ULTIMATE JOURNAL OF LEGAL STUDIES (ULJLS)
Journal homepage: https://talenta.usu.ac.id/uljls

Legal Protection and Commercialization Opportunities for Copyright of Architectural Works

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ARTICLE INFO
Article history:
Received: Jan 30, 2025
Revised: Apr 26, 2025
Accepted: May 29, 2025
Available online May 31, 2025.

E-ISSN: 3026-0477
P-ISSN:

How to cite:
Yuswar, Cheryl Patriana & Adrian, Rio (2020). Legal Protection and Commercialization Opportunities for Copyright of Architectural Works. *Ultimate Journal of Legal Studies*, 3(1), 181-189.

ABSTRACT
Copyright protection for architectural works in Indonesia has been regulated in Law Number 28 of 2014 concerning Copyright. However, the implementation of this protection is still weak due to the low awareness of architectural practitioners to register their works, as well as the minimal socialization regarding the moral and economic rights of architects. This article examines the form of legal protection for architectural works and the opportunities for their commercialization through licensing. Commercialization of architectural works is not limited to the physical form of buildings, but can be expanded into various derivative products such as books, merchandise, and digital media. Through a normative approach, the authors highlights the importance of licensing as a legal instrument that allows architects to obtain sustainable passive income. In addition to providing economic benefits, licensing is also a means of legal protection and empowerment of the local economy. This article encourages the strengthening of the copyright protection system and the exploration of commercialization opportunities to increase the economic value and appreciation of architectural works in Indonesia.
Keyword: Architect, Architectural Work, Commercialization, Copyright.

ABSTRAK
Perlindungan hak cipta terhadap karya arsitektur di Indonesia telah diatur dalam Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta. Namun, implementasi perlindungan ini masih lemah karena rendahnya kesadaran pelaku arsitektur untuk mendaftarkan karya mereka, serta minimnya sosialisasi mengenai hak moral dan ekonomi arsitek. Artikel ini mengkaji bentuk perlindungan hukum terhadap karya arsitektur dan peluang komersialisasinya melalui lisensi. Komersialisasi karya arsitektur tidak terbatas pada bentuk fisik bangunan, melainkan dapat diperluas menjadi berbagai produk turunan seperti buku, merchandise, hingga media digital. Melalui pendekatan normatif, penulis menyoroti pentingnya lisensi sebagai instrumen hukum yang memungkinkan arsitek memperoleh pendapatan pasif yang berkelanjutan. Selain memberikan keuntungan ekonomi, lisensi juga menjadi sarana perlindungan hukum dan pemberdayaan ekonomi lokal. Artikel ini mendorong penguatan sistem perlindungan hak cipta serta eksplorasi peluang komersialisasi untuk meningkatkan nilai ekonomi dan penghargaan terhadap karya arsitektur di Indonesia.
Keyword: Arsitek, Hak Cipta, Karya Arsitektur, Komersialisasi.

10.32734/uljls.v3i1.19832

1. Introduction

Copyright is one part of intellectual property that has the broadest scope of protected objects, as it covers science, art, and literature.(Azwar et al., 2023) Protection of copyrighted works exists because there are many acts of taking someone's work or creativity that are carried out without the creator's permission. Actions without permission certainly cause not only material losses but also moral losses. Therefore, the concept of

intellectual property and the form of protection known as intellectual property rights were born to protect creators' work or innovation from misuse.

Intellectual Property, abbreviated as IP, is wealth generated through human intellectual abilities. The World Intellectual Property Organization (WIPO) defines IP as works resulting from human intellect, such as literary and artistic discoveries, designs, symbols, names, and images used in trade. Meanwhile, Intellectual Property Rights, hereinafter abbreviated to IPR, are rights granted to protect IP. In a broader sense, IPR is an exclusive right granted by the state to creators, inventors, or designers for their creations or findings that have commercial value, either directly automatically or through registration with the relevant agency, as a form of appreciation or recognition of rights that should be given legal protection.(Mulyani, 2012)

