CULTURAL HERITAGE LAW BETWEEN TRUTH AND POWER: LAW'S EVOLUTION AND OUR COLLECTIVE CULTURAL INTEREST IN AN INFORMATIONAL ECONOMY

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INTRODUCTION

Imagine if you will a time when all museums, galleries, foundations, and other spaces of public trust that usually display the tangible iterations of our shared cultural heritage, the complex of tangible objects and the tangible manifestations of intangible practices, representations, expressions, knowledge, and skills that we, as individuals, communities and as a collective, recognize as of cultural interest to us,[1] are closed. Instead of walking to a

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1 This meaning is gathered from the definitions of cultural property in the source nation of Italy and definitions of cultural property and intangible cultural heritage at the international level. *See* Decreto Legislativo, 22 gennaio 2004, art. 10, n.42, G.U. Feb. 24, 2004, n.137 (It.) [hereinafter D.Lgs. n. 42/2004 (It.)] (Italian Code of Cultural Property); Convention on the Protection of Cultural Property in the Event of Armed Conflict pmbl. & art. 1, May 14, 1954, 249 U.N.T.S. 215 (defining cultural property in terms of its relevance to all mankind); Convention for the Safeguarding of the Intangible Cultural Heritage art. 2(1), Oct. 17, 2003, 2368 U.N.T.S. 42671 (defining intangible cultural heritage in terms of practices, representations, expressions, knowledge, skills). Other literature defines cultural heritage even more broadly, in light of the emphasis on cultural heritage over cultural property, and the problematic commoditization that heritage as "property" implies. *See* Lyndel V. Prott & Patrick J. O'Keefe, '*Cultural Heritage' or 'Cultural Property*'?, 1 INT'L J. CULTURAL PROP. 307, 311 (1992). For an overview of the legal definitions of cultural property and cultural heritage at the international level, see generally Lucas Lixinski,

museum to be as close as we can to a tangible part of our cultural heritage, walking around a glass or plexiglass box to find the perfect angle at which to deeply engage with the object, placing ourselves as close to a painting as we can without the dreaded sensors being set off or a guard asking us to politely (or more emphatically) step away from the work, we sit in front of our computer. We watch a video of a museum director taking us on a tour of a museum gallery, a behind-the-scenes short documentary about an artist at work and other historical facts, or we may even download or view a three-dimensional scan of a tangible cultural property on display in the very gallery we can no longer access. Our multiple sensory abilities to gather information about the objects, already compromised or relinquished to others to a certain extent in the museum, are now wholly abandoned for a visual, purely *informational* appreciation of the object. Viewing the object's replica or reproduction[2] through a screen, outside the context of a museum or gallery space, outside a physical place of public trust,[3] makes tangible cultural heritage a piece of intangible, newly reified information which is produced, accumulated, and processed.[4] Shared on social media and on the internet, largely divorced from the physical context of the museum or other space of public trust save for hashtags or other location labels, the institutional actors and publics interacting with this information become even more vast and varied, and collective meaning-making more fractured and unique.

Far from a description of a twilight zone, this scenario was a present-day reality in Italy thanks to the advent of the coronavirus pandemic and the resulting shuttering of museums, galleries, and other public institutions. As of this writing, many museums in the United States are still under similar restrictions. The cultural information previously mediated through tangible properties or, at the very least, through the tangible manifestations of intangible practices and expressions (as with live performances), is now set free from the tangible object but fixed again and shared through technological means as data. In this context, cultural heritage becomes ever more a term that is meant to produce and accumulate information from our past in order to support the processing of information about our contemporary identities in the present. Before the pandemic, this creeping

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Definitions: From Cultural Property to Cultural Heritage (and Back?), *in* INTERNATIONAL HERITAGE LAW FOR COMMUNITIES 27 (2019). Landscape and natural heritage are, of course, also part of cultural heritage, but this Essay concentrates on tangible cultural property and some tangible manifestations of cultural heritage.

2 WALTER BENJAMIN, *The Work of Art in the Age of Mechanical Reproduction*, *in* ILLUMINATIONS 217, 220–21 (Hannah Arendt ed., Harry Zohn trans., 1969). Sonia K. Katyal has pointed to the numerous copyright law issues that are raised as "intangible images increasingly replace tangible items of cultural heritage" in a prepandemic museum context in *Technoheritage*, 105 CALIF. L. REV. 1111, 1117, 1133–1137 (2017).

3 *See generally* WHOSE MUSE? ART MUSEUMS AND THE PUBLIC TRUST (James Cuno ed., 2006).

4 *See* JULIE E. COHEN, BETWEEN TRUTH AND POWER: THE LEGAL CONSTRUCTIONS OF THE INFORMATIONAL CAPITALISM 16 (2019).

move to cultural heritage as information was already present through the digitization of objects and the inclusion of digital tools in galleries to supplement our experiences of the tangible object in front of us. Now, however, these digital experiences, no matter the reopening of galleries and the continued importance of and desire to visit cultural heritage in person, may, at the very least, be conceived as on equal footing with traditional presentations of the information naturally contained in cultural heritage. Museum collections and States showcase their cultural heritage and cultural property online, making culture an indelible part of the informational economy in which we now live; images and data points effectively act as replacements for the tangible objects or live processes meant to be seen in person. Even as we embrace the opportunity to return to museums in person and engage with tangible cultural property in all its physicality, digitization and reproduction remain crucially important parts of the cultural heritage experience.[5] Beyond the museum, States are now investing in digitization as a crucial part of their regulation of cultural heritage in a postpandemic world. How should we understand such a shift, and what does it mean for our collective cultural interest in heritage? Cultural heritage law has a role to play in answering this question. Indeed, cultural heritage law, whether at the international, supranational, or national levels, already requires forms of preservation that may encourage the digital sharing of cultural heritage at the same time as it seeks to circumscribe such digital exchange.

