British Association of Picture Libraries & Agencies

BAPLA Research Into Online Copyright Infringement - Assessing the Value Gap

Abstract

This report has been undertaken in order to draw attention to the key concern facing UK picture libraries and agencies on the issue of online copyright infringement and answer the question: "To what extent has copyright infringement online affected BAPLA members, thereby creating a 'value gap', and have social media platforms exacerbated the situation?". Infringement occurs when a copyright work is used without permission of the rights holder in the work, and may result in loss of income or other harms for the rights owner. Research has shown that infringement, in particular online, has had an enormous impact on many creative sectors[1].

Despite the fact that research analysing the impact of copyright infringement on the image industry has been undertaken as part of previous surveys and presentations for BAPLA[2], image infringement in its own right has never been fully assessed before. Given this situation and a lack of empirical evidence, this report aims to fill the data gap.

The daily world would be nothing without pictures, as very often they distil the essence of the message being portrayed to an audience. The photo library and agency sector differs from other creative industries, as income is derived from the licensing of images featured in a broad range of products in print and online. The internet enables the possibility of freedom of expression, as well as enhancing the exchange of information. However, the fast speed of replication online obstructs the ability of image rightsholders to exercise control over visual works and effectively tracing infringements. This has given rise to the 'value gap' which is the variance between the value returned to the rightsholder for licensed use of the work and the value derived by certain online platforms exploiting unauthorised uses.

BAPLA, the UK trade association for picture libraries and agencies, represents a significant number of rightsholders within the UK image sector. Some of the largest picture agencies are

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[1] Source: International Federation of the Phonographic Industry (IFPI) - Fixing the Value Gap
https://www.ifpi.org/downloads/GMR2018_ValueGap.pdf
[2] Source: How social media catches photographers in the value gap https://bapla.org.uk/ow-social-media-catches-photographers-in-the-value-gap/;

BAPLA members but also smaller right holders who are very often sole traders, and a variety of cultural heritage archives and news agencies. Given the diversity of over 130 BAPLA members[3], the problem of online copyright infringement can be examined from almost every angle. In this report, the opinions of purveyors such as small right holders, whose voices are very often not heard, can also show these problems from a different perspective.

In this report, we look at:

- present market size
- extent and cost of online copyright infringement
- the impact of social media

We also present an analysis of the findings.

The survey was sent to 107 BAPLA members, 48% completed the survey.

While this survey suggests the scale of the issue, it does not contain the full reporting of infringements, particularly as several of BAPLA's larger members, as well as some overseas and affilated members, did not take part in the survey. Additionally, not all members actively license images to customers and as a consequence also did not complete the survey.

It should be noted that the scope of the research refers only to a cross-section of BAPLA members and not the image sector worldwide.

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[3] This is the latest figure as of autumn 2019, as the BAPLA membership fluctuates annually.

Section One: Market Size

How many images do you represent?
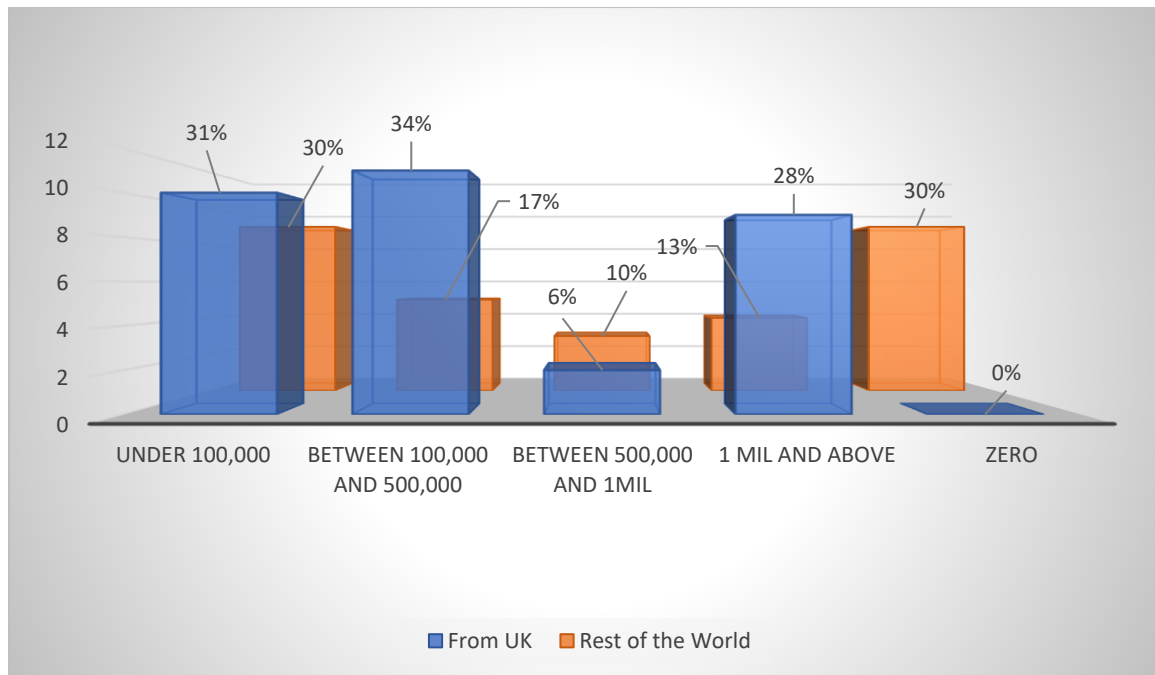
BAPLA members represent images both from the UK and from the rest of the world, from different professions and offering different services. This shows the enormous scope of breadth and diversity across the membership.

Despite the fact that a significant number of images originate from the UK, members also represent images of international origin. From the data provided we can calculate that there are approx. 274 million images from the UK, and approx. 17 million images (i.e. 6%) from the rest of the world. In total, just under 300 million images are represented by survey respondents. Starting with the biggest numbers in the UK, 28% of respondents represent 1 million or more images. This includes the representation of 2.5 million to 250 million images. The most common response was 'between 100,000 and 500,000', accounting for 34% of respondents. The majority of BAPLA members that responded to the survey also operate in the rest of the world, although 30% represent images from UK contributors only.

How many people do you employ?
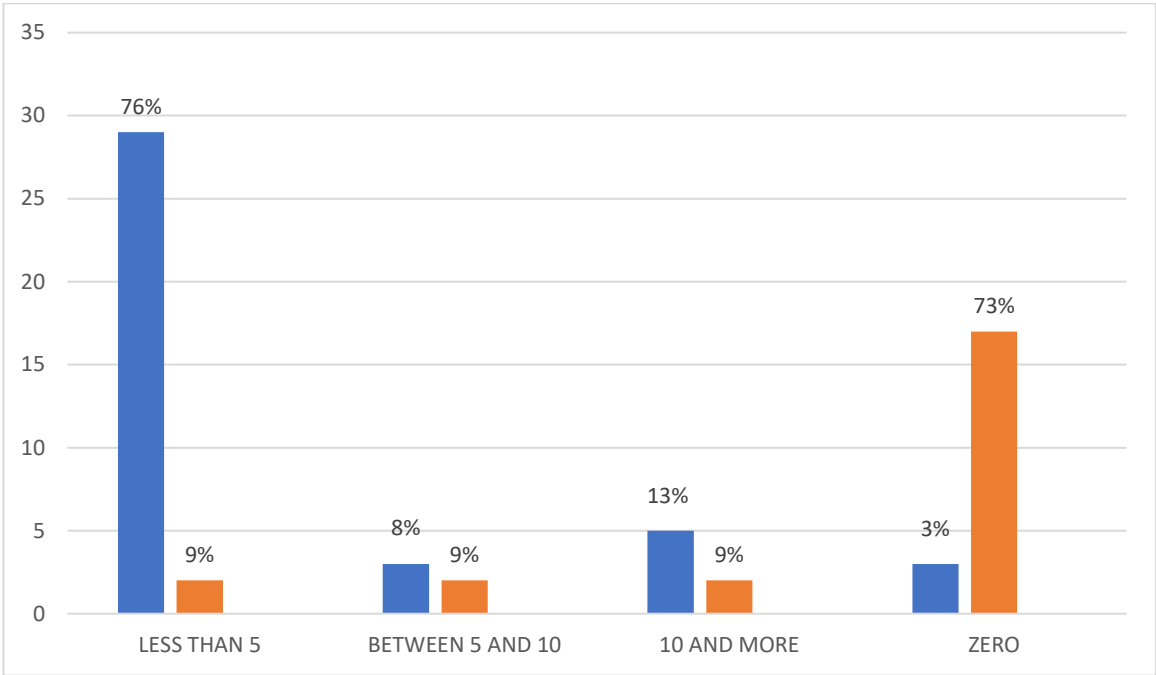
Not all respondents answered this question.

According to the survey, 62% of respondents employ staff covering the UK market, with 76% employing less than 5 people, 8% employing 'between 5 and 10', and 13% '10 and more'. 38% of respondents employ staff working on markets covering the rest of the world, with 9% employing 'less than 5', and the same percentage for 'between 5 and 10 people', and 9% for '10 and more'. For those respondents, this represents about 211 people employed in the image sector.

