



## WIPO/BCC Advanced Copyright Course 2022

# Rights and Interests of Photographers



## Rights & interests of photographers

**AOP**

Association of Photographers

**BAPLA**<sup>®</sup>

### *Presented by:*

- **Isabelle Doran**  
CEO, Association of Photographers and Board Director for Artistic Works, British Copyright Council
- **Anna Skurczynska**  
Founder Director, Open Plan Law, and Legal Counsel, British Association of Picture Libraries & Agencies

### *Covering the follow:*

1. **Introduction**
2. **The photo industry eco system and chain of rights**
3. **Types of licences, clients, and business markets**
4. **Contract terms and copyright basics**
5. **Areas of relevant copyright law for photography**
6. **Copyright education and industry concerns**
7. **Use of social media**
8. **The future for the photo industry**

## Rights & interests of photographers

From the Statute of Anne in 1709  
To the development and impact of  
photography in the 1830s  
By the 1860s the law gave  
copyright protection to  
photographs, and professional  
photographers began to realise  
their economic right from this point



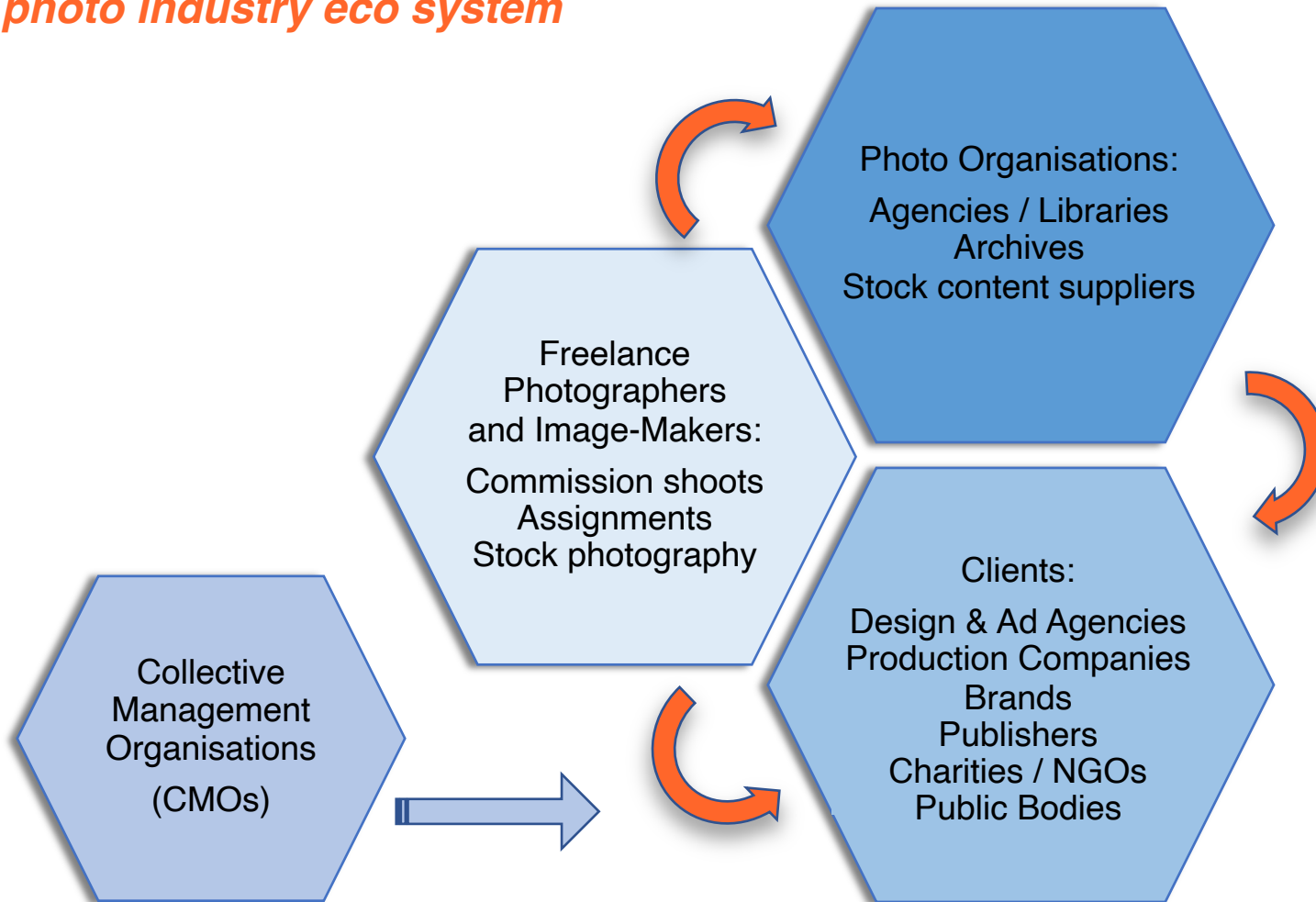
Copyright 1892  
By L.C. OVERPECK.

