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Protecting image copyright online
Views from the image library business

Presented by:

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Protecting image copyright online
Views from the image library business

Outline:

1. An overview of our industry

2. Threats to creators & their agencies when licensing or displaying images online

3. Image sharing sites & the Hosting Defence

4. How are image libraries chasing copyright infringements - tracking methods & legal action

5. What are the limitations to current methods

6. Best way forward for the industry

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1. An overview of our industry

- Copyright is the 'lifeblood' of the creative industries across the value chain, from *creators & rights holders* to *content producers & publishers*

- Our industry specialises in recognising the marketplace value of images

- Our income is derived from the licensing of images for products seen every day in print & increasingly for digital media…

- We provide a 'vital economic link' for many professional image-makers, supported their ability to derive income and reinvest in their creativity

- Licensing online is the significant driver of our industry

- Effective online search is a necessary tool for image discovery, but it is a double-edged sword

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2. Threats to creators & their agencies when licensing or displaying images online

Billions of images are uploaded & shared on image platforms[1 & 2]

transferring content value using platform ad revenue:

	Instagram	Facebook
Images Uploaded 'per day'	80 Million	350 Million
Images/Content Shared	40 Billion (so far)	4.75 Billion (daily)
Estimated Mobile Ad Revenue	$2.81 Billion (2017)	$33.76 Billion (2017)

And these figures just keep growing!

Compared with:

- UK Film/TV/video/radio/ photography + visual arts /performing/music = £6.98B [3]

- And a forecast global still images market projecting to reach £3.21B ($4.46B) by 2021 [4]

1: https://www.brandwatch.com/blog/96-amazing-social-media-statistics-and-facts-for-2016/
2: https://www.emarketer.com/Article/Social-Network-Ad-Revenues-Accelerate-Worldwide/1013015
3: CEPR March 2018 https://files.acrobat.com/a/preview/940e3529-f1ee-4932-ac0f-69c732ae1e8b
4: https://www.technavio.com/report/global-general-retail-goods-and-services-global-still-images-market-2017-2021

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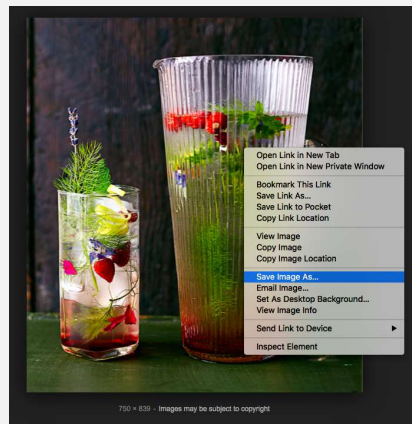# Views from the image library business

What is causing value for the image industry to diminish?

There are several components that provide fertile opportunity for the spread of images online

Firstly there are two main functional drivers:

Right-Click & Save -
which allows users to store, upload & share images irrespective of rightsholder ownership

Framing - which gives the 'framer' the opportunity to exploit the benefits of an image online, whilst the host derives little or no value
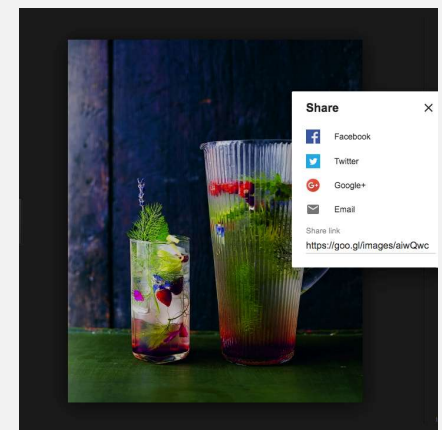
And the key catalysts of exponential growth in uncontrolled infringed images online are:

• Internet Service Providers and Social Media Platforms

Not only do they amplify the problem they also derive significant financial benefit, none of which returns to the rightsholder

• Even the structure of clients' websites further amplifies the problem for images we license for online use

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3. Image Sharing sites & the Hosting Defence

Image Value Block = The inability to enforce image copyright effectively online

- The image industry is one of the biggest casualties of online piracy

- Perception of free-to-use has lead to a significant reduction in commercial sales + drop in online traffic

- Using large scale Notice & Take Downs generally don't work when dealing with hundreds of thousands of commercial websites using a handful of images

- The *hosting defence* (*'safe harbor'*)* enables platforms to stand at arms length and not deal with unconstrained relentless infringement + prevents rights holders from challenging their unfair practices

