

Google Removes “View Image” Button from Image Search Results

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Google has changed the way users search for images by removing the “View Image” button from search results. This button, which previously accompanied every result, allowed users to view images directly without visiting the corresponding website from which the image was sourced.

This change is due to the recent settlement of a competition law complaint filed by Getty Images in Europe against the search engine giant. The settlement also includes various other changes to Google Image Search aimed at protecting the rights of copyright owners, as well as a partnership deal between the two companies.

Getty Images' Complaint

Getty Images (**Getty**) is an American company which supplies stock images and videos for businesses and individuals on a licence fee basis. Part of Getty's business model is stringently enforcing its copyright in stock images (including in one notorious case where Getty was sued for attempting to collect licence fees from a photographer for using her own photograph), although the company has also made millions of images available for free via non-commercial use licences.

In 2016, Getty filed an antitrust complaint with the European Commission against Google, on the basis that Google was “promoting piracy” and damaging its business. Getty argued that Google Image Search, which scrapes images online and displays them in a list of search results in response to user-inputted search terms, turned users into “accidental pirates” by allowing them to view and save full-size images without visiting the website from which the original image was scraped.

According to Getty this damaged its business model, as users were accessing Getty's images without visiting Getty's website, where the images in question were often watermarked and must be purchased. Interestingly, Getty did have the choice of not permitting its images to be displayed in Google search results, but chose not to do so, presumably due to fears that this would reduce its exposure online.

Settlement of the Complaint

Getty and Google recently announced that the complaint had been settled. As a part of the settlement, Google has agreed to:

- Make the copyright disclaimer which appears alongside image search results more prominent. The disclaimer appears when any image search result is expanded, and currently reads “Images may be subject to copyright”.

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- Remove the "View Image" button from search results. This button previously appeared next to any expanded image and allowed users to view the full-size image directly without visiting the source website. To view the original image, users will now have to either right-click and select "Open image in new tab" (when using the Google Chrome browser), or, as Getty clearly intends, click the "Visit" button, which takes users to the source website of the image.
- Remove the "Search by Image" function from Google Images results pages. Getty was concerned over this functionality allowing users to search for unwatermarked versions of its stock photos. The feature is still available from within the Google search bar however.
- Enter into a "multi-year licensing partnership" with Getty that will allow Google to use Getty's images on its various products and services.

For its part, Getty has formally withdrawn its European Commission antitrust complaint against Google.

Copyright Issues with Image Searching

The extent to which Google could potentially be liable for copyright infringement by scraping images from the internet and reproducing them in search results is an unclear area of law in Australia, whereas in other jurisdictions it has been held that hyperlinking to copyright content does not itself necessarily amount to copyright infringement.

In *Universal Music Australia Pty Ltd v Cooper* [2005] FCA 972 it was held that providing links to copyright infringing material amounted to authorisation of copyright infringement. Similar issues arose in the defamation context in *Google Inc v Duffy* [2017] SASCFC 130, where Google was held liable for linking to defamatory content and reproducing it in its (text-based) search results.

The Australian Law Reform Commission recommended in 2014 that the *Copyright Act 1968* (Cth) should include an exception for "incidental and technical uses which are essential to the operation of the internet", which seems to be targeted at hyperlinking and may arguably capture Google's image search functionality. This exception has not been implemented however.

Many images scraped by Google are covered by licences which permit non-commercial use or other Creative Commons licences permitting their use without a licence fee (including many images from Getty itself); however these images will also be caught by the changes made to Google's search results page, demonstrating that any one-size-fits-all approach will inevitably have its downsides.

Take-Away Points

On a practical level, the settlement will likely impact the way many people use Google to search for images.

Legally, while the settlement clearly does not create any precedent in any jurisdiction, the case demonstrates some of the challenges faced in enforcing copyright in images online, where images are routinely scraped and reproduced in search results.

Similar issues have arisen in the context of news reporting, with various newspapers also complaining that Google is scraping and reproducing their content, including that which is behind a paywall.

If Google's removal of the "View Image" button does result in driving more traffic to websites where original images are hosted, it may serve to increase advertising revenue for these sites, and will be a welcome change for rights

holders.

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