



## Should I Copyright My Drawings? Part II

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Technically speaking, a person does not need to take any steps to create a copyright, since a copyright will exist the moment the innovation is transferred from the mind to the page. Once that copyright has been created, the author will receive a number of exclusive rights. For example, the author will have the exclusive right to duplicate and reproduce the protected work. Additionally, the copyright holder will be the only person who can prepare derivative works of the plan or design, distribute the work via sale, rent, or lease, or display the work.

Nevertheless, while nothing is needed to create an architectural works copyright, authors should take several protective steps to help prevent the infringement of their plan or design. First, after an architectural work has been created, the author should place a copyright notice on any depiction of the work to supply the public with instant notice of protection. All copyright notices should include:

1. A © sign, the word “Copyright,” or the abbreviation “Copr.”
2. The year of the first publication, and
3. The name of the author.

This information should be included on any copies of the work and 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 copies.”

Second, all copyright owners should register their copyright with the United States Copyright Office, as significant benefits will be available only to registered copyright owners. First, registration will put the general public on notice that the author has a valid copyright claim available. Second, and most importantly, a copyright infringement claim is only available to copyright owners who have registered their work. Thus, if one wishes to prevent further 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.

Many victims of infringement, i.e., the author of the design or plan, are not notified of an infringer’s intent to use the architectural work. Thus, when discovery of an infringement does occur, it is usually the result of a random visit to the building site. Additionally, many view construction and architectural projects as job-specific and, consequently, view the designs and plans as having a very limited use outside the confines of that specific project. As a result, registration typically only occurs after the initial discovery of the alleged infringement.

However, as an incentive to register each and every work in a timely manner, the Copyright Act offers several exclusive damage remedies to those who have registered prior to the alleged infringement. A copyright holder may be eligible for statutory damages as well as profit damages, injunctive relief to prohibit the use of the design and drawings and the recovery of attorney fees if that holder registered either three months after publication of the work, or prior to the infringement. Statutory damages generally range from \$750 to \$30,000, but if the copyright holder can prove that the infringement was willful, the court may award up to \$150,000 in damages. In contrast, a holder who failed to register prior to the alleged infringement will only be eligible for actual and profit damages, and/or injunctive relief. Thus, because actual damages

are, oftentimes, limited and difficult to prove, there is a significant advantage to early registrants. Finally, if registration is completed within five years of publication of the work, it will constitute as prima facie evidence of the validity of a copyright.

Registering for a copyright is a simple process. First, the author must verify that the design will qualify as an architectural work by making sure the work will fit within the scope of protection described last week. Next, the author must complete an application Form VA. This form simply requires basic information about the work to be registered, such as, the title of the work, the name of the author, the nature of the work (architectural work, in this case), and the year of creation and publication. Third, the author must include a nonreturnable copy of the material or work to be registered. This “deposit requirement” has been described by the Copyright Office as “one complete copy of an architectural drawing or blueprint in visually perceptible form showing the overall form of the building and any interior arrangement of spaces and/or design elements in which copyright is claimed.” This deposit will be required whether the building has been constructed or not. However, if the building has already been constructed when the author decides to register the work, the author “must also include identifying material in the form of photographs that clearly disclose the architectural work being registered.” Finally, to complete the registration, the author must send, in one envelope or package, the Form VA, the deposit, and a \$30 payment to “Register of Copyrights,” to:

Library of Congress  
Copyright Office  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

Once the package has been mailed, the author should expect to wait between four and six months to receive the registration certificate. However, the effective date of registration will be the date on which the Copyright Office receives the package, regardless of the length of time it takes to process the application.

In our new age of technology architects are able to produce designs through the use digital tools and computer software at alarming speeds. Unfortunately, the copying or stealing of the plans and designs is taking place at the same rapid pace. Because early registration is required to take full advantage of the U.S. copyright laws, architects may want to register all of their works as soon as possible after their completion. A failure to do could end up causing unnecessary problems in the future and costing architects a significant amount of money.

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