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## Architectural Copyright: A Key Issue

Supporting Your Business  
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The original work created by any architect is protected by copyright. This includes patrimonial and moral prerogatives. It is important for anyone contracting with an architect to take these copyrights into account in negotiating the transfer of right of use while respecting the moral right of the architect creator of the work.

Absent such transfer or in the case of use that would infringe the author's moral right, the user risks having the architect bring a suit against him. Depending on the case, this may involve trying to obtain a court order to stop the acts in dispute (for example the unauthorized use of an image of a building on an Internet site) and/or being sentenced to damages.

This is far from a theoretical case as it is often the subject of a certain number of disputes, particularly in the hotel field. Just recently, the company exploiting the famous Le Fouquet's restaurant and the owner of the building were convicted of infringement of the architect's moral rights by the Paris Court of First Instance (*Tribunal de grande instance de Paris, March 1, 2010, RG no. 09/00827*).

- **Architectural work: a creation that can be protected under copyright law**

Copyright protection applies to the architectural work, its blueprints, drawings, sketches and scale models, when they demonstrate a minimum of originality and make it possible to reflect the personality of the author. This originality requirement excludes from copyright protection any type of standardized architecture or widely spread building types found all over France that could in no way claim to be the original work of a single author.

Architectural constructions located in protected zones or listed areas may be subject to extremely strict rules, that could entail the French architects board of heritage buildings stating their opinion and requiring that any new structures strictly respect the harmony of construction with surrounding buildings. Such technical and regulatory constraints leave no room for an architectural work to be protected by copyright (*Aix en Provence Cour d'Appel, June 11, 2009, RG no. 07/16447*).

On the other hand, for any and all original architectural work, copyright protection exists. The qualification of author is attributed either to the private individual architect who created the work, or to a group of authors in the case of a collaborative work, or even to an architecture firm at the origin of the work's design and in the name of which the work is disclosed if it is known as a collective work.

The author is protected for copyright on the work and this could limit to a certain extent the use of the building by its owner. In fact, besides the ownership rights to the actual physical building, the owner thereof is required to obtain a copyright transfer or agreement to its use from the architect.

- **In case of copyright ownership, express and detailed assignment of copyright for architectural works is required**

There is a strict legal framework governing the conditions that apply to copyright ownership transfers.

To be valid, the transfer contract must be extremely detailed and in particular specify the nature of the right of use assigned (right of reproduction, of representation, etc.), as well as the use that will be made of the creation transferred with its geographic location and duration.

Any right that would not be mentioned in the framework of this transfer agreement, would be assumed to remain the property of the architect author. It is therefore necessary to draft detailed transfer clauses specifically covering each of the rights for which the user intends to obtain ownership.

Financial compensation in consideration of for the transfer of these rights is to be provided in addition to the price for services provided by the architect.

As a rule, compensation for transfer of copyright ownership corresponds to a proportional remuneration of the income derived from use of the work. However, the intellectual property code provides a certain number of exceptions including lump sum compensation when the basis for calculation of proportional compensation cannot be defined.

- **Moral rights of the architect author and their limits**

In their capacity of author, architects have moral rights, namely the right to the name and the respect of the work.

Such rights, separate and apart from patrimonial rights, are indefeasible and inalienable. It is not possible to waive these rights through contractual arrangement.

Consequently, what is at stake here is for the owner of an architectural construction to define to what extent the use he wishes to make of such construction could constitute infringement of the author's moral rights.

It should be emphasized that requiring respect of the work gives the architect the right to oppose any change or installation that would alter the integrity or harmony of such work, or to oppose any significant change that could distort the nature of the work.

There is consequently a significant risk, recently illustrated in a decision of the Paris First Instance Court regarding the Fouquet's restaurant/hotel, that the architects argue their right to the respect of the work against any significant alteration of the construction. In the case in point, the dispute was over a substantial projected change of part of the building, known as "le Carré d'or", that provided the connection between two buildings. The purpose of the transformations was to make it easier to circulate between the buildings and make the construction of a hotel complex possible around the Le Fouquet's restaurant (Paris First

Instance Court decision of March 11, 2010, RG no. 09/00827). The court sentenced the company operating the Fouquet's restaurant and the owner of the building for infringement of the right to respect of the architect's work.

The arguments based on the necessity of these transformations were dismissed by the court with held such transformations to be a preconceived opinion that was not the result solely of technical and administrative constraints. On these grounds, the court decided that they infringed the architects' moral rights.

However, architect's moral rights have limits. They concern mainly regulatory or technical constraints or even those of public service. These can in fact require changes for the adaptation of the work to new needs that would thereby limit the moral right of the architect.

To conclude, for optimal use of architectural works, it is important to make sure of the widest possible transfer of patrimonial rights of the architect over the works in question and to verify to what extent the changes made to the works could infringe the architect's moral right.

If provision has not been made for such transfers before contracts are entered into with architects, then each situation must be analyzed on a case by case basis in order to adopt appropriate measures for the purpose of avoiding the risk of litigation. Finally, for any changes or installations that are considered necessary, but dubious, it would be preferable to obtain the architect's approval prior to initiating them.