



E-marketing strategies:

Collective/individual rights, trademarks, trade secrets, copyright and creative commons



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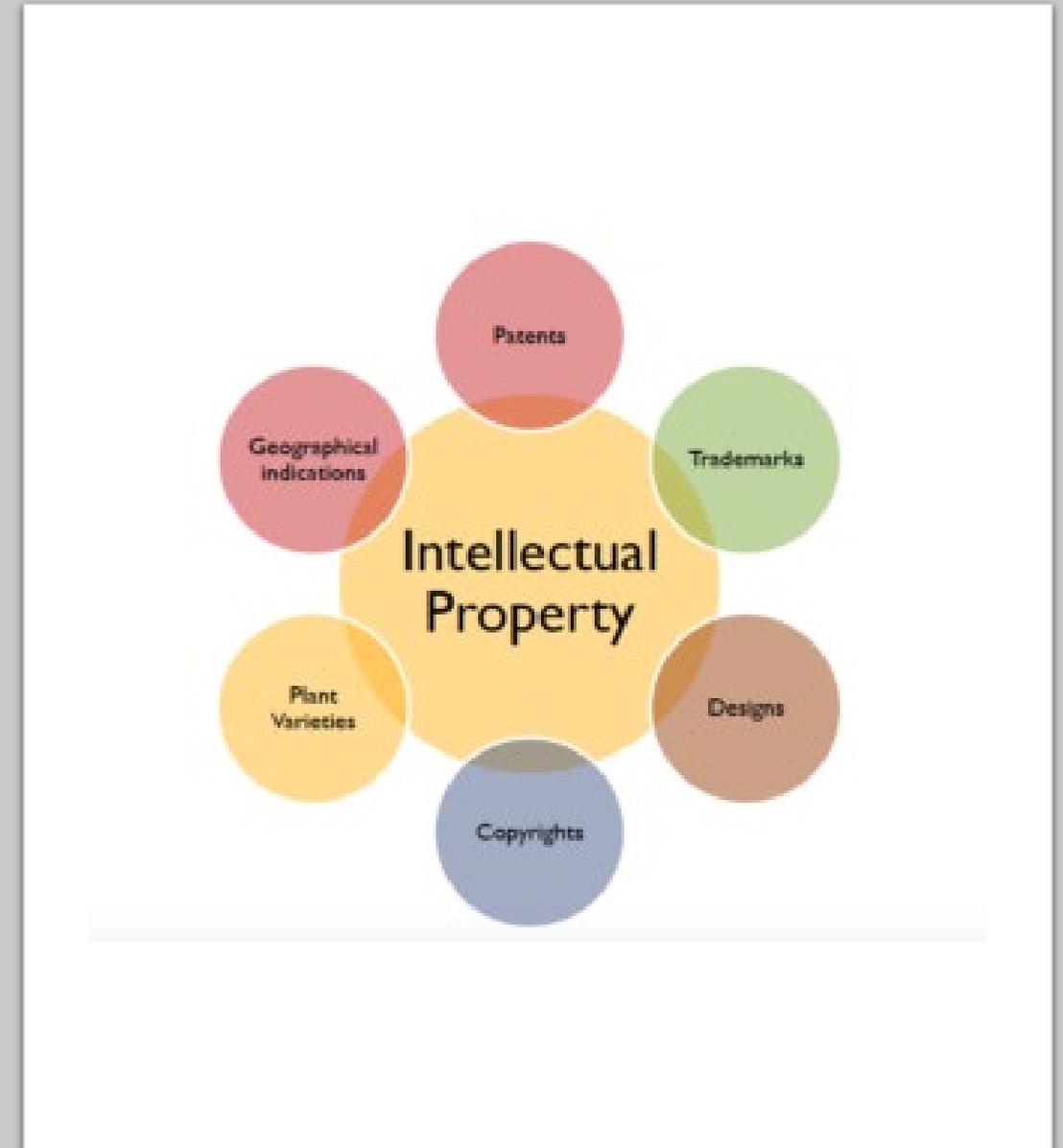
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Digital Context

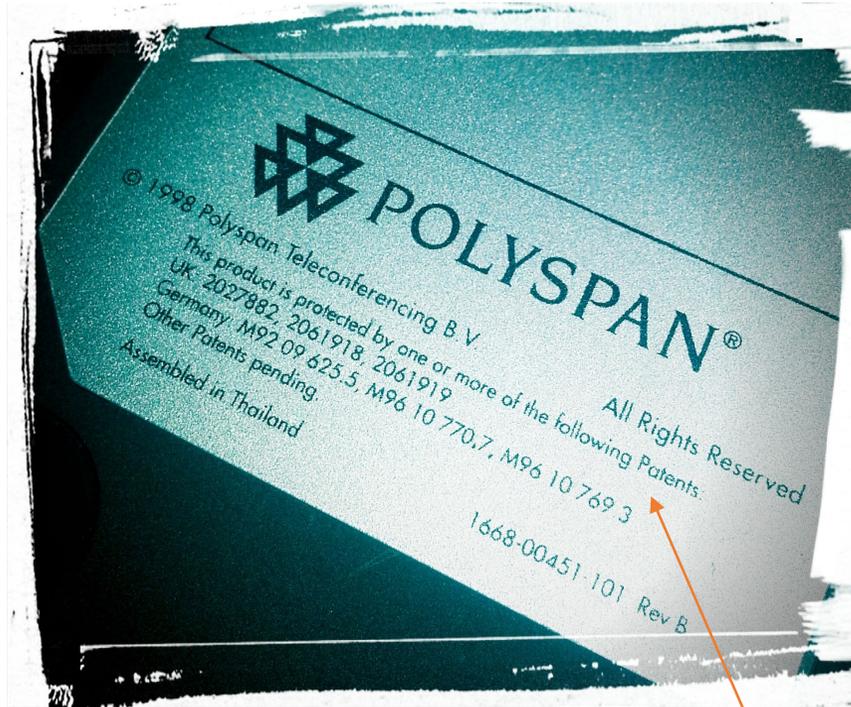
- **E-marketing**
 - Digital marketing is the component of marketing that utilizes internet and online based digital technologies such as desktop computers, mobile phones and other digital media and platforms to promote products and services.
- **Augmented reality**
 - Technology that overlays virtual content on the real-world environment.
- **Virtual reality**
 - Technology that immerses users into a completely virtual environment. Examples of existing VR systems include the Oculus Rift, PlayStation VR and HTC Vive.
- **Mixed reality**
 - Combines AR and VR technology, allowing users to simultaneously interact with both real-world and virtual environments.

