

ReCreating Europe



Authors

Marta Iljadica, Pinar Oruç (UGLA-CREATe), Giulia Dore, Laura di Nicola (UNITN), Ingmar Pastak, Helen Eenmaa (UTARTU), Marta Arisi (formerly UNITN)

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Placemaking and intellectual property

1. Introduction

This report¹ – working at the intersection of intellectual property law and geography – examines copyright and trade mark law rules in their spatial context. It is focused on culture and creativity broadly conceived with an emphasis on the uses of, and interactions with, culture in cities including especially copyright and digitisation of material and city branding. While the copyright implications of both digitisation and circulation of cultural heritage have been, and continue to be, addressed in a large body of literature there is relatively little attention paid to the specific interaction of copyright, and also trade marks in the context of placemaking.

This report examines the intersection between copyright, digitisation and the circulation of cultural heritage in the context of place. What we see in this report, and perhaps more broadly in the discussion of intellectual property and placemaking is both a **reaching in** (addressed for example in projects directed inwardly for and within specific places, especially for inhabitants) and a **reaching out** (seen especially in projects and campaigns directed outwardly, especially for tourism and investment). The three places considered are all cities - Glasgow in the UK, Tallinn in Estonia, and Trento in Italy - thus focusing the discussion of intellectual property and placemaking in a practical way.

We are interested in showing that copyright and trade mark laws operate in the context of placemaking to regulate the circulation of culture. We adopt the concept of circulation in a broad sense.² We identify particular ways that the practice of interacting with creativity and culture comes to interact with intellectual property rules. The circulation might thus be a practice both of people such as inhabitants of a city, but also an artist or architect, or organisations whether they are a museum, a local authority, tourism body. Intellectual property law mediates the circulation of culture both in creation (e.g. does copyright subsist? can a symbol be registered as a trade mark?), in use and re-working (e.g. digitisation, sharing of photographs of buildings which may be supported by copyright exceptions and limitations). A corollary of considering the role of intellectual property in placemaking is an exploration of the ways in which cultural heritage is used to foster place attachment at local, national or EU level but especially at the local (city) level.

The core concern of our report is to explore these place-specific uses as well as the sometimes complex interaction between on-site physical experience and the online or virtual experience of place. Just one example is the creation of immersive experiences where an on-site experience is augmented by, or experienced fully virtually through mobile apps and which in turn is regulated by copyright rules on reproduction through digitisation. Or, the ways in trade mark law can give proprietors control over important

¹ This is a slightly edited version of the report submitted on 31 January 2023 as part of Work Package 5 of the ReCreating Europe EU Horizon 2020 consortium, grant agreement no. 870626.

² The literature on this point is vast. For an example of one treatment of circulation and culture see: Benjamin Lee and Edward LiPuma, 'Cultures of Circulation: The Imaginations of Modernity' (2002) *Public Culture* 14(1): 191-213



cultural symbols which may then circulate both online and in the city's physical spaces as part of place branding efforts. There are many other instances of the interaction of intellectual property law in placemaking discussed in this report which will be of interest to different types of stakeholders.

The report proceeds from a discussion of concepts and context to particular studies of placemaking in the cities under discussion aims, overview of concepts and methodology (Part 1); placemaking and access to culture including coverage of relevant international and European legal frameworks and projects (Part 2); copyright law in the EU and placemaking (Part 3); placemaking and copyright in the UK, Estonia and Italy (Part 4); placemaking and trade marks in the UK, Estonia and Italy (Part 5); and a synthesis of key issues (Part 6).

This first part of the report provides an overview of questions stakeholders and aims (Part 1.1), the layout of the report (Part 1.2), definitions and concepts (Part 1.3), and methodology and sources (Part 1.4).

1.1 Aims, questions, and stakeholders

The **aim** of the report is to identify and discuss how intellectual property rules interact with placemaking at European Union and national (Estonia, Italian, and UK) levels.

This report is concerned with a number of interrelated concepts relating to the intersection between intellectual property law and placemaking: (i) space both on-site (physical) and virtual (including online) (ii) cultural heritage broadly understood (iii) digitisation (including especially the digitisation of cultural heritage institutions' collections) (iv) circulation, referring broadly to the sharing of tangible and intangible cultural heritage (in light of copyright rules) and the use of signs (in light of place names and symbols regulated by trade mark law), and (v) access, which cuts across the preceding concepts to encompass both the ability for organisations and individuals to interact with cultural heritage as well as the particular rules within copyright law concerning exceptions and limitations for persons with disabilities.

Given these cross-cutting concepts the **core question** of the report is: how and to what extent does intellectual property support placemaking?

The **related questions** addressed in this report are:

- What is placemaking and what types of activities does it encompass?
- What is the role of cultural heritage in placemaking?
- To what extent does copyright law regulate placemaking activities, including the digitisation of cultural heritage?
- To what extent does trade mark law regulate place branding activities?

We thus survey the role of copyright law and trade mark law to highlight particular IP rules, as well as placemaking-related and other European projects that may spark interest amongst policymakers at national and EU levels, relevant stakeholders working on placemaking activities (including tourism promotion), inhabitants and interested others. We also highlight the importance of accessibility in this context.



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1.1.1 Stakeholders

This section briefly identifies the stakeholder groups that might find the contents of this report useful. However, it is worth noting that the discussion in this report, especially the intellectual property rules that are highlighted, are likely to be of more general interest to readers who are keen to explore the concept of placemaking and the role of, especially, intellectual property law and policy within the EU in this context.

To give an indication, we have had the following stakeholders in mind in writing the report, but this is by no means an exhaustive list and different aspects of the report will be relevant depending on the stakeholder:

- Policy makers in the EU interested in cultural policy and place
- Policy makers in the field digitalization and creative economy
- Public authority officials responsible for regional or city branding
- Tourism promoters (individual or companies)
- Private enterprises in the cultural and creative industries
- Galleries, libraries, archives and museums (GLAM) institutions interested in wider impact of their work
- Neighbourhood representatives, local neighbourhood associations, NGOs
- Individual actors interacting with art, cultural heritage etc. including entrepreneurs

The core aim identified above can also be expressed in more stakeholder specific terms that is how intellectual property rules interact with placemaking to, for example:

- foster place attachment – GLAMs, individuals
- encourage tourism – local authority, tourist board
- encourage innovation and investment – government stakeholders

The following section provides a guide to the report based on likely stakeholder interests. However, the report is not intended to be prescriptive. Rather we mean to identify and explore copyright and trade mark possibilities to benefit placemaking projects (i.e. learning from existing projects and cities) and to encourage stakeholders to consider integrating intellectual property concerns at the start of any project or policy planning for placemaking.

1.2 Report layout and reading guide

This report has six parts. It includes both substantive discussion of the issues as well as additional features such as resource links to certain relevant sources especially those produced within the ReCreating Europe project. The report is also structured to include key points. These are summaries in “boxes” synthesising key points which may include policy recommendations but, again, are to be approached flexibly. At the end of this part we provide a reading guide which is tailored to different stakeholder groups.

Part 1 explains key concepts, methodology and sources. The part also indicates that those engaged in placemaking, and who may or may not consider themselves stakeholders in this context, are broader than individual galleries, libraries, archives or museums. It may encompass policymakers at city, regional, national and EU levels as well as individuals and communities, and creative industries amongst others. This part also offers an overview of some relevant definitions and concepts relating to cultural heritage and placemaking



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as well as drawing (critically) on concepts such as the ‘creative city’ (Part 1.3). It draws on some of the extensive literature on the topic especially from geography but also other disciplines (e.g. tourism and management studies, museum studies). Finally, the part offers an overview of the report’s methodology (Part 1.4).

Part 2 of the report offers theoretical and legal contexts for the remaining parts. After a brief account of on-site and digital placemaking (Part 2.1) we discuss the accessibility of cultural heritage and the importance of access to place related heritage by persons with disabilities (Part 2.2). The part then moves on to a discussion of relevant legal frameworks including, but not limited to, intellectual property in order to provide useful context at international (Part 2.3) and EU levels (Part 2.4). One particular aspect relevant to policymaking is highlighted in Part 2.4 and that is the plan for a common European data space. As such, this report is likely to be helpful to policymakers in identifying relevant issues and potential solutions in the process of implementing the common data space. The report also devotes space to a review of existing projects within Europe that are relevant to placemaking focusing on placemaking in the context of tourism, placemaking and cultural heritage more broadly, and identifying other relevant resources (Part 2.5 and the Annexes). The majority of projects identified are not intellectual property projects but identifying them enables us to show how, especially, copyright is relevant for stakeholders who may be inspired to adopt similar projects, programs or strategies in other places. The report then considers changes wrought by the COVID-19 pandemic (Part 2.6). Finally, the part summarises relevant responses to a survey of GLAMs undertaken by ReCreating Europe (Part 2.7). The survey provides an indication of the significance of place to digitisation and its link to copyright rules.

Part 3 builds on the overview of relevant projects and the legal frameworks identified to then focus on EU copyright law in the context of placemaking. It identifies copyright exceptions and limitations to copyright that are likely to be of particular significance such as the so-called freedom of panorama (Part 3.1). It then turns to a fuller examination of the recently adopted Copyright in the Digital Single Market Directive, especially Articles 6 and 14, which are of particular importance to GLAMs and others who are digitising art, cultural heritage and similar (Part 3.2). Given the aforementioned recommendation on the common European data space, this examination of the legal framework also offers insight into the feasibility of, and the difficulties and opportunities posed by, the current copyright framework to achieve the aims of the recommendation apart from the broader concerns with placemaking strategies in this report.

Part 4 of the report addresses placemaking and copyright with an initial overview provided of the European context (Part 4.1). It then primarily focuses on three cities and their relevant national copyright laws: Glasgow and UK copyright (Part 4.2), Tallinn and Estonian copyright (Part 4.3), and Trento and Italian copyright (Part 4.4). Each ‘city focus’ part follows the same structure. First there is a city overview, second the introduction of city-specific placemaking examples including digitisation initiatives and third an account of certain relevant copyright rules which reflect the copyright rules already identified at EU level in Part 3. Where relevant to the national jurisdiction certain copyright and/or cultural heritage policies are also considered.

Part 5 of the report addresses placemaking and trade marks. Here we return to discuss a particular type of placemaking including the role of cultural heritage for tourism promotion (Part 5.1) and the role city branding may play in innovation or attracting investment (Part 5.2). This part then offers an account of certain relevant



EU trade mark rules given the harmonisation of the law in this area (Part 5.3). The selection of rules identified are concentrated on the absolute grounds for refusal for registering signs as trade marks at EU level.³ There is also some reference to collective forms of protection since we also briefly introduce geographical indications protection. We also provide examples of city-related trade marks that are registered EU-wide. These selected rules are then considered again in subsequent parts but at national level. Each ‘city focus’ part follows the same structure, as is the case with the copyright part. First there is a description of the city’s branding strategies for tourism and investment, second an account of a selection of trade mark rules relevant to placemaking, and third a discussion of examples of city-related trade marks based on searches of the national trade mark register. Again, three cities are considered - Glasgow, Tallinn and Trento. Finally we draw copyright and trade marks together to explain the relevance of the overlaps between these forms of legal protection to placemaking (Part 5.7).

Part 6 of the report synthesises and reflects on some of the report’s main findings. It also includes relevant links to two resources developed within ReCreating Europe that provide detailed information on EU copyright law.

In light of the range of topics canvassed by this report and the range of stakeholders to which it applies the report may be read sequentially or by reference to specific areas of law or specific places. The different parts and sections of the report that are likely to be of interest to different groups of stakeholders are outlined below in ‘A reading guide for this report’.

A reading guide for this report

For **EU policymakers** and those interested in EU intellectual property, including the Digital Single Market:

- Part 2.2 on accessibility and cultural heritage
- Part 2.4 including especially section 2.4.1 on the Common European data space
- Part 3.1 on relevant copyright exceptions
- Part 3.2 on the Digital Single Market Directive
- Part 4.1 on placemaking in European cities
- Part 5.1 on the relevance of placemaking and tourism
- Part 5.3 on EU trade marks
- Part 5.7 regarding certain overlaps between copyright and trade marks

For stakeholders interested in intellectual property and place in **Glasgow/UK**:

- Part 4.2 on placemaking and copyright

³ This is of ongoing relevance to the studies of Trento (Italy) and Tallinn (Estonia) as EU Member States, however the significance of ‘retained’ EU law in the UK following the UK’s withdrawal from the EU means that EU law remains relevant to an extent.



- Part 5.4 on placemaking, especially city branding, and trade marks

For stakeholders interested in intellectual property and place in **Tallinn**/Estonia:

- Part 4.3 on placemaking and copyright
- Part 5.5 on placemaking, especially city branding, and trade marks

For stakeholders interested in intellectual property and place in **Trento**/Italy:

- Part 4.4 on placemaking and copyright
- Part 5.6 on placemaking, especially city branding, and trade marks

For stakeholders seeking to understand **placemaking** in the context of digitisation:

- Part 2.7 on the results of a survey of GLAMs within Europe
- Part 2.5 (and Annexes) for a review of selected European placemaking projects and resources

For **GLAM professionals** and others seeking guidance on copyright law (including directions to FAQs):

- Part 2.6 on responses to the COVID-19 pandemic
- Part 3.1 noting certain exceptions relevant to placemaking within the Infosoc Directive
- Part 3.2 outlining some key Articles from the CDSM Directive to support digitisation

For stakeholders, including **local government**, seeking examples and inspiration from existing placemaking projects:

- Part 2.5 (and Annexes) review of selected European placemaking projects
- Part 4.2, especially section 4.2.2
- Part 5.4 for examples of certain projects and initiatives within Glasgow
- Part 4.4, especially section 4.3.2
- Part 5.5 for examples of certain projects and initiatives within Tallinn
- Part 4.5, especially section 4.5.2
- Part 5.6 for examples of certain projects and initiatives within Trento



1.3 Definitions and concepts

The multiplicity of sources gathered for this report mean that a variety of legal and non-legal terms and concepts are used that will not necessarily be familiar to all readers. Some of these are explored below with the caveat that certain terms are the subject of ongoing, and lively, discussion. The definitions are thus intended to guide those to whom the terms are new and to assist with the reading of this report, but we do not suggest these are definitive explanations.

In the parts of the report that engage specifically with intellectual property rules and their application to place-making the following terms and abbreviations are used:

- **CDSM Directive** - Copyright in the Digital Single Market Directive currently being implemented by EU Member States.⁴
- **Infosoc Directive** - the Directive on the harmonisation of certain aspects of copyright and related rights in the information society.⁵
- **Copyright exceptions** - national and EU copyright laws have a number of rules that enable the use of (some of) a creator's copyright protected works for certain purposes for example, news reporting, or preservation of cultural heritage.⁶
- **Brand** - a set of concepts or values associated with a trader, organisation or similar.⁷
- **Trade mark** - a trade mark is a sign such as a word, phrase, logo used to designate the origin of certain goods and services. A trade mark may, but does not have to be, registered. At the EU level such an application would be made to the EU Intellectual Property Office.⁸ A trade mark may be part of a brand but they are not the same.

The terms and concepts canvassed in the section are considered in more detail below as the foundation for the link made between intellectual property and geography in this report. The subsequent sections (1.3.1, 1.3.2, and 1.3.3) address different relevant concepts to build from a discussion of cultural heritage to the meaning of place and placemaking and the uses of the concept of the 'creative city'.

1.3.1 Cultural heritage and institutions

This section is concerned with introducing some of the types of cultural heritage that we are concerned with in this report. While our report recognises that many of cultural heritage, both tangible and intangible, will

⁴ The text of Directive 2019/790 can be found at <https://eur-lex.europa.eu/eli/dir/2019/790/oj>

⁵ The text of Directive 2001/29/EC can be found at <https://eur-lex.europa.eu/eli/dir/2001/29/oj>

⁶ For an example of the mapping of copyright exceptions across the EU see, also included as a resource link in Part 6, the Copyright Exceptions database: www.copyrightexceptions.eu

⁷ The definition of a "brand" within the relevant literature is contested. See e.g. for an overview of the debates: Francesca Dall'Olmo Riley, 'Brand definitions and conceptualizations: The debate' in Francesca Dall'Olmo Riley, Jaywant Singh, and Charles Blankson (eds.) *The Routledge Companion to Brand Management* (Routledge, 2016)

⁸ See guidance provided at: European Union Intellectual Property Office, 'Trade Marks' <https://euipo.europa.eu/ohimportal/en/web/guest/trade-marks>



be relevant to placemaking we pay particular attention to certain types of artistic works since, as we show below in Part 3, these are objects of copyright regulation.

Cultural heritage is a highly important and equally difficult concept to define.⁹ It may have a number of forms, both tangible and intangible, and it may also be referred to as cultural property. As Macmillan shows, for instance, the relationship between cultural heritage / cultural property and intellectual property is especially fraught.¹⁰ In turn cultural heritage may exist in digital forms.

We move then to **architecture** as an important element of the built environment of a city and may form part of its cultural heritage. Architecture and copyright have a complex relationship for both how such works are protected in different jurisdictions and for how the works of public art are experienced and reproduced by the public. Bertoni and Montagnani assess the relationship between copyright law and public art, focusing on architectural works and highlighting the underlying tensions between the artist, the commissioner and the public, who have conflicting motivations on how these works can be used.¹¹ Insofar as we also consider works accessible in a city's public spaces we also make reference to **art**.

Museums and other heritage organisations are especially important in terms of the discussion in this report. Indeed we tend to refer to **GLAMs** (galleries, libraries, archives and museums). The role of museums and other heritage organisations is complex.¹² Thorpe focuses on (mis)using “heritage” to participate in urban planning and relies on Lefebvre’s ‘right to city’ idea to ask if our approach “creative... rather than competitive and proprietary”.¹³ It is therefore helpful to consider, as we do below, museums as places and their role in placemaking alongside a more general discussion of the meaning of place.

It is also appropriate to highlight the ways that cultural heritage can be used in (digital) placemaking. We give examples of architecture, public art etc. This is not to say that these are the only or even the most important examples of cultural heritage but these are relevant both to the copyright and trade marks assessments and therefore allow for at least an implicit comparison to be made between how the two types of intellectual

⁹ On defining cultural heritage see e.g. Janet Blake, ‘On Defining the Cultural Heritage’ (2000) *International and Comparative Law Quarterly* 49(1): 61-85; Lyndel V. Prott and Patrick J. O’Keefe, ‘“Cultural Heritage” or “Cultural Property”?’ (1992) *International Journal of Cultural Property* 1(2): 307-320; Manlio Frigo, ‘Cultural Property v. Cultural Heritage: A “Battle of Concepts” in International Law?’ (2004) *International Review of the Red Cross* 86(854): 367-378; Irini A. Stamatoudi, *Cultural Property Law and Restitution* (Edward Elgar, 2011)

¹⁰ See e.g. in reference to private property frameworks: Fiona Macmillan, ‘The Protection of Cultural Heritage: Common Heritage of Humankind, National Cultural ‘Patrimony’ or Private Property?’ *Northern Ireland Legal Quarterly* 64(3): 351-364; Fiona Macmillan, *Intellectual and Cultural Property: Between Market and Community* (Routledge 2021)

¹¹ Aura Bertoni and Maria Lillà Montagnani, ‘Public architectural art and its spirits of instability’ (2015) *Queen Mary Journal of Intellectual Property* 5(3): 247–263; Aura Bertoni and Maria Lillà Montagnani, ‘Public Art and Copyright Law: How the Public Nature of Architecture Changes Copyright Protection’ (2015) *Future Anterior*, 12(1): 46–55. Similarly, Rimmer focuses on copyright and architecture in the context of cultural institutions in Australia: Matthew Rimmer, ‘Crystal Palaces: Copyright Law and Public Architecture’ (2002) *14 Bond Law Review* 320

¹² Fiona Macmillan, ‘Intellectual property and cultural heritage: towards interdisciplinarity’ in Irene Calboli and Maria Lillà Montagnani (eds.), *Oxford Handbook on Intellectual Property Research* (OUP, 2021)

¹³ Referring to Sydney and participation in planning processes: Amelia Thorpe, ‘Between Rights in the City and the Right to the City: Heritage, Character and Public Participation in Urban Planning’ in Andrea Durbach and Lucas Lixinski (eds.) *Heritage, Culture and Rights: Challenging Legal Discourses* (Hart, 2017) p. 147



property rules regulate their circulation. Cultural heritage may also circulate informally online or be transformed into new, accessible formats. The examples discussed in this report are thus only a fraction of what “cultural heritage” might encompass. But these are nevertheless interesting, even indicative, of the relationship between cultural heritage and placemaking.

Public art that is commissioned for public buildings, parks or other places by local authorities is a significant example of art for placemaking. The aim may often be urban regeneration but even if not explicitly so, certainly such artistic interventions may be seeking to create place attachment in some way. For example, Clark and Madgin discuss the process of creating public art for the purpose of urban regeneration, and how it requires the input of different parties (focusing on the artists through interviews) especially in the East End of Glasgow.¹⁴ It is important to note that not all public art will be appealing to all parties: Sharp, Pollock and Paddison discuss the statues that were added as part of urban regeneration that excludes some members of the public (government-led placement of public art versus community-led efforts).¹⁵ Duconseille and Saner discuss how to stimulate placemaking in urban landscapes through inclusive artistic projects.¹⁶

In the next two sections we build on this idea that cultural heritage has an important role in placemaking by exploring the meaning of place and placemaking. We then expand the discussion to consider the concept of creativity at the city level.

1.3.2 Place, placemaking and place branding

The concepts discussed here support, in particular, the discussion in Parts 2.1. And 2.2 below as well as Parts 4 and 5 of this report.

The concept of **place** refers to, in its narrow sense, a location. In this report, the particular type of place of concern is the city but the term “place” is of course broader than that and will encompass not only certain urban conurbations but also smaller areas within them such as neighbourhoods, libraries, parks, workplaces. However “place” may also be defined more broadly than its physical location to encompass “place as a social process”.¹⁷ These more expansive understandings of place are especially relevant where, as in this report, there is a concern with the experience and creation of places through cultural engagement.

The need to look beyond purely physical location (though it is undoubtedly important) is also necessary when considering the circulation of creative works in digital forms that not only transcends the physical boundaries and material constructions of a particular place but also serve to actively host social relations, meanings and produce places of culture.¹⁸ A place according to such a definition is subjectively sensed and experienced

¹⁴ Julie Clark and Rebecca Madgin, ‘Writing the past into the fabric of the present: urban regeneration in Glasgow’s East End’ in: Nicholas Wise and Julie Clark (eds.) *Urban Transformations: Geographies of Renewal and Creative Change* (Routledge, 2017) pp. 11-27

¹⁵ Joanne Sharp, Vanda Pollock and Ronan Paddison, ‘Just art for a just city: Public art and social inclusion in urban regeneration’ (2005) *Urban Studies*, 42(5–6): 1001–1023

¹⁶ François Duconseille & Raymond Saner, ‘Creative Placemaking for Inclusive Urban Landscapes’ (2020) *The Journal of Arts Management, Law, and Society*, 50(3): 137-154

¹⁷ Susan Mayhew, *Oxford Dictionary of Geography* 5th ed. (OUP, 2015) s.v. “place”. The definition is multifaceted and unsettled.

¹⁸ Edward Relph, *Place and Placelessness* (Pion, 1976)



(such as a ‘home’ or a ‘neighbourhood’ or a ‘city’). A useful, and influential, account of place is found in the work of Massey who shows a place as a “product of interrelations”, while also including power relationships, economic and political changes and other ways in the ‘production’ of places and their identities.¹⁹

A related concept which is central to the aims of this report is that of **placemaking** (also referred to as place-making). Placemaking is an umbrella term to mark any kind of physical, social, symbolic and cultural contributions to a place.²⁰ Placemaking is done by professionals (planners, developers), local governments (through plans, strategies), heritage organisations, people (via local placemaking practices, such as community building). It includes creating, maintaining or re-configuring the identity of a place via branding, campaigns, urban regeneration projects and local initiatives, and it involves social media, public media, apps and other ways of representations of a place. Creating a narrative and meaning to a place involves often many of these stakeholders and mixes historical layers, such as buildings and cultural heritage with new layers of use.

The difficulties inherent in defining placemaking are apparent for example in this definition by Mayhew:

“The way we collectively shape our public realm to maximise its value; the planning, design, management, and programming of public spaces, rooted in community-based participation. Pierce et al. (2011) *TIBG* 36, 1, 54 define place-making as the: ‘set of social, political, and material processes by which people iteratively create and recreate the experienced geographies in which they live. Place-making is an inherently networked process, constituted by the socio-spatial relationships that link individuals together through a common place-frame’, which is the same definition, but in loftier language.”²¹

Indeed, this definition by Pierce and others engage with Massey’s idea of relational space in the context of a review of the literature on placemaking in order to bring it together with networking and politics.²²

The related concept of inhabitation is used in this report in a slightly different way to the concept of inhabiting somewhere by living in a certain area. It is used, borrowing from the work of Henri Lefebvre,²³ to describe an individual and/or community’s existence within, and experience of, a place (specifically, a city) in such a way that prioritises the agency of the people who for example, live or work there. It is worth also highlighting the

¹⁹ See amongst a great body of work: Doreen Massey, *For Space* (SAGE, 2005) including e.g. reference to “product of interrelations” (p. 31). Note further that place as a concept ought to be distinguished from that of ‘space’ as well as ‘territory’.

²⁰ Talja Blokland, ‘Celebrating Local Histories and Defining Neighbourhood Communities: Place-Making in a Gentrified Neighbourhood’ (2009) *Urban Studies* 46(8): 1593–1610; Michaela Benson and Emma Jackson, ‘Place-Making and Place Maintenance: Performativity, Place and Belonging among the Middle Classes’ (2012) *Sociology* 47(4): 793–809; see also e.g. Mahyar Arefi, *Deconstructing Placemaking: Needs, Opportunities, and Assets* (Routledge, 2014)

²¹ Susan Mayhew, *Oxford Dictionary of Geography* 5th ed. (OUP, 2015) s.v. “place-making”

²² Joseph Pierce, Deborah G Martin and James T Murphy, ‘Relational place-making: the networked politics of place’ (2011) *Transactions of the Institute of British Geographers* 36: 54-70, p. 55; pp. 58-60

²³ In the context of the right to the city and the concept of inhabitation as a political act. More specifically, the word ‘inhabitation’ is aligned to the concept of dwelling in a place (p. 122) and in particular ‘bodily inhabitation’ (p. 125): Chris Butler, *Henri Lefebvre: Spatial Politics, Everyday Life and the Right to the City* (Routledge, 2012)



concept of the **inhabitant** and to refract the concept through a copyright lens.²⁴ We use it in this report to mean a resident or other participant in the life of the city. It is useful especially inwardly directed placemaking activities. So, for example, place branding for example may be directed internally (to inhabitants) and externally (tourism, investment) using both “official” and “unofficial” circulation of digitised cultural heritage in civil society.

A corresponding concept to inhabiting a place here is that of **access to culture**. This is relevant in terms of ensuring access to copyright protected works to persons with disabilities as well as more generally when we discuss access in this report we are asking whether those rules enable anyone to interact with certain works and how. After all, being able to access culture within the place one inhabits is integral to a sense of belonging to the city. Thus, for example, that way in which copyright law interacts with the digitisation of cultural heritage is potentially important for inhabitants, but also visitors for instance, to form place attachments.

Place attachment in this context refers to the attachment individuals and communities, especially the inhabitants of cities, may have to the place they live in but can also refer to the attachment to a certain place by visitors/tourists.²⁵ In the context of city branding what is relevant is that strategies may be adopted in order to foster attachment in inhabitants and visitors²⁶ even if it is the latter type of outward-looking branding (coupled with branding to encourage investment) that is more commonly understood as an instance of city branding. Understanding culture and creativity in a particular place invites both a variety of perspectives and encourages different communities’ attachment to a particular place.²⁷

What follows from this is an understanding of museums but also other institutions both governmental and not, as agents of place making.²⁸ By linking intellectual property law explicitly we come to understand one of the important tools for policy makers and other stakeholders in creating places. Making the intellectual property and place connection is useful because it helps to reveal the, sometimes hidden, legal barriers to, as well as opportunities for, enhancement of placemaking projects. This report does not suggest that one type of approach or set of approaches to engagement with intellectual property is the best one; rather, the work presented here is intended to open up discussion of what appropriate strategies might be for a

²⁴ See for context e.g. Mark Purcell, ‘Excavating Lefebvre: The right to the city and its urban politics of the inhabitant’ (2002) *GeoJournal* 58: 99–108; Marta Iljadica, ‘Copyright and the right to the city’(2017) *Northern Ireland Legal Quarterly*, 68(1): 59–78

²⁵ See generally, in the context of tourism: Larry Dwyer, Ning Chris Chen and Jenny Jiyeon Lee ‘The role of place attachment in tourism research’ (2019) *Journal of Travel & Tourism Marketing* 36(5): 645-652.

²⁶ On the idea of “emotional place branding” in this context see Beatriz Casais and Túlía Poço, ‘Emotional branding of a city for inciting resident and visitor place attachment’ (2021) *Place Branding and Public Diplomacy*. The article considers the logo for the Portuguese city Viana do Castelo amongst other things. See further, regarding a cited case study of Ljubljana, Slovenia: Katja Udir Mišič and Klement Podnar, ‘The role of resident-city identification in building residents’ city commitment’ (2019) *European Planning Studies* 27(7): 1329-1349

²⁷ See, in the context of immigrant community experience and suggesting museums organise activities in public places and also collect material from communities in specific places: NEMO (Network of European Museum Organisations), ‘Museums, migration and cultural diversity: Recommendations for museum work’ (2015) p. 7-8, available at (PDF): https://www.ne-mo.org/fileadmin/Dateien/public/NEMO_documents/Nemo_Museums_Migration.pdf

²⁸ Ingmar Pastak and Anneli Kährrik, ‘The Impacts of Culture-led Flagship Projects on Local Communities in the Context of Post-socialist Tallinn’ (2016) *Sociologický časopis / Czech Sociological Review* 52(6): 963-990; Alan A. Lew, ‘Tourism planning and place making: place-making or placemaking?’ (2017) *Tourism Geographies* 19(3): 448-466



multiplicity of stakeholders. A pressing problem in this regard relates to museum decolonisation and public places.²⁹ Indeed placemaking efforts need to be understood critically to encourage accessibility and inclusion because the art and architecture, and museum holdings, is not neutral in the stories it tells about a place.

Finally, **place branding**, being a type of placemaking, may be defined as “the creation of value in space by reinforcing and representing place assets in a cohesive manner, as a narrative image of the place itself”.³⁰ When the concept of placemaking refers often in the literature to the ‘internal’ identities of places (such as perceived by local residents), it encompasses place branding which refers to the creation of an ‘external’ identity to a place for instance to attract tourists or investment.³¹ Place branding may be engaged in for example by local authorities and tourism boards.

1.3.3 The ‘creative city’ and cities of culture

This section continues the earlier discussion of place branding to consider the role of creativity and culture in the city, or at least in a certain strand of literature on creativity and culture in the city. The concepts discussed here support, in particular, the discussion in Part 5.

Placemaking in Europe necessitates some discussion of the concept of the ‘**creative city**’ because it provides relevant context for this report and some of the examples provided of place branding and ‘regeneration’ especially. Florida’s work has been particularly influential in popularising and operationalising the concept of the ‘creative city’.³² A relevant point is that in this process (regeneration) not only material capital matters

²⁹ John Gibling, Imma Ramos and Nikki Grout, ‘Dismantling the Master’s House: Thoughts on Representing Empire and Decolonising Museums and Public Spaces in Practice An Introduction’ (2019) *Third Text*, 33(4–5): 471–486; Shahid Vawda, ‘Museums and the Epistemology of Injustice: From Colonialism to Decoloniality’ (2019) *Museum International*, 71(1–2): 72–79

³⁰ Sara Grenni, L.G. Horlings and K. Soini ‘Linking spatial planning and place branding strategies through cultural narratives in places’ (2020) *European Planning Studies* 28(7): 1355–1374, p. 1355. For instance, there are cities that do not have “a major mediaeval history in which to anchor contemporary identity”, the creation of a postsocialist identity for Łódź is discussed by Young and Kaczmarek: Craig Young and Sylvia Kaczmarek, ‘The Socialist Past and Postsocialist Urban Identity’ (2008) *European Urban and Regional Studies* 15(1): 53–70.

³¹ See also that, through the example of Barcelona, Smith identifies a conceptual framework of how the cities can be re-imagined and how this can help wider goals such as regeneration: Andrew Smith ‘Conceptualizing city image change: The “re-imagining” of Barcelona’ (2005) *Tourism Geographies* 7(4): 398–423. Aubry, Blein and Vivant focus on the use of cultural amenities as a tool for strategic planning in Paris: Anna Aubry, Alexandre Blein and Elsa Vivant, ‘The promotion of creative industries as a tool for urban planning: the case of the Territoire de la culture et de la création in Paris Region’ (2015) *International Journal of Cultural Policy*, 21(2): 121–138

³² Richard L. Florida, *Cities and the Creative Class* (Taylor & Francis, 2004) and *The Rise of the Creative Class, revisited* (Basic Books, 2012). See amongst other works: Charles Landry, *The Creative city: A toolkit for urban innovators*, (Earthscan 2000); See also: Maurizio Carta, ‘Creative City 3.0: smart cities for the urban age’ (2012) *Smart Planning for Europe’s Gateway Cities. Connecting Peoples, Economies and Places*, Proceedings of IX Biennial of European Towns and Town Planners, 2012, <https://iris.unipa.it/handle/10447/70877>; Maurizio Carta, *La città creativa europea*, in R. Bobbio (ed.), *Urbanistica creativa. Progettare l’innovazione nelle città*, Milano, 2008, 35–75



(investments, refurbishing) but also symbolic/social/cultural capital is invested (by public authorities, by private developers, by artists, by local inhabitants).³³

The concept is relevant especially within urban policymaking while, in academic terms, coming under sustained criticism.³⁴ It is necessary to address it however because the language of the ‘creative city’ is present in city branding strategies. We can see such an approach, albeit less overtly, in Glasgow where the “brand positioning” is intended to “reflect [the] cultural and creative city”.³⁵ The ‘Glasgow Tourism and Visitor Plan’ does not integrate the creative city concept but we can see a celebration of the acknowledgment by the EU Cultural and Creative Cities Monitor (CCCM) 2019 report describing Glasgow as “gain[ing] recognition as a creative and cultural centre of European importance”.³⁶ Trento is also considered within the CCCM, which describes it as “an important educational, scientific, financial and political centre in the region and in Italy in general [that] is increasingly becoming a cosmopolitan city, standing out in Italy for its quality of life, standard of living and business opportunities”.³⁷

Not surprisingly, cultural institutions are called upon to realise the vision of the ‘creative city’.³⁸ But more than that ideas of the creative city have led to the ‘regeneration’ of not the city as a whole but rather specific neighbourhoods, sometimes proactively re-named as ‘quarters’ in which a new vision of the city is enacted, yet in a way that is not necessarily in keeping with and indeed “tend[s] to neglect both the historic precedents

³³ Ingmar Pastak and Anneli Kährrik, ‘Symbolic displacement revisited: Place-making narratives in gentrifying neighbourhoods of Tallinn’ (2021) *International journal of urban and regional research* 45(5): 814-834; Ingmar Pastak, Eneli Kindsiko, Tiit Tammaru, Reinout Kleinhans and Maarten van Ham, ‘Commercial gentrification in post-industrial neighbourhoods: a dynamic view from an entrepreneur’s perspective’ (2019) *Tijdschrift voor economische en sociale geografie* 110(5): 588-604

³⁴ See: Thomas Borén and Craig Young, ‘Getting Creative with the ‘Creative City’ Towards New Perspectives on Creativity in Urban Policy’ (2013) *International Journal of Urban and Regional Research* 37(5): 1799-1815; Stefan Krätke, ‘Creative Cities’ and the Rise of the Dealer Class: A Critique of Richard Florida’s Approach to Urban Theory, (2010) *International Journal of Urban and Regional Research* 34(4): 835-853; Jamie Peck, ‘Struggling with the Creative Class’ (2005) *International Journal of Urban and Regional Research* 29(4): 740-770

³⁵ Brochure, ‘Glasgow Tourism and Visitor Plan to 2023’ although further details are not provided, available at <https://glasgowtourismandvisitorplan.com/tourism-and-visitor-plan/tourism-and-events-in-glasgow-action-plan/> (p. 8). A report on activities (July – November 2022) highlights numerous cultural events: https://glasgowtourismandvisitorplan.com/media/2784/gtvp-update_november-2022_v8.pdf

³⁶ Glasgow Life, ‘glasgow crowned the UK’s top cultural and creative city’ (2019) in Glasgow Tourism and Visitor Plan <https://glasgowtourismandvisitorplan.com/news-and-media/2019/november/glasgow-crowned-the-uks-top-cultural-and-creative-city/>. The Cultural and Creative Cities Monitor report from 2019 can be accessed here: Joint Research Centre (European Commission), Alberti, V., Saisana, M., Tacao Moura, C., et al., *The cultural and creative cities monitor: 2019 edition*, Publications Office, 2019, <https://data.europa.eu/doi/10.2760/257371>. The focus of the report includes its identification of the ‘ideal Cultural and Creative City in Europe’ as a composite of seven European cities (p. 27). Tallinn is also mentioned favourably at certain points in the report relating for example to high ‘creative economy’ score (p. 65). Trento is also considered in the report and specifically noted (at p. 84, Table 6) within the list of ‘[c]ities where the majority of inhabitants are not more than 2 km from the closest cultural venue(s)’.

³⁷ The relevant information, including this quotation, may be found at: Joint Research Centre, ‘Cultural and Creative Cities Monitor: Trento’ <https://composite-indicators.jrc.ec.europa.eu/cultural-creative-cities-monitor/countries-and-cities/trento>

³⁸ For example, libraries on which see generally: Julia Nevárez, *The Urban Library: Creative City Branding in Spaces for All* (Springer 2021)



and the symbolic importance and value of place and space”.³⁹ The active attempts to regenerate Glasgow through arts and community engagement in Glasgow, for example, attracted both praise and criticism.⁴⁰

Urban **regeneration** is thus one of the city level strategies used by local authorities to find a new function to the area and to shape the identity of an area. It is helpful to introduce this concept here since it is a recurring theme - especially in Part 5 - in respect of the interaction between attempts to change a city’s image through branding while at the same time undertaking large-scale physical redevelopment projects. It has been described as a “comprehensive vision and action, starting from area development plan ... which seeks an improvement in the economic, physical, social and environmental condition of an area”.⁴¹ Industrial neighbourhoods are often the focus of attention.⁴² Cultural heritage may be used as a starting point for creating a sense of place in this regard. The local level is important in implementing the city and neighbourhood level regeneration projects. Many successful examples can be found from regeneration projects in the previous industrial, warehouse and port areas where the industrial functions have been changed towards cultural and touristic impressions, such as Tate Modern in old port area of London’s riverside, the Guggenheim museum in Bilbao, Spain and the Seaplane Harbour Museum on Tallinn’s seashore.⁴³

Numerous strategies may be embraced to improve a city’s image, for example, Glasgow being named as European **City of Culture** in 1990 can be seen as a catalyst for revitalising the city centre. Tallinn was European Capital of Culture in 2011.⁴⁴ Indeed, the designation as a city of culture has significant effects with Glasgow an “exemplary” instance of this.⁴⁵ The European Capitals of Culture (ECOC), launched in 1985, is an EU

³⁹ Graeme Evans, ‘From cultural quarters to creative city economy clusters – creative spaces in the new city economy’ in Mattias Legner (ed) *The Sustainability and Development of Cultural Quarters: International Perspectives* (Institute of Urban History, 2009) 32–59, p. 54. Criticism of the push to rejuvenate the city as a ‘creative city’ is subject to significant criticism with works noting especially the impact of gentrification pushing out long standing communities.

⁴⁰ John Grindrod, *Iconicon: A Journey Around the Landmark Buildings of Contemporary Britain* (Faber & Faber, 2022) pp. 618–619, discussing the responses around the time that Glasgow became a City of Culture in 1990.

⁴¹ Chris Couch, Olivier Sykes and Wolfgang Börstinghaus ‘Thirty years of urban regeneration in Britain, Germany and France: The importance of context and path dependency’ (2011) *Progress in Planning* 75: 1–52, p. 4 quoting Jon Ladd

⁴² See generally Peter Roberts and Hugh Sykes (eds.), *Urban Regeneration – A Handbook* (British Urban Regeneration Association, SAGE Publications 2000)

⁴³ Ingmar Pastak and Anneli Kährik, ‘The Impacts of Culture-led Flagship Projects on Local Communities in the Context of Post-socialist Tallinn’ (2016) *Sociologický časopis / Czech Sociological Review* 52(6): 963–990. There are also examples of creative clusters being formed for urban regeneration, see: Graeme Evans, ‘From cultural quarters to creative city economy clusters – creative spaces in the new city economy’ in Mattias Legner (ed.) *The Sustainability and Development of Cultural Quarters: International Perspectives* (Institute of Urban History, 2009), pp. 32–59. Another example is from Mänttä, Finland highlighting the importance of the arts: Sara Grenni, L.G. Horlings and K. Soini ‘Linking spatial planning and place branding strategies through cultural narratives in places’ (2020) *European Planning Studies* 28(7): 1355–1374

⁴⁴ The relevant website, ‘European Capital of Culture 2011’, may be found at: <https://www.tallinn.ee/en/european-capital-culture-2011>

⁴⁵ Panagiota Papanikolaou, ‘The European Capital of Culture: The Challenge for Urban Regeneration and Its Impact on the Cities’ (2012) *International Journal of Humanities and Social Science* 2(17): 268–273, p. 271. The article notes for example the renovation and construction of new buildings such as the Citizens’ Theatre. Other relevant examples include Pécs (Hungary) which similarly used city of culture status as a tool of ‘regeneration’, see e.g. Laszló Faragó,



initiative aimed at promoting the development of European cities to enhance cultural heritage, promote cultural diversity and inflate the sense of community heritage, highlighting the link between culture and the development of a city. It is also seen as a unique opportunity for cities to regenerate and grow, enhancing their local and international images.⁴⁶

A parallel initiative was launched by the Italian Ministry of Culture and Tourism from 2014, to expressly promote projects and activities that would enhance Italian cultural heritage, through the valorisation of different territories, and ultimately stimulate tourism and investments. Trento was shortlisted although did not win the title of Italian Capital of Culture for 2018.⁴⁷ Similar aims may be found in the award of Alpine Town of the Year, outlined in the context of the Alpine Framework Convention, an international covenant for the sustainable development of the Alps to which are part the EU and Italy, among others.⁴⁸ Trento was nominated as Alpine Town of the Year in 2004, for its “extraordinarily rich cultural heritage and a surprising dynamism toward modernity”, but also for its strong and continuous contributions to the growth of the Alpine network in “the spirit of the Alpine Convention”.⁴⁹

What we can also see here is that in the context of a discussion of the ‘creative city’, certain areas of law can also be usefully considered in parallel to intellectual property protection such as World Heritage bids: Tallinn Old Town becoming a World Heritage site in 1997 and committee work, or the failed attempt to nominate Mackintosh designed buildings in Glasgow. Of the nearly sixty UNESCO World Heritage sites in Italy, comprising natural and cultural sites, many are historical centres of Italian cities (Rome, Florence, and many others), archeological areas, and architectural works. For the Trentino-Alto Adige region, the Dolomites, the mountain range in the northern Italian Alps, are significant having been nominated in 2009 for its landscape, described as “spectacular”, and its distinct geomorphology.⁵⁰

Finally, it is relevant to note that, at least in respect of city brands, these can be understood as involving co-creation by multiple stakeholders alongside local authorities.⁵¹ However, as we note in this report, the intellectual property in certain signs will nevertheless belong to a particular body or individual so the legal outcome of co-creation does not necessarily reflect the work involved in producing the city brand.

‘Urban regeneration in a ‘city of culture’ the case of Pécs, Hungary’ (2012) *European Spatial Research Policy* 19(2): 103-120

⁴⁶ As identified in, and also referring to ‘[e]nhancing the image of cities in the eyes of their own inhabitants’: European Commission, ‘European Capitals of Culture’

<https://culture.ec.europa.eu/policies/culture-in-cities-and-regions/european-capitals-of-culture>

⁴⁷ The relevant website may be found at: Ministero della Cultura, ‘Capitali della Cultura’ <https://capitalidellacultura.cultura.gov.it/cosa/>

⁴⁸ The Convention, whose scope includes bolstering the perception of the Alps as a place where people and nature coexist was first signed in 1991 and entered into force in 1995. For the Convention text see: <https://www.alpconv.org/en/home/convention/framework-convention/>

⁴⁹ ‘Trento, Italy - Alpine Town of the Year 2004’ <https://www.alpinetowns.org/town/trento/>

⁵⁰ UNESCO, ‘The Dolomites’ <https://whc.unesco.org/en/list/1237>. Note that the UNESCO World Heritage Site list, which contains unique landmarks having a special cultural or physical significance, currently inscribes 1154 properties across 167 countries, on which see: UNESCO, ‘World Heritage List’ <https://whc.unesco.org/en/list>

⁵¹ Magdalena Florek and Andrea Insch, ‘Learning to co-create the city brand experience’ (2020) *Journal of International Studies* 13(2): 163-177



1.4 Methodology and sources

This report adopts a **desk-based** methodology which engages with a variety of legal sources (such as legislation and cases). Given the emphasis on place the report distinguishes and accounts for different levels of legal application - international, but primarily EU and national - while applying the analysis towards the selected cities: Glasgow, Tallinn and Trento. The legal frameworks relevant to the three cities within the three relevant national jurisdictions: the UK, Estonia and Italy respectively. The report also engages with non-legal sources, especially academic work from law, geography and other disciplines as can be seen above in Part 1.3. Apart from a doctrinal study of relevant legislative sources, and case law where relevant, we also supplement the analysis with a review of a selection of projects relevant to placemaking.

In terms of literatures, the link between intellectual property law and geography is central to the contribution of the report, that is the interaction between intellectual property rules and placemaking. The academic literature on law and geography is well developed⁵² including on the relationship between law, space and art.⁵³ Copyright law in particular is directly engaged with experiences of space.⁵⁴

We also use **trade mark registry searches** to illustrate the discussion on place branding in particular.⁵⁵ These were undertaken at EU - via searches of the EU Intellectual Property Office register - as well as searches of the relevant national registers i.e. of the UK, Estonia and Italy.

Finally, we refer in the report to a **survey** undertaken within Work Package 5 of ReCreating Europe of galleries, museums, libraries and archives.⁵⁶ The results of the place-related questions of this survey indicate the relevance of place not only to holdings in certain cultural institutions but also the enduring importance of national copyright laws.

The key point to highlight is that the report seeks to treat intellectual property as a 'strategic tool' by revealing how and where intellectual property rules - for example exceptions or specific rules relating to digitisation - may be used to support placemaking efforts by a broad range of stakeholders. The most appropriate approach though will vary by city and community and the aims of any given stakeholder group - but rather emphasises that intellectual property rules provide opportunities and challenges for placemaking.

⁵² See e.g. Jenny Kanellopoulou, 'Of place and law' in Tim Edensor, Ares Kalandides and Uma Kothari (eds.) *The Routledge Handbook of Place* (Routledge, 2020)

⁵³ See e.g. Merima Bruncevic, *Law, Art and the Commons* (Routledge 2017) which, crucially, connects the material space of the art gallery with that of the intangible public domain. See also e.g. Lucy Finchett-Maddock, 'Forming the Legal Avant-Garde: A Theory of Art/Law' (2020) *Law, Culture and the Humanities*

⁵⁴ See especially in the context of architecture: Aura Bertoni and Maria Lillà Montagnani, 'Public architectural art and its spirits of instability' (2015) *Queen Mary Journal of Intellectual Property* 5(3): 247–263; Aura Bertoni and Maria Lillà Montagnani, 'Public Art and Copyright Law: How the Public Nature of Architecture Changes Copyright Protection' (2015) *Future Anterior*, 12(1): 46–55. For a useful account of 'law and geography' and what this means for intellectual property law see: Marketa Trimble, 'Intellectual property law and geography' in Irene Calboli and Maria Lillà Montagnani (eds.) *Handbook of Intellectual Property Research: Lenses, Methods, Perspectives* (OUP, 2021)

⁵⁵ i.e. searches of online trade mark registers of the UK, Estonia and Italy as well as the EU-wide register of the European Union Intellectual Property Office. See Part 5 of this report.

⁵⁶ See below Part 2.7 of this report.



The so-called freedom of panorama exception in copyright law is an example that demonstrates this since it provides a specific exception to copyright infringement.⁵⁷ This exception is discussed at EU level (see section 3.1.1) and in particular in relation to the UK and Estonia elsewhere in this report.⁵⁸ It provides an insight into how copyright may enable (or not) the reproduction and circulation of cultural heritage.

2. Placemaking, culture and creativity in context

This part provides context for our discussion of the international and European legal and policy contexts, as well as a review of some relevant developments. In Part 2.1 we use the placemaking concepts introduced above to discuss placemaking in on-site and digital contexts in more detail. In Part 2.2 we address the important link between accessibility and placemaking. Subsequent parts address cultural heritage in particular and this is discussed in terms of both the relevant international context (Part 2.3) and European context (Part 2.4). The latter also addresses the recommendation for the creation of a Common European data space (section 2.4.1). Such discussions are pertinent ahead of a review of a selection of European projects related to placemaking in Part 2.5. The wide range of these projects demonstrate both the enduring relevance of placemaking projects and the role of culture in generating and supporting place attachments. The selection of projects also suggests that there is a scarce discussion of the role of intellectual property in this context. The final section in this part then considers the impact of the COVID-19 pandemic (Part 2.6). Finally, in Part 2.7 we discuss certain results from the ReCreating Europe GLAM survey. Taken together the sections in this part provide a foundation for the subsequent discussions of relevant intellectual property rules.

2.1 Placemaking on-site and digitally

Distinctions may be made between physical and social places where the latter may take different forms. The physical refers to static elements such as houses, streets while the concept of the social to networks, relations, such as social life. In the context of this part of the report what is worth highlighting is that placemaking activities are about making places ‘alive’. This means that it is not only the physical attributes of a place - such as public art, architecture, street layouts, parks - but more significantly about the social features of a place (e.g. what contributions to this place or house make someone feel at home there). But this is not the only type of place.

In turn we may think of the city as having both physical and digital manifestations i.e. that there is also a “digital city”.⁵⁹ This is not the same idea as the ‘creative city’ but rather highlights that spatial experience is not limited to on-site (physical) experiences. This idea of this interaction has been described as a “translocal place”⁶⁰ and shows the way in which technology creates experiences of place. It “opens up the possibility of

⁵⁷ See Marta Iljadica, ‘Copyright and the Right to the City’ (2017) Northern Ireland Legal Quarterly 68(1): 59-78

⁵⁸ Note that Italy, unusually amongst EU Member States, does not have this copyright exception.

⁵⁹ On which see Alessandro Aurigi, *Making the Digital City: The Early Shaping of Urban Internet Space* (Routledge, 2016)

⁶⁰ See Setha Low, *Spatializing Culture* (Routledge, 2016) Chapter 8 “Translocal Space”: “Translocal space encompasses the experiences and materialities of everyday lives in multiple places. In this conceptual frame, a person who lives in



multiple kinds of social, spatial and political formations through the shared sense of meanings, loyalties and interests that bind people and places together”.⁶¹ This insight is relevant for a broader reason – in understanding the way in which identities are created through space we need to confront how law enables or inhibits placemaking and the creation of local (and other) identities.⁶² Digital placemaking refers to digital ways of creating the identities for a place, such as virtual tours in museums, Google Street View, digital twin models, and the like.

More specifically, the interactions with cultural heritage in *and* between physical (on-site) and digital spaces are to some extent mediated by intellectual property law.⁶³ This is relevant in a general sense because intellectual property rules allow certain uses and regulate the circulate of cultural heritage and in which place they are used, for example whether it is possible to reproduce an artistic work and share it online. Whether this is possible or not becomes even more important in the context of accessibility. Barriers to participation in cultural life including the possibility of using and interacting with cultural heritage may be constrained in the absence of additional legal protections for access (discussed below in Part 2.2).

Placemaking will go, similarly, beyond the physical understanding of the place and can be defined throughout different geographical scales from local to global.⁶⁴ Departing from local process and an individual sense of belonging, the perspective regarding place and its identity as a social construction has been widened to define also in larger territorial scales. Placemaking can take place also on a larger scale when area planners and city authorities create visions, strategies and land use plans for an area.⁶⁵ Or it can be defined in the city, region or country scale when larger strategies are implemented for example, tourism campaigns or activities done for hosting large scale events such as the Olympic Games or for preparations to host the activities for European Capitals of Culture). These types of plans or strategies are likely to also have digital expressions.

two or more locations often separated by national boundaries and distance has emotional, linguistic and material access to both simultaneously. [...] [T]ranslocal space becomes more than an individual’s experience or fixed emplacement and instead part of a network of multiple localities shared by families, neighbourhoods, groups and communities.” (p.174) Low is writing in the context of globalisation, immigration and displacement but the broader point about the “time-space compression” (p.202)

⁶¹ Setha Low, *Spatializing Culture* (Routledge, 2016), p. 181

⁶² Setha Low, *Spatializing Culture* (Routledge, 2016), p. 68 : “[C]hanges in the physical environment, its interpretation and its forms of representation also influence the social construction of space and with it people’s sense of inclusion and the ability to appropriate space for their needs.”

⁶³ For a discussion of placemaking and other relevant definitions see Part 1.3 above.

⁶⁴ See for instance on local placemaking: Giuseppe Carrus, Massimiliano Scopelliti, Ferdinando Fornara, Mirilia Bonnes and Marino Bonaiuto, ‘Place attachment, community identification, and pro-environmental engagement’ in Lynne C. Manzo and Patrick Devine-Wright (eds.) *Place attachment: Advances in theory, methods and applications* (Routledge, 2013) pp. 154–164

⁶⁵ See, referring to Melbourne: Ruth Fincher, Maree Parry and Kate Shaw, ‘Place-making or placemasking? The everyday political economy of “making place”’ (2016) *Planning Theory & Practice* 17(4): 516-536



2.2 Placemaking, cultural heritage and accessibility

In discussing placemaking and cultural heritage policies, it is also important to examine the issue of accessibility. If placemaking can be described as a way of rethinking public places in ways that facilitate regeneration and attract more visitors and residents,⁶⁶ it follows that the policies of place-making, to be truly effective, must necessarily involve the population as a whole. A city, a park, a museum, a public space become the heart of a community only if everyone feels welcome and is given the opportunity to access and participate in cultural life. Therefore, the concepts of placemaking and accessibility are closely related to each other. Indeed, it is evident that redesigning places in a city or in a community urges a holistic approach, considering the formal regulatory framework and the practical ways in which both placemaking and accessibility function.

In order to understand the close connection between these two concepts, it is worth referring also to the concept of design for all. Placemaking policies, as well as design for all policies, are both creation processes that must take into account the accessibility issues since their first steps in order to integrate it within the final result. In particular, the definition of design for all is offered by the European Institute for Design and Disability (EIDD)⁶⁷ in the Stockholm Declaration of 2004 which states that:

“Design for All is design for human diversity, social inclusion and equality. This holistic and innovative approach constitutes a creative and ethical challenge for all planners, designers, entrepreneurs, administrators and political leaders. Design for All aims to enable all people to have equal opportunities to participate in every aspect of society. To achieve this, the built environment, everyday objects, services, culture and information – in short, everything that is designed and made by people to be used by people – must be accessible, convenient for everyone in society to use and responsive to evolving human diversity. The practice of Design for All makes conscious use of the analysis of human needs and aspirations and requires the involvement of end users at every stage in the design process.”⁶⁸

Therefore, it is clear that both design for all and placemaking policies must use the concept of accessibility as a starting point to design projects.

It is worth outlining the legal instruments supporting access to culture and addressing the barriers experienced by people with disabilities.⁶⁹ The legal instruments that take centre stage are the **Convention**

⁶⁶ For a complete definition of placemaking see section 1.3.2 above. Placemaking may also occur in natural contexts of course. See e.g. <https://www.paesaggivitivinicoliunesco.it/en/progetto/landescape-the-disabilities-un-paesaggio-tutti/>. This is also mentioned in the review of projects in section 2.5.2 below.

