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New Code, Business Archives and Entrepreneurs. Is everything clear?

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1. How do business archives fit into the New Code for the Preservation of Cultural Assets?

In the third issue of this magazine, Paola Carucci, expressing her discontent with the shortsightedness of the legislature, said something noteworthy: business archives are private archives in every respect, subject to their pertinent laws. Consequently, business archives become cultural assets following the declaration of notable historical value (in fact, according to the New Code, this stipulation does not regard mere acknowledgement, as it did in the past, but actually constitutes the "cultural" quality of the asset).
A rule introduced by the Code establishes that the law for public archives (which is more strict) continues to be effective for the part of the archives produced before privatization. However, this rule affects only those archives of public companies that became corporations. On one hand, this protects the records from "casual" uses by the new ownership. On the other hand, it creates serious interpretative problems for the other part of the archives that preserves records produced after privatization. Which law will regulate those records? If we follow the letter of the law, archives produced after privatization will be covered by the law for private archives only if they have received official declaration of notable historical interest.
Let's consider the example of the Ferrovie (Railway), which was a state-owned service company that became a public corporation within a few years, and then finally, a public limited company. "*Quid iuris*"(what is the law?) for the documentation concerning the railway network and its infrastructures? These records certainly date back a very long time, and then, increase considerably with records produced by the Company (or rather, Companies, since ownership changed several times as a result of many subsequent reforms). Is the archives half public and half private? At what point will the new part receive official declaration? In the meantime, the archives grow continuously and after a certain period of time, records that are no longer useful to the current administration are at risk of disposal or destruction. Ferrovie is just one example of a problem that concerns many other ex public companies that have managed vital and strategic fields of the Italian economy over the last century. Names such as ENI, IRI and Telecom make us realize the seriousness of this problem.
I must admit that recently, new companies have begun to pay greater attention to their archival heritage as they realize its strategic value. Nevertheless, I believe that the new norms - according to the New Code - should be reinforced by amendments that require new companies to safeguard their documentation more strictly. For the moment everything depends on the all-important declaration, with all the *if*s and *but*s linked to a limitation that concerns private archives as they are created. Even if we ignore this considerable difficulty, we should remember that the law concerning "declared" private archives allows operations that are forbidden for public archives. For example, a public archives has inalienable status, whereas the private one does not; public ownership must

provide for the preservation of its archives from its beginning, whereas the private ownership does not have the same requirement.
Unfortunately, the French concept of judging the quality of an archives in relation to the public relevance of its creator's position, did not take hold in Italy. This doesn't imply the need for every business archives to be considered public, also because of a probable normative modification that adopts stricter measures for large companies that were previously public and continue to hold great power in controlling strategic sectors of the Italian economy.

2. What is the status of the entrepreneur in the New Code and why is the entrepreneur subject to the same sanctions as the director of a public archives?

Simply stated, the entrepreneur is a private party according to Italian law. As far as sanctions are concerned, I wouldn't say that the entrepreneur is compared to the director of a public archives from a penal point of view. Sanctions are applied to unlawful behaviors, which means not complying with the regulations for the safeguarding of a cultural asset. As the regulations for owners (who also produce records), possessors and holders of a private archives are different from those of the director of a public archives - as explained in the two examples above-, therefore infringement of these regulations is necessarily different. There are a few cases of a private entrepreneur who manages a public archives and is subject to the sanctions. for public archives.
The provisions that give rise to the differentiation between public and private punish those who fail to ask for legal authorization before acting (i.e. filing, restoration or moving the archives etc.) on a cultural asset, whether owned or simply held in custody. These provisions penalize any behavior that may damage the cultural asset (public or private archives declared of notable historical value). In other words, if the owner or custodian of the archives reorganizes or restores it without previously asking for approval - which may be a simple description of the proposed action - from an Archival Superintendence Office is subject to penalty. In cases requiring urgent intervention, a communication describing the action must be sent within ten days, according to the Code. Penalties are also imposed if the archives is permanently moved without permission - which again, for private archives, consists of simply declaring the move to the appropriate authority.
I don't want to analyze the entire list of sanctions at this point, but only to underline that this is an innovation introduced by the Testo unico in 2000 and confirmed by the Code that covers archives with complete safeguarding - reinforced by sanctions that have existed for the other cultural assets since 1939. I would also add that the archival law of 1939 included a mechanism for sanctions which was not confirmed by the decree of the President of the Republic 1409 (DPR 1409) in 1963. Nonetheless, the law of 1939 was repealed. Paola Carucci, in the article mentioned above, is critical about this aspect: why do we need to ask for an authorization, sanctioning an unlawful behavior? Wouldn't a courtesy notice be sufficient?
I do not feel that it is sufficient. Nor do I understand why the owner (or possessor or holder) of an artifact of notable historical value has to ask permission from the inspection authority in order to carry out ordinary maintenance: to clean a painting - not necessarily by Rafael; or do repair work on a historical building - not necessarily by a famous architect; or even just move a collection of paintings, whereas the owner of an archives may carry out any of these actions unchecked, perhaps damaging the asset irreparably - and I can assure the reader that this is not just an hypothesis. It has happened quite frequently in the past that records, restored and filed - sometimes with State funding, have been moved from a suitable room (in terms of microclimate and preserving equipment) to a cellar so as to make room for a piano or an armchair. I am not saying that an archives should never be transferred, but the inspection authority should be able to evaluate the suitability of the room where an archives is to be moved. Otherwise, there are Preservation

