

REPORT ON THE FREEDOM OF PANORAMA in EUROPE

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I. Freedom of Panorama

Freedom of Panorama is a notion that applies for an exception in the copyrights laws. According to this principle the subjective rights of copyright owner are limited (i.e. there is a restriction in the scope of copyright) to a different extent (in accordance to the different legislations) regarding the use copyrighted works permanently located in public places.

For the purposes of the present report shall be taken the understanding for Freedom of Panorama as *“the right to take photograph of public spaces and to use such photographs for personal and commercial purposes”*, given by Bryce Clayton Newell (*Freedom of Panorama: A Comparative Look at International Restrictions on Public Photography*, 44 CREIGHTON LAW REVIEW 405 (2011)). Though that in many jurisdictions are provided narrow or widen forms of use of publicly placed works, it could be considered that the above understanding presents the core of the notion as well the most common form of use.

The extent of the provided free use regarding the publicly placed copyrighted works varies in the different countries.

II. Legal framework in European Union

Art. 5, Section 3 (h) Directive 2001/29/EC provides the opportunity of such provision (copyright' exception) to be implemented in the legislations of Member States (*“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.”*)

Below shall be discussed the relevant legal provisions regarding the *Freedom of Panorama* Exception under the Copyrights Laws in European Union per country. It must be also noted, that the below discussed provisions applies to works *that are permanently placed in public places*.

1. AUSTRIA

1.1. Relevant legal provision

“Free Uses of Works of Art, Article 54.¹—(1) It shall be permissible...5. It shall be permissible to reproduce, distribute, present in public by means of optical devices and broadcast works of architecture after their construction or other works of fine art permanently located in a place used as a public thoroughfare; this provision shall not extend to the replication of a work of architecture and the reproduction of a painting or a graphic work for the purpose of placing such reproduction permanently in a place of such kind, or to the three-dimensional reproduction of a three-dimensional work.”²

1.2. Comments

The rule applies to works of architecture and generally to works of art (works of literature as defined in § 2 of the Federal Law on Copyright are excluded).

Ways of use that are permitted are reproduction, distribution, presentation in public as well broadcast (photography is included in the permissible actions of use).

Interesting clarification is included in the above provision – it applies to works of architecture only after their construction. It means that architectural works during their erection/construction process even placed in public spaces are not subject to the provision’ exception.

Under the above provision there are two restrictions: regarding making of three dimensional copies of three-dimensional work; and a specific restriction for architectural work/painting/graphic work for which copies are forbidden if aimed to be placed permanently in public. - It is forbidden copies to be done for the purposes of placing them on public.

No restriction stated with regard to the commercial use.

In conclusion – Freedom of Panorama is enjoyed to a high extent in Austria.

2. BELGIUM

2.1. Relevant legal provision

¹ Federal Act on Copyright in Works of Literature and Art and on Related Rights (Copyright Act) – as last amended Federal Law Gazette 150/2013;Source - <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001848>

² Original text of the provision –“Werke der Baukunst nach einem ausgeführten Bau oder andere Werke der bildenden Künste nach Werkstücken, die dazu angefertigt wurden, sich bleibend an einem öffentlichen Ort zu befinden, zu vervielfältigen, zu verbreiten, durch optische Einrichtungen öffentlich vorzuführen, durch Rundfunk zu senden und der Öffentlichkeit zur Verfügung zu stellen; ausgenommen sind das Nachbauen von Werken der Baukunst, die Vervielfältigung eines Werkes der Malkunst oder der graphischen Künste zur bleibenden Anbringung an einem Orte der genannten Art sowie die Vervielfältigung von Werken der Plastik durch die Plastik.”

*“Art. 22.³—(1) Once a work has been lawfully published, its author may not prohibit: ... 2. reproduction and communication to the public of a work shown in a place accessible to the public where the aim of reproduction or communication to the public is not the work itself”*⁴

2.2. Comments

The rule applies to all types of copyrighted works.

Under the above provision the permissible use includes reproduction and communication to the public (i.e. it is permissible to photograph) as far as the sole work is not the aim of the taken action. This restriction means that the permitted actions, i.e. the *freedom of panorama* applies to very short types of reproductions.

No restrictions are introduced in connection to the commercial use.

In conclusion - the Freedom of Panorama is limited.

3. BULGARIA

3.1. Relevant legal provision

“Permissible Free Use without Payment of Compensation Art. 24. ⁵The following shall be permissible without the consent of the copyright holder and without payment of compensation:

7. Use of works permanently exhibited on streets, squares and other public places, excluding mechanical contact copying, as well as their broadcasting by wireless means or transmission by cable or other technical means, if done for the purposes of information or another non-commercial purpose.”

3.2. Comments

The rule applies to all types of copyrighted works.

The rule also applies to all types of use (the term used in the provision states “use” which interpretation in connection to art. 19 means that all of types of use are

³ Law on Copyright and Neighboring Rights (of June 30, 1994, as of 31.12.2012)Source - http://www.sacd-scam.be/IMG/pdf/20121123_Loi_coordonnee_Fr-DEFdef.pdf

⁴ Text in french “2° la reproduction et la communication au public de l'oeuvre exposée dans un lieu accessible au public, lorsque le but de la reproduction ou de la communication au public n'est pas l'oeuvre elle-même;”

⁵ LAW ON COPYRIGHT AND NEIGHBOURING RIGHTS (Published in State Gazette No 56/1993; as last amended State Gazette 25 of March 25, 2011)Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=125323

meant including photography). It exclude however direct mechanical copying of the works.

The provision includes restriction – such uses must be done for informational or other non-commercial uses, i.e. the commercial use is excluded for the scope of exception.

In conclusion - Freedom of Panorama could be defined as relatively limited.

4. CROATIA

4.1. Legal framework

“REPRODUCTION OF COPYRIGHT WORKS PERMANENTLY LOCATED IN PUBLIC PLACES Article 91⁶

(1) It shall be permitted to reproduce the works, which are permanently located on streets, squares, parks or other places that are accessible to the public, and to distribute and communicate to the public such reproductions.

