

Good morning,

I am representing today the picture industry. The picture industry is made up of micro, small and a couple of medium companies. These picture agencies represent photographers. Prominent players are getty images and shutterstock, latest new comer on the market Adobe. We also represent press picture agencies such as Reuters or dpa, museums and galleries, in short all the fields of photography.

The picture industry is the major casualty of online piracy. The value gap – which we call value block in our industry – is our major concern.

My presentation will first explain what the value gap means for the picture industry.. And then propose a critical examination of the directive. The presentation is 12 minutes long.

### **SLIDE 1**

The value gap is the manifestation of the disparity between Demand and Revenue: a growing demand for images, yet declining revenues for the image providers.

This slide provides a couple of statistics.

In the context of the Directive, I would like to point to one in particular: *“85% of images found online by visual content recognition tools are unlawful copies.”*

Visual recognition technology has been around for 1° to 15 years. It is very effective of up to 95% of image match. The technology is put in place by the rights holders themselves. Online services at present do not use visual recognition technology to track ownership.

### **SLIDE 3+ 4 + 5**

(Slide 2) The value gap stems from a business model that has developed alongside the growth of social media platforms.

This business model bases on the unauthorized use of third party images, with no ownership check and encouragement to share this content.

Platforms attract users with visual content, develop features to keep the users on their platforms, gather user data and re-use this data to generate revenue from advertising.

Not a cent of the revenue is returned to the providers of the visual content.

Here a couple of examples of unauthorized uses on social platforms

Search for “frog” on Pinterest

Search for frogs on Tumblr

## SLIDE 6

Image search engines are one major manifestations of this business model leading to the value gap, if not value block.

Here is an example from BING, search for “leopard”.

Image search engines aggregate a large amount of images. In the last couple of years, instead of referring back to the websites where the images are hosted, they have developed features in order to keep users on their platforms.

## SLIDE 7

The development of Google Images provides us an excellent example of this development.

On this slide, you see two versions of Google Images. The first one at the top is the “older” version, still available in France. The second one at the bottom is the version available all over Europe, except France and Germany. It’s available in Belgium, you can make a try tonight.

On the version at the top, the image is shown in the forefront. In the background, you can see the website where the image stems from. It’s National Geographic, they have licensed the image. On the right hand side, you can see the metadata information attached to the image. A user right-clicking this image will know that it is being downloaded from NG.

In contrast, all this information has disappeared in the newer version. The image is shown against a neutral black background. What makes things worse, Google Images is now proposing a search for similar, at the top, at the bottom and on the right. The user are encouraged to stay in the Google universe without ever visiting the hosting website.

It should be added here, and this is not a detail in the context of the DSM Directive, that the image shown is **framed**. It is not stored on the Google server but **deep-linked** from the database of the source website.

Google is developing these features and this business model further.

Let me read you an a news published by Bloomberg on November 14<sup>th</sup>, just two weeks ago.

<https://www.bloomberg.com/news/articles/2016-11-14/google-buys-shopping-search-startup-to-make-images-more-lucrative>

GOOGLE BUYS SHOOPING SEARCH STARTUP TO MAKE IMAGES MORE LUCRATIVE

The key sentence here is.

"The acquisition suggests that Google, the largest unit of Alphabet Inc., is making further moves to tie its massive library of online image links with a revenue stream."

Google wants to make their library of "links" more lucrative while not a penny will returned to the providers of the linked images who have not even given their authorization.

What is troubling also is that Google seems to be entertaining a database of « links ». But as you see from the examples I have shown you, what you see are the pictures themselves. It is a myth to believe that Google only has a database of links and the image libraries the images themselves. This is the same. **The links are the images.**

**Let me be clear here: we are not opposing the fact that our images are being indexed, displayed or shared. We have a problem that when a revenue is generated, not a single penny goes back to the rightholders.**

As I said before, not a value gap but a value block.

### **SLIDE 8**

This brings me to the comment of the Directive.

In general, we welcome this directive as a step in the right direction.