Although many members represent an enormous number of pictures and many right holders, employment in this sector can be classified as being at a relatively low level. This is certainly a factor to consider when reviewing the current enforcement framework for picture agencies and libraries; arguably enacting Article 17 of the Digital Single Market Copyright Directive[4] might stimulate more employment in the sector.

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[4] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0790&from=EN

How much turnover do you generate (approx.)?
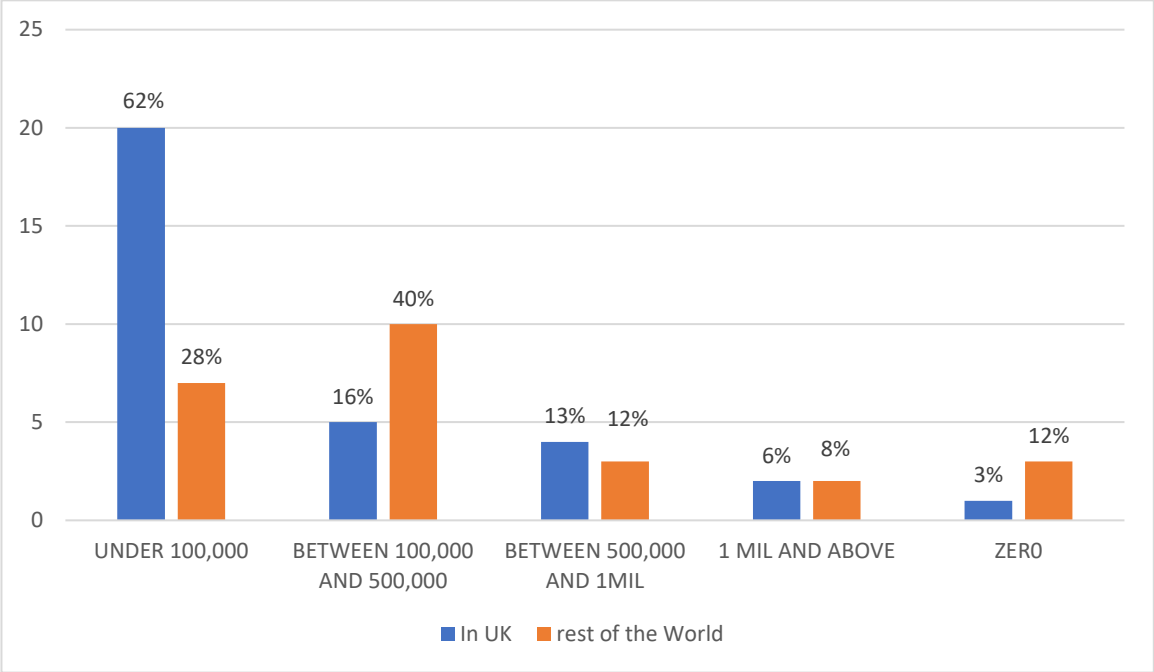
After analysing the number of images represented, the natural assumption is to expect to see sizeable turnover as respondents represent so many images. However, the largest group among members (62%) reported 'under £100,000' turnover, ranging from the lowest £9,000 through to £85,000 as the highest within the category. 40% of agencies reported generating income from the rest of the world in the range £100,000 to £500,000.

For the UK, 22% of respondents crossed the line of £500,000 and above, with 32% for the rest of the world. Given the demand for images, it cannot be ignored that there are clear factors impacting on the level of income for picture libraries and agencies, in comparison to the level of income being generated by online content sharing service providers (OCSSPs)[5].

The total turnover from respondents is approximately £12M in the UK and £16M from the rest of the world. We can extrapolate that if the survey had been completed by the full membership, the turnover would most likely have at least doubled.

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[5] Social media advertising revenue is forecast at $51.3 billion USD for 2018 ($17.24 per user). Revenue is set to grow 10.5 percent annually, Source: https://blog.hootsuite.com/social-media-advertising-stats/

Section Two: The Extent Of Online Copyright Infringement

Do you experience online infringements of the images you represent?
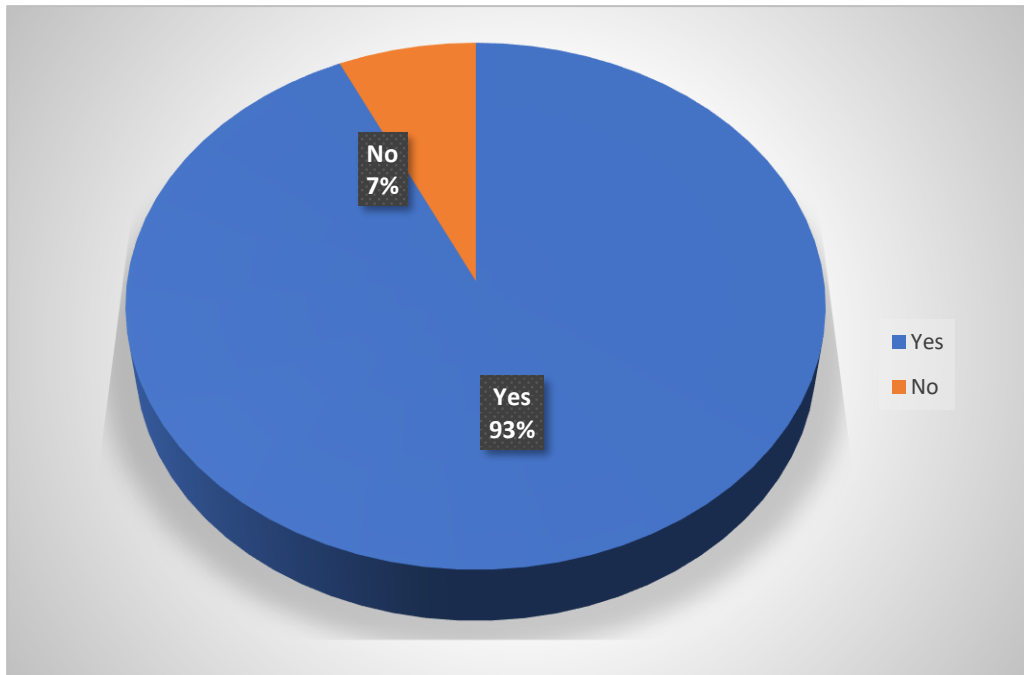

93% answered 'yes' to the question 'Do you experience online infringement of the images you represent'. Only 7% said that the problem of online infringement does not concern them; some indicating that their collections were not available online.

The substantial number of 'yes' responses illustrates the problem of the 'value gap' for images. It also raises the question of how to efficiently deal with online infringement and how many people are able to undertake measures in order to counteract this situation.
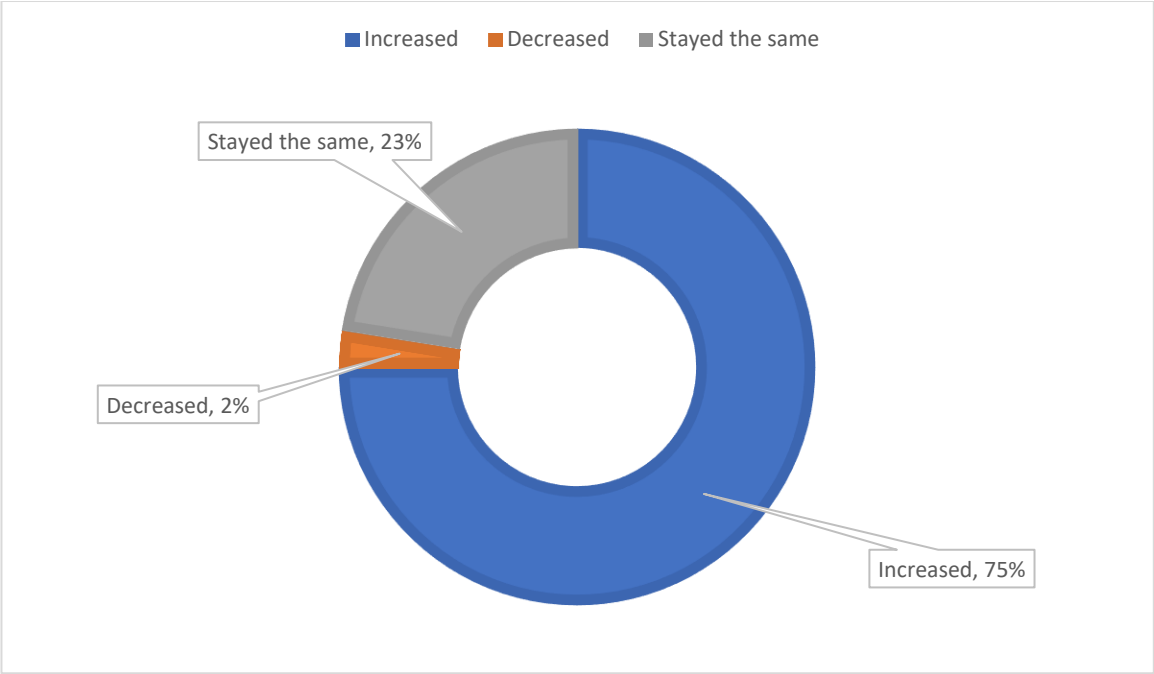
Over the past 5 years has the level of online infringements:

Increased, Decreased, Stayed the same?

