

## Our Legal Reality



### Copyright Law — Does It Apply to Component Manufacturers by Kent J. Pagel

"You say that copyright law does not apply to you — think again!" No different than books, movies and songs, federal copyright laws protect the intellectual property of engineers, architects and designers, home or

otherwise. In the construction context, copyright laws prevent anyone from reproducing, modifying or reusing plans or designs without written permission from the copyright owner.

What does this mean? It is illegal to copy or reproduce plans (that are not purchased as reproducible plans) from a plan book or even on the Internet. It is illegal to simply copy a set of plans provided, unless the plans come with a license to copy. It is illegal to make additional sets of plans for construction without consent (e.g. paying an additional nominal cost). Redrawing or modifying plans without first obtaining the copyright owner's written permission is prohibited, although a purchase of plans would allow for non-structural changes to be made to the plans through "redlining," although the "redlined" plans still retain their original copyright and cannot be copied.

Think about this concept in these terms: copyright law does not protect against an unauthorized use but instead protects against unauthorized reproduction, adaption, display and/or distribution.

As you can see, the technical requirements for qualifying for copyright protection are fairly easy to meet. The more difficult task for the copyright owner involves how to successfully protect the copyright. While a claim of copyright infringement is outside the scope of this article, as a general rule to prevail in copyright litigation regarding plans and designs, a copyright owner must establish that: 1) the design documents qualify for copyright protection, as outlined above; and 2) the documents that are claimed to infringe on the copyrighted documents are substantially similar to those of the architect, engineer or designer who created them.

While knowing that one is infringing on a copyright is not necessary to prosecute a claim and assessment of damages such as loss of profits, a willful copyright infringement could lead to an

#### HOW TO HANDLE COPYRIGHT NOTICES

Regarding copyright notices, if you are the originator of the intellectual property that is subject to copyright protection, it is always a good idea of place a copyright notice on any depiction of the design. Such notice should consist of ©, the abbreviation "Copr" or the word "Copyright" followed by the year of first publication and the name of the owner of the copyright. Example: "Copyright Law: Does it Apply to Component Manufacturers" © 2003, Kent J. Pagel.

assessment of statutory damages of \$100,000 plus attorney's fees.

## **HOW DO I KNOW MY CUSTOMER IS LEGALLY USING THE PLANS I AM PROVIDED? WHAT IF I AM ASKED TO COPY A SET OF PLANS FOR A CUSTOMER?**

A customer comes to you or your truss design staff with “rough drawings” asking you to value engineer or redraw a final set of floor, wall and roof structural drawings. Or, the customer may simply request that you redraw the existing structural plans and provide a roof or floor truss placement plan. The customer may even indicate the initial drawings are his own renderings.

The truss designer takes the crude drawings, and using many of his own design ideas, creates a set of structural drawings. Or, the truss designer may simply redraw the drawings and prepare a truss placement plan. Only later do you learn that the customer has traced the crude plans from a plan book, or has drawn them from a tour of homes in the local area. The customer may have even purchased the original set of house plans from an architect or designer but that license is limited for use in the construction of one, and only one, house. In the meantime, you and/or your truss designer are sued although no one from your company ever saw the plan book or the homes, and the new plans represent many of your truss designer's own ideas and designs. In addition, there has been no notice of copyright protection on the preliminary drawings.

In this example, it is conceivable that your truss designer and your company as the employer of the truss designer could be held liable for the customer's misconduct. To copy or redraw/modify the plans or designs of another is a violation of the originator's copyright. This is true even though there is no knowledge of the original work and no intent to copy. While the customer's conduct may be the focus of the litigation, that focus will be of little comfort to a truss designer or component manufacturer dragged through litigation at a cost of all profits it received from the project and the legal fees expended to defend the action.

To minimize the risk of potential litigation, it is imperative that component manufacturers and their truss designers know the source of any drawing upon which they are relying in preparing their design and/or placement drawings. The mere assurance that there is no copyright issue is insufficient to protect them from liability.

It may be necessary under certain circumstances for the component manufacturer and truss designer to be indemnified by the customer or whoever supplies the drawings or design information upon which the truss designer is to base his design documents. Of course, this is useful only to the extent the person providing the indemnity is and remains solvent.

Another way the component manufacturer could mitigate this risk is to add a provision to their customer contract similar to the following:

Builder represents and warrants that it legally holds all rights to the plans and specifications provided to Anytown Truss Company for performance of the component design [describe the specific design work that is being done] contemplated by this Agreement. Builder hereby agrees to release, indemnify and hold Anytown Truss Company harmless from any and all claims, direct or indirect,

which challenge the right of the Builder in the plans and/or specifications for the structure to be constructed as contemplated by this Agreement.

A contract provision like this one is very important to the extent the component manufacturer chooses to go beyond the typical design and placement of the trusses and chooses to work with the “rough drawings” to provide a final set of floor, wall and roof structural drawings.

#### **WHAT SHOULD I DO IF ASKED BY “BUILDER B” TO PROVIDE HIM THE SAME TRUSS DESIGNES AND TRUSS PLACEMENT PLANS AS PROVIDED TO “BUILDER A”?**

You follow the suggestions above regarding Builder A and make sure he has either ownership in the plans provided or the requisite permission to redraw and modify such plans. Working with Builder A, you are able to accommodate the appearance sought by the builder and at the same time you arrive at an effective structural design efficiently using components you manufacture. You do such a good job that Builder B asks that you do the same for him, either requesting a copy of the plans provided by Builder A or requesting that you at least provide your redrawn structural drawings or the truss designs and placement plans you prepared. BEWARE, the original plans provided to you by Builder A are copyright protected. Furthermore, your redrawn structural drawings or truss designs and placement plans have been incorporated into the structural design of Builder A and are also most likely copyright protected.

#### **HOW COULD I HAVE STOPPED THAT BUILDER FROM USING MY TRUSS DESIGN DRAWINGS AND PLACEMENT PLANS?**

At times, the component manufacturer is asked to prepare truss designs even before the truss contract is awarded. The builder may be on a tight schedule and needs the designs as soon as possible or the designs may be required for permitting. The truss design drawings and placement plans provided are themselves subject to copyright protection although it can become complicated as to whether an implied license exists as between the component manufacturer and its builder customer once the drawings are submitted. In any event, it is unlikely the component manufacturer will either want or choose to enforce copyright protection through litigation. My typical recommendation in these circumstances is to at least obtain an agreement in writing with such customer that ensures you get paid for your design work in the event that you are not awarded the bid or which specifically states that the design work cannot be used by the builder customer unless and until the bid is awarded to the component manufacturer.

While it may seem like a long shot that anyone would enforce copyright laws in the construction context, due to the fact that it has become somewhat traditional to make copies of plans and specifications, it is worth taking time to review your internal procedures. From there you can assess the protection you have provided yourself and the existing risks that you may face. Be careful about “doing what it takes to help the customer” out of concern that if you do not, your competition will. While it is good to have a passion for customer service, it is also wise to assess the costs and risks of aggressive customer service, especially in the area of copyrights.

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Kent J. Pagel is the President and Senior Shareholder of Pagel, Davis & Hill, a professional corporation. Mr. Pagel serves as the outside counsel for WTCA.

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