



PICSEL Annual Transparency Report (“ATR”) for 2017

The purpose of this ATR is to provide information about the activities of PICSEL for the financial year ending 31 December 2017 in compliance with The Collective Management of Copyright (EU Directive) Regulations 2016 (“Regulations”). The information in this report is drawn from the Annual Report and Financial Statements for PICSEL for the year ended 31 December 2017.

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

About PICSEL

PICSEL is a 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.

Report on Activities

CLA Membership

In February 2017 PICSEL was recognised as ‘significantly representative’ and accepted as a full member of the CLA with observer status on their board. Together with DACS, PICSEL became the first new members of the CLA since it was founded over 30 years ago.

Nominations for a director representing visual artists (“VAs”) on the CLA Board were sought throughout 2017 by the CLA. ALCS said that they would leave this decision to DACS and PICSEL as ALCS already had a Director on the Board and felt sufficiently represented. In November 2017 DACS exercised its right under the CLA Articles of Association to nominate the VA director to the CLA Board. PICSEL argued that this was not a representative of all VACMO’s as PICSEL had been refused permission by DACS to meet their candidate and were not able to ascertain whether he spoke for its members. The CLA attempted to mediate, for which PICSEL was extremely grateful, but DACS would not accept any alternative and exercised their right under Article 29.1.1 of the CLA Articles of Association which states that “in the absence of agreement the Member with the largest share of the Creators’ Distribution may nominate for appointment a single Director”. PICSEL asked that it be noted that there was no agreement because there had been no discussion. It was noted. The VA representative on the CLA Board is Neil Burgess, a DACS director.

IPO Liaison

Throughout 2017, PICSEL engaged fully in discussions with the IPO, recognising that we are very much guinea pigs for the implementation of the Regulations and wanting to be secure in the arc of our development. Throughout, PICSEL has sought clarity and transparency in the reading and implementation of the Regulations for the benefit of all rights holders whether they are members of PICSEL or not.

Of primary concern to PICSEL in early 2017 were the transparency obligations of CMOs under the Regulations. PICSEL sought guidance from the IPO on the ability of PICSEL to submit an ATR under existing levels of transparency in the distribution of VA revenue. Currently the market share is decided by the auditor appointed by the CLA using DACS’ Payback model which DACS will not divulge. PICSEL asked the IPO if the ATR requirements would be satisfied with this lack of transparency and whether the PICSEL Directors could fulfil their obligations of duty of care by agreeing to an undisclosed model. After several months of discussion the IPO concluded that they were satisfied with the current level of transparency.

During the year an official complaint against PICSEL was made to the IPO by a group of non-members who chose the option to maintain their anonymity. Whilst the complaint was dismissed by the IPO we were grateful that we were able to reconcile some conflicting statements on our website. In the interest of transparency details of the complaint are at the end of this ATR. **

CLA Distribution Process

A joint review was held by the CLA and the CMOs representing the visual arts (“VACMOs”) after the matching of CLA data was completed. The purpose of this was to find ways to improve the quality of claims and reduce errors in the new claims process which was proving to be a challenge for some.

The review showed that PICSEL members had embraced the process and showed a sound understanding of the new procedures with 27% of all their collective images claimed matching CLA survey data.

PICSEL outperformed all expectations in terms of quality of claims, earning a higher proportion of matched revenue than its size would suggest and showing that its claims procedure was not only quick and simple, but also very effective.

The CLA distribution was made in late August and was immediately contested by PICSEL. It was clear that only 9 months of 2016 revenue had been distributed. PICSEL pointed out that this would put the CLA in breach of the Regulations as all of 2016 revenue had to be distributed by the CLA to the VACMOs by the end of December 2017, yet only 9 months revenue was to be distributed. The CLA responded immediately and convened a meeting to address the issue.

