover "typeface as such". This means that if someone draws or digitizes letters in a new style, the *design itself* is free for others to imitate. For example, if a designer creates a new alphabet with a unique look, another person could lawfully draw letters in the same style or make their own font with those same letter shapes – because the **artistic design of the alphabet is not protected**. The only potential exceptions would be if the design

includes extra pictorial elements (as noted above) that are separable art. But the core letterforms (the strokes that form A–Z, etc.) have **no copyright**. This principle was established by Congress and confirmed by *Eltra v. Ringer*, and it is reflected in the Copyright Office's refusal to register typefaces.

- **Font Software (Digital Code/Data)**: *Protected by copyright (if original).* The **digital representation of a font** – for instance, a TrueType or OpenType font file – often contains code and data that tell a computer how to draw the letters. This code can include instructions, vectors, and hints that involve creative choices by the font developer. Under U.S. law, computer programs are literary works protected by copyright (17 U.S.C. § 102(a)(1) covers software). Thus, to the extent a font file is considered a **computer program or a set of original instructions**, it *can* be copyrighted. The *Adobe* case confirmed that copying another font's digital outline data can infringe the font software copyright. Practically, font foundries register their font files as software to enforce license agreements and prevent outright copying of the files. It's important to note that this protection covers the *specific digital expression* (the code and exact vector coordinates), not the abstract design. For example, Adobe could stop Southern Software from copying Adobe's font file for "Utopia," but Adobe **could not stop** someone from independently drawing a look-alike alphabet (since the design itself isn't protected). In essence, copyright for font software prevents **digital piracy of the font files**, but it does *not* grant a monopoly on the typeface's appearance.

To illustrate the difference: copying or distributing a font file (or substantially duplicating its code) without permission is likely copyright infringement – the same as copying software – whereas *using* a font to create text or graphics is not an infringement of the design. In the high-profile **P22 Type Foundry v. Universal Studios** dispute, for example, the font maker P22 sued over merchandise printed with its "Cezanne" typeface. P22 did **not** claim ownership of the calligraphic style itself; instead it alleged infringement of the **font software** and breach of the font's license agreement. The case hinged on whether the theme park had used P22's font software without authorization (making unauthorized copies in memory or print). This underscores that any legal claim by font creators must be tied to the software/code or a contract, since the **design alone has no copyright**.

Ornamental or Highly Artistic Fonts – Special Considerations

What about fonts that are more than just functional letter shapes – for example, hand-drawn alphabets with elaborate artistry, or fonts created with proprietary software that imbue a unique look? Do they receive any copyright or other protection?

- **Hand-Drawn Artistic Lettering**: Individually crafted letters that incorporate distinctive artwork *can* be protected **as artwork** – but not as a "typeface" per se. If an artist creates, say, an illustrated alphabet where each letter is a small painting or contains creative imagery, those illustrations are copyrightable as **pictorial works**. The key is that the artistic element must be separable from the letter's function. The Copyright Office gives examples: a letter "G" drawn as a giraffe, or an "O" filled with an oak tree design, could

be seen as an original pictorial work shaped like a letter. In such cases, the *particular drawings* (giraffe, tree, etc.) are protected. However, the *idea* of making letters look like animals or the general style of those letters is not protected – only the specific expressive artwork by that artist is. Additionally, if those illustrated letters are distributed as a font, the *font software file* could be registered (covering the digital images or code), but again the concept of that typeface style is not exclusive to the artist. In short, **decorative elements added to letters** can be shielded by copyright, but the underlying alphabetic forms remain free for all.

- **Fonts Made with Proprietary Software Tools**: Many modern fonts are created using specialized design software (e.g., FontLab, Glyphs). These tools often generate the font file (code) automatically from the designer's visual outlines. The Copyright Office's recent skepticism (circa 2018) about registering such fonts stems from the concern that the **human authorship in the code is minimal** when using these tools. The designer is principally creating shapes (unprotectable as typeface designs), and the software is handling the technical expression. Consequently, a font file that is essentially just coordinates output by a program might be deemed **uncopyrightable** by the Office (as they view it akin to submitting a graphic design in a non-code format). This doesn't mean the font has no protection at all: if the shapes are extremely original, the designer could still pursue a design patent or rely on trademark in some contexts (see below). But under copyright, unless the designer can demonstrate original **software-like expression** (perhaps custom coding or scripting in the font, or novel programmatic features), the font file might not get registered. This is a nuanced and evolving issue – essentially testing how to apply the idea/expression line in the realm of digitally assisted design. Until resolved, font creators using such tools should be aware that the **safety net of copyright for their font files may be weakening**, and they may need to lean more on **licensing contracts** to prevent unauthorized use (most commercial fonts are distributed under licenses that restrict copying, even apart from copyright law).
- **Compilation of Glyphs as a Work**: Another angle is to consider whether a set of font glyphs (say a collection of 26 letter drawings) could be protected as a **compilation or collection** of art. While the Copyright Office would not register the set as a "font," it might register a set of illustrated letters as a published collection of artwork if each letter has sufficient creativity. The protection would still only cover the artwork and the particular selection/arrangement, not the idea of a typeface. Generally, this is rare and would require each glyph to be more like a standalone artistic work (e.g. illuminated manuscript letters). Standard font designs, no matter how stylish, do not meet this threshold.

