



**WIPO/BCC Advanced Copyright Course - 8 September 2021**

# **Rights and Interests of Photographers**

Presented by Isabelle Doran, Chair, BAPLA and  
Board Director for Artistic Works, BCC

# BAPLA

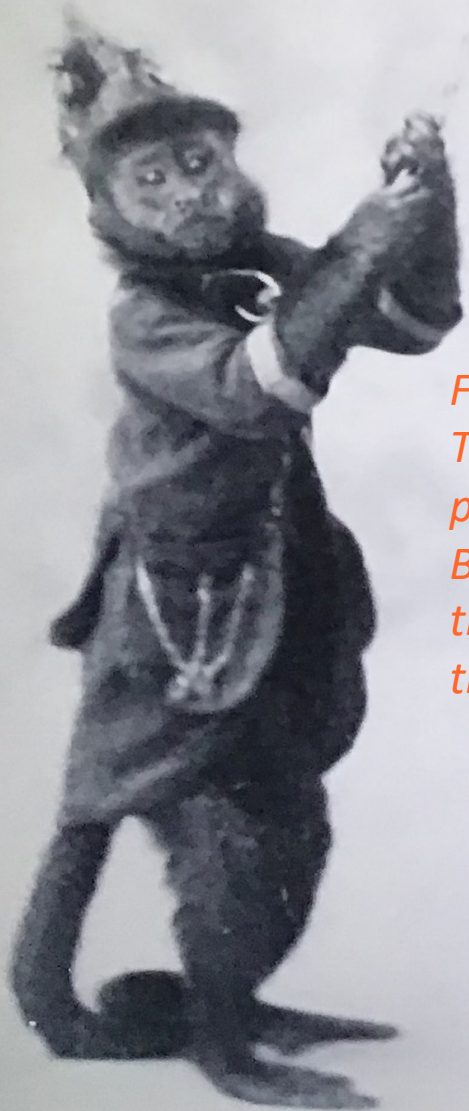
## Rights & interests of photographers

*Covering the follow:*

- 1. About BAPLA**
- 2. Copyright education and key industry concern**
- 3. The photo industry eco system and chain of rights**
- 4. Types of licences, clients, and business markets**
- 5. Areas of relevant copyright law for photography**
- 6. Contract terms and copyright basics**
- 7. Social media and memes**
- 8. The future for the photo industry**



## Rights & interests of photographers



*From the Statute of Anne in 1710  
To the development and impact of  
photography in the 1830s  
By the 1890s photographers recognised  
the significance of **copyright** to protect  
their economic right*



