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Digitalization and access to cultural heritage from the Italian perspective. A focus on digital archives and collections*

1. Introduction

In this contribution, I will aim to portray a brief overview of the Italian approach towards the digital turn in the context of cultural heritage, focusing on the digitization[1] of cultural institutions' archives and collections[2]. I will mention significant case studies and refer to legal and policy measures, connecting my discourse to the concept of access as related to the function of valorization of cultural heritage. The broader scope would be to offer a few insights into a deeper understanding of the 'culture of cultural heritage' that permeates our legal system and our society at large. In doing so, I will try to highlight along the discussion some dichotomies that have always characterized the field of cultural heritage – they have, in fact, emerged numerous times in these two days of conference – and have only been amplified by the digitization process. These dichotomies concern the relationship between public and private, a physical object versus a digital one, original versus replica/copy, cultural heritage law versus IP law, in-copyright works versus public domain works, commercial versus non-commercial use, and the tension between the two notions of culture and economy.

Digitization can help to preserve cultural heritage for future generations, ensuring that important cultural assets are not lost or forgotten. It can also provide new and innovative ways to disseminate and promote cultural heritage, making it more accessible and engaging for a wider audience. For the purposes of this contribution, I will consider the perspective of digitization as a form of valorization of cultural heritage. Specifically, I will parse digitization as a potential powerful way to bring the concept of valorization to its fullest realization, by encompassing all aspects of what it means to add value to cultural heritage, including the creation of digital copies to protect cultural assets from degradation and damage over time, as well as increasing access to and engagement with cultural heritage through reuse.

As an initial exploration of a broader analysis, this contribution will raise as many questions as possible, aiming at supporting further dialogue and conversations around the digitization process of cultural objects, with its benefits and criticisms, and its impact in shaping and influencing how we understand and approach valorization of and access to cultural heritage.

2. The digital turn in the context of cultural heritage. Digitized collections and archives: Access and reuse

It is undeniable, especially in the last decade, and even more after the Covid-19 pandemic, that the general trend of museums and archives all over the world has been to digitize their collections and provide online access to heritage material[3].

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1. Although in this contribution the terms digitization and digitalization are sometimes used interchangeably, they have different meanings. Digitization refers to the conversion of physical objects into digital form, while digitalization is a broader concept that involves creating digital versions of physical objects but more generally refers to the use of digital tools and the incorporation of digital technologies into various aspects of society and culture.
2. Cultural institutions encompass museums, libraries, and archives. *See* art. 101, Italian Code of Cultural Heritage, 'Institutions and places of culture':
«1. For the purposes of this Code, museums, libraries and archives, archaeological parks and areas, and monumental complexes are deemed institutions and places of culture.
2. The following definitions apply:
a) "museum" shall mean a permanent facility which acquires, conserves, arranges and exhibits cultural property for the purposes of education and study;
b) "library" shall mean a permanent facility which gathers and conserves an organized collection of books, materials and information, written or published on any kind of support, and ensures consultation for the purposes of promoting reading and study;
c) "archive" shall mean a permanent facility which collects, inventories, and conserves original documents of historical interest and ensures consultation for purposes of study and research».
Curatorial studies adopt the acronym GLAMs, including galleries, libraries, archives, and museums. This presentation will refer to archives and museum collections, and sometimes libraries, in a quite interchangeable way. The different types of objects held by each type of institution are not relevant for the purposes of this contribution, because the focus is on the digitization process, whose issues are common to all types of cultural institutions.
3. From the pioneering Rijksmuseum in Amsterdam, at the forefront in opening access to the digital public domain images of their col-

Are Italian institutions being part of this same global trend? As the first country to regulate cultural property, Italy has long set the standard for other nations, and continues to do so. However, when it comes to digitization, Italy has been slow to adopt this trend, compared to other countries. This may be due to its long history of protecting cultural heritage, which has resulted in a strong regulatory framework that prioritizes control and regulation of cultural heritage. It may not be surprising, then, that the idea of loosening control, even partially, may feel too much as a departure from our traditional way of thinking.

Nonetheless, even in Italy the impact of the pandemic has led to accelerated digitization of museum collections, besides the promotion of a vast array of online activities (virtual tours, workshops, educational programs, podcasts, gamification)[4].

