Who owns the copyright of architectural works and designs?

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Abstract:
Copyright protects the rights and interests of authors on their original works of authorship such as literary, dramatic, musical, artistic, and certain other intellectual works including architectural works and designs. It is automatic once a tangible medium of expression in any form of an innovative material, which conforms the Copyright Designs and Patents Act 1988 (CDPA 1988), is created. This includes the building, the architectural plans and drawings. There is no official copyright registry, no requirements on any fees need to be paid and they can be published or unpublished materials. Copyrights owners have the rights to control the reproduction, display, publication, and even derivation of the design. However, there are limitations on the rights of the copyright owners concerning copyrights infringements. Infringement of copyright is an unauthorised violation of the exclusive rights of the copyright author.

Architects and engineers depend on copyright law to protect their works and design. Copyrights are protected on the arrangements of spaces and elements as well as the overall form of the architectural design. However, it does not cover the design of functional elements and standard features. Although copyright law provides automatic protection to all original architectural plans, the limitation is that copyright only protects the expression of ideas but not the ideas themselves. It can be argued that architectural drawings and design, including models are recognised categories of artistic works which are protected under the copyright law. This research investigates to what extent copyrights protect the rights and interests of the designers on architectural works and design.

Keywords:
Architectural works and design, copyright, infringement, intellectual property.

1 Introduction

The main objectives of this research is to explore the copyright issues on the protection of architectural works and designs in order to understand how the Copyright Law works in the UK, in order to determine the validity and effectiveness of the UK system in respect to protecting the interests and rights of architects and designers. Furthermore, to investigate the Copyright Law in the UK on the protection of architectural works and designs, and consider the possibility of reform proposed in the UK. Finally, to examine
how effective are the UK and US systems of Copyright Law in protecting the rights and interests of architects and designers on architectural works and designs.

In order to provide solutions to the above objectives, this research sets out to answer the following research question:

“How effective is the UK’s Copyright Law in protecting the rights and interests of architects and designers?”

In considering how effective the UK’s Copyright Law in protecting the rights and interests of architects and designers, the following factors were taken into account:

1. appropriate reward for the authors’ creativity on the design which are original even if they are also functional shall be considered.
2. protection of designs from unauthorised use and copying (exclusive rights)
3. clear infringement standard
4. remedies for infringement

2 United Kingdom Copyright Law

Copyright law protects architectural drawings and plans which are considered as “artistic work” and “graphics” under the Copyright Designs and Patents Act 1988. A work of architecture being a building or a model for a building is an “artistic work” under s 4(1) of the Copyright, Design, and Patent Act 1988 as amended. It is generally agreed that to benefit from copyright protection a work of architecture requires an artistic character in the design. Buildings and architectures can attract protection under the copyright law. They are essentially protected indirectly by copyright in the plans and drawings to construct them. In Pearce v Ove Arup Partnership Ltd (Copying)\(^1\), Pearce believed that features of the design of Kunsthall Museum in Rotterdam had been copied from his Docklands plans therefore infringed his UK and Dutch copyrights. It was held that Kunsthall was independently designed with a similar feature to Pearce’s design hence there was no infringement incurred.

The CDPA 1988 s4 defines “artistic work” as:

(a) a graphic work (including painting, drawing, diagram, map, chart, or plan, engraving, lithograph, woodcut, or similar work), photograph, sculpture, or collage, irrespective of artistic quality,
(b) a work of architecture being a building or a model for a building, or
(c) a work of artistic craftsmanship

Whilst copyright law protects architectural drawings and plans, it does not protect the ideas and concepts embodied in them. It can be argued that in this way, the development of architectural ideas and concepts is encouraged without restriction. Copyright only subsists in the form of the expression of ideas, but not taking the ideas and applying them in works of architecture. This is to prevent the monopoly of the common stock of architectural ideas. It can be argued that the law is not to protect the field of architecture from development of ideas evolving from prior concepts. In the area of

music and composed works, a composer may listen to a tune and integrate it into his own composition subconsciously without realising that a similar exists. In Gomme (E.) Ltd v. Relaxateze, Walton J, stated that there was no copying, although he accepted that subconscious copying was possible because a tune can remain in human memory for a considerable duration. Similarly, if an architect inspects an architectural plan, he or she may be influenced by the prior viewing. It is possible that he or she may take the architectural concept and style embodied in the plan and applies to his or her own design in an original plan produced by him or her without any infringement.

