



Is the Italian Cultural Heritage eligible for protection also outside the Italian territory and even against exploitation lacking direct commercial purposes?

The Vitruvian Man case

When a work of art is considered also a "cultural asset", as defined by the Cultural Heritage Code, its use and reproduction are subject to a rather strict rule: **they must be authorized by the competent Italian public entities, determining the royalty due for the license of the work of art.**

Recently the Court of Venice applied the above rule in a case where Ravensburger had used the image of the Leonardo da Vinci's Vitruvian Man as the subject of its puzzles, without any prior authorization by the Museum holding the piece of art.

The Court stated that the use of the image of the Vitruvian Man made by Ravensburger conflicted with the provisions of the Italian Code of Cultural Heritage. Therefore, it **injunctioned the German company from using the image** of the work of art, in any possible jurisdiction, **condemned it to pay a € 1,500,00 penalty** for each day of delay in the execution of the decision and **ordered its partial publication** in some national newspapers.

The Venetian judges considered the Italian jurisdiction to exist, although the manufacturing activity of the puzzles reproducing the Vitruvian Man did not even in part take place in the Italian territory and the puzzles were not intended to be sold on the Italian market.

The Court ruled this way since Italy is the place where the damage arose, i.e., the place where the event giving rise to the liability for the tort directly generated its harmful effects. The reason is that both the original work of art and the museum that holds it are located in Italy. Furthermore, in Italy both the debasement of the image of the work of art and the loss of earnings from royalties have occurred. Therefore, in application of art. 7 no. 2 of the EU Regulation. no. 1215/2012, **although the illicit event was generated in Germany, the causal sequence that had determined the damage, produced its effects in Italy. Moreover, according to the principle of ubiquity, the plaintiff still may choose whether to sue the defendant in the Court of the place where the damage occurred or that of the place where the illicit conduct took place.**

In addition, the Italian jurisdiction also existed because Ravensburger s.r.l., the Italian affiliate of the German company, had also been sued in the proceedings. According to art. 8 of EU Regulation. no.

1215/2012, **if a legal proceeding is instituted against a plurality of defendants, a claimant domiciled in a Member State can always sue one of them in a State where another defendant is domiciled**, provided the claims are so closely connected that it is expedient to hear and determine them together.

Finally, **the Court of Venice held that it had jurisdiction also under Article 35 of the above-mentioned Regulation**, according to which *“Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.”*

After deeming Italian jurisdiction to exist, the court stated the applicability of the Italian law and therefore of the Code of Cultural Heritage (and of the Regulations for the reproduction of cultural heritage held in the Gallerie dell'Accademia drawn up in accordance with the law), with reference to all the parties of the trial. In fact, although the dispute was characterized by elements of transnationality, it had the main connection with the Italian territory.

In particular, it was explained that **the provisions of the Code of Cultural Heritage should be qualified as 'overriding mandatory provisions' under private international law**: the Code is unique at the European level and protects a public interest, as the Legislator intended to best safeguard an essential interest for the Italian State, known throughout the world for its immense historical-artistic and cultural heritage.

Furthermore, pursuant to article 4 of the Rome II Regulation, **the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs**, irrespective of the countries in which the event giving rise to the damage and the indirect consequences of that event occurred.

Finally, the Venetian judges noted that the Code of Cultural Heritage does not provide for any specific limitation of its effectiveness within national borders.

The Michelangelo's David case

In recent years, the provisions protecting the Italian Cultural Heritage are becoming always more frequently applied. This trend is demonstrated also by **the recent judgment issued by the Court of Florence on 21 April 2023, whereby protection was granted to the image of Michelangelo's David, used by a publishing company as the cover of a well-known magazine** comparing the image of the David with that of a model, without the authorization of the museum that preserves the work of art.

The judgement is a relevant decision in Italian case law as it awarded the Ministry for Cultural heritage and activities (since the David belongs to the State) compensation for both pecuniary damages (estimated 20,000.00 euros) and non-pecuniary damages (estimated 30,000.00 euros).

Although the Florentine dispute did not have any transnational elements, the decision is worthy of note for the fact that the use of David's image on the cover of GQ magazine did not respond to a direct commercial need, as was the case with the Vitruvian man.

Indeed, the Court of Florence, either according to the Cultural Heritage Code or to article 10 of the Italian Civil Code, considered the Italian sculpture masterpiece entitled to enjoy protection against any misappropriation of its image, irrespective of the pursuit of specific commercial goals by the defendant.

3 Takeaways

1. If any person (even non-Italian) is willing to use the image of an Italian cultural asset, they should check whether said asset is protected according to the Italian Cultural Heritage Code.
2. If the asset is protected, the use of its image is subject to the authorization of the competent Italian Public Authority.
3. Lacking the authorization, the user of the image will not be able to defend him/herself in front of an Italian Court, stating i) that the use does not take place in Italy, ii) that it is not intended for mere commercial purposes, iii) that he/she is not subject to the Italian jurisdiction, or iv) that the Italian national provisions are not applicable.

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