

Jurisdiction: All Federal

Question

1. Under current U.S. copyright law (caselaw, statutes, regulations, agency information), to what extent are fonts and typefaces protectable as intellectual property? Please focus on the distinction between protection for font software versus typeface designs. What are the key limitations on such protection as established by statute and case law? Specifically, if a font has been created by proprietary software, or if a font has been hand-designed to include artistic elements (e.g., "A" incorporates a detailed drawing of an apple into its design), is the font entitled to copyright protection?

` recognized that font software may be copyrightable (*Laatz v. Zazzle, Inc.*, 682 F.Supp.3d 791 (2023))[2]. The court cited  *Adobe Systems Inc. v. Southern Software Inc.* , which noted that creating scalable typefonts using already digitized typeface represents a significant change in the industry and that such software may involve original computer instructions entitled to protection ( *Adobe Systems Inc. v. Southern Software Inc.*, Not Reported in F.Supp. (1998))[4].

Key Limitations on Protection

Ideas and Functional Elements

Under 17 U.S.C.A. § 102 (b), copyright protection does not extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work (17 U.S.C.A. § 102)[5]. This means that while the specific code of font software can be protected, the underlying ideas or functional elements cannot be.

Artistic Elements in Fonts

If a font has been hand-designed to include artistic elements, such as incorporating a detailed drawing into its design, it may still face limitations. The artistic elements themselves might be protectable as pictorial, graphic, or sculptural works under [17 U.S.C.A. § 101](#) , but the overall typeface design remains unprotected as a typeface ([17 U.S.C.A. § 101](#))[6]. In [Shake Shack Enterprises, LLC v. Brand Design Company, Inc.](#) , the court acknowledged that while typeface designs are not protected, the individual artistic elements within a typeface could be considered works of pictorial or graphic art ([Shake Shack Enterprises, LLC v. Brand Design Company, Inc., 708 F.Supp.3d 515 \(2023\)](#))[7].

Preemption and State Law

Federal copyright law preempts state law claims that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 ([17 U.S.C.A. § 301](#))[8]. However, state law may still provide protection for aspects of typeface designs that do not fall within the subject matter of federal copyright law.

In summary, while typeface designs themselves are not protectable under U.S. copyright law, font software that includes original computer instructions can be protected. Artistic elements within a font may be protected as separate works of art, but the overall typeface design remains unprotected.

The above response is AI-generated and may contain errors. It should be verified for accuracy.

Cases, statutes, and regulations

1. [§ 202.1 Material not subject to copyright.](#)

37 CFR § 202.1

"...The following are examples of works not subject to copyright and applications for registration of such works cannot be entertained: (a) Words and short phrases such as names,

titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents; (b) Ideas, plans, methods, systems, or devices, as distinguished from the particular manner in which they are expressed or described in a writing; (c) Blank forms, such as time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms and the like, which are designed for recording information and do not in themselves convey information; (d) Works consisting entirely of information that is common property containing no original authorship, such as, for example: Standard calendars, height and weight charts, tape measures and rulers, schedules of sporting events, and lists or tables taken from public documents ore) Typeface as typeface...."

2. Laatz v. Zazzle, Inc.

United States District Court, N.D. California. • July 17, 2023 • 682 F.Supp.3d 791 • 2023 WL 4600432

"...1. Ownership of a Valid Copyright. "Typeface as typeface"-i.e., the design of a font-is not copyrightable. 37 C.F.R. S 202.1(e); see Adobe Sys. Inc. v. S. Software Inc., No. C 95-20710 RMW (PVT), 1998 WL 104303, at *3 (N.D.Cal. Feb. 2, 1998) (citing Eltra Corp. v. Ringer, 579 F.2d 294, 298 (4th Cir. 1978)). However, font software may be copyrightable. See Adobe, 1998 WL 104303, at *5. For example, a "computer program() 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." Policy Decision on Copyrightability of Digitized Typefaces, 57 Fed. Reg. 35, at 6201-01, 6202 (Feb. 21, 1992)...."

"...Font software may be copyrightable. 17 U.S.C.A. S 101 et seq...."

"...Copyright owner sufficiently pleaded ownership, as required for copyright infringement claim, on allegations that she "hand-coded" several aspects of font and used software program to "compile" font codes into font software. 17 U.S.C.A. S 101 et seq...."

