



INFORMATION SHEET G17

House plans & copyright

May 2004

This information sheet provides a brief introduction to copyright issues for builders, draftspeople and architects, as well as for people who engage a builder, draftsman or architect to draw a house plan for them. Where we have referred to a “builder”, the comments apply equally to a draftsman or architect.

For a more detailed discussion, see our book *Architects: Copyright & Moral Rights*.

For information about our other information sheets, other publications and training program, see our website www.copyright.org.au or contact us (see contact details at the bottom of the page).

The purpose of this information sheet is to give general introductory information about copyright. If you need to know about how the law applies in a particular situation, please get advice from a lawyer.

Key points

- House plans, including those produced by project home companies, are protected by copyright.
- Generally, a person who commissions someone to draw up a house plan has an “implied licence” to construct a building based on the plan—but this depends on the facts of the situation and is not always the case.
- Ideas, styles and techniques are not protected by copyright. However, a particular plan that makes use of common ideas or styles may itself be protected.

Copyright protection

In Australia, copyright law is contained in the Copyright Act 1968 (Cth) and the court cases which have applied and interpreted the Act.

Copyright protects a range of categories of material, including sketches, plans and models of buildings, and the buildings themselves.

What is NOT protected by copyright?

Copyright does not protect ideas, information or concepts. For example, the idea of building a rectangular house surrounded by a verandah with an open-plan living area, French windows facing north and three bedrooms facing south is not in itself protected. However, drawings, plans, models and buildings incorporating these features are protected by copyright.

How do you get copyright protection?

Drawings, sketches, plans, and other copyright material are protected automatically as soon as they are given “material form” (for example, by being drawn on paper, saved as a digital file, photographed or filmed). There is no registration procedure.

An owner of copyright is entitled to put the copyright notice on the work. This is the symbol ©, followed by the name of the copyright owner and the year of creation or first publication. There is no special procedure for doing this, and the work is protected by copyright even if there is no notice.

What does copyright protection mean?

Copyright owners have exclusive rights to use their work in certain ways. These include the right to **reproduce** the work and to **communicate** it “to the public”.

If you do any of the following with all or a distinctive part of a house plan, you will **reproduce** the copyright work:

- photocopy a plan;
- copy a plan by hand;
- scan a hard (paper) copy of a plan;
- make a digital copy of a digital file of a plan;
- print out a digital file of a plan;
- draw up a more detailed version of the plan; or
- photograph or film the plan.

It is also likely that you will reproduce the copyright work if you:

- make a model based on the plan; or
- build a house based on the plan.

You will **communicate** a house plan if you do any of the following with all or a distinctive part of it:

- email it (for example to a builder, surveyor, architect or local council town planner);
- fax it;
- put it on the Internet or intranet; or
- broadcast it.

Who owns copyright in house plans?

In most cases, copyright in a drawing such as a house plan is owned by the person who does the drawing, even if the drawing depicts another person’s ideas. A major exception to this rule is for **employees**: if an employee creates copyright material as part of his or her job, the employer owns copyright (unless they have made an agreement to the contrary). Someone who is a freelancer or independent contractor is not an employee for the purposes of determining ownership of copyright. For further information, see our information sheet *Ownership of copyright*.

In general terms, if you pay someone who is not your employee to create house plans (for example, if you engage an architect or builder to draw up plans), they will own the copyright (unless you have made an agreement to the contrary). However, you would have permission (a “licence”) to use the plans in the ways agreed between you or implied from the circumstances (see below under “When do I need permission to use someone else’s plans?”).

It is always a good idea to set out in writing the agreement between you and the person who is drawing up the plans. If the agreement includes a transfer (“assignment”) of copyright, the agreement must be in writing and signed by the person who would otherwise own copyright (in most cases, the “author” of the plan or their employer). For information on the kinds of issues that should be covered in these agreements, see our information sheet *Assigning & licensing rights*.

I’m paying a builder to draw a plan based on my ideas and sketches. Who owns copyright?

Even if you have discussed your ideas and requirements and asked the builder, architect or draftsman to draw up plans incorporating those ideas, the copyright owner will generally be the person who drew the plans. At most, someone giving instructions to a builder, architect or draftsman as to how plans should look might be a co-owner of copyright. However, ideas themselves are not protected by copyright: it is the person who expresses those ideas in a particular material form who owns copyright in that particular work.

If you have drawn up a sketch showing what you want and asked the builder to draw up scale plans, it is likely that you own copyright in your sketch and the builder will own copyright in his or her plan. If the plan incorporates the essential features of your sketch, it is likely that you have “underlying rights” in the builder’s plan, since copying the builder’s plan will indirectly reproduce your plan. In these cases, someone else who uses the plan (such as another client of the builder) might need permission from both you and the builder.

Of course, if your sketch incorporates essential or distinctive elements of someone else’s sketch, plan or house, you are likely to need permission from that copyright owner both to include those elements in your sketch and to “authorise” the builder to reproduce it.

When do I need permission to use someone else’s plans?

