

# Copyright in Architectural Works

Contributed by AIA Knowledge Resources Staff

Revised January 2007

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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 copyright.

## SUMMARY

It is important for an architect to understand intellectual property and which aspects of copyright laws relate to architectural works. A brief description of copyright of architectural works as well as owner-architect agreements concerning copyright of construction documents are offered below.

## OWNING THE RIGHT TO COPY

Copyright protects original works of authorship that are fixed in a tangible form of expression. Copyright is nothing more—and nothing less—than the right to copy or reproduce an intellectual work or to create new works derived from it. Unless the original author of the work explicitly conveys the right to copy it or to create derivative works from it, the author retains those rights for the full term defined by law.

Intellectual works that may be protected by copyright include literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

Copyright protection exists from the time a work is created in fixed form. The copyright in the work *immediately* becomes the property of the author who created the work; only the author or those deriving their rights through the author can rightfully claim copyright.

An appropriate copyright notice should be placed on all design and construction documents. Since another party that willfully intends to infringe a copyright may be likely to remove a title block on a drawing, it may be helpful to also place the notice in a discreet location in the body of the drawing where it cannot be easily removed without visibly altering

the image. The two most common forms of copyright notice are

© 2003 John Dough, Architect

Copyright 2003, Jane Doe Architect, Inc.

While it is not necessary to register an architectural work with the U.S. Copyright Office to retain the copyright in it, registration entitles the copyright holder to additional remedies in the event of infringement. See “Additional Resources” at the end of this article for information on copyright registration.

## ARCHITECTURAL WORKS

Under Section 102 of the U.S. Copyright Act, an “architectural work” is defined as an original building design that is embodied in any tangible medium of expression. The intellectual work protected is the design itself—the overall form as well as the arrangement and composition of spaces and elements of the design—but does not include individual standard components such as doors or windows or design elements that are functionally required.

The “medium of expression” can include architectural plans, drawings, scale models, photographs, or the building itself. One or more may be needed to document the existence and establish ownership of an original architectural work. The medium of expression should not be confused, however, with the building *design*—the intellectual property that is protected as an original architectural work.

The categories of intellectual work that copyright may protect are viewed broadly. Typically, architects are most concerned with retaining the copyright to their original building designs. However, they may also claim copyrights for their intellectual work in a number of other categories. They may copyright drawings, models, photographs, and other images (as opposed to the building design itself) as “pictorial, graphic, and sculptural works,” while copyrighting specifications, reports, or other written material as “literary work.”

## “PROPERTY BOUNDARIES” OF COPYRIGHT

Because an intellectual work is intangible, the property rights embodied in copyright can be difficult for even the owner of the intellectual property to grasp. For architects, the difficulty is exacerbated further by the now-common practice of creating architectural works using electronic media, wherein the expression of an architectural work is itself intangible.

The Copyright Act provides that the “fixation” of an intellectual work in a tangible form of expression need not be “directly perceptible” if it may be communicated with the aid of a machine or device. This principle of copyright law has been applied for many years to other intangible intellectual works such as sound recordings, which can be communicated only with the aid of a compatible mechanical or electronic device.

Copyright is not the same as ownership of the “tangible expression” of an intellectual work. The transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright. For example, one may purchase a copy of a literary work such as a novel, but ownership of the book does not give one the right to copy it and sell the copies to others or to create derivative works of the novel such as a play or film.

When an architect conveys ownership of final construction documents of a building to the building’s owner, ownership of the physical documents (in either print or electronic form) does not give the building owner the right to copy these instruments of service or to create derivative works from them, such as another set of construction documents or another building. Unless the architect explicitly conveys it, the copyright in the architectural work remains the architect’s property.

## EDUCATIONAL CHALLENGES

While the property boundaries of copyright in artistic, musical, or literary works are well understood and even taken for granted in American society, the same boundaries for architectural works are not as well understood and recognized, even by architects. This can lead to misunderstandings and unnecessary disputes.

Architects commonly assume that the transfer of ownership of the instruments of service is an all-or-nothing proposition and that the architect has little latitude in limiting the use of copyrighted material. However, in the United States, property rights are often, though not always, absolute. This means that

a property owner (in this case, the architect, who owns the copyright) is generally free to convey property rights to others in whole (the full copyright), in part (a limited license or right of use), or not at all, and is entitled to require and receive any compensation to which the buyer and seller freely and mutually agree.

This does not mean, however, that the party to whom the rights are being conveyed is obligated to pay any price or agree to any terms the seller demands. Just as a copyright owner is free to place a value on intellectual property as a condition of full or partial transfer of ownership, a buyer is free to accept or reject the price or terms or to make a counteroffer. Property value is determined this way in a free market.

## LIABILITY ISSUES

Any transfer of information produced by architects, particularly in electronic form, raises serious questions regarding professional liability. While liability of data transfer is beyond the scope of this article, the resources listed at the end of this article address the issue in considerable depth.

## COPYRIGHT AND OWNER-ARCHITECT AGREEMENTS

While it is not necessary to have explicit language in an owner-architect agreement to preserve the architect’s copyright in the instruments of service, including such language may help clarify the architect’s property rights and reduce the likelihood of misunderstandings and disputes. It also provides an opportunity to educate the client and to have a frank discussion about ownership of the documents upon completion of the project. By taking the initiative in addressing the issue and demonstrating an appreciation for the building owner’s information needs after construction is complete, the architect can fortify the relationship of trust and reach a mutually satisfactory agreement.

## RESOURCES

Detailed information regarding copyright and copyright registration is available from the U.S. Copyright Office, Library of Congress, by visiting the following Web site: <http://www.loc.gov/copyright>

Of particular interest to architects is Circular 41, *Copyright Claims in Architectural Works*, which can be downloaded at no cost as an Adobe Acrobat (PDF) file from the following Web site: <http://www.copyright.gov/circs/circ41.pdf>

### More Best Practices

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

- 12.01.02 Antitrust Compliance Guidelines
- 12.01.03 Warning Signs for Potential Claims
- 11.05.03 Intellectual Property: Trademark, Patent, and Copyright Basics

### 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. The *Handbook* can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by sending an e-mail to [bookstore@aia.org](mailto:bookstore@aia.org)



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### Keywords

- Leadership
- Legal issues
- Intellectual property
- Copyright
- Practice