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Copyright of Engineering Drawings, Plans and Designs

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I. Plans for Construction of Structures

Jack and Jill's business finally took off and the financial struggles of the early years were behind them. They engaged an engineering firm to design a custom dream house, investing a significant amount of money into the custom design services. It was all worth it to have a "one of a kind" house.

Three years later, Jack was driving to work and saw a house that looked remarkably like their "one of a kind" dream home. He turned around to give it a better look. It was not just similar, it was an exact duplicate!

Jack contacted his long-time family attorney about the misappropriation of his design ideas. To his dismay, he learned that the engineering firm owned the copyright in the plans. In fact, the design was so successful; they had sold dozens of copies of the prints in the past year for construction in the area. There was nothing illegal about what they had done.

Jack and Jill felt violated. Their expectations about the professional relationship and the rights in the work product were very different from the practices of the engineering firm. They could hardly recommend this firm to friends and associates, somehow feeling that their activities were immoral, even if they did not rise to the level of illegal.

The engineering firm, of course, had different expectations. In fact, its practices were common in the industry. The significant investment of resources in custom design work can be recovered by these additional revenue streams. In a way, that keeps the hourly rates at an affordable level for independent clients. This misunderstanding is likely to have a negative impact on their business. While it is immeasurable to what extent and how many would-be clients don't make that call after hearing the story of Jack and Jill, it is possible that the former clients have a large circle of influence. Additionally, the firm is proud of the work it did and its reputation in the community. Despite doing nothing wrong, they are dismayed at the prospect of unhappy clients.

The best way to avoid these situations is to understand the body of rights each respective party has in this situation and to account for these rights in the engagement letter and initial client meetings. This will avoid unfortunate misunderstandings like the one just described.

So, what is the law surrounding designs, plans and constructed structures?

The design concept is not protected by copyright

The design ideas of the homeowner – client are not represented in a concrete form and cannot be copyrighted. Ideas are not protected, but their expression may be protected.

Blueprints enjoy copyright protection

The author who expresses those ideas in a concrete form (in the form of blueprints) is eligible for copyright protection. The author of the drawings is the sole owner of the copyright even if the ideas were a joint conception by client and engineer.

The plans for custom designs may be reused

Copyright is a property right in the same way we think of real property (houses and land) or personal property (cars, clothing, jewelry and animals).

A homeowner who engages an engineer (or architect) in a contract that did not provide for the transfer of copyright is granted a one-time non-exclusive license to use the plans to build one structure and only one structure. The copyright owner, the engineer or engineering firm, may license the plans without restriction to be built anywhere, including right next door. He may do this by non-exclusive or exclusive license according to the terms of the contract reached between the parties.

Limitations to the engineer's rights may arise from unfair competition laws and the contract between the parties. Both issues were brought out in a case by Donald Trump against his architect. Trump's former architect, Mr. Birnbaum, designed a "look – alike" building across from Trump Plaza on Third Avenue in New York City. Mr. Birnbaum attempted to create a "twin tower" effect with similar buildings across from one another at the doorway to Third Avenue. Unfortunately, his creative vision was not shared by The Donald. In this case, the Trump Plaza design was considered distinctive in the mixture of overall elements and therefore, the overall mixture enjoyed copyright protection (but not individual elements). The contract provided that the architect did own the plans but did not have the right to use them for any other buildings. The contract provision played a crucial role in the judicial outcome. It is not clear how the case would have turned out without this contractual provision.

The Structures constructed from the plans may be protected by copyright

An original design of a building embodied in any tangible medium of expression, including a building, architectural plans, or drawings, is subject to copyright protection as an architectural work. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design but does not include individual standard features or design elements that are functionally required. The term building means structures that are habitable by humans and intended to be both permanent and stationary. This includes houses, office buildings, churches, museums, gazebos, and garden pavilions.

Structures other than buildings cannot be registered. These may include bridges, cloverleafs, dams, walkways, tents, recreational vehicles, mobile homes, and boats.

Standard configurations of spaces, and individual standard features, such as windows, doors, and other staple building components, as well as functional elements whose design or placement is dictated by utilitarian concerns also are ineligible for registration.

