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# BEST CASE SCENARIOS FOR COPYRIGHT

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## FREEDOM OF PANORAMA IN PORTUGAL

by Teresa Nobre

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**Best Case Scenarios for Copyright** is an initiative by COMMUNIA, presenting best examples of copyright exceptions and limitations found in national laws of member states of the European Union. We believe that, by harmonizing copyright exceptions and limitations across Europe, using as a model these best examples that are permitted within the EU law, the EU would reinforce users' rights in access to culture and education.


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The **COMMUNIA International Association** on the public domain is a network of activists, researchers and practitioners from universities, NGOs and SME established in 10 Member States. COMMUNIA advocates for policies that expand the public domain and increase access to and reuse of culture and knowledge. We seek to limit the scope of exclusive copyright to sensible proportions that do not place unnecessary restrictions on access and use.

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# INTRODUCTION

Freedom of panorama derives from the German term *Panoramafreiheit*, and generally refers to the rights to photograph, film or otherwise reproduce copyrighted works that are located in public places, and to publish or otherwise share such reproductions without the author's consent.

As we will see in this study, when it comes to the so-called freedom of panorama<sup>1</sup>, Portugal has taken “full advantage of all policy space available”<sup>2</sup> under the European Union law. This was achieved by almost literally transposing into national law the freedom of panorama exception “prototype”<sup>3</sup> provided for in the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (“InfoSoc Directive”).

It has been argued that the way to achieve the most flexible implementation of the optional EU exceptions is by means of “literal copies of the prototypes” embedded in the InfoSoc (Hugenholtz and Senftleben, 2011: 17). That is what Portugal has done<sup>4</sup>.

Moreover, for freedom of panorama, Portugal has fully explored the “flexibility (that lies) outside the EU *acquis*”<sup>5</sup>. Indeed, instead of limiting the scope of application of the national exception to the rights harmonised under the Directive (reproduction, communication to the public, making available to the public, and distribution), the Portuguese legislator decided to further apply the exception to all exclusive rights, including the unharmonised right of adaptation. This allows for unauthorised transformative uses, which are generally not contemplated by freedom of panorama provisions found in other laws of EU member states<sup>6</sup>.

As a result of this national strategy, we now find in Portugal a relatively abstract norm that allows for a broad spectrum of unauthorised uses, provided that the three-step test criteria is met. This leads undeniably to a flexible “semi-open norm that comes close to open-ended defences, such as the US fair use doctrine”

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<sup>1</sup> The Portuguese legislator does not use the term “freedom of panorama”.

<sup>2</sup> Hugenholtz and Senftleben, 2011: 2.

<sup>3</sup> The exceptions listed in the InfoSoc “constitute prototypes for national law making rather than precisely circumscribed exceptions with no inherent flexibility” (Hugenholtz and Senftleben, 2011: 14).

<sup>4</sup> Portugal has transposed into national law almost all the optional exceptions listed in the InfoSoc Directive (Gonçalves, 2006: 252). The only exception that was left aside was the parody exception – parody is considered to be secured by freedom of speech (Pereira, 2008: 866-860) and by the rule that protects parodies as new original works [Associação Portuguesa de Propriedade Intelectual, [Parecer sobre a proposta de Lei n.º 108/IX – Transposição da Directiva n.º 2001/29, de 22 de Maio](#) (2004)]. About half of the optional exceptions were implemented into Portuguese law by literally copying the text of the InfoSoc Directive.

<sup>5</sup> See Hugenholtz and Senftleben, 2011: 26.

<sup>6</sup> See the [Report on the Freedom of Panorama in Europe by iRights Berlin](#) and the [Report on the Freedom of Panorama in Europe by University of Library Studies and IT, Bulgaria](#), both commissioned by Wikimedia Deutschland.

(Hugenholtz and Senftleben, 2011: 17). That is the reason why this national model was selected as the best example of a freedom of panorama exception in the EU context. When we say the “best example”, we intend to say the best example considering the EU copyright *acquis*.