The main principle is to distinguish whether the plans are an expression of concepts and ideas therefore legitimate to use, or the manifestation of original concepts or styles of the designers therefore contributest a copyright infringement if they are copied without permission. However, adaptation of an idea is permitted. In a lengthy case of Jones v London Borough of Tower Hamlets, the claimant designed a scheme for 80 new homes for a developer employed by Tower Hamlets Borough Council. The Council had to take over the development when the developer became insolvent. The architect sued for copyright infringement based on his initial design being copied by the council without permission and no payment was made. There were apparent similarities between the designs. The architect’s claim failed. The principle was that architects are allowed to adapt an idea provided that there is no copying of the copyright protected works.

Architectural concepts and ideas may be encouraged to be developed but not copied. It can be argued that if the architectural drawings contain “unique” designs, they can be under copyright protection. To ensure their copyright is protected, architects and engineers should grant the permission explicitly for the use of their plans, clearly identify which rights are assignable to the third parties, normally with financial implications.

Copyright is a negative right which inhibits the duplication of the work of the authors by others. Copyright subsists in the form in which ideas are expressed, but not in the ideas themselves (Jones v London Borough of Tower Hamlets [2001] R.P.C. 23). Architects and engineers create particular designs for specific clients. These designs are mostly unique and ought to be protected under the law of copyright. There are clauses concerning copyrights in all professional appointments, but the construction industry seems to pay little attention to intellectual property rights. The copyright in drawings and specifications is normally owned by the designers – architects and engineers. There appears to be a lack of reported cases which have examined these issues as most of disputes are settled either via arbitration or mediation outside the court. They are confidential or negotiated directly and are not normally reported as court cases.

### 3 Authorship

The author, who creates the work, is the original owner, the first owner as defined in s91 of the Copyright, Designs and Patents Act 1988. There are three main requirements:

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4 Ibid.
to prove the originality of a design which qualifies for the protection under s213(5) of the CDPA 1988.

1. The design must not be commonplace in the field of design in question under s214(4).
2. The design must originate from the designer; Petersen J, in University of London Press v University Tutorial Press [1916] decided that the word “original” does not necessarily mean that the work must be the expression of inventive thought.
3. The design must not have been copied

The author is a person who creates a work. One of the characteristics of architectural works and designs are their interdisciplinary nature. The law should protect co-authors, and joint authors cannot be liable to one another for copyright infringement. The joint authors should be allowed to exploit the copyright independently and can independently licence the use of the copyright. The joint authors, neither of them should be exclusively responsible for any of the design and the details can be used from one design to another.

There is no requirement for registration on copyright. When the above are fulfilled an unregistered design right will subsist automatically in the design.

Royal Institution of British Architects (R.I.B.A.) conditions of appointment contract has an expressed term stating that unless an alternative agreement has been made the architect retains his copyright in his drawings and the work executed by reference to them. The architect owns the copyright in the drawings and any documentation produced in the course of the project. Therefore, a builder who physically constructs a work of architecture cannot claim copyright even he builds it. In Meikle v Maufe [1941] 3 All ER 144, the Court held that the architect should owned the copyright in the design documents and the resulting building. Under the CDPA 1988, the architect also enjoys the moral right to be identified as its designer of the building, however these rights have to be asserted. The RIBA conditions of appointment contract express it clearly that the architect remains the author of the architectural works. In situations where a building contractor building for an employer, the commissioning client (Cyprotex Discovery Ltd v University of Sheffield [2004] RPC 887) or an employee working for an employer, the employer, in both situations, is normally the author and owner, unless there is an agreement between them stating the contrary (s11(2), CDPA 1988). If a client would like to make use of the calculations, plans, or memoranda, the contract with the designers has to express as provisions. In Leicester County Council v Michael Faraday & Partners Ltd. [1941] 2 KB 205, the local authority claimed that it was the owner of all the documents and plans which were produced by the defendants, who were surveyors contracted to undertake the valuations of the properties. The court held that documents were owned by the defendants because the documents were their expert works, unless there was a contract indicating these provisions.