⁶⁷ EIDD Design for All Europe is an international platform for different organisations with the common goal of creating a more inclusive Europe for everyone. The website of EIDD is available at: <https://dfaurope.eu/>

⁶⁸ The EIDD Stockholm Declaration, adopted on 9 May 2004, at the Annual General Meeting of the European Institute for Design and Disability in Stockholm. Available at: <https://dfaurope.eu/what-is-dfa/dfa-documents/the-eidd-stockholm-declaration-2004/>

⁶⁹ For a more in-depth overview, see: Giulia Rossello, Arianna Martinelli, Delia Ferri, Katie Donnellan, ‘D2.8 Final report on case studies on the effectiveness of regulatory measures to increase digital access to academics and people with visual impairments’ (2022) <https://doi.org/10.5281/zenodo.6793215>; Delia Ferri, Noelle Higgins, Katie Donnellan, M.



on the Rights of Persons with Disabilities (CRPD)⁷⁰ and the Marrakesh Treaty.⁷¹ The United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) formulates accessibility obligations in Article 9 CRPD. The CRPD, however, encompasses a broad concept of accessibility that includes physical and economic access as well as access to information.⁷² The CRPD has the merit, as pointed out by Harpur and Suzor, that “has swept in a new disability politics that focuses on a social model of disability that views differences of access as predominantly social construct”.⁷³

The WIPO-administered Marrakesh Treaty aims to integrate, on one hand, the principles listed in the CRPD and, on the other, the subject of intellectual property.⁷⁴ It is a treaty with a strong humanitarian value because it puts great emphasis on the need for social integration and the creation of an accessible cultural heritage.⁷⁵ On a practical level, the Treaty required the member States to introduce a number of limitations and exceptions to copyright law that would allow the reproduction, distribution and making available of published works in accessible formats to people who are blind, visually impaired or otherwise print impaired. The Treaty also introduces rules to facilitate the cross-border exchange of these works among organisations that help these beneficiaries.

The path that the CRPD and the Marrakesh Treaty have laid out is a start, but it is insufficient by itself to achieve a discipline of free access for people with disabilities; in fact, it is necessary for States to take positive action to ensure that people with disabilities enjoy adequate access to educational and cultural resources. Until now, the actions that have been taken mostly regard just cases of conflict with the interests of copyright holders.⁷⁶ Once again, there is a clear tendency to not diverge from the limited exceptions-based approach

Laura Serra, ‘D2.5 Report on barriers experienced by vulnerable groups’ (2022) <https://doi.org/10.5281/zenodo.6793172>

⁷⁰ United Nations, Convention on the Rights of Persons with Disabilities, drafted on 13 December 2006 and signed in New York on 30 March 2007, entered into force on 3 May 2008, G.A. A/RES/61/106, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

⁷¹ WIPO, Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted on 27th June 2013 and entered into force on 30th September 2016. The Marrakesh Treaty requires the contracting parties to adopt national laws to promote the production of books in accessible formats, e.g., Braille, e-books, audiobooks or large print. Moreover, the treaty should foster the cross-border exchange of these works.

⁷² Delia Ferri, Noelle Higgins, Katie Donnellan, M. Laura Serra, ‘D2.5 Report on barriers experienced by vulnerable groups’ (2022) <https://doi.org/10.5281/zenodo.6793172>

⁷³ Paul Harpur and Nicolas Suzor, ‘Copyright Protections and Disability Rights: Turning the Page to a New International Paradigm’ (2013) *University of New South Wales Law Journal* 36(3): 745-778, p. 746

⁷⁴ Giulia Rossello, Arianna Martinelli, Delia Ferri, Katie Donnellan, ‘D2.8 Final report on case studies on the effectiveness of regulatory measures to increase digital access to academics and people with visual impairments’ (2022) <https://doi.org/10.5281/zenodo.6793215>

⁷⁵ The text of the Marrakesh Treaty can be found here: <https://www.wipo.int/treaties/en/ip/marrakesh/>

⁷⁶ Paul Harpur and Nicolas Suzor, ‘Copyright Protections and Disability Rights: Turning the Page to a New International Paradigm’ (2013) *University of New South Wales Law Journal* 36(3): 745-778, p. 746, according to whom: “Historically, disability rights have been peripheral to copyright law. While copyright did not explicitly develop to exclude people with disabilities, now that the possibility of universal design and full access has become real, current copyright law



that favours copyright owners instead of users and their needs. The Marrakesh Treaty, on the one hand, is very innovative because it obliges member States to undertake a review of the system taking into account accessibility issues that affect people with visual impairments, but, on the other hand, it plays along with the general nature of the copyright system, which can be defined as limited exceptions-based. Therefore, it is not innovative to the point of framing the accessibility issue as part of the general system but it remains anchored to the limited exceptions-based nature of copyright, relegating the issue of accessibility for people with disabilities to some exceptions.

In 2017, the European Union introduced a Directive (2017/1564/EU) and a Regulation (2017/1563/EU) to implement the Marrakesh Treaty. The **Marrakesh Directive**:

“aims to further harmonise Union law applicable to copyright and related rights in the framework of the internal market, by establishing rules on the use of certain works and other subject matter without the authorisation of the rightholder, for the benefit of persons who are blind, visually impaired or otherwise print-disabled.”⁷⁷

Article 3 of the Directive introduces a mandatory exception that states that a beneficiary person or authorised entity do not have to obtain a previous authorisation of the rightholder of any copyright or related right in a work to make a copy of a work in an accessible format. This exception encompasses the reproduction right, the right of communication to the public, the right of making available to the public and the distribution right.⁷⁸ The referred framework is broadly articulated in the work of ReCreating Europe under Work Package 2, whose final report of case studies provides a legal mapping table that outlines the impact of the Directive for the implementation of the Treaty across six different Member States (Germany, Hungary, Ireland, Italy, The Netherlands, and Sweden)⁷⁹ and encompasses the impact of regulatory responses to paradigmatic access issues for people with visual impairments. The Regulation permits the cross-border exchange of accessible format copies of certain works between the Union and third countries that are parties to the Marrakesh Treaty without the authorisation of the rightholder. Although that final report only concerns one of the

supports a publishing regime whose practical effect is to deliver wildly discriminatory levels of access.” (p. 757, footnote omitted).

⁷⁷Article 1 of Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

⁷⁸ This Directive is in line with what was previously established in the Article 5(3)(b) of the Infosoc Directive: " Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:[...] (b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability". For a more in-depth overview, see Giulia Rossello, Arianna Martinelli, Delia Ferri, Katie Donnellan, 'D2.8 Final report on case studies on the effectiveness of regulatory measures to increase digital access to academics and people with visual impairments' (2022) <https://doi.org/10.5281/zenodo.6793215>, pp. 23-24

⁷⁹ Giulia Rossello, Arianna Martinelli, Delia Ferri, Katie Donnellan, 'D2.8 Final report on case studies on the effectiveness of regulatory measures to increase digital access to academics and people with visual impairments' (2022) <https://doi.org/10.5281/zenodo.6793215>



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countries we address in the present report - Italy - it is nevertheless important for any national policymakers to understand the implementation of the Marrakesh Directive.

In this context, it is also worth mentioning the issue of accessibility from a digital point of view especially in light of the discussion above of digital placemaking (in Part 2.1). The European Parliament and the Council adopted the **Web Accessibility Directive** (Directive (EU) 2016/2102) which has been in force since 22 December 2016 and aims to ensure effective digital accessibility of public services for people with disabilities and to harmonise European standards by reducing barriers for developers of accessibility-related products and services⁸⁰.

Nowadays there is a very large number of digital services offered to the public and simple changes can make websites and apps of public services easily accessible also for people with disabilities⁸¹. This piece of legislation merely implements what the CRPD had already established in Article 9:

"States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, [...] to information and communications, including information and communications technologies and systems [...]"

The Web Accessibility Directive obliges websites and apps of public sector bodies to meet specific accessibility standards and to provide a statement in which it is explained how they comply with the requirements of the Directive.⁸² In particular, users must have access to a "feedback mechanism" to report any failure to comply with the accessibility goal and can ask for information about any inaccessible content and, thus, accessible alternatives.⁸³ This indicates that certain 'official' sites that facilitate placemaking, such as virtual tours, are also subject to these standards.

The above mentioned Work Package 2 report addresses the question of whether intellectual property law has proven to be a useful tool in facilitating access to culture for this category of users or not. As it emerges in the report:

"individuals with paradigmatic access issues (i.e. [...] persons with visual impairment) have limited knowledge of copyright law and copyright exceptions. This lack of knowledge might be connected to the inherent complexity of copyright law and its evolving nature. It may be also linked to the absence of adequate awareness raising activities on copyright law and exceptions".⁸⁴

Even if the knowledge of the law appears to be poor, on a practical level, the greatest benefits perceived by persons with visual impairment are related to the improved availability of works in accessible format.

⁸⁰ Available at: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L2102>

⁸¹ Available at: <https://digital-strategy.ec.europa.eu/en/policies/web-accessibility>

⁸² Art. 7 Web Accessibility Directive

⁸³ Art 7(1)(b) Web Accessibility Directive

⁸⁴ Giulia Rossello, Arianna Martinelli, Delia Ferri, Katie Donnellan, 'D2.8 Final report on case studies on the effectiveness of regulatory measures to increase digital access to academics and people with visual impairments' (2022) <https://doi.org/10.5281/zenodo.6793215> p. 52



Unfortunately, the cost of production of works in these formats is high, so the “book famine”⁸⁵ phenomenon has not been solved⁸⁶.

Many of these arguments were discussed during “Open Up museums! Prospects and Challenges of Accessibility, Diversity and Inclusion”, the conference organised in the framework of ReCreating Europe, hosted at the premises of the Museum of Science in Trento and the Museum of Modern and Contemporary art in Rovereto in May, 2022.⁸⁷ Among the research outputs and best practices that were presented, it is worth mentioning some of them.

The **State Tactile Museo Omero in Ancona (Italy)**⁸⁸ is the first Italian tactile museum and the only state tactile museum in the world.⁸⁹ It defines itself as a democratic museum that, through the enhancement of the tactile sense, allows users who are normally excluded from the world of art and museums, such as people with visual impairments, to enjoy the museum experience.⁹⁰ In this museum, for example, works may be experienced directly through the sense of touch, as with the architectural model of the Pantheon (Fig. 1). The uniqueness of this museum is that it exploits the sense of touch and all its potential and nuances. Through the workshops organised by the museum, people can try to stimulate their sense of touch.⁹¹ The idea of

⁸⁵ Paul Harpur and Nicolas Suzor, ‘Copyright Protections and Disability Rights: Turning the Page to a New International Paradigm’ (2013) *University of New South Wales Law Journal* 36(3): 745-778. The book famine is an expression used in the article to refer to the physical shortage of books converted into readable formats for blind, visually impaired, or print impaired people.

⁸⁶ Giulia Rossello, Arianna Martinelli, Delia Ferri, Katie Donnellan, ‘D2.8 Final report on case studies on the effectiveness of regulatory measures to increase digital access to academics and people with visual impairments’ (2022) <https://doi.org/10.5281/zenodo.6793215> pp. 52-53

⁸⁷ ReCreating Europe, ‘Open Up Museums! Prospects and challenges of Accessibility, Diversity and Inclusion’ (2022) <https://www.recreating.eu/2022/04/20/open-up-museums-prospects-and-challenges-of-accessibility-diversity-and-inclusion>. For a report on the event see: ReCreating Europe, ‘Report: Open Up Museums! Workshop, Trento/Rovereto’ (2022) <https://www.recreating.eu/2022/06/15/report-open-up-museums-workshop-trento-rovereto/>

⁸⁸ The website of the Museo Omero is available at: <https://www.museoomero.it/> For an example of a discussion of the museum and its role in inclusion see: Martina Pellacani and Maria Della Lucia, ‘Social inclusion and visual disabilities: the state tactile museum Omero of Ancona’ (2021) *Sinergia-SIMA 2021 Conference Leveraging intersections in management theory and practice*, 10-11 June 2021, University of Palermo

⁸⁹ The first such museum was inaugurated in 1992 in Madrid. The website of the museum is available at URL: <https://museo.once.es/>. Among other examples of tactile museums in Italy, it is worth mentioning the Polo Tattile Multimediale in Catania, see: <https://www.polotattile.it/> and the Museo tattile in Varese, see: <http://www.museotattilevarese.it/>

⁹⁰ A. Grassini, M. Bernacchia, A. Socrati, A. Trasatti, ‘Il Museo Tattile Statale “Omero” di Ancona. Non c’è integrazione sociale senza integrazione culturale’ in G. Cetorelli, M. R. Guido (eds.), *Accessibilità e patrimonio culturale. Linee guida al piano strategico-operativo, buone pratiche e indagine conoscitiva* (Roma, 2020), 175, pp. 175-176 Available at: http://musei.beniculturali.it/wp-content/uploads/2021/05/Quaderno_n7_PAGINE-AFFIANC-DIGITALE-DEF_12NOV-W.pdf

⁹¹ A. Grassini, M. Bernacchia, A. Socrati, A. Trasatti, ‘Il Museo Tattile Statale “Omero” di Ancona. Non c’è integrazione sociale senza integrazione culturale’ in G. Cetorelli, M. R. Guido (eds.), *Accessibilità e patrimonio culturale. Linee guida al piano strategico-operativo, buone pratiche e indagine conoscitiva* (Roma, 2020) explaining that (our translation): “Free admission and gratuity of all activities for people with disabilities, the possibility of conducting independent blindfolded tours or discovering the collection with fun maps, constant educational proposals for families, accessible



accessibility is the principal mission of Museo Omero, hence it is continuously committed to improving this aspect as widely as possible by taking the accessibility concept into account from the start. It indicates a way forward for museums seeking to take the first step in creating a place where everyone can enjoy the museum experience in all its aspects.

Fig. 1. Model of The Pantheon from the State Tactile Museo Omero in Ancona.⁹²



Image description: a small three dimensional model cutaway of the Pantheon, a Roman building with a dome in the centre and columns to the right

Another pioneer in designing and developing museum experiences tailored for vulnerable groups is the **Museum of Modern and Contemporary Art of Trento and Rovereto (MART)**⁹³ which offers, in its educational area, a wide range of projects such as the Augmentative and Alternative Communication (AAC)⁹⁴ guide, a tactile guide that ensures the exploration of some of the sculptures in the collections and tablets with a Italian sign language (Lingua Italiana dei Segni) video guide with subtitles available for free.⁹⁵ The museum has demonstrated its commitment to creating projects aimed at fostering the museum experience for people with physical and intellectual disabilities (Fig. 2). Particularly significant is that, over the past few years, MART

workshops for every school age group, and the organisation of concerts and shows, even in the evening, are all elements of accessibility that go hand in hand with the presence of elevators and escalators for people with disabilities, braille supports, workshops in LIS, and a free art education for the blind” (p. 175).

⁹² Architectural model, wood and resin (65 x 137 x 95 cm; scala model 1:75). Reproducing original Roman architecture of 27 B.C. (45,6 x 54,5; 43,33 m diameter cupol), Rome, Piazza della Rotonda. Photo: Maurizio Bolognini. Courtesy of Museo Tattile Statale Omero Archive. Accessible at URL: <https://www.museoomero.it/en/opere/the-pantheon/>

⁹³ The MART website is available at: <https://www.mart.tn.it/>

⁹⁴ The definition of Augmentative and Alternative Communication (A.A.C.) given by the International Society for Augmentative and Alternative Communication (ISAAC) is “Comunicazione Aumentativa e Alternativa (C.A.A.) è il termine usato per descrivere tutte le modalità di comunicazione che possono facilitare e migliorare la comunicazione di tutte le persone che hanno difficoltà ad utilizzare i più comuni canali comunicativi, soprattutto il linguaggio orale e la scrittura.” Our translation: “Augmentative and Alternative Communication (A.C.) is the term used to describe all the ways of communication that can facilitate and improve the communication of people who have difficulties using the most common communication channels, such as listening and writing”. The history and work of the associations is available at: <http://www.isaacitaly.it/>

⁹⁵See (PDF): <https://martcms.dimension.it/media/j4cfv2n2/guida-mart-caa.pdf>



This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 870626

has worked in strict synergy with local associations such as Ente Nazionale Sordi (ENS),⁹⁶ AbilNova Cooperativa Sociale,⁹⁷ Anffas⁹⁸, the local centre of mental health,⁹⁹ to point out weaknesses and to build educational pathways suitable for all needs.

Fig. 2 MART's projects and activities for people with specific needs.¹⁰⁰

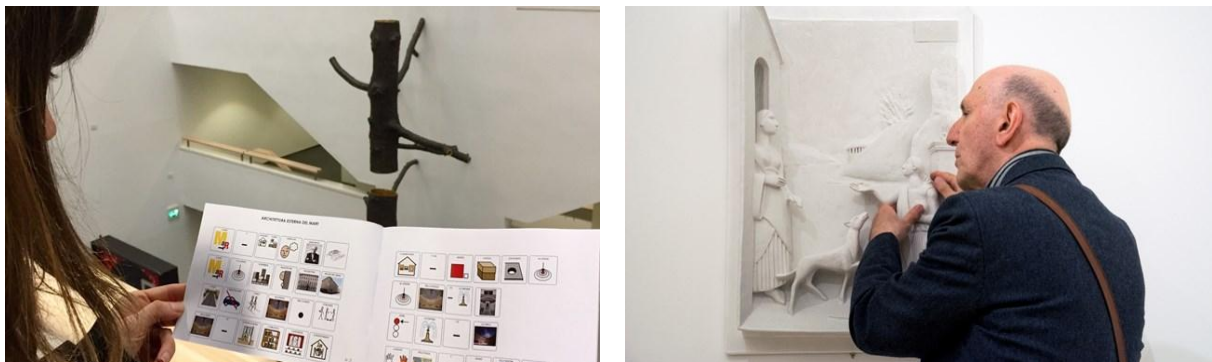


Image description (left): a person with long brown hair holds a booklet with pictures of squares representing information about the MART museum collection

Image description (right): man wearing a dark suit jacket and striped shirt faces towards and is touching with both hands a white relief artwork with horses and people representing the painting "Le figlie di Loth" by Carlo Carrà.

Another example of a museum that has diligently thought about its museum environment in terms of accessibility is the **Museum of science in Trento (MUSE)**.¹⁰¹ Following the example of MART, the dialogue between Anffas and Muse has resulted in the creation of many projects such as AAC projects and guides in "Easy to Read"¹⁰². In this way, people with disabilities were able to truly exercise their rights to access to culture and be involved in the creation process of projects that will make the museum a cultural point of reference. Moreover, the OpenMUSE section of the MUSE's website is divided into two sections containing videos with LIS translation for Deaf/deaf and blind and visually impaired persons.¹⁰³

⁹⁶ The website is available at: <https://www.ens.it>

⁹⁷ Formerly AbC IRIFOR, see: www.abilnova.it

⁹⁸ Anffas (Associazione Nazionale di Famiglie e Persone con Disabilità Intellettive e Disturbi del Neurosviluppo)

⁹⁹ Centro salute mentale (CSM), with which MART collaborates on the "Recovery College" project, <https://www.apss.tn.it/Azienda/Luoghi/Centro-salute-mentale-Trento>

¹⁰⁰ For further information see: <https://www.mart.tn.it/mart/attivita-per-persone-con-bisogni-specifici-123009>

The work on the right is a representation of a famous painting by Carlo Carrà, *Le figlie di Loth* (1919), oil on canvas, 111 x 80 cm, held by MART, Collezione VAF-Stiftung, <https://www.mart.tn.it/opere/le-figlie-di-loth-86998>.

¹⁰¹ The website of the Museum is available at URL: <https://www.muse.it/it/Pagine/default.aspx>

¹⁰² The "Easy to read" language, promoted at the European level by "Inclusion Europe", is a simplified language that helps people with disabilities (intellectual and physical), not only to read but also to understand information.

¹⁰³ For its commitment in creating an open and inclusive museum, MUSE was awarded the Anffas Trentino 2022 prize.



It is finally worth mentioning "The Museum Outside the Museum" project¹⁰⁴ that demonstrates how broad and multifaceted the concept of accessibility can be. It is promoted by the Egyptian Museum in Turin (Italy).¹⁰⁵ The aim of the project is to make the contents of the museum accessible to people who could not otherwise access the museum (e.g. from hospitals or prisons). The project has developed educational contents to involve and engage people with the museum's cultural activities

Among the research projects, the ERC DANCING project arose from the need to fill a legislative gap and make the right to enjoy a truly engaging participation in cultural life effective for people with disabilities. Indeed, the entire project is rooted in the principles expressed in the CPRD, in particular in Article 30 which recognized "the right of persons with disabilities to take part on an equal basis with others in cultural life."¹⁰⁶ The goals of the project are to recognize the barriers (physical and cultural) that people with disabilities face as well as the facilitators to participation, to understand the current legal framework and how to use the legal tools of the EU to make the culture inclusive and accessible to everybody, and finally, to promote a new paradigm about the promotion of cultural diversity in the EU legal system that includes the cultural rights of people with disabilities.¹⁰⁷

Key points - placemaking and accessibility

- Cultural heritage is important to placemaking and can generate place attachment both on-site (in physical) and digital, especially in the presentation of museum collections
- Inclusion of persons with disabilities is essential and placemaking activities need to be planned at the outset with an understanding of the relevant legal frameworks including the Marrakesh Treaty
- The circulation of digitised creativity and culture on the internet ought to conform to the requirements of the Web Accessibility Directive
- Examples of museums with inclusive on-site practices are the State Tactile Museo Omero and MART

¹⁰⁴The projects developed by the Museo Egizio are described here: 'Progetti Speciali' <https://www.museoegizio.it/scopri/progetti-speciali/>

¹⁰⁵ The website of the Museum is available at: <https://www.museoegizio.it/>

¹⁰⁶ Art. 30 CRPD – Participation in cultural life, recreation, leisure and sport.

¹⁰⁷ Protecting the Right to Culture of Persons with Disabilities and Enhancing Cultural Diversity through European Union Law: Exploring New Paths (DANCING). This project has received funding from the European Council (ERC) under the European Union's Horizon 2020 Research and Innovation Programme (grant agreement No. 864182). The website of the project, led by Delia Ferri, is available at: <https://ercdancing.maynoothuniversity.ie/about-erc-project-dancing/about-the-project/>



2.3 International context

This report is concerned primarily with intellectual property law but adjacent fields of regulation may also be relevant. This section thus considers the international framework for the legal protection of cultural property. The instruments discussed here should be considered alongside other international instruments, especially those relating to accessibility (such as the Marrakesh Treaty discussed above in Part 2.2) in the placemaking context.

At the international level, cultural property law governs the intricate relationship between the places and the art, architecture and heritage they contain. The United Nations Educational, Scientific and Cultural Organization (UNESCO) instruments are key in shaping the treatment of heritage, both in tangible and intangible form. One of the common methods is inventory-making, which involves listing tangible and intangible heritage in separate lists. For the purposes of place-making, an area or tradition passing the nomination and Committee stages mean increased visibility, prestige and funding.

Before introducing inventory-making in 1972 and 2003 UNESCO Conventions, a few key observations about the earlier cultural property law instruments are useful for context:

- In terms of purpose, earlier UNESCO instruments such as the 1954 Hague Convention focus more on reducing the losses of heritage during armed conflict, whereas later instruments focus on illicit import and export of heritage and changing social and economic conditions.¹⁰⁸
- In terms of scope, earlier UNESCO instruments prioritise tangible heritage whereas later instruments include also on the intangible heritage.¹⁰⁹
- In terms of actors, UNESCO instruments usually put the responsibility on the States, not individuals. But later instruments recognise the importance of cooperating with communities, groups and individuals.¹¹⁰
- In terms of the measures recommended, UNESCO instruments usually have vague and non-binding requirements for the protection of heritage. But considering that there are different interests of the stakeholders, it is understandable why UNESCO embraces uncertain measures.

While the idea to protect certain places has already been developing since the two world wars, the 1972 World Heritage Convention was a reaction to the realisation that “increasing urbanisation, industrialisation, social and economic upheaval, pollution and climate change were all contributing to the decay, degradation and destruction” of the heritage, combined with the international tourism and increasing accessibility of the heritage sites to the public.¹¹¹ The momentum to protect certain places through international instruments occurred in different places “simultaneously and unconnectedly”.¹¹² Events such as the flooding of

¹⁰⁸ See Article 2 of 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Article 4 of 1972 UNESCO World Heritage Convention

¹⁰⁹ See Article 2 of 2003 Convention for the Safeguarding of the Intangible Cultural Heritage

¹¹⁰ See Article 11(b) of 2003 Convention for the Safeguarding of the Intangible Cultural Heritage

¹¹¹ Craig Forrest, *International Law and the Protection of Cultural Heritage* (Routledge, 2010) p. 224

¹¹² Christina Cameron and Mechtild Rössler, *Many Voices, One Vision: the Early Years of the World Heritage Convention: The Early Years of the World Heritage Convention* (Routledge, 2013) p. 2



archaeological sites after the Aswan Dam's construction then increased the international motivation to design a regime for cooperation and protection of such sites.¹¹³

In the United States, there were two parallel initiatives, one for natural and other for cultural heritage, "apparently unknown to the other until 1970".¹¹⁴ The protection of heritage sites developed together with the protection of natural areas. For example, one of the earliest examples making the list of ecologically important areas, such as national parks and reserves, was the "United Nations List of Protected Areas and Equivalent Reserves", prepared in 1962.¹¹⁵ After 27 plenary sessions and disagreements on the funding model, the World Heritage Convention was adopted on 16 November 1972 and came into force on 17 December 1975. The World Heritage Convention defines its scope as cultural and natural heritage with "outstanding universal value",¹¹⁶ without clarifying the criteria in the main Convention. The Convention refers to the "heritage of all nations" and the "world heritage of mankind as a whole".¹¹⁷ Since the Convention itself did not define world heritage other than monuments, groups of buildings sites, the criteria had to be further clarified with the Operational Guidelines. But the uncertainty on "outstanding universal value" and the early discussions in 1977-1980 showed continuing problems with applying the criteria to sites from diverse cultures.¹¹⁸ The concerns on rapid growth of the list between 1978 to early 2000s showed that the sites were uneven with (i) more European and North American inscriptions than the rest and (ii) more cultural heritage than natural heritage.¹¹⁹ This has led to the significant revision of the Operational Guidelines and the adoption of Global Strategy to ensure a balanced representation of heritage.

Article 4 of the Convention foresees that State Parties are to identify and protect the sites on their territory.¹²⁰ For this stage, the States are free to rely on the criteria established for the World Heritage Committee in the Operational Guidelines but are not obligated to.¹²¹ Even if an identified heritage site does not make it to the World Heritage List, that does not diminish the State's responsibility to protect the site under Article 4 and it shall "endeavour" to adopt a general policy and set up services for protection, develop scientific studies, take necessary measures and develop centres for training in conservation.¹²² Being on the List means having access to the World Heritage Fund, which provides both scientific and management guidance and financial

¹¹³ Craig Forrest, *International Law and the Protection of Cultural Heritage* (Routledge 2010) p. 227

¹¹⁴ Christina Cameron and Mechtild Rössler, *Many Voices, One Vision: the Early Years of the World Heritage Convention: The Early Years of the World Heritage Convention* (Routledge, 2013) p.

¹¹⁵ Christina Cameron and Mechtild Rössler, *Many Voices, One Vision: the Early Years of the World Heritage Convention: The Early Years of the World Heritage Convention* (Routledge, 2013) p. 2

¹¹⁶ Arts. 1 and 2 1972 UNESCO World Heritage Convention

¹¹⁷ 1972 UNESCO World Heritage Convention, Preamble

¹¹⁸ *Many Voices, One Vision: the Early Years of the World Heritage Convention: The Early Years of the World Heritage Convention* (Routledge, 2013) p. 34

¹¹⁹ *Many Voices, One Vision: the Early Years of the World Heritage Convention: The Early Years of the World Heritage Convention* (Routledge, 2013) p. 47

¹²⁰ Art. 4 1972 UNESCO World Heritage Convention

¹²¹ Craig Forrest, *International Law and the Protection of Cultural Heritage* (Routledge, 2010) p. 242

¹²² Art. 5 1972 UNESCO World Heritage Convention



support. State Parties' regular contributions to this fund, administrative framework and the reporting mechanisms are carefully determined.¹²³

It is up to the States to make nominations for the Committee, while it is possible to submit joint nominations with other State parties for sites that are in multiple territories – but this is more common for natural heritage than cultural heritage.¹²⁴ States have to submit inventories that should be regularly updated, those will be placed in a Tentative List for future nominations. For actual nominations, the sites must be on the Tentative List for at least a year.¹²⁵ The nominations should provide information on the existing protection in place and the relevant policy, scientific, technical, administrative and financial measures (current and future) and the evidence for “outstanding universal value”.¹²⁶ In order to address the rapid growth of the List, the Committee has set up the limit of 35 nominations to be considered per year, while encouraging the State Parties to slow down their rate of submissions.¹²⁷ This decision has a significant impact on the prioritisation of world heritage and its effectiveness for placemaking.

Article 11(4) requires a “List of World Heritage in Danger”, including both natural deterioration and public/private development projects, where conservation assistance will be provided and the committee would monitor the site. The Convention also requires State Parties to “not take any deliberate measures which might damage directly or indirectly the cultural and natural heritage” in Article 6(3). Over time, intangible cultural heritage was also included under the scope of protection. In addition to the motivation to equally protect cultures with primarily intangible heritage, colonisation and globalisation also led to the disappearance of cultural traditions and skills.

The possibility of including intangible heritage in the scope of cultural property law was included in the 1982 World Conference on Cultural Policies in Mexico City. Cultural heritage was defined in a way that includes:

“work of anonymous artists, expressions of the people’s spirituality, and the body of values which give meaning to life... both tangible and intangible works through which the creativity of that people finds expression: languages, rites, beliefs, historic places and monuments, literature, works of art, archives and libraries”.¹²⁸

This was then followed by the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore, which required the group to be the ones safeguarding their ‘folklore’, its forms consisting of “language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts” among others. The Living Human Treasures Programme was launched in 1993, which encouraged Member States to identify and recognise the persons willing to pass on how to create elements of intangible cultural heritage.¹²⁹

¹²³ Craig Forrest, *International Law and the Protection of Cultural Heritage* (Routledge, 2010) pp. 267-274

¹²⁴ Craig Forrest, *International Law and the Protection of Cultural Heritage* (Routledge, 2010) p. 250

¹²⁵ The Operational Guidelines for the Implementation of the World Heritage Convention 2021, p. 65

¹²⁶ Operational Guidelines 2021, 53 and 71

¹²⁷ Operational Guidelines 2021, 60*bis* and 59

¹²⁸ UNESCO World Conference on Cultural Policies Final Report 1982, p. 43

¹²⁹ UNESCO, ‘Living Human Treasures: a former programme of UNESCO’ <https://ich.unesco.org/en/living-human-treasures>



This programme went beyond inventory making and focused instead on keeping the traditions alive through skilled people.

In 1997, the Programme of the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity was launched.¹³⁰ This programme relied on a nomination system similar to the one in the World Heritage Convention, whose list was criticised for concentrating too much on the monuments in European countries. There were concerns that State Parties would not nominate World Heritage Sites which are valuable for Indigenous communities and instead make their nominations that strengthen their authority or choose a less complex natural area to increase the chances of gaining recognition from the jury.¹³¹ The Programme encouraged national representatives to prepare the files “as far as possible” with the persons belonging to the communities, based on what is important for them.¹³² Nevertheless, candidature files were required to be submitted by national representatives only, thus reducing the control of Indigenous communities. The nominations were assessed by a jury in the next stage that applied vague protection criteria such as “outstanding value, roots in tradition, affirming cultural identity, application of the skill and technical qualities, being testimony of a living tradition and risk of disappearing”.¹³³ In addition to the application of subjective criteria from both during nomination and the Jury decision stage; the Programme only allowed nominating one file from each Member State every two years,¹³⁴ which can be restrictive.

In 2003, the Convention for the Safeguarding of Intangible Cultural Heritage was adopted. The Convention describes intangible heritage in five domains: “(a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship” and it foresees an inventorying system.¹³⁵ Despite its importance for the scope, the 2003 Convention had some weaknesses. To ensure higher degree of participation from the Member States, the 2003 Convention was vague about the definitions and steps needed. Although it recommends “establishing documentation institutions for the intangible cultural heritage and facilitating access to them”,¹³⁶ it does not really address how to do so. Similar to the Masterpieces Programme, this instrument also places the responsibility of managing intangible heritage on the States, who might not be as sensitive as the local communities themselves. Its inventory making approach can be criticised for only having a limited, frozen view of the heritage inscribed and this increased visibility can make them more susceptible to abuse.

¹³⁰ UNESCO, ‘1982-2000: from Mondiacult to Our Creative Diversity’ <https://ich.unesco.org/en/1982-2000-00309>

¹³¹ Stefan Disko, ‘Indigenous Cultural Heritage in the Implementation of UNESCO’s World Heritage Convention: Opportunities, Obstacles and Challenges’ in Alexandra Xanthaki, Sanna Valkonen, Leena Heinämäki, and Piia Kristiina Nuorgam (eds.), *Indigenous Peoples’ Cultural Heritage* (Brill Nijhoff, 2017) pp. 39-78

¹³² UNESCO Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity: Guide for the Presentation of Candidature Files, para.10-11

¹³³ UNESCO Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity: Guide for the Presentation of Candidature Files, para.22.

¹³⁴ UNESCO Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity: Guide for the Presentation of Candidature Files, para.9

¹³⁵ Art. 2 2003 Convention for the Safeguarding of the Intangible Cultural Heritage

¹³⁶ Art. 13(d)(iii) 2003 Convention for the Safeguarding of the Intangible Cultural Heritage



Considering these instruments focus on making tangible and intangible inventories, can UNESCO inventory-making be a useful tool for placemaking? Achieving heritage status means greater visibility and guaranteed financial and organisational support from UNESCO for the protection and promotion of the listed heritage. But these lists also have shortcomings when it comes to placemaking as we indicate below.

The first thing to consider is the increased visibility that comes with being on an inventory. Studies show that World Heritage Status comes with a large increase in the annual number of visitors.¹³⁷ While it might bring economic advantages to the sites and the surrounding neighbourhood, it also means an increase in the costs of reducing the over-exploitation.¹³⁸ The same applies to intangible heritage, where the risk of appropriation and commodification increases.

Second, the list is constantly growing, which has the potential to cause ‘institutional fatigue’ where the same level of support is no longer possible.¹³⁹ Since there is a limit on the number of nominations, there will be some prioritisation in what the State parties choose to nominate. This could mean that sites or intangible heritage that is more valuable to a minority or is less likely to attract tourists can be ignored and not nominated by the State.¹⁴⁰

Third, it is also possible to remove a site from the World Heritage List, if it loses the characteristics or if the intrinsic qualities of the site were already threatened at the time of nominations and the necessary measures were not taken in time.¹⁴¹ While it can be connected to reasons such as armed conflict or natural disasters, this could also be caused by activities that are otherwise needed for the city. Since the beginning, a total of three sites were removed from the list (from Oman, Germany, the UK).¹⁴² Dresden Elbe Valley was removed from the World Heritage List in 2009 due to losing its outstanding universal value after the building of Waldschlösschen Bridge.¹⁴³ A poll taken shortly after the delisting decision showed that the majority of the participants did not think UNESCO title was necessary and the majority voted in favour of the bridge.¹⁴⁴ Most recently, Liverpool was delisted in 2021 due to the development of Liverpool Waters being seen to have damaged the outstanding universal value and its “authenticity and integrity”.¹⁴⁵ Similar to the Elbe Valley poll, the delisting is argued to not affect the locals and the current tourism.¹⁴⁶ Such examples show that

¹³⁷ Marie-Theres Albert and Birgitta Ringbeck, *40 Years World Heritage Convention: Popularizing the Protection of Cultural and Natural Heritage* (De Gruyter, 2015), p. 139

¹³⁸ Marie-Theres Albert and Birgitta Ringbeck, *40 Years World Heritage Convention: Popularizing the Protection of Cultural and Natural Heritage* (De Gruyter, 2015) p. 145

¹³⁹ Craig Forrest, *International Law and the Protection of Cultural Heritage* (Routledge 2010) p. 285

¹⁴⁰ Christina Cameron and Mechtild Rössler, *Many Voices, One Vision: the Early Years of the World Heritage Convention: The Early Years of the World Heritage Convention* (Routledge, 2013) pp. 231-232

¹⁴¹ The Operational Guidelines for the Implementation of the World Heritage Convention 116

¹⁴² UNESCO, ‘World Heritage List’ (Delisted) <https://whc.unesco.org/en/list/?&delisted=1>

¹⁴³ UNESCO, ‘Dresden is deleted from UNESCO’s World Heritage List’ <https://whc.unesco.org/en/news/522>

¹⁴⁴ Jennifer Ambramsohn, ‘Dresden loses UNESCO world heritage status’ <<https://www.dw.com/en/dresden-loses-unesco-world-heritage-status/a-4415238>>

¹⁴⁵ UNESCO, ‘World Heritage Committee deletes Liverpool - Maritime Mercantile City from UNESCO’s World Heritage List’ <https://whc.unesco.org/en/news/2314>

¹⁴⁶ Josh Halliday, ‘We don’t need UNESCO listing, says new Liverpool heritage chief’ *The Guardian* (September 2021) <https://www.theguardian.com/uk-news/2021/sep/23/we-dont-need-unesco-listing-says-new-liverpool-heritage-chief>



construction and developments that are currently deemed necessary for the cities and locals, might clash with the heritage status. So a decision has to be made between the past and the current in some circumstances.

Finally, what has “outstanding value” in a city might not be seen as equally valuable compared to the rest of the world. We can see an example of this in Glasgow, as one of the cities covered in this report. The buildings of Charles Rennie Mackintosh located in Glasgow were considered under the UK Tentative List of Potential Sites for World Heritage Nomination. The nomination was for a serial site of two buildings that were built between 1897 and 1909 and the outstanding value was claimed based on the architectural style.¹⁴⁷ After the tentative list was reviewed by the independent experts in the UK’s Department for Culture, Media and Sport, the panel responded that “the nominated buildings did not have potential OUV in their own right. A number of urban sites inscribed on the WH List already contain significant Art Nouveau architecture”.¹⁴⁸

While not connected to the UNESCO instruments and inventory-making above, an extra concern with being treated as “cultural heritage” locally might mean being subject to more stringent local cultural heritage laws, such as State permission for the reproduction of heritage or other requirements (see below in Part 4.4 regarding Trento).

Key points - international cultural heritage context

- UNESCO instruments, especially 1972 World Heritage Convention and 2003 Intangible Heritage Convention focus on making inventories of tangible and intangible heritage
- Listing can be a useful tool for placemaking and provide increased visibility and funding, but parties need to consider the vagueness of the criteria applied, strategic prioritisation in nominations and the risk of losing heritage status if the area changes

2.4 European context

This part of the report is concerned primarily with examples of placemaking and the interaction of intellectual property rules with placemaking in Europe and especially the regulatory framework of the EU. It does not

¹⁴⁷ UK Tentative List of Potential Sites for World Heritage Nomination: Application form’

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/78262/WHAF_Buildings_CRMackintosh_Glasgow.pdf (PDF)

¹⁴⁸ ‘The UK’s World Heritage Review of the Tentative List of the United Kingdom of Great Britain and Northern Ireland: Independent Expert Panel Report to the Department for Culture, Media and Sport’ (March 2011) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/78235/Review-WH-Tentative-List-Report_March2011.doc. The failed World Heritage nomination of Mackintosh buildings in Glasgow is also addressed in Part 4.2 of this report. “OUV” is an abbreviation for Outstanding Universal Value.



provide an overview of the whole regulatory landscape.¹⁴⁹ Rather the part focuses on a recent intervention: the Council Recommendation for a Common European Data Space relating to the access and circulation of cultural heritage.¹⁵⁰ There appears to be the potential for this data space - assuming the adoption from the start of appropriate intellectual property policies to match the infrastructure needed to create the data space - to enable the circulation of digitised versions of important and at-risk cultural heritage. In turn this matters because of its potential for supporting digital placemaking that fosters attachments to particular places.¹⁵¹

In considering the interaction between intellectual property law, cultural heritage circulation and digitisation it is thus appropriate to take into account in this report how and whether the objectives of the Recommendation can be met within current IP frameworks including especially in light of the DSM Directive.¹⁵² Indeed the DSM Directive, the Recommendation on common European Data Spaces as well as the Open Data Directive,¹⁵³ as Wallace puts it, is the “the EU [setting] in motion a sea change of legal, policy, and technology support to liberate eligible digital heritage for public access and unfettered reuse.”¹⁵⁴

In short, the question becomes: how are places made at the intersection of on-site and digital spaces and what policies, including “digital strategy”¹⁵⁵ and approaches might **support placemaking**? This needs to be understood however in the broader policy context that concerns access to culture. The other point to consider is that there is already guidance regarding the aesthetics and experience of the built environment more generally.¹⁵⁶ This is clearly relevant to placemaking as a matter of physical on-site interventions.

Within this context, it is also worth noting some other cultural programs such as the Council of Europe’s Heritage Days and Europa Nostra Awards for Cultural Heritage: in 2006 European Heritage Label started as a

¹⁴⁹ A relatively recent and related effort in Europe, from the Council of Europe is the Convention on the Value of Cultural Heritage for Society (also known as the Faro Convention), which acknowledges the relevance of objects and places as a vehicle for the values of a community and instrumental to protect diversity and inclusion. For the text of the Faro Convention see: Council of Europe Framework Convention on the Value of Cultural Heritage for Society, CETS No. 199, adopted on 13 October 2005, opened for signature in Faro on 27 October 2005, and entered into force on 1 June 2011. The full text is available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=199>

¹⁵⁰ Commission Recommendation (EU) 2021/1970 of 10 November 2021 on a common European data space for cultural heritage (OJ L 401 12.11.2021, p. 5, CELEX: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021H1970>)

¹⁵¹ This type of discussion is important and crosses disciplinary boundaries. A recent joint event between three EU-funded projects (ReCreating Europe, inDICEs, and DANCING) which took place in Trento and Rovereto in May 2022, “Open Up Museums!” is an example of this. The panel on placemaking ‘Panel 4 - Inhabiting culture: digitisation, copyright and creativity in placemaking’ is summarised in the reCreating Europe blog report here: <https://www.recreating.eu/2022/06/15/report-open-up-museums-workshop-trento-rovereto/>. See also a discussion of the event above in Part 2.2.

¹⁵² Recital 16 Digital Single Market Directive

¹⁵³ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast)

¹⁵⁴ Andrea Wallace, ‘21 for 21: Digital Heritage and the Public Domain’, CREATE blog (7 January 2022) <https://www.create.ac.uk/blog/2022/01/07/21-for-2021-digital-heritage-and-the-public-domain/>

¹⁵⁵ Recital 7 and Arts. 4, 6 and 7 Commission Recommendation (EU) 2021/1970 of 10 November 2021 on a common European data space for cultural heritage

¹⁵⁶ See e.g. Council resolution of 12 February 2001 on architectural quality in urban and rural environments: [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001G0306\(03\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001G0306(03)&from=EN)



intergovernmental scheme¹⁵⁷ and set up a system similar to UNESCO World Heritage Lists, where candidates are decided at the national level and the labels are awarded by the Heritage Committee of Europe.¹⁵⁸

2.4.1 Common European data space

This section directly and indirectly addresses the Recommendation on a common European data space as soft law.¹⁵⁹ In fact, the Recommendation reflects that, despite the EU lacking specific competence in the field of cultural heritage, it could be argued that the Recommendations makes cultural heritage data loosely fall within the Data Strategy.¹⁶⁰ The Recommendation follows the Commission Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation,¹⁶¹ but it differs because it addresses in a more extensive way the relationship between cultural heritage, and technology - in a nod to the key concepts of the 2030 Digital Compass. It is also noteworthy that the Recommendation also provides a common ground of reference for the context of placemaking, as it reports the definitions of tangible¹⁶² and intangible¹⁶³ cultural heritage that link back to the UNESCO Conventions of 1972 and 2003 (on which see above, Part 2.3). Next to these, there is also a notion of “all types of cultural heritage”, including tangible, intangible, natural, born digital, covering those at risk as well.

Given that Member States have fundamentally different approaches to cultural heritage, the Recommendation calls for the adoption of a comprehensive digital strategy coupled with a green transition. This seems crucial in the aftermath of COVID-19.¹⁶⁴ The pandemic highlighted strengths and weaknesses of the cultural sector, and the Recommendation also aims at encouraging Member States to put in place frameworks to enhance the recovery and transformation that would support cultural heritage institutions to become empowered and resilient.¹⁶⁵

Overall, the Recommendation, which will be subject to a follow-up in two years, seems to be the key source to understand the current EU policy developments in the field. It bears emphasis that it points not only to

¹⁵⁷ Tuuli Lahdesmaki, Viktoria L.A. Ceginskas, Sigrid Kaasik-Korgerus, Katja Makinen and Johanna Turunen, *Creating and Governing Cultural Heritage in the European Union: The European Heritage Label* (Routledge, 2020) pp. 8-10

¹⁵⁸ The list includes sites from the selected countries in this report: Great Guild Hall in Tallinn, Historical Ensemble of University of Tartu and Fort Cadine in Trento. For the full list and procedures, see <https://culture.ec.europa.eu/cultural-heritage/initiatives-and-success-stories/european-heritage-label>

¹⁵⁹ Under 288 of the TFEU which indicates that recommendations are guidance rather than law; noting also that this Recommendation replaces the preceding one of 2011.

¹⁶⁰ EU Commission Communication - A European strategy for data, COM(2020) 66 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0066>

¹⁶¹ Commission Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation OJ L 283, 29.10.2011, p. 39–45, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011H0711>

¹⁶² Definition of tangible includes monuments and archeological sites; separate definition of natural heritage referring to the UNESCO Convention of 1972

¹⁶³ Definition of intangible cultural heritage as taking into account the role of communities and cultural spaces, referring to UNESCO Convention of 2003 on intangible cultural heritage.

¹⁶⁴ For further discussion see below Part 2.6 on COVID-19 and placemaking.

¹⁶⁵ See Recitals 3, 8 and 15 Commission Recommendation on a common European data space for cultural heritage



vertical issues (as in relation to copyright exceptions and limitations or open data regulations, as in Recitals 14 and 16) but also transversal issues of the cultural heritage sector, such as the lack of digital skills (Recital 15) and accessibility (Recital 11).¹⁶⁶ The last of these specifically mentions “accessible tactile experiences” which is relevant in light of the preceding discussion of cultural heritage and accessibility in Part 2.2 of this report.

More specifically several passages in the Recommendation highlight the relationship that exists between copyright, cultural heritage, and placemaking, focusing on data-driven opportunities. As a premise, the Recommendation addresses buildings, monuments and heritage sites, including those at risk, as under-digitised domains but also mentions of smart cities, environmental modelling, and sustainable tourism.¹⁶⁷

Recital 10 also specifically envisages the role of digitisation preservation of “buildings, monuments, sites and intangible cultural heritage”, in respect of tourism. Explicit relevance is acknowledged in relation to sustainable and innovative tourism, considered in line with the objectives of the European Green Deal. Chapter II regarding digitisation is especially relevant for the purposes of the present report since it indicates the need for adopt a more holistic strategy to support cultural heritage institutions and the adoption of advanced technologies for digitisation and preservation, setting clear goals, where the criteria should consider cultural heritage at risk, visited cultural and heritage monuments, buildings and sites, and the low level of digitisation of specific assets. Europeana is mentioned throughout the Recommendation and Article 16 specifically states that Member States “should actively encourage cultural heritage institutions to make their digitised assets available through Europeana and thus contribute to the data space...”.¹⁶⁸

In light of the placemaking concerns that encompass tourism and investment in this report it is interesting to see the mentions of the partnership between cultural sector and other sectors emerging as key. Remarkably, the sectors mentioned are education/training, creative industries, and sustainable cultural tourism.¹⁶⁹ Article 17 in Chapter III, regarding principles for the Common European Data Space, seems also highly related to placemaking since it mentions “European cultural jewels”, which suggests a shared EU and national cultural identity. Within the data domain, the provision urges that 3D digitised cultural heritage would allow for the re-use in domains such as social sciences and humanities, cultural tourism and others. This would appear to be at least an implicit acknowledgement of the importance of digital placemaking efforts.

As part of this process in late 2021 an Expert Group on CDECHE was formed - the group is intended to support cooperation between EU Member States, the European Commission and UNESCO.¹⁷⁰ A report has also been

¹⁶⁶ Note that Recital 16 Commission Recommendation on a common European data space for cultural heritage begins “Cultural heritage institutions have encountered different copyright-related obstacles when digitising and sharing cultural heritage, such as the costs associated with clearing rights, lack of sufficient copyright expertise among cultural heritage professionals, limitations to cross border cooperation between institutions.”

¹⁶⁷ See recital 10 as well as Recitals 9 and 19 Commission Recommendation on a common European data space for cultural heritage

¹⁶⁸ Europeana is one of the initiatives described in Annex D to this report.

¹⁶⁹ Art. 8 Commission Recommendation on a common European data space for cultural heritage

¹⁷⁰ European Commission, ‘Expert Group on a common European Data Space for Cultural Heritage’ <https://digital-strategy.ec.europa.eu/en/news/expert-group-common-european-data-space-cultural-heritage>. For a discussion of UNESCO in the context of world heritage listing see Part 2.3 above (international context).



published on a ‘European Collaborative Cloud for Cultural Heritage’.¹⁷¹ As of 19 October 2022, following a call for tenders, the contract for the creation of the common European data space for cultural heritage was awarded to a consortium of organisations.¹⁷² The work packages are described as follows:

1. “Development and operation of the data space infrastructure;
2. Integration of high-quality data;
3. Capacity building and fostering reuse;
4. Digital services for the public.”¹⁷³

In terms of this report, the aim of ‘fostering reuse’ is especially relevant insofar as it relates to the question of placemaking, specifically the ways in which the circulation of cultural heritage may support place attachment. While not referring to places specifically, a recent meeting of the Commission Expert Group on the CEDCHE noted the lack of a register in most countries of ‘at risk’ cultural heritage sites, buildings, objects, and digital artworks amongst other things.¹⁷⁴ Particular note was made of the general lack of digitisation of monuments and sites in 3D forms.¹⁷⁵ While regulation of such activities is not only the domain of intellectual property law it is clear that IP, especially copyright, forms part of - as indicated by reference to Article 11 of the “digital skills gap” - that knowledge of the flexibilities offered by copyright is an important part of the cultural heritage professionals’ toolkits even if it is not directly mentioned within that Article.¹⁷⁶ The reference to upskilling in respect of “advanced digitisation and extended reality technologies” for example has clear intellectual property implications. As this report suggests, relevant aspects of intellectual property law need to be addressed alongside the technical knowledge and skills required for the common data space to function well.

Key points - common European data space

- The Recommendation on a common European data space indicates a way forward for the digitisation and circulation of European cultural heritage to support placemaking

¹⁷¹ This ‘ex-ante impact assessment’ was published on 2 May 2022: European Commission, Directorate-General for Research and Innovation, Pere Brunet, Livio De Luca, Eero Hyvönen, et al., ‘Report on a European collaborative cloud for cultural heritage : ex – ante impact assessment’, Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2777/64014>

¹⁷² For details see: European Commission, ‘The deployment of a common European data space for cultural heritage’ <https://digital-strategy.ec.europa.eu/en/news/deployment-common-european-data-space-cultural-heritage>

¹⁷³ European Commission, ‘The deployment of a common European data space for cultural heritage’ <https://digital-strategy.ec.europa.eu/en/news/deployment-common-european-data-space-cultural-heritage>

¹⁷⁴ Minutes - Second meeting of the Commission Expert Group on the Common European Data Space for Cultural Heritage (CEDCHE) 11 and 12 May 2022 p. 4, available at <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=38654&fromExpertGroups=true>

¹⁷⁵ Minutes - Second meeting of the Commission Expert Group on the Common European Data Space for Cultural Heritage (CEDCHE) 11 and 12 May 2022 p. 4, available at <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=38654&fromExpertGroups=true>

¹⁷⁶ Art. 11 Commission Recommendation on a common European data space for cultural heritage



- The common data space can be understood as a potential tool for digital placemaking
- Knowledge of intellectual property rules, especially copyright, is an essential component of digitisation strategies

2.5 Review of projects

This part highlights a number of recently completed and current projects especially those receiving EU funding and which are relevant to placemaking projects that include an element of strong empirical engagement and/or are concerned with access to culture.¹⁷⁷ The breakdown of projects into different sections below is inexact - there are commonalities and overlaps across the different categories. It identifies a range of interesting and relevant material at least some of which is likely to be new and spark interest whether in developing placemaking policies or projects. So for example this might mean replicating the aims of the Hidden Cities app as a potential route to community engagement or identifying similar projects to address difficult histories, for example by learning from the Glasgow walk on the history of slavery which encouraged a new and fuller understanding of the city.¹⁷⁸

Another reason to include this review of projects is that most of the projects identified do not include a discussion of intellectual property law which is beyond the aims of the projects described. Thus an analysis of existing projects can be used to identify intellectual property issues and potential solutions to policymakers in other cities. It can also be useful in current and future projects some of which include ongoing, EU funded, networks specifically on placemaking. The usefulness lies in suggesting that such projects consider accounting for the intersection between the placemaking activities being studied and their intersection with intellectual property law perhaps especially in light of the Recommendation on the common European data space discussed above (in section 2.4.1).

In the subsequent sections and related Annexes we present the projects, initiatives and networks in the form of highlights. The intention is not to summarise and evaluate each project but rather to suggest directions for exploration depending on specific stakeholder interests. To present the projects and other initiatives in a clear and direct way each is briefly described by including information from the relevant web page. We then select and link to certain deliverables and examples and offer comments where relevant to the placemaking concerns of the current report. We identify where Glasgow, Tallinn or Trento (or cities in the UK, Estonia or

¹⁷⁷ Note that since the start of this review of projects by the ReCreating Europe team, inDICES has in the meantime also listed relevant projects some of which are also mentioned in Part 2.5 of this report. For this helpful overview of projects identifying best practices relating to culture in European cities in the context of the COVID-19 pandemic: Pier Luigi Sacco et al. 'D1.3: Report on data gathering V.1' (2021) <https://www.zenodo.org/record/5141542#.Yz7flHbMJhF> pp. 17-18

¹⁷⁸ See the augmented reality mobile app developed by writer and director Adura Onashile, 'Ghosts' described here: National Theatre of Scotland, 'Ghosts' <https://www.nationaltheatrescotland.com/past-performances/ghosts>. The app included audio description, British Sign Language interpretation, and captions while the physical route was accessible for participants using wheelchairs.



Italy) are mentioned within the projects. The selection of the material is presented for information and is not to be understood as endorsement of any particular project or view.

These summaries can be read alongside existing work within Work Package 5 of ReCreating Europe, especially the GLAM FAQs as well as the deliverables of numerous projects including, for example, inDICES.¹⁷⁹

2.5.1 Highlighted projects relevant to place and access to culture, and creativity

This section provides an overview of projects, networks and other initiatives that concern, especially, issues relating to place, and access to culture and creativity in those places. A number of relevant projects are highlighted here by providing a description and an indication of relevant case studies and deliverables (e.g. reports, resources). Certain projects are relevant in broad terms even if not directly related to placemaking because they raise important points about access to culture more generally. An example of this is the ARCHES project focused on accessibility of cultural heritage for example sign language avatars, the creation of tactile works and other technological interventions.

The reviewed projects are likely to be of particular interest to stakeholders concerned with access in their locality. Thus even if projects are not necessarily concerned with Glasgow, Tallinn, and Trento there are potentially useful suggestions for ensuring the accessible and equitable approaches to creativity and culture.

The overviews of the relevant projects may be found in **Annex A** at the end of this report.

2.5.2 EU/Europe projects relevant to tourism within place-making

A number of projects directly address tourism strategies and initiatives in particular cities in Europe. The distinction between projects in this and the preceding section (2.5.1) is not necessarily obvious though. Certain projects, such as ROCK, which is discussed above in section 2.4.1 are also relevant here. In terms of understanding placemaking holistically it is worthwhile considering this more outward focused - insofar as they aim to attract visitors - set of projects alongside those described elsewhere in Part 2.5 that also focus inwards by engaging inhabitants of particular places.

The overviews of the relevant projects may be found in **Annex B**.

2.5.3 Cultural heritage and related projects

This section continues the review of projects. Here we select certain projects that have a particular concern with the use and circulation of cultural heritage in Europe. We draw attention especially to partner institutions (if any) from Estonia, Italy and the UK and then especially to any organisations or project locations in Tallinn, Trento, or Glasgow respectively. We also highlight, in particular, the inDICES project which offers a variety of stakeholder-focused deliverables and tools relevant to the operation of cultural heritage institutions. What the review indicates is the enduring contemporary relevance of cultural heritage to

¹⁷⁹ inDICES: Measuring the Impact of Digital Culture is a Horizon 2020 funded consortium: <https://indices-culture.eu/>. Partners in Work Package 5 of ReCreating Europe have collaborated with inDICES on events, for example as discussed in Part 2.2 of this report (on cultural heritage and accessibility). The resource link for the GLAM FAQs can be found at the end of Part 3 of this report as a 'Resource link'.



placemaking as well as, for some projects, the necessity of integrating an understanding of the operation of intellectual property law. More generally, as with the preceding two sections, the highlighted deliverables, tools and other resources provides a potential source of inspiration to stakeholders involved in placemaking projects (especially community engagement through cultural heritage) that could be of interest also to Glasgow, Tallinn, or Trento. In particular, some of the projects highlight potential new business models.

