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The ‘Visual Turn’ in Copyright History and its Relevance to Art History

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Copyright history scholars have long focussed on the protection of books and literary works, not art. This article assesses the implications for art history of a recent ‘visual turn’ in copyright history scholarship which has brought copyright protection for the visual arts to the centre-stage for the first time. Focussing on nineteenth century painting, particularly examples from the work of William Holman Hunt (1827-1910), the article explores the value of copyright history and its archival sources to art history.

In recent years, there has been a ‘visual turn’ in legal scholarship, bringing the inter-relation between visual and legal ways of thinking into focus, instead of approaching law as only the province of written texts.¹ Law, as a consequence, has entered art historical dialogue, as evidenced by the inclusion of ‘law and art’ panels in recent Art Historical Association conferences.² My own field, the history of copyright, is one strand of this ‘visual turn’. Copyright history has long been dominated by studies about copyright protection for literary works, particularly books. This changed in 2018, with the publication of the first in-depth and longitudinal accounts of the history of copyright and the visual arts: my own monograph, *Art and Modern Copyright: The Contested Image* (2018, CUP) and *Becoming Property: Art, Theory and Law in Early Modern France* (2018, Yale University Press) by the art historian Katie Scott.³ These accounts reveal artistic copyright to provide new and different perspectives

I would like to thank Judith Bronkhurst for her comments on an earlier draft of this article.

¹ For example, *Law and the Visual*, an anthology of essays by humanities scholars edited by the art historian Desmond Manderson (2018, University of Toronto Press) and *Legal Emblems and the Art of Law* by legal scholar Peter Goodrich (2014, CUP).

² ‘Art and Law: Objects and Spaces as Legal Actors’ convened by art historians Jack Hartnell and Kevin Lotery for the AAH Conference 2018, and ‘The Laws that Bind Us’ convened by law professor Estelle Derclaye and the art historian Ashley Gallant for AAH Conference 2021.

³ For a review essay charting the significance of recent copyright history scholarship see E. Cooper, ‘Becoming Property and Copyright and the Value of Performance’, *Law Culture and the Humanities*, Vol 16, Oct. 2020, 504-7. For a book review of Scott’s *Becoming Property* see E. Cooper, *The Burlington Magazine*, May 2020, p.460.

on copyright history and not to be simply a replay of familiar themes from the history of literary copyright.⁴

This article explores the implications of this ‘visual turn’ in copyright history for art history. Of course, copyright has long been on the radar of art historians: in catalogues raisonnés, surveys of a particular artist’s body of work, it is sometimes noted whether or not copyright was included in the transactions comprising the chain of provenance,⁵ and copyright law features in art historical accounts of the history of printmaking⁶ because of copyright’s role in regulating multiples⁷ as well as in certain histories of photography.⁸ However, as this article shows, the recent expansion in copyright history scholarship also to encompass the visual arts allows for a more nuanced understanding of copyright and its relation with artistic practice, and this, in turn, can provide fresh perspectives for art history’s interrogation of art-works. Both *Art and Modern Copyright* and *Becoming Property* reveal copyright history to be integral to understanding the aesthetics, commerce and practice of art at particular points in time and in particular contexts, as well as opening up new primary sources about art, previously unconsidered by art historians.

In this article, I provide an overview of these angles, with a focus on copyright law protecting painting in the United Kingdom in the nineteenth century. While copyright history scholarship has already begun to resonate in art historical work – as demonstrated by the excellent recent anthology *Victorian Artists’ Autograph Replicas: Auras, Aesthetics, Patronage and the Art Market* edited by Julie Codell (2020, Routledge) – this article points to further connections between the two disciplines, which remain open for exploration. In doing

⁴ See also E. Cooper, ‘How Art Was Different: Researching the History of Artistic Copyright’, in I. Alexander and H. T. Gómez-Arostegui (eds.), *Research Handbook on the History of Copyright Law* (2016, Edward Elgar).