A survey performed by the Digital Innovation in Cultural Heritage and Activities Observatory of the Politecnico di Milano shows that, while in 2020, forty percent of Italian museums offered digitized collections, by May 2021 they were already seventy percent. However, the Observatory also revealed that only one out of four museums (twenty-four percent) have a strategic plan for digital innovation and over half (fifty-one percent) of museums do not have professionals with digital skills in their workforce. Qualitative data suggest that the increasing availability of digital content does not correspond to adequate planning and design for such content, as well as tools used to convey it. The research points to a major issue, that is, how these new digital resources may turn from mere file storages to usable, interactive, and efficient archives. How to make them accessible on top of being digitized?

The concept of valorization established in the Italian Code of Cultural Heritage suggests that the initial step towards improving digital collections and archives is to increase awareness and knowledge about them, followed by making them accessible and usable to the public.

Valorization, as Lorenzo Casini explained in his presentation, has been later introduced by the Italian legislator[5] as an additional function to preservation ('tutela'), to be performed by both public and private institutions (the public has the duty to perform and the private may choose to perform, article 111 of the Code), on the one side to promote knowledge of cultural heritage, and, on the other side, to ensure the best conditions for the use and public enjoyment of such assets (article 6 of the Code). This implies that digital collections and archives should first be acknowledged and then activated.

The introduction of the function of valorization has profoundly changed the nature of cultural institutions, both public and private, which have slowly begun to be perceived no longer as dusty repositories where to store and preserve cultural assets, but rather as dynamic, living institutions, whose content can be accessed, reinterpreted, and reworked[6].

In this regard I would like to mention a 2020 research project by the Department of Legal Sciences, in collaboration with the Department of Architecture and Design, of the University of Florence titled *Living Archives: New methods of dissemination and reuse for fashion heritage.*

With particular reference to textile and fashion archives, the project starts from the premise that, although it is becoming more and more clear that digitized cultural objects can potentially serve as a knowledge system open to multiple uses, reuses and interpretations, digital archives do not receive enough attention and usage from the general public. Furthermore, possible recipients are often not even aware of their existence. Therefore, the project aims

lections, freely available online in high resolution since 2012, the major cultural institutions all over the world followed, among others, the Metropolitan Museum of New York, the National Gallery of Washington, the National Museum of Stockholm, the National Gallery of Denmark.

4. Seven out of ten museums (seventy three percent) have expanded digital initiatives and services already available in the pre-pandemic period, *see* Istat Report on 'Musei e istituzioni similari in Italia – anno 2020', available at www.istat.it/it/files//2022/02/REPORT_MUSEI-E-ISTITUZIONI-SIMILARI-IN-ITALIA.pdf (last accessed February 15, 2023).

5. Legislative decree no. 112/98 introduced the notion of valorization in addition to the primary function of preservation. Later on, the constitutional law no. 3/2001 took up the 1998 legislation and inserted valorization into the Constitution, amending article 117 on the allocation of powers between state (preservation) and regions (valorization).

6. Cultural institutions have been assuming a new role as public service providers, see article 111, Code of Cultural Heritage*:* «The activities for the enhancement of the cultural heritage consists in the stable constitution and organization of resources, facilities or networks, or in providing technical skills or financial or instrumental resources, designed for carrying out the functions and pursuing the aims indicated in article 6. Private subjects may concur, co-operate or participate in such activities. Enhancement may be carried out by public or private initiative. Enhancement carried out by public initiative shall conform to the principles of freedom of participation, plurality of participants, continuity of activity, equality of treatment, economic feasibility and management transparency. Enhancement carried out by private initiative is deemed a socially useful activity and its aims of social solidarity are recognized [precede by art. 101: (3) The institutions and places indicated in paragraph 1 which belong to government bodies are designated for public enjoyment and offer a public service. (4) The exhibition and consultation facilities as well as the places indicated in paragraph 1 which belong to private individuals and are open to the public offer a private socially useful service. Public institutions deliver a public service, whilst private institutions deliver a service that is only deemed useful for society]».
The premise is a new definition of cultural objects that is based on their use ('beni di fruizione') rather than on their ownership ('beni di appartenenza'), Giannini M.S., *I beni culturali*, Riv. trim. dir. pub. 3, 1976; see also Sandulli A., *Beni pubblici*, *Enc. del dir*. V, 1959, p. 277; Cassese S., *I beni pubblici. Circolazione e tutela*, Milano: Giuffrè, 1969. For a non-legal perspective, see Viola F., *Da attrattori ad attivatori culturali*, Territori della Cultura 42, 2020, p. 230.

at investigating the role of digital archives today and exploring their potential, by devising varied solutions, such as educational activities, call for ideas, contests, and periodical events. The overarching goal is to encourage the dissemination and reuse of archival material, particularly for research, education, and inspiration for designers and creatives in various fields. The project adopts an interdisciplinary method that combines the design-driven approach of designers, who identify the contexts and meanings of digitized material, with the legal expertise of comparative lawyers, who work to define the most appropriate ways of reusing archival content within a legal framework that respects the rights of creators and users alike.