Copies of the Plans for Estimating or Construction

The right to copy the plans is retained by the copyright owner. The purchaser of a set of plans has a one-time license, not ownership of the copyright. The licensee may not take the plans to a local copy shop and make copies, even for legitimate purposes in the course of using them to build the structure. (With the introduction of software and digital media, the law may be moving toward an implied license under fair use copyright provisions to allow an implied license to make reasonably necessary copies to build a single structure.)

This is typically handled by the transfer of rights under a non-exclusive license in the form of a reproducible set of the engineering plans. These rights carry the right to make a specified number of copies, typically 10 sets. Alternatively, they may convey the right to make the necessary copies to construct one building if the number of copies is specifically limited. An extended license may be granted for additional duplications if they become necessary or desirable. Each of these transactions may be separate and chargeable! You are in the realm of business, not legal, decisions on issues such as how many copies to allow and what fees are to be negotiated for the first and any extended licenses.

It is advisable to require customer licensees to obtain and destroy all copies given to construction companies, estimators, suppliers or government agencies once they have completed the project. (Some government agencies may require a set to be retained.) This prevents misappropriation of copyright interests by others. The customer/licensee may be held liable for infringement in which they played a role, even unknowingly. Explaining this often provides an incentive for their participation in this endeavor. You may even consider asking for a certification that the copies have been accounted for and destroyed.

II. Engineering Design Plans for Non-Building Subject Matter

Many of the same principles outlined above apply in the context of design plans for mechanical devices, electronic components and other subject matter. There is one critical difference, however, in that patent protection may be available for the design concept. In that case, the engineer will likely be deemed to be “one who is reducing the inventive concept to practice” and will have no ownership interest in the concept itself. Thus, the inventor may have protectible interests that have implications with respect to any copyright interests created. For example, if the inventor has a patent monopoly on the subject matter, then the opportunity to exploit the plans for additional revenue streams is limited at best. An engineer may be interested in copyright of his work product insofar as it is reproduced in marketing materials, instructional manuals and the like. However, with this reality, it is most likely that the client will want to negotiate for the conveyance of any copyright in the work product for these reasons.

Utilitarian objects, or “Useful Articles” may have both copyrightable and non-copyrightable aspects. A “useful article” is an object having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. Examples are clothing, furniture, machinery, dinnerware, and lighting fixtures. An article that is normally part of a useful article may itself be a useful article, for example, an ornamental wheel cover on a vehicle.

Copyright does not protect the mechanical or utilitarian aspects of such works of craftsmanship. It may, however, protect any pictorial, graphic, or sculptural authorship that can be identified separately from the utilitarian aspects of an object. Thus, a useful article may have both copyrightable and uncopyrightable features. For example, a carving on the back of a chair or a floral relief design on silver flatware could be protected by copyright, but the design of the chair or flatware itself could not.

III. Implications of Ownership of the Copyright

Copyright law provides that, in the absence of a written agreement to the contrary, the author is the owner of the copyright in the plans. So, if the contract is silent on the matter, the engineering firm owns the copyright in the plans.

The most common written agreement dealing with this subject matter is the contract between the engineer and client. However, a construction company and engineer may also have a written agreement that transfers ownership in the copyright. Many construction companies desire to purchase rights in plans so they can use them repeatedly in subdivisions without restriction or licensing fees.

Works for Hire

Works for hire include work
1. Performed by employees in the scope of employment, or
2. Work by independent contractors if it is both specially commissioned and falls within one of the 8 categories listed below:
    1. Contribution to a collective work
    2. Part of motion picture
    3. Translation
    4. Supplementary work
    5. Compilation
    6. Instructional text
    7. Test or answer to test
    8. atlas

In many cases, if not most, plans will not be deemed works for hire when they are done by a sole proprietor engineer. (Perhaps if they were commissioned as illustrations for a collective work such as a book, instructional manual or

marketing materials.) If they are done by an engineer working for an engineering firm, then copyright ownership rests with the employer in most cases.

