

# George Oakley Totten, Jr., the International Association of Architects and Copyright

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*This article examines the role of American architect George Oakley Totten, Jr., who served as a key representative of the profession to the International Association of Architects during the first several decades of the 20th century. He worked to promote more interaction between architects in the United States, particularly through his membership in the American Association of Architects, and those in other nations. His approach was dual-pronged, as he urged more international exhibitions and competitions as well as more uniform laws and policies affecting the profession within and among nations. The latter, he believed, could be accomplished, at least in part, by all nations signing onto the Berne Convention and amending their domestic legislation to align with the Berne standards for the regulation of architectural, intellectual property. Totten's advocacy of Berne-conforming legislation failed to stimulate a supportive effort on the part of American architects during his lifetime for a variety of reasons. However, he played a unique role in connecting the two organizations, one international and one domestic, during his professional lifetime.*

## **Introduction**

Successful completion of international agreements among nations almost always requires supportive domestic constituencies. The education and cultivation of political parties, elites both inside and outside of government, nongovernmental organizations, and the public writ large, may, at various points, be crucial to successfully reaching global solutions to common problems. During the 1920's and 1930's in the United States, one such constituent group was the American Institute of Architects (AIA), headquartered in Washington, D.C. As producers of material culture, in a time of eroding national boundaries and easier transmission of artistic styles, methods and ideas, this organization might have been expected to have an intense interest in the protection of the intellectual property of its members under international rules. However, available evidence reveals only a lukewarm concern with domestic legislation that would make the United States copyright policy regarding architectural creations consistent with heightened international standards, specifically under the International Copyright Union, formed by the Berne Treaty of 1866. One prominent member of the AIA, George Oakley Totten, Jr., tried to highlight the issue to his American peers, particularly after his attendance at the 12th International Congress of Architects in Budapest in 1930. Totten was involved to an unparalleled extent with this international body of architects, particularly through its leadership, the Permanent Committee of the International Association of Architects (CPIA), which had long advocated Berne membership for all nations. Nevertheless, for a variety of reasons, neither Totten nor the AIA lobbied actively for its preferences to the United States Congress.

While the architectural profession's lack of visible support for these so-called 'Berne-adherence' bills was but one of many reasons for their failure, the examination of the

organization during this period does help to extend into the United States an inquiry posed by scholar Isabella Lohr (Lohr 2009). She explores the ways in which European cultural industries responded to the movement advocating the internationalization of authors' rights. Further, she examines the effect of the economic, social and political disruptions of the period on the globalization of intellectual property rights. In her research, she points out the key role played by national and international interest groups in the shaping of intellectual property protections, particularly as they sought actively to influence (and nation-states to include them in) the processes of information gathering and dissemination, negotiation and, ultimately, legislation. This inquiry adopts implicitly the neoliberal approach as described by Keohane (2005), Nye (Nye and Keohane 1977), Goldstein (Goldstein et al. 2003) and Milner (2009) who see within it four main elements. These include "an emphasis on non-state actors, including international institutions, on forms of power besides force and threats, on the role of interdependence in addition to anarchy in the international system, and on the importance of cooperation as well as conflict in international politics" (Milner 2009, 4).

### The CPIA

During the first half of the 20th century, the permanent seat of the international body governing the profession of architecture was in Paris. The international body, the Comité Permanent International des Architectes (CPIA), was formed in Paris in July 1867. Its stated role was to

"safeguard the great common interests of architects during the period between congresses, control competitions and follow with keen attention the development of the law in respect of mental property and of authorship, and is endeavoring to promote these at the various diplomatic conferences... so as to obtain the perfect protection of the rights of architects as possible" (League of Nations).

The CPIA leadership was composed of a president, eight vice presidents, a secretary general, eight secretaries, a Treasurer and twelve members. The CPIA's member structure consisted of 'sections'; each section having from 1 to 15 members from each country, depending on population. England, France and the United States each had 15 members. The CPIA's leadership had charge of the organization: selecting the countries in which the congresses were to be held, determining the topics to be discussed and making the arrangements for the international meetings with the host delegation. It always held an organizational meeting the day before the opening of a congress and the day immediately following its close. The purpose of these congresses was to "reestablish the friendly intercourse and comradeship between architects of the various nations divided by the dissensions of the war" (Bierbauer et al. 1931, 4), but there was also a more targeted, political purpose. As Hungarian member Virgil Bierbauer explains, part of the Congress's mission was "to discuss the common difficulties which beset architects, in order to come to mutual understandings and to pass resolutions which they might ask their governments to put into execution" (Bierbauer et al. 1931, 4). An American Institute of Architects' editorial in 1927 hailed this organization and its congresses as "another step in the process of moral preparation which leads to a true international mind" (AIA Journal 1927, 279). Congresses were located in the grand capitals of the world, like Brussels, Rome and Madrid, no doubt so that delegates could study the architectural treasures of each, even as they discussed more theoretical topics. Each member country sent its delegation. Dues to belong to the CPIA were not steep—only 100 francs per year per member. The CPIA also solicited donations. Because congresses were

held all over Europe with delegates from many countries, no official language existed. Hence, the 1930 proceedings, held in Budapest, were in German, English, French, Hungarian and Italian. Congresses were held somewhat irregularly during the 20th century, generally every two or so years, beginning in 1897. During the period from 1911 to 1927, due to WWI and its aftermath, no Congresses were held until the 1927 Hague conference. These congresses continued to be held until 1937. The 13th (1933) Congress, as was decided at the 12th, was to be held in Washington D.C., but cancelled due to the Depression, then rescheduled in Rome for 1935. In 1948, the CPIA ceased to exist as an independent entity, merging with another architectural organization, the International Meetings of Architects, to form the International Union of Architects.