Granting rights to IP that originate from a person's intellectual abilities as a form of manifestation of his alter-ego (a reflection of his personality) or the embodiment of his qualities of feeling, intention, and reasoning power is an important thing to do. IP is born with a sacrifice of energy, time, and even quite a lot of money. This sacrifice gives the work produced value. According to John Locke, through the theory of labor of his body and the work of his hands, a person who has worked has the right to obtain the results he obtains. John Locke emphasized the importance of rewarding someone who has made a "sacrifice" to discover and cultivate something from nature in the form of property rights. This concept developed by Locke became known as Labor Theory.(Locke, 2004)

The Indonesian government has demonstrated its commitment to protecting the IPR of its citizens, which is reflected in its active participation in various organizations and international agreements in the field of IPR. Through Presidential Decree no. 24 of 1979, Indonesia officially ratified the Paris Convention for the Protection of Industrial Property and the Convention Establishing the World Intellectual Property Organization (WIPO), making it a member of WIPO, a body under the auspices of the UN which has 193 member countries and focuses on services, policies, information, as well as cooperation in the field of IPR. Apart from that, due to its membership in the World Trade Organization (WTO), Indonesia also ratified the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement through Law No. 7 of 1994. This involvement requires Indonesia to implement the protection and development of a comprehensive national legal regime in the field of IPR, including copyright protection.

Copyright is an important aspect within the scope of IPR. Currently, the legal basis that regulates copyright in Indonesia is Law Number 28 of 2014 concerning Copyright (UUHC). According to UUHC, copyright is an exclusive right automatically granted to the creator based on the declarative principle after a work is realized in concrete form without reducing the restrictions regulated by statutory regulations. UUHC has provided legal protection for various creations, including architectural works, as stated in Article 40 paragraph (1) letter g UUHC. In the article's explanation, "architectural work" covers various aspects, starting from the physical form of the building, building layout, design drawings, and technical drawings to building models or mockups.

Even though architectural works are legally recognized and protected, the attention and protection of architectural works in practice still lack depth and comprehensiveness, unlike music, which is seems to be priority in UUHC and receives full attention and protection rather than other copyrightable subject matters.(Yuswar et al., 2024) Meanwhile, architectural works are given less priority even though their beauty and function are no less important. Architectural works result from equally valuable thought, creativity, and vision, which deserve protection. Based on the latest data from the Intellectual Property Database (PDKI), only 1,473 copyright applications related to architecture have been accepted. This number is minimal compared to the total number of copyright applications, which amounted to 670,886. This means the percentage of architectural works created only reached 0.22% of 670,886.

Based on the data, the 1,473 applications for copyright of architectural works is a clear indication that the majority of architectural practitioners have not utilised copyright registration as an instrument of legal protection. This low application reflects the lack of awareness of the benefits of legal certainty. This is very unfortunate, because architectural works have great potential to be commercialized.

Commercialisation of architectural works is the use of architectural works in both physical and visual forms to obtain economic benefits. This includes direct use of buildings, as well as the transformation of their designs into other forms such as books, logo designs, Lego toys or other merchandise. This commercialisation will

bring greater economic benefits to the copyright holders of architectural works. However, in practice, it is not uncommon for the commercialisation of architectural works to be carried out without permission from the copyright holder, as in the case of Rabbit Town, which has been described above.

Although a number of studies have discussed copyright protection, most of them only focus on copyright protection of songs and music. Research that discusses copyright protection of architectural works is still very minimal. In addition, research that specifically discusses how architectural works can be legally commercialized is also very limited.

Research by Hendarto Kenedy focuses on the urgency of regulating copyright law for architectural works that are used commercially. This is different from this study, which not only analyses legal protection, but also how to legally commercialise architectural works through an appropriate legal framework.(Kenedy, 2022) Furthermore, research by Muhammad Rizky dan Mustakim focuses on the implementation of Article 36 of the Copyright Law in the working relationship between architects and service users in Banda Aceh and its obstacles.(Rizky & Mustakim, 2021) However, it has not discussed the aspect of the commercialisation of architectural works. This study will fill the gap by examining how architectural works can be legally used for commercial purposes through the existing legal framework.

Based on the background that has been described, there are several important questions that become the formulation of the problem in this article. First, what is the form of legal protection for the copyright of architectural works in Indonesia? Second, what efforts can be made to take advantage of the opportunities for the commercialisation of architectural works legally through the right legal framework?

