



BAPLA response: IPO Industrial Strategy Call For Views 15th November 2017

BAPLA welcomes this call for views on the IPO's Strategic Review. For the photography industry, the use of image-led content on search engines, social media and commercial websites is prolific and in most cases hard to track the full extent of unauthorised exploitation simply because rights holders and their representatives are unable to adequately address the issues with great effect.

This Strategic Review has the potential to be vital in providing much needed support for image community in respect of valuing the importance of copyright as part of the IP portfolio and integral part of innovation, as well as addressing the balance in the online market place, which currently favours tech giants. The review could also provide an invaluable opportunity to help foster much needed dialogue between these types of platforms, which in recent years have gained unprecedented advantages by developing exclusionary online services, whilst image owners needing to reclaim control of their valuable IP and, in many cases, generate an income.

About BAPLA

BAPLA, founded in 1975, is the UK trade association for picture libraries and agencies representing members of a unique part of the creative industry. BAPLA has a broad and diverse membership of image rights holders and purveyors, from sole traders to major news, stock and production agencies, as well as SMEs, archives and cultural heritage institutions. Members include 4Corners, Alamy, Bridgeman Images, Lee Miller Archives, Science Photo Library, PA Images, Magnum Photos, British Pathé, and Getty Images, to name but a few. BAPLA members are the main source of licensed images you see every day in print and digital media, and as such have contributed to the UK economy for over 40 years, furnishing organisations across all forms of publishing, news, advertising & marketing, retail, science & medicine, and public bodies.

Our members generate revenue for, and manage the interests of over 120,000 creators and rights holders, encompassing a breadth of experienced and new young image-makers. The photo library and agency sector is unique within the framework of the image industry as it is a vital economic link for many professional image-makers, and as such has always embraced new technologies into working practices where possible. Our industry specialises in recognising the 'marketplace value' of images and for decades has supported the ability of professional image-makers to derive income and reinvest in their creativity. Innovation and new business opportunities has been the key driving force behind our members' ability to create and maintain a strong global image industry¹.

Voluntary IP Register

Whilst BAPLA can see the practical reasons for suggesting introducing voluntary registration of images, this approach is not an appropriate solution for various reasons, mainly;

¹ The United Kingdom is one of the three largest markets in the world, alongside the US & Germany, providing two thirds of all image suppliers - Page 4, http://www.stockimagemarket.uni-hd.de/downloads/GSIM_Survey_2012_Part_III.pdf

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- These days, everyone is a photographer and a rights-owner, with there being billions of new images created in the UK every year. The market is delivering on the creation of copyrighted images. The high volume of images available online would make any registration system unmanageable.
- Registration would add an additional cost burden on rights holders, this would go against the principles laid down by the Berne Convention, that entitlement to copyright should not be subject to any formalities.
- Registration systems risks creating a two-tier rights systems (registered copyright and unregistered copyright) without a tangible benefit to registration. Questions of copyright authorship or ownership depend on adequate evidence of creation rather than the mere fact of registration. The system risks either being redundant, or creating an additional layer of disputes as to its ability to prove authorship, as well as increase the likelihood of costly litigation
- What is required is further expansion on educating users about the value of IP, in particular copyright content such as images. Increasing the profile of good copyright practice and the benefits that help to narrow the value gap would be far more productive.

BAPLA members collectively process millions of images per day. For example, a number of our members are press agencies producing images for the global news market; during previous consultations (such as Hargreaves & Copyright Hub – reference submissions) feedback from members was that the administrative costs outweighed the consideration. In the context of the work carried out under the auspices of the Copyright Hub, it is worth recalling the Hub's initiatives relating to metadata. Rather than a registration system, BAPLA would welcome proposals as to standardised metadata for digital copyright works, coupled with the stronger measures against metadata stripping.

Industry Initiatives

BAPLA members make available millions of images each day. Our members have always strived to utilise innovative technologies and improve efficiencies on ways to make licensing accessible & easy for users². Our membership includes suppliers of software, working alongside picture libraries and agencies, that provide services that search for and process online infringements, as a consequence of the proliferation of infringed images online. Since its inception BAPLA has also been a supporter of the Copyright Hub, offering a gateway to collaborate on ideas & initiatives with technology partners. There are opportunities to expand on initiatives, however for some members outdated infrastructures and service costs tend to be prohibit commitment levels.

