



International Federation of Consulting Engineers
The Global Voice of Consulting Engineers

Copyright

FIDIC Briefing Note

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Contents

Background	2
Copyright.....	3
Copyright: legal protection	3
Engineer's concern.....	3
Consultant's concern	3
Innovation, Economy	3
Right to re-use.....	3
FIDIC's view	3
Client-consultant benefits.....	4
Fair balance	4
FIDIC recommends:.....	4

Background

The international engineering federation FIDIC (the International Federation of Consulting Engineers) believes that its member associations and their members should strive to achieve the highest degree of quality and standards.

FIDIC has always had policy statements that it expects its members to follow to ensure high standards of service in the infrastructure industry. These standards are reflected in FIDICs contracts, policy work, events and committees.

Copyright

Copyright: legal protection

Copyright is the right of an author to control the copying of his work. Under the laws of most countries, the originator of the work product (reports, models, drawings, publications, etc.) can obtain legal protection against the use of his work by others. Also, the parties to a contract where one party has been engaged by another to develop a product for a specific project or purpose can agree on the basis for the re-use of such product on other projects.

While the copyright concept is generally thought of as concerning authors of literary work, artists, and composers of music, whose work product is sold to the general public, it is also of serious concern to Consultants, such as architects and engineers, whose work may be performed for a specific Client.

Engineer's concern

The concern of the Architect may be primarily the protection of the artistry of his design. The concern for the Engineer will be to protect the uniqueness of his design and its future use by him, and in controlling re-use by others of such designs which, if inappropriately applied, may lead to costly legal liability. It should be primarily noted that while an overall design is unlikely to be reproduced, it is the designs of particular features within an overall design which become critical, and which the Engineer may wish to use again.

Consultant's concern

For Consultants, copyright is inter-related with technology transfer, which is encouraged by FIDIC as a contribution to world development, and the consultants' remuneration. FIDIC recommends that the Consultant should be fairly compensated for the transfer of copyright and technology.

Innovation, Economy

Consultants would be entitled to be fairly compensated for the effort and the inherent risk they assume in developing innovative solutions to enhance the efficiency and/or economy of a project. Furthermore, it seems reasonable that the liability for any decision to re-use designs, for other than the original purpose, should rest with the party that undertakes such re-use. Unfortunately, the law in many countries does not protect Consultants from liability to third parties incurred as a result of a Client's inappropriate applications of designs.

Right to re-use

When a project is so truly unique that its design is one-of-a-kind there is little difficulty. However, misunderstanding or even confrontation can arise between Clients and Consultants over the re-use of design documents. A Client may feel that the project design for which he paid should belong to him alone, including the right to apply it to other future projects.

The Consultant may feel that his design idea is his, to benefit his practice and reputation, and to facilitate future work for other Clients. He may also feel that the use of the design beyond that specified in the original retainer with the Client should be compensated for by payment of an additional fee, since the economic value of the design is increased when its use is thus extended.

FIDIC's view

Only in a very few cases could there be any legitimate reason for a Client to prevent a Consultant from re-using the product of his services. For example, a hotel chain owner might be legitimately concerned if an architect were to re-use some specifically distinctive features intended to identify

his hotels. Consultants have a more valid commercial reason to deny re-use, on the basis that their engagement for specific projects should not close the door to future work by enabling Clients to re-use designs for such future work. A further serious concern of the Consultant is to protect himself from liability arising from the inappropriate use of his product by others, including the Client. The perspective of the Consulting Engineer is apparent in the language of the standard documentation of FIDIC and other professional engineering organisations, which recite that ownership and use are retained by the Consultant.

Client-consultant benefits

The enhancement of the competence of the Consultant, by allowing him to retain the ownership of final drawings and the intermediate tools, benefits future Clients indirectly as well as the Consultant himself. If, on the other hand, the Consultant is required to give up completely the designs he has generated, the Consultant will lose the skill and the marketing opportunity which he developed, and wider societal benefits such as the use of the improved technology or lower engineering costs may also be lost.

Fair balance

In short, the parallel objective of copyright policy should continue to be the spread of useful knowledge and the furnishing to Consultants of a financial incentive for innovation and the advancement of their profession. The striking of a fair balance between these perspectives will usually have to be achieved in the context of the negotiations of the Agreement for Professional Services between Clients and Consultants.

FIDIC recommends:

- The Agreement confirming the engagement by a Client of the consultant should address the question of ownership of the copyright of the design drawings, specifications and other documents used by or to be prepared by the Consultant under the Agreement.
- As a general case, it will be appropriate that the Agreement provide that ownership of the copyright in design drawings, specifications and other documents should be retained by the Consultant.
- Clients should be entitled to use, manufacture or reproduce any drawings and documents produced by the Consultant for a project, for the sole purpose of the operation and management of such project.
- In limited situations, it may be appropriate that the Agreement provide for the complete transfer of ownership of copyright to the Client. Every effort should be made to ensure that the risks of inappropriate re-use are fully described to the Client and that the Client Organisation is qualified to understand and properly re-use such copyright. Contract provisions should indemnify the Consultant from liability to either the Client or third parties which might arise from such re-use.
- In all cases, the Agreement should recognise that the Consultants' fee will necessarily be greater if the ownership of the copyright is to be completely transferred to the Client, to compensate for the innovation and research transferred to the Client.



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Endnotes