
RECOMMENDED GUIDELINES FOR ACCORD POLICY ON INTELLECTUAL PROPERTY AND COPYRIGHT

Accord Policy on Intellectual Property and Copyright

That the national law of a UIA member section should entitle an architect to practice his/her profession without detriment to his/her authority and responsibility, and to retain ownership of the intellectual property and copyright of his/her work.

The UIA desires to develop and maintain the protection of the intellectual property and copyright of architects in their works in a manner as effective and uniform as possible. The UIA recognises the profound impact of the development and convergence of information and communication technologies on the creation and use of artistic works. Moreover the UIA emphasises the outstanding significance of copyright protection as an incentive to artistic creation, while recognising the need to maintain a balance between the rights of authors and the larger public interest.

The works mentioned in this Guideline should enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his/her successors in title.

Preamble

Architectural services are characterised by the intellectual capacity of the architect. Qualified architects are capable of developing creative building solutions by-applying their knowledge and skill to a consideration of the client's requirements. The ideas and concepts created by the intellectual activity of architects are the products, which enables them to practice as architects. The importance of this creative intellectual endeavour requires that it have strong protection. Protection of -intellectual property rights guarantee that others cannot exploit the intellectual effort of architects and other creators of original works. This protection provides an incentive for further creative and innovative development in architecture for the benefit of clients and the public. This fact is essential for cultural improvement in architecture, which becomes more and more important in a globalized world in order to allow people to identify themselves with their built environment.

Intellectual Property means the rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, such as copyright rights, patent rights and others. As opposed to property of things, intellectual property covers the intellectual effort. Intellectual property is a general term made further concrete in patent law, copyright law or trade mark law.

Copyright covers specifically the intellectual effort regarding an artistic creation as opposed to the intellectual effort regarding the development of a pure technical process or object, which can only be protected under patent law. Copyright protects the interest of authors in relation to their creations and grants them the exclusive right of using their creations.

To provide services successfully in foreign countries architects must have the assurance that their intellectual property in their creative works are protected. Therefore it is important that intellectual property is protected in all countries to provide the necessary security for architects to confidently provide the best service to their clients. In this aspect the UIA Guideline on Practice in a Host Nation plays an important role in furthering cross-border services while protecting the intellectual property of architects.

Guideline

The following Guideline attempts to define the key concepts, issues and common eventualities relating to intellectual property rights in the field of architecture. These include definitions of “author” and the “works “ that are subject to copyright and issues such as moral rights, protection, ownership and enforcement.

1. Author

1.1 Initial Ownership

The author of a work is the person who created that work, and is presumptively the owner of the copyright in the work. An author is always a natural person. Corporations, businesses or public entities may, however, own copyright of a work when the work is made under a consultancy agreements (See 1.2) or if the authors agree to assign their rights, provided that this is regulated in the relevant national copyright law.

1.2 Works made under employment and consultant agreements

In the case of works authored by an architect while under an employment arrangement, the employer is presumptively the owner of the copyright, however this may be altered by explicit terms in the agreement of employment. In the case of works authored by an architect engaged as consultant, the architect is presumptively the owner of the copyright. However, if the law permits copyright may be transferred by agreement and with the consent of the author As copyright is a commercial property it is appropriate that payment, in addition to the fees paid for architectural services, is made to architects who agree to transferring the ownership of the copyright in their work.

1.3 Collective Works

Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

Copyright in a collective contribution in creating work vests in all authors of the collective work. All authors have the same rights connected to the copyright. Those rights can only be used collectively regarding the work as a whole.

2. Protected works

Copyright protects “original works of authorship” that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it can be communicated with the aid of a machine or device. No publication or registration or other action is required to secure copyright. Copyright is secured automatically when the work is created for the first time.

2.1 Architectural works

Protected works under this guideline are original architectural works of authorship fixed in any tangible medium of expression, which represent a personal and original intellectual creation. Novelty, ingenuity, or aesthetic

merit are not qualifying criteria for protected works. The necessary standard of originality requires only that the work owes its existence to the efforts of the author and is not merely a copy of a pre-existing work.