Increased | Decreased | Stayed the same

Stayed the same
23%

Decreased
13%
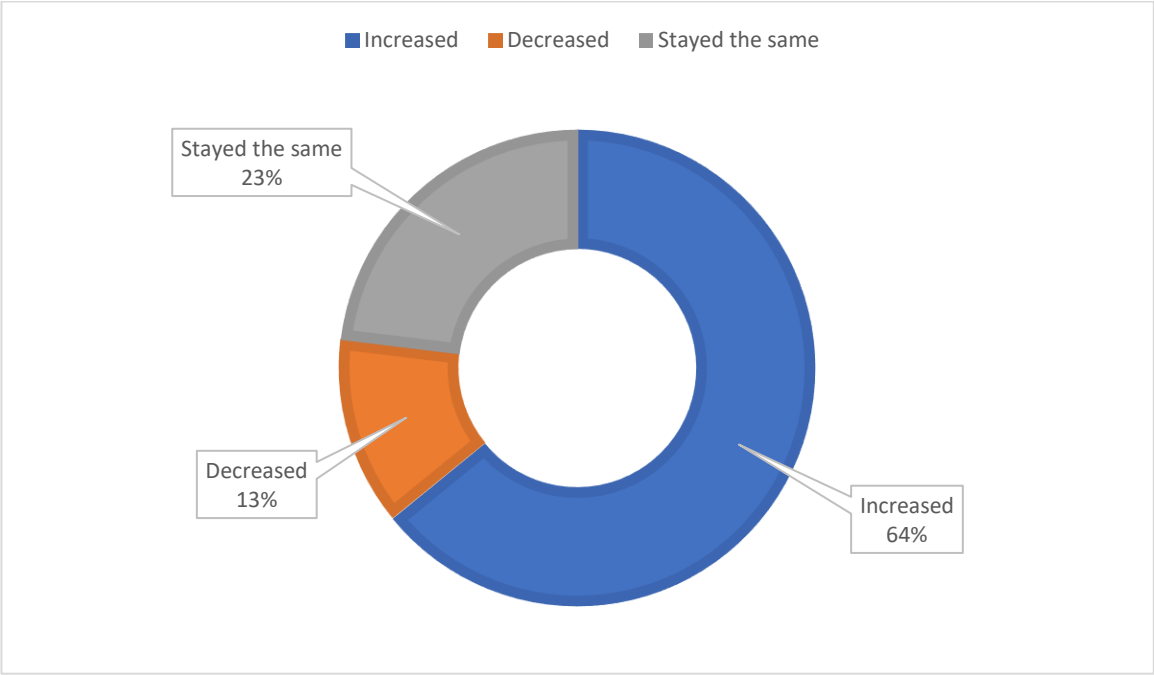
Increased
64%

Over the past 10 years has the level of online infringements:

Increased, Decreased, Stayed the same?

Increased | Decreased | Stayed the same

Stayed the same, 23%

Decreased, 2%

Increased, 75%

Reviewing the responses overall, online infringements have occured on a large scale over the last 10 years.

Changes over the past 5 years show that 64% believed the level of infringement had increased, compared with 23% saying it had stayed the same, and 13% saying it had decreased.

Responding to the question on the levels of infringements over the past 10 years, 75% stated that it had increased, 22% stated the level had stayed the same, and less than 1% stated that it had decreased.

Most respondents answered the question on what supporting evidence they could provide in relation to infringements over the last 10 years, with the significant majority commenting on the increase:

Example Comments:

"The amount of time spent on infringements has increased."

"The results provided by infringement pursuing services we use, increase in our findings online, increase in notifications from photographers."

"We use an image infringement service which tracks and reports image infringements. The scale has increased 10-fold in the last 10 years. It started as the odd infringement online over 10 years ago; 5 years ago it reached a significant tipping point, but financial recovery worked well; and now the current situation is so overwhelming that certain infringements (such as social media platform use) are having a negative effect on licensing for online use. Social media platforms have exacerbated the issue in the last 5 years, creating a behavioural attitude where people don't respect the cost of producing an image, simply taking an image to use it commercially for free."

"Our photographs are littered all over the internet. The public at large are believing more and more that photography is something that you should be able to use for free. Sites such as Instagram and Facebook have done little to help this."

"Reverse image search technology has returned increased numbers of images year on year; more websites appearing, many of them mirrors of each other, with images we can identify as ours."

"Vastly increasing usage of social media, allows images to be too easily spread."

"Invisible watermark reports (Digimarc), rights holder complaints."

"Reports from compliance companies like Picscout and then Copytrack, on top of our own research using Google Image Search."

"tracking through ImageRights."

"The number of infringement notices we send."

Among responses the opinion was expressed that identifying an infringement does not constitute a hard task in itself, however being recompensed for the infringement does. Many members are, for a variety of reasons, unable to track infringements. The significant contribution in changing statistics over the last 10 to 5 years was made by reverse image search technology and infringement pursuing services. These methods quite recently have become more popular in use. Some ways of monitoring images can be highly time consuming and ineffective, for instance, research that is based on searching, browsing websites, or putting keywords in a browser. It is clear that whilst there remains a significant increase in terms of online infringement, nevertheless, it costs many hours of tedious and physical monitoring of the Internet.

Another issue is the perception of pictures as a free tool. Through social media platforms like Facebook and Instagram, it may seem to be trivial (arguably encouraged) to copy and post images however because images are so quickly disseminated most infringements are hard to follow up on, creating a 'whack-a-mole' condition for members. The issue of very slow tracking only exacerbates the situation. Most observations are based on checking websites, reviewing reports and verifying usage. But these methods are too slow to prevent infringement on a significant scale. Many opinions within this report stressed that because of social media, licensing for online use is considered far more challenging these days.

Do you actively pursue online infringements?
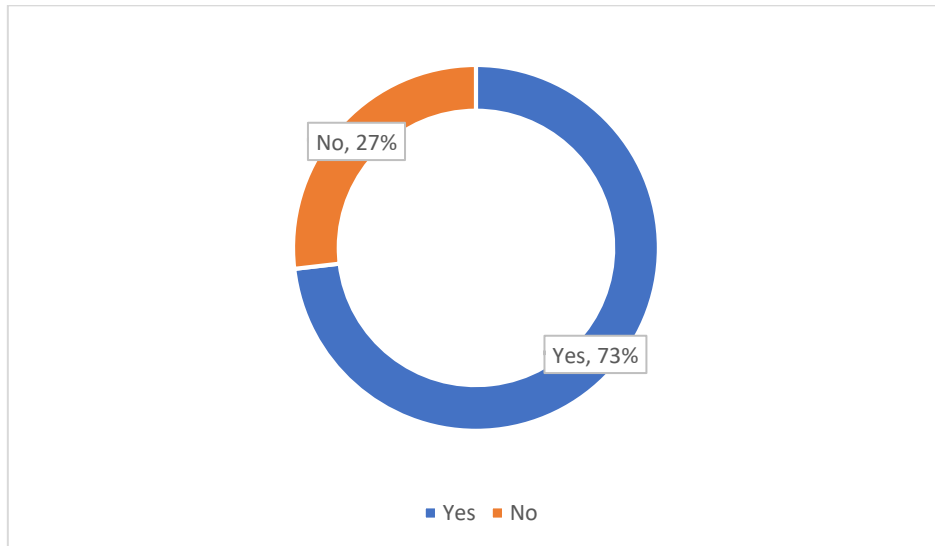
When asked the question of whether respondents actively pursue online infringements, a significant proportion - 73% answered 'yes. Of these, less than 46% reported an average success rate in pursuing infringements (see chart below). Only approx. 27% of respondents did not chase infringements. It may be that these respondents do not pursue infringements due to factors that fall outside of the scope of this survey.

