



BAPLA (the British Association of Picture Libraries and Agencies) is the UK trade association for picture libraries and agencies representing photographers and image-makers. The photo licensing industry is worth several billion dollars globally and in the UK alone several hundred million pounds, with BAPLA members contributing a sizeable amount towards this.

Our members employ in the region of 2,500 people in the UK and generate revenue for, and manage the interests of over 120,000 creators and rights holders. The photographic sector is unique within the framework of the UK creative industry. Our members have adapted the needs of our B2B clients as well as to market changes as rapidly as they appear, continuously striving to work towards solutions for the growth in digital enterprises.

Social Media Impact

BAPLA are pleased to see the IPO approach this area of infringement. For the photography industry, the use of image-led content on social media is prolific and in most cases hard to track the full extent of infringement simply because rights holders and their representatives cannot keep up with the speed of dissemination.

This research has the potential to be vital in gauging the level of impact for the creative sector as a whole, and in particular for photography. The review could also provide an invaluable platform to help foster much needed dialogue between technology companies creating social media sites and content creators wanting to reclaim control of their valuable IP and, in some cases, generate an income.

The Ideology of Social Media

The concept or ideology of social media is for users to publish or share their own content e.g. "I like this picture (add photo here)", but like many online services, social media sites are a fertile ground for third party owned copyright content to be reproduced without proper permissions.

- Social Media sites encourage users to share all content (users' and third parties') to the widest possible audience for greater reach;
- Terms & conditions of posting content, placing the onus on the user to upload or share content, enabling greater opportunity for infringement;
- Algorithms are used to enable upload of large size, high-resolution files to enhance customer experience at the cost of the ownership information (metadata), which is stripped.
- As a result, social media sites become repositories of content shared almost without restrictions thus creating a misunderstanding of what constitutes public domain for the purposes of copyright protection. What follows is an expectation that use of copyright works should be free, meaning both unpaid and unrestricted. This expectation is the most significant factor in the erosion of the respect for copyright.

The photography industry has been overwhelmed by social media sharing and increasing infringements online. The widespread infringement facilitated by social media sites has a negative impact on client relationships our members work hard to foster. Clients who legitimately license content from our members find that the same content is then taken (or scrapped) shared and monetised without consent or remuneration to rights holders. This results in clients questioning why they should continue to pay license fees if they can obtain content for free. In the worst case, it increases the chances of online infringement, by converting good (licensee paying) corporate citizens into infringers.

In a report released last year, photography tops the research on social media engagement. Images constitute 43% of the content of those sites, with the next usage at only 29%. With



2.7 billion internet users plus an average of 1 trillion images¹ to be taken in 2014, it is little wonder that photographers and their representatives are struggling to cope with controlling their IP.

Some of the statistics below indicate the importance of visual content in social media. With 71% of global internet users “sharing content” on social media sites and 58% of users from the UK ², social media sites are harnessing the public’s appetite for photos:

- 200 million snaps per day on Snapchat³
- Instagram alone has for example 150 million users consuming 55m photos per day⁴
- Among the top 10 activities on Facebook and Google Plus for Q2 2013, uploading and sharing photos has been the ‘top’ activity on desktop, mobile and tablet (Jeffbullas.com)
- Among the top 10 activities on Twitter for Q2 2013, uploading and sharing photos has been the ‘second top’ activity on desktop, mobile and tablet (Jeffbullas.com)
- Pinterest, a visual medium, is the fastest growing social media network, which grew 88% -on-year (Computer World) ⁵

Questions from the IPO:

1. Scale

- *Obtain an indicative assessment of the use of social media to either promote respect for IP or facilitate infringement.*

BAPLA and its members have over the years supported many campaigns that promote respect for IP, the latest include the Copyright Hub and copyrightuser.com. Our members have individually contacted various social media organisations, with a few successfully engaging and making steps towards finding industry solutions. For example, Getty Images is able to offer a post-use billing solution utilising its PicScout platform that dynamically identifies images posted to a social media platform by a third party user, credits the copyright owner of the image and returns a share of any advertising revenue generated by that content to the copyright owner (see details here:

<http://www.picscout.com/solutions/licensing/>). This creates a win-win solution but this can only be achieved if the owner of a social media platform has the incentive to speak with copyright owners, which they do not have if they’re easily able to hide behind safe harbour defences such as the “hosting” defence under the E-Commerce Directive.

