

# Image Copyright and Abuse

Having been targeted by a Swiss company PicRights, this presentation is to explain Copyright Trolling and abuse, and what to do about it.

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# Copyright Trolling

Some companies, such as PicRights, use Copyright Law to make money. This is not genuine copyright protection, but copyright trolling. This involves searching through web documents, from the present and past, and finding images that are protected by copyright by Reuters or Associated Press. PicRights is based in an apartment in a small town in Switzerland, and is probably simply a 'letterbox'.

Many teachers and journalists use images from the internet without being aware that these pictures are protected under copyright. These images could be protected with a watermark indicating their source, but normally are not.

The company then requests the web author to remove the image and to pay a licence fee. So, even if you remove the image, or even if the image was used years ago and has been offline for years; you have to pay. In my case, the first demand was for 375€, but it can be much more.

# Copyright Trolling

If you don't pay, you receive regular E-mails threatening you with legal action, and increasing the 'fine', in my case from 375€ to 675€. After a while, PicRights then contacts a legal firm in your country. In France, they use Cabinet Reynal-Perret, who then increase the cost; in my case from 675€ to 775€, and claim that you are not allowed to reveal the 'negotiations' to anyone else. I asked Renal-Perret to take me to court. No reply. To my knowledge, and from all the testimonies I have received from other victims, **Reynal-Perret have never gone to court over a PicRights issue.**

Most victims simply pay up. If Copyright Trolling occurs in the USA, you are protected by a sensible law called 'Digital Media Law' that protects users such as teachers and journalists. *"The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."*

# Copyright Trolling, France

Here is some very useful information from a fellow French victim, Olivier, concerning the application of copyright law in France:

***(CA Paris, 16 juin 2015, RG 14/07984; CA Paris, 7 octobre 2015, RG n°10/11257 ; Cour d'appel de Versailles du 20 avril 2017 (RG n° 15/0825) :***

*« il convient de rappeler que la production d'impressions ou de captures d'écran Internet n'est pas un mode de preuve prohibé dès lors que ces constats sont datés et proviennent de pages accessibles à partir du site Internet d'origine, étant relevé que les pré requis techniques invoqués par les appelants, qui trouvent leur source dans la norme AFNOR NFZ67-147, n'ont pas de caractère obligatoire et ne constituent que des recommandations de bonnes pratiques »).*

# Copyright Trolling, France

*Continued :*

*Àie droit d'auteur*

*Pour pouvoir être protégée par le droit d'auteur, une photographie doit être originale, c'est-à-dire porter l'empreinte de la personnalité de son auteur.*

*La jurisprudence considère qu'en matière de photo, l'empreinte du photographe se retrouve à travers les choix librement opérés par lui-même, notamment s'agissant de l'angle de prise de vue ou du cadrage, de l'éclairage choisi, de la position demandée aux personnes photographiées, de l'aménagement du décor, etc. En revanche, l'application de filtres ou de retouches ne permet pas de démontrer, seule, un caractère original à la photo.*

# Copyright Trolling, France

Continued :

Le cas particulier de certaines photos sportives

*La jurisprudence retient que les photos prises au cours d'un match, à l'insu des protagonistes, sont généralement le fruit du hasard qui trouve son origine dans les phases animées du jeu, dont tant la mise en œuvre que le résultat échappent à la volonté du photographe qui ne fait qu'intercepter un instant fugace. Ainsi, ce type de photos, notamment par leur prise en rafales sur des appareils numériques, ne relève pas d'un choix technique libre et n'est donc a priori pas protégeable au titre du droit d'auteur.*

Regardez 'La Preuve de l'originalité' (Ministère de la Culture, décembre 2020), especially the footnotes on page 32 – *with thanks to Amy – another victim who refused to pay.*

# Copyright Trolling

Unfortunately, in Europe different countries have different laws allowing for abusive protection of Copyright that costs considerable amounts of money to citizens simply doing their job (associations, journalists, teachers, students etc.)

This presentation will show you my particular case, and then provide sources to help other victims of this Copyright trolling to know where to go for advice and assistance.