What are Intellectual Property Rights

- Intellectual Property Rights aim to safeguard creators and other producers of intellectual goods and services, by granting them rights to control how these intangible goods are used.
- Intellectual Property Rights give the creator or owner control over their property and the power to choose how others access and use it.



Patents



The owner of an issued patent may physically mark the patented item, packaging of the item or a website with the word “patent” or the abbreviation “pat.” along with the patent number.

What is a patent?

- A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.

What kind of protection does a patent offer?

- In principle, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention (including online).
 - In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent.

How long does a patent last?

- The protection is granted for a limited period, generally 20 years from the filing date of the application.

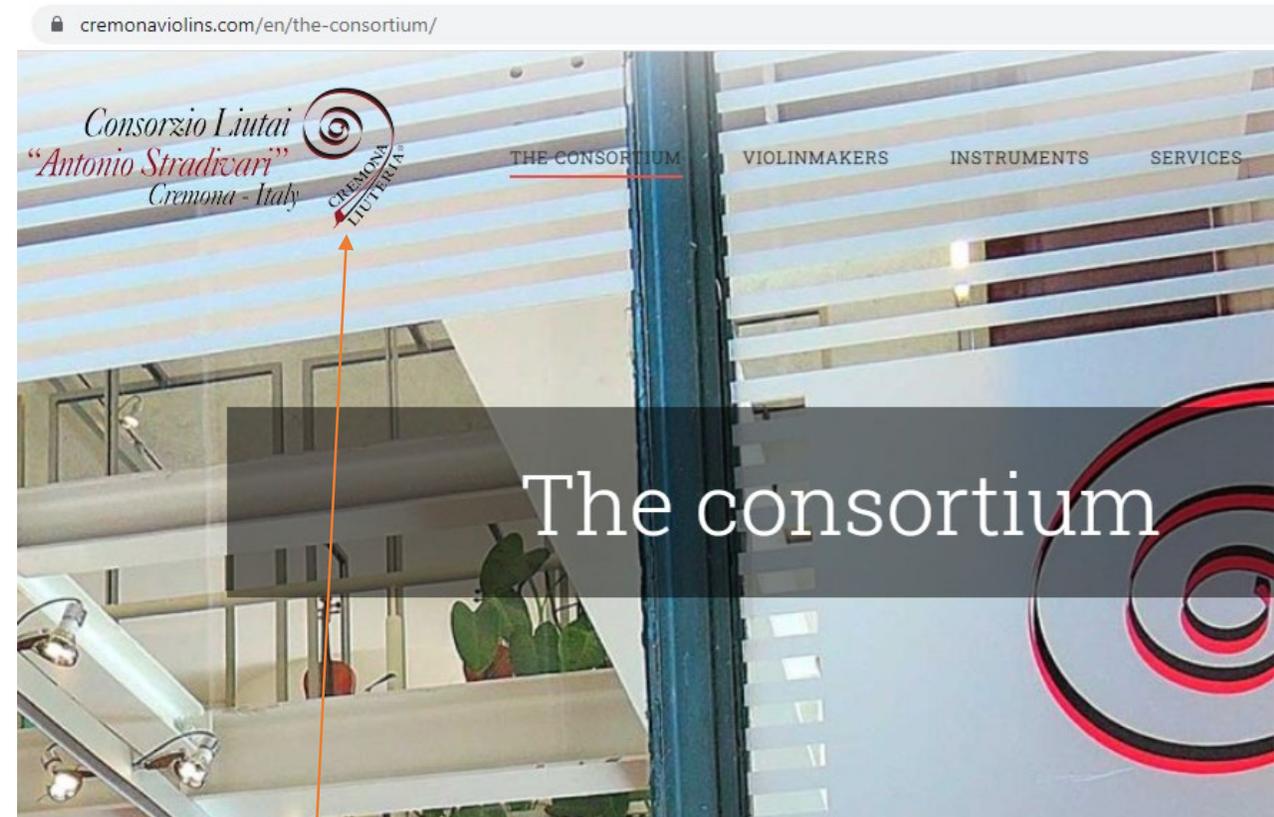
Trademark

What is a Trademark?

- A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises

What kinds of trademark can be registered?

- A word or a combination of words, letters, and numerals can constitute a trademark.
 - But trademarks may also consist of drawings, symbols, three-dimensional features such as the shape and packaging of goods, non-visible signs such as sounds or fragrances, or color shades used as distinguishing features – the possibilities are almost limitless.



- The 'Cremona Liuteria' figurative trademark is an example of a (collective) trademark.
- Such a trademark can be used online, on websites for example.

