



PDHonline Course P140J (0.5 PDH)

Copyright Protection

Instructor: Thomas Strong, P.L.S.

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PDH Online | PDH Center

5272 Meadow Estates Drive
Fairfax, VA 22030-6658
Phone: 703-988-0088
www.PDHonline.com

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Copyright Protection

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Course Content

Term of Copyright

These exclusive rights are vested in the owner of the copyright upon the creation of the work and endure for a term consisting of the life of the owner plus seventy years after his death. The term of protection of a work made for hire is 95 years from the date of publication or 120 years from the date of creation, whichever expires first.

Necessary Elements

1. *The work must be original.*

This usually does not present a problem for most drawings since they are compiled from information obtained by the surveyor's field personnel or ideas used in the design of buildings or subdivision design. A problem could arise however, if a surveyors resurveys a piece of property he previously surveyed and finds that the original conditions had not changed. If the new drawing was prepared using the old drawing as a basis, the new drawing may not be a proper subject for copyright since it was not an original work. To alleviate this situation, when making a survey drawing make sure that the drawing is prepared through the use of field data gathered for the preparation of that specific drawing.

2. *The work must be fixed in some tangible medium.*

Surveys and design drawings are fixed when the tangible drawings are created.

3. *The work must be an expression*

The survey drawing is an expression of certain surveyor obtained facts, such as topographic features. The facts themselves such as the data gathered are not proper subjects of copyright, but the compilation of the data into a tangible medium of expression is. Maps and plans, which are designed by architects and engineers, are an expression of ideas.

Ownership

The professional who prepared the drawings owns the Copyright in maps and drawings. But who owns the copyright to drawings that are prepared by an employee of the professional? Although the general rule is that the person who creates a work is the author of that work, there is an exception to that principle; the copyright law defines a

category of work called “works made for hire” If a work is “made for hire,” the employer, and not the employee, is considered the author.

Work Made for Hire

Section 101 of the copyright law defines a “work made for hire “ as:

1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a sound recording, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for a publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes; and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

Employee or Contractor

Whether or not a particular work is made for hire is determined by the relationship between the parties. This determination can be difficult because the definition of a work made for hire is complex.

If an employee creates the work, then generally the work would be considered a work made for hire. The term “employee” for copyright purposes is not the same as the common understanding of the term.

To help determine who is an employee the Supreme Court in *CCNV v. Reid* identified certain factors that characterize an “employer-employee” relationship as defined by the agency.

1. *Control by the employer over the work*
For example, the employer determines how the work should be done, has the work done at the employer’s location, and provides the equipment to create the work.
2. *Control by employer over the employee*
For example, the employer controls the employee’s schedule in creating the work, determines the method of payment, and has the right to hire the employee’s assistants.

3. *Status and conduct of employer*

For example, the employer is in business to produce such works, provides the employee benefits, and withholds tax from the employee's wages.

If an independent contractor creates the work, the work is a specially ordered or commissioned work such a work can only be a work made for hire if both of the following conditions are met.

1. It comes within one of the ten categories of works listed in the second part of the definition above.
2. There is a written agreement between the parties specifying that the work is a work made for hire.

The Copyright Act provides that ownership of copyright is distinct from ownership of the material object. Thus, when a client is given a survey map, if the drawing has been properly copyrighted, the surveyor retains ownership of the copyright. This applies only to drawings copyrighted after January 1, 1978.

Notice of Copyright

Whenever plans are prepared and copyrighted, a notice of copyright must be placed on all publicly distributed copies. There are three essential elements, which must be incorporated into this notice.

1. The symbol ©, the word "Copyright," or the abbreviation "Copr."
2. The year of first publication of the survey drawing
3. The name of the surveyor

This notice should be located in such a way that it is easily seen and identifiable. An example of a proper notice of copyright may be as follows: © 2000 John Q. Surveyor & Associates, Inc.

Registration of the Copyright

Registration can be accomplished by filing form VA (for visual arts) along with a \$30 fee and one copy of the drawings to be copyrighted. The form can be downloaded from the Copyright Office website at: <http://www.loc.gov/copyright>, or for forms and information the address of the Copyright Office is:

Library of Congress
Copyright Office
Public Information Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

Three months worth of drawings can be sent in with each registration and filed as a compilation. Subsequent work sent in will be added to this initial filing. Upon receipt of the registration materials and fee, the Register of Copyright will send the copyright owner a certificate of registration under the seal of the Copyright Office.

If for some reason you have filled the form out incorrectly or the drawings cannot be registered for some reason, the Register will notify the copyright owner in writing of the fact.

Benefits

Although it is not necessary to register your drawings to obtain protection of your copyright, there are certain benefits that are obtained by doing so.

1. Registration is an absolute prerequisite for bringing suit to enforce a copyright claim.
2. Attorney's fee and statutory damages will be awarded for infringements that take place after the date of registration.

Infringement

The copyright owner is entitled to institute an action for infringement of copyright against anyone who violates the privileges of the copyright owner. The owner of the copyright is entitled to:

1. An injunction to prevent any further infringement.
2. Damages in the amount of the actual damages proven plus the infringer's profits or statutory damages in the amount of up to \$10,000 if the infringement is innocent or up to \$50,000 if the infringement is willful.

References

1. United States Copyright Office, "Circular 12" revised June 1999-2000, U.S. Government Printing Office 1999-454-879/29.
2. United States Copyright Office, "Circular 9" revised February 2000, U.S. Government Printing Office 2000-461-113/99