Transfer of Copyright

A written contract may transfer copyright to the client. This should be done with an assignment of copyright interests. State law, including New York, may not reliably transfer the bundle of property rights in other documents and forms. General assignment language must meet the requirements for the law of the state where the contract is to be enforced, or the laws under which it will be determined. These are often set forth in the pro forma language near the end of the contract. Generally acceptable assignment language (that qualifies in New York) might be along the lines of the following:

WHEREAS, <seller> has/have invented and authored certain works in <title> for which copyright protection is claimed (or for which a Copyright Registration by the United States Copyright Office was issued on <issue date>, and accorded <copyright registration number>); and

WHEREAS, <buyer> is desirous of obtaining the entire right, title and interest in, to and under the said work and copyright;

NOW THEREFORE, in consideration of the sum of One Dollar ($1.00) in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the said <seller> has/have sold, assigned, transferred and set over, and by these presents
does/do hereby sell, assign, transfer and set over, unto the said <buyer>, its successors, legal representatives and assigns, the entire right, title and interest in, to and under the said work and any copyrights which may be granted thereon and all derivative works thereof which may hereafter be filed for works and derivative works in any country or countries foreign to the United States, and all Copyright Registration or its equivalent which may be granted for said works and derivative works in any country or countries foreign to the United States and all extensions, renewals and reissues thereof.

IN TESTIMONY WHEREOF, I hereunto set my hand and seal this _____ day of _____, 2005.

_____
<seller>

In a work-for-hire agreement, a clause such as the following might be used:
1. Title and Copyright Assignment
(a) Engineer and client intend this to be a contract for services and each considers the products and results of the services to be rendered by Engineer hereunder (the "Work") to be a work made for hire. Engineer

acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of client.

(b) If for any reason the Work would not be considered a work made for hire under applicable law, Engineer does hereby sell, assign, and transfer to Client, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world.

(c) If the Work is one to which the provisions of 17 U.S.C. 106A apply, the Engineer hereby waives and appoints Client to assert on the Illustrator's behalf the Engineer's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions or the Work, in any medium, for Client's purposes.

(d) Engineer agrees to execute all papers and to perform such other proper acts as Client may deem necessary to secure for Clients or its designee the rights herein assigned.

The engineer may, and should in my opinion, negotiate a fee for the transfer of the copyright interests. In fact, since the engineer will be deprived of the opportunity to earn additional revenues from future licensing or sale of the plans, the exclusive services may be at a premium rate in lieu of, or in addition to, a prescribed fee for copyright transfer. These are less legal issues than business issues and thus, your decisions and rates should be considered accordingly. The negotiated fee structure will be market dependent in most cases.

Modifications to the Plans

Modifications to the original plans are considered derivative works under copyright law and are also protected by copyright. If the engineer owns the copyright, another engineer or architect cannot make modifications without permission of the copyright owner. Once again, you are in the territory of business decisions on what to allow and appropriate fees to negotiate in these circumstances, especially in a small community of engineers who frequently work with one another.

The purchaser of a license has the right to make modifications as a licensee, however, the rights in those derivative works, including the right to make copies, belongs to the original copyright owner. Yes, that means only one red-line set is allowed; no copying is permitted without a license.

Term of Copyright

How long does the copyright in the plans and the building last? We will limit our discussion to currently created works. (The terms for past works may differ.) The copyright term depends upon the circumstances, but it is beyond the lifetime of its author!

General Copyright
Generally
Life of author + 70 years

Joint Works
Life of last surviving author + 70 years

Works Made For Hire
Shorter of 95 years from first publication or 120 years from year of creation

(An added benefit is that the term ends on December 31st of the relevant year. We don't need to know exact months and days.)

Copyright Infringement

You will want to consult an attorney who specializes in intellectual property law to discuss your potential remedies and costs. As with anything, prevention is only a fraction of the cost of resolving a dispute. Some basic information is available on the Copyright Office official website at www.copyright.gov.

What constitutes fair use?

