Copyright FAQs

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How do architects obtain copyright protection for their designs?

Architectural drawings, models of buildings, completed buildings, and photographs of buildings and models of buildings are all regarded as 'artistic works' as defined in s10(a) and 10(b) of the Commonwealth Copyright Act 1968 ('the act'):

… a painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not…

and

… a building or model of a building, whether the building or model is of artistic quality or not.

Architects automatically own the copyright in their original designs (drawings, models, or completed buildings) unless the:

- work has been done for the Commonwealth, state or territory governments or one of their agencies (see 5(a) following)
- or the architect has agreed with the client that the client has copyright (see 5(c) following)

Is it necessary to use the © symbol on drawings and other documents?

This is not strictly necessary in Australia, although it is necessary if copyright is to be enforced in some other countries. However, it is a good idea to put the © or the word 'copyright' followed by the name and year the drawing or document was created, as prima facie proof if you do own the copyright.

Are ideas copyright?

No, copyright exists in original expression in a physical form, not in ideas.

It is therefore possible for an architect to be influenced by another architect's design ideas without infringing copyright in the other architect's work. There is sometimes a fine line between being influenced or inspired by another architect's work, and copying it. In Ancher Mortlock Murray and Woolley Pty Ltd v Hooker Homes Pty Ltd (1971) Justice Street said:

An architect may legitimately inspect an original plan or house and then, having absorbed the architectural concept and appreciated the architectural style represented therein, return to his own drawing board and apply that concept and style to an original plan prepared by him and in due course to a house built to that plan. There is a dividing line separating such a legitimate process from an inspection followed by a later copying of a substantial part of the physical object inspected, even though

the copying be from memory; the latter exercise does infringe. In many instances it will be difficult to state categorically whether the dividing line has been crossed.

Do architects have moral rights?

Yes, since 2000, and these rights are retrospective. The Copyright Amendment (Moral Rights) Act 2000 does not prevent a building from being altered without the architect's consent, but it does require the owner to notify the architect before the alterations or demolition take place.

What rights does the client have?

1. Where the client is the Commonwealth or state or territory government:
   If the client is the Commonwealth or state or territory government or their agency and the work is prepared under their direction or control, the client automatically owns copyright under the act (Crown copyright). However, the Copyright Act provides that this statutory presumption can be overridden by an express agreement (refer to (c) following).

2. Where the client is not the Commonwealth, state or territory government, or there is no express agreement for the client's ownership of copyright, the architect's client has automatically implied rights to use copyright material as it wishes, unless those rights are restrained in some way by an express agreement.

When an architect contracts with a building owner to produce plans for the purpose of their being used to carry out construction work at a particular site, there arises, subject to any contractual provision to the contrary, an implied licence from the architect for the use of the plans for that purpose. (see Gruzman Pty Ltd v Percy Marks Pty Ltd [1989]; Beck v Montana Constructions Pty Ltd [1964-5]; Ng v Clyde Securities Ltd [1976])

In the Gruzman case, the architect's services were purportedly terminated by the client during construction. The construction work continued and the architect wished to restrain the former client from departing from the original plans. It was held that the implied licence to use the drawings for construction work did not restrain carrying out of the work which departed from those plans.

Cases such as Ng v Clyde Securities Ltd in 1976 had already established that there is an implied licence which passes to subsequent owners of the land. Revoking the licence is commonly intended to avoid the need for legal action by prompting payment in order to have the licence reinstated. In this case it was found that the architect had merely a contractual claim against the original client for unpaid fees, and, without an express contractual agreement setting out a right to revoke the licence when not paid, the architect could not withdraw the implied licence to build from the owner or subsequent purchaser.

In a 2006 High Court case, Concrete Pty Limited v Parramatta Design & Developments Pty Ltd, (Parramatta), the court also found the architect could not prove a contractual agreement entitling it to deny a subsequent owner the implied licence. Prior to this, in the Federal Court, from which the subsequent owner of the land appealed to the High Court, the architect had been found to have an inherent right to withdraw the implied licence to use its copyright if not paid a reasonable fee. In rejecting the Federal Court's reasoning the High Court confirmed the prior law of Ng v Clyde Securities Ltd that there is ordinarily an implied licence which extends to a subsequent purchaser. However, the court went further, holding that the implied licence is irrevocable for an original or subsequent owner where one of the essential purposes for which the plans were created has come to pass, such as a planning permit or development consent that 'runs with the land' and gives statutory development rights to the land's owner.

1. Advantages of an express agreement on copyright:

One of the many benefits of a written client and architect agreement is that the issue of copyright can be dealt with explicitly. Its importance is heightened by Parramatta. In particular, the architect can make an express licence agreement with the client which restricts the client's right to use copyright material under the implied licence. However, if the copyright is assigned to the client under the agreement (or the presumption of Crown copyright is not reversed by an agreement) no such considerations arise.

2. The Institute's Client and Architect Agreement 2009
   Clauses G headed 'Intellectual Property' deals with copyright and licensing to use the design. The agreement states that the architect retains copyright in the design, defined as the design concepts, drawings and documents. (As this agreement is unlikely to be used by government, or without amendment, the presumption of government copyright is unlikely to be an issue.)

Paragraph A of clause G provides that there is no implied licence to use the design, but only an express licence granted by the agreement.

Paragraph B of clause G provides for automatic revocation of the licence on any change of owenership, or legal interest in the site. This anticipates the circumstances of both insolvency of the client and sale to another owner. The architect can reinstate the licence at its discretion, but the discretion must be reasonably exercised.

When all services are complete and full payment has been made, the licence becomes irrevocable.

What should the architect do if approached to take over another architect's project before completion to protect against possible copyright or moral-rights infringement?

The following steps are suggested as a guide to good practice and are not to be taken as a substitute for legal advice in individual cases:

1. At no stage attempt to give yourself or your client or potential client legal advice about the validity of any assertions about copyright ownership, infringement of copyright, or anything else. Obtain legal advice if in doubt. If the client owns all copyright, it is the client who must license you, (impliedly by your engagement) to use the copyright work. However, the copyright in the project is not necessarily the same thing as the copyright in, say, the drawings.
2. If it is beyond doubt that the previous architect owns copyright in the project or the drawings, as applicable, inform the prospective client that the client should notify the previous architect or designer of your possible appointment as architect in order to obtain copyright licences and to make appropriate arrangements for moral rights attribution of the previous architect in relation to the drawings and the project.
3. If the previous architect or designer has no objection to granting you a licence to use their work for completion of the project and you are able to agree on moral rights attribution, have all of this confirmed in writing and proceed to make the appropriate agreement with the prospective client regarding terms of engagement.
4. If the previous architect or designer objects to licensing you, or you cannot agree on appropriate attribution, or the prospective client declines to notify the previous architect or designer, and you wish to pursue the project, obtain a warranty from the client through your lawyer that the client is entitled to appoint you (this might include a copy of any legal opinion obtained by the client). Also obtain through your lawyer an indemnity from the client worded to provide you with complete protection in the event that the previous architect or designer or any employee makes any claim against you for unauthorised use of copyright material, or for infringement of moral rights.