

Cultural heritage images, pseudo-intellectual property and the end of public domain

Using comparative law to teach the interplay between IP and cultural heritage regulation

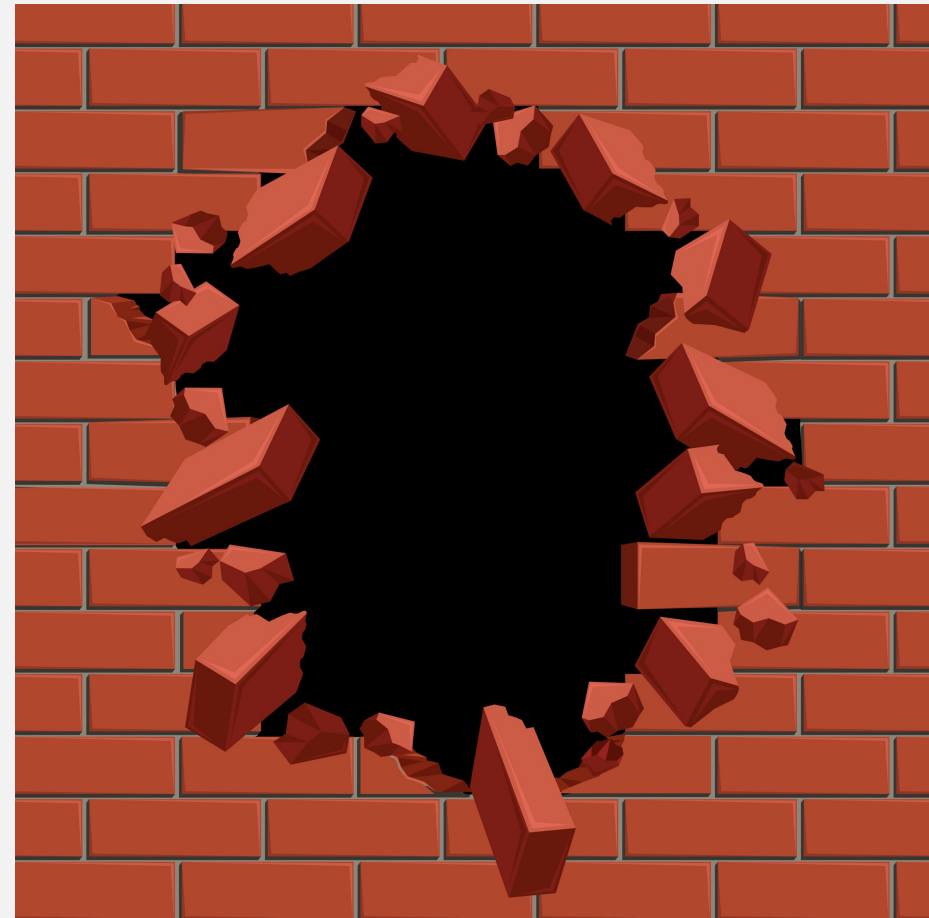
[EIPTN Conference 2023](#) – Copenhagen Business School

6 October 2023

Roberto Caso, Giulia Dore

Breaking walls: teaching IP through comparative law

- Case method, problem solving and legal skills
- Interdisciplinary approach: Law & Economics, Law & Technology, Law & Arts
- Open Educational Resources;: e.g. «[Diritto d'autore e arte \[Copyright Law & Art\] 2023-2024](#)»



