



PICSEL Annual Transparency Report ("ATR") for 2019

The purpose of this ATR is to provide information about the activities of PICSEL for the financial year ending 31 December 2019 in compliance with the Collective Management of Copyright (EU Directive) Regulations 2016 ("Regulations"), transposed into UK law on 24th February 2016. The information in this report is drawn from the Annual Report and Financial Statements for PICSEL for the year ended 31 December 2019.

This ATR, the Annual Report and PICSEL's Financial Statements are published on PICSEL's website, www.picssel.org.uk. They are updated on an annual basis.

About PICSEL

PICSEL is a not-for-profit private company limited by guarantee (Reg. No. 9899186) and is a collective management organisation (CMO) run by and for its members, who are creative rights holders, and their representatives.

In accordance with the Regulations PICSEL recognises a rights holder as:

Any person or entity other than a CMO that:

- holds a copyright or related right, or
- under an agreement for the exploitation of rights or by law is entitled to a share in the rights revenue.

PICSEL was created by rights holders for rights holders and is governed by a board of directors, the majority of whom are members and all of whom are elected by the members. Under the articles of association, the board is also permitted to appoint non-members as directors where appropriate, subject to ratification by members at the General Assembly. Currently, we have one independent director who is not a member.

As a not-for-profit organisation, PICSEL operates in the interests of all its members to ensure fair, equal and timely distribution of revenue.

PICSEL Governance

During 2019 the Board of Directors comprised:

Isabelle Doran – Loupe Images (Chair)*

John Balean – Topfoto (Treasurer)**

Chris Barwick – Stockfood

Victoria Bridgeman – Bridgeman Images

Paul Brown – Mary Evans Picture Library

Hamish Crooks – Magnum Photos

Jonnie Leger – AKG-images

Fergus McKenna – Mirrorpix

Paul Seheult – Eye Ubiquitous (CEO)

Denise Swanson – Individual Creator Member

Sarah Williams – Independent Director (Resigned 21/08/19) ***

*In March Isabelle Doran was elected to the post of Chair by the full Board.

**During the year John Balean was appointed Treasurer of the company.

*** In August, Sarah Williams resigned as a Director to take up her role as CEO of IMPEL, the new collective licensing agency representing digital publishing rights of independent musicians.

REPORT ON ACTIVITIES

ERA Membership

In March 2019 PICSEL became a member of the Educational Recording Agency (ERA) whose licence *“enables schools, colleges and universities to make educational use of recordings of TV and Radio broadcasts”*. As a member, PICSEL now sits on the ERA Board and will receive a share of the licence fees. In 2020 PICSEL will make its first distribution to members who have licensed their images for TV broadcasts in the UK.

BCC Membership

In July 2019 PICSEL became a member of the British Copyright Council (BCC) which *“provides an effective, authoritative and representative voice for the copyright community, and encourages greater understanding and acceptance of copyright in the UK and around the world.”* PICSEL sits on the Working Group on Copyright and Technology as well as being involved in the CMO group.

IFRRO Membership and Conferences

In July 2019 PICSEL became a member of IFRRO, the International Federation of Reproduction Rights Organisations, *“the international network of collective management organisations working to protect and enable easy legal access to copyright material.”*

In June PICSEL attended their Mid-year Meeting in Dublin, which centres on European issues.

In November PICSEL attended the International Conference, as a full member, hosted in Edinburgh, Scotland, by the CLA.

Directive of Copyright in the Digital Single Market (Directive 2019/790), including Article 8 (Out-of-commerce works), Article 12 (Extended Collective Licensing) Article 17 (licensing of platforms), AI (Artificial Intelligence) and the development of collective rights management in Africa, Asia and the Caribbean, were the lead topics for the Conference.

The Visual Working Group meeting dealt with licensing social media platforms under Article 17 with concepts presented by CMOs from France and Canada using image recognition with blockchain.

IVARO – Irish Visual Arts Rights Organisation

In 2019 PICSEL distributed royalties from the Irish Visual Arts Rights Organisation (IVARO), for the first time to PICSEL members, through IVARO’s RETURN distribution scheme. Those who had licensed images for use in books and magazines in the Republic of Ireland, and who could provide the relevant usage data, were eligible to claim through PICSEL.

Article 17 of the EU Copyright Directive – Copyright Stakeholders Dialogue

Whilst IFRRO’s World Conference was taking place in Edinburgh, the EU Commission held the second Copyright Stakeholder Dialogue meeting in Brussels. PICSEL, CEPIC, Getty Images and EVA (European Visual Artists) made presentations on possible technology solutions for the licensing of social media platforms. With both the Chair and CEO of PICSEL at the IFRRO Conference in Edinburgh, PICSEL’s legal counsel Anna Skurczynska presented PICSEL’s technology solution. You can see the session here:

<https://webcast.ec.europa.eu/copyright-stakeholder-dialogues-05-11-2019>

The EU Commission is looking for a technology solution, and PICSEL’s presentation prompted approaches from several platforms immediately after the event. PICSEL’s proposal uses existing Visual Recognition Technology, which matches agency images to those uploaded to Platforms by users. As with the matched data system for publications, this works to ensure the “fair remuneration” of rightsholders.