The purpose of this study is to examine the legal protection of copyright of architectural works in Indonesia and to reveal the opportunities for its utilisation for legal commercialisation. The main contribution of this study is to offer a new perspective on the importance of strengthening copyright protection and opportunities for legal commercialisation of architectural works, which have so far received little attention in copyright law studies.

The legal research method in this article is normative legal research. This normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in statutory regulations.(Amiruddin & Asikin, 2012) The statutory approach is the approach to the problem used in this written research. The legislative approach examines statutory regulations that still lack or foster deviant practices according to norms.

2. Result and Discussion

a. Legal protection of copyright of architectural works in Indonesia

People often identify the word architecture with buildings because there is no definite agreement among experts regarding the definition of architecture. According to Mangunwijaya, architecture is an expression and treasure of culture, directly expressing the most apparent soul. It describes how a society finds a philosophy of life and handles life's problems. Bill Hiller defines architecture by distinguishing whether architecture is an object (thing) or an activity (activity). Hiller finally concluded that the two meanings could not be separated. According to him, architecture requires a process of activity to produce an object (thing). This combination is called architecture.

If we refer to the constitution, Article 1 point 1 of Law Number 5 of 2017 concerning Architects defines architecture as the result of the complete application of science, technology, and art in creating space and the built environment as part of human culture and civilization that fulfills the rules of function, construction and aesthetic rules include safety, security, health, comfort, and convenience factors. People who practice architecture are called architects. Architecture is an important part of human life. We live in buildings designed with architectural principles and carry out our daily activities in buildings that are also works of architecture. Every space we inhabit is clear evidence of the role of architects in our life.

Even though the expression "nothing new beneath the sun" means nothing new in nature, it is important to protect architectural works. A work of architecture that stands firm is not created just like that. Its presence

goes through various long processes and stages. In this case, the role of an architect cannot be separated. There is so much dedication, thought, time, energy, and even a lot of money from an architect in producing an architectural work. A relevant way of appreciating the work of an architect is to provide copyright protection for the architectural work he creates.
UUHC, as the legal umbrella for copyright in Indonesia, has categorized architecture as a protected creative object. These provisions are contained in Article 40, paragraph (1) letter h. Referring to Article 40, architectural works are one of copyrightable subject matters. So, what kind of architectural works are entitled to protection? The explanation of Article 40, paragraph 1 letter h UUHC states that what is meant by "architectural work" includes, among other things, the physical form of the building, the layout of the building, building design drawings, technical drawings of buildings, and models or mock-ups of buildings. Based on this article, the scope of architectural work can be known. As a copyrightable subject matter protected under the UUHC, the protection of architectural works is not much different from other works protected under the UUHC, namely by providing exclusive moral and economic rights.

Copyright is an exclusive right consisting of moral rights and economic rights. In Article 5 (1), Moral rights are rights that are eternally inherent in the Creator to:

a) continue to include or not include his name on the copy in connection with the public use of his work;
b) using an alias or pseudonym;
c) change his Creation according to appropriateness in society;
d) change the title and sub-title of the Work; and
e) defend their rights in the event of distortion of the work, mutilation of the work, modification of the work, or anything detrimental to their honor or reputation.

Meanwhile, economic rights are contained in Article 8 UUHC, which states that economic rights are the exclusive rights of the Creator or Copyright Holder to obtain economic benefits from the Creation. Moral and economic rights are exclusive rights given to Creator and Copyright Holders. Provisions regarding Creators are regulated in Chapter IV UUHC concerning Creators starting from Articles 31 to Article 37. Creators and Copyright Holders are different, and a clear separation is needed, especially between Creators and Copyright Holders, in architectural works. The Creator is the person who first created an original creation. Status as a Copyright Holder will automatically attach to him, and he will be entitled to moral and economic rights over his creation.