The Directive:

- Re-establishes a level playing field between stakeholders
- **By encouraging** cooperation
- **And Incentivising** the use of Technology

We welcome the reference to technology. This reference formalises the present situation and will drive the development of new technologies.

In the picture industry, the cost of technology is, presently carried by rights holders.

**In fact, I would like to use the opportunity to ask a question to Google.**

*(Turning to Tobias) Tobias, I am very happy that you are on the panel today. I have a question for you that you do not need to answer immediately but*

*Why is it that Google is proposing a content ID to the music and audio-visual industry but not to the picture industry. Why is there no content ID for images?*

So good stuff in the Directive.

However, there is big **however**.

**For the image sector**, all the good stuff proposed by the Directive is **annihilated** by the fact that what we call **the framing loophole** is not closed.

>>>> Art. 13 refers to content that is “stored” by online services.

But aggregators do not typically store the content, not for pictures in any case. They frame the content. This means that in order to display the picture, they establish a deep link on the database where the image is stored.

>>>> Also Recital 33 expressly excludes hyperlinks from the scope of the Directive.

**Commentaire [S1]:** I do not wish to say more than this during the presentation. If questioned, I will refer to the Svensson which concerns

**Yet, not all links are equal –**

**There is a difference between a link that points to content and a link that displays content.**

To explain the difference, I would like to show you an example.

### **SLIDE 9**

One CEPIC member has licensed this beautiful picture to the Guardian.

The Guardian is a respectable newspaper that lawfully licences images.

The present image was licensed for 5,85 €. --- 5,85 €.

The image you see here is stored in the content management system of the Guardian. The Guardian has acquired the image file and it's stored in their database.

The license allows the image to be enlarged to a high res by clicking on the arrow on the top right.

Users love pictures, they love to view them and to share them!

When you click, this is what you get. A beautiful high res image of a blue-eyed leopard in the snow.

The image you are seeing here is framed.

We're fine with it. It's in the licence. The Guardian paid 5,95 € for being able to do this.

My point here is rather that from the point of view of the user, **there is no difference between the display of a stored image and the display of a framed image.**

### **SLIDE 10**

Of course the image has been widely shared. A quick search on Google general search shows that the image has been copied all around the internet. On this screenshot here, you can see that Google proposes a “search for similar” functionality on the first page of their general search.

### **SLIDE 11**

This second screenshot is from Google Images. You can see that the image has been shared more than 300 times on various websites. There are three pages with this image.

### **SLIDE 12**

Another example of storing versus framing.

On this website, no difference. The stored images have been licensed. The framed images are shown with no authorization of the user.

### **SLIDE 13**

The omission of the “framing loophole” annihilates the positive propositions of the Directive in an other area: when it comes to authors.

This example relates to the Chapter 3 of the Directive. This chapter relates to authors and how they should proportionally participate in the revenue making on the Internet.

Picture agencies are Art.14 compliant. They report monthly to bi-monthly to their photographers. In this case, the following picture had been licensed to BING.

### **SLIDE 14**

The photographer complained that the monthly reporting was only showing one payment to BING. “I don’t understand, I have found this picture 240 times on the Internet”.

Indeed, the photograph has been licensed 1 time to BING, de-multiplied 240 times on the Internet, stored or framed there is no way to know from a user/viewer perspective. The photographer received one payment. This picture can never be sold again.

The point here is that when it comes to have a **proportionate share of the pie**, you need to have a pie to share in the first place!

The value gap is the picture industry is really a value block, there is no revenue at all coming back to the content providers and unless the framing loophole is not lifted, this will not change.

### **SLIDE 15**

As conclusion we think this Directive is a step in the right direction. It’s been written for the music and audio-visual industries.

Unless the framing loophole is closed, its benefits will be annihilated for the picture industry.

We want to share pictures, we want pictures to be shown, we want to produce into pictures. And for this we need to be paid for. **There is no reason why the picture industry should be left behind by the legislator.**

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