### Major Totten

George Oakley Totten, Jr. was one of the premier American architects of the Gilded Age. He is known most for his work on crafting elegant, spacious homes in Washington, D.C. for the very rich as well as for the design of embassies, leaving a legacy that still distinguishes many of the parts of the city (Beauchamp n.d.; Mueller 2012). Born in 1866, he was descended from one of the early Dutch families of New York. Totten obtained bachelor's (1891) and master's degrees (1892) at Columbia University. He received a McKim Traveling Scholarship which enabled him to journey widely in Europe, including to Italy and Greece. It was during this period of travel that he claimed to have been one of the last people to stand on the roof of the Parthenon before it collapsed completely (Totten III 2002). Fluent in French, he studied at L'Ecole des Beaux Arts in Paris. Back in the United States, he became the Supervising Architect of the Department of the Treasury in 1895-98, an enormously influential and taxing position as he was responsible, along with his staff, for the designs of all federal buildings. Beginning in 1897 he collaborated on projects with the wife of Missouri Senator John B. Henderson, Margaret Foote Henderson, a relationship that continued until 1918. The wealthy Henderson bought parcels of land in the District and commissioned him to do the architectural design work for many opulent structures, many done in what was termed the "Renaissance Revival" style. Some of these were designed as, or later became, embassies. His embassy work includes the Greek Embassy (1907), the Embassy of Pakistan (1909), the Turkish Embassy (1915), and the Ecuadorian Embassy (1922). He also designed the Congressional Club in 1914, the place for Congressional wives to socialize and host events. His work can be seen today in many areas of the city, including Dupont Circle, Embassy Row, The Kalorama Triangle, Columbia Heights, Meridian Hill and Mt. Pleasant. After he left the Treasury Department in 1898 and, until 1907, he and Laussat Richter Rogers, a fellow Columbia graduate, had a firm in Philadelphia, Totten and Rogers, although Rogers left the partnership due to an advantageous inheritance. Working in Turkey during the beginning of the century, he designed the American Chancery as well as the Prime Minister's residence. This work so impressed the Sultan of Turkey, Abdulhamid II, that he appointed him his official architect. Unfortunately, revolutionaries deposed the Sultan in 1908 before Totten could take up the position.

During World War One, Totten served as a major in the Army Corps of Engineers and, until his death, was often referred to as 'Major' Totten. He and his wife, the Swedish sculptress Vicken von Post, were ensconced in the highest social circles in the nation's capital. At his wedding in 1921, The Washington Herald headline read "Maj. Totten Takes a Bride, Society Wedding in Capital attended by high official persons" (1921, 5), included the Secretary of

State Charles Evans Hughes and his wife, ambassadors, ministers and other diplomats. He and his wife both attended many balls as well as many receptions and dinners with top diplomats and government officials, including Presidents. One of his main foci in the 20th century, like that of so many other architects and artists in Washington, was to help invigorate Pierre L'Enfant's vision of the nation's capital, which had been developed initially under President George Washington. As such, he was involved in many of the capital's civic organizations, including The Committee of One Hundred, which was founded explicitly to promote development along the lines of the L'Enfant Plan. He also served as an adviser for the remodeling of the United States Capitol building. In the 1920's he became enamored of Mayan architecture, traveling to Central America and completing a book, *Maya Architecture*, which was published in 1926 (Totten 1926). It was from one of his travels there that he brought back a specimen of the Yucatan goldfinch which he donated to the Smithsonian Museum (Smithsonian Institution 1921, 193).

Totten was a long standing, active member of the American Institute of Architects, from 1899 to 1939, the year of his death. The AIA, founded in 1857 by 13 architects, was and continues to be the premier organization of the profession and was headquartered in Washington, D.C. in the interwar period, as it is today. Over its 162 years, it counts among its esteemed membership such notables as Cass Gilbert, the architect of the United States Supreme Court building, Daniel Burnham, who designed the Flatiron Building in New York City, and Charles McKim, architect of the Boston Public Library. The organization influenced many of the laws and policies which have helped to shape and preserve the American building culture, from the Macmillan Plan for the redesign of the nation's capital, to urban planning and the development of low-cost housing. The organization took the lead in carrying out the Historic American Buildings Survey, a New Deal program founded under the auspices of the National Parks Service to document examples of early architecture and historic structures by means of photographs and measured drawings. Over the decades it has advocated for the interests of the profession, for example, by developing standard architectural contracts and model legislation for the state-by-state registration of architects. During the 1920's and 1930's, among its presidents were Robert O. Kohn, Milton Medary, and Ernest John Russell.