(2) The works referred to in paragraph (1) of this Article may not be reproduced in a three-dimensional form.

(3) The source and authorship shall be indicated on the copies referred to in paragraph (1) of this Article, unless such indication is not possible.

REPRODUCTION OF ARCHITECTURAL STRUCTURE Article 92

The provisions referred to in Article 91, paragraph (1) of this Act shall apply only in respect of outer appearance of the architectural structure.”

4.2. Comments

The rule applies to all types of works protected under copyrights with the exception of interiors of public buildings (architectural structure).

It permits use in several forms (reproduction of the works and distribution/communication of such copies). Under the wording the photography is permitted form of use.

It is explicitly forbidden to make three dimensional copies of the work under the present rule.

There is also a requirement for indication of the authorship.

No restriction is included regarding the commercial use, or regarding the aim of use of the copies.

⁶ Copyright and Related Right Act NN 173/2003 in force from October 30, 2003 *NN 79/2007 in force from August 7, 2007 **NN 80/2011 in force from July 13, 2011Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=230077

In conclusion - Freedom of panorama is enjoyed to a high extent.

5. CYPRUS

5.1. Legal framework

“Article 7.⁷—(1) Copyright in a scientific, literary, musical or artistic work or a cinematograph film or photograph shall consist in the exclusive right to control the doing in the Republic of any of the following acts: the reproduction in any form, sale, rental, distribution, lending, advertising, exhibiting in public, the communication to the public, the broadcasting, the translation, adaptation and any other arrangement, of the whole work or a substantial part thereof:

Provided that copyright in any such work shall not include the right to control—

(c) the reproduction and distribution of copies of any artistic work permanently situated in a place where it may be viewed by the public;”

5.2. Comments

The rule applies to the artistic works only. Under the legal definition of Art. 2,b “artistic works include paintings, drawings, etchings, lithographs, woodcuts, engravings and prints; maps, plans and diagrams; works of sculpture; photographs not comprised in a cinematograph film; works of architecture in the form of buildings or models; works of artistic craftsmanship and works similar thereto).

The allowed under the provision use includes reproduction and distribution of copies, which means that the photography is included.

No restrictions are provided regarding the commercial use or the purpose of use.

In conclusion - Freedom of Panorama is enjoyed to a relatively high extent in Cyprus.

6. CZECH REPUBLIC

6.1. Relevant legal provision

“Article 33⁸ Use of a Work Located in Public Place

(1) Copyright is not infringed by anybody who records or expresses by drawing, painting, graphic art, photography or film a work permanently located on a square, in a street, in a park, on a public route or in any other public place; copyright shall

⁷ The Copyright Laws 1976 to 1993* (Law No. 59, of December 3, 1976, as last amended by Law No. 18(I), 1993)Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=126086

⁸ Consolidated version of Act No. 121/2000 Coll., on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act), as amended by Act No. 81/2005 Coll., Act No. 61/2006 Coll. and Act No. 216/2006 Coll.Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=137175

likewise not be infringed by anybody who further uses a work so expressed, rendered or recorded. If possible, the name of the author (unless the work is an anonymous work) or the name of the person under whose name the work is being introduced in public, the title of the work and its location shall be indicated.

(2) The provisions of Paragraph (1) shall not apply to making a reproduction or imitation of a work of architecture in the form of erecting a building and to the reproduction and distribution of a work in the form of a three-dimensional reproduction.”

6.2. Comments

The rule applies to all types of works.

The possible use is defined as follows: record and expressing (including by photography) as well the further uses of the copies. There is included a requirement for indication of authorship (if possible) of the initial work.

The provision includes specific restriction regard to reproduction/imitation of works of architecture (meant actual three-dimensional copy) as well three-dimensional copies of the rest of the works.

There is no restriction regarding the commercial use.

In conclusion - Freedom of Panorama is enjoyed to a high extent.

7. DENMARK

7.1. Relevant legal provision

“Use of Works of Fine Arts etc. ⁹

24.-(1) Works of art included in a collection, or exhibited, or offered for sale may be reproduced in catalogues of the collection. Such works of art may also be used in notices of exhibitions or sale, including in the form of communication to the public.

(2) Works of art may be reproduced in pictorial form and then made available to the public if they are permanently situated in a public place or road. The provision of the first sentence shall not apply if the work of art is the chief motif and its reproduction is used for commercial purposes.

(3) Buildings may be freely reproduced in pictorial form and then made available to the public.”

“24 a.-(1) A work of art that has been made public may be reproduced, if the terms regarding extend collective license according to section 50 have been met. This shall, however, not apply if the author has issued a prohibition against use of the work in relation to any of the parties to the license agreement.”

⁹ Consolidated Act on Copyright 2010 1 (Consolidated Act No. 202 of February 27th, 2010)Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=191420

7.2. Comments

The rule applies to the works of art (i.e. the literary works are excluded from its application – Section 1 of the Act, Protected works).

The permitted use under the provision is described as per reproduction in pictorial form (i.e. photography is permitted) and communication to the public of the copies made.

There is restriction for the form of use – the work of art may not be the chief motif (in other word main subject) of such reproduction. There is also a restriction regarding the purpose of use – commercial use is not allowed.

The above restrictions do not apply for the buildings.

There is also a specific text in connection to the extended collective license.

In general, Freedom of Panorama is enjoyed to a full extent with regard to the buildings and to a limited extent regarding the works of art. Literary works are not included.

8. ESTONIA

8.1. Relevant legal provision

“§ 20”.¹⁰ Free use of reproductions of works located in places open to public

It is permitted to reproduce works of architecture, works of visual art, works of applied art or photographic works which are permanently located in places open to the public, without the authorization of the author and without payment of remuneration, by any means except for mechanical contact copying, and to communicate such reproductions of works to the public except if the work is the main subject of the reproduction and it is intended to be used for direct commercial purposes. If the work specified in this section carries the name of its author, it shall be indicated in communicating the reproduction to the public.

