PICSEL Annual Transparency Report ("ATR") for 2022

The purpose of this ATR is to provide information about the activities of PICSEL for the financial year ending 31 December 2022 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 2022.

This ATR, the Annual Report and PICSEL's Financial Statements are published on PICSEL's website, www.picsel.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 2022 the Board of Directors comprised:

John Balean – Topfoto (Chair)
Paul Brown – Mary Evans Picture Library
Hamish Crooks – Magnum Photos
Jonnie Leger – AKG-images
Fergus McKenna – Mirrorpix
Adele West – Bridgeman Images
Denise Swanson – Individual Creator Member
Florian Koempel – Independent Non-Executive Director
Matthew Bailey – Independent Non-Executive Director
Paul Seheult – Eye Ubiquitous (CEO)

REPORT ON ACTIVITIES

The pandemic has created a new work model for all. Remote or hybrid meetings became the norm, however there was an increase in opportunities for in-person events.

2022 AGM

The 2022 AGM was postponed to early 2023 with the approval of the Board. The IPO was notified and did not raise an objection.

The in-person event was held in The Fish Room at The Royal Society of Chemistry, Burlington House, London, with one member attending virtually.

Ian Jenkins attended as the IPO observer.

Members unanimously approved the appointment of Trevor Jennis McDermott as a Director of the company.

Members also unanimously approved that PICSEL accept the invitation to join The Smart Fund, a fund that comes from sales of electronic devices that copy, store and share creative content. We will join the four CMO founding members – ALCS, BECS, DACS and Directors UK – in lobbying for the establishment of the fund in UK Law as it is in most European states.

The Board were proud to be able to announce that PICSEL has joined with DACS as the visual arts representatives of a new collecting society AVLA, the Audiovisual Licensing Alliance. PICSEL are co-founders with AGICOA, ALCS, BECS, DACS and Directors UK representing producers, authors, performing artists, visual artists and independent directors. This project began in 2020 and licensing is scheduled to begin in autumn 2023 for the making available to the public of television broadcasts, initially in the hospitality sector.

We were delighted to welcome Dr Tom Chatfield who gave a thought provoking and entertaining presentation on AI, and Justin Manton, who continued our series of presentations by members of the CLA management team, bringing greater clarity and understanding of the work they do on behalf of members.

CEPIC Conference

In May CEPIC returned to an in-person event with Congress22 in Majorca. The unexpectedly high attendance, after two years without a Congress, demonstrated the strength of the agency licensing community's desire to do business with each other again. There was an absence of representatives from the USA and Asia due to restrictions on travel in their territories. However, Europe was very well represented.

There was an opportunity to meet existing PICSEL members to discuss their claims and developments taking place, as well as meet prospective new members.

There were a lot of technology companies from infringement to AI developers, all of whom were worth meeting.

Our CEO joined the CEPIC Board as the BAPLA representative in January 2022, and joined the first CEPIC AI Working Group for its inaugural meeting in Majorca. The group is made up of lawyers from Spain, UK and the USA; AI developers from Israel, Germany and USA; photo agencies from Europe; CEPIC; and collective management of rights through PICSEL. The aim is to produce Ethical Guidelines on AI that all parties can sign up to.

This was probably one of the first roundtable meetings on this subject anywhere, and progressed steadily, and successfully, throughout 2022.

It was announced in Majorca that the theme of Congress23, to be held in Antibes, will be AI and will see the launch of the CEPIC Ethical AI Guidelines.

IFRRO Conferences

There are two annual conferences for IFRRO. The European in Springtime and the World Conference in the Autumn.

The European Conference coincided with CEPIC Congress and Mary Egan attended on PICSEL's behalf, reporting back to the Board on her return.

The World Conference was attended by our Chair, John Balean, who extended our contact base and had a crash course in global collective management of rights.

Membership

We have been very pleased that membership continued to grow through 2022. These rightsholders will be involved for the first time with claims on the 2023 RightShare® distribution.

Financial Impact of COVID-19 on PICSEL

Whilst most creative sectors have seen a significant financial downturn, in publishing and TV there was little or no impact on secondary license revenue in the UK. In fact, there was strong growth. Overseas royalty earnings, however, have been slow to recover.

Costs remained lower than normal for PICSEL with little or no travel, or events to attend.

Rights Valuation

The FTI Valuation of 2015 set the percentage splits between publishers, authors and visual artists for different categories of publications in educational and non-educational collective licensing.

It recommended that there should be a rolling review of its determination as circumstances change. The first categories to review are magazines and journals.