- As image rightholders we face a *value block* as vast incomes generated by platforms simply don't flow back...
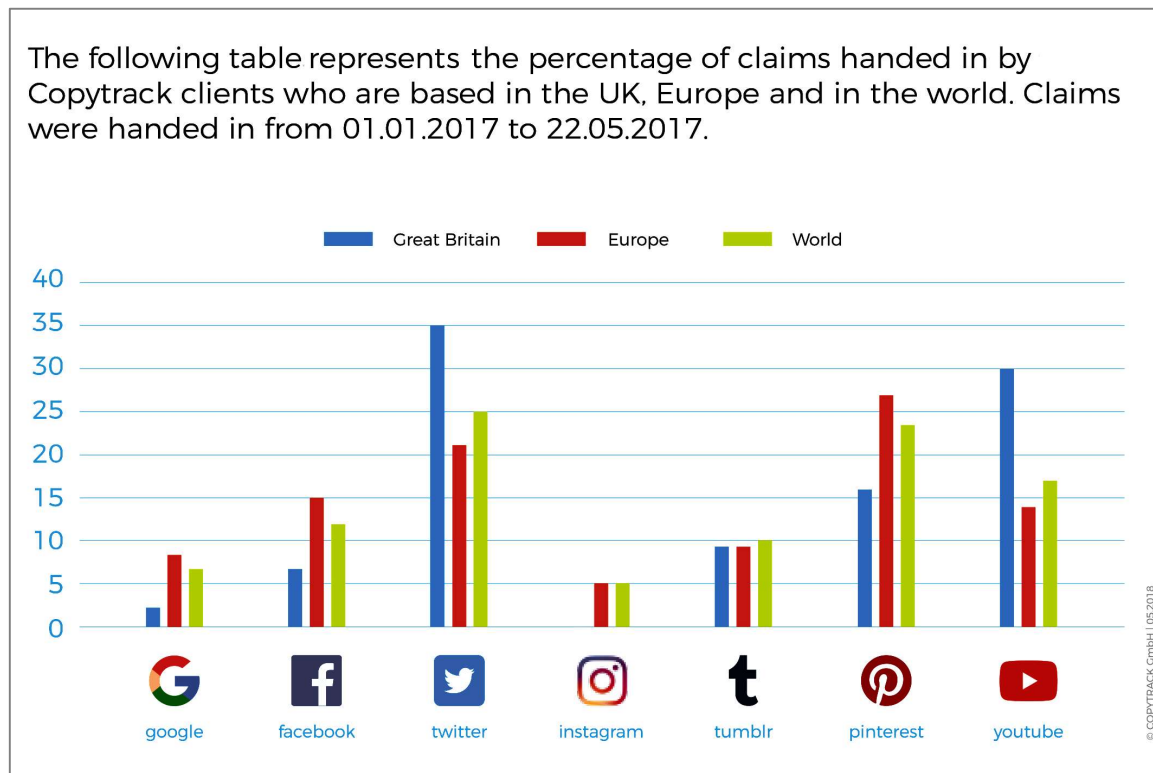

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* US Safe harbor provision & EU E-Commerce Directive 2000/31/EC

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Scale of the problem: (industry example)

- In a survey conducted in 2015, 94% of BAPLA members encountered copyright infringement online
- There were around 180 million websites recorded globally in 2017, with an expected growth of 69%
- The following graph shows the 'scale of the problem'

The following table represents the percentage of claims handed in by Copytrack clients who are based in the UK, Europe and in the world. Claims were handed in from 01.01.2017 to 22.05.2017.