Julie Cohen's book, *Between Truth and Power*, analyzes our shift to an informational economy, the increasing presence of networked infrastructures that contest our traditional rule-of-law framework, and the important role transnational governance institutions play in this context. As subject-matter examples of the shift to an informational economy, Cohen spotlights labor, land, and money and inspires us to think about how tangible goods have become dematerialized and intangible and then reified again as information and how legal entitlements shape our complex interactions with these newly complex properties. Taking inspiration from Cohen's spotlight on labor, land, and money, this Essay proposes cultural heritage as another subject matter worthy of the analysis Cohen frames in her book. Is cultural heritage law, as a legal system that mediates between the truth and power Cohen details, equipped to deal with heritage's new essence as part of informational

5 As, perhaps, they always have. Since Roman times reproductions of works have served to stand in for and, in certain circumstances, even replace lost objects, whether for study, aesthetic appreciation, or other cultural messages. *See* Dep't of Greek and Roman Art, *Roman Copies of Greek Statues*, MET MUSEUM ART (Oct. 2002), http://www.metmuseum.org/toah/hd/rogr/hd_rogr.htm. For an exploration of the reproducibility of forms in Ancient Greece through *schema*, see MARIA LUISA CATONI, LA COMUNICAZIONE NON VERBALE NELLA GRECIA ANTICA [NONVERBAL COMMUNICATION IN ANCIENT GREECE] (2008). Digitization and the need for the majority of our interactions to be mediated by technology now seem to have taken this historic reproduction to an extreme, divorcing it from any materiality.

capitalism? Does our collective cultural interest, the bedrock of the classification of cultural property and the recognition of cultural heritage under the law, look different through the lens of these networked infrastructures on platforms? If cultural heritage is increasingly seen as information, as data to be consumed all over the world, how should cultural heritage law regulate this cultural information, if at all? Should cultural heritage law embrace technology as a complement to its legal framework? If so, what does this mean for traditional actors in the cultural heritage space, especially nation states?

I. CULTURAL HERITAGE LAW: THE ITALIAN CASE AND ITS EVOLUTIONS IN A NETWORKED, INFORMATIONAL AGE

Discussions of cultural heritage as a legal notion and definition under the law often concentrate on the dichotomy between cultural heritage and cultural property in international law.[6] Critiques of the use of "property" to regulate, at its most comprehensive, "manifestations of human life which represent a particular view of life and witness the history and validity of that view"[7] are founded in conceptions of property's fundamental inability to actuate the community interests at the heart of cultural heritage.[8] Indeed, likely because of the very uniqueness of the subject matter at issue, the legal framework that applies to this vast category of "manifestations of human life" is fractured into different spheres which apply to different slices of the proverbial cultural heritage pie. We see safeguarding of cultural heritage, at the international level, as actuated by the making of lists and States' affirmative obligations to consult communities;[9] and cultural property as meaning the tangible properties that States define as of importance in specific categories, including art or history[10] or, quite the opposite, "irrespective of origin or ownership,"[11] the "movable or immovable property of great importance to the cultural heritage of every people."[12] Intellectual property law plays its own role in this legal universe, facing critiques as actors try to fill any cultural heritage law gaps despite intellectual property law's emphasis on fixation, its term limits, and its limited definitions of authorship or even who

6 Lixinski, *supra* note 1, at 27; Janet Blake, *On Defining the Cultural Heritage*, 49 INT'L AND COMPAR. L.Q. 61 (2000); Prott & O'Keefe, *supra* note 1, at 307.

7 Prott & O'Keefe, *supra* note 1, at 307 (see especially the section *Problems with 'Property'* on pages 309–12).

8 *See, e.g.*, *id.* at 309–12.

9 Convention for the Safeguarding of the Intangible Cultural Heritage art. 2, Oct. 17, 2003, 2368 U.N.T.S. 42671; Convention for the Protection of the World Cultural and Natural Heritage arts. 4 & 6, Nov. 16, 1972, 1037 U.N.T.S. 151.

10 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property art. 1, Nov. 14, 1970, 823 U.N.T.S. 231.

11 Convention on the Protection of Cultural Property in the Event of Armed Conflict art. 1, May 14, 1954, 249 U.N.T.S. 215.

12 *Id.* at art. 1(a).

is an inventor,[13] which are uneasy companions for heritage. Proposed legal frameworks like the Tunis Model Law on Copyright for Developing Countries,[14] suggested additions to the Design Law Treaty,[15] or even the use of copyright law or trademark law to actuate control of source communities' cultural heritage[16] in market nations,[17] are all examples of the ways in which communities and individuals attempt to overcome the roadblocks of legal gaps and seek to protect their heritage.

The narrative of the application of intellectual property law to cultural heritage, critiques of it, and even the broader conversation about cultural property and cultural heritage as terms[18] have, as Cohen observes of the work of "[l]egal scholars of the information economy,"[19] perhaps tended to focus too much on "the themes of propertization and control."[20] Indeed, Cohen's consideration in *Between Truth and Power* of entitlements, broadly defined, and the law, and not just propertization and control, offers an opportunity to reconsider cultural heritage law, the legal notion of cultural heritage, and the broader subject matter at issue in terms that move beyond propertization and control. Indeed, to a certain extent, this is what the complex statutory legal framework for cultural heritage in Italy already offers us. While a fundamental importance is still ascribed to who owns cultural property, and duties and obligations are theoretically still framed in terms of control, the consideration of interests, their balancing, and the very existence of our collective cultural interest, as explored in Italian doctrine and Italian cultural

13 *See generally* Michael A. Brown, *Heritage as Property*, *in* PROPERTY IN QUESTION: VALUE TRANSFORMATION IN THE GLOBAL ECONOMY 49 (Katherine Verdery & Caroline Humphrey eds., 2004); Michael F. Brown, *Can Culture Be Copyrighted?* 39 CURRENT ANTHROPOLOGY 193 (1998); Michael F. Brown, *Culture, Property and Peoplehood: A Comment on Carpenter, Katyal, and Riley's "In Defense of Property"*, 17 INT'L J. CULTURAL PROP. 569 (2010). *But see* SUSAN SCAFIDI, WHO OWNS CULTURE? APPROPRIATION AND AUTHENTICITY IN AMERICAN LAW 2 (2005); Kristen A. Carpenter, Sonia K. Katyal & Angela R. Riley, *Clarifying Cultural Property*, 17 INT'L J. CULTURAL PROP. 581 (2010) [hereinafter Carpenter, Katyal & Riley, *Clarifying Cultural Property*]; Kristen A. Carpenter, Sonia K. Katyal & Angela R. Riley, *In Defense of Property*, 118 YALE L.J. 1022 (2009).

14 World Intell. Prop. Org., *Tunis Model Law on Copyright*, COPYRIGHT: MONTHLY REV. WORLD INTELL. PROP. ORG., July–Aug. 1976, at 165, 165, https://www.wipo.int/edocs/pubdocs/en/copyright/120/wipo_pub_120_1976_07-08.pdf.