One of our main concerns is with the lack of coordinated open channels for rights holder, especially those from smaller SMEs or as individuals to communicate with Social Media organisations and identify persistent infringers collectively. We are also interested in ensuring that these online organisations take responsibility for educating those using their services to

¹ <http://news.yahoo.com/number-photos-taken-2014-approach-1-trillion-thanks-013002154.html>

² <http://ipsos-na.com/news-polls/pressrelease.aspx?id=6254>

³ <http://blog.snapchat.com/post/53763657196/recent-additions-to-team-snapchat>

⁴ <http://instagram.com/press/>

⁵ <http://www.socialmediatoday.com/content/what-most-popular-content-shared-social-media>

⁷ For example: <http://www.news-cloud.co.uk/> and <http://celeb.news-cloud.co.uk/>



they are unable to tackle the increase in the copyright infringement due to the harsh realities of having to weigh up costs vs. outcome.

2. Impact

- Would it be possible to produce a broad assessment of the impact to business?

BAPLA members have always strived to be innovative, adopting digital content delivery and fashioning business models to suit the needs of a diverse range of clients. We regularly maintain good communications with clients, adapting services, delivery and pricing for both traditional and new forms of communication. For example Getty Images has agreed deals with Yahoo to license content, Corbis Images licenses Yahoo and AOL, and many picture agencies have agreed licensing terms for images using on the Bing home page. The impact to our members' business continuity and growth, can be demonstrated by the two tables and accompanying analysis shown in the attached submission to the IPO by Getty Images in October 2013 (see section 1.c). This demonstrates the clear rise in social media popularity compared to more traditional online publishers, at the expense of law abiding copyright publishers losing advertising revenue generating opportunities to platforms that allow (and encourage) third party content to be published irrespective of whether it is properly licensed

- What is the impact on business (e.g. financial, reputational etc), whether positive or negative?

Both financial and reputational aspects for our members are challenged. Whilst our members have embraced social media sites for legitimate marketing uses all content misuse facilitated by these sites place legitimate deals in jeopardy. As mentioned above, the scale of the infringement, the statutory safe harbour defences available to social media platforms and the associated cost of legal enforcement together makes it near impossible to police online infringement. As a result our members suffer twice: through the loss of licensing revenue from the infringer, and through their clients and contributors being dissatisfied with the level of protection of the content they licensed from, or to, our members.

A range of members have tried to counteract the negative effects of social media use, by providing technology systems that identify infringed images, and also by providing legal means/service to use certain types of images or platforms for users engaged in social media activity, but even these measures are limited only to monetising on commercial uses and do not address the wider problem of the expectation created, or at least fuelled, by the social media sites that all content should be free..

- Has the proliferation of social media contributed to formation of underground closed groups set up to facilitate infringement; how have consumers become aware of these groups; and what awareness do they have of IP infringement?

We have been made aware of a few cases of illegitimate websites harbouring copyright images from other rights owners, but in most cases they tend to be dealt with by members directly, as the reporting structures and legal actions are designed as such.

3. Identifying the characteristics of infringement

If the study does indicate that social media platforms are being used to facilitate IP crime, we would want analysis to establish the following -

- What is the role of the social media platform?*
- Do they have responsibility for content?*
- What are the common intermediaries?*



- *How is the infringement coordinated?*
- *What groups are involved?*
- *What do they need to do and how do they do it?*
- *Where are the perpetrators of infringement, both electronically and physically?*
- *Are there any obvious links to other illegal activities occurring through social media platforms?*

We support the question posed by the IPO above. For responsibility we would also like to add - What educational IP advice is offered? And - What resources are used to help facilitate removing and discouraging infringements?

