

# Images Want to Be Free!

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When I first became involved in the world of architectural publishing back in the 1970s and subsequently began seeing my own writing on architecture appear in print, illustrations weren't a big deal. Mostly you photographed what you wanted out of books or magazines, handed slides or prints over to the publisher, and included a source note in the caption or else in a figure list at the end. Since this was academic publishing, there was an assumption that it was fair use, even if that venerable concept (which actually goes back to British Common Law) wasn't widely invoked yet. If there happened to be a well-known and important photographer involved, say, Ezra Stoller, you wrote a letter to that individual or his company and requested permission. Costs for a single image rarely topped \$50. That was pretty much it. A little later, in the mid-1980s when I became senior editor for architecture and design at Rizzoli, a commercial publisher, we would "troubleshoot" the list of illustrations. When there was a clear copyright holder, like the Fondation Le Corbusier, we negotiated with them directly.

Increasingly, however, copyright protectionism ramped up, and the effects rippled into the world of academic publishing too. A loss I have never quite gotten over had to do with textual rather than image permissions. It occurred in the early 1980s when I was in charge of the Oppositions Books series at the Institute for Architecture and Urban Studies in New York. We had just published (in association with MIT Press) a beautiful translation of Adolf Loos's first collection of essays, *Spoken into the Void*. Loos had originally collected these writings, written for contemporary newspapers and journals between 1897

and 1900, in a single volume titled *Ins Leere gesprochen* in 1921, and republished the collection with minor revisions in 1931, two years before his death. We had also already translated, edited, and gathered the illustrations for a second volume of essays, containing a collection of Loos's writings from 1900 to 1930, also originally published in Austria in 1931 under the title *Trotzdem*. We were about to put it into production when a man named Adolf Opel got wind of our intention and wrote to MIT Press claiming to represent Elsie Altmann-Loos, Loos's second wife and sole named heir to his estate, and demanding that we desist. Although we could not verify his claim, MIT was unwilling to risk a lawsuit. A dispute over the ownership of Loos's body of writings has continued to the present day, with several other parties emerging to challenge Opel's claim, and *Trotzdem* has never been published in English in its entirety. Opel, however, now in his eighties, has issued several volumes of Loos's writings in both German and English, rearranging Loos's essays according to his own themes (and presumably thus avoiding copyright infringement).<sup>1</sup>

1 Incidentally, some of Opel's English translations of the essays from *Ins Leere gesprochen* are very close to those in the Oppositions Books edition. On the copyright controversy surrounding Loos's writings, see Janet Stewart, *Fashioning Vienna: Adolf Loos's Cultural Criticism* (Routledge, 2000), pp. 10–17; and especially a recent elucidation of the tangled *affaire Loos* by Ines Weizman, "The Three Lives of Modern Architecture: Wills, Copyrights, and Their Violations," in Thordis Arrhenius, Mari Lending, Wallis Miller, and Jérémie Michael McGowan, eds., *Exhibiting Architecture: Place and Displacement* (Zurich: Lars Müller, 2014), 183–96. Weizman argues that in 2008, with the passage of 75 years since Loos's death, his writings and drawings have finally entered the public domain and may now be freely republished and reproduced by anyone.

Today, online and off, there is an increasingly formidable array of gatekeepers in the path of scholarly publication. A bewildering set of rules and exceptions governs term of copyright, licensing arrangements, and what is and is not in the public domain. The lack of uniformity in laws and enforcement from country to country adds to the confusion. The appointed middlemen also derive an unspecified share of royalties or fees from their services. Familiar online nowadays are images that have the logos of digital archives and websites stamped across them and online books with grayed-out illustrations, frustrating viewing and reading. At the same time, the great majority of images that appear on sites like Pinterest, Tumblr, and Google Images are posted without provenance (some of them employing devices to make them vanish like the Cheshire cat after a few seconds unless one agrees to become a member of a particular online community).

