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Educational, Scientific
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**World Intellectual
Property
Organization
WIPO - Geneva**

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**COMMITTEE OF GOVERNMENTAL EXPERTS
ON WORKS OF ARCHITECTURE**

Geneva, October 20 to 22, 1986

REPORT

adopted by the Committee of Experts

I. Introduction

1. In pursuance of the decisions adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its twenty-third session and by the Governing Bodies of the World Intellectual Property Organization (WIPO) at their fifteenth series of meetings in October 1985, the Directors General of Unesco and WIPO jointly convened a Committee of Governmental Experts on Works of Architecture at the headquarters of WIPO in Geneva from October 20 to 22, 1986.

2. The purpose of the meeting was to discuss the various copyright issues arising in relation to works of architecture with a view to devising certain "principles" which, together with comments, could afford guidance to governments when they had to deal with those issues. There seems to be a particular need for such "principles" at the present time as the interests of the persons engaged in intellectual activity in this field are often neglected in connection with the uses of their creations.

3. The "principles" have no binding force and their purpose is merely to indicate directions that seem reasonable in the search for solutions which, by safeguarding the rights of authors and other owners of rights in works of architecture, give them fair treatment and promote the creative activity that is so eminently necessary for safeguarding the cultural identity of every nation.

4. Experts from the following 20 States attended the meeting: Algeria, Austria, Cameroon, Denmark, Finland, German Democratic Republic, Hungary, India, Italy, Japan, Lebanon, Madagascar, Netherlands, Peru, Spain, Sweden, Switzerland, United Kingdom, United Republic of Tanzania, United States of America.

5. One State, Brazil, was represented by an observer.

6. The Palestine Liberation Organization (PLO) attended the meeting as an observer.

7. Observers from one intergovernmental organization, namely the International Labour Organisation (ILO), and from four international non-governmental organizations, namely the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), the International Publishers Association (IPA), the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law and the World Crafts Council (WCC) participated in the meeting.

8. The list of participants is attached to this report.

II. Opening of the Meeting

9. Dr. Arpad Bogsch, Director General of WIPO, opened the meeting and welcomed the participants on behalf of WIPO and Unesco.

III. Election of the Chairman

10. Mr. Robert Dittrich (Austria) was unanimously elected Chairman of the meeting.

IV. Adoption of the Rules of Procedure

11. The Committee adopted the Rules of Procedure contained in document UNESCO/WIPO/CGE/WA/2. It was decided that the Committee should elect two Vice-Chairmen and that the tasks of the Rapporteur should be fulfilled by the Secretariat. It was also agreed that, in accordance with the usual practice in meetings such as the present one, the report would be available only in English and French.

V. Election of the Other Officers

12. Mr. Péter Gyertyánfy (Hungary) and Mr. Jean Nkono (Cameroon) were unanimously elected Vice-Chairmen of the meeting.

VI. Adoption of the Agenda

13. The provisional agenda of the meeting of the Committee, as appearing in document UNESCO/WIPO/CGE/WA/1 Prov., was adopted.

VII. Examination of Guiding Principles Concerning Works of Architecture

14. Discussions were based on the Memorandum on questions concerning the protection of works of architecture and works relative to architecture prepared by the Secretariat (document UNESCO/WIPO/CGE/WA/3).

General Discussion

15. After congratulating the Secretariat on the high quality of the document, a number of delegations emphasized the usefulness of devising principles which could be proposed as a guide to national legislation in the establishment of rules providing adequate protection for the owners of the rights associated with works of architecture and works relative to architecture.

16. Several delegations stated that, in general, the Principles and the statements contained in the Memorandum were acceptable to their governments and that they would have comments to make only concerning details or particular parts of the document under discussion.

17. Several delegations underlined the importance of studying copyright problems in relation to works of architecture, especially because their national copyright laws were under revision. The cultural and economic impact of works of architecture on everyday life was also mentioned, as well as the problems involved in, for instance, drawing the line between the design elements and the utilitarian aspects of this category of works. Hence there was a need to examine the copyright problems in this context.

Works in the Field of Architecture

18. A number of comments were made regarding the notion of architectural works. One delegation suggested that in the third sentence of paragraph 12 of the Memorandum, dealing with the unimportance of utilitarian aspects in that context, one should insert the words "in principle." It was stressed by other participants, however, that the protection depended on the original elements regardless of the purpose of the building or similar construction.