Meanwhile, the Copyright Holder does not necessarily have the status of Creator. Copyright Holders can use economic rights after agreeing with the Creator. Two potential subjects can be creators in architectural works: the architect and the architect's service user. Based on the UUHC, three possibilities exist for who can be called the Creator.(Rosalina, 2010)

1) The Creator is the Architect
   a. In the case of an architect who is a designer and assisted by assistance staff under him, the Architect is the Creator of architectural works. Article 34: "In the case of a Creation designed by someone and realized and carried out by another person under the direction and supervision of the Person who designed it, the person who designed the Creation is considered the Creator."
   b. If several architects create an architectural work, several architects can be called Creators. Article 1 number 2: "A creator is a person or several people who individually or together produce a unique and personal creation." The Architect who leads or supervises the completion of all architectural creations is also called the Creator. Article 33 (1) "In the event that a work consists of several separate parts created by 2 (two) or more people, who is considered the creator, namely the person who leads and supervises the completion of the entire work."
   c. If an Architect works for a company or his services are used in an order by a service user, the Creator is the Architect. Article 36: "Unless otherwise agreed, the Creator and Copyright Holder of a Work created in a work relationship or based on an order is the party who created the Work."

2) Creators are Architects and service users.
   If the architect and service user work together to create an architectural work, both can be called creators. This is stated in article 1 point 2 UUHC: "A creator is a person or several people who individually or together produce a unique and personal creation." In practice, it is not uncommon to find a service user who, even though he has recruited an architect, the service user also provides ideas and

ideas in the process of creating architectural works. Thus, service users can be considered creators by article 1 number 2 UUHC.

3) The Creator is the service user.
   a. In the event that the service user leads and supervises the completion of the entire work, then the service user is the creator. Article 33 (1) "If a work consists of several separate parts created by 2 (two) or more people, who is considered the creator, namely the person who leads and supervises the completion of the entire work."
   b. If the service user is the person who designs the architectural work and supervises and leads the process of creating the design for the Architect who only serves as executor, then the service user is the creator. Article 34 UUHC: "If a work is designed by someone and realized and carried out by another person under the direction and supervision of the person who designed it, the person who designed the work is considered the creator.

In addition, according to Article 35 (1), which states "that unless otherwise agreed", the Copyright Holder for a Creation made by the Creator in an official relationship, which is considered to be the Creator, is a government agency. This has implications, if an architect works with the government in creating an architectural work, as long as it is not agreed that the architect is the creator, then the one who will be considered the creator is the government. This will later affect the moral and economic rights of an architect to his work.

Through the abovementioned articles, UUHC has provided clear parameters for determining which party has the right to copyright architectural works. So far, because the terms architect and architecture are similar, this has given rise to the perception that the Architect is the party who will always be the Creator of architectural works. However, if we examine it further, the UUHC has given a unique position to the Architect, where as long as there is no other agreement, the architectural copyright remains in the hands of the Architect at all times. The UUHC has also provided a period of protection for the copyright of architectural works, as stated in article 58 of the UUHC, which is valid during the lifetime of the Creator and continues for 70 (seventy) years after the Creator dies, starting from January 1 of the following year.

Apart from that, the UUHC has also included provisions regarding sanctions for violations of copyright in architectural works. These provisions are contained in CHAPTER XVII UUHC concerning criminal provisions starting from Article 112 to Article 120. Even though the UUHC has protected architectural works through copyright, the reality on the ground does not show harmony. This is indicated by the minimal copyright registration for architectural works through DJKI. Based on the latest data from the Intellectual Property Database (PDKI), only 1,473 copyright applications related to architecture have been accepted. This number is minimal compared to the total number of copyright applications, which amounted to 670,886. This means the percentage of architectural works created only reached 0.22% of 670,886.

The lack of copyright registration for architectural works certainly impacts the protection of architectural works themselves. The difficulty of finding cases in court regarding copyright infringement of architectural works is one of the impacts. Such circumstances will affect the protection of architectural works.(Rosalina, 2010) Suppose there are many disputes over copyright infringement of architectural works. In that case, the legal system can be encouraged to develop progressively and responsively to meet the need to protect architectural works. If many disputes arise due to weak architectural copyright protection, strengthening the existing legal framework will become increasingly urgent. Legislators could be encouraged to review regulations related to copyright so that they become more relevant to the realities and needs of creators of architectural works.