15 Margo A. Bagley, *"Ask Me No Questions": The Struggle for Disclosure of Cultural and Genetic Resource Utilization in Design*, 20 VAND. J. ENT. & TECH. L. 975, 1015 (2018).

16 *See, e.g.*, Navajo Nation v. Urban Outfitters, Inc. 935 F. Supp. 2d 1147, 1154 (D.N.M. 2013); Sealaska Heritage Inst., Inc. v. Neiman Marcus Grp., No. 1:20-cv-00002 (D. Alaska filed Apr. 20, 2020).

17 John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80 AM. J. INT'L L. 831, 832 (1986).

18 Perhaps with the exception of Katyal et al., who speak in terms of cultural property as defined by fiduciary duties. *See* Carpenter, Katyal & Riley, *Clarifying Cultural Property*, *supra* note 13, at 585.

19 COHEN, *supra* note 4, at 11.

20 *Id.*

heritage law's legislative history, allow for a more nuanced understanding of the role of cultural heritage law and cultural heritage law's very future in the networked information age.

The birth of cultural property law on the Italian territory dates to long before the use of the terms cultural property and cultural heritage at the international level in the twentieth century. Central to Italian law's historic regulation of the vast category of "manifestations of human life"[21] is a reference not to cultural property but to things of varying cultural importance. Papal Bulls in the fifteenth and sixteenth centuries concerned themselves with limiting the circulation of objects of antiquity and prohibiting the destruction of ancient public buildings.[22] Cardinal Pacca's 1820 edict grounds its reference to objects of antiquity in their exemplary nature, what we might term their artistic or educational value; it cites to the potential art historical merit of marble sculptures by nonliving authors, and cloths and mosaics, in its establishment of a complex regulatory framework for their circulation and presence in the Papal States.[23] Prior to Italy's unification, individual regions prohibited the exportation of certain objects of antiquity following this model.[24] The early twentieth century saw the Italian State begin to regulate in this area and grapple with the multiple examples of cultural heritage on its territory—soon ancient manuscripts, rare prints and engravings, and even villas, parks, and gardens of artistic or historic interest came expressly into the law's ambit.[25] In 1939 the Italian government enacted its *Law for the Preservation of Things of Artistic or Historic Interest* which would be applied until 1999 when a consolidated act came into force. In his

21 Prott & O'Keefe, *supra* note 1, at 309.

22 LORENZO CASINI, EREDITARE IL FUTURO: DILIMMI SUL PATRIMONIO CULTURALE [INHERITING OUR FUTURE: CULTURAL HERITAGE DILEMMAS] 27 (2016) [hereinafter CASINI, EREDITARE]; Pope Pius II, Cum Almam Nostrum Urbem (Apr. 26, 1462), https://online.scuola.zanichelli.it/ilcriccoditeodoro/files/2011/11/legislazione_01.pdf. Later international legal instruments would similarly prohibit destruction, including the 1907 Hague Convention for Respecting the Laws and Customs of War on Land which required that "all necessary steps must be taken to spare as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments" in article 27. Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex art. 27, Oct. 18, 1907, 36 Stat. 2277, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/195-200037?OpenDocument.

23 TOMMASO ALIBRANDI & PIERGIORGIO FERRI, I BENI CULTURALI E AMBIENTALI 4 (2001); EDITTO CARDINAL PACCA, *Above the Antiques and the Excavations*, (Apr. 7, 1820), http://www.ssb.vt.it/compendio%20legislativo/EDITTO_CARDINAL_PACCA.pdf.

24 ALIBRANDI & FERRI, *supra* note 23, at 4 (describing laws in the Kingdom of Naples in 1822; Tuscany in 1854; Lombardo Veneto in 1745, 1818, and 1827; Parma in 1760; and Modena in 1857). For an exhaustive compilation of the various edicts and laws emanated in Italian city-states from 1571 to 1860, see ANDREA EMILIANI, LEGGI, BANDI E PROVVEDIMENTI PER LA TUTELA DEI BENI ARTISTICI E CULTURALI NEGLI ANTICHI STATI ITALIANI 1571–1860 (1996).

25 *See* Legge 20 giugno 1909, n.364, G.U. June 28, 1909, n.150 (It.) (including modifications from Legge 23 giugno 1912, n. 688, G.U. July 8, 1912, n.160 (It.); R.D. 24 novembre 1927, n.2461, G.U. Jan. 7, 1928, n.5 (It.)).

presentation of the law to Parliament, Minister Giuseppe Bottai explained the use of the word "interesse."[26] By the use of the term "interesse" with added qualifiers such as "artistico, storico, archeologico, o etnografico,"[27] the law intended to refer both to a public concern and also to private rights.[28] Explaining the reasons that the government should indeed concern itself with this subject matter and the drafting of the rules within the law itself, Bottai emphasized that the State cannot be disinterested in objects of artistic or historic interest because they are a precious spiritual and nonspiritual asset of Italy.[29] At the same time, however, the public interest in artistic and historic objects must also exist in tandem with the rights of private citizens and institutions.[30] A balancing of public and private interests then is at the heart of Italian law's decision to subject certain things of cultural interest to duties of preservation and valorization, such as the communication and enhancement of cultural property's importance.[31] Interests are at the heart of Italian law's framing of the entitlements surrounding its particular definition of cultural property and this is so even in the 2004 Code of Cultural Heritage and Landscape in force today.[32]

What is, however, the public cultural interest that at times might override private interests? How is this balancing recognized by Italian administrative authorities and what fundamentally drives the public cultural interest? As Michele Cantucci wrote in the mid-twentieth century when re-presenting Italian cultural property law to a post–World War II world, the interest at the heart of the law here is made up of both subjective and objective aspects; the public cultural interest is "essentially a subjective fact, inasmuch as it is not an absolute value, but a relative value, which is that resulting from the judgments of subjects, translating itself into, across this evaluation, an interest which is understood in an objective sense."[33] A thing is understood as being of interest when one or multiple subjects converge their spontaneous attention on it as a result of an economic or spiritual judgment.[34] This convergence makes a thing objectively interesting, but people can also have an interest in

26 Art. 1, Legge 1 giugno 1939, n.1089, G.U. Aug. 8, 1939, n.184 (It.).

27 *Id.*

28 Mario Serio, *Introduzione*, *in* 1 ISTITUZIONI E POLITICHE CULTURALI IN ITALIA NEGLI ANNI TRENTA [INSTITUTIONS AND CULTURAL POLITICS IN ITALY IN THE 1930S] 331, 334 (Vincenzo Cazzato ed., 2001); *Tutela delle cose d'interesse artistico o storico, in* 1 ISTITUZIONI E POLITICHE CULTURALI IN ITALIA NEGLI ANNI TRENTA, *supra* note 28, at 408, 408–09.

