

PB-31 RELEASE OF ELECTRONIC DOCUMENTS

REFERENCE

Practice Bulletin PB-17 Copyright and Intellectual Property
Practice Bulletin PB-15 Documents Authentication
Practice Bulletin PB-06 Succession
Practice Bulletin PB-28 As Built and Record Drawings

It is not uncommon for a client, a successor architect or another architect working on the same building at a later date, or licensed interior designers under the same circumstances, to request copies of digital files for their own use. This occurs generally for the convenience of the affected parties.

Members are cautioned against the release of electronic documents without consideration of adding restrictive conditions as this can affect one's liability.

The Alberta Association of Architects (AAA) strongly recommends that its members do not, under any circumstances, release to anyone useable electronic documents that are complete or under seal.

BACKGROUND

Reference material on this topic is readily available in the AAA Practice Bulletins listed above and in Appendix A of the RAIC CHOP Manual that directly addresses Digital Copyright and Architects. The quotes below in italics are taken from this Manual.

Architects and licensed interior designers own and retain copyright of their work products by federal statute. Unauthorized use of these work products for any purpose is not permitted, unless specifically authorised in writing by the architect.

The client owns¹ only *the right to use* the documents as legal "instruments of service" under contract, but only for the purposes intended and that is strictly to enable a building to be constructed.

Importantly, the client or any other party is not entitled to **modify** these instruments of service in any way to suit their own purposes. As a result, architects and licensed interior designers are under no obligation to enable the use of their source documents, for example, to build a base layer(s) for shop drawing preparation or for another professional to build a base layer(s) for such things as tenant layouts. The simple reason for this is that 1) the original author has no control over these documents, 2) third parties are not under contract with the author and, 3) are not paying a fee for this service.

Aside from convenience and INFORMATION purposes, architects and licensed interior designers are under no legal obligation to make copyrighted source documents available to any third party.

There is also a big difference between using a contract drawing as an "instrument of service" for construction under a legal contract and the availability of a drawing to be a source layer of information to be actively modified and used by a third party, even the contractor, and that basic

difference is the unwanted and uninsured liability for the unauthorized use of proprietary work products.

RECOMMENDATIONS

The issuance of a set of electronic files without the seal that are in a single layer or image format (pdf, jpeg, png, etc.) represents a reasonable approach to enabling drawings to be issued and used *for information only* as long as the drawings cannot be readily modified and are issued with suitable disclaimers. Documents released in a single layer minimizes their use.

A more pragmatic approach is to prepare a significantly abridged set of electronic documents that can be in any workable format but include a written disclaimer and authorization *that is qualified*, as follows:

1. Authorization in the form of a letter that refers to 1) the copyright entitlement of the architect including indemnifications under the existing contract between the architect and the client and 2) a clear statement declaring the specific request and purpose for the release and use of the information.
2. Always issue *incomplete* electronic drawing(s) with only strategic layers, *excluding other layers* such as 1) dimensions (provide a scale bar or just grid dimensions if applicable), 2) the company title block and 3) any other miscellaneous proprietary and detailed information.
3. Add a disclaimer directly onto the drawings:
 - (a) For Information Only
 - (b) Information herein is protected by copyright and the author assumes no responsibility or liability whatsoever for the use of this information for any purpose. (DO NOT IDENTIFY or associate your name on the documents).
 - (c) Layout and dimensions provided for general information only. All conditions to be verified by others.

This applies to all circumstances, even in the case of successor architects or interior designers. It is expected that a successor will be able to use released documents for information only. The successor in turn is expected to prepare its own set of detailed documents for the same project, particularly up to and including the contract document phase.

USEFUL SUGGESTIONS

1. From the CHOP Manual:
 - (a) *digital drawings bound or with layers grouped into a single layer minimize the usefulness of the file.*
 - (b) *software, such as Adobe Acrobat, create graphic files that are printable and viewable, but have no direct CAD usefulness.*
 - (c) *materials available for download from a web, ftp, or other public site should be password protected.*
 - (d) *include text in an e-mail message, with any removable media, and within the file itself, warning the user that the content of the file is protected by copyright and that copying is prohibited unless written permission is obtained.*

2. Providing the client has paid for producing Record Drawings, the client has the right to use them but solely for the purposes intended. This package would also include suitable disclaimer(s) regarding ownership of copyright, no assumption of liability whatsoever for unauthorized use by anyone including the client or any third party, etc. This can be achieved with a contract or a covering letter and by affixing the disclaimer(s) to the documents directly.
3. If any third party with whom there is no contract, the architect has a choice about releasing any documents at all. If any documents are released, it is recommended that all of the above recommendations be considered and **never** release a full set of anything in any form.
4. It remains an architect's choice as to whether or not to charge a fee for the service of releasing documents. However, if the architect has not been paid to provide or release any documents to a client or a third party, the architect is NOT obligated to do anything.

SUMMARY

Architects and licensed interior designers each have a right to protect against unauthorized use of their documents. The best way to do this is to either keep the information from being disseminated to third parties in the first place or, alternatively, to ensure it is only incomplete information that is released with formal written permission. Always:

- ▶ Indicate your ownership of the copyright to the work products and the moral rights to this intellectual property.
- ▶ Execute a contract for use that indicates what you are prepared to do and for how much.
- ▶ Remind the party that you will assume no responsibility for any unauthorized use of your work products whatsoever, client or third party, and indicate clearly that this is subject to the terms of your liability insurance policy and is not negotiable.
- ▶ Understand that documents to be released should only be sufficient information to enable another party to refer to your work so that party can prepare **its own drawings** for any new work. This is especially true for landlord / tenant work where a landlord often wants to reuse drawings for expediency's sake and to save money by not asking another consultant to do new drawings. This negates the value of the professional services previously provided and can increase liability if allowed.
- ▶ Understand a full set of documents is very rarely required for information purposes.
- ▶ Provide electronic information with all proprietary information removed and add disclaimers absolving any responsibility for its use.

NOTES

¹ For example, ownership of a set of plans does not mean that a client also owns the copyright in them. The plans can be owned by the client, but activities restricted by the copyright law (such as making a copy, posting the plans on a web site, or constructing a second building from the plans) still apply. The client is entitled to the use of the "instruments of service" (usually the drawings and specifications), but only on the condition that the client has paid for the services represented by the instruments of service, and then only for the purpose intended.

This practice bulletin does not directly address the Building Information Modeling (BIM) file and the issue of copyright and dissemination of the BIM 3D model and its multidisciplinary data. However, the principles around its third-party dissemination are exactly the same as in this bulletin. Members are referred to the Institute for BIM in Canada (IBC) for additional information around the specific management issues associated with these data systems.

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