Copyright Review Board
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

October 30, 2026

Michael J. Bradford, Esq.
Luedeka Neely Group, P.C.
P.O. Box 1871
Knoxville, TN 37901

Re: Second Request for Reconsideration of Refusal to Register SpeedComp Geriatric SQL (SR #1-9027681301; Correspondence ID: 1-4Q85IVV)

Dear Mr. Bradford:

The Review Board of the United States Copyright Office ("Board") has considered D. Malcom Spica's ("Dr. Spica") second request for reconsideration of the Registration Program's refusal to register a computer program claim in the work titled "SpeedComp Geriatric SQL" ("Work"). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program's denial of registration.

I. DESCRIPTION OF THE WORK

The Work is a set of 28 Structured Query Language ("SQL") queries for a database. The database, which is not claimed as a part of the Work, appears to contain data related to geriatric assessments, *i.e.*, neuropsychological examinations for older adults. Each of the queries is prefaced with a label ranging from 1000 to 1028.[1] For example, query *q1002*:

q1002

SELECT ([1]+[2]+[3]+[4]+[5]+[6]+[7]+[8]+[9]+[10]) AS Total, t1041.ID, t1041.[Laboratory Number], t1041.[Last Name], t1041.[First Name], t1041.Age, t1041.[1], t1041.[2], t1041.[3], t1041.[4], t1041.[5], t1041.[6], t1041.[7], t1041.[8], t1041.[9], t1041.[10], t1041.[Total Correct], t1041.Source, t1041.ApraxiaZScore, t1041.Apraxiapercentile, t1041.ApraxiaRange

FROM t1041;

In addition, the Work has a short title block and a subsequent heading that says, "Microsoft Access Queries." A reproduction of the Work is included as Appendix A.

[1] All the labels have the prefix *q*, two have an additional prefix *1-*, and there is no query *q1018*.

II. ADMINISTRATIVE RECORD

On July 15, 2020, Dr. Spica filed an application to register a copyright claim in the Work. In an August 5, 2020 letter, a Copyright Office registration specialist refused to register the claim, determining that "material submitted does not contain a copyrightable computer program or any other copyrightable authorship," and noting that the Work "appears to contain uncopyrightable database queries." Initial Letter Refusing Registration from U.S. Copyright Office to Rick Barnes at 1 (Aug. 5, 2020).

On October 27, 2020, Dr. Spica requested that the Office reconsider its initial refusal to register the Work, arguing that "[t]he SQL code . . . is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result," and that it constitutes "source code, which is in a human readable format and which must be translated to a machine readable format in order to be processed by the computer." Email from Rick Barnes to U.S. Copyright Office (Oct. 27, 2020) ("First Request").

After reviewing the Work in light of the points raised in the First Request, the Office reevaluated the claims and again concluded that it could not be registered. Refusal of First Request for Reconsideration from U.S. Copyright Office to Rick Barnes (Mar. 23, 2021). While agreeing with Dr. Spica that the Work is a computer program, the Office found that "it does not contain sufficient original and creative authorship to support a copyright registration." *Id.* at 1. Specifically, the Office concluded that the deposited code "consist[s] of precise commands for returning specific search inquiries," and that these commands "are determined by the search, not creativity." *Id.* at 3.

On June 23, 2021, Dr. Spica requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. Email from Rick Barnes to U.S. Copyright Office (June 23, 2021) ("Second Request"). Dr. Spica made three arguments for why the Work contains sufficient original and creative authorship to support registration.