"...C. Plaintiff's Fonts. Plaintiff derives her primary source of income from creating fonts and selling licenses for limited use of those fonts and associated font software. FAC PP 36-37. She has created over 110 unique fonts. Id. P 34. In 2016, Plaintiff used FontLab 7.1 to design and create a trio of fonts-the "Blooming Elegant Trio," comprised of Blooming Elegant, Blooming Elegant Sans, and Blooming Elegant Hand-along with the software (the "Blooming Elegant Software") used to implement the Blooming Elegant Trio. Id. PP 6, 40. When creating the Blooming Elegant Trio and Blooming Elegant Software, Plaintiff "hand-coded the designs for individual characters/glyphs by selecting the 'on-curve' and 'off-curve' reference points for each individual character/glyph for each font." Id. P 49. Plaintiff also "personally hand-coded the instructions for how the () glyphs should appear . by choosing the values for each of the font-wide variables that FontLab permits a designer to set, such as cap height, letter spacing, ascender height, and descender height." Id. Additionally, Plaintiff "hand wrote and inserted custom code that FontLab incorporated into the final packaged Blooming Elegant Software, which implemented ligatures and stylistic alternate letters for the fonts." Id. P 50...."

3. 🚩 **Apple Computer, Inc. v. Microsoft Corp.**

United States District Court, N.D. California. • August 07, 1992 • 799 F.Supp. 1006 • 1992 WL 195830

"...C. Fonts, Colors, and Miscellaneous. There are only two non-random ways to space fonts: they can be monospaced, or proportionally-spaced. Apple cannot appropriate one of these rare ideas for its exclusive use, nor could such an idea be protectible. Further, the use of proportionally-spaced fonts is common to user interfaces, see videotape B. Microsoft does not even use the same font as Apple, see Foley Suppl Decl P 29. The type of font-spacing used in a user interface cannot be the grounds for copyright infringement...."

"...Type of font-spacing used in computer graphical user interface cannot be grounds for copyright infringement; barring random spacing, fonts can only be monospaced or proportionally spaced, and neither of those ideas can be appropriated for exclusive use. 17 U.S.C.A. S 102(b)...."

4. 🚩 **Adobe Systems Inc. v. Southern Software Inc.**

United States District Court, N.D. California. • February 02, 1998 • Not Reported in F.Supp. • 1998 WL 104303

"...III. ANALYSIS .A. Adobe's motion and defendants' cross-motion on copyright claims. 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 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...."

"...III. ANALYSIS .A. Adobe's motion and defendants' cross-motion on copyright claims. Defendants argue that after one has filtered out the unprotectable elements of plaintiff's software in order to compare what remains, one finds that minimal, if any, protectable expression remains. Thus, defendants state that "merely manipulating an unprotectable font image to create another, slightly different (but still unprotectable) font image cannot possibly give rise to protectable expression." Defs. Memo., pp. 15-16. Defendants assert that no matter what points are selected by the Adobe editor performing the process, they correspond directly to, and hence are determined by, the unprotectable font shape. Therefore, because the output is not protected and there cannot be any creativity in what the editor does to obtain the output, nothing is protectable...."

5. § 102. Subject matter of copyright: In general

17 USCA § 102

"...(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories: (1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works. (b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.5) pictorial, graphic, and sculptural works;..."

6. § 101. Definitions

17 USCA § 101

"...Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following: An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author. An "architectural work" is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features. "Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are..."

"...by the courts or the Copyright Office. Paragraph (2) shall be interpreted as if both section 2(a)(1) of the Work Made For Hire and Copyright Corrections Act of 2000 and section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, were never enacted, and without regard to any inaction or awareness by the Congress at any time of any judicial determinations...."

7. Shake Shack Enterprises, LLC v. Brand Design Company, Inc.

United States District Court, S.D. New York. • December 28, 2023 • 708 F.Supp.3d 515 • 2023 WL 9003713

"...1. Subject Matter of Copyright. Next, the Neutraface glyphs are pictorial or graphic works, and they fall within the subject matter of copyright. Though it is not this Court's role to opine on exactly what is (or is not) art, "(t)hat a typeface design may constitute a work of art seems hardly open to question." 1 Nimmer on Copyright, S 2.15 (2023). The Neutraface glyphs have a specific "style of . lettering" and a "scale and design" that House Industries describes as uniquely impossible to recreate. (Opp. at 8.) Neutraface has a certain aesthetic of "sophistication and clean architectural lines," and is found within House Industries' "fun, hand-crafted, design-driven" portfolio of works. (Counterclaim PP 14, 16.) The Court is satisfied that typeface glyphs constitute a work of pictorial or graphic art within the meaning of 17 U.S.C. sections 101 and 102...."

"...1. Subject Matter of Copyright. House Industries attempts to resist this conclusion on the basis that "(t)ypeface as typeface" is not subject to copyright protection under 37 C.F.R. S 202.1(e). (See Opp. at 11-12.) Though 37 C.F.R. S 202.1(e) excludes typefaces from the ambit of copyright protection, it does not follow that typefaces fall entirely outside the subject matter of copyright for purposes of statutory preemption...."

"...Though the Copyright Act excludes typefaces from the ambit of copyright protection, it does not follow that typefaces fall entirely outside the subject matter of copyright for purposes of statutory preemption under the Act. 17 U.S.C.A. SS 102, 301; 37 C.F.R. S 202.1(e)...."