Several factors cause euphoria for architectural works to be less than other works protected through copyright. First, the UUHC does not protect architectural creations, including creators and copyright holders. Various applicable copyright regimes, from Law No. 6 of 1982 until currently in effect, namely Law No. 28 of 2014, do not regulate what parameters can be used to indicate that copyright violation in architectural works has been violated. Apart from that, UUHC also does not require Copyright registration. Second is the culture of the people. The individual nature of IPR often creates contradictions with the culture of Indonesian society, which is intensely rooted in communal nuances. Third, there is a lack of socialization of the Copyright Law to the public, especially architects. Many architects do not understand this. Many architects assume that if they have received payment for the architectural work they have created, their obligations to service users have been

completed, regardless of whether the architectural work they have created is changed or reproduced without the knowledge of the architect concerned in the future.(Rizky & Mustakim, 2021)

b. Commercialization Opportunities for Architectural Works Through the Copyright Legal Framework

It is interesting to ask whether an Architect or Creator of architectural works can only commercialize their work in the form of physical buildings. Is there an opportunity for them to transform their work into other forms to maximize their economic rights? This question will be answered through the lens of copyright. According to KBBI, commercialization is the act of making something into merchandise. Commercializing architectural works can be interpreted as an effort to make architectural works have added value and provide economic benefits for their creators. Currently, opportunities to commercialize architectural works are increasingly wide open. This is to encourage the spirit of Creators always to innovate and continue to create works with the right to be given IPR protection.

IPR is an intangible movable object first known in countries with the Anglo-Saxon legal system.(Hidayah, 2017) UUHC, as the legal umbrella for copyright, also states in Article 16, paragraph 1 that copyright is an intangible movable object. In civil law, IPR can be said to be an object or *zaak* in Dutch. According to L.J. Van Apeldoorn, objects in a juridical order are legal objects.(Apeldoorn, 1980) A legal object can be used by a legal subject (person or legal entity) and become an object in a legal relationship.(Tutik, 2008) Through the various views above, IPR as an object can become a legal object, be 'judged' by someone, and have economic value. The consequence is that IPR is assets that can be transferred to other parties, either in the form of sale and purchase, inheritance, gift, or special agreements such as licenses.

One of the most potential ways to commercialize the copyright of architectural works is through licensing agreements. The license agreement often used in the transfer of IPR is an agreement granting the right to use IPR in exchange for payment of royalties or fees by the licensee (licensee) to the person granting the license (licensor). In general, license agreements provide exclusive rights in using economic rights to IPR. A license is a creator's monopoly right to prevent others from using their work without permission.

According to article 1 number 20, a license is written permission given by the Copyright Holder or Related Rights Owner to another party to exercise economic rights over their work or related rights products under certain conditions. A license is one of the agreements regulated through the Civil Code. Therefore, the license conditions must follow the provisions of Article 1320 of the Civil Code as follows:

1) Agree with those who bind themselves
2) The ability to create an engagement
3) A sure thing
4) A permitted cause.

Based on the principle of freedom of contract, there are no standard rules regarding the form of a licensing agreement as long as the agreement does not conflict with statutory regulations. Article 6 of Government Regulation Number 36 of 2018 concerning the Recording of Intellectual Property License Agreements and Article 82 of the UUHC has provided provisions for prohibited license agreements, which are essentially as follows:

1) The License Agreement is prohibited from containing provisions that result in losses to the Indonesian economy and interests.
2) The contents of the License Agreement are prohibited from conflicting with the provisions of laws and regulations, religious values, morality, and public order.
3) The License Agreement is prohibited from being a means of eliminating or taking over all of the Author's rights to his work.
4) Contains restrictions that hamper the ability of the Indonesian people to transfer, master, and develop technology.
5) Resulting in unfair business competition

The Licensing Agreement is the answer to whether there is an opportunity for Creators of architectural works to transform their work into other forms to maximize their economic rights. Not all Creators can reproduce their creations due to limited raw materials and lengthy production, marketing, and administration processes. If the Creator cannot do this, giving the license to someone else can be a solution.(Gatot Supramono, 2010)

However, it should be underlined that the licensee only receives economic rights from the Creator, while moral rights remain attached to the Creator.(Ayu et al., 2021)
In general, IPR licensing agreements are divided into exclusive license agreements and non-exclusive license agreements. An exclusive license agreement is an agreement in which the rights owner (licensor) grants the right to only one party to use, publish, and reproduce a copyrighted work for a certain period. In an exclusive license agreement, the licensor promises not to give the same permission to other parties; only the party receiving the license may exploit the right without any other party being given a similar permission. While a non-license license agreement is the opposite, a non-exclusive license agreement is an agreement where the licensor grants permission to more than one party to use, publish, or reproduce the same copyrighted work. The licensor can grant the same permission to other parties in this agreement. This means that many parties can take advantage of these rights simultaneously.