Trademark

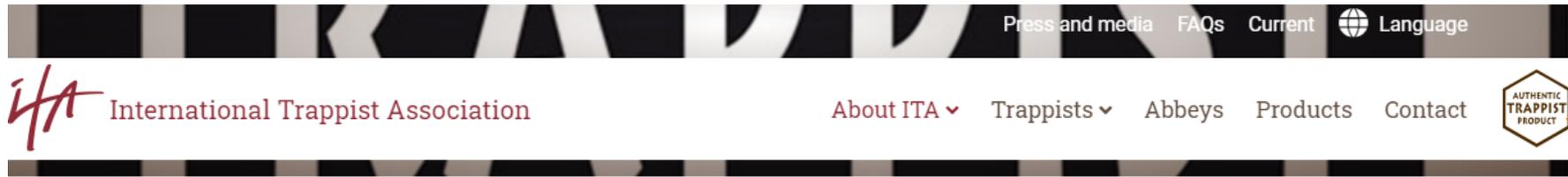
What rights does a trademark provide?

- Trademark protection ensures that the owners of marks have the exclusive right to use them to identify goods or services.
- It also allows the owners to permit others to use them in return for payment.

How long does trademark protection last?

- Trademark rights are initially time-limited national or regional rights.
 - The period of protection can be extended through renewal (in general, every 10 years).

Source: <https://www.wipo.int/trademarks/en/>



Criteria for obtaining the ATP label

Some products produced by ITA members bear the exclusive, international label "Authentic Trappist Product" (ATP). The most famous are the different **Trappist® beers**. But other products can also qualify for the label, from **bread** to **cheese**, **liqueurs**, and **religious artifacts**.

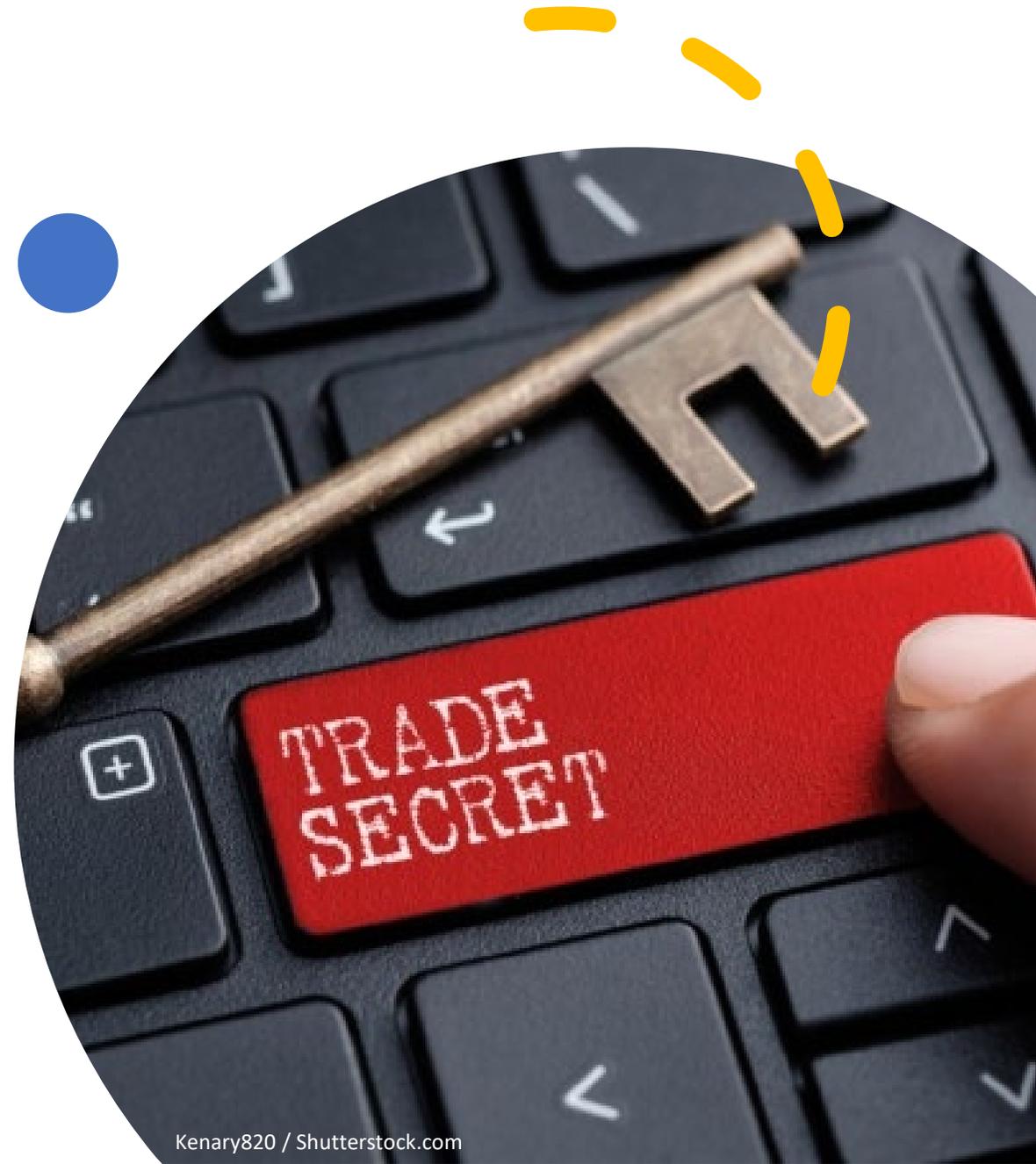


The collective mark 'Authentic Trappist Product' may be used (online) in association with the intangible cultural heritage *Beer culture in Belgium*

Trade Secret

What is a trade secret?