Despite much of his work in and around the nation's capital. Totten was internationalist in his outlook. He desired more and frequent interaction with architects across the world, rather than the hardening of national boundaries and styles. Totten was well-acquainted with these International Architectural Congresses, having attended as a member of the United States delegations a total of eight times and becoming increasingly engaged in successive congresses. In 1897, at the age of 31, he attended his first Congress in Brussels, although doubts were expressed that someone so young could ably represent the profession "in such a distinguished gathering" (United States Department of the Interior 1988, 5). While there, he lamented the lack of American works at the accompanying exhibition. "No American architecture either of a public or private nature was represented. This is much to be regretted, especially in view of the fact that so little is known in Europe of the progress we are making in architecture. I would respectfully suggest as a duty we owe to other countries in the great problem of architectural development, that a large and complete exhibition of our public buildings be sent to the next International Congress in Paris" (Comte-rendu 1897, 4). In 1900 his only role at the Congress was to deliver a lecture by Columbia University architecture professor A.D. Hamlin on exterior facades of large buildings in the United States. (Comte-rendu 1900, 228) Yet, at that time, he had already been a CPIA American section officer since

1897, a position he would hold until his death. At the 5th Congress, he was appointed honorary Secretary General of the Congress. At the 6th Congress in Madrid in 1904, he served as the President (section leader) for the discussion of one of the core themes of the conference, "The Character of Scientific Education in the general training of architects," (Comte-rendu 1904, 167). The 8th Congress saw him presenting the Austrian Society of Engineers and Architects with a collection of photographs of public buildings in Washington, D.C. At the 10th Congress in Brussels in 1922, Totten was presented with the Diploma and the Medal of the Societe Centrale d'architecture de Belgique. In announcing Totten's official role in the upcoming 1930 Congress, editor Robert Craik McLean of *The Western Architect* wrote:

"[Totten] is the head of his class and the only member of it. The memory of this writer goeth not back to the contrary when George Oakley Totten, Jr. did not head, as often solely comprise, the committee on international architectural relations when they took the form of a Congress and in some foreign country. Therefore to him belongs the palm of merit for carrying America's architectural flag abroad and year by year representing the profession on foreign lands" (1930, 71).

Totten once expressed his views about the value to him personally of these congresses. As he put it, the congresses allowed him to visit new countries, to discuss international issues and, finally, "to make the acquaintance of the men in the same profession in all parts of the world" (Comte-rendu 1904, 472).

### **The Budapest Congress**

In March 23, 1929, a gathering of the American Section of the Permanent Committee of the International Association of Architects was held at the New York City home of the Chairman of the organization, Cass Gilbert, the designer of the United States Supreme Court building (Los Angeles Times 1930, D5). The members present were Professor William A. Boring, Dr. C. Howard Walker, Dr. Warren P. Laird, Mr. John Russell Pope, Mr. J. Otis Post, Mr. J. Monroe Hewlett and Mr. George Oakley Totten, Jr., Secretary of the American Section. At this meeting a letter was read from the Hungarian Society of Architects, inviting the Americans to participate in the upcoming congress to be held in Budapest in September 1930. The invitation was accepted. Shortly after that, Secretary of State of the United States under President Hoover, Henry Lewis Stimson, appointed Totten to chair the American delegation to the Budapest congress. Others appointed included Cass Gilbert, William Boring, Warren Laird and C. Howard Walker. However, of these official delegates, only John Mead Howells chose to attend, the others declining either due to lack of funds or prior work commitments. Totten chose to go by way of Stockholm where he visited his wife and their two sons who were summering in Sweden (Washington Post 1930, 7).

The September 6th official opening of the congressional session began with a greeting and address by CPIA president Joseph Cuypers (XII Nemzetkozi Epiteszkongresszus, Programm 1930). Royal Hungarian Minister of Culture and Education Count Kuno Klebansberg and Budapest Mayor Dr. Ference Ripka also welcomed the delegates. CPIA officers gave several reports on internal matters.

Each day's schedule was packed with official lectures and events, spread out across several venues in the city, including the Hungarian Academy of Sciences, the Hall of the Association of Hungarian Engineers and Architects, the Technical University, and Ferenc Liszt Academy of Music (XII Nemzetkozi Epiteszkongresszus, Programm 1930). In addition, the host delegation planned many outings and visits to cultural, architectural and historical