The overviews of the relevant projects may be found in **Annex C** of this report.

2.5.4 Other resources and data

This section concerns other sources of data that may be relevant. It considers not projects but rather given an indication of some sources to complement the material already discussed. The focus is on Europeana and its city-specific collection while the relevant descriptions also include Eurocities insofar as it provides data on two of the cities relevant to this report (Glasgow and Tallinn). The latter does not offer the same information on Trento it does cover seventeen cities in Italy and may thus be of more general relevance.

This section also includes a very specific, and different, type of organisation - Culture Counts - which operates within Scotland. It has, it is worth noting immediately, produced a 'cultural toolkit for towns' which provides just one example of placemaking strategy even if not concerned with intellectual property rights.

The overviews may be found below in **Annex D**.

Key points - review of projects

- Many projects are place-specific and engage different stakeholders
- Current and future projects could usefully consider intellectual property law - especially copyright - and how it may support placemaking activities
- The tools, publications and other outputs from current and former projects offer an existing set of resources for stakeholders engaged in placemaking to consult
- Future projects could adopt a more overt approach to placemaking and accessibility

2.6 The COVID-19 pandemic and placemaking

The COVID-19 pandemic required the reorientation of cultural and creative activities away from on-site



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

experiences.¹⁸⁰ This was in evidence especially in respect of the GLAM sector. It would appear that this has produced an acceleration of the circulation of cultural material online as well as a more sensitive approach to messaging by certain institutions.¹⁸¹ Similarly, an examination of museums' responses to the closing of on-site exhibitions found that it enabled access for audiences that would not have been able to view a physical exhibition.¹⁸²

Such pandemic responses may be especially significant, as one recent paper suggests, in the context of 'small heritage' (i.e. small museums and other cultural heritage sites) notwithstanding the difficulties such organisations face with respect to digitisation and the development of tourism strategies.¹⁸³ Recent focus group research into "place, identity, belonging, value and meaning and their relationships to heritage and the local geographical scale" indicated that participants' experiences had an impact on their views on the place they lived.¹⁸⁴ This is significant in light of the broader findings of that study relating to the impact of the pandemic:

"Participants found the presentation of heritage at this 'local scale' rewarding as it prompted engagement with parts of collections that held significance and meaning. [...] This warm reception might well be due to changes in patterns of movement wrought by the Covid-19 restrictions in place during 2020 and 2021 that led the public to reconnect with the neighbourhoods or areas in which they reside. People have spent more time exploring where they live developing an appetite to understand more about the streets and buildings near them and the people who used to live and work in them. Similarly, participants were unable to visit other 'own places' but could reconnect digitally."¹⁸⁵

While the COVID-19 pandemic shows the relevance of multiple activities that engage inhabitants and others within particular places it has also revealed the relevance of intellectual property rights in relation to access to culture. Challenges in respect of access to copyright protected material in its physical and digital forms are

¹⁸⁰ For a short, contemporaneous response to the COVID-19 pandemic in the context of tourism and place see: Raffaella Gmeiner, 'Tourism, CCIS and COVID-19' (7 July 2020) CICERONE Blog, <https://cicerone-project.eu/tourism-ccis-and-covid-19/>

¹⁸¹ See, with examples, from the Horizon funded network POEM (Participatory Museum Practices): Cassandra Kist, 'Museums, Challenging Heritage and Social Media During COVID-19' (2020) *Museum & Society* 18(3): 345-348. <https://doi.org/10.29311/mas.v18i3.3539>

¹⁸² Ellie King, M. Paul Smith, Paul F. Wilson, and Mark A. Williams, 'Digital Responses of UK Museum Exhibitions to the COVID-19 Crisis, March - June 2020' (2021) 64(3): 487-504, pp. 493-494

¹⁸³ Letizia Bollini and Chiara Facchini, '*I Wish You Were Here*. Designing a Geostorytelling Ecosystem for Enhancing the Small Heritages' Experience' in Gervasi, O., Murgante, B., Misra, S., Rocha, A.M.A.C., Garau, C. (eds.) *Computational Science and Its Applications – ICCSA 2022 Workshops*. ICCSA 2022. Lecture Notes in Computer Science, vol 13378. Springer, Cham. pp. 459; 461-462.

¹⁸⁴ Gethin Rees, Alex Hunt, Valeria Vitale, John Horgan and Peter Strachan, 'Discovering the local in national cultural heritage collections. How web maps can help the UK public engage with their 'own places'' (2022) *Information, Communication & Society* DOI: 10.1080/1369118X.2022.2113819 p. 9

¹⁸⁵ Rees et al., 'Discovering the local in national cultural heritage collections' p. 14



pronounced.¹⁸⁶ Drawing evidence from different survey results of GLAMs, including a Network of European Museum Organisations survey,¹⁸⁷ Walsh et al. highlight that GLAM institutions experienced some significant difficulties during the pandemic relating to the cost of licensing schemes.¹⁸⁸ At the same time the authors show that the growth of initiatives such as virtual exhibitions, social media engagement and the like created a lot of new content to which copyright attached but without a related commitment to openness.¹⁸⁹ Note also that the COVID-19 pandemic was also the impetus for using more digital ways to brand, experience and 'perform' local places.¹⁹⁰

The relevant point to highlight here before continuing to a discussion of EU copyright law in terms of the GLAM survey results (below in Part 2.7) and of the rules in more detail in Part 3 of this report is that the pandemic highlighted existing connections between placemaking and intellectual property rights. As such, subsequent analyses of intellectual property rights need to be understood in light of the flexibilities they offer (or not) in continuing to ensure engagement with - and widening access to - culture both on-site and digitally.

2.7 GLAM survey results

The necessity of undertaking the work in this report can be seen, apart from the points made in Part 1 on the relevance of exploring the link between placemaking and intellectual property generally, in stakeholder information received via a survey conducted by ReCreating Europe in 2020.¹⁹¹ A couple of preliminary points are worth noting here: first, the survey addressed GLAM professionals specifically rather than other groups

¹⁸⁶ For a detailed account of the copyright framework in the pandemic context, amongst other issues including especially health and patents, calling for a re-evaluation of existing framework in order to improve access see: Karen Walsh, Andrea Wallace, Mathile Pavis, Natalie Olszowy, James Griffin, and Naomi Hawkins, 'Intellectual Property Rights and Access in a Crisis' (2021) IIC - International Review of Intellectual Property and Competition Law 52: 379-416 <https://doi.org/10.1007/s40319-021-01041-1>

¹⁸⁷ For the summary of the results see: NEMO, 'Survey on the impact of the COVID-19 situation on museums in Europe' (2020) available at https://www.nemo.org/fileadmin/Dateien/public/NEMO_documents/Nemo_Museums_Migration.pdf

¹⁸⁸ Karen Walsh, Andrea Wallace, Mathile Pavis, Natalie Olszowy, James Griffin, and Naomi Hawkins, 'Intellectual Property Rights and Access in a Crisis' (2021) IIC - International Review of Intellectual Property and Competition Law 52: 379-416, pp. 395-396.

¹⁸⁹ Karen Walsh, Andrea Wallace, Mathile Pavis, Natalie Olszowy, James Griffin, and Naomi Hawkins, 'Intellectual Property Rights and Access in a Crisis' (2021) IIC - International Review of Intellectual Property and Competition Law 52: 379-416, p. 396. The authors note the need to reduce both intellectual property and non-IP barriers in light of: UNESCO, Recommendation on Open Educational Resources (OER) 25 November 2019, Paris <https://www.unesco.org/en/legal-affairs/recommendation-open-educational-resources-oer>

¹⁹⁰ Jacek Kotus, Michał Rzeszewski and Artur Olejniczak, 'Material and digital dimensions of urban public spaces through the lens of social distancing' (2022) *Cities* 108356, p. 130.

¹⁹¹ The survey questions, respondents and responses were first presented in Giulia Dore, Lorenzo Beltrame, Iris Buunk, 'Impact of Copyright Law and Open Policies in relation to digitisation practices in the GLAM Sector: Preliminary results from the GLAM survey 2021' (2021) Link to PDF: 10.5281/zenodo.4887261

Full analysis is undertaken in Giulia Dore, Lorenzo Beltrame, Silvia Giovanetti, *Measuring the Impact of Copyright and Open Policies in Digitisation: Evidence from the GLAM sector* (on file with the authors).



of stakeholders that are also relevant to the present report (see above, section 1.1.1); and second, that nevertheless the survey's findings are highly relevant in demonstrating the gaps in knowledge of EU copyright law within a sector that is essential for the preservation and promotion of, and indeed access to, cultural heritage.

The survey had 125 full responses and libraries, mostly public, in particular were well-represented.¹⁹² The survey sought information from respondents including the type and size of the organisation and where it is located¹⁹³ as well as the types and extent of digital resource holdings of the organisation if any. The main part of the survey was oriented towards determining the extent of knowledge of EU copyright law. This is significant given the relatively recent adoption of the CDSM Directive. While 83% of respondents said they were moderately or very familiar with copyright law, only a slim majority (51%) of respondents had knowledge of the CDSM Directive. Indeed while 92% of respondents¹⁹⁴ indicated familiarity with national copyright laws the familiarity with EU copyright instruments as a whole was between 38-43%.

Looking further into the data on the CDSM Directive the survey reveals some interesting information on the use of copyright exceptions. It indicates that 38.8% of respondents used copyright exceptions at least in part while only 24% of respondents relied on copyright exceptions in order to digitise resources. Yet, 68.8% of respondents stated explicitly that they embrace any policy that facilitates the openness of their collections. There thus appears to be a gap between a desire for openness and the use of copyright exceptions.

In short then, any discussion of intellectual property and placemaking must consider that knowledge of intellectual property, including especially copyright, may be limited and that therefore (as this report seeks to do) it is important to identify the core rules and how they operate in a way that will assist stakeholders in relying, where relevant, on copyright exceptions and other rules in order to digitise and circulate their collections.¹⁹⁵ More generally, what we see from the results of the survey is the enduring importance of national copyright frameworks and their application but (potential) fragmentation and some lack of harmonisation at the EU level. While this may be less significant from the perspective of the development of local or national community identities it may be significant in terms of EU approaches to access to culture.

In the context of the above findings, the responses to two supplementary questions at the end of the survey are of particular interest to placemaking in the intellectual property context with which this report is concerned. The two questions were optional but the responses provide useful data on GLAM institutions' holdings of digital resources that relate to the city where the institution is found and whether the digitised content is geocoded. What the results reveal, alongside the earlier point made about the enduring relevance

¹⁹² Partial responses were disregarded.

¹⁹³ The list of options include countries in the EU, the most represented being Italy, Germany, Denmark, Estonia and the Netherlands, as well as the United Kingdom, while also enabling respondents to fill out an "other" box.

¹⁹⁴ Of which 35.4% indicated they were moderately aware of national copyright laws and 57.6% indicated they were very familiar.

¹⁹⁵ Giulia Dore, Roberto Caso, Marta Arisi, Lorenzo Beltrame, 'Guidelines & FAQs (GM) industries – Interim version' (17 March 2022) <https://zenodo.org/record/6364833#.Y9ZVjHbP3b0>



of national approaches to copyright, is that the place of digitisation matters. Moreover, the content of the digital heritage often reflects / is significant to the place where the GLAM institution is sited. The questions and responses are summarised in Table 1 and Table 2 below.

Table 1

Does any of the digital resources focus on the place or country where your organisation is located (e.g. local history archive, digitised artworks by local artists, city maps)?	N.	%
Yes	57	77,0
No	14	18,9
Total	74	100,0

Table 2

Does your organisation hold any geocoded digitised content (e.g. geo-visualisation historical simulations, virtual reality)?	N.	%
Yes	22	29,7
No	52	70,3
Total	74	100,0

While holdings of geocoded content are small the number, at nearly 30%, is significant and indicates the relevance of place that may be expressed by GLAM organisations through the use of geocoding as a tool. For example, this type of content may be relevant to immersive experiences such as augmented reality within museums but the significance of place is evidence well beyond the narrow confines of geocoded digital



content.¹⁹⁶ More generally, the strong indication of the significance of the locality of relevant digitised resources suggests that issues around the digitisation and circulation of cultural heritage (and other material) are intertwined with, and potentially fundamental to, placemaking practices. Taken together with the general GLAM survey results, this suggests that whether (and how) the CDSM Directive is being implemented matters not only for the obvious reasons – e.g. parity in the operation of exceptions across the EU and the evenness of access to cultural heritage that this seems to imply – but also because slow implementation, fragmentation and the prioritisation in practice of existing national rules affects the experience of, and access to, culture of people’s experience of particular places. In short, poor implementation is liable to affect – at least indirectly – placemaking and the sense of belonging a community may have at local and EU levels because of the barriers placed in the way of the circulation of cultural heritage.

Key points - GLAM survey results

- National copyright laws are a key source for GLAM organisations seeking to digitise their collections
- A survey of GLAM organisations indicates that further information is needed on the usefulness of copyright exceptions including those in the CDSM Directive
- Placemaking is a significant aspect of the digitisation of GLAM collections

3. Placemaking and EU copyright law

One of the principles on which the copyright system is based is the copyright owner’s exclusive right to reproduce, communicate and make available to the public their work. However, this bundle of rights can be variously limited by a set of limitations and exceptions which can vary from Member State to Member State. This part of the report addresses two key Directives in EU copyright law: the Infosoc Directive and the more recently adopted CDSM Directive. We identify certain rules that are of particular relevance at the intersection of placemaking and copyright law in two ways.

First, in Part 3.1, three optional exceptions to copyright infringement are considered - freedom of panorama and incidental inclusion - alongside a brief mention of reproduction of building plans, since the interaction between place and copyright law is the most obvious while being less well understood in relation to these exceptions. These exceptions are of particular relevance to inhabitants, visitors and others and suggest that copyright law may, inherently, be concerned with the possibility of supporting place attachment. Second, in

¹⁹⁶ See generally on the relevance of geolocation: Trunfio, Mariapina, Maria Della Lucia, Salvatore Campana, and Adele Magnelli, ‘Innovating the cultural heritage museum service model through virtual reality and augmented reality: The effects on the overall visitor experience and satisfaction’ (2022) *Journal of Heritage Tourism* 17(1): 1-19



Part 3.2, the report turns to an overview of provisions in the CDSM Directive that are specifically of relevance to GLAM organisations engaged in the digitisation of their collections. These provisions need to be understood especially in light of the importance of intellectual property law to placemaking (identified generally in Part 1 and Part 2).¹⁹⁷ As we suggest above, the circulation of cultural heritage depends upon the effective operation of rules for digitising buildings and other elements of cultural heritage in physical places and enabling them to be preserved, and potentially experienced, virtually. Overlaying this is a broad concern with place as an on-site experience in Part 3.1 below since it relates to interaction in physical space and the reconstruction of the built environment, and the potential for a virtual experience in light of the potential digitisation of works, in Part 3.2 below.

Before moving to an overview of certain copyright rules it is therefore necessary to emphasise that we do not present an exhaustive account of the rules that may be relevant here. In particular, all of the relevant copyright exceptions are considered in detail as part of a project of mapping of copyright in the context of access to culture, amongst other things, elsewhere in the mapping work undertaken by ReCreating Europe.¹⁹⁸ This mapping is especially important in the context of an appropriately functioning Digital Single Market in the EU. However, since copyright law is not fully harmonised the copyright position in selected countries is discussed, insofar as specific points are relevant, in the ‘city focus’ part below (Part 4). These mirror to a large extent the EU-level discussion in Part 3 here.

3.1 The EU Infosoc Directive and copyright exceptions relevant to placemaking

This part considers how specific exceptions within the Infosoc Directive may interact with placemaking.¹⁹⁹ In particular it raises the question of whether - given the exceptions being discussed are optional - the uneven adoption of especially freedom of panorama has an impact on the evenness of circulation of digitised culture and creativity. The concern is acute in the context of the common European data space recommendation to digitise certain buildings and sites since this will be more straightforward in Member States with a strong freedom of panorama exception for making copies of buildings. This is not to say that other copyright or related rules will not be significant and may in fact enable the free digitisation and circulation of cultural heritage. However, the issue of fragmentation, especially in the context of the operation of the Digital Single Market ought to be considered. Indeed there are differences in transposition even where the relevant exception has been adopted and so care needs to be taken by stakeholders depending on their territory.²⁰⁰

¹⁹⁷ This includes the relevance of the link between cultural heritage and placemaking, including access to culture (Parts 2.1. And 2.2) aim to create a common European data space (discussed in section 2.4.1) and the GLAM survey results (Part 2.7).

¹⁹⁸ See the mapping of copyright flexibilities, including accounting for harmonisation as well as fragmentation, the report: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) <https://doi.org/10.5281/zenodo.7540511>

¹⁹⁹ The text of Directive 2001/29/EC is available at <https://eur-lex.europa.eu/eli/dir/2001/29/oj>

²⁰⁰ See also the resource link to the visual mapping of copyright exceptions in Part 6 of this report for a useful representation of Member States’ implementation of the Infosoc Directive exceptions. For a discussion of territoriality



It needs to be understood, as do all of the exceptions and limitations in Article 5 of the Infosoc Directive, that these are subject to the three-step test. Thus the freedom of panorama, incidental inclusion and reconstruction of buildings exceptions will apply only where the use does not “conflict with a normal exploitation of the work or other subject-matter and [does] not unreasonably prejudice the legitimate interests of the rightholder.”²⁰¹

3.1.1 Freedom of panorama

The internet has enabled new forms of communication, sharing, and reproduction. In light of this, the freedom of panorama exception is significant; the trend for sharing images of buildings and sculptures in public places is far from marginal.²⁰² Scholars also argue that panorama exception in copyright law is not sufficient, with concerns about what is deemed as “commercial” especially in the digital environment.²⁰³ Also worth noting that freedom of panorama is not harmonised and the reproduction of heritage can be subject to local rules.²⁰⁴ Interacting with one’s own city ought to be seen as part of promotion of creativity and culture and be accommodated by copyright.²⁰⁵

The optional exception for the reproduction of publicly placed copyright protected works, often referred to as ‘freedom of panorama’ highlights the significance of the placement of a work to the ability for someone to freely reproduce it. It is found in Article 5(3)(h) Infosoc Directive: “use of works, such as works of architecture or sculpture, made to be located permanently in public places”. As such it is especially relevant to the circulation of images of art and architecture. Crucially it enables not only reproduction - by taking a photograph or making a sketch, but also the communication to the public of that work. We can see then, in the context of placemaking, the accounting for both on-site and virtual interaction with art, architecture and other works (note the reference in the Article to the non-exhaustive “as such”) that may support or enhance place attachment.

It is worth noting that a preliminary attempt to include a mandatory freedom of panorama exception in the CDSM Directive failed.²⁰⁶ However the exception had been adopted in different ways in EU Member States

and the Digital Single Market see: Mireille van Eechoud and Romy van Es, ‘D4.2 Report on EU policy space in light of international framework’ <https://doi.org/10.5281/zenodo.5069608>

²⁰¹ Art. 5(5) Infosoc Directive

²⁰² Pauline Combe, ‘Copyright Protection of Works Displayed in Public Places: Challenges over the Freedom of Panorama Exception’ (2018) *Art antiquity & Law* 23: 313, pp. 313-316

²⁰³ Katherine Galilee, ‘To what extent should uses of public architectural works be permitted under European copyright law?’ (2018) *Stockholm Intellectual Property Law Review* 1(2): 18-33

²⁰⁴ Ramon Romano (2018). ‘Copyright law and cultural heritage in Italy: Work in progress’ (2018) *Journal of Intellectual Property Law and Practice* 13(9): 694–699

²⁰⁵ In light of the significance of inhabitance as identified in section 1.3.2. On this point in relation to freedom of panorama (in the UK context) see generally: Marta Iljadica, ‘Copyright and the Right to the City’ (2017) *Northern Ireland Legal Quarterly* 68(1): 59-78

²⁰⁶ The attempted inclusion of the exception was tracked as part of an empirical project on the operation of freedom of panorama in the UK, and including a study of Glasgow, funded by The Carnegie Trust for the Universities of Scotland (RIG007417) by Marta Iljadica and Amy Thomas, ‘Freedom of panorama: making copyright Law (in)visible’ a summary



attaching particular conditions. Some jurisdictions, namely France and Italy, do not have freedom of panorama provisions at all.²⁰⁷ In the absence of a mandatory freedom of panorama exception across the EU, GLAMs, inhabitants, and other stakeholders will need to remain cognisant of the specific flexibilities available at a national level not only in terms of freedom of panorama but also other potentially useful exceptions such as quotation, if available.²⁰⁸

In terms of copyright supporting access to culture (as a part of placemaking) the freedom of panorama provision is not necessarily sufficient insofar as it may lack broad applicability to persons with disabilities. This may be because the provision is limited to certain types of works or a limitation in terms of the types of reproductions that can be made which may limit the possibility to produce place experiences that are accessible. It is thus necessary instead, as with other exceptions and limitations, to consider the specific exception in the Infosoc Directive relating to uses “for the benefit of people with a disability”.²⁰⁹

3.1.2 Incidental inclusion

Certain provisions enable the use of copyright protected works without the copyright owner’s permission where such works are used only incidentally.²¹⁰ Although not concerned specifically with works such as buildings and sculptures in public places, the incidental inclusion exception has an affinity to freedom of panorama.²¹¹ It is found in Article 5(3)(i) Infosoc Directive: “incidental inclusion of a work or other subject-matter in other material”.

This exception may be relevant to certain promotional activities such as the use of certain works in advertising campaigns since that type of work might include multiple copyright protected works. Some of these which might only be fleetingly used in a broadcast or constitute a very small proportion of an advertisement for example. The exception would though of course not apply to the use of such works as

of which is available on the CREATE Centre website at: <https://www.create.ac.uk/project/public-domain/2021/04/22/freedom-of-panorama-making-copyright-law-invisible-2/>

²⁰⁷ But see below in Part 4.4 in the discussion of Trento the role of the Italian cultural heritage code in this context which, on one interpretation, would seem to fulfil the role of the freedom of panorama exception.

²⁰⁸ Art. 5(3)(d) Infosoc Directive: “quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author’s name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose”.

²⁰⁹ Art. 5(3)(b) Infosoc Directive: “uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability”. See: Caterina Sganga, Péter Mezei, Magali Contardi, Pelin Turan, István Harkai, Giorgia Bucaria, and Camilla Signoretta, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) <https://doi.org/10.5281/zenodo.7540511>

²¹⁰ In the UK it is found in s 31 CDPA 1988. The meaning of ‘incidental’ is not defined in the legislation and has not been further clarified in the case law which maintains a flexible approach: the application remains highly fact specific. In the Infosoc Directive the rule is found in Article 5(3)(i).

²¹¹ In Belgium, the incidental inclusion exception does in fact only apply to publicly situated works. For further details see: Caterina Sganga, Péter Mezei, Magali Contardi, Pelin Turan, István Harkai, Giorgia Bucaria, and Camilla Signoretta, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) p. 127 <https://doi.org/10.5281/zenodo.7540511>



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trade marks because the whole of one work is perhaps more likely to be used, for example a pictorial representation of a sculpture in a city square.

In the placemaking context we can see that taking a photograph of a public place may include, incidentally, a number of works including two dimensional works that would not otherwise fall within the freedom of panorama exception. This is therefore a helpful complementary exception whether for a visitor taking a photograph or a local authority or tourist board seeking images of a city for brochures or online tourism campaigns. In the context of access to culture incidental inclusion exception, and notwithstanding the particularities of differences in the detail of adoption in different Member States, the key points are that the relevant source must be lawful and that the copyright protected work “plays a minor, collateral role”.²¹²

As such both the freedom of panorama and incidental inclusion exceptions, while seemingly little known, are helpful to public bodies engaging in destination branding but are also of critical example to inhabitants and even tourists as co-creators of city brands and, more generally, as participants in the culture of a city. Again, this is the case whether for example informally digitising its public spaces and sharing these images of buildings and other works or using elements of the city’s cultural heritage as part of city branding.

3.1.3 Reconstruction of buildings

A further aspect of the Infosoc Directive is worth highlighting briefly because it also has a direct relationship to placemaking: the exception related to the reconstruction of buildings. It is found in Article 5(3)(m) Infosoc Directive: “use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building”.

While much of the discussion in this report relates to the reproduction of copyright protected works and the circulation of two dimensional reproductions or the digitisation of whole buildings or even sites, this exception is directly relevant to on-site place experience. It also seems plausible to say that the operation of this provision has the potential to influence inhabitants’ place attachment as well as affect the perception of a place in tourism and innovation branding efforts. This is because it has an impact on the physical experience of a city or other place. This means in turn that the interpretation - more specifically, the national implementation - of the provision is key. Issues that arise in this context are whether the relevant use must be in aid of preserving heritage, for repair only, or for renovation.²¹³

²¹² This is helpfully outlined in the form of ‘dos and don’ts’ along with an overview of key differences between Member States that have adopted the incidental inclusion exception in: Caterina Sganga, Camilla Signoretta, Peter Mezei, Delia Ferri, and Noelle Higgins, ‘Understanding and learning to use copyright flexibilities: Guidance and best practices’ (2022) <https://doi.org/10.5281/zenodo.7148721> pp. 8-9. For a practical response, including recommendations for stakeholders in the EU, that takes into account the territorial aspects of copyright exceptions in the context of access to culture in respect of other exceptions see elsewhere in this same document.

²¹³ For a useful overview see: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) <https://doi.org/10.5281/zenodo.7540511> pp. 579-580. This provision might operate in practice is not always



Unusually amongst EU Member States, the reconstruction of buildings provision in Slovakia offers some guidance on how this provision may be interpreted by foregrounding the preservation of the building in the context of its artistic value.²¹⁴ In Poland the provision is interpreted specifically in light of consistency with moral rights provisions, specifically the right of integrity.²¹⁵ The integrity right, broadly speaking, refers to the ability of the author of a copyright protected work to control interference with it. In the context of buildings this may include objecting to unsympathetic additions to the original structure.²¹⁶

So, while this report is not concerned with moral rights, the broader point relating to the control that may be exercised over works (especially buildings) that are experienced by potential users of those works. We see, cumulatively when accounting for the freedom of panorama and incidental inclusion exceptions copyright law, at least potentially, regulating responses to a place and perhaps also community identities yet, at least in respect to the reconstruction of buildings, with limited if any ability of inhabitants, visitors and others to effect change in their built environment.

Key points - the Infosoc Directive exceptions

- The Infosoc Directive provides for a number of optional exceptions and limitations that have resonance with placemaking
- Of particular relevance are incidental inclusion, freedom of panorama and reconstruction of buildings
- Understanding the legal approaches in the Member States remains crucial because of differences in implementation

clear and Member States that have adopted the provision with varying effects: e.g. the transposition in Lithuania excludes commercial reconstructions (p. 580).

²¹⁴ Referring to section 52 in the relevant legislation: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, 'D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources' (2023) <https://doi.org/10.5281/zenodo.7540511> p. 580

²¹⁵ Discussing Judgement of Sąd Apelacyjny, (Appellate Court) in Gdańsk of 10th February 2009 II APo 8/08 Legalis Numer 177239; LEX nr 524897: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, 'D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources' (2023) <https://doi.org/10.5281/zenodo.7540511> p. 580

²¹⁶ The moral right of integrity provisions, where they exist, differ according to national jurisdictions. For example, in the UK for example s. 80 Copyright Designs and Patents Act 1988 (UK) enables authors to object, under certain conditions, to the "derogatory treatment" of their work. § 12(3) Copyright Act (Estonia) includes a "right of integrity of the work". Italian Copyright law (L. 633/1941), provides a strong protection to moral rights, with Article 20 comma 1 specifying that regardless of the economic rights and in perpetuity, the author retains the attribution right, and "the right to object to any distortion, mutilation or other modification, and to any act to the detriment of the work itself, that may be detrimental to his honour or reputation". The only exception considered by the law concerns work of architecture, whose necessary alternation may not be opposed by the author (Article 20 comma 2 Lda).



3.2 The EU Digital Single Market Directive

In 2016 a Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market was published.²¹⁷ The Explanatory Memorandum explains the reasons of the proposal as follows:

“The evolution of digital technologies has changed the way works and other protected subject-matter are created, produced, distributed and exploited. New uses have emerged as well as new actors and new business models. In the digital environment, cross-border uses have also intensified and new opportunities for consumers to access copyright-protected content have materialised. Even though the objectives and principles laid down by the EU copyright framework remain sound, there is a need to adapt it to these new realities.”²¹⁸

The subject of copyright has always been regulated by the European Union through directives, the so-called soft law acts. Article 288 TFEU states that directives shall be binding about the result to be achieved upon the Member State to which they are addressed, leaving to the national authorities the power to choose the form and means of achieving that result.²¹⁹ Precisely for this reason, the introduction in the CDSM Directive of some mandatory exceptions and limitations makes their implementation interesting to track²²⁰

This section addresses aspects of the CDSM Directive that are relevant in particular to GLAMs.²²¹ This is in line with the underlying assumption of this report that museums, but also other cultural heritage institutions and actors are ‘placemaking agents’.²²² As such the CDSM Directive is potentially an important driver for placemaking at the intersection of cultural heritage and intellectual property law. This is particularly relevant given the results of the GLAM survey the results of which are discussed above (in Part 2.7) and the significance

²¹⁷ The Directive 2019/790 text is available at <https://eur-lex.europa.eu/eli/dir/2019/790/oj>

²¹⁸ Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market COM/2016/0593 final - 2016/0280 (COD), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A593%3AFIN> p. 2

²¹⁹ Art. 288 Treaty on the Functioning of the European Union (TFEU) states that “[...] A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. [...]”

²²⁰ For helpful mapping of the adoption of the CDSM Directive across the EU Member States see this tracking resource: CREATE Centre: University of Glasgow & ReCreating Europe, EU Copyright Reform: Evidence on the Implementation of the Copyright in Digital Single Market Directive (Directive (EU) 2019/790) <https://www.create.ac.uk/cdsm-implementation-resource-page/> (accessed January 2023)

²²¹ ReCreating Europe deliverables within Work Package 5 that may be highlighted here include e.g. Roberto Caso, Giulia Dore and Marta Arisi ‘D5.1: Report on the existing legal framework for Galleries and Museums (GM) in EU’ (2021) <https://doi.org/10.5281/zenodo.5070449>; Giulia Dore, Roberto Caso, Paolo Guarda and Marta Arisi ‘D5.7: Final Policy Recommendations for EU Lawmakers’ (2023) <https://doi.org/10.5281/zenodo.7544364>

²²² The concept of agents of placemaking is described in section 1.3.2 above. See also for an example of the role of contemporary museums: Martin Heidenreich and Beatriz Plaza ‘Renewal through Culture? The Role of Museums in the Renewal of Industrial Regions in Europe’ (2013) *European Planning Studies* 23(8): 1441-1445



attached to holdings relating to a particular place. The operation of the relevant copyright rules is thus not only relevant to the smooth operation of museum digitisation efforts but also to possibilities offered to inhabitants and others to form attachments to a city or other place.

The two goals of the preserving and digitising of European cultural heritage have been handled together since the early 2000s. In 2006, the Commission recommended:

“to improve conditions for digitisation of, and online accessibility to, cultural material by: ... (b) establishing or promoting mechanisms, on a voluntary basis, to facilitate the use of works that are out of print or out of distribution, following consultation of interested parties”.²²³

In 2011, a Memorandum of Understanding of Key Principles on the Digitisation and Making Available of Out-of-Commerce Works was signed by the European libraries, publishers, authors and collecting societies, which defines its scope as:

“books and journals which have been published for the first time in the country where the Agreement is requested, and are to be digitised and made available by publicly accessible cultural institutions as contained within Art 5(2)(c) [Infosoc Directive]”.²²⁴

Around the same time, there were multiple early projects focusing on the digitisation of cultural heritage, both as national attempts,²²⁵ and joint projects to bring digital collections from Europe together. The first joint project was called ‘Gateway and Bridge to Europe’s National Libraries’ (GABRIEL), founded in 1997, which was followed by The European Library (TEL) between 2001 and 2016.²²⁶ TEL acted as a contributor to Europeana from 2010²²⁷ and ended its services in 2016.²²⁸ At the time of writing Europeana has links with more than 4,000 institutions and includes over 31 million images of cultural heritage.²²⁹

Building up on the Infosoc Directive and existing national laws that are relevant to the digitisation of cultural heritage, this section will address the changes after the CDSM Directive and how they relate to placemaking

²²³ Commission Recommendation of 24 August 2006 on the digitisation and online accessibility of cultural material and digital preservation ((EC) 2006/585) para 6(b).

²²⁴ ‘Memorandum of Understanding: Key Principles on the Digitisation and Making Available of Out-of-Commerce Works’ (2011), available to read here: <https://www.jipitec.eu/issues/jipitec-2-3-2011/3180/mou.pdf>

²²⁵ Marija Dalbello, ‘Cultural Dimensions of Digital Library Development, Part I: Theory and Methodological Framework for a Comparative Study of the Cultures of Innovation in Five European National Libraries’ (2008) *The Library Quarterly: Information, Community, Policy* 78(4): 355-395

²²⁶ Sally Chambers and Wouter Schallier, ‘Bringing Research Libraries into Europeana: Establishing a Library-Domain Aggregator’ (2010) *LIBER Quarterly* 20(1): 105-118, pp. 107–108

²²⁷ Sally Chambers and Wouter Schallier, ‘Bringing Research Libraries into Europeana: Establishing a Library-Domain Aggregator’ (2010) *LIBER Quarterly* 20: 105, pp. 107–108

²²⁸ Europeana, ‘The European Library is now Europeana’: <https://www.europeana.eu/en/TEL>

²²⁹ Europeana, ‘About’ <https://www.europeana.eu/en/about-us>. For one account of its activities see e.g: Vivien Petras, Timothy Hill, Juliane Stiller & Maria Gäde, ‘Europeana – a Search Engine for Digitised Cultural Heritage Material’ (2017) *Datenbank Spektrum* 17: 41-46



purposes. It is necessary to add that the role that is played by the use of cultural heritage goes beyond just the economic impact in the Digital Single Market, but has also cultural and social effects.²³⁰

3.2.1 Article 6

Article 6, titled ‘Preservation of cultural heritage’, allows reproductions of works by heritage institutions for purposes of preservation. It is helpful to understand a little of the background position prior to the adoption of Article 6. Prior to the CDSM Directive, there was already a copyright exception Article 5(2)(c) in the Infosoc Directive for the reproduction right: “... in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage”. This exception limited itself to certain beneficiaries and to non-commercial reproduction of works only. Since it was not mandatory, it was implemented differently by Member States, similar to other Infosoc Article 5 exceptions.

At the national level, some Member States have general library exceptions where preservation is not specifically mentioned as a purpose, while others group preservation and replacement under the same provision.²³¹ Member States that have such replacement or completion provisions require the works to be unavailable on the market or not reasonably practicable to purchase (without determining what is “reasonable”). The beneficiaries in the Member States are also not harmonised. While libraries and archives were allowed in all Member States, some exceptions excluded museums and educational institutions from the beneficiaries.²³²

Some Member States exceptions limit the copying only to the works in permanent collection, but it was not defined in a harmonised way. This would exclude works on temporary loans for exhibitions. Some Member States also excluded software, as this was already addressed in the Software Directive.²³³ More importantly, the method of reproduction allowed for the GLAM benefitting from this exception was not clarified in the national law. Some allowed preservation “by all means” or “any kind of reproduction”, while others emphasised digital methods (such as Austria, Denmark and Latvia).²³⁴

²³⁰ For cultural heritage value chains in the DSM see INDIGES, ‘Policy Analysis of Value Chains for CHIs in the Digital Single Market’ (2021) <https://zenodo.org/record/5541874#.Yz7gbXbMJhF>

²³¹ Kenneth Crews, ‘Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised (2017 Edition)’ (2017) WIPO SCCR/35/6 https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=389654
Jean-François Canat, Lucie Guibault, ‘Study on Copyright Limitations and Exceptions for Museums’ (2015) SCCR/30/2 https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=302596

²³² Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) <https://doi.org/10.5281/zenodo.7540511> pp. 531-533

²³³ Art. 5 Directive (EC) 2009/24 of the European Parliament and of the Council of 23 April 2009 on the Legal Protection of Computer Programs

²³⁴ Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) <https://doi.org/10.5281/zenodo.7540511> pp.535-537



It is also worth mentioning that these exceptions are for reproduction only and do not allow sharing what is reproduced by the GLAM institution. There are other exceptions that would allow communication of the work that may be relevant.²³⁵

An important case to address the “right to digitise” is *TU Darmstadt v Eugen Ulmer*,²³⁶ where the university library was allowed to digitise the hard-copy book and make it available on the dedicated terminals (available on the same number of terminals as the number of books the library owned). However they were not allowed to let the users print out the book or take it on memory sticks (permanent access outside the premises), as these would mean reproduction by the users instead of the GLAM and was not covered by Art.5(3)(n) Infosoc Directive. Other initiatives to preserve cultural heritage can be traced back to 2011, for example where EC launched the steps of proposing a Directive for orphan works.²³⁷

Given that the individual preservation exceptions, digitisation initiatives and case law were not consistent, the CDSM Directive is the next step for improving the preservation of cultural heritage.

First, Article 6 is a mandatory copyright exception specifically for the purpose of preservation. It is not necessarily wide enough to include purposes such as cataloguing, indexing or restoring. The Directive has an open list of beneficiaries that is wide enough to cover various types of heritage institutions,²³⁸ clarifying the situation of educational institutions, research organisations and public sector broadcasting organisations.

The new exception also limits itself to permanent collections. It describes what is permanent as “owned or permanently held by that institution, for example as a result of a transfer of ownership or a licence agreement, legal deposit obligations or permanent custody arrangements”.²³⁹ Limiting the benefits of preservation to the permanent collections only reduces the availability of other collections that cannot be digitised.

By recognising the challenges faced by institutions regarding digital methods,²⁴⁰ the new exception both foresees digital methods for preservation and includes “technological obsolescence” as a reason for preservation,²⁴¹ which will be useful to GLAMs holding heritage in formats that are no longer accessible or deteriorating. Constant changes in the format are a valid concern as they are often being replaced by newer ones and deemed to have “a shelf-life often measured in single-digit years”.²⁴²

One of the most useful additions of the new Directive is the cross-border cooperation foreseen in Recital 28 that allows “assistance of other cultural institutions and other third parties”, including the ones in other

²³⁵ Art. 5(3) Infosoc Directive, especially Art. 5(3)(a) and Art. 5(3)(n)

²³⁶ Case C–117/13 *Technische Universität Darmstadt v Eugen Ulmer KG* [2014] ECDR 23

²³⁷ Directive 2012/28 (Orphan Works Directive)

²³⁸ Recital 13 CDSM Directive

²³⁹ Recital 29 CDSM Directive

²⁴⁰ Recital 25 CDSM Directive

²⁴¹ Recital 27 CDSM Directive

²⁴² Tim Padfield, ‘Preserving and accessing our cultural heritage – issues for cultural sector institutions: archives, libraries, museums and galleries’ in Estelle Derlaye (ed.), *Copyright and Cultural Heritage: Preservation and Access to the Works in a Digital World* (Edward Elgar, 2010) p. 196



Member States. While it is great for sharing the expertise on preservation and digitisation, this could also cause problems on who controls the scans and which MS law will be applicable.

A brief summary and comparison of preservation in Member States provisions and Article 6 is provided below in Table 3.

Table 3 Preservation exception comparison

	Summary of pre-CDSM exceptions in Member States²⁴³	Article 6 and relevant recitals
Purpose of exception	General library exceptions, exceptions specific for preservation and replacement, exceptions for completion.	<p>“purposes of preservation of such works or other subject matter and to the extent necessary for such preservation.” (Art 6)</p> <p>“technological obsolescence or degradation of original” (Recital 27)</p>

²⁴³ More information on the individual preservation exceptions prior to the CDSM Directive can be found in: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) <https://doi.org/10.5281/zenodo.7540511>; Kenneth Crews, ‘Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised (2017 Edition)’ WIPO 2017 SCCR/35/6 https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=389654; Eleonora Rosati, *Copyright in Digital Single Market* (OUP, 2021) pp. 130-150



Beneficiaries	Libraries and archives in all Member States, museums in some, educational institutions in very few.	<p>“publicly accessible libraries and museums regardless of the type of works or other subject matter that they hold in their permanent collections, as well as archives, film or audio heritage institutions. They should also be understood to include, inter alia, national libraries and national archives, and, as far as their archives and publicly accessible libraries are concerned, educational establishments, research organisations and public sector broadcasting organisations.” (Recital 13)</p> <p>Recital 25 recognises the role of cultural heritage institutions for preservation and their challenges with digital methods</p>
Method of copying	“By all means”, “any kind of reproduction,” while others specifically mention digital	“in any format or medium”, digital means mentioned in Recital
Types of works that can be copied	Most Member State allowed copying works in permanent collection but definition of permanence unclear. Unpublished works and/or software excluded in some Member States.	“works and other subject matter permanently in their collections” (Recital 27), permanently defined as “copies of such works or other subject matter are owned or permanently held by that institution, for example as a result of a transfer of ownership or a licence agreement, legal deposit obligations or permanent custody arrangement” (Recital 29)



Conditions	<p>“non-profit institutions” or “non-commercial purposes”</p> <p>For replacement purpose, “impossible to acquire from the market or general trade” or “not reasonable practicable to purchase a copy”.</p>	<p>Unharmonised approaches hamper cross-border preservation/preservation networks (Recital 26)</p> <p>Heritage institutions can rely on the technical support from other institutions or 3rd parties (Recital 28).</p>
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However, Article 6 also has some shortcomings for the purpose of placemaking.

First, as a general problem, the national implementations will really determine the usefulness of this provision. It is too soon to determine if the Member States will go beyond what is foreseen in Article 6. Member States with similar exceptions might choose to implement the provision as it is and embrace the use of digital methods on the permanent collection, with a list of activities that fit “preservation” or they could go above Article 6 and also allow preserving temporary works and allow other internal uses.²⁴⁴ If we look at the chosen jurisdictions for this project, the UK already has a preservation exception and has not implemented the CDSM Directive.²⁴⁵

Second, limiting the preservation to the permanent collection can only hinder local projects and temporary exhibitions, where objects from other institutions are obtained on a long-term loan. Such works would then be excluded from any digital records of such exhibitions, such as temporary exhibitions in a particular city.

Third, while restoration can be included under this provision,²⁴⁶ limits of what can be digitally restored is uncertain. Digital restoration of previously digitised heritage can lead to further questions about originality, which is tied to Article 14 of the CDSM Directive (discussed below in section 3.2.2). For out-of-commerce works, Articles 8-11 can help to a certain extent, but its national implementations are also uncertain.²⁴⁷

The same can also be suggested for the uncertainties around the implementation of Articles 3 and 4 CDSM Directive and how they will impact the use of digitised heritage for text and data mining to discover new knowledge and patterns amongst the GLAM collections. If only a limited part of collections are digitised for preservation (such as public domain or permanent), outputs of such data analysis would not be fully

²⁴⁴ Communia, ‘Article 6 Preservation Exception’ (2020) available at <https://www.communia-association.org/wp-content/uploads/2020/07/Webinar-Presentation-Preservation-Art.6.pdf>

²⁴⁵ For a detailed analysis see: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) <https://doi.org/10.5281/zenodo.7540511>

²⁴⁶ Eleonora Rosati, *Copyright in Digital Single Market* (OUP, 2021) p. 137

²⁴⁷ Articles 8-11 CDSM Directive. See also: Case C–301/15 *Marc Soulier, Sara Doke v Premier ministre, Ministre de la Culture et de la Communication* [2016] Judgment of the Court (Third Chamber) [2017] ECDR 23



representative of the existing European heritage. The provision also does not provide much on digitisation and accessibility, especially in the context of disability.²⁴⁸

Finally, and most importantly, while preservation is very useful both the existing exceptions and Article 6 does not guarantee GLAMs providing access to the works they preserve (digital or otherwise). Therefore, the benefits of this provision for GLAM and place-making would be limited and need to be addressed by individual institutions on a case by case basis.

3.2.2 Article 14

Article 14 of the CDSM Directive titled ‘Works of visual art in the public domain’ ensures that the reproductions of public domain works will not be subject to copyright unless they are original (author’s own intellectual creation). Given the results of the GLAM survey (summarised in Part 2.7 of this report) this is potentially significant in, amongst other things, enabling cultural heritage institutions to digitise place-related material.

For the reproduction of public domain works, GLAMs may face two main difficulties. The first is determining if the work is actually in the public domain, which could be challenging considering the works with unclear copyright status.²⁴⁹ According to a European Commission study in 2010, orphan works constitute 13% of the books and 21% of the films in the EU.²⁵⁰ A British Library study from 2011 shows that, of the chosen sample (a book per year from between 1870 and 2010) 57% of books were in copyright.²⁵¹

Second, and more importantly, the question is whether the digitisation of cultural heritage may produce original works through the act of reproduction. Claiming that their reproductions are original allows GLAMs to rely on copyright and generate revenue, which could then be spent for more digitisation. This could be significant for a number of activities including those related to producing virtual place experiences for example.

The originality standard in CJEU decisions is that the work has to be the ‘author’s own intellectual creation’, and this can only be present when the author can make ‘free and creative choices’ that are not dictated by their technical function but these decisions can occur at various different stages (such as preparation, choosing angles and editing).²⁵² But it also carries the risk of pulling the public domain back to the scope of copyright. Two cases can be used as an example to photographing public domain works of art, but they do

²⁴⁸ Delia Ferri, Noelle Higgins, Katie Donnellan, M. Laura Serra, ‘D2.5 Report on barriers experienced by vulnerable groups’ (2022) <https://doi.org/10.5281/zenodo.6793172>

²⁴⁹ Frederik Truyen and Charlotte Waelde, ‘Copyright, Cultural Heritage and Photography: A Gordian Knot?’ in Karol Jan Borowiecki, Neil Forbes and Antonella Fresa (eds.) *Cultural Heritage in a Changing World* (Springer, 2016)

²⁵⁰ Anna Vuopala, ‘Assessment of the Orphan works issue and Costs for Rights Clearance – European Commission DG Information Society and Media Unit E4 Access to Information’ (May 2010) pp. 5, 25

²⁵¹ Barbara Stratton, *Seeking New Landscapes: a rights clearance study in the context of mass digitisation of 140 books published between 1870 and 2010* (British Library, 2011) p. 5

²⁵² Case C-5/08 *Infopaq International A/S v Danske Dagblades Forening* [2009] ECDR 16; Case C-145/10 *Eva-Maria Painer v Standard VerlagsGmbH and Ors* [2012] ECDR (6) 89



not address more recent methods of reproduction, such as 3D scanning or photogrammetry.²⁵³ In a case from Germany,²⁵⁴ the museum's photographs of the paintings in an exhibition catalogue were reproduced by the visitor who also took photographs on-site. The court recognised that the museum's photographs can be protected (in a lesser form, provided for non-original photographs in Germany), and the museum can also restrict photography on the museum premises.²⁵⁵ It can be suggested that Article 14 was a direct reaction to the concerns brought up in this case.²⁵⁶

Article 14 also requires Member States to not provide copyright protection to the reproductions of works of visual art, unless the reproduction meets the 'author's own intellectual creation' threshold. Recital 53 provides some clarification for the rationale for this provision: "circulation of faithful reproductions of works in the public domain contributes to the access to and promotion of culture, and the access to cultural heritage" and there are inconsistencies in practice, both due to the digital environment and unharmonised national rules affecting cross-border dissemination.²⁵⁷

The CDSM Directive does not clarify the meaning of "works of visual art" so it is not clear if it includes all kinds of visual works, including two and three-dimensional and even audiovisual.²⁵⁸ It can be useful for GLAM to interpret this widely, but could also lead to different results at the level of national implementation.²⁵⁹ The conditions of this provision (originality), is subject to the EU originality standard.²⁶⁰

²⁵³ Andrea Wallace and Ellen Euler, 'Revisiting Access to Cultural Heritage in the Public Domain: EU and International Developments' (2020) IIC International Review of Intellectual Property and Competition Law 51(7): 823–855. See also the US case, *Bridgeman Art Library v Corel Corp*, 36 F Supp 2d 191 (SDNY 1999) where copyright was not found to subsist in "slavishly copies" of public domain works. The case attracted significant comment in both the US and in the EU. See e.g. Robert C. Matz, 'Bridgeman Art Library, Ltd. v. Corel Corp.' (2000) Berkeley Technology Law Journal 15(3): 3-23; Terry S Kogan, 'Photographic Reproductions, Copyright and the Slavish Copy' (2012) Columbia Journal of Law and the Arts 35(4): 445-502; Mary Campbell Wojcik, 'The Antithesis of Originality: Bridgeman, Image Licensors, and the Public Domain' [2008] Hastings Communications and Entertainment Law Journal 30(2): 257-286; Robin J. Allan, 'After Bridgeman: Copyright, Museums, and Public Domain Works of Art' (2007) University of Pennsylvania Law Review 155(4): 961-990

²⁵⁴ German Federal Supreme Court (Bundesgerichtshof) Case I ZR 104/17, 20 December 2018 (*Museumsfotos*)

²⁵⁵ Andrea Wallace and Ellen Euler, 'Revisiting Access to Cultural Heritage in the Public Domain: EU and International Developments' (2020) IIC International Review of Intellectual Property and Competition Law 51(7): 823–855

²⁵⁶ European Copyright Society, 'Comment of the European Copyright Society on the Implementation of Art. 14 of the DSM-Directive 2019/790' (2020) JIPITEC – Journal of Intellectual Property, Information Technology and E-Commerce Law <https://www.jipitec.eu/issues/jipitec-11-2-2020/5103>

²⁵⁷ Recital 53 CDSM Directive, although the recital does mention the case by name

²⁵⁸ https://pro.europeana.eu/files/Europeana_Professional/Publications/Recommendations%20on%20copyright%20and%20its%20role%20in%20the%20digital%20transformation%20of%20the%20cultural%20heritage%20sector.pdf p. 8

See also: 'Comment of the European Copyright Society on the Implementation of Art. 14 of the DSM-Directive 2019/790' <https://www.jipitec.eu/issues/jipitec-11-2-2020/5103>

²⁵⁹ Andrea Wallace and Ellen Euler, 'Revisiting Access to Cultural Heritage in the Public Domain: EU and International Developments' (2020) IIC International Review of Intellectual Property and Competition Law, 51(7), 823–855

²⁶⁰ Thomas Margoni, 'The digitisation of cultural heritage: originality, derivative works and (non) original photographs' (2014) Institute for Information Law (IVIIR); Andreas Rahmatian, 'Copyright protection for the restoration, reconstruction and digitization of public domain works' in Estelle Derclaye (ed), *Copyright and Cultural Heritage: Preservation and Access to the Works in a Digital World* (Edward Elgar, 2010).



However, Article 14 also has potential shortcomings for the purpose of placemaking. First, reproductions of public domain works is an area where both Member States and the individual GLAMs in the Member States have inconsistent practices. Similar to Article 6, the national implementation of Article 14 will determine how beneficial this provision will be to the flourishing of digital cultural heritage and, thus, placemaking.

Article 14 can also be expected to impact the practices of the cultural sector institutions under the Open Data Directive (also, the re-use of public sector information)²⁶¹ - despite this covering only a few types of cultural establishments (libraries, including university libraries, museums and archives) because its provisions allow cultural establishments to charge limited fees to cover their efforts in providing the documents for re-use.²⁶²

In relation to GLAMs and placemaking, the lack of copyright or related rights in the faithful reproductions could often mean opening up (reproductions of) public domain works that are part of the GLAM collections to the public, which may be useful for generating place attachments where the works are place-related.

Since placemaking efforts may seek to reflect the history and heritage of a location, GLAMs would be more likely to produce faithful copies of the relevant work, which may therefore lack originality. Assuming that most digitisation activities will not be original enough, this has to be assessed case by case.²⁶³ This provision could thus also have a discouraging effect on the GLAM. But if cultural heritage institutions make an effort to edit digitised heritage to create original versions, that would then lead to a distorted version of heritage, and therefore the distorted version of the place in question. Furthermore, since copyright is not the only way of controlling the works and their reproductions, institutions might still continue to apply other rules prohibiting visitor photography or only provide low-quality copies online (and saving the high-resolution images for fee paying customers).²⁶⁴ Especially in the context of GLAM activities with an explicitly place-based element it is clear that the regulation of on-site behaviour will remain important.

So, while Article 14 CDSM Directive clarifies that reproductions are not protected unless original, in practice the EU originality threshold and individual interpretations will determine the practices of GLAMs. This might cause difficulties however insofar as the national implementations of the relevant CDSM Directive provisions affect the cross-border use of reproductions of works of visual art.²⁶⁵

²⁶¹ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information

²⁶² For more on Public Sector Information and GLAM see: Andrea Wallace and Ellen Euler, 'Revisiting Access to Cultural Heritage in the Public Domain: EU and International Developments' (2020) IIC International Review of Intellectual Property and Competition Law 51(7): 823–855

²⁶³ See in relation to 3D reproductions: Pinar Oruç, '3D Digitisation of Cultural Heritage: Copyright Implications of the Methods, Purposes and Collaboration' (2020) 11 JIPITEC 149. <https://www.jipitec.eu/issues/jipitec-11-2-2020/5096>

²⁶⁴ Alexandra Giannopoulou, 'The New Copyright Directive: Article 14 or when the Public Domain Enters the New Copyright Directive' Kluwer Copyright Blog (27 June 2019) <http://copyrightblog.kluweriplaw.com/2019/06/27/the-new-copyright-directive-article-14-or-when-the-public-domain-enters-the-new-copyright-directive/>

²⁶⁵ Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, 'D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources' (2023) <https://doi.org/10.5281/zenodo.7540511> pp. 620-621



3.2.3 Articles 8-12

In this section we address further aspects of the CDSM Directive and that is changes to the treatment of out-of-commerce works, clarified and expanded in Articles 8-12. One of the earliest definitions of such works include:

“when the whole work, in all its versions and manifestations is no longer commercially available in customary channels of commerce, regardless of the existence of tangible copies of the work in libraries and among the public (including through second hand bookshops or antiquarian bookshops)”.²⁶⁶

Some Member States already had provisions in place for out-of-commerce works, but they were not harmonised on the number of copies allowed, their restoration, use of dedicated terminals and the definition of “unavailability”.²⁶⁷

Before the CDSM changes, it is necessary to mention the law in France²⁶⁸ and the subsequent case *Soulier and Doke v Ministre de la Culture*.²⁶⁹ This system required Bibliothèque nationale de France (BNF) to manage a database of out-of-commerce works (works published before 1 January 2001 and no longer commercially distributed). When a book remained on this database for more than six months, a collecting society could give a licence for its digitisation and communication to the public for five years (renewable), in return for a fee.²⁷⁰ The system has been criticised for its scope, because it only covers works before 2001 and those with a publishing contract (thus excluding self-published books).²⁷¹ Another issue that needs to be mentioned is the extra right that this system gives to publishers, who are able to oppose the digitisation of the work, even if they did not include digital uses in their original publishing contracts with the author.²⁷² In the *Soulier* case, a French law that allowed the digitisation and communication of out-of-commerce works was found to be not in line with Articles 2(a) and 3(1) of the Infosoc Directive.²⁷³

²⁶⁶ Memorandum of Understanding: Key Principles on the Digitisation and Making Available of Out-of-Commerce Works (2011)

²⁶⁷ See also: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) <https://doi.org/10.5281/zenodo.7540511> pp.550-554; Kenneth Crews, ‘Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised (2017 Edition)’ WIPO 2017 SCCR/35/6 https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=389654

²⁶⁸ LOI n° 2012-287 du 1er mars 2012 relative à l'exploitation numérique des livres indisponibles du XXe siècle.

²⁶⁹ Case C–301/15 *Marc Soulier, Sara Doke v Premier ministre, Ministre de la Culture et de la Communication* [2016] Judgment of the Court (Third Chamber) [2017] ECDR 23

²⁷⁰ Case C–301/15 *Marc Soulier, Sara Doke v Premier ministre, Ministre de la Culture et de la Communication* [2016] Judgment of the Court (Third Chamber) [2017] ECDR 23, [15]

²⁷¹ Alexandra Bensamoun, ‘The French Out-of-Commerce Books Law in the Light of European Orphan Works’ (2014) *Queen Mary Journal of Intellectual Property* 4: 213-225, p. 217

²⁷² Jane Ginsburg, ‘Fair Use for Free, or Permitted-but-Paid?’ (2014) *Columbia Law School Center for Law and Economic Studies, Working Paper No 481*, p. 43

²⁷³ Case C–301/15 *Marc Soulier, Sara Doke v Premier ministre, Ministre de la Culture et de la Communication* [2016] Judgment of the Court (Third Chamber) [2017] ECDR 23 para 53; See also: Caterina Sganga, ‘The eloquent silence of Soulier and Doke’ (2017) *Journal of Intellectual Property Law and Practice* 12(4): 321-330



Under the new Directive, Member States shall provide that a collective management organisation (CMO), that sufficiently representative of the rightholders in the relevant type of works, to conclude non-exclusive licenses for non-commercial purposes with cultural heritage institutions for reproduction, distribution, communication or making available to public (Article 8(1)).²⁷⁴ Where such collective management organisations do not exist, Member States should provide an exception or limitation to the reproduction, adaptation and communication of original databases; the extraction and re-utilisation sui generis databases; reproduction, adaptation and distribution of computer programs and the reproduction and communication of other works (Article 8(2)). This was a later addition to the CDSM Directive, which originally only focused on the licensing mechanism in Article 8(1).

