

# Font Licensing and Protection Details

*Victor Gaultney,  
SIL Non-Roman Script Initiative (NRSI)  
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## Basic font use licensing

The simplest standard of legal font use is that *no one is allowed to use a font on their computer unless they specifically have a license for that font*. When a font is 'purchased' the user never really owns the font—they typically receive a license to use that font on only one computer. These End User License Agreements (EULAs) differ between companies but generally state quite clearly that the fonts may only be used on machines for which there is a valid license. These licenses can be 'purchased' in a variety of ways: directly from the font vendor (Adobe, Bitstream), as part of a larger software package (such as Microsoft Office), or just by downloading the font from a web site (as with most freeware fonts including many SIL fonts).

However the font is obtained, almost all licenses do not allow the font to be passed onto others. *So the most basic legal rule of font copyright is that unless the license specifically allows it, fonts cannot be shared among multiple computers, even if they are all owned by the same person or corporation, and fonts cannot be given away to others*. In all cases the EULA is the authoritative source for specific licensing details.

The basis for this is that when you obtain a font (or any other software) you are making a legal agreement to abide by the EULA. If the conditions stated in the EULA are broken then the other party has a right to claim any damages as a result of that broken agreement.

## Trademarks, design patents and copyrights

There are three types of protection that can be afforded to typefaces and fonts in addition to basic license agreements: trademark, design patent and copyright. These are intended to keep non-licensees from copying the fonts in some way and passing them off as original material. They each have implications for the computer support person.

The **Trademark** system is the weakest form of protection, allowing only the font name itself to be protected. Hermann Zapf's popular typeface Palatino™ is arguably the most copied typeface in the world. Many companies made their own identical versions of it (including the Book Antiqua distributed in the past by Microsoft), but had to change the name. *This means that no one is allowed to use a currently existing typeface name for a new font, even if the fonts are completely unrelated*.

The **Design Patent** system is the strongest, but most uncommon type of protection. The designation is relatively rare because of the cost and effort involved, but is powerful. It is the only US legal precedent that protects the actual *design* - the individual shapes of the letters in a font. The Lucida font family (designed by Bigelow and Holmes) were some of the first digital fonts to be given a patent. If a designer were to

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copy them, even by redrawing them from scratch using pencil and paper, he would be in serious legal trouble.

The **Copyright** system is the most commonly used type of protection, but has also been the most vague and difficult to enforce. There is no explicit protection for fonts or typeface designs in US copyright law. Hence, fonts have, until recently, fallen between the cracks in the justice system.

## Fonts are software

Within the last few years, the situation has changed dramatically. Two specific legal cases have shown that fonts are protected from unauthorized duplication *because they are computer software*. Note carefully that this applies only to the font software itself (the PostScript or TrueType file), not the actual artistic design.

From 1993 to 1995, Bitstream and four other type companies successfully sued SWFTE for copyright infringement. SWFTE had used computer programs to take other typefounders' fonts, convert them to their own format and give them new names. The case centered around the fact that SWFTE had used Bitstream's software (the digital fonts themselves) to create the new fonts. This was, however, a singular case and was somewhat controversial, so it did not conclusively settle the font copyright issue.

Three years later an even stronger legal precedent was set in the case of Adobe vs. Southern Software Inc. (SSI). It seems that SSI had used FontMonger to copy and rename fonts from Adobe and others. They thought they were safe from prosecution because, though they had directly copied the points that define the shapes from Adobe's fonts, they had moved all the points just slightly so they were not technically identical. Nevertheless, in his 1998 judgment, the judge determined that the computer code had been copied:

The evidence presented shows that there is some creativity in designing the font software programs. While the glyph dictates to a certain extent what points the editor must choose, it does not dictate every point that must be chosen. Adobe has shown that font editors make creative choices as to what points to select based on the image in front of them on the computer screen. The code is determined directly from the selection of the points. Thus, any copying of the points is copying of literal expression, that is, in essence, copying of the computer code itself.

As a result of this judgment, companies must be much more diligent about the font design process. If they develop a font that is very similar to an existing font they must be quite careful that all the design work is original: that every glyph is redrawn and that other software information (such as width metrics) is not based upon the original software 'code' of the font.

Unlike before 1998, it can now be argued that opening up a commercial font in a font design program (such as FontLab), copying the outline to the template or mask layer and redrawing the letter to match the shape of the original is a breach of copyright law. This is true even if every point is new, because the original software code was viewed in FontLab and used as a template for the new work. This is clearly a very strong, new interpretation of the copyright law.

If a type designer wants to 'copy' a font in a manner legal in the USA, he would now be required to print out every glyph at large size on a printer, then scan the image and import it into the font design program. He could then manually or automatically trace the image. This seems to be perfectly legal under current understandings of US copyright law, but may not be morally acceptable.

## References and useful links

Note the dates on some of the following documents. Pre-1998 ones may not reflect current legal practice or interpretation.

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For more information on the [free software](#)<sup>1</sup>, [open source](#)<sup>2</sup> licensing and [copyleft](#)<sup>3</sup> strategies, consult the larger document on [Intellectual Property Concerns in the Development of Complex Script and Language Resources](#)<sup>4</sup>.

Adobe's anti-piracy font info: <http://www.adobe.com/aboutadobe/antipiracy/fonts.html>

Digital Millennium Copyright Act of 1998 (U.S. Copyright Office Summary): <http://www.loc.gov/copyright/legislation/dmca.pdf>

Microsoft's font distribution and license info: <http://www.microsoft.com/typography/faq/faq11.htm>

TypeRight.org: <http://www.typeright.org/>

The TypeRight Guide to Ethical Typeface Design: [http://www.typeright.org/getd\\_print.html](http://www.typeright.org/getd_print.html)

TypeRight legal summary (1997): <http://www.typeright.org/feature4.html>

Comp.fonts FAQ (1996): <http://www.nwalsh.com/comp.fonts/FAQ/index.html>

Copyright and Digital Typography (Paul Schaffner, 1995): <http://www-personal.umich.edu/~pfs/essay2.html>

Extensive set of links regarding font copyright issues: <http://cgm.cs.mcgill.ca/~luc/legal.html>

## Sample font EULAs

Adobe: <http://www.eyewire.com/about/usage/licensing/adobetype-eula.html>

Berthold: <http://www.bertholdtypes.com/info/agreement.html>

Linotype: [http://www.fontexplorer.com/isroot/FontStore/content/00\\_home/content/license.html](http://www.fontexplorer.com/isroot/FontStore/content/00_home/content/license.html)

Microsoft (for their Web fonts): <http://www.microsoft.com/typography/fontpack/eula.htm>

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<sup>1</sup> <http://www.gnu.org/>

<sup>2</sup> <http://www.opensource.org>

<sup>3</sup> <http://www.gnu.org/copyleft/copyleft.html>

<sup>4</sup> [http://scripts.sil.org/cms/scripts/page.php?site\\_id=nrsi&item\\_id=UNESCOIP](http://scripts.sil.org/cms/scripts/page.php?site_id=nrsi&item_id=UNESCOIP)