

UNDERSTANDING PROPERTY AND INTELLECTUAL PROPERTY LAWS: A TANGIBLE AND INTANGIBLE INTERSECTION

ABSTRACT

Property and intellectual property law cover two distinct types of property: tangible (physical items like land) and intangible (non-physical assets like goodwill). Despite their differences, these two realms often intersect in interesting ways. For property developers, buyers and sellers, it is crucial to know what can and cannot be done with building plans. This is where copyright law comes into play, influencing property law from various perspectives. For instance, when developing a new building, the copyright implications of the building plans must be considered. Similarly, sellers and buyers need to be aware of these laws to avoid legal pitfalls. By understanding how these laws intersect, navigating the complexities of property development and transactions becomes more effective. This article delivers a concise and practical summary of the legal framework related to building copyright. It offers valuable advice on the tangible and intangible intersection of property and intellectual property laws and what property developers, buyers and sellers should know to handle a building designer's plans appropriately.

I INTRODUCTION

This article delves into the fascinating intersection of real and intellectual property ('IP'), a topic that Simon Palk is deeply passionate about. As one of Simon's students from the early 1990s, I vividly remember his enthusiasm for exploring these intersections. Simon's dedication to this field is evident in his 1986 writing on copyright law.¹ Therefore, it is truly fitting to write about building copyright in this forum of the *Adelaide Law Review* dedicated to Simon.

In Australia, copyright is an unregistered IP right that protects an expression of an original idea and arises when an original work is created.² An 'original work'

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¹ Simon N L Palk, 'Copyright: Basic Structure and Basic Principles' (University of Adelaide Law School Continuing Education, 10 July 1986).

² *Copyright Act 1968* (Cth) s 32 ('*Copyright Act*').

must meet the originality requirement in accordance with the *Copyright Act 1968* (Cth) (*'Copyright Act'*).³ This requires that a creator has used some independent intellectual effort to create a work that is more than a mere copy of a work already in existence.⁴ Where a work meets the originality test, and is a literary, dramatic, musical or artistic work, its protection is dealt with under pt III of the *Copyright Act*. Subject matter outside that scope is protected under pt IV of the *Copyright Act*.

Building plans are classified as 'artistic works' under s 10(1) of the *Copyright Act*, as they are drawings. Furthermore, a building that is created from those plans is also an 'artistic work' for the purposes of s 10(1) of the *Copyright Act*. Therefore, copyright can subsist in both the drawings of a building, such as plans, and the building itself.

A copyright owner of drawings and/or a building is afforded exclusive rights under the *Copyright Act* to use, reproduce, and communicate their work to the exclusion of all others.⁵ Consequently, building designers have exclusive rights to: (1) reproduce the work in a material form; (2) publish the work; and (3) communicate the work to the public.

Unless otherwise agreed, the building designer owns the copyright in the IP, including the building plans and drawings, and any detailed descriptions.⁶ Building plan copyright can exist in various forms, including hand-drawn house plans or software-created works.⁷ What is not protected by copyright are ideas, styles, and techniques involved in building constructions.⁸

Furthermore, building designers who are copyright owners also have moral rights that are personal to them.⁹ This means that they have the right of attribution, a right against false attribution and the right of integrity.¹⁰ Unlike copyright, moral rights cannot be assigned or licenced and so property developers, buyers and sellers need to be aware of the potential infringement they might be liable for in changing a building designer's drawings, plans and building.¹¹

Lack of clarity and understanding about copyright in building plans can be problematic for property developers, buyers and sellers. Without this knowledge, they

³ Ibid.

⁴ *IceTv Pty Ltd v Nine Network Australia Pty Ltd* (2009) 239 CLR 458, 474 [33] (French CJ, Crennan and Kiefel JJ) (*'IceTV'*).

⁵ *Copyright Act* (n 2) s 31(1)(b).

⁶ Ibid s 10(1).

⁷ *Look Design and Development Pty Ltd v Edge Developments Pty Ltd* [2022] QDC 116, [26] (*'Look Design'*).