One of the project's partners is the European Fashion Heritage Association (EFHA), established in 2014 in Florence following a successful European Commission-funded project, in which for the first time both public and private archives and museums across Europe gathered to share online, through the digital library Europeana, their rich heritage of historical clothing and accessories, contemporary designs, catwalk photographs, drawings, sketches, magazines, catalogues and videos[7]. Europeana collects and gives access to tens of millions of digital objects from cultural institutions across Europe, and the EFHA has been contributing as an aggregator for its fashion sector, thus creating the largest and richest fashion heritage digital repository available online, with more than 930,000 records published in 2022. The Association has now grown to more than forty-five different European fashion institutions from fifteen European countries, from small private museums to large national institutions, with the common goals of supporting the preservation and valorization of tangible and intangible heritage connected to textile and fashion. To achieve this objective, the primary effort has been towards facilitating free access to Europe's vast and distinctive fashion heritage. Throughout the years, the Association has been elaborated different guidelines to support fashion institutions in handling different issues related to reuse of digital content online. As an output to Europeana project, a report on *Fashion and Intellectual Property 'Best Practice' Guidelines* has been published to address the challenges faced by cultural institutions when managing rights related to fashion content[8]. A key aim of Europeana has been to make content available under open access terms when possible. Open access means that content should be accessible to everyone free of charge and re-usable without further permission to be required from rights holders.

7. See the European Fashion Heritage Association website, fashionheritage.eu, and the Europeana website, pro.europeana.eu (last accessed February 15, 2023).
8. Europeana Fashion, *Fashion and Intellectual Property 'Best Practice' Guidelines*, 2013, available at fashionheritage.eu/publications/ (last accessed February 15, 2023).

3. Open access movement and the debate in Italy

In recent times, the debate on open access policies, that first raised in United States and Europe in the late 1990s and early 2000s, has also started raging among Italian scholars, cultural heritage professionals and public opinion. But, in fact, have any Italian institutions adopted open access policies? Excluding a small number of public libraries, I can name Museo Egizio and Fondazione Torino Musei (including Galleria Civica di Arte Moderna e Contemporanea, Museo d'arte orientale, Palazzo Madama), among a few, which are all, not unexpectedly, private foundations. Private entities have typically invested more funds, compensating for the public sector's shortfall, and have been less influenced by the idea of separating culture from economy, as we will explore later on. A recent finding in the realm of public institutions is the National Museum of Matera, in Southern Italy[9]. The digitization process has involved only one small collection, the Rizzon collection, but made seventy-four digital reproductions of pottery vases available online under one of the most open Creative Commons licensing schemes, the CC BY[10]. CC BY stands for Creative Commons Attribution. It is a type of Creative Commons license that allows others to use, distribute, and modify a work, even for commercial purposes, as long as they provide attribution to the original creator. This means that anyone can use or adapt a work licensed under CC BY, if they credit the original creator. The CC BY license is one of the most permissive Creative Commons licenses, and is commonly used for open access academic publishing and other types of content that the creator wants to make widely available for others to use and build upon[11].

9. See the ongoing survey by McCarthy D., Wallace A., *Survey of GLAM open access policy and practice, 2018 to present*, available at docs.google.com/spreadsheets/d/1WPS-KJptUJ-o8SXtg00llcxq0IKJu8eO6Ege_GrLaNc/edit#gid=1216556120 (last accessed February 15, 2023). At the moment, the Italian institutions adopting open access policies that I did not already mentioned in the text are: Archivi delle arti applicate italiane del XX secolo; Archivio Fotografico – Fondo Gabinio; Archivio Pietro Pensa; Archivio Storico Ricordi; Associazione culturale GoTellGo; Biblioteca Digitale Trentina; Biblioteca Europea di Informazione e Cultura; Biblioteca Nazionale Centrale di Firenze; Biblioteca Nazionale Centrale di Roma; Dipartimento di Scienze della Vita, Università degli Studi di Trieste; Dr. Friederich Tessmann Provincial Library; Fondazione Biblioteca Europea di Informazione e Cultura (BEIC); Fondazione Centro Studi Aldo Capitini; Fondazione Ranieri di Sorbello; Politecnico di Milano; Promoter Digital Gallery; Raccolte extraeuropee del Castello Sforzesco; Università di Bologna; Università di Trieste.
10. See the Rizzon Collection of National Museum of Matera, https://www.museimatera.it/collezione-rizzon-online-museo-nazionale-matera/. See also Archivio Fotografico Museo Egizio, archivio fotografico.museoegizio.it/it/ and Fondazione Torino Musei, www.fondazionetorinomusei.it/it/servizi/open-data/ (all last accessed Febraury 15, 2023).
11. See creativecommons.org/licenses/ (last accessed February 15, 2023).