Rightholders may exclude their works from this licensing mechanism and exception (Article 8(4)). The CDSM Directive provides the rationale and the concerns for this provision in Recitals 30-43, especially focusing on the challenges of cultural heritage institutions digitising such material to be balanced with the protecting the interests of the rightholder who should be able to opt-out, within systems individually set up by the Member State depending on their individual circumstances (types of CMOs, percentage to sufficiently represent, procedure to opt-out etc.).

The system foreseen in this Article is further supported by other articles under CDSM: Article 9 that allows the cross-border uses for out-of-commerce works that are authorised under Article 8(1) and (2), Article 10 that foresees the information on such works to be added to an online portal for all Member States, and Article 11 that facilitates stakeholder dialogue between Member States, rightholders, CMOs and heritage institutions. Article 12 foresees an extended collective licensing system that is not limited to out-of-commerce works, but it is not mandatory.

The new system also has some potential shortcomings for the purpose of placemaking. First, determining if a work is out-of-commerce requires a reasonable effort to assess the availability to the public in the customary channels of commerce, taking into account the characteristics of the particular work, what amounts to “reasonable effort” is to be determined by Member States (Recital 38). Similar to the “diligent search” required for orphan works, this is still going to require time and effort.

Given the uncertainties around “reasonable effort” and “customary channels of commerce”,²⁷⁵ this provision will need to be treated carefully. Recital 37 foresees this system to also be available for “never-in-commerce” works, which includes unpublished works, “without prejudice to other applicable legal constraints, such as national rules on moral rights”. While it makes sense for the purposes of increased digitisation (that is correspondingly likely to be positive for placemaking), the sensitivities of rightholders regarding their unpublished works requires great caution. For example, amateur recordings or unpublished letters that are

²⁷⁴ On Art. 8 CDSM Directive see exploration in: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) <https://doi.org/10.5281/zenodo.7540511> pp. 48-49, 52-53. (On Art. 12 see p. 94ff.)

²⁷⁵ Eleonora Rosati, *Copyright in Digital Single Market* (OUP, 2021) pp. 172-173



significant to an individual place are more likely to be discovered by the rightholder if they are still alive and nearby.

The option to opt-out at any point, both for published and unpublished out-of-commerce works, makes them a risky choice for placemaking activities. If a placemaking project relies on few of these works that are then subsequently withdrawn, this can jeopardise the time, effort and investment that goes into these projects.

Key points - the CDSM Directive and GLAMs

- The CDSM Directive will have an impact on the preservation and digitisation of cultural heritage and the treatment of out-of-commerce works, both by GLAM and the public
- These provisions have shortcomings for placemaking considering their limits and the uncertainties around their scopes
- Their implementation and actual impact on the GLAM sector will become clearer in the future
- Copyright guidance for GLAMs is likely to be very useful in understanding the copyright landscape for the CDSM Directive

Resource links - GLAM Frequently Asked Questions

Information for GLAM professionals on copyright and digitisation

For galleries and museums: 'Guidelines and FAQs (GM)' <https://doi.org/10.5281/zenodo.7586081>

For libraries and archives: 'Guidelines and FAQs (LA)' <https://doi.org/10.5281/zenodo.7528723>

4. Placemaking, culture, digitisation and copyright: city focus

This and the following part (Part 5) move from the discussion of relevant copyright rules at EU level and the collection and explanation of a sample of relevant European projects related to placemaking above in Parts 2 and 3 to a more specific study of placemaking with a focus on local community engagement with culture and creativity in the selected cities (Glasgow, Tallinn, Trento) especially regarding cultural heritage. The subsequent part (Part 6) also introduces trade mark law into the discussion of intellectual property and



placemaking to consider investment and other aims related to building city and other place identities. Each city section in Parts 4 and 5 highlights certain projects to illustrate the points being made.²⁷⁶

The first part briefly considers the European context for the ‘city focus’ parts and the subsequent parts on Glasgow (Part 4.2), Tallinn (Part 4.3) and Trento (Part 4.4). In each of the city parts we provide an overview of the city, providing some examples or mini case-studies relevant to placemaking. These examples broadly correspond to certain themes: on-site placemaking, GLAM and digitisation for placemaking, and regeneration projects in particular neighbourhoods. Each city part then also addresses core copyright rules and policies relevant to placemaking which mirror, as appropriate, the EU provisions set out above in Part 3.

4.1 European context and setting

Before continuing to discuss the three cities that are the core of this and the subsequent parts it is important to note that we are seeking to explore both on-site (physical) and virtual spaces for the circulation of culture. What links these explorations is a concern with the way in which copyright law interacts with placemaking. This in turn is important because it enables new narratives to be created about cities.²⁷⁷ In the context of the present report being able to consider three cities offers opportunities to stakeholders even outwith those cities and countries to gather ideas and insights about different approaches to placemaking and how copyright law may be relevant in this context.

Glasgow, Trento and Tallinn are only roughly comparable in size and indeed Glasgow is significantly larger based on population size and may be described, although the meanings of this may be contested, as a post-industrial city. But both Tallinn and Trento also have post-industrial neighbourhoods which have been the focus of local regeneration efforts.²⁷⁸ There are certain similarities that make consideration of these cities both possible and desirable in the present context.

In placemaking terms we are concerned, in each city, with identifying how copyright law and other relevant policies interact with for example on-site and digitised GLAM materials and how this in turn may enhance

²⁷⁶ The approach adopted is similar in conceptualisation to the ‘projects in focus’ idea adopted in much more detail in: Jo Vergunst, Elizabeth Curtis, Oliver Davis, Robert Johnston, Helen Graham, Colin Shepherd, ‘Material legacies: shaping things and places through heritage’ in Keri Facer and Kate Pahl (eds.) *Valuing Interdisciplinary Collaborative Research: Beyond Impact* (Bristol University Press, 2017)

²⁷⁷ For example, Berlin’s role as the capital city is explored by Cochrane, who argues that capital cities have the role of “shaping national urban and regional relations” and compares Berlin with other newly emerging capitals such as Cardiff and Edinburgh: Allan Cochrane, ‘Making Up Meanings in a Capital City’ (2006) *European Urban and Regional Studies* 13(1): 5–24

²⁷⁸ Note that regeneration efforts are not without controversy. The large literature in this area indicates varying reactions to gentrification in their areas. Fincher, for example, explores the tensions between placemaking and urban regeneration and whether such practices pay attention to the areas affected by “poverty, social difference and urban grudge” with a focus on Melbourne. Ruth Fincher, Maree Parry and Kate Shaw, ‘Place-making or placemasking? The everyday political economy of “making place”’ (2016) *Planning Theory & Practice* 17(4):5 16–536



place attachment especially for a city's inhabitants.²⁷⁹ Within the cities the stakeholders identified are a broad group and include governmental, for-profit and non-profit bodies with a particular focus on GLAM institutions to reflect the broader work undertaken in Work Package 5 within the ReCreating Europe consortium. This part addresses national laws (specifically copyright law in the UK, Estonia and Italy) given copyright law is not fully harmonised. This is also relevant given differences in implementation and, in the case of the UK, possibilities for divergence from EU standards after the UK's withdrawal from the EU. However, it is worth noting the link between city, regional and European identities as well. Especially in the context of the digitisation of cultural heritage, the circulation of even place-specific cultural heritage has the potential to enhance access to culture beyond the originating site and encourage cultural cohesion more broadly.

4.2 Glasgow

This part discusses the use of cultural heritage to establish and promote place attachment in Glasgow by addressing the local developments for placemaking, digitisation, examples and certain UK copyright developments. The part begins with a description of Glasgow (section 4.2.1) before considering three placemaking mini case-studies: the Riverside Museum, the Hunterian museum and the Finnieston neighbourhood (in section 4.2.2). The final section (4.2.3) chooses specific aspects of UK copyright law to address that are of particular relevance to placemaking. These include, mirroring provisions discussed above in Part 3, freedom of panorama and incidental inclusion, building reconstruction, and certain provisions relevant to GLAMs.

4.2.1 Glasgow overview

Glasgow is the fourth largest city in the UK and the largest city in Scotland, with a population of 635,130.²⁸⁰ Famous historical buildings include Glasgow Cathedral, Govan Old Parish Church, Central Station, Glasgow City Chambers, the University of Glasgow's Gilbert Scott Building, the Trades House of Glasgow and the Kelvingrove Art Gallery and Museum.²⁸¹ The major events that have impacted the city include Glasgow Garden Festival (1988), European City of Culture designation (1990), City of Visual Arts (1996) and City of Architecture and Design (1999) – associated with investment in venues such as Glasgow Royal Concert Hall (1990), the Gallery of Modern Art (1996) and the Lighthouse Centre for Architecture and Design (1999), the 'Armadillo' auditorium at the Scottish Events Campus (2000), refurbishment of Kelvingrove Art Gallery and

²⁷⁹ For a discussion of place attachment and other relevant terminology in this report see above, Part 1.3 and, generally, Part 2.1 on placemaking on-site and digitally.

²⁸⁰ For further such information about the city see: 'Understanding Glasgow: Glasgow Indicators Project' <https://www.understandingglasgow.com/indicators/population/overview>

²⁸¹ 'Historic Glasgow' <https://peoplemakeglasgow.com/inspire-me/historic-glasgow>. On the role of museums in Glasgow see e.g. Maria Economou, 'Evaluation strategies in the cultural sector: the case of the Kelvingrove Museum and Art Gallery in Glasgow' (2004) *Museum and Society* 2(1): 30-46; Mark O'Neill, Pete Seaman, Duncan Dornan, 'Thinking through health and museums in Glasgow' in Mark O'Neill and Glenn Hooper (eds.) *Connecting Museums* (Routledge, 2019)



Museum (2006) and the opening of Riverside Transport Museum (2011).²⁸² This was then followed by the 2014 Commonwealth Games (after winning the bid in 2007), which led to the building of a velodrome and Athletes Village, and SSE Hydro alongside the SEC. Most recently, Glasgow hosted COP26, the United National Climate Change Conference in 2021.

4.2.2 Glasgow - placemaking, digitisation and examples

Various factors play a role in placemaking which may be directed inwardly to inhabitants and outwardly, for example to visitors. Glasgow had bursts of change connected to large events taking place in the city, which led to the physical improvement and regeneration of certain physical venues and the growth in promoting the city.²⁸³ Although not strictly limited to Glasgow, the work and resources of VisitScotland (previously called the Scottish Tourist Board) should be taken into consideration.²⁸⁴

If we look at the history of Glasgow, despite being seen as a strong industrial city in the 19th century, the city later went through “a bruising period of deindustrialisation and depopulation”.²⁸⁵ Unemployment rose to 30% in 1930 and employment in manufacturing fell 45% in the 1970s and early 1980s.²⁸⁶ The descriptions of the city change between the 1970s and 1980s too: in 1977 Glasgow was described as the “most impoverished” UK city and then in 1988 as a “pioneer of post-industrial regeneration”, in Keating’s aptly named *The City that Refused to Die*.²⁸⁷ So while it is certain that a transformation occurred in between, understanding its scale requires us to look at individual developments in a little more detail.

The Glasgow Garden Festival is a good starting point. As the “the first international event to be held in Glasgow in over 50 years following the Empire Exhibition in 1938”, the festival - held in 1988 - had a big role in the “rebirth of the city”.²⁸⁸ Between 1984 and 1992, unused industrial space such as “disused docklands, abandoned steel works, empty warehouses, and coal depots” were turned into temporary gardens.²⁸⁹ It is

²⁸² For a more detailed summary of factors and historical events contributing to Glasgow’s development prior to 2005 see Clare Murphy and Emily Boyle, ‘Testing a Conceptual Model of Cultural Tourism Development in the Post-Industrial City: A Case Study of Glasgow’ (2006) *Tourism and Hospitality Research* 6(2): 111-128 Table 1 on p. 120. Note that the City of Culture designation is also known as the Capital of Culture, see regarding Glasgow section 4.2.2 of this report.

²⁸³ For a conceptual model for cultural tourism development in the industrial city, see Clare Murphy and Emily Boyle, ‘Testing a Conceptual Model of Cultural Tourism Development in the Post-Industrial City: A Case Study of Glasgow’ (2006) *Tourism and Hospitality Research* 6(2): 111-128, p. 117, Figure 1

²⁸⁴ ‘VisitScotland’ <https://www.visitscotland.com/see-do/>

²⁸⁵ See Keith Kintrea and Rebecca Madgin, ‘Introduction: transforming post-industrial Glasgow – moving beyond the epic and the toxic’ in *Transforming Glasgow: Beyond the Post-Industrial City* (Policy Press 2019) p. 1

²⁸⁶ Matthew Tucker, ‘The cultural production of cities: Rhetoric or reality? Lessons from Glasgow’ (2008) *Journal of Retail & Leisure Property* 7: 21-33, p. 25

²⁸⁷ Keith Kintrea and Rebecca Madgin, ‘Introduction: transforming post-industrial Glasgow – moving beyond the epic and the toxic’ in *Transforming Glasgow: Beyond the Post-Industrial City* (Policy Press 2019) p. 1

²⁸⁸ The Newsroom, ‘The Glasgow Garden Festival: A true legacy or a glorious failure?’ *The Scotsman* (3 December 2016) <https://www.scotsman.com/whats-on/arts-and-entertainment/glasgow-garden-festival-true-legacy-or-glorious-failure-1461035>

²⁸⁹ Sam Wetherell, ‘Sowing Seeds: Garden Festivals and the Remaking of British Cities after Deindustrialization’ (2021) *Journal of British Studies* 61: 83-104, p. 83



important to note however that, despite attracting over four million visitors,²⁹⁰ the Garden Festival did not lead to a large-scale investment or the regeneration of the area where it was held.²⁹¹ The site remained derelict until the development of Pacific Quay, and a part of the site of what was the Garden Festival is, as of 2022, still under development into apartments, offices and shops.²⁹² In the meantime, finding missing artefacts from the festival, both big and small, has become an online project called 'After the Garden Festival...'.²⁹³

The attempts to change the image of Glasgow were supported with the city council's "Glasgow's Miles Better" campaign in 1983.²⁹⁴ The campaign was successful in increasing the interest in visiting Glasgow.²⁹⁵ (There is a clear link here with city branding as a specific type of placemaking that is oriented towards securing visitors and investment in cities and is discussed in more detail in Part 5 below with the Glasgow aspect expanded upon in Part 5.4.) Then, following a 1985 report on the city's economic problems, and the reputation of being in a "downward spiral of decline", Glasgow Action was formed and focused on making the city centre more attractive for corporate headquarters, software industry and more local service industries.²⁹⁶ These changes in the city centre also included: development of retail areas such as Princes Square, the St Enoch Centre, the Italian Centre, the Buchanan Galleries, as well as the upgrading of Buchanan Street and the regeneration of the Merchant City.²⁹⁷

Another important development for promoting local identity occurred in 1990, when Glasgow became European Capital of Culture. In its first five years, that status had been awarded to already prominent cities such as Athens, Florence and Paris.²⁹⁸ According to Garcia, the selection of Glasgow marked the change for

²⁹⁰ The Newsroom, 'The Glasgow Garden Festival: A true legacy or a glorious failure?' The Scotsman (3 December 2016) <https://www.scotsman.com/whats-on/arts-and-entertainment/glasgow-garden-festival-true-legacy-or-glorious-failure-1461035>

²⁹¹ Sam Wetherell, 'Sowing Seeds: Garden Festivals and the Remaking of British Cities after Deindustrialization' (2021) *Journal of British Studies* 61: 83-104, pp. 86-87

²⁹² Sarah Hilley, 'Glasgow Garden Festival site to finally be transformed after 34 years' Glasgow Live (7 April 2022) <https://www.glasgowlive.co.uk/news/glasgow-news/glasgow-garden-festival-site-finally-23627002>

²⁹³ Eve Livingston, 'Glasgow archaeologists dig for lost treasures from 1988 garden festival' The Guardian (28 May 2022) <https://www.theguardian.com/uk-news/2022/may/28/glasgow-archaeologists-lost-treasures-1988-garden-festival>

²⁹⁴ Maria V. Gomez, 'Reflective images: the case of urban regeneration in Glasgow and Bilbao' (1998) *International Journal of Urban and Regional Research* 22(1): 106-121, p. 111

²⁹⁵ Matthew Tucker, 'The cultural production of cities: Rhetoric or reality? Lessons from Glasgow' (2008) *Journal of Retail & Leisure Property* 7: 21-33.

²⁹⁶ Maria V. Gomez, 'Reflective images: the case of urban regeneration in Glasgow and Bilbao' (1998) *International Journal of Urban and Regional Research* 22 (1): 106-121, p. 111

²⁹⁷ Clare Murphy and Emily Boyle, 'Testing a Conceptual Model of Cultural Tourism Development in the Post-Industrial City: A Case Study of Glasgow' (2006) *Tourism and Hospitality Research* 6(2): 111-128, p. 120

²⁹⁸ Beatriz Garcia, 'De-constructing the City of Culture: The Long Term Cultural Legacies of Glasgow 1990' (2005) *Urban Studies*, 42(5/6): 841-868, p. 843



the award to be more useful for emerging cities with “medium-to-large regeneration projects”.²⁹⁹ Being named a European Capital of Culture has been described as:

“arguably the greatest accolade to aspire to for our contemporary cities in changing and promoting a cultural mindscape, but at the same time acting as a catalyst to the successful delivery of economic growth ... [bringing] net economic return between £10.3m and £14.1”.³⁰⁰

But the legacy of being a Capital of Culture in terms of transformation of the city’s image is harder to measure.³⁰¹ A particular challenge was a strong economic focus which resulted in a “lack of provision to sustain cultural legacies in the long term”.³⁰² There were also concerns that the 1990 changes in the city had “[sanitised] the ‘real’ working class culture” of Glasgow to create an artificial image of the city.³⁰³

In this culture-based transformation of Glasgow it is worth highlighting that public art also played a role, especially in the late 1990s. Interestingly, Glasgow competed for but did not become a “City of Visual Arts” in the competition organised by the UK Arts Council but nevertheless organised a festival of visual arts in 1996.³⁰⁴ However, when there were more pressing local concerns, public art was not always seen as a priority. When, in 1999, Glasgow became a ‘City of Architecture and Design’, local artists created “Five Spaces”, where five Glasgow locations were turned into design projects, leading to some criticisms of the public art excluding local communities.³⁰⁵ Similarly, funding public art in the Gorbals was criticised as “frivolous or even profligate”, considering the poverty levels in the area.³⁰⁶

²⁹⁹ Beatriz Garcia, ‘De-constructing the City of Culture: The Long Term Cultural Legacies of Glasgow 1990’ (2005) *Urban Studies*, 42(5/6): 841-868, p. 843

³⁰⁰ Matthew Tucker, ‘The cultural production of cities: Rhetoric or reality? Lessons from Glasgow’ (2008) *Journal of Retail & Leisure Property* 7: 21-33, p. 23

³⁰¹ See on different methodologies for measuring this including studies of media and marketing sources, focus groups and the like: Beatriz Garcia, ‘Cultural policy and urban regeneration in western European cities: lessons from experience, prospects for the future’ (2004) *Local Economy*, 19(4): 312–332; Beatriz Garcia, ‘Urban regeneration, arts programming and major events: Glasgow 1990, Sydney 2000 and Barcelona 2004’ (2004) *International Journal of Cultural Policy*, 10(1): 103–118; Beatriz Garcia, ‘De-constructing the City of Culture: The Long Term Cultural Legacies of Glasgow 1990’ (2005) *Urban Studies*, 42(5/6): 841-868

³⁰² Beatriz Garcia, ‘Cultural policy and urban regeneration in western European cities: lessons from experience, prospects for the future’ (2004) *Local Economy*, 19(4): 312-332, p. 319

³⁰³ Mark Boyle and George Hughes, ‘The politics of the representation of ‘the real’: discourses from the Left on Glasgow’s role as European City of Culture 1990’ (1991) *Area* 23(3): 217–228, p. 225. The authors analyse Workers City group’s opposition to European Capital of Culture events.

³⁰⁴ Mark O’Neill, ‘Museums and Identity in Glasgow’ (2006) *International journal of heritage studies* 12(1): 29-48, p. 37; ‘Never mind your paintings, Glasgow was promised a National Gallery’ *The Herald* (25 June 2016) www.heraldsotland.com/life_style/arts_ents/14579754.never-mind-paintings-glasgow-promised-national-gallery

³⁰⁵ See: Joanne Sharp, Venda Pollock and Ronan Paddison, ‘Just art for a just city: Public art and social inclusion in urban regeneration’ (2005) *Urban Studies*, 42(5–6): 1001–1023; Joanne Sharp, ‘The life and death of five spaces: public art and community regeneration in Glasgow’ (2007) *Cultural Geographies* 14: 274-292

³⁰⁶ Venda Louise Pollock and Ronan Paddison, ‘On place-making, participation and public art: The Gorbals, Glasgow’ (2014) *Journal of Urbanism: International Research on Placemaking and Urban Sustainability* 7(1): 85–105, p. 94



Another example of the use of artistic heritage is the use of Charles Rennie Mackintosh's architectural works for the transformation of the city.³⁰⁷ Despite the lack of World Heritage status, these works play a big role in Glasgow's identity. Evans explains how Mackintosh designs were featured heavily in city souvenirs and logos, especially around the year of 'Architecture and Design', and this is an example of "associating a place with a cultural icon... to imbue a place with a creative character".³⁰⁸

Another large event that impacted the city was a sporting rather than cultural event: the 2014 Commonwealth Games, for which both Glasgow City Council and the Scottish Government focused on the regeneration of the east side of Glasgow. The 2007 candidature file for these games even mentioned "making effective use of otherwise derelict land and creating employment opportunities for local people".³⁰⁹ However, this approach neglected the exclusionary impacts on communities in the area.³¹⁰ Similar to other big UK sporting events, such as the London Olympics in 2012, the economic impact was aimed at the construction, tourism and events sectors.³¹¹ The expected value of the Commonwealth Games was estimated to be £50m, through for example through ticket sales and broadcasting arrangements.³¹² However, it is worth noting that local inhabitants had also become critical of the changes prior to the Games, especially that led to the displacement of "predominantly poor and marginalised groups".³¹³

In addition to the criticisms of these developments for not being in touch with the inhabitants' needs, some of the transformations have been seen as hiding certain parts of the history of the city. Especially recently, it is argued that Glasgow's historic connections with the transatlantic slave trade were not fully taken into consideration when the city council confirmed the name of an area in the east of the city centre as "Merchant City", prior to Glasgow's designation as European City of Culture.³¹⁴ A corollary of this criticism has been that

³⁰⁷ These buildings were previously mentioned under Part 2.3 (international context), in relation to how their nomination for the UK tentative list of world heritage was rejected.

³⁰⁸ Graeme Evans, 'Hard-Branding the cultural city-from Prado to Prada' (2003) *International Journal of Urban and Regional Research*, 27(2): 417-440, p. 421

³⁰⁹ Quoted in: Julie Clark and Ade Kearns, 'People, Place and Prosperity in the East End of Glasgow: an assessment of the potential economic impacts of the 2014 Commonwealth Games and associated regeneration activities on local communities' (2014) Project Report. GoWell / Glasgow Centre for Population Health, Glasgow, <https://eprints.gla.ac.uk/107305/1/107305.pdf> p. 7

³¹⁰ For a critical discussion of the of the stigmatisation of the area at the time of the Commonwealth Games see: Neil Gray and Gerry Mooney, 'Glasgow's new urban frontier: 'Civilising' the population of 'Glasgow East'' (2011) *City* 15(1): 4-24

³¹¹ Julie Clark and Ade Kearns, 'People, Place and Prosperity in the East End of Glasgow: an assessment of the potential economic impacts of the 2014 Commonwealth Games and associated regeneration activities on local communities' (2014) Project Report. GoWell/ Glasgow Centre for Population Health, Glasgow, <https://eprints.gla.ac.uk/107305/1/107305.pdf> pp. 8-9

³¹² Matthew Tucker, 'The cultural production of cities: Rhetoric or reality? Lessons from Glasgow' (2008) *Journal of Retail & Leisure Property* 7(1): 21-33, p. 22

³¹³ Referring to the east end of Glasgow: Kirsteen Paton, Gerry Mooney and Kim McKee, 'Class, Citizenship and Regeneration: Glasgow and the Commonwealth Games 2014' (2012) *Antipode* 44(4): 1470-1489, p. 1484

³¹⁴ Stephen Mullen, 'Addressing the absences in Teaching Scotland's slavery past' in Nasar Meer, Smina Akhtar and Neil Davidson (eds.) *Taking Stock: Race Equality in Scotland* (Runnymede, 2020) pp. 29-33; Rebecca Madgin, 'A place for urban conservation? The changing values of Glasgow's built heritage' in Keith Kintrea and Rebecca Madgin (eds.)



the museum sector has not accounted for this history, though more recently Glasgow museums are recognising in their collections how the city trade and these merchants benefited from slavery.³¹⁵

As we see from these examples, not all events had a long-lasting and consistent positive impact and the regeneration of the city is also not a straightforward upwards trend. However, the range of culture-based events especially are important instances of placemaking in Glasgow that caused major or minor changes in the cultural and economic life of the city that were directed both inwardly, to Glasgow's inhabitants, and outwardly, in terms of attracting tourism and investment. It is therefore worth recognising these efforts and attempts to transform and promote the identity of the city. In light of this we now provide three examples that reflect the current reality: one museum, one neighbourhood and one digitisation project.

1. Riverside Museum: The Riverside Museum, a dramatic construction on the waterfront of the River Clyde, houses a collection of transport-related objects that had previously been located in the Kelvin Hall. The Museum of Transport moved to this new home, designed by Zaha Hadid, in 2011. The museum holds 21,000 objects related to transportation and includes "reconstructions, scale models and 90 touch screen panels" that display videos and text material on the transport history of the city of Glasgow.³¹⁶ As an example of placemaking it is an interesting one, combining on-site physical reconstructions of streets within the museum space as well as augmenting these by access to digital material to tell the story of travel within the city. It is also, importantly, physically accessible for visitors.³¹⁷

Zaha Hadid explained the project as:

"The Riverside Museum is a fantastic project where the exhibits and building come together at this prominent and historic location on the Clyde waterfront. The complex geometries of the extruded design continue Glasgow's rich engineering traditions and will be a part of the city's future as a centre of innovation."³¹⁸

Transforming Glasgow: Beyond the Post-Industrial City (Policy Press, 2019) pp. 221-238. See also: Stephen Mullen, *It Wasn't Us: The Truth About Glasgow and Slavery* (Royal Incorporation of Architects in Scotland, 2009); Stephen Mullen, 'Addressing the absences in Teaching Scotland's slavery past' in Nasar Meer, Smina Akhtar and Neil Davidson (eds.) *Taking Stock: Race Equality in Scotland* (Runnymede, 2020) pp. 29-33; T.M. Devine (ed.), *Recovering Scotland's slavery past: the Caribbean connection* (Edinburgh University Press, 2015)

³¹⁵ Stephen Mullen, 'Addressing the absences in Teaching Scotland's slavery past' in Nasar Meer, Smina Akhtar and Neil Davidson (eds.), *Taking Stock: Race Equality in Scotland* (Runnymede, 2020) pp. 29-33

³¹⁶ Riccardo Bianchini, 'Riverside Museum of Transport | Glasgow' Inexhibit (15 August 2022) <https://www.inexhibit.com/mymuseum/riverside-museum-transport-glasgow-zaha-hadid/>

³¹⁷ See accessibility, for example information for visitors using wheelchairs, British Sign Language video, and other information available at: Glasgow Life, 'Riverside Museum' <https://www.glasgowlife.org.uk/museums/venues/riverside-museum>

³¹⁸ Glasgow Life, 'Riverside Museum' <https://www.glasgowlife.org.uk/museums/venues/riverside-museum>



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

The futuristic looking building has been described as not fully fitting in with its surroundings, the historical site of Glasgow's shipyards.³¹⁹ Even so, the museum won the European Museum of the Year Award in 2013³²⁰ and remains a popular Glasgow attraction.

The Riverside Museum

<https://www.visitscotland.com/info/see-do/riverside-museum-p995001>

<https://www.glasgowlife.org.uk/museums/venues/riverside-museum>

2. Finnieston: Located on the north side of the River Clyde, Finnieston is a neighbourhood that houses the SEC Centre, including the previously mentioned SEC 'Armadillo', and OVO Hydro, where large-scale local arts, music and sports events are held. In terms of creativity and culture in Glasgow, the music scene is particularly important and these venues added to existing, and famous venues, across Glasgow such as the long-gone Apollo, and King Tut's and the Barrowlands.³²¹ Certainly what we see is the enduring significance of live music and performance as central to the creation of place.³²²

One author described the changes along the Clyde as follows:

"[W]hile historic Edinburgh might have struggled to push ahead with bold new projects, such as an expensively timid tram network, its ever confident rival Glasgow created a series of spectacular new museums and regenerated districts and open spaces along the Clyde..."³²³

The neighbourhood has a variety of bars and restaurants making Finnieston popular despite concerns about gentrification of what was previously a shipbuilding and working class area.³²⁴ The Finnieston crane - an

³¹⁹ "[I]t is the relationship between the futuristic museum and what that land once was that presents the real dilemma of Riverside for me.": Di Drummond, 'Exhibition and museum review' (2012) *The Journal of Transport History* 22(2): 260-262

³²⁰ See: European Museum Forum, 'The European Museum of the Year Award' <https://www.europeanforum.museum/en/winners/the-emya/>

³²¹ These are other examples of venues that have played an important role in the history of the Glasgow music scene. The now-closed Apollo especially in the 1970s, King Tut's in the 1990s and the Barrowlands Ballroom in the 2000s (a venue in operation since the 1930s).

³²² See e.g. description of Glasgow as UNESCO City of Music since 2008: Cities of Music Network (UNESCO), 'Glasgow' <https://citiesofmusic.net/city/glasgow/>. See also. Advertising a music related 'city break': Glasgow Life, Glasgow Music Nonstop' *People Make Glasgow*, <https://peoplemakeglasgow.com/see-do/glasgow-for-music-lovers/glasgow-music-nonstop>

³²³ John Grindrod, *Iconicon: A Journey Around the Landmark Buildings of Contemporary Britain* (Faber & Faber, 2022) p.566. The book cites the 1971 documentary "Glasgow 1980" (dir. Oscar Marzaroli) which is available to view on the National Library of Scotland's Moving Image Archive: <https://movingimage.nls.uk/film/0974> Indeed the moving image archive shows, as at January 2023, that 423 films tagged 'Glasgow' are available to view online.

³²⁴ See generally for contemporaneous comment: Craig Williams, 'A look back at Finnieston in its 'honkin' days before it became hipster central' *Glasgow Live* (6 August 2020); 'The Shoreditch effect: How Finnieston became the hippest place in Britain' *The Herald* (27 March 2016) <https://www.heraldscotland.com/news/14386243.shoreditch-effect-finnieston-became-hippest-place-britain/>; Tori Chalmers, 'The Top 10 Things To See And Do In Finnieston, Glasgow'



imposing crane that had been used when the shipyard was operational - has also become a popular image on postcards and the like. Finally, in light of preceding discussion regarding the importance of Mackintosh style to the cultural image of Glasgow, Finnieston is also home to a sculpture of Charles Rennie Mackintosh sitting on a reproduction of one of his famous Mackintosh chairs.³²⁵

3. The Hunterian Virtual Exhibitions: The Hunterian is a museum and art gallery located in the University of Glasgow. It has the distinction of being Scotland's oldest museum having been founded in 1807 and moved to its current location, when the University of Glasgow also changed sites, in 1870.³²⁶ The digitised collections of the museum were especially useful when the museum stopped in-person visits during the COVID-19 pandemic.³²⁷ It is also useful to highlight here Horizon2020 project, EMOTIVE (described in Annex C), which engaged with the digitisation at Hunterian, especially on an onsite experience titled 'Views on Verecunda's Life: A Digital Window to the Scottish Roman Past' that included Virtual and Augmented Reality features for the objects in the museum.³²⁸ The Hunterian's selection of digitised material can be accessed both through the museum's own website and The Bloomberg Connects mobile phone app.³²⁹

In the context of earlier discussion of access to culture, and especially making work accessible, it is also worth highlighting the accessibility information made available.³³⁰ While this is not as extensive as the examples provided by the State Tactile Museo Omero in Ancona or MART (see above, Part 2.2) it is a good example of taking into account the different ways in which a place might be experienced. The audio description pilot at The Hunterian museum offers a nice example of how accessibility may be improved both for on-site and virtual visitor experiences.³³¹

This of course is one example of collections that are available Glasgow-wide. Indeed Glasgow Life (the community interest company providing services on behalf of the local authority, Glasgow City Council, such as leisure centres, libraries and museums) enables inhabitants, or indeed any interested individual, to search its online collection.³³² Helpfully the collection enables browsing by museum which offers a neat illustration

Culture Trip (1 February 2018) <https://theculturetrip.com/europe/united-kingdom/scotland/articles/top-10-things-see-finnieston-glasgow/>

³²⁵ 'Mackintosh statue unveiled on anniversary of his death' BBC News (10 December 2018)

<https://www.bbc.co.uk/news/uk-scotland-glasgow-west-46508177>

³²⁶ The Hunterian, 'History' <https://www.gla.ac.uk/hunterian/about/history>

³²⁷ See: 'Hunterian: A Conduit for Engagement' https://www.gla.ac.uk/colleges/arts/knowledge-exchange/catalyst/blog/digitalculturalheritage/headline_835618_en.html

³²⁸ Maria Economou et al, 'D9.4: Summative Evaluation of Final Release (platform and experiences)' EMOTIVE Project https://emotiveproject.eu/wp-content/uploads/2019/12/EMOTIVE_D9.4_Summative_Evaluation_Final_Release_Platform_and_Experiences-v1.0.pdf

³²⁹ Art UK, 'The Hunterian launches on Bloomberg Connects' <https://artuk.org/discover/stories/the-hunterian-launches-on-bloomberg-connects>

³³⁰ The Hunterian, 'Accessibility' <https://www.gla.ac.uk/hunterian/visit/accessibility/>

³³¹ The Hunterian, 'Audio Description - Pilot' <https://www.gla.ac.uk/hunterian/visit/accessibility/audiodescriptions>

³³² The Glasgow Museums 'Collections Navigator' is available here: <http://collections.glasgowmuseums.com/mwebcgi/mweb?request=home>. The images in the collection are described



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

of the interface between on-site and digital experiences of spaces such as the Kelvingrove Museum and other sites. The National Library of Scotland, of course, carries a huge range of digitised materials relating to Glasgow.³³³

The Hunterian

<https://www.gla.ac.uk/hunterian/visit/exhibitions/virtualexhibitions/>

<https://www.gla.ac.uk/hunterian/visit/bloombergconnects/>

4.2.3 UK copyright and policies relevant to placemaking

UK copyright rules can be found in Copyright, Designs and Patents Act 1988 (CDPA). While numerous rules are relevant for the purposes of placemaking this part offers an overview in particular of those relevant to GLAMs as well as, especially, those exceptions with clear resonance for placemaking all of which are likely to be of interest to different stakeholders alongside cultural heritage professionals.

Copyright, Designs and Patents Act 1988

<https://www.legislation.gov.uk/ukpga/1988/48/contents>

For works that are protected by copyright, for the purposes of digitisation and circulation of cultural heritage, the works need to be reproduced first. The reproduction right is found in section 17 of the CDPA and covers digital copies as well. Furthermore, depending on how the digitised material is circulated, the reproduced works can then be distributed (section 18 CDPA), performed, showed or played in public (section 19 CDPA), communicated to the public (section 20) and be used in adaptations (section 21 CDPA). All of these activities would be caught by the infringement provision under section 16 if done without the authorisation of the rightsholder – unless covered by the defences under sections 28-44B CDPA.

Following the UK's withdrawal from the EU, it was indicated that the UK would not implement the CDSM Directive.³³⁴ As such, the discussion in this section differs from the equivalent sections relating to Tallinn and Trento which are both in EU Member States.

Under UK copyright law, in order to rely on a limitation or exception, first the dealing has to be “fair”, for which the courts will analyse factors of the nature of the work, amount taken, purpose of use, effect of use

as being under a Creative Commons licence ‘where we have permission to do so’ (‘Images on the website’, <http://collections.glasgowmuseums.com/hints.html>).

³³³ See the National Library of Scotland website: <https://www.nls.uk/>

³³⁴ Chris Skidmore: ‘United Kingdom will not be required to implement the Directive, and the Government has no plans to do so’ <https://questions-statements.parliament.uk/written-questions/detail/2020-01-16/4371>



on the market, motives for dealing and whether the purpose could have been achieved in different ways.³³⁵ Second, the “fair dealing” has to fit the purposes and conditions under the relevant CDPA limitations and exceptions. Those that are especially relevant to the digitisation and circulation of cultural heritage are:

- **Temporary copies** (section 28A): Temporary copying that is “transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable (a) a transmission of the work in a network between third parties by an intermediary; or (b) a lawful use of the work” is allowed, this was a mandatory exception in Article 5(1) Infosoc Directive.
- **Research and private study** (section 29): Libraries, archives, museums and educational institutions can make work available to their users via dedicated terminals on premises for non-commercial research and private study.
- **Text and data mining** (section 29A): the UK introduced a text and data mining provision in 2014 that allows computation analysis of lawfully accessible works, for non-commercial research. While this is different from Articles 3 and 4 CDSM Directive, there is potential for introducing a copyright and database exception allowing text and data mining for any purpose, after the UK Intellectual Property Office’s recent consultation on Artificial Intelligence and intellectual property.³³⁶
- **Criticism, Review, Quotation and News Reporting** (section 30): Within this provision, the more recent quotation defence in subsection 30(1ZA), may be relevant. It allows quotations from works made available to the public, where the quotation is fair and is not more “than is required for by the specific purpose”, with sufficient acknowledgment. If interpreted flexibly, the quotation defence can have wide-ranging implications.³³⁷
- **Making accessible copies for disabled persons** (sections 31A-F): Another defence that was updated in 2014, it allows personal use and making accessible copies of works for people with disabilities, in line with the Marrakesh Directive, implementing the Marrakesh Treaty..
- **Libraries and archives** (sections 37-44A): Especially following the 2014 changes, UK copyright allows libraries, archives and museums making preservation and replacement copies of works in their permanent collections, including digital copies.

Not included on the above list is the provision relating to orphan works (formerly found in section 44B CDPA, now repealed). Following the UK’s withdrawal from the EU, the orphan works exception was repealed and UK-based institutions that share orphan works online, including the ones placed before the Brexit implementation date, may face claims of copyright infringement and need to rely on licensing instead.³³⁸ This

³³⁵ For a summary of “fairness” factors based on the UK case law, see Bently, Sherman, Gangjee and Johnson, *Intellectual Property Law* 6th edn (OUP, 2022) Chapter 9. For an explanation directed at members of the public see the Copyright User (UK) resource link at the end of this section of the report.

³³⁶ UK Intellectual Property Office, ‘Consultation outcome: Artificial Intelligence and Intellectual Property: copyright and patents’, 28 June 2022. <https://www.gov.uk/government/consultations/artificial-intelligence-and-ip-copyright-and-patents/artificial-intelligence-and-intellectual-property-copyright-and-patents>

³³⁷ See: Tanya Aplin and Lione Bently, *Global Mandatory Fair Use: The Nature and Scope of the Right to Quote Copyright Works* (CUP, 2020)

³³⁸ i.e. before 1 January 2021. See: UK Intellectual Property Office, ‘Guidance: Orphan Works and cultural heritage institutions’, 30 January 2020 <https://www.gov.uk/guidance/orphan-works-and-cultural-heritage-institutions>



change will make it more difficult to use UK orphan works in placemaking and any other activities involving the digitisation of material.

While also relevant to the digitisation and circulation of cultural heritage, the incidental inclusion and freedom of panorama provisions are more broadly relevant to a potentially large number of stakeholders including city inhabitants. **Incidental inclusion** (section 31 CDPA) in UK copyright law allows the incidental inclusion of works in artistic works, sound recordings, films and broadcasts.

Representation of certain artistic works on public display (section 62 CDPA) is the UK's freedom of panorama provision. Copyright in buildings, sculptures, models for buildings and works of artistic craftsmanship permanently situated in public places are not infringed by reproductions such as making graphic work, a photograph or a film. An interesting aspect of this provision is that it does not, on the face of it, exclude commercial uses of the publicly placed works which suggests a broader array of users can benefit and which is in contrast to a number of freedom of panorama provisions in other jurisdictions.³³⁹ In broad terms it is only two dimensional reproductions of three dimensional works that are allowed which has implications for the kinds of interactions that are enabled in public places with the relevant works.

No longer an EU member, the situation in the UK is a good example of an unfortunately limited provision which restrains the effect of the exception not only to certain types of three dimensional works, including buildings and sculpture, but also the allowable reproductions. It allows two dimensional but not three dimensional reproduction but offers no protection against the infringement of plans or drawings on which a sculpture or building is based.³⁴⁰ This has potentially deleterious effects on place experience for people with a visual impairment given that works of publicly situated sculpture could not justify the reproduction, under freedom of panorama, in three dimensions akin to the examples provided of the The State Tactile Museo Omero above (in Part 2.2).

In contrast, for example, to Italy with its Cultural Heritage Code, there is no overarching law or policy regarding cultural heritage in the UK.³⁴¹ Specifically there is no official report relating to digitisation UK wide although resources exist from specific organisations.³⁴²

What we also see in the absence of a centralised approach to digitisation is the publication of helpful materials by specific organisations. In respect of materials related to Glasgow the obvious source is the

³³⁹ There are no decided cases on this point, or indeed freedom of panorama more generally, in the UK. A case from New Zealand - which has a similarly worded freedom of panorama provision - indicates that it covered both commercial and non-commercial uses. See: *Radford v Hallenstein Bros Ltd* High Court, Auckland, CIV 2006-404-004881 (unreported 2007)

³⁴⁰ Robert Burrell and Allison Coleman, *Copyright Exceptions: The Digital Impact* (CUP, 2010) p. 233

³⁴¹ In the UK, each country (England, Northern Ireland, Scotland and Wales) are responsible for their own historic environment. For a diagram of the institutional framework relating to England see: Council of Europe, 'United Kingdom - England' <https://www.coe.int/en/web/herein-system/united-kingdom-england>

³⁴² As an example, see UNESCO UK Commission report on Using Digital Technology to Innovate in Heritage Research, Policy and Practice: <https://unesco.org.uk/using-digital-technology-to-innovate-in-heritage-research-policy-and-practice/>



copyright overview provided by the National Library of Scotland about the use of its collections.³⁴³ The library also has an accessibility statement which is transparent both in what accessibility requirements are met and which are not (yet) possible to enable access to its digital collections.³⁴⁴

Finally, to return to the issue of **reconstruction of buildings** (already discussed above as an optional exception under the Infosoc Directive in section 3.1.3). The relevant provision in the UK, in section 65 CDPA, provides that “[a]nything done for the purposes of reconstructing a building” will not be a copyright infringement. Crucially, and in contrast to the operation of the freedom of panorama provision, such actions will also not be an infringement of any underlying “drawings or plans”.³⁴⁵

What is also relevant here is that a building is defined in the Act to include a part of a building as well as “any fixed structure”.³⁴⁶ This means that various different aspects of the built environment may fall within this provision. This is significant insofar as placemaking is concerned because the provision enables changes to be made to the city’s built environment. However, some ambiguity remains about the precise meaning of ‘reconstruction’, specifically whether the reconstructed building must replicate the original. The ordinary meaning of the word, as a matter of statutory interpretation, seems to indicate that the provision applies to re-building a building that has been damaged for instance. An appropriately expansive reading would be needed to account for the possibility of changes being made while still remaining within the scope of the exception. Certainly in the context of placemaking this expansiveness would be helpful in enabling the local authority, community or property owner as the case may be to make free alterations and so shape the experience of a particular place.³⁴⁷

Key points - Glasgow and UK copyright law

- Glasgow is a unique example of re-inventing and promoting the identity of a post-industrialist city through international and national events
- While current UK copyright limitations and exceptions allow the digitisation and use of cultural heritage to a certain extent, the UK not implementing the CDSM Directive will cause divergence with EU Member States
- Broadly applicable placemaking provisions relate to freedom of panorama and incidental inclusion
- Changes to physical places in the form of building reconstruction will not usually infringe copyright

³⁴³ The guidance for using the extensive digitised collections of the NLS can be found here: National Library of Scotland, ‘Copyright’ <https://www.nls.uk/copyright/>.

³⁴⁴ National Library of Scotland, ‘Website accessibility statement’ <https://www.nls.uk/about-us/website-accessibility-statement/>

³⁴⁵ s. 65(b) CDPA

³⁴⁶ See the definition of an artistic work: s. 4(2) CDPA

³⁴⁷ We leave aside here the separate questions that may arise from any claims relating to breaches of the integrity right (i.e. that such alteration could be a derogatory treatment) in s. 80 CDPA.



Resource link - Copyright User (UK)

www.copyrightuser.org

This resource does not provide legal advice but is an authoritative and helpful source of information on UK copyright law including for users, creators and the public generally



Image description: A black and red logo of an intertwining copyright symbol with a smiley face and the text spelling out CopyrightUser.org underneath.

4.3 Tallinn

This part discusses the use of cultural heritage to establish and promote place attachment in Tallinn by considering placemaking, digitisation, case studies and relevant Estonian copyright provisions. The part begins with a description of Tallinn and some of its cultural landmarks (section 4.3.1). It then introduces three placemaking mini case-studies in section 4.3.2: the Old Town, the Seaplane Harbour museum, and Northern Tallinn. Finally, section 4.3.3 describes specific aspects of Estonian copyright law that are of particular relevance to placemaking efforts. These include, mirroring provisions discussed above in Part 3, freedom of panorama and incidental inclusion, and certain provisions that may be of particular relevance to GLAMs following the implementation of the CDSM Directive.

4.3.1 Tallinn overview

Tallinn is the capital of Estonia and has registered a population of approximately 437,600.³⁴⁸ Tallinn has been the major economic and cultural centre of Estonia since the Middle Ages. As a Hanseatic city, it has been on a major trade route between Europe and Russia. In terms of culture, Tallinn has a UNESCO World Heritage listing. This is related to the Old Town which dates back to the 10th century and which recognises its older architectural heritage: the merchant houses, barns, warehouses as well as the Town Hall.³⁴⁹ With the development of rail infrastructure and building large industrial areas during the Soviet period to Northern

³⁴⁸ As of 2022 according to the Estonian Population Registry. See: Ministry of Interior website: <https://www.siseministeerium.ee/tegevusvaldkonnad/rahvastikutoimingud/rahvastikuregister>

³⁴⁹ UNESCO, 'Historic Centre (Old Town) of Tallinn' <https://whc.unesco.org/en/list/822>. It was added to the list in 1997.



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

Tallinn and the outskirts of the city, the historic city centre has been mostly used as a tourist hotspot and to host cultural events. For example, Tallinn Old Town annually hosts Medieval Days and other local festivals that represent the long history of the city.³⁵⁰ Tallinn has also hosted Europe-wide cultural events and has been designated a European Capital of Culture in 2011.³⁵¹ In 2023 it was designated a European Green Capital.³⁵² Since 2000, the industrial heritage from 19th and 20th centuries has been a subject for a functional change - it has been developed from industrial production to host creative industries and related businesses and boosted tourism to Northern Tallinn and other previously known industrial areas in the city.³⁵³

In 1991 when Estonia gained its independence, economic reforms and deindustrialisation followed the collapse of the Soviet system. In the 1990s Estonia rapidly adapted its economy to the post-industrial service-oriented model. For nearly three decades, Estonia has tried to change its identity from a 'post-Soviet' country to a 'Nordic' country. The identity of industrial success, being part of a Soviet era and during independence perceived as a reference to repressions, the industrial image and heritage have started to transform into the modern success-story of IT industries and e-services. Since 2004, Estonia has been a member state of the European Union and has up to the date fast developed a strong IT-industry. Being in the forefront of Estonian digital revolution and development of e-government and digital services, Tallinn has the highest number of start-ups companies per capita amongst European countries.³⁵⁴ The technology companies originating in Tallinn include famous ones such as, for example, Skype. The image building towards a different direction of creative and IT industries has also induced the regeneration of city centre industrial properties. Some of these properties have been targeted for transformation into office space, living quarters and exhibition space. The last of these includes the Seaplane Harbour museum which we discuss below.

4.3.2 Tallinn - placemaking, digitisation and examples

In this section of Part 4.3 on Tallinn we give a literature overview of the significant developments at the intersection of digitalisation, cultural heritage and placemaking. We first briefly pay attention to the visioning of the city in strategic development documents as a form to officially seek for a common city brand identity and the role of culture in this (this discussion is also highly relevant to the more specific consideration of city branding in Part 5.5 of this report). We then introduce three examples of how placemaking has been undertaken based on this identity: Tallinn Old Town, Seaplane Harbour museum and the case of Northern Tallinn as an regeneration site.

³⁵⁰ See e.g. Visit Tallinn, 'Tallinn Medieval Days' <https://www.visittallinn.ee/eng/visitor/see-do/events/events/8539/tallinn-medieval-days>

³⁵¹ Alongside Turku (Finland): European Commission, 'Tallinn and Turku' <https://culture.ec.europa.eu/tallinn-and-turku>

³⁵² As of 21 January 2023: European Commission, Directorate-General for Environment, 'Tallinn starts as 2023 European Green Capital' (20 January 2023) https://environment.ec.europa.eu/news/tallinn-starts-2023-european-green-capital-2023-01-20_en

³⁵³ Ingmar Pastak and Anneli Kährik, 'The Impacts of Culture-led Flagship Projects on Local Communities in the Context of Post-socialist Tallinn' (2016) *Sociologický časopis / Czech Sociological Review* 52(6): 963-990

³⁵⁴ Ben Rooney, 'The Many Reasons Estonia Is a Tech Start-Up Nation' *The Wall Street Journal* (14 June 2012)



The official brand identity of Tallinn has been following the main principles in the city branding throughout recent decades. In 2010s when the ‘creative city’ concept reached the political agenda of Nordic countries and worldwide³⁵⁵ Tallinn guided its development and city branding towards a stronger position of creative and cultural industries. In the 2020s, the creative city idea became less important and the identity was more targeted to sustainability, green city and healthy living conditions, as these were the key themes also in Nordic countries and EU-wide.³⁵⁶ The focus of the official identity of the city was thus being shifted from the development of creative economy and international attractiveness as the main targets in 2010, to the ‘Tallinn Development Strategy 2030’ and then towards good living conditions and well-being as stated in 2020 in the new ‘Tallinn Development Strategy 2035’. Two parts from the relevant strategies are worth considering in more detail since they illustrate the nature of the identity to which the strategies aspire:

“Tallinn is the capital of Estonia, a multicultural city of hardworking and creative people. A unique cultural sign and a seaside gateway to the past and the future. Tallinn is an internationally attractive place to visit and leader of a competitive new economy in an innovative, balanced, green and safe urban environment.” (as in 2010, in Tallinn Development Strategy 2030)³⁵⁷

“Tallinn is a green world city where people live looking to the future and valuing heritage. Tallinn is one of the leaders of the green revolution in Estonia: the economy and ways of life here affect the well-being of the entire population of the country. Tallinn's green turn implementation model is an example to the world.” (as in 2020, in Tallinn Development Strategy 2035)³⁵⁸

Based on the strategic targets, the city of Tallinn has also been involved in EU-wide campaigns. These two strategic visions show how the image creation goes hand-in-hand with large-scale campaigns, such as culture-related and green-related city designations. Throughout the previous period from 2010–2020, Tallinn has widely pushed its identity towards creative entrepreneurship and digital development in order to apply for the European City of Culture 2011 and to host the activities around it. On 9 September 2021, Tallinn received recognition from the European Commission - the title European Green Capital 2023.³⁵⁹ The latter vision marks the new direction of identity creation towards the Green Capital 2023 pursuit.

Notably, in a similar vein, the city-wide placemaking campaigns involving physical transformations, creating sites for public culture exhibitions have grown out from the broader identity formation. For example, the preparation and activities conducted within the European City of Culture in 2011 had its direct influences: the city finished the renovation of Tallinn Creative Hub which hosted many cultural events in 2011.³⁶⁰ Tallinn

³⁵⁵ Anders Lund Hansen, Hans Thor Andersen and Eric Clark, ‘Creative Copenhagen: Globalization, Urban Governance and Social Change’ (2001) *European Planning Studies* 9(7): 851-869; Darrin Bayliss, ‘The Rise of the Creative City: Culture and Creativity in Copenhagen’ (2007) *European Planning Studies* 15(7): 889-903

³⁵⁶ See generally the Tallinn Development Strategy, discussed below.

³⁵⁷ ‘Tallinn Development Strategy 2030’ (no longer publicly accessible, on file with authors)

³⁵⁸ ‘Tallinn Development Strategy 2035’, accessible at: <https://www.riigiteataja.ee/akt/429122020009>

³⁵⁹ Further information and relevant events are found here: ‘Tallinn European Green Capital 2023’ <https://greentallinn.eu/en/>

³⁶⁰ For an overview see: ‘Our Story’ Kultuurikatel <https://kultuurikatel.ee/en/tallinn-creative-hub/our-story/>



Creative Hub is an event and activity centre aimed at developing cooperation between culture and arts, creative industries, and the private sector situated in an old power plant. Another achievement, the Culture Kilometre, which included transforming an old railway starting from the city centre and reaching the previously industrial sites in Northern Tallinn, was completed in 2011. It was a 2,5 km long walkway through the historical part of Tallinn's seaside, considered to be as a tourist route and outdoor exhibition site for European City of Culture events, meant for introducing the historical and industrial heritage of Northern Tallinn.³⁶¹ Planned as temporary, the Culture Kilometre was later transformed into a street.

Estonian digital image has also fostered museums, galleries and archives to implement digital access and collections since the 2000s. The most recent influence on Tallinn's digital image - besides international campaigns and seeking ways to apply for such - has been the COVID-19 pandemic. For the GLAM sector, this was a trigger for virtual tours, virtual identity creation and initiated change of how museums and galleries work. We introduce three mini case-studies of how Tallinn's digital image has been changing throughout the years 2010-2022. These do not engage the wide spectrum of the city's placemaking practices but show the main transformations in the way local heritage has been used in the city's contemporary placemaking practices.

1. Northern Tallinn is the first mini case study illustrating the practice of private and public regeneration to host creative industries in industrial heritage sites. Northern Tallinn is the northernmost of Tallinn's eight city districts. At the end of the industrialisation period by the 1990s, about one third of the land of Northern Tallinn was being used for industrial purposes.³⁶² Since the industrial revolution and development of railway infrastructure it has been an area known for heavy machinery industry, blue collar jobs and shipyards. In the 1990s Northern Tallinn faced a sharp decline of local industries when Estonia after gaining its independence made reforms to implement the principles of a free market and took a direction towards a service-oriented economy. Despite being mostly in private ownership, that kind of convertible housing stock was a subject of industrial housing regeneration into residential and commercial uses.³⁶³

The area was first discovered by low-budget artists who enjoyed the cheap properties and transformed old industrial buildings with their limited resources into bohemian galleries, cafeterias and offices.³⁶⁴ Later such developments have attracted medium-budgeted and high-end businesses, mostly from cultural and creative industries, and most recently also architecture and law offices, IT companies and luxury brand salons have followed to settle in. Northern Tallinn has become one of the main sites for creative industries and remains

³⁶¹ For a visitor's perspective on the route see: Piia, 'Tallinn Culture Kilometre – A Fascinating Walk Through Rough Times, Estonia' Ticket to Adventures (30 September 2015) <https://tickettoadventures.wordpress.com/2015/09/30/tallinn-culture-kilometer-a-fascinating-walk-through-times/>

³⁶² Merje Feldan, 'Urban Waterfront Regeneration and Local Governance in Tallinn' (2000) *Europe-Asia Studies* 52(5): 829–850, p.832

³⁶³ Kadri Leetmaa, Tiit Tammaru, Johanna Holvandus, Ingmar Pastak, Kristiina Kamenik and Anneli Kährnik, 'Governance arrangements and initiatives in Tallinn, Estonia' (2014) Tartu: University of Tartu

³⁶⁴ Ingmar Pastak, Eneli Kindsiko, Johanna Holvandus, Kadri Leetmaa, Tiit Tammaru, 'Fieldwork entrepreneurs. Tallinn (Estonia)' (2016) Tartu: University of Tartu <https://zenodo.org/record/437511>



one of the few sites in Tallinn where an old industrial area has been transformed into a creative cluster, hosting the most well-known local creative hubs and hip restaurants. Thus the image of run-down areas, closed factories, unemployment has transformed to a completely opposite - demanded creative office space and housing area.³⁶⁵ In fact, one of the main goals during the City of Culture nomination in 2011 was opening the seaside that was closed during the Soviet occupation for about 50 years because most of the seaside in Northern Tallinn hosted closed plants, shipyards and military areas.³⁶⁶

2. Seaplane harbour museum is a contemporary museum located in Northern Tallinn which contributes to local identity and involves digital content and placemaking. Seaplane Harbour (the national maritime museum located in the old seaplane harbour hangars) is located on a former military waterfront area closed to the public. It has undergone a complete change in function towards a museum hosting maritime history collections, ships and several thematic exhibitions.³⁶⁷ The waterfront museum project was developed by the Estonian Ministry of Culture and financed by the European Regional Development Fund. It has gained worldwide attention and media coverage with its success story with a strong concept and flagship development role - a modern museum located in formerly run-down area and particularly in seaplane hangars with significant architectural value.³⁶⁸ Opened in 2012, the first CEO of the museum described how the general public was not ready and could not see the development potential of the area, how journalists thought that the location of the museum was a failure and how the museum was difficult to find by visitors because there were no maintained roads at that time.³⁶⁹ Although the project did not specifically aim to boost the local socio-economic climate, it has had a flagship role in creating local identity of post-industrial (and Post-Soviet) transformation in Tallinn and its waterfront area.³⁷⁰ Now the museum has often been used as an example for urban regeneration when opening, both physically and mentally the access to the seaside.