8. § 301. Preemption with respect to other laws

17 USCA § 301

"...(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State. (b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to-- (1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103, including works of..."

9. Agfa Monotype Corp. v. Adobe Systems, Inc.

United States District Court, N.D. Illinois, Eastern Division. • January 13, 2005 • 404 F.Supp.2d 1030 • 2005 WL 3430869

"...B. 17 U.S.C. S 1201(b)(1) Liability. Defendant responds that Plaintiffs' complaint relates only to the subsequent uses for their TrueType Fonts after the fonts have already been embedded permissibly within the PDF. Plaintiffs have already authorized the copy and distribution of their TrueType Fonts for embedding in PDF documents for "Print and Preview" purposes. Acrobat 5.0 does not make an additional copy or distribution of the font to embed the font in free text annotations or form fields, and thus there is no "(1) subsequent reproduction, (2) subsequent creation of derivative work, (3) subsequent distribution." (Def. Chamberlain Rep. Mem. at 3). Acrobat 5.0 does not infringe a right of copyright because the "Copyright Act does not give a copyright holder the right to control subsequent use of lawfully-made copies." (Def. Rep. Chamberlain Mem. at 2)...."

"...B. 17 U.S.C. S 1201(b)(1) Liability. Further, even if the embedding bits were narrowly tailored to protect a right of copyright, Defendant argues that they do not constitute "technological measures that effectively protect () a right of a copyright owner" as defined under Section 1201(b)(2)(emphasis added). The embedding bit only indicates or flags the font owner's embedding permission preferences. Such embedding bits do not prevent copying, and a computer program can simply proceed to copy the TrueType Font data regardless of the setting of the bit. Further, because the Any Font Feature was implemented with the addition of only two lines of code, it was easily modified in the subsequent Adobe Acrobat 5.05, evidencing the conclusion that embedding bits do not effectively protect Plaintiffs' copyright rights...."

"...Portable document format (PDF) program that allegedly permitted editing of documents using copyrighted fonts did impermissibly circumvent embedding bits associated with the fonts in violation of the Digital Millennium Copyright Act (DMCA) provision prohibiting the circumvention of a technological measure that effectively controls access to a protected work; embedding bits, which indicated font embedding licensing rights to other programs, did not "effectively control access" to a protected work because specifications for the fonts had been available for free download from the Internet, and embedding bits were not encrypted, scrambled or authenticated. 17 U.S.C.A. S 1201(a)(2)...."

10. Leonard Storch Enterprises, Inc. v. Mergenthaler Linotype Co.

United States District Court; E.D. New York. • August 08, 1980 • Not Reported in F.Supp. • 1980 WL 1175

"...(Opinion from the Bench). The people who create the typefaces have complained, have tried many different avenues to protecting what they view as their property, and the problem hasn't been confined to this country, but apparently has been a problem at least in Europe and perhaps elsewhere in the world...."

"...(Opinion from the Bench). But, defendant claims about the process that they use. They concede they don't have protection for the design of the letters. I am not sure what their position is precisely upon the spacing of the letters, whether that is considered to be part of a typeface design or not, I am not sure. I would think probably it is because certainly the relationship of

letters to each other has a significant aesthetic dimension to it in terms of the overall appearance with the end result on the printed page...."

11. Broderbund Software, Inc. v. Unison World, Inc.

United States District Court, N.D. California. • October 08, 1986 • 648 F.Supp. 1127 • 231 U.S.P.Q. 700

"...3. Mechanical or utilitarian constraints. In the present case, it is clear that the structure, sequence, and layout of the audiovisual displays in "Print Shop" were dictated primarily by artistic and aesthetic considerations, and not by utilitarian or mechanical ones. Repeatedly, the testimony of David Balsam showed that, in creating the screens of "Print Shop," he based textual and graphic decisions on the basis of aesthetic and artistic preferences. On the "Now Type Your Message" screen of "Print Shop," for instance, no mechanical or practical constraint forced Balsam to make the "Stencil" typeface smaller on the display than the "Alexia" typeface. The choice was purely arbitrary. On the "Choose a Font" screen, no mechanical or practical factor compelled Balsam to use those exact words ("Choose a Font"). He could have written, "Select a Font," or "Indicate a Typeface Preference," or "Which Type Style Do You Prefer," or any combination of these terms. Another example is the "Screen Magic" function-Balsam considered calling this "See Animation." He could have called it "Kaleidoscope." The bottom line is that the designer of any program that performed the same functions as "Print Shop" had available a wide range of expression governed predominantly by artistic and not utilitarian considerations. Thus, the Court cannot accept defendant's argument that the audiovisual displays of "Print Shop" fall outside the scope of "pictorial" or "graphic" works as set forth in S 101...."