**AOP**  
Association of Photographers

**BAPLA**

## The photo industry eco system and chain of rights

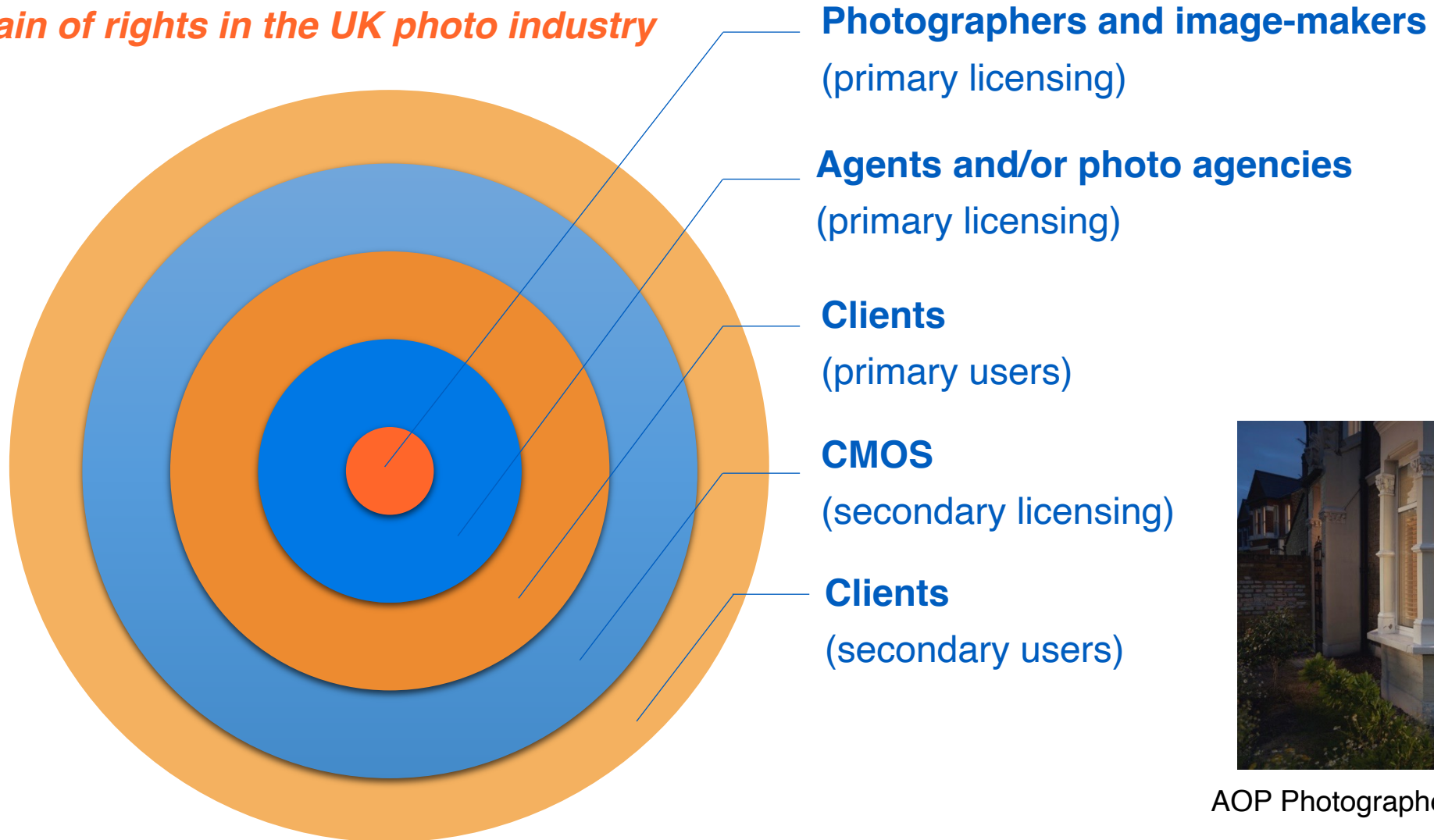
### *The photo industry eco system*



AOP Photographer © Michael Wharley

# The photo industry eco system and chain of rights

## *Chain of rights in the UK photo industry*

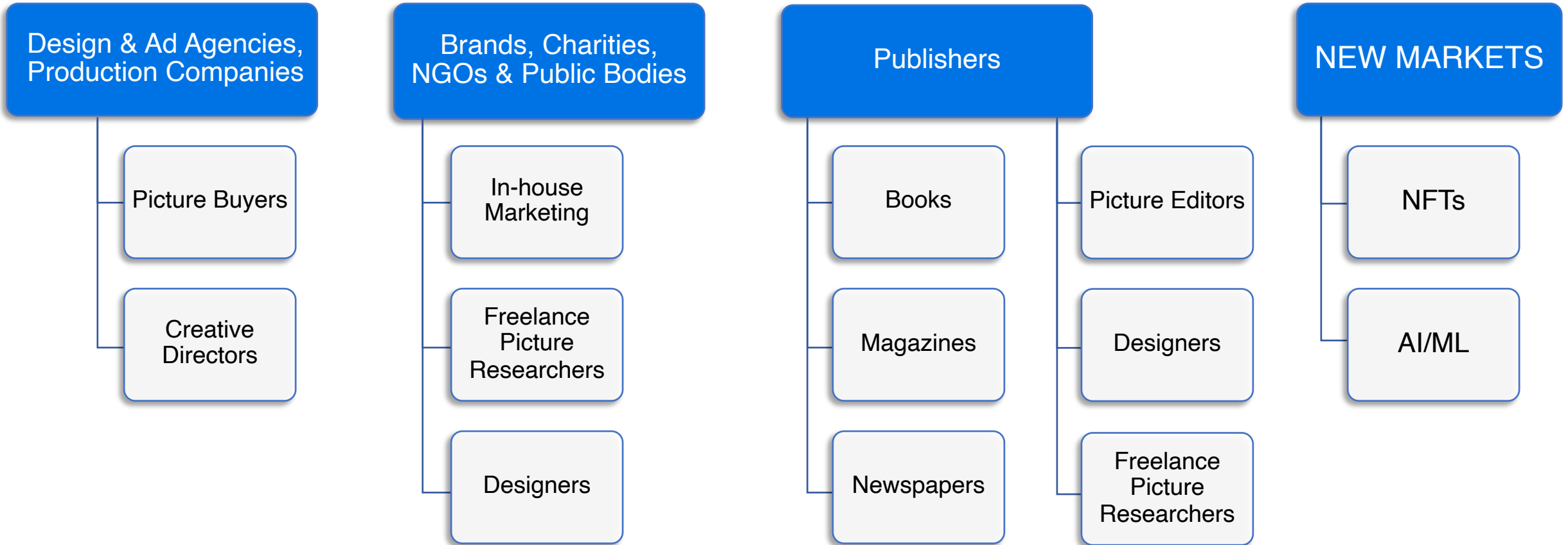


AOP Photographer © Julia Fullerton-Batten

## Types of clients and business markets

**Clients cover: Design, ad agencies, production companies, brands, publishers, charities, public bodies  
Picture researchers, editors, buyers or designers, public relations & marketing**

