



Copyright of Engineering Drawings, Plans and Designs

An Online Continuing Education Course for Engineers

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Credit: 2 Hours / 2 PDH / 2 CPD

Copyright of Engineering Drawings, Plans and Designs

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IN THIS PROFESSIONAL DEVELOPMENT COURSE, YOU WILL LEARN:

- Learn to identify copyrightable aspects of building plans and buildings
- Learn the respective rights of client and design engineer in the work product
- Learn how to transfer copyright property
- Learn how to protect copyright property
- Learn to identify when a copyright is created in an engineer's work product
- Learn the term of the copyright
- Learn how and why to give proper copyright notice
- Learn about foreign copyright protection
- Learn how to register a copyright in engineering drawings and plans
- Learn how to register a copyright in an architectural work
- Learn about derivative works and a copyright owner's rights in such works
- Learn what "fair use" means
- Learn implications of copyright ownership
- Learn things to consider and include in professional engineering services contracts
- Learn what works for hire are and their copyright ownership implications

INTRODUCTION

Copyright, a form of intellectual property law protects original works of authorship including literary, dramatic, musical, and artistic works. Artistic works include poetry, novels, movies, songs, and computer software. Architecture is visual art that enjoys copyright protection. Copyright does not protect facts, discoveries, ideas, systems, or methods of operation, although it may protect the way these things are expressed. Chapter 13 of the Copyright Law protects original designs of vessel hulls.

Other forms of intellectual property include patents and trademarks. Copyright protects original works of authorship, while a patent protects inventions or discoveries. A trademark protects words, phrases, symbols, or designs that identify the source of the goods or services of one party and distinguish them from those of others.

Architectural works became subject to copyright protection in 1990. The copyright law defines "architectural work" as "the design of a building embodied in any tangible medium of expression, including a building, architectural plans, or drawings." The protection extends to the

overall form as well as the arrangement and composition of spaces and elements in design. Protection does not extend to individual standard features or design elements that are functionally required like doors and window Engineers regularly design useful articles and buildings. They reduce ideas into drawings and plans to give them concrete form. An engineer's professional and creative work product may be protected by copyright. Copyright may offer remedies in the event work product is misappropriated and may provide additional revenue streams for professional endeavors. Let's explore how copyright may be useful for engineers.

I. PLANS FOR CONSTRUCTION OF STRUCTURES

Jack and Jill's business finally took off and the financial struggles of the early years were behind them. They engaged an engineering firm to design a custom dream house, investing a significant amount of money into the custom design services. It was all worth it to have a "one of a kind" house.

Three years later, Jack was driving to work and saw a house that looked remarkably like their "one of a kind" dream home. He turned around to give it a better look. It was not just similar, it was an exact duplicate!

Jack contacted his long-time family attorney about the misappropriation of his design ideas. To his dismay, he learned that the engineering firm owned the copyright in the plans. In fact, the design was so successful; they had sold dozens of copies of the prints in the past year for construction in the area. There was nothing illegal about what they had done.

Jack and Jill felt violated. Their expectations about the professional relationship and the rights in the work product were very different from the practices of the engineering firm. They could hardly recommend this firm to friends and associates, somehow feeling that their activities were immoral, even if they did not rise to the level of illegal.

The engineering firm, of course, had different expectations. In fact, its practices were common in the industry. The significant investment of resources in custom design work can be recovered by these additional revenue streams. In a way, that keeps the hourly rates at an affordable level for independent clients. This misunderstanding is likely to have a negative impact on their business. While it is immeasurable to what extent and how many would-be clients don't make that call after hearing the story of Jack and Jill, it is possible that the former clients have a large circle of influence. Additionally, the firm is proud of the work it did and its reputation in the community. Despite doing nothing wrong, they are dismayed at the prospect of unhappy clients.

The best way to avoid these situations is to understand the body of rights each respective party has in this situation and to account for these rights in the engagement letter and initial client meetings. This will avoid unfortunate misunderstandings like the one just described.

So, what is the law surrounding designs, plans and constructed structures?

THE DESIGN CONCEPT IS NOT PROTECTED BY COPYRIGHT

The design ideas of the homeowner: client are not represented in a concrete form and cannot be copyrighted. Ideas are not protected, but their expression may be protected.

BLUEPRINTS ENJOY COPYRIGHT PROTECTION

The author who expresses those ideas in a concrete form (in the form of blueprints) is eligible for copyright protection. The author of the drawings is the sole owner of the copyright even if the ideas were a joint conception by client and engineer.

THE PLANS FOR CUSTOM DESIGNS MAY BE REUSED

Copyright is a property right in the same way we think of real property (houses and land) or personal property (cars, clothing, jewelry and animals).

A homeowner who engages an engineer (or architect) in a contract that did not provide for the transfer of copyright is granted a one-time non-exclusive license to use the plans to build one structure and only one structure. The copyright owner, the engineer or engineering firm, may license the plans without restriction to be built anywhere, including right next door. He may do this by non-exclusive or exclusive license according to the terms of the contract reached between the parties.