12. Real View, LLC v. 20-20 Technologies, Inc.

United States District Court, D. Massachusetts. • February 11, 2010 • 683 F.Supp.2d 147 • 2010 WL 455459

"...This analysis, however, proves too much. Both the case law and the leading commentary warn against losing sight of the forest for the trees. See, e.g., Nimmer on Copyright S 13.03 ("In performing the filtering . the analysis should not proceed mechanically simply by isolating physical elements out of the copyrightable work."); id. ("Although each geometric form in isolation might be subject to exclusion from the court's calculus, the conceptual interrelationship of shapes should remain present for the court's analysis even after filtering out particular concrete objects, thus subjecting the defendant to potential liability should copying of those elements be proven."); Arnstein v. Porter, 154 F.2d 464, 477 (2d Cir.1946) (Clark, J., dissenting) ("It is as though we found Shakespeare a plagiarist on the basis of his use of articles, pronouns, prepositions, and adjectives also used by others."); Boisson v. Banian, Ltd., 273 F.3d 262, 272 (2d Cir.2001) ("(A) court is not to dissect the works at issue into separate components and compare only the copyrightable elements. To do so would . result in almost nothing being copyrightable because original works broken down into their composite parts would usually be little more than basic unprotectible

elements like letters, colors and symbols.") (internal citation omitted). The fact that each individual icon or feature on a screen cannot necessarily be copyrighted does not deny the screen itself, as the sum of those icons or features, copyright protection. Thus the critical question becomes whether the screen display and graphical user interface are protectable as a compilation: whether the selection and arrangement of the icons, the layouts of the windows on the screen, and the dialog boxes which comprise the graphical user interface are themselves protectable as expression...."

13. **Torah Soft Ltd. v. Drosnin**

United States District Court, S.D. New York. • March 30, 2001 • 136 F.Supp.2d 276 • 2001 WL 314642

"...d. Removal of Spaces Between Words. In sum, none of the features of the Database or the Software are sufficiently original to merit protection. Plaintiff has failed to satisfy its burden of proving that the Software's outputs of Bible code finds, as displayed in the matrixes, contain protectable expression. Accordingly, defendants' motion for summary judgment is granted...."

14. **Oracle America, Inc. v. Google Inc.**

United States Court of Appeals, Federal Circuit. • May 09, 2014 • 750 F.3d 1339 • 2014 WL 1855277

"...III. Google's Policy-Based Arguments. Importantly for our purposes, the Supreme Court has made clear that "(n)either the Copyright Statute nor any other says that because a thing is patentable it may not be copyrighted." *Mazer v. Stein*, 347 U.S. 201, 217, 74 S.Ct. 460, 98 L.Ed. 630 (1954). Indeed, the thrust of the CONTU Report is that copyright is "the most suitable mode of legal protection for computer software." Peter S. Menell, *An Analysis of the Scope of Copyright Protection for Application Programs*, 41 *Stan. L.Rev.* 1045, 1072 (1989); see also CONTU Report at 1 (recommending that copyright law be amended "to make it explicit that computer programs, to the extent that they embody an author's original creation, are proper subject matter of copyright"). Until either the Supreme Court or Congress tells us otherwise, we are bound to respect the Ninth Circuit's decision to afford software programs protection under the copyright laws. We thus decline any invitation to declare that protection of software programs should be the domain of patent law, and only patent law...."

15. **MiTek Holdings, Inc. v. Arce Engineering Co., Inc.**

United States District Court, S.D. Florida, Miami Division. • October 31, 1994 • 864 F.Supp. 1568 • 1994 WL 515922

"...B. FILTRATION. Sotolongo testified that he copied many of the Aces Layout Programs' graphics features from other public domain graphics programs on the market, including the AUTO-

CAD illustrator program. The Court notes that the ability of a graphics program to vary the size of the picture is not unique to the Aces Layout Programs. Accordingly, the Court finds that this feature is part of the public domain and is therefore not entitled to copyright protection...."

Additional Research on This Topic

16. 🚩 **Manufacturers Technologies, Inc. v. Cams, Inc.**

United States District Court, D. Connecticut. • January 30, 1989 • 706 F.Supp. 984 • 1989 WL 12665

