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*COPYRIGHT PROTECTION  
FOR  
ARCHITECTURAL WORKS*

by  
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## ***COPYRIGHT PROTECTION FOR ARCHITECTURAL WORKS***

Recent changes to the U.S. Copyright Act, and newly proposed Copyright Office regulations, dramatically increase copyright protection for "architectural works". Although copyright protection for architectural plans and blueprints has been available for many years, until recently no federal law, copyright of otherwise, prevented the construction of a building based on copyrighted plans or the copying of a building itself. This paper briefly sets out the current scope of protection for "architectural works" and describes recently proposed regulations for registering such works at the U.S. Copyright Office.

Effective December 1, 1990, the category of "architectural works" was added to the U.S. Copyright Act and defined as follows:

... the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.

17 U.S.C §102 (a) (8).<sup>1</sup>

The creation of copyright protection for architectural works provides substantially greater protection than that which previously existed in this country. For example, prior to the addition of "architectural works" to the Copyright Act, architectural plans were only protected against two dimensional copying (e.g., photocopying plans); a developer could legally build a structure based on published, copyrighted plans without the copyright owner's consent. A developer could make sketches or take photographs of distinctive buildings, uses of space, or structural ornaments, and reproduce such features in its own building. Under certain circumstances, these activities could now constitute copyright infringement.

Standard architectural features will not be protected by copyright law. As in other areas of copyright protection, however, an original combination of standard features may be subject to copyright protection, provided that there is no functional necessity for the particular combination.

Certain restrictions apply to the scope of copyright protection for architectural works that do not exist in other areas of copyright. Normally, a copyright owner has the exclusive right to make and sell copies, and make derivative works, of the copyrighted work. Had these exclusive rights been applied to architectural works, unauthorized photographs of protected buildings would have been infringements, and structural modifications by a building's owner would have constituted infringing derivative works. To avoid these kinds of results, the revised Copyright Act expressly states that the owner of a copyright in an architectural work cannot prevent:

... the making, distribution, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

17 U.S.C. §102 (a).

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<sup>1</sup>This change occurred as a result of the U.S. joining the Berne Convention, the world's oldest international copyright treaty.

With respect to modification of a building, the Copyright Act states:

...the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alteration to such building, and destroy or authorize the destruction of such building.

17 U.S.C. §102 (b).

As with other copyrightable works, an owner of a copyright in an architectural work is well advised to obtain copyright registration for the work at the U.S. Copyright Office. If a registered work is copied, statutory damages of up to \$100,000 per infringement and recovery of attorneys' fees may be available.

In September 1991, the Copyright Office published proposed regulations for the registration of the architectural works, addressing the following issues:

- "Buildings" are defined as "habitable structures, such as houses or office buildings, and structures not inhabited but used by humans, such as churches or gazebos."
- If dual copyright protection for architectural plans is desired (i.e., if they are considered both "pictorial, graphic, and sculptural works," as well as "architectural works"), two separate copyright applications for registration must be submitted. Applicants should use a modified Form VA for architectural works.
- In the case of architectural works, the construction of a building does not itself constitute publication. The sale of architectural plans to the public, however, would constitute publication of the building, as well as the plans themselves.<sup>2</sup>
- Bridges, cloverleaves, dams and walkways would not constitute architectural works because they are "purely functional structures."

Changing copyright law as applied to architectural works will affect many of the rules of competition in the construction industry. In the past, absent a contractual prohibition between parties or the unauthorized copying of architectural plans, a builder could freely copy architectural features from the structures of competitors of third parties. Such copying today poses potential liability for copyright infringement. Moreover, the increased scope of protection for architectural work underscores the need to understand who owns the copyright. Many builders have been surprised to learn that the independent architect or designer is the owner of the copyright — not the commissioning party, not the party who pays for the drawings, and not the party who had the concepts underlying the drawings. Given the expansion of copyright protection for architectural works, members of the construction industry are well advised to ensure in working with architects and designers that (1) each party understands who owns the copyright in a commissioned work and (2) proper indemnities against copyright infringement are in place.



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<sup>2</sup>The publication status of a work may affect the term of copyright and would affect the deposit requirements at the Copyright Office for architectural works.