In 2021 a steering group from ALCS, DACS, PICSEL and PLS was formed to begin the process with a view to concluding a review in 2022/23.

The original valuation was expensive and time consuming, and it was agreed that the steering group would work to ensure that this was not repeated.

Constructive meetings were held throughout 2022 to help find common ground. However, the market continues to be uncertain with the long-term effects of the pandemic remaining unclear. Questions remain both around licensee behaviour, and the development of data collection. The steering group will continue to meet in 2023 to monitor the situation.

MARKET CHANGES

The Global View

The arrival of the war in Ukraine left doubt about the collection of royalties in Russia for all creative sectors. It also created concerns for members around their dealing with Russian photographers and partner photo agencies. As sanctions grew during the year, the problem became more acute.

Inflation created by the War in Ukraine could have an impact on license renewals at some point.

The Tribunal in Australia ruled against the universities who had challenged the need for a license to copy. Universities appealed the decision, but the Tribunal rejected it and set the license fee. Royalties should start to flow in time for the 2023 RightShare® distribution.

Canada is a worrying example of how widening exceptions and limitations has crushed creativity, diversity and content and delivered a diminished publishing industry.

In 2012 an exception of fair dealing for education was introduced in Canada. Ten years of litigation has concluded with the Court's ruling that the exception should remain. The effect has been the devastation of the publishing and collective licensing sectors, with authors and Canadian culture itself taking the full force. The Canadian Government has since pledged to look closely into fair remuneration of authors.

The EU Copyright Directive

Whilst we are no longer part of the EU, the implementation of the Directive will impact UK rightsholders, and it will give guidance to the UK Government on what parts of the Directive could be implemented in the UK at some point in the future. Whilst our copyright regime is robust, we do not want to be left behind, and changes will be inevitable.

Progress in adopting the Directive in the EU is speeding up. As of 8th June 2022, 3 countries had not proposed to implement the Directive. The sticking point continues to be Article 17 and platform licensing. Legal challenges were being made in several countries on the grounds of Human Rights and Freedom of Speech.

The Court of Justice for the European Union ruled on whether Article 17 conflicts with basic human rights. They said that it does touch on matters of human rights, but there are so many protective provisions it in itself does not infringe human rights.

A further ruling said that Article 17 did not infringe freedom of expression.

Future Developments

Whilst the UK rejected the concept of a private copying levy some years ago, the pandemic has given it greater justification with a significant increase in the sales of PCs, laptops, tablets and smartphones. The Smart Fund will work to address this issue.

ECL (Extended Collective Licensing) will be revisited in short time if a suitable legislative vehicle can be found by the IPO.

Licensing of platforms is making progress slowly in Europe.

NFTs have ceased to be a topic of interest, but AI will dominate the coming years.

Open Access continues to challenge the industry globally.

For creators, and VACMOs, the US publisher licensing model remains a threat to their incomes, and we continue to recommend that UK rightsholders do not assign their rights and retain the right to claim secondary rights revenue when licensing their copyright works. This is essential for sustaining a balanced ecosystem.

Divergence from EU laws, exceptions and limitations remain high on our list of concerns.

IPO CMO Working Group

The IPO reported that there were no issues to report on its analysis of the 2021/22 Annual Transparency Reports.

The IPO advised that no sanctions had been issued for non-compliance of the Collective Management of Copyright (EU Directive) Regulations 2016 (the Regulations) because there were no incidents where it had received evidence of a possible breach that had warranted further investigation.

The IPO published its 2022-23 Corporate plan, on 12 May. There were two main areas of focus for copyright: delivering the Government's workplan in response to the DCMS Select Committee's report on the Economics of Music Streaming and beginning to develop a new copyright strategy - reflecting the UK's ability to shape policy more directly since leaving the EU.

The framework for the new copyright strategy was being developed to keep pace with societal changes, technology, the environment, culture and the economy. The IPO said it would update the Group as the strategy develops.

The DMU (Digital Markets Unit) had been established to oversee a new regulatory regime for the most powerful digital firms and would promote greater competition and innovation in these markets and look to protect consumer and businesses from unfair practices.

Powers for the DMU and for the new regulatory regime would require legislation but it was still uncertain when a Bill would be introduced.

The IPO reported that they regularly engaged with the DMU.

The IPO explained that the technical fix to ECL would need primary legislation. It would continue looking for opportunities in suitable legislative vehicles, though this was not straightforward given the unprecedented premium on parliamentary time.

Concerns were raised with the IPO about the delays at IPEC due to COVID which is impacting creators.