# FREEDOM OF PANORAMA IN PORTUGAL

## 1. Text of the copyright exception or limitation

All provisions mentioned herein are from the Portuguese Code of Authors' Rights and Neighbouring Rights (*Código do Direito de Autor e dos Direitos Conexos*) ("Portuguese Code") introduced by the Decree-Law no. 63/85 of 14 March 1985 (as last amended by the Law no. 49/2015 of 5 June 2015).

An official and updated original version of the Code is available at [pgdlisboa.pt](http://pgdlisboa.pt). There are no official translations into English available.

### 1.1. Main legal provision

The freedom of panorama exception or limitation<sup>7</sup> was introduced by the [Law no. 50/2004 of 24 August 2004](#), which implemented the InfoSoc Directive. The wording used in the national legal provision is nearly the same as the wording used in article 5, paragraph 3, point h) of the InfoSoc Directive.

Freedom of panorama exception is foreseen in article 75.<sup>o</sup>, paragraph 2, point q) of Chapter II (On Free Uses) of Title II (On Uses of the Work) of the Portuguese Code. This provision (as well as the remaining provisions in this title) only regulates uses of works protected by "*direito de autor*" (authors' rights), i.e. literary and artistic works:

#### [Artigo 75.<sup>o</sup>](#)

Âmbito

(...)

2. São lícitas, sem o consentimento do autor, as seguintes utilizações da obra:

(...)

q. A utilização de obras, como, por exemplo, obras de arquitectura ou escultura, feitas para serem mantidas permanentemente em locais públicos;

(...)

3. É também lícita a distribuição dos exemplares licitamente reproduzidos, na medida justificada pelo objectivo do acto de reprodução.

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<sup>7</sup> Portuguese law applies the term "utilização livre" ("free use"). No reference is made to the terms "exceptions" or "limitations". Those terms refer to different legal concepts: "exception" is generally understood as a derogation from a rule; "limitation" often refers to legal provisions that exclude certain subject matters from the protection of copyright. In Portuguese legal literature we find different scholars rejecting the term "exception" in favour of the term "limitation" (e.g. Ascensão, 2003: 89-90; Vieira, 2009: 443-444; Vicente, 2011: 258-260). In joined cases C-457/11 to C-460/11 *VG Wort*, 27 June 2013, the Court of Justice of the European Union (CJEU) held that "the exclusive right may, depending on the circumstances, be either, as an exception, totally excluded, or merely limited". In this study, the terms "exception" and "limitation" will be used interchangeably, for purposes of simplicity.

## **Article 75.º**

### **Scope**

(...)

2. The following uses of the work are legal, without the author's consent:

(...)

q. the use of works, such as, for instance, works of architecture or sculpture, made to be located permanently in public places;

(...)

3. The distribution of the legally reproduced copies, to the extent justified by the purpose of the act of reproduction, is also legal.

## 1.2. Other relevant legal provisions

The conditions applicable to the freedom of panorama exception are foreseen in article 75.º, paragraph 4 (which lays down the so-called three-step test), and in article 76.º, paragraph 1, point a) (which refers to the right of attribution):

### Artigo 75.º

#### **Âmbito**

(...)

4. Os modos de exercício das utilizações previstas nos números anteriores não devem atingir a exploração normal da obra, nem causar prejuízo injustificado dos interesses legítimos do autor.

(...)

## **Article 75.º**

### **Scope**

(...)

4. The ways of exercising the uses foreseen in the preceding paragraphs shall not be contrary to the normal exploitation of the work, nor cause an unjustified prejudice to the legitimate interests of the author.

(...)

### Artigo 76.º

#### **Requisitos**

1. A utilização livre a que se refere o artigo anterior deve ser acompanhada:

a) Da indicação, sempre que possível, do nome do autor e do editor, do título da obra e demais circunstâncias que os identifiquem;

(...)

## **Article 76.º**

### **Conditions**

The free uses mentioned in the preceding article shall be accompanied of:

a) the indication, wherever possible, of the name of the author and of the editor, the title of the work and other circumstances that identify them;

(...)

The Portuguese Code envisages the right to translate or otherwise transform a work that is used under any exception or limitation to authors' rights (including without limitation the freedom of panorama limitation) in article 71.º:

### Artigo 71.º

#### **Faculdade Legal de Tradução**

A faculdade legal de utilização de uma obra sem prévio consentimento do autor implica a faculdade de a traduzir ou transformar por qualquer modo, na medida necessária para essa utilização.