6 [1941] 3 All ER 144.
7 [2004] RPC 887.
8 [1941] 2 KB 205.
4 Assignment and Licence

Architects and engineers as designers normally have two ways of dealing with their copyright: they are assignment and licence. The first method is to expressly assign their copyright to the employer in terms of engagement which must be recorded in writing (ss 90-92, CDPA 1988). This copyright assignment must be stated clearly in the contract signed by both parties. Provided the architect or engineer does not replicate the whole design in another architecture s 64, CDPA 1988 allows the designer to retain the rights to reproduce some parts of the design for development, to be reused in another project. In general, architects prefer licensing than assigning copyright of architectural plans. Licensing provides architects freedom of future use and modification of their design for development. Clause 6.2.1 of the Royal Institute of British Architects, Conditions of Engagement (CE/99) allows Architect to suspend the licence of copyright materials owned by him or her if the client is in default of payment of their fees. The Architect needs to give a seven-day notice for the suspension. The architect can also authorise a third party to use his copyright materials but he continues to retain the copyright. If there is no expressed agreement on copyright, the employer, that is, the commissioning client will have an implied licence to use the drawings and plans for him according to the fee paid to the architect. However, a licence to use the architectural plans may not be implied in every contract with the architects, especially when the architects have charged only a nominal fee for the drawings. In Stovin-Bradford v Volpoint Properties Ltd, a licence to use the drawings to construct a building was not implied because the architect had only been paid for the work for the purpose of planning permission. Salmon LJ said that even if the architects were to charge the full scale fee for preparing drawings for a planning permission they would not necessarily imply a licence to use the drawings for erecting the building, if they were not supervising the construction of the work. In Blair v Osborne and Tomkins, Jacobs J. lays down the principle:

“It seems to me that the principle involved is this; that the engagement for reward of a person to produce material of a nature which is capable of being the subject of copyright implies a permission, or consent, or licence in the person giving the engagement to use the material in the manner and for the purpose in which and for which it was contemplated between the parties that it would be used at the time of the engagement.”

The normal use of the plans may be for the alteration by a different architect, the printing of a developer’s brochure for enquiring potential buyers (Robert Allan & Partners v Scottish Ideal Homes). Unless agreement is made, certain unique distinctive features in the design cannot be used in an extension of the original building (Meikle v Maufe).

Both the Royal Institute of British Architects, Conditions of Engagement (CE/99) Clause 6.2 and the Association of Consulting Engineers Conditions of Engagement 1995 (2nd ed, 1998) Agreement D have expressly licensed the commissioning client to

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10 [1971] 2 QB 78, [1971] 1 All ER 468, CA at p235.
11 [1972] SLT (Sh Ct) 32.
12 [1941] 3 All ER 144.
copy and use, and also allowing other consultants and contractors to copy and use the drawings and documents for the purposes related to the project. This is under the condition that the fees have been paid according to the agreement, and the architect has completed the scheme design, detailed design and production information.

The reason behind an implied licence is explained below. The client who commissions an architect to design for him does not entitle to use the designs. It is unlikely to settle on an agreement between the client’s commercial efficacy and the architect’s interest. Hence, if the architect has not have an expressed copyright on the design, a licence to the commissioning client will normally be implied. Most architects and engineers favour the granting of a licence than assignment of their copyright.

In Glengate-KG Properties Ltd v Norwich Union Fire Insurance Society Ltd and others, although a licence was granted to Glengate to reproduce the designs after completion of work, the architects had reserved the copyright in the drawings and designs, as explained in Clause 15 of the Royal Institute of British Architects (RIBA) Explaining an architect’s service quoted below:

15. Copyright

Unless an alternative agreement has been made, the architect owns the copyright in the drawings and documentation produced in the course of the project. The client will usually have a licence to copy and use them only for purposes related to the project. If stage payments have been made to the architect, and the stage involving the planning submission has been completed and paid for, then the client has the right to use the relevant drawings for the purpose for which they were prepared (i.e. the planning application), regardless of any subsequent dispute which results in the withholding of fees owed for any following project stages.