Copytrack - Territorial results over a 5-*Month Period*

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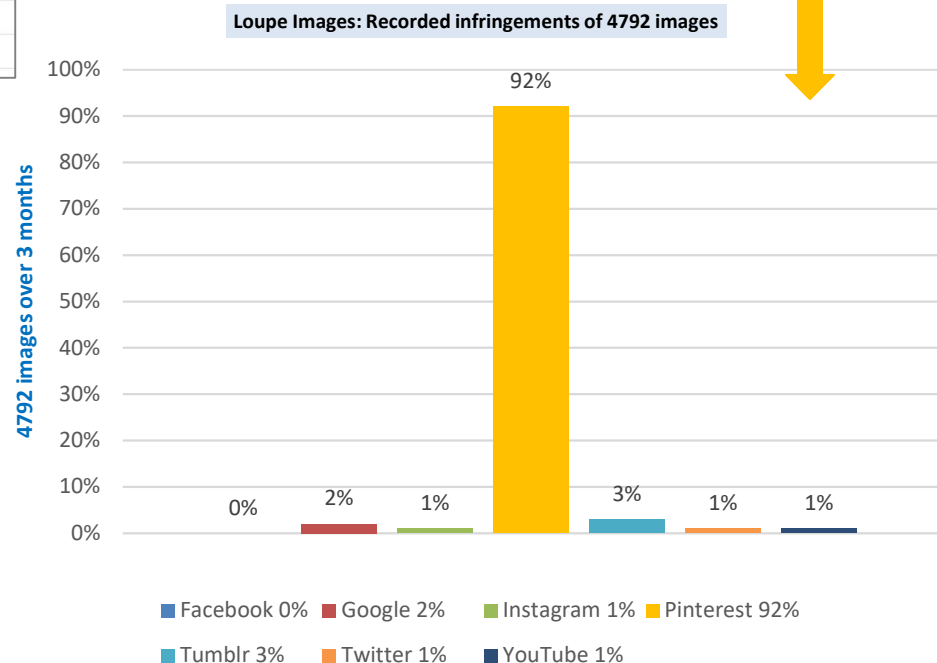**Scale of the problem:** (image library example)

Example using one Loupe Images collection of 3783 images:

This table & graph shows comparative image infringement data using results via ImageRights over a *3 Month Period*

Sighting Folders — Images 3,783

Folder	Sightings	Description
Blogging Platforms	2255	We usually don't pursue infringements on blogging platforms.
Photo Sharing Sites	173	Flickr, Picasa, etc.
Social Media Sites	6287	We usually don't pursue social media sites.
Unable to Pursue	1471	Sightings for which it is highly unlikely that we can recover any form of monetary compensation.

From one collection images identified on <u>social media platforms</u> saw a 60% increase

- Infringements via Platforms cannot easily be pursued
- Platforms' own reporting services are generally set up for single infringement reporting or very large scale (millions)

Loupe Images: Recorded infringements of 4792 images

4792 images over 3 months

92%

- Facebook 0%
- Google 2%
- Instagram 1%
- Pinterest 92%
- Tumblr 3%
- Twitter 1%
- YouTube 1%

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Image Exploitation by Internet Service Providers:

Major search engines like Google use images to improve engagement in order to:

- Keep users on their site for longer
- And increase ad revenue
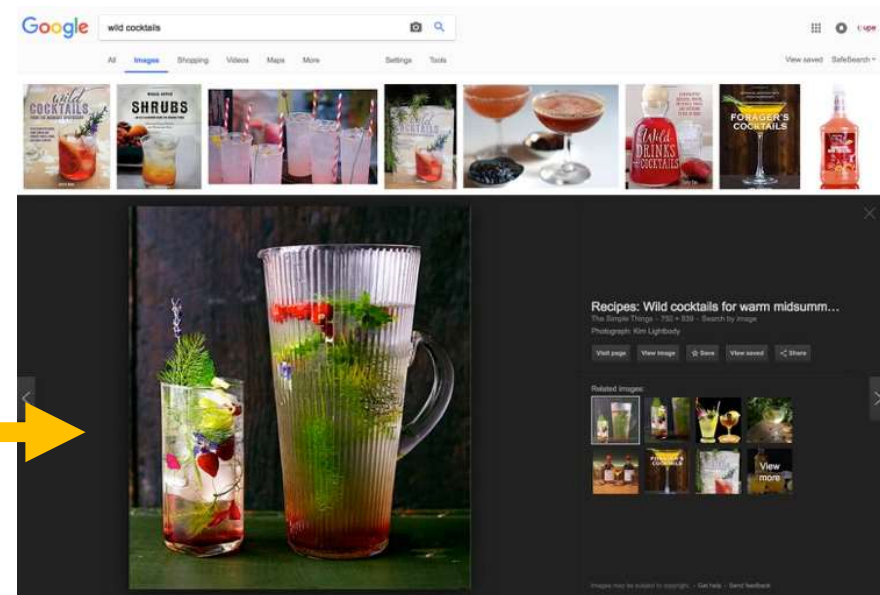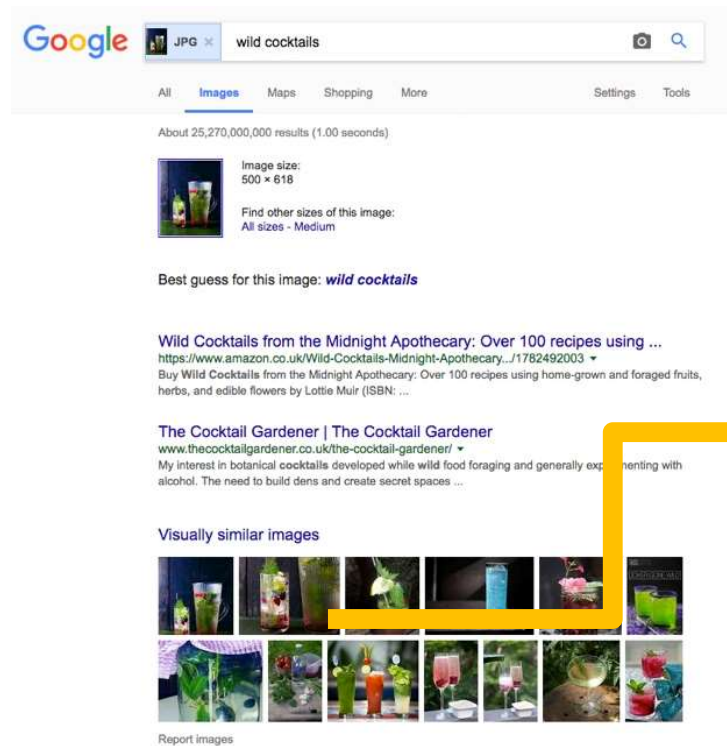
- From a 'general search' to the 'framed' image it takes 3 clicks to get to the source site
- Buttons take the user to various options...