### **Article 71.º**

#### **Statutory Right of Translation**

The statutory right to use a work without the author's previous consent includes the statutory right to translate or otherwise transform, to the extent necessary to such use.

A definition of the term "*lugar público*" ("public place") is provided for in article 149.º, paragraph 3 of Section VI (On Broadcasting and other processes aimed at reproducing signals, sounds and images) of Chapter III (On Uses in special) of Title II (On Uses of the Work) of the Portuguese Copyright:

### Artigo 149.º

#### **Autorização**

(...)

3. Entende-se por lugar público todo aquele a que seja oferecido o acesso, implícita ou explicitamente, mediante remuneração ou sem ela, ainda que com reserva declarada do direito de admissão.

### **Article 149.º**

#### **Permission**

(...)

3. A public place is understood as a place to which access is offered, explicitly or implicitly, for remuneration or without it, even if the right of admission is reserved.

Free uses of performances, phonograms, films and broadcasts are regulated in Title III (On Neighbouring Rights) of the Portuguese Code. The freedom of panorama

exception to authors' rights is applicable *mutatis mutandis* to “direitos conexos” (neighbouring rights), according to article 189.º:

### Artigo 189.º

#### Utilizações Livres

1. A protecção concedida neste título não abrange:

(...)

f) Os demais casos em que a utilização da obra é lícita sem o consentimento do autor.

(...)

3. As limitações e excepções que recaem sobre o direito de autor são aplicáveis aos direitos conexos, em tudo o que for compatível com a natureza destes direitos.

### Article 189.º

#### Free Uses

1. The protection granted in this title does not include:

(...)

f) The other situations where the use of a work, without the author's consent, is legal.

(...)

3. The limitations and exceptions that are applicable to authors' rights are applicable to neighbouring rights, in so far as this is compatible with the nature of these rights.

## **2. Analysis of the scope of the exception or limitation**

As above-mentioned, the Portuguese legislator decided to implement the optional exception or limitation foreseen in article 5(3)(h) of the InfoSoc Directive using nearly the same wording than the text of the Directive. Although there is a number of openly formulated concepts in the text of the Directive, which can give national courts some flexibility, one should be aware that such concepts could also be considered “autonomous concepts of Union law”<sup>8</sup>. So far, there are no decisions by the CJEU on freedom of panorama, but at any time the CJEU may be asked to interpret the legal provision and, subsequently, impose a uniform interpretation of the notions contained therein.

There are no known decisions by the Portuguese courts on this matter. There is also no legal literature on the topic. Nevertheless, some of the concepts contained in the provision are used in other legal provisions of the Portuguese Code and have been widely discussed by national scholars. A systemic analysis of the Portuguese Code

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<sup>8</sup> In Case C-510/10 *TV2 Danmark*, 26 April 2012, and also in Case C-201/13 *Deckyman*, 3 September 2014, the CJEU considered that certain expressions that were contained in different optional exceptions to be autonomous concepts of Union law. In the *Deckyman* decision, the CJEU went even further, by defining the specific conditions that a parody must fulfil.

can, therefore, help us with the interpretation of the freedom of panorama limitation.

## 2.1. Acts

The Portuguese exception covers all acts of use, including without limitation reproduction, communication to the public, making available to the public, distribution and alteration or transformation of the protected works.

Article 5(3)(h) and article 5(5) of the InfoSoc Directive allow Member States to introduce into their national copyright laws an exception or limitation to the rights provided for in articles 2 (reproduction right), 3 (right of communicating to the public and right of making available to the public) and 4 (distribution right) of the Directive. The Portuguese law is not, however, restricted to such rights.

The Portuguese Code – as it is standard in the *droit d'auteur* systems – gives the owners of authors' rights a broad exclusive right with examples in the law. The term “*utilização*” (“use”), which can be found throughout the Code<sup>9</sup>, refers to such broad economic right. It is said, in different legal provisions, that the author has in general the exclusive right to use, within which all the specific exclusive rights are included. When referring to a specific right, and not to the general one, the legislator never applies the word “*utilização*” (“use”).

