

Is your building actually your building? Depends on copyright

Consider this scenario: A business owner hires an architect to design and create plans for the construction of a retail store, a restaurant or commercial building. The building is constructed and the business takes off.



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Later, the owner wants to open a second location, identical to the first. The owner may be surprised to discover that he or she does not own the design of the building or the right to construct the identical building in a second location, and even more surprised to discover that the architect will require a second design fee if a duplicate building is to be constructed.

There are many misconceptions about the ownership rights to architectural drawings and works, which can be costly in terms of time and money. Some of the more common fallacies include:

- If there is no copyright stamp on the drawings, then they are not protected.
- If I modify the design slightly, there can be no infringement.
- I paid for the plans, so I own the copyright.
- The copyright only covers the drawings, not the completed building.
- My liability for any copyright infringement is limited to the cost of the architectural drawings.

Each of these statements is incorrect. The owner who directs another to "copy" the building without the permission of the original designer can be liable for damages, and can be prevented from constructing the duplicate building altogether.

Contrary to common misperceptions, copyright protection attaches instantly at the moment a work is created, and there

is no requirement that the author register the work with the U.S. Copyright Office for this protection to attach.

Before an infringement action can be filed, the author is required to register the work. Although registration can be accomplished after the infringement has occurred and an infringement action can still be maintained, statutory damages and attorney fees are only available if the work was registered prior to the infringement.

Prior to 1990, only the written plans and drawings were subject to copyright protection, and there was no prohibition against copying the actual constructed building.

Today, a design professional holds two forms of copyright. The first pertains to the written plans and drawings. These documents are protected as "pictorial, graphic and sculptural works," which cannot be reproduced without the architect's permission.

In 1990, Congress expanded the copyright protections given to design professionals with the passage of the Architectural Works Copyright Protection Act. The act only applies to buildings designed or constructed after Dec. 1, 1990, and extends copyright protection to the completed building itself.

Under the Federal Copyright Act, the copyright owner retains the exclusive right to reproduce the copyrighted work and to prepare derivative works based upon the copyrighted work. Typically architects, not the clients, retain ownership rights in the drawings, plans and completed structure. Architects can contractually assign or otherwise transfer ownership in the copyright.

Damages available in civil lawsuits for architectural copyright infringement can be substantial. And statutory penalties can run up to \$150,000.

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