⁸ *Donoghue v Allied Newspapers Ltd* [1938] Ch 106, 109 (*'Donoghue'*).

⁹ *Copyright Act* (n 2) pt IX.

¹⁰ Ibid.

¹¹ Ibid s 195AN(3).

can face significant challenges. Developers may assume that purchasing land or obtaining planning permission includes the rights to use existing building plans. However, the copyright remains with the original creator, such as a building designer or architect. Using building plans without proper permission from the original creator can lead to legal action for copyright infringement that can result in significant liability and even injunctions that stop or delay development.¹² Addressing these issues early in the development process and obtaining legal advice on building copyright can help to mitigate the risks associated with copyright infringement of building plans. Accordingly, this article provides a clear and practical overview of the legal landscape surrounding building copyright, offering valuable insights into what developers, buyers and sellers can do with a building designer's plans.

II WHAT IS COPYRIGHT?

A Requirements

The basic concept behind copyright is that a creator of an original work, such as a building designer, should have the right to exploit their work through reproduction, publication, and communication to the public without others being allowed to copy their creative output.¹³ The grant of these exclusive rights provides an incentive to innovate. In Australia, there are no formal requirements to obtain copyright protection and there is no procedure for registering a copyright interest.¹⁴ Instead, for copyright to subsist in Australia, it is required that the work, such as a building plan, meet the following criteria as set out in the *Copyright Act*. The work must:

- *Be expressed in material form*¹⁵ — copyright does not protect ideas, styles, techniques, or concepts. The ideas must be expressed in a material form to be protected. Therefore, the ideas that generate a building plan are typically expressed in a 2D material form such as a drawing and/or plan by a building designer. The building designer creates an artistic work by putting the ideas, that perhaps their client has come to them with, on paper. Eventually the building plan will lead to a building, another expression of an idea in a material form, except now 3D.
- *Be created by an identifiable author*¹⁶ — there must be an identifiable person who creates the artistic work, and for a building plan this would typically be a building designer or an architect. Such a person might also use computer

¹² See generally *ibid* pt III div 2.

¹³ Alexander Bates, 'Artistic Works Industrially Applied: A Comparison of Copyright/ Designs Law in Australia and New Zealand' (1993) 17(2) *University of Queensland Law Journal* 247, 248.

¹⁴ *Ibid*.

¹⁵ *Copyright Act* (n 2) ss 10(1), 22(1).

¹⁶ *Donoghue* (n 8); *Telstra Corporation Ltd v Phone Directories Company Pty Ltd* (2010) 264 ALR 617, 630–1 [37] ('*Telstra Corporation*').

software to create a drawing or plan, but they must use independent intellectual and creative effort in doing so to be identifiable as an author.¹⁷

- *Fall within the definition of a 'work' or 'other subject matter'* — under s 10(1) of the *Copyright Act*, an 'artistic work' relevant to building can include the following: sketches, building drawings, architectural drawings, computer aided drawings, diagrams, charts and plans, completed buildings and building structures, photographs of buildings, and building models. Furthermore, written materials, such as written submissions to support planning applications are 'literary works', as are marketing communications and articles.¹⁸ However, this article focuses on 'artistic works' for the purposes of evaluating the legal landscape relating to copyright in building plans and drawings.
- *Be 'original'* — this requires that a building plan be created with some 'independent intellectual effort' that is 'not merely copied from another work'.¹⁹ It needs to have a point of distinction satisfying the requirement that someone has put effort into creating something different rather than just copying someone else's work.
- *Be connected in some way to Australia* — this means that the author of the artistic work must be a 'qualified person' for the purposes of the *Copyright Act*; this is defined as an Australian citizen or a person resident in Australia.²⁰ Where an artistic work is a building, it must be situated in Australia.²¹

Assuming that all these requirements have been met, copyright in building plans will automatically come into existence, without need for registration or notification.²² This, of course, carries with it certain rights.

