



# CIRCULATION AND CONTROL

Artistic Culture and Intellectual  
Property in the Nineteenth Century

EDITED BY MARIE-STÉPHANIE DELAMAIRE AND WILL SLAUTER



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# 10. Architectural Copyright, Painters and Public Space in Mid-Nineteenth-Century Britain

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## Introduction

A premise of mid-nineteenth century copyright debates culminating in the passage of the Fine Arts Copyright Act 1862 (the first UK copyright legislation expressly to protect paintings, drawings and photographs) was the aesthetic parity of painting with literature, grounded in the notion of the 'fine arts'.<sup>2</sup> Books were longstanding subject matter of copyright, protected by statute since the early eighteenth century. By the mid-nineteenth century, the aesthetic equivalence of new subject matter to literature was part of the case in favor of copyright protection for paintings, and raised further questions as regards the protection of photographs (as photography's fine art status was unclear).<sup>3</sup> This chapter

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- 1 The authors are grateful for comments on an earlier draft by participants of the Workshop of the International Society for the History and Theory of Intellectual Property, Sydney, 2019 (particularly Charles Rice) and the Conference 'Images, Copyright and the Public Domain in the Nineteenth Century', Paris, 2019, as well as the specific comments of the editors of this volume. Elena Cooper is grateful to The Leverhulme Trust (grant no: ECF-2016-016).
  - 2 Fine Arts Copyright Act 1862 (25 & 26 Vic. c.68); Lionel Bently, 'Art and the Making of Modern Copyright Law', in *Dear Images: Art, Copyright and Culture*, ed. by Daniel McClean and Karsten Schubert (London: Ridinghouse RCA, 2002), pp. 331–351; Elena Cooper, *Art and Modern Copyright: The Contested Image* (Cambridge: Cambridge University Press, 2018) p. 12.
  - 3 Bently, 'Art and the Making', p. 332; Cooper, *Art and Modern Copyright*, Chapter 2.

considers a hitherto unconsidered facet of the artistic copyright debates of the 1850s and early 1860s: the resistance of painters to unsuccessful proposals put forward by architects for copyright protection for three-dimensional buildings (unprotected by copyright until 1911). As we later explain in detail, by the late 1850s, the hub for copyright reform was the Copyright Committee of the Society of Arts, Manufactures and Commerce, and painters soon came to dominate its discussions; photographers and engravers were members of the same Committee, but had significantly less influence. Architecture had long been accepted to be a fine art.<sup>4</sup> Yet, though painters invoked the rhetoric of the 'fine arts' when seeking to establish the case for their own protection, they emphatically resisted similar claims made by architects as regards protection for their three-dimensional works. This chapter explores this seeming contradiction within the copyright debates of the 1850s and early 1860s, focusing on tensions between painters (as the dominant lobby group in the Society of Arts' Committee) and architects. In so doing, we link copyright to nineteenth-century concepts that might be seen as forerunners to later ideas about the 'right to the city'. This relates both to arguments in favor of architectural copyright (asserting that copyright would improve public experience of architecture) as well as painters' opposition to architectural copyright (contending that image-making in the public space should not be restricted by new copyright subject matter). In this respect, the debates considered in this chapter differ from the tensions between painters and photographers during the same period which, as has been shown elsewhere, became intertwined with questions of creative status.<sup>5</sup>

## Building Nineteenth-Century Public Spaces

The nineteenth century marked the expansion of British cities, and strong activity as regards urban building in response to industrialization and social and economic change. As a result, and as the historian Donald J. Olsen describes in *The City as a Work of Art*, cities became

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4 Paul Oskar Kristeller, 'The Modern System of the Arts: A study in the History of Aesthetics Part I', *Journal of the History of Ideas*, 12 (1951), 496–527 (p. 497), <https://doi.org/10.2307/2707484>.

5 Cooper, *Art and Modern Copyright*, Chapter 2.

monuments — enduring representations of identity — rather than merely spaces containing monumental works.<sup>6</sup> In London, the central city layout changed strikingly, implemented by the architect John Nash. His additions included a new broad street, Regent Street (see Figure 1), and a new square, Trafalgar Square (completed in the 1830s), as well as the new National Gallery on the Square's north side, opening in 1838. New bridges and railway stations were also built: for instance, Tower Bridge was built between 1886 and 1894 and Baker Street station (see Figure 2), part of the first underground (the Metropolitan Railway) opened in 1863. There were also new Government buildings at Whitehall: buildings were constructed in the 1860s and 1870s to house the Foreign Office, India Office, Colonial Office, and Home Office. In Westminster, the Houses of Parliament had burned down in 1834, and the new building was largely completed in 1860; between the Strand and Carey Street, a new Royal Courts of Justice building was opened in 1882. South Kensington was also a site for new construction funded by the profits of the Great Exhibition of 1851, including the buildings that today house the Victoria and Albert Museum, the National History Museum, and Imperial College. The Royal Albert Hall was erected between 1867 and 1871.<sup>7</sup>

This new-built environment sought to endow London with imperial status and authority and resonate ideologically with its inhabitants.<sup>8</sup> Indeed, historians of architecture have noted that architectural changes of the nineteenth century were accompanied by a growing discourse about the experience of architecture by the public. As H. Horatio Joyce and Edward Gillin argue in *Experiencing Architecture in the Nineteenth Century*:

In the nineteenth century, more than ever before, architecture was built to be experienced [...] how individuals experienced buildings around them was central to society and culture. How architecture was seen, smelt, felt, heard in, interpreted [...] was inseparable from the ways in which contemporaries perceived their rapidly industrializing societies to

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6 Donald J. Olsen, *The City as a Work of Art: London, Paris, Vienna* (New Haven and London: Yale University Press, 1986) p. 9.

7 Stephen Porter, *London: A History in Painting and Illustrations* (Gloucestershire: Amberley Publishing, 2014) pp. 103–105, 225, 232.

8 Nancy Rose Marshall, *City of Gold and Mud: Painting Victorian London* (New Haven and London: Yale University Press, 2012) p. 26.



Fig. 1 The Quadrant, Regent Street, 1852, City of Westminster Archives Centre.



