

As to the lack of the provision, which would state that each accessible format copy respects the integrity of the work or other subject matter, it is to be stressed that the protection of the right of integrity is granted under the PCA. According to Article 16.3, moral rights protect the perpetual, inalienable and non-transferable link between the author and their work and, in particular, their right to protect the integrity of the content and form of a work. It is to be mentioned that the infringement of the right of integrity can occur when distortion, mutilation or other modification, or other derogatory action in relation to the work, would be prejudicial to the honour or reputation of the author (cf Article 6bis of the Berne Convention).

The compensation schemes in the case of copyright exceptions for people with disabilities are not justified by the tradition of Polish copyright law. The regulations that are in force now do not provide such a system in the vast majority of cases of copyright exceptions. The introduction of a compensation system would, therefore, have a negative effect on the situation of blind and partially sighted people in relation to other disabled persons and beneficiaries of other types of exceptions. Moreover, on the basis of Polish realities, it could be a factor hampering the exchange of copies in accessible formats. At the same time, the lack of compensation scheme does not create a threat to the market (cf. justification to the Polish law of 22/11/2018, p. 19–20).

Practical significance

According to the World Health Organization, it is estimated that 253 million people live with vision impairment: 36 million are blind and 217 million have moderate to severe vision impairment. In this respect, the introduction of a new form of exception to economic rights means not only that the Polish legislature has complied with its EU obligations but also helped protect the ability of persons with disabilities to participate on an equal basis in cultural life through access to materials in accessible formats and ensured that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to cultural materials for persons with disabilities (cf the *Convention on the Rights of Persons with Disabilities*).

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doi:10.1093/jiplp/jpy189
Advance Access Publication 16 January 2019

■ US Copyright Office Review Board applies Feist originality standard to fabric pattern

US Copyright Office Review Board, *Hastens Sangar AB Fabric Pattern*, Correspondence ID: 1- 2BDGRHF; SR 1-4268431251, 5 October 2018

In compliance with the enhanced originality standard as resulting from the rejection of the ‘sweat of the brow’ approach in *Feist Publ’ns, Inc v Rural Tel Serv Co*, 499 U.S. 340, 345 (1991), the US Copyright Office Review Board has confirmed the refusal to register a chequered fabric pattern as a copyright work.

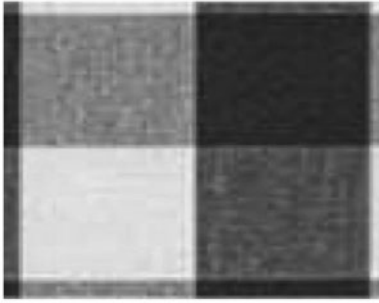
Legal context

Originality has always been one of most important criteria that a work needs to satisfy in order to be eligible for copyright protection. Under 17 USC § 102(a), a work may be protected if it qualifies as an ‘original work of authorship fixed in any tangible medium of expression’. The term ‘original’ consists of two components: independent creation and sufficient creativity. The former means that a work should be created by the author himself and not simply copied from any other work. The latter means that work must display sufficient creativity. The traditional approach in the USA was in the sense of protecting both low authorship works, which required labour and represented mainly economic interest (‘sweat of the brow’), and high authorship works, which required certain level of creativity. However, with the decision of the US Supreme Court in *Feist Publ’ns, Inc v Rural Tel Serv Co*, 499 US 340, 345 (1991), the relevant approach changed, as the ‘sweat of the brow’ was rejected. Today, for copyright protection to arise under US law, a modicum of creativity is required. The decision commented in this note helps to understand how the originality standard established in *Feist* is applied in practice.

Facts

Hastens Sangar wanted to register a copyright claim in a work consisting of a two-dimensional graphic pattern with white, dark blue, medium, blue and light blue rectangles arranged in a chequered pattern.

The Copyright Office refused the registration. According to the examiner, the colour scheme of three shades and the design of the box cheques were not creative enough to constitute a work which could be protected by copyright law (Letter from Sandra Ware, Registration Specialist, to David May, 3 May 2017). Hastens Sangar requested the Office to reconsider its decision on a number of grounds, including that the work at issue produces an optical illusion.



Analysis

In October 2018, the Copyright Office Review Board affirmed the refusal and reached the conclusion that the work of Hastens Sagar does not contain the authorship required to sustain a claim to copyright.

The Copyright Office regulations implement the requirement of creativity that was described in the *Feist* decision, which means that a work must embody some creativity in order to be protected by copyright. According to the Review Board, the work at hand was a simple combination of basic geometric shapes. Such composition of simple squares is commonly used in a number of designs. As for the colours, it was found that use of blue and white did not raise the work to the level of copyrightability. In line with the decisions in *Coach, Inc v Peters*, 386 F Supp 2d 495, 496 (SDNY 2005) and *Satava v Lowry*, 323 F 3d 805, 811 (9th Cir 2003), the Review Board concluded that a simplistic arrangement of elements is not eligible for copyright protection.

Practical significance

There is still a possibility that the Copyright Office will register a work which consists of geometric shapes, but only if these design elements are arranged in a creative way. It is also important to take into account that Copyright Office uses objective criteria to decide whether a work is original or not. The underlying symbolic meaning, impression and the intent of author are irrelevant to whether a work contains a sufficient amount of creativity. The most relevant aspect of the Review Board conclusion is indeed the emphasis on using objective criteria to determine whether a work is sufficiently creative to warrant copyright protection. Such approach might influence whether registration should be granted to, eg contemporary artistic objects. So, some of Kenneth Noland's artworks, that is, schematic compositions in different combinations of colour and paintings composed entirely of horizontal stripes of pure colour, might be unlikely to be regarded as sufficiently original under this test. In a similar fashion, the whole category of ready-made artworks from manufactured objects might be considered insufficiently original as well.

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doi:10.1093/jiplp/jpy188

Advance Access Publication 12 January 2019