29 *Tutela delle cose d'interesse artistico o storico*, *in* 1 ISTITUZIONI E POLITICHE CULTURALI IN ITALIA NEGLI ANNI TRENTA, *supra* note 28, at 408, 408.

30 *Id.*

31 Lorenzo Casini, *La tutela e la valorizzazione dei beni culturali*, *in* 3 DIRITTO DELL'ARTE 13, 22–25 (2014) (discussing the purpose of valorization) [hereinafter Casina, *La tutela e la valorizzazione dei beni culturali*].

32 *See* D.Lgs. n. 42/2004 (It.).

33 MICHELE CANTUCCI, LA TUTELA GIURIDICA DELLE COSE D'INTERESSE ARTISTICO O STORICO 100–03 (1953) (describing this as applied to a thing, through which an interest of the collective is satisfied).

34 *Id.*

something at the same time because they themselves feel a specific feeling or state because of it.[35] The subjective part of interest is what can make an interest public: the expansion of this interest across social networks and relationships makes it collective and, therefore, the purpose of satisfying it, public.[36] Artistic interest or historic interest are in fact kinds of public interest: both artistic and historic qualifiers fulfill specific aims or satisfy certain collective objectives.[37] Central to decisions about what things are of this public cultural interest by administrative agencies, and their accompanying imposition of duties on private individuals to preserve a cultural property[38] or on public authorities to not alienate a cultural property,[39] among others, is that the public artistic or historic interest under the law is understood in relation to the aims and interests of the collective. Experts or employees of the Ministry of Culture who make such determinations cannot be too vague or too general in their reasons.[40] Central to determinations of public cultural interest is a link to the collective and the ability to recognize administrative judgments as culturally relevant.

And it is here that Cohen's observation that "[p]latform-based digital infrastructures' affordances for collective meaning-making are widely recognized"[41] is relevant to Italian cultural heritage law. Collective meaning-making in our modern society, as mediated now through technology, has begun to shape Italian cultural heritage law in unexpected ways. Technology's use as an evaluative support within government institutions in Italy has already been used. For example, the Ministry of Cultural Heritage and Activities' use of an algorithm to determine what monetary amounts to distribute to performers in show business in 2014[42] was deemed appropriate upon judicial review, given that it was part of an administrative balancing of public and private interests that was not contrary to the required technical reasonableness.[43] Even more than a creeping procedural use, however, is

35 *Id.* at 101; *see also* Lorenzo Casini, *"Italian Hours": The Globalization of Cultural Property Law*, 9 INT'L J. CONST. L. 369, 375 (2011) ("[Cultural objects] transmit something that cannot be touched, such as the terrific emotion that visitors may feel once they enter the Colosseum in Rome: '[r]elics excite a special emotion, even [though] they have no religious significance.'" (quoting John Henry Merryman, *The Public Interest in Cultural Property*, 77 CAL. L. REV. 339, 348 (1989), *reprinted in* JOHN HENRY MERRYMAN, THINKING ABOUT THE ELGIN MARBLES 142, 152 (2d ed. 2009))) [hereinafter Casini, *Italian Hours*].

36 CANTUCCI, *supra* note 33, at 101.

37 *Id.* at 102 (which can include "the conservation of artistic and historical values considered as a means to elevate culture, [as a means] for the perfecting of the activities of the spirit . . . . so an individual can develop his personality").

38 *See* Casini, *La tutela e la valorizzazione dei beni culturali*, *supra* note 31, at 17–22.

39 C.c., art. 822.

40 Cons. Stato sez. vi, 19 ottobre 2018, n. 5986 (reviewing the classification of Lucio Dalla's home and studio as cultural property).

41 COHEN, *supra* note 4, at 86.

42 As described in LORENZO CASINI, LO STATO NELL'ERA DI GOOGLE: FRONTIERE E SFIDE GLOBALI 59–60 (2020) [hereinafter CASINI, LO STATO NELL'ERA DI GOOGLE].

43 *Id.* (citing Cons. Stato sez. vi, 30 novembre 2016 n. 5035).

technology's role in reproducing cultural properties and supporting these properties' various cultural significance, or even, at times, undermining it. This has proved challenging for Italian cultural heritage law itself, and the law has had to change and adapt in the face of such dissemination.

The traditional duty imposed by Italian cultural heritage law is one of preservation of the tangible object.[44] This preservation is justified by the fact that, caught up in the tangible object, is a public cultural interest unique to that object.[45] Losing the cultural property in its tangible iteration would mean a loss of that unique public cultural interest and the knowledge of the artistic or historical value it contains for the benefit of our common community. Part of this duty to preserve tangible cultural properties includes regulating their reproduction. Article 107 of the current Code of Cultural Property mandates that public authorities who hold cultural properties may consent to their reproduction.[46] It is for this reason that the casting of reproductions from original cultural properties is only exceptionally allowed under the law.[47] Indeed, such an express prohibition has been framed as a way to control the originality, authenticity, and truth present within the materiality of cultural property.[48] Article 107, and its justification, formed the basis for many express prohibitions of photographing cultural properties in museums and archives. As recently as 2013 visitors to the Uffizi were forbidden from taking pictures of the great works of art they saw, including works which are, in copyright terms, assuredly in the public domain. Although technically these visitors, as private individuals who were using the photographs only for study or personal use, might have fallen into some of the exceptions allowed under Article 108 of the Code, the law's effective application was overbroad to mitigate an improper use of reproductions of cultural property. Moreover, despite Article 107's reference to copyright law (*diritto d'autore*) as a limit on public authorities' privilege to allow or forbid the reproductions of cultural property in their possession, such a prohibition effectively seemed to inappropriately extend copyright law well beyond its terms of expiration. Indeed, the fraught relationship between term limits in Italian copyright law and time thresholds in Italian cultural property law has been acknowledged in Italian scholarship.[49] In 2014, Article 108 of the Code was amended to allow private individuals to freely reproduce cultural property so long as such a reproduction was not for commercial purposes as part of the Art Bonus

44 *See* Lorenzo Casini, *Beni Culturali*, *in* ENCICLOPEDIA GIURIDICA DEL SOLE 24 ORE 5–7 (2007).