And... organic *search algorithms* encourage the *demotion of watermarked images*

Effect = drives traffic away from original source

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Share Links + Right Click & Save:

These Platforms encourage users to share either directly via
social media platforms or use the *'Share Link'* provided.
These share links "double-frame" images
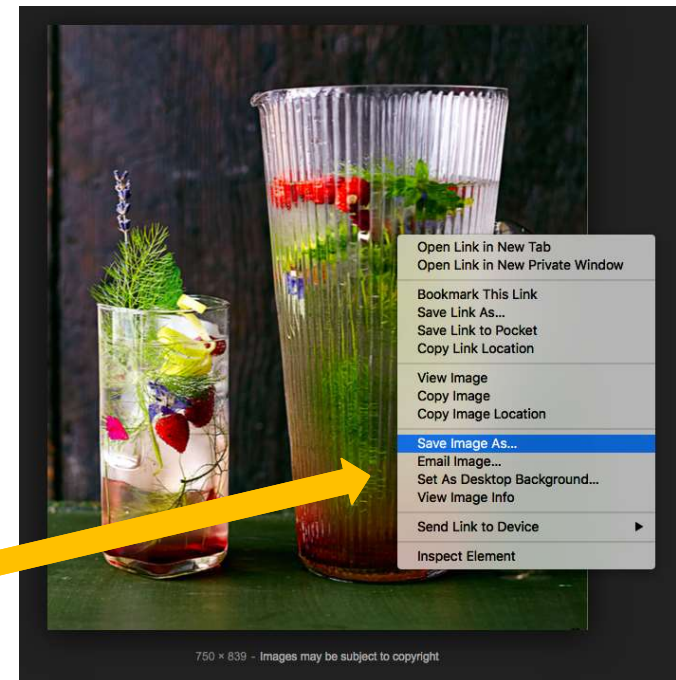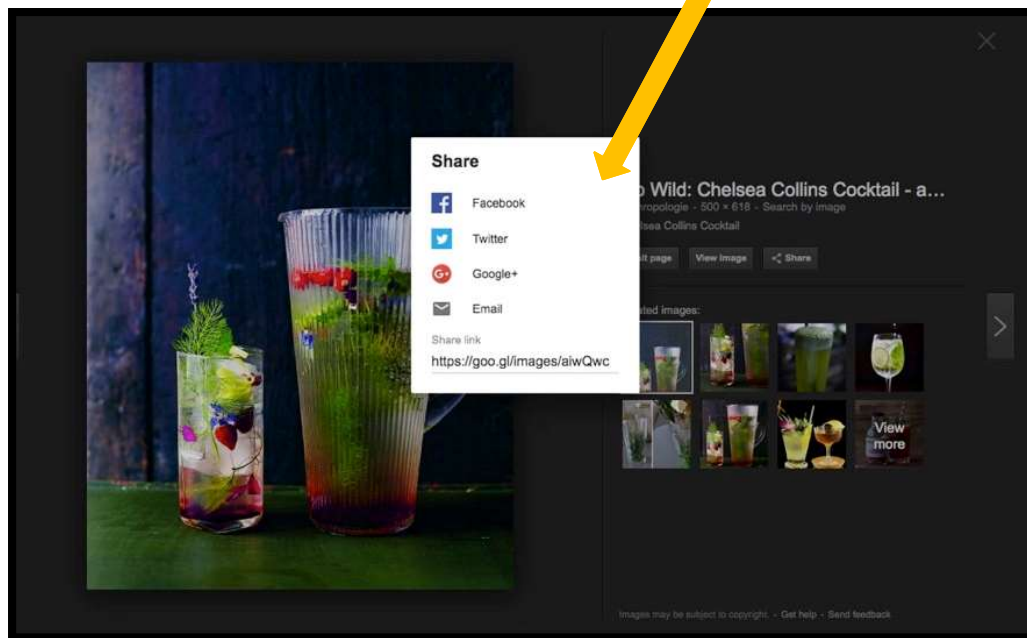
Google's *'Right-Click & Save'*:
allows you to save the image & upload it to any
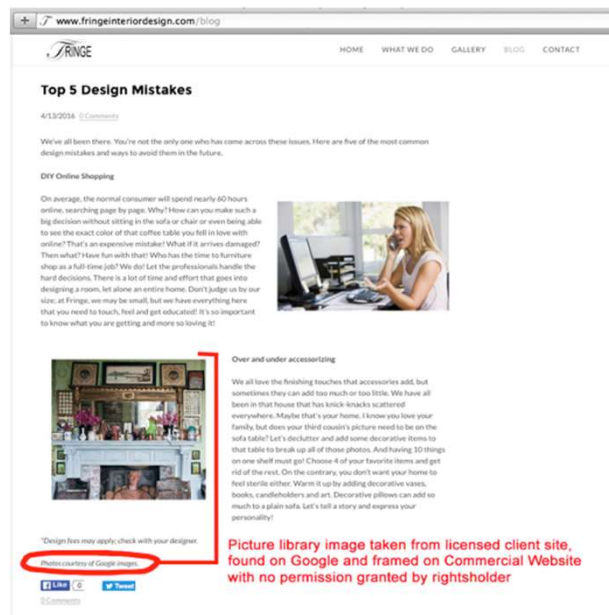platform *& repurpose it for any commercial use*

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Double-Framing:

These are secondary uses or *"double-framing"* by 3rd party commercial platforms

Google Images
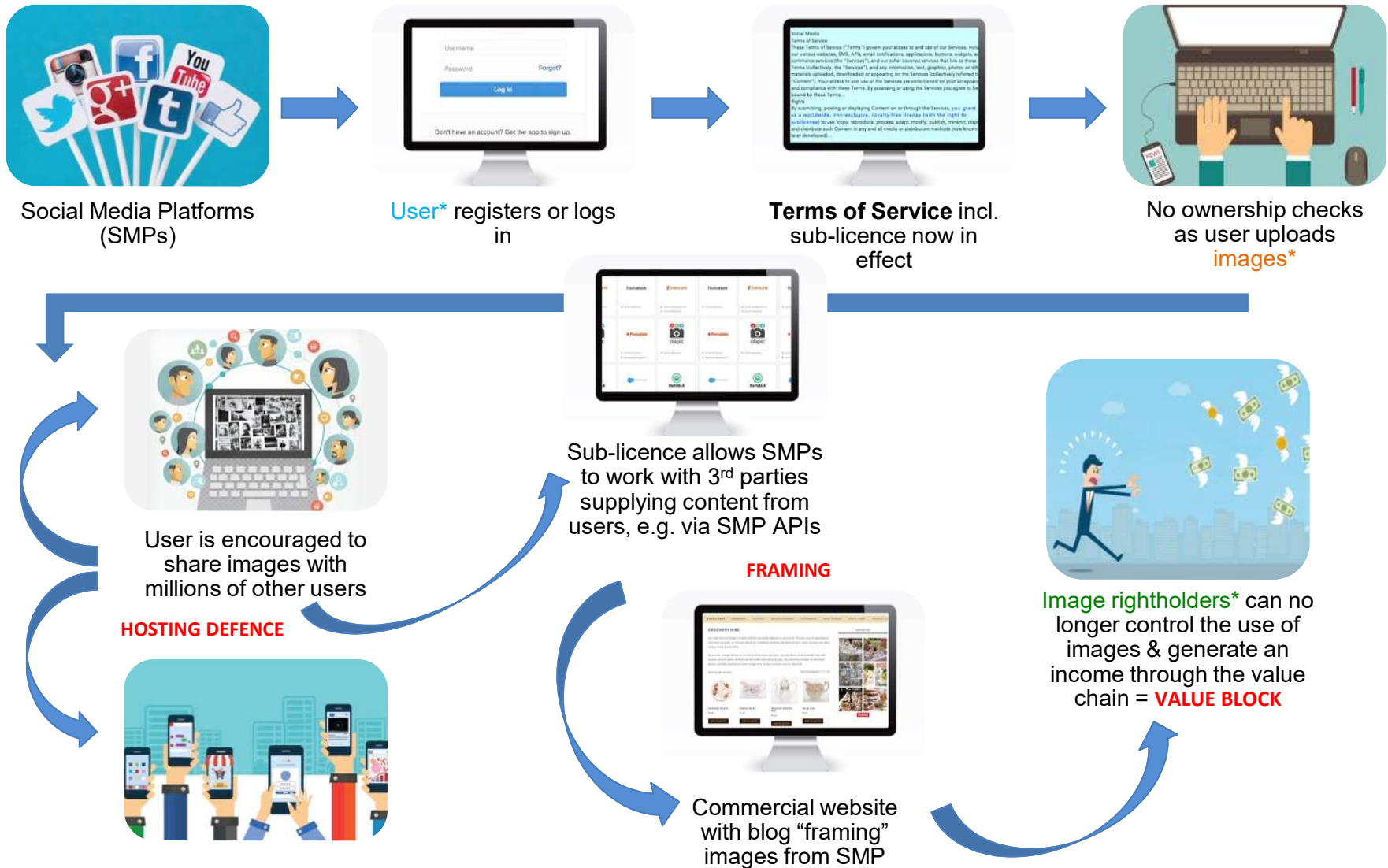
Pinterest

- Using similar <u>Terms of Service</u>, Platforms can offer 3rd party licensed-uses without having to seek permission from rights holders
- It's at this point that *infringement tracking services* can report on these infringements > the question is whether they can <u>easily</u> pursue these infringements on our behalf

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Social Media Platforms & the Value Block:

ENFORCEMENT

Social Media Platforms (SMPs)

User* registers or logs in

Terms of Service incl. sub-licence now in effect

No ownership checks as user uploads images*

User is encouraged to share images with millions of other users

HOSTING DEFENCE

Sub-licence allows SMPs to work with 3rd parties supplying content from users, e.g. via SMP APIs

FRAMING

Commercial website with blog "framing" images from SMP

Image rightholders* can no longer control the use of images & generate an income through the value chain = VALUE BLOCK

