6.12.4 Copyright Management Plan

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<th>Business and Governance</th>
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Background

The Copyright Act 1968 provides specific obligations on Council in respect to information held by Council as a necessary component of its functions, as well as obligations under the Local Government Act 1993 (the Act) and associated legislation. An excellent reference source for this area is www.copyright.org.au

Definitions

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<th>Term</th>
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<td>Breach</td>
<td>Publication or other act where: copyright existed in the work or other subject-matter and the copy of that material was done otherwise than by, or with the licence of, the owner of the copyright or copyright did not exist in the work or other subject-matter and the act concerned was done otherwise than by, or with the consent of the author or persons lawfully claiming to have copyright.</td>
</tr>
<tr>
<td>Copyright owner</td>
<td>A person is considered the copyright owner of the document if they are the drawer of the plan.</td>
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<tr>
<td>Licence</td>
<td>A licence in writing, signed by or on behalf of the owner or prospective owner of copyright, authorising the licensee, to do an act the owner of the copyright would, but for the licence, have the exclusive right to do.</td>
</tr>
<tr>
<td>Infringing copy</td>
<td>In relation to a work – a reproduction of the work, or an adaptation of the work, being an article the making of which constituted an infringement of the copyright in the work.</td>
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Procedure

Council shall require any person who applies for copyright plans of a building or elements thereof held by Council to give particulars, in the form of a Statutory Declaration, as to the intended use of any information obtained from the inspection.

If Council considers the request to be in keeping with its obligations under the various items of legislation, a licence shall be required from the copyright owner of the plans before the plans shall be copied. If the licence is obtained, and the information is provided, the documents provided will state the plans are subject to copyright and are provided in accordance with the written consent of the Licensor and the date the consent is given.

In the event a licence cannot be obtained from the copyright owner or in the event that the copyright owner cannot be contacted by the applicant upon reasonable enquiry of publicly available information systems, application shall be refused.

If the General Manager or any other member of the staff of Council decides that access to a document or other information held by Council should not be given to the public or a Councillor, the person concerned must provide the Council with written reasons for the refusal.

Council will include with all appropriate application forms a standard copyright consent form which shall be held on file and taken as consent by the owner of the copyright to the use of the plans or documents during consideration of the application. A fresh consent form will be required if publication of the documents is not in relation to the development application process.

Objective

This Management Plan has been designed to avoid potential breaches of copyright law occurring in respect to the copying of house plans.
Applicable legislation

The Government Information (Public Access) Act 2009 (the GIPA Act) provides obligation on Council to make available for inspection specific information. However, a person does not have the right to inspect so much of a development application, or an application for approval to erect a building, as consists of:

a. the plans and specifications for any residential parts of a proposed building, other than plans that show its height and its external configuration in relation to the site on which it is proposed to be erected, or
b. commercial information, if the information would be likely:
   i. to prejudice the commercial position of the person who supplied it, or
   ii. to reveal a trade secret.

The Environment Planning and Assessment Act 1979 and the GIPA Act complement the Copyright Act in respect to house plans and Section 148(1) provides as follows:

1. A person shall not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:
   a. with the consent of the person from whom the information was obtained
   b. in connection with the administration or execution of this Act
   c. for the purposes of any legal proceedings arising out of this Act or of any report of any such proceeding
   d. in accordance with a requirement imposed under the Ombudsman Act 1974 or with other lawful excuse.

Copyright and house plans – March 2007

Information sheet G17 extracted from Copyright Council website

This information sheet provides a brief introduction to copyright issues for people who engage a builder, draftsperson or architect to draw a house plan for them. For a more detailed discussion, see our book Copyright & Architecture.

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 veranda 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 (for example, © Archie Tecture, 2006). 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 all or a distinctive part of the work (for example, photocopy, scan, print out or photograph the work) and to communicate all or a distinctive part of the work “to the public” (for example, email, fax or put it online).

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.
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.

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).

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.

The “copyright notice”

An owner of copyright is entitled to put the copyright notice on their work. This is the symbol ©, followed by the name of the copyright owner and the year of first publication (distribution of copies). There is no special procedure for doing this and it is not a requirement of copyright ownership.