In the context of exceptions and limitations, the legislative technique is no different: when the national legislator wants to exempt only certain acts of use, it expressly says so. Actually there are only a few exceptions and limitations in the Portuguese law that are applicable to all acts of use and that, thus, apply the term “*utilização*” (“use”). In sum, there are absolutely no doubts that the freedom of panorama exception covers all exclusive rights.

Article 71.<sup>o</sup>, which is applicable to all exceptions and limitations listed in the Code, further reinforces that the right to use a work without the author's previous consent includes the right to translate or otherwise transform, to the extent necessary to such use.

Article 75.<sup>o</sup>(3), which is also applicable to all exceptions and limitations listed in the Code, clarifies that all copies of the protected work that were made under an exception can be legally distributed.

## 2.2. Object

The Portuguese limitation applies to all works that are made to be permanently located in public places. This covers works protected by authors' rights, as well as subject matter protected by neighbouring rights, since the law provision dealing

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<sup>9</sup> Namely in articles 9.<sup>o</sup> (Authors' rights content), 40.<sup>o</sup> (Exploitation of economic rights) and 68.<sup>o</sup> (Forms of use) of Chapter I (On Protected Works) of Title I (On Protected Works and Authors' Rights) of the Portuguese Code.



with the latter says that all exceptions to authors' rights are applicable *mutatis mutandis* to neighbouring rights.

The exception is applicable to all categories of works. The legal provision refers to public placed works, and gives two examples of such works: works of architecture or sculpture. Although the examples provided for in the law are of three-dimensional works, there is no reason to exclude two-dimensional works of the scope of the provision, such as graffiti, murals, literary works, etc. Indeed, the wording used in the legal provision – “*obras*” (“*works*”) – makes it clear that there is no limitation as to the categories of works that can be used under this exception. Following the Continental law tradition, the Portuguese law provides for an open-ended definition of protected works, with examples in the law, which are purely illustrative<sup>10</sup>. The term “*obras*” (“*works*”), thus, refers to all categories of works.

The fact that the norm illustrates the types of works that can be covered by the exception cannot alone be interpreted as a limitation of such works. If the legislator had intended to limit the scope of application of the exception in that way, it would have used a different wording, such as “three-dimensional works” or similar. Moreover, by saying “*tais como*” (“*such as*”) and adding “*por exemplo*” (“*for instance*”), the national legislator reinforces the idea that architecture and sculpture are just examples of publicly placed works. The only criterion is, thus, to our understanding, whether those works are permanently located in a public place or not.

The freedom of panorama norm does not specify what can be considered a public place, but the meaning can be inferred from other legal provisions of the Portuguese Code. Actually, a similar term – “*lugar público*”<sup>11</sup> (“*public place*”) – is used in the context of theatrical performance<sup>12</sup> and broadcasting<sup>13</sup>. In the broadcasting context, there is a definition of the term “*lugar público*” (“*public place*”). Although the definition is contained in a provision dealing with a specific right of the authors, Portuguese scholars share the understanding that the same is a general definition of public place, which can be applied in other contexts (Ascensão, 1992: 279; Rebello, 2002: 168).

According to the aforementioned legal definition, a public place is a place that is publicly accessible, even if the access to the public is implicit and/or an entrance fee is charged and/or the right of admission is reserved. This includes, clearly, public interiors. But even if said definition was not applicable in the context of freedom of panorama, there would be no doubts about public interiors being covered by the exception. Indeed, if the lawmaker had intended to confine freedom of panorama to outdoors it would have certainly used the wording “*via pública*” (“*public highway*”) or

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<sup>10</sup> See article 1.º (Definition), article 2.º (Original works) and article 3.º (Works deemed to be original), all from Chapter I (On Protected Works) of Title I (On Protected Works and Authors' Rights) of the Portuguese Code.

<sup>11</sup> The terms “*local*” and “*lugar*” are synonyms.

<sup>12</sup> See article 108.º of the Portuguese Code.