[RT I 2004, 71, 500 – entry into force 29.10.2004]”

“§ 20 Free use of reproductions of works of architecture located in places open to public in real estate advertisements

The reproduction and communication to the public of reproductions of works of architecture in real estate advertisements to the extent justified by the purpose without the authorisation of the author and without payment of remuneration is

¹⁰ Copyright Act passed 11 November 1992 RT 1992, 49, 615, entry into force 12 December 1992, last amended RT I, 01.01.2012 28.12.2011Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=258141

permitted if mention is made of the name of the author of the work. [RT I 2006, 28, 210 – entry into force 30.06.2006]”

8.2. Comments

The rule applies with regard to several types of works – of architecture, visual and applied art and photography (i.e. the specific list means that not all of the types of copyrighted works are subject to the exception but only those included in the list.

Under the provision is permitted reproduction and communication of such copies (thus the photography of works is permitted under the provision). However, direct mechanical copying is not allowed as a method for reproduction.

The rule provides several further restrictions - the copied work must not be the main subject of the copy. Further there is a restriction regarding the commercial use - the copy must not be intended for **direct** commercial purposes.

The rule also requires indication of the authorship.

There is included also a special provision regarding the use of works of architecture (exclusively) regarding real estate advertisements.

In conclusion the Freedom of Panorama is limited - because of the restriction regarding commercial use (direct commercial purposes) and because of the requirement regarding the purpose of reproduction (main subject of the reproduction).

9. FINLAND

9.1. Relevant legal provision

“Section 25a (14.10.2005/821)¹¹ (3) A work of art may be reproduced in pictorial form in cases other than those referred to in subsections 1 and 2 if the work is permanently placed at, or in the immediate vicinity of, a public place. If the work of art is the leading motive of the picture, the picture may not be used for the purpose of gain. A picture having a material connection to the text may, however, be included in a newspaper or a periodical.

(4) A building may be freely reproduced in pictorial form.” Section 25a (14.10.2005/821)

9.2. Comments

The rule refers to works of art (literary works, Section 1(1) of the Act, are not mentioned).

¹¹ Copyright Act (404/1961, amendments up to 307/2010 included)Source - <http://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf>

It defines the form of use which is reproduction in pictorial form, (i.e. photography is permitted).

The rule includes one restriction formulated in interesting way – it forbids use for commercial purpose (economic gain) in case that the copied work is the main subject of the reproduction.

However, it is specifically mentioned the buildings may be freely reproduced.

In conclusion - the works of architecture enjoy full Freedom of Panorama and for the other works Freedom of Panorama is relatively limited.

10. FRANCE

10.1. Legal framework

Article L 122-5¹² of the French Code de la propriété intellectuelle which addresses the exceptions in copyrights lacks such a provision regarding the representation of publicly placed works of art.

However, Art. L-122-5 contains the following text (with some relevance to the subject issue):

“9. Reproduction or representation, in full or in part, of a work of graphic art, plastic or architectural art, through print media, broadcast or online press, for the exclusive immediate information and direct relationship with the latter, subject to clear indication of the name of the author.

The first paragraph of this 9° shall not apply to works, including photographic or illustrative, designed themselves to account information.”¹³

10.2. Comments

France is one of the few countries where the Freedom of Panorama is not provided in the legislation. However, the court practice has accepted several decisions where some levels of the copyright exception are pronounced. It means for example that taking of pictures of copyrighted works of architecture has to be authorized by the copyright owner. However, to some extent this is regarded as a stronger protection for the copyright over works of art and especially over architectural works.

¹² Law N0 92-597 of July 1, 1992 on the Intellectual Property Code (Legislative part) as consolidated by January 1, 2014 Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=322949

¹³ La reproduction ou la représentation, intégrale ou partielle, d'une oeuvre d'art graphique, plastique ou architecturale, par voie de presse écrite, audiovisuelle ou en ligne, dans un but exclusif d'information immédiate et en relation directe avec cette dernière, sous réserve d'indiquer clairement le nom de l'auteur. Le premier alinéa du présent 9° ne s'applique pas aux oeuvres, notamment photographiques ou d'illustration, qui visent elles-mêmes à rendre compte de l'information.

The above paragraph 9 from Article L-122-5 of French Code however allows use (reproduction and representation) of architectural, graphic and plastic art (there is no specification for their placement in public or not) with exclusive information purposes only.¹⁴

11. GERMANY

11.1. Relevant legal provision

“Article 59. Works in public spaces¹⁵

(1) It shall be permissible to reproduce, distribute and make available to the public works located permanently in public roads and ways or public open spaces. In the case of buildings, this authorization shall only extend to the façade.

(2) The reproductions may not be carried out on a building.”

11.2. Comments

The notion Freedom of Panorama is derived from German copyright law.

The rule applies to all types of works. However, the interiors of public buildings are excluded from the scope of works.

The permitted use is described as reproduction, dissemination and making available to public - which means that the photography is permitted.

No restrictions are mentioned regarding the commercial use or the way of reproduction of the work (main subject of the reproduction or not).

In conclusion - The Freedom of Panorama is enjoyed to a high extent.

12. GREECE

12.1. Relevant legal provision

14 This rule however needs further analysis in respect to Freedom of Panorama exception (though it is placed on the plane of informational use and not on the classic understanding regarding Freedom of Panorama).

15 Act on Copyright and related rights as last amended by Federal Law Gazette I p. 3714 (1.10.2013)Source - http://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html

“Use of Images of Works Sited in Public Places Article 26.¹⁶ The occasional reproduction and communication by the mass media of images of architectural works, fine art works, photographs or works of applied art, which are sited permanently in a public place, shall be permissible, without the consent of the author and without payment.”

12.2. Comments

The rule applied to several types of works – of architecture, fine and applied arts and photography.

The rule permits use of two types (occasional reproduction/communication by mass media of images, i.e. specific types of reproductions and specific authorized persons).