B *Rights Copyright Provides*

Pursuant to s 31(1)(b) of the *Copyright Act*, copyright provides the author of an artistic work, the exclusive rights to: (1) reproduce the work in a material form; (2) publish the work; and (3) communicate the work to the public — which means to make available online or electronically transmit a work.²³ Copyright in artistic works exists for the life of the author plus 70 years.²⁴

The 'author' is the creator of the work and is the owner of any copyright subsisting in the work.²⁵ Therefore, as the creator of a building drawing or plan, the building designer automatically owns the copyright that subsists in that piece of work. They

¹⁷ *Telstra Corporation* (n 16) 683 [334].

¹⁸ *Copyright Act* (n 2) s 10(1).

¹⁹ *IceTV* (n 4) 474 [33] (French CJ, Crennan and Kiefel JJ).

²⁰ *Copyright Act* (n 2) s 32(4).

²¹ *Ibid* s 32(3).

²² *Ibid* s 32.

²³ *Ibid* ss 10(1), 22(1).

²⁴ *Ibid* s 33.

²⁵ *Ibid* s 35(2).

have the legal right to be acknowledged as the original creator of the work. While clients might provide a building designer ideas about what they want included in their building plans, ideas are not protected by copyright.²⁶ It is the expression of those ideas in material form, in a drawing and/or plan, in which copyright will subsist and that belongs to the designer of the drawing and the plans.

Accordingly, in creating a plan, or even a building model, a building designer will have the exclusive rights to reproduce, publish and communicate the work. These rights are commercial in nature and enable the building designer to make money from their creative effort. These rights act as an incentive for creators to continue their innovation, which is what IP laws are primarily focused on achieving. Building designers, as copyright owners, can copy and reproduce their drawings and plans. The only way that someone else can use a copy of a building designer's drawings or plans is if the building designer assigns²⁷ their copyright in the building drawings and plans to someone else or licences²⁸ the copyright to someone else.

If a building designer assigns copyright to someone else — such as their client for whom they have created the building plan (assignee) — they will lose control over the copyright, unless the assignment document includes an express provision to the contrary and limits the assignment.²⁹ This means that in the future, the building designer would not be able to prevent the assignee from further assigning or licensing all, or part, of the copyright in the building plans, or from altering the building plans in any way. However, as will be explained later, the way in which the assignee — the new copyright owner — deals with the copyright in the building plan may be constrained by a recognition of the building designer's moral rights as the original creator of the work.

On the other hand, if a building designer licences the copyright to someone else, such as the client for whom they have created the building plan (licensee), in exchange for monetary consideration (licence fee), the building designer still owns the copyright but allows the licensee to use it.³⁰ A licence can be exclusive or non-exclusive.³¹ Pursuant to an exclusive licence, the building designer authorises the licensee to take advantage of the exclusive rights the building designer has in relation to the copyright in the building plans to the exclusion of anyone else — except for the designer.³² Exclusive licences must be in writing and signed.³³ The significance of an exclusive licence is its irrevocability, except in accordance with the terms of the

²⁶ *Donoghue* (n 8) 109.

²⁷ *Copyright Act* (n 2) s 196(1).

²⁸ *Ibid* s 196(4).

²⁹ *Ibid* s 196(2).

³⁰ *Ibid* s 119.

³¹ *Primary Health Care Ltd v Commissioner of Taxation* (2010) 186 FCR 301, 338 [151] ('*Primary Health Care*').

³² *Copyright Act* (n 2) s 119.

³³ *Ibid* s 10(1).

written licence and in the case of infringement. A licensee can commence proceedings for infringement pursuant to s 119 of the *Copyright Act*. A licence might also be non-exclusive, which means that a building designer can licence the copyright to more than one licensee. Non-exclusive licences do not need to be in writing and are revocable at will.³⁴

III HOW CAN COPYRIGHT IN BUILDING PLANS BE INFRINGED?