First, he argued that the Work "brings in data from a large database," which "contains much more data than what is retrieved," and this "selective retrieval" evidences creativity. *Id.* Another author might select "a different combination of data elements to retrieve and operate upon, so as to - for example - achieve a different result, or achieve the same result in a different manner." *Id.* In addition, the queries include nested "conditional JOIN, ON, and AND commands," which indicate "a complex logical manipulation of the data - not a mere retrieval of whatever might just happen to be in the database." *Id.* He claimed that these "[l]ogical statements" are "evidence of creativity . . . and can be found in many different places throughout the work." *Id.*

Second, Dr. Spica argued that "the work does more than merely retrieve the data from the database," it also "performs operations upon the retrieved data." *Id.* He illustrated this with the following excerpt from query *q1004*:

> SELECT -1*([1]+[2]+[3]+[4]+[5]+[6]+[7]+[8]+[9]+[10]+[11]+[12]+[13]+[14]+[15]+
> [16]+[17]+[18]+[19]+[20]+[21]+[22]+[23]+[24]+[25]+[26]+[27]+[28]+[29]+[30]) AS
> Total

Dr. Spica explained that "[t]his operation reads in data, sums it, and gives the resultant sum a new name of Total." *Id.* He claimed that this "evidences mathematical manipulation of the data that is retrieved," and that "[m]athematical operations such as this are . . . found throughout the work." *Id.*

Finally, Dr. Spica argued that the SQL queries are "not at all determined by the search - they are determined by the creativity of the author of the work to produce desired results from the data in a desired manner." *Id.* He explained that "[a]nother author might retrieve completely different data from the database, perform different operations upon that data, in a different manner, and produce completely different results." *Id.*

III. DISCUSSION

After carefully examining the Work and considering the arguments made in the First and Second Requests, the Board finds that the Work does not contain the creativity necessary to sustain a copyright claim.

A. The Legal Framework

1) Computer Programs

The Copyright Act protects "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." 17 U.S.C. § 102(a). The term "works of authorship" includes "literary works," *id.*, which are in turn defined as works "expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects . . . in which they are embodied." *Id.* § 101. It is well settled that Congress intended to protect "computer data bases, and computer programs" under copyright law, and that for purposes of section 102(a), these types of works would be classified as literary works. H.R. REP. NO. 94-1476, at 54, *reprinted in* 1976 U.S.C.C.A.N. 5659, 5667. Section 101 defines a "computer program" as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." 17 U.S.C. § 101. Various other Copyright Act provisions confirm that a person may own a copyright in a "computer program." *See, e.g.*, 17 U.S.C. §§ 109(b)(1)(A), 117, 506(a)(3)(A).

Computer programs typically contain both literal and nonliteral elements. The literal elements include the source code and object code constituting the program. The nonliteral elements may include the architecture of the computer program; the structure, sequence, and organization of the program; the relationships and interconnections between these elements; and any flowcharts that illustrate these relationships, as well as the user interface. *See, e.g.*, *SAS Inst., Inc. v. World Programming Ltd.*, 64 F.4th 1319, 1326 (Fed. Cir. 2023); *Eng'g Dynamics Inc. v. Structural Software, Inc.*, 26 F.3d 1335, 1341–42 (5th Cir. 1994); *Gates Rubber Co. v. Bando Chemical Indus.*, 9 F.3d 823, 835 (10th Cir. 1993); *Comput. Assocs. Int'l, Inc. v. Altai, Inc.*, 982 F.2d 693, 702 (2d Cir. 1992). Courts have recognized that both the literal and nonliteral elements of a program may be eligible for copyright protection under section 102(a) of the Act. *See, e.g., Altai*, 982 F.2d at 702 (source and object code protectable); *Comput. Mgmt.*

Assistance Co. v. DeCastro, 220 F.3d 396, 400 (5th Cir. 2000) (literal and nonliteral elements protectable).

Computer programs can be represented by source code or object code. COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 721.5 (3d ed. 2021) ("COMPENDIUM (THIRD)"). Source code is a "set of statements and instructions written by a human being using a particular programming language," which is generally "comprehensible to a person who is familiar with the relevant programming language." *Id.* § 721.3. Object code is "the representation of a computer program in a machine language," and "is comprehensible to a computer or other electronic device, but it is not intended to be read by human beings, and as a general rule, it is not directly comprehensible to human beings." *Id.* § 721.4.

