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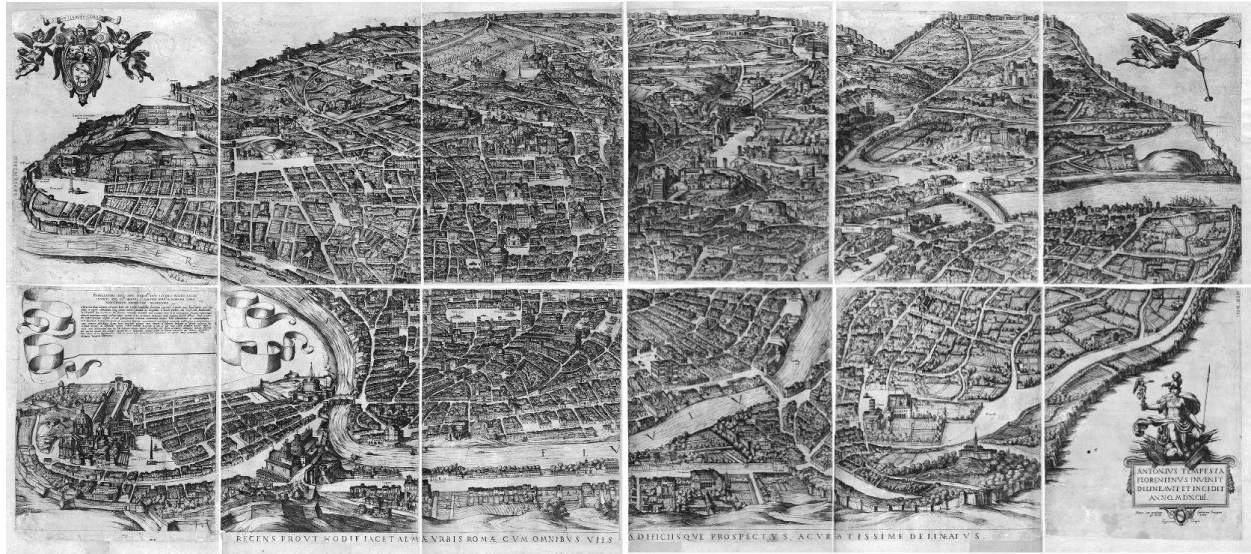
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The 1593 Antonio Tempesta Map of Rome

By Jane C. Ginsburg, Columbia Law School

Abstract

This Essay, for the collection A HISTORY OF IP IN 50 OBJECTS, Dan Hunter and Claudy Op Den Kamp, editors (forthcoming, Cambridge U. Press. 2018), examines Florentine painter and engraver Antonio Tempesta's 1593 petition for a Papal printing privilege on his great bird's-eye view Map of Rome. The arguments Tempesta made in support of his request for the exclusive rights to print, sell and control variations on his map evoke justifications spanning the full range of modern intellectual property rhetoric, from fear of unscrupulous competitors, to author-centric rationales. Invocations of labor and investment and unfair competition-based justifications were familiar – indeed ubiquitous – in Tempesta's time, and still echo today. Long before the 1710 British Statute of Anne (vesting exclusive rights in authors), the precursor regime of printing privileges had well understood printing monopolies to be incentives to intellectual and financial investment. The pre-copyright system thus firmly established one of the philosophical pillars of modern copyright law. Tempesta's petition, however, goes further than its antecedents with respect to the second pillar of modern copyright law, the natural rights of the author, a rationale that roots exclusive rights in personal creativity. Tempesta focused the rights on the creator, and equated creativity with his personal honor, thus foreshadowing a moral rights conception of copyright.



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In the late 1580s, Florentine painter and printmaker Antonio Tempesta, having thrived under Pope Gregory XIII, found himself on the ebbing end of the subsequent Pope, Sixtus V's patronage. Tempesta's commissions to fresco churches or residences had fallen off, but the burgeoning print market offered new opportunities. Printed images of Rome proved increasingly popular with pilgrims, particularly in anticipation of the Jubilee of 1600. Moreover, Rome's urban transformation under Sixtus V refocused attention from the ruined glories of the imperial past to the grandiose design of new thoroughfares, piazzas, fountains and edifices. The newly-mastered engineering feat of transporting obelisks symbolized the passage of grandeur from Roman emperors to Popes; obelisks displaced from their pagan settings now rose throughout the city, facing churches and ecclesiastical palaces. An immense bird's-eye view depiction of the city, greater in size and detail than any predecessor, would celebrate the new Rome, and, not incidentally, would advertise Tempesta's representational accomplishments to prospective Papal and other patrons. It would also enhance his reputation as a printmaker.

