
CAN AN ARCHITECT OWN COPYRIGHT? NAVIGATING LEGAL DILEMMA OF COPYRIGHTABILITY

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ABSTRACT

Architecture is a dynamic and evolving subject matter under the intellectual property regime. Since the IPR laws intend to protect the creativity and innovativeness of architectural works, being unique expressions of design, they also entitle them to the same rights and protection that are stipulated under the IPR Laws. The paper aims to examine the inclusion and ongoing developments in the field of Architecture under the purview of the intellectual property landscape. The paper initially examines the Berne Convention, where the idea of including Architectural works under the IP was formally recognised. Furthermore, analyse the global development on the same by discussing the developments in various jurisdictions, India, the UK and the USA. All three countries hold different takes on the same. In India and the United Kingdom, architectural works under IPR have much broader moral rights than in the USA, wherein the USA places emphasis on the economic right. The final section of the paper discusses about freedom of panorama, which acts as an exemption to the copyright protection given to architectural works, mainly in the public domain.

Introduction

Like other intellectual property, such as trademarks, copyright is also enlisted in the IP field to protect the creator's freedom of creativity and prevent others from using such works as original works. Unlike trademarks and Patents, Copyright deals with literature and an elaborate extended ambit of artistic works. Looking back at the history of copyright protections, one can see that it seems to differ from country to country. Therefore, when an authors have copyright to the work, they do not have the same kind of protection in another country, and this could cause chaos, like they could not prevent others from stealing their artistic idea and work, and legal actions could not be taken. This is how the idea of enforcing a universally applicable Copyright protection came into discussion before the world countries. In the aftermath of these events, it led to the formation of the Berne Convention for the Protection of Literary and Artistic Works, which turned out to be one of the milestones and a significant international treaty for governing copyright protection. And when the Berne convention was first held in Berne in Switzerland, the prime goal that it aimed was to harmonise the copyright protection internationally by providing equal protection to creative works such as literature, music, and fine arts in all member states. India is a member of the Berne Convention since 1828 and the convention has influenced the Indian copyright laws to a great extent as well. Therefore, the Indian copyright laws can be treated as a mixture of laws worldwide and of the Berne Convention, also with some modification made by its own. In India, the protection provided by the copyright extends to 60 years generally,

Whether copyright protection can be extended to architectural works has been and still exists as a never-ending question among the world forum. When looking into the Berne Convention of 1886, the Architectural works were not explicitly included in the list of protected works, instead copyright protection was granted to plans, sketches and plastic works related to architecture, which includes architectural drawings, blueprints and scale models, but not to the actual constructed buildings. Nevertheless, after numerous debates and discussions, the architectural copyright protection came with the 1908 Berlin revision of the Berne Convention. On the other hand, in India, also section 13 of the Copyright Act of 1957 dealt with types of Artistic works that are eligible for the copyright protection, and in this provision, it includes the term "*a work of Architecture*" means any building or structure having an artistic character or design, or any model for such building or structure. Therefore, it is evident that the Indian laws also provide the Architects the right against false attribution of their work. But still, other

world countries have a varying take on this matter, which is reflected in their copyright Laws.

Glimpse into the History of Inclusion of Architectural Works into the Ambit of Copyright

The Bern Convention and Subsequent Developments:

The Bern Convention reflect the board debate about the intersection of artistic expression, the balance between property and intellectual property rights and the challenges in defining the originality in architecture. It was this historical milestone that led to the growing recognition of Architecture as a form of Artistic Creativity. At first, when the convention was held in 1886 the Architectural works were not explicitly included in the list of protected works, instead copyright protection was granted to plans, sketches and plastic works related to architecture, which includes architectural drawings, blueprints and scale models, but not to the actual constructed buildings. And this exclusion was done on the account of several legal and practical factors during that time. Firstly, the legal scholars and the government considered Architecture as a functional discipline, meaning, unlike painting or sculpture, buildings were primarily a functional structure rather than an artistic creation, the practical purpose of architecture is to provide shelter and infrastructure. On the other hand, the likable conflict of property rights also raised concerns as the buildings were copyrighted, the property owner might face legal restriction in the case of modification or demolition of the buildings, which creates an uncertainty. Furthermore, at that time most of the countries did not recognise the architectural works as artistic creation that needs to be protected within the copyright as it was already dealt with under contract laws, patents. And the complexity in enforcing copyright laws on architectural works. In short, due to these factors, the 1886 convention reluctantly did not extend the copyright protection to Architectural works.