sites both in and out of the city for the architects and their families. As Totten later pointed out, due to the receptions at different locales across the city, the participants were able to see the interiors of halls to which they might not have otherwise been able to gain access (The Octagon 1930). The Hungarians made sure that official trips had expert leaders. For example, on a trip to the national library/archives at Buda Castle, the national Chief Archivist Desiderius Csanky led the group, presenting relevant information. An excursion by train to the Hungarian General Colliery Ltd. at Felsogalla, was organized by the company and led by its director. This tour allowed the visitors to view the industrial architecture of the enterprise, connecting the coal works building to one of the core themes of the conference. A walk around the mid-Danube Margaret Island to view the baths and medieval ruins, was led by Dr. Coloman Lux, a lecturer at The Technical University. The delegates and their guests were treated to an insiders' look at the impressive neo-Gothic Parliament building on the Pest side of the river, completed only 28 years earlier. This was led by the technical chief director of the Parliament, Oscar Fritz de Laczay. During the evening of September 12 the delegates and their families attended a gala performance in honor of the 12th Congress, a performance of "Carnival Wedding," by the Hungarian composer Ede Poldini at the Royal Opera House. Topics of lectures ranged from modernist architecture in Budapest and Germany to the preservation of ancient buildings in Greece. Totten himself spoke about "The Future Development of Washington (D.C.)," most likely inspired by the recent passage of the 1926 Public Buildings Act. In it the U.S. Congress had committed \$50 million for the construction of federal buildings, including money for the so-called 'Federal Triangle,' the most fulsome appropriation for federal buildings in history.

Totten, and the Swedish architect Ivar Tengbom, played key roles in overseeing the debates on the various 'themes' that had been distilled from the suggestions solicited from members by the CPIA. At the Congress, Totten was appointed the President of the Commission on Debates, his vice president, Tengbom.

The debates in this 12th Congress were a series of discussions intended to produce an official consensus of the attendees on a number of topics. Each of these themed sessions, in turn, had a different set of presidents, vice presidents, reporters (Rapporteurs General) and secretaries. For each of these panels, Hungarians occupied all the offices except that of President. For Theme I, Prof. Dr. Ing. W. Kreis of Dresden, Germany presided. Theme II: Prof. Calzo Bini from Milan, Italy; Theme III: Prof. Prof. E. Pontremolli; Theme IV: Dr. Ir. D.F. Slowthouwer from Amsterdam, Holland; Theme V: G.A. Sutherland from Manchester, England.

The themes of this particular conference to be discussed by sub-groups of the attendees were applicable to most members of the profession, whatever their preferred style of architecture or country of origin. These were: the practical training of architects, the licensing/regulation of the profession of architects in each country, copyright protection for architectural products, the role of architects in modern, industrial construction, and architectural acoustics of concert halls (XII Nemzetkozi Epiteszkongresszus, Resolutions 1930). Totten, as Secretary of the American Section of the CPIA, had a hand in selecting these specific themes in pre-congress planning in Paris, not only for their broad appeal to European architects, but also for Americans, the concerns of which he was well-acquainted. In the United States, for example, the official AIA journal of the time, *The Octagon*, reveals the profession's desire to increase the number of American states which required architects to be registered, after submitting evidence of their qualifications and training to a state board. It is clear that contractors,

engineers and others in the construction field were passing themselves off as architects or at least performing the same functions. As one author put it, without the unification of the profession through registration and other means, "it can only be a question of time until one of the oldest and greatest profession becomes the prey of all manner of unscrupulous 'gyps' to the lasting detriment of the people of America" (The Octagon 1931a, 10, 19). The acoustics of performance halls was also relevant personally to Totten and Tengbom, both of whom had recently designed opera halls.

Strict rules governed the discussions in each of the themed sessions. At least 20 members had to be present in order to assure adequate deliberation. Decisions took place by majority vote within each section. No one could speak for more than a maximum of five minutes, nor speak more than one time on anyone subject unless given special permission by the President of the Debates. A summary of the discussion was provided by the reporter in duplicate copies and signed. At the conclusion of these debates and a vote, resolutions were adopted in the committees and reported out. They were then voted upon by the entire membership. At the final plenary meeting the resolutions would be announced.

### Resolutions

A number of resolutions resulted from these themed sessions. One of these dealt with the common desire of architects to continue to distinguish themselves as members of a unique profession, based on their training and experience, and to prevent others from masquerading as architects or performing their functions. It read in part: "The Congress finds it desirable that organizations of architects be constituted in each nation, under the foundation of the laws and be charged with the registering all architects and safeguarding the general interests of the body of architects" (XII Nemzetkozi Epiteszkongresszus, Resolutions 1930). The resolution recommended that this particular demand be transmitted by the Secretariat General of the CPIA to all national governments as well as to The League of Nations. Others recommended that architectural training should include more practical subjects such as construction materials and finance, and that architects should be registered in each nation. Another, reflecting the interwar boom of industrialization and urbanization, urged architects in all countries to "begin a campaign of propaganda, both in word and in writing, to influence industrial associations to welcome the participation of architects in planning new installations and factories" (XII Nemzetkozi Epiteszkongresszus, Resolutions 1930). The last theme's resolutions concerned the importance of the study of architectural acoustics. Deliberations had been aided by representatives of the International Congress of Organists who, as acoustical experts, had been invited to participate. It was recommended that, in each country, a scientific laboratory should be set up for the purpose of facilitating advances in acoustics. Again, reflecting the contemporary phenomena of industrialization and urbanization, the resolution stressed the importance of good acoustics 'for efficacy in work and for sleep,' (XII Nemzetkozi Epiteszkongresszus, Resolutions 1930).