5 Infringement

The CDPA 1988 s16 provides exclusive rights to owners of copyright to do or authorise others to do or to act in the UK in relations to those works. These rights include copying the work, issuing copies of the work to the public, performing, showing or playing the work in public, broadcasting the work and making adaptation of the work. In fact, the adaptation work is an original copyright work in its own rights. For an infringement to take place, the infringed work should be copyright, a right should be infringed, and there was no defence. The copyright owners do not need to prove that the defendant had knowledge that the work was copyright protected, it is strict liability. There are two forms of infringement: primary infringement and secondary infringement. Primary infringements are restricted acts carried out by a person himself or herself or by a person being authorised to do so, without the permission of the copyright owner no matter what mental state the defendant is in. The intention of the defendant is

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13 [1996] 2 All ER 487.
14 Clause 15 of the Royal Institute of British Architects (RIBA) Explaining an architect’s service.
Secondary infringements are dealings with infringing copies of a work. They are concerned with more serious infringements of larger scale with actual and constructive knowledge.

5.1 Primary Infringements

In Francis, Day and Hunter v Bron, the Court of Appeal suggested a two-pronged test for infringing reproduction. Firstly, there is a sufficient degree of objective similarity between the two works; secondly, there is some casual connection between the original and the allegedly infringing work. For objective similarity, there is no requirement for the works to be identical before they are considered as infringement. If a substantial part has been copied, it can constitute an infringement. “Substantial part” is a qualitative test rather than a quantitative test as in Ladbroke v William Hill. The court will identify sufficient degree of similarity with the original work by an objective test as in Designers Guild Ltd v Russell Williams (Textiles) Ltd. However, it is not considered to be an infringement if it is similarity is devolved from a casual connection with the earlier work. The later work can be qualified to obtain separate copyright even though there is an infringement involves in the earlier work.

Copying according to C DPA 1988 s17(2) includes storage of the work in any medium which includes digital storage. According to CDPA 1988 s17(3), making a copy in three dimensions from a two-dimensional work and vice versa is a primary infringement.

5.2 Secondary Infringements

Secondary infringement usually involves commercial infringement of reproducing copyrighted work including possessing, selling, exhibiting or distributing infringing copies with knowledge of the infringement or at least hold reason to believe that there is an infringement. By “reason to believe” it means the knowledge of facts that a reasonable man would come up with the relevant belief as long as he or she has sufficient time to acquire the reasonable belief after investigation of the facts.

Copyright infringement is an unauthorised violation of the exclusive rights of the author and owner of an intellectual property. The copying of architectural plans by duplicating from the original plans is an example of copyright infringement. A perfect replica is not necessary to prove infringement, as long as an ordinary average layman would realise that there is an appropriation from the original work. Angela Adrian (2008) suggested that

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18 [2001] 1 WLR 2416.
19 CDPA 1988 s27(2).
“The test is whether the plan or building was a copy of the concept or style and therefore legitimate or a copy of the author’s original manifestations of that concept or style and therefore an infringement.” (Adrian, 2008, p529).

5.3 Remedies for Infringements

Under s62 of the CDPA 1988 the remedies for copyright infringement are damages, injunctions, accounts or otherwise. For architectural works, it is unlikely that the court would order the demolition of the building because of the cost involved; hence, it the remedies are likely to be in monetary compensation. Another remedy for architectural works would be to register a caution under the Land Registration Act 1925, s54(1) against the property which is alleged to infringement of copyright of architectural plans owned by an architect (Arnold, 1997).

5.4 Defences

There are a number of exceptions available as defences under the CDPA 1988. These include fair dealing, incidental inclusion and artistic works on public display. Under Copyright, Designs and Patents Act 1988, ss 28-76, the copying of copyright works is allowed for fair dealing if the purpose of using the materials is for research and private study, criticism or review, reporting current events or incidental inclusion, provided it is not for substantial financial gain.