The issue arose through a misunderstanding by signatories of the mediated agreement over the word "distribution". PICSEL's interpretation of the agreement and the Regulations was that the 2016 distribution related to the calendar year. However the CLA "distribution" is based on their financial year of April to March as the revenue in the first three months of the calendar year relates to licenses for the previous year. PICSEL then asked why April 2016 to April 2017 was not then distributed. The response was that the mediated agreement referred to a calendar year distribution to VACMOs and CLA had paid the remaining nine months of 2016. Payment for the first three months of 2016 had already gone to DACS as it related to 2015 revenue which DACS distributed alone and that left only 9 calendar year months to distribute. They did recognise that we were correct to highlight the issue to ensure compliance and that minor wording changes were needed to the mediated agreement.

They proposed that distribution in 2018 would be for 15 months of revenue to catch up, after which they would revert to a 12 monthly distribution which would ensure compliance with the Regulations going forward. This was finally agreed in December, and accepted by the IPO, making it possible for PICSEL to make its distribution before the end of the year. A total of £268,408 was distributed to members during the year ended 31 December 2017.

PLS Distribution

2017 was the first time that there was a separate PLS distribution for license revenue collected on their behalf by the NLA. Previously, this had been handled by the CLA and covers business licenses for copying of magazines. PLS made it clear that they intended their distribution to follow as closely as possible the CLA methodology and CLA schedules set out in the Mediation agreement between CLA, ALCS, DACS and PICSEL. Unfortunately, this process took considerably longer than expected and was not completed until December 2017. PICSEL's distribution of this revenue could not then take place until early 2018. A total of £44,490 was distributed to members in 2018 and therefore accrued in the 2017 financial statements.

Members Extra

Through tight financial control of costs during 2017, PICSEL was able to make a discretionary distribution to those who were members in 2017, allocated based on their claims and effectively reducing the admin charge. A total of £7,937 was distributed in early 2018.

Extended Collective Licensing

In October 2017 the CLA made its long anticipated application to the IPO for an Extended Collective License (“ECL”). This followed rights holders’ approval delivered through a ballot by CLA members of their own members. The consultation process was then begun by the IPO. However in April 2018 CLA mutually agreed with the IPO that they would withdraw the application due to the high level of uncertainty over Brexit and unresolved EU legislation relating to copyright and its application to ECL generally.

PICSEL Governance

There were changes to the PICSEL board during the year.

After serving 18 months as the founding chair of PICSEL, Isabelle Doran resigned from the board in 2017. Having put considerable work into making PICSEL possible and ensuring its core principles of an equitable and fair distribution of secondary rights revenue, Isabelle felt that she could no longer commit sufficient time to the role with her many other growing commitments. Whilst we miss her daily input we are reassured by her continued support and comment.

Also in 2017 Tim Harris resigned from the Board feeling unable to commit sufficient time to PICSEL with his other industry roles putting increasing demands on his time.

The new board of directors elected at the AGM comprises:

John Balean - Topfoto
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 – Executive Director
Denise Swanson – Creator Director
Sarah Williams – Independent Director

The board has now established four key committees, covering Distribution, Business Development, Finance and Membership & Communications.

Strategic Review

Challenges

PICSEL will face direct and indirect challenges in the coming months and years. The new competitive environment between representative VACMOs, the evolving environment within collective licensing itself and continuing uncertainty over Brexit may create significant change.

The competitive environment will see a change in membership levels and hence market share, but PICSEL will continue to bring a more transparent and equitable distribution of revenue to rights holders and we are confident that these driving principles will serve to support our sustained growth.

The nature of collective rights management is evolving and PICSEL will work with the CLA, and others, to ensure that a robust environment can be sustained. As a member of the CLA, PICSEL is in a position to be involved at an early stage in any developments that will impact on VA rights holders and can ensure that the allocations for VA's decided by the FTI Valuation are maintained.

The coming years will see reassessments of the valuations relating to the VA share of secondary rights and PICSEL will work with all VACMO's to ensure that an equitable allocation is made to the VA sector.