CEPIC Congress 2019

The 2019 Congress was held in Paris and concluded with a Legal and Strategic Workshop dealing with the implementation of the EU Copyright Directive and the Digital Single Market (DSM).

Whilst the aim of the Directive is to create a standard across the EU, it became clear that the acceptance of local differences, and even translations, will make finding common ground a challenge.

The Congress was also an opportunity to learn how photographers, picture libraries and agencies interact with CMOs across Europe. There was little consistency, with some agencies never having heard of collective licensing, others who found the process too complicated, and those who were told flatly that they could not claim on behalf of their contributing photographers.

A different picture emerged to that existing in the UK. The requirement for competition and the opportunity for rightsholders to choose where to place their repertoire – key objectives in the CRM Directive, embraced in the UK by PICSEL, to enable the choice of representation for rightsholders has not been received with similar enthusiasm in the rest of Europe.

CLA Royalty Officers Day

Each year CLA holds a two-day conference for its royalty officers. These are the people who collect the data on copying from CLA license holders, that is then used to create the data pool. Rightsholders claims are matched against this data pool to allocate payments.

CLA invited PICSEL to give a presentation to the conference explaining how the work of royalty officers directly benefited rightsholders. This was the first time that it had been made clear to them that their work financially benefited rightsholders, which they clearly appreciated.

It was also a good opportunity to gain insight on issues around data collection.

IPO CMO Working Group

Meetings continue with the IPO through the year reviewing implementation of the CRM Directive in the UK, and across Europe, and dealing with issues arising.

Following meetings between the IPO and rightsholders, issues around ATR's emerged particularly foreign revenue details. The IPO will be issuing further guidance on transparency to CMOs in time for the 2019 ATRs.

Further meetings with the IPO throughout the year centred on Brexit and trade negotiations. PICSEL strongly urged the IPO to support the robust UK copyright regime over the US system in any trade deals that come with Brexit. The IPO stated that their position is to support the UK regime which has proven to be robust, and we continued to urge them to promote Fair Dealing over the American Fair Use provision which is not in rightsholders' interests.

BAPLA FOCUS

This is the annual one-day event held by BAPLA for picture libraries and agencies, as well as picture buyers, with panel discussions on industry developments, issues and initiatives.

A break-out session was the most popular innovation in 2019 with marketing, technology and copyright very popular with both picture buyers and picture libraries.

In the copyright area there was a deep concern from all sides over publishers' contracts. The terms meant that picture buyers were restricted to only a few suppliers who had agreed to the broad terms, thereby limiting access to unique and specialist content. Most agencies could not agree to the terms because there were third party rights in many cases that could not be signed over.

This was clearly an issue for PICSEL members present, and together with BAPLA we have been able to facilitate discussions with the Publishers Association, who have been very receptive to the proposal for a roundtable to discuss these issues and seek a solution that is in the interest of all parties. Unfortunately, COVID-19 has postponed this event, but it will be resumed in late 2020 or early 2021.

FINANCIAL REPORT

- Overall, there was a 26.6% increase in revenue with a 20% increase in distributions.
- Rightsholder representation rose by 19% over 2018.

CLA Market Share

PICSEL's market share for CLA and PLS distributions is calculated by an independent auditor appointed by the CLA.

As membership has grown, so has our market share, rising to 12.3% from 11.4% in 2018. At the same time PICSEL's share of the total CLA distribution rose to 13.9% from 10.9% in 2018. This was due to continued success with matched data allocations.

PICSEL members continue to embrace the data driven model for revenue distribution and it has proved a greater success for PICSEL members than expected.

- PICSEL members' claims represented 25.9% of all matched titles
- 33.2% of images claimed by PICSEL members matched CLA data

Revenue was above expectation with individual images being allocated up to £1,950 showing an increase of 14.7% on 2018. Individual rights holders' allocations ranged from the minimum of £25 to £15,000 up from £8,290 in 2018. These were all once again well above industry reports.

PLS Market Share

Market share rose to 12% from 10.3% in 2018.

The total PLS distribution rose by 7.6% over 2018 and the PICSEL share of this total distribution rose to 16.3% from 11.6% in 2018.