45 Massimo Severo Giannini, *I beni culturali* [*Cultural Properties*] 31 RIVISTA TRIMESTRALE DI DIRITTO PUBBLICO [TRIMESTER REVIEW OF PUBLIC LAW] 3 (1976).

46 Art. 107, D.Lgs. n. 42/2004.

47 *Id.* at art. 107(2).

48 Lorenzo Casini, *Riprodurre il patrimonio culturale? I "pieni" e i "vuoti" normative*, 3 AEDON no. 1127–345 (2018) (quoting John Henry Merryman, *supra* note 35), http://www.aedon.mulino.it/archivio/2018/3/casini.htm [hereinafter Casini, *Riprodurre*].

49 *Id.* For a separate consideration of the application of copyright law at the nexus of digital technology and cultural heritage see Katyal, *supra* note 2.

reform.[50] Moreover, reproductions for noncommercial uses related to freedom of expression or thought or creativity, promotion of the knowledge of cultural heritage, and valorization of cultural properties by public authorities who do not possess the cultural property in question are also now allowed.[51] Still other initiatives of the Ministry reflect an increased acknowledgement of the role that technology can play, such as the institution of a *Digital Library* to support public cultural institutions' digitization efforts[52] and even the creation of Instagram accounts and official websites by the Uffizi[53] itself.

Of course, as other authors have noted,[54] these carveouts for certain reproductions in Italian cultural property law raise the inevitable question of whether this historic legal framework can maintain the very entitlements it has shaped over time. Cultural property is reproduced and then becomes reified anew through images shared on Instagram; it exists as information or data with which we interact in networked infrastructures. Even if originally used for noncommercial purposes and therefore legal under Italian cultural property law, how is a new entitlement to cultural property not created for social media users and social media networks platforms? How can cultural property law forbid, both theoretically and practically, new meanings that are ascribed to these reproductions, the reproductions' underlying cultural properties, and even the reproductions' use as valuable data by companies? Expressly forbidden commercial uses revealed on social media already indicate challenges to the effectiveness of Italian cultural property law in this area. When in 2014 an Illinois rifle company superimposed an AR-50A1 rifle on an image of Michelangelo's David and used it in an advertisement,[55] the Italian Ministry of Culture found itself engaged in a naming and shaming campaign, alleging a violation of the *decoro* or the dignity of the cultural property under the law in an extra-legal context.[56] The false dichotomy between tangible cultural properties and intangible cultural essences is increasingly evident on the internet. The growing dissemination of images

50 Casini, *Riprodurre*, *supra* note 48; Giovanni Gallo, *Il decreto Art Bonus e la riproducibilità dei beni culturali*, 3 AEDON no. 1127–1–345 (2014), http://www.aedon.mulino.it/archivio/2014/3/gallo.htm.

51 Art. 108, D.Lgs. n. 42/2004; Casini, *Riprodurre*, *supra* note 48.

52 Casini, *Riprodurre*, *supra* note 48; *Istituto Centrale per la Digitalizzazione del Patrimonio Culturale—Digital Library*, MINISTERO DELLA CULTURA, https://www.beniculturali.it/ente/istituto-centrale-per-la-digitalizzazione-del-patrimonio-culturale-digital-library (last visited Apr. 17, 2021).

53 For the Uffizi website see *Gli Uffizi*, LE GALLERIE DEGLI UFFIZI, https://www.uffizi.it/en/the-uffizi (last visited Apr. 17, 2021); Gallerie degli Uffizi (@uffizigalleries), INSTAGRAM, https://www.instagram.com/uffizigalleries/?hl=en (last visited Apr. 17, 2021).

54 Casini, *Riprodurre*, *supra* note 48.

55 *Italy Furious at Gun-Toting 'David' Statue in U.S. Rifle Ad*, TIME (Mar. 9, 2014, 11:55 AM), https://time.com/17313/italy-furious-at-gun-toting-david-statue-in-u-s-rifle-ad/.

56 *See id.*

and technological representations of heritage online reveal the extreme fragility of the law and legal institutions when confronted with the information technologies Cohen describes. Indeed, the reproductions of cultural properties on social media and digital platforms, whether for noncommercial or even commercial purposes, now, at the very least, help produce the very public cultural interests in cultural property which Italian cultural property law is meant to preserve and protect. In this sense, when we think of the multitude of other legal fields that apply to data and information (from copyright law to privacy law and data protection laws) Italian cultural property law might not be alone in framing legal entitlements informed by cultural interest. Moreover, new-meaning-making and forms of cultural heritage that are born digital and otherwise informed by an online and purely informational existence are not *a priori* regulated by Italian cultural property law as cultural property.[57] The inevitable evolution of Italian cultural property law into a legal framework more expressly concerned with intangibles might be required, although this seems unlikely given its obsession with tangible properties throughout history and the disavowal of intangibles, like text, from its subject matter.[58] On the other hand, an even more express acknowledgment of Italian cultural property law's relationship to other legal frameworks, including intellectual property law and global administrative norms,[59] might fill such cultural heritage gaps in an informational economy.

II. SOLUTIONS FOR CULTURAL HERITAGE LAW GAPS IN ITALY AND BEYOND WITHIN NETWORKED INFRASTRUCTURES

As Italian cultural property law has sought to respond to the challenges raised by its existence in an informational economy, there are examples of the law's expansion and evolution, and therefore of the Italian State, as an expansive regulator of the cultural essence at the heart of cultural property law in new venues. In this sense, cultural heritage law becomes one legal tool in an arsenal of others as the Italian State seeks to pursue cultural objectives in an increasingly global "Google" era.[60]

As the internet has become increasingly important for cultural institutions and public museums have undergone structural reforms in Italy,[61] museum websites have become a necessary part of the valorization of cultural heritage. When the Uffizi Galleries, a public institution, was ready to create its own official website separate from the regional museum association to

57 Art. 7-bis, D.Lgs. n. 42/2004 (following its emphasis on materiality).

58 Tommaso Alibrandi, *L'evoluzione del concetto di bene culturale*, 75 FORO ADMINISTRATIVO 2701, 2703 (1999) (report to the Gubbio Convention on the Consolidated Text on Cultural and Environmental Heritage).