Tempesta may have perceived even greater need for alternative sources of income as the early demise of Sixtus V, and the signally brief reigns of his immediate successors (three popes in two of the years during which Tempesta would have been developing his map), rendered the prospect of Papal patronage ever more precarious. When Tempesta completed his map, Clement VIII, a fellow-Florentine, was in the second year of what turned out to be a 13-year papacy. By this point, however, if Tempesta was still hoping for lucrative work as a painter of large-scale frescos, he was also extensively exploiting the print market. Moreover, perhaps wary of Papal inconstancy in largess or longevity, Tempesta dedicated his map not to Clement VIII, but to Jacobo Bosio, the representative of the Knights of Malta to the Holy See, and whose favor

¹ Antonio Tempesta, *Recens prout hodie iacet almae urbis Romae cum omnibus viis aedificiisque prospectus accuratissime delineatus* (Rome, 1593), etching, 40¾ × 96 in. (103.5 × 244 cm). Photo: Newberry Library, Chicago, Novacco 4F 256. Image copied from Jessica Maier, *ROME MEASURED AND IMAGINED: EARLY MODERN MAPS OF THE ETERNAL CITY* (U Chicago Press 2015), fig 57.

Tempesta's dedication evokes.² The map, monumental in every sense – in dimensions, 103.5 × 244 cm, and in its comprehensive coverage of ordinary dwellings as well as imposing new buildings – set a new standard for visual representations of contemporary Rome. Thenceforth, throughout the 17th century, maps of Rome would literally as well as figuratively derive from Tempesta's template, as subsequent publishers following Tempesta's death reworked the plates Tempesta etched.³

Tempesta anticipated great success for his map, and accordingly sought to ensure that he would retain the profits. In a step unusual for artists and print designers, he not only drew the underlying images and etched them himself, but also, rather than selling the copper plates to one of the established Italian or Flemish print publishers in Rome, kept the plates, thus becoming his own publisher. Most importantly from an intellectual property perspective, he obtained privileges granting him a ten-year monopoly on printing or selling his map. Tempesta was by no means the first mapmaker or printmaker of Roman images to seek exclusive rights from the Pope and other sovereigns. For example, Leonardo Bufalini received Papal and French, Spanish and Venetian privileges for his 1551 map of Rome; in 1587 Venetian publisher Girolamo Francino obtained a Papal privilege for *Le cose maravigliose dell'alma città di Roma*, with text and engravings celebrating the great public works of Sixtus V; in 1588 Flemish publisher Nicolas van Aelst (who would publish other prints by Tempesta) received a Papal privilege for engravings of Roman obelisks. But Tempesta's Papal privilege stands out for the arguments Tempesta made to support his application for the grant.

Tempesta wrote:

Antonio Tempesta, Florentine painter, having in this city [Rome] printed a work of a new Rome, of which he is not only the creator, but also has drawn and engraved it with his own hand, with much personal expense, effort, and care for many years, and fearing that others may usurp this work from him by copying it, and consequently gather the fruits of his efforts, therefore approaches Your Holiness and humbly requests him to deign to grant him a special privilege as is usually granted to every creator of new works, so that no one in the Papal States may for ten years print, have printed, or have others make the said work, and [further requests] that all other works that the Petitioner shall in the future create or publish with permission of the superiors [Papal censorship authorities] may

² Eckhard Leuschner, "Prolegomena to a Study of Antonio Tempesta's 'Map of Rome,'" in *Piante di Roma dal Rinascimento ai catasti*, ed. Mario Bevilacqua and Marcello Fagiolo (Rome: Artemide, 2012), 158, 161 details Tempesta's relations with the Bosio family.