*Copyright 1892  
By L.C. OVERPECK.*

## About BAPLA

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BAPLA<sup>®</sup>

*British Association of Picture Libraries and Agencies*

**Who we are:** Founded in 1975, BAPLA is the UK's largest trade association for image suppliers

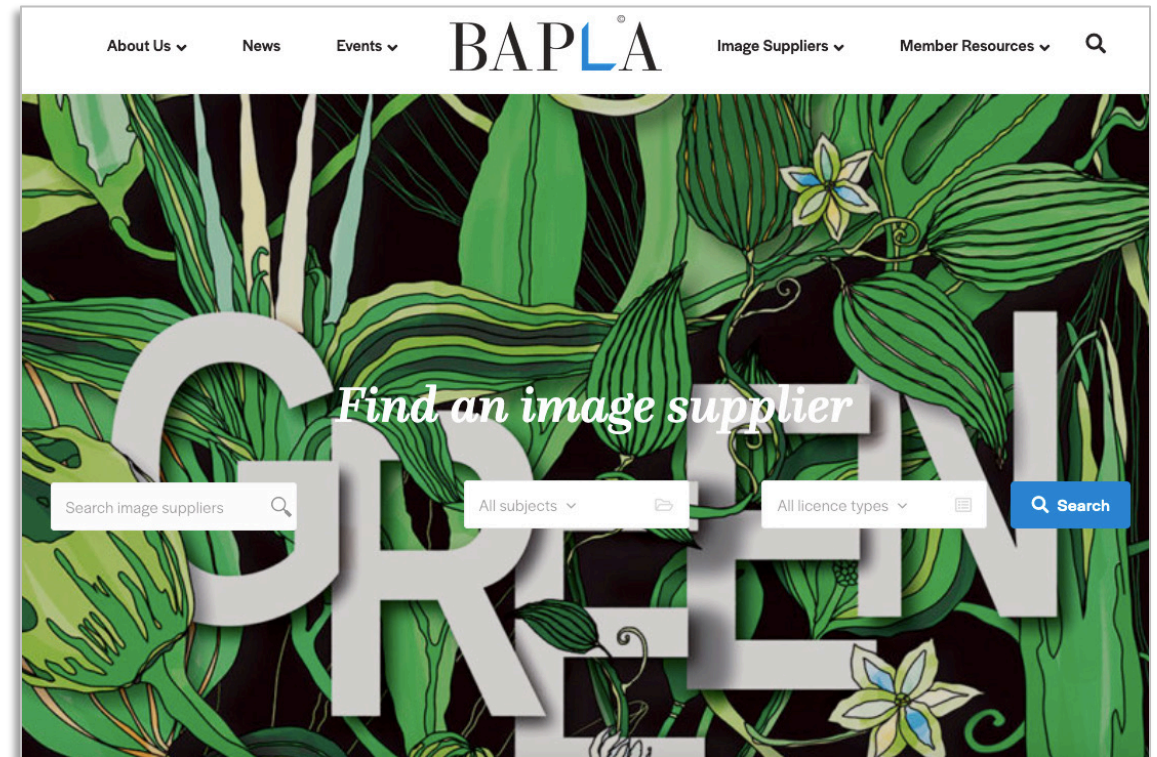
### **Who we represent:**

BAPLA represents image licensors, incorporating a broad and diverse membership of **over 100** members, Combined our members have over **1 billion images** available to license

providing a vital '**economic link**' for over **120,000** professional photographers

**What we do:** BAPLA provides an **essential gateway** to a broad & diverse range of image licensors from:

*Sole traders; major stock, production and news agencies; SMEs; cultural heritage institutes; & technology companies*



# About BAPLA

# BAPLA<sup>®</sup>

BAPLA members supply and license a substantial percentage of images seen every day in print and digital media

The collage illustrates the BAPLA ecosystem. On the left is the BAPLA search interface with a 'Find an image supplier' banner and search filters. The center features a grid of image suppliers including 4Corners Images, Arcangel Images, AirTeamImages, and akg-images. Below this are screenshots of media content: 'The Telegraph' with a 'Morning said rush hour' article, 'METRO' with a 'How to cook Will Torrent's apricot and florentines' recipe, 'The Lifestyle Editor' with a 'Beautifully Small' article, and a book cover for 'The Forgotten Garden' by Kate Morton. A 'MODERN RUSTIC' magazine cover is also visible, showing a dining table and cookies.

# About BAPLA

# BAPLA<sup>®</sup>

A selection of some photo archives, libraries, agencies, and stock content suppliers we represent