- Trade secrets are IPRs on confidential information which may be sold or licensed.
- In general, to qualify as a trade secret, the information must be:
 - **commercially valuable because it is secret,**
 - **known only to a limited group of persons,** and
 - **subject to reasonable steps taken by the rightful holder of the information to keep it secret**
- The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection.



What kind of information is protected by trade secrets?

- In general, any confidential business information which provides an enterprise a competitive edge and is unknown to others.
 - Trade secrets encompass:
 - **Technical information**
 - Such as information concerning manufacturing processes, pharmaceutical test data, designs and drawings of computer programs
 - **Commercial information**
 - Such as distribution methods, list of suppliers and clients, and advertising strategies
- A trade secret may be also made up of a combination of elements, each of which by itself is in the public domain, but where the combination, which is kept secret, provides a competitive advantage.



Trade Secret

Copyright

What is copyright?

- Copyright refers to the exclusive rights that creators have over their literary and artistic works.

What 'work' does copyright apply to?

- Original literary, dramatic, musical and artistic works.
 - This includes works that may be accessed online, such as books, music, paintings, sculpture, films, computer programs, databases, advertisements, maps, and technical drawings.



The foot of the webpage: <https://en.unesco.org/> indicates the copyright holder

Who holds the copyright?

- In the majority of countries, and according to the Berne Convention, copyright protection is obtained automatically without the need for registration or other formalities.

How long does copyright last?

- In those countries which are members of the Berne Convention, the time limit should be equal to or longer than 50 years after the creator's death.

Copyright and Creative Commons

- The Creative Commons copyright licenses and tools forge a balance inside the traditional “all rights reserved” setting that copyright law creates.
- Creative Commons copyright licenses give everyone from individual creators to large companies and institutions a simple, standardized way to grant copyright permissions to their creative work.





Why Intellectual Property Rights matter in digital contexts



IPRs may be individual (owned by a legal individual) or collective (owned by a group of individuals, such as an association)



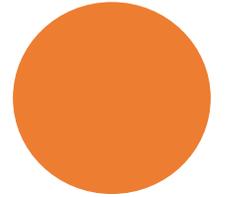
IPRs can be collective rights empowering communities when drafted carefully and in an inclusive way

Case Study: Craftsmanship of mechanical watchmaking and art mechanics

- The intangible cultural heritage *Craftsmanship of mechanical watchmaking and art mechanics* is practised in the towns and cities of the Jura Arc (a region that covers the border between Switzerland and France).
- The IPRs associated with this ICH are mainly patents and trade secrets.
- These IPRs are associated with technical aspects of craftsmanship, such as the mechanisms, designs and creations that heritage-bearers produce.
- The IPRs do not relate 'to the know-how itself, which is widely disseminated and transmitted'.