Institutions where assets are properly preserved. Sanctions were introduced into the New Code as an extremely useful safeguarding instrument, above all as a deterrent to unlawful behavior.
We might ask ourselves whether it is possible to classify cultural assets as "more" or "less" important. This question was seriously considered by the committee that wrote the Testo Unico and the committee that drafted the Code. But the law maker weighed this hypothesis, overruled it, and opted for a general definition of "cultural asset", identifying it with anything declared of notable historical interest. This covered all protected typologies including public and private archives. Moreover, the legislator also listed a further series of goods that are partially safeguarded, even though they have not been declared cultural assets

It is the declaration of interest and its consequent obligation that create the status of an asset whether we are referring to a painting, a collection, a monument, a manuscript, a library or an archives (with a few exceptions, such as those declared *ope legis*). A public archives is part of this "extra ordinem" area of protection because it is assumed to be of notable historical value from its beginning, and its creator is legally bound to comply. This is not the case for private archives, which become cultural assets *only after* the declaration: only then is the owner or custodian obliged to comply.
It may be excessive to safeguard business archives to this degree, except in the case of important companies such as those mentioned earlier in this article. However, once the declaration is effective, the entrepreneur is legally bound to safeguard the cultural asset, and is indisputably subject to the system of penal and administrative sanctions in cases of non-compliance.

What's more, I feel that those companies who accept or even seek a declaration of notable historical value for their own archives, often do so for business reasons and are interested in keeping their archives as a sort of business jewel. Editors, for example, tend to look after their historical library, but do not seem to care as much about their administrative and book-keeping records which, for a historian, are far more important than the library. It is necessary to create a different kind of archival culture in the companies. Sustaining knowledge of business' cultural heritage is as important as fostering a culture of conservation.

To this end, the Centro per la Cultura d'Impresa together with the Ansaldo Foundation have accomplished a great deal. Other important steps have been taken by the Archival Superintendence Offices, which have carried out large censuses of business archives in Italy.

The real problem, as we know, is to support business in taking care of their archives, even during periods of crisis. The long-standing idea of creating territorial archives that keep and preserve a business' archives – even temporarily, until a crisis is resolved – is generous step in the right direction that has led to good results in other European countries. It has been proposed and implemented in Italy by the Centro and the Ansaldo Foundation. As always, funds are a problem. After so many years of discussion (Giuseppe Paletta brought up this theme at the National Archives Conference in 1998) We hope to find a way of nurturing this model in Italy.

3. Is the New Code adequate to deal with the documentary commingling (archives and products) that is typical in business; for example, the coexistence of museums and archives? How do we share surveillance of such different cultural assets?

The Code isn't so precise that this type of problem may be solved on a normative level, but rather on a conceptual and theoretical one. As I said, the Code has a univocal and unitary approach to cultural assets, with particular reference to archives. However, the Code doesn't specify the typologies of records that should be preserved in an archives. Rather, it is archival theory that comes back to the theme of safeguarding *any* records - no matter what their form or subject matter - that are necessary to "document" the activity of a public or private agency, family, or individual,

In business, the commingling of different record categories is common: paper records, technical plans, photographs and products (newspapers, books, goods and so on). The concept of this sort of archives may include all these categories, since they all document the course of a business.
With regard to the editorial sector, I mentioned the case of a historical library which, for a newspaper, would be its periodical and newspaper library: both are integral parts of the archives, documenting the activity of the business. Similarly, but in a different field, the costume sketches, set designs, playscripts, photographs and even the costumes are part of a theatrical archives, along with the administrative records (whether printed or electronic) of the theater and its productions . This is true even if these items have been collected in a museum. They are inevitably linked to the rest of the archives.
A good example of a collection that covers a wide range of record typologies is the extraordinary archives of the publishing house Ricordi, which participated in the theatrical staging of melodramas in the early 20th century for which it published the musical texts.
I don't think there is a problem of relations among the Superintendence Offices for the surveillance of these records. A problem arises when a single object falls under different jurisdictions (for example, photographs or models of buildings or films etc.). It doesn't arise in the case of an archives that, to continue with the previous example, also preserves an important photograph collection or a significant number of building models, as often found in the archives of building contractors or architects, or a group of films that belong to a motion picture studio.
The Archival Superintendence is the primary point of reference. Nothing prevents this first agency from involving another Superintendence so that the action for archival conservation is more clearly stated. Of course, laws are made by people; in the end, it comes down to a question of loyal cooperation and institutional courtesy.