As reported last year, there was concern that the lack of implementation of the DSM (Digital Single Market) in the UK would threaten reciprocity between CMOs in the UK and the EU. This has become real in certain creator sectors with questions being asked in others. The IPO fully recognise the situation and the concerns it raises.

Further meetings with the IPO throughout the year centred on Brexit and trade negotiations. PICSEL continued to urge 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.

We can expect to see much of the IPO's time taken up with REUL, Retained EU Law. All EU laws will lapse at midnight 31st December 2023, unless a case can be made to retain them. The CRM Regulations, under which CMOs operate, is one such law.

AI and TDM Consultation

In January PICSEL submitted their response to the open consultation "Artificial Intelligence and Intellectual Property: copyright and patents" together with giving its written support to responses submitted by BAPLA, BCC and CLA. There was very little divergence in the creative sector's responses, showing a unified position across all disciplines.

In June the IPO published the outcome of the consultation.

https://www.gov.uk/government/consultations/artificial-intelligence-and-ip-copyright-and-patents/outcome/artificial-intelligence-and-intellectual-property-copyright-and-patents-government-response-to-consultation

The first part dealt with Computer Generated Works (CGW) and no changes were proposed.

The second part dealt with Text and Data Mining (TDM) and was met with shock and surprise by creative sector. It reported that:

"The Government has decided to introduce a new copyright and database right exception which allows TDM for any purpose."

This was the nuclear option and was never entertained as a possibility by the creative sector who were stunned by what they felt was a disregard for the principles of copyright.

Shock was reinforced when it emerged that generative AI developers had already scraped the internet of almost everything they needed and had been doing so for many years. The clear and justifiable benefits that AI could bring to the world were now drowned by what was perceived as a theft of unprecedented proportions.

The AI companies claimed Fair Use, which does not apply in the UK, and considered having to pay a license fee for the use of copyright content to be a barrier to AI development and the economic health of the UK. The basic principle of copyright that you have to pay to use copyright content was overlooked, and far from being a barrier it is simply a cost of doing business.

Regrettably 2022 saw a high turnover of IPO Ministers, not to mention Prime Ministers, which created a high level of uncertainty for everybody.

In the late autumn, the IPO sought quantitative evidence from all sides as the felt that had been lacking in the initial submissions. They proposed workshops in early 2023 for all parties with a focus on input and output concerns.

They will continue to engage with stakeholders on the next steps for AI.

FINANCIAL REPORT

- Overall, there was a 4.61% decrease in cash receipts with a 4.61% decrease in cash distributions. The difference reflects the exceptional payments received in 2021 and a reduced VA allocation from PLS due to publishers moving to NLA.
- Rightsholder representation rose by 30%.
- Revenue was above expectation with individual images being allocated over £4,500. Individual rights holders' allocations ranged from the minimum of £25 to over £30,000. These were all once again well above industry reports.

To comply with the transparency requirements of the Regulations regarding this ATR, and in particular clause 21 (4) (i) that financial information on the costs of rights management and other services be provided by the collective management organisation to rightsholders, we can confirm that the percentage of costs in relation to rights revenue for 2022 was 10.19%. Further, to comply with 21 (4)(i)(ii) (breakdown of costs attributable to the management of rights) the total cost was £84,692 or 90.83%. With regard to 21 (4)(i)(iii) (breakdown of costs attributable to services other than the management of rights) the total cost was £8,554 or 9.17%.

CLA Market Share

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

Our market share remained reasonably static at 12.6%. At the same time PICSEL's share of the total CLA distribution rose slightly to 14.5% from 14.47% in 2021. This was due mainly 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 27.39% of all matched titles, rising from 26.76% in 2021.
- 35.44% of images claimed by PICSEL members matched CLA data, rising from 29.99% in 2021.

PLS Market Share

The total PLS distribution to all VACMOs fell by 6% over 2021, due mainly to publishers moving to NLA from PLS. PICSEL's share of this total distribution was down slightly to 16.9% from 17.43% in 2021.

- PICSEL members' claims represented 27.26% of all matched titles, down from 34.82% in 2021. This was due to previous good matches with titles that had moved to NLA.
- 41.25% of images claimed by PICSEL members matched PLS data, up from 32.46% in 2021.

Remuneration of Chief Executive Officer and Board of Directors

Paul Seheult (Chief Executive Officer)	Total Remuneration £45,751*
John Balean (Chair)	Fees Received as a PICSEL Director £5,000
Adele West (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
Florian Koempel (Director)	Fees Received as a PICSEL Director £0.00
Matthew Bailey (Director)	Fees Received as a PICSEL Director £0.00

**Includes £3,000 inclusive rent charged to PICSEL at a fair market rate and £1,501 pension contributions.*

RightShare® - Distribution of Revenue

Revenue came from collective management schemes for Visual Artists operated by the CLA (Copyright Licensing Agency), PLS (Publishers' Licensing Services), ERA (Education Recording Agency), IVARO (Irish Visual Artists Rights Organisation).

