Art and Modern Copyright

Art and Modern Copyright is the first in-depth and longitudinal study of the history of copyright protecting the visual arts. Exploring legal developments during an important period in the making of the modern law, the mid-nineteenth to early twentieth centuries, in relation to four themes – the protection of copyright ‘authors’ (painters, photographers and engravers), art collectors, sitters and the public interest – it uncovers a number of long-forgotten narratives of copyright history, including views of copyright that differ from how we think today. As well as considering the distinct nature of the contribution of copyright to the history of the cultural domain accounted for by scholars of art history and the sociology of art, this book examines the value to lawyers and policy-makers today of copyright history as a destabilising influence: in taking us to ways of thinking that differ from our own, history can sharpen the critical lens through which we view copyright debates today.

Elena Cooper is Leverhulme Early Career Fellow at CREATe, School of Law, University of Glasgow. Elena is a member of the British Art Network and the Institute of Art and Law, and an Associate of the Centre for Intellectual Property and Information Law, University of Cambridge.
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Art and Modern Copyright

The Contested Image

Elena Cooper

CREATe, University of Glasgow
For Lukas, a special friend, and in fond memory of Kyriakos.
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Acknowledgements

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Finally, I am delighted to have William Powell Frith’s _The Railway Station_ as the front-cover to this book: an iconic example Victorian modern art, which was first exhibited in 1862 as the introduction of copyright protection for painting was debated by Parliament. For this, I am most grateful to Laura McCulloch, Royal Holloway, University of London.
Plates

Plate 1 *Panorama of Damascus, Looking South West* by Francis Frith, 1857, from the photographic series *Views in the Holy Land*.


Plate 3 Unauthorised photograph of John Jabez Edwin Mayall’s photograph of Queen Victoria, carte-de-visite, early 1860s.

Plate 4 Unauthorised photograph of John Jabez Edwin Mayall’s photograph of Prince Albert of Saxe-Coburg-Gotha, carte-de-visite, early 1860s.

Plate 5 *Roundell Palmer, 1st Earl of Selbourne* by Maull & Polyblank, carte-de-visite, 1860s.

Plate 6 *Richard Bethell, 1st Baron Westbury*, by John & Charles Watkins, carte-de-visite, 1862.

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Plate 9 *Samuel Jones Loyd, 1st Baron Overstone*, by Vernon Heath, carte-de-visite, mid 1860s.

Plate 10 Unauthorised photograph of William Henry Simmons’ engraving of *The Light of the World* by William Holman Hunt, carte-de-visite, 1860s.

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Plate 12 Mr Justice Blackburn by London Stereoscopic & Photographic Company, carte-de-visite photograph, 1870s.

Plate 13 Photograph appearing on the front page of *The Daily Mirror* of 19 November 1910, documenting the women’s suffrage protest on Black Friday, 18 November 1910 (Mirrorpix).
Abbreviations and Archive Sources

**Abbreviations**

BJP  
*The British Journal of Photography*

Engraving Acts  
Engraving Act 1735, 8 Geo. II c.13; Engraving Act 1767, 7 Geo. III c.38; Engraving Act 1777, 17 Geo. III c.57; Engraving Act 1836, 6&7 Will IV c.59 and Copyright Act 1852, 15&16 Vic. c.12, s.14

NAPSS  
Transactions of the National Association for the Promotion of Social Science

NAPSS  
Proceedings of the National Association for the Promotion of Social Science

PJ  
*The Journal of the Photographic Society* (later *The Photographic Journal*)

PN  
*The Photographic News*

1878 Report  
Copyright Commission: The Royal Commissions and the Report of the Commissioners; P.P. 1878 C-2036, C-2036–1 XXIV.163, 253

1898 Report  
Report of the Select Committee on the Copyright Bill (H.L.) and the Copyright (Amendment) Bill (H.L.); P.P. 1898 (189)

1899 Report  
Report from the Select Committee of the House of Lords on the Copyright Bill [H.L.] and the Copyright (Artistic) Bill [H.L.] together with the Proceedings of the Committee, Minutes of Evidence and Appendix; P.P. 1899 (362)

1900 Report  
Report on the Select Committee on the Copyright Bill [H.L.] and the Copyright (Artistic) Bill [H.L.] together with the Proceedings of the Committee, Minutes of Evidence and Appendix; P.P. 1900 (193)

1909 Report  
Report of the Committee on the Law of Copyright; P.P. 1909 Cd.4976
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**Archive Sources**

