

## What to Consider when Filming Buildings

### **Definition of “filming”**

For the purposes of this note, filming is defined as any filming or photography that will be used for either private or commercial purposes, including theatrical distribution and broadcast.

### **Filming Buildings**

- Buildings are protected by copyright under English law but there is a specific exception under section 62 of the Copyright, Designs and Patents Act 1988 which permits you to take a photograph or film of a building without infringing its copyright. This means that you do not require the permission of the owners of the copyright in a building to make a film or take a photograph of it.
- The exception does not extend to making a physical 3D reproduction of a building. If the building is still within the term of copyright protection (which normally lasts for the life of the architect plus 70 years) then you will need the permission of the copyright owner to recreate it as part of a film set.
- A building on public display is not infringed by making a film, photograph, broadcasting a visual image or making a graphic work representing it. Graphic works include, among other things, drawings and diagrams. Adding VFX effects to footage of a building on public display is akin to either (i) creating a graphic work of the building or (ii) manipulating the existing footage/photograph of the building so as to enhance it. In the latter scenario the altered image is itself likely to be a graphic work of the original building, but even if this were not the case, as the original recording of the building did not infringe the building's copyright, the altered footage/image would also not amount to an infringement.
- It is worth bearing in mind, however, that you may need to position yourself on private land in order to film certain buildings. This will require consent of the landlord and/or owner of the land in question. Many apparently “public” spaces are actually privately owned portions of land which are made open to the public for very specific purposes, not including filming. Additionally, if you want to film inside a building, you will certainly need the permission of the building owners. The exception under section 62 (described above) does not mean you can freely enter onto private land to photograph and record buildings.
- It is at the stage of seeking consent that the building owners/landlords may insert a number of contractual restrictions on what you can and cannot do with images of the building. For example, whilst you could, under copyright law, make a recording of the interior of the building without permission, it is likely to be one of the terms of entry to the building that you will not take any such recordings, or that such recordings may only be for personal use. Conversely, if you want the right to recreate either the interior or the exterior of the building after you have left the building, you should ensure this right is included in your licence agreement. You should always check the terms of entry carefully.
- If the copyright in a building has expired (which normally means that the architect has been dead for longer than 70 years) it is not an infringement of copyright to recreate it but bear in mind that, particularly if recreating the interior of a building, you are likely to need to enter onto the property in order to take photos and make sketches of it. In doing so, you will face the same issues when seeking the landowner's consent as explained in the previous paragraph.
- There are also other intellectual property rights to consider:

- Visible Trade Marks & Logos: permission may be required to show any trademarks that are visible on the building (whether interior or exterior). For example, the London Eye bears branding and consent to include these trade marks in a film may need to be obtained if trademarks are prominently visible in the film.
- Logo copyright: there may also be copyright in any logos, designs or artworks visible on or in the building and you should normally obtain permission before including such items in your film. There is an exception for “incidental inclusion” of such items but the protection it affords is limited. It only covers genuinely incidental uses of copyright works, in the sense that their inclusion is casual or of secondary importance and is not the focus of a shot. Including an image of a copyright work that is referenced in the screenplay is unlikely to be regarded as incidental, for example. The incidental use exception is also unlikely to extend to replicating artworks, designs and other works protected by copyright that are visible on or in the building. Whether or not a particular use is incidental should be reviewed on a case-by-case basis.
- Passing Off: a building may also be considered to represent an individual or institution, even if no logos are visible. For example, Old Trafford could be said to represent Manchester United. Therefore, it is arguable that including certain buildings in a film could amount to a representation to the public that the film is associated with or endorsed by a certain individual, institution or entity. This might amount to “passing off”. Provided the use of any buildings with a clear association is sufficiently incidental, it is unlikely to amount to a representation, but filmmakers should proceed with caution. Footage of any such buildings should not be used in the marketing or promotions for a film and consideration should be given as to whether a disclaimer needs to be included clarifying that the film is not endorsed or licensed by the relevant association.
- Defamation: whether or not the building is still within copyright, you need to consider whether the content of your film risks an inference of passing-off or defamation. To use the previous example, if the film suggested that a famous (albeit fictional) football club was involved in a match-fixing scandal and used footage of Old Trafford to represent the grounds of such football club, this might be considered defamatory. This, however, is not a question of copyright infringement so it does not matter whether the building is still protected by copyright. What is important is which individual, corporation or entity is being defamed and this is unlikely to be the owner of copyright in the building. Using footage of a generic London office building which is not associated with any individual, corporation or other entity and depicting the building as the headquarters of a criminal organisation, for example, is unlikely to be defamatory.
- National Monuments: there is no enhanced protection for national monuments. If they are situated in a public place, the exception granted under section 62 of the Copyright, Designs and Patents Act 1988 will apply. In addition, the copyright in older national monuments is likely to have expired, so these could be reproduced without infringing copyright, regardless of section 62. Restrictions may be imposed if the owner or authority responsible for the monument is also responsible for issuing the filming permission for the land from which you want to film.
- New ‘Iconic’ buildings: Section 62 applies equally to buildings or structures which are particularly iconic, so it is not an infringement in such buildings’ copyright to record or take a photograph of them. However there are other legal heads of claim which building owners may use to restrict use of images of their buildings:
  - The building owners could have registered the actual image of the building itself as a trade mark. This would prevent somebody using the image in the course of trade on any class of good or service in which the mark is registered. If the image of any building were a registered trade mark you should take care not to use the image in any publicity and promotion for a film or brand. Provided this precaution is taken,

using an image of such buildings in your film would not be “in the course of trade” and should not infringe the trade mark.

- If there are logos, designs or artworks visible on or in the building then you should normally obtain permission from the owners of these before including such items in your film. If these are not visible in the final film then permission is not required.

- **Light Displays on Buildings:** a straightforward light display on a building is unlikely to be protected as a copyright work (i.e. different colours and patterns shone on the exterior of a building). However, a more complex light display that included logos, trademarks or even extracts from a film (the projections used in the Olympics Opening Ceremony, for example) will be protected and filmmakers should take advice before including such displays in their work, even if any inclusion is brief or incidental.

- **Works of Public Art:** as above, there is no enhanced protection for these works. If they are situated in a public place, section 62 applies. You can therefore make a photograph or film of such works but this would not extend to making 3D reproductions or items of merchandise featuring the artwork. It would also be sensible to avoid featuring the artwork in any marketing or promotions for the film (i.e. trailers and posters) or commercials.

#### **Practical tips for filmmakers:**

- Consider how you are going to film the building in question – do you need permission from any landowners? Ensure there are no restrictions on access which bar you from filming on their land.
- If you have the permission of the relevant landowners or you are on public land then you do not need the permission of the owner of the copyright in the building to record or take a photo of the building and to exploit what you produce.
- If the building is still in copyright you will need the copyright owner’s permission to recreate it as part of your set. If the copyright has expired you will not need permission under copyright law, but you still need to comply with any contractual restrictions imposed on you by the landowner when you enter the building to take photos/notes/sketches etc.
- Always check who actually owns the copyright in a building? It may not be the tenant or even the landlord; it may be the original architect. Even if the original architect doesn’t retain the copyright, they may have agreed a right of consent over any commercial exploitation of images of their building which are taken on private land. You should ensure any licence you sign contains standard warranties that the other side does actually have the right to grant you the permissions and rights you need.
- Once you have cleared all the hurdles involved in filming the building itself, there may also be protected trade marks (which may attract both trade mark and copyright protection) or copyright-protected logos, designs and other artworks which are visible on or in the building. You should consider on a case-by-case basis whether you will need to clear the use of such works before including them in your film. You should also not recreate any of these without permission.

**Note:**

This note is intended to provide a general background on the way English law approaches issues around filming buildings. It is not intended to be taken as legal advice. The legal issues involved are complex and each situation is different, requiring an individual analysis.