19. Some delegations expressed the view that the element of creativity should also be referred to and that Principle WA.1 should be amended accordingly. This was agreed to by the Committee.

20. Certain delegations mentioned that the internal aspect of the building or similar construction should also be taken into consideration when this category of works was discussed.

21. One delegation said that the creative arrangement of the space should be a decisive aspect in relation to the protection of this category of works, and that both the internal and the external form would be of importance in that connection, in addition to the element of originality.

22. One observer representing two non-governmental organizations mentioned that the question of protection depended not on technical elements but on the copyright concept of originality. That concept could differ from one copyright system to another, but it always contained an element of creative activity.

23. Some delegations drew attention to the words "new materials" mentioned in paragraph 11 of the Memorandum and to the question whether the protection of the work of architecture applied to the work in its entirety or also to parts of it. The question of the position of employed authors was also mentioned.

24. One delegation expressed the view that in Principle WA.1, reference should be made to the artistic element and not only, as proposed, to the original element. It was considered however that such an approach might introduce an element that was too subjective to constitute a criterion in the field concerned.

25. Some delegations stressed that what was said in paragraph 16 of the Memorandum did not necessarily correspond completely to the definitions of this category of works under national laws. It was agreed that it was not necessary to make Principles WA.1 and WA.2 more detailed in that respect.

Right of Reproduction

26. The question of the term of protection for works of architecture was raised. It was agreed that the commentary on the Principles should recall that under Article 7(1) of the Berne Convention the duration of protection of copyright was the life of the author and 50 years after his death, and that under Article IV(2)(a) of the Universal Copyright Convention it should not be less than the life of the author and 25 years after his death.

27. One delegation expressed the opinion that paragraph 17 of the Memorandum should also mention the right of publication, because that right was provided for in the legislation of its country. It was felt however that, in practice, the right to authorize or prohibit publication was essentially covered by the moral rights and by the right of reproduction, since publication usually presupposed reproduction of the work. It was also felt that the question of communication to the public of images of works of architecture was essentially covered by Principle WA.7.

28. After the above discussion, it was agreed that the two basic rights of authors that were particularly relevant to works of architecture and works relative to architecture were the right of reproduction and the right of alteration.

29. As far as the right of reproduction was concerned, the delegations expressed their agreement on the contents of the Memorandum and on the proposed Principle WA.3.

The Right of Alteration

30. Different points of view were expressed in the discussion of the author's exclusive right to authorize alterations to his work of architecture.

31. Some delegations declared that in general the provisions under Principle WA.4 were acceptable to them. One of the delegations said moreover that in its opinion a change in the practical use of a building should not be regarded as amounting to an alteration within the meaning of the Principle.

32. Certain delegations suggested that the provision embodied in the Principle should be improved in such a way as would strengthen the author's right to authorize alterations. One of those delegations stated that restrictions on that right would be permitted only on condition that the author's moral rights were respected. It also underlined that only contractual solutions concerning the possibility of alteration in the future would not be sufficient to preserve the right.

33. It was suggested that the first sentence of paragraph 29, starting with the expression "such severe restrictions" should be modified, as the wording was considered too strong, especially in view of the fact that such restrictions existed in certain countries.

34. Some delegations were of the opinion that the author's right provided for in Principle WA.4 was too extensive. In their view, there should be a better balance between the author's right and the possibilities of the proprietor of the building to make alterations which were required according to his practical or technical needs. One delegation suggested that restrictions on the proprietor's possibilities in that respect should be admissible if the author's moral rights were not sufficiently safeguarded by provisions inspired by Principles WA.5 and WA.6.

35. One delegation said that, under its national law, buildings could be altered without the consent of the author for technical reasons or if so required for their practical utilization. A proposal had however been forwarded concerning alterations to buildings that were public property. In the case of alterations that entailed a significant restructuring of such a building with far-reaching effects on its architectural conception, the author should be notified and given a reasonable time to submit his observations on the matter.

36. Some delegations asked for an explanation of what the words "of great importance" meant in the present context and suggested making it clear in the Principle that the importance in question referred to "practical and technical factors."