2) Originality

A work may be registered if it qualifies as an "original work[] of authorship fixed in any tangible medium of expression." 17 U.S.C. § 102(a). In this context, the term "original" consists of two components: independent creation and sufficient creativity. *See Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). First, the work must have been independently created by the author, *i.e.*, not copied from another work. *Id.* Second, the work must possess sufficient creativity. *Id.* Only a modicum of creativity is necessary, but the Supreme Court has ruled that some works (such as the alphabetized telephone directory at issue in *Feist*) fail to meet even this low threshold. *Id.* The Court observed that "[a]s a constitutional matter, copyright protects only those constituent elements of a work that possess more than a *de minimis* quantum of creativity" and that "garden-variety," "obvious," or "practically inevitable" selection, coordination, and arrangement lack the necessary "creative spark required by the Copyright Act." *Id.* at 362–64.

Some combinations of common or standard design elements may contain sufficient creativity with respect to how they are juxtaposed or arranged to support a copyright claim. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *See Feist*, 499 U.S. at 358 (finding the Copyright Act "implies that some 'ways' [of selecting, coordinating, or arranging uncopyrightable material] will trigger copyright, but that others will not"). A determination of copyrightability in the combination of standard expressive elements depends on whether the selection, coordination, or arrangement is done in such a way as to result in copyrightable authorship. *Id.*; *see also Atari Games Corp. v. Oman*, 888 F.2d 878, 883 (D.C. Cir. 1989); *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 498–99 (S.D.N.Y. 2005). As the Ninth Circuit has explained, "a combination of unprotectable elements is eligible for copyright protection only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship." *Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003).

The Office's regulations implement the longstanding requirement of originality set forth in the Copyright Act. *See* 37 C.F.R. § 202.1. In its regulations and publications, the Office has explained that copyright does not protect "words and short phrases" or a "mere listing of ingredients or contents." *See id.* § 202.1(a); COMPENDIUM (THIRD) § 313.4(C), 313.4(F). Copyright likewise does not protect "[b]lank forms, such as time cards, graph paper, account

books, diaries, bank checks, scorecards, address books, report forms, order forms and the like." 37 C.F.R. § 202.1(d); COMPENDIUM (THIRD) § 313.4(G).

3) Systems, Methods of Operation, and Merger

Section 102(b) of the Copyright Act provides that the copyright in a work 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. § 102(b). This section codifies the longstanding principle, first recognized by the U.S. Supreme Court in *Baker v. Selden*, that while copyright law protects the original expression of ideas, it does not extend to the underlying ideas themselves. 101 U.S. 99, 102–04 (1879) (holding that a copyright in a book describing a bookkeeping system that included blank forms protected only how the rightsholder "explained and described a peculiar system of book-keeping" and did not grant the right to prevent others from using the system described in this book or "the exclusive right to make, sell, and use account-books prepared upon the plan set forth in such book").

A closely related principle, also stemming from *Baker*, is the merger doctrine. When there is only one way, or only a limited number of ways, to convey the idea that the author seeks to express, the author's expression cannot be protected under copyright law because that would result in a monopoly over the idea itself and prevent others from using that same idea in other works. *See, e.g., Herbert Rosenthal Jewelry Corp. v. Kalpakian*, 446 F.2d 738, 742 (9th Cir. 1971) ("When the 'idea' and its 'expression' are thus inseparable, copying the 'expression' will not be barred, since protecting the 'expression' in such circumstances would confer a monopoly of the 'idea' upon the copyright owner free of the conditions and limitations imposed by the patent law."); *Morrissey v. Procter & Gamble Co.*, 379 F.2d 675, 678–79 (1st Cir. 1967). On the other hand, where the same idea may be expressed in many different ways, the author's expression of that idea may be copyrightable. *See Soc'y of Holy Transfiguration Monastery, Inc. v. Gregory*, 689 F.3d 29, 53 (1st Cir. 2012) (rejecting merger argument regarding translations of ancient Greek texts because "the art of translation involves choices among many possible means of expressing ideas") (internal marks omitted). Thus, the Office's regulations expressly preclude registration of "methods [or] systems . . . as distinguished from the particular manner in which they are expressed or described in a writing." 37 C.F.R. § 202.1(b). In cases where merger may apply, the Office examines whether the work contains an appreciable amount of expression that can be separated from its underlying idea. *See, e.g.,* COMPENDIUM (THIRD) § 313.4(G). For example, "contracts, insurance policies, and other textual documents with 'fill-in' spaces may be registered if they contain a sufficient amount of expressive, literary authorship that is not standard or functional." *Id.* But "the mere inclusion of a large number of terms on a blank form may not satisfy the originality requirement if those terms are part of a system for recording information, such as a medical diagnostic form." *Id.*