There is no restrictions regarding the commercial use or way of use (main subject or not of the image).

In conclusion – relatively limited Freedom of Panorama.

13. HUNGARY

13.1. Relevant legal provision

“Article 68 ¹⁷(1) Of a fine art, architectural and applied art creation erected with a permanent character outdoors in a public place a view may be made and used without the authorization of the author and paying remuneration to him. (2) For purposes of scientific educational lectures as well as of school education (Article 33, Paragraph (4)), the picture of a fine art, architectural, applied art and industrial design creation, furthermore artistic photographs may be used without the authorization of the author and paying remuneration to him.”

13.2. Comments

The rule applies to several types of works – of architecture, of applied and fine arts.

It permits making of “view” (i.e. photography is permitted) and its followed usage.

No restriction with regard to the commercial use or whether the work is a main subject of the reproduction.

¹⁶ Copyright, Related Rights and Cultural Matters (Law No. 2121/1993 as last amended by Law No. 3057/2002 (article 81) and by Law 3207/2003 (article 10 par. 33) and by Law No. 3524/2007)Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=186801

¹⁷ Act No. LXXVI of 1999 on copyright (consolidated text as of 01.01. 2007)Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=325838

In conclusion - relatively high extent of Freedom of Panorama enjoyed for the relevant types of works.

14. IRELAND

14.1. Relevant legal provision

“Representation of certain artistic works on public display¹⁸

93.—(1) This section applies to the copyright in—

(a) buildings, and

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

(2) The copyright in a work to which this section applies is not infringed by—

(a) making a painting, drawing, diagram, map, chart, plan, engraving, etching, lithograph, woodcut, print or similar thing representing it,

(b) making a photograph or film of it, or

(c) broadcasting or including in a cable programme service, an image of it.

(3) The copyright in a work to which this section applies is not infringed by the making available to the public of copies of anything the making of which is not, by virtue of this section, an infringement of the copyright in the work.”

14.2. Comments

The rule applies to the works of architecture, sculptures and works of *artistic craftsmanship*.

The provision provides specific listing of the forms of permitted use and types of reproductions allowed - in the list is included photographing. Further it includes the possibility copies of works received under the section to be lawfully communicated to the public.

No restrictions are provided regarding the commercial use.

In conclusion - Freedom of Panorama is enjoyed to a high extent with regard to the relevant types of works.

15. ITALY

15.1. Legal framework

¹⁸ Copyright and Related Rights Act, 2000* (No. 28 of 2000)Source - <http://www.irishstatutebook.ie/2000/en/act/pub/0028/index.html>

Chapter Five “Free Use “¹⁹ of the Italian Law does not include specific provision regarding the exception Freedom of Panorama regarding copyrighted works, situated in public spaces.

15.2. Comments

Italy, along with France is among the few countries that provides extensive copyright protection to the public spaces, i.e. do not provide exception related to the Freedom of Panorama. This approach corresponds to the extensive copyright protection of the architectural works granted by the Italian legislation.

It however must be noted that there is a similar provision (as the one cited with regard to France) which allows use (reproduction and communication) of works (not specified to be publicly placed) for information purposes only.²⁰

16. LATVIA

16.1. Relevant legal provision

“Section 25.²¹ Use of a Work on Public Display

(1) It is permitted to use images of works of architecture, photography, visual arts, design, as well as of applied arts, permanently displayed in public places, for personal use and as information in news broadcasts or reports of current events, or include in works for non-commercial purposes.

(2) That which is referred to in this Section shall not apply to cases when the image of a work is an object for further repetition of the work, for broadcast by broadcasting organizations or for the purpose of commercial use of the image of a work.

[22 April 2004; 6 December 2007]”

16.2. Comments

The rule applies to several types of works – of architecture, visual and applied arts, works of photography and design.

19 Law for the Protection of Copyright and Neighboring Rights (Law No. 633 of April 22, 1941, as last amended by Decree Law No. 64 of April 30, 2010)Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=301483

20 Original text - Article 65, p. (2) 2. La riproduzione o comunicazione al pubblico di opere o materiali protetti utilizzati in occasione di avvenimenti di attualità è consentita ai fini dell'esercizio del diritto di cronaca e nei limiti dello scopo informativo, sempre che si indichi, salvo caso di impossibilità, la fonte, incluso il nome dell'autore, se riportato.

21 Copyright Law with amending laws of 6 March 2003; 22 April 2004; 8 February 2007; 6 December 2007.Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=196720

It permits the following use of images (i.e. reproduction by the way of photography is permitted) in several ways: personal use, non-commercial use and information in broadcast/report.

Restriction is provided with regard to commercial use.

In conclusion - Freedom of Panorama is provided to a limited extent.

17. LITHUANIA

17.1. Relevant legal provision

“Article 28. ²²Limitations to Copyright in Works of Architecture and Sculptures

1. It shall be permissible to carry out the following acts without the authorisation of an author and without a remuneration:

1) to reproduce and make available to the public works of architecture and sculptures, made to be located permanently in public places., except exhibitions and museums;

2) to use a project, design, sketch or model of a building or any other construction works for the purpose of reconstructing this building or construction works.

2. The provisions of subparagraph 1 of paragraph 1 of this Article shall not be applied when a work of architecture or a sculpture is the main subject of representation in the reproduction, and when this is done for direct or indirect commercial advantage.

3. The provisions of subparagraph 1 of paragraph 1 of this Article shall not grant the right to reproduce works of architecture in the form of buildings or other construction works, and to make copies of sculptures.”

17.2. Comments

The rule applies to several types of works - of architecture and sculptures (however it explicitly excludes works which are part of exhibitions and museums.

Public spaces receive more restricted than usual definition - museums and exhibitions are excluded from the scope of the provision.

The permitted use include the right of reproduction and communication to the public. However, actual copies (three dimensional) of buildings and sculptures are excluded of the provision' application.

The rule includes also a restriction regarding the commercial use (direct/indirect commercial advantage).

In conclusion - the Freedom of Panorama is provided to a relatively limited extent.

