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# World finds itself in quandary over 'panorama photos'; now come drones

Stop! Don't take that picture! Tourists are used to being warned against taking pictures at border crossings, inside sacred sites and at places where security is a particular concern. But standing in a public square, taking a picture of a well-known public sculpture or famous building?

In many countries — including the United States — the "freedom of panorama" is not as free as you may think. In fact, in many countries, where and when you take the photo is as important as the technology used.

In simple terms, "freedom of panorama" generally refers to the right to make commercial and noncommercial photos and videos of buildings, sculptures and other public works permanently sited in public places, such as Cloud Gate (The Bean) in Chicago, the Eiffel Tower in Paris and the Sky Tower in Auckland, New Zealand.

Although tourists believe they have the right to snap as many photos as they would like of these public structures, and share them with their friends online, as I was reminded on a recent trip to New Zealand, that right depends on the country where they are snapping or filming.

New Zealand is a free panorama country. Section 73 of its Copyright Act grants both commercial and amateur photographers, cinematographers and graphic artists the right to reproduce public works in their chosen medium and distribute those reproductions to the public.

So long as the subject is a "building" or "work," including "works of artistic craftsmanship," that are "permanently situated in a public place or in premises open to the public"; they are available for reproduction.

By contrast, France recognizes no freedom of panorama. To the contrary, according to the website of the Societe d'Exploitation de la Tour Eiffel, the company that manages the Eiffel Tower, the public is free to take pictures of the tower during the day. But at night, such photos are prohibited, absent prior permission, since the light show is still subject to copyright protection under French law.

Although organization's website states that photographs for "private use" are permissible, such use does not generally include posting "private" images on social media sites under French law. Tourists taking selfies featuring the illuminated tower could arguably be subject to takedown notices in the United States. With the number of night illumination photos available online, it seems unlikely the tower organization is pursuing members of the general public.

The effect of self-censorship, however, is harder to measure.

Take the Atomium in Brussels. Since Belgium similarly rejects any freedom of panorama, this unique structure, built in 1958 for the Universal Exhibition, remains subject to copyright. While private photos are allowed, the architecture enthusiast website GlassSteelandStone.com wound up in a copyright fight several years ago when it posted images of the Atomium. The site deleted the pictures.

The harm caused by this inconsistent treatment of the public's right to photograph public buildings and art has become more acute with the development of hobby (noncommercial) drone photography. With its ability to create breathtaking panoramas, drone photography's popularity has surged.

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Unlike Chicago, whose recently enacted ordinance includes drone use below 400 feet, most countries either lack regulations governing such uses (such as the United Kingdom) or are in the process of reviewing and revising them (including the United States at the federal level).

Even for places like Chicago and New Zealand that have regulations governing drone use below 400 feet, such regulations do not directly address the copyright issues arising from drone photography. Even if permission to fly the drone is secured pursuant to regulations, such permission alone does not ensure the right to photograph objects in the public space absent copyright laws allowing such actions.

In the United States, freedom of panorama is granted under Section 120 of the Copyright Act. It allows the reproduction of "architectural works" in "pictures, paintings, photographs or other pictorial representations" so long as the building is "located in or ordinarily visible from a public place." This line-of-sight grant raises interesting possibilities in the era of drone photography.

Although telephoto lenses expanded the potential range of "accessible" architecture covered by Section 120, the scope of such protection was still anchored in an individual with his feet planted in public space. Drones flown in line of sight undeniably will expand these zones of public access even further.

Developments this past summer signal that the battle over the precise scope of any international freedom of panorama has only started. In the European Union, freedom of panorama is governed by Article 5(3)(h) of the Information Society Directive (2001/29/EC).

This article makes permissible reproduction of "works ... such as works of architecture or sculpture ... located permanently in public places" optional. Efforts to make this freedom mandatory in all member countries failed in July. So did efforts to eliminate any freedom of panorama for commercial photography. The increasing popularity of drone photography will undoubtedly resurrect the issue.

A reconsideration of reproduction rights of copyrighted activities through the "freedom of panorama" is long overdue. But consideration of the scope of such freedom should be expanded beyond architecture to include consideration of other copyright protectable activities occurring within public areas.

If a drone flew over Millennium Park with permission, filming The Bean, a student from the Art Institute creating a charcoal drawing of the scene before her, a local musician holding an impromptu concert and a pickup volleyball game, the present scope of the freedom of panorama would only address the filming of The Bean.

Drones permit the capture of an entire performance, often unobserved, and with fidelity of sound that currently rivals the best recording studios. Internationally performer's rights are generally limited to those who deliver ... interpret, or otherwise perform literary or artistic works or expressions of folklore." The musician would be covered. The pickup volleyball game would not.

Arguably, so long as the video does not focus on the protected drawing or record the musician's entire performance, any reproduction should qualify as a fair use. But like all things in the changing world of copyright and drone photography, without clearer, and more consistent guidelines, the legal force of demands to "stop filming" or "take down that video" will continue to depend on where you are.

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