⁵ See, for example, Bronkurst, Vol. 1, noting the position on copyright in particular sales in the ‘provenance’ section to the following paintings: *The Triumph of the Innocents* (p.238 sold ‘without copyright’ by the Walker Art Gallery and p.256, replica, sold ‘without copyright’ in 1897-1900), *Our English Coasts (Strayed Sheep)* (p.156 sold ‘without copyright’ at Sotheby’s in 1873), *The Awakening Conscience* (p.165 sold ‘without copyright’ in 1854), *The Finding of the Saviour in the Temple* (p.173 sold ‘with copyright’ to Gambart in 1860-1), *The Scapegoat* (p.179 sold ‘without copyright’ in 1856), *An Italian Girl (Tuscan Girl Plaiting Straw)* (p.217, ‘copyright reserved’ in 1869), *The Shadow of Death* (sold ‘without copyright’ in 1873).

⁶ See, for example, A. Griffiths, *The Print Before Photography: An Introduction to European Printmaking 1550-1820* (The British Museum, 2016), Chapter 6.

⁷ See further Scott, *Becoming Property*, p.16.

⁸ See, for example, S. Edwards, *The Making of English Photography: Allegories* (Pennsylvania State University Press, 2006), J. Cox and C. Ford, *Julia Margaret Cameron: The Complete Photographs*, (Getty Publications, 2003), A. Hamber, *A Higher Branch of the Art: Photographing the Fine Arts in England, 1839-80* (Routledge, 1997).

so, I refer to examples from the work of the painter William Holman Hunt, drawing attention to the new perspectives on Hunt that can be gleaned from copyright history's archival sources.

Two archival sources are referred to. First, I refer to the results of a detailed search, which I conducted jointly with the art historian Judith Bronkhurst⁹ of the nineteenth and early twentieth century copyright registers held at The National Archives, London, locating all the copyright registrations recording Hunt as 'author' of the work: a total of 26 entries, set out in full in the Appendix.¹⁰ Whereas scholars of literature and book history have long recognised the copyright registers to be important sources for humanities scholarship – as indicated by the *Stationers' Register Online* digitisation project led by the book historian Giles Bergel¹¹ – copyright registers for works of art have yet to be fully explored by art historians.¹²

Secondly, at the close of this article, I discuss original correspondence from Hunt which I found in copyright files held by the Archive of the Walker Art Gallery, Liverpool concerning Hunt's painting *The Triumph of the Innocents*.¹³ The location of the letter, in a file of legal documentation, meant that it had previously escaped the meticulous research of art historians, and I show how it illustrates well the connections between copyright, commerce and aesthetic ideas, a relation yet to be fully explored by art history.

By way of introduction, copyright history is a notoriously complicated field of study. The first copyright Act, the Statute of Anne, was passed in Great Britain in 1710 and protected books, and this was followed during the course of the eighteenth, nineteenth and early twentieth centuries by further piecemeal Acts, providing different rules for protecting different subject matter. These included Acts protecting engraving (the Engraving Acts 1735, 1767, 1777, 1836 and 1852), sculpture (the Sculpture Copyright Acts 1798 and 1814) and painting, drawing and photographs (The Fine Arts Copyright Act 1862).¹⁴ There were a total of 21 different copyright

⁹ Judith Bronkhurst, who requires no introduction in art history circles, is the well-known author of the authoritative two-volume work *William Holman Hunt: A Catalogue Raisonné* (2006, Yale University Press).

¹⁰ I am grateful to Judith Bronkhurst for cross-referencing each copyright registration to the corresponding painting's catalogue number in Bronkhurst, *William Holman Hunt*.

¹¹ The Stationers' Online project, digitising copyright registrations for books in the UK, refers to these registers as 'arguably the most important primary source for the study of the history of the book in Britain', 'other than the books themselves'. See: <https://digital.humanities.ox.ac.uk/project/stationers-register-online>, accessed November 2020.

¹² To date, the copyright registers have been explored by historians of photography (e.g. Cox and Ford, *Julia Margaret Cameron: The Complete Photographs*, and Hamber, *A Higher Branch of the Art*) but not, for example, those researching painting.

¹³ I am grateful for the assistance of Xanthe Brooke and Alex Patterson at the Walker Gallery Archive.