59 *See* Lorenzo Casini, *Beyond Drip-Painting? Ten Years of GAL and the Emergence of a Global Administration*, 13 INT'L J. CONST. L. 473, 474–77 (2015); Casini, *Italian Hours*, *supra* note 35, at 379–82.

60 CASINI, LO STATO NELL'ERA DI GOOGLE, *supra* note 42.

61 CASINI, EREDITARE, *supra* note 22.

which it belonged, in part to control unofficial ticket sales by unauthorized third parties to the museum,[62] it found itself unable to purchase UFFIZI.COM. Indeed, another company, BoxNic Anstalt in Luxembourg had registered the domain name and others through GoDaddy,[63] including UFFIZI.NET, UFFIZIGALLERY.COM, UFFIZIGALLERY.NET, UFFIZIGALLERY.ORG, and AMICIDEGLIUFFIZI.COM in 1998.[64] Given its business of selling "tickets online at <uffizi.com> to museums, tours, cultural and sporting events in Italy, including the Gallerie degli Uffizi,"[65] the very activity the Uffizi hoped to prevent by founding its own websites and registering its name and logos as trademarks,[66] BoxNic Anstalt found itself on the receiving end of an administrative Uniform Domain Name Dispute Resolution Policy ("UDRP") action. Initiated by the Uffizi in 2018, following the rules of the Internet Corporation for Assigned Names and Numbers ("ICANN") incorporating this service offered by the WIPO Arbitration and Mediation Center,[67] the complaint argued that BoxNic Anstalt had no right to use UFFIZI.COM given the Uffizi Galleries' fame and its registered EU trademarks.[68] Alleging confusion rendered by the use of such an identical mark as a domain name, the Uffizi Galleries requested the transfer of UFFIZI.COM from BoxNic Anstalt.[69] As a response to this action, BoxNic Anstalt sued the Uffizi Galleries in United States District Court in Arizona, following GoDaddy's terms of service,[70] after WIPO had found in favor of the Uffizi Galleries and ordered the transfer of the domain name.[71] Observing Uffizi to be the dominant part of the Uffizi Galleries' design mark, which it viewed in its textuality and in translation, the WIPO decision implied the domain name was confusingly similar to the mark and, moreover, observed the strong historic secondary meaning in the term Uffizi due to its recognition as indicating the gallery and, in any event, its present inherent distinctiveness as an arbitrary mark using a word that had become archaic over time.[72] This holding was especially important in light of BoxNic Anstalt's arguments that the word "uffizi" was

62 Editorial Staff, *Uffizi Galleries Gets New Website and Logo*, FLORENTINE, (Sept. 29, 2017, 9:32 AM), https://www.theflorentine.net/2017/09/29/uffizi-galleries-new-website-logo/ ("[E]liminating misinformation and price gouging is a leading mission of the new website.").

63 Complaint at 2, BoxNic Anstalt v. Gallerie degli Uffizi, No. CV-18-1263, 2020 WL 570945 (D. Ariz. Feb. 5, 2020).

64 *BoxNic Anstalt*, 2020 WL 570945, at *2 (D. Ariz. Feb. 5, 2020); Complaint, *supra* note 63, at *2, 3; *see also* BoxNic Anstalt v. Gallerie degli Uffizi, No. CV-18-1263, 2020 WL 2991561, at *1 (D. Ariz. June 3, 2020).

65 Complaint, *supra* note 63, at *2, *3.

66 *Uffizi Galleries Gets New Website and Logo, supra* note 62.

67 *Domain Name Dispute Resolution Service for Generic Top-Level Domains*, WORLD INTELL. PROP. ORG., https://www.wipo.int/amc/en/domains/gtld/ (last visited Apr. 17, 2021).

68 Complaint, *supra* note 63, at Ex. F.

69 Complaint, *supra* note 63, at Ex. F, pt. VI, VII.

70 Complaint, *supra* note 63, at *2.

71 Complaint, *supra* note 63, at *2, *5.

72 Complaint, *supra* note 63, at Ex. H.

generic or descriptive inasmuch as it translated to "offices."[73] Despite filing a detailed complaint alleging reverse domain hijacking, the decision of the WIPO arbitrator is the only one on the merits, given that the Uffizi Galleries won on procedural grounds in the District Court of Arizona, which entered a default judgment when BoxNic Anstalt failed to "participate in the litigation."[74]

While the substantive trademark legal issues in the case and domain names' mediation of cultural interest are of interest, especially when read in light of the U.S. Supreme Court's recent decision in *Booking.com*[75] and our ability to identify UFFIZI.COM with *the* Uffizi in Florence, for the purposes of this Essay the role of ICANN as a transnational governance institution and the UDRP as a standard-setting mechanism are more relevant. In this instance, we see how a State's recourse, through a public museum, to ICANN's policies and its embrace of WIPO arbitration mechanisms is an instance of enforcing our collective cultural recognition of the Uffizi outside of cultural heritage law. In her book, Cohen describes ICANN as an example of "emergent transnational legal-institutional models, supplying new templates for the configuration and exercise of network-and-standard based governance authority."[76] The Uffizi Galleries' participation in this model and its embrace of the internet and its procedures and standards to police not only the economic results associated with its name (by halting unauthorized ticket sales) but the recognition of the Uffizi Galleries as an important cultural institution and purveyor of cultural heritage indicates a solution for gaps in Italian cultural heritage law as it exists in an informational economy. Of course, whether this is a proper solution is another question. Cohen's work highlights how the multistakeholder-based model of ICANN can both impose positive "accountability mandates"[77] and yet also create "a significant policy tilt toward relatively well-resourced interests concerned chiefly with protection of trademarks and other intellectual property."[78] While the WIPO arbitrator's decision relied on BoxNic Anstalt's submitted evidence more than the Uffizi's to decide on secondary meaning to order the transfer of Uffizi.com to the Uffizi Galleries, the question of whether states charged with preserving cultural property and managing important, historic cultural institutions might have an edge in certain network-and-standard based governance authorities is an important one for the evolution of our collective cultural meaning-making in the internet age. Might a State inappropriately

73 Complaint, *supra* note 63, at Ex. H.

74 BoxNic Anstalt v. Gallerie degli Uffizi, No. CV-18-1263, 2020 WL 570945, at *2 (D. Ariz. Feb. 5, 2020).

75 U.S. Pat. & Trademark Off. v. Booking.com B.V., 140 S. Ct. 2298, 2301 (2020) ("A term styled 'generic.com' is a generic name for a class of goods or services only if the term has that meaning to consumers.").