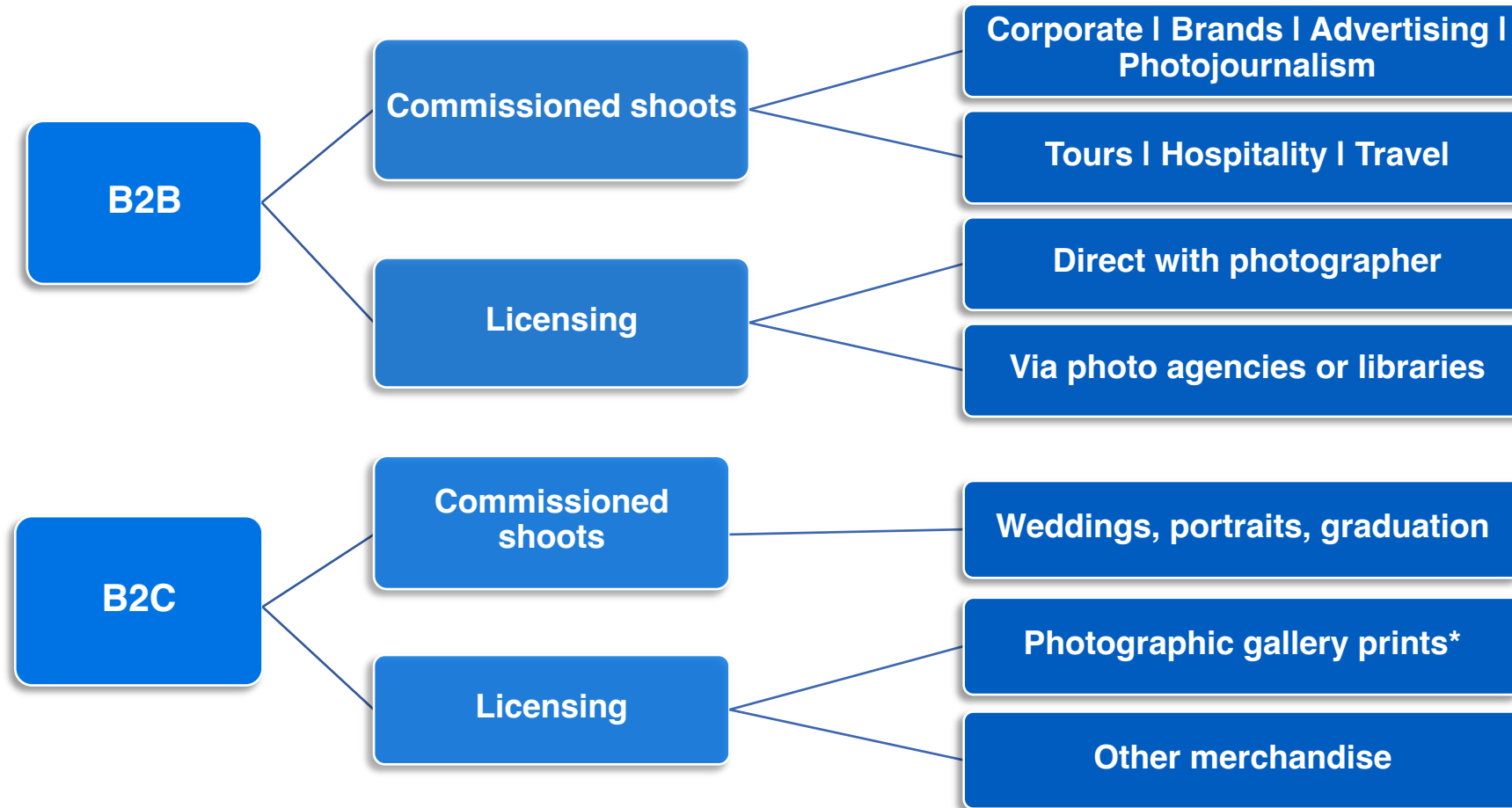
**Now seeing a burgeoning licensing market appearing – NFTs, AI and Machine Learning !**