If yes (you do actively pursue infringements), what would you estimate, as a % proportion, your success rate to be?
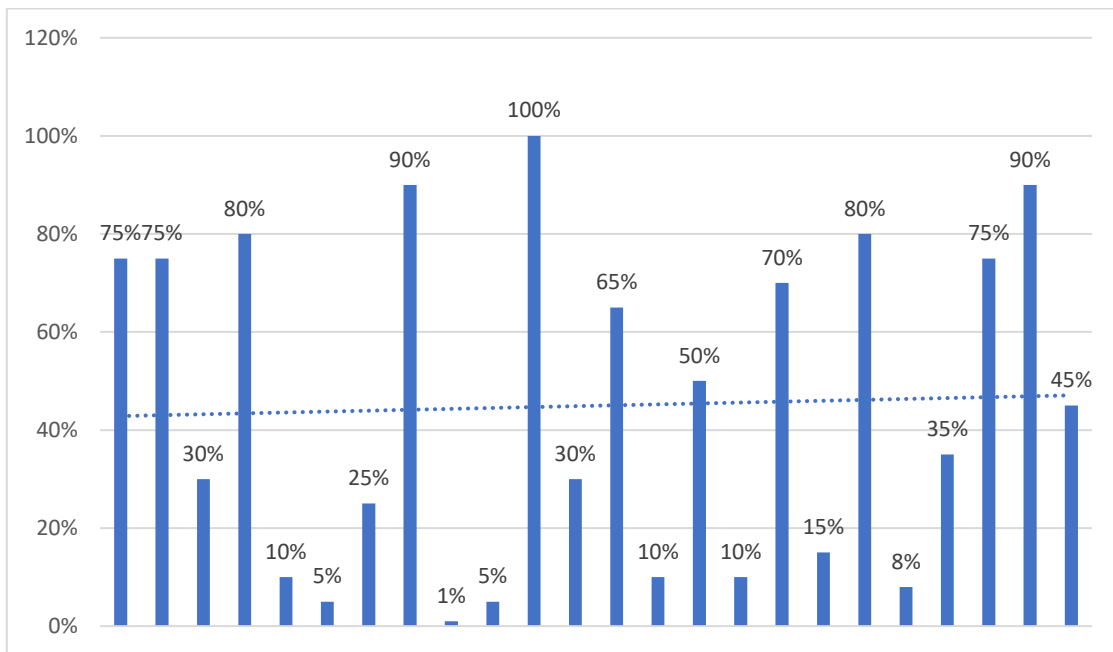
After successfully tracking the infringement the next step is to effectively reverse the violation of the right. Even with members demonstrating a relatively high success rate, the process can often be a laborious task, as evidenced by the remaning 54% of members, giving an overall average success rate of only 46%. Given this, it is unsurprising that some members may not actively pursue these breaches of the law.

Please select the type of infringements you pursue (tick as many as appropriate):

☐   Commercial websites

☐   Social Media platforms (e.g. Twitter, Pinterest, Facebook)

☐   ISPs (e.g. Google, Bing, Yahoo)

☐   Blog sites (e.g. Blogspot)
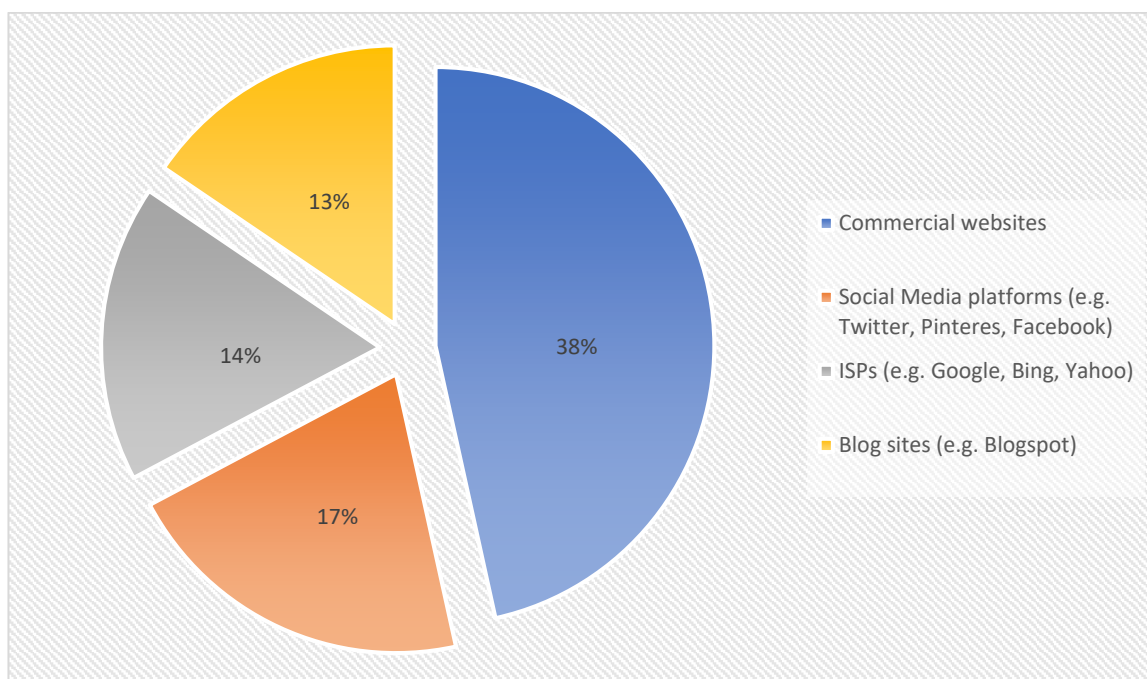
The growth of the internet has enabled a broad range of infringing use types. However with time and resources being limited members need to prioritise the type of copyright violation to pursue.

The most pursued online infringements are undertaken by commercial websites (38% of respondents), as the traceability (including making contact) of the infringer tends to be more straightforward.

This is followed by social media platforms (otherwise referred to as online content sharing service providers) at 17%, and then internet service suppliers (ISPs) at 14% and Blog sites (13%). It is worth noting that combining Social Media, ISPs and Blog sites together equates to 44% - giving a slightly higher margin of 6% above commercial websites alone, particularly factoring in advertising income generated by these online platforms.

How do you pursue unauthorised online uses? Tick all that apply:

☐ Copyright enforcement services

☐ Legal action via courts

☐ Commercial settlement

☐ Take down notice to hosting platform
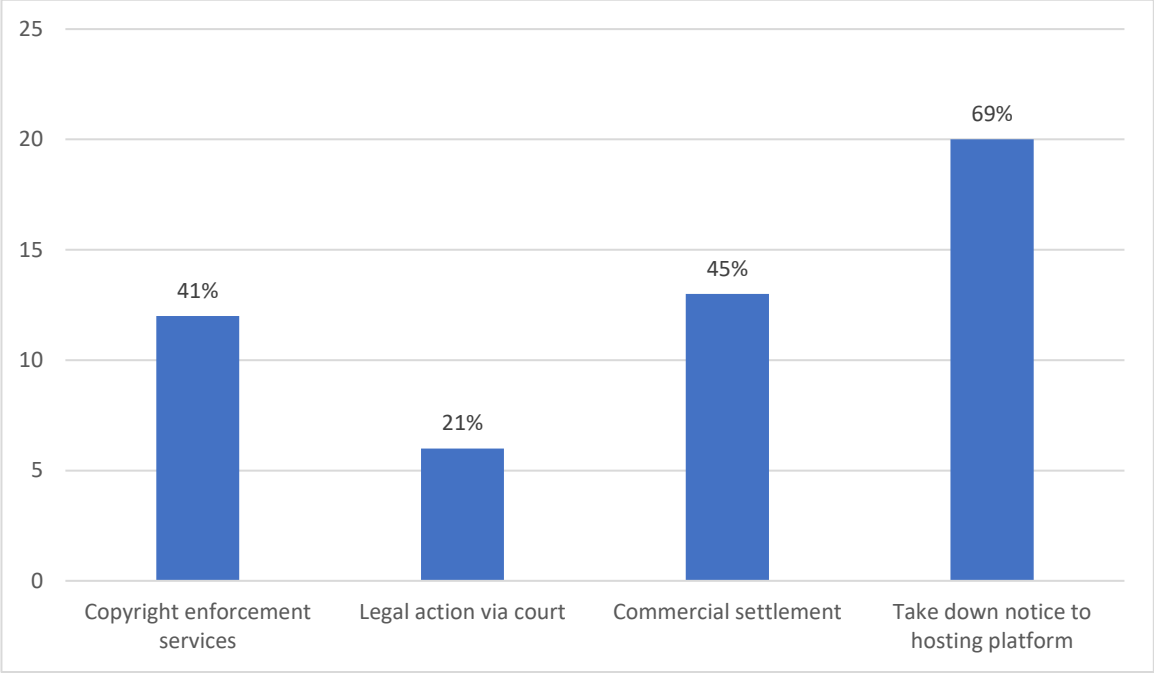
In response to the question about how they pursue unauthorised online uses, the majority of respondents answered "take down notice to hosting platform" (69%), followed by "Commercial settlement" (45%).

In spite of the fact that 'Copyright enforcement services' are becoming recognised as one of the most effective ways of tracing and responding to image infringement, in reality, the percentage of members using this service is only 41%. This may be due in part to services fees associated with these organisations. The least used approach reported was using "Legal action via

court"(21%). This would likely follow once all other remedies had been exhausted and the balance of damages awarded outweighs the cost of the process and time spent. The UK's IPEC Small Claims Track, used as a last resort, has been constructive in that regard.