Fig. 2 Metropolitan Railway, Baker Street Station, c.1864, City of Westminster Archives Centre.

be modern and progressive. [...] This was a moment of profound social and economic change, through rapid industrialization, urbanization and population growth [...] And the built environment was very much part of this changing world.<sup>9</sup>

These observations about architecture in the nineteenth century share much, argue Joyce and Gillin, with the philosopher Henri Lefebvre's twentieth-century theorization of the inhabitation of space as productive: a physical and mental category produced through human agency.<sup>10</sup> In the nineteenth-century architectural press, this heightened awareness of the experience of architecture gave rise to increasing commentary about the merits and weaknesses of new building on the urban space, as well as critical analysis of competing ideas for future changes, and these were sometimes written from the perspective of the anonymous 'critical loungeur about town' as the observer of urban change.<sup>11</sup> These commentaries can be placed in the wider context of the 'public language of city exploration' which art historians have noted to be present in Britain as early as the 1820s, pre-dating the later, nineteenth-century French discourse of the *flâneur*: the gentleman who wandered the streets of the city absorbing its spectacles, and usually attributed to the writing of Charles Baudelaire.<sup>12</sup> Such constructions of the experience of the city are dependent on assumptions about gender, class and race and,

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- 9 Edward Gillin and H. Horatio Joyce, 'Introduction', in *Experiencing Architecture in the Nineteenth Century: Buildings and Society in the Modern Age*, ed. by Edward Gillin and H. Horatio Joyce (London: Bloomsbury Visual Arts, 2019), pp. 1–12 (p. 1), <https://doi.org/10.5040/9781350045972>.
- 10 Ibid, p. 4, citing Henri Lefebvre's influential 1974 book *La production de l'espace*. On the construction of space in Britain see also Colin G. Pooley, 'Patterns on the ground: urban form, residential structure and the social construction of space', in *The Cambridge Urban History of Britain*, Volume 3: 1840–1950, ed. by Martin Daunton (Cambridge: Cambridge University Press, 2000), pp. 429–465, <https://doi.org/10.1017/CHOL9780521417075>.
- 11 For example, Lynx Eye, 'New Buildings in the City of London, No 1', *Builders' Weekly Reporter*, 27 July 1861, p. 2521; 'Our New Year's Address', *The Builders' Weekly Reporter*, 13 January 1862, p. 2857; 'Our New Year's Address', *The Builders' Weekly Reporter*, 20 January 1862, p. 2873 describing one new building as 'distinguished by its novelty of treatment'; 'Important New Buildings of the Metropolis' *Builders' Weekly Reporter*, 7 April 1862, p. 3049; 'New Blackfriars' Bridge', *The Builders' Weekly Reporter*, 27 January 1862, p. 2907: assessing various designs put forward for a new bridge at Blackfriars. 'A Critical Loungeur About Town' was the title of a series of articles published in *The Builders' Weekly Reporter*, starting in 1861: 'A Critical Loungeur About Town, No.1', *The Builders' Weekly Reporter*, 14 October 1861, p. 2675.
- 12 Marshall, *City of Gold and Mud*, p. 29.

consequently, the representation of the city promoted and reinforced particular identities, over others.<sup>13</sup>

The architectural development of the city and the public experience of the individual moving around town was prominent in the context of the development of parks such as Victoria Park in London.<sup>14</sup> Crucially, building projects were not necessarily purely aesthetic projects but also reflected a more general concern with the health of the city.<sup>15</sup> For example, the Metropolitan Board of Works, created in 1855, was tasked with effecting necessary practical improvements such as London's sewage system. This in turn gave (literal) cover to city beautification projects: for example, the Victoria Embankment project produced a beautiful public space that in reality is a fancy sewer lid.<sup>16</sup>

Architects seemed to be aware of the significance of architecture beyond its existence as an object. The understanding of the public experience of architecture, including public space generally, is implicit in architectural trade publications of the time (e.g. *The Builder*) and demonstrates a keen awareness of architecture being more than for architects, but about public spaces and public benefit. Thus, for example *The Building News*, in an item about expenditure on London parks observes in 1860: 'Kew-gardens are so admirably managed, and productive of so much enjoyment as well as of instruction to all classes of society'.<sup>17</sup> Art and architecture were also discussed in terms of offering advantage to the working class, as we see in the justification of parks for leisure as improving the health of the working class.<sup>18</sup>

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13 On the female perspective on the idea of the flâneur noting that it is 'necessarily male' in allowing the walker to proceed unnoticed, see Janet Wolff, 'Gender and the Haunting of Cities (or, the retirement of the flâneur)' in *The Invisible Flâneuse? Gender, Public Space, and Visual Culture in Nineteenth-Century Paris*, ed. by Aruna D'Souza and Tom McDonough (Manchester University Press, 2006) pp. 18–31 (p. 19) and Lynda Nead, *Victorian Babylon: People, Streets and Images in Nineteenth-Century London* (New Haven: Yale University Press, 2000), p. 9.

14 On the occasion of the opening of the park's fountain in ('once-tabooed') east London: 'Opening of the Victoria Fountain', *The Builders' Weekly Reporter*, 14 July 1862, p. 3286. See also, on Cremorne Park: Nead, *Victorian Babylon*, p. 109.

15 In nineteenth-century Glasgow this entailed the wholesale destruction of areas of the city: Micheline Nilsen, *Architecture in Nineteenth-Century Photographs: Essays on Reading a Collection* (Abingdon and New York: Ashgate, 2011), p. 45.

16 Olsen, *The City as a Work of Art*, p. 24.

17 'Public Works and Buildings', *The Building News*, 6 July 1860, p. 539.

18 See for example: 'The Advantages and Use of a Knowledge of Art to the Working Classes', *The Builders' Weekly Reporter*, 20 January 1862, p. 2863.

Attention was paid more widely to the aesthetics of the city that was being produced. Architectural influences of the time were varied, with *The Builders' Weekly Reporter* carrying an opinion piece in 1861 querying the extensive adoption of an Italian style of architecture over the preceding two years, and the presentation of different architectural styles next to each other instead of showing a uniformity of style.<sup>19</sup> We see here a clear conception of architectural works mattering because they produce a particular image of public space. Architectural style may, furthermore, be considered as part of a political project, something to which a correspondent to *The Building News* alluded, privileging a specific type of person: 'With proper direction, the characteristics of the Englishman and *his present civilization* can sure be expressed in national architectural features'.<sup>20</sup> Moreover, there is a suggestion in the architectural press of the time that architecture is not (only) a thing but produces movement. The style of streets matters because of what it says about the city and the country in question. For example, *The Builders' Weekly Reporter* allegedly quotes an Italian visitor criticizing London sculpture and architecture:

[I]t is a town of monstrosities, and the amateurs of the fine arts are not able to decide whether they should wonder most at the want of good taste, or the patience of the *people who night and morning pass such wretched performances* and allow them to remain.<sup>21</sup>

The criticism is perhaps beside the point, but the movement of people, alluded to above, matters; it is useful as a reflection of the understanding of British cities (in the above criticism, London) as public spaces that are not static: they both produce and are produced by movement. In short, architecture (and also architects' views of their role) would seem to echo the Lefebvrian concept of space as a 'lived experience'.<sup>22</sup> Architecture

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19 'Lynx Eye', *The Builders' Weekly Reporter*, 27 July 1861, p. 2521.