<sup>13</sup> See article 149.º, no. 3 of the Portuguese Code.

similar. The term “*locais públicos*” (“*public places*”) in Portuguese is commonly used to refer to all sorts of places that can be accessed by the public, and not only to streets, squares or other open public places.

Finally, the Portuguese law does not offer any guidance to what it means for a work to be made to be permanently located in a public place. It seems clear to us that there is an element of intentionality involved: the provision says that the works must have been “*made to be located permanently in public places*” (“*feitas para serem mantidas permanentemente em locais públicos*”). This means that it is irrelevant if the work is, in fact, permanently placed in a public place or not for the entire duration of its existence. What is relevant is the intention of the author when making the work, or at least when placing the work in such place. If he or she intended to leave the work in the public place for the lifetime of the work or at least for an indefinite period of time, then one should consider that such work is a permanent publicly placed work.

In the so-called *Wrapped Reichstag* decision of January 24, 2002<sup>14</sup>, the German Federal Supreme Court of Justice held that the relevant criterion is, indeed, the original intention, but as perceived by an “objective observer”. Based on this, the Court considered that their national freedom of panorama exception could not be applicable to photographic reproductions of a temporary art installation. Although it could be argued that the work ceased to exist on the dismantling of the installation (indeed, the work had only been created for the purpose of the exposition and was destroyed afterwards), the Court considered that the temporary character of the installation clearly showed that no permanent presentation was intended. Again, there is no case law in Portugal on the subject, so we do not know if the Portuguese courts would favour such a restrictive interpretation of the word “permanent”.

### 2.3. Purposes

The Portuguese Code does not limit the purposes covered by the freedom of panorama limitation. While in other provisions the legislator explicitly delimits the purposes of the uses made under a certain exception, the same does not happen with the freedom of panorama provision. As we will see below in sub-section 3.6, the application of the three-step test may obviously limit the purposes of the uses, but the text of the provision itself does not exclude *a priori* any purposes (including without limitation any commercial purposes).

### 2.4. Beneficiaries

There is no legal limitation as to the potential beneficiaries of the freedom of panorama exception. Any individual and any entity, regardless of its legal nature, can benefit from the exception.

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<sup>14</sup> BGH, I ZR 102/99 (KG) – Verhüllter Reichstag, 24 January 2002.

## 2.5. Remuneration

No remuneration is due for uses made under the freedom of panorama limitation.

## 2.6. Other conditions

### *(a) The three-step test*

All uses made under an exception or limitation – including without limitation the freedom of panorama one – are subject to the three-step test, which the Portuguese legislator has partially incorporated into the national law<sup>15</sup>.

Only the second (“no conflict with a normal exploitation”) and third (“no unreasonable prejudice to legitimate interests”) steps of the test were implemented into the Portuguese Code. The first step (“certain special cases”) was not incorporated – most probably because it was deemed unnecessary. In fact, in one of the legal opinions regarding the national implementation of the InfoSoc Directive, it was argued that the closed list of cases covered by the national legal provision could be regarded as “certain special cases”<sup>16</sup>.

The implementation of the three-step test into the law has been criticized by some Portuguese scholars, on the grounds that the three-step test should not be directed to courts (Vieira, 2009: 456-458)<sup>17</sup>. Others, however, see it has a chance to give courts some flexibility when determining the scope of application of a certain exception or limitation (Pereira, 2008: 863).

There are only a few cases dealing with exceptions or limitations within Portuguese case law, and of those we only know one that makes a reference to the test to assess whether a specific use is lawful or not<sup>18</sup>. Therefore, it is not possible to evaluate the impact of the implementation of the test into national law. Nevertheless, it is worth mentioning that, in a couple of cases, national courts have stated that authors’ rights also serve public interests and are, thus, limited rights<sup>19</sup>.

In the international arena, there are also diverging positions on the interpretation of the three-step test, but the idea that the test can be used as a balancing tool, and does not need to be perceived as a restrictive control mechanism, has been gaining ground in recent years. The European Court of Human Rights held in the *Ashby Donald* decision that derogations to the freedom of expression principle by copyright

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<sup>15</sup> See article 75.º paragraph 4 of the Portuguese Code.