4)* Scènes à Faire *and External Constraints

Scènes à faire, or "scenes that must be done," is a common law doctrine that limits the scope of copyright in works that otherwise qualify for copyright protection by excluding from protection any commonplace elements that lack originality. *See, e.g.*, *Walker v. Time Life Films, Inc.*, 784 F.2d 44, 50 (2d Cir. 1986); *Gates Rubber Co.*, 9 F.3d at 838; *Lexmark Int'l, Inc. v.*

Static Control Components, Inc., 387 F.3d 522, 535 (6th Cir. 2004). It provides that the expressive elements of a work are not entitled to protection if they are standard, stock, or common to a particular topic, or if they necessarily follow from a common theme or setting. *Gates Rubber Co.*, 9 F.3d at 838. Courts have recognized that extending copyright protection to the necessary incidents of a particular theme or setting would grant a monopoly to the first person who adopted that form of expression. *See, e.g.*, *Hoehling v. Universal City Studios, Inc.*, 618 F.2d 972, 979–80 (2d Cir. 1980). Accordingly, the Office will not register works that consist entirely of *scènes à faire* or other unprotectable elements. *See* COMPENDIUM (THIRD) § 313.4(I).

Although *scènes à faire* principally applies in cases involving fictional or dramatic works, the doctrine also extends to computer programs. Courts have recognized that *scènes à faire* may limit or even eliminate protection for elements of a computer program that are dictated by external factors or by efficiency concerns, such as the mechanical specifications of the computer that runs the program, compatibility requirements of other programs that the program is intended to work with, hardware design standards that have been adopted by computer manufacturers, widely accepted programming techniques within the computer industry, as well as the demands of the industry that is expected to use the program. *See, e.g., RJ Control Consultants, Inc. v. Multiject, LLC*, 100 F.4th 659, 674–75 (6th Cir. 2024) (applying doctrine to code changes made to accommodate new hardware and dictated by industry standards); *Lexmark*, 387 F.3d at 535–36 (outlining applicability of doctrine to computer programs and specifically, "lockout" codes); *Computer Management Assistance Co.*, 220 F.3d at 400–02 (same, considering stock industry demands in connection with program for tracking orders, inventory, and promotional pricing); *Mitel, Inc. v. Iqtel, Inc.*, 124 F.3d 1366, 1374–76 (10th Cir. 1997) (addressing hardware compatibility requirements and industry practices); *Altai*, 982 F.2d at 709, 715 (applying doctrine in context of computer programs).

B. Analysis of the Work

The Work is a set of 28 SQL queries for a medical or research database related to geriatric assessments, which has various tables, such as *t1041* and *t1116*, and columns, such as *Laboratory Number* and *Last Name*.[2] Dr. Spica does not claim ownership of the database and explicitly asserts that it is "completely separate from the work." Second Request. Instead, he seeks to register the queries as a "computer program."

To start, the Board observes that it is questionable that the Work qualifies as a "computer program," even as that term is broadly defined in the Copyright Act. The Work has no obvious programmatic structure, and many of the 28 queries are completely independent. One such query is *q1002*, which does not reference any other query, is not referenced by any other query, and requests data from a source table that is also not referenced by any other query. The same is true of queries *q1003*, *q1004*, and many others. Rather than a single coherent program, the Work is closer to a collection of loosely related code snippets, all of which draw on the same database.