Later, after two decades, the topic of architectural works again came to the forefront when the legal scholars and professionals associated began strongly advocating for protecting Architectural works as it evolved as a high creative and artistic discipline. Moreover, a great outbreak happened when, in 1890, a Belgian delegate, Jules de Borchgrave, in his landmark article, formally called for architectural works to be recognized as artistic creation under copyright. He argued that just like painters, sculptors and musicians, Architects also create unique, original works of art that also deserve protection and further, the building's aesthetic design and innovative structure are not functional elements but the expression of an artist that required a significant artistic effort. He also stated that the absence of legal protection would

make it difficult for the Architects to prevent plagiarism, which would ultimately discourage innovation in design. His arguments seconded by several legal scholars and professionals, including the *Association Littéraire et Artistique Internationale* (ALAI), the most influential group advocated for the same.

Additionally, in 1896, the convention was revised at Paris, so called the Paris Revision of the Berne Convention, where the issue of Architectural works formally raised for the first time. During the delegation, instead of reaching a uniform conclusion. The discussions ended in a limbo as some delegates argued that buildings should be explicitly enlisted in the list of protected works, while the countries such as Britain, Germany and Norway vehemently opposed this, therefore the Paris Revision included a provision stating that the Architectural works would only be protected by countries where the national law already have such existing provision which turned the copyright protection of buildings optional and inconsistent.

The architectural works copyright protection came with the Berlin Revision of the Berne Convention of 1908. The Convention was amended and explicitly included “*works of architecture*” in Article 2 (1) of the convention. This revision meant that it is not only architectural drawings and models protected, but also the physical buildings as well. Several key developments had contributed to this significant milestone. One is that Germany, which initially opposed the inclusion of architectural work, revised its position in 1907 by extending the copyright protection to architectural works in its national law. Secondly, in the early 20th century, a vast majority of countries started granting copyright protection to buildings, which helped the convention to adopt a unified approach and also some judicial courts recognised the copyright protection in architectural works and reinforced the idea that it is also an artistic discipline that needs to be protected. Even though the Berlin revision created a significant milestone in the field of intellectual property by this inclusion, it left some rooms allowing national variation in its enforcement.

Copyright Protection of Architectural Works in India

India has been a signatory to the Berne Convention since 1828. The Indian legal regime also provides certain copyright protection to architectural works, but it is also important to note that the ambit of architectural work also overlapped with the Trademark Act of 1999 as well. Further, concerning architectural works within the ambit of Copyright of 1957. In the Act, section 2 (c) (ii) defines the term artistic works and it covers buildings, structures or their

models which contain some artistic design or character as mentioned in section 2(b) of the Copyright Act. Further, section 13 of the Copyright Act, which dealt with works in which copyright protection will subsist in its clause (5) of the provision, clearly stated that “*work of architecture*” copyright shall subsist only in the artistic character and design and it is not extent to the process or method of construction. In short, the right of architects only extends to the artistic character and design, not to the construction Process per se, and the Delhi High Court has very evidently discussed it in the case of *Raj Rewal v. UOI & Others*¹, where the plaintiff distinguished architects have challenged the demolition of the Hall of Nations and Nehru Pavilion at Pragati Maidan by the Union government and the ITPO. The plaintiff claimed that the building was his artistic creation, and thereby, the demolition of the building violated his moral right as an architect under Section 57 of the Copyright Act of 1957. The court dismissed the plaintiff’s suit and ruled that he had no legal claim over the demolished building, architectural copyright protects only the design and the plan, not the physical building itself. Moreover, demolition does not constitute distortion or mutilation means architects cannot invoke moral rights to prevent the destruction of their structures.