In general terms, someone who is not the copyright owner needs permission to use the copyright material in any of the ways reserved to the copyright owner (such as **reproducing** or **communicating** the material). Even if only part of the plan is reproduced, permission will be needed if an important part of the original elements of the plan is reproduced. These elements need not form a large proportion of the plan.

If you have made an agreement with the person who owns copyright in the plans, you will have the right to use it in the ways that have been agreed between you. Alternatively, you may have an **implied licence** to use the plans for the purposes for which they were commissioned (for example, getting council approval, and building a house based on them).

Can I use a plan in a brochure as the basis for my house?

You usually need permission from the owner of copyright in the plan if you reproduce important or distinctive parts of it. The fact that the plan is published in a brochure does not mean that you have permission to reproduce it.

Can I photocopy plans of a development application for the property next door?

There is no general exception to infringement that applies in these circumstances. However, since you may be affected by the development, you may be able to copy the plans as a fair dealing for research or study. However, the local council may not be entitled to copy the plans for you. Some councils overcome this problem by asking people submitting development applications to provide multiple copies of the plans, or to give express permission for the plans to be copied for these purposes.

I want to sell my house with the renovation plans which I’ve had approved by the council. Do I need the architect’s permission?

Depending on the terms and conditions of your agreement with the architect, an implied licence to build may be transferable to the new owner of the land. However, you should read the agreement carefully. In some cases, architects’ contracts specify that the client does not receive a licence to reproduce the plans (in further plans or a building) until they have paid the fees; or that the licence cannot be transferred without the architect’s permission.

Generally, vendors and buyers may need to consider getting specific advice on this issue from a solicitor with the relevant expertise. The Law Society in your State or Territory should be able to refer you to a solicitor in your area.

Contracts & house plans

I have paid a builder to draw a plan. Can I ask another builder to build the house?

In many cases, you will need permission from the first builder to build a house based on the plan. This is because the builder is likely to own copyright in the plan, and you may not have an implied licence to build using another builder. You should seek legal advice if you are considering building from such a plan without the builder’s permission. If you decide not to build from that plan, it is advisable not to show that plan to anyone you subsequently ask to draw a new plan for you. If the second person does see the earlier plan there may be an inference that that person has consciously or subconsciously copied original elements of the earlier plan.

My builder has gone out of business without completing my house. Can I engage another builder to complete the house?

Depending on your agreement with the builder and other surrounding circumstances, you may be entitled to engage another builder to complete the project. If the builder owns copyright in the plans, you may need to seek legal advice to clarify your position. If you do require permission, copyright may be controlled by the receiver appointed to administer the builder's business.

Infringement of copyright in house plans

Reproduction of another person's plan without that person's permission ("licence") will usually infringe the person's copyright. Reproduction of part of a plan may also infringe copyright, if the part is important and original. In some cases, permission may be implied from a contract or from the circumstances.

An owner of copyright can take legal action to stop further infringements and to seek compensation. For further information, see our information sheet *Infringement: actions, remedies, offences, penalties*.

How many changes do I have to make to avoid infringing copyright in house plans?

If you have reproduced any important or distinctive elements of the other person's plan, you will not avoid infringement by making additions or changes. These elements may include features such as: the internal arrangement of rooms, windows, and doors; the indication of spaces; the design of the roof; and the dimensions of the building. In some circumstances, copying the perspective or the balancing of features may infringe copyright.

My plans are very simple—will I infringe copyright if they turn out to be very similar to someone else's plans?

Copyright is not infringed if a person coincidentally produces a plan which is similar to another which the person has never seen. This may occur if the plan is very simple or involves a common combination of features (such as building a standard 3-bedroom house with kitchen, laundry, bathroom, lounge/dining room and garage on a standard-sized rectangular block of land).

I have received a letter from a solicitor which claims that I have infringed copyright. What do I do?

It is usually a good idea to engage a solicitor to advise you about your legal position, and to respond to the infringement claim. If you do not have a solicitor with the relevant expertise, the Law Society in your State may be able to recommend one. For further information, see our information sheet *Infringement: what can I do?*

Moral rights

Creators of copyright works (including artistic works such as house plans and buildings) have moral rights in relation to their work. These rights are:

- to be attributed as the creator of the work;
- not to have the work falsely attributed to another person, or to have altered work falsely attributed as unaltered; and
- not to have the work treated in a way that damages the creator's honour or reputation.

Moral rights can only be owned by individuals. However, some architectural firms make agreements with their employees under which the firm, rather than the individual architect is attributed as the creator of a work.

If you receive documents such as plans on which the creator's name appears, you should ensure that any copies you make or communicate still show the creator's name.

In practical terms, moral rights issues in relation to buildings and plans are most likely to arise where a relatively well-known building is to be altered or demolished. In such cases, the Copyright Act provides a procedure which the building owners can follow to avoid infringing the creator's moral rights. For further information, see our information sheet *Moral rights* and our practical guide *Moral Rights*.

Further information

For further information about copyright, see our website – www.copyright.org.au or contact us.

Reproducing this information sheet

You may download and print one copy of this information sheet from our web site for your reference. Otherwise, we sell printed copies of information sheets to Australian customers for AUD\$5.50 each (we may be able to offer a discounted price for multiple copies of an information sheet).

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.

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