

Copyright Guidelines

- 1 Copyright Basics
- 2 Responsibilities of the RIHA Journal Author
- 3 How to Proceed / How to Avoid Copyright Fees

Copyright is a complicated matter. Here, only some aspects pertaining to image use in RIHA Journal are briefly outlined. Often, questions of image use will have to be considered and negotiated on a case-by-case basis. For that reason, please consult with your local editor whenever you wish to use image material in your article which is sensitive to copyright issues.

A note on terminology: Due to its server location in Germany, RIHA Journal is under the jurisdiction of the German Copyright Act (*Urheberrechtsgesetz* [UrhG]). For your convenience, and following common usage, "copyright" and "public domain" are used here as informal translations of the German terms "Urheberrecht" and "gemeinfrei," respectively. Please note, however, that, given national differences in jurisdiction, they are not legally equivalent. Hence, German terms are added in parentheses where appropriate.

1 Copyright Basics

- A copyright in a *work of art* is to be distinguished from a copyright in a *photograph of a work of art* (where the work of art may or may not be in the public domain). That means that if you wish to use an image of a copyright-protected work of art (i.e., a work of art that is *not* in the public domain), you may have to obtain copyright permission not only from the rights holder of the work of art, but also from the rights holder of the image used. It also means that you may have to obtain permission for using the image of a work of art where the work of art itself is no longer under copyright.

- **Duration of Copyright for Works of Art**

Since, as indicated above, the RIHA Journal website is hosted by a server located in Germany, the German Copyright Act (*Urheberrechtsgesetz* [UrhG]) applies – independently of your nationality, your country of residence, or the nationality of the artist or rights holder in question.

The copyright holder of a work of art is the artist. In German jurisdiction, as in most other countries, copyright for works of art generally subsists for 70 years after the death of the artist (Cf. UrhG § 64). After that date, copyright expires and the work of art enters the public domain (is "gemeinfrei"). Generally, cut-off day is the 1st of January. (E.g., if an artist died in 1920, his or her work entered the public domain at January 1, 1991.)

- **Duration of Copyright for Photographs of Works of Art**

Photographs of works of art are protected by ancillary copyright as well. Note that a general distinction is drawn between photographs of two-dimensional and of tridimensional works of art.

If the photograph/slide is the product of a straightforward photographic process or a process analogous to photography, copyright protection terminates 50 years after the creation of the photograph/slide, or 50 years after its first authorized publication. As a rule, this is the case with photographs of two-dimensional artworks. (Cf. UrhG § 72)

By contrast, photos taken of tridimensional originals (sculptures, architecture, etc.) are generally classified as photographic works of art (so-called "Lichtbildwerke") (since by choosing, e.g., a certain angle or special lighting, an artistic element enters the

process). Hence, they are protected by copyright for 70 years after the photographer's death. (Cf. UrhG § 2)

- **Licenses**

Most artists whose works are copyright-protected are members of visual arts collective management societies (such as, e.g., ADAGP in France, or ARS in the U.S.). These organizations manage and protect copyrights which copyright holders are themselves unable to protect for practical or legal reasons. This means that permission requests are usually to be addressed to these societies.

Due to the server location of RIHA Journal, the relevant collecting society for RIHA Journal authors is the collecting society in Germany, Verwertungsgesellschaft Bild-Kunst, Bonn (<http://www.bildkunst.de>, English version available). As collecting societies cooperate internationally, VG Bild-Kunst is the relevant address also if the artist in question is represented by one of the foreign sister societies of VG Bild-Kunst.

Not all artists whose work is copyright-protected are members of collecting societies, though. In some cases, you will need to request permission from, e.g., foundations or communities of heirs. These may have diverging licensing policies.

Permission to use **photographs** generally requires authorization directly from the photographer or institution (e.g. image databases, publishers). Few photographers are also represented by collecting societies.

- **Exemption**

Under certain conditions, permission may not be required for the reproduction of copyrighted works if the reproduction qualifies (1) as a quotation within the meaning of Paragraph 51 German Copyright Act (UrhG) and (2) is inapt for subsequent reproductions (for details see below).

2 Responsibilities of the RIHA Journal Author

- It is the author's responsibility to obtain written permission to reproduce copyright-protected material in her/his article.
- Written permissions have to be obtained *before* publication of the article. Authors are strongly encouraged to procure images and permissions as early as possible, preferably before submitting their manuscripts. Please be aware that tracing copyright holders and obtaining permission for image use can be time-consuming.
- Authors have to send a signed hard copy of the copyright declaration to their local RIHA Journal editor before imprimatur (permission to publish) can be requested from them. A prepared declaration form is available at RIHA Journal's website or can be requested from the responsible local editor.
- In order to avoid problems (and costs) connected to licenses and copyright permissions, we strongly recommend using – whenever possible – material that is not under copyright or to which no license fees apply.
- The author has to pay any costs incurred for the article, including photography and permissions expenses. In rare cases, license fees may be paid by RIHA (see below, 3, B, iii).