### Theme III Intellectual Property

One of the sets of resolutions that emerged from the themed discussions called for more widespread and better protection for the intellectual property of architects. This was not a startlingly new development at the congress. The topic of intellectual property of architects had surfaced at several earlier conferences. It was one with which Totten, due to his regular attendance both at the planning sessions and congresses themselves, had become familiar. At

the 1900 Paris Congress, one of the resolutions called for the same protection for works of architecture as for other artistic works (Comte-rendu, 1900, XXXVI). In 1904 at the 6th Congress in Madrid, one of the themes was again the artistic property of works of architecture (Comte-rendu 1904, 138, 199). A resolution at the 8th Congress in Vienna read:

“The 8th International Congress of Architects, Vienna 1908, remembering on the one hand the resolutions on copyright during the last thirty years... that the architectural design and all the drawings which compose it, together or separately, be protected by all governments and by all International Conventions in exactly the same fashion as is the case with other artistic work” (Comte-rendu 1908, 193).

In his review of the events at that particular conference, Totten mused later, “[Architectural copyright] is a subject of apparently greater importance in Europe than with us, or is it that we have not awakened to its importance?” (Comte-rendu 1908, 192).

The relevant 1930 resolutions are as follows:

### **Theme III. The protection of artistic property in architectures from the international perspective**

1. The Congress expresses the view/wish that the rights of authors be extended in all the nations which have signed onto the Berne Convention and in uniform measure, in the case of transformations, additions and demolitions of parts of the buildings, that the complete demolition of a structure will not be authorized if it results in an indisputable, artistic loss.

2. That the special characteristics of either ideas or projects cannot be appropriated; but each nation, city or other authorities have the right of expropriation in the case where expropriation is rendered indispensable by the consideration of the community/public interest, of a social or national character. In that case, at least the author ought to be paid, as agreed upon by both parties, an amount decided upon by an independent tribunal, and the idea of a project can be used only for the purpose of the expropriation.

1. The protection of the right of authorship constituted by the Berne Convention should be placed under the protection and surveillance of the League of Nations (XII Nemzetközi Epítészkonferencia, Resolutions 1930).

The main significance of this 1866 Berne Convention was its creation of the International Copyright Union. Membership in this organization meant that that author-citizens of one country in the Union, even if they had not obtained a copyright in their own country, would be protected. In the event that the work was copied in any other Union country, they would be able to appear in courts of any other signatory nation to claim redress against the piracy (Solberg 1926, 88). Thorvald Solberg, the United States Registrar of Copyrights during the 1920's, described the significance of the new entity.

“[T]he great advance secured among its signatories was that international copyright relations were no longer based upon a reciprocity which implied an exchange of exactly equal rights and privileges for the same term of protection, but that an author of one country of the Union was to be protected in all of the other countries of the Union by the copyright laws in force in each country” (Solberg 1926, 88).

A series of ‘Berne-revision’ conferences in Europe followed in the next several decades. Their purpose was to adjust the rules for replicating and transmitting cultural goods in light of newly-identified issues and problems. In Berlin 1908, architectural works were included explicitly under the Berne Copyright Union rules. A 1914 protocol held that the Union could refuse protection to citizens of nonmembers, such as those from the U.S., where the laws of

the home nation did not protect in sufficient manner the works of foreign artists. In Rome 1928, the union reaffirmed the 1914 protocol, but perhaps more significantly, inserted into the text a ‘moral rights’ clause.

Moral rights are a feature of European civil law that emerged first in France in the 19th century. As described by legal scholar Elizabeth Schere, this concept embodies the idea that “the author has a right over his creation that goes beyond exploitative rights; these rights are personal, nonpecuniary and inseparable from human rights. ...” (2018, 775). These rights are derived from natural law. From this natural law source flow two rights: the right of paternity and the right of integrity. From paternity flows the author’s inalienable right of deciding whether to claim authorship under his/her own name or to publish it anonymously or under a pseudonym. Even if an employer hires someone to create a work, the employer cannot ‘own’ the creation because the creation is linked to the individual and his core persona. The right of integrity protects the author’s work from modification, damage or destruction. Moral rights are fundamental.

By the mid 1920's, most of the European and Commonwealth countries had signed onto Berne and thus became members of the International Copyright Union, but the United States had not. However, the Union did attempt to encourage United States’ agreement by setting an August 1931 date before which a nonmember could join under the rules set at Berlin in 1908. After that, the post-Berlin stipulations, including those adopted at the Rome convention, would apply to new joiners. All to no avail, as far as the Americans were concerned. The United States, jealous of its own prerogatives, preferred to maintain its own bilateral and multilateral treaties of reciprocity regarding copyright which, during that period, it already had with more than 40 countries. In those arrangements, the copyright law applied in foreign courts would be the same as the law in the country in which the copyright was obtained originally, a significant difference from the workings of the Copyright Union.