"...A) The Copyrightability of Computer Screen Displays. Recognizing their burden, the defendants argue on several different grounds that plaintiff's screen displays do not contain copyrightable subject-matter. These arguments raise issues novel to this district and circuit which courts have only just begun to confront and which grow out of the fact that two different computer programs, whose source codes were created independently of one another, can produce computer screen displays which are very similar, if not totally alike. While other courts have considered the scope of copyright protection of a computer program copyright, only two courts have specifically dealt with the issue of whether the copyright in a computer program should extend protection to the screen displays generated by that program. The first of these cases, Broderbund Software, Inc. v. Unison World, 648 F.Supp. 1127, 1132 (N.D.Cal.1986), took a very broad view. It held that the copyright in a computer program extends beyond the literal program codes to the structures of that program including its audiovisual displays. However, in reaching this conclusion, the court appears to have misinterpreted the Third Circuit's holding in Whelan Associates, Inc. v. Jaslow Dental Laboratory, Inc., 797 F.2d 1222 (3d Cir.1986). In Whelan, the Third Circuit held that the copyright in a computer program protects the structure, sequence, and organization of that program even in the absence of direct source or object code copying. 797 F.2d at 1233. The Broderbund court extended the reach of Whelan by equating computer program copyright protection for the structure, sequence, and organization of a program with protection of the screen outputs. 648 F.Supp. at 1133. However, the Whelan court said only that, as an evidentiary matter, that screen outputs could be indirect and inferential evidence useful in establishing copying of the underlying computer program. 797 F.2d at 1244. The Broderbund court sought to determine the protectible expressive aspects of the screen displays at issue by referring to the idea of the computer program at issue. 648 F.Supp. at 1132. Specifically, it held that because a unique third computer program (not at issue in the suit) existed, which like defendants and plaintiffs programs..."

17. § 202.3 Registration of copyright.

37 CFR § 202.3

"...(b) Administrative classification and application forms- (i) Pursuant to the authority granted by section 408(c)(1) of title 17 of the United States Code, the Register of Copyrights has

determined that, on the basis of one application, deposit, and filing fee, a group registration may be made for automated databases and their updates or other derivative versions that are original works of authorship, if, where a database (or updates or other revisions thereof), if unpublished, is (or are) fixed, or if published is (or are) published only in the form of machine-readable copies, all of the following conditions are met: (A) All of the updates or other revisions are owned by the same copyright claimant;..."

"...(a) General. (1) This section prescribes conditions for the registration of copyright, and the application to be made for registration under sections 408 and 409 of title 17 of the United States Code. (2) For the purposes of this section, the terms audiovisual work, compilation, copy, derivative work, device, fixation, literary work, motion picture, phonorecord, pictorial, graphic and sculptural works, process, sound recording, and their variant forms, have the meanings set forth in section 101 of title 17. The term author includes an employer or other person for whom a work is "made for hire" under section 101 of title 17. (3) For the purposes of this section, a copyright claimant is either: (i) The author of a work; (ii) A person or organization that has obtained ownership of all rights under the copyright initially belonging to the author. (FN1) (b) Administrative classification and application forms- (1) Classes of works..."

Administrative decisions and guidance

THE INFORMATION NEEDS OF COMMUNITIES

June 01, 2011 • 2011 WL 2286864

"...Federal Communications Commission (F.C.C.) THE INFORMATION NEEDS OF COMMUNITIES The changing media landscape in a broadband..."

"...networks, fewer barriers to entry, and more ways to consume information. Choice abounds. Local TV stations, newspapers and a flood of..."

"...landscape shifting as fast as it has been, some current regulations are out of sync with the information needs of communities and the fluid nature of modern local..."

"...are well used. Our specific recommendations follow six broad principles: > Information required by FCC policy to be disclosed to the public..."

CHAPTER 600: EXAMINATION PRACTICES

September 29, 2017 • 2017 WL 11609580

"...United States Copyright Office Compendium III: Copyright Office Practices Last Revised: September 29, 2017 CHAPTER 600: EXAMINATION PRACTICES Contents 601 What This Chapter Covers 602 General U.S. Copyright Office Examination Practices 602.1 Completion of the Application 602.2 Statutorily Required Information in the Application 602.3 Requirements for Registration of a..."

"...4(E) Duplicate Claims 602.5 General Practices for Processing Information Provided in a Paper Application 602.6 General Policy Regarding Location of Information 602.7 General Practices Regarding Missing Information 602.8 General Policy Regarding Extraneous Information 602.9 General Policy Regarding Social Security Numbers, Driver's License..."

"...and Bank Account Numbers 602.10 General Practices Regarding Cataloging Information 603 Variances 603.1 Immaterial Variances 603.2 Material Variances..."

"...Adding Comments to the Registration Record 604.3 Adding Missing Information to the Registration Record 604.4 Documenting Communications with the..."

CHAPTER 600: EXAMINATION PRACTICES

January 28, 2021 • FIP-CPYPRC Ch. 600 • 2014 WL 7749581

"...United States Copyright Office Compendium III: Copyright Office Practices Last Revised: January 28, 2021 CHAPTER 600: EXAMINATION PRACTICES 601 What This Chapter Covers 602 General U.S. Copyright Office Examination Practices 602.1 Completion of the Application 602.2 Statutorily Required Information in the Application 602.3 Requirements for Registration of a..."

"...4(E) Duplicate Claims 602.5 General Practices for Processing Information Provided in a Paper Application 602.6 General Policy Regarding Location of Information 602.7 General Practices Regarding Missing Information 602.8 General Policy Regarding Extraneous Information 602.9 General Policy Regarding Social Security Numbers, Driver's License..."

"...and Bank Account Numbers 602.10 General Practices Regarding Cataloging Information 603 Variances 603.1 Immaterial Variances 603.2 Material Variances..."

