

# Copyright exceptions in public places

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## Overview

- Certain works of public display (freedom of panorama)
  - Section 62 Copyright Designs and Patents Act 1988 (UK)
  - Art 5(3)(h) Infosoc Directive (EU)
- Incidental inclusion
  - Section 31 Copyright Designs and Patents Act 1988 (UK)
  - Article 5(3)(i) Infosoc Directive (EU)

## Class exercise

Imagine you are travelling from home to the lecture hall. You see something that interests you and you photograph it with your mobile phone. Your photograph shows part of a city street: there is street art on one of the buildings, a statue of a historical figure, an advertisement on the exterior of a kiosk, and several trees.

Do you think you should be able to share this photograph?  
Why/why not?



# **FREEDOM OF PANORAMA**

**(SECTION 62 CDPA: REPRESENTATION OF  
CERTAIN ARTISTIC WORKS ON PUBLIC DISPLAY)**

## Section 62(1) CDPA

(1) This section applies to—

- (a) buildings, and
- (b) sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.

## Section 62(2) CDPA

- (2) The copyright in such a work is **not infringed** by—
- (a) making a **graphic work** representing it,
  - (b) making a **photograph or film** of it, or
  - (c) making a **broadcast of a visual image** of it.

## Section 62(3) CDPA

(3) Nor is the copyright infringed by the issue to the public of copies, or the communication to the public, of anything whose making was, by virtue of this section, not an infringement of the copyright.

# Copyright and public place research project

“Everyday Panoramas: making copyright visible in  
Aberdeen, Edinburgh and Glasgow”

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## Everyday Panoramas

Starting point:

"You are walking around the city. You see something in public that you like and you photograph it. You're aware that there is a limited freedom of panorama exception but unsure about whether you can share the photo on social media. Being highly conscientious you attempt to find out who own the copyright."

## Everyday Panoramas – summary

Key questions on s. 62:

- OK: Public domain works
- OK: In-copyright buildings
- OK: In-copyright sculptures
- In-copyright works of artistic craftsmanship?
- Not OK: In-copyright graphic works
- Works on temporary display?

## Commercial purposes

Does the exception for publicly placed works apply to commercial uses?

See: *Radford v Hallensteins Bros Ltd* High Court, Auckland, CIV 2006–404–004881 (unreported 2007)

## Summary: freedom of panorama (in the UK)

- Pragmatic exception to allow for the reproduction of certain works in public spaces
- Section 62 CDPA applies to works of architecture, sculpture and works of artistic craftsmanship, but does not apply to graphic works or works on temporary display
- Section 31 CDPA (incidental inclusion exception) may also apply

## Quick question

In your opinion, is the freedom of panorama exception ‘fair’ in letting users capture copyrighted works in public spaces?

## Freedom of Panorama (in the EU)

Optional exception under the Infosoc Directive, Article 5(3)(h)

Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases: [...]

use of works, **such as** works of architecture or sculpture, **made to be located permanently in public places;**

## Freedom of Panorama (EU implementation)

- Implementation varies widely from state to state
- Proposed harmonization via CDSM Directive ultimately dropped

See:

<https://copyrightexceptions.eu/#info53h>

## Example - France

Is photographing the Eiffel Tower at night a copyright infringement?

Short answer: yes



## Class question

To what extent do copyright and cultural heritage laws in Italy enable the reproduction of publicly placed works?



# INCIDENTAL INCLUSION

## Incidental inclusion exception

CDPA s31 Incidental inclusion of copyright material.

(1) Copyright in a **work** is not infringed by its **incidental inclusion** in an **artistic work, sound recording, film or broadcast**. [...]

## Incidental inclusion (in the EU)

- Optional exception under the Infosoc Directive, Article 5(3)(i)
- Implementation varies amongst member states

See:

<https://copyrightexceptions.eu/#info53i>

# Thank you!

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