Section 107 contains a list of the various purposes for which the reproduction of a copyrighted work may be considered "fair." These "fair uses" include criticism, comment, news reporting, teaching, scholarship, and research. The U.S. Copyright Office's official website explains: "*Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair:*

1. *the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;*
2. *the nature of the copyrighted work;*

3. *amount and substantiality of the portion used in relation to the copyrighted work as a whole; and*
4. *the effect of the use upon the potential market for or value of the copyrighted work.*

The distinction between "fair use" and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission.

Copyright protects the particular way an author has expressed himself; it does not extend to any ideas, systems, or factual information conveyed in the work.

The safest course is always to get permission from the copyright owner before using copyrighted material. The Copyright Office cannot give this permission.

When it is impracticable to obtain permission, use of copyrighted material should be avoided unless the doctrine of "fair use" would clearly apply to the situation. The Copyright Office can neither determine if a certain use may be considered "fair" nor advise on possible copyright violations. If there is any doubt, it is advisable to consult an attorney."

Is my copyright good in other countries?

The United States has copyright relations with most countries throughout the world, and as a result of these agreements, we honor each other's citizens' copyrights. However, the United States does not have such copyright relationships with every country.

IV. Creating and Registering a Copyright

Your work is under copyright protection the moment it is created and fixed in a tangible form that it is perceptible either directly or with the aid of a machine or device. In general, registration is voluntary. (For boat hull design protection under Chapter 13, registration within 2 years is required.) You will have to register, however, if you wish to bring a lawsuit for infringement of a U.S. work. The practice of sending a copy of your own work to yourself is sometimes called a "poor man's copyright." There is no provision in the copyright law regarding any such type of protection, and it is not a substitute for registration.

Why should I register my work if copyright protection is automatic?

Registration is recommended for a number of reasons. Many choose to register their works because they wish to make a public record and have a certificate of registration. This provides notice to the public of the ownership and copyright claim. Registered works may be eligible for statutory damages and attorney's

fees in successful litigation if registration occurs within 5 years of publication; it is considered *prima facie* evidence in a court of law. The registration also creates a stronger asset that may be sold or used as collateral in financing.

Copyright Notice

Copyright rights accrue under common law, even without notice of your intent to claim copyright. So, without doing a thing, you have some weak copyright interests. However, to be able to sue for infringement in federal court, you must register the copyright with the Copyright Office (a part of the Library of Congress). Additionally, one defense that an infringer may use is that he was an innocent infringer, that is, he had no notice that a copyright was claimed in the subject matter. Damages are much different than in the case of willful (knowing) infringement. Thus, it is advisable to mark your plans or drawings with a copyright notice to protect your interests.

Copyright law provides the following notice format for general copyright:

© or Copr. or Copyright	+ Year of First Publication	+Name of copyright owner

Our copyright in this document would look like this:

© 2006 Tracy P. Jong and Cheng–Ning Jong

Some people also use more extensive warnings in a legend (in addition to the notice above) such as the following:

> *These plans are protected under the Federal Copyright Act, Title XVII of the U.S. code and Chapter 37 of the Code of Federal Regulations. Engineering firm retains title and ownership of the original documents. The blueprints licensed to you cannot be used or resold to any other individual. Reproduction of these home plans, either in whole or in part, including any form of copying and/or preparation of derivative works thereof, for any reason without prior written permission, is strictly prohibited. The purchase of a set of home plans in no way transfers any copyright or other ownership interest in it to the buyer except for a limited license to use that set of home plans for the construction of one dwelling. The purchase of additional sets of that home plan at a reduced price from the original set or as part of a multiple set package does not convey to the buyer a license to construct more than one dwelling. Similarly, the purchase of reproducible sets carries the same copyright protection. To use any plans more than once, and to avoid any copyright /license infringement, it is necessary to contact the plan's designer to receive a release and license for any extended usage. Whereas a purchaser of reproducibles is granted a*

license to make copies, it should be noted that as copyrighted material, making photocopies from blueprints is illegal.
Copyright and licensing of home plans for construction exist to protect all parties. It respects and supports the intellectual property of the original architect or designer. Copyright law has been reinforced over the past few years. Willful infringement could cause settlements for statutory damages up to $100,000.00 plus attorney fees, damages and loss of profits.

