

Many architects fail to take the necessary steps to fully protect their intellectual property rights to their designs and blueprints. Many property owners and contractors ignore the risks associated with copyright infringement when using a blueprint or design of unknown origin. For architects, failing to understand the scope of copyright protection, how to use such protection and the ways that copyrights can be transferred can lead to unfettered copying of designs and blueprints and cost substantial money in lost royalties and fees. For property owners and contractors, failing to understand the perils of infringement can lead to significant litigation expense in a copyright infringement lawsuit.

The Scope of Copyright Protection

Generally, copyright protection extends to the author [architect] of the work, unless there is a written agreement to the contrary or the work is a "work for hire." The Copyright Act defines the scope of protection afforded to architectural designs and blueprints and sets forth the remedies available for infringement. The act protects both "pictorial, graphic, and sculptural works" and "architectural works." Architectural works are defined as a building's design "as embodied in any tangible medium of expression, including a building, architectural plans, or drawings." This includes "overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features," according to the act. Thus, an architect's original creative expression is protected, whether it exists in a blueprint or in a final building.

The act does not protect standard design features or design elements having a purely useful as opposed to aesthetic function. As one court has explained: "A window is a useful article and therefore cannot be copyrighted. However, a design on a window is not a 'useful' article and can be copyrighted."

The determination of whether the Copyright Act is applicable hinges on whether a design or design element involved the architect's original creative input. In the example above, the fact that a window is used in a design is not subject to copyright protection because it involves no creative input. The combination of the window's design, shape, color and location, however, may be subject to copyright protection if it involves the architect's creative determination.

The threshold level of necessary creative input is low. The Supreme Court has explained that "even a slight amount will suffice. The vast majority of works make the grade quite easily, as they possess some creative spark, no matter how crude, humble or obvious it might be."