<sup>16</sup> See Associação Portuguesa de Propriedade Intelectual, [Parecer sobre a proposta de Lei n.º 108/IX – Transposição da Directiva n.º 2001/29, de 22 de Maio](#) (2004).

<sup>17</sup> Alberto Vieira even suggests that it is not possible in practice to apply the three-step test to individual uses, as the impact of a certain exception or limitation on the commercial exploitation of a work or on the interests of a right holder can only be determined if all uses made under such exception or limitation are taken into account. (Vieira, 2009: 456-458).

<sup>18</sup> See [Ac. TRC 30-03-2011 \(rel. Jorge Jacob\)](#).

<sup>19</sup> See [Ac. TRC 30-03-2011 \(rel. Jorge Jacob\)](#) and [Ac. TRP 06.12.2006 \(rel. Ernesto Nascimento\)](#).

law need to be prescribed by law and need to be necessary<sup>20</sup>. The CJEU, for its part, ruled in the Painer decision that the exception embedded in article 5(3)(d) of the InfoSoc Directive must allow a fair balance between the interests of the right holders, on one hand, and the right to freedom of expression of the users of the work, on the other hand<sup>21</sup>. These decisions seem to convey the idea that a correct application of the three-step test must not overlook the interests of the general public, particularly if these public interests are connected with fundamental rights<sup>22</sup>.

In sum, in order to assess if an individual use made under the freedom of panorama limitation is lawful, one must ascertain if such use does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the right holder. Since freedom of panorama is justified by freedom of expression and public interest considerations, there is a strong possibility that, when applying the test to specific freedom of panorama uses, national courts will balance the interests of the authors and rights holders with those public interest considerations.

#### **(b) Attribution**

Users must indicate, wherever possible, the name of the author and of the editor, the title of the publicly placed work and other circumstances that identify them<sup>23</sup>.

### 3. Analysis of the impact of the exception or limitation

There are no studies on the social or economic impact of the freedom of panorama limitation in Portugal.

### 4. Examples of use

In 2008, the **Lisbon Municipality** started a project called GAU – Galeria de Arte Urbana (GAU – Urban Art Gallery), which presents graffiti, street art and other urban artworks located in public spaces all over Lisbon, to the public. The project includes:

- Semestral free-to-read publications on street-art, made available online at [Issuu](#);
- A [Facebook page](#), where images of urban art works – by the Lisbon Municipality and by fans alike – are regularly posted;
- A [Youtube channel](#) and a [Google+ page](#), where videos featuring urban art events events and works are frequently uploaded;

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<sup>20</sup> *Ashby Donald and others v France*, appl. No. 36769/08, 10 January 2013.

<sup>21</sup> Case C-145/10 *Painer*, 1 December 2011.

<sup>22</sup> See C. Geiger, R. Hilty, J. Griffiths and U. Suthersanen, [“Declaration on A Balanced Interpretation of the “Three-Step-Test” in Copyright” \(2010\)](#).

<sup>23</sup> See article 76.<sup>o</sup> paragraph 1, point a) of the Portuguese Code.

- A [Google Art Project](#) page that exhibits high-resolution images of urban artworks.

The Portuguese tourist board, **Turismo de Portugal, I.P.**, runs an official website for Portugal as a tourist destination, [visitportugal.com](http://visitportugal.com), which contains images of copyrighted works that are located in public places in Portugal, e.g.:

- [Pictures of buildings, tiles and temporary art installations](#) uploaded by users;
- Several publications with recommendations on what to do in the different regions and cities of Portugal, with images of buildings and artworks, e.g. a [publication on street art](#) in Lisbon.

The Portuguese **Calouste Gulbenkian Foundation Art Library** <sup>24</sup> has posted nearly 18000 pictures on Flickr, including pictures of public placed works that are still protected by copyright, such as:

- [Untitled \(1956\) by Rogério Ribeiro](#), a mural on the interior of Alto dos Moínhos School, Lisbon, photographed by Ana Lopes de Almeida.
- [Untitled \(1959\) by Rogério Ribeiro](#), a mural on the interior of Avenida Metro Station, Lisbon, photographed by Ana Lopes de Almeida.
- [“O Mar” \(1960\) by Maria Keil](#), a mural on the façades of a building located at Infante Santo Avenue, Lisbon, photographed by Ana Lopes de Almeida.
- [Untitled \(1982?\) by João Abel Manta](#), a mural located at Calouste Gulbenkian Avenue, Lisbon, photographed by Ana Lopes de Almeida.