Explication de Copyright Trolling en Français (Into The Minds)

# My Case

I was contacted in November 2020 by PicRights claiming that I had used a photo belonging to Reuters, and that I had no right to use it. The somewhat banal photo of some Euros, was part of an economics presentation about historical financial structure. As well as requesting that the photo be removed, it included:

*« Si vous ne bénéficiez pas d'autorisation d'utilisation pour cet usage, nous vous remercions de retirer cette/ces image(s) immédiatement de votre site internet et de nous contacter à [ResolveFR@picrights.com](mailto:ResolveFR@picrights.com) afin de régulariser cette situation. Nous attirons votre attention sur le fait que le retrait seul de cette/ces image(s) ne suffira pas à clore ce différend. Nous réclamons le paiement d'un dédommagement lorsqu'une image fait l'objet d'une utilisation non autorisée. »*

What is not clear is why this particular amount of money and where any money paid goes. To Reuters? To United Press? Or, more probably, to PicRights and their legal representatives in each country.

# My Case

At first I thought it was phishing and replied:

*Bonjour*

*Une organisation tel comme vous prétendez d'être, n'utiliserai jamais 'Cher David'.*

*Je vous conseil de consulter CourrierPicRightset demande de dédommagement - Internet*

11 January. They reply, demanding 375€ « *Associated Press est disposée à régler la question pour 375 €.* »

I then ask them to withdraw their claim since I had removed the photo, and asked them to contact the 'owner' to allow me to use it for educational purposes.

PicRights claimed that the 'owner' (Reuters or Associated Press?) refused the request, but presented no proof that they had passed on my request.

# My Case

By the 19th January, the 'price' had gone up from 375€ to 675€!

Although they include « *Les conditions de cette offre sont confidentielles* », I feel it is necessary to warn the public, especially journalists and teachers, of this abusive behaviour.

21st January. The offer is cancelled with the threat of legal procedures

28th January. They try again, demanding 675€

8th February, the offer is cancelled again.

24th February. The case is taken up by a French law firm, CabinetReynal-Perret. I receive a registered letter (actually received by my institute, not by me). They demand payment of 775€. Without payment they threaten legal action.

Reynal-Perret send two more E-mails (17 March and 8 April) threatening action. After the first E-mail from PicRights, I do not reply to any of their E-mails. I have three sources of legal insurance, and would be happy to see the PicRights lawyers try to defend their case in court.

# My Case

Following further e-mails, I write the following:

Madame

Je ne vais pas subir à cet acharnement pécuniaire, dont vous devez avoir honte. Je vais, par contre, alimenter encore plus mon PowerPoint sur le sujet pour informer les futurs victimes de leurs droits, et comment réagir à cet harcèlement.

Vous dites toujours que vous allez protéger les droits de votre 'client'. Si vous pensez que vous avez raison devant un tribunal, faites le.

Dr David Rees

*To date, no reply. I do not believe that they want to set a precedent by going to court and losing*

# Internet Links

In order to better understand this abuse of copyright, I started to carry out some research on the internet. Here are some very useful links.

PicRights AFP News Agency

Complaints about this type of legal harrassment by this company can be found here:

CourrierPicRightset demande de dédommagement –Internet. One of the comments in the forum includes a reply from the DGCCRF « *"Votre réclamation en date du 3 septembre 2020 a retenu toute mon attention. Les pratiques commerciales de la société PICRIGHT en cause ne paraissent pas respecter la réglementation applicable en France. Cependant, je vous informe que les compétences des agents de la DGCCRF étant limitées au seul territoire national, il ne m'est donc pas possible de faire procéder à une enquête sur cette entreprise (...)"*

The French lawyer Alexandre Lazarèguehas an excellent article

‘Images et droits d’auteur : stop aux abus !’ The same lawyer also proposes ‘Actions Collectives’ against PicRights

# Internet Links

The 'Fair Rights' bill on digital protection in the USA can be found here.

French law concerning copyright can be found here

A comparison of copyright law in Europe for teachers can be found here, with 15 case studies

Here is an article from 'Formations Juridiques'

« PicRights+ AFP : une opération de copyright trolling bien rodée » from Into The Minds

Here is a video (YouTube) « PicRights: Comment réagir à la demande d'un copyrighttroll »

Consumer Warning on Copyright Trolling by Public Citizen

Facebook group 'Litiges avec PicRights/ AFP / Cabinet Reynal-Perret'

Calling Out Copyright Troll Mathew Higbee

How Two Spam Emails Cost Me \$650 (or) When PicRights Enters Your Life

# What to do

After following the links and understanding the scam, you will understand that it is unlikely that PicRights will try to take you to court. They rely on threats and submission.

To protect yourself, check if you have private legal insurance, use your institute's legal services, and for French civil servants, use the legal services and insurance of Crédit Social des Fonctionnaires.

The more people (mostly teachers and journalists) defend their rights, the more legal cases will be won creating more cases of 'jurisprudence' to stop this legal abuse of teachers who are simply carrying out their work as educators.

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