The discussion around open access is part of the larger debate on reproduction and reuse of digital images. Digital images may be of different types of objects subjected to different regimes of protection: 1) artworks protected by copyright or intellectual property rights, in case of industrial design or even museum brands (see the case of Uffizi)[12]; 2) cultural objects protected by copyright and cultural heritage law; 3) public domain material protected by cultural heritage law.

Under copyright law, reproduction requires permission from the author, while objects in the public domain are freely reusable. However, in the Italian legal system, the cultural heritage law imposes further restrictions on works that are in the public domain and may fall under the definition of 'bene culturale' (article 2.2 of the Code). As a result, even if a work is in the public domain, the owner or custodian can still prevent others from using or reproducing it to safeguard the public interest in that object.

The copyright and intellectual property framework may be challenging to reconsider, given its strong influence in the Italian legal tradition. The debate raises the question of whether, instead, the provisions of cultural heritage law that require permission for reproducing public domain material could be reviewed. This idea acknowledges the dominant economic perspective that underlies copyright law, while considering a more nuanced approach to cultural heritage that takes into account the public interest in promoting access and reuse. While copyright law may not be easily altered, revising the provisions of cultural heritage law for cultural objects that are no longer protected by copyright could be a more feasible option.

In Italy, the debate has gained momentum since 2014 with the so-called Art Bonus legislation (law no. 106 of July 29, 2014), which accorded the free reproducibility of cultural heritage in museums for non-commercial use, and the subsequent law no. 124 of August 4, 2017, which extended the provision to cultural objects in archives and libraries[13]. Article 108.3-*bis* of the Italian Code of Cultural Heritage was amended by establishing that «activities, carried out on a non-profit basis, for the purpose of study, research, free expression of thought or creative expression, and promotion of knowledge of cultural heritage are free».

In the aftermath of the Covid-19 pandemic, the Digital Agenda for Europe 2020 has urged cultural institutions to make their data more accessible and open. Significant investments of the European Recovery Fund[14] have therefore been addressed towards the digitization of cultural heritage with the creation of the Digital Library (Central Institute for the digitization of cultural heritage) of the Ministry of Culture[15], which promoted the National Plan for the Digitization of Cultural Heritage (PND). The PND focused on the *Guidelines for the acquisition, circulation and reuse of reproductions of cultural property in the digital environment*, and its final version was released by the Digital Library in 2022[16].

The debate has been further fueled by the process of implementation of the EU Directive no. 790 of 17 April 2019 on Copyright and related rights in the digital single market, focusing on article 14, which provided the free reproducibility of cultural objects even for commercial uses. Article 108 of the Italian Code places significant limitations on the commercial use of images of works in the public domain, requiring authorization from the institutions that own or manage the cultural object. Despite the above-mentioned revisions made to the Code in 2014 and 2017, it remains prohibited to reproduce images of cultural assets in the public domain for commercial purposes. The adoption of article 14 of the Copyright Directive would have eliminated the typical distinction between commercial and non-commercial uses.

Over time, the terms of the debate have shifted: while at an early stage the discussion was about what kind of limits on

