FRENCH PERSPECTIVE

COPYRIGHT ISSUES RELATED TO ARCHITECTURE AND CONSTRUCTION

Eléonore GASPAR
Duclos, Thorne, Mollet-Viéville & Associés
Paris, France

AIPPI – Trilateral seminar - 2017 Warsaw
March 17, 2017

Copyright protection of architectural works

- **Berne Convention**

  Article 2 (1)

- **Article L. 112-2 of the IPC** :

  « *The following, in particular, shall be considered works of the mind within the meaning of this Code: (…)*
  7° works of drawing, painting, architecture, sculpture, engraving and lithography;(…)
  12° plans, sketches and three-dimensional works relative to (…) architecture (…) »

dtmv & associés

What types of architectural works are eligible for protection under copyright law?

- Buildings and monuments
- Plans, sketches and models
- Interiors

dtmv & associés

What are the criteria for copyright protection?

To qualify for copyright protection, an architectural work must:

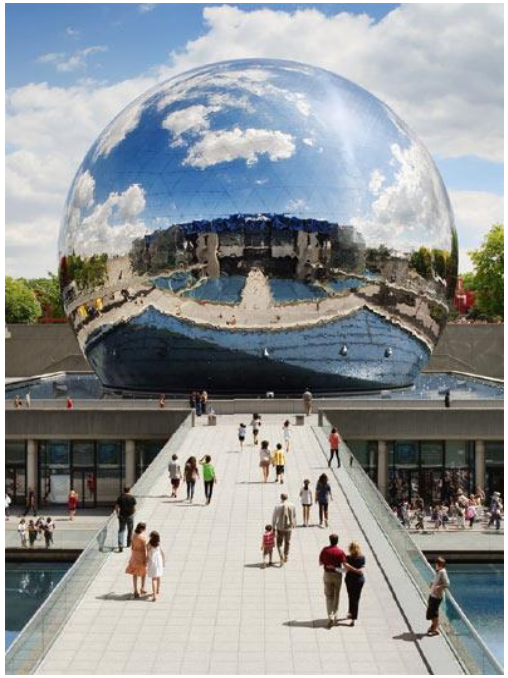
- be **original** = **"expression of the author's personality"**

- ***« In architectural matters, the originality required <u>must not be the result of technical, functional or environmental constraints</u> but of a personal choice by the author involving a true effort of intellectual creation and aesthetic research giving the work of the mind in question its own individual overall appearance"*** (*Metz Court of Appeals, December 4, 2014*)

- **No protection of idea**

dtmv & associés

Examples of architectural works protected by French Copyright Law



La Géode – La Cité des Sciences et de l'Industrie, Paris, France - © Unknown

PYRAMIDE DU LOUVRE, Paris, France - © Unknown

La Grande Arche de la Défense, Paris, France - © Don Weston

dtmv & associés

Examples of architectural works protected by French Copyright Law

- **Extensions, design and decoration of a building intended as a restaurant** (*Paris First Instance Court, March 25, 1993*)

Interior of N'CAFE restaurant, HOTEL NOVOTEL, Paris - © Unknown

- **The renovation of a building, i.e., the restoration of the glass wall, the extension of the stairs and the installation of utility areas** (*Paris Court of Appeals, 4th Chamber, November 20, 1996)*

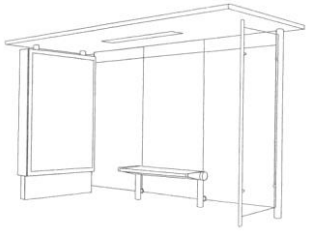
« Le Manoir de Paris » located 16 rue du Paradis in Paris, © Unknown

Examples of architectural works protected by French Copyright Law

- **A wastewater treatment plant** (*Paris Court of Appeals, 4th Chamber, January 18, 2002*) ;

- **Plans and design drawings for the design and decoration of a shoe shop** (*Paris Court of Appeals, 4th Chamber, October 26, 2005*);

- **A bus station and its bench** (*Paris First Instance Court, March 17, 2010)*



- **An architectural landscape plan** (Versailles Court of Appeals, May 16, 2013)

dtmv & associés

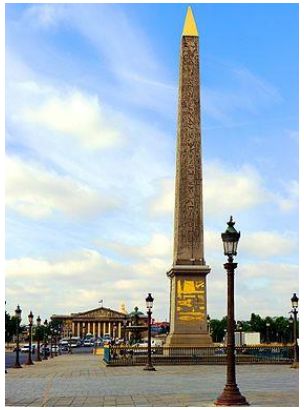
Examples of architectural works not protected by French Copyright Law

- **Interior renovation**, i.e., **consolidation of frames and floors**, and **configuration of offices** (*Council of State, 2nd and 6th subsections, May 6, 2005, no. 78833*);
- **Standard design for an optical shop only based on general recommandations and drawings** (*Supreme Court, 1st Civil Chamber, June 17, 2003, no. 01/17-650, Ms X. v. ALAIN AFFLELOU et al.*);
- **A wooden shed model** (*Supreme Court, 1st Civil Chamber, no. 05/12-193, July 5, 2006*);
- **Plans prepared on the basis of requirements imposed by a design charter** (*Paris First Instance Court, April 26, 2013*);
- **An exhibition stand respecting functional requirements and contraints set by the exhibition organizer** (*Paris First Instance Court, October 3, 2013*)

Term of protection

- Lifetime of the author + 70 years after his/her death

Examples of architectural works in the public domain



dtmv & associés

Specific examples of architectural works in the public domain

The **lighting of the Eiffel Tower** (*Supreme Court, March 3, 1992, SYN A.P.S and Karen von Spreckelsen v. Abeilles Cartes*)