20 'Victorian Architecture' (Correspondence), *The Building News*, 23 November 1860, p. 900 (emphasis in original).

21 'The Critical Lounger about Town no. 2', *The Builders' Weekly Reporter*, 27 July 1861, p. 2717 (emphasis added).

22 See Henri Lefebvre, *The Production of Space*, trans. by Donald Nicholson-Smith (Oxford: Blackwell Publishing, 2009), noting also the understanding of 'lived experience' as 'flux' or 'non-knowledge' (pp. 4, 6). Lefebvre distinguishes between the 'problematic' of space and 'spatial practice', the latter including architecture (p. 413). Elsewhere, Lefebvre notes: 'Perhaps... the producers of space have always

creates an encounter between the work of architecture and the city's inhabitants.<sup>23</sup> A distinct feature of architecture is that inhabitants could move through and use a building (in the case of private housing, physically inhabit it) whereas a painting or photograph could only be viewed. Accordingly, buildings, as elements of public space, were viewed simultaneously as objects and as sites of activity by the public. Such activity would include image-making and, as we explain in the next section, by the 1840s and 1850s the depiction of urban public space had acquired great importance.

### Image-Making and Public Space

Public access — such as walking, viewing — and engagement with city spaces made architecture a ready subject for representation in paintings (our focus due to the nature of the composition of the Society of Arts' Copyright Committee, explained below), as well as in photographs and engravings. For example, urban development projects such as the building of municipal offices and museums were a practical response to a growing population, but also became the subject of photographs to help tourists distinguish new buildings from 'ancient' ones.<sup>24</sup> Thus, the physical manifestation of the city — its aesthetics and the attendant controversies over appropriate architectural style — mattered precisely because these buildings would be reproduced in two-dimensional images. In a discussion of how cities are represented, the art historian Caroline Arscott summarizes the position as follows, considering in particular the aesthetic theories of the nineteenth-century critic John Ruskin:

The choice of a classical façade and gothic form became a vexed question. A beautiful vista or a fine building could figure prominently in an engraved or painted scene and lend the represented cityscape the

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acted in accordance with a representation, while the 'users' passively experienced whatever was imposed upon them...' (p. 43).

23 See *Experiencing Architecture*, ed. by Joyce and Gillim, on Lefebvre and the concept of space as experience: 'When we deal with experience, we do not just examine how architecture could be encountered by inhabitants, but that the act of experiencing a building or a built environment contributed and shaped the architecture itself' (p. 4).

24 Nilsen, *Architecture in Nineteenth-Century Photographs*, p. 103.

aesthetic merits and ethical connotations of the environment or building. Or else an image could alter, cancel or marginalise the architectural components of the urban fabric.<sup>25</sup>

What we can see here is an expectation that the city will be open to visual representation. While the concept of public space is not referred to, it is implicit in the view presented above. Indeed, the artistic practice of the period was, we argue, built on a conception that the city's public spaces — its views and vistas, its buildings and squares — should be available for reproduction.<sup>26</sup>

It is thus helpful to place the dispute between painters and architects within the context of not only the rapid industrialization of the period, but also aesthetic experiences within the mid-nineteenth-century city. Two aspects of aesthetic experience are relevant: the capture of views (especially via panoramic entertainment) and the paintings of streetscapes and elements of street life. Both aspects feed into the constitution of the individual — the city's inhabitant, who is both viewer and viewed — during this period.

The reproduction of the city as panoramic entertainment in the early nineteenth century included paintings exhibited in rotundas, an experience that became very popular and gained its inventor patent protection.<sup>27</sup> Such panoramas usually had a 'moatlike area surrounding [a] viewing platform' which had the effect of fully immersing the viewer in the view.<sup>28</sup> Panoramas of this nature, such as *A View of London and the Surrounding Country Taken from the Top of St Paul's Cathedral* (ca. 1845), represented a fast-changing urban environment to its inhabitants.<sup>29</sup>

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25 Caroline Arscott, 'The representation of the city in the visual arts', in *The Cambridge Urban History of Britain, Volume III 1840–1950*, ed. by Martin Dauntton (Cambridge: Cambridge University Press, 2000), pp. 811–831 (p. 813) <https://doi.org/10.1017/CHOL9780521417075>.

26 Nead, *Victorian Babylon*: 'London was itself a web of representations and the site for the circulation of representations' (p. 57).

27 Robert Barker applied for a patent in 1787 and first exhibited his *Panorama of Edinburgh* in 1788. Bernard Comment, *The Panorama* trans. by Anne-Marie Glasheen (London: Reaktion Books, 1999), p. 23. On the history of panoramas, see also Michael Charlesworth, *Landscape and Vision in Nineteenth-Century Britain and France* (Abington and New York: Ashgate, 2008), Chapter 1. On panoramas: Comment, *Panorama*, p. 25.

28 Jonathan Crary, 'Géricault, the Panorama, and Sites of Reality in the Early Nineteenth Century', *Grey Room*, 9 (2002), 5–25 (p. 19).

29 Comment, *Panorama*, pp. 145, 165.

Crucially, such panoramas sought to be highly realistic; Robert Barker defended himself against an accusation that his Edinburgh panorama was inauthentic by seeking certification from the city's Provost that he had accurately represented the city.<sup>30</sup> This objective of truthful representation required that the buildings forming part of the cityscapes were free to be reproduced.

The art historian Nancy Rose Marshall describes nineteenth-century images of London as existing on a 'continuum between the panorama and the vignette', reflecting interest in not just the bird's eye view, but also street-level representations of the urban environment which depicted the public's relationship to the city.<sup>31</sup> In the 1820s and 1830s, as the art historian Alex Werner explains, there were 'relatively few paintings of urban contemporary life'.<sup>32</sup> However, by the 1840s and 1850s, 'urban modern life settings became popular subjects within the tradition of genre painting'.<sup>33</sup> Such paintings included the representation of particular people in 'street-cry' paintings and illustrations, such as *London Cries and Public Edifices* (1847) by John Leighton and *Covent Garden Market: The West End* (1859) by William McConnell.<sup>34</sup> They also comprised documentary pictures, for instance paintings by George Elgar Hicks, such as *Billingsgate Fish Market* (1861), which echoed the written social commentary work of the journalist Henry Mayhew (published as *The London Labour and the London Poor* in installments between 1849–1852, and as a book in 1861–2).<sup>35</sup> *Billingsgate Fish Market* was praised by the *Athenaeum* in 1861 as exemplifying the importance of documenting modern life in the City:

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30 Ibid., pp. 145, 129.

