

I'll investigate current U.S. copyright law regarding fonts and typefaces, focusing on the important distinction between font software and typeface designs.

Based on current U.S. copyright law, there's a clear distinction between the protection available for typefaces versus font software. Here's a comprehensive overview:

Typeface Designs vs. Font Software

Typeface Designs (Not Protected by Copyright)

In the United States, the shapes of typefaces are not eligible for copyright protection. This has been established legal precedent since the 1978 case *Eltra Corp. v. Ringer*, and was codified in federal regulations in 1992 (37 CFR § 202.1(e)). The U.S. Copyright Office explicitly states that "copyright law does not protect typeface or mere variations of typographical ornamentation or lettering" because typefaces are considered building blocks of expression used to create copyrightable works rather than being protected works themselves.

The reasoning behind this exclusion is that:

1. Typefaces are considered to have an "inherent inseparability" from their utility in language (commonly referred to as the "separability test").
2. Historically, fonts were primarily viewed as industrial products (cast in metal by foundries), and useful items have traditionally had limited copyright protection.
3. Typefaces are seen as functional objects whose public utility outweighs private interest in protecting their creative elements under U.S. law.

Font Software (Protected by Copyright)

While typeface designs themselves cannot be copyrighted, the software that generates them can be protected:

In 1992, the U.S. Copyright Office determined that digital outline fonts had elements that could be protected as software if the source code of the font file "contains a sufficient amount of original authorship." Since then, the Office has accepted registration of copyright for digital vector fonts, such as PostScript Type 1, TrueType, and OpenType format files.

This means that when you use computer code to direct the stylization of a typeface and generate a font, that computer code is potentially subject to copyright protections. As computer programs are protected as literary works in the United States, a font file program is eligible for copyright protection if the source code was written by a human.

Key Court Cases

The distinction between typeface and font software was notably clarified in:

1. *Eltra Corp. v. Ringer* (1978): This U.S. Court of Appeals for the Fourth Circuit case determined that typefaces were not eligible for protection under U.S. copyright law. The court held that the typeface design submitted did not qualify as a "work of art" under the 1909 Copyright Act.
2. *Adobe Systems, Inc. v. Southern Software, Inc.* (1998): This case helped distinguish between intellectual property protection for a font versus a typeface. SSI had used font editing software to copy and slightly modify Adobe's fonts. The court held that Adobe's Utopia font was protectable expression under copyright law, and that SSI's modifications to Adobe's fonts were mechanical and constituted copyright infringement.

Alternative Protection for Typefaces

While typefaces cannot be copyrighted, they can be protected through other means:

1. **Design Patents:** Typeface designs may be protected by design patents under U.S. patent law, though the requirements are more strict than those for copyright. The term of protection is 14-15 years from the filing date. Notably, the first U.S. design patent ever awarded was for a typeface.
2. **Trademark Protection:** Trademark law protects only the name of a typeface but not the design of the typeface itself.
3. **Licensing Agreements:** Many type foundries and designers offer fonts under licensing agreements (EULAs). When you purchase a font, you are granted specific rights to use it, with limitations typically included in the license.

Artistic Elements in Typefaces

Regarding fonts with incorporated artistic elements (like an "A" that incorporates a detailed drawing of an apple):

The Copyright Office states there are "some very limited cases where the Office may register some types of typeface, typefont, lettering, or calligraphy." To register such copyrightable content, "you should describe the surface decoration or other ornamentation and should explain how it is separable from the typeface characters."

The key concept here is separability - if the artistic elements can be conceptually separated from the functional letterform, those specific elements might be eligible for copyright protection, even though the letterform itself would not be protected.

International Variations

It's worth noting that protection for typefaces varies internationally:

Typefaces can be protected in other countries, including the United Kingdom, Germany, and France. For example, English law considers fonts subject to copyright, but that protection only lasts for 25 years from first publication and does not cover their usage by typographers.

Conclusion

In summary, under current U.S. law:

- Typeface designs themselves are not protected by copyright
- Font software (the computer code that creates typefaces) is protected by copyright
- Typeface designs may be protected by design patents
- Names of typefaces may be protected by trademark
- Artistic elements incorporated into typefaces may be copyrightable if they are separable from the letterforms
- Licensing agreements (EULAs) typically govern the legal use of commercial fonts

When using fonts created by proprietary software or fonts with artistic elements, it's essential to understand both the licensing terms of the font software and the limited protections available for the actual typeface design.