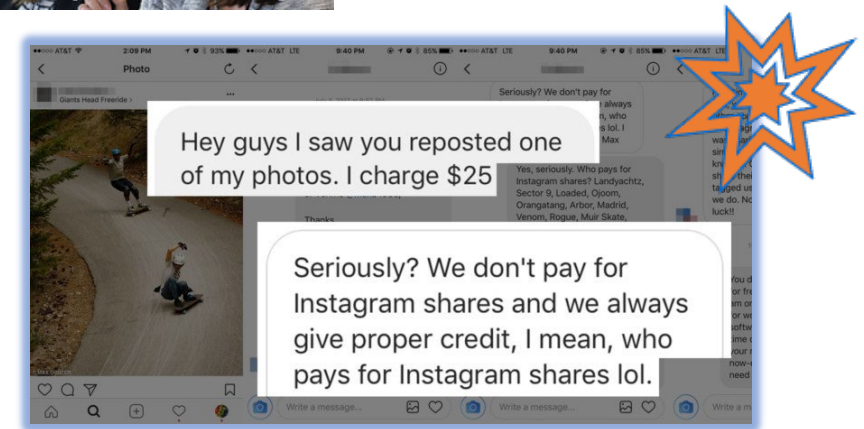


## Copyright education and key industry concern

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



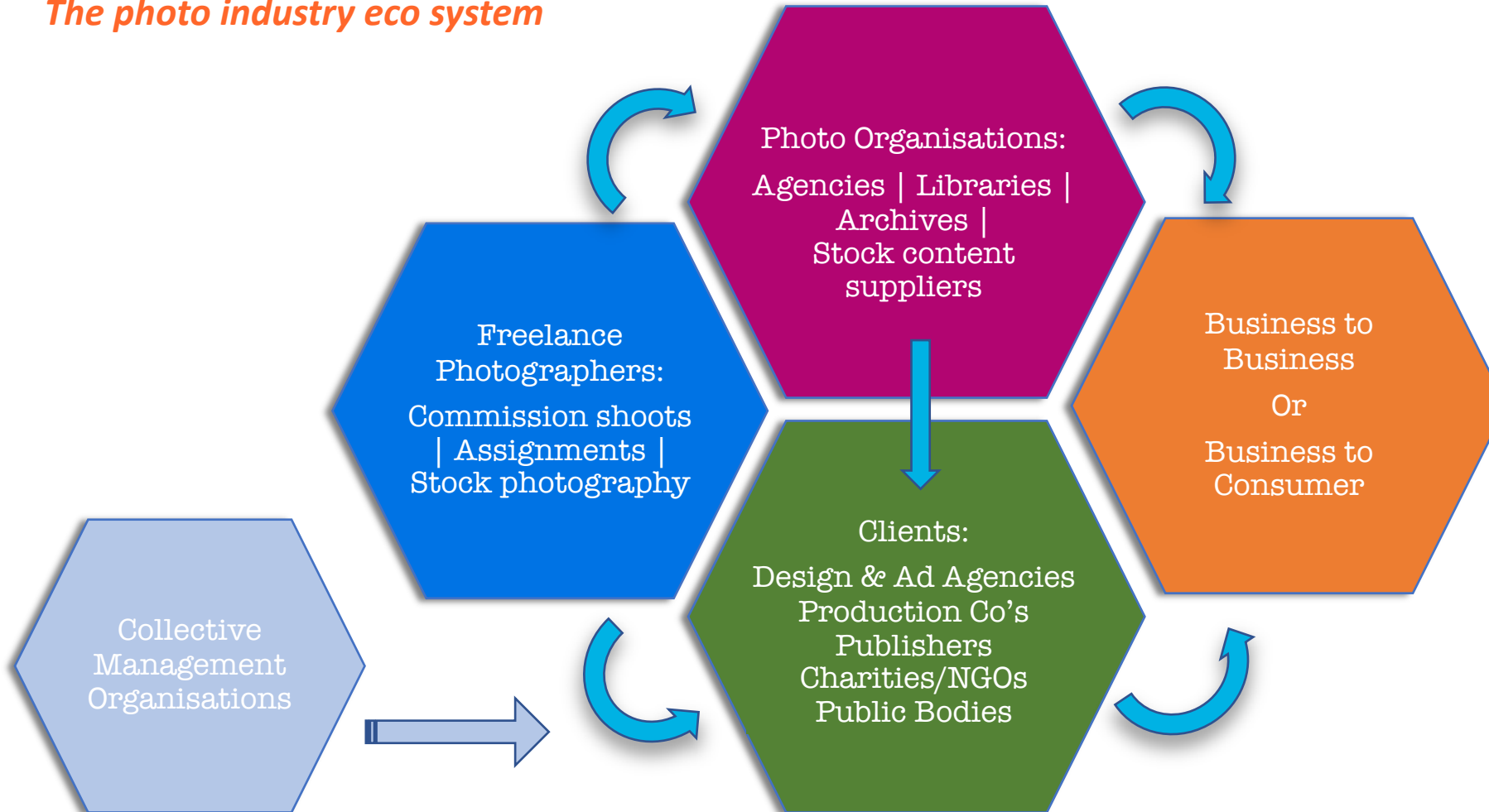
- A **constant & costly challenge** is the **enforcement of copyright** - particularly **online use** across all parts of the world
- Copyright **infringement online** sees no signs of abating
- **93%** photo businesses **experience online copyright infringement\***
- **25% licensing revenue is lost** as a result of online infringements



[\* BAPLA Online Infringement Survey, November 2019]