### **Copyright**

Upon his return from Budapest in autumn of 1930, Totten met with the American Institute of Architects in December to share his Hungarian experience. He praised the congress and its achievements, lectures and the kind hospitality of his Hungarian hosts (The Octagon 1930a, 7). In some detail and with approbation, he recounted the resolutions taken there. However, in presenting the resolutions regarding intellectual property, his generally positive tone shifted to one of criticism. Less than two years prior to the Budapest Congress, the International Copyright Convention had been held in Rome in 1928, a meeting of which Totten would have been well aware. This, coupled with his recent experience at the Congress, most certainly put copyright in the forefront of Totten’s mind at this time.

Before the Board of Directors, he castigated the United States Congress for its lack of action in passing copyright legislation that would align U.S. law with the Berne international standards and for not joining the International Copyright Union. Not surprisingly, during his professional life, Totten had become well-acquainted with the copyright strengths and weaknesses in the United States. By 1930, he had received copyrights for a proposed suspension bridge and a proposed opera house, both in 1920, as well as his book on Mayan architecture in 1926. He stated: “previous [Architectural] Congresses have advocated copyright laws that would protect the artist (architects, painters and sculptors) with the same protection as that accorded authors. Some countries have such laws and this is not true in America. We do not even belong to the International Copyrights[sic] Union” (The Octagon

1930a, 7). He expressed some slight optimism, though, in noting approvingly that there was a particular Berne-adherence bill, most probably the so-called Vestal Bill which, at that time, was being considered in the U.S. House of Representatives (Columbia Law Review 1931). In the meantime, he suggested that the AIA should create a commission to formulate a standard letter requesting owners of buildings to employ the original architects for any alterations or enlargements. This, he said, would result ‘in justice’ to the original architect, as well as “a point of economy and efficiency to the owner” (The Octagon 1930a, 7).

In presenting his criticism to the AIA, Totten was speaking to professionals who would logically seem to have an interest in controlling their intellectual property through legal rules, although views might differ as to their exact form and extent. Architects generally had at least two major concerns, which ownership of their intellectual property could help address. First, copyright helps limit their exposure to tort liability. Second, another person’s reuse of the plans without permission means that the architects receive no financial benefit from their investment of time and effort.

During this interwar period in the United States, only written plans could be copyrighted, not the resulting buildings. Owners of architect-designed buildings were completely free to modify and even tear down such structures as they wished. A copyright in architectural plans did not prohibit the unauthorized construction of the building depicted therein, according to numerous state and federal court opinions. Generally, AIA standard contracts were the modal form of establishing legal rights and remedies. Any legal protections, such as there were, was divided between the state and the federal governments. Several alternatives to copyright existed under both state and federal law (Washington Lee Law Review 1990). These included design patent law, unfair competition common law, trademark law, and the ‘separability test’ of copyright law. The concept of separability meant that a copyright could be obtained if the work’s nonfunctional aspects existed independently from its functional aspects. These were often difficult to distinguish. Thus, architects in the United States did not rely primarily on copyright because of the other available options as well as the limited nature of copyright protections.

This complex, diverse web of laws resulted in a different, lower level of protection for architectural works than was required for membership the Berne-created International Copyright Union. In order for the United States to join, the United States Congress would have had to pass at least one extremely comprehensive or possibly several Berne adherence bills. These proposed laws would not only affect the architectural profession, but artists and creators of cultural property of all types, from graphic artists to jukebox operators, dressmakers, filmmakers, composers, flower arrangers, and writers. Any such bills would have to be built upon a consensus among all these very disparate groups with distinct and sometimes conflicting interests. Significantly, such bills would have had to recognize and enshrine European-style ‘moral rights’ in an individual’s creations, as was mandated in the Rome 1928 revision conference.

Such Congressional action, however, had also to conform to the United States Constitution’s clause in Article I, Sec. 8... “Congress shall have the power... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” (U. S. Constitution, art.1, sec. 8, cl. 8). The Constitution mandates that the purpose of copyright is utilitarian, not moral. Its stated purpose is to stimulate progress and creativity among others for the benefit of the public, not to embed natural rights in an individual’s creation. The United States, unlike

European nations, did not grant paternity or integrity rights in any artistic work, the right of the work’s current owner always predominating.

The interwar growth of overseas markets for U.S. cultural producers, however, did spur some serious American congressional attempts at conforming legislation. During the 1920’s and 30’s, Congress considered a number of bills called ‘design legislation’ (Solberg 1926, 68-11; Solberg 1930). These bills were aimed at legislating ‘Berne’ standards of copyright domestically. Although these initiatives continued into the 1930s, United States’ efforts to craft Berne-adherent, domestic legislation waned considerably after the 1928 Berne revision conference in Rome provided ‘moral rights’ protection (Washington Lee Law Review 1990).

Some of these bills may have been supported or opposed by American architectural interests. However, if they were, their views were not very visible. The Register of Copyrights later noted “During the 73rd (1933-35), 74th (1935-37), 75th (1937-39), 76th (1939-41) and 77th (1941-43) Congresses, new Berne adherence bills were introduced, which would also have protected works of architecture. Yet, “no witnesses on behalf of architectural interests appeared, nor does there appear to have been any reference to the issue in the numerous committee reports” (Oman 1989, 84). Issues of amplifying copyright protections hardly appear to have been a major concern of the profession in the late 1920’s and 1930’s, if one examines the official journal and the various reports of the state chapters of the profession in The Octagon. This, despite the fact that the United States had always fallen short of Berne standards with respect to architectural copyright.

