

# Federal Protection Through Copyrights

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## CONSULT YOUR ATTORNEY

The information herein should not be regarded as a substitute for legal advice. Readers are strongly advised to consult an attorney for advice regarding any matter related to intellectual property.

## BACKGROUND

Under the U.S. Copyright Act, the owner of a copyright is given a number of exclusive rights over a work and can bring an action for infringement if another party violates these rights by distributing the work without the copyright owner's consent. When the unlawful use of copyrighted documents is proven, the copyright owner can recover both statutory and actual damages, including any profits gained by the infringer. Also, a court can issue an injunction to force the copier to abstain from further acts.

To maximize legal protection, firms may want to establish procedures to place a copyright notice on all eligible deliverables and register copyrights when the likelihood of infringement seems high.

## OWNERSHIP OF CREATIVE EXPRESSION

The question of copyright ownership should be addressed in the architect's services agreement. Initially, the owner of a copyright is the author of the work—defined as the person or legal entity who controls and directs creation of the original work. Transfer of ownership of a copy, such as by providing a record set of documents to a client, does not transfer copyright ownership.

If professional services are for a client and a signed contract indicates that the instruments of service are works made for hire, the contract transfers ownership both of the drawings and specifications and of the right to reproduce the information to the client. The client can then prohibit the architect from further reproducing any of the plans and specifications without permission. This can be a problem if the architect intended to use details created in the plans for other projects in the normal course of his or her activities.

## COPYRIGHT BASICS

An actual copyright notice is not necessary for drawings to be protected. The notice does serve as a warning to all, however, that the copyright has been claimed, thus preventing infringers from later claiming they were unaware the work was copyrighted.

The copyright should be registered to obtain maximum protection. Separate registrations for technical drawings and for the design as an architectural work are possible. Either can be obtained before or upon completion of the project. Other copyrights can be obtained for studies and reports, renderings, or other pictorial works. Prime architects, however, cannot register the works of consultants unless properly authorized to do so.

If a copyright is properly registered before infringement occurs, additional remedies are available against the infringing party, including attorneys' fees and statutory damages. Although registration is required to file a copyright infringement lawsuit, registration can take place after infringement. In this instance, only actual damages can be obtained from the infringing party.

While only original aspects of drawings, specifications, and the design of a structure itself can be copyrighted, many architects assume that an entire set of documents can be registered. In fact, a blanket registration that includes the work of others may void the whole process. The form requires a listing of derivative works, which are based on one or more preexisting documents. The copyright will be limited to only the original work and not to the derivative parts of the drawings and specifications. If derivative works are not identified, the entire copyright may be invalidated because the implication of the registration that everything is original would be false.

Copyright infringement cases can be difficult to prove, and recovery may seem inadequate. The use of federal copyright law, however, can help a firm protect its compensation and creative endeavors.

## RESOURCES

### More Best Practices

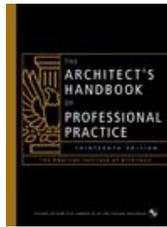
The following AIA Best Practices provide additional information related to this topic:

- 17.01.08 Intellectual Property: Trademark, Patent, and Copyright Basics
- 17.01.07 Copyright in Architectural Works
- 17.03.02 Reproducing AIA Contract Documents: Rights and Restrictions

### For More Information on This Topic

See also "Intellectual Property and the Architect" by Dale R. Ellickson, Esq., FAIA, *The Architect's Handbook of Professional Practice*, 13th edition, Chapter 11, page 316.

See also the 14th edition of the *Handbook*, which can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by email at [bookstore@aia.org](mailto:bookstore@aia.org).



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## Keywords

- Practice
- Legal management
- Legal documents
- Intellectual property
- Copyrights



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