

**A COMPARATIVE ANALYSIS OF THE COPYRIGHT LAW BETWEEN THE  
UNITED KINGDOM AND ZAMBIA**

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## ABSTRACT

This chapter examines the scope of copyright protection for architectural works, with particular emphasis on the legal challenges surrounding the definition of a “building” and the protection of non-habitable structures. It explores the historical development of copyright protection for architectural works and highlights the uncertainties that arise when distinguishing protected architectural works from non-protected three-dimensional structures such as bridges, dams, and monuments. The study compares the legal frameworks governing architectural copyright in the United Kingdom and Zambia. It finds that while both jurisdictions recognize architectural works as copyrightable artistic works, the United Kingdom provides a broader and clearer definition of a building under its copyright legislation, thereby offering greater legal certainty. In contrast, the Zambian Copyright Act does not define the term “building,” creating ambiguity regarding the scope of protection available to architects and designers. The chapter further analyzes the remedies available for copyright infringement, including damages, injunctions, accounts of profits, delivery up of infringing articles, and criminal sanctions. It observes that although both jurisdictions provide similar remedies and comply with international copyright standards, the absence of clear statutory definitions and judicial guidance in Zambia limits the effective enforcement of rights relating to architectural works. The study concludes that legal clarity regarding the protection of architectural works is essential to safeguard the rights and interests of creators while encouraging innovation and development within the architectural profession.

**Keywords:** *Architectural Works, Copyright Infringement, Intellectual Property Rights, Copyright Protection*

## INTRODUCTION

From time immemorial, there has been litigation over what constitutes a building that can be protected as an architectural work.<sup>58</sup> This may reflect the fact that architects and other designers create a wide variety of structures. Recognizing the difficulty in using the term building, the legislative history attempts to refine the definition of architectural works.<sup>59</sup> It states that the term building encompasses habitable structures such as houses and office buildings. It also covers structures that are used, but not inhabited, by human beings, such as churches, pergolas, gazebos, and garden pavilions.<sup>60</sup> Thus, according to legislative history, if the structure is meant to be inhabited by a human being, even temporarily, as in the case of a gazebo, it is a building and qualifies as a copyrightable architectural work.<sup>61</sup>

The legislative history, however, does not resolve all ambiguities. Generally, the history restricts the definition of building to exclude bridges, dams and related non-habitable three-dimensional structures from protection.<sup>62</sup> This exclusion raises two major questions. The first question being whether this distinction is necessary and, if so, how an architect can know whether his or her work will be categorized as a protected architectural work or as a non-protected non-habitable three-dimensional structure.<sup>63</sup>

It can be opined that many bridges across the world are monumental and deserve as much protection as buildings. For example, architects recognize the Golden Gate Bridge and the Bay Bridge in California as significant works of architectural and engineering design.<sup>64</sup> Since the legislative history precludes protection of certain works of architecture such as bridges, these works should be afforded copyright protection because the legislative history creates an inappropriate distinction between architectural works and non-habitable three-dimensional structures.<sup>65</sup>

## THE UNITED KINGDOM COPYRIGHT LAW

Copyright law protects original architectural drawings and plans as artistic works under the Copyright, Designs and Patents Act 1988.<sup>66</sup> A work of architecture, being a building or a model for a building, is also protected as an artistic work.<sup>67</sup> Section 4(1)(b) of the Copyright, Designs and Patents Act 1988 defines a work of architecture as “a building or a model for a building,” while section 4(2) provides that “building” includes any fixed structure or part of a building.<sup>68</sup>

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<sup>58</sup> Robert R. Jones Associates Inc v Nino Homes (1991) 858 F Supp 1185 (ED Va).

<sup>59</sup> US Congress, House Report No 101-735, *Architectural Works Copyright Protection Act 1990* 20–21.

<sup>60</sup> *ibid.*

<sup>61</sup> *ibid.*

<sup>62</sup> House Report No 101-735 (n 2) 20–21.