If you use copyright infringement tracking services, how many do you use?
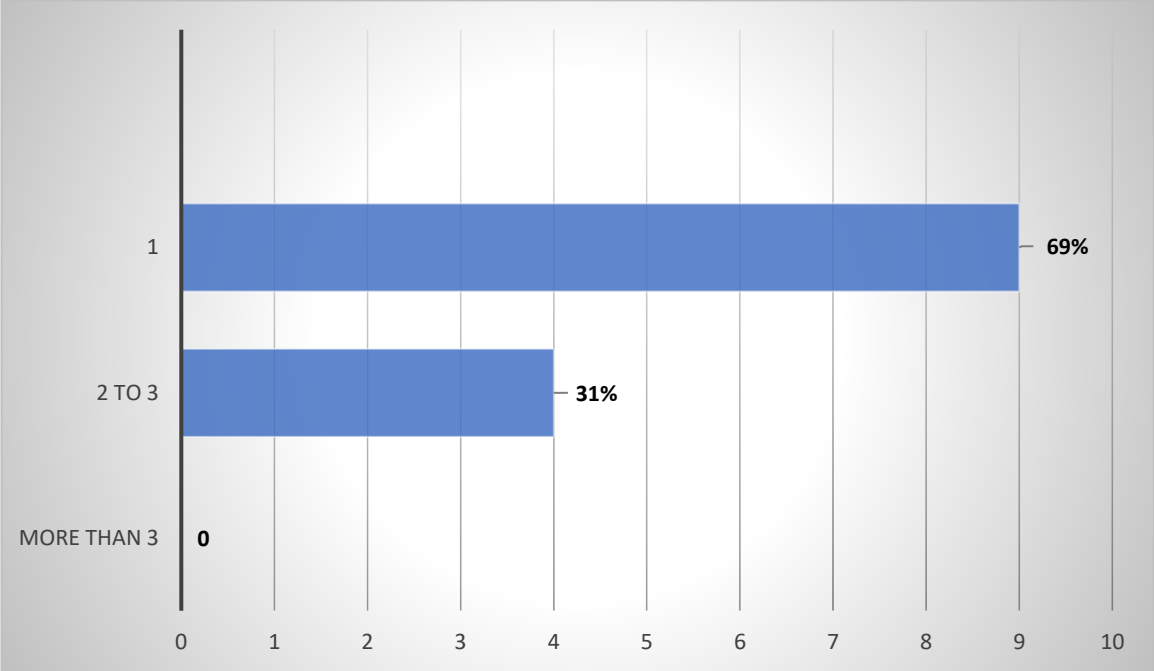
Of those using Infringement Tracking Services (also referred to as Copyright enforcement services), 69% used 1 service, and 31% used 2-3 services, although notably no respondents used more than three services.

One respondent commented: "The copyright infringement companies we use are quite effective but it involves good systems and a lot of work."

Have you obtained financial compensation for unauthorised uses you have pursued?
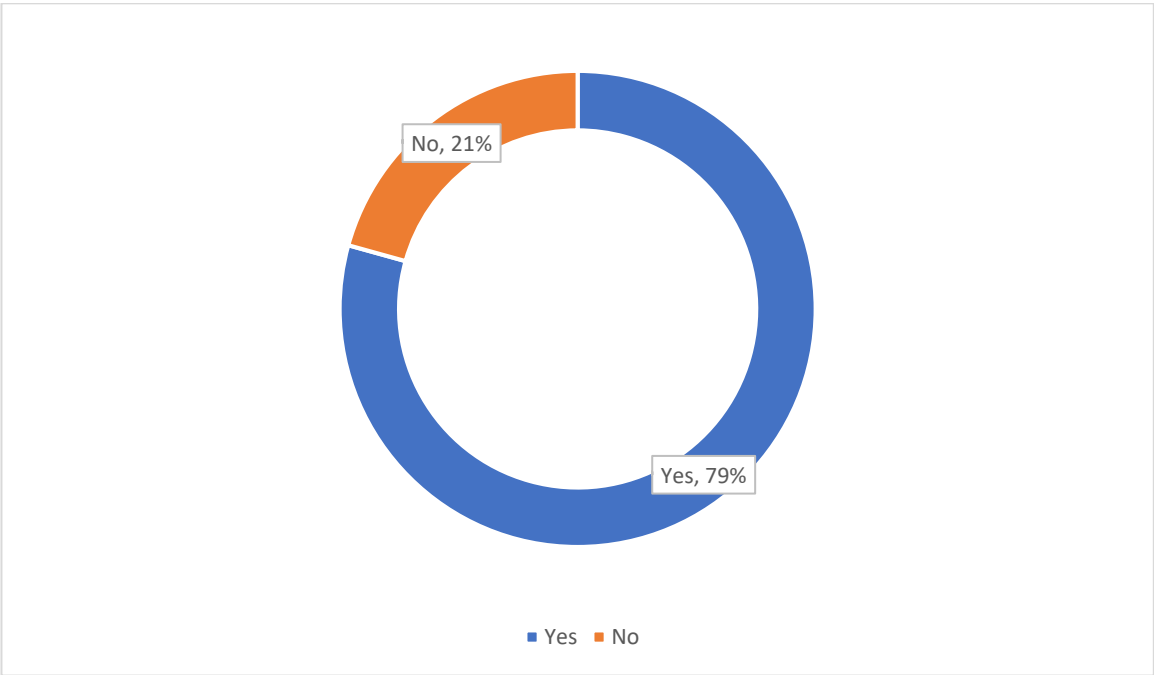

Analysing the effectiveness of the actions against online copyright infringement, it is highly significant when reviewing the impact of economic loss to members' business revenues. For this reason we asked whether members 'obtain financial compensation for unauthorised uses they have pursued' online.

79% of respondents answered that they had been able to do so through various methods. Nonetheless, 21% of respondents were not able to obtain compensation. One reason cited was the challenge of doing so in certain countries like China and Russia.

Notably, an additional comment on financial compensation from one respondent was, "We have to pay a standard service fee for the Copyright Infringement Service we use, and the compensation can vary, but in all online infringement cases it's for commercial use". This demonstrates that the prospect of paying compensation does not deter infringers, using the work for commercial purposes, from the potential violation of the right.

How effective are the methods you use?
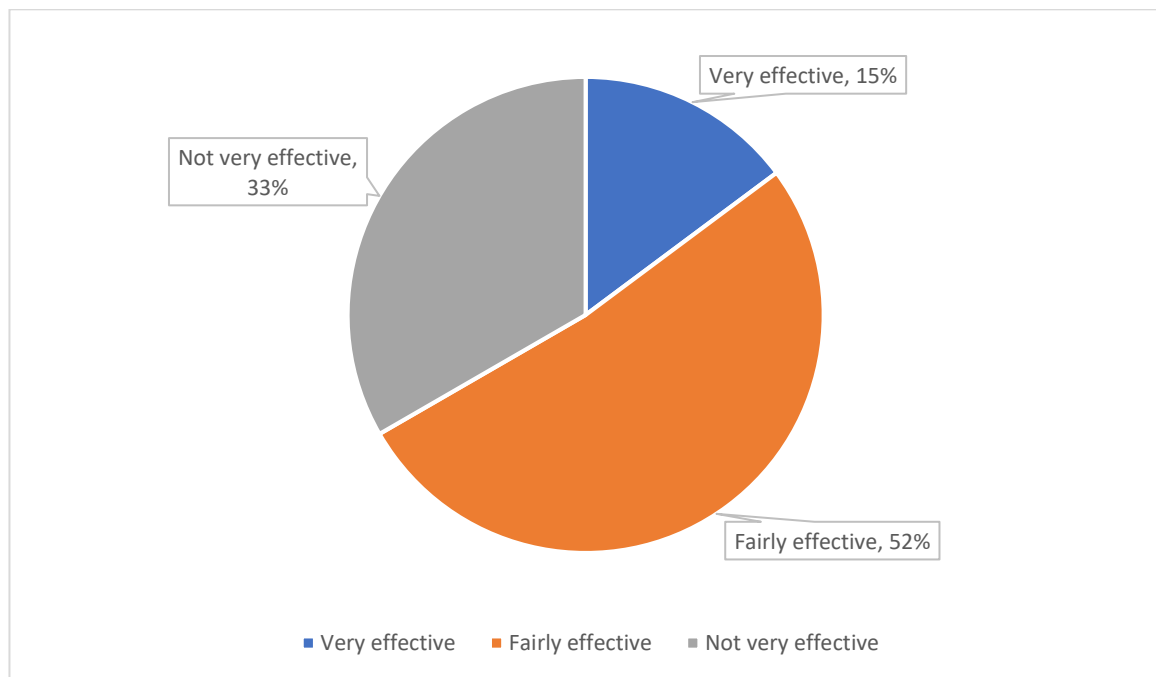
Whilst 52% of respondents felt that methods available to them were fairly effective, a relatively large percentage (33%) said methods used were not very effective.

Comments from members highlight problems with the methods used:

"It takes time as generally at least 3 take down notices are required to different email addresses."

"As we're an SME we mostly rely on the copyright infringement chasing services. We cannot afford the cost, time & effort to either use the 'Take down notice' or legal action via courts. And as the infringements can be little and often, covering thousands of websites, and social media platforms, such as Pinterest Inc (plus .co.uk, .de, .es, .fr, .mx, etc.) share no liability, we are unable to do anything about chasing infringements via another route. Therefore, we only use the copyright infringement services that undertake chasing commercial websites."

"Fairly ineffective outside of Europe and US."