Several Portuguese artists have reported to us that when they capture images of publicly placed works (e.g. architecture, sculptures, graffiti, etc.) in their own artistic works (e.g. photographs, films, etc.), they do not ask for permission of the authors of the featured works before releasing their own works, because they understand that such uses are legal. For instance, several works of **Mónica de Miranda**<sup>25</sup> – a Portuguese artist whose work is based on themes of urban archaeology and personal geographies – rely partially or totally on the freedom of panorama provision, e.g.:

- “Hotel Globo” (2015) is a [photography work](#) and a [video work](#) depicting a modernist architectural work (including its interiors) located in Luanda, Angola. The works were exhibited in MNAC – Chiado Contemporary Art Museum, Lisbon, Portugal. A book from the homonymous exhibition, containing said-photographs, was released and sold during the exhibition.
- “Underconstruction” (2009) is an art project by Mónica de Miranda, curated by Paul Goodwin, which comprises different artworks, including panoramic

<sup>24</sup> <http://gulbenkian.pt/biblioteca-arte/en/>

<sup>25</sup> <http://www.monicademiranda.org>

photographs of neighbourhoods located in the suburbs of Lisbon, photographs of buildings located in those neighbourhoods, and the video work [“Military Road” \(2009\)](#), which presents a panoramic video journey across a road in Lisbon, Portugal. The works were exhibited in Pavilhão 28, Lisbon, Portugal. A book from the homonymous exhibition, containing said-photographs, was released and sold during the exhibition.

- “Tuning” (2007), “Tuning Lisboa” (2008), and [“Tuning” \(2010\)](#) are video installations that consist of panoramic video journeys across different cities, including Lisbon, Portugal. “Tuning Lisboa” was exhibited in Plataforma Revólver, Lisbon, Portugal.
- [“Panorama” \(2009, ongoing\)](#) is a series of panoramic photographs taken in different locations, including Lisbon, Portugal.

Several **Wikipedia** pages about famous Portuguese artists display pictures of some those artists’ works that are located in public places, e.g.:

- **Joana de Vasconcelos** [Portuguese page](#) contains a picture of the art installation [“Néctar” \(2006\)](#), which is placed in front of the main entrance of The Berardo Collection Museum, in Lisbon
- **Alexandre Farto a.k.a. Vhils** [Portuguese page](#) contains several pictures of his street art, including a picture of a [wall carving](#) located at Calouste Gulbenkian Avenue, in Lisbon, alongside a mural by João Abel Manta
- **José de Guimarães** [Portuguese page](#) contains a picture of the sculpture [“Lisbon”](#) that is located in 25 de Abril square, in Lisbon

## 5. Notes

### Case Law

#### *Portugal*

Acórdão do Tribunal da Relação de Coimbra (TRC), 30-03-2011 (rel. Jorge Jacob)

Acórdão do Tribunal da Relação do Porto (TRP), 6-12-2006 (rel. Ernesto Nascimento)

#### *CJEU*

Case C-145/10 *Eva-Maria Painer v Standard VerlagsGmbH and Others*, 1 December 2011

Case C-510/10 *DR, TV2 Danmark A/S v NCB – Nordisk Copyright Bureau*, 26 April 2012

Joined cases C-457/11 to C-460/11 *Verwertungsgesellschaft Wort (VG Wort) v Kyocera and Others (C-457/11) and Canon Deutschland GmbH (C-458/11)*, and *Fujitsu Technology*

*Solutions GmbH (C-459/11) and Hewlett-Packard GmbH (C-460/11) v Verwertungsgesellschaft Wort (VG Wort)*, 27 June 2013

Case C-201/13 *John Deckyman, Vrijheidsfonds VZW v Helena Vandersteen and Others*, 3 September 2014

### **Other**

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