Sharing A Click Of London Eye? It Could Get You Into Trouble!

Legal Era looks at a topic that has been mired in controversy across the globe – freedom of panorama

Ranjan Narula
Managing Partner
RNA, IP Attorneys

Mayur Varshney
Associate
RNA, IP Attorneys

Taking a selfie with the Taj Mahal in the backdrop? You will never think about copyright violation or permission required to do so. Actually, once you have paid the fees at the entrance, "The Taj" is all yours to conquer (in your camera!). Not so if you are in Brussels standing before the Atomium building for you better be careful as you could be chased for copyright infringement by Andre Waterkeyn, the family of designer. Likewise, the design of Eiffel Tower is out of copyright which allows you to take photographs during day however, the lighting system during night time doesn't. Therefore, it is advisable that you take prior permission of the Société d'Exploitation de la Tour Eiffel (SETE) to take pictures lawfully at night.

One of the topics mired in controversy is the 'freedom of panorama'. What is this freedom of panorama? Freedom of panorama is permission to take and publish *photographs* and *videos* of buildings and artworks permanently located in a public place without infringing on any copyright which might rest in the underlying work.

Europe has divided opinions on freedom of panorama. Some countries have complete freedom of panorama whilst some countries have partial freedom of panorama i.e. those countries allow publication of those photographs only for non-commercial purposes and the remaining ones don't have freedom of panorama at all.

Recently, freedom of panorama was in the spotlight once again during review of the European Union Copyright Law directive. It may sound a bit absurd, but European Law makers were thinking to make it illegal for you to take a photograph of the London Eye, or the Frankfurt Skyline. Paradoxically, Julia Reda who was tasked with developing a report aimed at making recommendations for potential legislative changes to EU copyright law was in favour of extending the right of panorama across the European Union, which means complete freedom of panorama. But the EU Parliament's Legal Affairs Committee took the opposite stance, concluding that *"the commercial use of photographs, video footage or other images of works which are permanently located in physical public places should always be subject to prior authorisation from the authors or any proxy acting for them"*.

Commercial Or Non Commercial Use

The above restriction would have applied to commercial usage i.e. companies which make money by selling photographs. On the face of it, it didn't seem to be a problem, however, in the real world, the distinction between commercial and non commercial is much more complex. For example, you would think it perfectly fine to upload photographs on Facebook, but in reality you are agreeing to the terms of service of Facebook which means you are giving permission to Facebook to use your

photographs commercially. Thus, uploading of such pictures would come under commercial usage and therefore, it is your responsibility to take permission from the right holder or collecting society responsible for issuing licence for commercial usage of such photographs. Not doing so, before you legally upload, could tag you as a criminal in the eyes of the law.

Freedom Of Panorama And Copyright Law

Similarly, your personal website would be considered commercial if it has an advertisement or *flattr* button or micro-payment service in use even if you make lot less money than you pay for hosting the website.

It is widely acknowledged that such a stringent restriction on the commercial use of photographs or videos which are permanently located in physical public places would have greatly harmed journalists, professional photographers or documentary filmmakers. Their activities clearly lie in the commercial sphere, and for decades, they have relied on public space that can be used by anybody without having to negotiate a licence first.

Such a restriction would have not only created trouble for the above professionals but would have eroded the very roots of copyright law. As is widely acknowledged, one of the primary goals of copyright law is to promote creation of new art. Such a restriction would have meant hampering the creation of art and demoralising the creators. In fact, architects who were the only group of people who would have been benefited by such a restriction on commercial usage also took an opposite stand. The Royal Institute of British Architects (RIBA), for example, said the proposals *"would… have negative implications, and represent a potentially damaging restriction of the debate about architecture and public space"*.

On the other hand, Wikimedia Foundation quoted, *"the version of freedom of panorama now under consideration is not compatible with Wikimedia's goal to broadly share knowledge. If this amendment became law, it would be more difficult for users to freely share photos of public spaces. It would be a step backwards in revamping the EU's copyright rules for the digital age."* Thus, if such a provision had come into effect, thousands of photographs on Wikipedia would have been removed.

European Parliament Votes On Freedom Of Panorama

Thus, in light of the above hue and cry, the Members of the European Parliament (MEPs) were asked to either vote in favour of the suggested amendment A8–0209/3 by Marietje Schaake to restore the meaning of original text as suggested by Julia Reda i.e. liberal freedom of panorama across all European States, or should Schaake's amendment fail, to completely remove the provision.

Finally, judgement day arrived. On July 09, 2015, the proposed provision (para 46 struck off) was voted down in plenary, with the Greens/European Free Alliance vice-chair explaining that, *"most countries will allow people to post selfies including images of public buildings online and view photos of famous buildings on Wikipedia unencumbered by copyright."*

Parliament's group of the Progressive Alliance of Socialists and Democrats (S&D) shadow rapporteur Mary Honeyball was of the view, *"...Clearly the idea that you could find yourself in legal trouble for sharing a photo of the London Eye or Guggenheim in Bilbao is ludicrous."*

To conclude, the MEPs have voted against the provision putting restriction on commercial usage of photographs or videos of works located in physical public places without authorisation. This is clearly in line with the basic ideology of copyright law of promoting interests of art, creators and the society as a whole.

Position in India

According to Indian Copyright Act, certain acts do not amount to infringement, namely:

1. The making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture (Section 52 (1) (s));
2. The making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause (iii) of clause (c) of section 2 ["any other work of artistic craftsmanship"], if such work is permanently situated in a public place or any premises to which the public has access (Section 52 (1) (t));
3. The inclusion in a cinematograph film of any artistic work permanently situated in a public place or any premises to which the public has access (Section 52 (1) (u)).

Thus, from the foregoing account, it can be seen that freedom of panorama is available in India. And for Indian tourists, the incentive to impress their families and friends with photographs of many, if not all, European monuments is still intact.

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