

Copyright Protection for Engineers?

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Engineering firm assets are typically pretty light. Firms typically lease their office space and equipment. The firm's primary assets are its intellectual property in the form of drawings and plans. In essence, the drawings and plans are the products of the engineering firm. Can engineering drawings and plans be protected by copyright? Engineers who create these designs are understandably interested in protecting them. The short answer is "yes." In the absence of a written agreement to the contrary, the author (engineer) is the owner of the copyright in the plans.

This article provides a broad overview of copyright protection available to engineers. To protect engineering work that may be subject to copyright protection is an intricate task. It is recommended that you consult with your attorney before initiating any plans to seek copyright registration or to bring a copyright infringement action.

What is and what is not subject to copyright protection? Design ideas or concepts are not protected by copyright, but the expression of those ideas or concepts may be protected. The engineer who expresses the idea or concept in the form of plans or drawings may obtain copyright protection. When a work is completed, it is automatically protected by common law copyright, but this protection is fairly limited. The federal Copyright Act provides procedures that allow the copyright owner to enhance the protection afforded by common law copyright. The Copyright Act specifically affords protection to the category of "architectural works," which can include engineering plans and drawings. The work must also be "original," defined as "independently created by its author" and possessing "some minimal degree of creativity."

The federal Architectural Works Copyright Protection Act ("AWCPA") was enacted in 1990 to provide copyright protection to physical architectural works, which were not previously protected by the Copyright Act. The AWCPA enhances, and does not supersede, the protection afforded to architectural works under the Copyright Act. The AWCPA defines architectural works as "the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings." The architectural work protection afforded to buildings is limited and requires the structure to be habitable by humans. The building must also be both permanent and stationary, such as a house, office building, museum, concert hall, or stadium. Structures other than buildings are not eligible for copyright protection as an architectural work. Some examples include bridges, dams, tents, recreational vehicles, mobile homes, automobiles, and boats.

The architectural work includes the overall form of the building, but does not include the individual standard features, such as windows, doors, and other fixtures. Design elements that are functionally required are also not eligible for copyright protection. While copyright does not protect the functional or utilitarian aspects of the design, it may protect any artistic or graphic authorship that can be identified separately.

For example, the towel rack in a bathroom may not be subject to copyright protection, but any artistic component of the towel rack, such as a sculpture or pictorial display, may qualify for separate protection as a sculptural work.

Copyright protection may extend to non-building objects such as mechanical devices and electronic components. The physical non-building objects, however, are not afforded copyright protection as architectural works as they do not qualify as buildings as defined by the AWCPA. The design idea or concept of such items may be eligible for patent protection, which is beyond the scope of this article. The functionality and utilitarian principles discussed above apply to engineering plans and drawings for non-building objects. Utilitarian objects, or “useful articles” are objects exhibiting an intrinsic utilitarian function that is not to merely portray the appearance of the article such as clothing, furniture, machinery, or dinnerware. Such objects may have both copyrightable and non-copyrightable aspects. For instance, the artistic carving on a wooden chair could be subject to copyright, but the functional design of the chair could not.

While formal copyright notices are no longer required to appear on the work, the copyright owner should include the notice because this provides advantages in a copyright infringement action. Formal registration of the copyright with the U.S. Copyright Office provides the owner with proof of the date of creation, which is important in any type of infringement action. Furthermore, the owner cannot commence a federal copyright infringement action without first registering the copyright.

The courts have held that the default rule is the author retains the copyright in the absence of a written agreement to the contrary. Thus, if the contract does not address the copyright ownership, the engineering firm owns the copyright in the plans. The AIA and EJCDC contract documents both reflect this principle.

Owners are increasingly demanding that engineers do not retain absolute ownership over the work. Frequently, the owner’s needs can be met through the issuance of a nonexclusive license by the engineer to the owner. A license is merely a grant of permission by the owner of the rights in the work to another entity. These agreements allow the engineer to retain ownership of the copyright, and can provide for the owner’s ability to modify the work and use the work in future projects. A nonexclusive license allows the engineer to grant licenses to others, preserving the potential for future revenue generation. The agreement can require the owner to indemnify the engineer for any claims or damages arising from the owner’s negligence in modifying the work.

Sometimes the owner will insist on owning the copyright interest in the engineer’s work. When this happens, the engineer should explore the possibility of retaining a nonexclusive license for his own future use. The engineer should retain the right to use standard details that appear in the work. Indemnity provisions should also be included. If the owner will not grant the engineer a license, the engineer may want to seek additional compensation from the owner for foregoing ownership of the work.

The owner of a copyright in engineering plans enjoys three basic rights: (1) the right to reproduce the plans; (2) the right to prepare derivative works based on the plans; and (3) the right to build the structure depicted in the plans. The copyright owner also enjoys the right to prevent others from exercising these rights. The best defense an engineer has against a charge of copyright infringement is to argue that the work was independently created, that is the result of the engineer's own creativity and ingenuity. The statute of limitations for a copyright infringement claim is short and the actions must be brought within three years after the alleged infringement took place.

If the copyright is found to have been infringed, there are three types of damages the copyright owner has to choose from, but there is an election of remedies and only one may be pursued. First, the copyright owner can recover the profits it would have made but for the infringing party's infringement on the copyright. Second, the owner can recover any profits earned by the infringing party as a direct result of the infringement. Third, if the copyright owner has registered the copyright with the Copyright office before the infringement took place, the owner can seek statutory damages, which are limited to a maximum of \$30,000 for each work (or up to \$150,000 if the owner proves the infringement was intentional). In addition to monetary damages, the copyright owner can seek injunctive relief against the infringing party, in the form of a court order compelling the infringing party to cease production of the designs and buildings. Reasonable attorneys' fees and costs may also be awarded to the copyright owner if the copyright was registered with the Copyright Office before the infringement occurred. However, the alleged infringing party can also request reasonable attorneys' fees and costs if he prevails in the suit.

These are some of the highlights of copyright protection, including what types of engineering work are eligible for copyright protection and what potential relief is available for the engineer whose work is protected by copyright. Engineers should view their plans and drawings as a critical part of their business and should take the necessary steps to protect this intellectual property. The engineer should decide what should be protected, then establish intraoffice procedures to ensure the protection is obtained. Conversely, the engineer should establish intraoffice procedures to defend the firm against allegations of copyright infringement from other engineers. Copyright can protect the engineer's work, but the proper procedures should be followed to retain ownership and ensure compliance with the Copyright Act.

Bio

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