

## 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 recreating it as part of a film set.
- 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 EDF Energy branding and consent to include EDF’s trade marks in a film may need to be obtained if trademarks are prominently visible in the film.
  - 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.

### **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.**