"...Adding Comments to the Registration Record 604.3 Adding Missing Information to the Registration Record 604.4 Documenting Communications with the..."

Practical Law

Intellectual Property: Overview

Practice note: overview • Maintained • National/Federal

This Practice Note provides an overview of the principal categories of intellectual property (IP) under US law and related practice considerations. It discusses patents, trademarks, copyrights, mask works, and trade secrets. For each of these categories of IP, the Note describes the legal authority governing protection, protected subject matter and the scope of protection, the acquisition and maintenance of rights, and enforcement considerations, including for claims of infringement, misappropriation, and dilution.

"...Under current Copyright Office policy, works containing AI-generated material may be copyrighted to the extent that they contain sufficient human authorship to meet the standard for copyright protection (88 Fed. Reg. 16190 (Mar. 16, 2023)). The US District Court for the District of Columbia held that the Copyright Office acted properly in refusing to register a work created by an AI computer system without any human involvement (Thaler v. Perlmutter..."

"...IP protection for mask works is regulated in the US by the Copyright Office under the authority of the federal Semiconductor Chip Protection Act of 1984 (SCPA). The Copyright Office publication Federal Statutory Protection for Mask Works (Circular 100) provides legal and regulatory background information, as well as procedural guidance, on mask work protection...."

"...Courts have established that the standard of originality required for copyright protection is low. For example, similar photographs of the same scene are each protected by copyright. In addition, the extent or lack of intellectual effort or creativity is irrelevant. The Copyright Act expressly excludes from copyright protection works of the US government, for example, the text of statutes, court opinions, and census reports...."

"...Certain trade secrets may have independent protection under copyright laws or can be the subject matter of patent applications. For example, computer source code, which can be protected as a trade secret, may also be protected by copyright and can embody a patentable invention. However, trade secret protection may be lost if a deposit and public disclosure of source code are made in connection with registration of the copyright in the source code and will be lost if a patent is issued on the software program (or if the patent application is published) (see also Copyrights..."

Intellectual Property Rights: The Key Issues

Practice notes • Maintained • National/Federal

This Practice Note discusses the main categories of intellectual property (IP) rights in the US and their management, including IP ownership, assignment, and licensing. It also examines the issues that arise surrounding business transactions involving IP, including M&A and finance transactions, as well as basic tax treatment of IP under federal law.

"...Like patents and trademarks, copyright protection depends on the national laws where copyright protection is sought. In the US, copyrights are personal property subject to state and local laws. They may be bequeathed by will or pass as personal property by the applicable laws of intestate succession...."

"...This Practice Note discusses the main categories of intellectual property (IP) rights in the US and their management, including IP ownership, assignment, and licensing. It also examines the issues that arise surrounding business transactions involving IP, including M&A and finance transactions, as well as basic tax treatment of IP under federal law...."

"...Security interests in patents, copyrights, and trademarks should be in writing and should be recorded under the Uniform Commercial Code (UCC), along with the security interest in all other collateral. In addition, security interests in patents and registered trademarks should be timely recorded with the USPTO and security interests in registered copyrights should be recorded with the US Copyright Office. For patents, registered copyrights, and trademarks, recordation protects the secured party from later bona fide purchasers claiming an interest in the IP. In the case of copyright..."

"...Priority against a later bona fide transferee, if the copyright assignment is recorded with the US Copyright Office within one month after its execution in the US or within two months after its execution outside the US or at any time before the recordation of a later transfer...."

Intellectual Property: Stock Purchases and Mergers

Practice notes • **Maintained** • National/Federal

A Practice Note highlighting key intellectual property (IP) considerations in stock purchase and merger transactions. This Note discusses legal due diligence of the target company's IP and drafting and negotiating IP aspects of stock purchase and merger agreements (including representations and warranties) and ancillary agreements. It also addresses certain information technology (IT) considerations.

"...A Practice Note highlighting key intellectual property (IP) considerations in stock purchase and merger transactions. This Note discusses legal due diligence of the target company's IP and drafting and negotiating IP aspects of stock purchase and merger agreements (including representations and warranties) and ancillary agreements. It also addresses certain information technology (IT) considerations...."

"...In most stock purchase and merger transactions, legal issues involving intellectual property (IP) are handled by IP counsel separately, but concurrently, with the negotiation of other transaction issues. Depending on the nature of the target company's business and the buyer's reasons for acquisition, IP can be a significant driver in the transaction and issues involving IP can carry considerable weight in the transaction...."

"...Reversion rights. Under UScopyrightlaw, an author of a copyrighted work has the irrevocable right to terminate any assignment or license of the copyright in the work generally within a five-year window beginning 35 years after the grant (or, for pre-1978 grants, beginning 56 years from the date of copyright). However, this termination right does not apply to work made for hire. The buyer should identify any material works that have been assigned or licensed to the target company and may be subject to a termination notice from the original author. This risk is particularly significant if the target company's business involves the commercialization of music, film, or similar entertainment properties...."