³ Giovanni Battista de Rossi reworked Tempesta's plates for his 1665 edition of the map; but it is not known how the de Rossi publishing house came into possession of the plates. According to Leuschner, "Censorship and the Market: Antonio Tempesta's 'New' subjects in the context of Roman Printmaking, c. 1600, in *The Art Market in Italy 15th-17th Centuries*, (Modena 2003) 65, 70, after initially retaining them in order to self-publish, Tempesta sold the plates for many of his prints to various publishers, including van Aelst. However, "The copper plates or *lastre* of the 'Map of Rome' appear to have been among those that Tempesta never sold to another print publisher during his lifetime, "Prolegomena," *op. cit.* at 162. Rather, Leuschner concludes that "no continuing activity of a Tempesta workshop is documented – the contents of the artist's studio, especially the remaining copper plates, must have been sold and dispersed," Eckhard Leuschner, "Note on Antonio Tempesta" p. 4, entry 3501 in, *Antonio Tempesta: Commentary, Part 1 (Illustrated Bartsch)* vol. 35 (New York 2005).

enjoy the same Privilege as well so that he may with so much greater eagerness attend to and labor every day [to create] new things for the utility of all, and for his own honor, which he will receive by the singular grace from Your Holiness.⁴

The petition evokes justifications spanning the full range of modern intellectual property rhetoric, from fear of unscrupulous competitors, to author-centric rationales. Invocations of labor and investment (“with much personal expense, effort, and care for many years”), and unfair competition-based justifications (“fearing that others may usurp this work from him by copying it, and consequently gather the fruits of his efforts”) were familiar – indeed ubiquitous – in Tempesta’s time, and still echo today. From the earliest Roman printing privileges in the late 15th century, these rationales figured prominently in petitions by and privileges granted both to authors and to publishers. Frequently, petitions and privileges would emphasize the public benefit that publishing the work would confer, while stressing that the author or publisher hesitates to bring the work forth, lest others unfairly reap the fruits of their labors, to the great detriment of the author or publisher. Other petitions make explicit the incentive rationale that underlies investment-protection arguments. They urge, as did Tempesta, that the grant of a privilege would encourage not only immediate publication of the identified work, but also future productivity, to even greater public benefit (“so that he may with so much greater eagerness attend to and labor every day [to create] new things for the utility of all”). We can see that long before the inception of true copyright, in the 1710 British Statute of Anne (vesting exclusive rights in authors), the precursor regime of printing privileges had well understood printing monopolies to be incentives to intellectual and financial investment. The pre-copyright system thus firmly established one of the philosophical pillars of modern copyright law.

Tempesta’s petition, however, goes further than its antecedents with respect to the second pillar of modern copyright law, the natural rights of the author, a rationale that roots exclusive rights in personal creativity. Tempesta’s contention that new works routinely receive privileges, implying “ought” (for his work) from “is” (for works in general), was not novel. But he focused the rights on the creator (“as is usually granted to every creator of new works”), and equated creativity with his personal honor, thus foreshadowing a moral rights conception of copyright. It would be anachronistic to argue that Tempesta claimed that exclusive rights inherently arise out of the creation of a work of authorship (rather than solely by sovereign grant); on the contrary, Tempesta carefully acknowledged both that privileges are a “singular grace” from the Pope, and that all works must receive a license from the Papal censors. Nonetheless, in advancing the then-unusual request that the privilege cover “all other works that the Petitioner shall in the future create or publish,” Tempesta was urging that his entire future production should automatically enjoy a ten-year monopoly on reproduction and distribution in the Papal States (subject, of course, to the censors’ approval of each work Tempesta would bring forth). In more modern terms, Tempesta was seeking a result equivalent to “you create it, it’s yours.” Tempesta also tied

⁴ Archivio segreto vaticano [ASVat], Sec. Brev. Reg. 208 F. 74 (13 October 1593); the petition appears at F. 76r, translation mine. A full transcription of the original Italian appears in Eckhard Leuschner, “The Papal Printing Privilege,” *Print Quarterly* XV (1998), 359, 370 (Appendix); a partial transcription appears in Christopher L.C.E. Witcombe, *Copyright in the Renaissance: Prints and the Privilegio in Sixteenth-Century Venice and Rome* (Leiden, Brill 2004), 242 & n. 24.

his request to incentive rationales – the broad grant would spur him ever more eagerly to greater creativity, but even this conflation of creativity-based and labor-incentive conceptions, one might contend, anticipates the frequent oscillation and overlap in modern copyright between natural rights and social contractarian theories of copyright.

