

## Support for the EU Copyright Directive - BAPLA Submission

On behalf of BAPLA, **we earnestly request that the UK Government supports the Copyright Directive**, considering the journey it has taken us and how far we have come. It would be a pity to see it fall at the last hurdle over what we believe to be a few revisions to the text, which we feel are possible in order to placate concerns held by the Image Sector. We hope that the UK Government will take this opportunity to try to revise the following text, which we believe disadvantages image rightsholders.

We hope the Government would be prepared to support the directive with the caveat that the following amendments to the text are implemented. We have listed our red lines in order of importance, for ease of reference

### Key Red Lines (In order of importance):

#### 1. Article 13 (4a) Recital 38b - Row 83

**Second paragraph** - Rightsholder information - *“among other factors, the size of rightsholders and the type of their works and other subject matter”*

**Delete “size of rightsholders”** – There is potential for discriminatory treatment against smaller rightsholders such as SMEs. The size of rightsholders and the type of their works means there would be a strong possibility of avoiding/ignoring image rightsholders who overall tend to be SMEs and have copyright content infringed across a broader spectrum. A significant majority of rightsholder within our Image Sector would be adversely affected by this, particularly as SME’s. The initial reason for Article 13 was to provide a fair marketplace for all rightsholder not merely for the largest.

**Last paragraph, last sentence** - *“a number of elements should be considered, such as...avoiding the availability of different types of content”* [Part of 13.4a - only where it refers to the types of works]

**Delete “different types”** – There should not be ‘one rule for one type of content over another’ it should be the same treatment across all types of content. Again, it is discriminatory, essentially all rightsholders types of content should be considered.

Legislation should apply to all rightsholders of all sizes and all types of content, irrespective of the size of the industry affected.

#### 2. Recital 38(d) - Row 85

**First paragraph, line 6 - Delete words:** *“or when the revenue generated by their uploads are not significant in relation to the copyright relevant act of the users for which they are covered”* – This is because if the directive has already applied the example of *“without any profit making purposes”* then there is no need for this additional wording. It is unnecessary and allows for greater interpretation by OSCCRs to decide upon any type of use which they may deem to be less significant.

#### 3. UGC – Article 13 (5)

*“users shall be allowed to upload content generated by them and which includes third-party content for purposes of quotation, criticism, review, caricature, parody, or pastiche”* – **Revise the text to “users continue to benefit”** from the exceptions. The exception goes too far in creating a “right” rather than an exception.

### Optional:

- **Recital 38(d) - Row 85**

**First paragraph, line 5** - Better clarification of *“without any profit-making purpose”*.

**As a service industry, BAPLA members core business activities are in digital trade.** Licensing digital content online has become the norm for the Image Sector, with both income and investment utilised to innovate in new technologies. Our members have thrived under a compatible UK/EU regulatory IP framework for the best part of 25 years. However, the digital transformation online has led to digital inequality in the online marketplace where the balance is tipped towards the advantage of OCSSPs and away from image rightsholders.

**Who benefits under safe harbour provisions?** OCSSPs are in a highly advantageous position, utilising ‘safe harbour’ provisions to their own economic benefit and taking full advantage of a ‘limited liability’ regime, which affects competitiveness and manipulates a ‘digital barrier’ for image rights holders. **BAPLA has responded on numerous occasions in support of introducing regulations that address the liability of online service providers<sup>1</sup>.**

We believe adopting these amendments provides a golden opportunity for the UK Government to show continuing support for not only the importance of copyright for our sector but also fulfilling the original statement of intent of providing a fair online marketplace for the livelihoods of creators and SMEs so we can continue to grow, innovate, and invest in our visual cultural heritage.

For and on behalf of BAPLA

Isabelle Doran  
Head of Policy and Public Affairs  
<https://bapla.org.uk/>

## About BAPLA

**BAPLA members provide a ‘vital economic link’ for many professional photographers, supporting their ability to derive income and reinvest in their creativity.** Founded in 1975, BAPLA is the UK trade association for picture libraries and agencies. We have 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 *Bridgeman Images, British Pathé, Camera Press, Lee Miller Archives, Science Photo Library, PA Images, Magnum Photos, and Getty Images*, to name but a few. Our 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.

**The UK image licensing market is the second largest global market in the world<sup>2</sup>.** The image sector has always been about growth and innovation, adopting new technologies as they arise in order to meet with customer demands. BAPLA has championed the recognition of marketplace value of photography. During that time BAPLA members have invested heavily in technological innovation allowing them to move from analogue to digital, digitising millions of images of great historical and artistic value in order to offer access to digital copies. The global still images market is projected to reach £3.21 Billion (\$4.46 Billion) by 2021<sup>3</sup>.

**BAPLA members generate revenue for, and manage the interests of over 120,000 creators rights holders.** For decades, our members have supported a wide breadth of experienced and new young image-makers. Significant investment is made on an ongoing basis in accurate keywording and adding metadata, allowing for seamless customer experience on the one hand, and full remuneration of the creators on the other. Investment in maintaining a custodial role – preserving, digitising, referencing collections, is also an integral part of running an image library and agency.

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<sup>1</sup> BAPLA Submission for Call for Views: Modernising the European copyright framework <https://bapla.org.uk/wp-content/uploads/2018/08/Call-for-views-on-modernising-the-European-copyright-framework-2016.pdf> and BAPLA response to Select Committee on the European Union Internal Market Sub Committee <https://bapla.org.uk/wp-content/uploads/2018/08/Call-for-evidence-on-online-platforms-2015.pdf>

<sup>2</sup> GSIM Report 2012, with Germany first & the USA third - [http://www.stockimagemarket.uni-hd.de/downloads/GSIM\\_Survey\\_2012\\_Part\\_III.pdf](http://www.stockimagemarket.uni-hd.de/downloads/GSIM_Survey_2012_Part_III.pdf)

<sup>3</sup> <https://www.technavio.com/report/global-general-retail-goods-and-services-global-still-images-market-2017-2021>