In 1926, the AIA did commission a special committee to discuss and make recommendations for H.R. 10434, a Berne revision bill. This bill dealt with copyrights of works of art, sculpture, music, motion picture, plays photography, scenarios, dramatic compositions, lectures, maps as well as works of architecture, models, or designs for architectural work (U.S. House of Representatives 1926). The Executive Committee of the AIA, acting for the Board of Directors, resolved ‘in principle’ to accept the changes suggested by the special committee and authorized it to convey endorsement of the Institute to Congress (AIA Journal 1927). However, this appears never to have been sent (Berenbak 2019).

According to AIA records, at a May 1931 meeting of the AIA Executive Committee Board of Directors, correspondence regarding and the report and text of pending, Congressional legislation HR 11852, another design bill, was presented. This legislation had been referred to the Committee on Allied Arts, chaired by J. Monroe Hewlett. His committee was charged with preparing a report, which it failed to do. Hewlett stated, “as a result of my investigation, it would seem that this is a most desirable measure—not so much in the interest of architects and other professional artists but in the interest of those engaged in commercial art and design, which is at present suffering greatly from the general practice of pirating” (The Octagon 1931b, 18). Primarily out of consideration for these fellow artists, he urged that the Institute put itself on record as supporting the measures in the bill. When President Robert Kohn informed the group that the bill in question had never made it through the legislative process, the group resolved nonetheless to approve only ‘the principles’ set forth in that particular bill, should similar provisions be present in future legislation.

It was not only architects, but other American cultural producers as well, who were wary about joining the union, due to the substantive differences between the Berne rules and existing American copyright law. These included shoe and clothing manufacturers, the American Authors League, the American Federation of the Arts, and pinball manufacturers, just to name a few. One size did not definitely fit all and agreement on the best approaches was

elusive. Indeed, a few years later, a promising 1935 bill failed due to the many divergent views about their interests among the many types of artists (Patry 1994).

Why was the American architectural community so diffident on the issue, even after the recommendations of multiple architectural congresses, as well as Totten's emphatic address to the AIA? One possible answer may have been identified by Totten himself; i.e. American architects' lack of interest in international perspectives and engagement. Stated Totten, "it's a pity that American architects have not grasped the importance, the pleasure and the profit to be gained from these international gatherings..." (The Octagon 1930a, 7). Another possible explanation is that, during the 1930's, the AIA simply lacked the resources to press its interests on Capitol Hill. In 1933, The Octagon reported that "the architectural profession is confronted with an economic crisis which with respect to the personal fortunes of architects has many similarities to the war crisis 16 years before. The Institute finds it must operate with drastically reduced incomes..." (Octagon 1933, 3). During the 1930's the institute's staff consisted of only an executive secretary, two stenographers and a junior clerk. Board of Directors as well as Executive Committee meetings were held more infrequently than in earlier years. At least one annual convention was cancelled, and others were held with reduced attendance and budgets. State chapters would have had even fewer resources for operating and lobbying in their state capitals and Washington, D.C.

Copyright scholar Raphael Winick attributes the reluctance of the United States to join the Berne Union to the "policy objective" of American copyright law which was of particular relevance to those in the architectural field (1992, 1602). As noted above, American intellectual property centers on the benefit to the public, not the artists. Its purpose is to spur creativity and innovation. Winick maintains that architects are right to be suspicious of copyright reforms such as the International Copyright Union required. Architects rarely come up with entirely novel designs, instead drawing upon the 'architectural vocabulary' of many centuries, both domestic and international. The key difficulty for lawmakers is "determining at what point the novel recombination of pre-existing ideas should constitute protectable artistic expression." (Winick 1992, 1605). AIA architect Hewlett's comments, asserting that the protection offered by one of the design bills was more relevant to those in the commercial art world than to architects, illustrates this unease about the proposed legislation. British-born, American architect Leon Victor Solon, commenting in 1926 on one of the Congressional design bills, expressed similar concerns. Despite acknowledging the commonplace 'filching' of architectural features, he wrote, "It is apparently impossible to define the constituent elements of an original architectural design, in such fashion that a protective boundary might be described around it by law... when technicalities and abstract quantities have been cleverly postulated by experts holding conflicting views [at trial], confusion of the court and lay jury is sure to result" (The Architectural Record 1926, 392-393). Instead, he recommended a 'hybrid' remedy: a panel of impartial architects should act as a jury to hear the dispute and, if the offender was 'convicted,' he should lose his practicing privileges under state charters.