## Types of clients, and business markets

**Business to Business:** Professional commissions and licensing for end products

**Business to Consumer:** Provide bespoke products such as prints, or photographing occasions



**However...**  
The arrival of **Social Media Platforms** has disrupted these traditional business market routes

\*Artists Resale Rights of over £10k

## Types of licensing bodies

---

### Collective Management Organisations (CMOs) - what & who are they?

- A **type of licensing body** which grant rights on behalf of *multiple rights holders* in a single ('blanket') licence for a single payment
- Can be called *secondary licensing*, after primary licensing is issued by photographers and/or photo libraries
- CMOs *here* represent rightsholders of broadcast or published work, either directly or through a related collecting society
- Claims are for **photographs already published in print or online**
- Two relevant CMOs represent photographers and agencies:  
DACS (est. 1984) and PICSEL (est. 2016)
- **UK law allows recognition for the contractual chain of rights**

**AOP**

Association of Photographers

**BAPLA**<sup>®</sup>





## Types of marketplace licences offered

**Commissioned shoots** Most professional photographers are commissioned, adding licensing terms not covered below

**Picture Libraries and Agencies** Tend to offer range of the following licence models:

**Rights Managed**

Has the most control + most popular with photographers and agencies; works well for specialist, bespoke, or high investment images

Less popular with clients as they need to re-license for other uses; critical for high investment images

**Royalty Free**

Favoured by many clients, allows for multiple uses

Can lower the market value of images in the long term

**Flat Rates**

Applied to all sizes, can make it simpler for both parties

Once used it's then hard to revert to other licensing models; have to go with market rate

**Subscriptions**

Works well with vast digital collections – either multi-packs or micro payments

Popular with low value or freemium models

**Creative Commons**

Popular with cultural heritage, tied into funding

CC-BY applied to an image is immutable!

## Types of licences, clients, and business markets

- **Contract terms**
- **Copyright**

### Contract Terms are vital for rightsholders to understand

We always recommend

- Becoming familiar with certain onerous terms
- As such terms can unwittingly hand over rights to other parties
- And unfairly disadvantage image rightsholders

### Copyright basics

We always recommend

- Understanding why **copyright** is important for a professional career
- Gives rightsholders power to permit use, generate income, and enforce usage rights
- Understanding where national exceptions apply, including in other territories

Terms of Service

worldwide use

transferable

sublicensable

in perpetuity

any language

all media any format

third party use

license photocopying

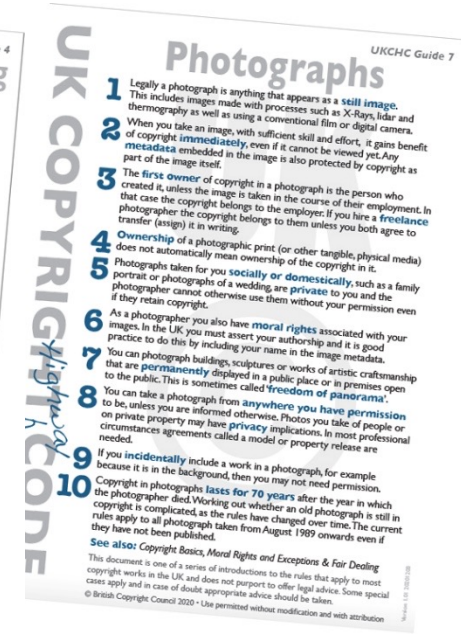
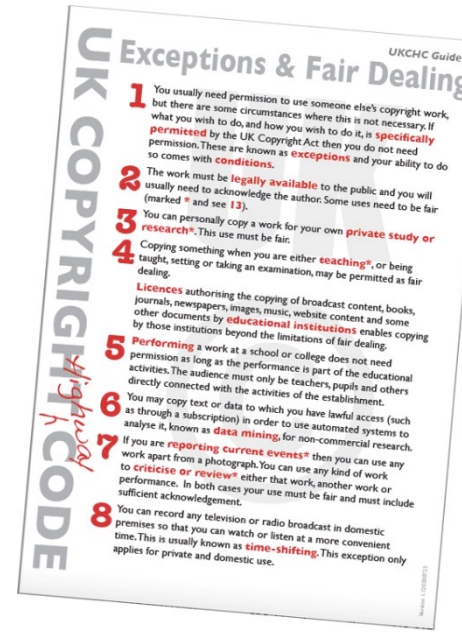


