

## Research Guide: Getting Permission to Use Archival Materials in Architecture

An original architectural design embodied in any tangible medium of expression, such as a building or architectural plans or drawings, is subject to copyright protection as an "architectural work" under the Copyright Act., 17 U.S.C. § 102, as amended on December 1, 1990. (Library of Congress, Copyright Office Circular 41, Copyright Claims in Architectural Works, <http://www.copyright.gov/circs/circ41.pdf>)

A. Keep these principles in mind as you pursue permission to use archival materials related to architectural works:

- Documents as well as the building can be copyrighted.
- The design may also be patented (check Cornell University's Law School for excellent information about patent law, <http://www.law.cornell.edu/wex/index.php/Patent>).
- Even if all of the copyrights of a firm or architect are transferred in writing to an archive, the archive may not own copyright in all the transferred artifacts, because a particular project may have been done as a work-for-hire or as part of a consortial effort, either of which arrangements could vest copyright ownership in another entity besides the firm or the architect who did the work.

B. Always determine copyright ownership on a project-by-project basis. Here's how to get started:

1. Determine the authors of the project.
2. Look for any contracts in the project collection. Traditionally (and as per American Institute of Architects, <http://www.e-architect.com/>, documents B141 and B161, located in the *Handbook of Professional Practice* [AFA Library's Circulation Desk NA1996 A726 2004]), owner-architect agreements define architectural drawings and specifications as "instruments of service." This means that the architect usually retains ownership of copyright and sells only his or her services.
3. Copyright may have been transferred to the architect's or firm's client if the work was commissioned as a work-for-hire. This would have to be set out in a contract, signed by the parties.
4. If the architect or firm retained copyright and transferred it to the archive **by a written agreement**, the archive may grant permission.
5. If the architect or firm did not transfer copyright to the archive, permission must be sought from either the architect or firm, or the client if the copyright was transferred to him or her.
6. In the case of a jointly owned work, discuss with at least one owner whether the owners have an agreement to require approval from all the owners for any use of the work. Generally, joint owners can grant non-exclusive rights to others without the agreement of their co-owners; however, in the absence of

agreement from all joint owners, no owner can assign or exclusively license the copyright in the jointly owned work.

7. Consider whether the work might be in the public domain (<http://www.unc.edu/~unc1ng/public-d.htm>): when was the work created? Has it ever been published? Is the author deceased? A work is considered published when underlying plans, drawings or other copies of the building designed 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. Architectural works created on or after December 1, 1990, and any architectural works that were unconstructed and embodied in unpublished plans or drawings on that date are eligible for protection. See Copyright Claims in Architectural Works. Circular 41. United States Copyright Office, The Library of Congress, August 1993 (<http://www.copyright.gov/circs/circ41.pdf>).
8. If the project is still protected, and the authors are ceased or deceased, contact heirs and successor firms.
9. Are there successor firms? Were the rights properly transferred? Did the firm die with the architect? Use the following to aid your search: administrative histories found in finding aids, gift files of the collection, and historical research. If you can identify a successor firm, can they provide documentation verifying the transfer of copyright to the firm?
10. Are there any heirs? The Copyright Act designates the spouse and children as the class of persons who inherit copyrights when the owner dies without a will. If there is a will, consult its provisions to see to when the copyrights may have been transferred. Keep in mind that there may be a strong possibility that the rights to the material were retained by the architectural firm or business rather than passed on to heirs.