

## Response sheet

Please provide evidence from those markets and media types you have experience of with a completed Response Sheet to "[HooperSecretariat@ipo.gov.uk](mailto:HooperSecretariat@ipo.gov.uk) no later than **Friday 10 February**.

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Please indicate which media type you work with (tick as appropriate)	Music and audio Performances <b>Artworks ✓</b> Still pictures Moving pictures Mixed media (content that contains moving pictures, text and still pictures, e.g. a newspaper website) Cross-media (the same digital content being licensed on different platforms, for example cable television and Smartphones) Other (please provide details)	

This consultation forms part of a publication exercise. As such, your response may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

If you do not want part or whole of your response or name to be made public please tick this box: and explain why you regard the information you have provided as confidential:

## **DCE feasibility consultation reply by The Association of Photographers (AOP)**

The Association of Photographers Limited (AOP) is a not-for-profit professional trade association, founded in 1968. Its aims are to promote and protect the worth; credibility and standing of its members and to vigorously defend and lobby for the interests and rights of all photographers in the photographic profession.

With around 1,600 members, the AOP represents professional photographers, assistants, agents and students. Members have a wide client base, ranging from individual clients in the corporate sector to design groups, publishing houses, music publishers and advertising agencies. Their work is published worldwide in magazines, newspapers, books and advertising campaigns and many sell their images as Fine Art through galleries, both traditional spaces and online.

The AOP is a member of the British Copyright Council, British Photographic Council, Pyramide Europe (EEIG) and AOP members are represented by the Design and Artists Copyright Society (DACS) for collective licensing.

All our photographer and assistant members are SMEs, some work in partnership with another photographer but the vast majority are individuals either working for their own limited company or as sole traders.

### 1) Hypothesis:

*"Copyright licensing involving rights owners, rights managers, rights users and end users across the different media types, in the three defined copyright markets, is not fit for purpose for the digital age."*

Whilst there is some truth in this statement it is not that straightforward and not necessarily correct for all genres. Photography is relatively easy to licence in the digital age:

- directly from the photographer, or their agent for commissioned images
- directly from the photographer for images on the photographer's website
- through image stock libraries such as Getty
- by collective (CLA licence) for photocopying, scanning, and cable re-transmission.

However, it is equally as easy for images to be downloaded and used illegally, without permission and without a licence. Images are a perfect medium for a

digital age, the Internet is saturated with images, both professional and amateur, available through sites such as Flickr and Facebook. Google Image searches for images by name or subject, and trawls the web to produce pages of results.

*copyright licensing is:*

*expensive (process and cost of rights)*

Processing a licence to use an image has little cost to the licensor, other than administration time – whether the licensor is an individual, an agent or a library. The cost of the rights themselves are tailored to meet the licensee's needs and can be included in the initial fee paid, when the images are being commissioned; or calculated using the media, territory and time period the licensee requires.

<http://calc.the-aop.org/BUR.html>

[http://www.gettyimages.co.uk/Services/RightsClearance.aspx?isource=gbr\\_home\\_FTV\\_rightsClearance](http://www.gettyimages.co.uk/Services/RightsClearance.aspx?isource=gbr_home_FTV_rightsClearance)

In 1992, the Association of Photographers (AOP) worked with art buyers from leading advertising agencies and photographic agents to agree a method of licensing images, together with a method of charging for additional usage of images over and above the initial commission brief. The method has, over that time, provided a workable solution to ensure all parties to the contract/commission clearly understand how and where images can be used, and formulate how much extra needs to be budgeted for if additional usage is required. The AOP has now set up an on-line "Usage" calculator, which is currently being beta-tested, to provide free, easy access to the formula that can provide the suggested cost of appropriate fees for both licensors and licensees. A link to this calculator is in the previous paragraph.

A list of the most common licensing terms used by photographers is in the appendix to this reply and a more comprehensive list can be found at <http://www.useplus.com/useplus/glossary.asp>

To further help those commissioners of photography, who work on a direct client basis rather than using marketing agency to negotiate for them, we produced a website [www.copyright4clients.com](http://www.copyright4clients.com) to educate them on how photographers price and license their work. The site links through to our Association site so that they can see, and download, the paperwork and methodology of pricing the re-use of images [www.the-aop.org](http://www.the-aop.org).

*difficult to use*

Licensing is not difficult unless the rights owner is difficult to trace; for example

when metadata that is usually stored with a digital image has been stripped out, leaving the image without identification that would lead to the rights-owner of the image. When this happens, the work is said to be 'orphaned' or an 'orphan work'.

