

What Does it Mean When I See a Copyright on an Architect's Drawings?

By Thomas L. Rosenberg



Often we hear about an architect providing a copyright to its drawings. From a contractor's perspective, what does this mean? Why does an architect copyright its drawings?

COPYRIGHT ACT

By way of background, in 1976, Congress enacted the Copyright Act. This law aims to protect "original works of authorship fixed in any tangible medium of expression." Section 102 of the Act lists the number of categories which it considers to be protected works of authorship. Prior to 1990, architectural works were not listed as a specifically protected category. However,

many courts protected architectural design drawings and plans under the "pictorial, graphic, and sculptural works" subsection. Courts limited, however, the scope of this copyright protection to only the drawings or plans themselves and not necessarily the design depicted in the drawing or plan. The justification asserted was the belief that architecture primarily served a utilitarian function rather than a creative function.

CHANGE IN THE '90S

Things changed in 1990 when Congress passed the Architectural Works Copyright Protection Act (AWCPA) to defeat court precedent which held that a building

design was not protected by the copyright act by adding "architectural works" as an expressly protected work of authorship. An architectural work has been defined as the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. It is meant to include the "overall form" and "arrangement and composition of spaces and elements in the design," but does not extend to "individual standard features," such as windows, doors, and other utilitarian-like structural elements. Additionally, copyright protection only extends to the design of a building which encompasses those types of

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structures which are habitable by humans. Thus, structures such as bridges, dams, walkways, tents, mobile homes, and boats are not within the scope of protection. The AWCPA only applies to building designs and plans created on or after December 1, 1990.

COPYRIGHT NOTICE

Very little is needed to create an architectural works copyright. Some contend that a person need not take any steps to create a copyright since a copyright exists the moment the innovation is transferred from the mind to the page. Others state that the creator of the work should take several protective steps to help protect the infringement of their plan or design. The author should place a copyright notice on any depiction of the work to supply the public with instant notice of protection. A copyright notice should include a © sign, the word "Copyright," or the abbreviation "Copr." It also should include the year of first publication and the name of the author. It should be placed in a position that will provide reasonable notice of the claim of copyright. On most architectural plans or designs, this means on the front or back of the documents.


REGISTER FOR BEST PROTECTION

For best protection, copyrighted owners register their copyright with the U.S. Copyright Office because benefits are available only to those who register. First, registration puts the general public on notice that the author has a valid copyright. Second, a copyright infringement claim is only available to copyright owners who have registered their work. Thus, if one wishes to prevent future infringement, or sue an infringer for damages, he or she must register the work prior to filing suit, whether that occurs before or after the alleged infringement.

The Copyright Act also offers several exclusive remedies to those who have registered prior to an alleged infringement. A copyright holder may be eligible for statutory damages as well as lost profits, injunctive relief to prohibit the use of the design and drawings, and recovery of attorneys' fees if the holder registered within certain time limitations prior to the act of infringement. Statutory damages can become excessive and this is important because often actual damages are limited and difficult to prove.

With technology, architects are able to produce designs through the use of digital tools and computer software much quicker than ever before. Unfortunately, the copying or stealing of plans and designs is taking place at the same rapid pace. Early registration helps one take full advantage of the U.S. copyright laws.


Therefore, a design builder, architect, or engineer can avoid unnecessary problems by obtaining a copyright for their drawings. From a contractor's standpoint, the contractor must recognize and respect the copyright on a drawing and not use it for improper purposes or on other projects without the author's permission. ■



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