

Copyright Protection for Fonts and Typefaces Under U.S. Law

The legal protection of fonts and typefaces in the United States presents a nuanced landscape where certain elements receive copyright protection while others are explicitly excluded. This report examines the current state of U.S. copyright law regarding fonts and typefaces, the critical distinctions between typeface designs and font software, and the specific scenarios where protection may or may not apply.

Typeface Designs: Limited Protection Under Copyright Law

Under current U.S. copyright law, typeface designs themselves—the visual appearance of letterforms—generally cannot be protected by copyright. This limitation is explicitly codified in federal regulations, specifically 37 CFR § 202.1(e), which lists "typeface as typeface" among works not subject to copyright protection^{[1][2]}. This regulatory exclusion reflects a deliberate policy choice by Congress when crafting the 1976 Copyright Act to exclude typeface designs from copyright protection^[3].

The U.S. Copyright Office's Circular 33 elaborates on this exclusion, stating that copyright protection is generally unavailable for "typographic ornamentation or lettering, regardless of whether the typeface is commonly used or unique"^[4]. This position has been maintained through various legal challenges and policy reviews over decades.

The exclusion of typeface designs from copyright protection was influenced by practical considerations. As one source notes, there was "fear by book publishers and authors that unbeknownst to them a printer might use an infringing typeface, resulting in an injunction, destruction of infringing copies, and damages"^[5]. By excluding typefaces from copyright protection, Congress aimed to prevent potential liability issues that could disrupt publishing and printing industries.

Limited Exceptions for Artistic Elements

Despite the general rule excluding typeface designs from copyright protection, there are narrow exceptions where certain artistic elements incorporated into letterforms might be protected. The Copyright Office's Compendium acknowledges that in "very limited cases" the Office may register some types of typeface, typefont, lettering, or calligraphy^[6].

These limited exceptions typically apply to "pictorial or graphic elements that are incorporated into uncopyrightable characters or used to represent an entire letter or number"^[7]. The Compendium provides

specific examples such as "original pictorial art that forms the entire body or shape of the typeface characters, such as a representation of an oak tree, a rose, or a giraffe that is depicted in the shape of a particular letter"^[1]. These elements may be registrable if they are conceptually separable from the letterforms themselves.

Font Software: Distinct Copyright Protection

While typeface designs generally lack copyright protection, the software code that generates or renders fonts on computers and digital devices does receive copyright protection. This distinction has been firmly established through Copyright Office policy decisions and regulations.

In 1992, the Copyright Office issued a final regulation clarifying that "computer programs designed for generating typeface in conjunction with low resolution and other printing devices may involve original computer instructions entitled to protection under the Copyright Act"^[2]. This policy position recognized that "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"^[3].

The key distinction was articulated succinctly by one source: "The short answer in the USA: Typefaces are not copyrightable; bitmapped fonts are not copyrightable, but scalable fonts are copyrightable"^[4]. This distinction reflects the Copyright Office's view that scalable fonts constitute computer programs that contain sufficient original authorship to warrant copyright protection.

Evolution of the Policy on Font Software

The Copyright Office's position on font software has evolved over time. Prior to 1992, the Office required copyright applicants to disclaim protection for any "data that merely represents an electronic depiction of a particular typeface or individual letterform"^[5]. However, after recognizing technological advancements in font creation, the Office determined that "creating scalable typefonts using already-digitized typeface represents a significant change in the industry"^[6] and amended its practices to no longer require such disclaimers.

This evolution reflects the recognition that the creative process involved in developing font software often contains protectable expression that is "neither limited by the unprotectable shape of the letters nor functionally mandated"^[7].