*User: general public, professional person or organisation   *Images: illustrations, photographs, artwork, cartoons, etc   *Image rights holders: individuals, image libraries & agencies
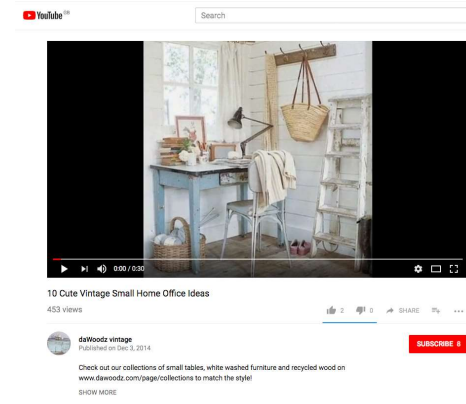
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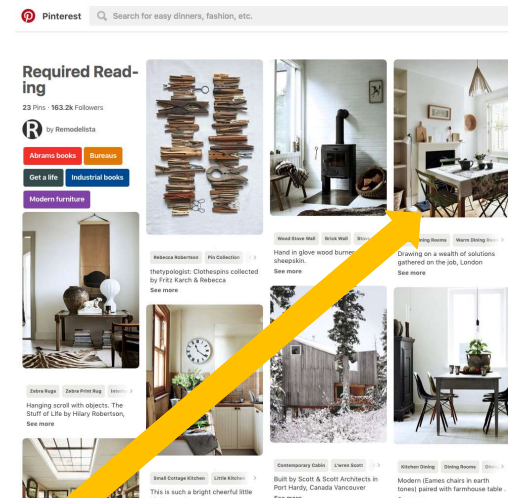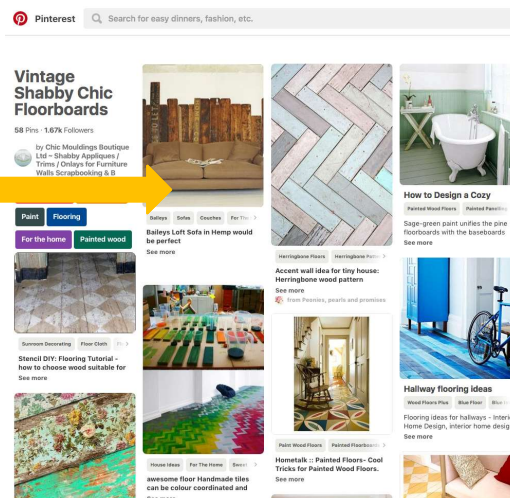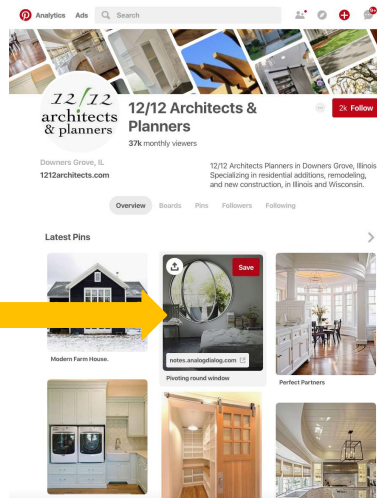
Examples of Right Click & Save

Twitter

YouTube

Pinterest

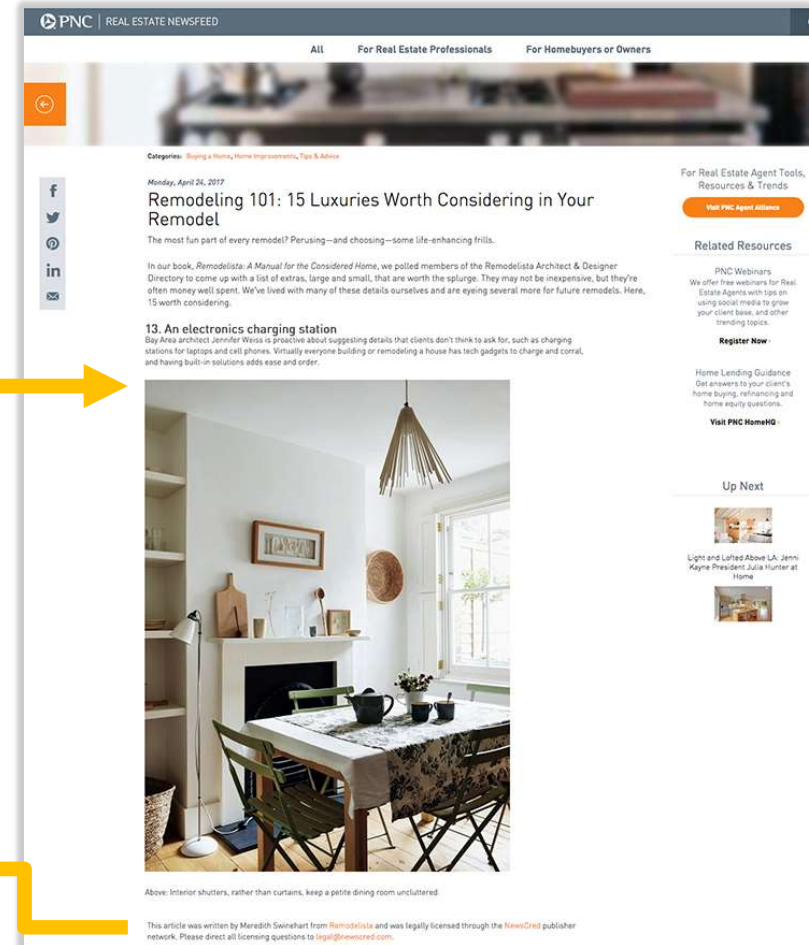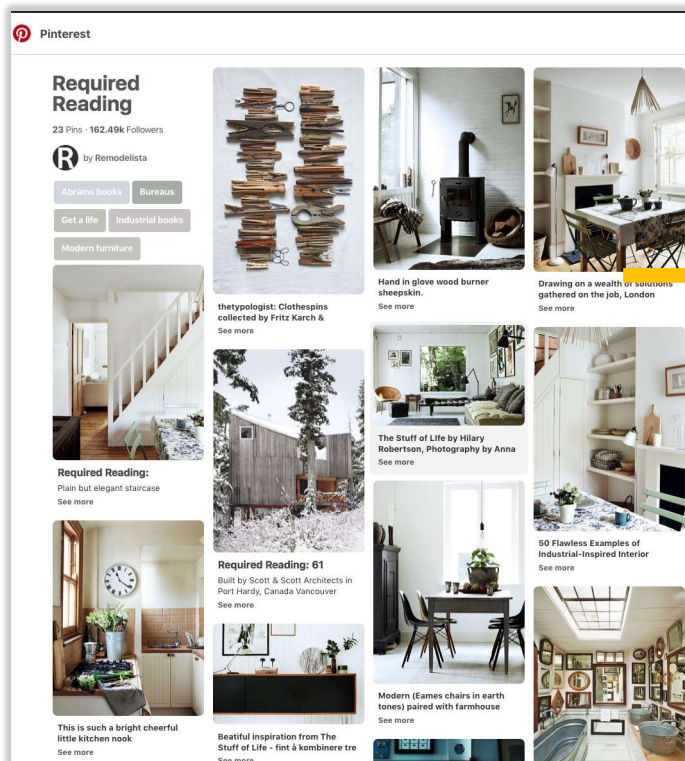Uploaded to Pinterest by a Commercial Blog and…