Copyright protection extends only to documented or built works and not to ideas, procedures, methods of operation or mathematical concepts as such, because these works might be protected under the relevant technical protection rights such as patent rights. Copyright protection can cover any kind of architectural work.

2.2 Protection of specific architectural works

2.2.1 Documentation of architectural designs.

Documentation of architectural designs and buildings either in electronic or hardcopy form can be protected under copyright. Apart from the plans, drawings, schemes, etc. of the object as a copyright protected work, the object itself can be protected, if-realized in three dimensions. This refers also to works of town planning and urban design.

2.2.2 Expert opinions, specifications and other documents

The given form of representation of expert opinions, specifications and other documents can be protected under copyright, if they represent a personal creation. The protection does not cover the content of the document but only the form of representation, in order to distinguish copyright from technical protection rights such as patent right.

2.2.3 Buildings

A building can be protected under copyright, assuming the design fulfils the requirements of a personal creation of originality (See above 2.1). Similarly, parts of buildings or the combination of buildings can be protected as well as the newly creative assembled combination of already known elements as an ensemble. Style, taste, aesthetic value or fashion are of no importance to the question, if the work has the necessary creative character. Any building or architectural work can be protected under copyright-.

3. Protection of the author's interests

The architect as owner of copyright has the exclusive rights to authorise the reproduction of her/his works in copies, as long as they are protected under

copyright law. Unauthorised reproduction by others may give -the right to the author to initiate legal action.

However it must be noted that in the field of architecture many building elements are already known, such as doors, windows, roofs and walls and hence limit the architectural creation. This is why the issue of infringement of copyright only arises, if a unique concept of a building, an extravagant technical detail or an extraordinary appearance of a building is copied. The mere influence of existing architectural works on the design of new - architectural works does not constitute an infringement of copyright.

Droit Moral/ Moral Rights

The so-called “moral rights” include the right of attribution and the right of integrity in the protected works. These rights provide for recognition of authorship and protection of the works against violations.

3.1 Right to publish architectural work

Subject to the laws relating to privacy authors of architectural works should enjoy the exclusive right to publish their work. This right applies to architects only in a limited way because in general they have no say in the - publication of the building they design for the client. However, the architect should have the power to decide if, when and how plans and pictures of his work are going to be published. In addition designs entered in architectural competitions should only be published and exhibited in accordance with the conditions of the competition or with the specific approval of the author.

Works produced by students in the course of their studies should only be published and exhibited as required for the purpose of scholarly evaluation and criticism. Students work should not be published for other reasons without the consent of the student.

The use of a copyrighted work for purposes such as criticism, comment, news reporting, teaching, scholarship or research should not be an infringement of copyright. The use for such purposes is sometimes referred as the 'fair use' exception to copyright protection. There are reasonable limitations on such fair use; which has the effect of reducing the author's market for the copyrighted work

3.2 Recognition of authorship

Authors should have the right to put their name on their work and to have the work attributed to them when it is published. This recognition is especially important for sketches, plans and other documents, but it applies also to the built facility. Even though a copyright notice is not a condition of copyright protection, the notice should be displayed, particularly on drawings and other architectural documents, for clarification. In doing so, the author can avoid a defence of innocent infringement in mitigation of actual or statutory damages. A possible copyright notice could read: “Copyright © Associated Architects, Inc. 1999”.

3.3 Violation of architectural works

Besides the author’s economic rights and even if those rights are transferred someone else the author should have the right to claim authorship of the work and to object to plagiarism, distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation. This right, sometimes described as the Moral Right to Integrity in created work, should be maintained even after the death of the author, at least until the expiry of the economic rights, and should be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed.