To maximize the commercialization of architectural works to obtain economic benefits, Creators of architectural works would be better off using non-exclusive licensing agreements because Creators have more opportunities to transform their work into more varied forms through agreements with more than one party. For example, an Architect who generally has the status of creating architectural works can collaborate with a writer to create a book about the architectural works he has created. Architects can express their ideas and knowledge, as well as the knowledge used in creating architectural works in a book, through a writer. Architects can also tell interesting things, such as the philosophical meaning of the architectural works they have created.

Picture 1. Commercialization of Architectural Works (Talks, 2023)

Picture 1. is an example of how an architectural work in this case Monas (National Monument) can be commercialized into various products with economic value. The architectural work of Monas can be transformed into a shirt, digital poster, light show, and can even be made into a Lego toy. If a creator of the architectural work knows about this opportunity, it is better for him to take advantage of this opportunity and make more benefits from his work.

Picture 2. Commercialization of Architectural Works into various products

Picture 2. shows that architects have opportunity to enter a licensing agreements with companies that make popular merchandise today. In this case, we take the example of skyscrapers as architectural works that can be transformed into various merchandise that have commercial value, such as wallet hangers, tote bags, and mugs that are now popular with the public. By taking advantage of these opportunities, architects have the potential to gain greater profits through commercialization efforts of their architectural works.

Licensing is the most appropriate way to commercialize architectural works. Licensing offers economic potential that is not only profitable but also sustainable. Licensing provides an opportunity for creators, as copyright holders of architectural works, to grant permission to other parties for transforming their works into various forms in return for royalties. Article 1 (1) of the Copyright Law states that Royalties are compensation for the use of the Economic Rights of a Creation or Related Rights Product received by the creator or owner of the related rights.

Licensing offers long-term benefits to the creators of architectural works. So far, many architects assume that after completing a building design, a lump sum payment is the only benefit they get. This is different if the creator registers his work and has the status of copyright holder. Thus, architects can enter into a licensing agreement and earn continuous passive income, without having to be directly involved in the production or sales process of the work. Thus, architects as creators have the opportunity to continue earning income even when they do not have a main project to work on.

Architectural works licensed into various merchandise also have the potential to empower local communities and improve the national economy. Companies or individuals receiving licenses can later open up new jobs. For example, companies that make architectural design-based merchandise can recruit local workers for the production and distribution processes. This will encourage economic growth while providing opportunities for the community to earn income. This is in line with the mandate of Presidential Regulation No. 72 of 2015 concerning the Creative Economy Agency. It is stated that architecture is a creative sub-sector that has the potential to empower communities and improve the national economy.

The opportunity for commercialization of architectural works through licensing not only has a positive impact on strengthening the economy, but also acts as a legal shield that will protect the interests of both parties. For the creator as the licensor, the risk of copyright infringement can be minimized. Meanwhile, the licensee obtains the official right to utilize and use architectural works, so that they can avoid the risk of legal violations and disputes in the future.

3. Conclusion

Copyright protection for architectural works in Indonesia is regulated in in Law No. 28 of 2014 concerning Copyright. However, its implementation is still minimal. Low awareness and registration rates of architectural works at DJKI make it difficult for architects to prove ownership and take action against violations. In addition, the lack of socialization and understanding of moral and economic rights weakens the position of creators in maintaining the integrity and compensation for their work. Strengthening the copyright registration and education mechanisms is essential to ensure effective law enforcement and respect for architectural works.

Through the copyright regime, architects have a great opportunity to commercialize their work with a licensing agreement, either exclusive or non-exclusive, as an instrument to grant permission to use designs in various products (merchandise, books, toys, etc.). This mechanism is not only createing a continuous passive income stream for creators but also encouraging innovation and diversification of works without having to be directly involved in production. On the other hand, licensing supports local economic empowerment through job creation and strengthening the national creative industry, in line with the mandate of Presidential Regulation No. 72 of 2015. Thus, copyright licensing becomes an effective bridge between legal protection and optimization of the economic value of architectural works.

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