Other Intellectual Property Protections for Fonts

Because of copyright's limited scope for typefaces, designers have turned to other forms of intellectual property for protection:

- **Design Patents**: In the United States, **design patents** can be granted for new, original, and ornamental designs of an article of manufacture (35 U.S.C. § 171). Typeface designs, being ornamental shapes of printed characters, can qualify for design patent protection. In fact, the very **first U.S. design patent ever issued (1842)** was for a set of typeface

designs. Today, a typeface (or a font's overall design) can be the subject of a design patent if it meets the requirements of novelty and non-obviousness. A design patent gives the owner exclusive rights to the design for **15 years** from issuance. However, using design patents for fonts is relatively rare – obtaining a patent is slower and more costly than creating a font, and the design must be truly novel. Some type foundries have secured design patents for signature typefaces, which can be useful against direct font cloning. But many designers forego this route due to practical limitations (also, a design patent only protects against someone making essentially the *same design*; it wouldn't cover someone's *independent creation* of a similar style if it's not identical enough to the patented design).

- **Trademarks**: Trademark law can indirectly protect fonts in a couple of ways. **Typeface names** (font names) are often trademarked by their publishers (for example, names like "Helvetica®" or "Times New Roman®" function as brand identifiers for the typeface). This prevents competitors from naming a knock-off font with the same name, but it doesn't stop them from copying the design under a different name. In some instances, the **distinctive appearance of lettering** is associated with a brand (for example, the Coca-Cola logo's particular script or the Disney logo font). In such cases, the specific stylized lettering can be protected as a **trademark or part of a logo**, but that protection only applies in contexts where it signifies the source of goods or services. It wouldn't stop someone from using the lettering style in a non-trademark context. Generally, trademark is a narrow tool here – it protects brand identifiers, not designs in the abstract.
- **Contracts and Licensing**: **Font licenses (EULAs)** are a critical mechanism for font creators. When someone purchases or downloads a font, they typically agree to terms of use. These licenses may restrict embedding the font in websites, using it for commercial products, or redistributing it. Breaching a font's license can lead to legal action for contract violation or, if the act also involves unauthorized copying of the font software, copyright infringement. As mentioned, because copyright on the design is not available, foundries rely on **enforcing the software license**. The P22 foundry in the Harry Potter theme park case, for example, included a license clause requiring a special commercial license for merchandise use; their lawsuit included a **breach of contract claim** for using the font beyond the license scope. Thus, even if the letter shapes aren't protected by copyright, the *use of the font file* is governed by contract law. Companies ignoring font licenses have faced demands for license fees or damages.
- **International Protections**: (Briefly worth noting) outside the U.S., laws differ. In the EU, for instance, typeface designs can be protected for a limited time under design rights, and some countries allow copyright on typefaces. These distinctions mean that a font unprotected in the U.S. may still have protection abroad. However, our focus here is U.S. law – the key point is that the U.S. stands out in *not* granting copyright in typeface designs, relying instead on the above alternatives.

The table below summarizes these protection types and their limitations for fonts:

Aspect	Protectable by Copyright?	Other IP Protection	Limitations
Typeface design (letter shapes)	**No** – excluded as utilitarian design.	*Design Patent*: Yes (15-year term).*Trademark*:	Others may freely imitate the design in

Aspect	Protectable by Copyright?	Other IP Protection	Limitations
		Possibly style as part of a logo/brand.	new works. Design patent requires novelty; trademark protects only in source-identifying use.
Font name (e.g. "Arial")	No (names/titles not copyrightable).	*Trademark*: Yes, as a brand name for the font.	Trademark doesn't prevent copying the font's design, only use of the name in commerce.
Font software (digital code)	**Yes** – as computer software if original.	*Trade Secret*: Possibly, if kept internal; *Contracts*: License agreements.	Only protects the code; third parties can design lookalike fonts from scratch. Recent policy doubts if auto-generated code qualifies.
Ornamental/artistic elements in a font	**Yes,** if separable artwork.	*Design Patent*: possibly, if part of claimed design; *Trademark*: if it serves as a logo.	Copyright covers only the artistic part (e.g. illustration), not the letter idea. Must be clearly separable to qualify.
Calligraphy or hand-lettered art	**Yes** – protected as an artistic *work* (drawing/graphic).	*Trademark*: if used commercially (e.g., as a logo).	Protection is for the specific artwork. Does not extend to reuse of the "style" as a font or system of writing.