¹⁴ For further details see Cooper, *Art and Modern Copyright*, p.2. Copies of the legislation, and other legal documents, are available for free download through the online resource 'Primary Sources on

statutes by 1911, the year in which they were (with a few minor exceptions¹⁵) repealed and replaced by a single Copyright Act (the Copyright Act 1911) premised on the general principle of uniform treatment for all copyright subject matter. This history of statutory copyright – Acts passed by Parliament – with its origins in the eighteenth century, should be placed in the context of an earlier system of ad hoc privileges granted by the Crown, providing monopolies to print and reprint particular works; the extent to which privileges protected visual art in Great Britain is a subject yet to be explored in detail by copyright history scholars (as contrasted with the French position, uncovered by Scott in *Becoming Property*). Further, until 1912 (when the 1911 Act entered into force) statutory copyright co-existed with common law copyright based on judicial case law rather than Act of Parliament. The ruling in *Albert v Strange* (1849) – thought to be the first case in which a visual work was protected at common law – held that the common law would protect ‘any work of literature, art or science’ for so long as it remained unpublished.¹⁶

These insights enable art historians to go beyond a discussion of ‘copyright’ in generic terms, to a more specific understanding of exactly what rights were being sold at a particular point in time. For instance, if a picture was sold before 29 July 1862, the date of the passage of the Fine Arts Copyright Act 1862, the statutory rights sold were only those under the Engraving Acts, that is the rights to the print, not the painting itself; the ruling in *DeBerenger v Wheble* (1819) made clear that the Engraving Acts did not prevent copying directly from the painting itself.¹⁷ Accordingly, paintings such as Hunt’s *The Light of the World* (held at Keble College, Oxford), *The Scapegoat* and *The Finding of the Saviour in the Temple* which were first sold in 1853, 1856 and 1860-1 respectively, were never protected by the 1862 Act; only the *prints* were protected (under the Engraving Acts). Understanding the relative weakness of the legal rights attaching to these pictures, for example, enhances our appreciation of the impressive price paid by the printseller Ernest Gambart for *The Finding* - £5,500 including copyright – which Bronkhurst notes to be the highest sum ever paid for a modern painting at that time.¹⁸

Copyright (1450-1900)’, eds. L. Bently and M. Kretschmer, www.copyrighthistory.org, which also provides copyright history resources for a number of other jurisdictions: United States of America, France, Italy, Germany, Netherlands, Portugal, Brazil, Spain and Jewish Law.

¹⁵ One such exception was section 7 of the Fine Arts Copyright Act 1862, discussed below, which remained on the statute book until repealed by the Copyright Act 1956.

¹⁶ *Prince Albert v Strange* (1849) 1 Mac & G 25,42; 41 ER 1171, 1178. See further Cooper, *Art and Modern Copyright*, p.212.

¹⁷ (1819) 2 Stark. 548; 171 ER 732.

¹⁸ Bronkhurst, *William Holman Hunt* Vol. 1 p.176. For details of the first sale of *The Light*, *The Scapegoat* and *The Finding* see Bronkhurst, *William Holman Hunt*, p.150, p.179 and 173.

Further, it may be a contributing factor to explaining the extent to which unauthorised photographic copies of particular engravings of paintings circulated; photographers engaged in trade in unauthorised photographs of paintings, formed a society in the 1860s – the Photographic Protection Society – aimed at raising funds to defend legal proceedings and sharing intelligence about detection, and its ‘Caution List’, identifying pictures where copyright was thought to be weak, included Hunt’s *The Scapegoat*.¹⁹

The Fine Arts Copyright Act 1862 was the first Act to protect painting (as well as drawings and photographs), but it was not without its problems. In particular, ownership of copyright was a thorny issue: on first sale of a painting, the copyright would be irretrievably lost, unless it was reserved in writing by buyer and seller at point of sale. Different rules applied where a painting was commissioned, where the commissioner would own the copyright and, as Robyn Asleson’s contribution to the Codell anthology shows, these subtle differences may cast new light on how art historians understand the choices made by painters: Asleson shows copyright ownership rules to be in the consciousness of the painter Albert Moore, with direct implications for whether he accepted a commission to paint a new work, or instead sold a pre-existing work.²⁰

