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Public Art and Copyright Law

An Exploratory Analysis

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Overview

- **Terms in place**
- **Architectural copyright**
- **Copyright protection for works of public art**
- **Mapping the conflicting interests in Public Art**
- **Making sense of the “public interest” in PA cases**



Public art?

Terms in place

street graffiti

Landscape

Bridges dams

furniture Paintings

Monuments lighting

civic gardens

Buildings

Structures

Terms in place



Common features

- Publicly displayed
- Single/stand alone original works

YET

Terms in place



Architectural copyright

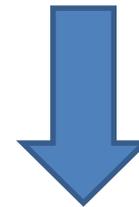
Diverse © regimes

Public works of
fine art



“traditional”
copyright

Architectural works



**architectural
copyright**

Architectural copyright: decades of debate

1908 Berlin Revision Conference of the Berne Convention → works of architecture

- **Article L. 112-2, 7° of the French Intellectual Property Code** → works of architecture and urban design
- **1911 of United Kingdom** → design contained in architectural drawings but not architectural ideas and concepts

Directive 2001/29/EC (art 5(3), lett h)) → **freedom of panorama**

- 'use of works, such as works of architecture or sculpture, made to be located permanently in public spaces'

1990 US Architectural Works Copyright Protection Act (AWCPA):

- Only human occupancy (no bridges, dams, tents, recreational vehicles, mobile homes and boats)
- No moral rights

SOUTH ELEVATION

2000 Australian Copyright Amendment (Moral Rights) Act → **moral rights to architects**

- Paternity right
- Integrity right

EAST ELEVATION

110 BATH STREET,
GLASGOW APRIL 1900

More on copyright on architectural works

Traditionally → immaterial representation (*corpus mysticum*)

∨
material embodiment(s) (*corpus mechanicum*)

