



ELECTRONIC FILE SHARING: DO'S and DON'TS

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With the advancement of technology in both our personal and professional lives comes the responsibility of protecting information exchanged electronically. Design professionals have benefited significantly with the advancement of technology by, among other things, being able to not only create computer aided designs (CAD) on the computer, but also to edit those designs and, when necessary, forward those designs to other parties. As a result, documents that used to take days, and sometimes weeks, for a design professional to prepare, revise, and provide to other parties, can now be accomplished in a fraction of that time.

Along with the obvious benefits of being able to prepare documents on a computer and almost instantly share them with others, comes inherent dangers which must be carefully evaluated and addressed before sharing such information. Specifically, after preparing CAD drawings for a project, a design professional is often requested, or obligated, to provide those drawings to others including the project owner, contractor, and sub-contractors in order to complete the project. The owners may decide to make revisions to the drawings and change the scope of the project, contractors need the drawings in order to perform the construction, and sub-consultants often need the design professional's drawings in order to prepare their scope of work.

When sharing these files electronically with others there exists the possibility that the files may be manipulated, and in some instances used on other projects, by persons without the design professional's permission. Just as it is necessary to sometimes reformat a Word document into a PDF document to prevent the recipient of the document from modifying and changing the document, so to must the design professional protect their CAD drawings when sharing such files with others.

There are several file formats including, among others, PDF and DWF that are available to design professional to assist in protecting against file manipulation and unauthorized use. It is recommended that the design professional consult with an IT specialist fully versed in this type of file conversion before sharing the files with others. Such file formats and programs can convert the CAD file to a read-only file such that the file cannot be modified in any way. There also exists the ability to limit specific files to be viewed, while excluding other files from being viewed. It is also necessary to discuss with

the IT specialist, and fully understand, the scope of such protection afforded by the PDF and WDF files before sharing the files electronically. Importantly, despite the best efforts at protecting the files, in certain instances these protective files can be unlocked by others.

In many instances the design professional's documents must be provided to other parties in an unprotected format. For example, they may be needed for the preparation of as-built drawings or for preparation sub-consultant's (i.e. structural, MEP, etc.) drawings. Under such circumstances it is essential that, before the CAD files are shared electronically, the design professional have in place the appropriate written agreement. This agreement must be with the party whom the drawings are being shared, and include the necessary language to fully protect the design professional from damages which may result from unauthorized use and/or modifications to the drawings by others.

The following list provides important provisions to include in a CAD file sharing agreement:

- Identify the project by name and location;
- Set forth the type of electronic files being shared and make no representation as to the compatibility of that file with the recipient's hardware or software;
- Specifically enumerate the particular electronic files being shared;
- Provide that the use of the electronic files must adhere to the terms and conditions contained in the contract documents and project agreements;
- State that the data contained in the electronic files, and any unauthorized use or re-use by the recipient or others, will be at the recipient's sole risk without liability to the design professional;
- Include that by accepting the electronic files for the recipient's convenience and use, the recipient agrees to make no claim and thereby waives, to the fullest extent permitted by law, any claim or cause of action of any nature against the design professional, its officers, employees, agents or sub-consultants, which may arise out of, or in connection with, the recipient's use of the electronic files;
- Set forth that the electronic files are not contract documents and that the design professional makes no representation regarding the accuracy or completeness of the electronic files the recipient receives;
- Provide that the design professional makes no representation that it is transferring the copyright of the electronic files to the recipient, that the

ownership of all copyrighted drawings which are contained within the electronic files remain with the owner so the copyright, and no transfer of ownership is being made by virtue of the electronic files being sent to the recipient;

- State that because of the potential that information presented on the electronic files may be modified unintentionally or otherwise, the design professional reserves the right to remove indicia of its ownership and/or involvement from each electronic display, where applicable;
- Acknowledge that, under no circumstance, shall delivery of electronic files for use by the recipient be deemed a sale by the design professional and that the design professional makes no warranties, either express or implied, of merchantability or fitness for a particular purpose of the files; and
- Include that in no event shall the design professional be liable for any loss of profit or any consequential damages relative to the delivery of the electronic files.

CONCLUSION

The suggestions set forth above regarding CAD file sharing, both in protected and unprotected formats, is comprehensive but by no means exhaustive. Each project is unique and may require additional precautions to properly protect the design professional's electronic files. Therefore, before electronically sharing CAD drawings with others the design professional should address and resolve these issues with both an IT specialist and legal counsel in order to protect the design professional from liability exposure and potential claims arising out of the transfer of such files.

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This article is intended only as a general discussion of the subject topic and as such does not create an attorney-client relationship with the reader and is not meant to provide legal advice in any manner.