Another innovation introduced by the 1862 Act, was the introduction of cheap and quick magistrates’ procedures for enforcing artistic copyright (known as ‘summary jurisdiction’). Indeed, as a result of the intervention of printsellers led by Ernest Gambart, from 1862, magistrates could also hear cases for the infringement of engraving copyright under the older Engraving Acts (previously only enforceable through slow and expensive procedures of the courts of common law and equity). However, after the 1862 Act was passed, printsellers found that it was difficult to bring engraving copyright cases before magistrates due to technicalities with the legislation. In such circumstances, magistrates allowed printsellers, in effect, to claim for the infringement of engraving copyright where they had registered copyright in their own photographs of the engravings. This was highly questionable legally, as there was no allegation that the defendant had copied the printsellers photographs (only the engravings had been copied) but magistrates long allowed this approach where the printsellers proved they owned engraving copyright. This explains why, for example, Gambart registered copyright in

¹⁹ Photographic Protection Society, Caution List, held by The British Library, London.

²⁰ R. Asleson, ‘Repetition, Aestheticism, and Copyright Law in the Art Practice of Albert Moore’ in Codell, *Victorian Artists’ Autograph Replicas*, p.64-76, p.68-9 and p.70.

a *photograph* of Simmons' engraving of Hunt's *The Light of the World* in 1863, as this, in practice, strengthened the effectiveness of protection for the engraving.²¹

Copyright history also opens up new sources of information for art historians. In the UK, copyright under the Fine Arts Copyright Act 1862 (in paintings, drawings and photographs) was subject to registration at Stationers Hall. Registration could be effected at any time, but legal action for infringement could not be taken for anything done before registration. Registrations could also be subject to legal challenge (on the basis that they did not comply with the 1862 Act) and 'expunged' (or deleted) by the courts, as was the case with the registration for the oil painting *Calling of the Roll After an Engagement, Crimea* by Elizabeth Butler, which was registered in May 1874, but expunged on the order of the High Court in February 1876.²²

What records remain? For paintings, there are some 50 volumes of register entries held at The National Archives, London (held in COPY 3) together with the application forms submitted (held in COPY 1) which exist up until 1912, when registration was abolished. The 1862 Act applied only to the United Kingdom, and a number of self-governing dominions (such as New Zealand, Victoria, South Australia, Queensland, New South Wales, Natal, Cape of Good Hope) set up their own artistic copyright registers based on legislation that often mirrored the 1862 Act (though sometimes with important local variations).²³

What information do the UK copyright registers provide? The copyright registers record the proprietor of copyright, the 'author' of the work, as well as, in some cases, the parties and dates of transactions transferring copyright. Accordingly, copyright registers may provide art historians with an additional source of information about provenance, where copyright and painting were sold together, as well as clarifying whether copyright was included in the sale price. For instance, in the case of Hunt's work, the register shows that copyright *was* included in the sale of a number paintings, where the position was previously unknown: *Morning Prayer* to Joseph Morby and then to Agnew & Sons in 1867, *Isabella and the Pot of Basil* to Gambart in 1867, *Bianca* to Gambart in 1870 and the drawings *Moonlight at Salerno*, *Cathedral of Salerno*, *Sunset near Naples* and *A Festa at Fiesole* to Gambart in 1869. Conversely, the register suggests that copyright was *not* included with the sale of *May Morning on Magdalen*

²¹ The photograph was registered on 11.6.1863, see The National Archives, COPY 3/104.

²² The National Archives, COPY 3/112.

²³ For an example of an important local variation in Victoria and New South Wales see Cooper, *Art and Modern Copyright*, 210-211, discussing its implications for copying of the paintings *Wedded* by Frederic Leighton and *The Widower* by Luke Fildes in the National Gallery of New South Wales.

Tower to Barrow Cadbury 1906 (for the City of Birmingham Museum and Art Gallery) as this was registered by Hunt in 1906.