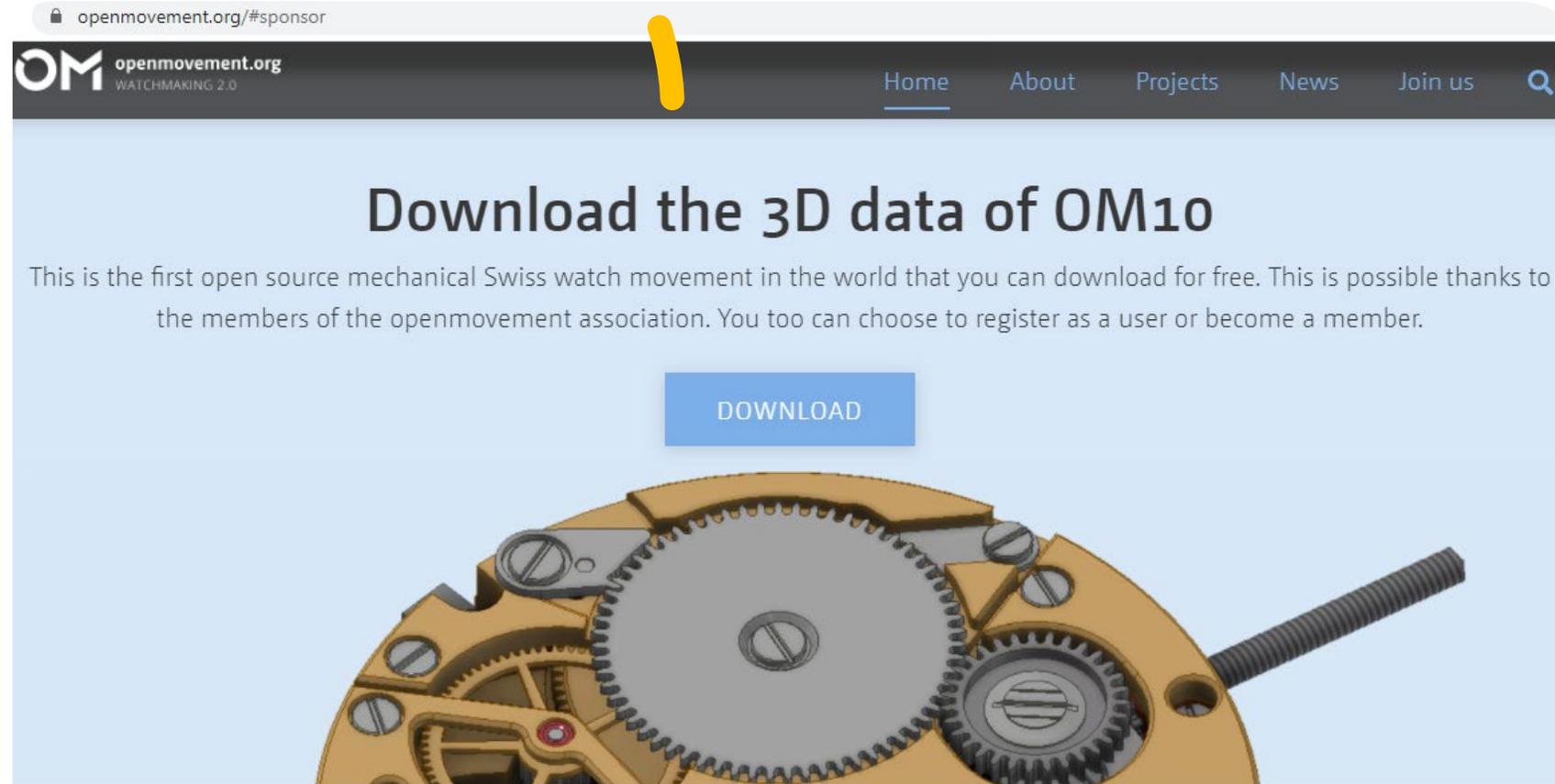


Photograph:
<https://www.uniformwares.com/swiss-made/>



Case Study: Craftsmanship of mechanical watchmaking and art mechanics

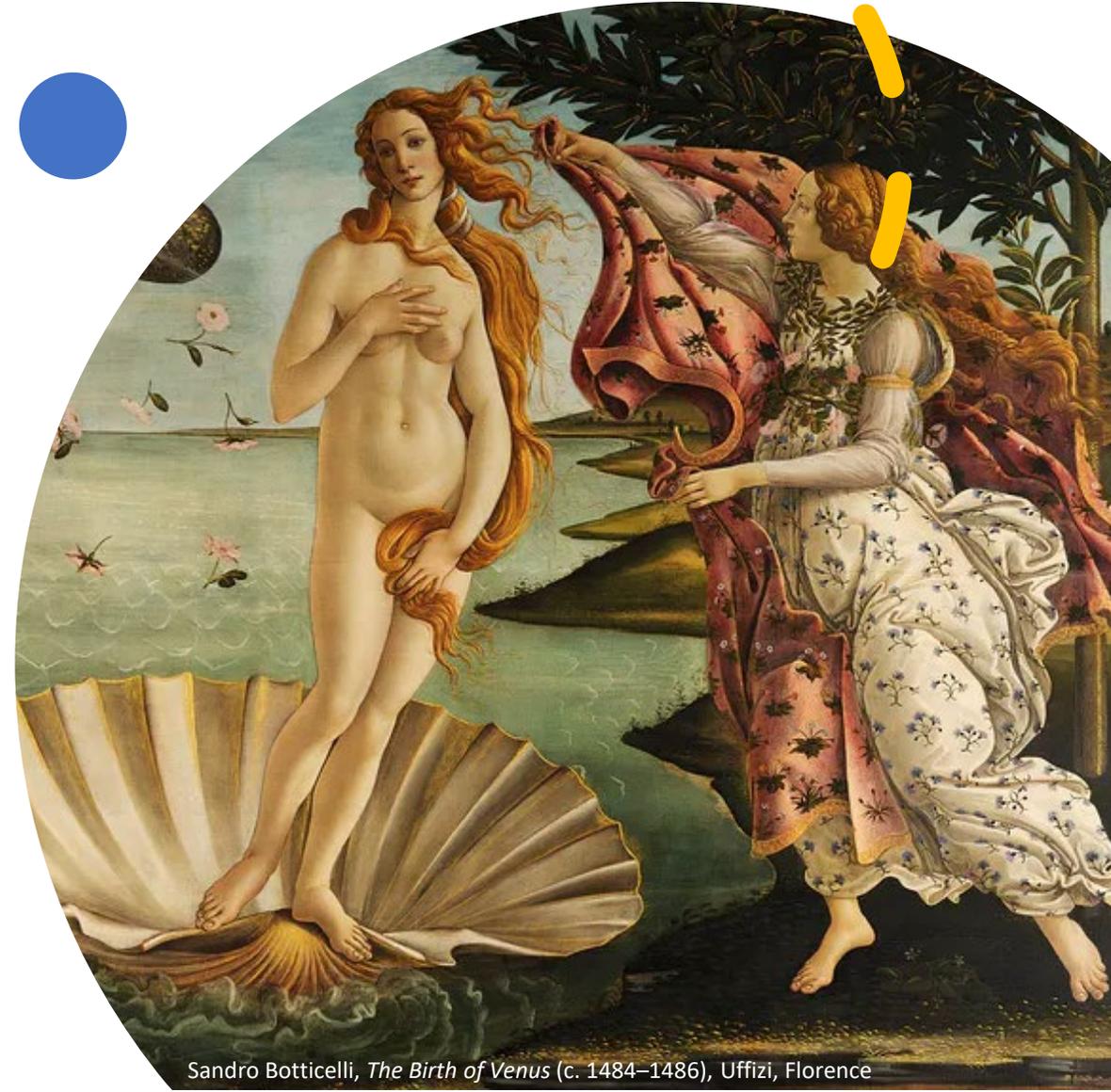
- Some practitioners organize collaborative projects, including the open source movement (openmovement.org), **a group which has been formed to construct new basic watch movements in the public domain based on open source principles.**
- The objective of this group is to allow improvements and further developments to the basic watch movement which **will be made accessible and shared with the community online**