4. Identifying the effectiveness of measures to discourage infringement
If measures to educate and inform users of IP infringement are identified, we would want to establish the following -

- *What measures have been used?*
- *How effective have these measures been?*

BAPLA supports this notion and would like to suggest that better and more open dialogue between rights holders and social media organisations to coordinate educational programmes and marketing promotions around IP is engaged.

5. Using the outputs
It is hoped that the study will:

- *Provide the IPO Intelligence Hub with information that can begin to inform enforcement partners and enable refined activities against online infringement.*
- *Provide an initial spotlight on larger organised infringing groups, providing a snapshot of the current issues and paving the way for further focused assessment within less well-known social media/marketplace platforms.*
- *To help prioritise this work within IPO's broader enforcement strategy.*

BAPLA would welcome this approach and will be taking steps to regularly inform members on appropriate infringing offenders and would therefore appreciate inclusion in any broader enforcement strategy that tackles infringements relating to online exploitation.

Outcome for BAPLA

BAPLA would like to see develop the opportunity to have roundtable discussions with those creating and facilitating social media sites which would include ISP's who have their own versions⁸. BAPLA would also like to see this assessment expanded upon, as we had little time to provide a detailed account using empirical evidence.

Quotes from BAPLA Members

"In some cases yes and more often in the past as SM began to emerge, however it's a mammoth task to undertake and the spread of reposts is epidemic." Anonymous

"We realised some time ago that we could not pursue the tsunami of global misuse." Arcaid Images

"It is difficult to quantify the infringement but just blogging alone causes a full time workload to request images be used at the correct resolution and to include the correct copyright line

⁸ Facebook, Pinterest, Snapchat, flickr, Tumblr, Twitter, Google +, Bing widget, etc



and needless to say as a private archive we do not have the funds to employ someone to monitor this disregard for copyrighted images." Lee Miller Archives

"The proportion of infringed images used on social media sites has grown exponentially over the last few years to the point where it's almost impossible to monitor for infringements that lead to great criminal activity. The hardest part is having the opportunity to find better solutions with social media companies to work together to find better solutions. In the meantime the impact on business is clear." Loupe Images

"'Pinterest' in particular is frustrating as rarely do the users bother to discover if the images are under copyright, the images may be 'pinned' at any size and with no wording the images appear available with no accreditation or links to the owners... To date I have had images successfully removed from You Tube and find their system fair and easy to use. Their policy of giving a 'strike' to infringers is also positive." Lee Miller Archives

"[Social Media Sites] could help and support formats and links that rights holders provide in copyright images and could reword their T&C regarding blanket copyright giveaways." Rex Features

- Can you provide at least one example (more can be included) of a social media infringement which you feel has had a direct impact on your business
Orlando Bloom crying pic which he retweeted. Widely reported across all media. Some paid. Some saw it as 'fair use'. Humph! Rex Features

"In numerous conversations with students and professionals - who we know to have used Arcaid's image, there seem to be no realisation that to take and use images is illegal." Arcaid Images

"Broadly speaking we see Social Media as a developing part of our business model in which the industry's rules and best practices have yet to fully form. We do feel it has become a positive business tool for both promotion purposes and new business contacts." Rex Features

- What would you like to see change?

"It would be good for a rights holder or a collection of right holders to be able to approach the social media channel owners with reports about users rather than specific items. If all a user does is share material to which they do not have the rights then the account should be shut down rather than items that are flagged being removed." Anonymous

"Proper credits at the least, embedded links to the supplier maybe, but a firmer application of the principle of I.P. within social media in general would be most helpful." Rex Features

On behalf of BAPLA

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