12. In recent years, museums worldwide have poured increasing attention into protecting and exploiting their brands. In Italy, however, the exploitation of trademarks by museums is still limited. Few museums appear to have filed a trademark, suffice it to say that Gallerie degli Uffizi filed its (new) trademark only in 2017 (Trademark No. 017158114 filed on August 30, 2017). And even when trademark exploitation occurs, it is still limited to the creation of branded product lines to be sold within the exhibition-related bookshop.
13. On the Italian debate around reproduction of digital images of cultural heritage, see Casini L., *Riprodurre il patrimonio culturale? I 'pieni' e i 'vuoti' normativi*, Aedon 3, 2018; Modolo M., *La riproduzione del bene culturale pubblico tra norme di tutela, diritto d'autore e diritto al patrimonio*. Aedon 1, 2021; Forte P., *Il bene culturale pubblico digitalizzato: prime note per uno studio giuridico*, P.A. Persona e Amministrazione, 2019, p. 245; Carpentieri P., *Digitalizzazione, banche dati digitali e valorizzazione dei beni culturali*, in Aedon 3, 2020.
14. See commission.europa.eu/strategy-and-policy/recovery-plan-europe_en (last accessed February 15, 2023). One of the major initiatives towards the digital funded by the Recovery Fund was the platform ITsART, the so-called Netflix of Italian culture, proposed by the then Minister of Culture Dario Franceschini to support the performing and visual arts fields at the time of Covid emergency. Active since May 2021, ITsART did not even last two years. After making losses of nearly 7.5 million euros at the end of its first year of operation, Cassa Depositi e Prestiti, which held a majority stake, officially put it into liquidation on December 29, 2022. But in January 2023, the new minister Gennaro Sangiuliano decided not to refinance it: www.exibart.com/attualita/addio-itsart-la-netflix-della-cultura-italiana-chiude-le-porte/ (last accessed February 15, 2023).
15. See digitallibrary.cultura.gov.it/ (last accessed February 15, 2023).
16. Digital Library (2022). Piano Nazionale di Digitalizzazione del Patrimonio culturale. Linee guida per l'acquisizione, la circolazione e il riuso delle riproduzioni dei beni culturali in ambiente digitale, available at docs.italia.it/media/pdf/icdp-pnd-circolazione-riuso-docs/v1.0-giugno-2022/icdp-pnd-circolazione-riuso-docs.pdf. This final report has been released by the Digital Library after one month of public consultation on a provisional draft. A review of the outcomes of the consultation is available at partecipa.gov.it/processes/piano-nazionale-digitalizzazione-patrimonio-culturale/f/144/ (all last accessed February 15, 2023).

reproductions should be envisioned, nowadays the question is whether there should be any limitation at all.
Associations and private organizations, such as ICOM Italia, Wikimedia Italia, Creative Commons Italia have been actively participating to the debate on open access and highly engaged in the process of implementation of the Directive. Extensive research has been conducted and detailed and comprehensive guidelines have been developed with the purpose to increase the level of public access to cultural heritage[17]. Several hearings were held in the Italian Senate supporting the full adoption of the EU Directive[18].
Notwithstanding these internal and external pressures, the Directive was implemented in 2021 (through legislative decree no. 177 of November 8, 2021) without any effect on the distinction commercial versus non-commercial use.
In general, apart from the cases I mentioned, above all the Egyptian Museum, which was even awarded by ICOM Italia with the Open Culture Prize for its unique experience, the commercial versus non-commercial distinction remains a fundamental element of the Italian regime of protection of cultural heritage. Even the organizations that are more actively involved in the digitization and open to new forms of access have not yet moved beyond this distinction.
Let me mention the case of the *Museo del Tessuto*, or Textile Museum, in Prato, a private foundation, which is one of the largest cultural institutions in Italy dedicated to the enhancement of ancient and contemporary textile art and production. The Museum is part of the European Fashion Heritage Association and highly involved in several European-funded projects for the promotion of European textile cultural heritage, which cover various fields including digitalization (*e.g.*, the Crafted project[19]). The process of digitization of the Museum's archive and collections is still ongoing: currently they are planning to digitize through Europeana and make available online 3,600 pre-industrialized objects with the broad CC license, CC BY-NC-SA[20]. A work licensed under CC BY-NC-SA can be shared, adapted, and used for non-commercial purposes as long as the original creator is given credit for it, and any new creation is also licensed under the same or a compatible Creative Commons license. Reuse for commercial purposes would still need a request to obtain the permission. However, despite not being at the forefront of active digitalization processes and implementation of open access policies, the Museo del Tessuto's work is of significant value in creating and promoting a European network that could serve as a platform for starting conversations on unifying standards of access to digitized cultural heritage across the largest number of cultural institutions.

17. See, among others, ICOM Italia, *FAQ Copyright e licenze aperte nel web*; *Id.*, *OPEN ACCESS. 100 domande e risposte per Musei, Archivi e Biblioteche. Diritto d'autore, copyright e licenze aperte per la cultura nel web*, available at www.icom-italia.org/gruppo-ricerca-digital-cultural-heritage/ (last accessed February 15, 2023).
18. See ICOM Italia, *Audizione informale di ICOM Italia presso la XIV Commissione permanente (Politiche dell'Unione Europea) del Senato della Repubblica Italiana sul disegno di legge n. 1721 (Legge di delegazione europea 2019)*, 2020, www.senato.it/application/xmanager/projects/leg18/attachments/documento_evento_procedura_commissione/files/000/144/301/ICOM.pdf; see also www.wikimedia.it/news/audizione-al-senato-liberiamo-i-beni-culturali-e-adeguiamoci-alleuropa/ (all last accessed February 15, 2023).
19. www.museodeltessuto.it/progetti-europei/ (last accessed February 15, 2023).
20. This information is from an interview conducted with Laura Fiesoli, responsible of contemporary and digital area at the Textile Museum in Prato, in May 2022.

