

manufacturers who are provided copies of these documents of the Designer's proprietary interest in such documents.

In order to reflect the owner's limited need to be able to use the designer's documents for information and reference purposes after the project is completed, the following language should be added:

The Owner shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with the Owner's use and occupancy of the project provided the Designer is not in default under this Agreement, except as provided herein or by agreement in writing and with appropriate compensation to the Designer. The drawings and specifications shall not be used by the Owner or others on other projects, for additions to this project, or for completion of this project by others.

Design professionals should negotiate for additional fees with any owner who seeks to utilize the design documents for any future project. If such negotiation is not possible, the design professional needs protection for claims arising out of such future use. An owner should agree to indemnify, i.e., restore any loss to, the design professional for any future loss associated with the owner's subsequent use of the drawings and specifications. The following provision will operate to reduce exposure in the event of the owner's subsequent use of the designer's documents:

In the event the Designer is not retained for subsequent adaptation(s) and the use of the design prepared by him/her for this project, the Owner shall defend, indemnify, and hold the Designer harmless from and against all claims, demands, liabilities, causes of actions, lawsuits, damages, judgments, costs, and expenses, including reasonable attorneys' fees, the Designer may sustain or incur, in connection with, arising out of, as a consequence of, or by reason of the use of the Designer's design on such subsequent adaptation(s) and new project(s).

By including such provisions in agreements with clients, designers will protect their property interests in the tangible manifestations of their work at the same time that they also recognize the owner's need to have some control over the documents concerning the project.

Copyright Laws

U.S. and many international copyright laws protect original works of authorship fixed in any unique and tangible medium of expression. The copyright laws apply to the expression of an idea, but not to the idea itself. In other words, ideas may not be copyrighted, but their “tangible expression” may be. Under Section 102 of the Copyright Act, 17 U.S.C., as amended on December 1, 1990, an original design of a building, embodied in any tangible medium of expression, including a building, design plans, or drawings, is subject to copyright protection as an “architectural work.”

Designers should be aware that Section 102 of the U.S. Copyright Act is limited to certain structures. The use of the term “building” excludes many types of three-dimensional works worthy of copyright protection, such as bridges, walkways, recreational vehicles, mobile homes, boats, and gardens. However, the term “building” includes not only structures inhabited by humans, but also those merely used by humans, such as churches, pergolas, gazebos, and garden pavilions. These are limited examples of many other forms which may be copyright-protected.

COPYRIGHT VS. PATENT PROTECTIONS

It should also be noted that a copyright is distinct from a patent. There are three basic differences between the two: first, the subject matter differs because patents are directed at physical, scientific, and technological items, whereas copyrights encompass artistic and intellectual works. In general, copyrightable works are nonfunctional; examples include writing, painting, or a piece of sculpture. Second, patents offer considerably more protection. A patent is a 17-year monopoly granted to the inventor by the federal government in exchange for a complete and thorough description of his or her invention. A copyright is a right granted to the author of literary or artistic productions, whereby he is invested with the sole and exclusive privilege of ownership of a work, including the right to license publishing and distribution rights. Protection under the U.S. Copyright Act is secure for 50 years, after which it may be renewed. Third, unlike the patent process, it is a relatively simple matter to obtain copyright registration. An application is submitted, together with a filing fee and one original copy of the unpublished work to be copyrighted.

Copyright grants four rights exclusively to the author or owner of the architectural work: the right to transform or adapt the work into another form;