AOP Photographer © Martin Brent

## Copyright and related IP rights for photography

### Areas of copyright law relevant to photographers

- Moral Rights
- Copyright Exceptions & Fair Dealing
- Model & property release
- Trademarks, Design Rights and related-rights,
- Personalities



As members of the British Copyright Council, we always recommend referring to reputable sources for copyright guides:



Intellectual Property Office - <https://www.gov.uk/topic/intellectual-property/copyright>



British Copyright Council - <https://www.britishcopyright.org/information/>

## Copyright law for photography

### UK copyright framework in relation to photographs

- Works of art and works of artistic craftsmanship in photos - are they incidental uses?
- Freedom of Panorama e.g., public space - architecture, sculptures, etc on permanent display
- News Reporting - reporting on current events, the exception doesn't apply to photographs in the UK



Works of artistic  
craftsmanship?



Incidental Use?

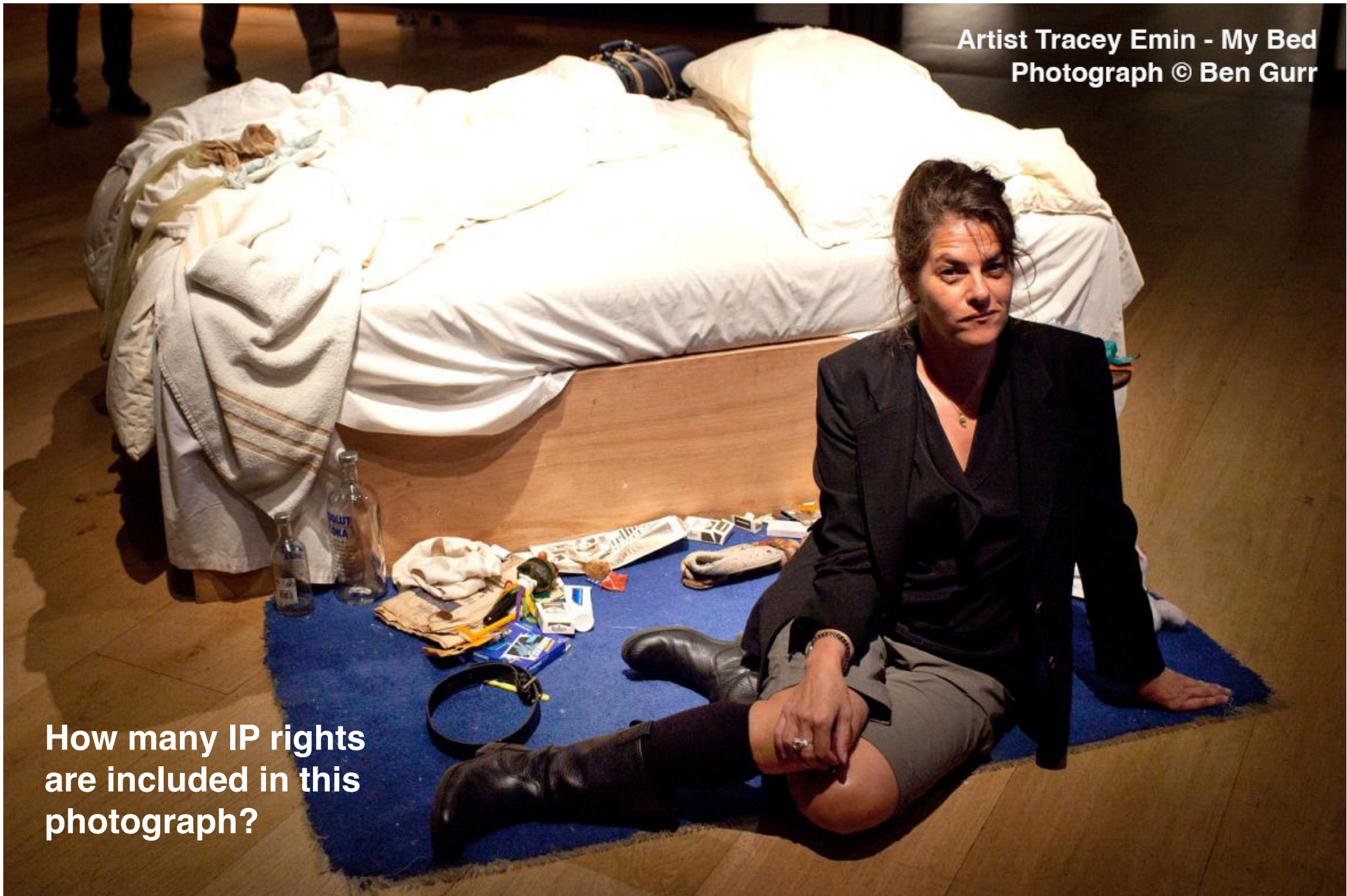


Freedom of panorama?