[2] Although the database was not provided with the application, the Board assumes for the purpose of this determination that it includes the tables and columns expected by the queries, and that the columns contain content consistent with their descriptive names.

At most, there are a handful of "chained" or "nested" queries, meaning the results of one are used as the source for another.

The queries themselves are also not computer programs in the colloquial sense; unlike the code for most computer programs, they have no variables, no functions, and no control structures. Instead, they are declarative statements that "specify the rules by which results may be computed . . . rather than specifying the algorithms by which those results must be computed."[3] They are analogous to complex email searches composed of various logical rules defining the searches by keywords, recipients, dates, attachments, size, etc.[4]

More precisely, each query has up to four types of rules:

> **(1) Column Retrieval**. The queries are predominantly comma-separated lists that identify desired columns for retrieval. Over 80% of the characters in query *q1002* list pre-existing columns by name. The other 27 queries are similarly composed.
>
> **(2) Arithmetic**. Some queries contain simple mathematical statements that return their results in new columns. Query *q1002* requests the sum of ten sequentially numbered columns in a new column called *Total*, while many of the other queries contain similar summations.
>
> **(3) Joins**. Some queries request data from multiple tables and therefore specify the algebraic rule for how the tables should be combined or "joined." For example, query *q1028* joins a series of tables where they match on *Laboratory Number*, using left joins.[5]
>
> **(4) Ordering**. Two of the queries specify that their results should be sorted by *Date Tested – 1*, in descending order.

The most programmatic parts of the queries are the mathematical and join statements, as they arguably process data rather than simply retrieve it. Whether that is enough to qualify as a "computer program" under Section 101 is a difficult question. But it is not one that needs to be answered here.

Even if the Work satisfies the statutory definition of a "computer program," it is not sufficiently creative to be copyrightable. The queries are simply logical statements that specify rules for retrieving and presenting pre-existing data relating to geriatric assessment test results. They are not determined by creativity but by the ideas underlying the queries, SQL syntax, the pre-existing table and column names, and industry standards.

---

[3] ISO/IEC, Information technology — Database languages — SQL — Part 1: Framework (SQL/Framework), 6 (ISO/IEC 9075-1:2023).

[4] *See, e.g.*, How to Search in Outlook, MICROSOFT.COM, *https://support.microsoft.com/en-us/outlook/getstarted/how-to-search-in-outlook* (last visited Oct. 29, 2026).

[5] For a description of left joins, *see* LEFT JOIN, RIGHT JOIN, Operations (Microsoft Access SQL), MICROSOFT.COM, *https://learn.microsoft.com/en-us/office/client-developer/access/desktop-database-reference/left-join-right-join-operations-microsoft-access-sql* (last visited Oct. 29, 2026).

Consider query *q1002*, copied in full above. It has two rules: one for retrieval and a second for arithmetic. The retrieval rule is just a comma-separated list of twenty columns identified by table (*t1041*) and name (*e.g., ID*, *Laboratory Number*, *Last Name*, *First Name*, *Age*, and other names relating to test scores for a motor disorder called apraxia). The code listing these columns cannot be separated from the idea of retrieving those columns. There are only limited ways for a query to express this selection and ordering of columns without compromising efficiency or performance; thus, the resulting code is not copyrightable because it is effectively merged with an unprotectable idea or system. *See Altai*, 982 F.2d at 708 ("While, hypothetically, there might be a myriad of ways in which a programmer may effectuate certain functions within a program . . . efficiency concerns may so narrow the practical range of choice as to make only one or two forms of expression workable options.").

While one *could* select different columns or choose a different order, it is not creativity that determined either here. The selection and ordering of database columns in the Work's queries are largely dictated by industry standards, such as those for evaluating apraxia test results, and are otherwise "garden-variety," "obvious," or "practically inevitable." *See Feist*, 499 U.S. at 362–63. It is not creativity but rather functional or industry requirements that would lead one to select basic patient identifiers, followed by raw scores, the total, the data source, and a handful of standard statistical measures, like z-score and percentile. *See RJ Control Consultants*, 100 F.4th at 674–75; *Computer Management Assistance Co.*, 220 F.3d at 400–01.