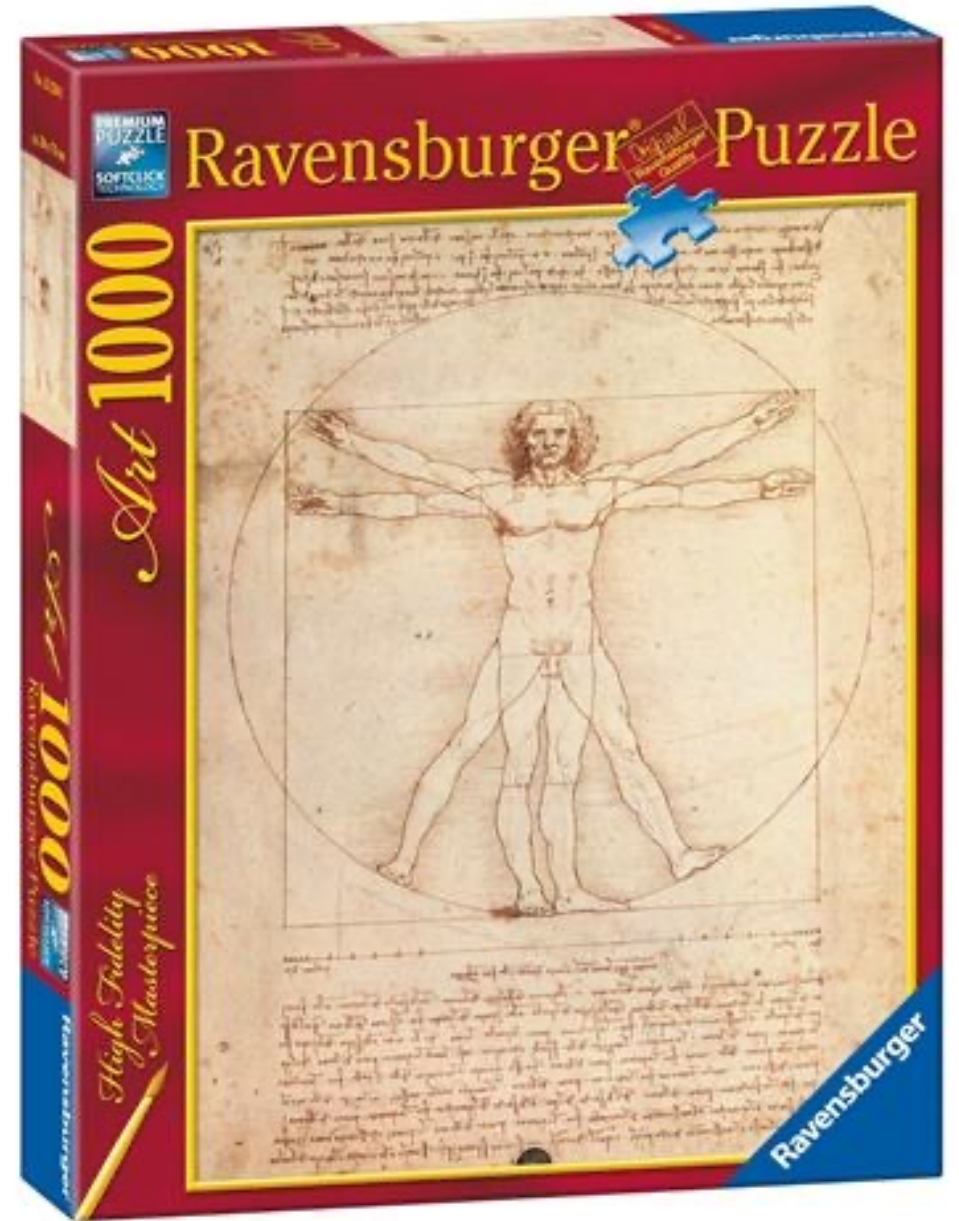
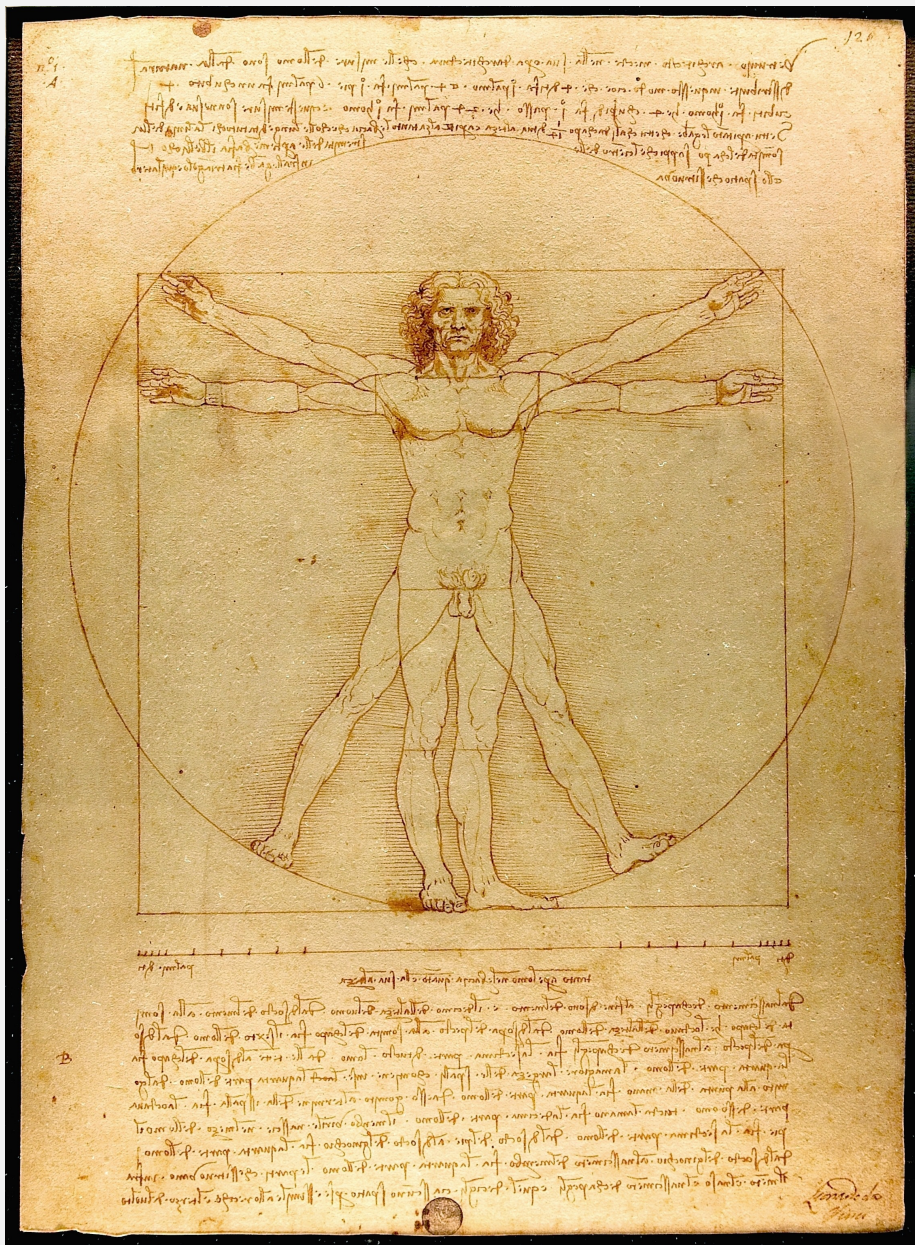
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The interplay between Intellectual Property and Cultural Property