The CDPA 1988 s31(1) allows the incidental inclusion of copyright materials not to constitute an infringement, for example, an informal photographic portrait of painting or sculpture or in a television broadcast. This rule also permits certain acts in respect of buildings, models of buildings and works of artistic craftsmanship which are located permanently in a public place or premises open to the public. Architecture in public location may be the subject of a graphic work, a photograph or video, or broadcast as a visual image without copyright infringement21.

6 Copyright Protection Measures

In the United Kingdom, Copyright law protects the creators of designs from having the drawings published, copied or broadcast in any way unless permission is given. Copyright protection is an automatic right, however, if there is any dispute, evidence is necessary to support any claim. In order to deter infringements, architects and designers can protect their drawings by using copyright notices for example including © or using the word “copyright” and ensure they are properly marked in the drawings as shown in Figure 1. They can register their design with verifiable proof of date and content. Registration can be submitted online or by post. Other supporting evidence on the evolution of ideas and development of the design would make a stronger case in the event of a dispute. In the design of architecture, it is quite often that it is a joint venture among the professional designers – architects, structural engineers, building services engineers and other designers. Agreement between the co-authors is an effective way to protect the copyright of individual professionals.

21 CDPA 1988 s 62.
How effective is the UK’s Copyright Law in protecting the rights and interests of architects and designers? The main protection in UK Copyright Law is the written form of the design in recorded drawings, but not the ideas contained in the architectural design. The design has to be created by a qualifying author, such as an architect or an engineer, and is original and tangible. An architect can licence a client or other design professions to use the drawings, but the copyright normally remains with the architect who creates the drawings. The Royal Institution of British Architects (RIBA) has RIBA standard form of appointment contract which protects architects. If fees due to them are not paid, the licence would not be valid. It is an infringement of copyright if the drawings are copied, distributed or rented to other designers or to make alterations on the original drawings without the author’s permission in the form of a valid licence. If a third party uses the plans for construction knowingly that it is an infringement of copyright, they are in breach of copyright law. Apart from copyright there are other forms of protection for architects’ work such as unregistered design rights, registered nationally as registered designs and European design rights. These issues are beyond the scope of this article.

The legislation in the UK is not clear concerning whether architectural designs are eligible to be registered as there is no specific exclusion or prohibition in doing so. It can be argued that certain modern buildings are likely to be industrial or handicraft items, but it is uncertain whether designs of buildings constructed by assembling prefabricated units can be registered as “three-dimensional products”. It was reported that the registration of concrete shelter was rejected. It remains unclear whether the design of a building can be registered or not.

One controversial issue in relation to the protection of architectural work is in regarding whether it should be afforded the same protection as a sculpture which is classified in the CDPA 1988 s 1 as an artistic work. Most architectural works are artistic works designed for a purpose; they are usually functional and utilitarian rather than purely artistic. Hence, it would be irrational to treat them as sculptures for copyright protection. A better scheme of protection of architectural works is to treat them as a sui generis category separated from sculptures and any other artistic works.
7 Proposed Law Reform

In the UK, under the Copyright Act 1911, architectural drawings were considered as literary works including maps, charts and plans. However, under the Copyright Acts 1956 and 1988, architectural drawings are afforded protection under artistic works. Neither of them provides satisfactory protection to architects and engineers as designers.

It is proposed by the author of this research that the designers and authors of architectural plans and works of architecture should be more adequately protected in the copyright for:

1. Two-dimensional representations such as architectural plans and drawings
2. Three-dimensional full scaled representations such as physical buildings including fixed structures
3. Three-dimensional physical scaled models
4. Digital representations such as digital Computer-aided design (CAD) models, photographs

7.1 Two-Dimensional Representations

The scope of afforded protection should realise that design in architecture normally incorporates selection, coordination or arrangement of elements. Although some of the design elements are not protectable, the integration and arrangement of these elements into an original new design should be allowed to be protected. In Shine v Childs the court held that the Olympic Tower had met the criteria for “copyrightability” realising an “unmistakable dash of originality need be demonstrated, high standards of uniqueness in creativity are dispensed with”. The combinations of the architectural design elements of twisting towers, diamond-windowed facades, set-backs and support grids are “dash of originality”. Furthermore, architects and engineers may include novel protectable elements into a standard common features, which may be not be able to be protected, but the protectable novel elements should still remain protected. The philosophy behind these proposals is in line to what were reported in the U.S. Congressional Report for Architectural Works Copyright Protection Bill in 1990.