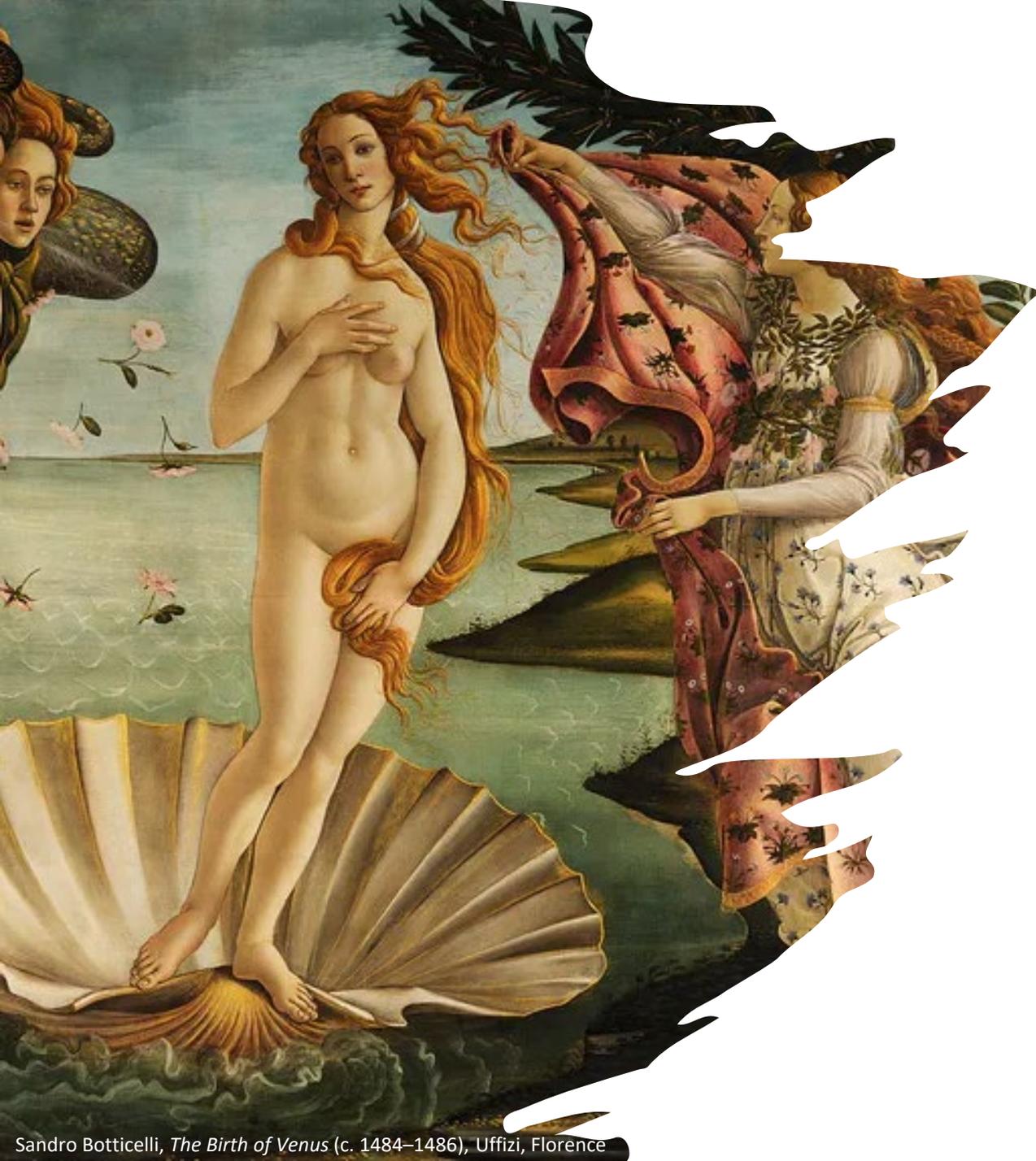
Online legal protection tools: Case Study: Botticelli's *The Birth of Venus*

Background

- Botticelli's *The Birth of Venus* resides within the Uffizi gallery in Florence, Italy.
- It is believed to have been painted in the mid-1480s and as such is **classed as being in the public domain** (free from copyright)
- However, in early July the Uffizi sent the pornography website **Pornhub** a strongly worded letter threatening legal action over the **unwelcome use of *The Birth of Venus***.
 - This came in response to the pornography platform's launch of an online guide to the nude or erotic aspects of artworks, including those of the Uffizi Gallery.
- **Pornhub subsequently removed any references and artworks pertaining to the Uffizi.**
- But how was it able to create this legal pressure over something in the public domain?



Sandro Botticelli, *The Birth of Venus* (c. 1484–1486), Uffizi, Florence



Online legal protection tools: Case Study: Botticelli's The Birth of Venus

Protection of cultural heritage

- The Uffizi has likely invoked rules within the Italian Cultural Heritage and Landscape Code.
 - This law empowers possessors of cultural heritage artefacts to prohibit their commercial exploitation, even where the latter have been created centuries ago.
 - Italian law strongly protects its heritage. The definition of cultural heritage itself under Italian law is broad: any works which “are of artistic, historical, archaeological and ethno-anthropological interest”.
- An action can be taken to stop any unwelcome or controversial use of the image, for example in a context like porn websites.