Nevertheless, circumstances were that the copyright law and the Design law overlap, otherwise there is a potential of leading to conflict between these two. This has also been discussed in the case of *Microfibres Inc. v. Girdhar & Co. & Anr.*² By the Delhi High Court. In this case, the appellant was a US-based Company Called Microfibres Inc, and they claimed that their fabric designs were original artistic works and sought copyright protection. While the respondent argued the Design should be protected under the Design Act of 2000. The court interpreted section 15(2) of the copyright Act and the mischief rule and stated that “*the mischief sought to be prevented is not the mischief of copying but of the larger monopoly claimed by the design proponent despite commercial production*” and further the court also observed that “*if a design is registered under the Design Act, then it would lose its copyright protection under the copyright Act. If it is a design registrable under the Designs Act but has not so been registered, the Design would continue to enjoy copyright protection under the Act so long as the threshold limit of its application on an article by an industrial process for more than 50 times is reached. But once that limit is crossed, it would lose its copyright protection under the Copyright Act. This interpretation, in our view, would harmonize the Copyright and the Designs Act in*

¹ Raj Rewal v. Union of India & Others, 2019 SCC OnLine Del 8716.

² Microfibres Inc. v. Girdhar & Co. & Anr, RFA (OS) NO.25/2006.

*accordance with the legislative intent*³.

The legal remedies available in the case of copyright infringement of architectural works are restricted as envisaged in section 59 of the Copyright Act of 1957. The way the court treats the issue of injunctions to prevent unauthorised reproduction as architecture is concerned is different from how it dealt with other artistic works. If a building or structure that infringes on a copyrighted architectural design that has already been constructed, then it is hard for the copyright owner to obtain an injunction to stop the construction or order the demolition of the building. This implies that if a structure closely resembles a copyrighted architectural design, and if it is also under construction, then the only legal remedy available to the copyright holder is seeking Damages or initiating a criminal prosecution.

The copyright Act grants the architectural works protection of 60 years from the beginning of the calendar years following the death of the architect which will prevent the reproduction of their plans, sketches and blueprints. However, the law protects the plans and drawings, it does not prevent others from constructing similar buildings once the construction has commenced. Although copyright protection is granted, the protection is not as extensive as it is for other artistic works like paintings or sculptures. And the uncoverable fact, the hardest to get the demolition order, also weakens an architect's ability to enforce their right. In light of this, the architects are encouraged to register their architectural works for copyright protection to establish a prima facie case of ownership in the event of legal disputes. In short, even though copyright does not fully prevent the infringement of architectural works, it acts as strong evidence of originality and authorship in an infringement suit.

Trademark Protection for Architectural Work: A New Trend

The Recent trends in the country also highlight that the copyright protection is not comprehensive, the architects and building owners can also register architectural design as Trademarks. Under section 2(m) of the Trademark Act of 1999, the term "mark" *includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof*". Thus its ambit extends protection of an architectural design in relation to a particular set of goods and/ or services. Unlike copyright protection of 60 years after the death of the architect, trademark offers

³ Microfibres Inc. v. Girdhar & Co. & Anr, RFA (OS) No. 25/2006, 34, ¶ 46.

perpetual protection, provided that it shall renew every 10 years. This also ensures the architectural design is protected from unauthorised commercial exploitation. There are also notable examples, such as the Taj Mahal Palace Hotel in Mumbai, which became the first building in India to secure a trademark protection under the Indian Hotel Company Limited (IHCL). Thus, by acquiring the trademark protection, IHCL obtain an exclusive right over the visual identity of the Taj Hotel, which means that third parties are prevented from commercially using the hotel's iconic design for any promotional purpose without permission and prevent commercial gain through misrepresentation. Additionally, in June 2018, the BSE has also obtained trademark registration for its 28-storey Phiroze Jeejeebhoy Tower. Therefore, the recent trademarking of these iconic buildings set a legal precedent for the architectural designs that have acquired a unique brand identity.

Copyright Protection of Architectural Works in the United Kingdom

In the United Kingdom, it is the *Copyright, Design and Patent Act of 1988*. The copyright law under the Act also covers the architectural works and drawings as literary works and it is envisaged under section 3(1) of the Act. Additionally, the section 4 of the Act protects buildings or models for a building under the definition of “artistic works” and this definition is capable of including buildings regardless of when they were established, for example the Clore Gallery at Tate Britain. The element of artistic quality is what distinguishes the architectural works from other copyright properties, as the architectural works do not need to possess artistic quality to acquire the copyright protection. Proving the originality of the architectural work is burdensome because the labour and skill that need to be invested in each artistic work may differ from one to another, as the circumstances demand. While determining the originality of an architectural work, the court looks into the distinction between the visual significance and the non-visual significance and in the former, skill and labour are treated as relevant and otherwise. For instance, in the case of *Drayton Controls (Engineering) v. Honeywell Control Systems*⁴, The court compared the drawing of a valve and held that the later drawing is original as there is a change in the shape of the valve, which holds the visual significance, and the court also highlighted that the mere change in the scale and dimension of the original work was not visual significant and did not render it as original. In short, this case states that it is not always the skill and labour, but there must also be some unique element or element of material

