

Intellectual Property

Weighing the past: Heritage protection vs. economic value

By **Emanuela Truffo**



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(August 18, 2021, 1:45 PM EDT) -- In his *Divine Comedy* Dante defined the Italian peninsula as *bel paese* — the beautiful country. What was Dante thinking about? The answer is, the unique landscape and flourishing arts that led to the Renaissance in a matter of less than a century.

In the past, the “establishment” considered the cultural heritage of the peninsula as something to be protected with the almost exclusive purpose of paying tribute to those who came before and who gifted it to us.

However, in too many cases, the landscape was considered nothing but an asset to be exploited.

Through decades, the general approach changed dramatically and led to the approval of the *Cultural Heritage and Landscape Protection Code*. Under the impulse of a set of EU directives and regulations aimed to the harmonization of the EU national laws on this subject matter, Italian lawmakers passed a bill granting the administration involved in the

cultural and landscape heritage protection legal tools to protect the latter and to turn both into one of the most valuable assets.

Although the great majority of the EU member states decided to enforce the “panorama exception” thus allowing the free use for commercial purposes of reproductions — no matter the support/technology used — of landscapes, three countries — Belgium, France and Italy — decided to exclude any kind of exception. Therefore, any possible commercial — including promotional — use of the “Italian landscape” should be previously authorized by the public entity appointed as its caretaker; i.e., the Italian people.

What does it mean?

Basically, that you can share a photobook of your vacation in Italy with friends, but you are not necessarily authorized to use it for promoting or doing business. What do you risk? Getting sued and paying damages. And in 99.99 per cent of cases, you will be ordered to cease and desist the conduct of cross-border use of the images. In a nutshell, the Italian landscape is protected, even in the 23 member states granting the “panorama exception.”

What about non-EU countries? The matter should be solved country by country according to the bilateral treaties that have been concluded by each member state — this specific area is not included in the subject matters reserved to the EU commission.

Besides the protection as part of the cultural and environment heritage, the landscape of a country is granted a legal defence against any kind of potential exploitation pursuant to the image/right of publicity rules. Basically, a landscape is not far from being considered an essential part of the image — brand image? — of a country and therefore the direct and/or indirect link to a specific landscape is a direct and/or indirect violation of the right of publicity of a country, similar to the “Italian sounding” regulations in the food industry.

Beyond any doubt, environmental and cultural heritages are protected throughout the world as paramount elements of the legacy that one generation gifts to the following ones. From a business

viewpoint, in the (post?) web era, borders are day-by-day turning into sliding doors: don't forget to think global and act local in developing the marketing strategy of any international business just to avoid faux pas.

This is the first part of a four-part series.

Emanuela Truffo is a partner at Studio Legale Jacobacci e Associati in Milan, Italy. She specializes in contentious and non-contentious intellectual property matters and commercial litigation across a wide range of local and international practices. She has developed expertise in negotiation and drafting of agreements such as licence, non-disclosure, non-compete and coexistence agreements concerning IP rights and copyright as well as for commercial transactions. The title of her presentation at the webinar is Product liability, IP infringements and torts: the basics of damages compensation pursuant Italian Law.

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