Formal Registration Process

Step 1: Determine the Category and Forms that are required

Engineering drawings and architectural works fall within the scope of "Visual Art Works." For copyright purposes, visual arts are original pictorial, graphic, and sculptural works, which include two-dimensional and three-dimensional works of fine, graphic, and applied art. Examples of visual arts works:

- Advertisements, commercial prints, labels
- Artificial flowers and plants
- Artwork applied to clothing or to other useful articles
- Bumper stickers, decals, stickers
- Cartographic works, such as maps, globes, relief models
- Cartoons, comic strips
- Collages
- Dolls, toys
- Drawings, paintings, murals
- Enamel works
- Fabric, floor, and wall covering designs
- Games, puzzles
- Greeting cards, postcards, stationery
- Holograms, computer and laser artwork
- Jewelry designs
- Models
- Mosaics
- Needlework and craft kits
- Original prints, such as engravings, etchings, serigraphs, silk screen prints, woodblock prints
- Patterns for sewing, knitting, crochet, needlework
- Photographs, photomontages
- Posters
- Record jacket artwork or photography
- Relief and intaglio prints
- Reproductions, such as lithographs, collotypes
- Sculpture, such as carvings, ceramics, figurines, maquettes, molds, relief sculptures

- Stained glass designs
- Stencils, cut-outs
- **Technical drawings, architectural drawings or plans, blueprints, diagrams, mechanical drawings**
- Weaving designs, lace designs, tapestries
- Architectural works

We will use a form VA (Visual Arts), a copy of which is included in the appendix. To fill out the form, we will need to know if the work was published or unpublished. This determination is made by the author.

A work is considered published when underlying plans, drawings, or other copies of the building design are distributed or made available to the general public by sale or other transfer of ownership, or by rental, lease, or lending. Construction of a building does not itself constitute publication for purposes of registration, unless multiple copies are constructed.

Forms may be downloaded from the official Copyright Office website. You may also get forms from the Copyright Office in person, by mailing in a request, or by calling its 24-hour-a-day forms hotline: (202) 707-9100. If you are not equipped with a computer that can download the forms, most public libraries should have the capability to download for you. A copy of the current form is provided in the Appendix.

You can make copies of copyright forms if they meet the following criteria: photocopied back-to-back and head-to-head on a single sheet of 8 ½-inch by 11-inch white paper. In other words, your copy must look just like the original.

A claim to copyright in an architectural work is distinct from a claim in technical drawings of the work. If registration is sought for both an architectural work and technical drawings of the work, separate applications must be submitted.

A single application may cover only a single architectural work whether published or unpublished. A group of architectural works may not be registered on a single application form. For works such as tract housing, a single work is one house model with all accompanying floor plan options, elevations, and styles that are applicable to that particular model.

Step 2: Mail the Form and Fee

To register a work, submit a completed application form, a nonrefundable filing and a nonreturnable copy or copies of the work to be registered. Generally, each work requires a separate application.

Online registration is not yet available but is among the goals of the Copyright Office's reengineering program and is expected to be available for use by the public sometime in the future.

Put into one envelope or package:

- A completed application Form VA and Form CON if needed.
- A $45 payment (as of July 1st, 2006) to "Register of Copyrights." Credit cards are usually not accepted for registration, unless the registrations are filed in person in the Copyright Office.
- Nonreturnable copy (ies) of the material to be registered. For blueprints, architectural drawings, mechanical drawings, diagrams and the like that will be one complete copy of published plans and one copy of unpublished plans.

In cases where the claimant is seeking registration for both an architectural work and for the same work's technical drawings, the deposit of a single technical drawing will suffice for both claims if the applications are submitted together.

