BAPLA

British Association of Picture Libraries &Agencies

BAPLA Response to the Competition and Markets Authority Market Study on Online Platforms and Digital Advertising

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, representing members of a unique area of the creative industry. 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. 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 and European economy for over 40 years.

The images sector has always been about growth and innovation, adopting new technologies as they arise in order to meet with customer demands.

BAPLA has consistently championed the recognition of marketplace value of photography. **Our image licensing market is the second largest global market in the world[1].** During that time BAPLA members have invested heavily over the years 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. 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.

BAPLA 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. Licensing online is the significant driver of the UK's image industry.

Our Response to the Online Platforms and Digital Advertising Market Study

BAPLA welcomes the opportunity to respond to the Competition and Markets Authority review into online platforms and digital market in the UK, by providing a broader insight into the extent of market advertising by leveraging content.

We propose to comment on the following points outlined both in the summary accompanying the market study, and in the scope of the consultation (page 74), which BAPLA members consider a key issue from the perspective of their businesses, namely:

- Whether competition in the digital advertising market may be distorted by any market power held by platforms
- How much of the value of advertising is captured by different parts of supply chain, including the extent to which the share being captured by intermediaries compared with publishers and other content providers might be higher than in a more competitive market

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[1] GSIM Report 2012 - http://www.stockimagemarket.uni-hd.de/downloads/GSIM_Survey_2012_Part_III.pdf

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Firstly, is important to note that BAPLA's membership covers a multitude of different types of picture libraries and agencies, including a significant number of SMEs, as part of the supply chain furnishing organisations across all forms of publishing, news, advertising & marketing, retail, science & medicine, and public bodies.

The impact of the market distortion created by certain types of platforms is experienced at different levels, nevertheless all BAPLA members have been affected by the design practices of these particular platform giants that exploit image content to capture users and drive up advertising revenue.

Platforms, specifically Internet Service Providers (ISPs) such as Google, and Online Content Sharing Service providers (OCSSPs) such as Facebook, are clearly abusing their position and acting as competing forces to image licensors. **Inadequate protection of images in the digital space has shifted the value from those that create images to those that leverage image content to increase user traffic, and repress user's needs to leave these platforms, in order to sell more advertising.**

Images play a large part in attracting users to interact online. As one platform giant puts it - Pinterest's founder and CEO Ben Silbermann, "a lot of the future of search is going to be about pictures instead of keywords"[2]. **These types of platforms are conducting an anti-competitive practice by scraping imagery to the benefit of their market dominance in advertising.**

Their dominance effectively ransoms a business to allow scraping of their content (in this case images) to keep users in their ecosystem, allowing a 'trickle of traffic' to the original source (unless the original source website pays heavily to advertise). The alternative is opting out, which means obliterating any traffic to the original source website. Aside from the content, the importance of traffic to an image library website is crucial - **without traffic to your website you are effectively invisible online.** It is the antithesis of fair competition - using market dominance and size for commercial gain.

BAPLA members have been greatly affected by the design model advocated by such platforms for over a decade. Google Images' format introduced in 2013[3], dramatically reduced the click-through rate to the source websites, depriving image owners of proper attribution and traffic, which affects their ability to attract business to their websites.

Google's de facto monopoly on search and search-based advertising was expanded further by exploiting image content in Google Images. It reached such a pivotal point that, with financial support from a coalition of 20 organisations including BAPLA, our European trade body CEPIC issued a competition complaint against Google about the growing dominance of Google Images (November 2013)[4]. They identified several key issues, which include:

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[2] Pinterest https://www.cnbc.com/2017/04/03/pinterest-ceo-future-of-search.html

[3] Google Images changes in 2013: https://webmasters.googleblog.com/2013/01/faster-image-search.html

[4] CEPIC 14th November 2013 http://cepic.org/issues/cepic-welcomes-the-decision-of-the-european-commission-in-the-google-search-shopping-case and http://cepic.org/issues/cepic-submits-eu-antitrust-complaint-against-google-images

- Google leverages its dominant position in general web search to favour its own platform service Google Images
- Using image providers' original works, Google diverts traffic from their sites to its own services
- Google's e-scraping practices of images stifles competition online and discourages investment in creativity

CEPIC inferred Google's exploitation of third-party's images as an abuse of dominance under Article 102 AEUV. In a statement, CEPIC said, *"…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*".

The design of these dominant platforms creates an unequal relationship between what is input (content we upload online) and what is output (the platforms gain from online), and continues to have a dramatic impact on the value chain, creating an unprecedented transfer value. As Ariel Ezrachi and Maurice Stucke state in their University of Oxford paper: The E-Scraper and E-Monopsony[5], *"An e-monopsony, like a monopoly, can use its trove of personal data to price discriminate both up- and down-stream*"…"*Even if the super-platform is not a buyer, it can distort competition upstream by scraping the viability of upstream providers*".

The internet traffic, generated by large online platforms, also removes the need or incentive for users to go to original or paid-for sources of images. **The long-term effect of these platform's 'e-monopsony' is almost inevitable, whereby users are kept as 'happy prisoners' never able to leave their captor.** As "*tech companies operate in something of a 'lawless zone' where they benefit from the ambiguity of their role…reinforcing the 'filter bubble' effect, the super-platforms–rather than promoting the marketplace of ideas–can actually hinder it.*"

Competition law provides complainants with the opportunity to bring forward cases of anti-competitive behaviour and abuse of dominant position in the marketplace. However, complainants still require money and investment to present a legal case. Smaller players, even when collaborating together, invariably lose out as the resources needed are often substantial[6].

We believe these types of platforms should not be able to continue prospering without adhering to a level playing field. We recommend that they should provide a 'one-click to source' approach for all websites, including image owners.

If you have any further questions, please don't hesitate to get in contact.

Yours sincerely,
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[5] The E-Scraper and E-Monopsony: https://www.law.ox.ac.uk/business-law-blog/blog/2017/04/e-scraper-and-e-monopsony

[6] Note: The CEPIC complaint remains unresolved due to time and funding constraints, which again is an indicator of market dominance and the overwhelming number of cases the EU Competition Commission had to review.