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# Congress Tees Up Copyright Protection for Golf Course Designs with the BIRDIE Act

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A new federal bill aims to put golf courses on “par” with other architectural designs by expanding federal copyright protection to golf courses. Copyright law in the United States, rooted in the U.S. Constitution, ensures protection for “original works of authorship fixed in any tangible medium of expression” (17 U.S.C. § 102(a)). This broad definition covers everything from literature to music to photographs, and — since a 1990 amendment to the Copyright Act — the design of buildings. This inclusion marked an acknowledgment of the creative and intellectual effort involved in architectural design, extending copyright’s reach to protect the fruits of architects’ labors.

Building on this tradition of evolving copyright protection to reflect the changing landscape of creative works, a new bill introduced in the 118th Congress seeks to further expand the ambit of copyright law. Known as the Bolstering Intellectual Rights against Digital Infringement Enhancement Act, or the “BIRDIE Act” (H.R. 7228), this proposed legislation aims to bring golf course designs under the umbrella of architectural works, with a focus on the ease of digital recreations. One rationale behind the bill is to offer protections for golf course designs, particularly in response to the expanding industry of golf simulators.

Introduced by U.S. Reps. Brian Fitzpatrick (R-PA) and Jimmy Panetta (D-CA), the bipartisan bill seeks to align the intellectual property rights of golf course architects with those afforded to other creative professions. Golf courses, with their intricate designs that blend functionality with aesthetic appeal, embody a form of artistic expression and architectural ingenuity. However, these designs are not expressly covered under the Copyright Act. The BIRDIE Act seeks to rectify this oversight by explicitly including golf course designs within the definition of “architectural works.”

Specifically, the bill proposes to amend Section 101 of Title 17 of the U.S. Code to cover not only the overall layout and design of a golf course but also its components, such as landscaping, irrigation systems, paths, greens, tees, practice facilities, bunkers, lakes, and topographic features. The BIRDIE Act’s provisions would be applicable to works created on or after December 1, 1990, as well as to unconstructed works embodied in unpublished plans or drawings as of that date. While some of

the most renowned golf courses in the United States, like Augusta National and Pebble Beach, were established well before 1990, numerous courses have undergone updates or redesigns that could now qualify for copyright protection under the BIRDIE Act if enacted. Thus, a wide array of existing and future golf course designs would benefit from copyright protection, safeguarding the interests of creators against unauthorized use or replication.

Although the bill is limited to golf course designs, extending copyright protection in this manner may have broader implications. In 2011, the Seventh Circuit held in *Kelley v. Chicago Park District* that a "living garden," even if arranged in an aesthetically pleasing manner, was not entitled to copyright protection. Like a garden, golf course design is not limited to inanimate objects or things, but instead involves both the changing landscape and the living flora that make courses memorable. If the BIRDIE Act became law, would that change the decision in *Kelley*, meaning a gardener could receive copyright for his garden? But that's not all — *Kelley* has been relied upon by the Copyright Board more recently in decisions restricting copyright protection for works with "nonhuman authorship," including works prepared by generative artificial intelligence. If passage of the BIRDIE Act undercuts *Kelley*, does it also undercut these recent decisions about AI authorship?

We leave those questions for the reader to ponder. For now, should this bill become law, it would open new avenues for protecting and leveraging intellectual property in golf course design, offering enhanced control over the use of these designs, and potentially unlocking new revenue streams through licensing. It also raises broader doctrinal questions about just who or what qualifies as the "author" of a work. Maybe one day soon, golf balls will no longer just be lodged in an ordinary bunker; instead, golfers may declare that the ball is ensnared in an original work of authorship, fixed in a tangible medium of expression. While this may not alleviate the frustrations of hitting an approach shot from a sand trap, it would empower golf course designers and architects to prevent unauthorized and unfettered recreations of their designs.

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