Do you employ dedicated staff to pursue online infringement?
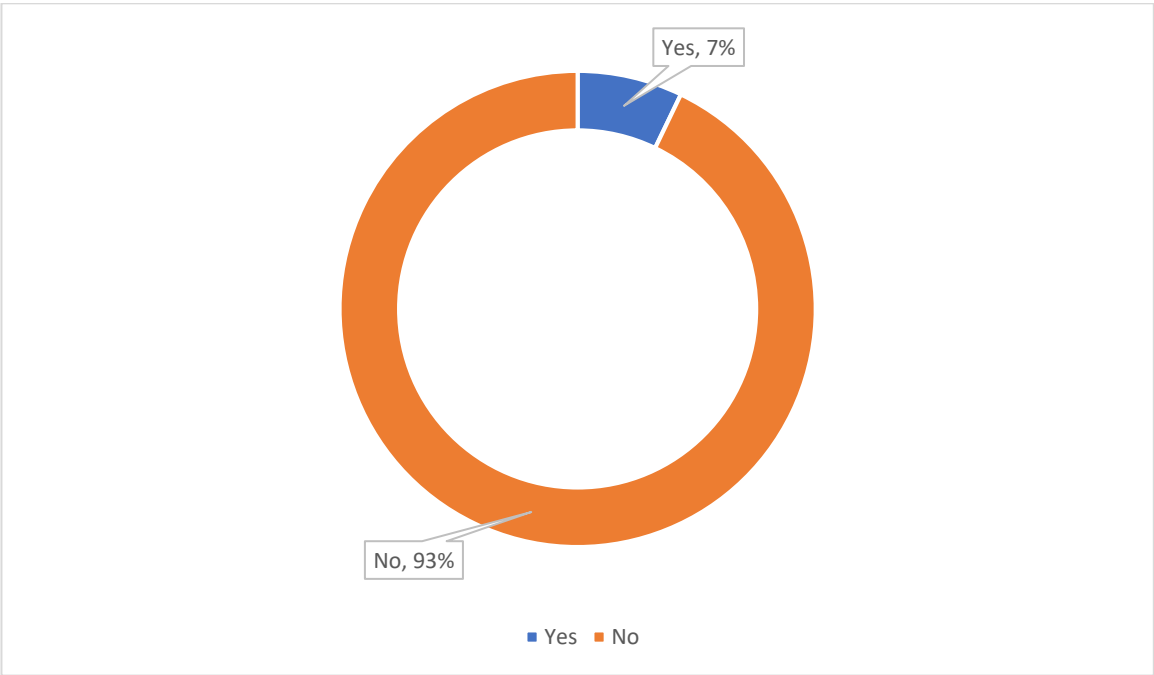
As we have already established a variety of methods are used to track and pursue illegal use online. Those actions take a lot of time, very often being an additional responsibility for members of staff. This is why it is vital to establish whether members employ dedicated staff for this purpose.

93% of respondents said that they do not employ any additional staff for this task. Only 7% (0.9% of staff levels recorded) of respondents answered the question with 'yes'.

The response to this question shows a significant disproportion between the two given that members taking part in the survey employ over 200 people in the UK. Only 0.9% of respondents employ staff with the sole responsibility of chasing online copyright infringement. This may well indicate that those employed within picture libraries and agencies have more than one role, such as sales and marketing, in addition to dealing with copyright enforcement.

Can you estimate, as a % proportion, how many person hours your company spends on pursuing online infringement in relation to sales?
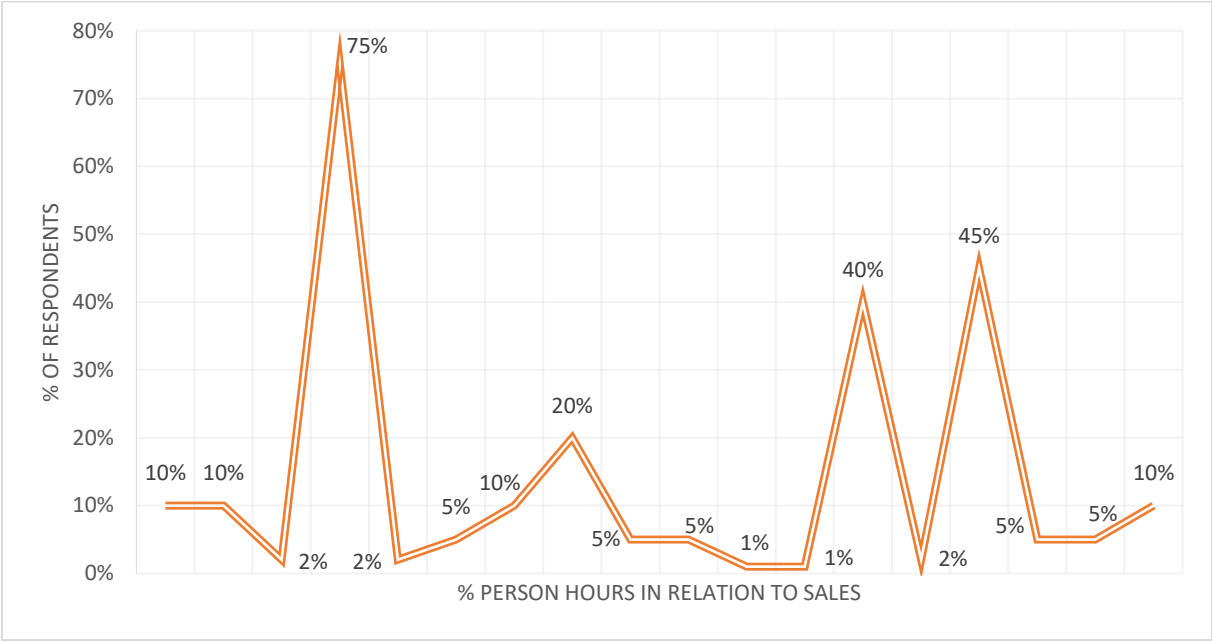

In order to determine the impact of pursuing online copyright infringements on members, we asked how much members were able to dedicate to it as a percentage of their staff time, given that monitoring of infringement is time consuming or very often hard to pursue.

The majority (47%) of respondents reported spending between 5-10% of normal business hours in relation to sales, giving an average of approx. 15.9% of time, with 21% reporting they spent over between 40% and 75% respectively.

Some respondents preferred to answer the question with comments on staff time given to pursuing infringements:

"One person spends about 4 hours per week on this task"

"A month, two hours or so, but there is definitely not enough time dedicated to this."

"The same amount of time as sales time"

"We do not actively seek out online infringements due to size of staff and pressure of work."

"As and when basis depending on what is found. Not a huge amount of time as it is simply not worth it."

Can you estimate, as a % proportion, the administrative cost your company spends on pursuing online infringement?
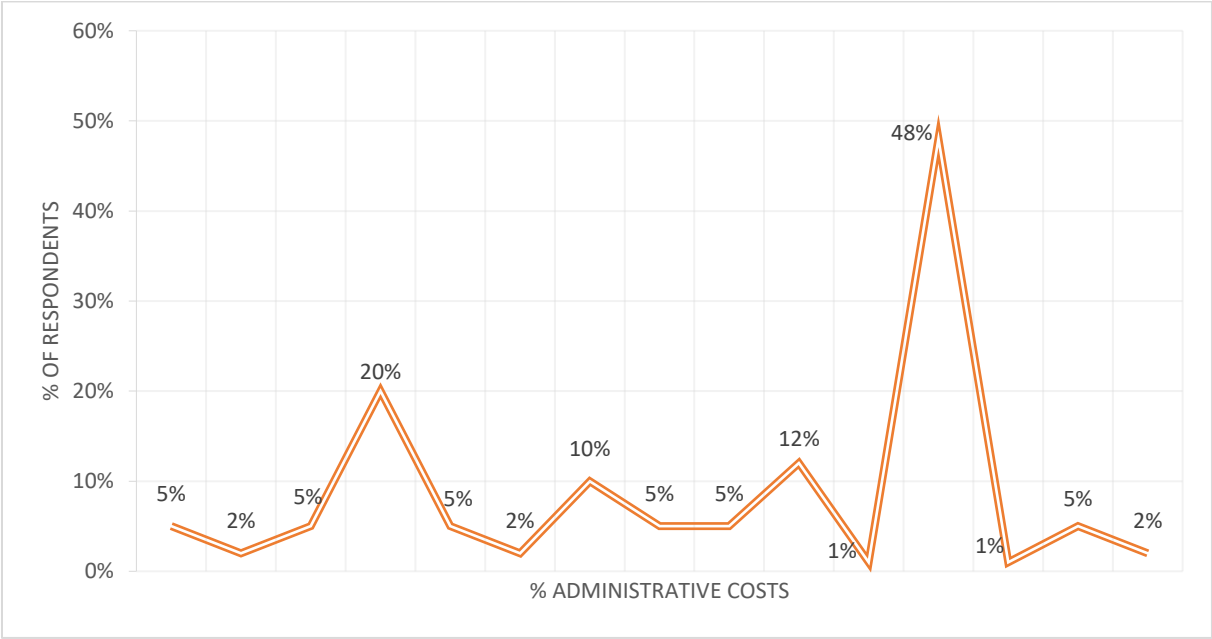
BAPLA has a notably diverse membership, in terms of size of organisation and the nature of content represented, therefore the administrative spend on pursuing online copyright infringement varies widely.

The majority (45%) of respondents reported spending on average about 5% on administrative costs, the maximum reported was 20%, giving an average of approx. 8.5%.

