



Questions on Territorial Licensing – BAPLA Response, November 2014

About BAPLA:

BAPLA is the trade association for picture libraries and agencies in the UK, representing over 200 members ranging from large to medium-sized companies to micro businesses and individuals licensing photographic images. Members include the major news, stock and production agencies as well as sole traders, specialist subject photography, and cultural heritage institutions. BAPLA members supply a significant percentage of images seen every day in print and digital media, both in the UK and Europe. We represent diverse and flexible commercial enterprises affording both rights holders and licensees a wide range of choice to license content from a national to a global scale. Our members employ in the region of 2,500 people in the UK and generate revenue for, and manage the interests of 120,000 creators and rights holders. From a commercial perspective, our members have always provided flexible business models adapted to the needs of their Business-to-Business (B2B) customers whilst maximising remuneration for the rights holders they represent, whilst continuously striving to work towards solutions for the growth in digital enterprises and to market changes as rapidly as they appear.

The current European market for photography represents 50% of the world market on a reported aggregated stock of 325 million images¹. The symbiosis of the relationship between our members as representatives and contributing rights holders as creators provides the opportunity for creators to earn a sustainable income from their creativity, while the representative invests heavily in promoting and delivering their images to market.

The following is a list of questions and answers concerning territorial licensing and cross-border use of copyright materials.

1) To what extent is territorial licensing currently used in your sector? Please provide examples.

Territorial licensing in the sense of regulating in which countries an image may be used is currently employed extensively in our sector. This is a cornerstone of the traditional “rights-managed” license model that enables licences to be tailored to meet the customer’s specific needs and therefore the customer only pays for what it needs. The territory of use is one of several variable parameters that may be adjusted to determine the price. Other variable parameters include can include duration, industry and medium of use. Licensees from any country in Europe, and the rest of the world, can select either a small or large-scale licence including 'Multi-Territorial Licences' (MTLs) depending on their picture requirements.

BAPLA members extensively use price tariffs based on territory as part of their direct licensing business models, (see Annex: 1.1).

The development of online accessibility has increased the opportunity for our industry, that of picture libraries, to fully represent a photographer's creative repertoire across different global markets. Back in 2001, when BAPLA conducted a Pricing Trend Survey², 17% stated they had no website, by 2008 every member had a website offering some form of e-commerce³. Multi-territorial pan-European licensing is an integral part of a picture library's

¹ Creativity Works: The Vital Contributions of Europe's Creative Industries to Growth and Jobs, 2014.

² BAPLA Pricing Trend Survey (distributed to BAPLA members only), 2001

³ BAPLA Members: http://www.bapla.org.uk/en/pages/find_by_name.html



direct licensing model, evolved over years of continual adaptability requested by our clients market needs. Please note, notwithstanding images now being widely available to license online, many license agreements are often heavily negotiated, as discussed further below.

The BAPLA Pricing Trend Survey of 2008⁴, with 119 questions asked to members, we find evidence that from 117 responses, 49% approached pricing for overseas clients differently, compared to those from the UK, (see Annex: 1.2).

As well as the “rights-managed” licensing model, many images these days are instead made available by some agencies under a “royalty-free” license model, whereby the customer pays a single licence fee, which sometimes varies according to the size of the image file, but otherwise permits a very broad range of commercial uses, unrestricted in geographical scope and unlimited in duration. Examples of BAPLA members that offer “royalty-free” licenses include Getty Images, Corbis, 4Corners, Alamy, Masterfile, Mint Images, National Geographic and Stockfood.

In this regard, whilst territorial licensing is a key feature of “rights-managed” licensing, customers also have the option of purchasing “royalty-free” licenses containing global rights.

Licensees also have the opportunity to ‘shop around’ to find the right content to suit their budgets, meaning that cross border licensing is common.

2) Why is territorial licensing used in your sector, and what are its impacts? (For example, impacts could include: impacts on prices, the range of content available, the number of member states in which content is available, how and when content is made available in different member states, ability to develop and make available new content).

Picture libraries have successfully adapted to the digital era, since 1997 when Getty Images launched their website, followed shortly by Corbis Images, Magnum Photos and so on. In 2014 every picture library has a website offering digital scans of images from the 19th century to the present day mobile phone photography. Our members license locally to globally, meeting image requirements for a broad range of customers with every type of budget. Our members represent a variety of archive sizes, from large companies (with up to 100 million images) to micro businesses and sole traders (with up to 30,000 images) who tend to have specialist archives, such as architectural photography. The Internet has made it possible for picture libraries to be accessed by any potential client either in Europe, China or Brazil.