<sup>63</sup> William F Patry, *Patry on Copyright* (Thomson Reuters 2024) vol 2, §3:117.

<sup>64</sup> David P Billington, *The Tower and the Bridge* (Princeton University Press 1983) 187–193

<sup>65</sup> Patry (n 6) §3:117.

<sup>66</sup> Copyright, Designs and Patents Act 1988 (UK), s 4.

<sup>67</sup> *ibid* s 4(1)(b).

<sup>68</sup> *ibid* s 4(2).

This broad interpretation was recognized in *Macmillan Publishers Ltd v Thomas Reed Publications Ltd*, where the court discussed the scope of copyright protection afforded to artistic works under the Act.<sup>69</sup> The definition includes modern additions to older buildings, such as the Clore Gallery extension at Tate Britain in London.<sup>70</sup>

There is no requirement that architectural works possess artistic merit before protection is conferred.<sup>71</sup> Accordingly, a simple office building may qualify for protection in the same manner as the Houses of Parliament, provided that the work satisfies the requirement of originality.<sup>72</sup>

## THE ZAMBIAN COPYRIGHT LAW

The Copyright and Performance Rights Act of Zambia provides protection for works of architecture in the form of buildings and models as artistic works.<sup>73</sup> However, unlike the United Kingdom Copyright, Designs and Patents Act 1988, the Zambian Act does not define the term “building.”<sup>74</sup>

This omission creates uncertainty regarding the scope of protection afforded to architectural works in Zambia. Since the Act does not define the term, creators may find it difficult to determine whether particular structures qualify for copyright protection.<sup>75</sup>

The Zambian copyright law does not specifically define what constitutes infringement of architectural works. Consequently, courts must rely on general copyright principles concerning substantial reproduction and copying of the expression of ideas rather than ideas themselves.<sup>76</sup>

The rationale for the historical reluctance to protect completed buildings was based on the copyright principle that ideas are not protected, only their expression.<sup>77</sup> Copyright law protects architectural drawings and plans but not the underlying ideas, concepts, or design principles embodied in them.<sup>78</sup> This principle promotes innovation and prevents monopolization of architectural concepts.<sup>79</sup>

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<sup>69</sup> *Macmillan Publishers Ltd v Thomas Reed Publications Ltd* [1993] FSR 455.

<sup>70</sup> Hugh Laddie, Peter Prescott and Mary Vitoria, *The Modern Law of Copyright and Designs* (4th edn, LexisNexis 2011) para 3.88.

<sup>71</sup> Copyright, Designs and Patents Act 1988, s 1(1)(a).

<sup>72</sup> Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia, s 2.

<sup>73</sup> *ibid.*

<sup>74</sup> Lloyd N Sakala, *Intellectual Property Law in Zambia* (UNZA Press 2015) 112

<sup>75</sup> *L B Plastics Ltd v Swish Products Ltd* [1979] RPC 551.

<sup>76</sup> *Baker v Selden* 101 US 99 (1879).

<sup>77</sup> *ibid.*

<sup>78</sup> Lionel Bently and Brad Sherman, *Intellectual Property Law* (6th edn, OUP 2022) 126.

<sup>79</sup> Cornish, Llewelyn and Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (10th edn, Sweet & Maxwell 2024) 765

## REMEDIES FOR THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

An infringement of an intellectual property right is generally actionable as a tort, and the remedies available for tortious conduct are also applicable to intellectual property disputes.<sup>80</sup>

In copyright law, legislation often specifies the remedies available. For example, when considering additional damages, courts may take into account the flagrancy of the infringement and any benefit accruing to the defendant.<sup>81</sup>

Part III of the Copyright and Performance Rights Act provides that infringement of copyright is actionable at the suit of the owner of the copyright.<sup>82</sup> Remedies generally fall into two categories: civil remedies and criminal sanctions.<sup>83</sup>

### CIVIL REMEDIES

A copyright owner whose rights have been infringed may seek damages, injunctions, account of profits, delivery up, or any other remedy available in relation to infringement of proprietary rights.<sup>84</sup>