- PICSEL members' claims represented 30.7% of all matched titles
- 14.7% of images claimed by PICSEL members matched PLS data
- Individual images received from £1 to £404
- Individual rightsholders received up to £10,874

Remuneration of Chief Executive Officer and Board of Directors

Paul Seheult (Chief Executive Officer)	Total Remuneration £33,000*
Isabelle Doran (Chair, Director)	Fees Received as a PICSEL Director £5,000
Chris Barwick (Director)	Fees Received as a PICSEL Director £0.00
John Balean (Director)	Fees Received as a PICSEL Director £0.00
Victoria Bridgeman (Director)	Fees Received as a PICSEL Director £0.00
Paul Brown (Director)	Fees Received as a PICSEL Director £0.00
Hamish Crooks (Director)	Fees Received as a PICSEL Director £0.00
Jonnie Leger (Director)	Fees Received as a PICSEL Director £0.00
Fergus McKenna (Director)	Fees Received as a PICSEL Director £0.00
Denise Swanson (Director)	Fees Received as a PICSEL Director £0.00

**Includes £3,000 inclusive rent charged to PICSEL at a fair market rate.*

RightShare® - Distribution of Revenue

Revenue came from collective management schemes for Visual Artists operated by the CLA (Copyright Licensing Agency), PLS (Publishers' Licensing Services), IVARO (Irish Visual Artists Rights Organisation) and a payment of historic German royalties from Bildkunst, the German VACMO, via DACS.

TV revenue for 2019 will be distributed in the 2020 RightShare®.

PICSEL made a subvention of 15% for its administration costs on all distribution other than the Bildkunst distribution, for which 0% was charged.

In 2018 it was agreed that any reasonable surplus should go towards a reserve and contingency fund for the benefit of members. The Board therefore agreed to implement a provision of £49,937 for non-distributable amounts for 2019, bringing the total provision to £98,741. In accordance with the obligations of the company under the Collective Management of Copyright (EU Directive) Regulations 2016, the provision is subject to a six-year cap under the Limitations Act, after which the amounts will be distributed to current members.

Please refer to the Report of Factual Findings at the end of this report, prepared by PICSEL's accountants, MHA Carpenter Box.

PLS Annual Distribution (Royalties received in 2019 for 2018 licensing period)

Revenue*	Net	% of Total PLS Distribution	Paid to Members	Subvention
Matched Data	£33,727	34.14%	£28,668	15%
Unmatched Data	£46,765	11.97%	£39,750	15%
Total	£80,492	16.3%	£68,418	15%

*Collective license revenue generated through business licenses raised by NLA on behalf of PLS

CLA Annual Distribution (Royalties received in 2019 for 2018 licensing period)

Revenue**	Net	% of Total CLA Distribution	Paid to Members	Subvention
Educational Matched	£159,871	19.25%	£135,890	15%
Non-educational Matched	£96,682	18.23%	£82,180	15%
Unmatched Data	£503,219	12.35%	£427,737	15%
Total	£759,772	13.96%	£645,807	15%

**Collective license revenue generated by educational, government and business licenses generated by CLA, document delivery and payments from overseas RROs.

IVARO Annual Distribution (Royalties received in 2019 for 2018 licensing period)

Revenue	Net	% of Total IVARO Distribution	Paid to Members	Subvention
RETURN***	£3,656	NA	£3,108	15%

***RETURN is a service for distributing reprographic royalties to visual creators. Reprographic royalties are collected from Universities, schools and businesses that use photocopying machines.

BildKunst distribution via DACS (Royalties received in 2019 for the period prior to and including 2015)

Revenue****	Net	% of Total DACS Distribution	Paid to Members	Subvention
Payment from DACS	£100,737	NA	£100,737	0%

****BildKunst, the German VACMO, paid to DACS historic royalties up to and including 2015 relating to a levy on mechanical copying raised in Germany.

These royalties had been paid out previously in Germany but were recalled from picture libraries and agencies following rulings at the Court of Justice of The European Union (CJEU), and the German High Court, which ruled that “publishers” were not entitled to remuneration. Only “authors” were entitled to remuneration in the Court’s view. As agencies were not “authors” they were classified in their absence as “publishers”, much to their considerable financial loss.

These ruling are expected to be reversed once the Copyright Directive is implemented in Germany.

Bildkunst made a sum available to DACS to distribute in the UK, but with a unique condition. Whilst picture libraries and agencies could distribute under the terms of their contractual agreements with their contributors, they could not distribute to any of their contributors that were not accepted as rightsholders under German Law. This meant that content that was owned by agencies through purchase or assignment was not eligible, nor were any “collections” and similar content licensed by the agencies. Similarly, cultural heritage organisations were excluded.

DACS informed us that they would make this distribution based on the claims made under Payback 2016. However, with the Bildkunst conditions in place, it meant that in some cases PICSEL members were denied up to 100% of their 2016 Payback claim.

In these circumstances, PICSEL did not feel it appropriate that a third VACMO should take a share of these rightsholders royalties on top of Bildkunst and DACS, and we accordingly charged no fee for handling the distribution using DACS’ calculations of rightsholders’ shares.