Totten himself, like the American profession more generally, did not seem to focus on the problem of architectural copyright in the 1930s, despite his comments after returning from Budapest. However, he did propose one organizational change at the AIA, which seemed to indicate his desire to see the views of domestic and European architects draw more closely together. In December, shortly after returning from Budapest, Totten, still as head of the American section of the CPIA, approached the AIA leadership. He invited the Secretary and President of the AIA to take on the role of ex officio members of the Permanent Committee of

the CPIA. Such a resolution was passed by the Board of Directors, which subsequently requested that the President appoint a special committee to cooperate with the American Section of the CPIA (The Octagon 1930b, 19). This proposal reflected clearly Totten's desire to make the AIA more engaged with CPIA activities around the world through joint meetings of the two groups, as well as perhaps harmonize AIA's policy priorities with those of the international body which had long advocated Berne adhesion.

By the 1930's, Totten, despite his advancing age, was very much occupied professionally. In June of 1932, still as Secretary of the American Section, he attended the Permanent Committee meeting in Paris and, from there, travelled on to Scotland to study Gothic church architecture. Also in 1932, he became President of the Washington, D.C. chapter of the AIA which occupied much of his time. In 1935, he took on the even bigger role of the Secretary of the CPIA in Paris. During the thirties, he was also involved deeply in two huge architectural projects, designing the Newark, New Jersey federal building as well as the post office in Waterbury, Connecticut. In more unpleasant matters, he became engaged in an ongoing battle over the design of the Calvert Street Bridge (Evening Star 1933, A2). In 1904 he had created the design for an arched masonry bridge for the Committee on Fine Arts (CFA) which, as a result, owned the rights. However, the bridge was not built immediately. In the 1930's, the CFA, despite owning Totten's design, decided to hold a bridge design competition for the long-delayed project. Philadelphia Architect Paul Pret's design was chosen. This proved galling to Totten. He also became engaged in a dispute with the executor of Henderson's will, George Edelin. The District of Columbia's zoning board was considering raising the legal height of buildings. Totten claimed that Henderson, desirous of preserving the low-profile character of the area, would never have countenanced this in the areas that the two of them had developed together. The executor claimed the architect's opposition was driven by financial motives, which Totten denied strenuously (Evening Star 1933). Totten also travelled back and forth to the Midwest to help plan a structure for Chicago's "The Colony of Progress, International Exposition" in 1933-1934. There he superintended the erection of a special building in the form of an Egyptian Temple boasting early Egyptian colors. An intensive study of relevant works on Egypt at the Library of Congress helped prepare him for this project (Totten III 2002).

As busy and productive as Totten was in the 1930's, the depression eventually took its toll. According to his son, "As the depression went on and on, he lost tremendous money every year and the depression didn't get over... So he was losing money and he couldn't afford his office downtown" (Totten III 2002). In fact, in 1938, just a year before his father's death, his son recounts that the Tottens lost their own home as well as an attached apartment due to financial straits (Totten III 2002).

Either due to his many projects, lack of funds or advancing age, Totten, although appointed again, did not attend the 13th International Congress in Rome in September 1935, an absence that was noted by his many colleagues throughout the world. However, he did attend the pre-conference planning meeting in Paris where the themes for the congress were chosen. Again, universal adoption of the Berne standards was selected as one of the core topics to be discussed, most likely with Totten's support. Despite Totten's absence at the congress itself, this conference too resolved to continue to press the case for Berne adherence for all countries, even supporting a special committee within the CPIA for the study of this "vital subject in its application in all countries, with instructions to report to the next Congress a form of law for suggested adoption by all countries..." (The Octagon 1935, 3).

After the Rome convention, C.C. Zantzinger, an AIA fellow who had attended, corresponded with Totten. Wrote Zantzinger "...[after returning from Rome] my first thought is to write you a report of all that transpired, knowing your personal interest and your great regret at being unable to attend for the first time in many years. You were indeed very much missed, not only by the American delegates but by your many friends amongst the foreigners from whom I bring you messages. Indeed, inquiries for you were continuous throughout the period of the Congress." (Zantzinger, 1935, 3). He credited Totten with his "active work in keeping the International Congress in the minds of the profession in the United States..." (Zantzinger 1935, 3).

Totten passed away in February 1939 after a 'six months illness' (Evening Star 1939, A14).

Ultimately neither Totten's efforts nor the CPIA's resolutions succeeded in spurring the American Institute of Architects' active involvement on Berne adherence during his lifetime, providing a case-specific answer to the broader inquiry posed by Lohr. (Indeed, the United States did not join the Berne Union until 1988). Even if the AIA had lobbied vigorously for Berne-conforming legislation, such legislation would have been unlikely to have been passed in the 1930's, given the diversity of interests among the many types of American cultural producers. Why Totten felt more strongly about this issue than most of his American peers is unknown. No evidence exists to show he was affected personally by any European architect or builder copying his designs or the buildings themselves. Neither did he express any definite interest in asserting the legal, 'moral rights' protection offered by Berne, although his suggestion that such protection be done through private arrangements might indicate such a view. Nevertheless, this energetic, multitalented American architect was a 'citizen of the world.' Perhaps he believed in a more globally-consistent system of regulation as symbolically important, one that would help to bind the profession more tightly together. Whatever his motivation, on this or any other architectural matter, during his professional career he stands out among all American members of the CPIA for his dedication to the organization, serving as an important link between it and the architectural profession in the United States.

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