

## CASE FILE #3: THE BAKER STREET BUILDING

### LEARNING AIMS

- Understand that different types of artistic works are protected by copyright
- Understand that certain works on public display can be copied without permission

### KEY QUESTIONS

The following key questions should be discussed to address the learning aims:

- What are artistic works and what do they protect?
- Is it possible to make copies of artistic works on public display or in public premises without infringing copyright?

Students will be expected to use Case File information to analyse ideas, to give opinions, and to justify opinions. Other questions posed within the Case File can be used to generate further discussion.

### WHAT ARE ARTISTIC WORKS AND WHAT DO THEY PROTECT?

- See **TEXT BOX #2 and #3**
- 'Artistic works' is one of the eight categories of works protected by the CDPA (the UK Copyright Act) (for more information, see [Case File #23](#)). It is a broad category that includes a variety of works such as graphic works (e.g. paintings, drawings, diagrams, maps, charts or plans), photographs, sculptures and collages irrespective of their artistic quality. It also includes works of architecture (buildings and models of buildings) and works of artistic craftsmanship.
- While the CDPA does not specifically say so, graffiti is widely accepted as a type of artistic work too.

### IS IT POSSIBLE TO MAKE COPIES OF ARTISTIC WORKS ON PUBLIC DISPLAY OR IN PUBLIC PREMISES WITHOUT INFRINGING COPYRIGHT?

- See **TEXT BOX #5 and #6**
- **YES.** In the UK, you can copy certain types of artistic works on public display in certain ways. If a building or sculpture is *permanently* situated in a 'public place or in premises open to the public', you can make a graphic work representing it (e.g. a painting or a drawing), take a photograph or film it without having to get permission from the copyright owner (see s.62 of the CDPA).
- However, graphic works on public display (e.g. paintings in galleries or murals on walls) can't be reproduced without permission (although galleries often permit the taking of photographs of their permanent collection).
- The possibility of reproducing artistic works on public display without permission from the copyright owner is often referred to as **freedom of panorama**.

- Some European countries – e.g. Italy – do not recognise this freedom. So, if you are on holiday in Italy, in principle even taking a selfie in front of a Calatrava bridge or a building by Renzo Piano would require permission from the copyright owner.
- The Eiffel Tower, in Paris, provides another interesting example.

Copyright in the Eiffel Tower expired in the 1990s, so, anyone is free to photograph it, and to share, sell or publish those photographs – **but only during the day**. This is because a night-time lightshow was added to the Tower in 1985, and this lightshow is protected under French copyright law as an artistic work. This means that, technically, although everyone is free to photograph the Tower by day, one should not take photographs of the Eiffel Tower at night without permission. (In practice though, the owner of the copyright in the lightshow has never tried to prevent tourists taking photos at night.)

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### 1. INTRODUCTION

Sherlock Holmes and John Watson discuss Joseph's case at 221B Baker Street. The above illustration is inspired by two sources: the fictional address of Holmes' apartment in the Arthur Conan Doyle stories, and 187 North Gower Street, in London, where the BBC filmed exterior shots of Holmes' building for its TV adaptation, *Sherlock*.

This Case File #3 explores the copyright status of buildings, designs and architectural plans, and considers when buildings can be copied by other creators, such as artists, photographers and film makers, without permission.

### 2. COPYRIGHT AND BUILDINGS

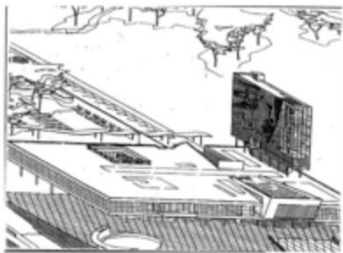
Architects depend on copyright to protect their work. While copyright protects different types of work, such as books, songs and films, works of architecture are protected as artistic works. A work of architecture is defined as 'a building or a model for a building', and a building is defined to include 'any fixed structure, and a part of a building or fixed structure'. The term 'structure' is not defined in the legislation. The London Eye or the Nemesis rollercoaster at Alton Towers are good examples of structures that would qualify for copyright protection, but so too would more ordinary structures, such as a bridge, an outdoor swimming pool, or a garden that was landscaped to include features such as stone walls, steps and a pond.