Virtual tour in Seaplane Harbour

<https://meremuuseum.ee/lennusadam/en/the-museum/eml-lembit/>

³⁶⁵ Tiit Tammaru, Eneli Kindsiko, Johanna Holvandus, Kadri Leetmaa, Ingmar Pastak and Annika Väiko, 'DIVERCITIES: Dealing with Urban Diversity – The Case of Tallinn, Estonia' (2016) Tartu: University of Tartu, Faculty of Science and Technology <https://zenodo.org/record/437538>

³⁶⁶ For a brief overview of the history of Tallinn see: 'History of Tallinn' <https://www.tallinn.ee/en/history-tallinn>

³⁶⁷ Kadri Leetmaa, Tiit Tammaru, Johanna Holvandus, Ingmar Pastak, Kristiina Kamenik and Anneli Kährik, 'Governance arrangements and initiatives in Tallinn, Estonia' (2014) Tartu: University of Tartu <https://zenodo.org/record/13017> see p. 21ff

³⁶⁸ Ingmar Pastak and Anneli Kährik, 'The Impacts of Culture-led Flagship Projects on Local Communities in the Context of Post-socialist Tallinn' (2016) Sociologický časopis / Czech Sociological Review 52(6): 963-990

³⁶⁹ Ingmar Pastak and Anneli Kährik, 'The Impacts of Culture-led Flagship Projects on Local Communities in the Context of Post-socialist Tallinn' (2016) Sociologický časopis / Czech Sociological Review 52(6): 963-990; Alan A. Lew, 'Tourism planning and place making: place-making or placemaking?' (2017) Tourism Geographies 19(3): 448-466

³⁷⁰ Ingmar Pastak and Anneli Kährik, 'The Impacts of Culture-led Flagship Projects on Local Communities in the Context of Post-socialist Tallinn' (2016) Sociologický časopis / Czech Sociological Review 52(6): 963-990



3. The Old Town of Tallinn is a significant and popular tourist site while in respect of the latter, the Hansa Days (held in Tallinn in 1992) and annual Medieval Days offer an example of such events.

Given the discussion observations above it is perhaps unsurprising to see the development of a strong digital identity or image for Tallinn. For example, we see the interaction of the on-site and digital in, for example the “**Virtual Old Town**” which represents the city’s digital identity. Tallinn Old Town is one of the close-to-origin preserved medieval city-cores in Europe and is listed as a UNESCO World Heritage Site. The matching digital identity, mainly presented through virtual walks, travel vlogs and web (such as Visittallinn.ee), had been developed already before the COVID-19 pandemic.

Virtual walk in Tallinn Old Town

https://mediabank.visittallinn.ee/eng/applications/vr_videos

<https://tallinn.info/>

4.3.3 Estonian copyright and policies relevant to placemaking

Estonian laws that are relevant for the purposes of placemaking can be found in the Copyright Act. This section offers an overview in particular of certain copyright exceptions and limitations that may relate to GLAMs, directly or indirectly. It includes an overview of the position in Estonia in respect of the implementation of the CDSM Directive. This section also outlines a rare, amongst EU Member States, provision relating to folklore, as well as particular exceptions with clear resonance for placemaking all of which are likely to be of interest to different stakeholders. It is also relevant to note that, in light of the preceding discussion of limitations and exceptions under the Infosoc Directive (above, Part 3.1) Estonia has not implemented the incidental inclusion exception found in Article 5(3)(i) nor that on the reconstruction of buildings. Freedom of panorama is, however, present.

Copyright Act (1992)

<https://www.riigiteataja.ee/en/eli/513012022002/consolide>

Note: this link includes an (unofficial) English translation alongside the Estonian text.

The digitisation of cultural heritage is the competence of relevant institutions. Cities such as Tallinn themselves do not centrally organise the activities in this field in Estonia but contribute with its owned institutions (museums, galleries, city archive, etc.). In the State-managed museums, libraries and archives



there are more than 900 million heritage objects important to Estonian culture, and a third of them are planned to be digitally accessible by 2023.³⁷¹

The Copyright Act provides copyright protection for numerous works. This includes art and architecture as well as other types of creative output. In terms of the built environment of Tallinn or another place in Estonia, various publicly accessible works, such as buildings, may be protected by copyright.³⁷² Unlike the UK, discussed above in section 4.2.3, the Estonian description of architecture is detailed and includes graphic works such as plans with reference also made to “works of architecture and landscape architecture (buildings, constructions, parks, green areas, etc.), urban developmental ensembles and complexes”.³⁷³ The copyright owners of these works have numerous rights including the right of reproduction, distribution, communication to the public, and adaptation.³⁷⁴ This of course means that the ways in which GLAMs, inhabitants or numerous other stakeholders are able to interact with these works is therefore circumscribed.

The Copyright Act states at the outset that the purpose of the copyright provisions include: “ensur[ing] the consistent development of culture and protection of cultural achievements”.³⁷⁵ Perhaps unsurprisingly then the rights of the copyright owner are limited in certain respects. Works of art, architecture and other works, including those held by GLAMs, may be used in certain circumstances. These ‘free’ uses of works are set out in Chapter IV of the Copyright Act. However, the limitations on the copyright owner’s exercise of their economic rights is also subject to the three-step test.³⁷⁶ This means that the use of the work (e.g. copying or communicating to the public by sharing a work online) having taken advantage of one of the limitations still ought not to prejudice the legitimate interests of the copyright owner.³⁷⁷

We see, as is clear from the reference to the three-step test above, some further mirroring of the Infosoc Directive. Some of the limitations and exceptions are highlighted here because they are relevant to the digitisation and/or circulation of art, architecture and cultural heritage generally. Paraphrasing the relevant provisions of the Copyright Act these are:

- **Temporary copies** (§ 18¹): Following the mandatory exception in Article 5(1) of the Infosoc Directive, the Copyright Act allows temporary or incidental reproductions. However, this is only allowed where the purpose is not commercial.

³⁷¹ See: Kultuuriministeerium, ‘Kultuuripärandi digiteerimise tegevuskava’ (‘Plan of Action for the Digitisation of Cultural Heritage’) available on the Ministry of Culture website here: <https://www.kul.ee/kultuurivaartused-ja-digitaalne-kultuuriparand/digitaalne-kultuuriparand/kultuuriparandi>.

³⁷² Amongst other works, sculpture (§ 4(13) Copyright Act) and architecture (§ 4(14) Copyright Act).

³⁷³ § 4(14) Copyright Act (unofficial translation). § 4(14) in the authentic Estonian text may be found at: <https://www.riigiteataja.ee/akt/114062013005>.

³⁷⁴ The complete list of economic rights is found in § 13 Copyright Act. Engaging in these activities requires the permission of the copyright owner: § 13¹ Copyright Act.

³⁷⁵ Unofficial translation of § 1(1).

³⁷⁶ In § 17 AutÕS. This reflects the three-step test in Article 5(5) Infosoc Directive described in Part 3.1 of this report.

³⁷⁷ Specifically: “Notwithstanding §§ 13 – 15 of this Act, but provided that this does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, it is permitted to use a work without the authorisation of its author and without payment of remuneration only in the cases explicitly prescribed in §§ 18 – 25⁴ of this Act” (unofficial translation).



- **Uses by cultural heritage institutions** (§ 20): This exception is of particular relevance to GLAMs because it allows certain institutions to make their work available and for works to be used at the relevant site.³⁷⁸ Given what we have shown elsewhere in this report regarding the role of GLAMs in holding place-specific material, this type of exception is potentially significant in supporting placemaking efforts.³⁷⁹ This may include access to certain material about the local city, region or other area. Even in the absence of significant place-specific holding the provision would appear to support a museum, for instance, as a physical site for cultural access. The uses permitted in § 20 are actually helpfully broader than private study and include preservation, discussed below in respect of the implementation of Article 6 of the CDSM Directive.
- **Text and data mining** (§ 19¹ and 19²): This is a transposition of Articles 3 and 4 of the CDSM Directive. Cultural heritage institutions are specifically included here. While the placemaking link here may not be immediately obvious this is nevertheless a useful example of just one of the provisions that is intended to support the work of these institutions.
- **Quotation** (§ 19(1)(1)): This exception allows for the quotation of works although only where the works have “already been lawfully made available to the public”.³⁸⁰ While this provision may apply to a number of different situations in the context of access to culture in a particular place it is likely to be useful to inhabitants, visitors and others in interacting with works in a GLAM. However, in terms of on-site interaction with the built environment, it is the freedom of panorama provision (discussed below) which is likely to be more appropriate.
- **Orphan works** (§§ 27² - 27⁸): This section is of particular significance to certain institutions including in supporting the digitisation of their collections. Specifically, “public memory institutions”³⁸¹ (i.e., public archives, museums, libraries, educational and research establishments, film or audio heritage institutions) and the Estonian Public Broadcasting organisation.³⁸² These institutions are permitted to use the works or phonograms identified as orphan works in their collections for making them “available to the public for cultural and educational purposes” and for their “reproduction for the purpose of digitising, making available to the public, indexation, cataloguing, preservation or restoration”, keeping in mind that the use must be in “public interests”.³⁸³ This would seem to be a somewhat narrow approach to orphan works. It also leaves open the question of what the ‘public

³⁷⁸ There are other exceptions relevant to the making of private copies in Estonian copyright law. This includes § 18(1) which allows the reproduction of “lawfully published works... [for] personal use”. What is significant here is that - in terms of the engagement with the built environment and indeed works of art more generally - limited edition art (§ 18(2)(2)) art and “works of architecture and landscape architecture” (§ 18(2)(1)) are excluded from the operation of the private copying exception.

³⁷⁹ See especially, in light of the GLAM survey results described in Part 2.7.

³⁸⁰ Unofficial translation of the phrase which in Estonian reads ‘õiguspäraselt avaldatud teos’.

³⁸¹ Unofficial translation of the phrase which in Estonian reads “avalik mäluasutus”.

³⁸² Eesti Rahvusringhääling is a publicly owned radio and television organisation.

³⁸³ Unofficial translation of § 27⁶(1).



interest' purpose might mean in this context. However it seems plausible that cultural heritage institutions generally are covered by this provision.³⁸⁴

As indicated above, the **freedom of panorama** exception in § 20¹ is of obvious relevance in the context of placemaking.³⁸⁵ It directly addresses how inhabitants, visitors and others may interact with certain publicly placed works of art, architecture etc. The (unofficial) translation of the provision is as follows:

It is permitted to reproduce works of architecture, works of visual art, works of applied art or photographic works which are permanently located in places open to the public, without the authorisation of the author and without payment of remuneration, by any means except for mechanical contact copying, and to communicate such reproductions of works to the public except if the work is the main subject of the reproduction and it is intended to be used for direct commercial purposes. If the work specified in this section carries the name of its author, it shall be indicated in communicating the reproduction to the public.³⁸⁶

The exception implements the equivalent optional exception in the Infosoc Directive (Article 5(3)(h)).³⁸⁷ However, it seems to narrow the operation of the exception slightly. Like the UK exception, discussed above in section 4.2.3, the types of works that can be reproduced are limited by being specifically listed.³⁸⁸ It is nevertheless a preferable approach in including two dimensional works as well, including photographs, which is not the case with section 62 CDPA in the UK. It is thus a more realistic approach to what an inhabitant, visitor or other individual or group may come across in public places i.e. both three and two dimensional public works. While not as potentially expansive as the optional exception in the Infosoc Directive, § 20¹ does come closer to meeting the public interest aims of the Copyright Act identified in § 2. However, because of the further limitation to noncommercial uses, the freedom of panorama exception is much less useful, if at all, in the context of city branding, discussed in Part 5.5 below. Certainly it seems to suggest that tourist brochure photographs may be allowed but perhaps without focusing on a particular work.

Of related significance to placemaking is perhaps the lack of a reconstruction of buildings exception. Since Estonian copyright law does not have this exception this means permission would need to be sought from the copyright owner to engage in re-building without at the same time infringing the architectural plans. However, this is not to say that such reconstruction may not be facilitated by other (non intellectual property) legal frameworks.

³⁸⁴ For further information see: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, 'D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources' (2023) <https://doi.org/10.5281/zenodo.7540511> p. 213

³⁸⁵ We are not addressing here the operation of the related provision, § 20², regarding the freedom to photograph works of architecture for the purpose of real estate advertising.

³⁸⁶ Note that "mechanical contact copying" would appear to be referring to the creation of new photos from negatives or new impressions from matrixes and the like rather than scanning per se.

³⁸⁷ See section 3.1.1 of this report.

³⁸⁸ This is in contrast to the more open ('such as') wording in the Infosoc Directive. For further discussion see: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, 'D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources' (2023) <https://doi.org/10.5281/zenodo.7540511> p. 207



Apart from the inclusion of the above exceptions, Estonian copyright law has an additional provision relating to **folklore**. Specifically, “works of folklore” are included in the list of works in which copyright does not subsist in the first place (§ 5(2)). This type of protection of symbols is important to highlight not only because of its potential significance in the context of copyright and cultural heritage protection. It is also potentially relevant to the copyright and trade mark overlap especially in respect of place branding activities.³⁸⁹ Indeed, the same provision also leaves to the public domain “official symbols of the state and insignia of organisations (flags, coats of arms, orders, medals, badges, etc.)”.³⁹⁰

More recently, Estonia has implemented Article 6 CDSM Directive on **preservation of cultural heritage** and Article 14 on public domain works.³⁹¹ The wording of Article 14 is reproduced almost exactly in § 5(9). However the Article 6 transposition would appear to be narrower than what the Directive allows.³⁹²

There is perhaps a more general point that can be made here about non-commercial uses. A careful balance needs to be struck between limiting the rights of the copyright owner on specific grounds only to non-commercial uses and supporting the activities of GLAMs and placemaking with considerations that some of these may also be commercial. While limiting the operation to non-commercial purposes may not necessarily harm the non-commercial work of, for example, certain GLAMs, placemaking activities involving the digitisation of cultural heritage do not only occur in non-commercial contexts. Relatedly and recently, the out of commerce works provision, § 57⁴, has implemented Article 8 of the CDSM Directive is potentially useful for GLAMs insofar as it allows the sharing of culture and creativity embodied in out-of-commerce works to circulate.³⁹³

Overall, what we see in the Estonian context is both the transposition of many EU limitations and exceptions while also demonstrating some divergence.³⁹⁴ Additionally and importantly in the context of the accessibility of culture, Estonia has transposed relevant provisions of the Marrakesh Directive relating to particular exceptions for persons with disabilities in §§ 25²-25⁵ of the Copyright Act.³⁹⁵ This includes enabling the reproduction of works in an accessible format.

³⁸⁹ Trade mark and copyright overlaps in placemaking for tourism and other related purposes are addressed in Part 5.7 of this report.

³⁹⁰ Unofficial translation. § 5(5) Copyright Act. This point is also relevant to the discussion of place branding below in Part 5 of this report, see below.

³⁹¹ For an assessment of Articles 6 and 14 see sections 3.2.1 and 3.2.2 above.

³⁹² As indicated in section 3.2.1 above the ‘non-commercial’ requirement would seem to be at odds with Recital 27 of the CDSM Directive especially because the lack of harmonisation might make preservation networks that cross EU Member State borders more challenging to implement as envisaged by Recital 26 of the Directive.

³⁹³ Both reproduction and making available to the public are covered.

³⁹⁴ Summarised in: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) <https://doi.org/10.5281/zenodo.7540511> p. 205. For a detailed description of the Estonian position see the same report: section 3.1.2.8.

³⁹⁵ Noting that this is a close transposition of the EU language: Caterina Sganga, Magali Contardi, Pelin Turan, Camilla Signoretta, Giorgia Bucaria, István Harkai, Péter Mezei, ‘D2.3 Copyright flexibilities: mapping and comparative assessment of EU and national sources’ (2023) <https://doi.org/10.5281/zenodo.7540511> p. 214



The preservation of cultural heritage and the provision of public access have been supported by an intensive digitisation strategy by which Estonia has digitised a significant part of its cultural heritage during the past years, expecting to make one third of the cultural heritage stored in its memory institutions digitally accessible by 2023.³⁹⁶ This also entails upgrading the infrastructure for storing information in the memory institutions which enables further digitisation from 2023.

Key points - Tallinn and Estonian copyright law

- Tallinn offers a useful study of a city engaging in both the regeneration of industrial areas and the development of a strong IT industry
- There are numerous examples of place attachment projects including a Capital of Culture designation, the encouragement of public exhibitions, and the development of creative hubs
- There has been an Estonian-wide effort to develop a digital image
- Broadly applicable placemaking provisions in Estonia relate to freedom of panorama and exceptions supporting digitisation

4.4 Trento

This third ‘city focus’ part discusses placemaking and cultural heritage in Trento. As with the preceding two parts, it is concerned with placemaking, digitisation, some mini case-studies and relevant cultural heritage and copyright provisions in Italy. The part begins with a description of Trento, its landscape and aspects of cultural significance (section 4.4.1). It then introduces three placemaking examples in section 4.4.2: Gallerie di Piedicastello, Quartiere dei ferrovieri and the Hidden Trento project. The final section (4.4.3) chooses specific aspects of Italian law to address that are of particular relevance to placemaking but also highlights certain differences to other jurisdictions in relation to GLAMs.

4.4.1 Trento overview

Trento, in Italy’s north east is the chief town of the autonomous province of Trentino. Together with the autonomous province of Bolzano/Bozen it constitutes the Italian region of Trentino Alto Adige/Südtirol. Extending in an area of nearly 160 km² and with an estimated population of 117,847 (in 2022),³⁹⁷ Trento sits

³⁹⁶ Kultuuriministeerium, ‘Kultuuripärandi digiteerimine 2018-2023 tegevuskava’ (‘Action Plan for the Digitisation of Cultural Heritage 2018-2023’) available on website of the Ministry of Culture here: <https://www.kul.ee/kultuurivaartused-ja-digitaalne-kultuuriparand/digitaalne-kultuuriparand/kultuuriparandi>

³⁹⁷ Data found in I.Stat, <http://dati.istat.it/Index.aspx?lang=en&SubSessionId=ba72b283-7a4a-488e-95c8-6b9993b68017#>



on the river Adige and is surrounded by the majestic Dolomite Alps. As indicated earlier in this report some of these sites are part of the UNESCO heritage (section 1.3.3).

Before being annexed to the Reign of Italy in 1919, Trento belonged to the Austrian and then Austro-Hungarian empire. Its foundation is tracked back to the first century BCE when the city, originally under the Celts, was conquered by the Romans who gave it the ancient name of Tridentum.³⁹⁸ Tridentum means the city of the three teeth, which alludes to the three hills surrounding it and which is carved on some of its historical buildings, including the late-Roman basilica upon which the Saint Vigilio cathedral stands.³⁹⁹ The underground remains of the Roman city, constantly expanded by conservation and renovation interventions, reveals the *splendidum municipium* that constituted a crucial crossroads between central Europe and the Mediterranean.⁴⁰⁰ In 1545-1563 the city hosted the Council of Trento that shaped the future of the Catholic church, following the protestant reform and rising to the counter-reformation, which signposted the late-medieval and Renaissance architecture that can still be admired today.

Officially described as “a precious mixture of nature, history and culture”,⁴⁰¹ Trento comprises both natural and cultural heritage sites. The former group includes the Dolomites, a World Heritage site since 2009.⁴⁰² Examples of cultural heritage include Fort Cadine, a fortification system comprising eighty monuments built between 1860 and 1915 that originally signalled the borders between the Kingdom of Italy (Regno d’Italia) and the Austro-Hungarian Empire serving the purposes of defence and enclosure. Fort Cadine is now a European Heritage site and regarded as a symbol of memory and a “European meeting place” fostering common cultural values and public dialogue.⁴⁰³

Among the prominent historical places it is also worth mentioning: the Buonconsiglio Castle, a monumental complex of buildings enclosed by walls, for centuries the residency of the powerful archbishops and since 1924 a national museum;⁴⁰⁴ the Torre Vanga tower that currently hosts the Alpine museums; and another excellent example of religious architecture such as the Diocesan museum and paleochristian Basilica.⁴⁰⁵

³⁹⁸ TrentinoCultura, ‘TRIDENTVM S.A.S.S. - Spazio Archeologico Sotterraneo del Sas / Sas Underground Archaeological Space’ <https://www.cultura.trentino.it/eng/Cultural-venues/All-cultural-venues/Museums-and-collections/TRIDENTVM-S.A.S.S.-Spazio-Archeologico-Sotterraneo-del-Sas-Sas-Underground-Archaeological-Space>

³⁹⁹ TrentinoCultura, ‘Early Christian Basilica of Saint Vigilius – Trento’ <https://www.cultura.trentino.it/eng/Cultural-venues/All-cultural-venues/Museums-and-collections/Early-Christian-Basilica-of-Saint-Vigilius-Trento>

⁴⁰⁰ See: TrentinoCultura, ‘Tridentum. The underground town’ <https://www.cultura.trentino.it/eng/Cultural-venues/All-cultural-venues/Archaeological-sites/Tridentum.-The-underground-town>

⁴⁰¹ Italia.IT, ‘Trento, a precious mix of nature, history and culture’ <https://www.italia.it/en/trentino/trento/guide-history-facts>

⁴⁰² See: UNESCO, ‘The Dolomites’ <https://whc.unesco.org/en/list/1237>.

⁴⁰³ <https://www.cultura.trentino.it/eng/Fort-Cadine>. For further information about its European Heritage Label see: ‘Fort Cadine, Italy’ <https://culture.ec.europa.eu/cultural-heritage/initiatives-and-success-stories/european-heritage-label/european-heritage-label-sites/fort-cadine-italy>

⁴⁰⁴ Castello del Buonconsiglio, ‘Introduction’ <https://www.buonconsiglio.it/index.php/en/Buonconsiglio-Castle/castle/Visit/Introduction>

⁴⁰⁵ Museo Diocesano Tridentino, ‘About Us’ <https://www.museodiocesanotrentino.it/pagine/about-us>



Among more recent cultural sites, the Museum of Science (MUSE),⁴⁰⁶ the Gianni Caproni Museum of Aeronautics;⁴⁰⁷ the SAT museum - Society of tridentine alpinists;⁴⁰⁸ and the Galleria Civica (civic gallery)⁴⁰⁹ that is part of the larger Museum of Modern and Contemporary Art (MART) located in the nearby town of Rovereto (on which see discussion above especially regarding accessibility in Part 2.2).⁴¹⁰ Contemporary spaces include the permanent expositions of the Officina dell'autonomia, meant to be a place to evidence and reflect on autonomy and the territory;⁴¹¹ of the De Gasperi place dedicated to the local politician and intellectual Alcide De Gasperi;⁴¹² and of the library of the Fondazione Museo Storico.⁴¹³ At the crossroads of natural and cultural heritage sites stand the Ecomuseum Argentario;⁴¹⁴ the Doss Trento complex, comprising a park and mausoleum dedicated to Cesare Battisti, recently complemented by the Historic national museum of Alpini troops;⁴¹⁵ and Gallerie di Piedicastello that will be analysed in further detail.⁴¹⁶

The town's and province's economy develops consistently in different sectors.⁴¹⁷ In the primary sector, agriculture stands out with a cooperative production of PGI apples (Mele del Trentino)⁴¹⁸ and DOC sparkling wines (Trento DOC).⁴¹⁹ In the secondary sector, the construction industry features a special interest for the wood value chain and sustainability,⁴²⁰ while manufacture employs innovative high-skilled technology and favours circularity;⁴²¹ the tertiary is mostly led by tourism that, advantaging from the proximity to the

⁴⁰⁶ See MUSE website: <https://www.muse.it/en/>. Note that the website for MUSE includes a clear link to Accessibility information: MUSE, 'Services and Accessibility' <https://www.muse.it/en/home/explore-the-museum/satellite-museums/geological-museum-of-the-dolomites-in-predazzo/services-and-accessibility/>

⁴⁰⁷ 'Gianni Caproni Museum of Aeronautics' <http://www.museostorico.it/index.php/Luoghi/I-luoghi-della-Fondazione/Museo-dell-aeronautica-Gianni-Caproni>

⁴⁰⁸ 'Società Alpinisti Tridentini' <https://www.sat.tn.it>

⁴⁰⁹ 'Galleria Civica Trento' <https://www.mart.tn.it/en/mart/galleria-civica-trento-122805>

⁴¹⁰ For the MART website see: <https://www.mart.tn.it>

⁴¹¹ 'Officina dell'autonomia', <https://museostorico.it/location/officina-dellautonomia/>

⁴¹² 'Spazio de Gasperi', <http://www.museostorico.it/index.php/Luoghi/I-luoghi-della-Fondazione/Spazio-De-Gasperi>

⁴¹³ 'Biblioteca della Fondazione' <http://www.museostorico.it/index.php/Luoghi/I-luoghi-della-Fondazione/Biblioteca-della-Fondazione>

⁴¹⁴ 'Ecomuseo Argentario', <https://www.ecoargentario.it/home>

⁴¹⁵ 'Museo Nazionale Alpini' <http://www.museonazionalealpini.it/index.php/it/>

⁴¹⁶ See: 'Gallerie di Piedicastello' <http://www.museostorico.it/index.php/Luoghi/I-luoghi-della-Fondazione/Le-Gallerie>

⁴¹⁷ Trentino Sviluppo SPA, 'Invest in Trentino' (2016)

https://trentinosviluppo.it/public/file/brochure/Brochure_Invest_in_Trentino_ING_-_DICEMBRE.PDF

⁴¹⁸ EC, Publication of an application for registration of a name pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs, 2020/C 72/11.

⁴¹⁹ 'Trentodoc' <https://www.trentodoc.com/en/>

⁴²⁰ 'ARCA', <https://www.arcacert.com>

⁴²¹ One of the most prominent actions in this sense is Progetto Manifattura, which itself describes as "an incubator and hub for companies with sustainable projects (that is) designed to be a model for sustainable growth that educates the public as it stimulates the green economy. It's a productivity platform that offers a mix of uses: offices, light manufacturing, test labs, research, education, and services. Access to plazas and walkways give people a chance to learn and participate": 'Progetto Manifattura' <https://progettomanifattura.it/en>



Dolomites and the Lake of Garda, spans from winter sports to rural and agri-food experiences;⁴²² the quaternary sector sees a growing role of the University of Trento,⁴²³ and of other research centres such as the Fondazione Bruno Kessler (FBK),⁴²⁴ and The Fondazione Edmund Mach (FMA),⁴²⁵ which together place Trento at the forefront of international education and research.⁴²⁶

4.4.2 Trento - placemaking, digitisation and examples

The following paragraphs illustrate the framework in which placemaking in Trento has developed and continues to grow. It is worth noting that, as a distinct feature especially if compared with the other two cities under consideration, placemaking here has a broader scope that goes beyond the single municipality and embraces the whole provincial territory.⁴²⁷ This has several implications, which also extend to foreseeing a peculiar trend in place of attachment that is shared by other neighbouring territories all under the umbrella of the alpine region.⁴²⁸ Yet, in line with the previous municipal and country-based analysis, the focus of this section will be on the city of Trento.

Defined as a prominent and growing “cosmopolitan city that stands out for quality of life and business opportunities”,⁴²⁹ Trento features several examples of urban regeneration that, as anticipated, is seen also in other towns surrounded by the Alps.⁴³⁰ It is to some extent supported by a strong social commitment towards the protection and valorisation of common goods,⁴³¹ and historical roots. Such core themes are

⁴²² For a broader picture of the tourism offer see: ‘Visit Trentino’ <https://www.visittrentino.info/en>

⁴²³ The University's website may be accessed at: <https://unitn.it>

⁴²⁴ ‘Fondazione Bruno Kessler’ <https://www.fbk.eu/en/>

⁴²⁵ ‘Fondazione Edmund Mach’ <https://www.fmach.it/eng>

⁴²⁶ Trento and overall its territory are also described as being led by policies of innovative public development, whose evolutionary process of culture-led urban regeneration places a considerable emphasis on the context. On this, see in particular Maria della Lucia, Mariapina Trunfio, Frank M. Go, ‘Does the Culture of Context Matter in Urban Regeneration Processes?’ in Maria D. Alvarez et al. (eds.) *Heritage Tourism Destination: Preservation, Communication and Development*, CABI, Wallingford, 2016, 11-21, who yet anticipate the risk of an inward-looking perspective (at p. 17). More generally, on the practices of protecting and valorising cultural heritage mapped in the Trentino area, see Giovanna Rech, ‘La valorizzazione del patrimonio culturale in Trentino’, Milano, Franco Angeli, 2019.

⁴²⁷ As it will be further discussed, this is also particularly true in relation to trademarks. See Part 5.6 of this report.

⁴²⁸ Cf. Alessandro Gretter, Chiara Rizzi, Sara Favargiotti, Alessandro Betta et Giovanna Ulrici, ‘Trento Social Commons. Community Engagement as Tools for New Physical and Cultural Relationships Between Rural and Peripheral Spaces’ (2018) *Journal of Alpine Research/Revue de géographie alpine* 106-2, Alpine Metropolis. Towards a New Partnership Between Towns and Mountains?/Dossier Métropoles alpines. Vers une nouvelle alliance entre villes et montagnes? <https://doi.org/10.4000/rga.4166>

⁴²⁹ European Commission, Joint Research Centre, ‘Trento’ Cultural and Creative Cities Monitor <https://composite-indicators.jrc.ec.europa.eu/cultural-creative-cities-monitor/countries-and-cities/trento>

⁴³⁰ See: Maria Della Lucia and Mariangela Franch, ‘Case B: Culture-led Urban Regeneration and Brand Building in Alpine Italian Cities’ in Frank M. Go, Arja Lemmetyinen and Ulla (eds), *Harnessing Place Branding through Cultural Entrepreneurship* (Palgrave Macmillan, 2014)

⁴³¹ For a broader perspective on the issue, see: Maria Francesca De Tullio and Violante Torre, ‘Dreams, Realities and Bogus Labels: Commons, Privatisations and the EU Dimension in Turin’ in Maria Francesca De Tullio (ed.) *Commons: Between Dreams and Reality* (Creative Industry Košice, 2020) p. 54, <https://culturalfoundation.eu/wp-content/uploads/2021/03/Commons.-From-Dream-to-Reality.pdf>



discussed through the portrayal of three minicase-studies. Two of them pertain to different examples of urban regeneration,⁴³² where the former focuses on cultural and culture-led renovation undergone by public authorities and the latter deals with private initiatives of urban design applied to a former working-class neighbourhood. The third refers to an example of digital immersive experience through historical storytelling.

1. Le Gallerie di Piedicastello: The case illustrates a great example of urban regeneration. *Le Gallerie* is a stunning exposition and cultural venue, part of the museum network of Trento and Trentino province,⁴³³ but before its conversion in 2008 it was once a mere pair of tunnels with high foot traffic. These underwent a radical redesign and repurpose by Gruppe Gut,⁴³⁴ and are now two distinct but connected spaces for exhibitions and public gatherings. The white tunnel (Galleria bianca) and the black one (Galleria nera) over the last decades have hosted several temporary exhibitions but also permanently displayed the history and memory of the place where they were originally built. The reasons behind their re-functionalization are also very practical as they were substituted by more efficient and better located tunnels, but their conversion has also contributed to the regeneration of the *Piedicastello* neighbourhood and benefitted its inhabitants.

2. Quartiere dei ferrovieri: Another case of regeneration is the formerly railwaymen district, which was specifically designed by eng. Emanuele Kern and built by the *Cooperativa dei Ferrovieri* in the early 1920s to host rail employers and their families. A picturesque example of social housing that even escaped the war bombs thanks to their sturdy materials (including pieces of rail tracks). Over the years, the district became rather central and, as it happened in other similar situations, they turned to be the object of real estate revaluation that accompanied the progressive changeover of the neighbourhood from a poor and overcrowded place to a niche residential one. The neighbourhood fits into the broad concept of urban design,⁴³⁵ where often public and private initiatives intersect.⁴³⁶ However, its houses have mostly kept the original unique urban scheme and are still looked at as “a village in a town”.⁴³⁷

3. Hidden Trento app: Part of a broader EU project PURE (Public Renaissance) that comprises other research hubs,⁴³⁸ “Hidden Trento” is a mobile phone app developed by the Italo-German Historical Institute of Fondazione Bruno Kessler, which allows users to virtually walk in the town of 1562-1563. Users are guided by historic virtual characters showing the places of great historical interest as well as less known places in Trento. Exploring such places with the aid of an updated satellite map and an historical map of the 16th

⁴³² On the subject, see: Maria Della Lucia, Mariapina Trunfio, and Frank M. Go, ‘Heritage and urban regeneration: Towards creative tourism’ in Nicola Bellini and Cecilia Pasquinelli (eds.) *Tourism in the City: Towards an Integrative Agenda on Urban Tourism* (Springer, 2017)

⁴³³ ‘Le Gallerie’ <http://www.museostorico.it/index.php/Luoghi/l-luoghi-della-Fondazione/Le-Gallerie>

⁴³⁴ ‘Gruppe Gut’ <http://www.gruppegut.it/en/start.php>

⁴³⁵ See ‘paessagio urbano / urban design’ (2019) (pdf) https://www.paesaggiourbano.org/wp-content/uploads/2020/01/PU_2019-3_v8_web.pdf

⁴³⁶ Matteo Aimini, ‘Trento, which kind of future? Perspectives for a resilient city’ (2019) AGATHÓN – International Journal of Architecture, Art and Design 6: 126-137

⁴³⁷ ‘Cooperativa di consumo fra ferrovieri del Trentino, turned later into Cooperativa edilizia Cesare Battisti fra ferrovieri’ <https://www.giornaletrentino.it/cronaca/trento/le-case-dei-ferrovieri-paesi-in-città-1.628669>

⁴³⁸ For the PURE website regarding this project see: <https://hiddencities.eu/>. See also for further details Annex C.



century, and entertained with short stories, users will get to know the city from a unique perspective.⁴³⁹ The aim of the project is to deliver a digital immersive experience into the urban history of Trento, inspiring users to engage with public places.

Hidden Trento

<https://hiddencities.eu/trento>

4.4.3 Italian copyright and policies relevant to placemaking

In the Italian context, there are different laws applicable to the digitisation of cultural heritage and that are thus relevant to the topic of the present report, focusing on placemaking. One first set of provisions come from the Italian Copyright law, L. 633/1941, Legge sul diritto d'autore e sui diritti connessi al suo esercizio (Lda). This law is informed by the Infosoc and CDSM Directives - already described in Part 3 of the report above - but presents a few specific traits that are worth mentioning.

In line with the methodology followed by the instant report, of all the potentially relevant provisions for placemaking in Italian copyright law only some will be discussed. After a short summary of the national implementation of EU Directives, this section especially focuses on provisions on copyright exceptions and limitations that have been formally enacted; other legal principles that may be interpreted in the sense of acknowledging an although limited and never explicit acknowledgment of some sort of freedom of panorama; and, the newly enacted provisions following the CDSM Directive. In addition, addressing the unique and yet complex intersection of Italian copyright law with the laws on cultural heritage, some emphasis is placed on the specific requirements or constraints of the latter. To that extent the layout of this section is a little different to that relating to UK and Estonian copyright above.

Italian Copyright law

<https://www.gazzettaufficiale.it/eli/id/1941/07/16/041U0633/sg>

The CDSM Directive has been transposed in Italy through Legislative Decree No. 177/2021. This Directive arose with the aim of adapting copyright law to today's society; therefore, the purpose is to modernise the

⁴³⁹ Massimo Rospoher and Enrico Valseriati, "Trento, the last chance for a beer". Mobility, material culture, and urban space in an early modern transit city' in Fabrizio Nevola, David Rosenthal and Nicholas Terpstra (eds.) *Hidden Cities: Urban Space, Geolocated Apps and Public History in Early Modern Europe* (Routledge, 2022) <https://doi.org/10.4324/9781003172000> pp. 125-149



law by making the adaptations that have become necessary to keep up with the digital environment.⁴⁴⁰ Building on earlier discussion of the CDSM Directive above it is relevant first because, for the first time, the transposition of more than one exception and limitation to copyright is required, and second because it is an update designed to adapt exceptions and limitations to technological changes to allow online and cross-border uses of copyright works. The exceptions that become part of the community acquis are contained in Title II of the Directive and concern text and data mining, digital and cross-border educational activities, and making copies for the preservation of cultural heritage.

The contents of Article 3 of the CDSM Directive have been incorporated into the new Article 70-ter Lda, referred to in Article 1(i) of Legislative Decree 177/2021. The commas 1 through 8 of Article 70-ter allow research organisations and cultural heritage protection institutions the activity of **text and data mining** of protected works and other materials, available in networks or databases to which they have lawful access, for scientific research purposes. In particular, comma 3 and 4, respectively, deal with defining, in a very extensive way, what it can be considered cultural heritage protection institutions and research organisations through the identification of the primary objective whose activity of such institutions must strive for, on the other hand, comma 6 and 7 of Article 70-ter Lda deal with measures to ensure the security and integrity of networks and databases. These measures can also be defined on the basis of agreements between the associations of rights holders, cultural heritage protection institutions and research organisations.⁴⁴¹

The contents of Article 4 of the CDSM Directive have been incorporated in the new Article 70-quater Lda. The operations of reproduction and extraction are allowed to those who legally have access to works or other materials contained in databases or networks for the purpose of text and data mining. Such activities are, however, permitted only when the use of the works and other materials has not been expressly reserved by the owners of copyright and related rights and the owners of the databases.⁴⁴² Comma 3 of Article 70-quater specifies that the same level of security for the performance of activities already defined in Article 70-ter comma Lda is to be applied in this case as well.

The new Article 70-bis Lda incorporated the contents of Article 5 of the CDSM Directive. This Article introduces an extension of the already existing exception of **quotation** sets in Art. 70 Lda.⁴⁴³ Article 70-bis provides that the same activities set up in the exception of Article 70 Lda (summary, citation, reproduction) in addition to the activities of translation and adaptation are permitted even when carried out by digital means. This addition aligned the directive's aim of updating the legislation to technological changes. Moreover, the subject of the exception is also extended through the inclusion of the general expression "other materials". However, the purposes of the permitted activities remain limited to illustrative purposes

⁴⁴⁰ See: 'Explanatory report Draft of the legislative decree implementing Directive (EU) 2019/790' The document is available at: https://www.governo.it/sites/governo.it/files/DLGS_DIRETTIVA_2019_790_RI.pdf

⁴⁴¹ Art. 1 (g) of the 'Explanatory Report. Draft of the legislative decree implementing Directive (EU) 2019/790' The document is available at: https://www.governo.it/sites/governo.it/files/DLGS_DIRETTIVA_2019_790_RI.pdf

⁴⁴² Art. 70-quater comma 1 Lda

⁴⁴³ Art. 1 (g) of the 'Explanatory report. Draft of the legislative decree implementing Directive (EU) 2019/790' The document is available at: https://www.governo.it/sites/governo.it/files/DLGS_DIRETTIVA_2019_790_RI.pdf



for educational use, to the extent justified by the non-commercial purpose pursued. The text of the Article is quite strict also about the indication of the source, imposing the indication of the author's names as well as the title of the work, the publisher and the translator, if these indications are on the work.⁴⁴⁴

Article 70-bis comma 1 Lda also specifies that these permitted uses must take place under the responsibility of an educational institution, on its premises or other place or in a secure electronic environment, accessible only to the teaching staff of that institution and the pupils or students enrolled in the course of study in which the works or other materials are used. Moreover, Article 70-bis comma 3 Lda limits the exception's applicability by stipulating that this exception does not apply to material that is primarily intended for the educational market or to sheet music when appropriate voluntary licences are available on the market and when such licences meet the needs and specificities of educational institutions and are readily known and accessible by them.⁴⁴⁵ Article 70-bis comma 4 Lda transposes Article 5 (3) of the CDSM Directive, which states that digital uses, even if they take place in Italy, but are made by an educational institution based in another Member State, then these are considered to be made exclusively in that Member State.⁴⁴⁶

Finally, Article 6 of the CDSM Directive was transposed into Art. 68 comma 2-bis Lda. This exception grants cultural heritage institutions (as defined under Art. 70-ter comma 3) the right to reproduce and make copies of works or other protected materials permanently present in their collections, in any format and on any medium, when this is done for the purpose of **preserving** such materials.⁴⁴⁷

Even before the CDSM Directive,⁴⁴⁸ there were attempts to harmonise the subject of the exceptions and limitations of copyright among Member States, but this goal has been achieved only partially; a clear example of this missed target is the freedom of panorama exception. The freedom of panorama exception was introduced in the Article 5(3)(h) of the Infosoc Directive. Since, as we identified above (in section 3.1.1) it was

⁴⁴⁴ Art. 1 (g) of the 'Explanatory Report. Draft of the legislative decree implementing Directive (EU) 2019/790' The document is available at: https://www.governo.it/sites/governo.it/files/DLGS_DIRETTIVA_2019_790_RI.pdf

⁴⁴⁵ Art. 70-bis comma 3 Lda (our translation)

⁴⁴⁶ In other words, on one hand, Article 70-bis Lda focuses on the didactic purpose, on the other, Article 70 addresses more general purposes such as criticism and discussion not necessarily related to educational goals and educational institutions. The new provision of Art. 70-bis Lda aims at ensuring the dissemination of culture through the regulation of digital educational content. See: Luciano Daffarra, 'La didattica come interesse primario tutelato tra le eccezioni al diritto d'autore: la direttiva DSM integra nella Legge Autore norme sull'educational, sul text e data mining, sull'utilizzo per fini illustrativi a scopo didattico: Focus sull'articolo 70-bis' (2022) <https://www.agendadigitale.eu/mercato-digitali/le-eccezioni-a-scopo-didattico-al-diritto-d'autore-cosa-prevedono-le-leggi-europee-e-italiane/>

⁴⁴⁷ Art. 1 (e) of the 'Explanatory Report. Draft of the legislative decree implementing Directive (EU) 2019/790' The document is available at: https://www.governo.it/sites/governo.it/files/DLGS_DIRETTIVA_2019_790_RI.pdf

It should be noted that Article 6 CSDM, because it mentions only the purpose of preservation, does not allow cultural heritage institutions to grant access to the public of a copy that has been made for preservation purpose. If a cultural heritage institution is interested in making available to the public a digital copy of an out-of-commerce work commercial, it will have to appeal to Articles 8-11 of the Directive (for a more in-depth discussion see section 3.2.3).

⁴⁴⁸ In particular the Infosoc Directive listed, in Article 5(3), a number of exceptions and limitations, but these were not mandatory. Even if the CDSM Directive introduced more than one mandatory exception, the freedom of panorama is still not one of them.



an optional exception and it was not implemented by Italy. It is also worth noting that other exceptions were also not implemented, including the one on incidental inclusion under Article 5(3)(i) Infosoc Directive.

Nevertheless, the absence of an explicit ban on what could constitute a freedom of panorama, either under copyright law or cultural heritage law, allows us to advance the argument that it may be justified under a more balanced interpretation of the law, pursuant to the broader scope of Article 2 of the Italian Constitution that acknowledges and guarantees people's inviolable human rights.⁴⁴⁹ At the same time, there are some norms in the current Italian legislative framework that could come to the rescue to cover (to a certain extent) the gap left by the failed implementation of the freedom of panorama exception.

The first thought could go to the Article 70 comma 1 Lda allowing the summary, the quotation and the reproduction of parts of copyrighted works and their communication to the public can be free if made for use of criticism or discussion, to the extent justified by such purposes and provided they do not constitute competition with the economic use of the work.⁴⁵⁰ However, given its narrow construction, it may not really be considered a valid alternative to freedom of panorama. Nor can it be Article 70 comma 1-bis that allows reproduction via internet of images and music in low resolution, only for educational or scientific uses, and only in cases where such uses are non-commercial.⁴⁵¹

Another Article introduced into Italian copyright law is Article 32-quater Lda (implementing Article 14 CDMS Directive) which governs the regime applicable to works of visual art in the **public domain**. This Article specifies that after the copyright protection of a work of visual art has expired, any act of reproduction of that work is not subject to copyright or related rights (unless the act itself constitutes an original work). This Article has some significance within the analysis of freedom of panorama because it allows dissemination, sharing and reuse of non-original digital images or copies of works that have fallen into the public domain.⁴⁵² However, it exclusively concerns works that have fallen into the public domain and it does not affect the reproduction of cultural heritage, the regulation of which remains the one set in the Cultural Heritage and Landscape Code⁴⁵³.

⁴⁴⁹ For a more detailed discussion of this interesting but rather still controversial issue, see on freedom of panorama and place: 'D5.10: Place Branding and Intellectual Property Law' summary forthcoming on the consortium's Zenodo page: <https://zenodo.org/communities/recreatingeurope>

⁴⁵⁰ Art. 70 comma 1 Lda (our translation).

⁴⁵¹ Pauline Combe, 'Copyright Protection of Works Displayed in Public Places: Challenges over the Freedom of Panorama Exception' (2018) *Art, Antiquity & Law* 23(4): 313-339, p. 323

⁴⁵² Art. 1 (a) of the explanatory report. Draft of the legislative decree implementing Directive (EU) 2019/790. The document is available at: https://www.governo.it/sites/governo.it/files/DLGS_DIRETTIVA_2019_790_RI.pdf. See Ilaria Paradiso, 'Libertà di panorama in Italia: le criticità di una normativa anacronistica' (2022) *Cyberlaws* <https://www.cyberlaws.it/2022/liberta-di-panorama-italia/> stating that (our paraphrase from Italian) furthermore, it comes across as too anachronistic since the growth of interest regarding freedom of panorama was driven by the necessity to allow the exchange of images on the internet and the low-resolution criterion is in contrast with how modern technology can easily produce high resolution content.

⁴⁵³ The text of the Cultural Heritage and Landscape Code is available at: <https://www.gazzettaufficiale.it/dettaglio/codici/beniCulturali>



The provision expressly allows to discuss what is a complex relationship between copyright and cultural heritage laws in Italy. Article 108 commas 3 and 3-*bis* of the **Cultural Heritage and Landscape Code** will promptly apply when the object of reproduction falls into the category of cultural heritage.⁴⁵⁴ Article 108 comma 3 states that the reproduction requested or made by private individuals for personal use or study purposes, or by public or private entities for enhancement purposes, provided they are implemented on a non-profit basis, is free of fees. The fee would otherwise be due to the authority to whom the piece of cultural heritage is entrusted. The comma 3-*bis* also sets a series of permitted and free acts of reproduction and dissemination that are carried out on a non-profit basis, for purposes of study, research, free expression of thought or creative expression and promotion of knowledge of cultural heritage.

Finally, also informed by the EU Open Data Directive, d.lgs. 36/2006 (as last amended by Directive (UE) 2019/1024), governs the re-use of public sector information, hence the re-use of documents from certain cultural establishments, and its material scope seems to include digitisation projects of cultural resources.⁴⁵⁵

It seems crucial to note that, at the time of writing, crucial projects to innovate the regulations regarding the digitisation of cultural heritage are ongoing in Italy. A plan and a set of guidelines for the digitisation of cultural heritage, as well as its data and metadata, has been promoted by the Istituto centrale per la digitalizzazione del patrimonio culturale – Digital Library, that is part of the national Ministry of Culture. The documents are currently under revision, following a phase of public consultation that ended in mid June 2022.⁴⁵⁶ The plan is part of the national realisation of the Recovery and Resiliency Facility part of the Next Generation EU program, Council Regulation (EU) 2020/2094, namely the Piano Nazionale di Ripresa e Resilienza (PNRR) named ‘Italia Domani’,⁴⁵⁷ but it also seems to incorporate the objectives described by the EU Commission Communication for the common European data space for cultural heritage (discussed above in section 2.4.1), which is expressly mentioned in a few key passages. Therefore we can expect relevant developments in the regulation of cultural heritage which may have potentially important impacts on placemaking for cultural heritage institutions in particular.

Finally, it is worth emphasising, as noted above, that, it remains true that all the policy initiatives as well as provisions to open cultural heritage would also still find that any act of reproduction, as well as re-use, of cultural heritage would still need to comply with the Cultural Heritage and Landscape Code.⁴⁵⁸

⁴⁵⁴ The definition of the category is provided by the Cultural Heritage and Landscape Code itself at Art. 2.

⁴⁵⁵ Articles 7, 11 and 12 bis d.lgs. 36/2006 provide further details on the fundamental derogations that the EU Directive provides for libraries, museums and archives.

⁴⁵⁶ ‘Istituto centrale per la digitalizzazione del patrimonio culturale – Digital Library, Ministero della Cultura, Piano nazionale di digitalizzazione del patrimonio culturale 2022-2023’ and, in particular ‘Linee guida per l’acquisizione, la circolazione e il riuso delle riproduzioni dei beni culturali in ambiente digitale’ (2022, version for public consultation), available at: <https://partecipa.gov.it/processes/piano-nazionale-digitalizzazione-patrimonio-culturale>.

⁴⁵⁷ See: <https://www.italiadomani.gov.it/content/sogei-ng/it/it/home.html>

⁴⁵⁸ The issue has been addressed more broadly, noting the complex intersection of copyright and cultural heritage with reference to the EU framework, by the recently published ReCreating Europe Work Package 5’s policy recommendations: Giulia Dore, Roberto Caso, Paolo Guarda, Marta Arisi, ‘D5.7 Final Policy Recommendations for EU Lawmakers’ (2023) <https://doi.org/10.5281/zenodo.7544364>



Key points - Trento and Italian copyright and cultural heritage laws

- Trento is shaped by features of both the natural and built environments
- Placemaking projects in Trento embrace the regeneration of buildings and neighbourhoods as well as digital experiences
- Italian copyright law enables the digitisation and use of cultural heritage to a certain extent
- Italy has transposed Articles 6 and 14 of the CDSM Directive
- Relevant provisions of the Cultural Heritage Code need to be understood alongside copyright to appreciate what flexibility is available for the interaction with cultural heritage
- The “Italia Domani” (PNRR) project incorporates the objectives of the European common data space for cultural heritage and may be significant for placemaking initiatives

5. Placemaking, tourism, branding and trade marks: city focus

Intellectual property rights are a significant aspect of brand control. A recent WIPO report (discussed further in Part 5.1 below)⁴⁵⁹ on tourism and intellectual property presents a rare acknowledgement of the significance of intellectual property rights to place branding. While copyright is relevant to placemaking, especially digitisation projects that enable the circulation of culture (e.g. reproduction and sharing of artistic works, or pictures of the built environment) and will also thus be relevant to “arts branding”,⁴⁶⁰ as a strategic tool in the placemaking context, we turn in this part to trade mark law. We focus here on place branding as a type of placemaking: place attachment remains important, specifically the question of how trade mark rules intersect with placemaking strategies and indeed branding strategies that may address a city’s inhabitants.⁴⁶¹ However, more generally such placemaking efforts are directed towards attracting innovation and investment and, in particular, visitors.

It is worth highlighting at this point that this part is concerned, unlike the preceding parts of this report, primarily with trade marks with copyright considered in terms of its overlap, where relevant, with trade

⁴⁵⁹ World Intellectual Property Organization (WIPO) and World Tourism Organization (UNWTO), ‘Boosting Tourism Development through Intellectual Property’ (WIPO, 2021) <https://www.wipo.int/publications/en/details.jsp?id=4543&plang=EN>

⁴⁶⁰ Daragh O’Reilly and Finola Kerrigan, ‘Arts branding’ in Francesca Dall’Olmo Riley, Jaywant Singh, and Charles Blankson (eds.) *The Routledge Companion to Brand Management* (Routledge, 2016), p.455

⁴⁶¹ For a discussion of place branding and related concepts see above section 1.3.2.



marks law especially in terms of the uses of cultural heritage and related symbols as trade marks.⁴⁶² Within trade mark law we introduce collective marks alongside individual marks. Also, given the obvious significance of place to the regime of geographical indications protection in the EU (and UK) we also refer to geographical indications where relevant. This part is intended to provide an overview of the legal framework. A more detailed legal examination, including an assessment of relevant case law may be found elsewhere.⁴⁶³

In Part 5.1 we provide an account of culture and creativity, especially cultural heritage, and how it interacts with tourism. Then in Part 5.2 we follow on from that to discuss city branding in more detail especially in respect of branding strategies oriented towards innovation and investment. Part 5.3 provides an overview of relevant EU and national trade marks rules which are largely harmonised. The subsequent three parts focus on three cities: Glasgow (Part 5.4), Tallinn (Part 5.5), and Trento (Part 5.6). Each of these parts offers in turn an overview of the city's approach to investment and tourism, an account of certain relevant trade mark rules in the relevant jurisdiction, and finally a set of examples of place-related trade marks. The final part brings together the main themes - tourism, innovation and investment in the context of the circulation of culture and trade marks for city branding - to assess the potential impact of overlaps between trade marks and copyright (Part 5.7).

5.1 Placemaking, cultural heritage and tourism

Engagement with art, architecture and indeed cultural heritage in general is crucial to placemaking (see also the discussion in section 1.3.3 above). As we have discussed elsewhere in this report (including in the review of projects in Part 2.5, and in the 'city focus' sections in Part 4) engagement with cultural heritage is relevant to inhabitants in generating attachment to places. When directed inwardly it can also foster positive identifications with particular places whether on-site or virtually, including through virtual reality experiences of museum spaces.⁴⁶⁴ Such efforts may simultaneously be directed outwardly especially towards potential tourists. Indeed, the distinction between placemaking for the development of community engagement and placemaking for tourism can be somewhat artificial. As the academic work on intersections between cultural heritage and tourism agglomeration shows, creativity and culture play an important role in tourism strategies but these strategies cannot be understood aside from policies relating to regeneration.⁴⁶⁵ More specifically,

⁴⁶² Note that also, unlike copyright, trade marks require registration so this part of the report will address some of the most relevant rules in this regard. Strictly speaking, trade names and the like can be used without being registered and other rules - perhaps unfair competition, or in the UK the passing off action - would offer some protection.

⁴⁶³ In the context of this ReCreating Europe project the related deliverable is D5.10, a journal article which offers a more detailed, doctrinal account of the link between trade mark law and placemaking, summary forthcoming on the consortium's zenodo page: <https://zenodo.org/communities/recreatingeurope>

⁴⁶⁴ See on this point e.g. Mariapina Trunfio, Maria Della Lucia, Salvatore Campana and Adele Magnelli, 'Innovating the cultural heritage museum service model through virtual reality and augmented reality: the effects on the overall visitor experience and satisfaction' (2022) *Journal of Heritage Tourism* 17(1): 1-19

⁴⁶⁵ Maria Della Lucia, Mariapina Trunfio, and Frank M. Go, 'Heritage and urban regeneration: Towards creative tourism' in Nicola Bellini and Cecilia Pasquinelli (eds.) *Tourism in the City: Towards an Integrative Agenda on Urban Tourism* (Springer, 2017)



and Trento is one example here, it is culture including connecting tourism to ‘iconic buildings’ that has proved to be successful in this context.⁴⁶⁶

This means that even as this part of the report turns to address trade mark law our understanding of who the audience is for city branding campaigns in particular is an expansive one. It neither focuses narrowly on the ‘average consumer’ concept in trade mark law but also not even simply on visitors. Rather we also consider how placemaking efforts in the tourism context may also affect inhabitants. In thinking about visits to heritage sites for instance the visitors may be from different places, including from within the city where the heritage site is found, and tourism information will need to reflect that. This is perhaps especially relevant in the context of heritage sites, and heritage tourism generally, given responses by visitors as to its authenticity are likely to vary.⁴⁶⁷ This also presents a challenge for bodies tasked with branding efforts.⁴⁶⁸ Then within those branding efforts, while it is just one aspect of branding, relevant stakeholders need to consider the operation of relevant intellectual property rules, especially trade marks.