⁴ *Drayton Controls (Engineering) v. Honeywell Control Sys.*, [1992] F.S.R. 245 (Eng.).

alteration or enhancement which is sufficient to make the work original to ensure the copyright protection of an architectural work.

Furthermore, while discussing the copyright protection in the context of architectural work, the Idea or expression Dichotomy also have an inevitable role to play. The idea or expression dichotomy protects the expression of an idea and not the idea itself. As far as architectural works are concerned, they are the architectural drawings and plans that are protected, not the ideas embodied within them. It ensures that architectural ideas remain freely available for use. This had reinforced in the case of *Jones v. London Borough of Tower Hamlets*⁵. This prevents monopolization of the common architectural style while still protecting original expressions.

The primary infringement of a copyrighted work takes place when a copy or a replica of the work is made without the authorisation of its true owner. And as per section 16 of the CDPA of 1988, the copyright owner has the exclusive right, including the right to copy, distribute or adapt the work. In the case of *Francis, Day and Hunter Ltd v. Bron*⁶, Denning LJ cited two important elements as necessary to establish the copyright infringement, one is that the causal connection between the original work and the allegedly infringed copyright work. nevertheless, if the two works are independently created and accidentally happened to be similar, then there is no infringement. and secondly, the alleged copied work must contain a substantial part of the copyrighted work, it does not need the exact replica of the original work.

Indirect Copying and Subconscious Copying

Indirect and subconscious copying are recognised under the intellectual property regime of the UK. This legal principle enshrines that an infringing work need not be copied directly from the original work. In the Case of *Solar Thomson Co. Ltd v. Barton*⁷, where the defendant asked a design engineer to draw a design of a spare part for a machine. The defendant, without showing the design of the claimant, gave instructions to the designer engineer but he did not disclose the original work of the claimant, and later the design engineer created a drawing much similar to the claimant. In light of the circumstances, the court of appeal held that the instruction given by the defendant is sufficient to constitute the *causal link* and copyright infringement. Moreover, apart from the *causal link*, as per section 16 (3) of the CDPA of 1988, the copied

⁵ *Jones v. London Borough of Tower Hamlets*, [2001] R.P.C. 23.

⁶ *Francis, Day and Hunter Ltd v. Bron*, [1963] Ch 587.

⁷ *Solar Thomson Engineering Co. Ltd v. Barton*, [1977] R.P.C. 537.

work as a whole or it must contain a substantial part and the substantial part is more about the qualitative. This rule is illustrated in the case of *Pearce v. Ove Arup Partnership Ltd*⁸, an architectural student, Pearce claimed that the design of the Kunsthal in Rotterdam allegedly copied its element from his work of Docklands drawing of 1986 and therefore it infringed his UK and Dutch copyright. However, the court struck down the claim and held that the similarities were insufficient to infer infringement as the Kunsthal was independently designed. And it was further clarified in the Case of *Designers Guild Ltd v. Russell Williams (Textiles) Ltd*, where the House of Lords observed that it is the cumulative effect of the copied features that needs to be examined rather than assessing them in isolation.

Regarding Subconscious Copying, it is also equally relevant in architectural works. Subconscious copying means that when a person unintentionally incorporates elements of a design that they previously created after viewing it. This principle was first articulated in the case of *Gomme (E) Ltd v. Relaxateze*⁹, where the court acknowledged that “*there was no copying, although he accepted that subconscious copying was possible because a tune can remain in human memory for a considerable duration.*” Similarly, there is also high probability that the architects are also influenced by a previously seen design without consciously replicating it. Nevertheless, in the case of *Jones v. London Borough of Tower Hamlets*¹⁰, the court reaffirmed that copyright should not monopolize the architectural idea instead protect the unique expression.

