

## ARCHITECTURAL COPYRIGHT POTENTIALITIES AND LIMITATIONS WITH A SPECIAL REFERENCE TO EGYPT

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### ABSTRACT

Copyright and related rights refer to a group of economic and moral rights granted to authors in literary and artistic disciplines to protect their original works. Copyright is a subsidiary issue belonging to the intellectual property rights which seeks to protect creativity and motivate creative people. The importance of this paper appears as architects should be aware of their rights, and their creative products should be protected. Therefore, the motivation in conducting this research is: to increase the awareness of copyright among Egyptian architects; and to spread the culture of respecting intellectual property. This paper applies an analytical comparative methodology in discussing copyright in architecture, it is structured into three parts: part one is an overview discussing concepts related to copyright in general, and to architecture in particular; part two analyzes and compares the rights granted to architects; while part three discusses the application issues. Finally, some of the most significant conclusions of this paper are; architecture differs from other disciplines with respect to copyright protection; and rights granted to Egyptian architects is almost equivalent to the international level, however, the realm of architectural work in Egypt requires more awareness about copyright.

KEYWORDS: Intellectual property, copyright, moral rights, architectural profession, copyright infringement, fair use.

### 1. INTRODUCTION

Creativity is the origin of evolution, and there is no creativity without a motivation whether moral or economic. Motivation is the actual incentive for creativity, since creative persons have the right to obtain an appropriate reward for their creative

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products. As a result the appreciation offered to them by the society renews their motivation towards further creativity. Accordingly, intellectual property laws have been enacted to protect the rights of creative persons and to avoid frustration which may hinder creativity if they lose their rights. Copyright is one of the laws that provide protection to literary and artistic works. It is the well-known subsidiary of intellectual property laws that include patent, trademarks, and trade secrets laws. Copyright is closely related to architecture as its creative products require protection, so this paper seeks to maintain the link between copyright and architecture on the one hand, and the Egyptian situation on the other.

This research aims to increase awareness of copyright among Egyptian architects, and to discuss the situation in Egypt to identify limitations and potentialities as an initiative for future developments. This paper applies an analytical comparative methodology in discussing copyright in architecture with respect to the situation in Egypt, it is structured into three parts: the first part is an overview which discusses basic concepts related to copyright in general, and architectural copyright in particular. The second part analyzes and compares among the rights granted to the architectural designer by copyright. The third part discusses application issues, as it sets the constraints for using copyrighted architectural works and other related topics.

## **2. COPYRIGHT IN ARCHITECTURE: AN OVERVIEW**

The first part will explain basic concepts related to copyright in general, and architectural copyright in particular such as the definition of copyright, when are architectural works protected by copyright, and the status of architectural copyright in Egypt.

### **2.1 What is Copyright?**

Copyright is an exclusive right granted to the author of an original work to keep others from unauthorized use of this work such as: publishing, copying, modifying, reproducing this original work, or deriving new works from it, as these unauthorized uses might affect the original work and consequently the author either economically or morally [1]. This right is maintained automatically when the original work is created.

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Copyright is a part of the intellectual property rights "IPRs". Many international treaties, agreements, and conventions have been held to regulate the IPRs; one of the most famous is the Berne Convention for the Protection of Literary and Artistic Works in 1886, then, it has been followed by many important conventions until the Copyright Treaty of the *World Intellectual Property Organization* "WIPO" in 1996 [2].

### 2.2 Does Copyright Protect Architecture?

Current copyright laws internationally and locally, provide protection for architectural works. The Egyptian Law on the Protection of Intellectual Property "ELPIP 82/2002" article 140 mentioned the categories of literary and artistic works that are protected by copyright; the list includes drawings and works of architecture as in Fig. 1 [2].