The study of intellectual property law as it intersects with the city branding (which, we recall, is one particular type of placemaking) is limited. As mentioned above, in the international context the significance of these issues has been acknowledged especially by WIPO and the World Tourism Organization in their joint report ‘Boosting Tourism Development through Intellectual Property’.⁴⁶⁹ The 2021 report includes a number of case studies indicating how intellectual property rights may be used by stakeholders within the “tourism value chain” including through merchandising.⁴⁷⁰ Similarly, the report mentions GLAMs, in the context of the importance of cultural heritage to tourism, using intellectual property to “leverage their assets”.⁴⁷¹ At the EU level we see a similar concern with developing tourism strategies including in the context of digitisation. This

⁴⁶⁶ Maria Della Lucia, Mariapina Trunfio, and Frank M. Go, ‘Heritage and urban regeneration: Towards creative tourism’ in Nicola Bellini and Cecilia Pasquinelli (eds.) *Tourism in the City: Towards an Integrative Agenda on Urban Tourism* (Springer, 2017) p. 188

⁴⁶⁷ For an account of different types of perceptions of authenticity, using two heritage site examples, see: Robert C. Thomsen and Stine Printzlau Vester ‘Towards a Semiotics-Based Typology of Authenticities in Heritage Tourism: Authenticities at Nottingham Castle, UK, and Nuuk Colonial Harbour, Greenland’ (2016) *Scandinavian Journal of Hospitality and Tourism* 16(3): 254–273

⁴⁶⁸ Identifying that ‘the idea of multiple authenticities – can utilise different elements in order to promote their site as being authentic to different types of visitors’: Robert C. Thomsen and Stine Printzlau Vester ‘Towards a Semiotics-Based Typology of Authenticities in Heritage Tourism: Authenticities at Nottingham Castle, UK, and Nuuk Colonial Harbour, Greenland’ (2016) *Scandinavian Journal of Hospitality and Tourism* 16(3): 254–273, p. 266

⁴⁶⁹ World Intellectual Property Organization (WIPO) and World Tourism Organization (UNWTO), ‘Boosting Tourism Development through Intellectual Property’ (WIPO, 2021) <https://www.wipo.int/publications/en/details.jsp?id=4543&plang=EN>

⁴⁷⁰ World Intellectual Property Organization (WIPO) and World Tourism Organization (UNWTO), ‘Boosting Tourism Development through Intellectual Property’ (WIPO, 2021) <https://www.wipo.int/publications/en/details.jsp?id=4543&plang=EN> p. 48.

⁴⁷¹ World Intellectual Property Organization (WIPO) and World Tourism Organization (UNWTO), ‘Boosting Tourism Development through Intellectual Property’ (WIPO, 2021) <https://www.wipo.int/publications/en/details.jsp?id=4543&plang=EN> p. 74.



is reflected in the Tourism Business Portal which targets small and medium sized enterprises in the tourism sector.⁴⁷²

The treatment of these issues at national level is still more limited but remains significant especially for EU Member States. This is because particularities of application, and the appropriate strategies, will depend on local context. Relevant stakeholders such as tourism boards will need to - even where intellectual property rights are harmonised as is the case with EU trade mark law - address national concerns even as they ensure competitiveness in the Digital Single Market. We can see a potential indication of the future direction of branding as both on-site and digital experiences, in the case of Italy, in the creation of a national digital tourism hub.⁴⁷³ Before continuing it is thus worth considering how city branding intersects with the physical places being marketed as destinations for tourists and others.

5.1.1 Placemaking, city areas and agglomeration

Cities, as hubs for business, compete with each other in order to attract tourists and an internationally mobile creative workforce.⁴⁷⁴ Old towns are traditionally seen as a site of cultural heritage that can be used to attract tourists and investments. Lew shows how cities run placemaking and place branding campaigns often meant to attract tourists and distinguishes it from the 'organic' placemaking that emerges through individual agency, the activities made and story-telling made by its inhabitants.⁴⁷⁵ The European old towns have been often transformed into visitor centres that aim mainly to be attractive for tourists, hosting restaurants, souvenir shops, museums and other attractions.

Despite attracting most visitors in cities, historical and newer central parts of the city face a new competitor - the previous industrial areas located outskirts of the old town but close to the city centre, a typical location of creative quarters that are the post-industrial transformations of industrial heritage in a modern form suitable for creative enterprises.⁴⁷⁶ These areas need a complete transformation in terms of function, physical qualities, social activities and also their identity. Many cultural quarters and gentrifying working class areas can be thus seen as a site for place-making which "involves the introduction of new ideas, tastes, and

⁴⁷² The information provided includes that on compliance with web accessibility as well as a 'digital toolbox' are amongst the relevant issues covered though these do not consider intellectual property rights: European Commission, 'Tourism Business Portal' https://single-market-economy.ec.europa.eu/sectors/tourism/business-portal_en See also: the report: Dianne Dredge, Giang Thi Linh Phi, R. Mahadevan, Eóin Meehan, Elena Popescu' Digitalisation in Tourism: In-depth analysis of challenges and opportunities.' (2018) Low Value procedure GRO-SME-17-C-091-A for Executive Agency for Small and Medium-sized Enterprises (EASME) Virtual Tourism Observatory. Aalborg University, Copenhagen.

⁴⁷³ 'Digital Tourism Hub' <https://www.italiadomani.gov.it/en/Interventi/investimenti/hub-del-turismo-digitale.html>

⁴⁷⁴ Richard Florida, Andrés Rodríguez-Pose and Michael Storper, 'Cities in a post-COVID world' (2021) Urban Studies <https://doi.org/10.1177/00420980211018072>

⁴⁷⁵ Alan A. Lew, 'Tourism planning and place making: place-making or placemaking?' (2017) Tourism Geographies 19(3): 448-466

⁴⁷⁶ See Ingmar Pastak, Ragne Kõuts-Klemm, Helen Eenmaa, & Eneli Kindsiko, 'D4.9: Entrepreneurship Patterns Of Creative Industries In Gentrifying Urban Neighbourhoods' (2023) <https://doi.org/10.5281/zenodo.7550691>



ideologies (i.e., *imaginations, narratives, and discourses*)” which, as a result of this process, changes the area to one which is more ‘attractive’ and encourages visitors and tourists.⁴⁷⁷

Pastak and Kährik show that the post-industrial creative areas are often made by using a common narrative - an eco-narrative.⁴⁷⁸ This narrative relates to an eco-friendly lifestyle and environmentally friendly ways of thinking, uses the industrial heritage in place-branding, can be visually identified by its “unsanitised finishings”, re-use and re-making (using secondhand materials and second-use furniture), and the somewhat ‘seedy’ industrial style. The narrative is used by different ‘agents’, such as artists, property developers, restaurant owners when it comes to building and redesigning their studios, offices, restaurants and apartments.

Geographic studies have pointed out that creative and cultural industries tend to be located in cultural and creative quarters often being established in industrial parts of the cities where the industries have moved out and left industrial housing easily to be converted into creative workspace, innovation incubators and exhibition space.⁴⁷⁹ Placemaking becomes an important aspect of creative quarters. Brownfield areas need monetary but also social and symbolic investments in order the functional change will work, starting from the collaborations, networks, social events and leisure activities. In order to do that, these areas “combine hard and soft infrastructure with historical and cultural amenities and qualities”.⁴⁸⁰ In turn, the promotion and circulation of cultural heritage is highly relevant to placemaking.

Such efforts may extend from building also to the planning or enhancement of cultural quarters where, usually, creative industries and GLAM institutions are likely to be clustered. The relevance of the creation of cultural quarters to placemaking in contemporary cities is subsequently reflected in city branding strategies adopted specifically to promote those quarters especially in respect of tourism and investment.⁴⁸¹ Moreover, such cultural quarters and their associated branding strategies will tend to relate to industrial, or rather post-industrial spaces.⁴⁸² Examples of this may be large in scale, such as building of museums designed by ‘star’

⁴⁷⁷ Ingmar Pastak, ‘Gentrification as Discourse and Practice When Building Territorial Identities and Place Attachment’ in Oana-Ramona Ilovan and Iwona Markuszewska (eds.) *Preserving and Constructing Place Attachment in Europe* (Springer, 2022) pp. 85-98

⁴⁷⁸ Ingmar Pastak and Anneli Kährik, ‘Symbolic displacement revisited: Place-making narratives in gentrifying neighbourhoods of Tallinn’ (2021) *International journal of urban and regional research* 45(5): 814-834

⁴⁷⁹ Graeme Evans, ‘Rethinking Place Branding and Place Making Through Creative and Cultural Quarters’ in Mihalis Kavaratzis, Gary Warnaby and Gregory J Ashworth (eds.) *Rethinking Place Branding: Comprehensive Brand Development for Cities and Regions* (Springer, 2015)

⁴⁸⁰ Graeme Evans, ‘Rethinking Place Branding and Place Making Through Creative and Cultural Quarters’ in Mihalis Kavaratzis, Gary Warnaby and Gregory J Ashworth (eds.) *Rethinking Place Branding: Comprehensive Brand Development for Cities and Regions* (Springer, 2015) p. 137

⁴⁸¹ See for example in the UK: John McCarthy, ‘Cultural quarters and regeneration: the case of Wolverhampton’ (2005) *Planning Practice & Research* 20(3): 297-311. In a similar vein, for an example of a study relating to creative clusters and branding in an area of Athens see: Nicholas Karachalis and Alex Deffner ‘Rethinking the connection between creative clusters and city branding: the cultural axis of Piraeus street in Athens’ (2012) *Quaestiones Geographicae* 31(4): 87-97

⁴⁸² On which see Graeme Evans, *Rethinking Place Branding and Place Making Through Creative and Cultural Quarters* (Springer, 2015)



architects⁴⁸³ commissioned in an effort to ‘regenerate’ post-industrial cities. The Zaha Hadid designed Riverside Museum in Glasgow, which opened in 2011, is an example of a museum built on a former shipbuilding site which intentionally echoes the past use of the area.⁴⁸⁴

Other examples may also be found in Italy where urban regeneration is an increasingly popular and topical issue.⁴⁸⁵ It is also a matter of concern politically. The recently adopted urban regeneration measures aimed at making cities sustainable and inclusive, as planned under the Italian Recovery and Resilience Plan (discussed in section 4.4.3), are indicative of an ongoing concern with *place*. What this also suggests in the context of this report is that national initiatives need to be understood as one part of the Next Generation EU package that the EU Member States negotiated in response to the COVID-19 pandemic.⁴⁸⁶ ‘Digitisation and innovation’ and ‘social inclusion’ are two axes of the strategic plan and it is in this context that we can understand how city branding, and placemaking more generally, operate in the EU.⁴⁸⁷

5.2 City branding for innovation and investment

This part engages with some of the relevant literature on city branding.⁴⁸⁸ Before continuing the discussion of city branding as an aspect of placemaking it is relevant to note here the broader significance of visual communication in the context of placemaking generally, including the role of graphic design as an aspect of the built environment.⁴⁸⁹ Visual design can be understood as an aspect of placemaking both in respect of

⁴⁸³ An example would be the Guggenheim Museum in Bilbao which has been studied and debated within academic literature. See: Beatriz Plaza, ‘The Guggenheim-Bilbao Museum Effect: A Reply to María V. Gomez’ (1999) ‘Reflective Images: The Case of Urban Regeneration in Glasgow and Bilbao’ *International Journal of Urban and Regional Research*, 23(3): 589-592; and, María V. Gómez and Sara Gonzáles, ‘A reply to Beatriz Plaza’s ‘The Guggenheim-Bilbao Museum effect’ (2001) *International Journal of Urban and Regional Research* 25(4): 898-900

⁴⁸⁴ It is described by the architect as “continu[ing] Glasgow’s rich engineering traditions”: Glasgow Life, ‘Riverside Museum’ <https://www.glasgowlife.org.uk/museums/venues/riverside-museum>. But see further discussion of the museum in section 4.2.2 above.

⁴⁸⁵ See e.g. Bologna for examples of the patterns of urban regeneration and sustainable development: ROCK (Regeneration and Optimisation of Cultural Heritage in Creative and Knowledge Cities), ‘3 Replicator Cities’ (<https://rockproject.eu/replicators#bologna>) which is also described in Annex A. For further interesting case studies, see also Anna Trono, Maria Chiara Zerbi and Valentina Castronuovo, ‘Urban Regeneration and Local Governance in Italy: Three Emblematic Cases’ in Carlos Nunes Silva and Ján Buček (eds.) *Local Government and Urban Governance in Europe*, 2017, Cham, 2017, 171-192; Ina Macaione, Antonio Ippolito, Anello Enrico, Roberto La Gioia, ‘A process of urban regeneration from below: The case of Taranto (Italy)’, in Anna Catalani, Zeinab Nour, Antonella Versaci, Dean Hawkes, Hocine Bougdah, Adolf Sotoca, Mahmoud Ghoneem, Ferdinando Trapani (eds.) *Cities’ Identity Through Architecture and Arts* (Proceedings of the International Conference on Cities’ Identity through Architecture and Arts (CITAA 2017), May 11-13, 2017, Cairo, Egypt) London, 2018, pp. 359-366

⁴⁸⁶ For more discussion on the NRRP see: Sabrina Sgambati, ‘The interventions of the Italian Recovery and Resilience Plan: Urban regeneration of the Italian cities’ (2022) *TeMA - Journal of Land Use, Mobility and Environment* 15(1): 167-173. The webpage for Next Generation EU is: https://next-generation-eu.europa.eu/index_en

⁴⁸⁷ See: Ministero dell’Economia e delle Finanze, ‘The National Recovery and Resilience Plan’ (2021) <https://www.mef.gov.it/en/focus/The-National-Recovery-and-Resilience-Plan-NRRP/>

⁴⁸⁸ This literature is extensive and crosses disciplinary boundaries. Just one example from the literature on place branding, cultural heritage tourism and community is: Frank M. Go, Arja Lemmetyinen, and Ulla Hakala (eds.), *Harnessing Place Branding through Cultural Entrepreneurship* (Palgrave Macmillan, 2015)

⁴⁸⁹ Katrina Sandbach, ‘Graphic Design and the Aesthetics of Place’ (2011) *Iridescent* 1(1): 148-159, p. 151



economic growth (that is “market share”) as well as “delineat[ing] communities or places”.⁴⁹⁰ This part of the report is concerned primarily with the former insofar as it concerns investment, tourism and the like and therefore tends to, more than the latter, be concerned with trade marks rather than copyright. However, it is necessary to understand the way in which city branding as an aspect of placemaking creates opportunities and risks in the management of intellectual property rights, especially in the overlap of trade marks and copyright at national and EU levels (discussed below in Parts 5.3 to 5.7).

5.2.1 Purposes of place branding

Following the brief definition of a brand above (in section 1.3.2) it is worth revisiting here since the very definition of a ‘brand’ is contested and unsettled. This seems to have produced what has been described as the dematerialised type of brand.⁴⁹¹ This tracks with the growing significance of trade marks which are seen, historically, as moving from “being a category of communication to objects of property”.⁴⁹² And although there is no widely accepted definition of place branding, it encompasses a range of activities to “reinforce and represent place assets in a cohesive manner”.⁴⁹³

Some argue that cities with a negative image (“perhaps even a pariah status”) are more eager to embrace such place branding strategies.⁴⁹⁴ Some authors define it from a geographic perspective while others use a marketing perspective. Market-driven forms of place branding are seen as “quick fix solutions” that ignore local narratives.⁴⁹⁵ Others focus on the connection between place branding and “smart growth”, which is a result of:

“interest in sustainable growth and environmental impacts, secondly an interest in transportation and green networks that enable this, thirdly an interest in variations in density to accommodate this, and finally an interest in multifunctional land use”.⁴⁹⁶

What is useful to note in this regard, as is perhaps already apparent from the discussion above in Part 4, is that place branding may entail on-site (physical) interventions apart from marketing campaigns and the like.

Community participation in city branding must also be considered. While place branding aims to create a positive image that would benefit residents, it also has the risk of “ignoring the differences in geographical

⁴⁹⁰ Katrina Sandbach, ‘Graphic Design and the Aesthetics of Place’ (2011) *Iridescent* 1(1): 148-159, p. 152

⁴⁹¹ Paul Manning, ‘The semiotics of brand’ (2010) *Annual Review of Anthropology* 39: 33-49, pp. 35-36

⁴⁹² Paul Manning, ‘The semiotics of brand’ (2010) *Annual Review of Anthropology* 39: 33-4, p. 36

⁴⁹³ Sara Grenni, L.G. Horlings and K. Soini ‘Linking spatial planning and place branding strategies through cultural narratives in places’ (2020) *European Planning Studies* 28(7): 1355–1374, p. 1355

⁴⁹⁴ John McCarthy, ‘Promoting image and identity in “Cultural Quarters”: The case of Dundee’ (2005) *Local Economy* 20(3): 280-293, p. 281. The author also quotes W. J. V. Neill, D. Fitzsimons & B. Murtagh (eds.) *Reimagining the Pariah City: Urban Development in Belfast and Detroit*, pp. 1–49 (Aldershot, 1995); Kristof Van Assche, Raoul Beunen and Ming Chien Lo, ‘Place as layered and segmentary commodity: place branding, smart growth and the creation of product and value (2016) *International Planning Studies* 21(2), 164-175, p. 167 (referring to the emergence of the concept and the *Journal of Place Branding*)

⁴⁹⁵ Sara Grenni, L.G. Horlings and K. Soini ‘Linking spatial planning and place branding strategies through cultural narratives in places’ (2020) *European Planning Studies* 28(7): 1355–1374, 1357

⁴⁹⁶ Kristof Van Assche, Raoul Beunen and Ming Chien Lo, ‘Place as layered and segmentary commodity: place branding, smart growth and the creation of product and value (2016) *International Planning Studies* 21(2), 164-17, p. 165



and socio-political context”.⁴⁹⁷ McCarthy explains that such culture-led approaches to urban regeneration leads to economic benefits (employment creation) and contributes to place marketing through reimagining the place, in addition to “a general increase in the quality of life”.⁴⁹⁸ But McCarthy questions whether they “promote homogeneity” and whether such practices might also prevent the development of other artistic endeavours.⁴⁹⁹

This is a particular issue where placemaking activities accompany gentrification of neighbourhoods. A study of Tallinn – specifically the role of entrepreneurs in gentrifying neighbourhoods – found that this may result in more opportunities for entrepreneurs because, at least initially, start-up costs will be lower in formerly industrial neighbourhoods in contrast with the strictly regulated historic town centre.⁵⁰⁰ More generally it is worth noting that notwithstanding some orientation towards inhabitants that place branding is targeted in many cases to an ‘outward audience’ (i.e. potential tourists or investors). The uses of cultural heritage and the creation and promotion of cultural quarters for example need to be understood in this context.

Notwithstanding the various difficulties of city branding there are certain elements of the city brand that are particularly relevant to the present report. These are certain words - especially the city name - pictorial representations, slogans and other aspects of branding communication which may also be the subject matter of intellectual property protection. Recent research on the popularity of ‘letter-based logos’ suggests that city branding as a whole obscures the actual nature of the city in favour of globally recognisable symbols.⁵⁰¹ Interestingly, the choice of city slogans may also reduce the individual identities of cities in order to court global success.⁵⁰² Considered more broadly in the context of city branding through local authority websites an outward looking ‘glocal’ approach can have unfortunate consequences for social cohesion by failing to engage fully with migrant communities.⁵⁰³ This would seem to suggest that, insofar as trade mark law in particular may grant property rights in certain elements of the city brand it may, unless care is taken, serve to entrench inequalities.

⁴⁹⁷ Sara Grenni, L.G. Horlings and K. Soini ‘Linking spatial planning and place branding strategies through cultural narratives in places’ (2020) *European Planning Studies* 28(7): 1355–1374, p. 1357

⁴⁹⁸ John McCarthy, ‘Promoting image and identity in “Cultural Quarters”’: The case of Dundee’ (2005) *Local Economy* 20(3): 280–293, pp. 280–281

⁴⁹⁹ Using the example of Dundee, Scotland: John McCarthy, ‘Promoting image and identity in “Cultural Quarters”’: The case of Dundee’ (2005) *Local Economy* 20(3): 280–293, pp. 280, 288. For a further and expansive study of place branding in the European context see e.g. Gregory Ashworth and Mihalis Kavaratzis (eds.) *Towards Effective Place Brand Management: Branding European Cities and Regions* (Edward Elgar, 2010)

⁵⁰⁰ Ingmar Pastak, Eneli Kindsiko, Johanna Holvandus, Kadri Leetmaa, Tiit Tammaru, ‘Fieldwork entrepreneurs, Tallinn (Estonia)’ (2016) University of Tartu

⁵⁰¹ Johan Järlehed, ‘Alphabet city: orthographic differentiation and branding in late capitalist cities’ (2021) *Social Semiotics* 31(1): 14–35. For an example of the logos see p. 16.

⁵⁰² See: Chi-Man Song and Hyeong-Yeon Jeon, ‘A semiotic study of regional branding reflected in the slogans of Korean regions’ (2018) *Social Semiotics* 28(2): 230–256. In the UK context we will return to the city slogan PEOPLE MAKE GLASGOW in Part 5.4 below.

⁵⁰³ The study in question includes Glasgow: Maria Cristina Paganoni, ‘City branding and social inclusion in the glocal city’ (2012) *Mobilities* 7(1): 13–31, pp. 26–27



Key points - placemaking and city branding

- Place branding is an aspect of placemaking the purpose of which is to generate tourism and investment
- A city brand may not reflect its inhabitants equally
- Branding strategies will make use of cultural heritage and other cultural aspects to promote the city
- Certain symbols and slogans that form part of the city brand may also be protected as trade marks

5.3 EU trade marks for placemaking

The potential coverage in this section is vast and the aim here is to indicate some of the key aspects of trade mark law at EU level that are of immediate relevance to placemaking efforts, specifically city and other place branding. Thus the selection of rules we highlight here and elsewhere in Part 5 are likely to be of interest in particular to stakeholders within the EU who engage, or seek to engage, in similar placemaking projects for tourism etc.

This part thus provides an overview of some of the key provisions of the EU trade mark rules in the Trade Marks Directive (TMD) and the Trade Mark Regulations (EUTMR) in section 5.3.2 and related collective forms of protection in section 5.3.3 with some reference to the separate geographical indications regime. The subsequent 'city focus' parts address national trade mark rules. As previously indicated, this area of intellectual property law is highly harmonised. This is the case also with the UK even after withdrawal from the EU (until and when divergence occurs). First, however, we consider some examples of city-related trade marks in section 5.3.1.

5.3.1 Trade mark search examples

In broad terms, it is helpful that in the context of city branding efforts a relevant public or private body may apply for EU trade marks at the EU Intellectual Property Office (EUIPO). This allows an EU wide place marketing strategy to be instituted.⁵⁰⁴ Indeed, a search of the EUIPO trade marks register reveals a number of trade marks using the names of cities.⁵⁰⁵ The circulation of cultural heritage (e.g. using pictorial representations of aspects of the city's built environment in a trade mark) via trade mark registration is a way to promote cities and foster city identities, while also creating potential links between city, region and

⁵⁰⁴ To search the EUIPO register, including using the trade mark numbers provided in this part of the report to view the trade marks discussed and read the list of goods and/or services with which they are associated, visit: <https://euipo.europa.eu/eSearch/>. The EUIPO also provides an overview trade mark law: EUIPO, 'Trade marks in the European Union' <https://euipo.europa.eu/ohimportal/en/web/guest/trade-marks-in-the-european-union> and 'Trade mark basics' <https://euipo.europa.eu/ohimportal/en/web/guest/trade-marks-basics>

⁵⁰⁵ The searches are current as of January 2023.



EU identities more broadly. At the very least what we see are the ways in which elements of places are transformed into trade marks to further commercial ends.

For example, a search for “**Glasgow**” reveals 32 trade mark applications in numerous classes of goods and/or services but especially relating to whisky.⁵⁰⁶ Of those currently valid 16 are figurative (e.g. a logo of some kind). Two of the figurative marks includes both the name of the city as well as representations of notable art and architecture: the Gilbert Scott tower of the University of Glasgow⁵⁰⁷ and the Duke of Wellington sculpture with a traffic cone.⁵⁰⁸ Others are, for example, sports team logos.⁵⁰⁹ Interestingly, the tourism related marks mentioned below (in section 5.4.3) are registered as UK trade marks and appear not to be registered as EU marks as well. The current Glasgow campaign does not have an associated EU trade mark although an old tourism campaign - “Glasgow: Scotland with style” - was registered at the relevant time.⁵¹⁰

A search for “**Tallinn**” offers 26 results. Of these 17 are currently registered trade marks of which 15 are figurative. Numerous classes of goods and/or services are included such as for Estonian liqueur⁵¹¹ or relate to visiting Tallinn including hotel services,⁵¹² or relate to particular events.⁵¹³ As with the Glasgow trade marks, the word “Tallinn” is used in conjunction with other words or is included amongst various figurative elements in a logo. Out of the registered trade marks those related to alcoholic beverages display the medieval Tallinn city scape as part of the bottle labels but there is no other obvious use of elements of cultural heritage alongside the name of the city. Tourism campaign specific trade marks are not in evidence here (which is not to say that they are not included elsewhere on the register at the EUIPO and in Estonia, see section 5.5.3 below). One further example is worth highlighting: the logo of the Port of Tallinn.⁵¹⁴ The yellow, blue, red and black crest with the words “Port of Tallinn” is a useful reminder of the relevance of trade mark registration for important city infrastructure where the relevant authority is seeking to attract users to that port as opposed to, presumably, competing ports. This is also an example of an association rather than an individual entity seeking trade mark registration.

A search for “**Trento**” shows 31 results of which 21 are currently registered. In addition to what will be discussed in the specific section dedicated to portraying a sample of trade marks related to Trento and its territory (see section 5.6.3), it should be anticipated that the stronger branding in many cases is regional. Acknowledging the typical emphasis on regional branding that features Trentino-Alto Adige/Südtirol, which often prevails over the city branding, a search for “Trentino” shows 47 results, of which 34 are currently registered and include quality marks, which are further discussed in respect to Trento below. Some of them include, mostly sketched, images of the mountains or other natural elements. A search for “Alto Adige”

⁵⁰⁶ Twenty of these are currently registered. The remainder of the applications have been withdrawn, expired etc.

⁵⁰⁷ Trade mark number 001002419.

⁵⁰⁸ 016489221. This is something of an iconic intervention - the traffic cone on the head of the Duke of Wellington in Glasgow; Queen street - representations of which also find their way into cards and other merchandise.

⁵⁰⁹ e.g. Glasgow Warriors rugby club: 018581739.

⁵¹⁰ The figurative trade mark is now expired: 003658788.

⁵¹¹ e.g. trade mark number 003431186

⁵¹² e.g. trade mark number 013156906

⁵¹³ e.g. fashion week in Tallinn: trade mark number 012129433.

⁵¹⁴ Trade mark number 009156217.



reveals 38 results, several of which appear to reference in the figurative marks the mountains. It should be finally noted that a search on the national database for the word “Trento” brings a higher number of results.⁵¹⁵

The above overview of marks present on the register is only one account of the range of available marks. Others may reproduce elements of the city environment (e.g. buildings or natural features of the landscape), its cultural heritage or other aspects in different textual or figurative forms that do not include the name of the city. So, just to give one example, a clothing manufacturer in Glasgow uses the name of a neighbourhood of Glasgow - Finnieston, described above in section 4.2.2- in its trade mark logo.⁵¹⁶

5.3.2 Trade mark registration

This section introduces some of the key trade mark provisions that are relevant to the registration of city and other place-specific trade marks for destination branding. We offer an overview of some of the rules including the prohibition on registration of descriptive marks. These rules are extensive and so we focus on a selection from the absolute grounds for refusal of registration since these are relevant at the very start of an attempt to register a certain sign as a trade mark.⁵¹⁷

EU trade marks - sources

Trade Marks Directive

Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (recast)

<https://eur-lex.europa.eu/eli/dir/2015/2436/oj>

Trade Mark Regulations

Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (codification)

<https://eur-lex.europa.eu/eli/reg/2017/1001/oj>

It is worth noting at the outset that a trade mark must be registered for identified **goods and/or services**: a trade mark must be able to function as a badge of origin for these goods and/or services. Thus the first,

⁵¹⁵ This is discussed again in section 5.6.3.

⁵¹⁶ Trade mark number 018190887. Part 5.6 on Trento also discusses this particular issue.

⁵¹⁷ These are grounds on which anyone may oppose the registration of a given sign as a trade mark. See: Art. 4 Trade Marks Directive and Art. 7 EU Trade Mark Regulation. In contrast, opposition on the relative grounds for refusal relates to early rights, for example the same or similar trade mark having been registered in the similar or same class of goods, or whether unfair advantage is taken on a well-known mark. See: Art. 5 Trade Marks Directive and Art. 8 EU Trade Mark Regulation. For an overview of the types of trade marks that may be registered see e.g. EUIPO, ‘What can be an EU trade mark?’ <https://euipo.europa.eu/ohimportal/en/web/guest/what-can-be-an-eu-trade-mark>.



preliminary, point is that any entity, such as a tourism board, must identify the goods and/or services to which the proposed trade mark relates. In the context of tourism for example Class 39 for services, including, travel arrangements, would appear to be especially relevant.⁵¹⁸ Given the earlier focus in this report on GLAMs, it is also worth highlighting Class 41 for education and cultural activities amongst other things. The broader point is that trade marks may be a relevant part of a branding strategy also for individual cultural sites such as specific museums. One museum mentioned elsewhere in this report - MART in Rovereto - had successfully registered its multicoloured logo as an EU trade mark in multiple classes including Class 41.⁵¹⁹

Second, the sign itself must be **capable of registration**. This sign in question “may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours...”.⁵²⁰ It must also be capable of distinguishing goods or services and representable on the trade mark register.⁵²¹ This indicates that a place name such as the name of a city, assuming there are no other obstacles, can be registered as a trade mark. Similarly, it indicates that pictorial or other representations of cultural heritage, the art or architecture of a city or similar, may also be a sign that could be registered as a trade mark. For example, the name of the place or a sketch of a famous building may form a logo.

Grounds for refusal that are significant to place branding include descriptiveness and the public policy / morality grounds. These are helpful to highlight because whether certain trade marks contain elements of cultural heritage or incorporate words, pictorial or other elements raises questions about whether it is socially useful to allow that kind of registration. The most obvious obstacle for a tourism body, non-government organisation or any other stakeholder seeking to register a sign to advertise sites, events, or services in a city using the name of the city is that registration may be refused if the sign is deemed to be descriptive. Article 4(1)(c) Trade Marks Directive and Article 7(1)(c) EUTMR provide that trade mark registration will be refused for signs that “consist exclusively” of “signs or indication which may serve, in trade, to designate” a number of qualities including the **geographical origin** of the relevant goods and/or services. Of course the place name may be combined with other words for example so this is certainly not an absolute prohibition on the use of place name at all. Crucially, there is a public interest element in play here. The Court of Justice has indicated that the registration of place names needs to ensure that place names remain available for other traders to use.⁵²²

Considering the subject matter of trade marks apart from place names, other place-related words and perhaps especially certain symbols may be relevant. Alongside the above grounds we see the special protection afforded to certain signs of “high symbolic value” in Article 4(3)(b) of the Trade Marks Directive

⁵¹⁸ For the description of each see WIPO’s Nice Classification database: <https://www.wipo.int/classifications/nice/en/>.

⁵¹⁹ Trade mark number 003395126. The registration has since expired. It is also worth noting that apart from Class 41 the trade mark was registered also in Classes 14, 16, 21, 24, 25, 28. The sign nevertheless remains in use by the museum.

⁵²⁰ Art. 3 TMD

⁵²¹ Art. 3(a) and 3(b) TMD

⁵²² Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Attenberger* [1999] ECR I-2779 ECLI:EU:C:1999:230. For a more detailed discussion of this point in the context of city branding see: ‘D5.10: Place Branding and Intellectual Property Law’ a summary of which is forthcoming on the consortium’s zenodo page: <https://zenodo.org/communities/recreatingeurope>



or those that are a protected **emblem**, in Article 4(3)(c).⁵²³ Emblems may include official emblems relating to a city or government. The question of symbolic value, while the TMD refers specifically to religious symbols, is likely to encompass other culturally significant signs.⁵²⁴ This may well include, we could argue, significant works of art, architecture or other cultural heritage. The approach here is likely to vary by Member State.

Finally, the examiner of a trade mark at the EUIPO, or indeed anyone minded to oppose a registration application, may invoke **public policy or morality**.⁵²⁵ This ground is found in Article 4(1)(f) TMD and Article 7(1)(f) EUTMR. In short, signs will not be registered where to do would not be in line with public policy or “accepted principles of morality”. Although it is difficult to speculate which aspects of cultural heritage might be refused registration as trade marks, the discussion below in Part 5.7 suggests that the inclusion of public domain artwork in a trade mark could lead to the registration being refused on public policy grounds.⁵²⁶

What we can see from the above rules on trade mark registration is that it is not necessarily straightforward to convert elements of a city brand into a sign that will be registrable as a trade mark. Place signs pose particular challenges especially because of the descriptiveness ground for refusal. To give one, further example: an application by the government of Andorra to register a figurative sign including the word “Andorra” was refused registration in 2017.⁵²⁷ Nevertheless, it is also relevant to note that even descriptive marks may acquire distinctiveness so a certain sign could be registered after a period of time.⁵²⁸

5.3.3 Collective trade marks and geographical indications

Although Part 5 of this report is concerned largely with trade marks, as we indicated above it is helpful to put this discussion in the context of other, related, forms of protection for place brands. The registration of individual marks is not the only way of protecting aspects of a place brand. Certain signs may be registered as collective or certification marks. Separately, from trade mark law, geographical indications are potentially significant in protecting food and other agricultural products originating in a certain place.

⁵²³ It reads in part: “Any Member State may provide that a trade mark is not to be registered or, if registered, is liable to be declared invalid where and to the extent that: (a) the use of that trade mark may be prohibited pursuant to provisions of law other than trade mark law of the Member State concerned or of the Union; (b) the trade mark includes a sign of high symbolic value, in particular a religious symbol...”

⁵²⁴ In making this argument Senftleben refers to “a country’s history and cultural traditions”: Martin Senftleben, ‘Free signs and free use: How to offer space for freedom of expression within the trademaking system’ in Christophe Geiger (ed.) *Research Handbook on Human Rights and Intellectual Property* (Edward Elgar, 2015) p. 357

⁵²⁵ But note the operation of the public policy or morality prohibition has been criticised for its lack of clarity. See: Alvaro Fernandez-Mora, ‘Inconsistencies in European trade mark law: the public policy and morality exclusions’ (2020) *Intellectual Property Quarterly* 4: 271-298

⁵²⁶ See especially the discussion of the Vigeland case [CITE]. EFTA Court, 6 April 2017, Case E-5/16, Municipality of Oslo

⁵²⁷ A decision of the General Court: T-806/19 *Govern d’Andorra v EUIPO*, 8 April 2022

⁵²⁸ [LEG Cite] Art. (4)(4) Trade Mark Directive



First, **collective and certification marks** are both protected at EU level and allow groups of producers to use a certain mark assuming certain rules set down by the association registering the mark are followed.⁵²⁹ Second, the EU Quality Schemes Regulations provide three types of protections for **geographical indications**.⁵³⁰ There are a number of types including: Protected Designation of Origin (PDO),⁵³¹ Protected Geographical Indication (PGI)⁵³² and certain geographical indications relating to ‘aromatised wines’⁵³³ and ‘spirit drinks’.⁵³⁴

The main difference between PDO and PGI lies in the, more or less intense, connection that the product has with the territory of origin; PDO products are those that have a stronger connection with the territory since the entire production chain must take place within the geographical area. The PGI sign is also designed to indicate the connection between the product and the geographical area but, for this category of signs, the link is less intense because it is sufficient that only one step of the production, transformation and preparation process takes place within the region, although, this step is what gives the final product certain qualities that can be obtained only thanks to the connection with the territory. The GI sign for wines and spirits marks products originating in a specific country, region or locality. As for PGI, it is sufficient that only one of the steps of distillation or preparation take place within the geographical area so that the final product can boast a particular quality essentially attributable to the link with the region.⁵³⁵

There is an important relationship between trade marks and GIs. Note that a prior GI may be the basis for an opposition to a trade mark registration.⁵³⁶

⁵²⁹ See articles in Section 6 Trade Marks Directive. For discussion of certification marks see e.g. Axel Ringelmann and Stefan Martin, ‘Defining the EU certification mark’ (2018) *Journal of Intellectual Property Law & Practice* 13(8): 625–632. See also: Miguel Ángel Medina González, ‘Collective, guarantee and certification marks and GIs: connections and dissimilarities’ (2012) *Journal of Intellectual Property Law & Practice*, 7(4): 251–263

⁵³⁰ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs.

⁵³¹ Art. 5(1) Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs OJ L 343, 14.12.2012, p. 1–29 (Quality Schemes Regulation)

⁵³² Art. 5(2) Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs OJ L 343, 14.12.2012, p. 1–29

⁵³³ Art. 2 Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 OJ L 84, 20.3.2014, p. 14–34

⁵³⁴ Art. 3(4) Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 PE/75/2018/REV/1 OJ L 130, 17.5.2019, p. 1–54

⁵³⁵ For more information about EU geographical indications generally see e.g. (in Italian): ‘Regimi di qualità: come funzionano’ https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_it

⁵³⁶ Art 5(3)(C) TMD. See also recital 38 of the Trade Mark Directive.



Key points - EU trade marks and other protection

- Trade marks law is a relevant consideration in placemaking for attracting tourism and investment
- EU trade mark rules on registration are intended to ensure that a sign is registered as a trade mark only where it can act as a badge of origin
- A city name may form part of a word or figurative trade mark
- Collective forms of protection that may be relevant to place branding include collective and certification marks and geographical indications

5.4 Glasgow

This part mirrors the EU discussion above in section 5.4.2 by outlining certain relevant grounds for refusing registration of certain signs. The trade marks overview, as with elsewhere in the report, is not intended to cover the entirety of relevant trade mark rules (these are the same for all attempts to register signs). Rather it aims to extend existing studies' findings on city branding as a particular aspect of placemaking by focusing on how trade mark rules may support or prevent the operation of city branding strategies. Rather it focuses on an overview of Glasgow approaches to placemaking in the context of investment and tourism in broad terms (section 5.4.1), a selection of trade mark rules that are relevant to city branding strategies (section 5.4.2). Finally, we offer an illustration of how Glasgow-related trade marks work in practice by sharing some examples from the UK Intellectual Property Office trade mark register in section 5.4.3.

5.4.1 Glasgow overview - investment and tourism

As broadly indicated above in Parts 1 and 2, and building more directly on the discussion of placemaking in Glasgow in Part 4.2, this section outlines some of the relevant city branding initiatives in Glasgow, including recent campaigns. While the focus here is on Glasgow-specific branding, this will not necessarily be the only type of branding for investment and/or tourism that is relevant: see in particular, VisitScotland as the national tourism body. Recently, the relevant country branding may be seen in the "Scotland is Now" campaign which began in 2018.⁵³⁷ The aims of the campaign are explained to include "international growth".⁵³⁸

⁵³⁷ The details can be found on the VisitScotland website here: 'Let's put Scotland on top of everyone's 'now' list' Visit Scotland <https://www.visitscotland.org/about-us/what-we-do/marketing/scotland-is-now>. The related website, Scotland is Now, includes a toolkit with images including of Glasgow architecture and other elements of the built environment including for example, the Riverside Museum: <https://assets.scotlandisnow.com/>

⁵³⁸ Visit Scotland 'Let's put Scotland on top of everyone's 'now' list' *Visit Scotland* <https://www.visitscotland.org/about-us/what-we-do/marketing/scotland-is-now>



The current Glasgow campaign - PEOPLE MAKE GLASGOW - is the most recent of a number of campaigns. What is relevant to note before briefly considering these campaigns in turn is that these different attempts to highlight a lively and friendly image need to also be understood in the context of physical transformation in the city. Some of these have already been considered above in respect of, for example, integrating Glasgow's post industrial heritage and the creation of cultural quarters.⁵³⁹ Some of these example of placemaking - including the creation of the 'iconic' Riverside Museum among them⁵⁴⁰ - have also been criticised as not really amounting to placemaking at all because they did not sufficiently involve inhabitants and other publics in creating a new city image.⁵⁴¹ Very recently we can see that type of engagement in the call for residents' views on the development of a new tourism strategy for Glasgow.⁵⁴²

In 1983, "Glasgow's Miles Better" was introduced.⁵⁴³ This was then followed, briefly, by "There's a lot Glasgowing on" and "Glasgow's Alive" in the early 1990s.⁵⁴⁴ "Glasgow: Scotland with Style" was introduced in 2004 and was successful in attracting tourism and investment for nine years, but was criticised for not covering the city's growing image in the engineering and bio-medical sectors and the decision was taken to replace it in time for the 2014 Commonwealth games.⁵⁴⁵ Following a public consultation, "People Make Glasgow" was announced as the new brand name for Glasgow in 2013, and the city council initially committed £500,000 to promote this brand both in the UK and abroad.⁵⁴⁶ Participants in the prior consultation had chosen it amongst other options through a process which saw "7,000 website hits and involved more than 400,000 Facebook and Twitter users worldwide" following the participation of "40 of Glasgow's leaders from the private, public and academic sectors".⁵⁴⁷ Although this part of our report, especially section 5.4.2 below considers very specific aspects of communicating a city brand - e.g. logos, words, phrases - this is only part of a city branding exercise as a whole. Glasgow branding needs to be understood as part of a broader plan including changes to the built environment and the holding of festivals

⁵³⁹ For further discussion see section 5.4.1.

⁵⁴⁰ For further discussion see section 5.4.2.

⁵⁴¹ Argument made in the context of redevelopment projects along the River Clyde: Georgiana Varna, 'Place-making and place-breaking on the banks of the Clyde' in Nicholas Wise and Julie Clark (eds.) *Urban Transformations: Geographies of Renewal and Creative Change* (Routledge, 2017) p. 130.

⁵⁴² Glasgow Life, 'Glasgow Life is Developing a new Tourism Strategy for the city and would like your input' (6 December 2022) Glasgow Tourism and Visitor Plan <https://glasgowtourismandvisitorplan.com/news-and-media/2022/december/glasgow-life-is-developing-a-new-tourism-strategy-for-the-city-and-would-like-your-input/>

⁵⁴³ María V. Gómez, 'Reflective images: the case of urban regeneration in Glasgow and Bilbao' (1998) *International Journal of Urban and Regional Research* 22(1): 106-121, p. 111

⁵⁴⁴ María V. Gómez, 'Reflective images: the case of urban regeneration in Glasgow and Bilbao' (1998) *International Journal of Urban and Regional Research* 22(1): 106-121, p. 111

⁵⁴⁵ <https://www.glasgowtimes.co.uk/news/13254611.plea-to-help-rebrand-glasgow/> For a critique of the branding campaign see e.g. Mhairi Lennon, 'Glasgow the Brand: Whose Story is it Anyway?' in Tara Babazon (ed.) *City Imaging: Regeneration, Renewal and Decay* (Springer, 2014)

⁵⁴⁶ "'People Make Glasgow' unveiled as new city brand' BBC (28 June 2013) <https://www.bbc.co.uk/news/uk-scotland-glasgow-west-23084390>

⁵⁴⁷ "'People Make Glasgow' unveiled as new city brand' BBC (28 June 2013) <https://www.bbc.co.uk/news/uk-scotland-glasgow-west-23084390>



and sporting events.⁵⁴⁸ Looking ahead, any further study of Glasgow city branding ought to be assessed also in light of its new accessibility and inclusivity strategy for tourism.⁵⁴⁹

As noted earlier, the current aspect of Glasgow’s city branding strategy we are focusing on is built around the PEOPLE MAKE GLASGOW brand.⁵⁵⁰ While city branding generally is associated, and obviously so, with tourism and investment, the “People Make Glasgow” strategy is arguably an example of a branding strategy seeking to include inhabitants.⁵⁵¹ This is interesting in light of the discussion in the following section on trade marks which, like any intellectual property rights and notwithstanding relevant exceptions, are grounded in exclusion while simultaneously encouraging the wide adoption of the slogan. The difference would seem to lie between use as a trade mark and the more general circulation of the phrase in official and unofficial communication.

5.4.2 UK trade marks and placemaking

The UK trade mark rules can be found in the Trade Mark Act 1994.

Trade Marks Act 1994

<https://www.legislation.gov.uk/ukpga/1994/26/contents>

This section focuses, as with the EU overview above (in section 5.3.2) on highlighting a selection of relevant trade mark rules: registrable signs, descriptiveness relating to geographical origin, emblem protection and public policy and morality.⁵⁵² Some reference is also made, mirroring the brief discussion in section 5.3.3, to collective forms of protection that may be relevant to place branding, namely collective and certification trade marks and geographical indications protection.

In seeking to register an aspect of a city brand certain basic requirements need to be met including, as previously shown, that the sign is capable of registration in the first place. It must be capable of

⁵⁴⁸ Referring to “community engagement” and regeneration in light of the Garden Festival, City of Culture status, and Commonwealth Games: Rebecca Finkel and Louise Platt, ‘Cultural festivals and the city’ (2020) *Geography Compass* 14(9):e12498, p. 4

⁵⁴⁹ On which see: Glasgow Life, ‘Accessible Glasgow’ Glasgow Tourism and Visitor Plan <https://glasgowtourismandvisitorplan.com/accessibility/>

⁵⁵⁰ See the website, which is part of Glasgow Life: ‘Visit Glasgow’ <https://peoplemakeglasgow.com/>

⁵⁵¹ For a discussion of the “People Make Glasgow” branding see e.g. Séverin Guillard and David McGillivray, ‘Eventful policies, public spaces and neoliberal citizenship: Lessons from Glasgow’ (2022) *Cities* 130: 103921, pp. 4-5. For a contemporaneous comment at the time the slogan was introduced see: Ian Jack, ‘Glasgow a friendly city? True enough, but this was not always its reputation’ *The Guardian* (9 August 2014) <https://www.theguardian.com/commentisfree/2014/aug/09/glasgow-friendly-city-true-enough>.

⁵⁵² This is only a selection of the relevant rules relating to trade mark registration which we identify here as having particular relevance to placemaking.



representation on the register and be capable of **distinguishing goods and/or services**.⁵⁵³ In the context of city branding this would mean that a city slogan or a sign designating tourism and related services could be registered.

Place names, such as names of cities, are clearly registrable signs but it is not necessarily clear that a sign that is only place name will be registered as a trade mark since it is likely to lack distinctiveness. However, in UK case law there are many examples of trade mark registrations that include place names with a number of cases preceding the current legislation. Some of these were successful and others not. An early twentieth century case concerned the registration of “Liverpool Cables” by the Liverpool Electric Cable Company.⁵⁵⁴ The question here was whether someone encountering the trade mark would think “Liverpool Cables” referred to products of the company or simply to cables made in Liverpool.⁵⁵⁵ It is only in the latter and not the former cases that the trade mark would be validly registered. The company appealed to the House of Lords against the decision of the registrar that it was not distinctive and in fact simply descriptive of the goods.⁵⁵⁶ Interestingly, the registrar had stated that “Liverpool” could not become distinctive because it is the name of a large city, but this argument was rejected by the court.⁵⁵⁷ The application to overturn the refusal to register was successful.⁵⁵⁸

In contrast, in a case concerning the place name Glastonbury in the trade mark “Glastonbury’s” (for slippers) that came before the House of Lords nearly a decade later, the mark was found to not be distinctive.⁵⁵⁹ Certainly it was not enough to simply add an apostrophe and the letter “s” at the end of the place name.⁵⁶⁰ Relating to a county rather than a city, the registration of the word mark “Yorkshire” (for copper tubes and fittings) was refused registration.⁵⁶¹ There was a lack of distinctiveness.

The important point to take from these examples is that this area of law is highly fact-specific. Whether a place-based trade mark that is being used, most likely by official tourism bodies, will depend on the inherent nature of the sign and whether it is capable of acting as a trade mark. This in turn will depend on the average consumer’s perception so the outcome of that is likely to be different for different cities. While we are concerned with public campaigns the same rules will apply in respect of private entities. As the recent

⁵⁵³ The requirements are in s. 1(1) Trade Marks Act 1994.

⁵⁵⁴ *Liverpool Electric Cable Company’s Application* (1929) 46 RPC 99. This case concerned the rules in the Trade Marks Act 1919.

⁵⁵⁵ *Liverpool Electric Cable Company’s Application* (1929) 46 RPC 99, p. 102

⁵⁵⁶ *Liverpool Electric Cable Company’s Application* (1929) 46 RPC 99, p. 102. Quoting from the refusal: “‘Liverpool’ being the ‘name of a very well known city in this country is geographical and not ‘capable of distinguishing the goods of any particular trader; that the word ‘Cables’ being the ordinary name of the goods adds little or no distinctiveness...” (p. 107).

⁵⁵⁷ *Liverpool Electric Cable Company’s Application* (1929) 46 RPC 99, p. 108.

⁵⁵⁸ *Liverpool Electric Cable Company’s Application* (1929) 46 RPC 99, p. 108.

⁵⁵⁹ *Liverpool Electric Cable Company’s Application* (1929) 46 RPC 99.

⁵⁶⁰ *Liverpool Electric Cable Company’s Application* (1929) 46 RPC 99, p. 257.

⁵⁶¹ The Court of Appeal and the House of Lords upheld the refusal to register: *Yorkshire Copper Work’s Application to Register a Trade Mark* (1953) 70 RPC 1; *Yorkshire Copper Works Ltd. v Registrar of Trade Marks* [1957] 1 WLR 554



Scottish case about the name of a village - Tomatin - indicates, courts are likely to continue addressing concerns that place names remain free to use by a variety of undertakings so long as there is no confusion.⁵⁶²

Thus, a sign must be inherently capable of distinguishing goods or services but even if it is inherently distinctive it must then not fall within one of the absolute grounds for refusal of registration found in section 3 of the Trade Marks Act. Our focus here is on subsection 1(c) of section 3 which includes “geographical origin” amongst other **descriptiveness** grounds. A sign will not be registered as a trade mark if it ‘exclusively designates’ the origin of goods. There are many cases on this point but it is worth revisiting the Tomatin case.⁵⁶³ This was a dispute relating to trade mark infringement rather than an appeal regarding registration.⁵⁶⁴ The dispute was between a whisky distillery and a developer of a retail park over the use of “Tomatin” as part of the respective trade marks. No infringement was found. The Inner House of the Court of Session in Scotland observed:

“[E]ven consumers who are less knowledgeable about single malts ... would readily distinguish between the parties’ respective goods and services. They would understand “Tomatin” to be a geographical descriptor. The addition of “Trading Company” emphasises the bright line between the sign and the marks.”⁵⁶⁵

The judgment also notes that the name of the village has been used by multiple entities including a school, a cafe and a football club amongst others.⁵⁶⁶ This neatly illustrates the importance of place names being available to use in commercial and non-commercial contexts. It is unsurprising that individuals and undertakings may wish to use the name of their home village or city. This broader public interest consideration needs to be considered when thinking about how and whether to convert certain elements of a place brand into property (i.e. a trade mark).

A more direct expression of the public interest in the absolute grounds for refusal of registration can be found in the **public policy or morality** ground: registration will be refused where it is ‘contrary to public policy or to accepted principles of morality’.⁵⁶⁷ There is comparatively little case law on this point in the UK but it is clear that a sensitive approach is required.⁵⁶⁸ In respect of the issues with which this report is concerned the public policy question is relevant especially where uses are made of cultural heritage.

As we have seen, while using place names as part of a trade mark sign seems an obvious element to register, it is not the only one that is likely to be relevant to a city branding strategy. These considerations are

⁵⁶² *Tomatin Distillery Co Ltd v Tomatin Trading Co Ltd* 2022 SLT 745. Further discussion of this case is in: ‘D5.10: Place Branding and Intellectual Property Law’ summary forthcoming on the consortium’s zenodo page: <https://zenodo.org/communities/recreatingeurope>

⁵⁶³ *Tomatin Distillery Co Ltd v Tomatin Trading Co Ltd* 2022 SLT 745

⁵⁶⁴ Note also the significance of the separate question relevant to infringement of whether the use of the disputed sign was “in accordance with honest practices”: s. 11(2)(c) Trade Marks Act 1994

⁵⁶⁵ *Tomatin Distillery Co Ltd v Tomatin Trading Co Ltd* 2022 SLT 745, [34]

⁵⁶⁶ *Tomatin Distillery Co Ltd v Tomatin Trading Co Ltd* 2022 SLT 745, [1]

⁵⁶⁷ s. 3(3)(a) Trade Marks Act 1994

⁵⁶⁸ From a case relating to the use of a word with a religious meaning: *Pooja Sweets & Savouries Ltd’s Trade Mark Application* [2015] 2 WLUK 243



significant especially in the context of signs embodying aspects of cultural heritage or any element of art, architecture or the built environment of a city. It would seem however that such pictorial representations are not going to be impeded by the descriptiveness grounds although they may (or perhaps, ought to) be refused registration of public policy grounds because common cultural heritage which generates place attachment ought to remain free to use. This point is considered again in Part 5.7 below.

The operation of these rules matters because of the broader context in which trade marks operate. As Davis shows, trade marks need to be understood in the context of the intellectual commons.⁵⁶⁹ Considering this argument in the context of placemaking the question we may ask is whether the embodiment of cultural heritage ought to form the basis of trade mark protection. Certainly in adopting public interest (and free competition) concerns about the availability of signs it would seem that if such signs are registered that they ought to be freely used by multiple traders for the same reasons given for the use of descriptive marks in the *Windsurfing* case.

A further, special form of protection is highlighted here: protected **emblems**.⁵⁷⁰ This is a potentially wide category given it covers national flags, government insignia, the Olympic symbols amongst others. It is worth mentioning as an aspect of placemaking that is relevant not directly to tourism and investment perhaps but because it is relevant to bolstering the official status of governmental bodies. Thus for example, the crest of Glasgow City Council could be protected.⁵⁷¹

Finally, in the context of place branding two types of collective protection are relevant. First, **collective marks** and certification marks.⁵⁷² These function akin to individual marks within trade mark law but the registered proprietor will be an association rather than an individual trader. Individual producers, for example, who follow the relevant rules will be able to use the mark on their products and thus take advantage of the positive associations of the place name with their product.

Second, **geographical indications** will be relevant to the food and other agricultural produce of a particular place. The geographical indications registered prior to 1 January 2021 remain registered while the UK has also introduced a UK regime for GIs.⁵⁷³ While a city may not seem to be the obvious location for geographical indications protection, in fact numerous names of UK cities are included in the EU database of GIs.⁵⁷⁴ For

⁵⁶⁹ Jennifer Davis, 'European trade mark law and the enclosure of the commons' (2002) *Intellectual Property Quarterly* 4: 342–367.

⁵⁷⁰ s. 3(5) Trade Marks Act 1994. The emblems are further defined in section 4 of the TMA.

⁵⁷¹ The City Crest: <https://www.glasgow.gov.uk/article/17325/The-City-Crest>

⁵⁷² ss. 49 and 50 Trade Marks Act 1994

⁵⁷³ For the guidance see: 'Protected geographical food and drink names: UK GI schemes' (4 January 2021) including the link to the new UK geographical indications registers: <https://www.gov.uk/guidance/protected-geographical-food-and-drink-names-uk-gi-schemes>. The position in Northern Ireland is different and producers may apply to the EU or the UK schemes.

⁵⁷⁴ See: European Commission, 'eAmbrosia: the EU geographical indications register' <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>. Pre-Brexit UK geographical indications are still listed.



example, while Glasgow is not present, other UK cities and places are, including London.⁵⁷⁵ We are not suggesting here that GIs are part of specific city branding efforts. However, given that place of origin is the very basis of protection it may, even indirectly, contribute to placemaking.⁵⁷⁶

5.4.3 Glasgow - trade mark examples

This section builds on the preceding sections on city branding in Glasgow to give a selection of examples for a UK Intellectual Property Office trade mark registry search.⁵⁷⁷ The aim here is to give examples of trade marks related to Glasgow that have been registered in the UK. The approach is two-fold. First, it accounts for types of signs related to specific names e.g. specific names and phrases, city skyline, other aspects of cultural heritage associated with Glasgow (e.g. Mackintosh style). The searches offer insights into which types of trade marks obviously related to the city (here, Glasgow) are registered, for what reason and by whom. This is relevant more generally in demonstrating the importance of accounting for intellectual property rights when discussing city branding: the trade mark may be one part of the brand as a whole but is not the same thing as a brand. Second, the search identifies trade marks by owner, focusing on bodies tasked with 'official' city branding as well as public bodies, in particular the local authority. The latter searches are particularly interesting to undertake because they identify, even if only partially, the visual identity of the bodies tasked with placemaking.