Brexit will pose unknown challenges and the IPO has engaged regularly with all CMO's on this. Whilst this has been mainly concerned with the adoption of the Regulations and the EU Digital Single Market, the volatile currency market is already impacting international revenue.

Market Share

PICSEL's market share was calculated by an independent auditor appointed by the CLA. His allocation for PICSEL was in line with projections. Market share is expected to increase as membership continues to grow.

PICSEL stated at the 2017 AGM that it was not possible to compare the 2017 distribution with previous years. A new more data-driven model was now in place with a greater emphasis on matched data, and thus the returns for this were as yet unknown.

To meet that challenge, PICSEL embraced this new data driven model for revenue distribution proposed by the CLA and it proved a greater success for PICSEL members than expected. With 12% of PICSEL members claimed titles matching CLA survey data, this was considerably above the industry average of 0.02%.

Revenue was also above expectation with several individual images being allocated over £1,700. Individual rights holders' allocations ranged from the minimum of £25 to £3,427. This was all above reported payments of between £25 and £550 made by another VACMO. This was particularly satisfactory, given that only 9 months of licence revenue was available and that PICSEL had been able to achieve this whilst maintaining a record low administration charge of 15%.

Opportunities

PICSEL has concentrated initially on the traditional UK market of book, magazine and journal licensing. There are other sectors that PICSEL will explore to offer a radical, and equitable, alternative to all rights holders in the coming years.

Financial Report

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**
Tim Harris (Director)	Fees Received as a PICSEL Director £0.00
John Balean (Director)	Fees Received as a PICSEL Director £0.00

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

***This was a decision by the new Board in recognition of the considerable work and commitment shown by Isabelle Doran over two years in the creation and successful early steps of PICSEL.*

Distribution of revenue

Revenue came from collective management schemes operated by the CLA (Copyright Licensing Agency) and PLS (Publishers' Licensing Services).

PICSEL made a subvention of 15% for its administration costs as anticipated and stated at the foundation of PICSEL.

Direct costs, including legal fees incurred in the foundation of PICSEL together with the more costly Mediation and ensuing dispute resolutions, totalled £19,500. Whilst the Mediation itself and implementation of the Mediation agreement was the major expense, there was extensive and costly legal debate over the interpretation and implementation of the Regulations in what has ultimately proved to be a useful exercise in establishing commonly agreed parameters for the field of collective licensing management.

In future years it is hoped that a single payment can be made to members for all schemes administered by PICSEL. However in 2017 the PLS distribution took place too late to be included with the December distribution of CLA revenue. Therefore, a separate payment for PLS revenue was made in early 2018. Whilst all distributions were within the timescale stipulated in the Regulations it was agreed that in future a single payment to members would be more cost effective and therefore should be our goal.

Due to the lateness of the agreement with PLS, finalised in December 2017, it was agreed with PLS that there was not enough time to run a data matching procedure and that the distribution would be based solely on the market share calculated by the auditor. From 2018 onwards both the matched and unmatched data methodology used by the CLA will be used by PLS with the same percentage changes agreed at the Mediation.

The Board has agreed that any genuine surplus for 2017 obtained through strict financial control should be distributed to those who were members in 2017. However it was also agreed that in future any reasonable surplus should go towards a reserve and contingency fund for the benefit of members.

Rights and Use	Income received	Income allocated	Distributed in 2017*	Distributed in 2018*	Direct costs allocated	15% admin charge allocated
CLA	£354,759	£354,759	£268,409	£15,307	£19,500	£51,543**
PLS***	£43,671	£43,671	£0	£37,121	£0	£6,550

**After deduction of direct costs and 15% admin charge. Actual administrative costs of the company may vary from the admin charge to rights holders.*

***The actual admin charge was 14.53%*

****It is not possible to analyse the PLS rights revenue into any further categories as these were not supplied.*

CLA Revenue Analysis	Income Received
Education Matched Allocation	£35,690
Non-education Matched Allocation	£5,614
Unmatched Allocation	£313,455

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

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.