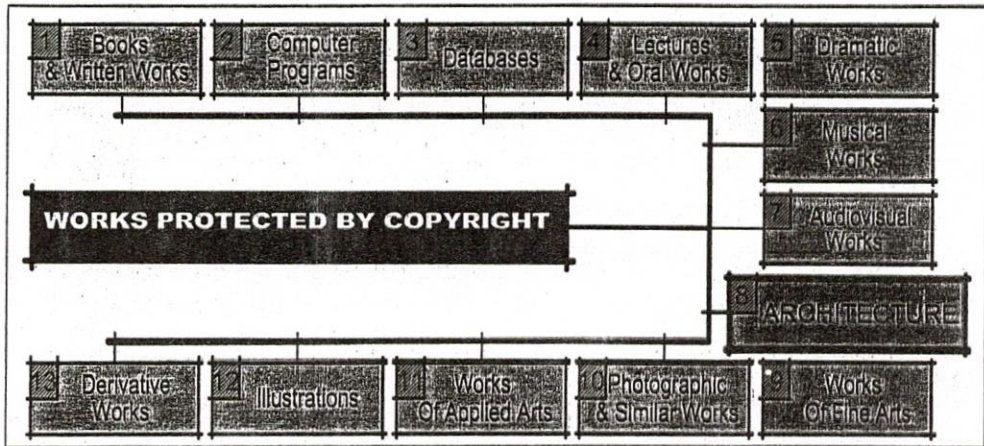


Fig. 1. Works protected by ELPIP 82/2002 including architecture.

### 2.3 Historical Review of Copyright

The idea of copyright appeared after inventing printers which facilitated the copying of books, the British Statute of Anne 1709 was the first copyright regulation that controls publishing and copying of books. In 1886, Berne Convention has been established and it is

considered a transitional historical event that regulated copyright, since before this convention a copyrighted work in a country would not be protected outside this country.

The Act of 1909 in USA was the first major revision of the U.S. copyright law with regard to architecture, and upon it, architectural plans were copyrighted. Then the act of 1976 expanded the protection to include sketches, drawings, and scaled models [3].

Although, until 1939 there was no law to regulate the IPRs in Egypt, the judicial system was protecting the IPRs according to the principles of the natural law and the rules of justice. In 1939, Egypt enacted the first IPRs law, later, in 1954, it enacted its first Copyright Law 354/1954, then Egypt joined the Berne Convention in 1977. In 2002, a new era of protection began when the IPRs Law 82/2002 went into force [4].

#### **2.4 Awareness of Copyright in Egypt**

Architects should be properly aware of the issues related to copyright, in order to guarantee a healthy working environment that motivates creativity and enhances productivity. Architects deal with copyright issues from two perspectives: an offensive one, in protecting their rights in their designs; as well as from a defensive one, in avoiding copyright infringement when they design [5].

Egypt has been convinced with the significance of the IPRs protection as its history reflects good actions about IPRs, however on the laymen level there might be a common lack of awareness. A study prepared by the African Copyright and Access to Knowledge Project "ACA2K" mentions that there are different levels of awareness of copyright in Egypt, the study has interviewed some stakeholders from different education such as; graduate students; researchers; professors; librarians; and publishers. This study has concluded that: graduate students show significant unawareness; while professors, researches and librarians are partially aware of copyright [4].

Until finalizing this paper a literature discussing the awareness of copyright among Egyptian architects was not obtained, yet, as design practitioners it have been noticed that some copyright infringements occur in the marketplace of architecture, either with good intentions or with unawareness of copyright. This implies that there might be a need for

future studies and research to explore the environment of copyright awareness among Egyptian architects, especially after the enactment of the ELPIP 82/2002.

## 2.5 Defining the Architectural Work

“An architectural work is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.” [2]

The previous definition is quoted from the U.S. Copyright Law section 101, it can be concluded that; the protected work is the design itself; the medium of expression can include the building itself, architectural plans, drawings, scale models, photographs, or even freehand sketches for example refer to Fig. 2 [6].