3 How to Proceed / How to Avoid Copyright Fees

- If the work of art you wish to reproduce in your article is

A) in the public domain ("gemeinfrei"), i.e., is *not* copyright-protected:

No copyright permission is required.

However, you may still have to request permission for using the photograph of the work.

- If the work of art you wish to reproduce in your article is **B) copyright-protected, i.e., is *not* in the public domain (not "gemeinfrei")**, there are various options:

i) Using alternative material

Consider using alternative illustrative material which is not under copyright.

This also holds for photographs of works of art. Whenever possible, use your own photographs.

ii) Referring the reader to other sources

You are also welcome to refer the reader to appropriate (online) sources for high quality reproductions of the works in question.

iii) Using images as "quotations"

Under certain conditions, copyright-protected material can be reproduced in scholarly publications for free. This is made possible by the "quotation right" (Zitatrecht) of German Copyright Act (UrhG), § 51.

Please note, however, that for a reproduction to qualify as a quotation within the meaning of § 51 UrhG, several conditions must be in place:

- Most importantly, the image must be **essential** to the article; i.e., it must be **indispensable** for confirming the author's line of reasoning.
- The text must **discuss the work/image in detail**; merely mentioning it will not do.
- The size of the image should be as **small** as possible (~ 1/8 page).
- The image must be **black-and-white**, unless the work's color is essential to the discussion.
- The image must be of **low resolution** (72 dpi)

Moreover, as always with images, please make sure to cite the source as detailed as possible.

Please be aware that these are only rules of thumb. Generally, choosing the "quotation" option means entering a legal grey zone and involves certain risks. Meaning, scope, and application of the quotation right are controversially discussed, and whether something qualifies as a quotation in the relevant sense can only be decided on a case-by-case basis.

RIHA Journal is obliged to annually inform the German collecting society VG Bild-Kunst about all RIHA Journal articles that reproduce copyright protected works. The VG Bild-Kunst will check whether the reproductions in question qualify as quotations or not. If they decide negatively and fees are due, even though the above rules have been observed by the authors, their fees are paid by RIHA.

iv) High quality reproductions: Permission required, fees due

If you wish to use high quality reproductions of a reasonable size that do not qualify as "mere quotations," however, copyright permission has to be obtained, and license fees may be due.

If the artist (or photographer) in question is represented by VG Bild-Kunst or of one of its sister societies, please contact one of these collecting societies. In addition, please inform your local editor.

To check whether the artist or photographer is represented by VG Bild-Kunst or one of its sister societies, please go to:

www.bildkunst.de/html/index_e.html > Search for artists > Reproduction rights and online rights (*English version*)

Or

www.bildkunst.de/index.html > Künstlersuche > Reproduktions- und Onlinerechte. (*German version*)

For a list of VG Bild-Kunst's sister societies worldwide go to http://www.bildkunst.de/html/partnerc_e.html.

If the artist or photographer is not represented by VG Bild-Kunst or one of its sister societies, please directly address the respective rights holder or her/his representative.

In either case, however, authors are kindly asked to consider the aforementioned alternatives i) – iii) first before using reproductions to which license fees apply.

Copyright Research

If you are uncertain whether the work of art you wish to illustrate is under copyright, or whether the artist is a member of a collecting society, begin your research by searching the artists database of one of the collecting societies. These databases generally list the names of all artists currently being members of any collecting society (about 40.000).

To trace the rights holder, you may also try other internet sources, contact relevant galleries or museums, or ask your local collecting society for assistance.

- **Rights holder unknown and other problems**

Sometimes, in spite of intense research and best efforts, the rights holder cannot be traced; or, you cannot get the rights holder to respond; or, the rights holder's terms of condition are unacceptable. Under those circumstances, please contact your country's collecting society and / or your local editor for advise so that each case can be considered individually.

In particular if the rights holder is unknown, please be aware that using the image in question would mean to run the risk of infringing someone's copyright.

As an alternative, we generally recommend choosing one of the options mentioned above: You may abandon the illustration, use an alternative illustration instead, reproduce the image as "quotation," or refer the reader to appropriate other sources. If you still wish to use the particular image in question – e.g., because it is fundamental to your article –, please consult your local editor about how to proceed.

- **Requesting Image Use Permission or Copyright Permission**

Many museums, image databases, and other institutions provide standardized request forms, either for requesting copyright or image use permission. With others, you may need to send an informal permission request letter.

In your request letter, you should include the following information:

that RIHA Journal is

- a **scholarly** journal
- published by RIHA, the International Association of Research Institutes in the History of Art, a **not-for-profit** association
- an e-journal, published **online only**
- an **open access** journal;

that articles are

- available **without time limit**

RIHA Journal Copyright Guidelines

- made available **in HTML and as PDFs**;

that images are

- made available **only within the context of the relevant article**, and that
- **full credit** will be given to the original source.

In cases in which you address the rights holder directly, you may well ask him or her to consider reducing or waiving any fees, given the scholarly and non-for-profit character of the publication. You are also welcome to refer the respective rights holder or institution to the copyright resolution of RIHA (<http://www.riha-institutes.org/resolutioncopyright.html>).