In the absence of an assignment or licence of copyright, anyone who attempts to reproduce, publish, or communicate a building drawing or plan, without the permission of the copyright owner, potentially infringes copyright. If someone were to produce a building drawing or plan that uses a substantial part of a building designer's original work without their permission, that person would be likely to have infringed the building designer's copyright. For example, a client might engage a building designer to create building plans for their proposed home. The client might take those building plans to another builder, without the original building designer's permission. The second builder then builds the house according to the building plans. Copyright would be infringed by both the client and the second builder as the house built would be a reproduction of the original building designer's copyright.

An artistic work, such as a building plan, is taken to have been reproduced if a version of that work is produced in a 2D or 3D form, such as a built home.³⁵ Whether there has been a 'reproduction' is determined by reviewing if there is an objective similarity between the alleged reproduction and the copyright work, such that one is recognisable as a copy of the other.³⁶ The *Copyright Act* provides that a 'substantial part' of the copyright work must be reproduced.³⁷ This is determined not on the *quantity* of the copyright work taken, but on the *quality* of the work taken.³⁸ Infringement will occur where an important part of the copyright work is reproduced, even if in terms of quantity that part is small.³⁹ In determining if a part of a work that is reproduced is substantial, an important question is the degree of originality of the particular form of expression taken.⁴⁰ While the skill and labour expended by the author may indicate that the part is highly original, this is not determinative.⁴¹ Thus, a part may be regarded as substantial due to its qualitative originality, even though it might be comparatively small in quantitative terms.

³⁴ *Primary Health Care* (n 31) 338 [151].

³⁵ *Copyright Act* (n 2) s 21(3).

³⁶ *Look Design* (n 7) [31].

³⁷ *Copyright Act* (n 2) s 14(1).

³⁸ *IceTV* (n 4) 509 [155] (Gummow, Hayne and Heydon JJ); *Elwood Clothing Pty Ltd v Cotton On Clothing Pty Ltd* (2008) 172 FCR 580, 592–3 [66] ('*Elwood Clothing*').

³⁹ *IceTV* (n 4) 509 [155] (Gummow, Hayne and Heydon JJ).

⁴⁰ *Ibid* 480 [52].

⁴¹ *Ibid*.

For an artistic work, such as a building plan, this can be determined on a visual comparison of the copyright work and the alleged reproduction.⁴²

It is useful to look at how courts have determined this ‘substantial part’ test in relation to building plans. In *Look Design and Development Pty Ltd v Edge Developments Pty Ltd*, the District Court of Queensland decided that an infringing building plan drawing must adopt the ‘essential features and substance of the copyright work’ which is assessed by looking at the original copyright work *as a whole*.⁴³ In this case, the second defendants, Mr and Ms Flaton, hired the plaintiff, a project home building company, to create housing plans for them. The plaintiff created what is referred to in the case as the ‘Revision B Plan.’ Eventually, communication between the parties ceased. The Flatons then engaged the first defendants to create another house plan, which the first defendants used to build the house.⁴⁴ The defendants argued several points against the plaintiff’s copyright infringement claim, including that the ‘Revision B Plan’ house plans did not qualify for copyright because they were created using computer software without any creative intellectual effort.⁴⁵ However, the District Court of Queensland rejected this argument, finding that the plaintiff had invested considerable time, effort, and skill in developing the plans.⁴⁶ Moreover, the Court decided that the second defendants had provided the ‘Revision B Plan’ to the first defendants with the explicit intention of reproducing them.⁴⁷ Consequently, the Court found that a ‘substantial part’ of the original work had been infringed by the first defendants, both in the new housing plans and the subsequently developed property.⁴⁸

In *D’Annunzio v Willunga Projects Pty Ltd*,⁴⁹ decided in the District Court of South Australia, the applicant contracted to buy three vacant lots in Willunga, South Australia, from Graeme Edward Inkley. The applicant planned to create a 35-lot subdivision and hired consultants, including Mr Davidson, to survey the land and draft the plans. These plans included lot sizes, road layout, and stormwater drainage. Mr D’Annunzio claimed he and Mr Davidson jointly authored the plans which the District Court accepted. Mr D’Annunzio could not complete the purchase, and in August 2020, Mr Inkley sold the land to the respondents. Mr D’Annunzio later found out that Willunga Projects had subdivided the land and was selling the lots. He claimed this infringed his copyright on the plans.⁵⁰ The Court found that while there were certain generic qualities to the subdivision, there were enough substantial

⁴² See, e.g., *Elwood Clothing* (n 38) 594 [74], 595 [80].