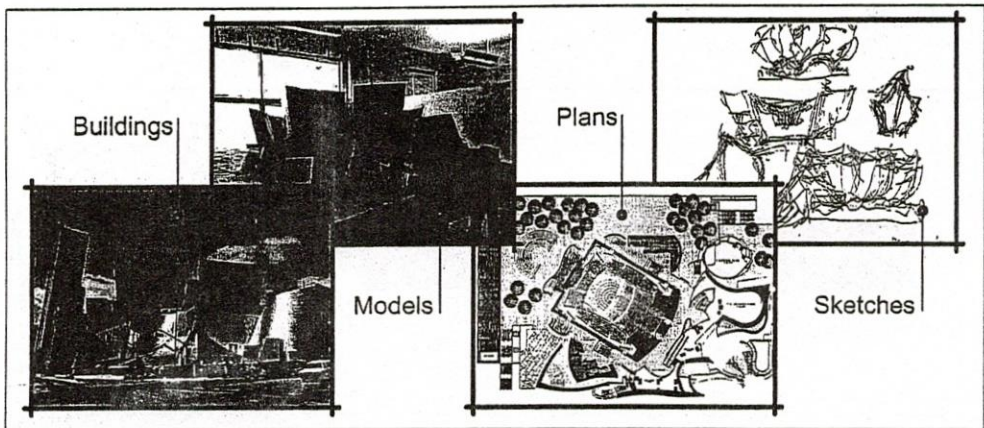


Fig. 2. The medium of expression, Disney Concert Hall, Frank Gehry, Los Angeles, 2003.  
Source of images: < <http://www.arcspace.com/architects/gehry/disney2>>

The protection of copyright covers the overall form as well as the arrangement and composition of spaces and elements of the design; but it does not cover individual standard components such as doors or windows or design elements that are utilitarian or functionally required. The U.S. Copyright office considers a building as a habitable,

permanent and stationary structure, including, but not limited to, houses, office buildings, and museums. While it considers certain designs as ineligible for copyright protection, those are structures other than buildings, including but not limited to; bridges; clover-leafs; dams; walkways; tents; recreational vehicles; mobile homes; and boats [7].

## 2.6 Criteria of Copyrightable Architectural Works

The WIPO has set two criteria for a work to be copyrighted shown in Fig. 3, the work must be original and presented in a tangible medium of expression [8]. A work is original when it is independently created and not copied, originality is the vital characteristic to obtain copyright, and it is relatively measured according to time and place. As long as the design remains an idea it cannot be copyrighted, and once the ideas are expressed in a tangible form the copyright protection could be provided. Architectural designs may be expressed as architectural drawings, blueprints, diagrams, models, etc. [6]

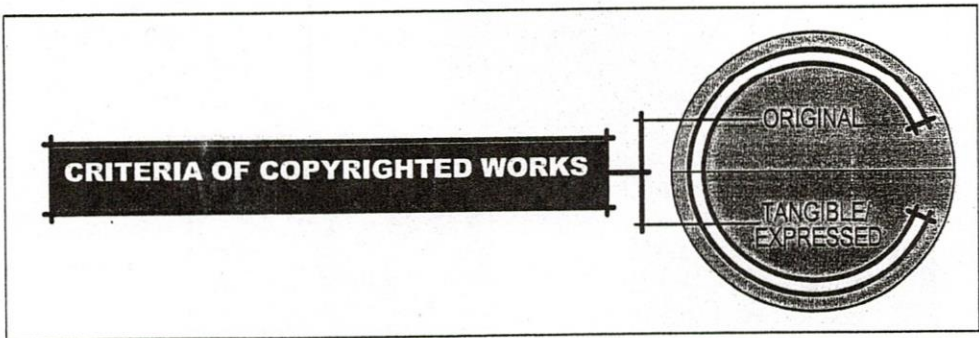


Fig. 3. Criteria for copyrighted works according to WIPO.

## 3. RIGHTS GRANTED TO ARCHITECTS

This part analyzes the ownership of architectural copyright, and compares among the rights granted to the architectural designer.