License revenue is allocated to PICSEL in two distinct ways:

- To titles that match survey data. For 2016 revenue this was 10%. It is planned to rise each year until 2021 to 40% for educational licenses and 30% for non-educational.
- To all titles that do not match survey data or where data is unavailable. For 2016 revenue this was 90% decreasing each year until 2021 to 60% for educational licenses and 70% for non-educational licenses.

This applies to both CLA and PLS license 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

ALCS – Authors' Licensing and Collecting Society

CLA – Copyright Licensing Agency

CMO – Collective Management Organisation commonly known as a collecting society

DACS – Designers and Artists Collecting Society

ECL – Extended Collective Licensing

FTI – FTI Consulting

IPO – Intellectual Property Office

PLS – Publishers' Licensing Services

VACMO – Visual Artists Collective Management Organisation

**** Complaint against PICSEL made to the IPO**

On receipt of the complaint by individuals who are not PICSEL members, and who chose the option of maintaining their anonymity, the IPO issued a list of questions relating to the complaint for PICSEL to respond to in person at the IPO offices. These covered Membership Requirements, Distribution Policy, Governance and Transparency. Below are the questions and abbreviated answers.

Membership Requirements:

Q. Does PICSEL admit individuals as members?

A. Yes

Q. Do the terms of membership for individuals differ from those of agencies?

A. No

Q. Does PICSEL operate different membership terms (including in relation to membership fees) for BAPLA members?

A. No, and there is no membership fee.

Q. Does PICSEL require applicants for membership to provide references? What is the purpose of this requirement?

A. Yes. The purpose is to ensure the legitimacy of their right to become a member?

Q. We understand that the PICSEL Articles of Association give the Board discretion to admit a member who does not meet the membership criteria. Has this discretion been exercised? Under what circumstances does PICSEL envisage it might be used, and what safeguards are used to ensure that the mechanism does not result in discrimination against other potential members?

A. This is to allow for expertise such as legal, CRM or other to be brought to the Board.

Distribution Policy:

Q. What are the respective roles of the Board and the Membership in determining the distribution policy?

A. The Distribution Committee is made up of members from all categories and represents over 80% of the membership. They formulate the policy and present it to the Board for approval. If approved this is presented to the members for approval.

Q. What deductions does PICSEL apply to the distributions and how can members obtain information?

A. The administration fee is proposed to be 15% and is in the published Distribution Policy.

Q. PICSEL refer to a “distribution partner” – who are they, and what information is available to members about this?

A. It was anticipated that this would be required by a nascent organisation, however PICSEL has developed its own effective distribution methodology and a distribution partner is a redundant requirement. Mention has been removed from the updated distribution policy.

Q. Will PICSEL, when reporting to rights holders as required by Regulation 17, distinguish between i) management fees deducted by PICSEL, ii) fees deducted on behalf of the distribution partner, iii) administration fees deducted from distributable revenue?

A. There is no distribution partner.

Governance:

Q. What is the reasoning for linking eligibility to stand as a Larger Agency or Smaller Agency Director to BAPLA membership or compliance with BAPLA Membership requirements?

A. There is no link to BAPLA membership. The BAPLA membership requirements contains the only definition of these categories available and it is logical to use an industry standard to define these categories.

Q. Are individual creators able to stand as Directors of PICSEL? Are there any restrictions to their eligibility?

A. Yes they can stand if they are an individual creator mandating member.

Q. Has PICSEL completed the notice to members required by Regulation 4(i)?

A. Yes, they are contained in both the membership and mandate forms.

Q. Is this information available on the PICSEL website?

A. Yes. The mandate and membership forms are available as PDFs on the website together with the Code of Conduct which gives further explanation.

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 2017. 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 2017.

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.