76 COHEN, *supra* note 4, at 210.

77 *Id.* at 230.

78 *Id.*

frame our collective cultural interest and cultural recognition by exercising trademark rights, controlling accompanying domain names, and replacing its regulation of the reproduction of cultural property itself with the regulation of the use of the names and marks of its cultural institutions?

The Uffizi example showcases State action through a networked governance arrangement, but, as Cohen describes in *Between Truth and Power*, transnational corporations and the global platforms they operate can set policy just as much as a sovereign state and exert a practical sovereignty in the authority they wield.[79] Indeed, this authority is highly evident in the ways in which transnational corporations and digital platforms affect culture, cultural policies, and even the very definition of what constitutes our cultural heritage. In Italy, off-the-internet, close connections between historic Italian, now multinational, corporations, the renovations of cultural heritage sites, and corporate events already blur the lines between the defined roles of public and private actors in the cultural heritage sphere, even producing performances and products that have immediate cultural impact.[80] And we've seen how Facebook's decisions about what counts as inappropriate nudity have removed culturally significant works of art from the online visual canon.[81] Policies affecting cultural heritage put in place by corporations as digital platforms can increase their own cultural authority and place them in a position of defining the authenticity and veracity of what is or is not cultural heritage.

In July of 2020 Facebook announced its implementation of a policy that would require content "that attempts to buy, sell or trade in historical artifacts" to be removed.[82] This policy is broader than its policy to date, which had only prohibited "the sale of stolen [historical] artifacts."[83] While Facebook's prohibition on the transfer and sale of stolen property mitigates potential (but unlikely) liability under the National Stolen Property Act

79 *Id.* at 234–35.

80 As for example, consider Fendi's fashion show at the Trevi fountain, an inalienable cultural property owned by the Italian government after sponsoring the fountain's renovation. Fiona Sinclair Scott, *Models Walk on Water as Karl Lagerfeld Makes History*, CNN (Aug. 15, 2016), https://edition.cnn.com/style/article/fendi-historical-couture-show-trevi-fountain/index.html. Bulgari's renovation of the Spanish Steps and its staging of a presentation for its perfume campaign on the same is another example. Katie O'Malley, *Bella Hadid Brings Rome to a Standstill with Her Most Magical Model Moment to Date*, ELLE (May 25, 2017), https://www.elle.com/uk/fashion/celebrity-style/news/a35995/bella-hadid-rome-spanish-steps/.

81 Gareth Harris, *Long-Running Facebook Battle over Censored Courbet Painting Gets Happy Ending*, ART NEWSPAPER (Aug. 6, 2019, 12:15 PM), https://www.theartnewspaper.com/news/facebook-legal-battle-over-courbet-painting-winds-down.

82 Tom Mashberg, *Facebook, Citing Looting Concerns, Bans Historical Artifact Sales*, N.Y. TIMES (June 23, 2020), https://www.nytimes.com/2020/06/23/arts/design/facebook-looting-artifacts-ban.html.

83 *Id.*

(NSPA),[84] it also expands norms promulgated through international, supranational, and national law to prohibit illicit sales and trafficking of cultural property, filling its gaps. While under the 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*,[85] and its implementing Cultural Property Implementation Act,[86] the United States has instituted strict import controls for illegally exported cultural property; such controls and bilateral agreements entered into with source nations may not implicate digital platforms.[87] While source nations and private individuals can bring suit in civil actions to recover stolen cultural property, and perhaps allege that a digital platform is also liable, like an online auction house, if the sale took place over their site,[88] intergovernmental and international nongovernmental organizations alike have been vocal about the practical and legal limits of the liability of digital platforms for the trafficking of antiquities.[89] One of the most important parts of the limits on digital platforms' liability is grounded in the dilemma of tangible and intangible property. Digital platforms do not have the tangible cultural property offered by a seller in their possession,[90] nor are

84 *See* 18 U.S.C. §§ 2314–15; *see also* Jennifer Anglim Kreder & Jason Nintrup, *Antiquity Meets the Modern Age: eBay's Potential Criminal Liability for Counterfeit and Stolen International Antiquity Sales*, 5 CASE W. RSRV. J.L., TECH. & INTERNET 143, 159–65 (2014) (exploring Ebay's liability under the NSPA for its role in illicit antiquities sales and concentrating on the challenges of the mens rea requirement).

85 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, *supra* note 10.

86 19 U.S.C. §§ 2601–13.

87 Although the 1970 Convention's Operations Guidelines note that States are expected to "monitor the online sales of cultural property and even create a network among the public to supervise the online market and notify the State authorities when an object of dubious origin appears." *See* UNITED NATIONS EDUC., SCI. & CULTURAL ORG., FIGHTING THE ILLICIT TRAFFICKING OF CULTURAL PROPERTY: A TOOLKIT FOR EUROPEAN JUDICIARY AND LAW ENFORCEMENT, 38 (2018), http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/movable/pdf/Toolkit.pdf (citing to paragraph 69 of the Operation Guidelines); *see also What Should I Do If I See a Stolen Item on Marketplace?, Help Center*, FACEBOOK, https://www.facebook.com/help/312500235963976 (last visited Apr. 17, 2021) (Facebook Marketplace policies encouraging users to contact law enforcement if they see a stolen item for sale on the platform).

88 *See generally* Tiffany (NJ) Inc. v. eBay Inc., 600 F.3d 93 (2d Cir. 2010).

89 *Basic Actions Concerning Cultural Objects Being Offered for Sale over the Internet*, UNESCO, https://en.unesco.org/sites/default/files/basic-actions-cultural-objects-for-sale_en.pdf (UNESCO, ICOM, and INTERPOL guidelines); AMR AL-AZM & KATIE A. PAUL, FACEBOOK'S BLACK MARKET IN ANTIQUITIES: TRAFFICKING, TERRORISM, AND WAR CRIMES 4–5 (2019), http://atharproject.org/wp-content/uploads/2019/06/ATHAR-FB-Report-June-2019-final.pdf (ATHAR Project Report).