Under the Royal Institute of British Architects (RIBA) Conditions of Appointment, the architects will retain the copyright over their design and drawings unless agreed otherwise. This means that even if it is the builder who physically constructs the building, they do not own the copyright as mentioned in the case of *Meikle v. Maufe*¹¹. However, in case the architect works for a client or employer, then it is the employer who usually owns the copyright unless there is an agreement stating otherwise¹² as per provision section 11(2) of the CDPA of 1988. Additionally, if a client wants to use architectural plans or calculations then it should be envisaged in the contract.

⁸ *Pearce v. Ove Arup Partnership Ltd*, [2002] ECDR CN2.

⁹ *Gomme (E.) Ltd v. Relaxateze* [1976] R.P.C. 377.

¹⁰ *Jones v. London Borough of Tower Hamlets* [2001] R.P.C. 23.

¹¹ *Meikle v. Maufe*, [1941] 3 All ER 144.

¹² *Cyprotex Discovery Ltd v. University of Sheffield*, [2004] RPC 887.

Architects and engineers can also manage their copyright through assignment and license. Assignment means transferring the copyright ownership to another party and it must be in writing as per the provisions from section 90-92 of the CDPA of 1988. However, architects prefer going for a license to assignment. The major reason for such an option is that the license allows them to retain their control over future alterations and use of the design. In the case of *Glengate-KG Properties Ltd. v. Norwich Union Fire Insurance Society Ltd*¹³, where it observed that as per Clause 3.15 of the RIBA Conditions of Engagement, the architect retains his copyright ownership even though there is a license granted. Furthermore, section 64 of the CDPA of 1988, it permits the architects to reuse the portions of their design in future works, but cannot reproduce the entire work. Licensing also enables the authorised use of copyright material by third parties while maintaining the ownership, and if there is no explicit agreement, the commissioning client is granted an implied agreement as per the fees paid, and such license covers reasonable use such as modifying or including the design in promotional material¹⁴. The Royal Institute of British Architects (RIBA) standard contracts also ensure the architect's copyright remains the same. If the fees remain unpaid, then the license is invalid. Additionally, both the RIBA Conditions of Engagement Clause 6.2 and the Association of Consulting Engineers Conditions of Engagement of 1995 permit the client to use and copy drawings for the project concerned purpose along with fees paid and the architect had completed the key stage of the project. Under section 62 of the CDPA damages, injunctions and financial compensation can be seek the affected party for the infringement. In the case of architectural works, the courts are more unlikely to order the demolition of the buildings due to the financial and practical implications behind it, instead, they can register a legal caution under section 54 (1) of the Land Registration Act of 1925 against the property that infringed their copyright of architectural plans owned by an architect.

Copyright Protection of Architectural Works in the United States

In the United States, it was the Architectural Works Copyright Protection Act (AWCPA) of 1990 that introduced explicit copyright protection for buildings and structures. Before the AWCPA, architectural works were only provided a limited extent of protection under the U.S Copyright Act of 1976, it only includes drawings, blueprints and models, but not the physical structures. This leads to little recourse against the unauthorised reproduction of their design

¹³ *Glengate-KG Properties Ltd v. Norwich Union Fire Insurance Society Ltd and others*, [1996] 2 All ER 487.

¹⁴ *Robert Allan & Partners v. Scottish Ideal Homes* [1972] SLT (Sh Ct) 32.

and discourages the architects from creating new innovative ideas. The Architectural Works Copyright Protection Act (AWCPA) of 1990 was introduced and enacted to fulfil the USA obligations under the Berne Convention and the Act closed all loopholes presented in the previous Act and extended the copyright protection to buildings and other structures designed after December 1, 1990. Furthermore, the AWCPA amended Title 17 of the US code and enshrined explicitly copyright protection for Architectural works. Under 17 U.S.C. § 101, an architectural work is defined as: “*The design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design but does not include individual standard features.*” The definition ensures that protection is provided for unique and creative aspects of a building’s design, while it also excludes functional and standard architectural features such as doors, words and common layouts. In short, the act aims at protecting artistic expression along with practical construction methods.