22 LAW ON COPYRIGHT AND RELATED RIGHTS 18 May 1999 No VIII-1185 Vilnius (Last amended on 19 January 2010 - No XI-656)Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=191199

18. LUXEMBURG

18.1. Relevant legal provision

“Section 2²³ Exceptions to copyright

10. When the work has been lawfully made available to the public, the author may not prohibit:...7 reproduction and communication of works located in a place accessible to the public, where such works are not the main reproduction or communication issue.”²⁴

18.2. Comments

The rule applies to all types of copyrighted works.

In the provision are permitted ways of use - reproduction and communication, i.e. photography is included.

No restriction is mentioned regarding to the commercial use.

Restriction is provided with regard to the main subject of the reproduction – it must not be the work itself.

In conclusion - Freedom of Panorama is provided to a relatively extent.

19. MALTA

19.1. Relevant legal provision

“Article 9.²⁵ (1) Copyright in an audiovisual work, a database, a literary work other than in the case of a computer programme, a musical or artistic work shall not include the right to authorise or prohibit

(p) the inclusion in a communication to the public, the making of a graphic representation and the making of a photograph or film, of a work of

23 Copyright Law from 13 March 2001 Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=128653

24 Original text – “Section 2, 10. Lorsque l’œuvre a été licitement rendue accessible au public, l’auteur ne peut Interdire:... la reproduction et la communication d’œuvres situées dans un lieu accessible au public, lorsque ces œuvres ne constituent pas le sujet principal de la reproduction ou de la communication.

25 CHAPTER 415 COPYRIGHTACT To make new provision in respect of copyright and neighbouring rights and certain “sui generis” intellectual property rights in substitution of the provisions of the Copyright Act, Cap. 196. 14th August, 2000; 1st January, 2001 ACT XIII of 2000, as amended by Acts VI of 2001, IX of 2003 and IX of 2009. Source - <http://www.wipo.int/edocs/lexdocs/laws/en/mt/mt006en.pdf>

architecture or sculpture or similar works made to be located permanently in public places; “

19.2. Comments

The rule applies to several types of work – of architecture, sculpture (or similar works).

It permits several types of use -graphic representation, photography, film.

No restrictions are provided with regard to the commercial use or way of representation (if the work is main subject or not of it).

In conclusion – Freedom of Panorama is provided to a high extent regarding the relevant types of works.

20. NETHERLANDS

20.1. Legal framework

“Article 18²⁶ – It shall not be deemed to be an infringement of the copyright in a work referred to in Article 10, first paragraph, under 6 or at work relative to architecture as provided in Article 10, first paragraph, under 8, which is permanently displayed in a public thoroughfare, to reproduce or publish a reproduction of such work as it is there. Where it concerns adoption of a compilation should not be taken over the works of the same author .”²⁷

20.2. Comments

The rule applies to several types of works – namely drawings, paintings, works of architecture and sculpture, lithographs, engravings and the like, designs, sketches and three-dimensional works relating to architecture, geography, topography or other sciences (Article 10, 1, under 6 and 8)).

The permitted under the rule use includes – reproduction and publishing of such reproductions, i.e. photography is included).

There are no restrictions regarding the commercial use.

²⁶ The Copyright Act, 1912 (as last amended in 2008) Source - http://wetten.overheid.nl/BWBR0001886/geldigheidsdatum_12-11-2009

²⁷ Original text – “Als inbreuk op het auteursrecht op een werk als bedoeld in [artikel 10, eerste lid, onder 6°](#), of op een werk, betrekkelijk tot de bouwkunde als bedoeld in [artikel 10, eerste lid, onder 8°](#), dat is gemaakt om permanent in openbare plaatsen te worden geplaatst, wordt niet beschouwd de verveelvoudiging of openbaarmaking van afbeeldingen van het werk zoals het zich aldaar bevindt. Waar het betreft het overnemen in een compilatiewerk, mag van dezelfde maker niet meer worden overgenomen dan enkele van zijn werken.”

In general – Freedom of Panorama is provided to a significant extent in Netherlands.

21. POLAND

21.1. Relevant legal provision

Article 33. ²⁸*It shall be allowed to disseminate: 1) the works permanently exhibited on commonly accessible public roads, streets, squares or gardens, although not for the same use;*

2) the works exhibited in commonly accessible public collections such as museums, galleries, and exhibition halls, though only in catalogues and printed publications for promotion of such works and also in press and television current event reports within the limits justified by information purposes;

3) in encyclopaedias and atlases - printed artistic and photographic works if it is difficult to get into contact with the author. In such case, the author shall have the right to remuneration.”

21.2. Comments

The rule applies to all types of copyrighted works (though it depends on the type of public place where these are placed – see par. 2 of the above rule).

It permits the use of such works – term “disseminate” with no restriction regarding the commercial use.

However, the allowed use must differ from the use (purpose) of the work itself.

In conclusion – Freedom of Panorama is enjoyed to a relative extent.

22. PORTUGAL

22.1. Legal framework

“Article 75 Unrestricted use ²⁹ *2 The following uses of a work are lawful without the author's consent ... “q) The use of articles, for example, architectural works or sculpture, made to be located permanently in local public;”*³⁰

28 ACT of 4 February 1994 ON COPYRIGHT AND RELATED RIGHTS as amended in 2010
Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=129378

29 Code of Copyright and related rights No 45/85 of September 17, 1985 as last amended in 2008
Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=198457

30 Original text – “A utilização de obras, como, por exemplo, obras de arquitectura ou escultura, feitas para serem mantidas permanentemente em locais públicos;”

22.2. Comments

The above provision provides full extent of Freedom of Panorama regarding architectural works and sculpture with no provided restrictions in the exception' rule.

23. ROMANIA

23.1. Relevant legal provision

“Art. 33.³¹—(1) f) the reproduction, to the exclusion of any means involving direct contact with the work, distribution or communication to the public of the image of an architectural work, work of plastic art, photographic work or work of applied art permanently located in a public place, except where the image of the work is the main subject of such reproduction, distribution or communication, and if it is used for commercial purposes.”