4. Access and public interest

During a conference on cultural heritage law in a comparative perspective between Italy and the United States such as this, I, too, cannot help but bring up in my remarks some arguments developed by Professor of Comparative Law and pioneer of Art and cultural heritage law at Stanford University, John Henry Merryman. In his seminal article of 1989 on *The Public Interest in Cultural Property*, Professor Merryman identified the primary interest in cultural heritage in «allowing the relevant public to access cultural heritage», meaning that the widest possible public should be able to see cultural objects owned by institutions[21].
The term «see» suggests a very specific way of fruition related to the in-person visit to museums, which is nowadays only one way out of a variety of different individual choices that people with different needs can make to enjoy cultural heritage. The term «owned» gives us the chance to reflect about the ongoing shift in the perception of the role of museums and cultural institutions as guardians or custodians rather than gatekeepers.
What does "access" mean according to Merryman? What does "access" mean today?
Access, especially after the technological turn, has different ways to be implemented, diverse levels of engagement: from the simple fruition, the mere visit or consultation, to new ways of active participation involving processes of co-design and co-creation. Over the past twenty years, private individuals, entities, and associations have been increasingly asking not only to enjoy heritage, but to actively participate in its management and enhancement in a perspective of horizontal subsidiarity envisaged by article 118 of the Constitution. And today even more, community engagement in terms of promoting actions for cultural heritage, already belonging to Italian legislation since 1939, has been incentivized with the official recognition of the

21. Merryman J.H., *The Public Interest in Cultural Property*, California Law Review 77, 1989, pp. 339-364.

usefulness of this approach by the ratification in 2020 of the Council of Europe's Framework Convention on the Value of Cultural Heritage for Society (Faro Convention, 2005). The parties to the Faro Convention recognize the right to access to cultural heritage as both the «the right to benefit from cultural heritage and to contribute towards its enrichment» (article 4, Faro Convention).

Has the notion of access assumed a diverse nuance in respect to the one described by Professor Merryman? Is there a single interpretation of what «the best conditions for the use and the enjoyment of cultural objects», as defined in article 6 of the Code, should be?

It is worthy to reflect carefully on the complex, layered, and multifaceted notion of access to cultural heritage.

The meaning of access has evolved over time, and the evolution of the concept of access is closely related to the evolution of how the different interests at stake are interpreted and balanced.

A classic dilemma attains to the balance between the interest to maximize access to cultural heritage and the interest in preserving and protecting cultural heritage. The two key objectives of museums – access and preservation – are often in conflict. Preservation takes precedence over access, such as when a delicate textile must be kept in storage to prevent it from fading due to light exposure, accessible only to a few scholars, rather than putting it on display for the general public[22]. It is common sense that if you do not preserve, you do not have anything to valorize.

However, the balancing between competing interests is always different depending on context and use. To rank these values *a priori* is to arbitrarily choose to prioritize certain uses and users over others. Therefore, it is necessary to acknowledge and navigate competing interests, and make decisions on a case-by-case basis, in order to work within these differences.

The notion of access is tightly connected to the one of public interest. What does "public interest" mean according to Merryman? What does "public interest" mean today?

Typically, cultural heritage involved several public interests, often in opposition or divergent. We mentioned the interest in the physical preservation of cultural objects, whose roots go back to the early ages, and the interest in granting public access to and spreading knowledge about cultural objects, that emerged after the Second World War. Globalization has made the picture even more complex. This complexity also involves the relationship between public authorities and private actors, given the fact that the latter can be either owners or visitors or sponsors of cultural objects. The role of private actors in this area is highly heterogeneous and differs from case to case.

Today, the answer to the question of what public interest is can also be related to the rethinking of the notion of cultural heritage through the lens of commons. When observing cultural heritage as a common good, its social value can immediately be appreciated and the interests that it serves. Framing cultural heritage as a commons puts into question the traditional public-private dichotomy – since public has an obvious role in the protection and management of cultural heritage, but also private associations and foundations are involved in the enhancement of cultural heritage –, and at the same time allows to go beyond traditional dichotomies such as the one between protection of and access to cultural heritage.