90 Which might indicate a digital platform is not liable under the NSPA, apart from the high bar of its mens rea requirement, given that the digital platform simply transmits intangible images of the object. *See* United States v. Yijia Zhang, 995 F. Supp. 2d 340, 350 (E.D. Pa. 2014) (holding the NSPA did not apply when the government accused the

they generally liable, in the United States, for individual content posted by users thanks to Section 230 of the 1996 Communications Decency Act.[91] The dematerialization of cultural property and its reification into images and data points, however, presents a potential workaround to these limits for the protection of cultural property. In certain limited circumstances, digital platforms are already required, under DMCA safe harbor provisions and other intermediary liability rules,[92] to remove or report content that infringes intellectual property or is otherwise prohibited by federal law.[93] The expansion of Facebook's policy to content itself, beyond tangible cultural property to its reproduction and image, raises questions about what counts as a historical artifact, who decides and how.[94] Proposals for the change in policy define a historical artifact as "rare items of significant historical, cultural, or scientific value . . . specifically . . . [p]roducts of archaeological discoveries and excavations[;] [a]ntiquities such as ancient funerary items, ancient tombstones, ancient coins, engraved seals, etc.[;] [h]uman remains and mummified body parts[;] [a]ncient scrolls and manuscripts."[95] Facebook consulted experts in its elaboration of the policy and recommendations, and through the policy it aspires to implement international cultural property laws and to frustrate what has been described as "the platform['s use as] . . . a digital black market where users buy and sell illicit antiquities originating from conflict zones."[96]

However, the broadening of Facebook's policy regarding historical artifacts to organic content includes Facebook in the collective meaning-making surrounding the reproductions of cultural property in potentially new ways. While a positive expansion of the obligations is more often required of

defendant of stealing digital files alone, and not a physical property which would satisfy the "goods, wares, or merchandise" requirement of the act).

91 AL-AZM & PAUL, *supra* note 89, at 2. Cohen discusses the narrative that supports this in the face of platforms' increasing moderation and control of how users see content on their sites in a section titled *The Most Important Law*, COHEN, *supra* note 4, at 97–101.

92 Kreder & Nintrup, *supra* note 84, at 169–74 (contrasting the United States with Germany). Note that Art. 20, *Council of Europe Convention on Offences Relating to Cultural Property*, COUNCIL EUR., https://www.coe.int/it/web/conventions/full-list/-/conventions/rms/0900001680710435 (last visited Apr. 17, 2021) (Council of Europe Treaty Series No. 211), asks states that are party to the Convention to "enable the monitoring and reporting of suspicious dealings or sales on the internet" at the national level and "encourage internet service providers, internet platforms and web-based sellers to co-operate in preventing the trafficking of cultural property by participating in the elaboration and implementation of relevant policies."

93 *See* 18 U.S.C. § 2258A.

94 *See* Mashberg, *supra* note 82.

95 FACEBOOK, PRODUCT POLICY FORUM, RECOMMENDATION: SALE OF HISTORICAL ARTIFACTS (2020), https://about.fb.com/wp-content/uploads/2020/06/06.23.2020-PPF-Deck_Sale-of-Historical-Artifacts.pdf.

96 *Id.* *But see* AL-AZM & PAUL, *supra* note 89.

states under international law,[97] the policy also represents a potentially slippery slope, revealing the cultural authority that digital platforms can exert in the heritage sphere. Facebook's definition of what counts as a historical artifact may leave important categories out.[98] Its use of certain experts over others, and its in-house deliberations as to what counts as inappropriate content under the policy might establish concentric circles of cultural property standards within its network and transnational governance structure. In examples of the content that would be taken down, for example, Facebook left Native American arrowheads out of the historical artifacts category. The implementation of the policy raises the possibility that Facebook and its affiliates, as platforms with their own networked infrastructures, have become a definitive part of the transnational governance institutions that mediate our collective cultural interest in these historical artifacts, especially in our understandings of cultural property and its existence in our tangible world, through the standards promulgated in a digital space. And these standards raise important questions. When does an image actually depict a historical artifact? When is there a difference between an image, a reproduction of a historical artifact, and the historical artifact itself? Is this Facebook policy another way to regulate certain uses of cultural property that infringe a cultural property's dignity, including an appreciation of them outside their original context in violation of the laws of their country of origin? Or, do such standards move the dial of our collective meaning-making to a more limited stage, circumscribing the ways in which we identify what is of cultural interest to us?[99]

CONCLUSION

Cultural heritage law is further evolving and responding to the increasingly important role that platforms and other structures of the informational economy play in the evolution of our collective cultural interest. It is important that the information inherent in cultural heritage be appropriately inherited for our future. Assuring such an inheritance is the proffered goal of cultural heritage law, but, in the face of its ineffectiveness or challenging application, that law is increasingly supplemented by other legal disciplines and by transnational governance institutions, including corporations and digital platforms. As the cultural essence of cultural

97 As with the Council of Europe's Convention on Offences Relating to Cultural Property's requirement that States work with internet service providers and social media platforms and its inapplicability to the United States. *See supra* note 92.

98 Although its policies may also include other subject matter of import, such as endangered species. *See Regulated Goods, Community Standards*, FACEBOOK, https://www.facebook.com/communitystandards/regulated_goods (last visited Apr. 17, 2021).

99 This is implied by a move from the written to the oral, a decrease in the range of ways to read a text, and an emphasis on other forms of evaluative metrics. *See* CASINI, LO STATO NELL'ERA DI GOOGLE, *supra* note 42, at 87–89.

property is freed from the tangibility of an object, and cultural heritage in its intangible nature is shared across digital media and through technology, the tangible and intangible divide that has grounded cultural heritage law in a source nation like Italy may be progressively vanishing. Nevertheless, collective cultural meaning and its production are still at the heart of the circulation of cultural heritage as information. Perhaps cultural heritage law, in Italy and elsewhere, should embrace technology and the other legal fields that accompany it, including intellectual property, privacy law, and data protection, more fully as complements to its own goals and policies. While this may seem troubling in light of the purposes of these other, noncultural heritage law regimes, the actions of States and digital platforms through networked structures may already reveal a willingness to use other legal means to accomplish cultural heritage ends. In *Between Truth and Power*, Cohen tells us that countermovements are temporary and that the law can mediate between truth and power to engender "real, incremental improvement."[100] Perhaps an expansive, complementary perspective of cultural heritage engendered by technology is a countermovement, an innovation; perhaps it is a precursor to cultural heritage law's eventual response to the justice that the use of these other legal tools and structures seek. In any event, these examples, and the history of cultural heritage law in Italy, indicate that as long as there is truth and power to be had through culture, the law will attempt to mediate between the two for the benefit of our collective society.

100 COHEN, *supra* note 4, at 270.