PICSEL made a subvention of 15% for its administration costs on all distributions.

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 £31,530for non-distributable amounts for 2022, bringing the total provision to £232,781. 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.

PLS Annual Distribution (Royalties received in 2022 for 2021 licensing period)

Revenue*	Net	% of Total PLS Distribution	Paid to Members	Subvention
Matched Data	£35,604	29.06%	£30,263	15%
Unmatched Data	£32,638	11.61%	£27,742	15%
Total	£68,242	16.91%	£58,005	15%

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

During the year a supplementary payment of £331.22 was received from PLS and will be included in the 2023 RightShare® PLS unmatched distribution.

CLA Annual Distribution (Royalties received in 2022 for 2021 licensing period)

Revenue**	Net	% of Total CLA Distribution	Paid to Members	Subvention
Educational Matched	£256,858	18.45%	£218,329	15%
Non-educational Matched	£94,511	16.29%	£80,334	15%
Unmatched Data	£432,427	12.60%	£367,563	15%
Total	£783,796	14.50%	£666,226	15%

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

Revenue received in 2021 mentioned in the 2021 ATR for 2022 distribution	Net	% of Total CLA Distribution	Paid to Members	Subvention
CLA Excess Admin Fee	24,241	NA	20,605	15%

Additional funds were received from Germany through CLA and was included in the main distribution as Unmatched Data as no title specific data was supplied.

Source	Net	Paid To Members	Subvention
Germany	£20,594	£17,505	15%

During the year £3,970 was received from DACS relating to various overseas funds which will be included in the 2023 RightShare® distribution.

TV Annual Distribution (Royalties received in 2022 for 2021 licensing period) from ERA.

Revenue***	Net	% of Total ERA Distribution	Paid to Members	Subvention
ERA	£37,795	NA	£32,126	15%

*** Under our agreement with DACS, whereby a market share is calculated annually by an independent auditor, the original payment from ERA was adjusted and £13,195.44 was received from DACS. The income relating to this distribution was received in both 2021 and 2022 and adjusted through the DACS agreement in July 2022 in time to be included in the main RightShare® 2022 distribution.

IVARO Annual Distribution (Royalties received in 2022 for 2021 licensing period)

Revenue	Net	% of Total IVARO Distribution	Paid to Members	Subvention
RETURN****	£12,421	NA	£10,558	15%

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

Deductions for social, cultural and educational services

There were no deductions for social, cultural and educational services during this reporting period.

Refusals to grant a license

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

Income arising from investment of rights revenue

There was no income arising from investment of rights revenue 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.picsel.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.

It was decided by the Distribution Committee, and confirmed by the Board, that the £25 minimum payment for TV claims would be discontinued as there was already a £25 minimum payment for all claims.

CLA and PLS Licence revenue in 2022 was allocated to PICSEL in the following ways:

- 60% to unmatched educational claims
- 70% to unmatched non-educational claims
- 40% to matched educational claims
- 30% to matched non-educational claims

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 used in this Report:

AGICOA – Association of International Collective Management of Audiovisual Works
AI – Artificial Intelligence
ALCS – Authors' Licensing and Collecting Society
ATR – Annual Transparency Report
AV - Audiovisual
AVLA – Audiovisual Licensing Alliance
BECS – British Equity Collecting Society
CDPA – Copyright Design and Patents Act
CLA – Copyright Licensing Agency
CMO – Collective Management Organisation, commonly known as a collecting society
CRM – Collective Rights Management
DACS – Design and Artists Collecting Society
DCMS – Department for Digital, Culture, Media & Sport
DMU – Digital Markets Unit
DSM – Digital Single Market
ECL – Extended Collective Licensing
ERA – Educational Recording Agency
EU – European Union
IPO – UK Intellectual Property Office
IFRRO – International Federation of Reproduction Rights Organisations
IVARO – Irish Visual Arts Rights Organisation
NFT – Non-fungible Tokens
NLA – Newspaper Licensing Agency
PIR – Post Implementation Review
PLS – Publishers' Licensing Services

REUL – Retained EU Law
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 2022. 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 2022.

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. 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.

Carpenter Box
Chartered Accountants
Worthing

Date: 13 September 2023

Carpenter Box is a trading name of Carpenter Box Limited