### 3.1 Who Owns the Copyright of Architecture?

The author in architecture refers to the designer of the architectural work, the author could be an individual or a group of authors, provided that all of the members should be sharing the idea of the design with an influential participation for each of them. However, architects whose roles are merely supervising, revising, or editing the architectural design are not considered to share its idea, which means that they cannot hold or be granted the copyright of the architectural work automatically [9].

ELPIP 82/2002 mentions that copyright might be given to one author or a group of authors and it ensures that the author is the person who creates the work, or the person whose name is indicated on or attributed to the published work unless it is proven otherwise. In the case of a work made by a group of authors or sponsored by another person or entity, the contributions of the participants in such work are integrated in a general objective previously set by them, in such a manner that it is impossible to distinguish the individual contribution of each member [2].

Recognizing the author in architecture is relatively complicated because the architect usually performs his/her work under two situations; as being an employee in a firm or organization; or as commissioned by a developer or a client, whereas designing without a sponsor is rarely found in architecture. Therefore, a question may be raised about the owner of architectural copyright; may the developer, commissioner or employer share the copyright with the architect? Yes, they might share the copyright, but to answer this question from a legal perspective it is required firstly to determine the nature of rights granted by copyright.

### 3.2 Copyright and Related Rights

Copyright and related rights are a group of rights aiming at guaranteeing the IPRs. These are categorized into two rights; economic and moral. Copyright refers directly to the economic rights which are transferable and enables the authors to

benefit from the reproduction of their work. While the moral rights are the related rights which are attached to authors who retain them and cannot transfer them to others, see Fig. 4 [10].

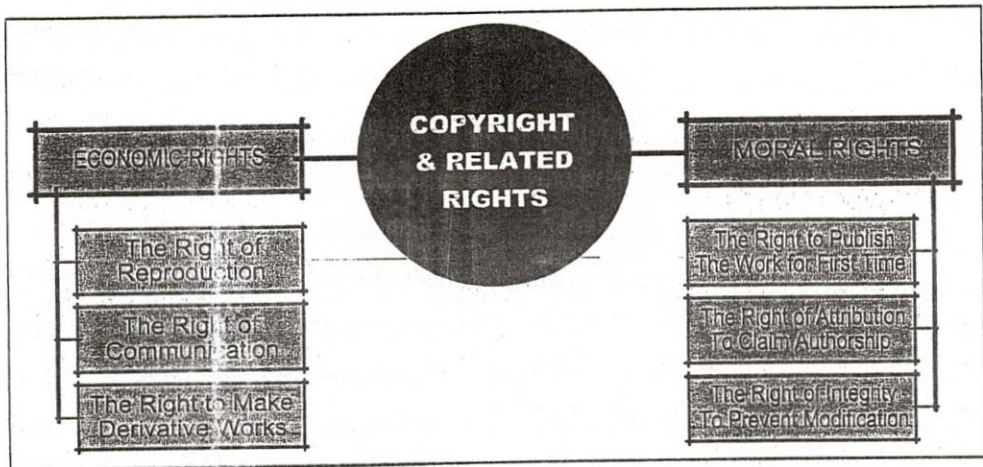


Fig. 4. The classification of copyright and related rights.

### 3.3 Economic Rights

Economic rights give the privilege of reproduction, communication, and making derivative work. These rights might be held by the author or they may be bought, sold, or licensed to another owner, for example; when a work is created by an author who is employed for the purpose of creating that work the employer might be the owner of copyright but this should be under a written agreement between the two parties [11]. The ELP 82/2002 article 149 mentions that:

“The author shall have the right to transfer to a third party all or some of his economic rights stated in this Law. Such a transfer shall be certified in writing and contain an explicit and detailed indication of each right to be transferred with the extent and purpose of transfer and the duration and place of exploitation” [2]



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The right of reproduction restricts the reproduction of copyrighted works, it is the privilege to reproduce copies of architectural drawings, or to construct additional buildings with the same design [12].