Architectural works → *1 corpus mysticum*

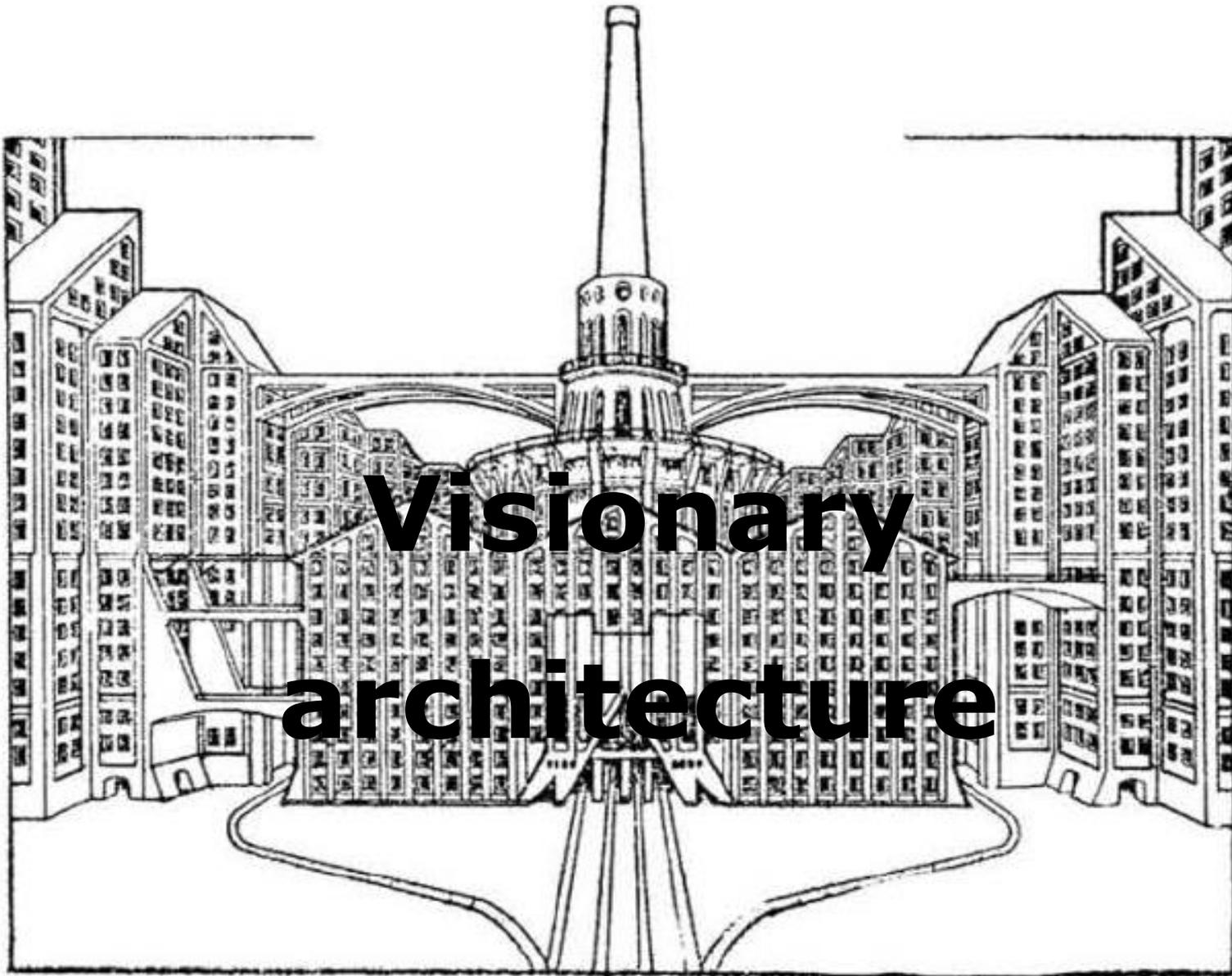
2 corpora mechanica

two material embodiments of the same immaterial representation

Plans and drawings



Completed work



Visionary architecture

Gran Fábrica

(tinta roja sobre cartulina, 28,5 x 32,5 cm.)

Publicado en *Architettura futurista* (fig. n. 21), Foligno, 1924.

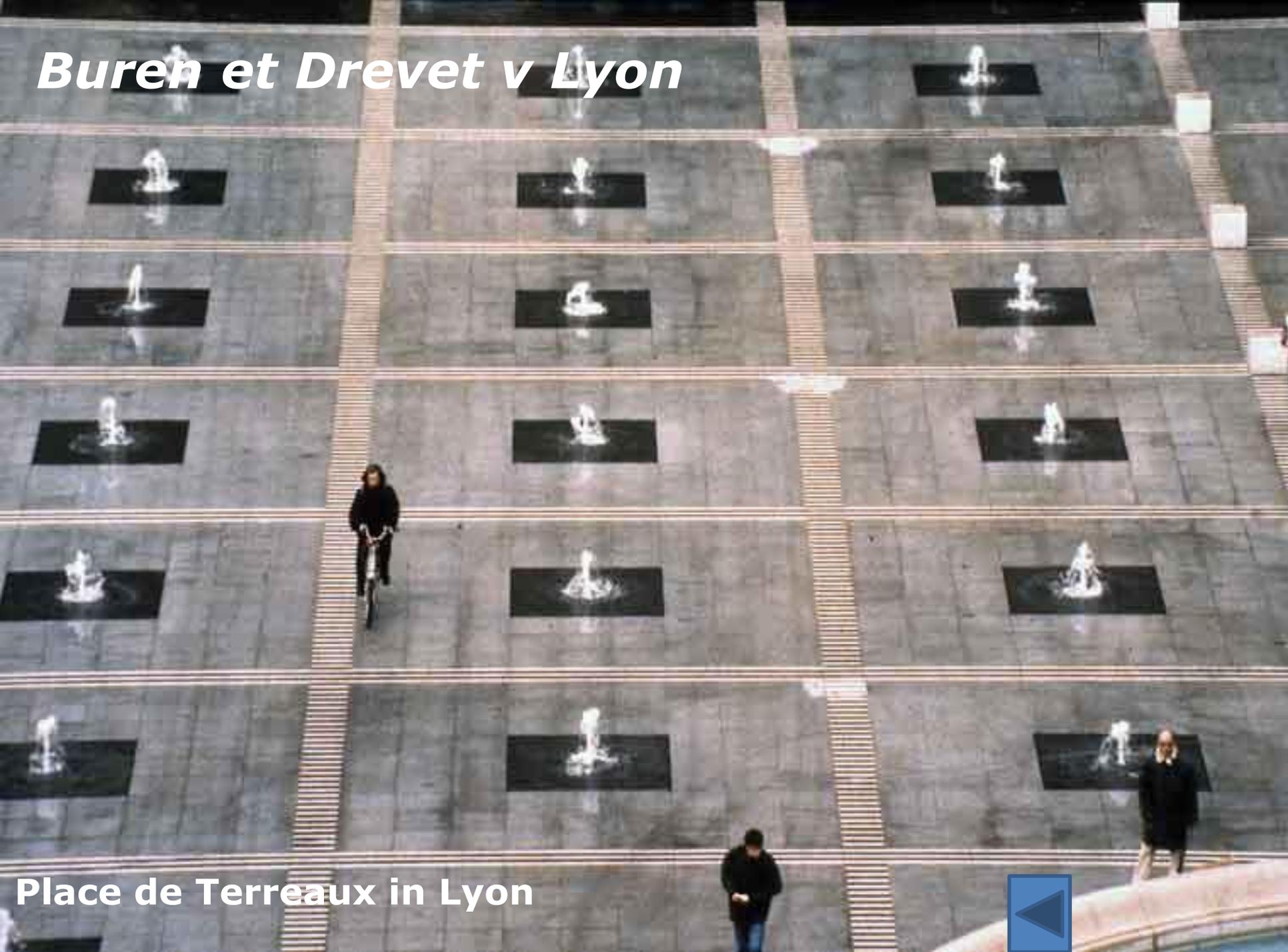
Copyright protection for public art works