### *difficult to access*

Licenses are only difficult to access if those who are party to the license are not widely-known and cannot be traced. However if all images are said to be licensed in order to be used, any images used by an individual or organisation could be said to be licensed by them and they should be able to provide access to the license details if requested so to do. Equally, if the image is credited to the rights-owner they can be traced and a query placed about the license details.

### *insufficiently transparent*

Image licences clearly state where, when, and for how long the image can be used. [http://home.the-aop.org/Downloads?p13\\_sectionid=2](http://home.the-aop.org/Downloads?p13_sectionid=2) Licences are accessed either through the photographer, their agent, or the library contracted to licence the work. All of these contacts should be visible on, in, or close to the image on the web-page and contactable by telephone, email, or click-through from the website. This information should be part of the metadata that is stored with each digital image.

### *siloed within individual media types*

Images may be imbedded in books (digital 'e-books' and analogue), television programmes or a moving image, but the rights-owners can often be traced. The fact that they are embedded often provides an easier path to trace back to the photographer through the publisher or producer.

### *victim to a misalignment of incentives between rights owners, rights managers rights users and end users*

The assumption that any misalignment of incentives exists de facto is incorrect. As with any transaction, as long as the terms of reference are clear and all parties understand the scope of the licensing provision, there is no issue to deal with. There has been much misinformation spread by various 'tech giants' who see the internet as a resource in its own right, providing material for no charge for all to use. This is often referred to as 'innovation' and is incorrect. Where creators or rights-owners have their work used without permission and at rates not previously negotiated or agreed with them, this is wrong.

## *insufficiently international on focus and scope*

Image licensing operates worldwide - as mentioned earlier, images are an ideal medium for the digital era; images that were previously produced on film are now produced digitally and can be easily uploaded to websites and distributed via the Internet. There is already a well-established global market for image licensing.

The digital era has seen the photographic industry expand, allowing photographers to reach new clients worldwide, license their work to a greater range of business, show their work to a global community through the expansion of social networking sites and sell images via online galleries to people who would not normally have considered purchasing an original work.

Many clients use the images they have commissioned on their websites as a matter of course; most magazines and newspapers publish digital versions of their publications. All of these uses can be, and are licensed at a reasonable cost.

*therefore*

*size of rights \*owners/managers pie is smaller than could be  
share of the pie for rights owners is smaller than it could be  
new digital business is being held back  
innovation held back*

In the case of photography, there is already an established method and formula for calculating the size of rights and share of the pie. However, new digital business can only be said to be held back, if it wants to license work [as it should] and the images it finds to use and would like to license are not shown with any information that can lead back to the rights owner [i.e. they have been orphaned].

*infringement of copyrighted content remains persistent*

This is certainly true, but not because of licensing failures but because there is apathy on behalf of the user to trace the creator: there is an incorrect perception that 'everything on the 'net is free' and it is easy to download and copy images, without permission or the creator's knowledge. This is theft.

Not all image digital file formats support metadata (that may include information on how large the picture is, the color depth, the image resolution, when the image was created and other data), which can be removed automatically when these formats are changed and search engines harvest imagery on request.

*end-user deprived of access to significant amount of commercially and culturally valuable content eg., archive material*

We are aware of the number of works claimed to be held by cultural institutions and for which rights owners cannot be traced. These historical works have not been 'orphaned' as a result of licensing not being fit for a digital era and have become orphans before the digital era began, when information on ownership had to be shown in, against or on the back of a printed image.

New 'orphans' will be created if the UK moral rights regime is not brought up to speed with the digital era. Quite simply, we want Moral Rights to be unwaivable and automatic. No assertion should be required on the part of the creator/rights-owner.

*UK GDP should grow by extra 2 billion per year by 2020 if barriers in the digital copyright market were reduced*

We are yet to be shown the basis of and evidence for this figure. It is feasible that a Digital Copyright Exchange – run in a similar way to the Amazon marketplace – could increase access to copyright works and, in return, boost income for both the creator and the UK economy. However, the figure quoted is hard to believe without empirical evidence.

## Section 2 – Definitions

We appreciate the clarity with which the processes of licensing, the distinctions between types of licensing, the various parties to the rights licensing process and the nine major media types are shown. We would agree with these definitions.

The three defined copyright markets and value chain, however, are different in the visual world.