The right of communication controls how and where a work is to be communicated or exhibited. Owning this right permits the advertisement or publication of the design for commercial purposes.

By the right of making derivative work the author may control the adaptation of his work through deriving new designs based on the original work, such as making a logo derived from an architect's design.

### 3.4 Moral Rights

These rights are eternal and cannot be transferred to others, the Berne Convention requires that moral rights should be independent of the author's economic rights, and remain with the author even after he has transferred all of his economic rights [11], also, ELPPI 82/2002 article 143 ensures that: "The author and his universal successor shall enjoy over the work perpetual imprescriptible and inalienable moral rights" [2]

Moral rights refer to all non-commercial rights which give the author the privilege of publication for the first time, claiming authorship and attribution, and defending the integrity of the work [2], and the regulation of the architectural profession in Egypt ensures these rights [12].

#### 3.4.1 The right to publish the work for the first time

Upon this right, the architect can decide when to disclose his design, and accordingly, he/she has the right to decide about its validity and to prevent publishing the design if it still needs more refinements, consequently, architects have the right to refrain from submitting the design or even they can object to its construction. This right is legally ensured to the extent, that architects cannot be enforced to waive it even if there is a written agreement to deprive them from this

right. In such cases, the only action that they might face is to pay a fair compensation to the effected party [9].

### **3.4.2 The right of attribution: to claim authorship**

This right allows the architect to be identified as the designer of a project, it prevents others from claiming that they designed the work as well as from claiming a false attribution to designs that the architect did not actually create.

### **3.4.3 The right of integrity: to prevent modification**

This right permits architects to defend both the integrity of their work and the use of their names to protect their reputation and career. Upon this right, the architect can protect his architectural designs from violations, distortions, adaptations, and modifications as the design is considered the physical representation of the designer's knowledge, thought, and taste [9].

## **3.5 Validity of Copyright**

Copyright does not continue indefinitely, it has a time limit, the Berne Convention settled the minimum limit of copyright validity as fifty years after the death date of the author or the death date of the last one of authors in collective works, but the parties of this convention may grant longer terms, for example the validity of copyright in Egypt is author's lifelong and additional fifty years after the date of his death, this duration is applied in many other countries such as Canada, Japan, China, South Africa, and some Arab countries, while in the USA, UK, Germany, Spain, and Turkey the duration is author's lifelong and additional seventy years after the date of his death [13].

## **4. APPLICATION ISSUES**

This part discusses copyright from the application point of view, as it sets the constraints for using copyrighted architectural works and the consequences of violating them.

### 4.1. Copyright Registration

Registration of the original work is not required in order to claim copyright, however, registration is sometimes required to commence a legal action against copyright infringement [5]. The copyright registration process is relatively cheaper and faster when it is compared to patent or trade mark registration, moreover, registration fees may be voluntary. In Egypt, registering an architectural work is achieved in the Copyright Office at the Ministry of Culture.

### 4.2 Copyright Infringement

Copyright infringement refers to the unlicensed use of copyrighted works which should be used only upon a written license or permission. Infringement in architecture may occur on several levels, some of them are common such as the unauthorized copying of architectural drawings, and in some other cases the infringement may extend to copy the design itself. Judging the infringement in architecture is a subjective matter depending on the presence of substantial similarity between the original work and the replica, in this process the court usually requires the aid of technical experts.

The substantial similarity analysis involves two steps: determining the parts of the author's work which are protected by copyright; second, determining whether the infringing work is substantially similar to the protected elements of the original work. However, the boundary of substantial similarity from acceptable similarity often seems arbitrary [14]. In design, there are two approaches for determining substantial similarity; firstly, the total concept and feel which relies on the intuitive response of the ordinary observer to a work in its whole to determine the amount of similarity; secondly, the analytic dissection which examines the constituent elements of a work and excises unprotect-able elements prior to comparison [15].