A related dichotomy that is worth dismantling is the typical divide between culture and economy. Several contributions to the conference have already highlighted the historical Italian skepticism towards the mixture of culture and economy. The exploitation of cultural heritage for financial gain is one of the greatest fears among Italian experts and the general public. Many question the ethics of commercial reuse, especially if it is carried out by a private entity. Public institutions consider themselves as the sole parties capable of guaranteeing the best interest of cultural heritage. This has been a long-standing issue that continues to be a point of concern in the cultural sector and places commercial reuse at the center of the debate around the reproduction of cultural heritage. Is it that commercial uses are disrespectful of the heritage aura (Benjamin, 1936)? And, moreover, what could be defined as a commercial purpose? Determining whether a particular use of cultural heritage qualifies as commercial is not always straightforward. Different institutions may employ different criteria and have varying definitions, and likewise, many factors can influence this determination, such as the context in which the use occurs, the nature of the use, and the intended audience.

And when a commercial purpose is present, does it preclude the possibility of achieving a cultural purpose as well? If we look at the art world, we find a similar discussion around the incompatibility between culture and profit[23]. Some have argued that commercialization of art can devalue its cultural significance. And yet, art and commerce have always been an inseparable pair. Throughout history,

22. *Ibid.*

23. In the United States the same debate regarding cinema as a form of artistic expression to be protected under the First Amendment is reflected by the two decisions: *Mutual Film Corp. v. Industrial Commission of Ohio*, 236 U.S. 230 (1915), where the court defined activities of production, distribution and enjoyment of films as «business, pure and simple, originated and conducted for profit», and because of this very purpose, were not entitled to any protection as free artistic expression, and the subsequent *Burstyn v. Wilson*, 343 U.S. 495 (1952), which by overruling *Mutual Film*, and establishing that as books, newspapers, magazines are published and sold for profit this does not prevent them from being considered as a form of expression, whose freedom is safeguarded by the First Amendment, so cinema should have been treated the same.

artists traditionally have worked on a commission basis and in the post-modern era the market has become even more deeply intertwined with the artistic process; only think about the work by Andy Warhol, such as the Brillo Boxes, where he took mass-market images of commercial subjects or pop culture and put them in galleries, practicing the explicit rejection of the traditional distinctions between high and low art and between art and commerce. In the United States there is also a proper form of art known as commercial art, that is art created for commercial purposes, mainly advertising, recognized under the protection of the First Amendment as early as 1903 in the case *Bleistein v Donaldson*. In this decision, the U.S. Supreme Court ruled that commercial artwork, including advertising, is entitled to the same constitutional protection as other forms of artistic expression, such as literature, music, and visual arts.

Nowadays, advertising worldwide has been much devoted to the re-use of art masterpieces for marketing campaigns. Is the value and significance of a classic piece of art diminished and diluted or rather enhanced and expanded by reworkings or reinterpretations that it may undergo?

Does the distinction between mere copying and creative re-elaboration matter in the debate on reproduction of digital images of cultural heritage? When is the use of a cultural object original enough to be considered a creative re-use and re-interpretation of the original?

So why must the cultural purpose of circulating knowledge and heritage be at odds with the commercial purpose? What are in practice the potential harms associated with this kind of use?

Cultural institutions, on the one side, may be reluctant to allow free use of cultural heritage images due to concerns of potential financial loss, and, on the other side, hold on to a more proprietary and pedagogical view of cultural heritage that emphasizes the need to prevent inappropriate uses of such images (unsuitable to a moral code identified with the notion of «decoro», as in the case of the Uffizi against the use of the Botticelli Venus image made by Pornhub that Felicia Caponigri explored in her contribution).

The issue of the reproduction of cultural property drew vast public attention in 2017 due to a case brought before the Court of Florence on the interlocutory appeal of the Ministry of Culture against a Florentine travel agency, Visit Today s.n.c., which, in the absence of a concession and payment of the relevant fee, was using the image of the David by Michelangelo to advertise the offer of tickets and guided tours to various museums, including the *Galleria dell'Accademia*, precisely where the statue is preserved. The Court inhibited Visit Today «in Italy and throughout Europe, from reproducing for commercial purposes the image of Michelangelo's David» and ordered «the immediate withdrawal from the market and destruction of all advertising material reproducing the image» due to the violation of article 108 of the Code of Cultural Heritage[24].

