

Photography or audiovisual recording of buildings located on a public thoroughfare

Report by the legal service of the Catalan Institute for Cultural Enterprises

Works protected by intellectual property law located permanently on a public thoroughfare can be reproduced, distributed and communicated freely by means of pictures, drawings, photographs and audiovisual procedures (art. 35.2 of the rewritten text of the Intellectual Property Act). Example: a mural or sculpture built into the façade of a building situated on a public street.

With regard to buildings, it is true that the construction in itself is not covered by the concept of works protected by intellectual property law (art. 10 of the rewritten text of the Intellectual Property Act http://portaljuridic.gencat.cat/ca/pjur_ocults/pjur_resultats_fitxa/?documentId=555968&action=fitxa [in Catalan]), but designs, plans and models of the building are so covered.

The principle governing the capture of images of the outside of buildings situated on a public thoroughfare is that of permissiveness as, "Whatever is not prohibited is permitted."

To the extent that buildings are not considered to be works for the purposes of the Intellectual Property Act, nor are they covered by the protection that this act stipulates for such works, so the owners of buildings which can be photographed or filmed from a public space cannot prohibit the capture and exploitation of images of the outside of the buildings. This is notwithstanding the fact that there may be regulations that restrict or charge for physical access to a place from which such images can be made (such as the permission required to make recordings on a public thoroughfare) or laws that preserve the privacy of people and their private spaces (civil protection of the right to honour, personal and family privacy and one's own image act, Organic Law 1/1982 of 5th May 1982 http://portaljuridic.gencat.cat/ca/pjur_ocults/pjur_resultats_fitxa/?documentId=555967&action=fitxa [in Catalan]), or other regulations that restrict the capture of images of the outside of specific buildings for security reasons.

Restrictions on exploiting images made of the outside of a building situated on a public thoroughfare may arise from the fact that the building has been registered as a trademark (art. 4 of the trademarks act, Law 17/2001 of 7th December 2001 http://portaljuridic.gencat.cat/ca/pjur_ocults/pjur_resultats_fitxa/?action=fitxa&documentId=555990 [in Catalan]).

The fact that an image is registered will not mean that the external image of the building cannot be captured (photographed, filmed), but it will create restrictions when it comes to exploiting the images captured. These restrictions are governed by article 34 of the trademark act (see link above) and mean that the owner of the trademark may prohibit third parties from using the images captured for economic transactions without their consent, to identify goods or services which are the same as or similar to those for which the trademark was registered and might therefore confuse the public about the identity of one or another party; or when this use suggests that there is a connection between the goods or services in relation to which the images captured are being used and the owner of the trademark, or in general where such use may involve unfair exploitation or detriment to the distinctive nature, notoriety or renown of the said registered trademark.

Consequently, and to the extent that permission to occupy the public thoroughfare has been obtained where necessary, and no other regulations are infringed, such as those affecting people's personal and family privacy, the owner of a building cannot prohibit the photographing or audiovisual recording of the outside of the said building. In the event of a conflict, only a judge is competent to order the destruction or non-exploitation of the images captured. Only a judge is empowered to "confiscate" a memory card or film from a camera. As regards the exploitation of these images, the fact that they have been registered as a trademark only prohibits the uses indicated above, but does not mean, for example, that they cannot be used in a film or even a commercial, providing it does not lead to the above-mentioned confusion, connection or discredit. Professionals are therefore recommended to assess the restrictions in art. 34 of the trademark act carefully before exploiting the images.

It is important to point out that the above explanation refers only to the capture of images of the outside of buildings situated on a public thoroughfare, and is not applicable to the capture of images of people or the inside of buildings.

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