

Copyright seems like a rather lofty notion. Few put copyright at the top of their list of must-haves in contract negotiations, and even fewer take the time to actually register their documents for copyright protection. But you do have copyright protections under current law. That copyright can come in handy as a risk management tool as well as leverage in a fee dispute. Unfortunately, many design professionals give away their rights vis-à-vis their contracts without a full appreciation of the implications of their actions.

Copyright statutes have been on our books since the 1700s. The Copyright Act (Title 17 of the US Code) provides useful protection applicable to your practice by including pictorial, graphic and sculptural works, as well as architectural works, as copyrightable materials. Architectural works include drawings, models and the structure itself. "Arrangement of spaces and elements" are protected, but not "individual standard features." Registering your architectural works creates a public record of the registration and is essential in an infringement action. It takes 30 minutes and \$30 to complete. But even if you do not register your works, they are still protected unless you give those rights away by contract.

Standard design industry contracts (e.g., AIA and EJCDC), keep the copyright with the design professional and provide for a limited license to the client/owner for use of the documents. That license is generally limited for use on the specific project only, and does not allow for transfer of that license to third parties. The design industry contracts also include an indemnity provision in the professional's favor that mitigates risk should those documents be used or modified without proper authority. Most owner-generated contracts, on the other hand, demand a transfer of copyright to the owner, and those terms are often agreed to by the professional, presumably because the professional is not fully aware of its rights or the risks involved in giving those rights away.

Depending on how "documents" is defined in the contract, the risks you take in giving away ownership and copyright protections can be significant. By relinquishing rights to plans, details specifications, general conditions and standard materials, you are potentially handing over (without additional compensation or further assurances of proper use) your ability to use the items you use and rely on every day in your practice. By surrendering rights to sketches, early renditions, preliminary calculations and mock-ups, you are possibly offering up items that may not be indicative of your "best day." Finally, by giving up rights to photographs and electric expressions, you are giving free reign to materials that can be easily manipulated or misinterpreted.

In sum, the perils of transferring your ownership and copyrights include:

- Loss of control of the use of your work product – increasing your risk and liability
- Loss of ability to interpret, resolve, refine
- Loss of ability to control reuse without your input (and without compensation)
- Loss of leverage in case of dispute (typically over fees), or if documents are to be reused in repairs by others
- Loss of opportunities to market the project

What can you do to minimize the risk related to document ownership and copyright?

- Affirm that all copyright remains with you, the Consultant
- Limit client/owner's license for use to final documents once full payment is received
- Permit use on the subject project only
- Limit use to final construction documents only
- Include a provision that owner/client shall not rely on any document unless it is in printed form, signed or sealed by the Consultant or one of its subconsultants

We are available to discuss these issues further and to assist in your contract reviews and negotiations.

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