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Dott.ssa Laura Sinigaglia

WIKIMEDIA FOUNDATION

Rome, January 24th, 2024

Obj.: LEGAL OPINION

Wikimedia Italy requested a legal opinion about legitimate uploading and making it available to the public on Wikimedia Commons, Wikipedia and her sister projects of pictures reproducing protected works of architecture based in Italy.

Notably, considering the status of the Italian legal context, at least two different versions of the authorisation have been developed, and the most recent one (see case 1 below) is the more reliable.

While in the first case, the authorisation explicitly states the ownership of the institution (which is also based on art. 11 of the LdA even if it is not mentioned), in the second case, it is necessary an interpretative approach also based on the above-mentioned article.

It is notable that Art. 11 LdA refers to all the genres of works listed in articles 1 and 2 LdA, and the term “publication” is intended for any form of first exploitation of the work that makes it known to the public.

We will discuss the matter through two case studies.

1. The first picture reproduces the Archimede Library in Settimo Torinese and took part in WLM 2023 https://commons.wikimedia.org/wiki/File:Settimo_Torinese_-

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[Biblioteca_Civica_Multimediale_Archimede_-_2023-09-24_14-12-43_003.jpg](#)



The authorisation/letter issued by the mayor in 2023, who owns the exploitation rights on the cultural good, which is still protected by copyright, covers all the needed areas to let the picture be reproduced and reused by users. In the letter, the mayor declares that the cultural goods are in the custody of her institution and that free reproduction is authorised for any purpose, according to the cultural heritage code (point 2 of the authorisation). Furthermore, the mayor also declares she is the work's rights holder and authorises its reproduction according to Italian copyright law (point 3 of the letter).

The authorisation concerns the reproduction and the release of the picture under the CC BY-SA licence (point 1 of the letter), so it is intended that the reusers should be able to reuse the picture for commercial purposes under the conditions provided by the CC BY-SA license itself.

2. The second picture reproduces the church of Dio Padre Misericordioso in Rome and took part in WLM 2015:

https://commons.wikimedia.org/wiki/Category:Chiesa_di_Dio_Padre_Misericordioso



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The authorisation/letter issued by the legal representative of the Municipality V of Rome in 2014 is more generic than the one indicated in point 1). It declares that Municipality V of Rome is the proprietor of the church. We can assume that the Municipality has commissioned the building of the above-mentioned church, which is still protected by the copyright. In this case, art. 11 of the Italian Copyright Law (n. 633/1941- LdA) applies attributing the exploitation rights to the Municipality for twenty years from the first publication (Art. 29 LdA). Furthermore, the Municipality expressly authorised the publication of the images of the cultural goods listed in the letter on Wikimedia Commons under a CC BY SA license, so it is intended that the reusers should be able to reuse the picture also for commercial purposes, under the conditions provided by the CC BY SA license itself.

In light of the above, I remain available for any further clarification.

Best regards,

Deborah De Angelis

(Attorney at law)

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