Completed works and ECONOMIC RIGHTS

- Two-dimensional reproduction
 - *Buren et Drevet v [Lyon](#)* (2005) FR
 - *[Radford](#) v Hallensteins Bros Ltd* (2007) NZ
 - *[Tats Cru](#) v Fiat* (2011)
 - *Cali Killa v [Urban Outfitters](#)* (2011)
 - *[Rime](#) v Moschino* (2015)
- Three-dimensional reproduction
 - Miniatures
 - Same size
 - Wangjing Soho [project](#) vs Meiquan 22nd Century
 - Austrian town of [Hallstatt](#)



Buren et Drevet v Lyon



Place de Terreaux in Lyon



Radford v Hallensteins Bros Ltd



Radford's Tip in Auckland



Tats Cru v Fiat



Cali Killa v Urban Outfitters



MOSCHINO

Rime v Moschino



Wangjing Soho and Meiquan 22nd Century





Austrian town of Hallstatt

Chinese town of Hallstatt



The 'MORAL SIDE' of public art ...

- Calatrava's Zubi Zuri in [Bilbao](#) (2007) SP
- Stuttgarter Hauptbahnhof ([2010](#)) GE

... And beyond

- Banksy phenomenon
 - *The Creative Foundation v Dreamland Leisure Ltd & Ors* ([2015](#))
 - Banksy's Slave Labour ([2013](#))
- Blu phenomenon
 - Blu v Bologna ([2016](#))

Zubi Zuri Bridge in Bilbao



“In addition to constituting a singular artistic creation suitable for protection, the work is a public one, offering a service to the citizens, and thus satisfies a public interest. If we weigh these interests, the public must prevail over the private”



Stuttgarter Hauptbahnhof



(Banksy's) Art Buff (Folkestone)



Banksy's Slave Labour (London)



Blu v Bologna



Mapping the conflicting interests in Public Art

- Private interests of the Author/Architect/Artist → Copyright/
individual identity
- Private interest of the Owner → Property
- Pluralistic interests
 - Local/state authorities → Cultural heritage
law/urban law
 - Third parties → Freedom of
panorama
 - Communities inhabiting that
public space → Collective
identity

Making sense of the public interest in PA

- Works created to be publicly displayed
- Trilateral relationship: author/owner/**public**
- Copyright traditional balance between private and public interests is altered
- Identitarian processes are triggered
- Collective interests play a role

Thanks! Questions ... comments ...