- **Angeli-Dennis Papers**: Correspondence to/from D.G. Rossetti, held by University of British Columbia Library, Canada.
- **Blaine Papers**: Correspondence and documents left by Delabere Robertson Blaine, held by the Crozier Cole family.
- **Brown Papers**: Ford Madox Brown Collection, (C1918), Manuscripts Division, Department of Rare Books and Special Collections, Princeton University Library, USA.
- **Field Papers**: Correspondence left by Edwin Wilkins Field (mssHM 42884–42939), The Huntington Library, San Marino, California, USA.
- **Graves Papers**: Papers of Henry Graves & Sons, Manuscripts, Add. 46140, held by the British Library.
- **St John’s Wood Papers**: Papers of St John’s Wood Arts Club and its Copyright Committee, held by City of Westminster Archives Centre, London.
- **LCC Papers**: Papers and Minutes of the Photographic Trade Section of the London Chamber of Commerce held by Guildhall Library, London.
- **Leathart Papers**: Papers of the collector James Leathart, held by University of British Columbia Library, Canada.
- **NA Records**: Records held by the National Archives, London.
- **NA of Scotland Records**: Records held by the National Archives of Scotland, Edinburgh.
- **NAL Papers**: Artist correspondence and papers, the diaries of Henry Cole, reports of the Science and Art Department, minutes of the British Institution and papers concerning the Society of Arts’ campaign for artistic copyright, held by the National Art Library, Victoria and Albert Museum, London.
- **National Gallery Papers**: Reports, minutes and correspondence held by the archive of the National Gallery, London.
- **NLS Papers**: Papers of David Octavius Hill, held by the National Library of Scotland, Edinburgh.
- **NSW Papers**: Correspondence held by the Art Gallery of New South Wales Institutional Archive, Sydney, Australia.
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<tr>
<td>RA Papers</td>
<td>Correspondence, reports and annual reports of the Royal Academy of Arts, held by the archive of the Royal Academy of Arts, London.</td>
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<tr>
<td>RBS Papers</td>
<td>Papers and council minutes of the Society of British Sculptors and pamphlets, held by the Royal British Society of Sculptors, Old Brompton Road, London.</td>
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<tr>
<td>RPS Papers</td>
<td>Papers and minutes of the Royal Photographic Society and papers of the Linked Ring Brotherhood, held by the National Media Museum, Bradford, but since 2016, held by the Archive of Art and Design (AAD), Victoria and Albert Museum, London.</td>
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<td>RWS Papers</td>
<td>Papers of Joseph Jenkins and Minutes of the Society of Painters in Water Colours, held by the Royal Watercolour Society, London.</td>
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<td>Scottish Academy Papers</td>
<td>Draft petitions, correspondence and minutes of the Royal Scottish Academy of Painting, Sculpture and Architecture, held by the Royal Scottish Academy’s archive, The Dean Gallery, Edinburgh.</td>
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<td>SOA Papers</td>
<td>Draft Bills, papers, correspondence and minutes concerning the Society of Arts’ campaign for artistic copyright, held by the archive of the Royal Society of Arts, John Adam Street, London.</td>
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<td>Trevelyans Papers</td>
<td>Correspondence deposited by the Trevelyan family, held by Special Collections, Newcastle University Library, Newcastle.</td>
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<td>Unilever Papers</td>
<td>Correspondence held by Unilever Art, Archives and Records Management (UARM), Port Sunlight, UK.</td>
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<td>Walker Papers</td>
<td>Correspondence, reproductions records and artist files, held by the Walker Art Gallery, Liverpool.</td>
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<td>Whistler Papers</td>
<td>Correspondence of James McNeill Whistler, held by University of Glasgow.</td>
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<td>Factory and Workshops Act, 41&amp;42 Vict. c.16, 66</td>
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<td>1879</td>
<td>New South Wales Copyright Act, 42 Vict. No. 20, 209</td>
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<td>1883</td>
<td>Patents, Designs and Trade Marks Act, 46&amp;47 Vict. c.57, 62 n.77</td>
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<td>1891</td>
<td>US Chase Act, 26 Stat. 1106, 88</td>
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<td>New Zealand Photographic Copyright Act, 1896 No. 16, 192</td>
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<td>1905</td>
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<td>Colony of the Cape of Good Hope Artistic Copyright Act, 1905 No. 46, 192</td>
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<td>1906</td>
<td>Musical Copyright Act, 6 Edw. 7 c.36, 2 n.10</td>
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<td>1911</td>
<td>Copyright Act, 1&amp;2 Geo. V. c.46, 1, 2, 49, 51 n.10, 52–53, 68, 115, 157, 159, 160, 165, 166, 203, 209, 210, 219, 244, 247–248, 258</td>
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<td>1956</td>
<td>Copyright Act, 4&amp;5 Eliz. 2, 112 n.24</td>
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<td>1988</td>
<td>Copyright, Designs and Patents Act, c.48, 51 n.7, 112, 260 n.29, 260 n.30</td>
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