Further, the copyright registers can provide authors of catalogues raisonnés with new insights into the details of particular transactions, as the parties and dates of legal agreements concerning paintings are sometimes expressly referred to. For instance, in the case of the work of Hunt, the full sale terms of the larger version of *The Light of the World* (today held by St Pauls Cathedral) to Charles Booth are unknown,²⁴ but the register makes clear that this included the copyright (acquired by Booth from Hunt on 29 December 1903) and it can therefore be inferred that Booth authorised the reproduction of the picture by photogravure published by the Fine Art Society in 1904. As regards the sale of *The Triumph of the Innocents* to the Walker Art Gallery, Liverpool in 1891, for £3,500: this sale was previously thought to be without copyright,²⁵ but in fact copyright was registered by the Walker Gallery, an institution that relied on copyright licensing for part of its income.²⁶ Further, a number of details of the early sale history of *Afterglow in Egypt* are unknown, but we can infer that the likely date of sale to Charles P. Matthews may be October 1865, the date of the copyright transfer in his favour.²⁷ It is known that William Holman Hunt reacquired *Bianca* in a sale at Christies in 1903,²⁸ but the copyright registers show he also registered the copyright in his own name in 1906. Finally, the register shows the previously unknown fact,²⁹ that Hunt's wife Edith, registered the copyright of *The Lady of Shalott*, one month after Hunt's death, in October 1910 (on the basis of an agreement of 21 December 1906).

Copyright registers also include a 'short description' of each work, which was a legal requirement for registration. Nineteenth century case law established that a picture's title would suffice, where 'the subject is indicated' by that title,³⁰ but the 1862 Act also allowed the

²⁴ Bronkhurst, *William Holman Hunt*, Vol.1 p.289.

²⁵ Bronkhurst, *William Holman Hunt*, Vol.1 p.238.

²⁶ Cooper, *Art and Modern Copyright*, p.210-211, uncovering the involvement of the Walker Gallery in the copyright debates culminating in the 1911 Act.

²⁷ Bronkhurst, *William Holman Hunt*, Vol.1 p.171.

²⁸ Bronkhurst, *William Holman Hunt*, Vol.1 p.220.

²⁹ Bronkhurst, *William Holman Hunt*, Vol.1 p.271.

³⁰ As Mr Justice Blackburn explained in *Ex Parte Beal* (1868) LR 387, 393: 'The picture 'Ordered on Foreign Service' represents an officer, who is ordered abroad, taking leave of a lady, and no one can doubt that is the picture intended. So again, 'My First Sermon' describes with sufficient exactness a child impressed with the novelty of her situation sitting in a pew, and listening with her eyes open; while the same child, fast asleep in a pew, forms the subject of 'My Second Sermon'. Mr Justice Blackburn gave Landseer's *A Piper and a Pair of Nutcrackers* and Landseer's *A Distinguished Member of the Humane Society* as examples where adding 'a sketch or outline of the work' would be advisable in addition to the title, to ensure the description was adequate.

inclusion of a ‘sketch, outline or photograph’ of the work. The registrations of Hunt’s work show that other details are also often provided, such as a painting’s size, inscriptions on the canvas and/or a detailed verbal description of the iconography.

The registers provide a snapshot of information about the painting as at a particular point in time, and may be a source for tracking changes to a picture or, in exceptional circumstances, a rare visual record, in cases where the whereabouts of a picture is now unknown. As regards Hunt’s registrations, photographs are included for six paintings. It is interesting to note that the photograph of *The Tracer* differs in certain details from the finished picture (the inclusion of stripes on the child’s trousers and a cap tucked into his belt³¹) and the photograph of *May Morning on Magdalen Tower* also includes a reproduction of the picture’s ornate frame.

Further, the copyright register can be useful in tracing changes to the titles of paintings. In the case of Hunt, for example, the register reveals a previously unknown fact about the title of the painting that we today know as *Morning Prayer*,³² which was entitled *Devotion* when registered by Agnew & Sons in 1867. There are other subtle differences in titles, such as *The Awakening Conscience*, painted in 1853-4, was registered in 1887 as *The Awakened Conscience*.³³ As the art historian Pamela Fletcher shows in her essay in the Codell anthology (referring to the discussion of Abraham Solomon’s *Second Class* in the copyright debates in the House of Lords in 1858) copyright records can be a source of new information about the changes in the title and ownership of a painting, and this can radically change our understandings of particular paintings and the intentions behind them.³⁴

Copyright history, then, can be useful to art historians in exploring the intricacies of the history of particular works and the nature of their legal protection. However, the implications of the ‘visual turn’ in copyright history scholarship for art history, goes beyond this and I now outline three aspects.