7.2 Three-Dimensional (3D) Full Scale Representations

The current UK copyright law considered copyright to be infringed if the elevation of the building with artistic characteristics is similar to the original plans. The scope of protection of works of architecture should extend to overall form, arrangement and composition of spaces and elements in the architectural design. Apart from the external visual characteristics the interior of the architecture should also be adequately protected.

The architect should be adequately protected if the 3-D full scaled building is obtained from the 2-D architectural plans as in Hunt v Pasternack.

22 382 F.Supp at 610.
23 192 F.3d 877, 879-80 (9th Cir. 1999).
7.3 Three Dimensional Physical Scaled Models

The tradition of representation of an architectural works at the design stage is by three-dimensional physical scaled models. The CDPA 1988 s62, models of building were allowed for unauthorized but legitimate copying such as making a graphic representation, making a photograph or filming, broadcasting, and these can be distributed to the public copies of the representation of the models. The copyright owners of these models should be given as a sui generis protection under architectural works.

7.4 Digital Representations

When the CDPA 1988 was enacted, the Internet was not widely used; the problem of pirating architectural designs did not exist on any appreciable scale. Nowadays, as more individuals use personal computers and the Internet, architectural plans and designs can easily be copied and traded by many users. Nowadays, architectural practices produce drawings for their designs with CAD tools. AutoCAD® is an American CAD software application which supports 2D and 3D design and drafting. Architectural designs can be represented in 2D and can be modelled in virtual reality three-dimensional models for visualization. It is important to protect architectural works and designs in the form of electronic models and Computer-Aided Design (CAD) drawings such as in AutoCAD® format when they can be downloaded, copied, stored and modified easily.

Newman had raised issues on problems with architectural works stored in computer systems. Most clients acquire the properties in the copy of a design from the architect. Newman argued that the final form of design represents a document which becomes the property of the client, even though they may not be printed out in hardcopy. Although the clients and the designers can include in the contractual documents copyright or licence clauses, it is proposed that the designers should be able to be protected by legislation automatically. They have to rely on implied terms creating uncertainties if they had not agreed on a granted licence.

It is difficult to claim for infringement of architectural works protected by copyright, when it is digitised and made available over the Internet. It is impossible to consolidate claims for infringement in one location, as the infringers may be under different jurisdictions, and they may be unknown to the copyright owner. It is proposed to apply a single universal law in dealing with infringements over the Internet.

The EU Copyright Directive has focused on the harmonisation of copyright laws in the information society. It extends the rights granted to copyright holders, in the following broad, technology-neutral exclusive rights including the right to authorise or prohibit reproduction including temporary reproduction, the right to authorise or prohibit the

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communication, or the making available to the public, of a work or other subject matter; and the right to distribute copies of the work.

8 Reform Proposal

The principles of providing appropriate copyright protection to designers such as architects and engineers are to encourage creativity in design. However, such protection should not hinder creative design and discourage future development in works of architecture. The copyrighted materials should be allowed to be used in fair dealing such as research or private study, review and criticism, reporting current issues and knowledge management, provided the main purpose is not for commercial financial gains.

The author’s preliminary proposal on the protection of architectural works and designs in the U.K. takes its cues from the AW PCA 1990. From the above discussion it is apparent that the most effective way to protect the rights and interests of architects and designers of their architectural works and designs is by sui generis protection similar to the proposal in this section.

(a) Definitions

1. “Architectural works” means “the design of a building as embodied in any tangible medium of expression, including buildings, three-dimensional models, architectural plans, or drawings and electronic representations. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, including novel functional features.”

2. “Design” means “the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article, other than surface decoration.”