## The photo industry eco system and chain of rights

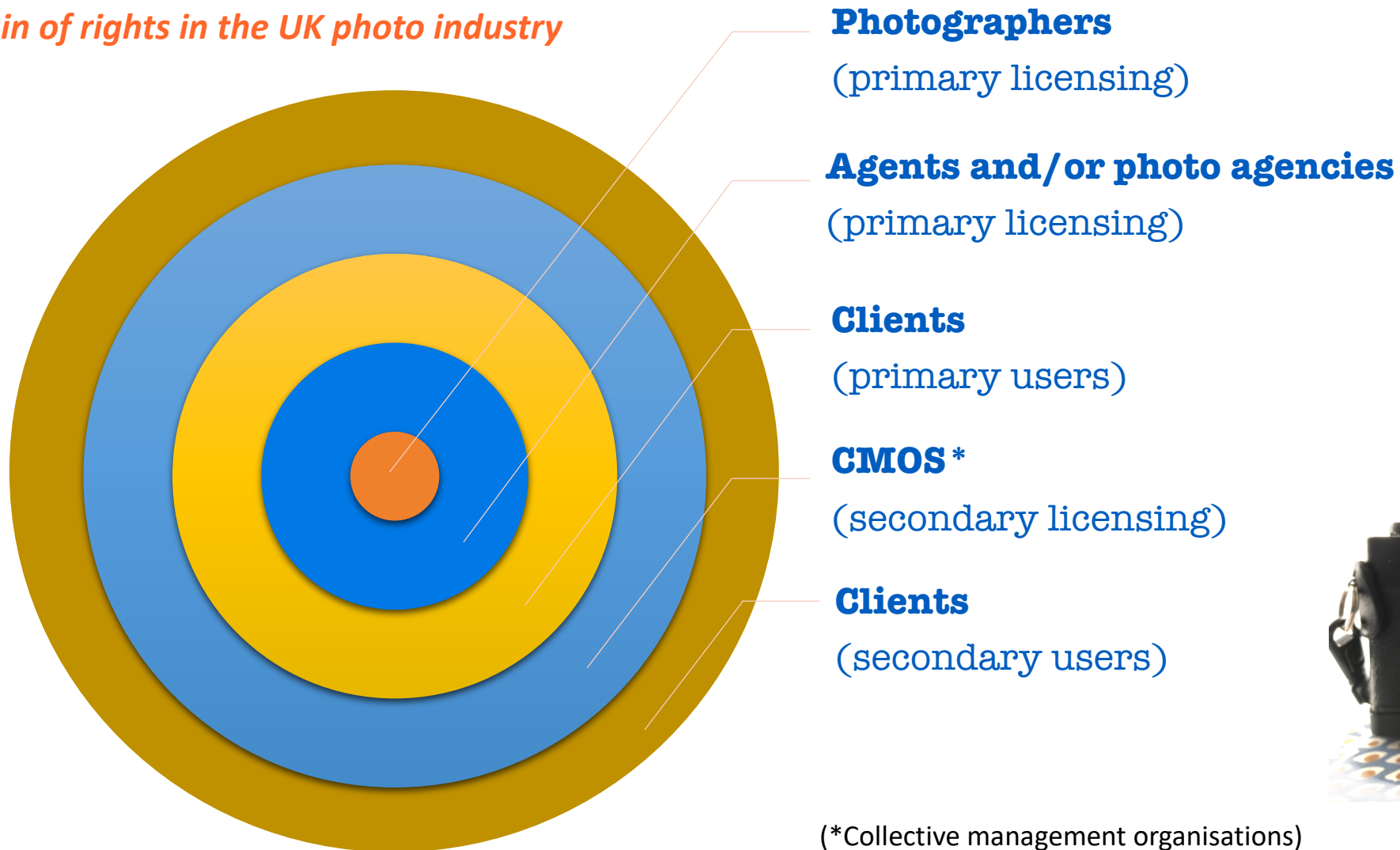
### *The photo industry eco system*





## The photo industry eco system and chain of rights

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



(\*Collective management organisations)