Key Limitations Established by Statute and Case Law

Several important limitations on copyright protection for fonts and typefaces have been established through statutory provisions, regulations, and case law:

1. **Explicit Regulatory Exclusion:** The most direct limitation is found in 37 CFR § 202.1(e), which explicitly lists "typeface as typeface" among materials not subject to copyright^{[1][2]}.
2. **Idea-Expression Dichotomy:** As articulated in the seminal case *Mazer v. Stein*, "Unlike a patent, a copyright gives no exclusive right to the art disclosed; protection is given only to the expression of the idea-not the idea itself"^[3]. This principle limits protection to the particular expression embodied in font software, not the underlying concept of the typeface design.
3. **Separability Requirement:** For decorative elements in a typeface to be protected, they must be conceptually separable from the utilitarian function of the letters. This principle derives from cases like *Carol Barnhart v. Economy Cover Corporation*, where the court established that conceptually separable expressive elements could receive copyright protection^[4].
4. **Functionality Limitations:** Elements that are functionally necessary or dictated by utilitarian considerations remain unprotectable, even if part of copyrightable font software.

Analysis of Specific Scenarios

Fonts Created by Proprietary Software

When a font is created using proprietary software, the resulting font file itself may be protected as a computer program under copyright law, particularly if it is a scalable font^[8]. However, this protection extends only to the software code that generates the font, not to the visual appearance of the typeface when displayed or printed.

As the Copyright Office clarified, "computer programs designed for generating typeface in conjunction with low-resolution and other printing devices may involve original computer instructions entitled to protection under the Copyright Act"^[6]. This means that while the proprietary font software is protected against unauthorized copying or distribution, the resulting typeface design displayed on screen or in print remains unprotected by copyright.

Hand-Designed Fonts with Artistic Elements

The second scenario-where a font has been hand-designed to include artistic elements, such as an "A" incorporating a detailed drawing of an apple-presents a more complex case. The Copyright Office's Compendium addresses this situation directly, noting that protection may be available for "original pictorial art that forms the entire body or shape of the typeface characters"^[5].

In this specific example, the apple drawing incorporated into the letter "A" could potentially receive copyright protection if the artistic element:

1. Contains sufficient original authorship
2. Is conceptually separable from the letter form itself
3. Is not merely a "variation of typographic ornamentation"^[4]

To register such a work, the applicant "should describe the surface decoration or other ornamentation and should explain how it is separable from the typeface characters"^[4]. However, the protection would extend only to the artistic elements-the apple design-not to the letterform or typeface design as a whole.

Alternative Forms of Intellectual Property Protection

While copyright protection for typefaces is limited, alternative forms of intellectual property protection are available:

Design Patents

The U.S. Patent and Trademark Office has historically granted design patents for typefaces. The Manual of Patent Examining Procedure acknowledges this practice, noting: "Traditionally, type fonts have been generated by solid blocks from which each letter or symbol was produced. Consequently, the USPTO has historically granted design patents drawn to type fonts"^[10]. Design patents can cover the underlying design of the typeface, provided the design is novel and non-obvious^[11].

Trademark Protection

Typefaces can also receive trademark protection when used as distinctive identifiers of goods or services. This protection is particularly relevant for distinctive logotypes or wordmarks where the specific rendering of letters serves as a brand identifier^[12]. However, trademark protection is limited to the use of the typeface in commerce to identify the source of goods or services, rather than protecting the design itself.

Conclusion

U.S. copyright law establishes a clear distinction between typeface designs (generally not protectable) and font software (potentially protectable as computer programs). This dichotomy reflects policy considerations balancing the interests of typeface designers against the needs of publishers, printers, and other users of typographic works.

The statutory exclusion of "typeface as typeface" from copyright protection remains a fundamental limitation, though narrow exceptions exist for separable artistic elements incorporated into letterforms. Meanwhile, the creative expression embodied in font software-particularly scalable fonts-has gained recognition as protectable subject matter through Copyright Office policy decisions and regulations.

For those seeking to protect their typographic creations, understanding these distinctions is crucial, as is consideration of alternative forms of protection such as design patents or trademarks, which may be more suitable for protecting the visual aspects of typeface designs.

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1. <https://www.law.cornell.edu/cfr/text/37/202.1>
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