However, note that private enterprises may also adopt elements of city related heritage in their trade mark. For example, "Charles Rennie Mackintosh" has been registered by a company selling kitchens.⁵⁷⁸ Similarly NGOs, charities and the like may adopt Glasgow-specific elements in their trade marks.⁵⁷⁹ When it comes to musical, sporting events and the like numerous trade marks have been registered referring to Glasgow although these are not necessarily owned by Glasgow-based entities. Examples include:

- "Glasgow 2014" which was registered in the respect of the Commonwealth Games (the registered proprietor of the trade mark is the Commonwealth Games Federation).⁵⁸⁰
- "Glasgow 2020" in respect of the European men's football championship (owned by UEFA).⁵⁸¹

⁵⁷⁵ For London Cured Smoked Salmon as a Protected Geographical Indication, no. PGI-GB-01350. A further 84 places are listed in the database including countries, regions, villages and other places in the UK.

⁵⁷⁶ On the link between geographical indications and place see generally e.g.: Dev S. Gangjee, 'Proving Provenance? Geographical Indications Certification and its Ambiguities' (2017) *World Development* 98: 12-24

⁵⁷⁷ The UK trade mark registry can be reached through <https://www.gov.uk/search-for-trademark>

⁵⁷⁸ Trade mark numbers UK00002381196 and UK00002601517. The first mark includes not only the name but also a representation of the famous Mackintosh rose motif.

⁵⁷⁹ This does not mean, however, that charities will necessarily feel it necessary to register their names as trade marks. For example, two charities relevant to the built heritage of Glasgow (Glasgow City Heritage Trust, and Glasgow Building Preservation Trust) do not appear to hold any registered UK trade marks. The University of Glasgow, holds a number of trade marks (e.g. UK00001357777 in Classes 15 and 16) including with the crest and name (UK00002465717 in multiple classes including Class 41)

⁵⁸⁰ Trade mark number UK00002433070.

⁵⁸¹ Trade mark number UK0911649779. "Glasgow 2020" is also registered as an EU trade mark, number 011649779.



- “Piping live! GLASGOW INTERNATIONAL PIPING FESTIVAL” as part of a figurative mark for a bagpipes festival (Glasgow International Piping Festival, in Glasgow, incorporated in the UK).⁵⁸²

The further point to note is that city-related images are not unusual overall. For example, an image search for all trade marks containing ‘urban landscapes or village scenes’ among figurative trade marks in Class 41 (which includes cultural activities) return 468 results, of which 368 are live marks. Numerous marks feature the London skyline for instance.

Given the variety of signs that may be used as trade marks in this way, highlighting a selection of official bodies’ trade mark registrations is instructive. What it suggests is an awareness of the importance of city branding, with trade mark registration being a relevant part of that. We can see this in respect of the trade marks related to local authority functions. It is in fact Culture and Sport Glasgow, that owns the core trade marks relating to culture in Glasgow and which are integral to the Glasgow city brand. Amongst these is the ownership of the Glasgow Life logos. Glasgow Life is the charity that operates under the name Glasgow Life to run leisure centres, museums and the like.⁵⁸³ Two of the relevant trade marks are:

- “Glasgow Life” series of two marks in colour and black and white⁵⁸⁴
- The colourful logo associated with Glasgow Life⁵⁸⁵

There exists, separately, Culture and Sport Glasgow (Trading) CIC which is a registered community interest company that owns the PEOPLE MAKE GLASGOW trade marks.⁵⁸⁶ That is, it is the company rather than the charity that is registered in numerous classes of goods and services for delivering tourism and other goods and services.

In the context of official city branding efforts two ‘dead’ trade marks are of interest in order to demonstrate that historically trade mark registration has formed part of such efforts. The first to note is a figurative mark containing stars and the text “Glasgow’s Alive” which belonged to Scottish Enterprise Glasgow.⁵⁸⁷ Notably, the registration contained a disclaimer: “Registration of this mark shall give no right to the exclusive use of the word “Glasgow's”.” This makes sense in light of discussion above (in section 5.4.2) about the need to keep certain words free. The second to note is “Glasgow: Scotland with style” written in a type reminiscent of the Mackintosh style.⁵⁸⁸

⁵⁸²

⁵⁸³ But note that Glasgow Life “delivers cultural, sporting and learning activities on behalf of Glasgow City Council”: Glasgow Life, ‘About Us’ <https://www.glasgowlife.org.uk/about-us>

⁵⁸⁴ Trade mark number UK00002550604 in Classes 9, 16, 35, 36, 39, 41 and 45.

⁵⁸⁵ Trade mark number UK00002550197 in Classes 9, 16, 35, 36, 39, 41 and 45.

⁵⁸⁶ Trade mark number UK00003011776 for classes 9, 14, 16, 18, 25, 26, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45.

⁵⁸⁷ Trade mark number UK00001490040. It was last renewed in 1999.

⁵⁸⁸ Trade mark number UK00002355399. It was owned by the Glasgow City Marketing Bureau Limited and last renewed in 2014. It had also been registered as an EUTM as noted above in section 5.3.1. There were also other variations of the logo in even more obviously Mackintosh style. See also the logo style for the Lighthouse building, although this application was withdrawn (UK00003720221).



Note finally, that the Glasgow City Council coat of arms is not registered by the UK Intellectual Property Office but might instead be registered with the Lord Lyon.⁵⁸⁹

Key points - Glasgow and UK trade mark law

- The campaign “People Make Glasgow” is interesting in being directed both outwardly at tourism and investment as well as inwardly to inhabitants
- UK trade mark law largely reflects the EU position
- Some of the relevant grounds for refusing registration for place-related signs include, especially, descriptiveness
- Examples of Glasgow-related trade marks show the variety of place-based signs and classes of goods or services that may be registered

5.5 Tallinn

This part addresses placemaking directed at tourism, investment and related activities. It follows the outline in section 5.4.2 on the relevant EU framework by outlining certain relevant grounds for refusing registration of certain signs. This part uses the Estonian Trade Marks Act to identify certain rules as they relate to tourism and investment activities. The city branding aspect is discussed in particular in section 5.5.1 with reference also made to the concept of the ‘creative city’ because of its significance to city branding projects in Tallinn. Subsequent sections consider particular trade mark rules on registration especially in respect of descriptive signs, such as the use of the city name (section 5.5.2). The final section of this part (5.5.3) provides a sample of Tallinn-related trade marks based on searches of the Estonian trade mark register held by the Patent Office.⁵⁹⁰

5.5.1 Tallinn overview - investment and tourism

This section provides an overview of some of the main tourism bodies and campaigns in Tallinn, with some reference made to Estonia more broadly. Two points are worth making at the outset. First, that Estonia has developed a country-wide digital identity system for citizens, as well as developing an e-residency option for non-citizens. This embrace of digitalisation can be seen in the e-Estonia initiative.⁵⁹¹ This is linked to more specific initiatives such as “Invest in Estonia”⁵⁹² and “Visit Estonia”.⁵⁹³ It may also be linked more generally to

⁵⁸⁹ The register can only be inspected personally.

⁵⁹⁰ The link to the Juurdepääsetavus is: <https://www.epa.ee/en>

⁵⁹¹ This includes, for example digital identity cards for citizens, and undertaking a great number of tasks and bureaucratic interactions online (e.g. in respect of tax).

⁵⁹² Enterprise Estonia, <https://investinestonia.com/>

⁵⁹³ Estonian Tourist Board, <https://www.visitestonia.com>



the country-branding of Estonia as a technologically progressive country. Indeed, some of the academic literature in the area of country branding treats Estonia as a case study in this regard⁵⁹⁴ although nation branding more generally has also been a subject of criticism for ignoring certain stories or voices or giving special emphasis to a single one.⁵⁹⁵ Of course, in terms of branding more generally this type of focus on a particular message is what makes the brand a potentially successful one.

Second, notwithstanding the development of a digitally savvy economic approach generally, the creation of branding strategies, as with numerous physically rooted placemaking activities, place branding is rooted in physical sites and their development. In the case of Tallinn this can be seen in the re-use of medieval heritage and the development of particular tourism narratives around cultural quarters and events (on which see also section 4.3.2 above).

What is particularly interesting in the case of Tallinn is that we see what appears to be a deliberate embrace of the concept of the 'creative city' (also mentioned above in section 4.3.2 in respect of placemaking in Tallinn). What started with the promotion of cultural and creative industries has reached the (official) city branding. This can be seen most clearly in, for example, Tallinn's new strategic vision which among else puts Tallinn forwards as 'a creative global city'.⁵⁹⁶ This overt binding of cultural heritage with competitiveness can be seen in the Tallinn 2035 Development Strategy which states:

“As the different historical levels of the urban space are one of the aspects of the attraction of Tallinn, the heritage conservation activities in the area of urban planning contribute to the achievement of the goal 'Creative global city'. Valuing the Old Town, which is on the UNESCO World Heritage List, or the areas of cultural and environmental value is therefore not merely an issue of cultural heritage, but also an aspect of competitiveness.”⁵⁹⁷

The careful management of the image of Tallinn is exemplified by the website dedicated to the common visual identity of Tallinn.⁵⁹⁸ Interestingly, the official blue and white Tallinn logo and its coat of arms are adapted on the branding site for use by specific neighbourhoods, for example the city centre which includes the Old Town.⁵⁹⁹ While the development strategy and visual identity are mostly put forward with the local

⁵⁹⁴ e.g. Siiri Same and Maria Claudia Solarte-Vasquez, 'Country Branding and Country Image: Insights, Challenges and Prospects. The Case of Estonia' (2014) *TalTech Journal of European Studies* 4(1): 137-165; Árpád Ferenc Papp-Váry, 'A Successful Example of Complex Country Branding: The 'E-Estonia' Positioning Concept and Its Relation to the Presidency of the Council of the EU' (2018) *Acta Universitatis Sapientiae, European and Regional Studies* 14(1): 87-115

⁵⁹⁵ See e.g. Sue Curry Jansen, 'Designer Nations: Neo-liberal nation branding - Brand Estonia' (2008) *Social Identities* 14(1): 121-142, p. 134

⁵⁹⁶ Tallinn 2035 Development Strategy. Accessible at: [https://strateegia.tallinn.ee/en; https://www.riigiteataja.ee/akt/429122020009](https://strateegia.tallinn.ee/en;https://www.riigiteataja.ee/akt/429122020009). One of the 'Tallinn 2035 Development Strategy' goals is named "Creative Global City" and it emphasises the role of cultural heritage: <https://strateegia.tallinn.ee/en/creative-global-city/>.

⁵⁹⁷ Tallinn 2035 Development Strategy. Accessible at: <https://strateegia.tallinn.ee/en>

⁵⁹⁸ Tallinna ühtne visuaalne identiteet. Accessible at: <https://identiteet.tallinn.ee/#/>

⁵⁹⁹ 'Linnaosad' (on the website on Tallinn's brand identity, 'Tallinna ühtne visuaalne identiteet') <https://identiteet.tallinn.ee/#/logode-ja-dokumentide-failid/linnaosad>. For further discussion of the Old Town see above section 4.3.2.



audience in mind, the official site of the Tallinn City Tourist Office & Convention Bureau is facing outside and offers two different forms of engagement: one for visitors (i.e. tourists) and the other for professionals (i.e. coming to Tallinn to hold business meetings and conferences).⁶⁰⁰

Although the discussion in this section has been concerned primarily with the building of a city brand in more general terms in Tallinn the next sections consider the role that trade mark law plays in this specific type of placemaking. The focus is on the place name - Tallinn - as well as how aspects of Tallinn's cultural heritage, including its built environment, may come to be included in various forms in figurative trade marks.

5.5.2 Estonian trade marks and placemaking

This section provides an overview of certain rules from the Estonian Trade Marks Act. Since the rules in this area of intellectual property law were harmonised, the existing EU case law will also be relevant. This should be contemplated given the paucity of Estonian cases on the provisions that are discussed here. Instead, this section ought to be read as a guide to some of the legislative provisions that are particularly relevant to placemaking given the emphasis on the use of place names in trade marks. This section is concerned with offering an overview of the following national trade mark registration rules: distinctiveness, descriptiveness (specifically, geographical origin), public order or morality, and the protection of certain emblems. It also briefly considers collective forms of protection that may be relevant to city branding. Case law relating to Estonia is also very limited at EU level.⁶⁰¹

Trade Marks Act

<https://www.riigiteataja.ee/en/eli/ee/518112013005/consolide/current>

Note: this link includes an (unofficial) English translation alongside the Estonian text.

All of the grounds for refusal discussed here are from the absolute grounds relating to the registration of a sign as a trade mark in Estonia. This is not to say that other rules are unimportant - indeed the relative grounds for refusal will also be taken into account by the trade mark examiner.⁶⁰² The first and most

⁶⁰⁰ Tallinn Tourist Information Centre, 'Visit Tallinn' <https://www.visittallinn.ee/>

⁶⁰¹ There have for instance only been two preliminary references made to the CJEU in the last decade in the field of trade marks but not related to the absolute grounds for refusal. See: Case C-280/15 *Nikolajeva v Multi Protect OÜ* ECLI:EU:C:2016:467 (on trade mark infringement); Case C-521/17 *Coöperatieve Vereniging SNB-REACT U.A. v Mehta* ECLI:EU:C:2018:639 (trade marks and legal standing, and other issues).

⁶⁰² For the 'Relative circumstances which preclude legal protection' § 10 Trade Marks Act. These include where there is an attempt to register a sign in the identical or similar class of goods as an earlier registered mark where the signs are confusingly similar. Note also the additional protection afforded to well-known marks: § 7 Trade Marks Act.



significant question, assuming the sign itself can be represented on the register,⁶⁰³ is that it is distinctive.⁶⁰⁴ A place name will potentially be able to **distinguish goods and/or services**. So, while this will generally not be a hurdle for an entity wishing to register a certain sign whether it is a place name or a sign featuring art or some example of cultural heritage for example, the **descriptiveness** ground may prove challenging in respect of the place name. This ground states that marks may be descriptive for a number of reasons including “designating the kind of goods”.⁶⁰⁵

Thus, in 2011, the Harju County Court for instance refused to transfer the domain name including the word “airport” or rather “lennujaam.ee” to the company that runs the airport in Tallinn noting that the word needed to remain free to use by others.⁶⁰⁶ Despite that, the signs “lennujaam” (airport)⁶⁰⁷ and “lennujaam.ee SINU VIRTUAALNE LENNUJAAM” (airport.ee Your Virtual Airport)⁶⁰⁸ have both been later registered as combined word and figurative marks for the airport of Tallinn. On the specific issue of place names, including Tallinn, being used in signs the most relevant hurdle to overcome is that concerned with ‘geographical origin’ in the absolute grounds for refusal.⁶⁰⁹

The prohibition against registering certain signs that are contrary to **public order or morality**⁶¹⁰ does not appear to be an obvious difficulty for those seeking to register Tallinn-related marks but that may depend on the nature of the sign itself. Certain types of symbols for instance may be considered de facto problematic.⁶¹¹ The nature of these signs will be highly fact-specific. As we have noted already elsewhere in the report we are focused on the basics of the law but we identify certain important developments that may influence approaches taken to particular issues. Of relevance here is the EFTA court decision in ‘Vigeland’ (discussed in Part 5.7 below). In the absence of similar disputes on the points of public order and morality in Estonia the judgement is instructive. It may suggest, for instance that if a public or private body wished to use the outline of elements that form part of the ‘Pollinator Highway’ or the art installation “Kohanemine” by the artist Kristina Õllek that questions might be asked about the desirability of monopolising these publicly

⁶⁰³ § 6 Trade Marks Act

⁶⁰⁴ § 9(2) Trade Marks Act. Although note also that distinctiveness may be acquired: § 12(2).

⁶⁰⁵ § 9(3) Trade Marks Act: “signs which consist exclusively of signs or indications which designate the kind, quality, quantity, intended purpose, value or geographical origin of the goods or services, the time of production of the goods or of rendering of the services, or other characteristics of the goods or services”.

⁶⁰⁶ *Tallinna Lennujaam AS v M&A AS* Harju County Court Decision 2-10-47190, which was in fact based on a number of other grounds, is discussed in: Anneli Kapp, ‘Tallinn Airport cannot monopolize the word ‘airport’ (2012) *Journal of Intellectual Property Law & Practice* 7(3): 153-155

⁶⁰⁷ Trademark number M201700082, “lennujaam”.

⁶⁰⁸ Trademark number M201000618, “lennujaam.ee SINU VIRTUAALNE LENNUJAAM”.

⁶⁰⁹ § 9(3) Trade Marks Act

⁶¹⁰ § 9(7) Trade Marks Act

⁶¹¹ For a general discussion of offensive marks in the context of Nazi and Soviet symbolism see e.g. Marcin Ożóg, ‘Stalinskaya: the uneasy case of offensive trade mark registration’ (2009) *Journal of Intellectual Property Law & Practice* 4(5): 360-364.



accessible works.⁶¹² In practice the bigger hurdle here is likely to be copyright since the works are very likely to be copyright protected.

What ought to be highlighted alongside considerations of public order is the separate subsection, § 9(9¹) Trade Marks Act, which prohibits the registration of signs with a “**high symbolic value**”, following Article 4(3)(b) of the Trade Marks Directive. This prohibition raises a number of interesting questions including whether certain of Tallinn’s cultural heritage may be refused registration as a trade mark on this basis.

Finally **collective** forms of protections are worth mentioning since, even if appearing not to be relevant to Tallinn at present, they may constitute part of a broader placemaking strategy which links products with a particular place. Note that in the Trade Marks Act both collective and certification trade mark registration is possible.⁶¹³ Similarly, **geographical indications** protection is possible although presently there are no products registered in the EU scheme that specifically mention Tallinn. Indeed, there are only two Estonian entries in the EU’s geographical indications register as a whole.⁶¹⁴ One of the ways this has been explained is that “not all countries in the EU have an established culture of *terroir*”.⁶¹⁵ In Estonia, more practical explanations might be given relating to difficulties in the application process and the fact that (other forms of) branding may be more effective.⁶¹⁶

5.5.3 Tallinn - trade mark examples

The Estonian trade mark register offers a rich source of information in relation to Tallinn-related trade marks.⁶¹⁷ The trade mark registry search offers a sample of the types of trade marks and their owners that relate to Tallinn. This is not an exhaustive account of what is found on the register given the many hundreds of results that are returned when searching only for entities with “Tallinn”, as an open ended search, in their company or organisation name. Similarly a search for “Tallinn” as a word (or part of a phrase) returned 281 results at the time of the search.⁶¹⁸ This combines both registered trade marks, applications to register a sign,

⁶¹² These projects are described at: ‘Public Art’ <https://www.tallinn.ee/en/publicart>. For further discussion of copyright see above, section 4.3.3.

⁶¹³ In Chapter 6 of the Trade Marks Act.

⁶¹⁴ Based in a search of the e-Ambrosia database which can be accessed at: <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>. The two registrations are for Sõir (PGI-EE-02487) and for Estonian vodka (PGI-EE-01971).

⁶¹⁵ Ester Bardone and Astra Spalvēna, ‘European Union food quality schemes and the transformation of traditional foods into European products in Latvia and Estonia’ (2019) *Appetite* 135: 43-53, p. 44 (emphasis in original)

⁶¹⁶ Ester Bardone and Astra Spalvēna, ‘European Union food quality schemes and the transformation of traditional foods into European products in Latvia and Estonia’ (2019) *Appetite* 135: 43-53, p. 46. The authors suggest that GIs may be more useful for outward facing advertising i.e. where a producer wants to attract non-Estonian consumers (p. 49).

⁶¹⁷ The trade mark register can be searched via the Patent Office’s database: <https://andmebaas.epa.ee/avalik/#/trademarks>. The database is available in Estonian and English. Note that the Patent Office of Estonia recently chose the figurative trade mark of the Open Air Museum as its “trade mark of the month”: Patent Office, ‘The Estonian Patent Office’s trade mark of the month for December is a figurative mark of the Estonian Open Air Museum’ News (27 December 2022) <https://www.epa.ee/en/news/estonian-patent-offices-trade-mark-month-december-figurative-mark-estonian-ppen-air-museum>

⁶¹⁸ The searches were undertaken or rechecked in the case of earlier searches in January 2023.



and marks deleted from the register. Nevertheless, it provides a useful indication of how images, words and conceptualisations of Tallinn as a place circulate commercially via trade marks. In considering the results of the searches certain aspects are highlighted in this section.

First, we provide examples of the use of the word TALLINN as a word mark or part of a word mark and then, second, examples of how aspects of the city are used in figurative marks. This may include representations of certain buildings, the city skyline etc. Third we consider in particular the trade marks owned by certain official bodies namely Tallinn Council (Tallinna Linnavalikogu) and Tallinn local government (Tallinna Linnavalitsus). In light of the discussion elsewhere in the report which indicates the potential power of placemaking activities, the types of marks that are officially registered are revealing. They tell us something not only about what kinds of place signs circulate but also what narrative of Tallinn those bodies wish to share.

The words “Tallinna” and “Tallinn” are, unsurprisingly popular, but also given the rules against descriptive marks are used in conjunction with other words or figurative elements. Two examples are:

- “Tallinna Pedagoogikaülikool” which is a combined mark of a university with a simple motif⁶¹⁹
- “Ida-Tallinna Keskhaigla” which includes a picture of a skyline in the style of an electro-cardiogram⁶²⁰

As we can see the city name is used in multiple industries and contexts. Alongside these, the professional handball club HC Tallinn has a logo including its name and a player holding a ball in mid-flight in a position as if they have jumped up and are about to score a goal.⁶²¹ The ice hockey and football teams do not use Tallinn in their names, although in the case of HC Viking we see echoes of the attachment to Viking history in Estonia.

A search for combined word and figurative and solely figurative marks and architecture marks returns a number of entries. Already discussed in respect of their EU registration it is worth mentioning again “Vana Tallinn”⁶²² (and other trademarks holding the same name). This is a traditional liquor trademark owned by local alcoholic distiller Liviko. The product’s logo uses the medieval Tallinn city panorama and the name Tallinn. Other examples include:

- “Tallinn Spicy Sprats”⁶²³ which is owned by local fish goods producer, Kihnu Fishery (located in another city, Pärnu). The product’s logo uses the Tallinn city panorama and the name Tallinn.
- “TALLINNA KAUBAMAJA”, a trade mark that uses a blocky black and white logo appearing to feature a building of a type that is found in the Old Town along with the words “TALLINNA KAUBAMAJA”.⁶²⁴
- The figurative mark for a choir in Tallin’s University of Technology⁶²⁵ includes a stylised picture of a building that may be inspired by the arches of Tallinn Town Hall.⁶²⁶

⁶¹⁹ Trade mark number 32867 including in Class 41 for education.

⁶²⁰ Trade mark number 53875.

⁶²¹ Trade mark number 55416 in Class 41.

⁶²² e.g. trade mark number 34125 in Class 33.

⁶²³ Trade Mark number 34504: “TALLINNA KILUD TALLINN SPICY SPRATS”

⁶²⁴ Trade mark number 9401186 in Class 42 for retail premises.

⁶²⁵ Trade mark number 44128 in Classes 9 and 41.

⁶²⁶ For more information see (in Estonian): <https://www.postimees.ee/1508267/tallinna-ulikool-sai-uae-logo>



Before moving to an overview of the ‘official’ Tallinn-related trade marks it is worth noting one further example which echoes a point made above in section 4.3.2 on the Hansa Days. The presentation of Tallinn’s Hanseatic League past in fact goes further. There is a medieval festival that is held every year previously called ‘Tallinn’s Hansa Days’, now ‘Medieval Days in Tallinn Old Town’. This would seem to complement the tourism promotion approach which presents the Old Town part of Tallinn as the main tourist destination in the city. Indeed, although it has since been deleted from the Estonian register, we can see the significance of medieval history in the figurative trade mark ‘Tallinn Medieval Capital’ that had been owned by the Tallinn City Office.⁶²⁷

In terms of ‘official’ marks there are numerous examples. The city owns about forty trademarks. Cultural heritage is used by for example by Tallinn City Council,⁶²⁸ Tallinn Song Festival Grounds (application only),⁶²⁹ Convent of Saint Bridget,⁶³⁰ Viru Gate,⁶³¹ amongst others.⁶³² The trade mark “TALLINNA LINNAVOLIKOGU TALLINN CITY COUNCIL” is worth concentrating on since it reproduces as a sketch of a building in the style of the Old Town.⁶³³ It does not reproduce the Town Hall Building itself. The same style of sketch, but a different building, can be seen in the trade mark which does appear to reproduce the exterior of the building.⁶³⁴ The Town Hall building is however reproduced in the Town Hall trade mark.⁶³⁵

We can see a different style of figurative mark in the trade mark registered by Tallinna Linnakantselei (Tallinn City Office).⁶³⁶ Rather than a stylised ‘flat’ sketch in a style that is uniform across a range of different marks this is a quite detailed black and white picture of the Town Hall which is presented as a perspective sketch

⁶²⁷ Trade mark number 32527 in Classes 16, 31 and 41. The last of these includes “tourist information”.

⁶²⁸ Trade mark number 32997 in Classes 16 and 35.

⁶²⁹ Application number 9900729. This has a similar visual identity to the apothecary and city council trade marks. The combined mark includes a black and white sketch of the stage in the grounds.

⁶³⁰ This is a registered trade mark number 9900727 in Classes 16, 25 and 35. The ruined convent building is shown in the figurative mark.

⁶³¹ The figurative mark includes sketches of the gate: trade mark number 32993 in Classes 16, 25 and 35. Class 35 includes “advertising”.

⁶³² e.g. the combined mark again with a building pictured “LINNAÕHK TEEB VABAKS TOWN MAKES FREE”, trade mark number 33069 in Classes 16, 35, 39, 41 and 42.

⁶³³ It is worth noting that Tallinn Council (Tallinna Linnavolikogu) itself does not, on a trade mark registry search, own any trade marks itself.

⁶³⁴ See trade mark number 33366 in Classes 16, 35 and 42. The combined mark has the black and white image of the building and underneath the text in capitals TALLINNA RAEAPTEEK and underneath that TOWN COUNCIL’S APOTHECARY. The trade mark is owned by the Tallinn City Office.

⁶³⁵ Trade mark number 33068 in Classes 16, 21, 25, 35 and 42. Class 42 includes “urban planning, architecture, landscape design” The phrases “Tallinna Raekoda” and “Tallinn Town Hall” both feature in the combined mark.

⁶³⁶ Trade mark number 37752 in Classes 32, 3, 43 which relate to alcoholic and non-alcoholic drinks, and cafe bars and the like.



with the Town Hall's tower on the left. Finally, being ubiquitous on Tallinn's official websites is the logo by itself,⁶³⁷ or the shield-type logo with wavy ribbon like lines logo with the name "Tallinn" in blue and white.⁶³⁸

In terms of approaches to city branding the trade mark register search indicates a consistent approach to branding across goods and services. It suggests an appeal both internally to inhabitants and externally to visitors.

Key points - Tallinn and Estonian trade mark law

- The city owns numerous trade marks which seem to be part of a well developed city branding strategy that is directed at inhabitants in the case of official council website as well as those not living in the city e.g. tourists
- The words "Tallinn" and "Tallinna" are popular inclusions in trade marks covering a variety of for profit and non profit undertakings
- The trade mark registry search shows that reproductions of elements of Tallinn's built environment, especially buildings in the Old Town, are used in figurative and combined picture and word marks
- Estonian trade mark law reproduces the EU position and CJEU judgments may offer guidance in light of the paucity of Estonian cases

5.6 Trento

In the final of the 'city focus' parts we consider Trento and Italian intellectual property law, specifically trade marks. It again follows the basic outline of the previous parts in addressing the absolute grounds for refusal on the basis of geographical origin for instance. The Trento part nevertheless offers something of a contrast to the discussions of Glasgow and Tallinn above. In considering trade mark rules relevant to tourism and investment it broadens out the discussion - as is necessary given the specific circumstances of Trento - to account also for the significance of regional branding. This part thus considers some of the relevant absolute grounds for refusal of registration of trade mark registration especially in the use of "Trento" as a sign (section 5.6.2). The final section of this part (5.5.3) provides, amongst other discussions, a sample of Trento-related trade marks and gives examples of word marks as well as marks reproducing elements of Trento's built environment. Because of the particularly outward looking nature of the branding we return in the final

⁶³⁷ Trade mark number 56613 in Classes 9, 12, 14, 16, 18, 20, 21, 22, 24, 25, 27, 30, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45.

⁶³⁸ Trade mark number 56617, also in numerous Classes of goods and services.



section also to an EUIPO trade mark search. That final section also ought to be read alongside earlier discussion of the significance of geographical indications protection in the Trentino region (in sections 4.4.1 and 5.6.1).

5.6.1 Trento overview - investment and tourism

Since 1989 Trentino has undertaken an effective strategy to promote the entire territory (thus not limited to the city of Trento) and attract tourism through the creation of a territorial brand that would certify the quality of its services and products.⁶³⁹ In particular, Trento is identified as being a good example of a Local Labour System whose development spans across different culture-related sectors, such as traditional cultural sectors (museums, archives, performing arts, etc.), new cultural sectors (music, movies, TV, publishing) and creative sectors (ICT, advertising, communication). Against this backdrop:

“the city of Trento – which is experimenting with the combining of highly specialized knowledge and technology sectors with emerging specializations in publishing, film and cultural and creative tourism – is a good example of such a system”.⁶⁴⁰

Over the years, the Trentino brand has undergone several changes but has always tried both to draw a continuity with the previous versions to keep expressing the variety and richness of the territory. The first version of the brand had two elements of the logotype (a butterfly and the lettering spelling out Trentino) that have been kept in the subsequent restyling of the place-brand because of its suitability in conveying the idea of natural landscape. Both the butterfly - whose shape looks like the territory of the Province - and the colour green - which refers to the mountainous landscape - are fundamental in conveying the image of the particular geographical conformation enjoyed by Trentino.⁶⁴¹

In 2002 and later in 2009, the brand underwent further modification so as to design the graphic in a more harmonious way. The last restyling of the territorial brand creates the idea of rugged peaks of the mountains: there are four colours which correspond to four different categories (tourism, agribusiness, industry and crafts, culture and education) and it recalls the colours of the Trentino territory with its mountains and lakes, the stylised butterfly ensures continuity with the previous logotype gaining more impact and visibility.⁶⁴²

⁶³⁹ M. Z., “Piano turistico del capoluogo, tracciate 6 aree di sviluppo” *Corriere del Trentino* (20 November 2022) <http://www.stradavinotrentino.info/dicono-di-noi-2022/varie-2022/>. Our translation: “In 1989 Trento recorded 100,000 tourist presences per year. In 2008, nearly two decades later-in between the 23 billion lira restyling of the historic centre thanks to Mayor Goio, the birth of the Mercatini, the Wine and Flavors route, Autunno Trentino, and the Festival of Economy - the tourists’ presences reached 700,000 in a city more aware of its strength in tourism as a driving-force for other sectors”.

⁶⁴⁰ Maria Della Lucia and Giovanna Segre, ‘Intersectoral local development in Italy: the cultural, creative and tourism industries’ (2017) *International Journal of Culture, Tourism and Hospitality Research* 11(3): 450-462, p. 457. See also Maria Della Lucia, ‘Creative cities: experimental urban labs’ (2015) *International Journal of Management Cases* 17(4): 156-172

⁶⁴¹ See the website dedicated to the brand “TRENTINO”, available at the URL: <https://www.marchiotrentino.it/>

⁶⁴² Eliana Sambrotta, ‘TRENTINO E ALTO ADIGE-SÜDTIROL: CASI DI SUCCESSO Quando un territorio diventa brand’ https://www.manageritalia.it/content/download/informazione/giornale/aprile_2010/06.pdf, pp. 11-12



The Trentino tourism system has also changed over time. As of today, Trentino Sviluppo is the company that holds the general direction of the tourism sector, with the task of promoting and developing different areas, including tourism.⁶⁴³ As part of its broader network, Trentino Marketing is responsible for devising, implementing and promoting projects for the development of Trentino tourism and it manages the territorial brand by protecting it and increasing its communicative power.⁶⁴⁴

The place branding strategy aimed at promoting what the Autonomous Province of Trento has to offer adopts a holistic approach that embraces products, services and activities of the entire territory. Therefore, the territorial brand has the great advantage of grouping many different entities of the territory under a single identity, promoting a specific image, which guarantees the quality of all their products and services. The correct use of the brand benefits both individual stakeholders who, by using the brand, enjoy the evocative power of the territorial image, identifying themselves within the tradition and culture of Trentino, and the territory as a whole and enjoy a qualitative reinforcement of the brand.

Tourism organisations, museums, cultural entities, hotels, restaurants, campsites, industrial and craft companies, cultural and sports associations, as well as temporary events may use this brand within their own communication strategies so as to enjoy the reflection of the positive values which the brand represents. The territory-branding is a particularly effective and evocative strategy of communication since the brand links the products and services directly to a precise geographic area.⁶⁴⁵ However, the territory-branding efficiency works only if the (non-exclusive) licence is granted wisely: Trentino Marketing, since it is the managing entity for the use of the territorial trademark, indeed manages the licensing procedure for the use of the trademark.

Moreover, it is worth focusing on food and wine tourism.⁶⁴⁶ This particular aspect of tourism is strictly linked to the image of the territory: the tourist seeks a genuine experience through original flavours, traditions, local culture and history. It is clear that this kind of tourism is strictly linked to the identity of a territory, therefore, it is fundamental to create synergy between local entities and tourism policies. An effective and efficient development of this tourism offer can only be achieved through a coordinated image through a programmatic agreement between the different entities involved in tourism promotion at both local and provincial levels.⁶⁴⁷

⁶⁴³ See Trentino Sviluppo website, available at URL: <https://trentinosviluppo.it/it/Istituzionale/Azienda/Storia/Storia.aspx>

⁶⁴⁴ See Trentino Marketing SpA website, available at: <https://www.trentinomarketing.org/it/chi-siamo>

⁶⁴⁵ Eliana Sambrotta, "TRENTINO E ALTO ADIGE-SÜDTIROL: CASI DI SUCCESSO Quando un territorio diventa brand", available at: https://www.manageritalia.it/content/download/informazione/giornale/aprile_2010/06.pdf; See also the website dedicated to the brand "TRENTINO", available at: <https://www.marchiotrentino.it/it/>

⁶⁴⁶ Provincial Law Dec. 19, 2001, No. 10 on social agriculture and thematic routes, in Art. 16 provides the definition of Wine and Flavor Routes as itineraries that connect territories characterised by typical and traditional type of food production or processing, handicraft production, wineries and farms, etc. The routes can also point out sites other than strictly gastronomic ones such as, naturalistic, cultural and historical landmarks so as to integrate the gastronomic offer with other cultural experiences, always linked to the territory. This kind of tourist service promotes the development of the territory and its productions. For an in-depth view visit the website available at: https://www.consiglio.provincia.tn.it/layouts/15/dispatcher/doc_dispatcher.aspx?app=clex&at_id=7459

⁶⁴⁷ Provincial Law Dec. 19, 2001, No. 10, article 17



A central role in promoting this type of tourism is certainly played by the Trentino quality brand (“Qualità Trentino”), which is germinated from the principal territorial brand “Trentino”. The brand certifies the high quality standards of Trentino's agroalimentary products and creates a network with the values of the territorial brand Trentino. The licence for (non-exclusive) use of the trademark is granted to those agri-food products that meet certain standards about the production methods, the characteristics and origin so that they can be considered typical Trentino's products as defined in the regulation called “Disciplinare” (specific for each product). It can be also granted to DOP and IGP products that do not bear the brand Trentino, as long as they are always typical Trentino's products.⁶⁴⁸

Finally, it is worth noting that the brand new tourism Policy Plan of the municipality of Trento for the next decade (2022-2032) identifies, among six macro-goals of the city, one about a strong brand.⁶⁴⁹ Tourism is a competitive sector and also fundamental to the province's economy, so it is important to continue to promote a distinctive brand image appealing to tourists.

5.6.2 Italian trade marks and placemaking

The legislation on trade marks is contained in the Codice della Proprietà Industriale (CPI),⁶⁵⁰ which systematised the Italian regulations on patents and inventions, models, designs, trademarks and plant novelties.

Code of Industrial Property

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-02-10;30>

Article 7 CPI lists what may be considered to be the subject of registration as a trademark: all signs, in particular words including names of persons, designs, letters, numerals, sounds, the shape of the product or its packaging, colour combinations or shades as long as they are capable of distinguishing the goods or services of an enterprise from those of other enterprises and the subject matter of the protection conferred on the owner is clearly and accurately represented in the register. The basic requirements, for the purposes of registration and consequent protection of a trademark, are three: novelty, distinctiveness and lawfulness. It should be noted that registration is not functional to the existence, per se, of the trademark but is necessary if the trademark owner wishes to enjoy the legal protection offered by registration.⁶⁵¹

⁶⁴⁸ See the Qualità Trentino brand website: <https://www.trentinoqualita.it/it/il-marchio/>

⁶⁴⁹ Piano di politica turistica del comune di Trento 2022-2032, p. 79, <https://www.comune.trento.it/Aree-tematiche/Cultura-e-turismo/Documentazione/Piano-di-politica-turistica-2022-2032>

⁶⁵⁰ Codice della proprietà industriale (CPI), D.lgs. 10 febbraio 2005, n. 30, G.U. 4 marzo 2005, n. 52

⁶⁵¹ To prove this point, it may be noted that, to a limited extent, also non registered (de facto) trade marks receive a certain degree of protection. Such protection is granted under Article 2571 Civil Code and Article 12(a) CPI and differs depending on whether the trademark is well known or it is known only locally.



The requirement in Article 12 CPI (novelty) states that signs that are identical or similar to another sign which is already on the market cannot be registered. In this context it is worth mentioning the principle of likelihood of confusion by the public (Articles 12 and 22 CPI).⁶⁵² The requirement of **distinctiveness** consists in the ability of a trademark to identify and differentiate a product or service from similar ones already on the market. The third and final requirement for the registration is the lawfulness of the trademark; it may not be registered if it is contrary to law, public order or morality (Art. 14, comma 1(a) CPI).

Once the three listed requirements are met, anyone can apply for (and obtain) registration of a trademark. Art 19 comma 3 CPI states that also public administrations can obtain trade mark registrations, and also for distinctive graphic features derived from cultural, historical, architectural or environmental heritage of relevant territories.⁶⁵³

Furthermore, in consideration of the specific dynamics of the Trento and Trentino placemaking, it is worth looking at geographical-based trademarks, geographical indications, and designations of origin. Italian law regulates registration differently depending on whether the trademark containing the geographical term is an individual trademark or a collective one.

A **collective trade mark** (regulated by Article 2570 Civil Code and Article 11 CPI) distinguishes the goods or services of several entities by their specific origin, quality and nature. The owner of the collective trademark (who generally does not use it) is the party who performs the function of guaranteeing the origin, nature or quality of the goods or services, also making it subject to the compliance with specific regulations (Disciplinari).⁶⁵⁴ Certification (or guarantee) marks are a new type of trademark that aims to certify a particular aspect of a product or service (e.g. quality) according to a specific set of rules. The validity of this type of mark is sectoral (according to Nice classification) and territorial.⁶⁵⁵ An example of a collective trademark is the quality mark of "Trentino Qualità".⁶⁵⁶

The individual trade mark may not merely contain the indication of the **geographical origin** of the product or service, otherwise it would lack distinctiveness.⁶⁵⁷ Besides, Article 10 CPI already states that, among other signs, "the names of States and Italian territorial public entities may not be subjected to registration [...]"

For a broader overview on trademark law in Italy, see Marco Ricolfi, in P. Auteri et al., *Diritto industriale. Proprietà intellettuale e concorrenza*, 7 ed. (Giappichelli, 2020) pp. 75-188

⁶⁵² This can occur when identical signs are used for identical or similar goods or services and there is a likelihood of confusion, or when signs are similar and are used by identical goods or services and there is a likelihood of confusion, or when goods or services are similar and there is a likelihood of confusion.

⁶⁵³ This particular aspect is discussed also in: 'D5.10: Place Branding and Intellectual Property Law' summary forthcoming on the consortium's zenodo page: <https://zenodo.org/communities/recreateingeurope>

⁶⁵⁴ See the Ufficio Italiano Brevetti e Marchi (UIBM) website: <https://uibm.mise.gov.it/index.php/it/marchi/il-marchio-collettivo-e-il-marchio-di-certificazione>

⁶⁵⁵ An Italian certification mark can also be used to certify the geographical origin of products and services, on the contrary, a European certification mark cannot certify geographical origin.

⁶⁵⁶ See above, section 5.6.1.

⁶⁵⁷ Art. 13 comma 1 (b) CPI.



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unless the competent authority has authorised their registration".⁶⁵⁸ Such limitation is linked to the risk that the use of names of, for instance, cities by private individuals could be deceptive.⁶⁵⁹

It is interesting to consider a trade mark containing a geographical element occurs when the term is not used in a descriptive way (as it generally is in case of geographical indications) but taking on its own distinctiveness. In fact, the Italian Supreme Court (Corte di Cassazione) has recognized that when the toponym or place name takes on a function that becomes distinctive then the trademark can be registered and thus obtain protection.⁶⁶⁰ There are a few interesting cases where Italian courts have considered place names and their descriptive function. One particular case was the one of the trademark "Verrazzano", which indicates a precise geographic territory and therefore it is used precisely in its descriptive non-distinctive function, however, the court recognized the trademark's registrability because of the place's lack of notoriety.⁶⁶¹ All this considered, It can be argued that the prohibition on the use of a toponym within a trade mark is not absolute and may have exceptions.⁶⁶²

Furthermore, the law specifically regulates **geographical indications** and designations of origin, which identify a country, region or locality used to designate a product which originates from that territory and whose qualities, reputation or characteristics are due exclusively or essentially to the geographical area of origin, including natural, human and traditional factors.⁶⁶³ This type of protection applies to products whose very nature is strongly influenced by the territory of origin.

⁶⁵⁸ Art. 10 comma 1 CPI (our translation). An interesting case concerns the one about the prohibition of the use of the name 'Vignale', the municipal emblem and trademark 'Vignaledanza', and the website, used for a dance theatre festival that took place outside the territory of that city (Vignale Monferrato). This and other examples are discussed in D5.10, p. 22.

⁶⁵⁹ Article 14 CPI lists in fact a number of cases in which signs may not be registered as trademarks, including, for example, to signs contrary to the law, public order and morality; those misleading the public, especially on geographical origin, nature, quality of the products or services, or type of sign; signs the use of which constitutes infringement of copyright, industrial property right or other exclusive rights of third parties. As an additional remark, such a norm further proves how trademark law has to be framed within a rather complex system that also pays attention to copyright law as well as city branding.

⁶⁶⁰ Cass. civ., sent. I, 19 aprile 2016, n. 7736, in Foro it., 2016, I, 1996. This was the case concerning the registration of the sign "Cotto d'Este" (for floor and wall ceramics), since this is an undefined geographical area only characterised by the presence, in the Renaissance period, of the Estensi family's estates. According to the Court, the link between place and product in this case was not necessary or customary but only incidental, since the geographical indication was peculiar to the point of being considered distinctive. See also: 'D5.10: Place Branding and Intellectual Property Law' summary forthcoming on the consortium's zenodo page: <https://zenodo.org/communities/recreatingeurope>.

⁶⁶¹ For a more in-depth view, see 'D5.10: Place Branding and Intellectual Property Law' which discusses the case decided by Tribunale di Napoli which allowed the registration of the trademarks "Salernitana sport" and "Salernitana calcio 1919" referencing the city of Salerno.

⁶⁶² Note that the question of symbolic value and other issues are similarly discussed in the article described 'D5.10: Place Branding and Intellectual Property Law'.

⁶⁶³ Article 29 CPI



5.6.3 Trento - trade mark examples

Focusing on Trento, and more broadly on Trentino and Trentino-Alto Adige, place branding appears frequent and deep-rooted, also in connection with the city and provinces' overall marketing strategies. It includes the use of the city name, and elements of the natural or built element ascribable to cultural heritage.⁶⁶⁴

A search on the EUIPO trade mark database shows 32 results, of which 21 are currently registered and 14 of these are figurative, including the word "Trento" as part of a logo for numerous types of goods and/or services including a festival,⁶⁶⁵ and Metodo Classico sparkling wine.⁶⁶⁶ It is also perhaps not surprising to find the TRENTODOC trade marks, owned by a consortium of wine producers, on this list.⁶⁶⁷ For the purpose of this report, it is in particular worth mentioning the figurative trade marks of:

- "CAVIT TRENTO" and
- "CANTINA DI TRENTO"

The trade marks are owned by two of the most representative cooperative wineries of Trentino. The former trade mark embeds a sketched symbol of the city, with the letter C "partially encircling the figure of a trident", as the three-pronged fork that can also be found in the fountain of Neptune and is also evocative of the historical name of Trento, "Tridentum".⁶⁶⁸ The latter includes a representation of the symbolic eagle (*aquila araldica*) already featured in many emblems and public bodies logos,⁶⁶⁹ including the University of Trento.⁶⁷⁰ The same search delivers another interesting example, the Aero Caproni Trento, of a trade mark embedding elements of the landscape, such as a deer and a "stylized landscape with green lawn, red mountains and blue sky".⁶⁷¹

A concurrent search in the national Italian database, broadening the search under title and description, reveals quite a high number of trade marks, over 200, some of which also present in the EUIPO portal.

⁶⁶⁴ The trade mark search has been conducted in particular through the EUIPO portal and the national database. To search the national trade mark registry see: Ufficio Italiano Brevetti e Marchi (Italian Patent and Trade marks Office): https://www.uibm.gov.it/bancadati/single_search/text_search/index/ A cross-search was also done on the WIPO IP portal (Madrid Monitor): <https://www3.wipo.int/madrid/monitor/en/>

⁶⁶⁵ Festival Economia: trade mark number 018629292 in Classes 14, 16, 18, 21, 24, 25, 35, 38, 41.

⁶⁶⁶ Trade mark number 005241575 in Class 33.

⁶⁶⁷ Trade mark number 015441355 in Classes 33, 35, 41, 43. The registered trade mark proprietor is the Consorzio Vini del Trentino.

⁶⁶⁸ Trade mark number 004051637 in Class 33. It is owned by Cavit Cantina Viticoltori Consorzio Cantine sociali del Trentino, società cooperativa. This trademark is also registered in other countries, e.g., the United Kingdom: trade mark number UK00904051637. The history of Trento is discussed above in section 4.4.1.

⁶⁶⁹ Trade mark number 018706820 in Class 33. Reflecting and confirming what was discussed above (see section 5.3.1) about the strong regional input to placemaking, it is noted that the eagle is a symbol shared by the municipality and the province of Trento. In a similar manner, the province of Bolzano (the often mentioned Südtirol) also shares the symbolic eagle. The use of the heralding eagle is however not an exclusivity of Trentino-Alto Adige, being instead quite common in the history of heraldry, especially in continental Europe.

⁶⁷⁰ Trade mark number 302019000085314 in Classes 41, 42.

⁶⁷¹ Our translation. Trade mark number 015084502 in Classes 12, 16, 25. Also registered in the United Kingdom as trade mark number UK00915084502.



Narrowing to figurative marks currently registered, and to those embedding elements of natural or built elements of the place, a number of examples are provided below.

First, “Trento città del Natale” (Christmas’ town) features a “graphic part formed by three concentric circles. The outermost represents the mountains encircling the city of Trento, the middle circle depicts the outline of the city sketched with its key monuments (from left to right: green tower, San Vigilio cathedral, Buonconsiglio Castle, Torre Vanga, Mausoleum of Cesare Battisti), the smaller circle depicts the rose window of Trento Cathedral or Dome”.⁶⁷² This is just one of the few registered by the Municipality of Trento, many of which include in the graphic part its skyline or its most iconic monuments.⁶⁷³ Second, “Antico Borgo di San Vigilio Città di Trento”, which embeds the San Vigilio Cathedral and its Tower, and Palazzo Pretorio.⁶⁷⁴ Third, “Club Armonia” also reproduces a stylised depiction of some monuments of the city, i.e., the Cathedral, the Civic Tower, the Buonconsiglio Castle, in conjunction with two theatrical masks.⁶⁷⁵ The use of Trento’s monument is indeed quite recurring and varies across several market industries.⁶⁷⁶ Fourth, the use of the city’s name and symbols extends to its historical denomination in *Tridentum acqua*, which consists of the inscription of the words “Tridentum aqua” associated with the outline of one side of the Civic Tower to which two drops of water are added.⁶⁷⁷

The municipality of Trento owns six registered trade marks. In addition to those already mentioned,⁶⁷⁸ we can add the trade mark “Feste Vigiliane”, relating to one of the main celebrations in the city coinciding with the Patron Saint’s feast. The mark depicts the sun framed in a sketched tower.⁶⁷⁹

In parallel, the province of Trento owns 49 registered trade marks,⁶⁸⁰ some of which are different versions of the same mark and include **certification marks**, some of which were mentioned in the preceding sections, which often include in their graphic form mostly natural “distinctive” elements that ideally link it to the place or territory of the region. One additional example in this sense is the one of “Trentinerbe”, which consists of a representation of a typical flower of Trentino (Tarassaco) in the backdrop of stylised lush mountains.⁶⁸¹

⁶⁷² Our translation. Trademark number 362021000177533 in Class 41. Registered by the Municipality of Trento.

⁶⁷³ e.g., “Trento Smart City” (trade mark number 302017000070191 in Classes 16, 25, 41, 42 and 302017000070187 in Classes 16, 25, 41, 42),

⁶⁷⁴ Trade mark number: 302020000077692 in Classes 41, 43. Registered by an individual.

⁶⁷⁵ Trade mark number: 362019000055477 in Class 41. Registered by a cultural association.

⁶⁷⁶ Another example is the one of “Trentino Gastronomia”, which includes a scattered composition of the city towers and other monuments of Trento. Trade mark number: 302001900929855 in Classes 29, 30, 33.

⁶⁷⁷ Trade mark number: 302017000086104 in Class 3. Registered by a joint-stock company.

⁶⁷⁸ “Trento città del Natale” and few versions of “Trento Smart City”.

⁶⁷⁹ Trade mark number 302018000022847 in Class 41.

⁶⁸⁰ These are registered in the Ufficio Italiano Brevetti e Marchi. Two additional trade marks are registered only at EU level.

⁶⁸¹ Trade mark number 302020000110747 in Classes 3, 30, 31, 32.



Key points - Trento and Italian trade mark law

- The city branding of Trento needs to be understood as a broader exercise in regional branding, i.e. of the autonomous province of Trentino
- The importance of place can be seen especially in the significance of food and wine production and promotion
- Italian trade mark law is harmonised with EU law and includes numerous grounds for refusal to register signs including place names to an extent
- Official bodies own numerous trade marks many of which reference elements of the natural environment, history and Trento city monuments for example

5.7 Copyright and trade mark overlaps

There is a sometimes uneasy relationship between cultural heritage and intellectual property law and we can see it manifested also in the overlaps between copyright and trade marks in the placemaking context. Indeed it is interesting that the WIPO report on branding and tourism we have discussed above in this part does not concentrate on overlaps in addressing multiple intellectual property rights.⁶⁸² If we turn more specifically to the categories of subject matter, it becomes apparent that the scope of heritage as defined under UNESCO instruments⁶⁸³ has the potential to overlap with the subject matter of intellectual property. Some of these will fall under the protected subject matter of copyright, which depends on international and national instruments. If we look at the Berne Convention definition, there is an illustrative list for protected subject matter in Article 2 and those works are protected in all contracting countries.⁶⁸⁴ Others may fall under trade

⁶⁸² World Intellectual Property Organization (WIPO) and World Tourism Organization (UNWTO), 'Boosting Tourism Development through Intellectual Property' (WIPO, 2021) <https://www.wipo.int/publications/en/details.jsp?id=4543&plang=EN>

⁶⁸³ Article 1 of 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property: "...rare specimens, property relating to history, products of archaeological excavations, elements of artistic or historical monuments, antiquities more than one hundred years old, objects of ethnological interest, property of artistic interest (such as pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand), original works of statuary art and sculpture in any material, original engravings, prints and lithographs, original artistic assemblages and montages in any material), rare manuscripts and incunabula, old books, documents and publications of special interest; postage, revenue and similar stamps, singly or in collections; archives, including sound, photographic and cinematographic archives; articles of furniture more than one hundred years old and old musical instruments"; Article 2 of Convention for the Safeguarding of the Intangible Cultural Heritage 2003: "inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship"

⁶⁸⁴ Art. 2(1) Berne Convention for the Protection of Literary and Artistic Works: "the expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form



mark law, considering that it protects “any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds”.⁶⁸⁵ The key point is that the sign, to be capable of registration as a trade mark, must be adequately represented on the register.

It is worth emphasising then that both cultural heritage that was previously protected by copyright whose copyright term expired, and cultural heritage that was never protected by copyright (not satisfying conditions such as originality or fixation) can potentially be regulated by other forms of intellectual property rights, especially trade mark law. The question then becomes whether it is appropriate to pull public domain subject matter under the control of intellectual property law or leave it for the public.⁶⁸⁶ This point is examined in this part by concentrating on a decision, relevant to place branding, that addresses the overlap of copyright and trade marks, the decision of the Court of Justice of the European Free Trade Association State (EFTA Court) judgment in the ‘Vigeland’ case below.⁶⁸⁷

The situation is complicated by the potential overlap between copyright law and trade mark law which we address elsewhere but reproduce some of the discussion here.⁶⁸⁸ Trade mark protection may well be available for works that have been traditionally protected by copyright.⁶⁸⁹ Considering that trade mark protection is indefinite (it can be renewed every 10 years) and copyright protection is subject to a limited term, it is understandable that intellectual property owners will become interested in registering certain assets as trade marks especially towards the end of the copyright protection term. Of course, it is also possible for the overlaps to exist from the very beginning. Such overlaps are not ideal, considering the risks of both different intellectual property rights providing irreconcilable outcomes and the risk of overprotection (“reduction of the public domain, reduction of freedom of movement, and overcompensation” by seeking to apply for double/triple damages for a single act of infringement).⁶⁹⁰

of its expression, such as books, [...] works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.”

⁶⁸⁵ Art. 4 EUTMR. The point was made, famously, in respect of an earlier iteration of EU trade mark law in the *Sieckmann* case, requiring the sign to be ‘clear, precise, self-contained, easily accessible, intelligible, durable and objective’: Case C-273/00 *Ralf Sieckmann v. Deutsches Patent-und Markenamt* [2002] ECR I-11737 [55]. The EU trade mark registration criteria are discussed above in Part 5.3.