First, copyright debates – discussions about what the law *should* be (rather than what the law actually was) – were very much in the contemplation of painters in the nineteenth century. As I show in *Art and Modern Copyright*, the period between the 1862 Act and the

³¹ For an explanation of these changes, see Bronkhurst, *William Holman Hunt*, Vol.1 p.262.

³² Bronkhurst, *William Holman Hunt*, Vol.1 p. 203.

³³ Also, *A Converted British Family Sheltering a Christian Missionary from the Persecution of Druids*, painted in 1849-50, was registered in 1887 as *A Christian Priest rescued by a British Family from the Druids*.

³⁴ P. Fletcher, ‘From Replica to Original: Abraham Solomon and the Market for Modern-Life Subjects’ in Codell, *Victorian Artists’ Autograph Replicas*, referring to the copyright debates of 1858 discussed in Cooper *Art and Modern Copyright*, p.128-129.

codification of copyright in 1911, was one of intense debate about how copyright law should be reformed, and this included the repeated discussion of proposals that, if enacted, would curb painters' freedom to repeat their own pictures after they were sold, so as to safeguard purchasers of art-works (who felt that painters' repetitions undermined the uniqueness and economic value of works they owned).³⁵ Numerous artists were active in this debate. Hunt, for example, published a piece on *Artistic Copyright* in *The Nineteenth Century* in 1879,³⁶ contemporaneous with the Royal Academy of Arts' Memorial to the Government, opposing such changes.³⁷ The climate created by these debates, in which painters were often put on the back-foot in defending their right to repeat their own works, sometimes had a direct bearing on artistic practice, dealings with patrons and the general unease with which some approached replicas, and examples are discussed in two chapters in the Codell anthology about Hunt by Bronkhurst and John Frederick Lewis by Briony Llewellyn.³⁸ Indeed, Llewellyn describes copyright as 'one of the most important artistic debates of the mid nineteenth century'³⁹ which acknowledges the relevance to art history of the dynamics of legal debates charted in detail in *Art and Modern Copyright*.

Secondly, and as yet unconsidered by art historians, are the implications of section 7 of the Fine Arts Copyright Act 1862 for artistic practice. The 1862 Act did not just introduce copyright protection for painting, but also regulated the use of artists signatures. Whereas copyright was about 'authors', section 7 concerned the 'Name, Initials or Monogram' of the person that 'made or executed' the work. Amongst other things it prevented 'fraudulent' dealings with a painting bearing the 'Name, Initials, or Monogram' of a person who 'did not execute or make' such work, and the copyright debates indicate that this was, at least in part, intended to prevent artists from selling works painted by assistants, but bearing the signature of the artist.⁴⁰ The distinction between 'authors' and 'makers' (as included in the 1862 Act and reiterated in the nineteenth century copyright debates more generally) and the relationship

³⁵ Cooper, *Art and Modern Copyright*, Chapter 4.

³⁶ William Holman Hunt, 'Artistic Copyright' (1879) *The Nineteenth Century* 418.

³⁷ See Cooper, *Art and Modern Copyright*, p.142-143. A copy of the Royal Academy's Memorial of 1879 can be found in the 'Primary Sources' on-line resource ed. Bently and Kretschmer, www.copyrighthistory.org.

³⁸ Bronkhurst, 'The Uncertain Status of William Holman Hunt's Oil Replicas' in Codell, *Victorian Artists' Autograph Replicas*, p.125-137 at p.125, and B. Llewellyn 'Is He Repeating Himself? Creative, Aesthetic and Commercial Dialogue in the Replicas of John Frederick Lewis' in Codell, *Victorian Artists' Autograph Replicas*, p.195-210, p.198.

