1998

The Case for Copyright: Protecting Originality and the Architect's Rights of Ownership

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Practice

The Case for Copyright

Protecting originality and the architect's rights of ownership

by Robert Greenstreet, Assoc. AIA, RIBA, PhD

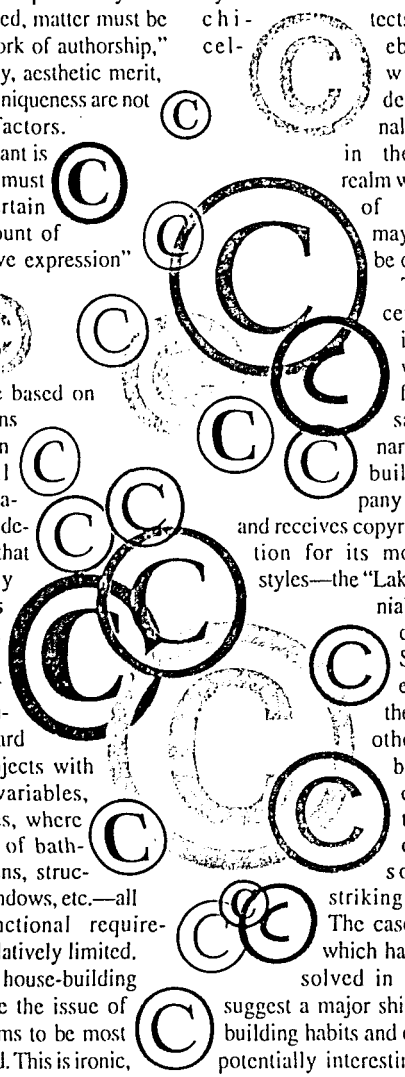
Well-publicized disputes involving such personalities as Steven Holl, Donald Trump, and Arquitectonica peppered the 1980s with interesting cases involving architectural copyright. These cases revolved around the argument that architects provide a service, not a product; and therefore, ownership of the ideas embodied in the end result—the buildings—could not pass to the owner without specific agreement.

Interesting as the copyright issue was, most of the cases and, ultimately, interest fizzled out until the latest attempt to create a legal safeguard. The U.S. joined the Bern Convention in 1989, and, to align with its international provisions (which hold copyright as a natural rather than a statutory right), Congress enacted the Architectural Works Copyright Protection Act of 1990. The new act replaces legislation that protected primarily the drawings (rather than the embodied ideas) and has now been in place long enough to assess its effectiveness.

Small scale

The 1990 act provides valuable protection for architects in a specific condition: It prevents their designs and drawings from being reused without their permission or compensation. Nonetheless, it has raised some interesting questions as to the definition of "architectural works" (for example, churches and gazebos are included, but parking garages, grain silos, or even free-standing walls may not be), what actually merits copyright protection and, most interesting, what constitutes real originality.

The act states specifically that to be copyrighted, matter must be "an original work of authorship," although quality, aesthetic merit, ingenuity, and uniqueness are not necessarily factors. What is important is that the work must contain a "certain minimum amount of original creative expression" and that copyright registration cannot be based on standard designs such as common architectural molding or features, nor upon design elements that are functionally required. This creates a wealth of opportunity for dispute, particularly with regard to smaller projects with few design variables, such as houses, where permutations of bathrooms, kitchens, structural walls, windows, etc.—all arguably functional requirements—are relatively limited.



It is in the house-building industry where the issue of originality seems to be most intently debated. This is ironic, as housing is not a field traditionally dominated by architects (the AIA once estimated that as little as 1 percent of American single-family houses were designed by architects), nor one celebrated for widespread design originality, but it is in the housing realm where issues of originality may ultimately be decided.

Three recent disputes in the Milwaukee area focus on the same scenario. A home-building company applies for and receives copyright protection for its model home styles—the "Lakeside Colonial," the "Traditional Saltbox," etc.—and then sues another home-building company that subsequently built something strikingly similar. The cases, none of which have been resolved in the courts, suggest a major shift in home-building habits and create some potentially interesting implications for architects in particular and the design industry as a whole.

First, the notion of jealously protecting the design integrity of, say, the "Lakeside Colonial" tends to fly in the face of traditional house-building habits of the past century. House plans and styles have been published freely in newspapers, journals, and specialty magazines since the 1920s—even Frank Lloyd Wright once published some model houses for general consumption—intending to give owners alternatives to use when discussing a new house with a builder. (And, of course, the discussion of a particular style, with or without modifications, is just as likely to involve the brochures of numerous home builders collected by the prospective owner.)

Second, the kinds of works submitted for and receiving copyright protection scarcely fall into the category of cutting-edge design, limited as they are in scale and, in many cases, architectural expertise. Furthermore, despite the best intentions of the act to prevent flagrant, wholesale copying of existing designs and drawings, how can protection on the grounds of originality be given to a colonial or a saltbox? Aren't they by definition redolent of styles that have long been in existence?

Large scale

Precedents now being determined on the home-building end of the copyright spectrum may also affect the architectural profession beyond the singular building to the physical environment as a whole. While copyright protection shields the rights of individuals on a building-by-building basis, it cannot deal with the notion of multiple buildings, the issue of precedent, or the need to create physically coherent communities.

Sometimes, being a good neighbor—blending in with the existing context of buildings—is an appropriate response and one certainly taught as a relevant strategy in architecture schools. If copyright law vigorously protects the design uniqueness of each building, then each new building, it might be argued, consciously has to be designed to be different from every other—not a recipe for a coherent built environment. Illustrative cases include the Trump Tower, where changes to the nearby building were legally mandated to prevent its appearance from being too similar to the original "statement," despite the urbanistic argument that the towers together could have created a powerful and coherent gateway to the street and the neighborhood.

This would not be the first time case law—the law as defined by the courts—has created tense situations never conceived by drafters of the original legislation. If case law becomes untenable, there is the recourse of new legislation, although this is a slow, cumbersome, and equally unpredictable course. For the time being, the best strategy for architects and planners is to stay informed, stay within the architect's standard of care, and continue to strive for the originality of creation that drew architectural works copyright protection in the first place.

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