The primary objective of damages is to compensate the claimant for losses suffered as a result of the infringement. The court seeks to place the claimant in the position they would have occupied had the infringement not occurred.<sup>85</sup>

This principle was applied in *Claydon Architectural Metalwork Ltd v DJ Higgins & Sons Ltd*, where the court held that losses that are too remote are not recoverable in damages.<sup>86</sup>

Under copyright law, innocence may operate as a defence to a claim for damages where the defendant proves that he was unaware and had no reasonable grounds for suspecting the existence of copyright.<sup>87</sup>

Additional damages may be awarded under United Kingdom copyright law where the circumstances justify such an award. These damages are compensatory rather than punitive in nature.<sup>88</sup>

An injunction is an equitable remedy restraining actual or threatened infringement. The principles governing interlocutory injunctions were authoritatively stated in *American*

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<sup>80</sup> Copyright, Designs and Patents Act 1988, s 97(2).

<sup>81</sup> Ibid

<sup>82</sup> Copyright and Performance Rights Act (Zambia), Part III.

<sup>83</sup> Cornish, Llewelyn and Aplin (n 23) 765.

<sup>84</sup> Copyright, Designs and Patents Act 1988, s 96.

<sup>85</sup> Ibid.

<sup>86</sup> *Claydon Architectural Metalwork Ltd v DJ Higgins & Sons Ltd* [1997] FSR 718

<sup>87</sup> Copyright, Designs and Patents Act 1988, s 97(1).

<sup>88</sup> Ibid s 97(2).

*Cyanamid Co v Ethicon Ltd*.<sup>89</sup> The court held that the claimant must demonstrate that there is a serious question to be tried and that damages would not be an adequate remedy.

Account of profits is an alternative remedy to damages and requires the infringer to surrender profits derived from the infringement.<sup>90</sup> In *Performing Right Society Ltd v A Hickey (Bar-B-Que Drive-In Restaurant)*, the court considered the circumstances under which an account of profits could be awarded instead of damages.<sup>91</sup>

The plaintiff may also seek delivery up of infringing articles for destruction or disposal. Section 28(4) of the Copyright and Performance Rights Act provides for destruction orders.<sup>92</sup>

Under English law, an architect may also protect his interests through land registration mechanisms such as cautions and restrictions affecting property that allegedly embodies infringing architectural plans.<sup>93</sup>

## CRIMINAL SANCTIONS

Certain intellectual property statutes provide criminal sanctions for infringement.<sup>94</sup> These sanctions may include fines, imprisonment, or both.<sup>95</sup> For example, section 28(1) of the Zambian Copyright and Performance Rights Act provides criminal penalties for copyright infringement, including substantial fines and terms of imprisonment upon conviction.<sup>96</sup>

In practice, courts often impose fines, with imprisonment serving as an alternative sanction where the fine is not paid.<sup>97</sup>

## CONCLUSION

Unlike the legislative history of the Architectural Works Copyright Protection Act, both the United Kingdom and Zambian statutes provide protection for architectural works without expressly excluding all non-habitable three-dimensional structures from protection.

Both legal systems generally comply with the requirements of the Berne Convention for the Protection of Literary and Artistic Works, which recognizes works of architecture as protected artistic works.<sup>98</sup>

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<sup>89</sup> *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.

<sup>90</sup> Cornish, Llewelyn and Aplin (n 23) 789.

<sup>91</sup> *Performing Right Society Ltd v A Hickey (Bar-B-Que Drive-In Restaurant)* [1951] 2 KB 739.

<sup>92</sup> Copyright and Performance Rights Act (Zambia), s 28(4)

<sup>93</sup> Land Registration Act 1925 (UK), s 54(1).

<sup>94</sup> Copyright and Performance Rights Act (Zambia), s 28.

<sup>95</sup> *ibid.*

<sup>96</sup> *ibid* s 28(1).