⁴³ *Look Design* (n 7) [37], quoting *Henley Arch Pty Ltd v Luckey Homes Pty Ltd* [2016] FCA 1217, [163] (Beach J) (emphasis added).

⁴⁴ *Look Design* (n 7) [3].

⁴⁵ *Ibid* [14].

⁴⁶ *Ibid* [26].

⁴⁷ *Ibid* [40].

⁴⁸ *Ibid* [56].

⁴⁹ [2021] SADC 36.

⁵⁰ *Ibid* [4]–[10].

similarities between the 2018 plans by D'Annunzio and Davidson and the Willunga Projects plan to support infringement of copyright.⁵¹

Lastly, in *Coles v Dormer*,⁵² unsuccessful bidders at a house auction decided to build a replica of the house nearby. Concerned about the uniqueness and value of their purchased property, the successful buyer, Coles, obtained the copyright for the building plans from the architect via an assignment. Coles then sought an injunction from the Supreme Court of Queensland, claiming that the replica build by the Respondent infringed their copyright.⁵³ The Court examined four issues: (1) originality of the building plans; (2) validity of the copyright assignment; (3) infringement of the building plans and the house construction; and (4) appropriate remedies.⁵⁴

The Court held in favour of Coles on the first three issues, noting that the exclusive rights of the owner of an original copyright work include the right to reproduce a 2D work in 3D form.⁵⁵ The Court found that the reproduction of the building plans was evident due to identical errors in both the original and infringing versions.⁵⁶ However, it deemed demolition of the defendants' home too harsh and instead ordered exterior changes to the value of \$60,000 to be made to the defendants' home so that it would no longer be identical to Coles' home.⁵⁷ The Court awarded additional damages to Coles for copyright infringement after Coles proved that they had informed the defendants that they were the owner of the copyright in the building plans, and had asked to see the defendants' plans, which the defendants refused to provide.⁵⁸

Together, these cases demonstrate that if an original building plan is reproduced without the copyright owner's consent, copyright infringement is likely. The test will be whether a substantial and qualitative part of the copyright work has been reproduced, which may be assessed on a visual comparison between the copyright work and the alleged reproduction.⁵⁹ If there has been a reproduction of a substantial part, then copyright will be infringed.⁶⁰

⁵¹ Ibid [37].

⁵² (2015) 117 IPR 184.

⁵³ Ibid 185–6 [2]–[6].

⁵⁴ Ibid 187 [16].

⁵⁵ Ibid 186 [13]–[14].

⁵⁶ Ibid 198 [75].

⁵⁷ Ibid 202 [100]; *Coles v Dormer (No 2)* [2017] 1 Qd R 63, 68 [26] ('*Coles v Dormer (No 2)*').

⁵⁸ *Coles v Dormer (No 2)* (n 57) 67–8 [23]–[24].

⁵⁹ *Elwood Clothing* (n 38) 595 [80].

⁶⁰ *Copyright Act* (n 2) pt III div 2.

IV HOW TO AVOID COPYRIGHT INFRINGEMENT

It is imperative that property developers, buyers and sellers obtain a building designer's permission to use their copyright work *before* attempting to use and reproduce building drawings and plans. The best way to avoid an infringement is to obtain an assignment, followed by an exclusive licence or at least a non-exclusive licence. These should be in writing to ensure that permission to use the copyright is express and to avoid confusion and uncertainty about what can be done with the copyright work.