It is worth noting that search engines tailor what consumers see when they visit their national search services, for example a German customer may only see a German picture library. Only by taking steps to localise its website (e.g. using different domain names, .de, .nl, .fr, .it, etc) can a UK-based picture library make its website easy to be found in other countries, thereby a degree of territoriality is unavoidably imposed on our sector due to the way that customers search for images using the internet.

Territorial licensing is, at it’s simplest, a solution to B2B customer demands, pricing values, and content tastes/trends tailored to local markets. It is less so about copyright restrictions. However, the latter is an important and necessary consideration for some images, e.g. where the author/creator is already exploiting their rights in their “home” territory and wishes to avoid contractual conflicts, confusion or cannibalisation of business in their own market but

⁴ BAPLA Pricing Trend Survey (distributed to BAPLA members only), 2008

also wishes to benefit from the wider geographical distribution offered by working with a foreign or international picture agency.

The spectrum of services provided by picture libraries ranges from the fully automated 24/7 downloadable ecommerce site, news pictures aggregation, stock/archive/historical images to new commissioned shoots, images at low cost – subscriptions, microstock, royalty-free to high value, specialist subject, rare and famous photographs. Some of our members also offer opportunities to purchase prints or merchandise for Business-to-Consumer (B2C) customers⁵.

Our members have adapted to cater for all picture needs across all markets, licensing for primary/direct use in print, online, and for products, used in new art forms, publishing (books, magazines, news, and blogs), TV and film, advertising and promotion, merchandising and mash ups. What determines negotiating licenses for their images are a range of factors such as: customer budgets, territory, client competition, exclusivity requests, and contractual obligations (some members aggregate images on behalf of other picture libraries and agencies to optimise territorial knowledge of local markets)⁶, (see Annex: 2.1, 2.2, and 2.3)

3) To what extent do prices for the same content vary between different member states in your sector? (Including for consumers and business-to-business transactions)

On the whole within BAPLA members' main commercial market of B2B licensing, prices vary dramatically depending on the commercial economy of the market and available budgets.

For example, the UK would generally prevail a higher fee than Belgium or Luxembourg due to the relative population/economy sizes and therefore levels of exposure for a licensed images. It is usually at the request of the customer to ask firstly for a UK fee, then perhaps for Benelux and then a price for all of Europe, with this information they negotiate what they have budgeted for, (see Annex: 3).

Many of our members clients operate on a international scale, either to Europe or globally. They often choose to vary images depending on the market they are selling to in order to match national tastes and trends. What one country likes another may not, for example with food images, whilst the UK is influenced by a wide variety of international foods they will have trend spikes – such as images of cupcakes, or cranberries at Christmas; whereas French and German national markets tend to prefer their traditional regional dishes especially during seasonal celebrations. The same applies to advertising on local, national and international levels – one photograph may translate better in one country rather than many, therefore prices are reflected accordingly – we wouldn't charge a global fee for an advert only shown in one region or country.

4) What are the reasons for introducing price differentials for the same content between member states? Can you give specific examples of where price differentiation is used?

The UK invests significantly in creative content as English language versions can be sold relatively widely outside of the UK, tending to lead to a greater number of products made or

⁵ Mary Evans Picture Library - Buy Prints: <http://www.prints-online.com/>

⁶ <http://www.gardenworldimages.com/Collections.aspx>

published, therefore license fees for images used in conjunction are charged appropriately (higher), with smaller countries/territories in the EU, our members lower prices in relation to market prices amongst competitors. For example, the Pricing Trend Survey (2008) noted members comments when licensing to clients in different sectors for the same content on whether they use a different pricing structure for clients based in foreign territories, and if so how do they price differently, (see Annex: 4)

5) If freedom to vary prices between member states were removed or limited, would this impact your pricing structure? If so, how? What would be the likely impact of this on consumers and businesses in the UK?

Our members and their contributors invest heavily in the creation and the marketing of photography for the commercial market, our industry would be significantly affected by removal of the commercial freedom to vary prices, it would remove the ability to penetrate lower priced member state markets and therefore would make it even more difficult to recoup investments. Many photographers would simply have to abandon their archives and many of our member picture libraries would no longer find it viable to continue their businesses.

Territorial licensing is a combination of the enforcement of creator's rights and the flexibility to meet our customer's needs in a commercially competitive European marketplace. We would question how a legally imposed flat tariff could be fair, whilst accommodating only those markets for those who can pay by levelled prices. In order to cater for cross-border licensing it should be the choice of content providers who invest heavily in the creation of content, such as photography, to exploit their economic rights to the full extent.