Online legal protection tools: Case Study: Boticelli's The Birth of Venus

Copyright and the public domain

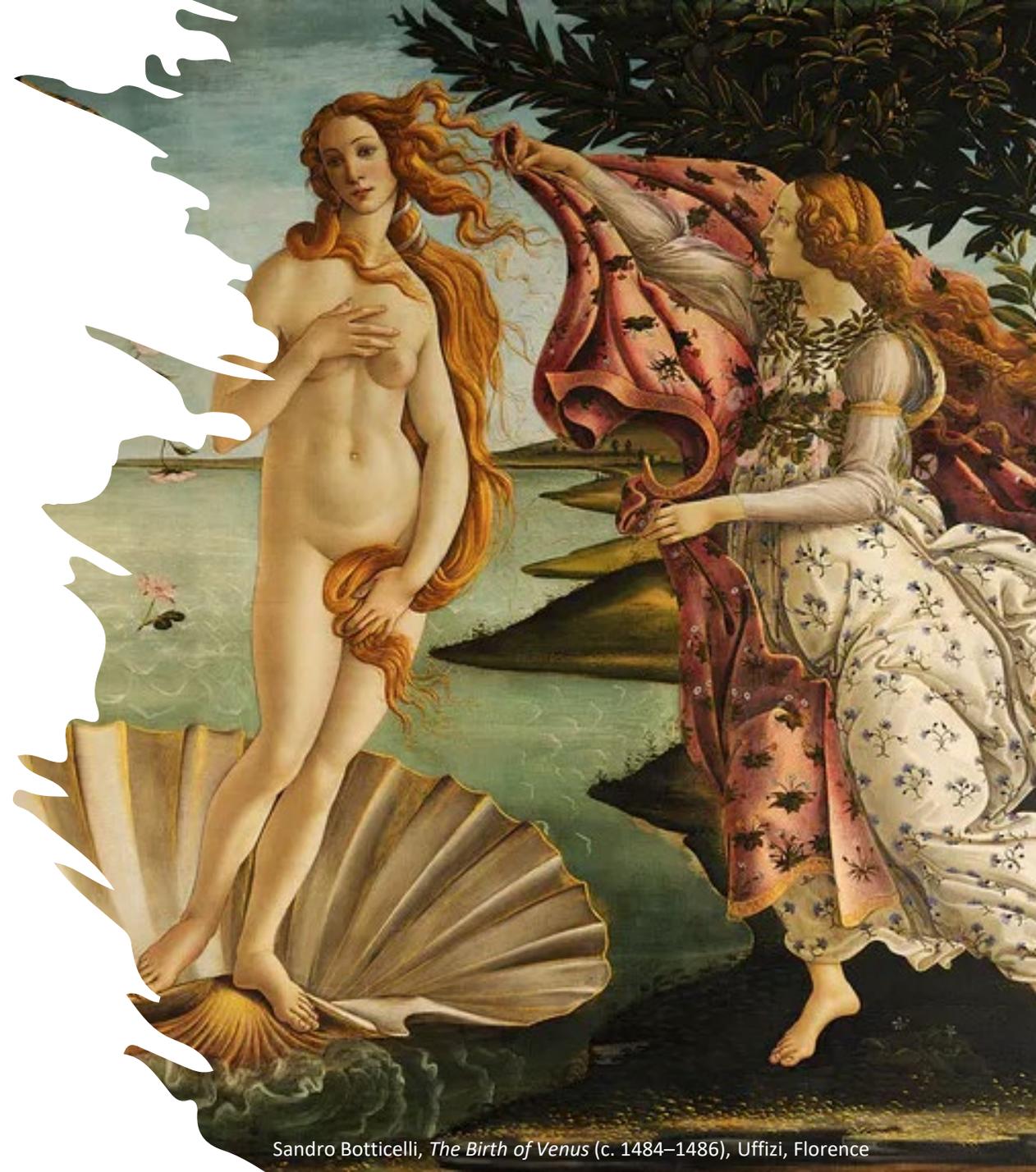
- Museums and galleries can use copyright to restrict the use of pictures of public domain pieces within their collection, or charge for such use.
 - For example by declaring that their photographs of old paintings are subject to copyright and cannot be used without paying a fee.
- But is this fair?
 - One may note that giving custodians of old artefacts a monopoly over those pictures means to artificially monopolise the underlying works, which should instead belong to the public and be available for anyone to use or reuse it.
- There is also an issue of originality.
 - Copyright law only protects original works of authorship.



Online legal protection tools: Case Study: Botticelli's The Birth of Venus

Access to culture

- There is also an access to culture angle.
 - Laws which consider pictures of paintings created centuries ago as deserving copyright protection frustrates the most important principle of copyright regimes themselves: namely, that after a specific period of time everyone should be able to use, and build upon, artworks that have fallen into the public domain.
- There is the need for a wide category of people to access high quality and faithful representations of public domain works.
 - Such as teachers, or creators of new content