The Centennial of the Eiffel Tower, Paris, France - © LE MONDE EN IMAGES

New provision : article L 641-42 of the Patrmonial Code
- Image of buildings in the « national domain »

dtmv & associés

ECONOMIC RIGHTS

<u>reproduction and representation rights</u>
(Art. L. 122-2 and L. 122-3 of the IPC)

<u>In the case of works of architecture</u>, reproduction shall also consist in the repeated execution of a plan or of a standard project »

- **express assignment of rights**
- **financial compensation**

- Examples **of infringements**

  - **Reproduction of an urban development project** *(Supreme Court, Criminal Chamber, September 24, 1997);*

  - **Display of architectural works** (*Paris Court of Appeals, April 4, 1985, Bonne v. Centre Pompidou*)

dtmv & associés

Exceptions to copyright protection

- General exceptions : Article **L. 122-5 of the IPC**

  Such as family circle, private copying, parody, press reviews, pastiche and caricature or exception for the benefit of libraries, museums and archive services …

- Exception specific to architectural works:

  ➢ article L. 122-5 (9°) of the IPC : « *reproduction or representation, in full or in part, of a work of graphic art, a visual work or <u>an architectural work</u> in the written press, or via visual or online media, for the exclusive purpose of <u>immediate information on an event</u>, subject to stating clearly the name of the author.* »

dtmv & associés

FREEDOM OF PANORAMA EXCEPTION?

- Exception provided by Directive No. 2001/29/EC (**a non-mandatory exception**)

  Article 5 (h): « *(…) use of works, such as works of architecture or sculpture, made to be located permanently in public places* »

- Recently introduced in French copyright law by the **Law for a Digital Republic No. 2016-1321 of October 7, 2016**

  Article L, 122-5 (11°) of the IPC: « *representations and reproductions of sculptures and architectural works placed permanently in public places, which are taken by individuals for non-profit purposes* »

→ **a late, partial and limited transposition**

dtmv & associés

FREEDOM OF PANORAMA EXCEPTION?

« **Background exception** » (*exception dite d'arrière-plan*) established by French case law

- Supreme Court, 1st Civil Chamber, March 15, 2005, no. 03/14-820, D. Buren v. Editions Cellard

  « *the representation of a work located in a public place is not infringing when it is incidental to the subject treated* »

Daniel Buren's fountains, Place des Terreaux, Lyons, France - © Daniel Buren

Place des Terreaux, Lyons, France - © Muriel Chaulet

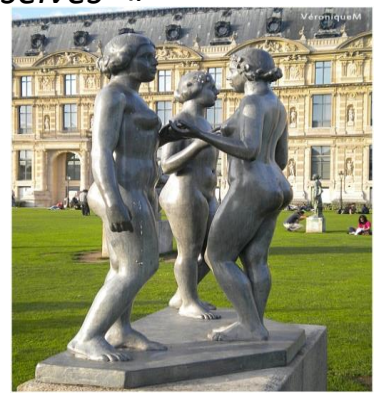
dtmv & associés

FREEDOM OF PANORAMA EXCEPTION?

« **Background exception** » (*exception dite d'arrière-plan*) established by French case law

- Supreme Court, 1st Civil Chamber, July 4, 1995, no. 93/10.555, Aristide Maillol case

  « *the representation of a work located in a public place is legal only when it is incidental to the main subject that is represented or treated ; (…) as the sculptures were filmed in their entirety and close up, which was not necessary given the subject treated, they were voluntarily presented for themselves* »



Aristide Maillol, *Monument à Cézanne* and *Trois Nymphes*, Tuileries Gardens, Paris, France - © Bernard Le Lann and © Véronique M.

dtmv & associés

Moral rights of architects

= the authorship right, the right of integrity, the right of disclosure and the right of withdrawal
(Art. L.121-1 of the IPC)

- Examples of violation of **the authorship right**
  - **Absence of the architect's name on a brochure including a photograph of the building designed by him** (*Besançon Court of Appeals, January 8, 1998*);
  - **Absence of the architect's name on the plans** (*Supreme Court, 1st Civil Chamber, June 5, 1984*), on the models (*Supreme Court, Criminal Chamber, January 26, 1965*) and on the buildings themselves
- Examples of violation of **the right of integrity**
  - **Undertaking of structural work <u>without the architect's consent</u> distorting his work and destroying the harmony of the architectural whole** (*Supreme Court, 1st Chamber, December 1, 1987*)

Moral right v. Property right

Striking a balance between the interests and rights of architects and building owners

« *Because of the utilitarian purpose of buildings commissioned from architects, architects cannot impose an absolute inalienability of their work, and the owner is entitled to make modifications when it becomes necessary to adapt it to new needs. The courts must therefore assess whether such modifications to the architectural work are, taking account of their nature and importance, justified by the circumstances that brought the owner to make them* » (*Supreme Court, 1st Civil Chamber, January 7, 1992, no.90/17.534*)

Case law solution reiterated: *Supreme Court, 1st Civil Chamber, June 11, 2009.*

Two conditions : 1) new needs

2) modifications strictly necessary, and not disproportionate to the aim pursued.

dtmv & associés

Other limits : Rules of public policy

- rules provided by urban planning law
- security and safety
- technical requirements

dtmv & associés

THANK YOU FOR YOUR ATTENTION

Duclos, Thorne, Mollet-Viéville & associés
164, rue du Faubourg Saint-Honoré
75008 Paris
Téléphone: +33 (0)1 56 69 31 00
Télécopie : +33 (0)1 56 69 31 01

gaspar@dtmvparis.com