## Types of licences, clients, and business markets

**Commissioned shoots** - Most common contract work for photographers, which can be licensed for further uses

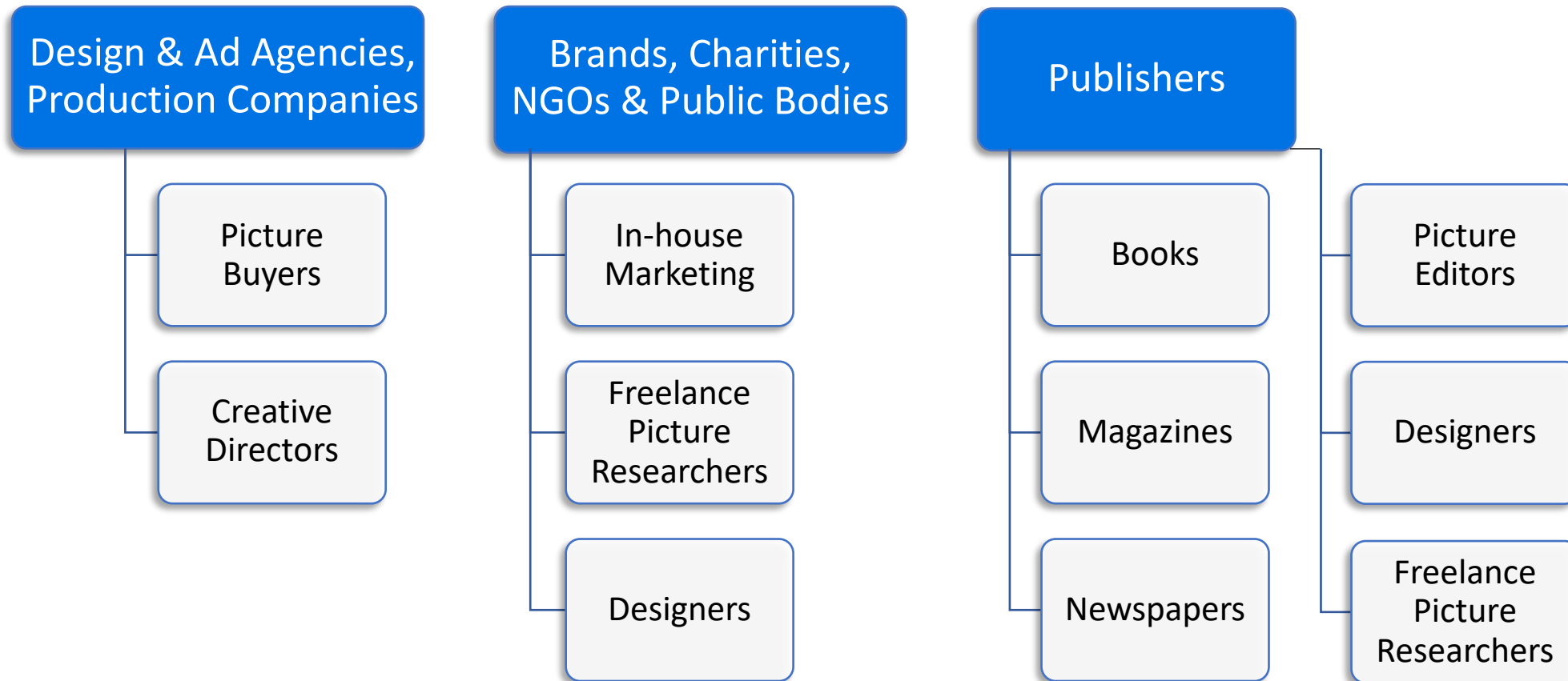
Wide variety of 'primary' licensing models provided:

|                         |  |  |
|-------------------------|--|--|
| <b>Rights Managed</b>   | 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 |
| <b>Royalty Free</b>     | Favoured by many clients, allows for multiple uses - for > 3 price points. Useful for everyday lifestyle images                    | Can lower the market value of images; hard to check on whether clients have gone beyond licence          |
| <b>Flat Rates</b>       | 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                |
| <b>Subscriptions</b>    | Works well with vast digital collections – either multi-packs or micro payments  | Popular with low value or freemium models (Pixabay, PicJumbo, etc)                                       |
| <b>Creative Commons</b> | Popular with cultural heritage, tied into funding  | CC-BY applied to an image is immutable!  |

Industry now increasingly licensing images for AI machine learning !