"...As with registered IP (see Common Registered IP Issues), in a carve-out transaction the buyer should ensure that any unregistered IP that is primarily or exclusively used by the target company but owned by the seller or another seller affiliate is assigned or licensed to the target company (see License Agreements and IP Assignments)...."

Additional secondary sources

APPENDIX II - FDA, OIG AND FTC GUIDANCE

FDA Advertising and Promotion Manual • FDA Advertising and Promotion Man. Appendix II

July, 1993 Dear Sir or Madam: This letter is directed to all New Drug Application, Abbreviated New Drug Application, and Abbreviated Antibiotic Drug Application ("NDA," "ANDAs," and "AADA") holders. The Division of Drug Marketing, Advertising, and Communications ("DDMAC"), in its review of prescription drug advertising and promotional labeling, is encountering certain issues associated with numerous firms and products. Although these issues are addressed on a case by case basis, we believe it is important to call the attention of all firms to these issues. Accordingly, this letter is to inform all application holders of these current issues. The issues discussed in this letter include compliance with the filing requirements of 21 C.F.R. § 314.81(b)(3)(i); the submission of foreign language advertising and promotional labeling; the submission of direct-to-consumer promotional materials; launch campaigns; the...

"...These types of legitimate requests from scientists/individuals for drug information will be regarded and treated as a personal communication between the requestor and firm."); 59 Fed. Reg. 59820, 59823 (November 18, 1994) (stating that manufacturers may respond to unsolicited requests for information with "responsive, nonpromotional, balanced scientific information, which may include information on unapproved uses, without subjecting their products to regulation based on the information..."

"...In general, the Agency considers two primary factors to determine whether risk information is comparable in scope to benefit information within promotional materials: (1) whether the risk information qualifies any representations made about the product (i.e., content of the risk information compared to content of the benefit information) and (2) whether the risk information is

presented with a prominence and readability comparable to the benefit claims about the product...."

"...However, FDA may object to substantial differences in font size or the presentation of risk information in a difficult to read font size, irrespective of the font size of benefit information, because this may seriously reduce the ability to see or comprehend the risk information...."

"...Presenting risk information with no signal, or beginning the presentation of risk information with unrelated information (e.g. presenting risk information in a paragraph that begins with information on indication or dosing) can also minimize the risks of the product and mislead the audience...."

TYPEFACE DESIGN AFTER THE DESKTOP REVOLUTION: A NEW CASE FOR LEGAL PROTECTION

Columbia-VLA Journal of Law & the Arts • 16 Colum.-VLA J.L. & Arts 97

For the last three decades, both the Copyright Office and Congress have consistently resisted strong movements in the typography industry to acquire copyright protection for typeface design. During the hearings on both copyright revision and the Title II design protection legislation, opponents of the protection of typeface argued the de minimis nature of typeface ornamentation and the potential antitrust consequences of restricting what for so long had been considered to be in the public domain. Proponents of protection emphasized the artistic skill needed to produce innovative designs. They testified to the start-up costs expended in the creation and marketing of a new typeface—costs largely avoided by the unauthorized duplicator. They demonstrated that typeface piracy was rampant in the United States because of the ease of photographic duplication of typeface “fonts” or alphabet matrices. ...

"... Notwithstanding that the typeface submitted for registration was a work of art, the trial court concluded that inaction by the legislature on typeface protection when it had been given direct opportunities to overrule the Copyright Office regulations prohibiting the registration of typefaces constituted “actual acquiescence in the administrative interpretation given the Copyright Act.” *Id.* at 202...."

"...Under the terms of the treaty, the contracting states agree to ensure the protection of typefaces for the creator of the design or his or her rightful successors in title, either by establishing a special national deposit system, by adapting the deposit requirements of their own industrial design law, or by incorporating typeface under copyright law...."

"...[FN62] Since Congress had specifically refused to protect typefaces when it omitted Title II from the Copyright Revision Act, [FN63] and the Fourth Circuit had refused to mandate changes in Regulation § 220.1, [FN64] the Copyright Office chose to be “conscious of the need for caution to

avoid a decision that would undermine the clear congressional and judicial findings that typeface designs are not copyright..."

"...[FN214] Since a typeface designer could not register a set under the Registered Designs Act of 1949, [FN215] but could protect even a single letter under either existing copyrightlaw or design registration, the report recommended that Parliament "amend the copyrightlaw to give the creator of an original set of type faces the right to control reproduction of the type faces as well as the importation and commercial distribution of copies."..."

