



Contract Corner: Copyrights

Welcome to the next in our occasional series of columns focusing on onerous contract clauses. In this issue, we look at contract language that asks you to give up the copyright to your plans and other instruments of service.

There are a number of reasons owners might want (or think they want) your copyrights. Perhaps they want to prevent a design feature from being repeated on other projects, protect the privacy of their information, or facilitate operation and maintenance of the project. They may want to reuse the design on other projects without your involvement. They might think that because they hired you, they own the “product.”

Your client agreement should clearly state that you will retain the copyrights to your drawings and design and, if possible, the ownership of those documents. This includes digital data and BIM models. Watch out for any owner-written language stating that the services you provide are “works made for hire” (where the employer is considered the author even if the employee actually created the work) or that you “assign all rights to the instruments of service” to the client. Make sure any clauses that address the termination of your services also address copyright and document ownership issues after termination.

Here are a few suggestions for countering your clients’ attempts at imposing unreasonable expectations on you. If your client wants your copyright, you might say:

- I’m curious why you want the copyright. As a design professional, I provide a service, not a product. Construction documents—drawings, specifications and reports, whether hard copy or electronic files—are the instruments of that service. It’s important—and customary—that I retain the copyright to them.
- My biggest concern is my liability for the unauthorized reuse of and/or changes to my designs, which could result in a claim being filed against me by someone who relied on my design for another project. Because these plans are for a specific site, if they’re reused under other site conditions or other geographic or climatic situations and without my involvement, problems are likely to arise. That would be risky for both of us.
- If I give you the copyright, I give up the right to reuse the original expression embodied in my design or instruments of service. While I’m not comfortable with that, I might be willing to agree to refrain from using specific design features on your competitors’ projects.
- Here’s the approach I think makes the most sense for both of us. I’ll grant you a limited license for the use of my instruments of service while I retain my copyright. For example, the agreements published by the American Institute of Architects, the Engineers Joint Contract Documents Committee and the Royal Architectural Institute of Canada, among others, use this approach. I’d be happy to send you some sample contract language we could use.

- If you're worried about protecting information regarding the project or the design concepts, we could add a confidentiality clause to our agreement that would also allow me to retain my copyrights and ownership of the documents.
- I can provide you with a reproducible copy of the final documents for your use in maintenance and operation of the project without giving up my copyrights or ownership of the original documents.
- If it's really important to you to own the documents, we'll need to compromise: I could transfer ownership of the final documents to you, on completion of the project and upon payment in full for my services, if you agree to indemnify me against unauthorized reuse of and unauthorized changes to my documents. But I'll need to retain the copyright.
- If you want to use the documents down the road, I'll retain the copyright of my materials but grant you a license to use the design for a specified future project, so long as I receive indemnity protection for all claims that may arise from the use of those documents without my involvement.

If you present these and other points and the client continues to insist on owning the copyright, don't agree unless you get an iron-clad indemnity and are paid in full before you transfer the copyright. (Also, don't agree to give up incremental rights as you work on the design—make sure that any copyright you transfer is for the final design document.)

As difficult as this conversation may be, it's up to you to safeguard your rights. Don't sign them away unless you are protected and well compensated.

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