## Types of licences, clients, and business markets

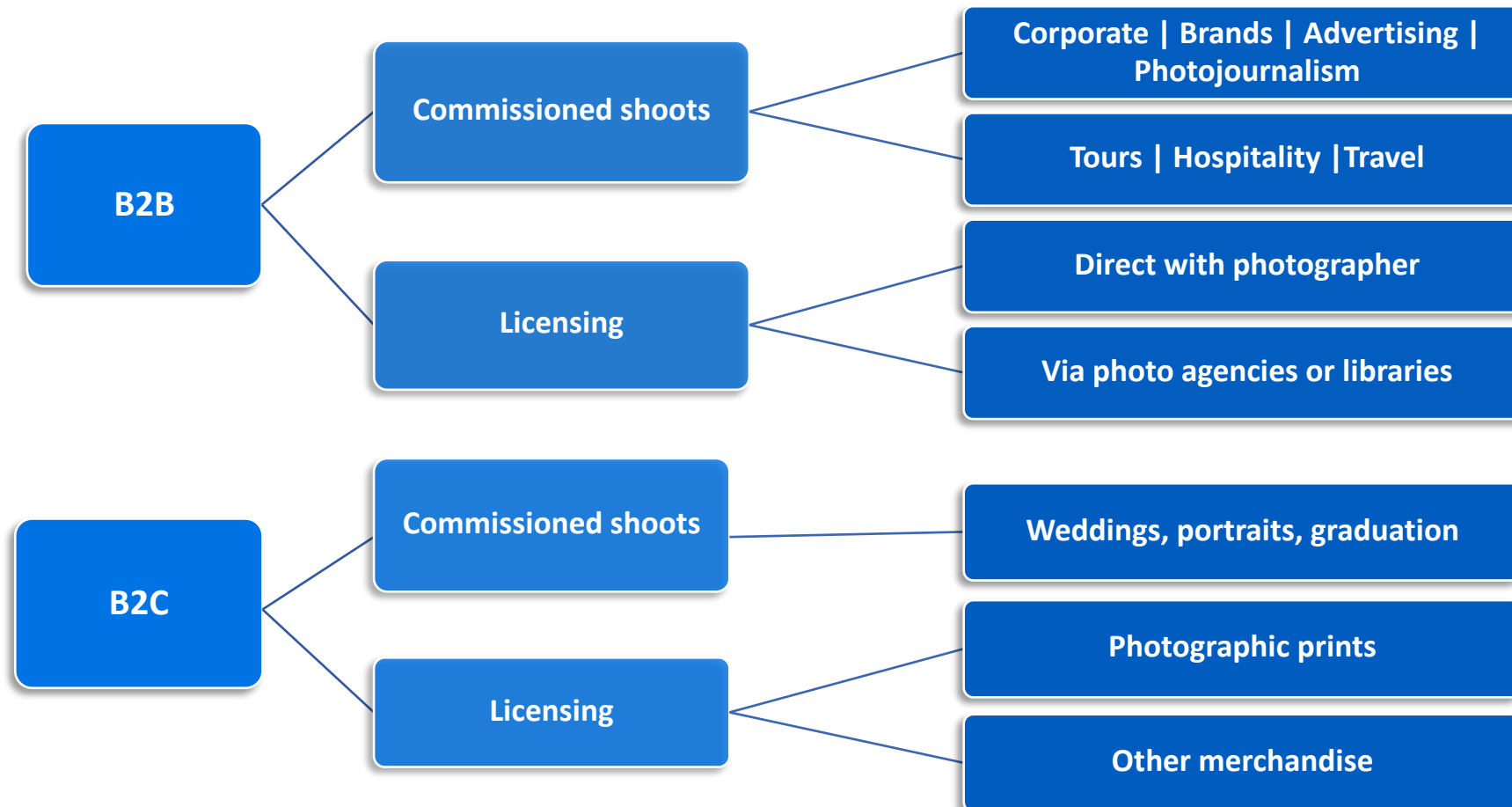
*Clients cover: Design and ad agencies, production companies, brands, publishers, charities & public bodies  
Picture researchers, editors, buyers or designers, public relations & marketing*



## Types of licences, 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 such as weddings*



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

## Types of licences, clients, and business markets

### *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

BAPLA<sup>®</sup>



DACS<sup>®</sup>

PICSEL



educational recording agency



## 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 flagrant terms
- Such terms can unwittingly hand over rights to other parties
- And unfairly disadvantage rightsholders

### Copyright basics

- 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

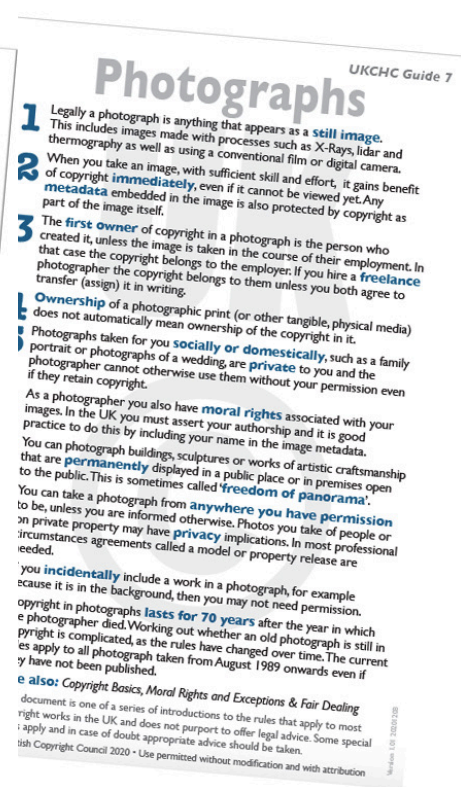
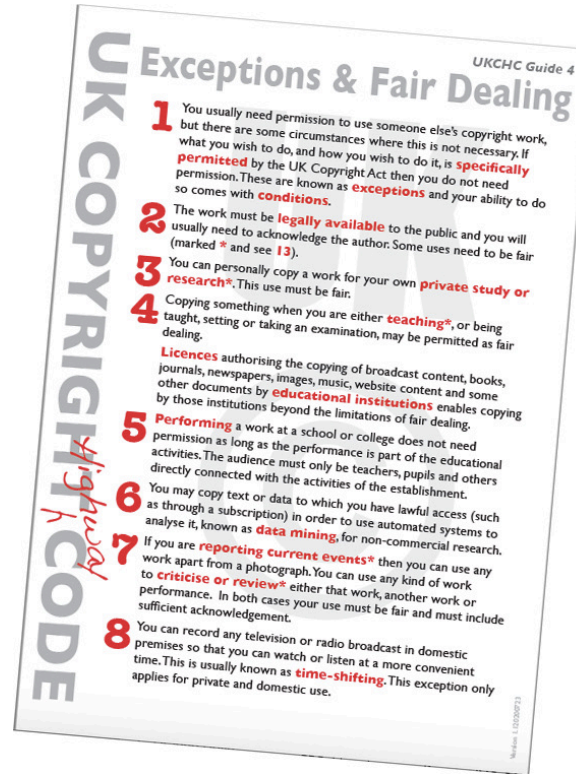
Terms of Service  
worldwide use  
in perpetuity      sublicensable  
any language      all media any format  
third party use  
license photocopying      transferable