§ 2:73. Typefaces

Law of Copyright • 1 The Law of Copyright § 2:73

Congress considered the issue of extending copyright protection to typeface designs in the 1976 Copyright Act, but deliberately chose to exclude them from the subject matter of copyright under the Act. Accordingly, the Register has promulgated a regulation that specifies "[t]ypeface as typeface" and "mere variations of typographic ornamentation" as "examples of works not subject to copyright." However, "computer programs designed for generating typeface ... may involve original computer instructions entitled to protection under the Copyright Act." Thus, where the plaintiff alleged that the defendant copied the software used to implement three of its fonts, the court denied a motion to dismiss, but added: "Defendants raise serious questions as to whether Plaintiff contributed enough to the Blooming Elegant Software to be considered its author. But that is a question of fact not appropriate for resolution at the pleading..."

"...Congress considered the issue of extending copyrightprotection to typeface designs in the 1976 Copyright Act, but deliberately chose to exclude them from the subject matter of copyright under the Act.[..."

"...1] Accordingly, the Register has promulgated a regulation that specifies " [t]ypeface as typeface " and "mere variations of typographic ornamentation" as "examples of works not subject to copyright."..."

"...See also *Shake Shack Enterprises, LLC v. Brand Design Company, Inc.*, 2023 WL 9003713, *4 (S.D. N.Y. 2023) ("The public is free to replicate, imitate, or reverse engineer [a typeface] ... to create glyphs of identical appearance, as long as House Industries' software is not used to do so.")...."

"...[3] Thus, where the plaintiff alleged that the defendant copied the software used to implement three of its fonts,[4] the court denied a motion to dismiss, but added: "Defendants raise serious questions as to whether Plaintiff contributed enough to the Blooming Elegant Software to be considered its author..."

Current awareness

Q&A: IP expert Mauricio Uribe on strategic uses of design patents

WESTLAW Intellectual Property Daily Briefing • 2022 WL 16825272

Thomson Reuters interviewed a top intellectual property attorney from IP and technology law firm Knobbe Martens to provide some insight into the growing practice of IP protection through design patents.

"...MU: Under the current U.S. Patent Office rules, an "applicant applying for the examination must demonstrate to the Director of the Office of Enrollment and Discipline (OED) that he or she possesses the scientific and technical training necessary to provide valuable service to patent applicants."..."

"...I and others in the IP bar are thankful for Director Vidal's leadership to prioritize and evangelize this initiative since her tenure began in April 2022, and we hope that this program will result in a positive change for the intellectual property community...."

"...On Oct. 18, the U.S. Patent and Trademark Office announced that, "in recognition of the growing importance of design protection amid new and emerging technologies," it is considering a design patent bar, separate from the utility patent bar that currently applies to those who practice matters before the PTO...."

"...For examples, U.S. copyright law expressly does not allow for protection of typefaces (37 CFR 202.1)...."

Cher off the hook for infringing logos with album cover (S.D.N.Y.)

WESTLAW Intellectual Property Daily Briefing • 2017 WL 1190448

A graphic designer has dropped a \$5 million copyright infringement suit accusing Cher of lifting his logo designs for the cover art of her 2013 album "Closer to the Truth."

"...Copyright-Infringement..."

"...Moshik Nadav sued the pop icon, whose full name is Cherilyn Sarkisian, in the U.S. District Court for the Southern District of New York, alleging that she and her company, Genesh Productions LLC, copied the typeface of his "Paris" and "Paris Pro" logos to create the lettering that spells out Cher's name and the album's title...."

"...In their dismissal motion, the defendants argued typefaces are not subject to copyright protection, and that Nadav's logos are not substantially similar to the album cover art...."

"...IntellectualProperty..."

Higher interest rate consumer loans may snag lenders

Practitioner Insights Commentaries • 2024 WL 174226

Paul Kellogg and Louis Rossitto of McGlinchey Stafford PLLC discuss state law requirements for secured consumer loans and second mortgages that bear interest greater than 10% per annum, with a focus on Texas.

"...This article focuses on the issues that could occur under Texas law, but there are many other states with similar statutes that apply to secured consumer loans and second lien mortgage loans, including Colorado, Connecticut, Florida, Massachusetts, New Jersey, New York, Oklahoma, Oregon, South Carolina, Virginia, and Wisconsin...."

"...Finally, the regulations also state that "the agreement entered in the English language is the legal document and determines the rights and obligations of the parties" and that "the disclosures required by federal law entered in the English language are the legal disclosures and determine the disclosure obligations of the [creditor]...."

"...If the terms of a closed-end loan (i.e., a loan with only one advance of funds) were negotiated in Spanish, a copy of a summary of those terms and other pertinent information must be provided to the borrower in Spanish in a form "identical to disclosures required for a closed-end transaction under" Regulation Z. See Tex. Fin. Code §341.502(a-1); 7 Tex. Admin. Code Rule §90.701(a)...."

"...With a background in municipal law and land use, he advises financial institutions and their affiliates, mortgage companies, sales finance companies, FinTech companies, and their lending partners, and others on matters at the state and federal level, including regulatory and compliance requirements for consumer and commercial loan documentation...."