- Cultural heritage images: uneasy cases and problems
- Open Access vs Exclusive Control; Public Domain vs (State-protected) Cultural Property
- The Italian case law: e.g. Michelangelo cases (Brioni, GQ), Vitruvian Man etc.

Italian Cultural Heritage Code (d.lgs. 2004 n. 42)

- Art. 107: the Ministry of Culture [...] may allow the reproduction of cultural heritage
- Art. 108: ruling reproduction fees
- Art. 108: the non-profit dissemination of legitimately acquired images of cultural heritage is permitted





Roberto Caso - Giulia Dore - Cultural heritage images - EIPTN -
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E.g. Italian Civil Court of first instance of Florence (Tribunale civile di Firenze), 20 April 2023 (GQ case)

- “unauthorized reproduction of the image of the nation’s **State-protected cultural property**, in a manner distorting the cultural purpose of the same property, constitutes a **civil tort** that must be compensated in **both pecuniary and non-pecuniary damages**”.

Italian Civil Court of first instance of Florence (Tribunale civile di Firenze), 20 April 2023

- “like the right to the image of the person, specified in article 10 of the Civil code, a **right to the image** can also be configured with reference to **cultural property**; this right finds its normative foundation in an express legislative provision, that is, in articles 107 and 108 of the Legislative Decree 42/2004, which constitute norms of direct implementation of article 9 of the Constitution [...]”.

Cultural heritage code + Civil code

- The **analogical link to civil personality rights** would like to allow the introduction in the Italian legal system of a tort (extra-contractual liability) under article 2043 of the Civil Code for violation of an absolute right of the “person” State.

The end of public domain

- The *ex post facto* judicial creation of an **eternal and indefinite pseudo-intellectual property** leads to the violation of the principle of the *numerus clausus* of intellectual property rights.



Pseudo-copyright

- A new form of pseudo-intellectual property (in this case, a pseudo-copyright musked as right of personality)
- Public power to exclusively control the commercial use of cultural heritage images

Breaking disciplinary walls

- Uneasy cases
- Comparative and interdisciplinary perspective
- Critical thinking

References

- Giulia Dore
- [The puzzled tie of copyright, cultural heritage and public domain in Italian law: is the Vitruvian Man taking on unbalanced proportions?](#)
- Kluwer Copyright Blog, April 6, 2023

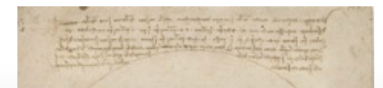
Kluwer Copyright Blog

INFRINGEMENT, ITALY, OWNERSHIP

The puzzled tie of copyright, cultural heritage and public domain in Italian law: is the Vitruvian Man taking on unbalanced proportions?

Giulia Dore (University of Trento) / April 6, 2023 / [Leave a comment](#)

In late 2022, the Court of Venice issued an interesting order restraining the use of the



References

- Roberto Caso
- [Michelangelo's David and cultural heritage images. The Italian pseudo-intellectual property and the end of public domain](#)
- Kluwer Copyright Blog, June 15, 2023

Kluwer Copyright Blog

CASE LAW, ITALY, REPRODUCTION (RIGHT OF)

Michelangelo's David and cultural heritage images. The Italian pseudo-intellectual property and the end of public domain

Roberto Caso (University of Trento) / June 15, 2023 / [Leave a comment](#)

On 20 April 2023, the Italian Civil Court of first instance of Florence (Tribunale civile di Firenze) issued a decision that held unlawful the reproduction by lenticular technique of the image of Michelangelo's David and its juxtaposition with the image of a male model on the cover of GQ magazine. The reproduction was not authorized by the public museum [Gallerie degli Uffizi](#) in Florence where the masterpiece is kept.

The ruling of the Tribunale was as follows:



References

- Roberto Caso
- [Il David, l'Uomo Vitruviano e il diritto all'immagine del bene culturale: verso un'evaporazione del pubblico dominio?](#)
- [Foro it., 2023, I, 2283](#)



References

- Giulia Dore, Pelin Turan, *When copyright meets digital cultural heritage: picturing an EU right to culture in freedom of panorama and reproduction of public domain art*, IIC - International Review of Intellectual Property and Competition Law (forthcoming)

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