It is important to note that in order to enjoy copyright in a building it does not need to be of a certain aesthetic or artistic quality. This means that even very simple buildings could, in theory, be protected by copyright. But, to attract copyright the work must be original, and so claiming copyright in a very simple building may be difficult.

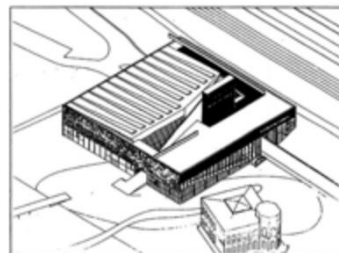
### 3. CURIOSITY

Just as a building or a structure is protected by copyright, the architect's drawings and plans (that is, the preparatory sketches for the building or structure) are also protected by their own copyright. Under the 1911 Copyright Act, these drawings, maps and plans were protected as if they were literary works. Today, they are protected under the Copyright Designs and Patents Act 1988 as artistic works.

### 4. THE CASE: *Pearce v Ove Arup Partnership* [2001] EWHC Ch 455



(Docklands)



(Kunsthal)

Infringement of copyright happens if a person copies the whole or a substantial part of a protected work without permission or without the benefit of a [copyright exception](#). When dealing with works of architecture, however, it is not always so easy to establish that unlawful copying has taken place.

In this case the architect Rem Koolhaas designed the Kunsthal museum in Rotterdam, but was accused of copying the designs for a town hall in Docklands created by the claimant Gareth Pearce as part of his final year project for his Diploma in Architecture. The court had to decide if Mr Koolhaas had copied the Docklands plans.

Mr Pearce argued that there were a number of similarities between the Kunsthal designs and the Docklands plans which, taken together, established that Mr Koolhaas must have copied his designs.

The Court took a different view. Just because Mr Pearce had identified a number of similar dimensions between the two buildings did not mean anything. Acknowledging that architects were often limited in their options when trying to achieve a particular structure or effect, the judge observed that you could take thousands of measurements to compare the two different designs are many were bound to be similar. That did not mean there had been copying, or that the copying was infringing. All that Mr Pearce had established was 'a collection of 'similarities' amounting individually and collectively to nothing'. 'You do not have to be an architect,' the judge said 'to recognise the absurdity of the comparison as evidence of copying'. The case had 'no foundation whatsoever'; it was 'pure fantasy – preposterous fantasy at that.'

## 5. COPYING ARTISTIC WORKS ON PUBLIC DISPLAY

Although buildings are protected by copyright the law allows you to make copies of the building in certain circumstances. For example, you can make your own painting or drawing of a building, just as we have done in our video, without infringing copyright. You can also photograph it, or include it in a film. And, you can distribute copies of your work to the public or post it online.

Copyright law also lets you make copies of other types of artistic work on public display. For example, you can paint, draw, photograph and film works of sculpture permanently situated in a public place or in premises open to the public, such as The National Gallery or TATE Modern (although public galleries may rely on contract law to set their own rules about what you can or cannot photograph within the building).

## 6. FOR DISCUSSION: NOT ALL WORKS ARE EQUAL

Why does the law let you make copies of certain artistic works on public display, such as buildings and sculptures, but not all artistic works on public display?

Think of a gallery, open to the public, that contains paintings as well as works of sculpture, or what about public graffiti or a mural on a wall? Why do you think the law distinguishes between different types of artistic work in this way?

## 7. USEFUL REFERENCES

Pearce v Ove Arup Partnership Ltd and Others [2001] EWHC Ch 455 is available here: <http://www.bailii.org/ew/cases/EWHC/Ch/2001/455.html>

The Copyright, Designs and Patents Act 1988 is available here: <http://www.legislation.gov.uk/ukpga/1988/48/contents>.

Section 4 provides the legal definition of artistic works, including works of architecture. Section 62 sets out which artistic works on public display can be copied and under what circumstances.