<sup>97</sup> Berne Convention for the Protection of Literary and Artistic Works 1886, art 2(1).

<sup>98</sup> Copyright, Designs and Patents Act 1988, s 4(2).

An advantage of the United Kingdom system is the broad definition of “building” contained in section 4(2) of the Copyright, Designs and Patents Act 1988.<sup>99</sup> In contrast, the absence of a statutory definition in the *Zambian Copyright and Performance Rights Act* remains a significant limitation in determining the scope of protection afforded to architectural works.

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<sup>99</sup> *Copyright and Performance Rights Act (Zambia)*, Chapter 406.

## REFERENCES

- American Cyanamid Co v Ethicon Ltd* [1975] AC 396.
- Baker v Selden* 101 US 99 (1879).
- Berne Convention for the Protection of Literary and Artistic Works 1886, art 2(1).
- Claydon Architectural Metalwork Ltd v DJ Higgins & Sons Ltd* [1997] FSR 718.
- Cornish, Llewelyn and Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (10th edn, Sweet & Maxwell 2024) 765.
- Cornish, Llewelyn and Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (10th edn, Sweet & Maxwell 2024) 765.
- Cornish, Llewelyn and Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (10th edn, Sweet & Maxwell 2024) 789.
- Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia, s 2.
- Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia, s 2.
- Copyright and Performance Rights Act (Zambia), Chapter 406.
- Copyright and Performance Rights Act (Zambia), Part III.
- Copyright and Performance Rights Act (Zambia), s 28.
- Copyright and Performance Rights Act (Zambia), s 28.
- Copyright and Performance Rights Act (Zambia), s 28(1).
- Copyright and Performance Rights Act (Zambia), s 28(4).
- Copyright, Designs and Patents Act 1988 (UK), s 4.
- Copyright, Designs and Patents Act 1988 (UK), s 4(1)(b).
- Copyright, Designs and Patents Act 1988 (UK), s 4(2).
- Copyright, Designs and Patents Act 1988, s 1(1)(a).
- Copyright, Designs and Patents Act 1988, s 96.
- Copyright, Designs and Patents Act 1988, s 96.
- Copyright, Designs and Patents Act 1988, s 97(1).
- Copyright, Designs and Patents Act 1988, s 97(2).
- Copyright, Designs and Patents Act 1988, s 97(2).
- Copyright, Designs and Patents Act 1988, s 97(2).
- Copyright, Designs and Patents Act 1988, s 4(2).
- David P Billington, *The Tower and the Bridge* (Princeton University Press 1983) 187–193.

House Report No 101-735, *Architectural Works Copyright Protection Act 1990* 20–21.

Hugh Laddie, Peter Prescott and Mary Vitoria, *The Modern Law of Copyright and Designs* (4th edn, LexisNexis 2011) para 3.88.

*L B Plastics Ltd v Swish Products Ltd* [1979] RPC 551.

Land Registration Act 1925 (UK), s 54(1).

Lionel Bently and Brad Sherman, *Intellectual Property Law* (6th edn, OUP 2022) 126.

Lloyd N Sakala, *Intellectual Property Law in Zambia* (UNZA Press 2015) 112.

*Macmillan Publishers Ltd v Thomas Reed Publications Ltd* [1993] FSR 455.

*Performing Right Society Ltd v A Hickey (Bar-B-Que Drive-In Restaurant)* [1951] 2 KB 739.

William F Patry, *Patry on Copyright* (Thomson Reuters 2024) vol 2, §3:117.

William F Patry, *Patry on Copyright* (Thomson Reuters 2024) vol 2, §3:117.

*Robert R. Jones Associates Inc v Nino Homes* (1991) 858 F Supp 1185 (ED Va).

US Congress, House Report No 101-735, *Architectural Works Copyright Protection Act 1990* 20–21.

US Congress, House Report No 101-735, *Architectural Works Copyright Protection Act 1990* 20–21.

US Congress, House Report No 101-735, *Architectural Works Copyright Protection Act 1990* 20–21.