Artist Tracey Emin - My Bed  
Photograph © Ben Gurr

How many IP rights  
are included in this  
photograph?



## Copyright law for photography

**AOP**

Association of Photographers

**BAPLA**<sup>®</sup>

**Moral Rights - Why are the  
stills credits an issue here?**

**Studio Facilities  
RIVERSIDE STUDIOS**

**Post Production Facilities  
SERIOUS**

**Graphic Design  
BOMPER STUDIO**

**Stills  
ALAMY  
REX FEATURES  
COPYRIGHT 2020 TWITTER, INC  
AND OTHER CONTRIBUTORS**

**Sourced from Social Media**

## Copyright education and key industry concern

**Copyright education** plays a key feature in representing & protecting photographers rights and interests



- **Copyright is the lifeblood of creators** and rightsholders, and their ability to compete in the marketplace
- A **constant & costly challenge** is the **enforcement of copyright** particularly **online use** across all parts of the world
- Around **93%** of photo businesses **experience online copyright infringement** \*
- With an average **loss of 25% licensing revenue** as a result of online infringements
- **Licensing copyright protected works is key** to sustaining a lifelong career in our industry



[\* BAPLA Online Infringement Survey, November 2019]

## Key industry concerns

Can **copyright law** serve **photographers** better?

- All image rightsholders face the issue of copyright infringement
- Copyright infringement is an economic harm
- Most copyright infringements go unchallenged and unreported – why?
- Options available to photographers as small businesses are limited but do provide some support

### Options available to photographers:

- Commercial settlement
- Use copyright enforcement services
- Take-down notices from hosting platforms
- Undertake legal action using the UK's Intellectual Property Enterprise Court (IPEC) Small Claims Track for up to £10,000

The IPEC SCT option is usually undertaken as a useful last resort  
Both Australia & US have now introduced similar small claim courts to assist sole traders and small business rights owners

### Average set-up costs (per shoot):

- Standard kit equipment investment  
**Average £20,475.00**
- R&D, Production costs, and Post-work time  
**Average £8,762.00**
- **Total: Average £29,237.00**





## Use of social media

---

### Social Media Platforms - What are the risks and why does it matter?

- Content is shared so broadly, often the original source or rightsholder information gets lost
- Significant number of non-permitted commercial uses (*infringements*)
- Larger risks with expectation of 'free to use' images
- Often not cleared for third party rights
- Could end up with an infringement claim notification
- Third party services known as '*embedding tools*'\* **Issued under a sublicensable term** - sometimes used by commercial services without realising they need to clear rights

\*[Various *US Photographers / Instagram cases, incl. Mashable, Newsweek, BuzzFeed, & other publishers (a current case features two photojournalists Alexis Hunley and Matthew Scott Brauer)*



## The future for the photo industry

### What does the future hold?

- The **utilisation of photographs for AI** - copyright permissions for data input & possible data misuse?
- Recommend licensing for **commercial text & data-mining** use
- Data protection - privacy policies should consider **data subject rights**
- Increase in **Non-Fungible Tokens (NFTs)** – regulation of online environment and education on copyright
- Gradual increase in **synthetic content** which could be both lucrative and risky, depending on how image content is sourced
- Increasing industry drive to identify and promote **image authenticity**



AOP Photographer © Richard Seymour



**Where relevant we recommend always seeking & obtaining a licence to support photographers' creativity**





Thank you

[isabelle@the-aop.org](mailto:isabelle@the-aop.org)

[anna.skurczynska@openplanlaw.com](mailto:anna.skurczynska@openplanlaw.com)



AOP Photographer © Tim Flach