In the absence of explicit consent of the copyright owner, usage of building plans can be a grey area. Where a property developer, buyer or seller wants to use or adapt a building designer's drawings or plans — perhaps by taking it to another builder to build the house for them or adapt the building drawing — they should first obtain the building designer's written permission. They will likely need to pay the building designer a licence fee to do so, and certain restrictions might be placed on the licence by the building designer. In any event, obtaining a licence, or even better, an assignment, is prudent and may allow a property developer to avoid copyright infringement.

Even minor alterations may lead to infringement. This is because the 'substantial part' test is based on the *quality* of the work taken, not the *quantity* of the work taken, as explained above.⁶¹ If a property developer, buyer or seller modifies one or two rooms of a building plan, but keeps the overall plan intact, they might still be liable for copyright infringement. Similarly, if a distinctive or significant element of a plan remains, even if it is small in quantity, it may also infringe copyright, if it is recognisable as a key feature of a plan.

Building designers can protect their work from infringement by ensuring effective clauses are included in their service agreements with clients that protect their copyright and other IP. The clauses should be as clear as possible about the building designer retaining copyright ownership in any building drawings, plans and/or models they create for their clients. The service agreement should also be explicit that, in the absence of a written assignment or licence arrangement, the client will not be able to use the copyright work.

While not required, as registration of copyright does not exist in Australia, it would be sensible for building designers to include the © symbol on their drawings. This might serve as a reminder to property developers, buyers and sellers that the building drawings and plans are subject to copyright.

Furthermore, property developers, buyers and sellers should be persistent in enquiring as to where a building idea has come from. For example, property developers could avoid liability for copyright infringement by probing into where the client has

⁶¹ *IceTV* (n 4) 509 [155] (Gummow, Hayne and Heydon JJ); *Elwood Clothing* (n 38) 592–3 [66].

sourced their inspiration, or a sketch they present. This is also important from the point of view of avoiding an infringement of a building designer's moral rights.

V MORAL RIGHTS

Unlike copyright, moral rights cannot be assigned or licenced to someone else.⁶² Moral rights remain with the author of the artistic works for their life plus 70 years.⁶³ This is because moral rights are personal to the author of the copyright work. They are owed to individual creators and not to organisations and businesses.

The *Copyright Act* provides for three main categories of moral rights:

1. attribution — the right to be credited as the creator of an original work;⁶⁴
2. against false attribution — the right not to have someone else credited as the creator of the original work;⁶⁵ and
3. integrity — the right not to have an original work treated in a derogatory manner that impacts on the creator's honour and reputation.⁶⁶

A Attribution

A building designer has the right to be identified as the author of an artistic work where their artistic work is reproduced, published, exhibited or communicated.⁶⁷ In those circumstances, their identification as the author of a building drawing, plan or design must be clear and reasonably prominent.⁶⁸ An identification will be taken to be reasonably prominent if their name is included on each reproduction of their work so that anyone acquiring the reproduction will have notice of the building designer's identity.⁶⁹ In the absence of such identification, this moral right will be infringed.

Correspondingly, if a building designer is hired to design a plan or drawing, then that building designer should be attributed as the creator of the design. However, where the building designer works for a building firm (such as a project home builder company) it is typical for employees to agree to moral rights consents in their employment agreement. As a result, employers are not required to credit those employees as creators of their work for client projects. Typically, individual employee building designers are not attributed as creators of various parts of a

⁶² *Copyright Act* (n 2) s 195AN(3).

⁶³ *Ibid* ss 195AM(2), 195AM(3).

⁶⁴ *Ibid* s 193.

⁶⁵ *Ibid* s 195AC.

⁶⁶ *Ibid* s 195AK.

⁶⁷ *Ibid* ss 193, 194(2).

⁶⁸ *Ibid* s 195AA.

⁶⁹ *Ibid* s 195AB.

building project. In such circumstances, it is reasonable not to identify the individual employee as the author.⁷⁰ On the other hand, if a firm hires a special contractor building designer to work on a project, then it is likely that the contractor will want to be attributed for the creation of the plan and the firm should allow this to happen to avoid moral rights infringement.