The privilege that Clement VIII in fact granted to Tempesta, while very broad, fell short of the full range of Tempesta’s aspiration. The Pope did not cover all of Tempesta’s future print production, but he did grant exclusive rights not only in the map of Rome, but “also in maps of whatever other places and cities that he will invent and will have engraved onto copper plates.”⁵ Moreover, the scope of the monopoly in the map of Rome (and, potentially, of other locations) extended to what copyright lawyers today call “derivative works,” that is, works based on the protected source, such as adaptations and new editions. The privilege thus reached “whatsoever form, whether larger or smaller, or in any form different from the version initially printed.” Coverage of different size versions of the map would ensure Tempesta control over smaller, less expensive, editions, whether to exploit that market, or, as appears to be the case, to preserve the monumental cachet of the immense original. It seems no smaller size editions of the map were published during Tempesta’s lifetime. Yet, the large-scale version may not have sold widely, either.⁶ Scholars of Roman printmaking have speculated, however, that the number of copies sold does not supply the measure of the map’s success. Rather, as Jessica Maier asked, and answered:

[W]ho did purchase large works like Tempesta’s . . . , and why? Francesca Consagra has unearthed documentation that sheds light on the collecting and display of these objects in Roman circles. She notes that owners of villas in the city’s greenbelt liked to decorate their residences with printed maps and city views, a fashion “observed by popes and merchants alike.” . . . Eckhard Leuschner has observed that the German architect and author Joseph Furttentbach (1591–1667) advised affluent readers to adorn their residences with maps of Rome in his *Architectura privata* of 1641. Furttentbach explicitly mentioned the works of Tempesta . . . , among others, as ideal decoration for a well-appointed study.⁷

In other words, Tempesta’s map may have attracted an elite clientele prepared both to pay prices three to twenty times higher than smaller prints commanded and, Tempesta may have hoped, to commission even more expensive painted decorations for their villas.

⁵ ASVat Sec. Brev. Reg. 208 F. 74r, (translation mine). It does not appear that Tempesta in fact created maps, large-scale or otherwise, of other cities or locations.

⁶ See Stefano Borsi, *Roma di Sisto V: La pianta di Antonio Tempesta, 1593* (Rome: Officina, 1986) 20, citing as evidence of the map’s lack of commercial success its limited print run, lower than the technical capacity of the plates. Borsi also suggested that the map’s large format disadvantaged it relative to smaller, less expensive maps, especially for the Jubilee tourist trade, *id.* But the map’s limited availability may in fact indicate that Tempesta was targeting a different market, see text *infra*.

⁷ Jessica Meier, *op. cit.* at 177, quoting, Francesca Consagra, *The De Rossi Family Print Publishing Shop: A Study in the History of the Print Industry in Seventeenth-Century Rome* (Ph.D. diss., Johns Hopkins University, 1993), 346–48; Leuschner, “Prolegomena,” at *op. cit.* at 163.

Tempesta's privilege thus served multiple purposes. It allowed him to control the market for his work, matching the public for his map to his self-conception as an innovative painter-printmaker,⁸ a polyvalent artist who not only "invents" the image, but "with his own hand" prepares it for the print medium, and moreover executes the transfer of the drawing to the copper plate. The exclusive rights the privilege conveyed provided legal security sufficient to warrant the undertaking of creating and disseminating the map and, Tempesta asserted, stimulating further creative endeavors. And it enhanced the author's "honor" by conferring the prestige of the approval of the Pope and other sovereigns, a prestige that carried market value, as the persistent appearance of the original notice of "privileges of the highest princes" (*cum privilegiis summorum principum*) through the 1645 reprinting of the map, long after the original privileges would have expired, attests.⁹

Over 400 years later, many of the financial and artistic concerns that motivated Tempesta's claim for exclusive rights in his creative output continue to underlie authors' aspirations for the copyright system today.

⁸ According to a near-contemporary biographer Giovanni Baglione, Tempesta was a man of many talents; in addition to his paintings and vast print output, for which Baglione states that Tempesta enjoyed an international market, Baglione recounts that Tempesta was a virtuoso musician and spoke multiple languages, Giovanni Baglione, *Le vite de' pittori, scultori, architetti, ed intagliatori, dal pontificato di Gregorio XIII. del 1572. fino a' tempi di papa Urbano Ottavo. nel 1642* 314-16 (Rome 1642).

⁹ Leuschner, "Prolegomena," *op. cit.* at 162-63, speculates that Tempesta may have renewed the 1593 privilege for his 1606 reprinting of the map, but acknowledges that "no archival documentation for this has as yet been found." My own research in the Vatican Secret Archives has not located a renewal of the privilege. In any event, it was not unusual for subsequent editions or reprintings of books to continue to assert a then-expired Papal privilege.