3.4 Alterations - Balancing the interests of owners and architects when buildings are altered

The long duration of a building makes it probable that adaptations, extensions or other changes are necessary. The client invested once in that building and must have the possibility to alter it according to his economical needs. The owner or user of the building must have the right to adapt the building to changing needs or purposes, which often includes changes in the architectural concept. Also changing public building regulations may require the alteration of a building.

At the same time the reputation of architects is largely established by their built works. Alterations to a building therefore have the potential to denigrate the reputation of the architect who is publicly known to be the author of the building. The alteration must ensure that the architects' personal interest for consistency of the building is safeguarded and their architectural capabilities are not disparaged or devalued in public. The architect is endangered that after unauthorized alteration of his publicized work he is

still recognized as the architect of that work. In the eyes of the public the author will then be seen as having made those new architectural expressions, which can damage his/her image.

It is necessary, therefore, to find a balance between the two interests: Interest of the owner for alteration and the interest of the author for consistency. In finding that balance one has to take into account that the original architect of a building has more insight than anybody else regarding possibilities in developing the building for changing demands. Because of the original architect's profound knowledge about the design, construction and environment of his creation only that architect is in the best position to develop the necessary solutions while respecting the design of the building and its aesthetic qualities. Consequently it is recommended that the author of a building should have the legal right to be consulted prior to the building being altered. Such a right would not prohibit owners from proceeding with alterations to suit their requirements. However a consultation conducted in good faith provides an opportunity for the owner to consider maintaining the integrity of the original design or, if necessary, for the architect to publicly dissociate from the altered works.

3.5 Destruction

The right of objecting to the alteration of the work should include also the right to object to its destruction. Contrary to alteration the destruction of the work does not include the danger that the architect will be recognized as the author of the altered work. However the destruction of the work still violates the moral right of integrity in the architect's work. The author has an interest in the work continuing to establish and maintain his or her professional reputation. Therefore the right of the owner to demolish the building conflicts with the moral right of the architect. Hence the right for destruction of a building must be balanced with the author's right for consistency.

4. Term of Protection

The term of copyright protection should extend to fifty years beyond the death of the author of the work.

5. Enforcement of Copyrights

The UIA recommends that laws and enforcement procedures are available that permit effective action against any act of infringement of intellectual property rights covered by this Guideline. These procedures should be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. Procedures concerning the enforcement of intellectual property rights should be fair and equitable. They should not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

6. Ownership of architectural plans

The legal classification of ownership of architectural plans differs between the common-law countries and the countries under the Napoleonic Code. In common-law countries the architect's documents are normally treated as instruments of service and the architect retains the ownership while the client enjoys the license, by contract, to use the documents to build the building. In countries under the Napoleonic Code the architect's documents become property of the client after termination of the contract. The architect is obliged by contract to hand out the documents to the client. This situation has an effect on the intellectual property: Whereas in the common-law countries the architects are both the proprietor of the actual and intellectual property of their documents, the architects in countries under the Napoleonic Code are only proprietor of the intellectual property of the documents, the proprietor of the actual document is the client.

7. Co-operation between UIA member sections

Each UIA member section shall enter, upon request, into consultations with any other UIA member section which has cause to believe that an intellectual property right owner, who must be a national or domiciliary of the UIA member section being addressed for consultations, is undertaking practices in violation of the requesting UIA member section's laws and regulations on the subject matter of this Guideline.

The UIA member section addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting UIA member section. It shall, furthermore, co-operate through supply of publicly available non-confidential relevant information.

8. Damages

Jurisdictions should have the authority to order a person who has knowingly infringed copyright to pay adequate compensation to the copyright holder

9. Institutional Arrangements; Final Provisions

The UIA shall monitor the operation of this Guideline, and in particular UIA member sections' compliance with their obligations hereunder, and shall afford UIA member sections the opportunity of consulting on matters relating to the aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the UIA member sections; and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. UIA member sections agree to co-operate with each other with a view to eliminating international trade in goods infringing intellectual property rights.

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