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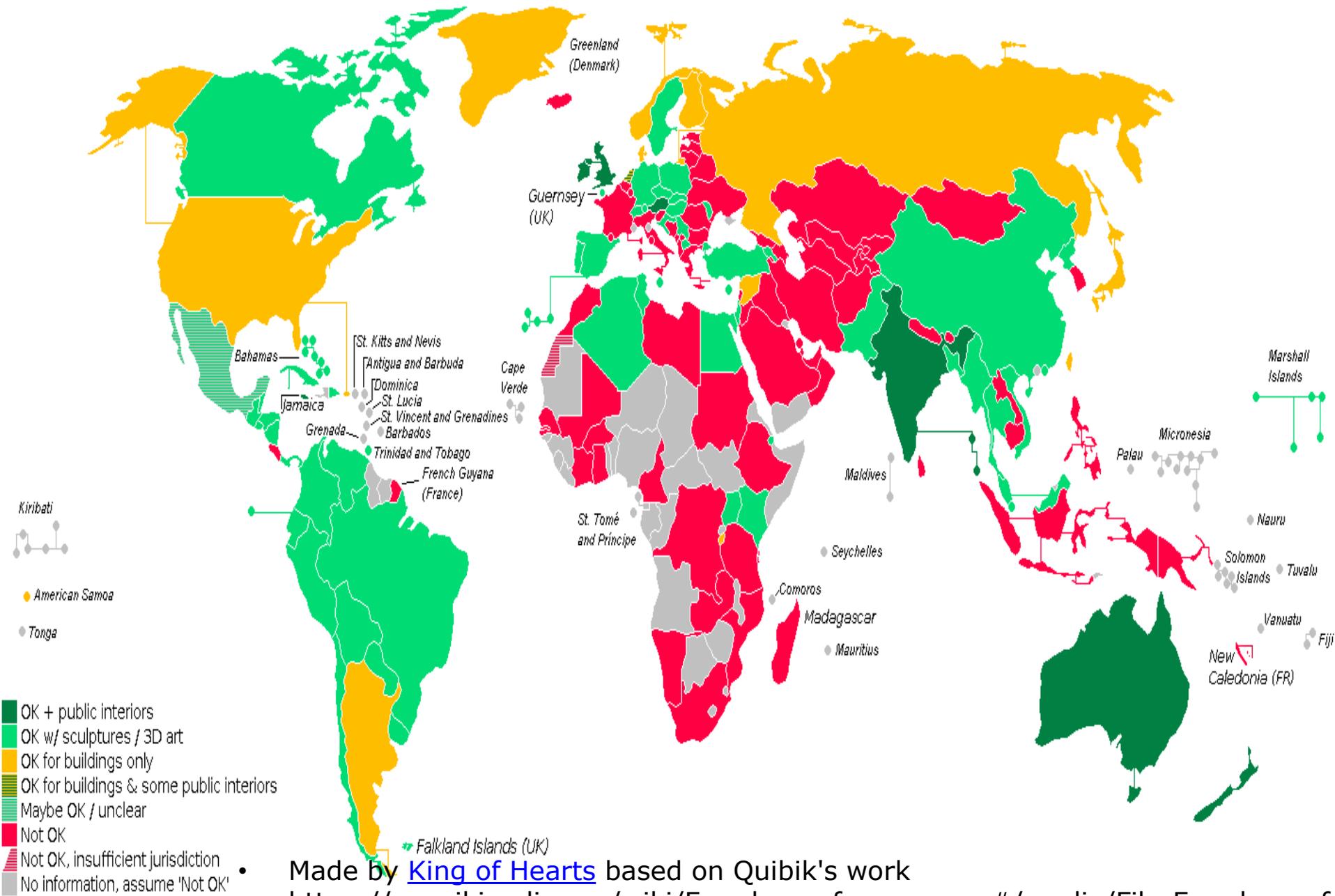


