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.

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.

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.

What should architects be careful about?

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 authorship 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.

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 about changes in the building stage 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 percent of the building costs. 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 architects 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.

Interview with Silvia Fiala

Thomas Höhne, Vienna, Austria 1985. Written and produced by Silvia Fiala in der Maria Theresien-Strasse 2, 1060 Vienna, Austria. Copyright © 2004 Silvia Fiala and Vienna architecture students. All rights reserved. Published in Austria by Architektur Studien Europäisch (May, Vienna 2004). More copyrights for architects and planners in Austria and Germany are available.