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“A comparative analysis of architects’ exercise of their right of integrity in collaborative construction projects”

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Abstract

Modern construction projects increasingly rely on interdisciplinary collaborations. This interdisciplinarity, and associated ‘openness’ is essential because buildings and their environments are expected to more effectively address contemporary “wicked problems”; societal problems that are particularly difficult or impossible to solve (i.e. due to the large economic burden, the number of people involved and/or limited understanding of the problem) (Rittel & Webber, 1973). In order to address these wicked problems (which for instance relate to climate change, sustainability, mobility and health) in building projects, a large variety of expertise from different disciplines is required (Beatley, 2013; Duffy, 2012; Imrie 2001).

An excellent example of this interdisciplinarity and openness in construction projects is the American ‘Rebuild By Design’ project. This project centers around interdisciplinary design teams and combines the expertise of architects, climatologists, urban planners, engineers and citizens to redesign specific areas of New York that were destroyed by Hurricane Sandy in 2011. Projects like ‘Rebuild By Design’ illustrate how contemporary construction no longer exclusively relies on the expertise of architects, but also requires the input of other experts (Beatley, 2008; Chao-Duivis, 2013; Duffy, 2012; Genard & Le Maire, 2016; Imrie & Hall, 2001).

However, this complexity in terms of project partners also introduces new legal challenges, some of which in the area of copyright law (Collins, 2017; Hirschman, 2017; Weizman, 2017). One of these challenges relates to the balancing of, on the one hand, the moral rights of the architect and, on other hand, the general interest or interests of third parties such as home owners (see also: Chapdelaine, 2017). The objective of this contribution is to analyze how the Belgian legal framework deals with this balancing of interests, specifically in the case where an architect invokes his (moral) right to integrity to prevent modification or demolition of “his” constructions. Or, in broader terms; how the trend towards openness in contemporary construction practice is (not) reflected in the governance of the copyright of architects.

This contribution is based on a literature review with doctrinal legal research and a comparative analysis with Belgium, the Netherlands and the US. These three jurisdictions were selected for two reasons. (i) Judging from the (growing) number of recent projects (including ‘Rebuild By Design’, see above), there is particular interest for interdisciplinary collaborations in all of these countries. (ii) There is a fundamental difference with respect to the balancing of interests. Whereas the US Copyright Act, in Section 120(b), specifically refers to the balancing of interests between architects and home owners, nor Belgian, nor Dutch copyright legislation has a similar, architecture-tailored provision (Shipley, 2010). Instead, Belgian and Dutch case-law has adopted the abuse of rights doctrine to resolve similar conflicts. (Adriaansens, 2015; Kabel, 2001; Vanlangendonck, 2004; Van Besien, 2017).

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