31 Marshall, *City of Gold and Mud*, p. 32, referring to the categories in Michel de Certeau in *The Practice of Everyday Life*. On 'the poetic space of the pedestrian' see Nead, *Victorian Babylon*, p. 7.

32 Alex Werner, 'The London Society Magazine and the Influence of William Powell Frith on Modern Life Illustration of the Early 1860s', in *William Powell Frith: Painting The Victorian Age*, ed. by Mark Bills and Vivien Knight (New Haven and London: Yale University Press, 2006), pp. 95–108 (p. 95).

33 Ibid.

34 Marshall, *City of Gold and Mud*, p. 39.

35 Mark Bills, 'The line which Separates Character from Caricature...': Frith and the Influence of Hogarth', in *William Powell Frith*, ed. by Mark Bills and Vivien Knight, pp. 41–55 (p. 48). *George Elgar Hicks: Painter of Victorian Life*, ed. by Rosamond Allwood and Rosemary Treble (London: Geffrye Museum, 1982–3), p. 4. See also Christopher Wood, *Victorian Panorama: Paintings of Modern Life* (London: Faber & Faber, 1976) which includes a review of works by Hicks.

Mr G.E. Hicks hit upon a good idea when he resolved to paint for us the scenes which take place at some well-known places of business in the City of London [...] Such pictures, even if less well painted than these really are, will be interesting for the future time, and therefore we shall be thankful to get them as creditably executed as this one is.<sup>36</sup>

Street-level pictures were also popular magazine illustrations, such as the *London Society* magazine's series of pictures entitled *The Artist in the London Streets* — the first of which was published in June 1862 depicting Oxford Street.<sup>37</sup> Further, as we explain in more detail later, the 1850s and early 1860s saw the exhibition of ground-breaking paintings depicting modern life by the Royal Academician William Powell Frith, a member of the Society of Arts' Copyright Committee, which firmly established modern life as an important subject of 'high art'.

The production and reproduction of the British city described above is the context in which the copyright debates (to which we now turn) took place. It suggests that this dispute is an example of the ways in which copyright too was the terrain for a contest not, or at least not only, over the protection of works but about the production and inhabitation of public space.

## Architecture and Copyright in the Nineteenth Century

Copyright protection, as is well known, was expanded gradually to artistic subject-matter such as engraving and sculpture, through piecemeal legislation passed in the eighteenth and nineteenth centuries. This followed the first copyright Act, the Statute of Anne 1710, which protected books.<sup>38</sup> By the mid-nineteenth century, two-dimensional works of architecture were protected by copyright in a number of ways. The Engraving Acts expressly protected 'architectural prints' produced by engraving,<sup>39</sup> and the Literary Copyright Act 1842 included within the protection for books, 'charts, maps or plans' which were separately published.<sup>40</sup> The Fine Arts Copyright Act 1862, as mentioned earlier,

36 *Athenaeum*, 25 May 1861, p. 699, quoted in *George Elgar Hicks*, ed. by Allwood and Treble, p. 11.

37 A. Werner, 'The London Society Magazine', p. 100.

38 An Act for the Encouragement of Learning (Statute of Anne) 1710 (8 Anne c.19).

39 Engravings Act 1767 (7 Geo. III c.38), s. 1.

40 Literary Copyright Act 1842 (5 & 6 Vict. c.45), s. 1.

was the first legislation to protect ‘drawings’ as well as paintings and photographs; it was uncontroversial in the debates that preceded its passage that ‘drawings’ would encompass architectural drawings.<sup>41</sup> As we will explain, controversies instead lay with proposals for the protection of three-dimensional works of architecture, which were outside the scope of the 1862 Act, and not protected until 1911.<sup>42</sup>

From the vantage point of today, it may appear strange that the same objections made against the protection of three-dimensional buildings were not also levelled against two-dimensional architectural drawings; today, in the UK, copyright infringement can be established where copying is not only indirect (through copying an intermediate copy of a copyright work) but also copying a three-dimensional work (e.g. a building) may infringe a two-dimensional work (e.g. a drawing) and vice versa.<sup>43</sup> By contrast, in the nineteenth century, copyright in two-dimensional works was more limited. The courts readily accepted that copying could be indirect: in *Re Beal's Case*, the Court of Queen's Bench held that ‘a copy from an intervening copy’, such as an engraving of a painting, would infringe copyright in a painting.<sup>44</sup> However, it was generally understood that copying a three-dimensional work would not infringe copyright in a two-dimensional work and vice versa, and this position remained until the passage of the Copyright Act 1911.<sup>45</sup>

Notwithstanding this legal position, in the case of sculpture — three-dimensional works which had been protected since the late eighteenth century — the general consensus of the copyright debates of the mid to late nineteenth century was that the law should be changed to provide

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41 Unlike protection under the Literary Copyright Act 1842, which commenced on publication, protection under the Fine Arts Copyright Act 1862 commenced on creation, and therefore would encompass unpublished architectural drawings. See further Cooper, *Art and Modern Copyright*, p. 214.

42 Copyright Act 1911, c.46, section 1(1) and 35(1), protecting ‘architectural works of art’. The 1911 Act also introduced an exception allowing the two-dimensional copying of such ‘architectural works of art’: section 2(1)(iii) Copyright Act 1911, discussed in Cooper, *Art and Modern Copyright*, p. 219. On the campaign for the protection of architecture from the 1870s to 1911 see: Kimberlee Weatherall, ‘Bringing Architecture into the Copyright System in the UK’, unpublished paper presented at Emmanuel College, Cambridge, 2009.

43 Copyright Designs and Patents Act 1988, section 16(3)(b) and 17(3).

44 *Re Beal's Case* (1868) L.R. 387, 394, per Blackburn J., with whom Mellor J. and Lush J. agreed.

45 Cooper, *Art and Modern Copyright*, pp. 218–19. Section 1(2) of the Copyright Act 1911 restricted reproduction in ‘any material form whatsoever’.

that two-dimensional reproductions (for example photographs of sculpture) would infringe copyright in three-dimensional sculpture.<sup>46</sup> This was accepted, for instance, by the Report of the majority of the Royal Commission on Copyright of 1878, endorsing the evidence given by the sculptor Thomas Woolner, and was a generally accepted premise in the copyright debates that followed thereafter to 1911.<sup>47</sup> This consensus reflected the principle that copyright should not be restricted to protecting the author against cases of harm, but should enable the author to ‘reap the benefits’ of the ‘money value in reproduction’.<sup>48</sup> That sculpture should be protected against copying in two dimensions was also an accepted tenet of the copyright debates of the 1850s. It was the application of the same principle to architecture, which caused painters difficulty. To uncover the nature of these debates, we now introduce the ‘hub’ of copyright reform initiatives in the 1850s and early 1860s: the copyright committee of the Society of Arts, Manufactures and Commerce.