Again some respondents preferred to answer the question with comments:

"About £2500 per year in salary costs"

"Eaten up in staff time"

"At the moment minimal but trialing several copyright tracking companies"

The low figures may indicate that members actively aim to ensure there is a minimal cost incurred in order to offset the monies received.

Can you estimate, as a % proportion, the loss of licensing revenue from online infringement to your company?
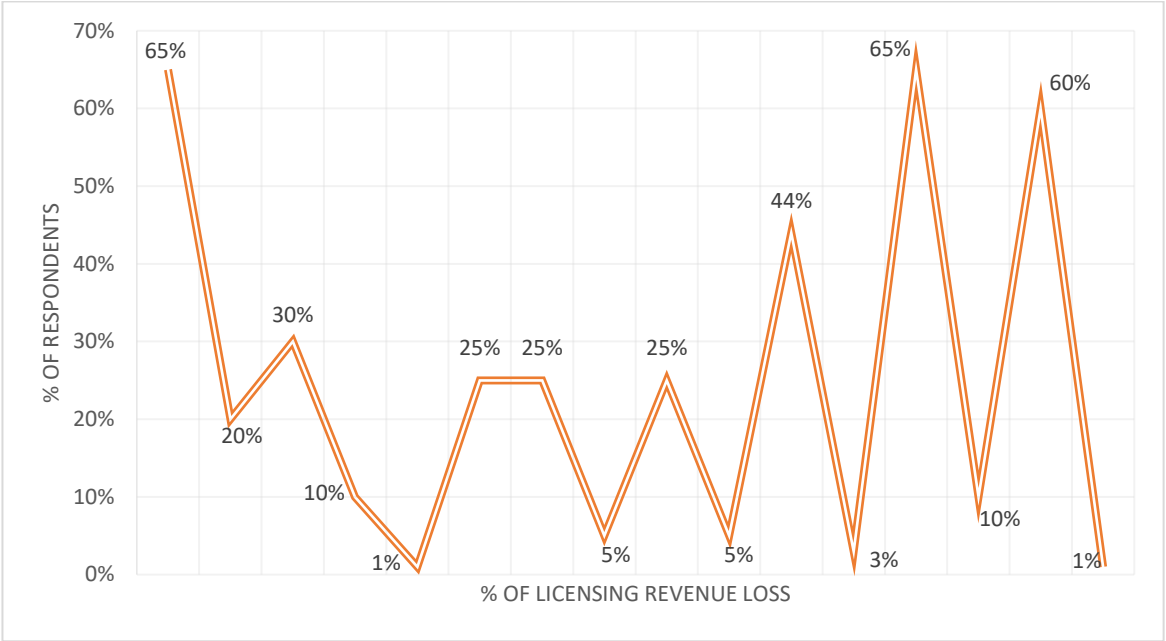
One of the most important purposes of this research is to establish the percentage loss of income. It has to be stressed that the level of income loss specified is high.

25% was the average proportion of licensing revenue lost from online infringements reported by respondents. 35% of respondents reported between 30% and 65%. The remaining respondents cited 10% and lower, giving an average of approx. 25% of licensing revenue loss. One reported over 5000%.
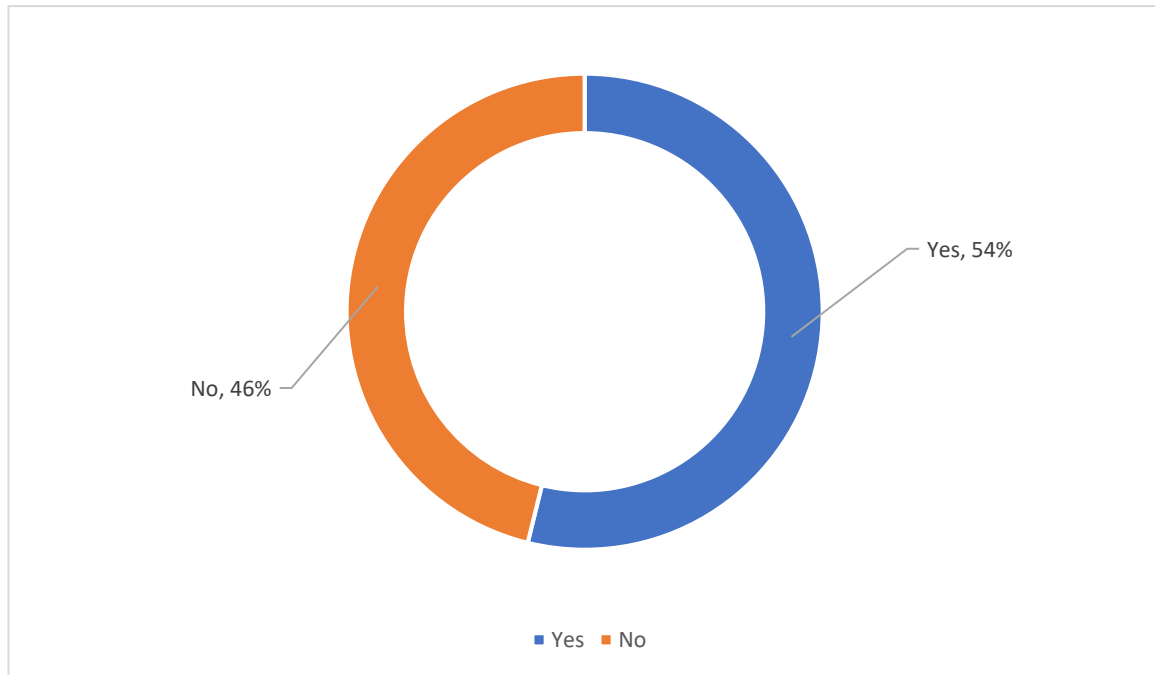
One respondent commented:

"From income from pursued cases, [we] would estimate £100,000+ from unsuccessful, unfound and pursuable cases, extrapolating from the income we receive from successful cases."

Section Three: The Impact Of Social Media

Does your company permit use on Social Media under your licensing terms & conditions?

Given the impact of social media, online use has changed as well. New options for licencing have emerged over the last 10 years. Therefore, it is reasonable to expect some members would provide for levels of permitted use of images on social media under their specified licencing terms and conditions.

54% responded that they permit the use of images on social media and 46% do not.

The conclusion may be drawn that as previously noted, the increasing use of social media for commercial purposes has had an enormous impact on the image sector and therefore some members have had to adapt their licences to accommodate their customer's needs.

Which Social Media platforms do you find has the most infringed content from your image library? Rank them in order:

- ☐ Twitter
- ☐ Pinterest
- ☐ Instagram
- ☐ Facebook
- ☐ Tumblr
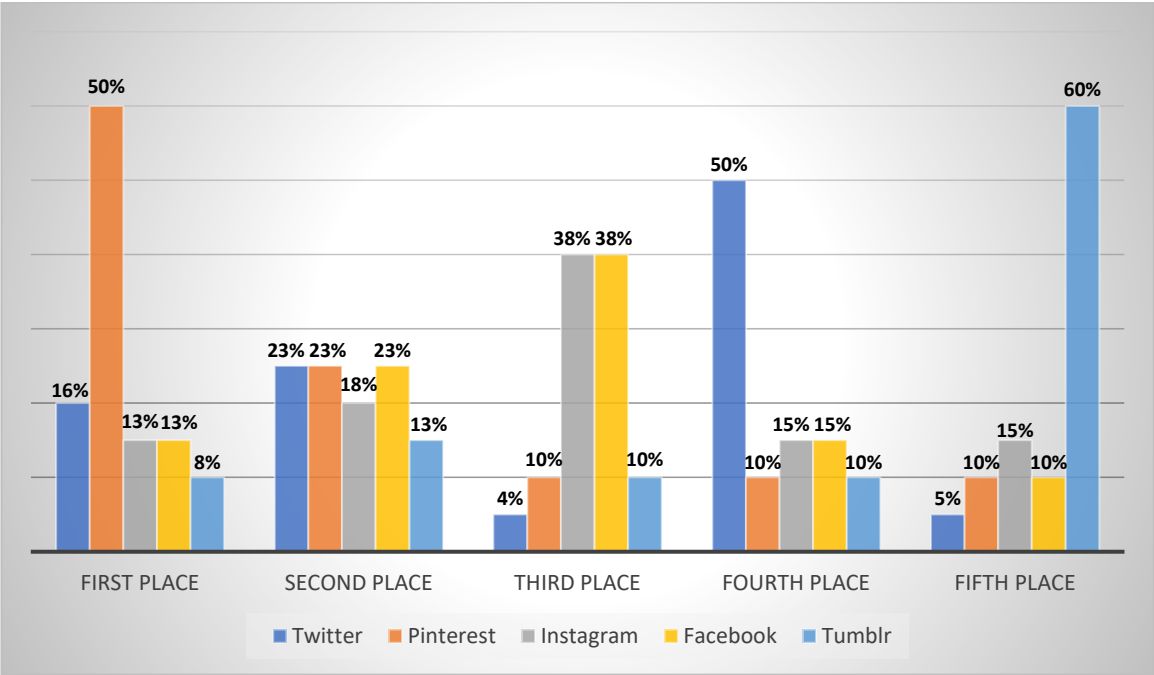
Amid many types of social media platforms, five online content service suppliers were identified as having business models focused on images to attract and retain users. Although it is worth stating there are an increasing number of smaller online content service suppliers who now use similar commercial models.