## Copyright law for photography

### Areas of copyright law relevant to photographers

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



As a British Copyright Council member, 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

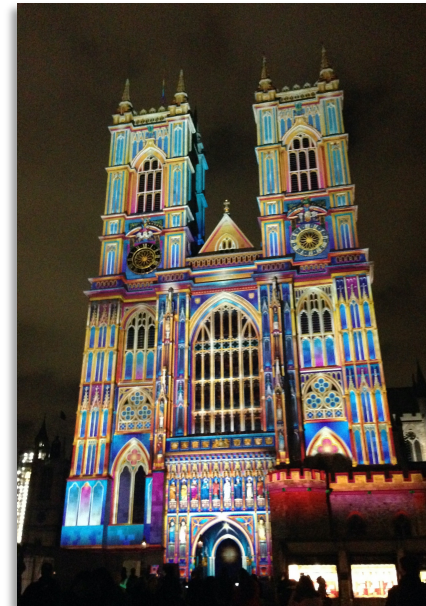
- News Reporting & Fair Dealing - reporting on current events, the exception doesn't apply to photographs
- Works of Artistic Craftsmanship in photos - now 70 years after death of the author > are they incidental uses?
- Freedom of Panorama e.g., public space - architecture, sculptures, etc on permanent display



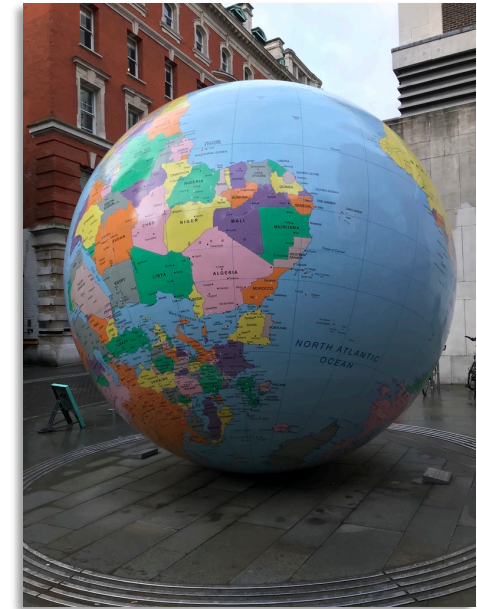
Works of artistic craftsmanship



Incidental Use?



Freedom of panorama?