The arithmetic rule, and remainder of the query, is simply a mathematical statement that requests the sum of ten columns, numbered *1* through *10*, in a new column called *Total*. Again, this is inseparable from the underlying idea; it is, essentially, an unprotectable system or method of operation. *See* 17 U.S.C. § 102(b). While one *could* rewrite the formula by changing the order of the terms, or choosing a different descriptive word for the result, there is nothing creative in a standard numerical ordering, or use of the word "total" for a sum. There is no creative expression in the SQL equivalent of $1 + 2 + 3 + 4 + 5 + 6 + 7 + 8 + 9 + 10 = Total$. *Cf. Feist*, 499 U.S. at 362–63 (explaining that "there is nothing remotely creative about arranging names alphabetically in a white pages directory.").

Notably, where the Work had the potential to demonstrate creative expression, it does not. The queries have generic, sequential identifiers; the tables are not aliased (*i.e.*, temporarily renamed or relabeled) and retain generic identifiers from the underlying database; there are no comments; and there is no formatting for readability. To the extent the code was written manually, rather than generated using a graphical query builder,[6] it does not appear to have been done creatively, but only to express the desired logic in a manner that most efficiently effectuates the idea embodied in the code. This is true not only for *q1002*, but all 28 SQL queries comprising the Work. Thus, after careful examination, the Board finds that the Work fails to satisfy the requirement of creative authorship and is not copyrightable.

Dr. Spica's counterarguments are unavailing. He first points to "selective retrieval," "complex logical manipulation," and "logical statements" as evidence of creativity. But, as

[6] *See, e.g.*, Create a query, form, or report in Access, MICROSOFT.COM, *https://support.microsoft.com/en-US/Access/training/create-a-query-form-or-report-in-access* (describing a "Query Wizard" feature) (last visited Oct. 29, 2026).

noted above, the retrieval and ordering of the columns are dictated by industry standards for reporting on pre-existing medical assessment data, or are otherwise "garden-variety," "obvious," or "practically inevitable." As for the "logical manipulation" and "logical statements" described by Dr. Spica, these are ideas that are inseparable from their expression in basic SQL syntax.

Dr. Spica claims that the queries "perform[] operations upon the retrieved data," just like any other program. Second Request. In support, he cites a mathematical statement from query *q1004*, which multiplies −1 by the sum of 30 sequentially numbered columns, and returns the result in a new column named *Total*. Like the mathematical statement discussed above, there is nothing creative in the straightforward negation of a sum in SQL syntax.

Finally, Dr. Spica claims that the queries are creative because "[a]nother author might retrieve completely different data from the database, perform different operations upon that data, in a different manner, and produce completely different results." Second Request. But this misses the point. The Office does not consider the novelty or ingenuity of the work or whether the author could have made alternative choices. COMPENDIUM (THIRD) §§ 310.1, 310.8; *see* H.R. REP. NO. 94-1476, at 51 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5664. Dr. Spica cannot claim copyright in logical operations or his system for evaluating geriatric assessment data, *see* 17 U.S.C. § 102(b), thereby requiring others to produce "completely different results" or risk an infringement action. His only potential claims would have been in the creative expression of the underlying logical operations or in the selection and presentation of the data; however, as explained here, there is no indication that he made creative choices sufficient to satisfy the originality standard for copyright protection.

IV. CONCLUSION

For the reasons stated herein, the Board affirms the refusal to register the copyright claim in the Work. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.

Maria Strong

U.S. Copyright Office Review Board
Maria Strong, Associate Register of Copyrights and
Director of Policy and International Affairs
Nicholas R. Bartelt, Assistant General Counsel
Michael J. Druckman, Assistant General Counsel