BAPLA believes a multiple pronged approach is required to support IP rights of image rights holders and to retain a balanced marketplace that enables fair trading opportunities for image rights holders. As well as legislative initiatives, this approach also requires reciprocal discussions with certain ISPs and social media platforms (SMPs) to provide solutions.

² BAPLA's latest survey on simplified rights - https://bapla.org.uk/coo/user/gpimages/Survey%20on%20simplified%20rights%20models%20v2.pdf?dm_i=5VL,4QJ9O,QW899,HRHCJ,1

Recommendations

Our recommendations would be to provide a variety of solutions, such as:

- Making copyright enforcement procedures easier, cheaper and more accessible:

These can be achieved by expanding on elements featured in both the E-Commerce Directive (40 (duty to act) 48 (duty of care) and 49 (code of conduct)) and INFOSOC Directive (Article 8.3 Sanctions & Remedies). We acknowledge the introduction of the Small Claims Court procedure³. It went some way to improving the ability for image rights holders to seek damages for copyright infringements. However, as more cases have been brought to IPEC, damages have significantly lowered. In the same instance BAPLA members are finding the spread of online copyright infringement has reached significant proportions across millions of commercial websites, which may display only a handful of images without permission;

- Addressing the "framing" loophole:

"Framing" is the process of enabling a user to view an image from one website while it is framed by another website, without having to seek permission from the original source or rights holder. The current application of "communication to the public" at the EU level has led to a form of digital exhaustion for images and other visual copyright works not normally locked away behind paywalls. The UK should look at how a more pragmatic test for "communication to the public" could be applied, based on user experience rather than technical factors such as where content is hosted.

- Establishing a "Digital Charter" that supports the creative sector:

Setting out core principles of good practice regarding treatment of copyright protected content online and related data processing activities, e.g. promotion of respect for copyright and sources where content may be licensed, transparency around use of data generated from user interaction with copyright protected content, rebalancing of algorithmic weighting of content by identifying the original source (which tend to be smaller files with protective watermarks/overlays/identifiers). etc.

- Expanding the voluntary search code:

Great strides were taken at the start of 2017 with the introduction of an industry Voluntary Code of Practice to deal with anti-piracy⁴, however whilst Notice & Takedown works for the music industry, the proliferation of millions of infringed images across millions of commercial websites through "reposting" and also "framing" of content is impacting on the abilities of legitimate image licensors. The images industry is more fragmented in nature - there are a greater number of smaller rights holders and not the same established big players that are seen in film and music industries. We therefore recommend that the same attention be afforded to the images sector, whereby steps are put in place to deter downstream infringement at a practical level, to reduce the risk of users becoming "accidental pirates";

³ <https://www.gov.uk/guidance/take-a-case-to-the-intellectual-property-enterprise-court>

⁴ <https://www.gov.uk/government/news/search-engines-and-creative-industries-sign-anti-piracy-agreement>

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- Narrow the "value-gap":

We have identified that when it comes to platforms that accept user uploaded images and also aggregators, we are facing a "value block" for images. Image owners find it impossible to broker licensing deals with these tech giants; even YouTube's Content ID system is not available for images. Incentivising a similar system to bridge the value gap and provide opportunities for remuneration for image owners. This could be done by re-examination of the existing legislative framework to identify opportunities for strengthening their application in the UK such that image rights holders are able to share in the attention generating value their works bring, thus being able to then reinvest in their creativity, e.g. the following sections of E-Commerce Directive could be implemented in a stronger fashion: recitals 40 (duty to act) 48 (duty of care) and 49 (code of conduct).

The images industry faces increasing unprecedented challenges in operating in the online marketplace as the monopolisation of tech giants, whether ISPs or social media platforms, expands at an alarming rate with little regard to the 'value gap' it's creating in it's wake.

The challenge of protecting images online and maintaining a thriving online marketplace for licensing images cannot be overstated, particularly as image search engines and social media platforms are able to take advantage of a current loophole in order to "frame" images without requiring to consent of the copyright owner.

We believe copyright holders should be given back the same freedom to license to those who display their images online as they have in the physical world. BAPLA looks forward to the opportunity to work with the IPO in order to help shape the future that includes developing innovation and technology solutions whilst providing a balanced, competitive and fair online market place.



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