Deductions for social, cultural and educational services

There were no deductions for social, cultural and educational services during 2019.

Refusals to grant a license

We have not refused to grant a license during this reporting period.

General Distribution Policies

Distribution of this revenue is outlined in PICSEL’s Distribution Policy which is available in full on our website www.picisel.org.uk

However, the principles, and execution, can be briefly summarised.

The PICSEL Board, working with the Distribution Committee, is responsible for the formulation and implementation of the Distribution Policy and is required to ensure that the policy is fair, transparent and cost effective. It will regularly review the policy in response to:

- Any changes in the terms of the licences;
- Any change in the availability of data that has the potential to impact upon a distribution;
- Member satisfaction with the current policy.

Licence revenue is allocated to PICSEL in two distinct ways:

- To titles that match survey data. For 2019 revenue this was 25%. It is planned to rise each year until 2021 to 40% for educational licences and 30% for non-educational.
- To all titles that do not match survey data or where data is unavailable. For 2019 revenue this was 75% decreasing each year until 2021 to 60% for educational licences and 70% for non-educational licences.

This applies to both CLA and PLS Licence revenue.

The Distribution Committee has advised the Board that revenue allocated to titles in the matching process should be paid to those titles following the principle of revenue following rights, and that the availability allocation should be shared out amongst claimants based on the number of uses claimed for.

All claims from all rights holders are treated equally without discrimination or prejudice to ensure PICSEL's principles of ensuring fair, equal and timely distribution of revenue to rights holders.

Acronyms in this Report

AI – Artificial Intelligence

ATR – Annual Transparency Report

BAPLA – British Association of Picture Libraries and Agencies

BCC – British Copyright Council

CEPIC - Coordination of European Picture Agencies Stock, Press and Heritage

CLA – Copyright Licensing Agency

CMO – Collective Management Organisation, commonly known as a collecting society

DACS – Designers and Artists Collecting Society

DSM – Digital Single Market

ECL – Extended Collective Licensing

ERA – Educational Recording Agency

EU – European Union

EVA – European Visual Artists

IPO – UK Intellectual Property Office

IFFRO – International Federation of Reproduction Rights Organisations

IVARO – Irish Visual Arts Rights Organisation

NLA – Newspaper Licensing Agency

PLS – Publishers' Licensing Services

VA – Visual Artists

VACMO – Visual Artists Collective Management Organisation

REPORT OF FACTUAL FINDINGS

To the directors of Picsel Limited

We have performed the procedures agreed with you and enumerated below with respect to the annual transparency report of Picsel Limited for the year ended 31 December 2019. Our engagement was undertaken in accordance with the International Standard on Related Services applicable to agreed-upon procedure engagements. The procedures were performed solely for the purpose of your compliance with Regulation 21 (2)(b) of the Collective Management of Copyright (EU Directive) Regulations 2016 and are summarised in the Collective Rights Management Directive.

We have carried out the agreed procedures as detailed in the 'Guidance on the collective management of Copyright (EU Directive) Regulations 2016: supplementary guidance on annual transparency reports and audit' issued by the Intellectual Property Office in October 2017. In relation to the breakdowns required by regulation 21(4) (g) to (k) our work was limited to the accounting information used to develop the breakdowns, and our work did not cover the merits of the decisions taken by Picsel Limited in order to allocate e.g. income or costs to particular categories, but was designed to ensure that the financial information presented as a result of these decisions is consistent with both the underlying books and records and the disclosed methodology.

We performed the procedures as set out in the guidance with no matters to report.

Although the above procedures are of an audit nature, they do not constitute a full scope audit or review engagement performed in accordance with International Standards on Auditing (UK) or the International Standard for Review Engagements (UK and Ireland). Accordingly, we do not express any assurance on the annual transparency report for the year ended 31 December 2019.

Had we performed additional procedures or had we performed engagements in accordance with International Standards on Auditing (UK) or the International Standard for Review Engagements (UK and Ireland), other matters might have come to our attention that would have been reported to you.

Use and purpose of our report

Our report is prepared solely for the use of Picsel Limited and solely for the purpose of its compliance with Regulation 21(2)(b) of the Collective Management of Copyright (EU Directive) Regulations 2016. It may not be relied upon by Picsel Limited for any other purpose whatsoever. Our report was not prepared for the benefit of any party other than Picsel Limited. MHA Carpenter Box neither owes nor accepts any duty to any other party (including any copyright owner, heirs to copyright owners, agents or licensees) and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by their reliance on our report.

MHA Carpenter Box

MHA Carpenter Box
Chartered Accountants
Worthing

Date: 27 August 2020

MHA Carpenter Box is a trading name of Carpenter Box Limited