

# The Importance of Copyright Protections to the Design Professional: A Case Study

**By: Sean Ryan, Esq. of Bardsley Law LLC**

The technological revolution of the last quarter century has connected the world in ways unimaginable by facilitating the free- and-easy dissemination of information. This evolution and its attendant ready manipulation and transmission of data has rendered design professionals acutely vulnerable to the theft of their intellectual property. However, design professionals are not without recourse. A recent case of ours illustrates the importance of registering the work, and the substantial benefits that emanate from federal copyright protections.

Recently, while prosecuting a fee claim against a developer on behalf of our architect client, it became evident that the developer was utilizing our client's architectural design plans without authorization. Thus, the developer had not only failed to pay for the architectural services but had also stolen the design and was attempting to utilize it to advance the project. In fact, we soon learned that the developer had retained two successor architects and instructed them to scrub the title block from our client's plans and proceed as if they were their own. However, due to the foresight of our client and the utilization of statutory intellectual property protections, our client was awarded \$225,000 for the violations of its copyright protected work. This award was entered despite the fact that the architect did not suffer any actual damages from the unauthorized use of its Instruments of Service. Rather, the \$225,000 in damages was awarded as a statutory penalty exclusively for the developer's willful violations of the federal copyright statutes.

From a legal perspective, this case offers valuable guidance for design professionals seeking to protect their work from unlawful reproduction and use. Under the law in order to prevail on a copyright infringement claim, the design professional must prove two independent elements: (1) ownership of a valid copyright, and (2) the unauthorized copying of original elements of a copyright protected work. As to the first element, it is important to note that copyright protections are not automatic. On the contrary, it is incumbent upon the design professional to register the work with the Register of Copyrights. Timing is key here, as statutory damages are only available if the work was registered prior to the infringement or within three months of the first publication of the work. This is particularly important because actual damages are difficult to prove in copyright cases, and statutory damages permit a court to award the prevailing party attorney's fees and costs. In our case, the prudent architect registered the architectural design, which enabled the recovery of damages well-beyond any that could be proven, and also provided compensation for all attorney's fees and costs incurred in the litigation.



In regard to proving unauthorized copying, it is imperative that the design professional act to protect itself and its work in its contract for professional services by carefully articulating its ownership of the Instruments of Service and the prerequisites for their use by other entities. Furthermore, maintaining clear ownership of the Instruments of Service adds leverage when a design professional is looking to recover unpaid fees for its services on the project. In our case, we utilized strong contractual language to unequivocally demonstrate our client's ownership, and the failures of the developer to satisfy the contractual requirements to attain a license to use the Instruments of Service.

The protections afforded copyrighted works under federal law are one of the strongest weapons in the design professional's arsenal against those inclined to unlawfully utilize their work without authorization. Design professionals work too hard and bear too much responsibility to permit their creations to become somebody else's payday. Don't be left emptyhanded on the sidelines as your work comes to fruition.

*Sean Ryan, Esq. is a partner at Bardsley Law, a law firm dedicated to the representation and furtherance of the design professional community. In addition to his role at Bardsley Law, Sean is the National General Counsel for the Society of Registered American Architects ("SARA"). Sean routinely drafts, negotiates, and provides guidance on complex construction contracts across all 50 states through the Contract Workshop at Bardsley Law. Please do not hesitate to contact Sean at [sryan@bardsleylawfirm.com](mailto:sryan@bardsleylawfirm.com) or (610) 804-3499 with any of your contract needs. Further information as to the Contract Workshop can be found at: <http://bardsleylawfirm.com/contract-workshop.html>*

---

This article provides general information, and should not be construed as specific legal, financial, insurance, or accounting advice. As with all matters of a legal or financial nature, you should consult with your own legal counsel and financial professionals. The Hartford shall not be liable for any direct, indirect, special, consequential, incidental, punitive or exemplary damages in connection with the use by you or anyone of the information provided herein.

The Hartford Financial Services Group, Inc., (NYSE: HIG) operates through its subsidiaries, including the underwriting company Hartford Fire Insurance Company, under the brand name, The Hartford®, and is headquartered in Hartford, CT. For additional details, please read The Hartford's legal notice at [www.thehartford.com](http://www.thehartford.com).