Primary licensing for commissioned works is handled by rights-owners themselves, or a photographic agent:

- to the advertising/design agencies who act on behalf of the ultimate client/end user.
- to the client, business-to-business (b2b), using the images eg., annual reports for the corporate sector or small businesses who commission the photographer without using a 'middle man' (an agent).
- to the client, retail (b2consumer) eg., wedding and portrait photography for personal and not commercial use.
- 
- to the magazine or publishing house for magazine, book and newspaper use.

Primary licensing of works already in existence:

- is contracted out to stock libraries (eg., Getty) who license images commercially to businesses and individuals
- is licensed directly by the rights owner via their own stock library to businesses and individuals

Secondary licensing of works already in existence but where tracing copying is impossible for the individual:

- is handled and licensed by the Copyright Licensing Agency for photocopying/scanning in businesses and educational establishments [www.cla.co.uk](http://www.cla.co.uk)
- is licensed by the Educational Recording Agency for works included in broadcasts to be used by educational establishments (including online learning) [www.era.org.uk](http://www.era.org.uk)

Monies for these secondary uses are collected on behalf of the visual community by DACS [www.dacs.org.uk](http://www.dacs.org.uk) and distributed through their PAYBACK scheme.

We would also agree with the majority of the features differentiating the digital age from the analogue/print age, but not all. We provide our interpretation of those below:

- *Disintermediation* – we believe the middle man/intermediary is equally, if not more, important to the visual sector in the digital era. More clients from other countries are commissioning UK photographers or licensing their images, more lengthy and protracted negotiations are needed and negotiators and agents become important in this role.
- *The erosion of monopoly status* – we believe that far from eroding monopolies, the digital age has seen certain 'tech giants' become incredibly powerful both in the marketplace for service provision and as lobbyists with deep pockets. Their interests are not the same as the individual creators, whose rights we exist to protect and fight for.
- *The fixed internet is effectively borderless* – we believe that this is not necessarily so. There are certain regions (China, for example) which exert great control over the content accessible to its user-base. Additionally, as software and browsing platforms become more sophisticated it is

increasingly possible to offer region-specific content which maintains the validity of managing use by territory and platform.

Gwen Thomas  
Executive Director Business & Legal Affairs  
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## APPENDIX – Photographic Licensing Media

<b><u>Print Media.</u></b>	<b><u>Content</u></b>
<b>POS</b>	also known as point of purchase
<b>Posters</b>	96/48/16/12/6/4 sheet superlights, escalator panels, bus sides & panels, taxi wraps & seats, bus backs, tube/underground, client vehicles, garage forecourt, rail station and all public areas where advertising is screened (not cinemas).
<b>PR</b>	editorial and industry competition and awards
<b>Press</b>	trade, consumer, local, national, magazines & newspapers
<b>Ambient</b>	clean graffiti, backs of receipts, hanging strips in railway carriages, handles of supermarket trolleys, projection onto buildings, hot air balloons
<b>Brochures</b>	
<b>Direct Mail</b>	door drop, leaflets and postcards
<b>Marketing Aids</b>	non purchasable includes umbrellas, ashtrays, beer mats, exhibition panels, trolley panels
<b>Collateral</b>	Compliment slips, business cards, letterheads, sales brochures, visual aids for presentations, web content, product data sheets, product white papers sales scripts, & demonstration scripts
<b>OOH (Out of Home)</b>	Posters, street furniture (bus shelters /kiosks / phone boxes), transit (buses/ taxis / subway / lorries / airport / post / bus stations) & alternative (stadiums / bike racks/ petrol pumps/ rest areas)
<b><u>Packaging</u></b>	Up to 3 years use, includes CD's & DVD's
<b><u>Digital Media.</u></b>	
<b>Company Website</b>	Main site of multi national interest content
<b>Regional Website</b>	Site with local interest content
<b>Internet Advertising</b>	Pop up ads

<b>Social Media</b>	Ads on Facebook, Flickr etc
<b>Intranet</b>	Company Internal
<b>Digital Posters</b>	digital posters
<b>PR</b>	editorial and industry competition and awards
<b>TV</b>	TV end frame
<b>Mobile</b>	In device images and video
<b>Direct Mail</b>	email campaigns
<b><u>Other media digital or print</u></b>	
<b>Annual Reports</b>	Company reports
<b>First British Rights</b>	Right to publish once in a British publication (magazine or newspaper)
<b>First British Rights with syndication</b>	As above with the right to syndicate to other publications
<b>Credit/Debit cards</b>	
<b>Advertorial</b>	Promotional piece in magazine
<b>Catalogues</b>	Retail or trade product catalogues
<b>Inserts</b>	Magazine Inserts
<b>Merchandising</b>	Images on promotional, saleable items eg T-shirts