When is permission needed from the copyright owner?

Permission is usually needed from the owner of copyright to reproduce a house plan (for example by photocopying it or copying it by hand). Permission is also usually needed to build a house that reproduces the plan. Even if only part of the plan is reproduced, permission will usually 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.
Unauthorised use usually infringes copyright

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 see compensation.

Some common questions

<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
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<tbody>
<tr>
<td>If I pay a builder to draw a plan based on my idea, who owns copyright?</td>
<td>In most cases, the builder who draws a plan will own copyright in the plan because he or she is the ‘author’ of it. A person who provides ideas is not an author. As explained above, you do not automatically own copyright in a plan you pay to have drawn.</td>
</tr>
<tr>
<td>If I pay a builder to draw a plan based on my sketch, who owns copyright?</td>
<td>In most cases, you will own copyright in your sketch as the author of it, and the builder will own copyright in his or her plan. In these cases, some other person who uses the plan (such as another client of the builder) may need permission from you as well as from the builder.</td>
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<tr>
<td>Can I avoid infringing copyright in another person’s plan by changing it?</td>
<td>If you have reproduced original elements of the other person’s plan, you will not avoid infringement by making additions or changes. The question is whether your plan substantially reproduces the original elements of another plan. 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.</td>
</tr>
<tr>
<td>Can I infringe copyright in a plan I’ve never seen?</td>
<td>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 if both plans are based on the same earlier drawing.</td>
</tr>
<tr>
<td>Can I use a plan in a brochure as the basis for my house?</td>
<td>You usually need permission from the owner of copyright in the plan if you reproduce original elements of the plan. The fact that the plan is published in a brochure does not mean that you have permission to reproduce it.</td>
</tr>
<tr>
<td>I have paid a builder to draw a plan. Can I ask another builder to build the house?</td>
<td>In most cases, you will need permission from the first builder to build a house based on the plan. This is because the builder, as “author” of the plan, will own copyright on it. 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.</td>
</tr>
<tr>
<td>My builder has gone out of business without completing my house. Can I engage another builder to complete the house?</td>
<td>Depending on your agreement with the builder and other surrounding circumstances, you may be entitled to engage another builder to complete the project. In most cases, you will 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.</td>
</tr>
<tr>
<td>I have received a letter from a solicitor which claims that I have infringed copyright. What do I do?</td>
<td>It is usually advisable 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 relevant expertise, the Law Society in your State may be able to recommend one.</td>
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Copyright owners are entitled to take legal action against persons who infringe their copyright. Unless otherwise permitted by the Copyright Act 1968 (the Act), unauthorised use of audio-visual items in which copyright subsists may infringe copyright in that item.

It is not an infringement of copyright in an audio-visual item to use that item in a manner that is a fair dealing under section 103C of the Act.

Section 103C of the Act relates to fair dealing for the purposes of research or study and sets out the matters that must be considered in determining whether a reproduction of an audio-visual item is a fair dealing.

A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringement involving the conversion of material into digital or electronic form.

Copyright warning notice – library

Copyright Regulations 1969

Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. Certain dealings with copyright will not constitute an infringement, including:

- A reproduction that is a fair dealing under the Copyright Act 1968 (the Act), including a fair dealing for the purposes of research or study; or
- A reproduction that is authorised by the copyright owner.

It is a fair dealing to make a reproduction for the purposes of research or study, of one or more articles on the same subject in a periodical publication, or, in the case of any other work, of a reasonable portion of a work.

In the case of a published work in hardcopy form that use not less than 10 pages and is not an artistic work, 10% of the number of pages, or one chapter is a reasonable portion.

In the case of a published work in electronic form only, a reasonable portion is not more than, in the aggregate 10% of the number of words in the work.

More extensive reproduction may constitute fair dealing. To determine whether it does, it is necessary to have regard to the criteria set out in subsection 40(2) of the Act.

A court may impose penalties and award damages in relation to offences and infringement involving the conversion of material into digital or electronic form.