



Question and Answer:
Do I Need Permission to Film the Outside of a Building?

June 6, 2011 by Bob Tarantino

The *Copyright Act* (Canada) extends copyright protection to "architectural works" (a subset of "artistic works") - does a filmmaker need permission to film the exterior of a building in a film or TV project?

Probably not, at least with respect to the building itself - but as with most matters which involve legal analysis, the answer is probably better phrased as "it depends". Let's start with some basic principles: Yes, buildings, as architectural works, can be protected by copyright. Some buildings will be in the public domain (because their author passed away more than fifty years ago, causing the building to have passed beyond the limits of the term of copyright protection in Canada, being life of the author plus fifty years), and so no claim of copyright infringement could plausibly be brought, and so no permission would be required.

If we're talking about buildings which are still under copyright protection, of particular use for filmmakers is Section 32.2(1)(b)(i) of the *Copyright Act* (Canada), which identifies certain "permitted acts" - the section states the following:

It is **not an infringement** of copyright ... for any person **to reproduce, in a painting, drawing, engraving, photograph or cinematographic work (i) an architectural work**, provided the copy is not in the nature of an architectural drawing or plan;

In short: filming a building for use in a film or TV project (each of which would qualify as a "cinematographic work") does not constitute copyright infringement of the copyright in that building. However, things are rarely quite that simple. The clearance procedures of most film and TV errors and omissions insurance policies will require that clearance be obtained if the filmed footage will include elements which are separately copyrightable or trade-marked. Thus, consideration must also be given to any items which are *attached* to the building in question - such as signs containing business names or logos, or artwork (such as an advertisement consisting of a large poster).

It's also worth considering whether artistic works which are *part* of the building itself require a separate clearance (imagine a statue or gargoyle which is attached to a building, or a mosaic or frieze which add decorative elements); while there do not appear to be any Canadian cases on point, there is a US 9th Circuit decision which discusses the matter in the context of a film project (in *Leicester v. Warner Bros.*, 232 F.3d 1212 (9th Cir. 2000) the court concluded that towers attached to a building shown in the film *Batman Forever* did not require separate clearance, as they fell within the ambit of 17 U.S.C. § 120(a), the US analogue to the Canadian provision we're discussing).



Other non-copyright matters which require consideration include the need to obtain permissions for the location of cameras and lighting which may be required in order to obtain the desired footage (i.e., if you need to get onto private or municipal property in order to set up your shot, permission will be required), and any potential defamation concerns (it's not terribly difficult to, imagine a scene showing the exterior of a building and attributing nefarious activities to the residents of that building - which, if the building and its tenants are readily identifiable, could give rise to a claim).

Thus, what at first appears to be a fairly simple question to answer refracts into a fairly nuanced analysis which could require some timely legal analysis by producer's counsel. In closing, I should also note that while researching this post I came across my favourite German word for today: Panoramafreiheit, a German legal concept (which apparently translates as "*Freedom of Panorama*") which appears roughly analogous to the exception to Canadian copyright discussed in this post.

[Inspiration for this post was provided by [Dear Rich: Does travel photographer need property release?](#), [Dear Rich: Do you need permission to publish pictures of buildings?](#) and by Gordan P. Firemark's [Asked and Answered: Using public buildings as setting for a film.](#)]

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