The laconic reasoning of the decision was based on the fact that the overuse of the digital image of an artwork «is likely to debase its attractiveness», resulting in revenue loss for the owning institution. However, data suggests that the opposite is true – digital dissemination of cultural objects in different contexts encourages people to visit the original artwork in person. Digital images are considered non-rivalrous, meaning that their use by one individual does not reduce their availability to others. The value of digital images lies in their potential for widespread sharing, which increases their value to the community and enhances the institution's visibility and the work's attractiveness. This can lead to increased audience engagement and possibly public and private funding opportunities. On the contrary, the costs of managing and accounting for reproductions are lower than the benefits of licensing them[25].

5. Concluding remarks

What we dealt with in the previous paragraphs partly explains why, in recent years, a deliberate effort to cultivate a culture of reuse has emerged: it is through reuse that cultural heritage is handed down and new heritage is created, and this is how the valorization of cultural heritage reaches its full significance.

Digital is not the same as physical, you do not have the same contact with the aura[26], however digitization opens up to other possibilities. By digitizing cultural heritage, it is possible to make it more widely available to people who may not have had access to it before. This includes people who are physically distant from the cultural heritage site or object, as well as those who may have mobility or other physical limitations that prevent them from visiting in person. Digitization also enables new forms of interaction with cultural heritage. For example, digitized collections can be explored through online platforms, allowing users

24. Tribunale di Firenze, order no. 13758 of October 26, 2017.
25. See Europeana, *Democratising the Rijksmuseum. Why did the Rijksmuseum make available their highest quality material without restrictions, and what are the results?*, available at pro.europeana.eu/files/Europeana_Professional/Publications/Democratising%20the%20Rijksmuseum.pdf (last accessed February 15, 2023).
26. Cf. the position of Professor Adler A. (2009). Against moral rights, *California Law Review* 263, p. 291: «There is no more aura. We can't fully experience the magic of the Mona Lisa because it is gone; it is a casualty of the triumph of mechanical reproduction. And it is not only mechanical reproduction – with its relentless mediation of our vision – that has ushered in this loss. The loss might also come from the very act of honoring and revering the work. As noted above, one artist warned that when we tum a picture into a masterpiece, we render it "invisible in the present"».

to zoom in and examine details, compare objects, and learn more about their history and significance. This can deepen people's engagement with cultural heritage and foster a greater appreciation for its value. Last, digitization enables easier access to and reuse of cultural assets, which can lead to the creation of new artistic or creative expressions that may become part of new cultural heritage.

As far as criticisms are concerned, the digitization process should not involve dangerous technical equipment that can risk damaging the object and jeopardize the primary need for preservation of cultural heritage. A significant and inevitable issue associated with the digitization of cultural heritage is technological obsolescence. This issue is not open for debate and cannot be completely solved[27].

One last important comment on the potential benefits of digitalization related to access to cultural heritage. The idea of cultural heritage is a very Western-based concept, surrounded by very Western-based dichotomies – this consideration emerged also yesterday during the roundtable discussion. As a final leave-behind, I would like to advocate for the increasingly widespread idea according to which digitization can represent a sort of rebalancing, by contributing to open to new voices and reducing the Western single-handed narrative in the debate around cultural heritage (Casini). Digitalization has the potential to enable a more nuanced understanding of the concept of cultural heritage, moving beyond binary categorizations and helping to redefine the dichotomies that are typical of the Western perspective.

The digitization of the Rizzon pottery collection by the Matera Museum is a way of preserving a modest cultural heritage that serves to document the history of the local area, regional identity, and the unique characteristics of the territory. Similarly, the Prato Textile Museum has been involved in various European initiatives, such as the Createx project[28], aimed at promoting the reuse of traditional clothing and techniques from Italy, Albania, and Spain.

The philosopher Derrida rightly assumed that technology has changed power relations and has the potential to redistribute powers – in the open structure of the web, ordinary people and minority groups can be heard and can have the ability to influence existing content by adding their own as well as to choose their own way of access cultural objects (or to not access).

A few major public institutions consider themselves the only ambassadors of what cultural heritage is and how it should be enjoyed, but defining cultural heritage, and the way of it is accessed, must be a local and community-involved decision-making process. To echo Sarah Harding's contribution, different times require different solutions. Despite its flaws and limitations, digitalization can contribute to a new way of accessing cultural heritage, fostering inclusivity and diversity.

27. This consideration was confirmed by Sarah Dominique Orlandi from ICOM Italia during an interview in February 2023.

28. See Createx Project – Textile Heritage Inspiring Creatives, available at https://www.museodeltessuto.it/progetti-europei/createx/ (last accessed February 15, 2023).