## Architects and the Society of Arts Copyright Committee

The Artistic Copyright Committee of the Society of Arts was established in November 1857, under the chairmanship of Sir Charles Eastlake (President of the Royal Academy of Arts). As originally composed, the Committee brought together a broad range of representatives from the art world: painters, photographers, engravers, art collectors, and art administrators. However, the original records of the meetings of the Committee, show that it was painters — Royal Academicians and watercolourists — that soon came to dominate the Committee.<sup>49</sup>

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46 Sculpture was protected by the Sculpture Copyright Act 1798 (38 Geo. III c.71) and Sculpture Copyright Act 1814 (54 Geo. III, c.56). On nineteenth century debates regarding the infringement of sculpture copyright see Cooper, *Art and Modern Copyright*, p. 218.

47 Copyright Commission, *The Royal Commissions and the Report of the Commissioners*; PP 1878 C-2036, C-2036-1 XXIV 163, 253, para. 97–98, and Thomas Woolner’s evidence at Q.4058.

48 William Reynolds-Stephens giving evidence to the Gorell Committee. See Report of the Committee on the Law of Copyright; PP 1909 Cd 4976, at Q.2285-92.

49 Cooper, *Art and Modern Copyright*, p. 23 and p. 30. The inclusion of architects on the Committee is discussed below.

The Committee articulated the general principles of its proposals in its Report to the Council of the Society of Arts published in March 1858. This outlined two categories of protection. The 'chief' object was 'to secure a Copyright... for such of the designs of an artist as he may himself have conceived, and as have been produced by his own hands, or those of his assistants'.<sup>50</sup>

This denoted 'works of which the artist's own brain may be considered as the inventor and primary source... however first embodied' but applying 'especially' to, amongst others, painters, sculptors and architects.<sup>51</sup> The 'next object' was protection for works of a 'more imitative character, and not necessarily embodying design' against their reproduction and sale by competitors; such protection would not extend to the 'original design or other source'.<sup>52</sup> Engravers, photographers, and plaster cast-makers were specified as the groups who would be 'principally' protected in this way.<sup>53</sup> While the inclusion of architecture within the first category of protection might reflect the equivalence of architects' claims to protection to those of painters and sculptors, the Report also envisaged different treatment for architecture as compared to sculpture as regards the scope of protection. It was to this that architects objected.

How did the Society of Arts' Report envisage that architecture was to be differently treated to sculpture? The 1858 Report made clear that copyright protection for sculpture should restrict two-dimensional reproductions. However, to accommodate the interests of painters and engravers, who wished to be free to depict sculptures located in the public space, the Report stated that there should only be infringement where 'the original design as the sole or chief end of the publication' was reproduced. The Report continued with an example:

No stranger ought to engrave one of the statues at the entrance of the House of Lords as a work *per se*. While a picture of the whole scene, including the set of statues as incidents would be within the rule known as to Copyright books, permitting legitimate extracts not being competitions with the original work or design.<sup>54</sup>

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50 Society for the Encouragement of Arts, Manufactures and Commerce, *Report of the Artistic Copyright Committee to the Council* (London: 1858), p. 4.

51 Ibid.

52 Ibid.

53 Ibid.

54 Ibid.

The 'rule known as to Copyright books' is a reference to infringement case law under the Literary Copyright Act 1842 which accommodated certain fair uses of copyright works; until the Copyright Act 1911, there were no express statutory defenses to infringement.<sup>55</sup>

A different approach, however, was recommended as regards works of architecture. First, the Report is ambiguous as to whether three-dimensional buildings were to be protected as works in their own right; the Report refers to the protection of 'architectural plans, models etc.' and does not specify that buildings also were to be protected. In any event, the Report made clear that nothing would 'prevent new drawings etc. being taken from executed buildings', suggesting that two-dimensional reproduction of buildings would not be restricted.<sup>56</sup>

Indeed, in the dossier of evidence collected by the Society of Arts' Committee following the publication of the Report — intended to illustrate the problems which legislative reform should address — the only example concerning architecture related to an incident where an architect's plan had been copied (rather than copying from the building itself). Charles Robert Cockerell, an architect who was also a Royal Academician, joined the Society of Arts' Committee in 1858, following the publication of the Society's Report.<sup>57</sup> The evidence which he gave, accepted for inclusion by the Society of Arts in its dossier, concerned the unauthorized copying of architectural plans submitted to architectural competitions. As Cockerell explained:

...piracy of ideas and inventions from rejected designs [...] is notorious, and the work executed is constantly the composition of the ideas and inventions of the several competitors, without scruple, reward, or acknowledgment of any kind.<sup>58</sup>

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55 See further: Kathy Bowrey, 'On Clarifying the Role of Originality and Fair Use in Nineteenth Century UK Jurisprudence: Appreciating "the humble grey which emerges as the result of long controversy"', in *The Common Law of Intellectual Property: Essays in Honour of Professor David Vaver*, ed. by Catherine Ng, Lionel Bently and Giuseppina Agostino (Oxford: Hart Publishing, 2010), p. 45–72, <https://doi.org/10.2139/ssrn.1402444>.

56 Ibid.

57 David Watkin, 'Cockerell, Charles Robert (1788–1863)' *Oxford Dictionary of National Biography*, <https://doi.org/10.1093/ref:odnb/5781>. Artistic Copyright Committee Minutes, 3 November 1858, RSA Archive, London.

58 E.M. Underdown, *The Law of Art Copyright* (London: John Crockford, 1863), p. 184.

As mentioned above, 'charts, maps or plans' were expressly included in the definition of 'books' protected under the Literary Copyright Act 1842, but this did not apply to unpublished works, as would have been the case in plans submitted to an architectural competition. While unpublished works were protected at common law, it was assumed by the Society of Arts' Committee that it was not an infringement to reproduce unpublished plans as a building in three dimensions. As Cockerell concluded referring to an example of a public competition:

The direct consequence of this failure of protection was, in that instance, that the most important feature of my design, and of other designs in this public competition, were pirated and put into execution in a great or public work.<sup>59</sup>

The Society of Arts proposals, then, in providing protection for two-dimensional drawings from the moment of their creation (rather than publication), met certain concerns of architects as regards the copying in two-dimensions of plans submitted to competitions. As an article in *The Building News* stated, by protecting drawings through copyright, 'the system of public competition will be ameliorated'.<sup>60</sup> However, architects wanted proposals that went further. As the same article continued, 'it does seem strange that the architect is to have no copyright in the design when realised; that is, in the work itself...'<sup>61</sup>

Indeed, as another article in the same journal concluded, referring to the paragraphs of the 1858 Report concerning architecture: 'The profession will probably not see very clearly how or in what manner [the Report's proposals] will or can confer benefit upon them'.<sup>62</sup> In this way, as an article in *The Builder* expressed in 1859, 'the depreciation of just rights to the profession is greater than is involved' in the case of competitions; architects, as we will now explain, also sought protection for their three-dimensional works.<sup>63</sup> However, repeated attempts by architects to secure this principle were adamantly opposed by the Society of Arts' Committee.