Apart from the broad protection provided under the Architectural Works Copyright Protection Act, there are notable limitations that affect the architect, and the building owners. The reason behind this limitation or exceptions is to balance architectural innovation, public accessibility and property rights. The first exception is that under 17 U.S.C. § 120(a) copyright protection for architectural works does not prevent the photographing, drawing, or painting of buildings that are located in public spaces. Which is essentially the legal principle of Freedom of Panorama. This ensures that the public buildings remain accessible to the public to prevent excessive legal barriers over photography and visual storytelling. Secondly, the building owners can modify or demolish a copyrighted building without the consent of the architects as per 17 U.S.C. § 120(b) and the architect cannot alter that affects the integrity of their design. Even though the Visual Artists Rights Act (VARA) of 1990 provide moral rights protection for artists and does not protect architects. Therefore, ensure that the property owner has the freedom to modify their buildings. This raise concerns over the architectural integrity and preservation of significant buildings.

Now we will look into a few case laws that are landmarkable in the US architectural copyright protection. In the case of *Rock and Roll Hall of Fame and Museum v. Gentile Production Inc*, the Rock and Roll Hall of Fame Foundation sued a photographer for selling the posters containing the museum’s distinctive architectural features without permission. The issue involved whether the museum’s architectural design could be treated as a trademark and

whether the photographer infringed it by his commercial use. The court ruled that museum design did not serve as a trademark and that the photographer is legally permissible to take the photo as public display is an exception. Further, in *Leicester v. Warner Bros*¹⁵ The sculpted architectural elements of Los Angeles buildings were featured in the first Batman Motion pictures. without obtaining the architect's consent. The architect filed a suit for copyright infringement. The issue involved was whether individual sculptural elements incorporated in the building could acquire separate copyright protection, the court ruled that sculpted elements were part of the architectural work and did not qualify for separate copyright protection. additionally, in *Yankee Candle Co. Inc v. New England Candle Co.*,¹⁶ Yankee Candle opened a store in the Holyoke Mall which was fitted out with several features including dark wood display cases, multi-paned windows, brass hardware and French doors. Yankee Candle was assigned the architectural plans from the architect and registered the plans and the building with the US Copyright Office. A competitor, New England Candle, opened a look-alike store in a nearby mall. The court ruled that retail store interior design only qualifies for copyright protection if it possesses distinct non-functional design elements.

In conclusion, the AWCPA also faced criticism for limiting the innovation as it provides overly broad protection to the architectural works, making it difficult for the architects to incorporate an existing design. Moreover, lacking clear originality standards and difficulty of distinguishing the functional and artistic elements in architecture. And as it allows the demolition and alteration of the copyright structure, which failed to protect the moral rights.

Freedom of Panorama: An Exception to Copyright Protection

Freedom of panorama is an exception to copyright protection. This legal principle allows individuals to freely take photographs, films, sketches, or reproduce sculptures, buildings, public structures, and artworks permanently situated in a public space without infringing on copyright protection and without the consent of the authors. The object behind this principle is to ensure that society's diverse interests are accommodated.¹⁷

The term "Freedom of panorama" is derived from the German word *Panoramafreiheit*, which means Panorama freedom. This legal principle varies from country to country. The history of

¹⁵ *Leicester v. Warner Bros*, 57 U.S.P.Q. 2d 1001 (9th Cir (US).

¹⁶ *Yankee Candle Co. Inc v. New England Candle Co.*, 14 F Supp 2d 154.

¹⁷ Anna Shtefan, *Freedom of Panorama: The EU Experience*, 11 EUR. J. LEGAL STUD. 13 (2019).

Freedom of Panorama can be traced back to 1840 when the kingdom of Bavaria enacted the first Freedom of Panorama. It is based on a two-module framework, the French-Italian and German-English models. The French-Italian Model does not lay down the restrictions on the copyright law, whereas the German-English Model highlight freedom of panorama as an exception to the copyright law. And India sided with the German-English models by making certain changes as suitable for the Indian scenario. Now we will be looking into how different countries have adopted this legal principle.

