Architecture and intellectual property

Rebecca Singleton



'If it's worth copying, it's worth protecting'

For architects, intellectual property (IP) law is vital. Without it plans, building designs and models would have no value as others could copy them without payment. But what are an architect's rights and how are those rights retained in order to avoid commercial exploitation?

The legislation for this area of law comes from the Copyright, Designs and Patents Act 1988 (CDPA), the Registered Designs Act 1949, the Trade Marks Act 1994 and the Patents Act 1977. IP itself is divided into those rights that are registrable at the Intellectual Property Office (IPO) and those that are not. Rights that must be registered before the work is protected include trademarks, patents and registered designs; IP rights that cannot be registered include copyright and unregistered design rights.

Copyright protects against copying. It is the simplest right as it automatically arises without registration as soon as a drawing, letter, list etc. is produced and protects original literary, dramatic, musical and artistic works as well as films, sound recordings, broadcasts and the typological arrangements of published additions. However it is only infringed if it is copied. If someone accidentally produced something similar without copying there is no breach of rights. The standard is fairly low: English law has protected even football pools coupons as copyright works and in one case the diary the Prince of Wales kept while travelling around Hong Kong was protected by copyright.

Within the field of architecture many copyright works arise. The artistic works category in the CDPA describes three types: graphic works, photographs, sculptures and collages; works of architecture being a building or a model of a building; and works of artistic craftsmanship. Therefore an architect's sketches, detailed drawings, models of buildings and buildings themselves are all protected under copyright. Copyright protection lasts for the life of the author plus seventy years from the end of the year in which they die. If an architect is employed then the employer will own the works produced in the course of employment. The customer or client only obtains a licence to use the material – which is not the same as ownership of the copyright in it unless the relevant contract between the parties states that the person commissioning the copyright work will own the resulting copyright.

As mentioned above, copyright cannot be registered and it is not an exclusive right; the work must have been copied, in other words it must be proved that the infringer had access to the original work. In the unlikely event of two architects separately designing two identical buildings and neither one having had any possibility of access to the other's work, then there would be no breach of copyright. Copyright owners find it useful to put the symbol © followed by the owner's name and the year the work was created in order to make people aware that the work is legally protected; in some countries who signed the Universal Copyright Convention (but not the Berne Convention) copyright is only

https://doi.org/10.1017/S1359135511000893 Published online by Cambridge University Press

available if the sign, legal owner and date is given. The copyright notice is sensible to add in any event as it does put off many potential infringers from copying.

The second IP right to consider is trademark law. Trademarks act as a badge of origin for goods and services; they make it possible for customers to tell who has provided the goods or services and distinguish themselves from other businesses. Architects will need to apply for a trademark at the IPO if they have a logo under which they operate; the names of buildings can be registered too. If the application is successful then you will have an exclusive right to provide architectural services under the trademark. In 2009 the big wheel in Nottingham's town centre, originally named the 'Nottingham Eye', had to change its name as Merlin Entertainments, who own the London Eye, claimed that the Nottingham structure's name was breaching their trademark. Trademark protection lasts indefinitely as long as renewal fees are paid every ten years. Regardless of whether there is a registration a business may also have rights under 'passing off'. This is another right that prevents competitors from passing off a business as their own, but it is harder to prove: the law on passing off is complex and detailed analysis is not necessary here.

Registered designs protect the appearance of (usually) physical items. A design is taken to include the appearance of the whole or part of a product, in particular the lines, contours, colours, shape, texture or materials of the product, in either two or three dimensions. In order to register a design it must be new and have individual character. A registered design right gives the owner the exclusive rights to the design for twenty-five years, subject to renewal every five years. Unregistered design rights also exist but do not apply to two-dimensional designs, only three-dimensional designs and only last for fifteen years.

The final IP right is patents. Patents protect industrial inventions so are unlikely to apply in the architectural field.

How may an architect's work be infringed? It has already been seen that copyright may subsist in an architect's sketches, models, plans and the works of architecture themselves: that work may therefore be infringed by someone producing plans that are a copy of the architect's plans. Last month this firm was advising on such a dispute. Secondly, infringement may occur when someone constructs a building from plans to which they do not have the rights, for example if an architect draws plans for a building that is never constructed and then someone else constructs a building from those same plans. Finally an architect's copyright may be infringed by a building being copied in the construction of another building. It is important to note here what amounts to infringement of a building by building: if a house were to have five windows and a front door and another house also had these features, this would most likely not be copyright infringement, whereas if every small detail of the building were copied then this could amount to infringement. The copying of a building by a two-dimensional representation, such as a photograph or drawing, is not an infringement of copyright.