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59 Ibid.

60 'Art Copyright', *The Building News*, 24 May 1861 p. 429.

61 Ibid.

62 'Property in Art', *The Building News*, 30 March 1860, pp. 241, 242.

63 'Architectural Copyright', *The Builder*, 11 June 1859, p. 385.

## Architectural Copyright and the RIBA Copyright Committee

The increasing professionalization of architectural practice in the nineteenth century, and its independence from noble patronage formed an important context for the copyright initiatives of architects.<sup>64</sup> The nineteenth century saw a boom in the construction of housing, and architects were keen to consolidate their professional position and fend off the challenges posed by a number of new players in the building world, in particular, the builder. Builders were general contractors that would oversee construction work, often with mere financial interests in building, rather than being workmen or having any real skills in their own right. By at least the late 1850s, architects were calling for copyright protection in three-dimensional buildings, owing to the activities of this new class of builder in the field of suburban housing. An architect would be engaged to produce the design, and the builder (sometimes, but not always, one who had overseen the work of the original design) would often subsequently produce countless other houses to the same design, at times working from the original plans, but more often from the three-dimensional buildings itself.<sup>65</sup> The result, argued the architects, was bad architecture: the designs were badly executed by builders, to the extent — to quote an article from *The Builder* in 1859 — that the architect ‘may be disgusted with his own work’.<sup>66</sup> Therefore, for architects, copyright in three-dimensional buildings was an essential element in establishing their professional authority over the building trades.<sup>67</sup>

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64 See further, Martin S. Briggs, *The Architect in History* (Oxford, Clarendon Press, 1927), Frank Jenkins, *Architect and Patron* (Oxford: Oxford University Press, 1961), B. Hanson, *Architects and the Building World' from Chambers to Ruskin: Constructing Authority* (Cambridge: Cambridge University Press, 2003).

65 ‘Architectural Copyright’, *The Builder*, 11 June 1859, p. 385: ‘many of the speculative builders even work entirely without drawings’. Therefore, the article concluded that only protection for three-dimensional works could ‘prevent that sort of imitation or perversion of an original design’ which was ‘one of the chief sources of annoyance and of injury to the reputation of architects’.

66 Ibid.

67 We deal below with the public-interest dimension to architectural copyright, which was also articulated by architects at this time. Note, also, that *The Builder* carried a report in 1858 of a meeting in Brussels the summary of which included the following point: ‘7. Works of design, painting, sculpture, architecture, and engraving to be placed on the same footing as regards copyright as works of literature.’ ‘Copyright Congress at Brussels’ *The Builder*, 9 October 1858, p. 680 (emphasis in original).

What specific action did architects take in an attempt to secure such rights? As we mentioned above, the architect Charles Robert Cockerell joined the Society of Arts' Copyright Committee in 1858, following the publication of the Society of Arts' Report; he attended its meetings in April 1858.<sup>68</sup> However, dissatisfied with the Society of Arts' proposals, architects sought to promote their interests instead through their own professional body, the Royal Institute of British Architects (RIBA) — which at that time was much concerned with the consolidation of architects' professional status more generally.<sup>69</sup> The first step taken by the RIBA, in May 1858, was the drafting of a petition to Parliament, which was presented by Lord Lyndhurst to the House of Lords in July 1858, the occasion of the first parliamentary debate on the subject of artistic copyright in the campaign culminating in the 1862 Act.<sup>70</sup> The petition, after reciting the need for architectural copyright, as 'architects are liable to injury in the piracy of their designs', specified: 'that such copyright should extend to their executed works, as well as to their publications'.<sup>71</sup> The House of Lords appointed a Select Committee, but this was abandoned in 1859 for reasons unconnected with the protection of architecture.<sup>72</sup>

Then, in April 1859, the RIBA Council formed its own Copyright Committee with the express purpose of continuing to press for architectural copyright reform in the form of the 1858 petition.<sup>73</sup> The Committee included Charles Robert Cockerell amongst its membership, in addition to the following architects: Thomas Leverton Donaldson (a founder of the RIBA and Professor of Architecture at University College London), George Godwin (an architect who was also the editor of the architectural journal *The Builder*), Robert Kerr (who was also Professor of construction arts at King's College London), John Woody Papworth

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68 Artistic Copyright Committee Minutes, 8 April 1858 and 15 April 1858, RSA Archive, London.

69 See further in Angela Mace, *The Royal Institute of British Architects: A Guide to its Archive and History* (London: Mansell Publishing, 1986). The Institute of British Architects was founded in 1834 and received a Royal Charter in 1837.

70 'Royal Institute of British Architects', *The Builder*, 8 May 1858, p. 310; *Journal of the House of Lords* Volume XC, 26 July 1858, p. 468–469.

71 'Royal Institute of British Architects', *The Builder*, 8 May 1858, p. 310.

72 Cooper, *Art and Modern Copyright*, pp. 32, 129.

73 RIBA Council Minutes, 1 April 1859, RIBA Archive. See also 'The Royal Academy; The Franchise; and Copyright; At the Institute of Architects', *The Builder*, 19 March 1859, pp. 199, 200.

(a frequent contributor to *The Builder*) and John Norton (who was also President of the Architectural Association).<sup>74</sup> In May 1860, the RIBA Committee again forwarded their petition of 1858 to the Society of Arts' Copyright Committee, asking that the Society of Arts' proposals 'be altered so as to be in accordance with the said petition' through the protection of three-dimensional works.<sup>75</sup> As the RIBA Council reported to the RIBA Annual Meeting in May 1860, the RIBA's grievance was that the Society of Arts scheme 'legalises the copying of Architects' executed works, while it affords protection to their publications'.<sup>76</sup>

A petition affirming the same principle — the protection of three-dimensional works of architecture — was also presented by the RIBA to Parliament in 1861, expressed to be 'essential to the bestowal of a protection to architects similar to that contemplated to be given to other artists'.<sup>77</sup> In view of these tensions, when the Fine Arts Copyright Bill of 1862 was introduced (again, on the initiative of the Society of Arts' Committee) dealing only with paintings, drawings and photographs, the RIBA Council concluded that it was 'undesirable to take any active steps with respect to it' in view that 'no direct reference has been made to works of Architecture'.<sup>78</sup>