Almost as dismaying as my experience with the Loos book was an encounter I had ten years ago when, as the editor of a small-format, low-budget series of books published by the Buell Center for the Study of American Architecture at Columbia University in association with Princeton Architectural Press, I found myself obliged to negotiate with the Mondrian/Holtzman Trust for the right to reproduce three black-and-white photos depicting the interiors of Mondrian's studios in Paris and New York.<sup>2</sup> Because several of Mondrian's paintings or "wallworks" were

2 Brian O'Doherty, *Studio and Cube: On the Relationship Between Where Art Is Made and Where It Is Displayed* (New York: Temple Hoyne Buell Center for the Study of American Architecture and Princeton Architectural Press, 2007).

visible within the photographs, the estate's representative demanded that we pay for each of those works additionally. She also required that we show her the complete list of images in the book in advance, and when she discovered that we also planned to include an installation shot of a 1928 gallery in a museum in Hannover, Germany—the famous *Abstrakt Kabinett* designed by El Lissitzky, in which two (subsequently lost) paintings by Mondrian could be seen hanging on the walls—she insisted on charging us for those too! The total cost, supposedly taking into consideration our nonprofit status, came to close to \$3,000, nearly half our editorial budget.

The American-based Mondrian estate is, as I subsequently learned, especially notorious among art scholars. As one exasperated Dutch commentator put it with regard to them,

US copyright law is meaningless. It started out expiring at [the artist's] death, then some years later was extended to support the artist's immediate family. Then Disney came along and no copyright has expired since—the limit gets extended every time it's due to expire. It has nothing to do with protecting heirs from poverty, but rather it is intended to protect corporate interests.<sup>3</sup>

The net result for all but the most well-endowed publications is a chill atmosphere and a diminution in both the number and quality of publishable

3 See “Mondriaan died 70 years ago, so is his work now copyright-free?” *DutchNews.nl*, January 2, 2015, <http://www.dutchnews.nl/news/archives/2015/01/mondriaan-died-70-years-ago-so-his-work-now-copyright-free/>.

images. Architectural writers are forced to hunt for views of buildings that are already in the public domain, or to make use of non-professional shots taken by anonymous photographers (or even with their own cameras—I confess to resorting to my own phone for purposes of a recent essay). Another consequence is that scholarly publishers now tend to pass back the costs of clearing rights to their authors as a matter of contract; for those who need to get their books and articles published, there's little option but to acquiesce. Naturally the readers of scholarly publications (including students) suffer too, being deprived of the best possible illustrations while nonetheless paying a steep price for academic books and sometimes also for articles in scholarly journals on proprietary websites. More fortunate authors may succeed in getting a grant from their university or from a foundation to cover some of the costs. Yet today the budget for artwork in a 250-page monograph on a topic in recent architectural history can easily run to \$15,000 or more.

Images want to be free, to paraphrase Stewart Brand, but images also want to be expensive. The inherent conflict in interest between open scholarly exchange and market forces is difficult to broker. In 2014, the College Art Association issued an extensive report showing that the existing “permissions culture” has taken a heavy toll on academic publishing. Historians, editors, publishers, and other members of the community of arts and letters are scared off from taking full and legal advantage of fair use doctrine. Yet “fair use is a reliable right of free expression,” the CAA affirmed, one

that the courts—up to and including the Supreme Court—“have celebrated as a tool to generate new culture.”<sup>4</sup>

From this standpoint, a recent announcement by the Rauschenberg Foundation, stewards of painter Robert Rauschenberg’s work and legacy, comes as a breath of fresh air. Concluding that it is, in fact, in their best interest to insure that the public has the best possible access to the artist’s body of work through high-quality images, they have decided to make their holdings more easily available for reproduction. A report titled “Rauschenberg Foundation Eases Copyright Restrictions on Art” appeared in the *New York Times* last February 26.<sup>5</sup> This policy shift, allowing open access for “all but patently commercial uses,” is now spurring introspection among other foundations as well.

Let’s hope a wider change is at hand.

4 See Patricia Aufderheide, Peter Jaszi, Bryan Bello, and Tijana Milosevic, *Copyright, Permissions, and Fair Use among Visual Arts and the Academic and Museum Visual Arts Communities: An Issues Report*, February 2014, <http://www.collegeart.org/pdf/FairUseIssuesReport.pdf>.

5 See [http://www.nytimes.com/2016/02/27/arts/design/rauschenberg-foundation-eases-copyright-restrictions-on-art.html?\\_r=0](http://www.nytimes.com/2016/02/27/arts/design/rauschenberg-foundation-eases-copyright-restrictions-on-art.html?_r=0).