

# Interior Design and COPYRIGHT LAWS

## Intellectual Property protected under the Copyright Act ▼

### General

Copyright is a part of a designer's intangible rights known as intellectual property which include designs and creative works. In Canada, the *Copyright Act* provides that forms of artistic work such as drawings, maps, charts, plans, works of artistic craftsmanship, architectural works, and compilations of artistic work are forms of protected intellectual property.

When you own the copyright in a work, you control how it is used in order to protect its value. Others who want to use the work have to buy the right to do so or otherwise get your permission.

The general rule in copyright law is that the creator of the work owns the work. But, as with most rules, there are exceptions to the general rule and situations where it is not applicable. Some of the exceptions include:

- ▶ Copyright in work prepared by an employee during the course of employment is owned by the employer; and
- ▶ Copyright may be assigned or licenced to a new owner.

And these exceptions to the general rule are, of course, subject to any agreement you make to the contrary.

Thus, ownership of copyright may be negotiated by you with your employer, your client or your employees as the case may be. If you negotiate an arrangement which is an exception to the general rule, you must put it in writing; otherwise, the general rule will apply.

### Registration of Copyright

Interior designers do not have to register for copyright protection. Proof of ownership, however, can be supported in a dispute with an official registration. A copyright registration can be applied for on the Canadian Intellectual Property Office website. Furniture designs and other industrial designs (generally defined as distinctive-looking new products) may also be eligible for registration.



The included information is for general reference only.

## Moral Rights

"Moral rights" are also protected under the *Copyright Act*. Moral rights mean that the author of the work has the right to the integrity of the work and the right, where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous. Moral rights are different from contractual or economic rights; moral rights essentially being derived from the reflection of the author's personality in his or her work, whereas economic rights grant an author the ability to benefit economically from their work. An author of a work retains moral rights for the length of the copyright, even if the copyright has been assigned or licensed to another party. Moral rights cannot be assigned or licensed, but can be waived by contract.

## Licensing or Assigning Copyright

Copyright owners can earn income from their works. Owners can grant a licence to use a specific design and receive a royalty payment. If the agreement is structured correctly, each time the design is used, the designer should receive a royalty payment. Owners can also assign their rights in copyright and receive payment. Any such licence or assignment must be in writing and signed by the owner.

A licence or assignment agreement, either for a fee or at no charge, should identify the purpose for which the copyrighted work is to be used. It should state that it is not to be used for any other purpose without the express written consent of the copyright owner and that the copyright owner shall not be liable for any damages arising from a non-permitted use. It should be clear that if a design is used for a subsequent space by a client, the original designer is not liable for ensuring the design meets the specific requirements, such as building code regulations, or any other applicable professional standards. All such liability should lie with the new designer working with the original design.

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It is important to note that ideas are not protected by copyright. It is the expression of ideas, for example, in a floor plan or through a drawing, that is protected. Therefore any agreement should include confirmation that the designer owns all plans and proposals he or she generates during the initial concept meeting, either with a client or when collaborating with another design firm.

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## Copyright Protection

Unless they have prior (preferably written) permission, clients, builders, other designers or any other member of the public may not copy designs or use an interior designer's intellectual property for their own benefit. In order to protect unregistered designs, be sure to always claim credit for them by adding the copyright designation on all plans and drawings:

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A non-disclosure agreement is the best way to protect proposals that are being pitched. But a non-disclosure agreement is not practical for all interior designers. At a minimum, reference should be made to the concepts being owned by the designer and if the designer is not hired for the project or is fired part way through, then the concepts and designs continue to be the property of the designer. Designers can sometimes receive compensation for giving up their rights to copyright. This is always something to consider when negotiating with another design company or a client.

## Copyright Infringement

Copyright infringement is a legal term for breach or violation of the rules in copyright law. Copyright infringement can be difficult to detect and damages arising from copyright infringement may be difficult to quantify. When a person makes a copy of an Interior Designer's work product for their own gain, this is a direct infringement and the Designer is entitled under the *Copyright Act* to seek civil remedies. Properly drafted agreements with clients, independent contractors and employees which clarify what the designer retains ownership of are the best way to protect and, if necessary, enforce intellectual property rights.

The *Copyright Act* identifies certain permitted acts and confirms that they do not constitute copyright infringement. For example, it is not an infringement of copyright for an author of an artistic work who is not the owner of the copyright in the work to use any sketch or plan made by the author for the purpose of the work, if the author does not thereby repeat or imitate the main design of the work.

Certain works that are permanently located in public places may be reproduced in certain ways without violating copyright. A painting, drawing, engraving, photograph or cinematographic work can be made of any sculpture or work of artistic craftsmanship if the sculpture or work of artistic craftsmanship is permanently situated in a public place. Such reproduction may be published. This exception only applies to works permanently situated in public places or buildings. So a piece of art that travels among public galleries will not be permanently situated in a public place and cannot be reproduced.

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**This provision also extends to architectural works as long as the paintings, drawings and so forth are not architectural drawings or plans.**

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Private property is different. While it may be generally permissible to photograph, draw or paint, for example, private property from a distance, privacy rights and trespassing laws must be respected. And again, creation of architectural drawings or plans of private property is not permitted.

## Case Studies ►

- 1** Enzo is an interior designer who runs his own business in London. He does not have any partners or employees. From time to time, Enzo hires independent contractors to help complete drawings for larger jobs. Can his independent contractors use the work they did for Enzo in their portfolios?

Enzo's independent contractors have the right to reproduce the work they created while working under contract for Enzo. In order to prevent them from doing so, Enzo should include a provision in his form of independent contractor agreement that he (or his company) will own the copyright in any work generated by the independent contractor during the term of the contract.

- 2** Michelle is employed by a large interior design firm in Toronto. She has worked there for more than 10 years and has decided to go out on her own. Can she use pictures of the designs she created in her portfolio?

Michelle is an employee and, as such, she does not own any copyright in the works she creates for her employer. Michelle needs permission from her employer in order to reproduce the projects she worked on in her portfolio. If she receives permission, credit should be given to her employer and anyone else who may have worked on the project.

- 3** Yvette is an interior designer in Ottawa. Her specialty is restaurant design. She has been working for a restaurant chain and has designed three of their locations which are all very similar. Can her client use Yvette's designs for future locations without hiring Yvette?

Yvette will have to look to her Design Services Agreement to determine whether she can prevent her former client from using her design. This is a difficult scenario as there would most likely need to be some modification to her designs to ensure it works in a new location. The question then becomes whether the modification sufficiently changes the design so that it becomes a new work. If interior designers are concerned about the reproduction of their work, they should ensure that their agreements clearly state they retain all copyright in the project.

# Applicable ARIDO Bylaws and Standards ►

## **A** Business and Professional Ethics

12. A Member shall not divulge any confidential information about a client or a project, or utilize photographs or copies in electronic form or specifications of the project without the express consent of the client, with the exception for those specifications or drawings over which the designer retains proprietary rights.
21. A Member shall not copy or plagiarize the design or work of another person without the written consent or agreement of the other person.
22. A Member shall not represent, pass off or claim authorship of the design of another person without the written consent or agreement of the other person.
23. A Member shall not claim credit for having performed interior design services on a project with respect to which the Member did not have a personal or active involvement.

## **B** Duty to Others and the Environment

3. A Member shall,
  - (f) give proper credit for professional interior design work carried out by others.