## Tensions between Painters and Architects

As noted in the opening of this chapter, there was, at first glance, a contradiction in the Society of Arts' treatment of architects' claims. On the one hand, as Lionel Bently has shown, the rhetoric of the 'fine arts' and the parity of painting to literature was invoked as an argument in

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74 L.A. Fagan, revised by Anne Pimlott Baker, 'Donaldson, Thomas Leverton (1795–1885)', *DNB*, <https://doi.org/10.1093/ref:odnb/7806>. GB Smith, revised by Ruth Richardson and Robert Thorne, 'Godwin, George (1813–1888)', *DNB*, <https://doi.org/10.1093/ref:odnb/10891>. Paul Waterhouse revised by Geoffrey Tyack, 'Kerr, Robert (1823–1904)', *DNB*, <https://doi.org/10.1093/ref:odnb/34304>. Arthur Cates revised by John Elliott 'Papworth, John Woody (1820–1870)', *DNB*, <https://doi.org/10.1093/ref:odnb/21256>. Paul Waterhouse revised by John Elliott, 'Norton, John (1823–1904)', *DNB*, <https://doi.org/10.1093/ref:odnb/35259>.

75 RIBA Copyright Committee Minutes, 12.5.1860, RIBA Archive. RIBA Petition 23.5.1860, RSA Archive.

76 Report of the Council to the Annual Meeting, 7 May 1860, RIBA Proceedings (1859–1860), RIBA Archive.

77 RIBA Copyright Committee Minutes, 20 June 1861, RIBA Archive.

78 Report of the Council to the Annual Meeting, 5 May 1862, RIBA Proceedings (1861–1862), RIBA Archive.

favor of the Society of Arts' proposals regarding painting.<sup>79</sup> Architects sought to justify protection for three-dimensional buildings, with analogous reasoning. As one article in *The Builder* published in 1859 expressed:

Works of design, paintings, sculpture, architecture and engraving were to be placed on the same footing as regards copyright, as works of literature. Nothing else can satisfy the justice of the case, and give the architect the reward for his labour, or effect the improvement which is demanded in our architecture [...] We, architects, want a demonstration by the law, of the fact that there is a right to property in architectural invention, as in all works of mind.<sup>80</sup>

As the same article later noted, literary copyright protected 'results from the labour of the pen guided by the intellect' and 'the rights of architects' were 'strictly analogous'.<sup>81</sup> In this way, the RIBA petition was characterized as seeking 'the assimilation of the position of architects' to authors, and reflecting architects' 'identity of claim' to copyright to those of other artists, including painters.<sup>82</sup> The injury to painting and painters which resulted from the circulation of 'spurious copies', was 'equally[...] true of buildings and architects' work.<sup>83</sup>

It was curious then, that the Society of Arts' Committee should oppose the same principle applied to architecture. As an article in *The Building News* remarked:

If [painters and sculptors] are to have copyright in the embodiment of their conception, ideas, or compositions, which they ought to have, so should architects have copyright in their ideas when embodied in construction.<sup>84</sup>

What lay behind the resistance of the Society of Arts to conceding to architects' proposals for protection of their three-dimensional works? As we have already noted, while the Society of Arts' Committee began as a broadly constituted body — spanning representatives from across the art-world — the Committee soon came to be dominated by painters,

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79 Bently, 'Art and the Making', p. 332.

80 'Architectural Copyright', *The Builder*, 11 June 1859, p. 385.

81 Ibid.

82 Ibid.

83 Ibid.

84 'Art Copyright', *The Building News*, 24 May 1861, p. 429.

led by the President of the Royal Academy Sir Charles Eastlake, who was also the Committee's Chairman.<sup>85</sup> It was the objections of painters, Royal Academicians and watercolorists that explained the Committee's resistance. The problem as regards the reception of 'the claims of architects', argued *The Builder* in 1859, lay with:

...those professors of the sister branches of art who have made themselves heard loudest in the matter of copyright. The title which is the proper subject for protection, is that to *design*; and it is impossible for us to understand that there can be clear views in this respect amongst persons who would attach less importance to work of architecture than to that of painting.<sup>86</sup>

What arguments were advanced by painters and architects? Architectural copyright intersected with ideas about the public's experience of architecture in two ways. On the one hand, arguments advanced by architects for architectural copyright, concerned the resulting public benefit of improved architecture to ordinary members of the public. As *The Builder* reported in 1859, with the exception of architectural projects of 'a higher order', such as 'public buildings and in localities like the city of London [...] where circumstances are specially favourable', the 'general state of architecture' was that 'it has not a tendency to become worse'.<sup>87</sup> Accordingly, as the article concluded:

...the corrective for the large amount of bad design in buildings, which is exhibited in suburban London, in fashionable watering-places, and in almost every town and populous district, would be supplied by a system of architectural copyright.<sup>88</sup>

Copyright, then, would result in 'the improvement which is needed in the aspect of our streets and our places of abode'<sup>89</sup> by producing greater 'originality' in architectural designs, such that 'there would be greater variation in street architecture than is at present apparent'.<sup>90</sup> These were arguments which reflected the public placement of architecture, accessible to the public in the widest sense. As an article from *The*

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85 Cooper, *Art and Modern Copyright*, p. 30.

86 'Architectural Copyright', *The Builder*, 11 June 1859, p. 385.

87 Ibid.

88 Ibid.

89 Ibid.

90 'Art Copyright', *The Building News*, 24 May 1861, p. 429.

*Building News* commented in 1860: 'Architecture standeth in the streets and public ways and welcometh, and exhibiteth herself to all alike, — to the million just as freely as to the millionaire'.<sup>91</sup> What is interesting here is the appeal not, as we see elsewhere, to public spaces such as Trafalgar Square and the like, but more humbly to the suburban house:

The architect is employed to design say an ordinary suburban residence [...] He will see, however, houses built to the very pattern, sometimes by the builder who had worked from his drawings: he will see his enrichments multiplied; and in unsuitable positions; and in every time a degree worse in execution. [...] The rights of architects, and the interest of the public in the maintenance, form a case which is strictly analogous.<sup>92</sup>

Accordingly, the multiplicity of poor copies becomes a broader *spatial* problem. This is made more explicitly in an appeal for copyright protection for works of architecture because of the inherently public nature of architecture:

The question [of copyright] affects not only architects, but those who might be benefited by becoming their clients and it affects vastly the future of architecture. Piracy actually tends to the destruction of the profession, in what should be its widest field. Let the corrective be applied ...[and] architects will find it then their interest to attend to the smaller class of houses; [...] and architecture may be advanced with benefit to all parties...<sup>93</sup>

In the hands of architects, then, the public placement of architecture — the experience of architecture by the public — was part of the case in favor of copyright protection for three-dimensional works. By contrast, from the perspective of painters, who wished to be free to depict the changing urban landscape in their two-dimensional works, the place of architecture in the public space explains their opposition to architectural copyright. As Nancy Rose Marshall shows in her monograph *City of Gold and Mud: Painting Victorian London*, the mid-nineteenth century saw the emergence of a 'self-conscious attempt to

91 'Vox Populi' and the Million', *The Building News*, 30 November 1860, p. 918.