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Terms of Service & Third Party Exploitation

…the commercial blog has then licensed the image to a US Real Estate Newsfeed – **without permission**

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4. How are image libraries chasing copyright infringements

Tracking methods and legal action

Available Options

International *Image Infringement Tracking Services*

- Most popular, used widely across the industry
- Use image recognition software with metadata to track & report infringements
- Rely on rightsholder verification
- Either license fees issued or penalty demands are submitted to commercial infringers

UK introduced the *Small Claims Track for infringements* under £10,000

- Cases predominately from photography sector
- Between 2012 & 2015* - 261 claims put through IPEC Small Claims Track service
- 206 (79%) claims were for copyright, with 144 photography-related
- Of which 135 claims for photo infringements on websites
- 100 claims were by freelance photographers & 22 by photo agents

Other methods:

| Sophisticated Watermarks | Reverse-Image Search | Blockchain incl. smart contracts | Crowd-based reporting |

* http://www.create.ac.uk/publications/photographic-copyright-and-the-intellectual-property-enterprise-court-in-historical-perspective/

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5. What are the limitations to current methods

No single solution is a panacea

Scale of the problem too immense for just one method

- Resources ➡ Time & Cost

- Apathy ➡ From infringers & rightsholders

- Limited scope ➡ Each solution on it's own has limitations

Infringement Tracking Services: Only reaches the tip of the iceberg / doesn't work easily with multi-agency representation / can't address the ease with which users can right click & save

Legal redress: Small Claims Track resource time & cost heavy + low penalty fees / works for multi-image infringement claims but too many reported are small scale

Should we be looking at a system that adopts several technology solutions?

Image Recognition Software		Original Source Identifiers incl. Metadata		Blockchain incl. Smart Contracts		Easier Platform Infringement Reporting
	+		**+**		**+**	

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6. Best way forward

To continue providing a viable image industry ecosystem online we have 3 key asks:

1. Continue *research to provide technology solutions without financial burden* on image libraries & creators

2. Enforcement regulations that *support the image industry's 'commercial licensing' abilities* *1

3. Platform responsibility to enable *fair remuneration online* for image rights holders *2

In addition

- *Never to use copyright as a bargaining chip* e.g. tech platforms offering investment in exchange for US-styled '*Fair Use*' system*3

- Expanding the *value of copyright through education*

©

*1 EU Copyright Directive, Article 13 – Fair online marketplace
*2 E-Commerce Directive, Article 5 – Duty of Care
*3 *Fair use*' has far broader interpretations, and is not the same as '*fair dealing*' in the UK
    which doesn't interfere with the normal exploitation of the work

Thank You

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