3. A design is “original” if the architectural works is the result of the designer’s creativity that provides a distinguishable work over prior works, and is not the result of directly copied from other sources.

4. “Design document” means “any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise.”

(b) Copyright Protection

1. Architectural works and designs shall be a sui generis statutory subject matter of copyright protection.

2. Architectural works and designs shall be protected in its own category separated from “artistic works” or “pictorial, graphic and sculptural works,” and in compliance with the requirements of the Berne Convention.

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26 Wording in SI2003/2498, reg 2(1), Sch 1, Pt 1, para 1, 8(3).
27 Ibid.
28 CDPA 1988 s 1.
29 US Copyright Act 1976.
(3) Architectural works and designs that are independently created and that express high degree of creativity shall be protected. Architectural works and designs that are not new or that do not significantly differ from existing designs shall be protected if there is evidence that they were independently created from prior work.

(4) The copyright owner of protected architectural works and designs shall have the right to prevent third parties not having the owner’s consent from constructing or transferring the works or designs which is a copy, or a substantially similar copy, of the protected works or design, especially when the acts are undertaken for commercial gain purposes.

(5) Protection shall vest at the time of fixation, when it is embodied in a medium of expression with sufficient permanence, even when it is in a transient form in the memory of a computer, especially for the works and design which are registered with the Copyright Office.

9 Conclusion

Adrian\textsuperscript{30} said recently that architecture has its special place in the law of copyright. While an architectural drawing can be protected by the UK copyright law, the law does not restrict the development of creative ideas and concepts but prevents the copying of plans.

Having reviewed the evidence and the relevant law, it can be concluded that both the jurisdictions of the U.S. and the U.K. do not adequately protect the rights and interests of architects and designers. There is a need for reform in respect to the protection of the rights and interests of designers on architectural works and designs. The authors’ creativity on the architectural designs which are original even if they are functional shall attract appropriate rewards. Architecture should be protected in its own category separated from “artistic works”, “graphic works” or the American category of “pictorial, graphic and sculptural works”. Because of their nature and characteristics, architectural works and designs should have \textit{sui generis} protection. Most buildings are designed to be functional and practical rather than simply for attaining an artistic purpose. Because of their integrated characteristics of being utilitarian, functional as well as artistic, architectural works and designs should not have to be evaluated under conceptual separability test. There is a need to establish a new test to satisfy their \textit{sui generis} characteristics. Authors should have exclusive rights on architectural works and designs preventing them from unauthorised use and copying. If artistic and functional architectural works were protected, architects and designers might be motivated for greater creativity, and they would be rewarded for their creative works and designs.

There should be clear infringement standards. The authors of architectural works and designs should be more adequately protected in the copyright for the architectural drawings and plans, the full scaled representation in physical buildings and the digital representations in computer models of the works of architecture. In the UK copyright

law, the physical buildings are considered as artistic works. Copyright protection should not only covers characteristics and original features of the buildings but also covers the methods or processes of construction. Concerning the copyright protection of computer models of architectural works, a single universal law should be introduced to tackle infringements of digitised works distribution of copyright works of architecture over the Internet without authorisation.

The most effective way to protect the rights and interests of architects and designers of their architectural works and designs is by sui generis protection. Sui generis protection has its benefits because it can take on the special characteristics of architectural works and designs requiring a different enforcement system with particular royalties relevant to the nature of architecture.

Apart from remedies of actual monetary damages, or issue of injunction reliefs, authors should be given the opportunities to influence the decision on their architectural works and designs. They should be given a chance to be consulted on the alterations and destructions of the constructed buildings.

10 Future Research

The advances in digital technologies have brought great challenge to copyright owners. There is no exception for copyrights protection for architectural works and designs. It would be worthwhile to further investigate whether the EU Copyright Directive\(^{31}\) and the UK implementation cover the protection of architectural works and designs effectively; and whether it is necessary to propose a reform to cover the architectural works and designs satisfactorily.

11 References


\(^{31}\) Copyright Directive 2001/29/EC of the European parliament and of the council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society


Royal Institute of British Architects, Conditions of Engagement (CE/99) Clause 6.2.