Remedies available for infringement are relatively measured according to the nature of the original work and the damages considering various factors some of them are; the profit the architect would have gained from granting a license; the profit gained by the infringer which increases if the infringed design is used numerously, and the loss of opportunity to enhance the architect's reputation and career. However, the destruction of the infringing work is unlikely for buildings, but the monetary compensations are the most likely form of remedy [14]. Although, some infringements to copyright lead to penalties, other cases may be excused and considered as a fair use as will be explained in the next point of this paper.

### 4.3 Fair Use

In parallel with copyright, the term fair use appears to justify the use of copyrighted works in some cases where the infringement may be excused. However, fair use should not be considered an exception for the copyright regulations because it is a defensive right rather than an affirmative one. The distinction between fair use and infringement may be vague as there is no specific value excuses the unlicensed use of a copyrighted work [16].

In order to determine fair use, there are four factors to be considered; the first is the purpose and character of the use where nonprofit or educational uses are favored over commercial ones; the nature of the work is the second factor, where the characteristics of the work are examined, for example, the fair use of nonfiction is favored than fiction; thirdly, the amount of the portion used, which is measured quantitatively and qualitatively; The last factor is the effect of the use on the market of the original work [17]. In conclusion, fair use is a flexible set of guidelines subject to adaptation for changing needs, the four factors are shown in Fig. 5.

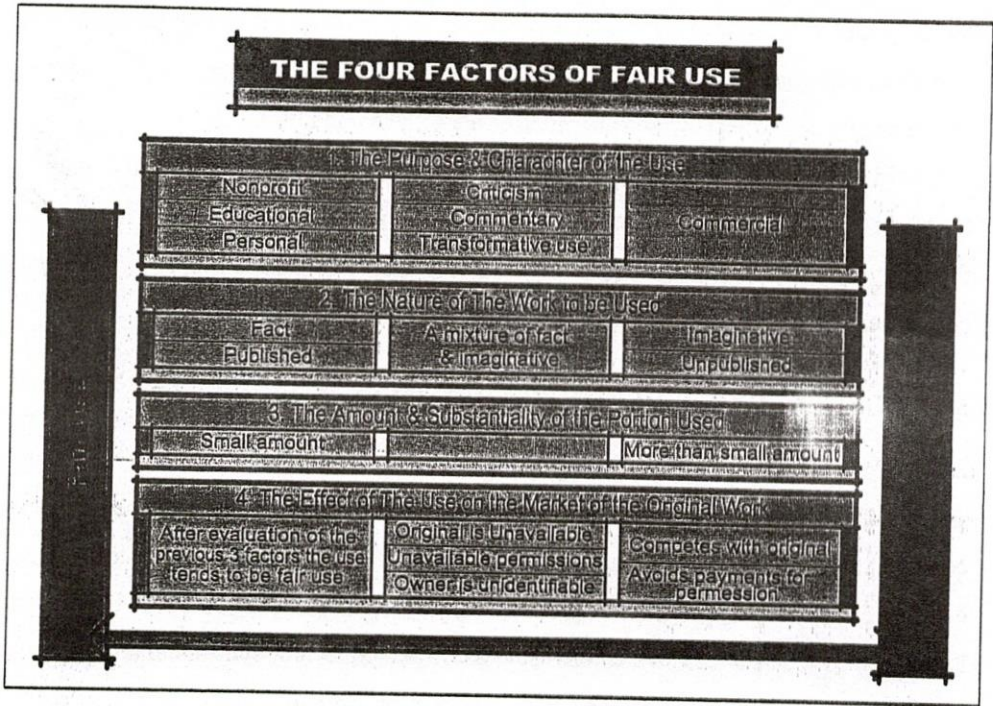


Fig. 5. The four factors of fair use [16].