23.2. Comments

The rule applies to several types of works - architecture, plastic or applied art, photographic works.

The rule allows use of image of such by reproduction, distribution and communication of the image ((i.e. the photography is allowed)

It provides restriction regarding the commercial use.

It provides also restriction regarding the way of presentation, i.e. - the work itself must not be the main subject of the image.

In conclusion - the application of Freedom of Panorama is limited because of the above restrictions.

24. SLOVAKIA

24.1. Relevant legal provision

“Section 27³² Use of work located in public areas

(1) No consent of the author is necessary to express the work located in a public area on a permanent basis by a drawing, painting, graphic art, picture in relief and relief model or by photography or film; a work expressed or recorded as described above can, without the consent of the author of the work located in a public area on a permanent basis, be used by making its copy, by public distribution of the copy in the form of its sale or by other forms of assignment of title, or by its communication

31 Law on Copyright and Neighboring Rights* (No. 8 of March 14, 1996) as of 2006Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=160655

32 ACT of 4 December 2003 on copyright and rights related to copyright (Copyright Act) Amendment: 84/2007 Coll. Amendment: 220/2007 Coll. Amendment: 453/2008 Coll.Source - http://portal.unesco.org/culture/en/files/39662/12517232503sl_copyright_2003_2008_en.pdf/sl_copyrig ht_2003_2008_en.pdf

to the public. The above forms of use are appropriately governed by provisions of S. 25 third sentence.

(2) Using the work pursuant to par. 1 does not result in an obligation to pay remuneration to the author."

24.2. Comments

The rule applies to all types of copyrighted works.

The norm provides permissible use by a specific listing that includes explicitly photography. It also provides lawful use of the copies received in result of the use of work under the rule.

Such a use however requires the indication of the authorship (of the work placed in public) – Section 25.

It does not include restriction regarding the commercial use.

In conclusion the Freedom of Panorama is enjoyed to a high extent with regard to the relevant types of works..

25. SLOVENIA

25.1. Relevant legal provision

Article 46³³ General provision

„Limitations on copyright are permissible in cases mentioned in this Section, provided that the extent of such exploitation of copyright works is limited by the intended purpose, is compatible with fair practice, does not conflict with normal use of the work, and does not unreasonably prejudice the legitimate interests of the author.“

Article 55 Works located in generally accessible premises

„(1) Works permanently placed in parks, streets, squares, or other generally accessible premises may be used freely.

(2) Works mentioned in the foregoing paragraph may not be reproduced in a three dimensional form, used for the same purpose as the original work, or used for economic gain.

(3) In cases stated in paragraph (1) of this Article, the source and authorship of the work must be indicated, if the latter is indicated on the work used. “

25.2. Comments

The rule applies to all types of copyrighted works.

It provides free use in general, i.e. it includes photography.

33 COPYRIGHT AND RELATED RIGHTS ACT of 30 March 1995 as last amended on 15 December 2006 (as in force from 13 January 2007)Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=180840

The rule provides restriction regarding the commercial use (used for economic gain). It also forbids reproduction in three-dimensional form and usage for the same purpose as of the work itself.

In conclusion - Freedom of Panorama is provided to a limited extent mainly because of the restriction regarding the commercial use.

26. SPAIN

26.1. Relevant legal provision

„(Use of Works Located in Thoroughfares) Art. 35.³⁴

Works permanently located in parks, streets, squares or other public places may be freely reproduced, distributed and communicated by means of paintings, drawings, photographs and audiovisual processes.“

26.2. Comments

The rule applies to all types of copyrighted works. The permitted ways of use - reproduction, distribution and communication - explicitly include photography as a mean of use.

No restrictions are mentioned regarding the commercial use (or other types of restrictions).

In conclusion - Full Freedom of Panorama enjoyed.

27. SWEDEN

27.1. Relevant legal provision

“Article 23.³⁵ Works of fine art which have been made public may be reproduced

1. in connection with the text in a scientific presentation which has not been prepared for commercial purposes,

2. in connection with the text in a critical presentation, except if it is in digital form,

34 Revised Law on Intellectual Property, regularizing, clarifying and harmonizing the applicable statutory provisions (approved by Royal Legislative Decree 1/1996 of April 12, 1996)*Source - http://www.wipo.int/wipolex/en/text.jsp?file_id=126674

35 ACT ON COPYRIGHT IN LITERARY AND ARTISTIC WORKS (Swedish Statute Book, SFS, 1960:729, as amended up to April 1, 2011)Source - <http://www.wipo.int/edocs/lexdocs/laws/en/se/se124en.pdf>

3. in a newspaper and a periodical in connection with a report on a current news event, except if the work has been created for reproduction in such a publication.

The provisions in the first Paragraph apply only if the use of the reproduction is carried out in conformity with proper usage and to the extent called for by the information purpose. (Act 2005:359).

Article 24. Works of fine art may be reproduced in pictorial form

1. if they are permanently located outdoors on, or at, a public place

2. if the purpose is to advertise an exhibition or a sale of the works of fine art but only to the extent necessary for the promotion of the exhibition or the sale or

3. if they form part of a collection, in catalogues, however not in digital form.

Buildings may be freely reproduced in pictorial form. (Act 2005:359)."

27.2. Comments

The rule applies to works of fine arts only (literary works are excluded).

Under the provision is allowed its use by means of reproduction in pictorial form (i.e. photography is included.)

No restriction is mentioned regarding the commercial use.

Freedom of Panorama is enjoyed to a high extent.

28. UNITED KINGDOM

28.1. Legal framework

"Representation of certain artistic works on public display.³⁶
62.—

(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 of in premises open to the public.

(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.

(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."

³⁶ Copyright, Designs and Patents Act 1988Source - <http://www.legislation.gov.uk/ukpga/1988/48/contents>

28.2. Comments

The rule applies to several types of works – buildings, sculptures, model of buildings and works of artistic craftsmanship.