Bicycle rank in Brookline, MA

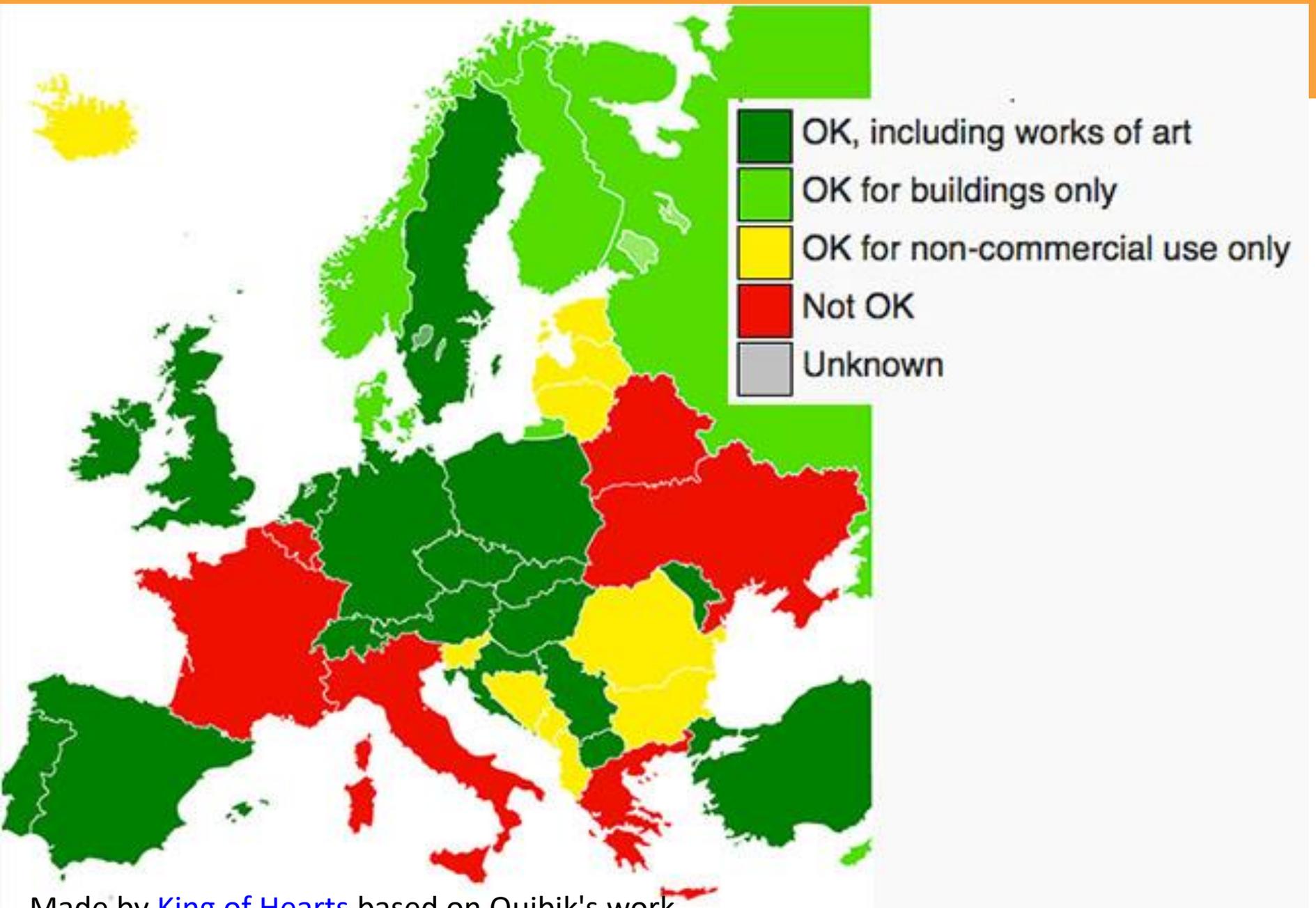
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What is freedom of panorama?

- Copyright exception:
 - 17 U.S. Code § 120(a)
 - European Union, Directive 2001/29/EC, Article 5(3), h
 - Member states (62 of the United Kingdom Copyright, Designs and Patents Act 1988; article 59 of the *Urheberrechtsgesetz*)
- Different interpretation:
 - Commercial vs non commercial
 - Public art boundaries
 - Where the photo is taken from
- Risk of overlap with cultural heritage laws



Made by [King of Hearts](#) based on Quibik's work
https://en.wikipedia.org/wiki/Freedom_of_panorama#/media/File:Freedom_of_Panorama_world_map.svg



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Legal Street Art & Copyright Protection

- Paintings on walls that are legally realized are no different from other artistic works
- They are protected if they meet copyright requirements
- Therefore, copyright protection will include:
 - Protection from copying OK
 - Protection from sale and removal OK
 - Protection from destruction ... depending on the public interest at stake

Making sense of the public interest in PA

- Publicly displayed artworks alter the traditional balance between private and public interests
- Trilateral relationship: author/owner/**public**
- Public art works trigger identitarian processes and resurrect pluralist interests

Illegal Street Art & Copyright protection

- Illegal street art is protected under copyright as the process by which an artwork is created is neutral in copyright terms (see, for example, paparazzi pictures).
- Copyright protection includes:
 - Protection from copying OK
 - Protection from sale and removal NOT SURE
 - Protection from destruction MORE LIKELY NOT