³⁹ Llewellyn, 'Is he Repeating Himself?', p.198.

⁴⁰ Cooper, *Art and Modern Copyright*, Chapter 4, p.121, 161-162.

between those concepts and the ‘autograph replica’ which lies at the heart of recent art history scholarship,⁴¹ is yet to be explored.

Finally, and perhaps most significantly, the ‘visual turn’ in copyright history illustrates the complex ways that law can both draw on and also feed into the formation of aesthetic ideas.⁴² This is well illustrated by Hunt’s statement of the originality of *The Triumph of the Innocents* (now held at the Walker Gallery Liverpool) in his letter of 7 March 1871, addressed to the Liverpool Corporation, which I located in the copyright records of the Walker Gallery Archive. In her contribution to the Codell anthology, Bronkhurst provides a detailed analysis of Hunt’s arguments in this ‘most revealing letter’: Hunt asserts that the originality of the Liverpool *Triumph* lies with the fact that ‘all the painting’ was ‘put on by my own hand’ (the crossings out in the letter showing that he had first written that ‘all the figures’ were by his hand), but also arguing for the originality of the other *Triumph*, as ‘there is not a touch of any hand but my own shewing on its surface’. He concludes that both paintings ‘are each original without question’, as both ‘gained by the experiments made on the other’.⁴³

Copyright history can provide further insight into Hunt’s comments. A prerequisite for copyright under the 1862 Act was that a work was ‘original’ and as securing copyright was of upmost importance to the Liverpool Corporation,⁴⁴ this explains the Liverpool’s Corporation’s insistence that: ‘we will not buy the picture until we are satisfied that it is the original’.⁴⁵ Hence Hunt’s letter was filed by the Liverpool Corporation amongst its copyright records, alongside copyright registration certificates and related legal documentation, perhaps considering it to be proof that the copyright criterion of ‘originality’ was satisfied.

Yet, Hunt (who was later to sell the other *Triumph*, now held at the Tate, for far more than he received from Liverpool) was clearly keen to adopt an aesthetic definition of originality that would also not damage the claim to copyright protection, and therefore the sales prospects, of the other *Triumph*. Indeed, as the Appendix shows, he registered and sold copyright in the prime version and replica of two pictures - *Isabella Or the Pot of Basil* and *May Morning on*

⁴¹ J. Codell ‘Victorian Artists’ Autograph Replicas: Auras, Aesthetics, Copyright and Economics in Codell, *Victorian Artists’ Autograph Replicas*, p.3-20.

⁴² For the position taken by Scott, see *Becoming Property* p.20. Scott argues that, in pre-modern France, ‘Intellectual property’ was ‘art theory as a practice’; ‘art theoretical concepts were... constitutive of property law and its cultural forms’.

⁴³ Bronkhurst, ‘The Uncertain Status of William Holman Hunt’s Oil Replicas’, p.134-135.

⁴⁴ See Cooper, *Art and Modern Copyright*, p.210-211. Income from copyright licensing was important source of gallery funding for the Liverpool Corporation and licensing *The Triumph* went on to be a steady source of income.

⁴⁵ Sir William Forwood, Chairman of the Liverpool Museum’s Art Committee, quoted in Bronkhurst, ‘The Uncertain Status of William Holman Hunt’s Oil Replicas’, p.134.

Magdalen Tower – as well as the later larger version of *The Light of the World* (now held at St Pauls). The discussion surrounding *The Triumph*, then, illustrates the sometimes intimate connection between copyright law and the aesthetics and commerce of art: Hunt’s formulation of originality was directly influenced by legal rules – the legal requirement of originality contained in section 1 of the 1862 Act – and Hunt’s argument, in turn, facilitated the legal practice of asserting there to be more than one original for copyright registration purposes.⁴⁶ Accordingly, and as this article more generally shows, copyright history provides a rich terrain for interdisciplinary engagement and can provide art historians with new and interesting perspectives on questions that go to the heart of art historical enquiry.

⁴⁶ As I explore in *Art and Modern Copyright* (p.136), this practice differs to the intentions expressed in Parliament in 1862, that repetitions would not attract copyright, and was not a practice tested in the courts.