92 'Architectural Copyright', *The Builder*, 11 June 1859, p. 385.

93 *Ibid.*, p. 386. Similarly, the following year, as the dispute raged on, stating that '[i]t is desirable, nevertheless, to keep the question open...' with protection for drawings only described as unsatisfactory both for architects and the public: 'Architects' Copyright', *The Builder*, 28 June 1860, p. 386.

create an “art of modern life” through the painting of ‘contemporary urban subjects’ on a grand scale. This reflected the Victorian awareness of London’s status as a ‘hub of global economic, political and social enterprise’, bringing together the elements of ‘modernity’. The result was a new reportage style of painting where ‘there was no obvious distance in space and time between the subjects depicted and the viewers themselves’.<sup>94</sup> Mid-nineteenth century painting, then, was dominated by ‘realist strategies of representation’, ‘with its crisp apparent transcription of the world’.<sup>95</sup> Painting played an important role in reproducing public space and simultaneously producing the public (or at least a certain public) that gazed upon itself in paintings of public spaces. In this way, as Marshall argues, image-making in Victorian Britain was as much part of the experience of the city as other practices, whether moving or mapping the city (which Henri Lefebvre was later to articulate), and to which Marshall adds the practice of ‘image-making to concretize [city] identities’.<sup>96</sup>

The depiction of modern life, particularly the urban environment, then, was generally accepted as an important ambition for painting by the mid-nineteenth century. As the art historian Rosemary Treble explains:

...it is clear that there was in the mid-century a common impulse to immortalise the City and its life in paint as a reaction against Romanticism and Naturalism, and a conscious assertion of new values over old.<sup>97</sup>

A particularly important contribution was the work of the Royal Academician painter William Powell Frith (1819–1909). Frith was formally a member of the Society of Arts’ Committee; he signed the Society’s petition to Parliament and attended the Committee’s deputation to the Prime Minister, Viscount Palmerston in 1860.<sup>98</sup> Frith was a pioneer in painting crowd-scenes capturing everyday

94 Marshall, *City of Gold and Mud*, p.1.

95 *Ibid.*, p. 3.

96 *Ibid.*, p. 11 referring to Henri Lefebvre, *The Urban Revolution* trans. by Robert Bonanno (Minnesota: University of Minnesota Press, 2003), pp. 118–119.

97 Rosemary Treble, ‘Victorian Painting of Modern Life’, in *George Elgar Hicks*, ed. by Allwood and Treble, p. 7.

98 ‘Court Circular’, *The Times*, 30 April 1860, p. 9. William Powell Frith was elected to the membership of the Copyright Committee on 11 March 1858: Minutes of the Artistic Copyright Committee, RSA Archive.

life, and established the importance of such 'modern life' subjects and their undisputed status as 'high art', particularly by presenting his approach as in the tradition of the street-scenes painted by the venerated eighteenth-century English painter William Hogarth (albeit adapted to suit Victorian sensibilities).<sup>99</sup> Frith's first crowd-scene, set at the seaside and entitled *Ramsgate Sands* (1854), was purchased by Queen Victoria in recognition of its significance.<sup>100</sup> A second picture of a crowd at the races, entitled *Derby Day* (1856–8) followed. The copyright debates of 1862 were contemporaneous with the much-awaited unveiling (in April 1862) of Frith's most ambitious panoramic picture, *The Railway Station*, which was his first crowd picture set in the urban environment (at Paddington railway station in London). Over 21,000 spectators viewed the picture over the seven weeks it was displayed, and it was praised by the art press of the time for capturing all 'the sparkle of modern life', 'the illustration of contemporary life' being 'one of the most valuable functions of art'.<sup>101</sup> Following on from this success, in the summer of 1862, the printseller Ernest Gambart commissioned Frith for a large sum (£10,000) to produce three London street-scenes entitled *The Streets of London*, comprising *Morning* (to be set in Covent Garden), *Noon* (depicting Regent Street) and *Night* (set in Haymarket), echoing Hogarth's famous picture *The Times of Day* (1736–1738). Only small-scale pictures were produced (today held in private hands) as Frith abandoned the project in 1863, to paint a picture of the Prince of Wales' Wedding.<sup>102</sup> However, the importance of art representing the urban environment would have undoubtedly been recognized by members of the Society's Committee who opposed protection for architecture. Copyright subject-matter debates, then, constituted a further terrain that registered the importance of the unencumbered freedom to experience public urban space through image-making.

99 Bills, 'The line which Separates Character from Caricature...', in *William Powell Frith*, ed. by Bills and Knight, pp. 41–55.

100 Mary Cowling, 'Frith and his Followers: Painters and Illustrators of London Life', in *William Powell Frith*, ed. by Bills and Knight, pp. 57–77 (p. 57).

101 *The Athenaeum*, 12 March 1862, pp. 502–504; and *Illustrated London News*, 3 May 1863, p. 457.

102 W.P. Frith, *My Autobiography and Reminiscences*, vol. 1 (Cambridge: Cambridge University Press, 2012) [originally published in 1887], pp. 338–340.

## Conclusion

The dispute between painters and architects uncovered in this chapter is not one about authorship, or whether new categories of author and work can (and ought to) be recognized, but rather represents a point of conflict between painters and architects over public space. In short, both painters and architects recognized that buildings were in some respect special for being publicly experienced. They differed, however, in what the implications of this should be for copyright protection. Painters saw buildings as subject matter for their paintings — paintings which would give back to the public, images of themselves and their world — while architects saw buildings as necessarily for the public to experience. For the former, copyright protection for architecture would prevent the viewing of the city in ways that would record modern life, and so help inhabitants conceptualize themselves. For copyright to prevent the reproduction of buildings would thus, the argument might run, not only represent an affront to the painter seeking freedom to exercise their aesthetic tastes, but would also harm the public itself. The latter, of course, situated the public differently: public buildings, public squares, gardens and parks, private housing has an indisputably public element because such buildings and spaces are necessary for public health, leisure, enjoyment or in the case of private houses, safety. Copyright protection would thus, for example, prevent detrimental, poor-quality copies of houses. More broadly, people's inhabitation of spaces — the ways spatial practices in effect create architecture through movement — is privileged. The tension becomes again one between the building as subject matter for a painting, and a building's use — the static and the dynamic — but where both aspects produce public experience of the mid-nineteenth century city and indeed mould *who* the public was.

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