The copyright symbol: use it or lose it

'Sketches, detailed drawings, models of buildings and buildings themselves are all protected'



The Scales of Justice symbol, this version released into the public domain by the Open Clip Art Library

Copyright is the most important IP right for architects. When contracting with clients it is very important to both parties that the contract clearly states who will own the IP rights created. If the architect wishes to remain the owner of the IP rights in a building then the architect can grant a licence to the client to use the IP rights for the purposes of constructing that building only and not a right to use the IP rights for constructing other buildings. If nothing is said about IP rights in the contract, or there is no written contract, then the rights remain with the architect unless the client did the designs. Sometimes client input is sufficient to amount to ownership by the client of that part of the work that they submitted to the architect to use; this is another reason why it is wise to have a sentence or two in the contract about IP ownership.

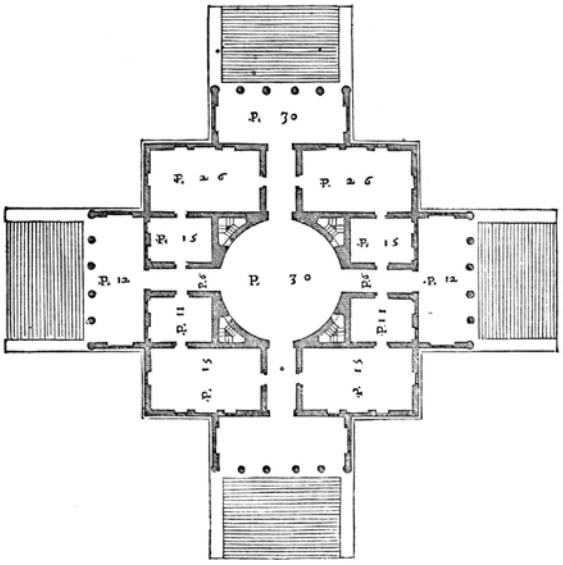
The distinction between the author and the owner is significant. If an architect designed a building in the course of employment they would be the author, but not the

https://doi.org/10.1017/S1359135511000893 Published online by Cambridge University Press

owner of the copyright in the works. There is also a distinction to be drawn between the owner of the copyright in the work and the owner of the physical material on which the work is first recorded. The basic rule is that the architect's plans themselves (i.e. the physical paper copies) become the property of the client unless the parties have agreed otherwise in English law. For those working elsewhere it is important to ensure that the contract states which laws apply and which courts handle disputes. Even then some countries do not recognise judgments of other states, so it is worth taking advice.

Some practical suggestions:

1 Have written signed contracts with clients. If not signed ensure the terms are accepted and not rejected before any work is done. Ensure purchase orders cross-refer to the terms too. Reject customer purchase order terms that contradict the contract terms of the architect.
2 Ensure those contracts contain a clause about who owns IP rights – ideally give the client a licence to use the works but not ownership so the works can be used with other clients later.
3 When using self-employed staff and consultants and when subcontracting work, ensure there is a written contract with them stating who owns IP rights.
4 Put © [name of company, year]. 'All Rights Reserved' on all plans, drawings, designs, specifications, tenders and the like.
5 Consider putting traps into documents that could catch an infringer such as deliberate spelling errors or features or fake names that would then show up on any copy.
6 For international contracts try to specify English (or Scottish) law and jurisdiction.
7 Never copy. Making small changes to someone else's work usually still means it is copied. In a case in 2010 in the EU *Infopaq* copying only ten words was breach of copyright and a Court of Appeal case in 2011 is due in *Newspaper Licensing Agency v Meltwater* which will clarify the law on copyright even in headlines and hypertext links.



Palladio's Villa Rotonda: a well-known architectural plan. William Kent's Chiswick House was similar but not identical

'The copying of a building by a two-dimensional representation, such as a photograph or drawing, is not an infringement of copyright'



Eye of a storm? A trademark title people have tried to copy: the London Eye (photo: Diliff)

As a judge said in one decision, 'if it's worth copying, it's worth protecting'.

Further information is at www.ipo.gov.uk. Most commercial law firms can give intellectual property law advice including the writer's – www.singlelaw.com

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https://doi.org/10.1017/S1359135511000893 Published online by Cambridge University Press