B *Against False Attribution of Authorship*

Pursuant to s 195AC of the *Copyright Act*, the author of an artistic work has a right not to have authorship of the work falsely attributed.⁷¹ The focus is on the attributor inserting or affixing their name or someone else's name on a work so as to falsely imply they are the author of the work in the knowledge that the person falsely attributed is not the author. Therefore, a building designer has the right not to have a person falsely attribute themselves as the author of the building designer's work by, for example, falsely affixing their name to the work or a reproduction of the work.⁷²

C *Integrity*

The right of integrity provides the author of copyright work with the right not to have their work subjected to derogatory treatment. Section 195AK of the *Copyright Act* provides:

- (1) ***Derogatory treatment***, in relation to an artistic work, means:
 - (a) the doing, in relation to the work, of anything that results in a material distortion of, the destruction or mutilation of, or a material alteration to, the work that is prejudicial to the author's honour or reputation; or
 - (b) an exhibition in public of the work that is prejudicial to the author's honour or reputation because of the manner or place in which the exhibition occurs; or
 - (c) the doing of anything else in relation to the work that is prejudicial to the author's honour or reputation.⁷³

Harm caused to an author's honour or reputation does not need to be direct monetary loss, but can include the intangible effects of a person's derogatory treatment of an author's work.⁷⁴ This can, in part, be assessed according to the author's subjective experience of the harm.⁷⁵

⁷⁰ Ibid s 195AR.

⁷¹ Ibid s 195AC.

⁷² Ibid s 195AE(2).

⁷³ Ibid s 195AK.

⁷⁴ *Perez v Fernandez* (2012) 260 FLR 1, 17 [96].

⁷⁵ Ibid 15–16 [87]–[88].

Consider the following scenario. A property developer hires a renowned building designer to create building plans and obtains an assignment of the copyright in the plans from the designer. However, no agreement is made regarding the building designer's moral rights. During construction, the client requests changes and the developer, believing they have the right given the copyright assignment, makes the alterations. The building designer later notices the changes and claims they harm their personal brand and reputation. As the building designer did not consent to the changes, and the developer did not follow the legal notification requirements under s 195AT of the *Copyright Act*,⁷⁶ the building designer may claim moral rights infringement.⁷⁷ This claim would be made on the basis that the changes distort their work and damage their reputation. The building designer should have been provided written notice by the developer allowing the designer to record or consult on the proposed changes. The developer could face damages or be forced to stop construction, wasting time and resources.

Overall, moral rights ensure that creators of artistic works, such as building designers, are properly attributed for their work and that their creations are not subjected to derogatory treatment that could harm their reputation. The law safeguards these rights by requiring property developers, buyers and sellers to identify, acknowledge and honour building designers' work and creativity. This helps to promote respect for the integrity and authorship of creative works, fostering a culture of recognition and respect for IP. As these rights cannot be assigned or licenced by the copyright owner, vigilance must be taken to ensure that the rights are respected even where there has been an assignment or licence of copyright. Moral rights are important rights personal to the creator and should not be disregarded.

VI CONCLUSION

The intersection of property and IP law in the realm of building copyright underscores the intricate balance between tangible and intangible assets. Building plans are more than just technical drawings; they are creative expressions deserving of protection and respect. By recognising the dual nature of these works, both as physical structures and intellectual creations, Australian copyright law ensures that building designers can safeguard their innovations while maintaining the integrity of their vision. This legal framework not only protects the rights of building designers as creators but also promotes a culture of innovation and excellence in the built environment. As building designers continue to build and design spaces of the future, it is important that property developers, buyers and sellers understand and respect these legal intersections. To stay clear of copyright infringement, it is essential to grasp the significance of the building copyright landscape.

⁷⁶ Section 195AT prescribes certain treatment of copyright works that does not constitute an infringement of an author's right to integrity.

⁷⁷ *Copyright Act* (n 2) s 195AT.