In France, the legal provisions do not explicitly mention or declare the existence of the legal principle of Freedom of panorama, neither regarding sculptures, architectural works, nor for 2D works permanently displayed in public spaces which meet the “*limitation to the criteria of originality*” (limitation au critere d’originalite). Additionally, there was a ruling of the Court of First Instance of Lyon that the copyright also applies to artworks displayed in public space, underlining the author’s exclusive right to reproduction and distribution. Furthermore, the French Intellectual Property Code stipulate strong provisions to ensure the protection of artistic works, including architects and artists. As per Article 111 and subsequent articles, an author has the right to control the use, reproduction and distribution of their work. Article 122 (1) envisages that the author has exclusive right over representation and broadcasting, includes photography, and further specifies that broadcasting includes making a work publicly known via any form of media covering photography and digital platforms. Moreover, Article 122 (4) makes the reproduction of a copyright work illegal even if it is either completely or partially made without the permission of the author or his legal heirs. In short, these provisions try to ensure both the economic and moral rights of authors are protected.

An interesting example would be the Eiffel Tower, which is France’s most famous monument. This monument is listed in the class of Architectural works protected by the European Union Copyright which was inserted into French Law. Since Gustave Eiffel passed away in 1923, the copyright protection granted for the physical structure of the tower came to an end in 1933, as the copyright protection in France lasts for 70 years after the death of the author, which is mentioned in Article 123 (1) of the French Intellectual Property Code. This subsequently makes the photography of the Eiffel Tower in the daytime out of the ambit of copyright protection and can be freely used. However, the controversial part is regarding the photography of the Eiffel Tower taken at night time. Because the illuminations and sparkling light display were added in 1985 by Pierre Bideau, it is treated as a separate artistic work and is still protected under French

copyright. Nevertheless, the illuminated tower photographs can be taken for non-commercial purposes, but if it is for commercial purposes, it requires permission. The French court confirmed that *the Société Nouvelle d'Exploitation de la Tour Eiffel* (SNTE), which holds the copyright over the tower, has the right to collect fees for nighttime unless the tower is merely an incidental part of a panoramic cityscape photograph featuring multiple monuments. And this instance has lightened debates about the lack of freedom of panorama in many European countries, including France.

In the Indian scenario, there is also no provision defining the Freedom of Panorama under the Copyright Act of 1957. However, sections 52 (t) and 52 (u) related to the concept of Freedom of Panorama. Section 52 (t) of the Copyright Act of 1957 stipulates that the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or any other work of artistic craftsmanship, which is permanently situated in a public place or any premises which is access to the public will not amount to copyright infringement¹⁸. Additionally, in sub-clause (u) of section 52, which also covered cinematographic films, as well as architectural works displayed in public space, within the concept of Freedom of Panorama. For instance, there was a short feature film called “*Neelkant Darshan*”, the film was shot in the Akshardham Temple, where the photography and videography of the temple were prohibited. As per section 14(c) (i) (A) of the Copyright Act of 1957, the architects and authors of an architectural work have an exclusive right to prevent others from storing their works in the electronic medium. That expressively conveys that the tourists capturing the photo of the Akshardham Temple can be a copyright infringement. Nevertheless, according to section 52, the provision provides an exception by granting permission to the people to take photographs and videography of buildings that are situated permanently in a publicly accessible location. This exception aligns with the idea of Freedom of Panorama.

Conclusion and Suggestion

In conclusion, it seems that the topic of architectural works and copyright protection still requires evolution, and the intellectual property world together needs to address the lack of knowledge and ignore that take place around the same time. As creator’s architects also put a great effort into the creation of architectural work, this cannot be ruined because of negligence in looking into its broad scope and need in the current scenario. Though there are laws, they

¹⁸ <https://www.khuranaandkhu.rana.com/2017/11/29/freedom-of-panorama/>

are sufficient and effective in protecting the architect's interests, and this augments their wider application. There are even legendary buildings around the world that have acquired copyrights on their own; the Burj Al Arab in the UAE and the Luxor Hotel and Casino in Las Vegas are only a few among them, and this list may extend in the forthcoming years.

Further, for more clarity and balance, it requires a harmonised Copyright Framework that brings meaningful protection to the Architecture interest without restraining property rights and public access. Considering the Indian Copyright regime, the enforceability of moral and economic rights, such as restraining the demolition of a building, is limited, which significantly weakens the Copyrightability of Architectural works and reduces the possibility of providing protection of drawings and plans. Moreover, envisaging legislative clarity by distinguishing the protectable artistic elements, ranging from functional features, with a stronger remedial mechanism would strengthen the Architectural rights without neglecting the ownership interests.

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