37. It was agreed that the amendment suggested should be inserted in the Principle and that the rest of the Principle, which referred mainly to the moral rights, should be deleted as superfluous.

Moral Rights

38. Some delegations drew attention to Principle WA.5 and the corresponding commentary in paragraph 34 of the Memorandum, and asked for clarification of the meaning of the statement that the right to be named on the work should be exercised "in good faith." It was suggested that, in the first sentence of the Principle, the expression "in the customary way" should be inserted before the words "on his work," and that the second and third sentences should be deleted. The suggestion was accepted by the Committee. One delegation stressed that the change was an appropriate one owing to the fact that, at

least in certain countries, buildings were often commissioned by public authorities, and that the architects were prohibited in such cases from having their names mentioned on the buildings concerned.

39. In reply to a question raised by one delegation it was stated that liability for infringements of moral rights should normally lie with the proprietor of the work of architecture and not, for instance, with the architect who proposed the alterations or the builder who made them.

40. With regard to Principle WA.6(2) it was stated that, at least in some countries, the courts would be free to choose between the various means of redress. It was moreover clarified that the word "damages" in the text of the Principle was wide enough to cover compensation for mental suffering, for instance.

41. One delegation stated that under the national law of its country there was a special provision concerning unfinished works. In its opinion architects could not refuse their contribution to the completion of such a work.

The Protection of the External Image of Works of Architecture

42. In the course of the discussions some delegations referred to the contents of their national law and questioned why Principle WA.7 covered only the external image of a work of architecture and not the internal image as well.

43. One delegation said that according to its national law and also the national laws of other countries within the same region, it was always permissible to reproduce the external image of a building without the restrictions mentioned in the proposed Principle. Another delegation said that also under its national law it was not an infringement to make pictures of the external image of a building, and that consequently Principle WA.7 should be without any limitation as to the purpose for which the pictures were made.

44. One delegation mentioned that, with regard to the reproduction of the external image, it might be necessary to take the ownership of the work of architecture into account as, according to some legislation, the State could be the owner of the work.

45. One observer representing two non-governmental organizations referred to paragraph 38 of the Memorandum, and supported the view that Principle WA.7 should deal only with the external image. In his opinion that could be justified by the assumption that the architect had in a way dedicated the outer aspects of his work to the public. With regard to paragraph 39, the observer stated that the selling of postcards of buildings, for instance, could amount to an infringement of the normal exploitation of the work of architecture in question. He pointed out that national laws generally accepted reproduction for private purposes, which for that reason did not need to be expressly mentioned. The Principle would then only indicate that no authorization by the architect was needed in cases such as when the work stood in a public place, even if the pictures were made for commercial purposes.

The proposal was not supported, however. One delegation expressed the view that a consequence of the proposal would have been that the owner of a building situated in a private area would not have been allowed to take pictures of it.

46. One delegation stated that in its opinion the distinction made in Principle WA.7 between reproduction of the exterior of a building for private purposes and for commercial purposes was inappropriate. In any case there was no provision for such a distinction in the national law of its country. It considered that an identical regulation should be provided for in both cases. In that respect, therefore, Principle WA.7 was drafted in too-broad terms. The right of reproduction should be restricted, i.e. reproduction should be allowed when the building was situated in a public place.

47. One delegation said that in its opinion the Principle should allow only such reproduction as involved the taking of panoramic views of buildings.

VIII. Conclusion

48. The Committee noted that the Secretariat would report on the results of the meeting to the next sessions of the Executive Committee of the Berne Union and the Intergovernmental Committee established by the Universal Copyright Convention.

IX. Adoption of the Report and Closing of the Meeting

49. The Committee unanimously adopted this report and, after the usual thanks, the Chairman declared the meeting closed.

[Annex follows]

ANNEX/ANNEXE/ANEXO

LIST OF PARTICIPANTS
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I. STATES/ETATS/ESTADOS

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III. OBSERVERS/OBSERVATEURS/OBSERVADORES

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V. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS/
ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/
ORGANIZACIONES INTERNACIONALES NO GUBERNAMENTALES

INTERNATIONAL ASSOCIATION FOR THE ADVANCEMENT OF TEACHING AND RESEARCH IN
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