

Bottom line

- **Typeface designs (the shapes of letters/numerals)** are **not protected by U.S. copyright**. The Copyright Office’s regulation says “typeface as typeface” is not copyrightable, and courts have approved that view.
 - **Font software** (the digital program/data that makes a typeface render/print) **can be protected as a computer program**, but that protection **does not extend to the typeface design** the program generates.
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1) Typeface designs

- **Regulation.** The Copyright Office will not register “typeface as typeface,” and also excludes “mere variations of typographic ornamentation [or] lettering.”
- **Case law.** *Eltra v. Ringer* upheld the Office’s refusal to register typeface designs under the 1909 Act and relied on the 1976 Act’s legislative history; courts and the Office have treated that rule as continuing.
- **Office guidance.** Circular 33 reiterates that typefaces, fonts, and lettering are “building blocks of expression” and aren’t registrable as such. The Compendium likewise states typeface/lettering/calligraphy are generally not registrable.

Result: Anyone may redraw a typeface’s letterforms (from scratch) without infringing copyright—so long as they don’t copy protected font software to do it.

2) Font software (digital fonts)

- **Protectable subject matter.** A program that generates a typeface or barcodes **may be registered** if it contains original code; however, **registration does not cover the typeface/letterforms the program outputs**. This has been the Office’s policy since 1988 and was codified in a 1992 rule.
- **Compendium §723.** Confirms the rule above and adds that if an “author” merely assigns coordinates to letterforms and lets third-party software render the font (without creating code), the Office may refuse registration. Deposit must be **source code**, not just glyph drawings.
- **Case law.** In *Adobe v. Southern Software* (N.D. Cal. 1998), the court held Adobe’s font program was protected expression (e.g., the creative selection/arrangement of control points), and copying those control points infringed—even though the underlying typeface design itself wasn’t protectable.

Result: Copying or distributing a font file (or code-level control points) can infringe; **recreating the same letter shapes via independent code should not**, because typeface designs are unprotected.

3) Key statutory limits that keep protection narrow

- **Idea/expression & methods.** Copyright doesn't cover ideas, methods, or systems (e.g., the idea of a particular letterform system or spacing scheme). That's §102(b).
 - **PGS/useful-article framework & history.** Congress declined to classify typeface designs as protectable pictorial/graphic works in the 1976 Act's history; the Office's regulation reflects that choice.
 - **Administrative guidance.** Circular 33 and the Compendium limit claims to the **program code** (not output designs) and require precise deposits/claims.
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4) Your hypotheticals

A. A “font” created using proprietary software (e.g., FontLab, Glyphs, etc.)

- Using proprietary tools does **not** change copyrightability of the **typeface** (still unprotectable).
- You can seek registration **only for your original program code**, if any. If you did not author code (you only drew shapes and the tool generated/compiled the code), the Office may treat your submission as unregistrable “data that merely represents an electronic depiction of a letterform.”

B. A hand-designed typeface where each glyph includes artistic elements (e.g., the letter “A” is a detailed apple drawing)

- The **typeface as a set of usable characters** is **still not copyrightable**.
 - However, **pictorial/graphic art embedded in a character may be registrable as artwork** if it's separable from the letter's utilitarian function—e.g., an apple illustration that **forms** the “A.” Protection would cover the apple artwork (as a PGS work), not the typeface per se.
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5) Practical takeaways

- **OK to clone shapes; not OK to clone code.** Redrawing the same letterforms with independently authored outlines/code is generally permissible; copying a font file or its control-point structure isn't.
 - **Registration mechanics.** To register font software, claim “computer program,” deposit source code, and **disclaim** typeface/letterform output.
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Primary authorities & guidance

- **37 C.F.R. § 202.1(a), (e)** (“mere variations of typographic ornamentation [and] lettering”; “typeface as typeface”).
- **Eltra Corp. v. Ringer**, 579 F.2d 294 (4th Cir. 1978).
- **U.S. Copyright Office Policy Decisions** on digitized typefaces (1988) and **Registrability of Computer Programs that Generate Typefaces** (1992).
- **Compendium (Third) §723** (font programs) and **§906.4** (typeface/lettering).
- **Circular 33** (Works Not Protected by Copyright).
- **Adobe Sys. v. Southern Software, Inc.**, No. C-95-20710 (N.D. Cal. 1998) (order recognizing protectable font-program code).
- **17 U.S.C. § 102(b); § 101** (definitions, incl. “computer program”).

*(Outside copyright, typeface designs may be pursued via **design patents** or branding law; that's a separate regime.)*