Limitations to the engineer's rights may arise from unfair competition laws and the contract between the parties. Both issues were brought out in a case by Donald Trump against his architect. Trump's former architect, Mr. Birnbaum, designed a "look – alike" building across from Trump Plaza on Third Avenue in New York City. Mr. Birnbaum attempted to create a "twin tower" effect with similar buildings across from one another at the doorway to Third Avenue. Unfortunately, his creative vision was not shared by The Donald. In this case, the Trump Plaza design was considered distinctive in the mixture of overall elements and therefore, the overall mixture enjoyed copyright protection (but not individual elements). The contract provided that the architect did own the plans but did not have the right to use them for any other buildings. The contract provision played a crucial role in the judicial outcome. It is not clear how the case would have turned out without this contractual provision.

THE STRUCTURES CONSTRUCTED FROM THE PLANS MAY BE PROTECTED BY COPYRIGHT

An original design of a building embodied in any tangible medium of expression, including a building, architectural plans, or drawings, is subject to copyright protection as an architectural work. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design but does not include individual standard features or design elements that are functionally required. The term building means structures that are habitable by humans and intended to be both permanent and stationary. This includes houses, office buildings,

churches, museums, gazebos, and garden pavilions.

Structures other than buildings cannot be registered. These may include bridges, cloverleaves, dams, walkways, tents, recreational vehicles, mobile homes, and boats.

Standard configurations of spaces, and individual standard features, such as windows, doors, and other staple building components, as well as functional elements whose design or placement is dictated by utilitarian concerns also are ineligible for registration.

COPIES OF THE PLANS FOR ESTIMATING OR CONSTRUCTION

The right to copy the plans is retained by the copyright owner. The purchaser of a set of plans has a one-time license, not ownership of the copyright. The licensee may not take the plans to a local copy shop and make copies, even for legitimate purposes in the course of using them to build the structure. (With the introduction of software and digital media, the law may be moving toward an implied license under fair use copyright provisions to allow an implied license to make reasonably necessary copies to build a single structure.)

This is typically handled by the transfer of rights under a non-exclusive license in the form of a reproducible set of the engineering plans. These rights carry the right to make a specified number of copies, typically 10 sets. Alternatively, they may convey the right to make the necessary copies to construct one building if the number of copies is specifically limited. An extended license may be granted for additional duplications if they become necessary or desirable. Each of these transactions may be separate and chargeable! You are in the realm of business, not legal, decisions on issues such as how many copies to allow and what fees are to be negotiated for the first and any extended licenses.

It is advisable to require customer licensees to obtain and destroy all copies given to construction companies, estimators, suppliers or government agencies once they have completed the project. (Some government agencies may require a set to be retained.) This prevents misappropriation of copyright interests by others. The customer/licensee may be held liable for infringement in which they played a role, even unknowingly. Explaining this often provides an incentive for their participation in this endeavor. You may even consider asking for a certification that the copies have been accounted for and destroyed.

II. ENGINEERING DESIGN PLANS FOR NON-BUILDING SUBJECT MATTER

Many of the same principles outlined above apply in the context of design plans for mechanical devices, electronic components and other subject matter. There is one critical difference, however, in that patent protection may be available for the design concept. In that case, the engineer will likely be deemed to be “one who is reducing the inventive concept to practice” and will have no ownership interest in the concept itself. Thus, the inventor may have protectible interests that have implications with respect to any copyright interests created. For example, if the inventor has a patent monopoly on the subject matter, then the opportunity to exploit the plans for additional revenue streams is limited at best. An engineer may be interested in

copyright of his work product insofar as it is reproduced in marketing materials, instructional manuals and the like. However, with this reality, it is most likely that the client will want to negotiate for the conveyance of any copyright in the work product for these reasons.

Utilitarian objects, or “Useful Articles” may have both copyrightable and non-copyrightable aspects. A “useful article” is an object having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. Examples are clothing, furniture, machinery, dinnerware, and lighting fixtures. An article that is normally part of a useful article may itself be a useful article, for example, an ornamental wheel cover on a vehicle.

Copyright does not protect the utilitarian aspects of works of craftsmanship. It may, however, protect the artistic aspects that can be identified separately from the utilitarian aspects. An ornamental back of a chair or a floral relief design on silverware may have both copyrightable and uncopyrightable aspects. The design of the chair or flatware itself could not be copyrighted.

III. IMPLICATIONS

Copyright law provides that the owner of the copyright in a work of art or design is the author of the work. If the author is an individual, the author is the owner of the copyright in the work. If the author is a firm, the engineering firm owns the copyright in the work.

The most common written contract between the engineer and client. However, the contract may not have a written agreement that transfers ownership of the copyright. The client may desire to purchase rights in plans so that they can be reproduced without restriction or licensing fees.

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RIGHT

Contrary, the author is the owner of the copyright in the work. If the author is a firm, the engineering firm owns the copyright in the work.

Contract between the engineer and client. However, the contract may not have a written agreement that transfers ownership of the copyright. The client may desire to purchase rights in plans so that they can be reproduced without restriction or licensing fees.

WORKS FOR HIRE

Works for hire include work:

1. Performed by employees in the scope of employment, or
2. Work by independent contractors if it is both specially commissioned and falls within one of the 8 categories listed below:
 1. Contribution to a collective work
 2. Part of motion picture
 3. Translation
 4. Supplementary work
 5. Compilation
 6. Instructional text
 7. Test or answer to test
 8. atlas