It is allowed under the provision several types of usage (including photography, which is specifically mentioned).

No restriction is mentioned regarding the commercial use (or other type of restriction).

Full extent of Freedom of Panorama is enjoyed.

29. RUSSIA

In Russia currently were introduced changes in the Civil Code that concern among others the Freedom of Panorama. The relevant text of Article 1276 (that shall enter into force from October 1, 2014) now states the following:

“Article 1276. Free use of works permanently placed in open to public access

1. It is permitted without the consent of the author or copyright holder and without payment of remuneration reproduction and distribution of made copies , broadcasting by wireless means or transmission by cable, making available to the public a work of fine art or photographic work that is permanently located on a place open to public access, except if the image of the work constitutes the main subject of the use or the image of the work is used used for profit.

2. It is permitted free use by reproduction and distribution of made copies, broadcasting by wireless means or transmission by cable, communication to the public in the form of images of works of architecture, urban planning and landscape works of art located in a place open to public access, or viewable from this place.”³⁷

37 “**Статья 1276.** Свободное использование произведения, постоянно находящегося в месте, открытом для свободного посещения 1. Допускается без согласия автора или иного правообладателя и без выплаты вознаграждения воспроизведение и распространение изготовленных экземпляров, сообщение в эфир или по кабелю, доведение до всеобщего сведения произведения изобразительного искусства или фотографического произведения, которые постоянно находятся в месте, открытом для свободного посещения, за исключением случаев, если изображение произведения является основным объектом использования или изображение произведения используется в целях извлечения прибыли.

2. Допускается свободное использование путем воспроизведения и распространения изготовленных экземпляров, сообщения в эфир или по кабелю, доведения всеобщего сведения в форме изображений произведений архитектуры, градостроительства и произведений садово-паркового искусства, расположенных в месте, открытом для свободного посещения или видных из этого место.

As seen above the current text of Article 1276 of the Civil Code of Russia accepts two levels of the Exception of copyrights related to the publicly placed works. For the first group of works (works of fine arts as well photographic works) is provided limited Freedom of Panorama (restrictions in connection to the purpose of reproduction as well to the commercial use are included). The second group of works (works of architecture, urban planning and landscape works) enjoys full extent of Freedom of Panorama' Exception. These could be freely reproduced and the received works to be also freely used.

III. Table - situation with Freedom of Panorama in accordance to the relevant legal provisions per country

Country	USE		Types of works				
	Commercial use	Types of use	Buildings	3D Artwork	2D Artwork	Text	Public Interior
Austria	Yes	Restrictions ³⁸	Yes	Yes	Yes	No	Not specifically mentioned
Belgium	Yes	High Restriction ³⁹	Yes	Yes	Yes	Yes	Yes

Previous version of the text "Статья 1276. Свободное использование произведения, постоянно находящегося в месте, открытом для свободного посещения"

Допускается без согласия автора или иного правообладателя и без выплаты вознаграждения воспроизведение, сообщение в эфир или по кабелю фотографического произведения, произведения архитектуры или произведения изобразительного искусства, которые постоянно находятся в месте, открытом для свободного посещения, за исключением случаев, когда изображение произведения таким способом является основным объектом этого воспроизведения, сообщения в эфир или по кабелю либо когда изображение произведения используется в коммерческих целях."

Source - Система ГАРАНТ: http://base.garant.ru/10164072/71/#block_40070#ixzz2xcr77Xaf

38 On the purpose of the copy/Making of 3D copy of 3D work, See part II, p. 1

Bulgaria	No	Restrictions ⁴⁰	Yes	Yes	Yes	Yes	Yes
Croatia	Yes	Restrictions ⁴¹	Yes	Yes	Yes	Yes	No
Cyprus	Yes	Requirements ⁴²	Yes	Yes	Yes	No	Yes
Czech Republic	Yes	Restrictions ⁴³	Yes	Yes	Yes	Yes	Yes
Denmark	Yes (in general) ⁴⁴	Restrictions ⁴⁵	Yes	Yes	Yes	No	Yes
Estonia	Yes (in general) ⁴⁶	Restrictions ⁴⁷	Yes	Yes	Yes	No	Not specifically mentioned
Finland	Yes (in general) ⁴⁸	Restrictions ⁴⁹	Yes	Yes	Yes	No	Not specific

39 Important restriction – The work itself may not be the purpose of use, See part II, p. 2

40 Mechanical copying is excluded/Purposes of information – See part II, p. 3

41 Making of 3D copy to a 3D work- See part II, p. 4

42 See part II, p. 5

43 Making of 3D copy to 3D work etc. along with some requirements regarding the use - See part II, p. 6

44 There is a restriction with regard to the commercial use that is not applicable regarding buildings but could be applicable regarding other works of art - See part II, p. 7

45 Restriction regarding works of art if these are the main motif of the reproduction - See part II, p.7

46 If the work is the main motif - See part II, p. 8

47 See part II, p. 8

48 Restriction in case that the work is the main motif of the reproduction - See part II, p. 9

49 See part II, p. 9 – However, no restrictions apply regarding buildings – i.e. they enjoy full FOP

							ly mentione d
France	No ⁵⁰	No	No	No	No	No	No
Germany	Yes	Most ⁵¹	Yes	Yes	Yes	Yes	No
Greece	Yes	High restriction ⁵²	Yes	Yes	Yes	No	Not specifically mentione d
Hungary	Yes	Some ⁵³	Yes	Yes	Yes	No	Not specifically mentione d
Ireland	Yes	Some ⁵⁴	Yes	Yes	No ⁵⁵	No	Not specifically mentione d
Italy	No ⁵⁶	No	No	No	No	No	No
Latvia	No	Restrictions ⁵⁷	Yes	Yes	Yes	No	Not specifically

⁵⁰ There is however rule (L-122-5, p.9) that applies with regard to the use for information (See part II, p. 10)

