

# ARCHITECTURAL COPYRIGHT

Interview with lawyer Thomas Höhne

Going public with a project or a design concept may not be a matter of getting publicity only. It can also be a matter of maintaining control and of making clear who is the owner of the rights on the design or concept and on the visuals related to it. We discussed the issue of architectural copyright with Thomas Höhne, a Vienna-based lawyer and expert in the field. And we found out that, in some cases, publicity may help you to protect your rights.

## *Wonderland: What exactly does copyright mean?*

Höhne: Anybody who originates a creative work automatically holds an exclusive right of use. This is similar to a property right. Although there are some European guidelines and conventions, the right of use remains a matter of national legislation in the end. The originator holds all rights on the work in the first place. In architecture, you may obtain the right to implement a construction design once or several times, to build it in Austria only or elsewhere, with or without any changes. Basically, all conceivable variants with regard to content, location, and time are possible.

## *You're talking about the rights of a client now. What about the rights of the architect?*

As a matter of principle, the originator is the holder of all rights pertaining to the work. The notion of the work is central to copyright. It is the creative achievement. But not everything that is creative can be called a work. Certain qualifications have to be met. The originator is the person who made the creation. He has the so-called moral rights and the exploitation rights. Moral rights include the right of being named as author, the right of publication and access.

## *What are the criteria to define something as a work in the legal sense?*

The law does not specify any criteria. It is possible that something is great, but may be nothing in terms of copyright. This is not a quality judgment.

## *Are publications relevant?*

If several architectural critics review the work or architecture magazines report on it, I would say it is relevant. Under Austrian law, it is a solely law-based decision which means that the judge does not have to hear expert opinions.

## *Is it permitted to photograph the work?*

Once the building is completed, unrestricted work use and the freedom of the public realm apply in Austria and Germany. When a film showing the work is broadcast on TV, it is permissible if I turn on my VCR and make a copy of it. It is not permissible, however, to make multiple copies for sale. And of course, replicating, or re-building, the built work is not permitted. However, it is allowed to represent the building in a painting, drawing, photograph, or film, and to distribute these pictures.

## *Should the author be indicated?*

Although, of course, it should be done, it doesn't happen in the majority of cases.

## *It seems that the majority of architects are not fully aware of their rights.*

As a matter of principle, indicating the author is obligatory. Some time ago, I read a detailed report on a recently opened restaurant. The owner and the chef were mentioned, the food was described, and it was also indicated who had taken the photos and written the article. However, the architect of the place went unmentioned. This is a lack of public awareness.

## *Is there anything like an architectural patent?*

Yes, there is, but it doesn't play an important role. A patent protects technical developments and procedures. But architecture isn't primarily about technologies, but about design. A plan is not patentable. However, there are examples of patents in architecture: Buckminster Fuller took out a patent on complete detached houses using airplane technology. Jean Prouvé and Konrad Wachsmann did the same. The difference between copyright and patent lies in the fact that the copyright isn't registered anywhere. You obtain it by the act of creating something.

## *In architecture, there may also be a question of who was first ...?*

Where is the boundary between inspiration and plagiarism? This is very difficult to determine. Of course, no architect works in a vacuum, or invents things from scratch.

## *What should architects be careful about? What can, or should, they try to settle by contract beforehand?*

There is always a question of power which affects all creative professions. There are plenty of details, which can be agreed upon by contract. For example: where and in which form will I be allowed to put up a plate which identifies me as the architect of the building; when and how will I have access to the house? According to the law, I have the right to do so, but the details are always negotiable. The essential question is: How far does my authorship go? Is the client entitled to commission somebody else to revise or complete my preliminary draft? Will I be able to establish my legal position as the sole originator of the whole project?

## *What about changes in the building stage and after completion?*

Austrian copyright laws entitle the client to make changes. The planner cannot insist on

maintaining his design without any modification. Architect fees are ten to twenty per cent of the building cost. In this case, you have to be pragmatic enough to recognize that. If the architect succeeds to stipulate that the client shall have to consult him before making changes, then the architect has an opportunity to bring in his ideas. But there will be no contract, in which the client unreservedly commits himself to carry out changes only with the agreement or collaboration of the architect. In Germany, too, courts of law always weigh up clients interests and the architect's rights. It was a sensation when Meinhard von Gerkan won the case he filed about the Berlin Central Station.

## *Who is the owner of the plans?*

This is something that should be stipulated in the contract. If the architect only provides the design and the client is responsible for the construction, the client will of course need the plans and will stipulate this in the contract. When the architect also does the detail planning or acts as construction supervisor, the client doesn't need to have the plans. And the client is not allowed to copy the plans.

## *When, and to which extent, will the architect have to share the copyright with other professionals involved in the building project?*

Under copyright law, a simple idea is not considered a work. Ideas and wishes of the client therefore are not relevant. If the client's requirements are so strict that the planner's task is reduced to mere implementation of given specifications, then the client will be considered as the originator. This was a matter in dispute between Friedensreich Hundertwasser and the architect who actually did the detail planning of the "Hundertwasser House". It turned out, though, that not the complete work was attributable to Hundertwasser. ❧

Interview by Silvia Forlati

Thomas Höhne, Vienna, Austria. Lawyer and senior partner of Höhne, In der Maur & Partner in Vienna. He is specialized in information law (including copyright, media and Internet), competition and trademark. He has recently published the book 'Architektur und Urheberrecht' (Manz, Vienna, 2007), about copyrights for architects and engineer in Austria and Germany. [www.h-i-p.at](http://www.h-i-p.at)