Architectural Works	
Unconstructed Building	**Constructed Building**
1 complete copy of an architectural drawing or blueprint showing the overall form of the building and any interior arrangement of spaces and/or design elements in which copyright is claimed	I.D. material 1 complete copy as described at left plus I.D. material in the form of photographs clearly identifying the architectural work being registered

For archival purposes, the Copyright Office prefers that the drawings constitute the most finished form of presentation drawings and consist of the following in descending order of preference:

1. Original format, or best quality form of reproduction, including offset or silk screen printing
2. Xerographic or photographic copies on good quality paper
3. Positive Photostat or photodirect positive
4. Blue line copies (diazo or ozalid process)

The deposit for a building that has been constructed must also include identifying material in the form of photographs that clearly disclose the architectural work being registered. The Copyright Office prefers 8 x 10-inch, good quality photographs that clearly show several exterior and interior views. The Copyright Office prefers that the deposit disclose the name(s) of the architect(s) and draftsperson(s) and the building site.

Copyright Office regulations require the deposit of identifying material instead of copies for three-dimensional works and for works that have been applied to three-dimensional objects. Identifying material must also be submitted for any pictorial, graphic, or sculptural work that exceeds 96 inches in any dimension.

In certain cases, identifying material is permitted; in other cases, it is required. Identifying material should meet the following specifications:

Type of identifying material: The material should consist of photographic prints, transparencies, photocopies, drawings, or similar two-dimensional reproductions or renderings of the work, in a form visually perceivable without the aid of a machine or device.

Color or black and white: If the work is a pictorial or graphic work, the material should reproduce the actual colors employed in the work. In all other cases, the material may be in black and white or may consist of a reproduction of the actual colors.

Completeness: As many pieces of identifying material should be submitted as are necessary to show clearly the entire copyrightable content of the work for which registration is being sought.

Number of sets: Only one set of complete identifying material is required.

Size: Photographic transparencies must be at least 35 mm in size and, if 3 x 3 inches or less, must be fixed in cardboard, plastic, or similar mounts; transparencies larger than 3 x 3 inches should be mounted. All types of identifying material other than photographic transparencies must be not less than 3 x 3 inches and not more than 9 x 12 inches, but preferably 8 x 10 inches. The image of the work should show clearly the entire copyrightable content of the work.

Title and dimension: At least one piece of identifying material must give the title of the work on its front, back, or mount and should include an exact measurement of one or more dimensions of the work.

Send the package to:
Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

There are no special mailing requirements. The only requirement is that all three elements—the application, the copy or copies of the work, and the $45 filing fee—be sent in the same package. Many people send their material by certified mail, with a return receipt request, but this is not required.

You must send the required copy or copies of the work to be registered. These copies will not be returned. Upon their deposit in the Copyright Office, under sections 407 and 408 of the Copyright law, all copies and identifying material, including those deposited in connection with claims that have been refused registration, are the property of the U.S. government.

To avoid damage to your deposit caused by necessary security measures, package the following items in boxes rather than envelopes for mailing to the Copyright Office:

- electronic media such as audiocassettes, videocassettes, CDs, and DVDs
- microform
- photographs
- slick advertisements, color photocopies, and other print items that are rubber- and vegetable-based

You may register unpublished works as a collection on one application with one title for the entire collection if certain conditions are met. It is not necessary to list the individual titles in your collection, although you may by completing a Form CON. Published works may only be registered as a collection if they were actually first published as a collection and if other requirements have been met.

There is no legal requirement that the author be identified by his or her real name on the application form. If filing under a fictitious name, check the "Pseudonymous" box at space 2 of form VA.

How long does the registration process take?

The time the Copyright Office requires to process an application varies, depending on the amount of material the Office is receiving. If your submission is in order, you may generally expect to receive a certificate of registration within approximately 4 months of submission. Your registration becomes effective on the day that the Copyright Office receives your application, payment, and copy (ies) in acceptable form.

Computer Media Requirement

Floppy disks and other removal media such as Zip disks, except for CD-ROMs are not acceptable. Therefore, the Copyright Office still generally requires a printed copy of the work for deposit. However, CDRoms are acceptable. The deposit requirement consists of the best edition of the CD-ROM package of any work, including the accompanying operating software, instruction manual, and a printed version, if included in the package.

Derivative Work

If the work is a “changed version” or “derivative work” and if it incorporates one or more earlier works that have already been published or registered for copyright or that are in the public domain that must be noted on the application where provided for. A derivative work may be registered if it contains substantial additions or modifications to an earlier work and if these modifications, as a whole, represent an original work of authorship.