



## **Image Providers Call for Better Protection of Creative Works Online**

**Policy Recommendations on  
Framing,  
Host Provider Privilege and  
Implied Consent**

**June 2015**

## **Image Providers Call for Better Protection of Creative Works Online - Policy Recommendations on Framing, Host provider Privilege and Implied Consent -**

On behalf of hundreds of thousands of photographers, as well as numerous picture agencies and stock archives, CEPIC calls upon the European legislator to update copyright law to protect images online for the benefit of creators and society generally. Only with such protection will creators and their picture agencies be able to share in the value that their works bring to society which is a prerequisite for investments and innovation.

### **Executive Summary**

Images have made the internet the vibrant and engaging place we enjoy today. Compelling, professionally produced imagery is essential for any website wishing to capture and retain the interest of web users globally. However, **over the last 10-15 years, inadequate protection of images in the digital space has shifted the value from those that create images to those that provide the platforms for viewing and sharing images.** Whilst all of the costs of production and distribution remain with the creators, **the benefits are increasingly realised by aggregators that merely copy or display third party images at no cost.** If this imbalance in the value chain persists, there will be less investment into creating tomorrow's iconic images, as well as less innovation in bringing new images to market. There will ultimately be a less diverse and shallower pool of new images being made freely accessible for the enjoyment of all internet users. Imagine a world where selfies and holiday snaps are the dominant content or where all professionally produced photography resides online only behind locked doors.

In the interests of a Digital Single Market that is based on cultural diversity, accessibility and creativity, **the InfoSoc and E-Commerce Directives should be amended to address:**

- **Framing. Online platforms and other websites are increasingly framing images instead of hosting the images and paying for a licence.** Framing incorporates an image into a website so that a website visitor perceives the image as appearing on that website, even though the image is technically hosted on a third party site. Framing allows the framing website to gain all of the benefits of having the image appear on its website while bearing none of the costs (of hosting the image, of content licence fee, etc.). Framing fundamentally deprives image creators of recognition of their authorship, revenue and the ability to control where their images appear online. In addition, framing causes consumer confusion as are given the false impression that the content displayed is owned or otherwise licensed by the website operator placing the link. This in turn has significantly encouraged internet piracy over recent years. Regrettably, European copyright law does not sufficiently protect creators against framing. The current InfoSoc Directive does not allow the courts to make the crucial distinction between: *(i)* general hyperlinking (acceptable), where the user knowingly clicks through to another website to access the full information; and *(ii)* framing of images (unacceptable), which relies on the same underlying technology, but which deprives users of any incentive to click through to the source as the frame already reveals the full information directly on the framing website. **It must be clarified that framing is reserved to the copyright holder as part of the right of communication to the public. Legislative proposals to ensure legality of hyperlinking must exclude framing.**
- **Liability exemptions. The picture industry is one of the biggest casualties of copyright laws lagging technological change.** Individuals and businesses alike no longer have the same incentives to respect property online as they do offline. Individual infringers can easily hide behind online platforms that protect their identity, while the platforms themselves cannot be held liable as they currently benefit from

liability privileges for “hosting providers”. The creators are left unprotected. **It should be clarified that the liability privilege for hosting providers does not apply to platforms that (i) actively participate in the organisation and display of content; (ii) display the content as their own; and/or (iii) otherwise monetise the content (directly or indirectly – e.g., through advertising and utilising data).**

- **Implied consent.** Some courts have assumed that image providers who do not use technical tools to block aggregators from crawling their sites and copying images impliedly consent to such aggregators’ use of their images. A website’s failure to use an “opt-out” mechanism such as the Robots Exclusion Protocol should not be interpreted as an implied licence. The lack of harmonisation of the (failed) concept of implied licences creates major uncertainty and undermines the idea of a Digital Single Market. There is a far better way that the fundamental role of search engines may be legitimised. **A new exception should be implemented for search engines that defines how they may (and may not) reference images.**
- **The recommendations in this paper present solutions to the most pressing problems faced today by photographers and the image industry.** They avoid the need to create a new ancillary copyright (akin to that granted to press publishers in certain countries) and therefore also avoid the associated challenges of equitable distribution by collecting societies amongst an ever increasing number of rightholders within the EU and beyond. Most importantly, **the recommendations in this paper will allow market forces to allocate value more fairly whilst also providing a solid base upon which innovation, accessibility and creativity may flourish within the Digital Single Market.**

## About CEPIC

CEPIC is a European not-for-profit trade association in the field of image rights. CEPIC was founded in 1993 to present a unified voice to advise and lobby on new legislation emerging from Brussels. It was registered as an EEIG (Economic European Interest Group) in Paris in 1999. As the Centre of the Picture Industry, CEPIC brings together through its member associations and affiliates nearly 700 picture agencies and photo libraries in 20 countries across Europe, both within and outside the European Union. It has affiliates in North America and Asia. It has among its membership the larger global players such as Getty Images, Corbis or Reuters. Through its membership, CEPIC represents more than 250.000 authors in direct licensing.

CEPIC’s members are expert in the conservation and marketing of imagery. They have been digitalising content from the advent of the internet, making the resulting digital asset available for commercial use, such as to newspapers, magazines and broadcasters, off and on-line, as well as in non- commercial environments for the purposes of research and education. Picture agencies and photo libraries also act as commercial rights management service providers on behalf of creators.

CEPIC achieved observer status at WIPO (World Intellectual Property Organisation) in 1997. CEPIC has been a member of IPTC since 2005, of ICOMP since 2009, of the Linked Content Coalition since 2012 and joined Creativity Works! in 2014. It has been part of the ARROW PLUS project until 2013 and, together with partner, EVA for collecting societies for visual arts, released a feasibility study on the inclusion of visual material in the ARROW system. It is presently be part of the EU funded project, RDI (Rights Data Integration) demonstrating of how to efficiently manage and trade intellectual property rights online for any and all types of usage, across any and all types of content, in any and all media.

**For further questions please contact**

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