⁵¹ See part II, p. 11

⁵² The reproduction has to be Occasional – See part II, p. 12

⁵³ Making of “a view” of the work is the permitted form of use – see part II, p. 13

⁵⁴ Specific listing of the permitted types/forms of use - See part II, p. 14

⁵⁵ It should be taken in mind that some works of artistic craftsmanship could be 2D artworks and thus to be subject to the provision

⁵⁶ See part II, p. 15

⁵⁷ See part II, p. 16

							mentioned
Lithuania	No	Restrictions ⁵⁸	Yes	Yes	Yes	No	No ⁵⁹
Luxembourg	Yes	Restriction ⁶⁰	Yes	Yes	Yes	Yes	Yes
Malta	Yes	Some ⁶¹	Yes	Yes	No ⁶²	No	Not specifically listed
Netherlands	Yes	Some ⁶³	Yes	Yes	Yes	No	Not specifically listed
Poland	Yes	Restriction ⁶⁴	Yes	Yes	Yes	Yes	No
Portugal	Yes	All	Yes	Yes	Not specifically listed	No	Not specifically listed
Romania	Yes ⁶⁵	Restrictions ⁶⁶	Yes	Yes	Yes	No	Not specifically listed
Slovakia	Yes	Some ⁶⁷	Yes	Yes	Yes	Yes	Not

58 See part II, p. 17

59 Exhibitions and museums are excluded - see part II, p. 17

60 Regarding the work as a main motive of the reproduction (similar to the restriction in Belgium) - see part II, p. 18

61 See part II, p. 19

62 Works of architecture, sculpture or similar works are mentioned - see part II, p. 19

63 See part II, p. 20

64 Not for the same use - see part II, p. 21

65 Restriction regarding the commercial use if the work is the main motif - see part. II, p. 22

66 See part II, p. 23

67 See part II, p. 24

							specifically listed
Slovenia	No	Restrictions ⁶⁸	Yes	Yes	Yes	Yes	Yes
Spain	Yes	Some ⁶⁹	Yes	Yes	Yes	Yes	Yes
Sweden	Yes	Some ⁷⁰	Yes	Yes	Yes	No	Not specifically listed
United Kingdom	Yes	Some ⁷¹	Yes	Yes	No ⁷²	No	Not specifically listed

IV. Comparative Analysis

1. Typical restrictions regarding the Freedom of Panorama Exception of Copyright laws

a) Commercial use

In many of the legislation is provided restriction under which is not possible to use the publicly available work, i.e. the derivative work received upon its use (photo etc.) for commercial purposes. In one or other form restrictions regarding the commercial use are included in the Copyright law (Bulgaria, Denmark (partial restriction), Estonia, Finland (partial), Latvia, Lithuania, Romania and Slovenia.

b) Main subject/Purpose of use

In some of the legislations restrictions are included regarding the possibility to copy (use) publicly available work if the work itself is the main subject of the copy/or the copy is to be used for the same purpose as the initial work.

States, where such a restriction is included in one or other form (formulation) are Denmark, Estonia, Finland, Luxemburg, Romania, Slovenia.

⁶⁸ Making of 3D copies or use for the same purpose as the work -See part II, p. 25

⁶⁹ Listed, see part II, p. 26

⁷⁰ See part II, p. 27

⁷¹ Specifically listed types/forms of use - See part II, p. 28

⁷² It should be taken in mind that some works of artistic craftsmanship could be 2D works and thus to fall under the application of the provision

The Belgium' copyright law provided interesting variation of the above restriction – it allows use of publicly place works as far as the use is not aimed at *reproduction or communication to the public of the work itself*.

Another criteria for non application of the exception rule in copyrights taken in different variations refer to the purpose of use.

For example, the Austrian rule regarding Exception Freedom of Panorama does not whereas “*the replication of a work of architecture and the reproduction of a painting or a graphic work for the purpose of placing such reproduction permanently in a place of such kind*”.

The legislations of Poland and Slovenia also provides that use under the Exception' rule could not extend to cases whereas the use is for the same purpose as of the initial work.

c) Three-dimensional reproductions/Replications of Architectural works

Under some jurisdictions hree-dimensional copies are explicitly excluded from the scope of Exception rule for Freedom of Panorama. For example – Croatia, Czech Republic, Luthuania and Slovenia.

In Austrian law is explicitly mentioned that threedimensional copies of threedimensional works are not allowed.

d) Formulations of the allowed ways of use (particular economic rights)

In most of the copyright laws exists separation of the different economic rights enjoyed by the copyright owner, i.e. different rights allows different actions with the work in question (reproduction, dissemination, adaptation etc.). Thus, it is not necessary the following use of the copies made through the use of works to be allowed if only some of the rights are granted. This should be taken in mind while considering the Freedom of Panorama Exception in cases where the provision does not refer to the general term “use” (which includes all of the economic rights) but only to some of these rights. Where, the formulation of the relevant provision refers to some of the economic right a deepen analysis of the applicable Copyright Law has to be undertaken.

e) Types of works included

One of the most important criteria on the provided extent of Freedom of Panorama is the referred types of works.

It could be mentioned that in general, building (works of architecture) are presented in all of the relevant provisions. In some cases namely the architectural works enjoy

the Freedom of Panorama Exception to a full extent (Denmark, Finland). However, many variations of referred types of works exist depending on the legislation.

f) Summary

France and Italy do not provide any exceptions regarding the use of works permanently located in publicly available places.⁷³

Countries like Spain and Portugal provides full extent of Freedom of Panorama Exception to the relevant types of works. With this regard must be mentioned also United Kingdom, Ireland and Slovakia.

Other countries, like Russia (after the current legislative changes), Finland and Denmark provide Freedom of Panorama on different levels depending on the types of works: Buildings in general (and in some cases other types of works) enjoy the Exception to a full extent. However, restrictions are provided for the other types of works.

⁷³ Though the cited in the relevant part of the report provision of L-122-5, 9 of Code of Intellectual Property of France could have some relevance - it allows the use for exclusive informational purposes.