Sandro Botticelli, *The Birth of Venus* (c. 1484–1486), Uffizi, Florence

Online legal protection tools: Case Study: Michelangelo's Doni Tondo

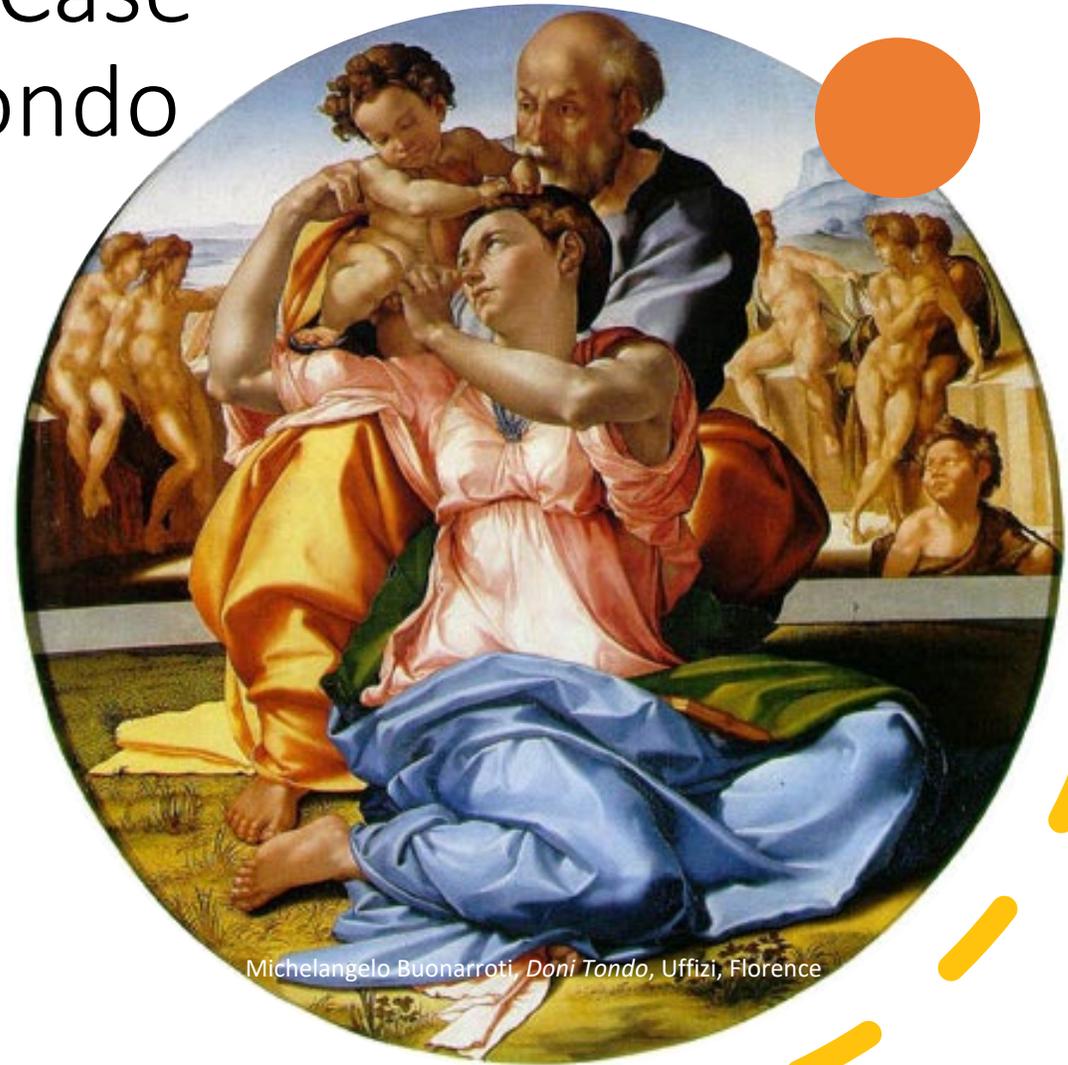
- The Uffizi Galleries are the first Italian museum to carry out the sale of a digital screen printing of a masterpiece, authenticating it with the blockchain.
- The work is Michelangelo's Doni Tondo and the digital screen printing is protected by a made in Italy patent, DAW® (Digital Artwork), created to contribute to the dissemination of digital heritage.
 - Produced in a limited series, certified, in 1: 1 scale, the new digital artwork authenticated by blockchain is exactly identical to the masterpiece from which it is obtained and protected with a digital encryption system, which makes it absolutely unrepeatable and unique.



Michelangelo Buonarroti, *Doni Tondo*, Uffizi, Florence

Online legal protection tools: Case Study: Michelangelo's Doni Tondo

- For each DAW[®], an NFT token (Non-fungible token) is also created on the Blockchain which certifies the ownership of the reproduction at very high resolution.
- Once made, the DAW[®] is accompanied by a certificate of authenticity signed by the Director of the museum that holds the original.
- Many artists and many galleries are adapting, because this innovation is opening up market prospects for digital artistic production, hitherto considered a “delicacy” for a small collector's niche.



Michelangelo Buonarroti, *Doni Tondo*, Uffizi, Florence



Frameworks:
Using
Intellectual
Property Rights
Online



Frameworks: Online legal protection tools as a safeguarding strategy in e-marketing activities

UNESCO

- UNESCO, Recommendation concerning the preservation of, and access to, documentary heritage including in digital form, 17 November 2015

European Union

- EU copyright law consists of 11 directives and 2 regulations, harmonising the essential rights of authors, performers, producers and broadcasters. This includes:
 - Directive on copyright and related rights in the Digital Single Market (“DSM Directive”), 17 April 2019
 - Directive on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes (“Satellite and Cable II”), 17 April 2019
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') also contain provisions relevant to copyright

Hot topics: Online legal protection tools as a safeguarding strategy in e-marketing activities

Use of real-world intellectual property in the virtual world

- Under US intellectual property laws, **use of trademarks and use of copyrightable materials require permission from the owner of the trademark/copyright.**
- However, to prevail on a claim of trademark infringement, a **plaintiff must establish** that the **defendant used the same or a similar mark "in commerce" in connection with the sale or advertising of goods or services without the plaintiff's consent.**
- Thus, the **user of a real-world trademark in an AR or VR environment may attempt to escape liability** under federal law **by claiming that the "in commerce" prong of the trademark infringement test cannot be satisfied.**

Use of virtual IP in the real world

- Similar infringement claims (and similar defenses to such claims) arise with the use of virtual IP in the real world.
- **In the AR environment, publishers incorporate the real world into the AR environment** generated for its users.
- **This means that IP in the real world may be incorporated into the AR environment, giving rise to infringement claims, particularly where AR replicates, distorts or replaces trademarked or copyrighted works.**



Thank you