## Copyright law for photography

*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**

## Social media and memes

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

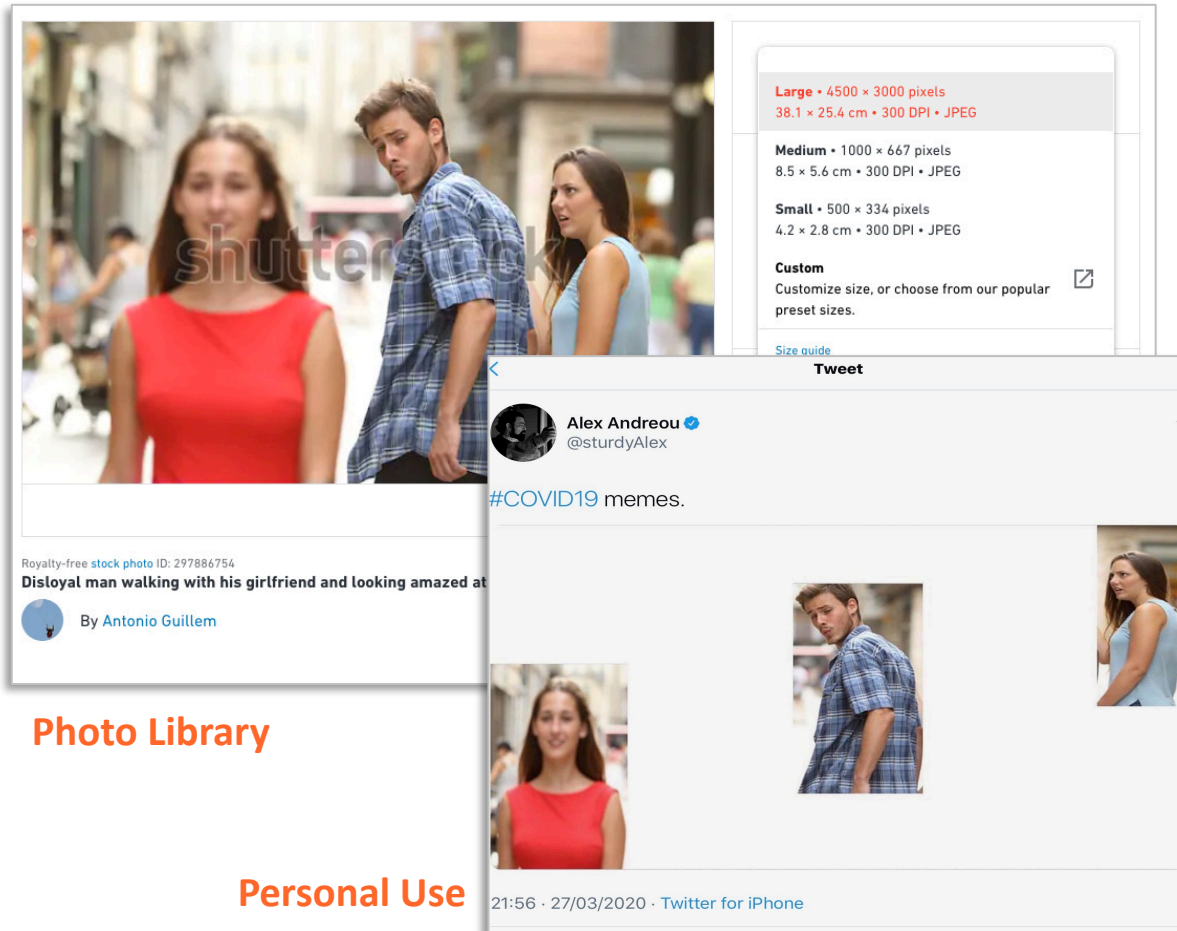
- Content is shared so broadly, often the original source or rightsholder gets lost
- Significant number of non-permitted uses (*infringements*)
- Larger risks with expectation of free to use
- Often not cleared for third party rights
- Could end up with an infringement claim notification
- Third party services known as ‘*embedding tools*’\* **Issued under 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)*



# Social media and memes

## Memes - exceptions and fair dealing (UK)



Large • 4500 × 3000 pixels  
38.1 × 25.4 cm • 300 DPI • JPEG

Medium • 1000 × 667 pixels  
8.5 × 5.6 cm • 300 DPI • JPEG

Small • 500 × 334 pixels  
4.2 × 2.8 cm • 300 DPI • JPEG

Custom  
Customize size, or choose from our popular preset sizes.

Size guide

Tweet

Alex Andreou  
@sturdyAlex

#COVID19 memes.

Royalty-free stock photo ID: 297886754  
Disloyal man walking with his girlfriend and looking amazed at  
By Antonio Guillem

21:56 · 27/03/2020 · Twitter for iPhone

Photo Library

Personal Use



Penguin Random House  
@penguinrandom

Follow

me  
em dash  
knowing when to use a semicolon

1:11 PM - 29 Aug 2017

10,890 Retweets 33,445 Likes

Commercial Uses



## 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**
- Increasing use of Non-Fungible Tokens (**NFTs**) - rights clearance?
- Gradual increase in **synthetic content** which could be both lucrative and risky... depending on the source
- Increasing industry drive to identify and promote **image authenticity**



*Where relevant always seek & obtain a licence to support photographers' creativity*



BAPLA<sup>®</sup>



Thank you & questions?

## WIPO/BCC Advanced Copyright Course

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Presented by Isabelle Doran, Chair, BAPLA

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 <https://www.linkedin.com/company/bapla/>

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*Floating in air © Isabelle Doran*