Recent Developments and Trends

The legal landscape for font and typeface protection is largely settled in doctrine but continues to evolve in practice:

- **Copyright Office Rejections and Potential Challenges**: The 2018 shift by the Copyright Office (refusing certain font software registrations) is a significant development. If the Office maintains that stance, we may see **appeals to the Copyright Office Review Board** and possibly lawsuits challenging the refusals. The font industry may push back, given that millions of dollars in licensing are premised on fonts being copyright-protected software. We could see a case that directly tests whether a modern font file (produced with standard tools) contains enough human-authored code to be copyrighted. Any such dispute would require courts to assess how much creative expression lies in the font's digital instructions versus the unprotectable design data. Until then, font creators should document their creative process (especially any coding)

when seeking registration, to strengthen their claim that the font file is an original computer program.

- **Enforcement Caution**: Companies and designers who use fonts should remain mindful of font licenses and the distinction between design and software. Even though the design isn't copyrighted, using a font file without a license **can still infringe the software copyright or breach a contract**, as demonstrated by multiple settlements in the past. Conversely, those wishing to use a font's *style* without paying may legally create their own font with similar look (or find/lookalike fonts), but directly copying the font file or outlines is risky. The line can be technical – e.g., *scanning or auto-tracing* a font's output might replicate the original font's data too closely. The safest route is respecting licenses or using legitimately free fonts.
- **Open Source and Licensing Trends**: In response to the complexities, there's a growing **open-source font movement**. Dozens of professional-quality fonts are released under licenses like SIL Open Font License or Apache License, giving users broad rights. While not a legal doctrine development, this trend is changing industry norms: it acknowledges that copyright protection for font design is limited, so creators either rely on software protection/licensing for revenue or choose to share their work freely for goodwill or other benefits.
- **Legislative Outlook**: Periodically, there are discussions about sui generis design protections. Given that Congress once considered a design protection for typefaces and seeing the ongoing tension, it's possible (though not currently imminent) that industry groups could lobby for a specific **design right for typefaces**. Any change would likely be controversial, as it pits font designers' interests against large content users (publishers, tech companies) who prefer the status quo of free typeface designs. For now, no new legislation has been enacted; the **status quo** is that **typeface designs have no copyright** and font software has the same protection (and uncertainties) as other software.

Conclusion

Under current U.S. copyright law, the **visual design of fonts and typefaces is largely unprotected**, considered a utilitarian framework for expression that anyone may use. The **primary avenue for legal protection is through copyright in the font's software code**, which has been recognized by courts and the Copyright Office – though recent policy shifts have introduced some uncertainty for automatically generated font files. In practice, font designers combine various strategies to safeguard their work: leveraging software copyrights, design patents, trademarks for names, and licensing agreements. Users of fonts, on the other hand, enjoy freedom to use and even imitate typeface designs, but must be careful not to copy font software without permission.

As of 2025, the balance struck in the late 20th century still holds: **letters and typeface designs belong to the public domain of shape and form, while font programs may belong to their creators**. Any changes to this balance will depend on future court decisions or legislative action. For now, understanding the nuanced distinction between a font's design and its digital implementation is key for anyone navigating the rights and limitations of typography in the U.S.

Sources:

- 17 U.S.C. §102 and House Report No. 94-1476 (1976) (legislative intent to exclude typeface designs)
- 37 C.F.R. §202.1(e) (Copyright Office regulation barring registration of typeface designs)
- *Eltra Corp. v. Ringer*, 579 F.2d 294 (4th Cir. 1978) (typeface not a "work of art" under Copyright Act)
- *Adobe Systems, Inc. v. Southern Software, Inc.*, 1998 WL 104303 (N.D. Cal. 1998) (font software code held copyrightable)
- U.S. Copyright Office, Compendium of U.S. Copyright Office Practices (3d Ed.), §906.4 (guidance on typeface, lettering, and separability)
- U.S. Copyright Office, Circular 33 (Works Not Protected by Copyright) (2017) (fonts/typeface not protected)
- Jeremy S. Goldman, *Battle Lines Drawn Over Font Copyright Protection* (Frankfurt Kurnit MediaLaw, 2020) (discussing 2018 Copyright Office shift)
- Foley Hoag LLP, *Harry Potter and the [Allegedly] Purloined Font* (July 15, 2011) (example of font software infringement claim and license enforcement)
- Thomas W. Galvani, *Copyright Protection and Fonts* (Sept. 20, 2010, updated 2023) (overview of font vs. typeface copyright, citing Eltra and 37 C.F.R. 202.1)
- U.S. Patent No. D1 (1842) (first design patent, covering typeface designs) (historical note).