

# ReCreating Europe



## D5.10 Academic journal article on IPRs and place

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# City™© Place branding and intellectual property law

*This is a summary of ReCreating Europe deliverable D5.10 “Journal article on IPRs and place”.*

This article considers the branding of cities and, specifically, how the creation of city brands intersects with EU and national rules on trade marks and copyright in particular, with some reference to collective forms of protection namely, geographical indications. To understand how intellectual property law may support placemaking (or not) through the creation of city brands this article focuses on how elements of cultural heritage are transformed into the subject matter of intellectual property rights, for example cultural heritage elements as the basis of a logo that is then registered as a trade mark. Cultural heritage is broadly conceived here to include different aspects of culture and creativity in a city including its artworks, architecture, cityscapes, geographically specific holdings of cultural heritage organisations as well as the name of a city or a related place. The overarching question this article responds to is: how does intellectual property impact the creation of city brands? To that end this article asks three related questions: (i) what is the relationship between city branding, cultural heritage and intellectual property law? (ii) what role do trade marks (including the registration of place names and elements of a city’s cultural heritage) and copyright play in city branding? (iii) what is the effect of overlaps in protection between copyright and trade marks on the circulation of signs embodying cultural heritage?

To explore the responses to these questions this article adopts a legal methodology involving a study of relevant legal instruments and case law. This is complemented by insights from legal and non-legal (e.g. geography) literature on placemaking. The article proceeds by first addressing the concept of city branding, providing an overview of the relevant intellectual property rights, and then the role of culture and creativity in placemaking. The next part of the article addresses the role of intellectual property via an account of the role of trade mark and copyright laws in city branding. Particular attention is given to the registration of trade marks relevant to the creation of city brands and, within that, the focus is on descriptiveness, public policy and morality, and the protection of emblems. In respect of copyright law we consider in particular the freedom of panorama exception, especially how it interacts with trade marks. The final part of the article addresses the overlap between trade marks and copyright. Since it is one of the few cases directly addressing the relevance of the operation of intellectual property to place branding, the EFTA court decision in *Vigeland*<sup>1</sup> is then considered. It encapsulates the tensions inherent in the balancing of competing interests in cultural heritage at the intersection of trade mark and copyright law in placemaking.

Finally, this article engages with examples of different cities including Glasgow (UK), Tallinn (Estonia), and Trento (Italy) amongst other cities and regions in Europe.<sup>2</sup> These examples offer insights into the operation of city branding and what this might reveal about city branding as a form of placemaking.<sup>3</sup>

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<sup>1</sup> Case E-5/16 Municipality of Oslo, 6 April 2017 (EFTA Court).

<sup>2</sup> These are not case studies but rather examples that have been chosen to illustrate particular points of intellectual property law.

<sup>3</sup> This is a reflection of the broader project of which this article forms part i.e. the work within Work Package 5 of the ReCreating Europe consortium within a Task on IPRs and placemaking (Horizon 2020 grant agreement No 870626) which focuses on placemaking in those three cities. However, the insights from this article are likely to be more broadly applicable especially within the European Union and the United Kingdom.