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The Power Behind the Plans: Copyright and Control



Construction projects involve significant creative and technical input from architects, engineers and designers (hereinafter referred to as *proprietors*). Once a client has paid for construction drawings and designs, one important question arises: may the client freely reproduce, reuse, or demand specific formats of those designs? This question is often answered with reference to the Copyright Act 98 of 1978 (the Act) and the agreement between the parties (if any).

The Act

Section 1(1)(iii) of the Act provides a broad definition of “artistic work”, which includes sketches and technical drawings; plans and models of buildings; and the building itself. Copyright protection arises **automatically**. The moment an original work is reduced to tangible form, whether as a drawing, model, or digital file, copyright comes into existence. No registration is required. Accordingly, artistic drawings and designs are legally protected under the Act as soon as they are created, provided that they are the proprietor’s original work.

Who Owns the Intellectual Property?

Generally, copyright vests in the proprietor and not the client who commissioned it, unless the parties agree otherwise in writing. Payment for artistic work does not automatically transfer ownership. Instead, the client is usually granted a limited right to use the intellectual property for the specific project for which the proprietor was remunerated. Ownership remains with the proprietor unless expressly transferred by contract.

When Is Reproduction Permitted?

Section 15(2) of the Act provides an important qualification: Copyright in architectural works is not infringed by the reconstruction of that work on the same site in the same style as the original. In practical terms:

- A client may rebuild the same structure on the same site;
- The use must align with the purpose for which the drawings were prepared; and
- The reproduction must not exceed what was contractually authorised.

However, reproducing drawings for a different site, adapting them for another development, or allowing third parties to use them without consent may constitute infringement.

What Constitutes Copyright Infringement?

Section 23 of the Act provides that any unauthorised reproduction, direct or indirect, or adaptation of artistic work in two or three-dimensional form amounts to copyright infringement.

This includes:

- Copying drawings in full or in part;
- Using modified versions of the original design; and
- Converting two-dimensional plans into a three-dimensional structure without authorisation.

Infringement is not avoided merely because only part of the work was reproduced.

Legal Remedies Available to the Proprietor

Section 24 of the Act sets out the remedies available where drawings or designs are reproduced without consent. These include:

- An interdict (a court order preventing further infringement);
- A claim for damages; and
- The return of infringing copies.

The Importance of Contractual Clauses

Standard building contracts and PROCSA agreements regulate intellectual property rights. In most instances, such agreements allow the client to retain copyright in documents prepared for the project. For this reason, understanding the provisions of the contract is critical. If a proprietor does not wish their drawings to be reproduced beyond the agreed project, this limitation must be expressly recorded in the agreement.

The Form in Which a Proprietor Must Issue Designs

Beyond reproduction and ownership, a related question often arises: In what form is the proprietor obliged to issue the designs? The Act does not prescribe a rigid format. Instead, the answer depends on the terms of the agreement between the proprietor and client. If the contract is silent, the proprietor must provide drawings reasonably sufficient for the intended project, but not necessarily in a reusable or modifiable format. Either way, copyright exists once the work is reduced to tangible form, whether on paper or in digital format. A common misconception is that payment entitles the client to all source files (such as AutoCAD or Revit models). This is generally incorrect unless expressly agreed.

Conclusion

Drawings and designs are protected as artistic works under South African copyright law. Ownership generally remains with the creator unless expressly transferred. While clients may use the designs for the project for which they were commissioned, unauthorised reproduction (including partial reproduction) may amount to infringement.

Similarly, there is no statutory requirement that proprietors issue designs in a particular format. The contract concluded between the parties usually governs both the extent of permitted use and the form of delivery. For both clients and professionals in the construction industry, the central principle is clear: intellectual property rights and format requirements must be expressly regulated in the appointment agreement to avoid uncertainty.

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