#### 4.4 Limitations of Copyright in Architecture

Architectural works have less protection than other artistic works, this situation exists as architecture is a public art, therefore copyright in architecture has many limitations, it does not protect taking or displaying photos for public buildings or buildings in public spaces [5]. In addition, the protection covers only the design but not the building itself, so the building owners are allowed to renew, reuse, or demolish their buildings without permission from the designer [3]. Despite that copyright prohibits the unauthorized use of the architectural drawings to produce similar buildings, it does not prohibit the generation of new drawings derived from an existing building [9].

The subject of architectural copyright to some architects may seem invaluable for protecting their reputation; they believe that it is not necessary for highly visible works such as skyscrapers or museums, because developers who invest millions of dollars in a

building that will be seen by everyone certainly aspire that their buildings are original. However, copyright protection is probably more valuable to architects who design homes and other smaller projects which are much easier to be copied [3].

Finally, identifying the level of similarity that rises to substantiality is one of the most challenging and debated questions in copyright law. This limitation affects the copyright infringement cases because even if copying is approved no legal consequences will be done unless the copying is substantial [15].

## 5. CONCLUSIONS & RECOMMENDATIONS

Copyright is a granted right regulated by law to protect the original works including architecture, it allows the architect to prevent unauthorized use of his work. The purpose of copyright is to provide motivation for further originality and creativity. In order to spread the culture of respecting the intellectual property rights, architects should be aware of copyright issues from two points of view, an offensive one when protecting their moral and economic rights, as well as a defensive one to avoid copyright infringement.

Architectural works with respect to copyright should be discussed particularly because it has less protection than other artistic works. Copyright protects only the design but not the building itself, this is because architectural works involve both the intellectual property and the physical property, where the designer has some IPRs and the owner has other rights on his property that might conflict some of the IPRs.

Recognizing the author in architecture is relatively complicated because the architect usually performs his work as a commissioner or an employee whereas designing without a sponsor is rarely found. Therefore, it is commonly found that the owner of copyright in architecture is not the author or the real designer of the work. This fact sometimes leads to an interference with the moral rights of architects as authors.

Judging the infringement in architecture is relatively complicated and requires the aid of experts because the judgment depends on the presence of substantial similarity between the original work and the replica. While, not all of the unauthorized use of

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architectural works will be considered as copyright infringement, there are exceptional cases that might be excused and considered a fair use without any penalty application.

The Egyptian legislations for copyright grant similar rights to architects as granted internationally, meanwhile, some infringements that occur in the marketplace of architecture are probably due to the unawareness of copyright, or the remedies of infringements which are relatively low.

Finally, this paper recommends the followings:

- To conduct further studies to investigate the environment of architectural copyright in Egypt to explore the nature of infringements that occur and the awareness of the stakeholders.
- To support the culture of respecting copyright by educating the architecture students to respect the dignity of intellectual property.
- To establish a non governmental organization that supports copyright in architecture, and is responsible for spreading the awareness of it as well as exposing the infringements and providing consultations in judging these infringements.

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### حقوق المؤلف المعماري بين الإمكانات والمحددات مع ذكر خاص للواقع المصري

ينقسم البحث الى ثلاثة أجزاء؛ الأول يستعرض المفاهيم والنظريات الأساسية المرتبطة بالموضوع مع تحديد ارتباطها بالعمارة، والثاني يستعرض مع التحليل والمقارنة حقوق المصمم المعماري الأدبية والمادية وطبيعة الحماية المرتبطة بهما، أما الثالث فيناقش الموضوع من الناحية التطبيقية، وأخيراً يسرد البحث عدداً من النتائج والتوصيات المستخلصة التي من أهمها أن حماية حق المؤلف في العمارة لها خصوصيتها عن باقي المجالات، وأن الحقوق الممنوحة للمعماري المصري مكافئة للمستوى المعمول به عالمياً، ولكن مجال العمل المعماري في مصر يحتاج لمزيد من التوعية بها حتى يتم تفعيل الحماية بصورة كاملة.