EDITORIAL

Copyright again, only much, much worse

Submissions ought now urgently to be made by readers of this journal in response to the British Government’s attempts to get to grips with what are called ‘orphan works’. Photographic records of works of art themselves out of copyright have been dragged into legislation that was initially prompted by the need to straighten out rights in film and video. The implication of the proposals is that photographic still reproductions of works of art are themselves works of art and therefore subject to copyright under EC rules (70 years after the death of the creator). The problem is, once this extraordinary step has been taken (statute law in England presently demands an element of creativity in a work of art, which case law partly supports, partly confuse), that there are countless such photographic records, often in the possession of agencies, the originators of which are not known or whose estate cannot be traced, records that are to be treated as if they were genuinely ‘orphan works’ in the copyright sense. Agencies that wish to charge fees for the use of reproductions, which includes a most unfortunate number of public museums, have a vested interest in promoting this unexamined notion.

The government needs to pay attention to the threat that this implication in the legislation poses to art-historical publications, books as well as journals, which will be an economic disaster in addition to the dire consequences to the dissemination of knowledge.

As art historians know well, many of the reproductive images in the agencies’ hands are now supplied in digital form, created from existing reproductions. There is an implication, although the question is not addressed in the proposals, that copyright must henceforth subsist in these digital reproductions, which are of course reproductions of reproductions (although with a nod to the continuation of the ‘original’ copyright), created in a purely automated process. There is little or no attention paid to the whole question of digital reproduction in the proposals, which fail even to address the question of the use of scanners. Yet scanning is a method employed not only by reproduction agencies but also by owners of original works of art to create digital images. The pressing of a button, it would seem, is now to be deemed sufficient to create copyright in the image thus produced. The whole idea of copyright is being effectively degraded, which surely cannot have been the government’s intention.

The proposals envisage, as a means of solving a conundrum that ought never to have been posed (reproductive images considered as ‘orphan works’), that a fee will be collected on behalf of any possible claims. As yet there is little indication as to how they will be collected (although with a nod to the continuation of the ‘original’ ‘copyright’), created in a purely automated process. There is little or no attention paid to the whole question of digital reproduction in the proposals, which fail even to address the question of the use of scanners. Yet scanning is a method employed not only by reproduction agencies but also by owners of original works of art to create digital images. The pressing of a button, it would seem, is now to be deemed sufficient to create copyright in the image thus produced. The whole idea of copyright is being effectively degraded, which surely cannot have been the government’s intention.

The proposals envisage, as a means of solving a conundrum that ought never to have been posed (reproductive images considered as ‘orphan works’), that a fee will be collected on behalf of any possible claims. As yet there is little indication as to how they will be collected (although with a nod to the continuation of the ‘original’ copyright), created in a purely automated process. There is little or no attention paid to the whole question of digital reproduction in the proposals, which fail even to address the question of the use of scanners. Yet scanning is a method employed not only by reproduction agencies but also by owners of original works of art to create digital images. The pressing of a button, it would seem, is now to be deemed sufficient to create copyright in the image thus produced. The whole idea of copyright is being effectively degraded, which surely cannot have been the government’s intention.

There are urgent reasons for making these submissions in objection to these unfortunate proposals (reference Intellectual Property Office 2011-004) by 21 March 2012. http://www.ipo.gov.uk/pro-policy/consult/consult-2011-copyright.htm

Supporters of The British Art Journal

G R Flick, Esq
Mrs James Brice
Anon
Maggs Bros Ltd

James Harvey British Art
Anthony Mould
Andrew Edmunds
Philip Mould: Historical Portraits
The Weiss Gallery