⁶⁸⁶ It is worth adding that cultural heritage may be subject to concurring conservation instruments and highlight the importance of their synergy. A good example is represented by the Italian Prosecco hills (Le Colline del Prosecco di Conegliano e Valdobbiadene) located in Veneto, region confining with the Trento province, which are protected as a World Heritage site and by the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage as part of the Mediterranean diet, inscribed in 2013 (8.COM) on the Representative List of the Intangible Cultural Heritage of Humanity: <https://whc.unesco.org/en/list/1571/>

⁶⁸⁷ 6 April 2017, Case E-5/16, Municipality of Oslo, Judgment

⁶⁸⁸ ‘D5.10: Place Branding and Intellectual Property Law’ a summary is forthcoming on the consortium’s Zenodo page: <https://zenodo.org/communities/recreatingeurope>

⁶⁸⁹ On a related point, for a discussion of the rise of non-traditional trade marks see: Mitchell Adams and Amanda Scardamaglia, ‘Non-traditional trade marks in Europe: an historical snapshot of applications and registrations’ (2018) *European Intellectual Property Review* 40(10): 623-629

⁶⁹⁰ Estelle Derclaye, ‘Overlapping Rights’ in Rochelle Dreyfus and Justine Pila (eds.) *The Oxford Handbook of Intellectual Property Law* (OUP, 2017) p. 623



Examples of such overlaps between copyright and trade mark law are summarised by Derclaye in four broad categories of works/signs, provided that they meet the relevant protection criteria (which is not always the case):

- **Slogans and titles:** these can be literary works under copyright law or word marks under trade mark law. Here the overlap is avoided by most jurisdictions by not providing copyright protection to single words. Short phrases, on the other hand, could be protected if sufficiently original under EU copyright law.⁶⁹¹
- **Sounds:** these can be musical works under copyright law or sound marks under trade mark law.⁶⁹²
- **Two-dimensional objects:** these can be artistic works under copyright law (paintings, drawings or photographs) or figurative, colour or colour combination marks under trade mark law.⁶⁹³
- **Three-dimensional objects:** these can be artistic works under copyright law (sculptures or works of artistic craftsmanship) or shape marks under trade mark law. Under EU law, this overlap is mainly avoided by Article 4(1)(e) Trade Mark Directive, which excludes a “shape, or another characteristic, which gives substantial value to the goods”, which are better suited for copyright or design protection.⁶⁹⁴

A key example in the overlap of cultural heritage, copyright and trade mark law in practice is the ‘Vigeland’ case, where the EFTA Court refused to register representations of sculptures that were no longer protected by copyright law as trade marks. Several grounds were considered and our focus here is on that based on public policy and principles of morality. In this dispute, the Municipality of Oslo filed for trade mark registration for sculptures by the Norwegian sculptor Gustav Vigeland, and was refused by the Norwegian Intellectual Property Office based on lack of distinctive character, being descriptive and consisting of a shape that adds substantial value to the goods.⁶⁹⁵

The Norwegian Board of Appeal had identified the risk that anyone can potentially register such works if they overcome distinctiveness hurdle:

“The Board of Appeal observes that if trade mark protection of well-known works of art could only be refused on grounds of lack of distinctiveness, this would leave open the possibility for distinctiveness to be achieved through use thus qualifying the work for registration at a later stage. Consequently, any undertaking could, in principle, achieve trade mark protection for copyrighted works that become freely available, regardless of the cultural value of such works.”⁶⁹⁶

Interestingly, the applicant in this case was the Municipality who argued that:

⁶⁹¹ Estelle Derclaye, ‘Overlapping Rights’ in Rochelle Dreyfus and Justine Pila (eds.) *The Oxford Handbook of Intellectual Property Law* (OUP, 2017) pp. 632-633

⁶⁹² Estelle Derclaye, ‘Overlapping Rights’ in Rochelle Dreyfus and Justine Pila (eds.) *The Oxford Handbook of Intellectual Property Law* (OUP, 2017) pp. 632-633

⁶⁹³ Estelle Derclaye, ‘Overlapping Rights’ in Rochelle Dreyfus and Justine Pila (eds.) *The Oxford Handbook of Intellectual Property Law* (OUP, 2017) pp. 632-633

⁶⁹⁴ Estelle Derclaye, ‘Overlapping Rights’ in Rochelle Dreyfus and Justine Pila (eds.) *The Oxford Handbook of Intellectual Property Law* (OUP, 2017) p. 634

⁶⁹⁵ EFTA Court, 6 April 2017, Case E-5/16, Municipality of Oslo, Judgment [27]

⁶⁹⁶ EFTA Court, 6 April 2017, Case E-5/16, Municipality of Oslo, Judgment [29]



“all of the shapes have been exclusively connected to, and used by or through, the Municipality since the death of Gustav Vigeland in 1943. Many of these shapes are well known and valuable, in particular, due to the efforts and investments made by the Municipality...”⁶⁹⁷

It is worth noting that although the applicant was the Municipality in this case, other parties might also want to try similar registrations with distinguished artistic works with ulterior motives, that can further stifle place branding goals.⁶⁹⁸

However, the EFTA Court highlighted the need for protecting the public domain: “considerations relating to the public domain also serve, to some extent, the general interest in protecting creations of the mind from commercial greed”.⁶⁹⁹ Furthermore the Court noted:

“the fact that works are part of the public domain is not a consequence of the lapse of copyright protection. Rather, protection is the exception to the rule that creative content becomes part of the public domain once communicated.”⁷⁰⁰

In addition to safeguarding the public domain, the Court recognised the risk of registration even amounting to misappropriation or a desecration of artist’s work:

“However, certain pieces of art may enjoy a particular status as prominent parts of a nation’s cultural heritage, an emblem of sovereignty or of the nation’s foundations and values. A trade mark registration may even be considered a misappropriation or a desecration of the artist’s work, in particular if it is granted for goods or services that contradict the values of the artist or the message communicated through the artwork in question. Therefore, the possibility cannot be ruled out that trade mark registration of an artwork may be perceived by the average consumer in the EEA State in question as offensive and therefore as contrary to accepted principles of morality.”⁷⁰¹

Overall, the decision is a useful example of how courts might address the potential overlaps in copyright, trade mark and cultural heritage, that will determine the impact of intellectual property placemaking efforts relying on the use of cultural heritage.⁷⁰²

⁶⁹⁷ Report for the Hearing, Judge-Rapporteur Baudenbacher, 5 October 2016, Case E-5/16 – Municipality of Oslo, [32]

⁶⁹⁸ “Interestingly, the registration initiative had not been taken by a trademark ‘troll’ seeking to obtain rights to popular artistic works for the sole purpose of threatening users with infringement claims and pressing for excessive licence fees without any intention to make genuine use of the works itself. On the contrary, the trademark application has been filed by the Municipality of Oslo”: Martin Senftleben, ‘No Trademark Protection for Artworks in the Public Domain – A Practical Guide to the Application of Public Order and Morality as Grounds for Refusal’ (2021) GRUR International 71(1): 3-17, p. 5

⁶⁹⁹ EFTA Court, 6 April 2017, Case E-5/16, Municipality of Oslo, Judgment [65]

⁷⁰⁰ EFTA Court, 6 April 2017, Case E-5/16, Municipality of Oslo, Judgment [66]

⁷⁰¹ EFTA Court, 6 April 2017, Case E-5/16, Municipality of Oslo, Judgment [92]

⁷⁰² See also Martin Senftleben, ‘No Trademark Protection for Artworks in the Public Domain – A Practical Guide to the Application of Public Order and Morality as Grounds for Refusal’ (2021) GRUR International 71(1): 3-17; Martin Senftleben, ‘Vigeland and the Status of Cultural Concerns in Trade Mark Law – The EFTA Court Develops More Effective Tools for the Preservation of the Public Domain’ (2017) IIC 48: 683-720; Martin Senftleben, *The Copyright/Trademark Interface: How the Expansion of Trademark Protection is Stifling Cultural Creativity* (Wolters Kluwer, 2021)



Key points - copyright and trade mark overlaps

- Copyright and trade marks may overlap in place branding
- The EFTA Court decision in the Vigeland case suggests a public interest focused way of limiting the registration of trade marks that embody artistic works that are in the public domain
- If works that are no longer protected by copyright can be registered as trade marks, especially by parties other than local authorities, that may have a negative impact on the availability of cultural heritage for placemaking

6. Synthesis

In this report we have sought to make evident the connection between intellectual property law - especially copyright and trade marks - and placemaking. A number of themes are apparent relating to accessibility and access to culture, what placemaking projects look like in a city's physical spaces and the role of digitisation in placemaking, what we can learn from looking at the approach to placemaking in three cities and across numerous European projects, and the care to be taken to the needs to different communities of inhabitants as well as the needs of multiple stakeholders as they navigate the circulation of culture and creativity in the service of placemaking. What we return to here is not a summary of what we have already addressed since in any event the reading paths through the report may have been different (in line with the reading guide to this report in section 1.2.1). Rather we return to emphasise that what we see in the examination of placemaking and intellectual property is both a reaching outwards to make cities visible to visitors and others as well as a reaching in, towards the city's inhabitants to make cities that are, ideally, inhabitable, indeed intelligible to all.

What then, next? What our report indicates is the potential for further engagement with intellectual property law at the intersection of law and geography. Some suggestions for future directions in research, and some gentle recommendations are:

- **Access** to culture is dependent on facilitating involvement of communities that is inclusive, whether relating to digitisation projects or on-site physical transformations of neighbourhoods. In particular placemaking efforts dependent on cultural heritage engagement ought to 'build in' access for persons with disabilities. Accessibility is an integral component for successful placemaking.
- The creation of a **common European data space** could integrate copyright considerations from the start both in the discussion of the working group and in building capacity in terms of copyright knowledge. This would include consideration of the territorial impacts of sharing cultural heritage between Member States.



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- **Copyright exceptions**, such as especially relating to ‘freedom of panorama’ and the reconstruction of buildings are useful in respect of interactions with works both on-site and digitally and, as particularly significant exceptions for placemaking ought to be considered for implementation in Member States that do not currently have these provisions.
- The reviewed projects offer an existing repository of potentially useful placemaking strategies and information for interested stakeholders. **Future projects** on placemaking, including place branding, could usefully account for, and test empirically, the role of trade mark registration in the circulation of city signs.

Alongside the above, and other points suggested in our report, we conclude with an acknowledgment of the importance of access to **copyright information** which is relevant especially in light of the GLAM survey results (from Part 2.7) and in respect of which the GLAM FAQs in Part 3 on digitisation of cultural heritage are worth highlighting again. Finally, we add here another two resource links for further, more leisurely exploration.

Resource link - Copyright User EU

www.copyrightuser.eu

This resource, once live, will not provide legal advice but will provide accessible information about EU copyright law.



Image description: A blue, black and red logo of a copyright symbol surrounded by yellow stars and intertwining with a smiley face and the text spelling out CopyrightUser.eu underneath.



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Resource link - Copyright Flexibilities

www.copyrightflexibilities.eu

This resource will provide a comprehensive guide to copyright flexibilities in the EU and include visualisations to help users understand the different flexibilities available.

This resource will not, once live, provide legal advice but will provide helpful information about the current state of EU copyright exceptions. It should be read in conjunction with especially the copyright material on Estonia and Italy in order to gain a more complete picture of relevant exceptions.

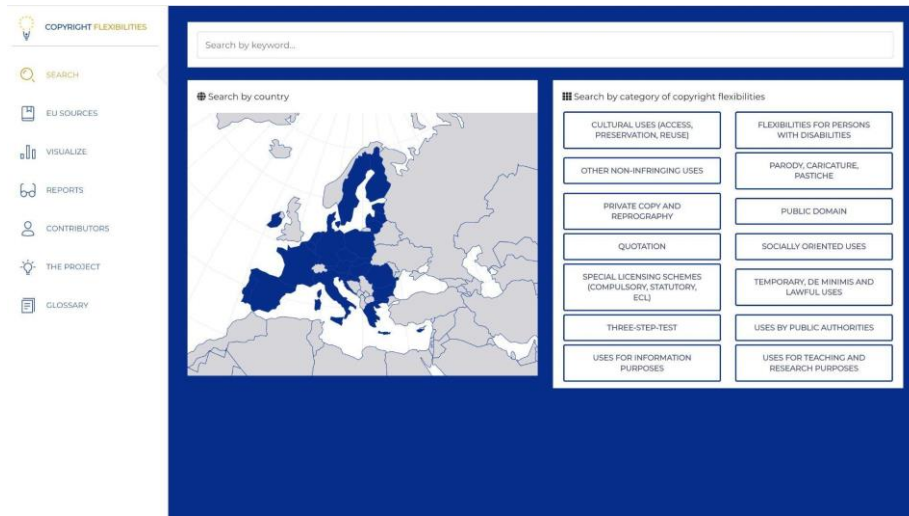


Image description: a screenshot of a web page with a blue and yellow list on the left, a grey map of Europe in the middle with the EU member states coloured in dark blue, and two columns of boxes of text on the right containing referring to different copyright concepts.



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Annexes

There are four annexes which correspond to the four section in Part 2.5 of the report:

A ‘Highlighted projects relevant to place and access to culture, and creativity’

B ‘EU/Europe projects relevant to tourism within place-making’

C ‘Cultural heritage and related projects’

D ‘Other resources and data’

Annex A

ROCK <https://rockproject.eu/>

This EU funded project ‘ROCK – Technologies and Tools for Better Access to Cultural Heritage’ ended in 2021. The aims of the project are described as:

“ROCK focuses on **historic city centres** as extraordinary laboratories to demonstrate how **Cultural Heritage [CH]** can be a **unique and powerful engine of regeneration, sustainable development and economic growth** for the whole city.”⁷⁰³

The project provides an extensive and highly relevant approach to place, cultural heritage and related issues. The project does not consider intellectual property rights and the present report may be understood as making this particularly legal contribution to existing projects, literature and other resources. The project has thirty three partners and engaged with two sets of cities dubbed “role models” and “replicators” which are intended to implement those models.

None of the cities are those we discuss in this report but the first set includes one city from the UK (Liverpool), and one from Italy (Turin). The second set includes one Italian city (Bologna).⁷⁰⁴ Both Italian cities are prominent. Turin is an exemplary post-industrial city undergoing important actions of urban regeneration. In Bologna the focus has been for years on sustainability and larger investments on welfare and social innovation. To that extent the cities are not too dissimilar to Trento which has also undertaken post-industrial regeneration projects.⁷⁰⁵ Indeed the aims of the project in seeking to engage with cities with historical centres and particular aspects of the project are also concerned with cultural heritage in the context of tourism.

Examples of deliverables produced by the ROCK project that may be of interest especially to stakeholders responsible for placemaking efforts or looking to engage in such efforts are ([link to document list of PDFs](#)):

⁷⁰³ ROCK, ‘About - Visitation and Ambition’ <https://rockproject.eu/about> (emphasis in original). This was a Horizon 2020 project: H2020-SC5-2016-2017 GA 730280.

⁷⁰⁴ The others are Skopje in North Macedonia and Lisbon in Portugal.

⁷⁰⁵ See in this report, section 4.1.1 (Trento overview) section 4.4.2 (placemaking examples).



- D6.6 ‘Linking Cultural Heritage to Smart Specialisation Strategies’ which brings cultural heritage together with “place-based innovation”.⁷⁰⁶
- D2.3 ‘Guidelines for sustainable adaptive reuse for CH - revised version’ focuses on strategies for adaptive reuse of places in the city.⁷⁰⁷

The above outputs are complements by certain tools and other information including digital tools in the cultural heritage context. A specific toolkit for city branding was developed and the insights here may be read alongside the material on trademarks that is developed in Part 5 of this report. The toolkit highlights the role of cultural heritage in city branding:

- The toolkit that may be viewed here: <https://www.branding-toolkit.rockproject.eu/>
- D5.6 ‘ROCK place branding toolkit: Cultural Heritage as a Driver for Branding the Contemporary City’ ([link to PDF](#)).⁷⁰⁸
- D5.7 ‘Report on advanced seminars on city branding - final version’ ([link to document in list of PDFs](#)) is based on seminars and practical engagement on “innovative city branding” and including leveraging aspects of the built environment in city branding.

A further item worth discussing here is the following which is an example of interactive heritage featured in Eurocities (also considered in section 2.5.4) is an app that highlights placemaking, heritage and participation. That is an augmented reality app for discovering Skopje's Jewish Quarter which had been destroyed by an earthquake.⁷⁰⁹

CULTURE LABS <https://culture-labs.eu/>

This is an EU funded project describing itself as a platform providing “recipes for social innovation” with partners from numerous institutions including from Italy (including with respect to museums in Tuscany) and the UK.⁷¹⁰ The project is described as follows:

“An increasing number of Cultural Institutions seeks to address the needs of communities engaging them through participatory initiatives so as to strengthen the relationships. #CultureLabs analyses

⁷⁰⁶ Miguel Rivas and Francesco Cappallano, *D6.6 Linking Cultural Heritage to Smart Specialisation Strategies* (2020) <https://rockproject.eu/documents-list/download/445/linking-cultural-heritage-to-smart-specialisation-strategies>

⁷⁰⁷ Gamze Dane and Cécile Houpert (2019).

⁷⁰⁸ Luis Rivero Moreno and Miguel Rivas, *D5.6 ROCK placebranding toolkit. Cultural Heritage as a Driver for Branding the Contemporary City* (2019) <https://rockproject.eu/documents-list/download/466/d56-rock-placebranding-toolkit-final-version>

⁷⁰⁹ The app is described here: Eurocities, ‘Three dimensions of a city’ (5 March 2020) <https://eurocities.eu/stories/three-dimensions-of-a-city/>.

⁷¹⁰ The partners listed are: Greece (IICS Uni of Athens, Singular Logic IT solutions), UK (Sheffield Hallam, People’s History Museum Manchester), Finland (Museovirasto-Finnish Heritage Agency), Italy (Fondazione Sistema Toscana, COOSS Marche ONLUS scpa), Germany (European Forum for Migration Studies), Spain (Platoniq).



ingredients and proposes recipes to facilitate the involvement of immigrant communities and disadvantaged groups that are disconnected from institutional Cultural Heritage.”⁷¹¹

The wide ranging research and studies available here including the following which, on account of their findings, themes and relevant stakeholders will likely be relevant to readers of the present report who are concerned with placemaking:

- D2.2 ‘Communities’ needs and living heritage study’ ([link to PDF](#)). This report complements D2.1 below.
- D2.1 ‘Institutional stakeholders needs and services analysis report’ ([link to PDF](#)). Note here the participants from GLAM and other relevant institutions in Italy and UK with potentially similar stakeholder groups identified above in Part 1.4 of this report.
- D3.2 ‘Case study definition and functional requirements v1’ ([link to PDF](#)). See Part 4.3 (p.38ff) within this deliverable on digital practices and community-led projects.
- ‘Cultural heritage and social impact: Digital technologies for social inclusion and participation – Symposium Companion’ ([link to PDF](#)). See Part 5 on ‘Digital Innovation in Cultural Heritage Practices’ (p. 19ff).

DIVERCITIES

This EU funded project, ‘Governing Urban Diversity: Creating Social Cohesion, Social Mobility and Economic Performance in Today’s Hyper-diversified Cities’, ran from 2013 to 2017.⁷¹² There is not currently a live website for the project however the CORDIS summary of the project states that:

“With the current economic situation in Europe, better social cohesion, higher economic performance and increased opportunities for social mobility are all ways to improve cities and make them more competitive. However, urban policies currently in place do not always consider urban diversity in a positive light. As such, new policies are called for as well as an assessment of successful policies.

The [project] sought out innovative policy instruments and government arrangements to help view urban diversity in a positive light, increase interaction between urban groups and expand participation. The research team conducted a comparative study in 13 European cities as well as in

⁷¹¹ Noted on the home page of CULTURELABS: Recipes for Social Innovation: <https://culture-labs.eu/>

⁷¹² The project page on the European Commission CORDIS website is here: <https://cordis.europa.eu/project/id/319970/results>. Due to participation in this project by current ReCreating Europe participants - Eneli Kindsiko and Ingmar Pastak - the current report can be understood as, in some way, building on the related work in the DIVERCITIES project. See: Ingmar Pastak, Eneli Kindsiko, Tiit Tammaru, Reinout Kleinhans and Maarten Van Ham, ‘Commercial gentrification in post-industrial neighbourhoods: A dynamic view from an entrepreneur’s perspective’ (2019) Tijdschrift voor Economische en Sociale Geografie (Journal of Economic and Human Geography) 110(5): 588-604.



Toronto, Canada. Case studies were utilised in diverse neighbourhoods. The project also sought ways to improve the knowledge base for policymakers on different levels.”⁷¹³

The outputs from the project include references to social cohesion, diversity, inhabitance and related concepts which. The University of Tartu was part of the DIVERCITIES project and the discussion in the report, especially as it relates to the city of Tallinn and Northern Tallinn area as for case study, builds upon this involvement. Of interest are the following:

- A report considering Tallinn specifically: ‘D6.1 Fieldwork inhabitants, Tallinn (Estonia)’ ([link to PDF](#)) This is an empirical study which considers social cohesion, uses of public space and other elements though not culture and creativity specifically.
- The open access book *Dealing with Urban Diversity: The Case of Tallinn* ([link to PDF](#)) argues that diversity in cities is positive and may inspire creativity.⁷¹⁴
- Journal article ‘The Impacts of Culture-led Flagship Projects on Local Communities in the Context of Post-socialist Tallinn’⁷¹⁵ ([link to PDF](#)) also relates to Tallinn and addresses the concept of placemaking directly and includes a study of Telliskivi Creative City.
- ‘Policy brief 4: Living with Diversity’ ([link to PDF](#)) noting the important of the urban environment especially small improvements to parks and other areas for inhabitants (p. 6).

FUTURE DIVERCITIES <https://future-divercities.eu>

A more recent, distinct, project to the above is FUTURE DIVERCITIES was undertaken between 2016 and 2020. The project concerns culture, regeneration and ecology and is concerned with nine European cities:

“seeking to re-imagine culture-led regeneration of urban empty spaces in an ecological way.

The project will develop cultural approaches to enhance and preserve the ecological value of unused vacant spaces in 9 European Cities: Berlin, Zagreb, Split, Liepaja, Kuopio, Marseille, Florence, Timișoara and Athens (Elefsina).”⁷¹⁶

The project is concerned with the potential of presently unused spaces and how they may be repurposed to encourage advancement in creativity and culture.

⁷¹³ ‘Results in Brief: Urban diversity boosts social and economic resilience’ (2017) <https://cordis.europa.eu/article/id/165904-urban-diversity-boosts-social-and-economic-resilience>.

⁷¹⁴ Authored by Tit Tammaru, Tiit, Eneli Kindsiko, Johanna Holvandus, Kadri Leetmaa, Ingmar Pastak, and Annika Väiko (2017).

⁷¹⁵ By Ingmar Pastak and Anneli Kährik (2016) Sociologický časopis/Czech Sociological Review 52(6): 963-990.

⁷¹⁶ Future DiverCities, ‘Home’ <https://future-divercities.eu/>. Outputs such as reports and training tools will be made available on the ‘Resources’ page.



It is also worth noting a further project at this point - Future DiverCities 2 - which is organising an event in 2023, the ANTI-Contemporary Arts Festival.⁷¹⁷

meSch <https://www.mesch-project.eu/>

The meSch project - 'Material Encounters with Digital Cultural Heritage' - is an EU funded project described as having:

“the goal of co-designing novel platforms for the creation of tangible exhibits at heritage sites: curators will be able to offer visitors new interactive experiences by means of material interaction with smart objects.”⁷¹⁸

The project has numerous partners including Museo Storico Italiano della Guerra.⁷¹⁹ This museum is in Rovereto which is also in the Trentino region and is its second largest city. On top of being part of the Trentino network of public museums, their close geographical proximity make the project of interest to Trento-based stakeholders. Another of the partners in Italy, Fondazione Bruno Kessler, are producers of the Hidden Trento app discussed in this report (in section 4.4.2).

There are numerous outputs a selection of which indicate a concern with providing resources for GLAM professionals and others, for example:

- Article with case study examples from museums: 'Do it together: the effect of curators, designers, and technologists sharing the making of new interactive visitors' experiences' ([HTML link](#))⁷²⁰
- A set of resources on co-design: Co-Design Resources for Cultural Heritage Professionals⁷²¹

MESOC <https://www.mesoc-project.eu/>

This Horizon 2020 EU funded project which ran from 2014 to 2020 Horizon also concerned numerous cities including one from Italy (Milan).⁷²² The project is described as:

⁷¹⁷ 'Future DiverCities 2' <https://antifestival.com/en/future-divercities/>.

⁷¹⁸ Stated on the homepage of meSch: <https://www.mesch-project.eu/>.

⁷¹⁹ The role in the project (of the museum) is described on the project website as: "To help the personalization by providing detailed information about different typologies of visitors of museums and historical sites, visitors expectations and visitors behaviours during the visit. Also to provide multimedia content to be used in the case study. Collaboration in experimenting new technologies of information. Collaboration in collecting information about the effectiveness of the tested technologies." The other partners, including a university in Scotland, are: UK (Sheffield Hallam, Strathclyde), Ireland (Uni of Limerick), Netherlands (WAAG, DEN, Uni of Amsterdam, Museon), Italy (eCTRL Solutions), Germany (Uni of Stuttgart), Spain (University Carlos III Madrid).

⁷²⁰ Petrelli, Daniela, Nick Dulake, Mark Marshall, Hub Kockelkorn and Anna Pisetti. "Do it together: The effect of curators, designers, and technologists sharing the making of new interactive visitors' experiences." *MW2016: Museums and the Web 2016*. Published February 5, 2016. Consulted January 31, 2023.

<https://mw2016.museumsandtheweb.com/paper/do-it-together-the-effect-of-curators-designers-and-technologists-sharing-the-making-of-new-interactive-visitors-experiences/>

⁷²¹ Linked to from <https://www.mesch-project.eu/Co-design/>

⁷²² The other nine cities concerned in this project were: Athens (Greece), Barcelona (Spain), Cluj (Romania), Ghent (Belgium), Issy-les-Moulineaux (Paris, France), Jerez de la Frontera (Spain), Lublin (Poland), Rijeka (Croatia), Turku (Finland), and Valencia (Spain).



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

“a Research and Innovation Action designed to propose, test and validate an innovative and original approach to measuring the societal value and impacts of culture and cultural policies and practices, related to three crossover themes of the new European Agenda for Culture: 1) Health and Wellbeing, 2) Urban and Territorial Renovation and 3) People’s Engagement and Participation.”⁷²³

The project was a response to the Agenda for Culture.⁷²⁴ A toolkit for measuring the impact of cultural policies: <https://toolkit.mesoc-project.eu/> The toolkit includes a visualisation tool, for instance, for browsing summaries of relevant academic papers. There are entries on the mapping tool for Glasgow and Trento.

The overview of projects continues in the next section to build a picture of diverse activities and outputs in recent projects.

Annex B

CICERONE <https://cicerone-project.eu/>

This project, which began in July 2020, focuses on cultural and creative industries in Europe. Its research is described as follows:

“CICERONE takes a novel approach by applying the Global Production Network approach to the cultural and creative industries. Thus far, this approach has been applied to manufacturing (car, electronics and apparel industry). Looking at the cultural and creative industries from this perspective enables to interrogate several important differences between manufacturing.”⁷²⁵

The project does not address placemaking but the incorporation of concerns with tourism, cultural heritage and the like would appear to have implications for this.⁷²⁶

IMPACTOUR <https://www.impactour.eu/>

This is another EU funded project - ‘IMproving Sustainable Development Policies and Practices to access, diversify and foster Cultural TOURism in European regions and areas’ - which is currently running (the project period is 2020-2023). The project is concerned primarily with cultural tourism and how it may ‘reinforce a feeling of belonging, value minority cultures and promote Europeanisation.’⁷²⁷ The project includes a number of pilot studies including numerous locations in Italy, although not Trento.⁷²⁸ A potentially interesting pilot

⁷²³ Description on the home page.

⁷²⁴ See: Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on a Work Plan for Culture (2015-2018).

⁷²⁵ CICERONE (Creative Industries Cultural Economy Production Network), ‘Research’ <https://cicerone-project.eu/research/>.

⁷²⁶ The research output for the project are available here: <https://cicerone-project.eu/results/>.

⁷²⁷ ‘About IMPACTOUR’ <https://www.impactour.eu/pages/about-impactour>

⁷²⁸ The studies concern, in Italy, Borgata Paraloup (and old partisan village, see <http://www.paraloup.it/>), Rittana (CN), Municipio 2 Milano, a peripheral area of Milan (MI, see <http://www.periferiemilano.com/>), Parco Nazionale dell’Alta Murgia (a national park, see: <https://www.parcoaltamurgia.it/>), Gravina in Puglia (BA); Palmi (RC).



This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 870626

study for the present report is that of Palmi in Reggio Calabria⁷²⁹ as is the study of a peripheral area of Milan.⁷³⁰

The project also includes a pilot study in Estonia although in rural Southern Estonia (in Võru).⁷³¹ Of more general interest may be the following publication on cultural heritage and sustainable development in certain regions by authors from Estonia:

- Tarmo Kalvet, Maarja Olesk, Marek Tiits and Janika Raun, 'Innovative Tools for Tourism and Cultural Tourism Impact Assessment' (2020) Sustainability 12(18): 7470 ([link to various formats](#))

SPOT <http://www.spotprojecth2020.eu/>

This is a recently completed project funded by the EU, also on cultural tourism and "Europeanisation" (2020-2022). The SPOT project - 'Social and Innovative Platform on Cultural Tourism and its Potential Towards Deepening Europeanisation' - described the issues it was concerned with as follows:

"The five main keystones of the project will be: incorporating the role of local communities, expanding the concept of cultural tourism, from the passive consumption of cultural objects to the active and interactive participation in cultural experiences, building in the role of stakeholders, developing this interactive and dynamic view of cultural tourism and view the issue of identity not as a local phenomenon, but as a multi-scale phenomenon."⁷³²

The case studies include Italy and the UK.⁷³³ Of particular interest is the study on fan tourism which relates to Scotland in a collaboration between Historic Scotland and Doune Village Community Council. It mentions numerous (Outlander, Rebus, James Bond, The Avengers)⁷³⁴ The relevant publications in respect of the case study on Scotland is:

- Claire Wallace and Stephanie Garrison, 'Media tourism and its role in sustaining Scotland's tourism industry' (2021) Sustainability 13(11): 6305 ([link to various formats](#)). The case studies include the Glenfinnan Viaduct which was used in the *Harry Potter* films and Doune Castle from a variety of television shows including *Monty Python* and *Outlander*. The authors explore, in the context of placemaking, whether the tourism inspired by popular culture is sustainable.

In respect of the studies in Italy, cultural tourism is considered in light of numerous issues including its role in economic development and which also address cultural heritage.⁷³⁵ It includes examples of good practices

⁷²⁹ The page on the IMPACTOUR website is: <https://www.impactour.eu/pages/palmi-calabria-italy>.

⁷³⁰ The page on the IMPACTOUR website is: <https://www.impactour.eu/pages/municipio-2-milano-cpm-italy>.

⁷³¹ <https://www.impactour.eu/pages/voru-county-estonia>

⁷³² SPOT, 'About the project' <http://www.spotprojecth2020.eu/about-the-project>.

⁷³³ The Piedmont landscape and media tourism respectively.

⁷³⁴ Claire Wallace and Stephanie Garrison. Online Cultural Activity and Fan Tourism. SPOT project (H2020): <http://www.spotprojecth2020.eu/media-tourism-in-scotland>. Their presentation in Euromed2020 event had examples of Visit Scotland promoting Outlander tours (based only on TV series) and also fan tours/maps around Inverness (based on both TV series and the books, authorised by the author). Project abstract on: <https://clairewallace.info/spot>

⁷³⁵ e.g. "Territori resilienti e paesaggi digitali: il turismo culturale nelle Langhe, Roero e Monferrato" available (pdf) at <https://zenodo.org/record/5504079>



(for example, open air museums)⁷³⁶ and links with other projects funded under different calls/programmes.⁷³⁷ There is also acknowledgement of the relationship between sites and “digital landscapes”.⁷³⁸

The other notable policy briefs and other resources are based on stakeholder engagement to make policy recommendations about cultural tourism:

- A policy brief for EU policymakers ‘Cultural Tourism from Local Stakeholder’s Perspective’ ([link to PDF](#)).
- A report on the empirical data gathered which includes discussion of the case studies in Italy and Scotland: D1.4 ‘Report on the results of surveys for tourists, residents and entrepreneurs in the case studies’ (2022) ([link to PDF](#)).⁷³⁹
- D2.1 ‘Policies, Practices, and Strategies of Cultural Tourism in Europe’ (2021) ([link to PDF](#)).⁷⁴⁰
- D5.6 ‘Policy Report 2’ (2022) ([link to PDF](#)). On material significant to Italy see pp. 128ff of the document, Policy Brief #24 on cultural tourism in Piedmont.

Because of the timing of the project it also accounts for the impacts of the COVID-19 pandemic.⁷⁴¹ It is further notable in addressing access to culture for persons with disabilities⁷⁴² (on which see in this report Part 2.2).

TEXTOUR <https://texttour-project.eu/>

This EU-funded project - ‘Social Innovation and TEchnologies for sustainable growth through participative cultural TOURism’ - is also concerned with cultural tourism and describes itself as “co-design[ing] pioneering and sustainable cultural tourism strategies to improve deprived areas in Europe and beyond”.⁷⁴³ The project includes city pilot studies, like the Crespi d’Adda, the labourer small district (hamlet) located in a remote area of Lombardia (Bergamo province) designed by the Italian industrial Crespi family for the benefit and use of their employees.⁷⁴⁴

The project is ongoing but an indication of its outputs can be seen in the following:

⁷³⁶ See <https://www.castellogrinzane.com/en/in-vigna-open-air-museum/>

⁷³⁷ E.g. Interreg: <https://www.interreg-alcotra.eu/it/i-progetti-finanziati-2014-2020>

⁷³⁸ Giovanna Rech and Lorenzo Migliorati, ‘Territori resilienti e paesaggi digitali: il turismo culturale nelle Langhe, Roero e Monferrato’ (2021) XLII Annual Scientific Conference of Italian Association of Regional Sciences (A.I.S.Re) “Territorial challenges in the post-covid era”, Web conference. Link to PDF: <https://doi.org/10.5281/zenodo.5504079>.

⁷³⁹ The authors are: Eline van Elburg, Marcel Pleijte, Bas Pedroli, Josine Donders and Frans Rip.

⁷⁴⁰ The authors of the report are Claire Wallace and John Shaddock.

⁷⁴¹ Giovanna Rech and Lorenzo Migliorati, ‘Social Representations about Cultural Tourism in the Time of COVID-19: A Case Study of Langhe, Monferrato and Roero (Italy)’ (2021) Sustainability 13(11): 630. Also available here (PDF): <https://doi.org/10.5281/zenodo.5616096>.

⁷⁴² The winery landscapes of Piedmonst (Langhe and Monferrato) are one of the case studies of the SPOT project. The relevant participating association is the Associazione per il patrimonio dei Paesaggi vitivinicoli di Langhe-Roero e Monferrato, see: <https://www.paesaggivitivinicoliunesco.it/en/progetto/landscape-the-disabilities-un-paesaggio-tutti/>

⁷⁴³ On the homepage of the project website.

⁷⁴⁴ Further information is available here: <https://www.crespidadda.it/>



- ‘Action cards for cultural tourism’ (2022) with numerous examples of cultural heritage based tourism ([link to PDF](#)).

ToNite <https://tonite.eu/en/>

This project was funded under the EU Urban Innovative Actions (UIA) programme. It aims at developing solutions to manage public places, foster social innovation and urban regeneration, with a focus on security and sustainable urban development. It has a narrow/local coverage, although including partners such as the European Forum For Urban Security (Efus).⁷⁴⁵

Annex C

inDICES <https://indices-culture.eu/>

The first project highlighted under this heading is a project running contemporaneously with ReCreating Europe and with which the consortium has ongoing research links, including joint participation in conferences and workshops. The work of the inDICES project then, while obviously having a different focus to that of ReCreating Europe, offers numerous interesting deliverables and other outputs built on stakeholder engagement which potentially complement the work within Work Package 5 of ReCreating Europe including complementing the work undertaken in this report.⁷⁴⁶ The inDICES project started in 2020 and is due to end in March 2023. It is concerned especially with the reuse of cultural heritage, and one of its five aims is described as follows:

“[To] [e]mpower Cultural Heritage Institutions (CHIs) to make strategic self-assessment about their readiness for the Digital Single Market and adaptation to the current legal frameworks in order to foster their digital transformation.”⁷⁴⁷

The other objectives relate to the development of a relevant methodology, analyse relevant law, including intellectual property, develop both policy recommendations and business models and create the ‘Open Observatory’.

Numerous deliverables are potentially relevant here but something worth highlighting is what appears to be unusual integration (amongst the projects considered in this section) of intellectual property concerns. The following deliverables are example of this:

⁷⁴⁵ See also, a research and design agency which is a partner in this project. For their work in relation to Turin in Italy see <https://www.experientia.com/portfolio/to-nite-urban-regeneration-in-turin/>

⁷⁴⁶ For further information see the blog post: ‘Joining forces for innovation in the European cultural sectors’ (13 July 2020) <https://www.recreating.eu/2020/07/13/joining-forces-for-innovation-in-the-european-cultural-sectors/>.

⁷⁴⁷ inDICES, ‘Objectives’ <https://indices-culture.eu/about/objectives/>.



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- D2.3 ‘A white paper with legal recommendations’ ([link to zenodo page and PDF](#)). This paper includes “IPR related recommendations on what changes should be implemented on European level to foster openness in CHIs in order to stimulate digital cultural content (re)use” (p. 5).⁷⁴⁸
- ‘Summary of Deliverables 2.1 and 2.2 Intellectual Property Rights for CHIs in the Digital Single Market - a comparative analysis’ ([link to zenodo page and PDF](#)). In the summary the authors address not only copyright but also mention trade marks, designs, patents and, additionally, the law relating to Traditional Cultural Expressions.⁷⁴⁹ Usefully, this output highlights the operation of the Digital Single Market in this context, the adoption of which is still quite recent.
- D3.1 ‘Policy analysis of value chains for CHIs in the Digital Single Market’ (2021) ([link to zenodo and PDF](#)).⁷⁵⁰ The report is not concerned with place as such but does indicate the relevance of on-site and online interactions to community identity for instance (p. 15; p. 77).

The project’s resources, including ‘best case’ examples of cultural heritage reuse, and guidelines for cultural heritage professionals include:

- ‘Consultation workshop with the CHI sector: value chains & impact in the cultural heritage sector’ (2020) ([link to web page](#)). This blog post offers a detailed summary and links to relevant videos.
- ‘Digitisation and digital transformation in the cultural heritage sector: perspectives of different communities’ ([link to web page](#)). This 2021 blog report mentions discussions held with stakeholders about the “circulation and creative use of cultural heritage.” It is interesting that workshop participants note the need for further data to be generated about their activities, both on-site and online.
- D3.2 ‘Guidelines for CHIs digital transformations’ (2021) ([link to zenodo and PDF](#)). These guidelines include a section on intellectual property rights (pp. 19-26).⁷⁵¹

OPEN HERITAGE <https://openheritage.eu>

This is a complex and detailed EU funded project - Organizing, Promoting and ENabling HEritage Reuse through Inclusion, Technology, Access, Governance and Empowerment - over 48 months that ran from 2018 to 2021. One of the interesting aspects of the project is its wide definition of cultural heritage. It includes not only officially recognised cultural heritage but rather “buildings, complexes, and spaces that have a symbolic or practical significance for local or trans-local heritage communities”⁷⁵² and is concerned with questions of urban regeneration, reuse, social cohesion amongst others. It established Collaborative Heritage

⁷⁴⁸ Konrad Gliściński and Francisco Lima, and others (2022). Note that this is the first version of the recommendations only.

⁷⁴⁹ The summary is written by Marie-Christine Janssens, Arina Gorbatyuk, and Sonsoles Pajares Rivas (2022). The summarised deliverables in full are, by the same authors and others: ‘Deliverable 2.1: Mapping of the relevant European IP legal framework.’ (2021) <https://doi.org/10.5281/zenodo.5141439> and ‘Deliverable 2.2: Legal comparative analysis for multi-level relationship involving CHIs’ (2021) <https://doi.org/10.5281/zenodo.5141536>.

⁷⁵⁰ By Aleksandra Janus, Alek Tarkowski, Jan Strycharz, and Maria Drabczyk, and others.

⁷⁵¹ Fred Truyen and Rasa Bočytė and others.

⁷⁵² OpenHeritage, ‘The Project’ <https://openheritage.eu/oh-project/>.



Labs of urban regeneration projects. This includes one in the UK (Sunderland) and one in Italy (Rome) as well as sixteen observatory cases.⁷⁵³

While not concerned with intellectual property in the context of cultural heritage reuse, the outputs of the project include a relevant consideration of cultural policies. The project also offers a typology of reuse of cultural heritage.⁷⁵⁴ A selection of publications and outputs are, including a mapping of policies:

- D2.1 'Mapping of current heritage re-use policies and regulations in Europe Complex policy overview of adaptive heritage re-use' (2019) ([link to PDF](#)).⁷⁵⁵
- D3.8 'Recommendations and suggested roadmap for the EU' (2022) ([link to PDF](#)).⁷⁵⁶ The output includes recommendations relating to inclusivity, and protecting cultural heritage that is endangered.

The project also developed resources and tools which are expected to be adopted by others, for example:

- A training program for a number of stakeholders including officials in cities.⁷⁵⁷
- D5.6. 'Inclusive business models for sustainable heritage re-use processes' (2022) ([link to PDF](#)) which offers guidance on creating a business model that includes suggestions on bringing together interdisciplinary teams, how to budget for the project and engaging the community in the project.⁷⁵⁸

PLUGGY <https://www.pluggy-project.eu>

This project - the 'Pluggable Social Platform for Heritage Awareness and Participation' - is an EU funded project that ran between 2016 and 2019. It is subtitled 'Plug into Cultural Heritage', and its main output is the creation of a social networking platform with an explicit focus on community engagement with cultural heritage. Specifically, the social media platform promotes European cultural heritage. The project site also offers free to use applications including for creating virtual reality experiences, games, and soundscapes.⁷⁵⁹ One of the applications can be used to create self-guided tours, building on Faro Convention 2005.⁷⁶⁰ <https://cordis.europa.eu/project/id/726765>

The outputs include further information on the use of the apps, as well as an engagement with intellectual property rights:

- D5.4 presents [links](#) to geolocation tours and stories including Amsterdam, Athens, Venice.

⁷⁵³ For example, the Italian part of the project concerns the the Alessandrino, Centocelle and Torre Spaccata (ACT) neighbourhoods in Rome: <https://co-roma.openheritage.eu/>. For the UK case see: <https://hswsunderland.openheritage.eu>.

⁷⁵⁴ OpenHeritage. 'Our OpenHeritage typology is ready' <https://openheritage.eu/our-typology-of-current-adaptive-heritage-reuse-policies-is-ready/>

⁷⁵⁵ The authors are Loes Veldpaus, Federica Fava and Dominika Brodowicz.

⁷⁵⁶ The authors are Miranda Iossifidis, Ashley Mason, Loes Veldpaus, Dora Mérai, Federica Fava.

⁷⁵⁷ Some of the relevant training videos may be accessed here:

<https://labs.openheritage.eu/processes/module3/f/360/>

⁷⁵⁸ The authors of the output are Joep de Roo and Rolf Novy-Huy.

⁷⁵⁹ PLUGGY, 'The pluggable apps' <https://www.pluggy-project.eu/> (including links to videos).

⁷⁶⁰ For some further discussion of the Faro Convention see the introduction to Part 2.4 above (European context).



- D2.5 'IPR report' ([link](#) to summary and PDF) focuses on copyright licensing issues relating to the PLUGGY platform and applications.

A further point to note is the connection between this project and others including ARCHES, EMOTIVE, CrossCult and others.⁷⁶¹

PURE www.hiddencities.eu

The EU funded project here is named PURE ('Public REnaissance: Urban Cultures of Public Space between Early Modern Europe and the Present'). The project partners use the title Hidden Cities for the website, the technical apps, and the specific city applications. This project is aimed at examining public spaces during the period 1450-1700 through five primary case studies, narrating the history of those places and identifying traces of the past in today's environment.

Of the city applications the one with resonance for the present report, Hidden Trento, is useful to highlight since it is also considered in the context of placemaking and digitisation in the Part 4.4 (section 4.4.2) 'city focus' on Trento. The Hidden Trento app offers a vast array of objects and stories relating to specific sites within Trento.⁷⁶² These include Albere Palace, the Cathedral, the city walls, and many others.

Of the different outputs related to the project the following are available open access the following may be of particular interest, including the first item which was presented at the Open Up Museums! conference in Rovereto in May 2022:

- Umberto Cechinatto and Massimo Rospocher presentation ([link to blog summary of conference](#)).

The edited collection by Fabrizio Nevola, David Rosenthal and Nicholas Terpstra *Hidden Cities: Urban Space, Geolocated Apps and Public History in Early Modern Europe* (Routledge, 2022) ([link to book](#), PDF version only) has numerous relevant chapters. See especially in this recently published book:

- chapter 2 'Heritage, digital placemaking and user experience' by Jo Morrison
- chapter 2 "Trento, the last chance for a beer" by Massimo Rospocher and Enrico Valseriati; and
- chapter 9 'The Hidden Cities apps' by Suzan Folkerts and Rick Lawrence.

EMOTIVE <https://emotiveproject.eu>

This project received EU funding during 2016-2019. It has a Glasgow connection with a major event held in The Hunterian Museum during the project (see Part 4.2). The project is based on what is described as "the premise that cultural sites are highly emotional places".⁷⁶³ The project developed a number of tools including virtual reality tools as well as engaging with physical sites of culture and indeed also combining the two which is of potential interest in light of the approaches to placemaking in the present report (see e.g. Part 2.1 above).

⁷⁶¹ See Spyros Souvlakis, Nikos Frangakis and Nantia Skepetari, 'Community outreach and policy briefing' (2019)

⁷⁶² The Trento site is here: <https://hiddencities.eu/trento/alla-rosa-inn/tavern-signs>.

⁷⁶³ EMOTIVE, 'Summary' <https://emotiveproject.eu/pages/summary/index.html>.



There were numerous outputs including tools and publications arising from the project. Focusing on those relating to Glasgow as well as digital cultural heritage and related issues the following may be of particular interest:

- These reflections by Maria Economou on digital cultural heritage including references to Kelvin Hall including how a cultural heritage institution engages with a broad audience: ‘Use And Impact Of Digital In Cultural Heritage: Insights From The Scottish Network Of Digital Cultural Resources Evaluation’ (2017) ([webpage link](#))
- ‘Evaluating emotional engagement in digital stories for interpreting the past. The case of the Hunterian Museum’s Antonine Wall EMOTIVE experiences’ ([link to PDF](#)).⁷⁶⁴

In respect of the use of tools several were deployed within the project which were intended for use cultural heritage professionals and creators to facilitate digital storytelling. These included immersive experiences and authoring tools.⁷⁶⁵ Furthermore, as we have seen already numerous projects may collaborate in different ways and EMOTIVE worked with other projects: ARCHES, PLUGGY and CrossCult.⁷⁶⁶

CrossCult <https://www.crosscult.lu>

This EU funded project ran between 2016 and 2019. - ‘Empowering reuse of digital cultural heritage in context-aware crosscuts of European history’ is, as its title indicates, focused on cultural heritage understood through a historical lens. It would to that extent appear to complement the PURE project (discussed under “Hidden Cities” above) which also focuses on history and storytelling. The project aims are described as follows:

“It will foster the re-interpretation of what citizens may have learnt in the light of cross-border interconnections among pieces of cultural heritage, other citizens' viewpoints and physical venues.

It seeks to increase retention, stimulate reflection and help citizens appreciate their common past and present in a more holistic manner.”⁷⁶⁷

In light of the GLAM survey findings above in Part 1.5 of this report the geolocalisation tools and apps for smart cities and smart venues, amongst others, may be relevant. The tools are not available but what is notable is that the project was concerned also with the development of business applications. Indeed one of the objectives of the project was to design business models relating to cultural experiences.⁷⁶⁸

MuseIT <https://www.muse-it.eu/>

This recently begun, EU funded project - ‘Multi-sensory, User-centred, Shared cultural Experiences through Interactive Technologies’ - is to run from October 2022 to Sept 2025. It has, unlike the majority of projects

⁷⁶⁴ These reflections were authored by Maria Economou, Hilary Young and Emilia Sosnowska as part of the 3rd Digital Heritage International Congress, San Francisco, CA, USA, 26-30 Oct 2018, ISBN 9781728102924.

⁷⁶⁵ Although not containing links to the tools specifically, examples of how they were used in the project can be found here: <https://emotiveproject.eu/pages/what-we-do/tools/index.html>.

⁷⁶⁶ EMOTIVE, ‘Collaborations’ <https://emotiveproject.eu/pages/collaborations/index.html>.

⁷⁶⁷ Stated on the homepage under the subheading ‘Where History meets IT’.

⁷⁶⁸ CrossCult, ‘Project Objectives’ <https://www.crosscult.lu/research/objectives>.



described, a particular focus on people with disabilities while aiming to target all people and cultural heritage institutions. The project explains its aims as follows:

“MuselT aims to co-design, develop, and co-evaluate a multisensory, user-centred platform for enriched engagement with cultural assets with **inclusion and equal opportunity for all as core principles**. The MuselT innovation is rooted in **multisensory representations of cultural heritage which extend beyond the visual and auditory senses**.”⁷⁶⁹

While not concerned specifically with the cities in this report, one of the partners is the Ministero Della Cultura (Italian Ministry of Culture). The potential for producing resources that make cultural heritage accessible is likely to be of interest to policy makers and governmental bodies responsible for delivering inclusive placemaking activities and projects. The project intends to cover both physical and born-digital cultural heritage as well as architectural sites.⁷⁷⁰

RECHARGE <https://cordis.europa.eu/project/id/101061233>

This recently begun EU funded project - ‘Resilient European Cultural Heritage As Resource for Growth and Engagement’ - is due to run from October 2022 to Sept 2025. It does not yet have an independent webpage but is described on CORDIS as follows, under the heading “Energising communities through culture”:

“RECHARGE is about participation and the value of cultural heritage and its institutions...The consortium will actively document and analyse this process, which will result in economic measures of effectiveness, indicators of sustainability and participation, museologic reprofiling of social and cultural spaces, cultural and social valuation, and managerial development of participatory business models. Combining both rigorous academic research and hands-on analysis through the Living Lab, RECHARGE will deliver a Playbook containing the ingredients and recipes that can be adapted to local environments to create participatory business models for their communities.”⁷⁷¹

Of the partners involved two organisation are from Italy: the European Fashion Heritage Association based in Florence, and the Fondazione Museo del Tessuto di Prato (the textile museum). There are also two partners from Estonia. One is Creativity Lab OÜ and the other Sihtasutus Eesti Meremuuseum (the Estonian Maritime Museum) both of which are based in Tallinn.

SILKNOW

This project is included here as an example of a very specific project, insofar as it addresses one particular type of cultural heritage and its digitisation. The EU co-funded project is concerned with European silk

⁷⁶⁹ Emphasis in original. MuselT, ‘Our objective and what we will do - co-design, creation and inclusion’ <https://www.muse-it.eu/museit-project>.

⁷⁷⁰ These are to be made available here: ‘Resources’ <https://www.muse-it.eu/resources>. Note that the website itself is also accessible.

⁷⁷¹ ‘Objective’ <https://cordis.europa.eu/project/id/101061233>. Further information about the project is available via another project partner, the Hunt Museum in Limerick, Ireland (PDF): <https://www.huntmuseum.com/assets/uploads/2022/08/RECHARGE-Synopsis.pdf>.



This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 870626

heritage from the 15th to the 19th centuries. It includes partners and stakeholders from Italy and the UK amongst many others.

Deliverables published by the project so far include those related to intellectual property law. Some of the deliverables and publications that may be of interest especially to smaller heritage institutions even those not concerned with silk heritage are:

- ‘Best Practices for Textile Collections about Documentation & Digital Data Curation’ (2021) ([link to PDF](#)) which include further links to place related initiatives (p. 21, on geographical names).
- An open access Sustainability journal issue ‘Silk Heritage in the Knowledge Society’ (2021) ([link](#)).

The project is notable for creating a tool for knowledge transfer i.e. “digital modelling of weaving techniques” (the Virtual Loom).⁷⁷² There is also a spatio-temporal data ontology viewer: STmaps ([link](#)).⁷⁷³

IN LOCO <https://inloco.eu/>

This is another highly specific entry that in this instance is likely to be of particular interest to stakeholders in Italy: Il Museo Diffuso Dell’Abbandono (the decentralised museums of abandonment). This is a web site for a virtual museum rather than a project like the others listed here. It creates maps in Romagna of abandoned architecture, heritage and other places while also inviting people to submit their own photographs and stories; the website also indicates that individuals can make suggestions for other places/regions to include in the “diffused museum”.

This kind of project may be of interest to other stakeholders in specific places both for community engagement and tourism. It is an example of the interaction between physical sites and interaction with those sites virtually. The project has also developed an app.⁷⁷⁴

Annex D

EUROPEANA

Europeana is an organisation that aggregates the digitised cultural heritage holdings of a network of museums. Significantly, Europeana is responding to the Common European data space for cultural heritage. The organisation describes itself as follows:

“Europeana provides cultural heritage enthusiasts, professionals, teachers, and researchers with digital access to European cultural heritage material. Why? To inspire and inform fresh perspectives and open conversations about our history and culture. To share and enjoy our rich cultural heritage. To use it to create new things.

⁷⁷² SILKNOW, ‘What is SILKNOW?’ <https://silknow.eu/index.php/about/>.

⁷⁷³ See also: Javier Sevilla, Pablo Casanova-Salas, Sergio Casas-Yrurzum, and Cristina Portalés, ‘Multi-Purpose Ontology-Based Visualization of Spatio-Temporal Data: A Case Study on Silk Heritage’ (2021) *Applied Sciences* 11(4): 1636. <https://doi.org/10.3390/app11041636>.

⁷⁷⁴ The app is available on Google Play as “IN LOCO museum of abandonment”.



We give you access to millions of cultural heritage items from institutions across Europe. Discover artworks, books, music, and videos on art, newspapers, archaeology, fashion, science, sport, and much more.⁷⁷⁵

Of particular interest in the context of placemaking is that the Europeana database enables the search of particular GLAMs' holdings as well as searches relating to particular places. These may be narrowed to holdings in particular countries. A search for Glasgow-tagged items for instance held in the UK returns 9,257 results. The website also has "collections", thus:

- Glasgow ([link to Glasgow collection webpage](#))
- Tallinn ([link to Tallinn collection webpage](#))
- There is not a separate collection on Trento but there is one for Trentino ([link to Trentino collection webpage](#))

While the above are directed at a general audience, in respect of material directed at GLAM professionals the ENUMERATE statistical data on Europeana Pro are relevant here:

- ENUMERATE project overview ([link to ENUMERATE webpage](#))
- Publicly available datasets ([webpage with link to data platform](#)). There is also the possibility of access to additional data i.e. to reuse ENUMERATE data which are available with permission

Of interest, in light of the placemaking concerns identified in this report especially relating to GLAM holdings, the ENUMERATE reports offer relevant information:

- An example is D4.4 'Report on ENUMERATE Core Survey 4' ([link to PDF](#))
- On the face of it the no direct comparator to GLAM survey question on geolocation and place-specific material but note the page on "Geography based resources" (p. 24). The definition of "geography based" here is "Monuments and buildings, Landscapes, Archeological sites, Other geography based resources" (p.55).

Furthermore, the ENUMERATE Self Assessment tool of 2022 is worth highlighting here ([Europeana website link](#)). Although the period for participation has now closed the outputs are likely to be of interest to cultural heritage practitioners. This tool was developed in collaboration with the inDICES project's Open Observatory.

For more information about inDICES see Annex C.

EUROCITIES

Eurocities describes itself as a network of more than 200 of the largest cities in Europe and it is based in Brussels.⁷⁷⁶ While its policy work and projects do not have an explicit concern with cultural heritage there is some engagement with creativity and culture as can be seen from involvement in the ROCK project

⁷⁷⁵ Europeana, 'About' <https://www.europeana.eu/en/about-us>.

⁷⁷⁶ Eurocities, 'About Us' <https://eurocities.eu/about-us/>. Apart from its member cities the network also has "partners" for example the Urban Future conference, the Urban Sustainability Exchange, and the magazine *Cities Today*.



(described in Annex A).⁷⁷⁷ Seventeen of the cities are in Italy, though it does not list Trento. It does list Tallinn, the only city from Estonia, and Glasgow as one of sixteen cities in the UK. The reason for including the network here is to see how cities describe themselves since the material on the city pages appears to have been submitted by the cities officially:

- Glasgow summary ([link to Glasgow web page](#))
- Tallinn summary ([link to Tallinn web page](#))

Certain publications and resources relating to cultural heritage may be of interest in offering brief examples of cultural heritage being used in particular cities. This includes interventions in the built environment as well as digital activities. An example of a relevant resource is ‘Cultural Heritage In Action Catalogue Of Good Practices’ (2020) ([link to catalogue on issuu](#)).⁷⁷⁸ The catalogue was created as part of the EU ‘Cultural Heritage in Action’ program. For an example in Scotland coordinated by Historic Scotland see pp. 22-23. Other examples include a joint database and web portal (Slovenia, p. 27), digital storytelling (Greece, p. 28), digital platform (Nantes, p. 38), and a crowdsourced digital archive (Rotterdam, p. 48).

Cultural and Creative Cities monitor

The European Commission’s collection of data is another relevant source of place-based information. It asks the question: “How cultural and creative is your city?” and provides a mapping tool including both qualitative and quantitative data on numerous cities.⁷⁷⁹

Of relevance to this report are the following city-specific pages:

- Glasgow ([link to webpage](#))
- Tallinn ([link to webpage](#))
- Trento ([link to webpage](#))

CULTURE COUNTS (Scotland)

This is a Scotland-specific organisation that is included here due to the resources and other information made available that may be of relevance to placemaking, especially in respect to Glasgow.⁷⁸⁰ The organisation advocates, for example for the adoption of certain cultural policies.⁷⁸¹

A resource of potential interest is the ‘Culture Toolkit for Towns’ which includes a section on art and culture ([link to Scottish Government town toolkit](#)).

⁷⁷⁷ Eurocities, ‘Culture and creativity’ <https://eurocities.eu/goals/culture-and-creativity/>.

⁷⁷⁸ Links to PDFs of related reports are available here: Eurocities, ‘Resources’ *Cultural Heritage in Action*, <https://culturalheritageinaction.eu/resources/>.

⁷⁷⁹ Joint Research Centre, ‘Cultural and Creative Cities Monitor’ <https://composite-indicators.jrc.ec.europa.eu/cultural-creative-cities-monitor>.

⁷⁸⁰ Culture Counts, ‘New Arts & Culture Toolkit for Scotland’s Towns’ (2021) <https://culturecounts.scot/news/2021/8/27/new-arts-amp-culture-toolkit-for-scotlands-towns>.

⁷⁸¹ E.g. a Culture Act, on which see: Culture Counts, ‘Manifesto Ask: Place: The Development of a Culture Act’ (2020) <https://culturecounts.scot/news/2020/11/25/manifesto-ask-place-the-development-of-a-culture-act>.





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