Respondents were asked to rank them from first to last regarding online infringement.

Pinterest stood out as one platform that has some of the most infringed images, whereas Tumblr was selected as the platform where respondents had found a lower number of infringed images, which may be due to the declining popularity of the platform.

How difficult or easy do you find it to report infringements on Social Media platforms?

On a scale of 1 being the easiest to 5 being the most difficult:
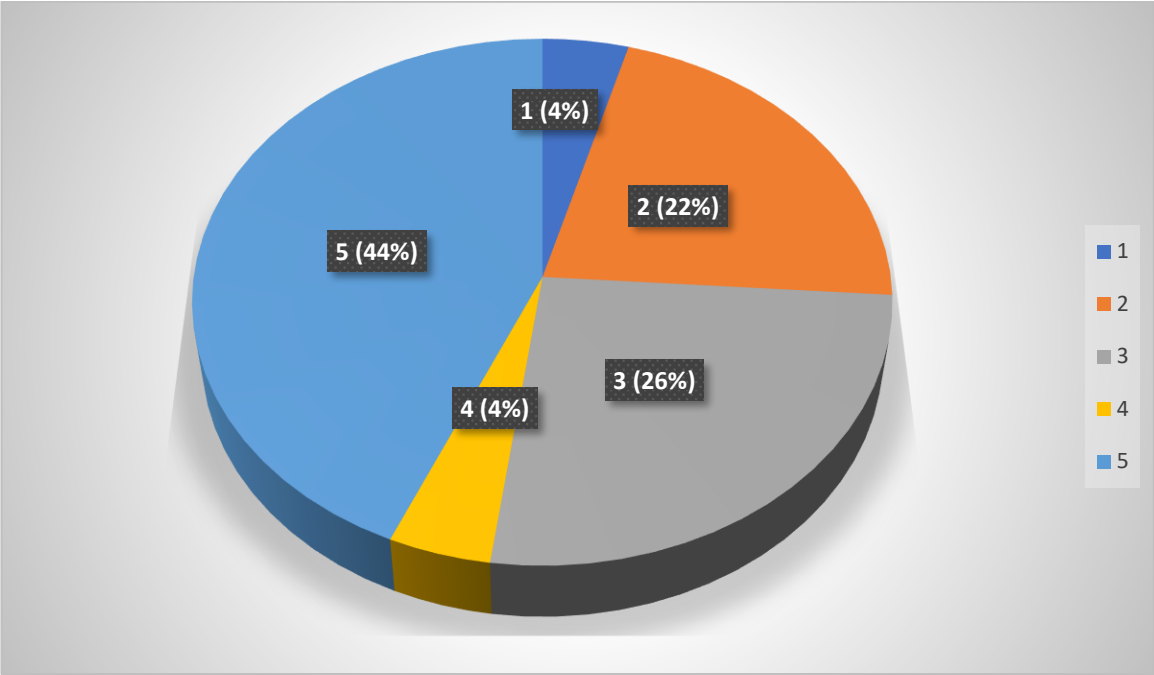
Without a doubt, the majority of answers show that members find reporting infringement on social media sites highly difficult.

44% of respondents selected Option 5 ('most difficult'), compared with only 4% selected 1 ('the easiest').

The question looked to identify the process of reporting infringement not the outcome of the measure. The conclusion to be drawn here is that it is particularly difficult to report infringements on social media. The pace and scale of infringement are likely to be factors. It would be worth exploring why this may be the case further, based on the outcome here.

Are you aware that if Article 17, of the recently passed EU Copyright Directive, is adopted into UK law then content-sharing service providers will require a licence from rightsholders to display copyright-protected images to the public?

-   Would you be supportive of such a measure?
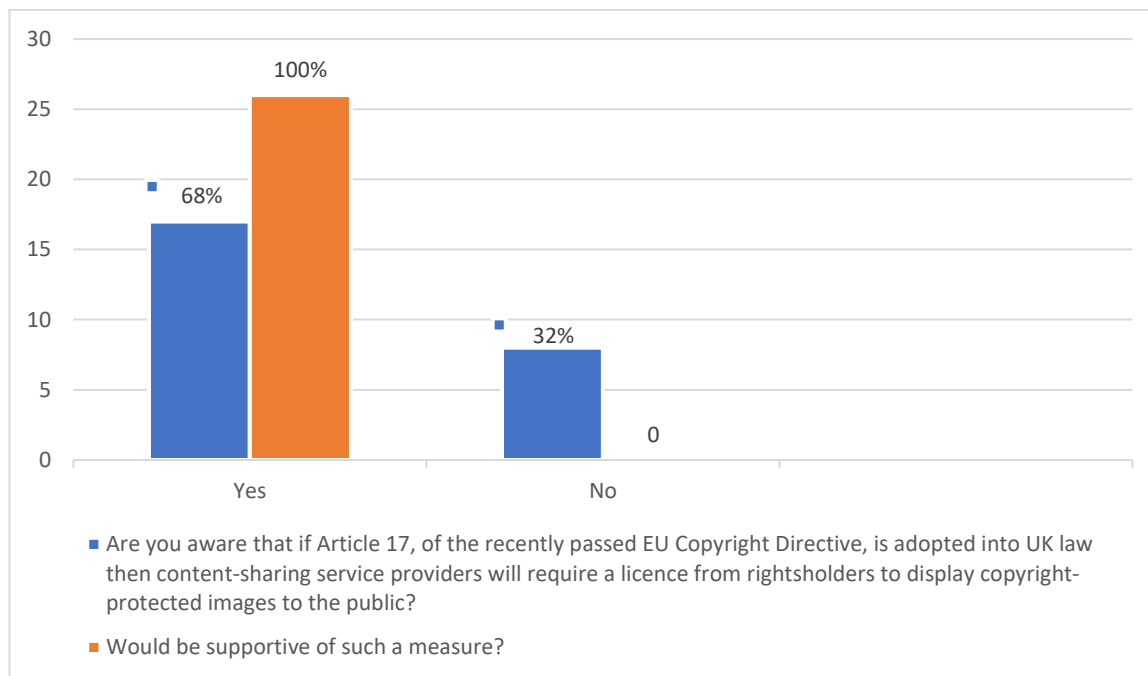
Article 17 of the Digital Single Market Copyright Directive[6] is pivotal in light of the problem with tracing the violation of copyright. Article 17 may significantly reduce the need to monitor the content online.

Therefore the response to these two questions is not surprising - 68% of respondents were aware of Article 17, 32% were not. All respondents said they supported requiring content-sharing service providers to obtain a licence in order to display copyright-protected images to the public.

The overall conclusion to draw from this final question is that the legal redress of a fair online marketplace for rightsholders expressed in Article 17 is fully endorsed by BAPLA members.

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[6] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0790&from=EN

Analysing The Results

This report aimed to answer the question: 'To what extent has copyright infringement online affected BAPLA members, creating a 'value gap' for images, and have social media platforms exacerbated the situation?" As is noticeable from the findings in the report, the problem clearly affects BAPLA members, and one of the causes can be identified as the impact of social media.

Over the last 10 years photo libraries and agencies have made significant investment in creative content and technology advances to ensure they continue to offer their customers variety, and access to hundreds of millions of images. However the changing habits of online commercial websites and increasing dominance of social media platforms means that there isn't currently a fair online marketplace in which they can operate.

This report, for the first time, clearly shows empirical evidence of a significant loss of income in the image sector. This creates the 'value gap' where the remuneration for authorised use is significantly lower in comparison to the infringing use, resulting in economic loss for image right holders. Current tools that seek to prevent online copyright infringement do not form enough of a solution to negate this loss, exacerbating issues with enforcement and lack of protection for copyrighted images. Many BAPLA members experience problems with monitoring image use on the internet, the methods for reporting infringements, the effectiveness of those actions, and the level of fees to compensate for violations.

While the internet has opened up many online opportunities, including the dominance of a few large players in the social media space, it equally impedes controlling the illegal use of images - usages that would otherwise be licensed. Images online are replicated far too quickly to be efficiently checked by picture libraries and agencies alone.

It is apparent that picture libraries and agencies do not have enough resources, including time and staff, to act effectively to control online infringement. The speedy distribution of images online has arguably contributed to the lack of appreciation of the skill and investment needed to

provide commercially available images. Increasingly it seems users do not see the need to obtain a licence for posting online content that isn't theirs.

Considering the results of the survey, the problem of online copyright infringement and enforcement - the 'value gap' - does exist and exists on a large scale for BAPLA members. In addition, the measures to prevent this are not sufficient. Under these circumstances, the provisions set out in Article 17 of the Copyright Directive, which aims to restrict unauthorised distribution of content, will and should play a crucial role.

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For and on behalf of the British Association of Picture Libraries and Agencies

With support and guidance from: Isabelle Doran, Susanne Kittlinger and Sohaila Baluch, on behalf of BAPLA, and Anna Skurczynska of Open Plan Law.