The business models offered by our members, on behalf of rights holders, enable customers to negotiate with them directly from whichever country or territory they need a licence for. Our members have proved, since the inception of picture libraries, that direct licensing models work well with no rigidly fixed prices. They continually adjust to market conditions as every type of market has a different price, and variety is essential for a successful commercial market. Therefore we see no reason to remove or limit our pricing structures. Our members have always endorsed business-led solutions, including the much-supported UK Copyright Hub⁷, which not only helps those trying to source image owners, it is also a live project looking to find solutions for granting permission from rights holders.

6) Are methods such as geo-blocking tools or specific licence/contract terms used to limit the Member States from which content can be bought (e.g. preventing a consumer based in the UK from buying or subscribing to content available in France)? If so, how are these methods used and what are the reasons for their usage? What proportion of content uses such controls?

Yes, technical measures such as geo-blocking and contract restrictions are sometimes used by some photo libraries.

Territorial licensing works to provide the enforcement of rights for contributing professional photographers and helps to protect them against the risk of infringement or exploitation by a third party without remuneration for their hard earned creativity. For example, a Belgian photographer asserts his rights in his own country and decides to assign a picture agency (with offices in Paris, London and New York) to exploit other territories to sell his images in

⁷ <http://www.copyrighthub.co.uk/get-permission/images> and <http://www.copyrighthub.co.uk/about>

Europe, USA and worldwide, using their expertise to generate income from his works. They will invest in marketing his photographs and negotiating with a variety of clients, spanning different market sectors such as publishing, advertising, TV and film, and merchandising, across different country economies. The picture agency may agree not to license the Belgian photographer's work into Belgium so as not to interfere with his existing business. The picture agency may deploy geo-blocking measures so that customers accessing its site from Belgium do not see those photographs and/or it may impose contractual restrictions on customers downloading the images for use in Belgium. If the picture agency were not able to do this, the Belgium photographer would not be inclined to exploit his works via the picture agency outside of Belgium.

7) In your sector, to what extent can a consumer of content lawfully purchased or subscribed-to in one Member State continue to use it when that consumer travels to another Member State? (For example, can someone lawfully subscribing to a video service in the UK continue to use that service when on holiday in Spain?) If this is not possible, how are these barriers applied and what are the reasons for their usage? What proportion of content uses such barriers?

Not applicable in our sector. Picture agencies do not restrict their customers from accessing their online accounts from certain territories, they are accessible wherever in the world the customer may be located at any particular time.

8) What would be the impact on your sector of removing the ability to use geo-blocking, contracts, or other tools to control the use of content within the EU?

Contracts and other tools such as pricing matrices provide a range of alternative choices for customers - micro stock to rights-managed, simple backgrounds to high end or iconic images. Any removal of the ability to price discriminate by country would remove the ability to price lower and therefore properly supply customers in poorer countries. Geo blocking is needed to broaden distribution in countries outside where a photographer might already be licensing.

BAPLA members would have significant concern with a "one size fits all" approach to creative content licensing in Europe, as it would seriously undermine the viability of many professional photographers (visual artists) our members represent, depriving them of their livelihoods, which already under enormous economic strain as their incomes decrease to less than the minimum wage in the UK. Organisations like The Artists Information Company, conducted a Paying Artists Campaign demonstrated that 72% of visual artists earned less than £10,000 per year⁸ to exhibit their works. Our members depend upon a robust copyright system to support their UK and international businesses. They rely on reasonable fees for use of their images and this revenue supports the photographers, as well as the continued digitisation of their analogue work, and correspondingly growth and innovation.

Our sector does not suffer from a lack of portability, being one of the most shared creative mediums across the internet, the issue is the connectivity between commercial content users and rights holders (as artists such as photographers earning an income) has not been sufficiently supported, rather exploited to feed technological developments without fair remuneration. We would support the review of the IP Enforcement Directive (IPRED), to

⁸ <http://www.theguardian.com/artanddesign/2014/may/26/not-paying-artists-gallery-culture-publicly-funded-exhibitions>

resolve the issue of increased infringements and exploitation to represent a fairer economic exchange for rights holder and creators.

Isabelle Doran
BAPLA Interim Chairman
14th November 2014

BAPLA Annex

1.1 Examples of BAPLA members using territorial licensing

Picture Library/Agency	Pricing Tariff	Territorial Option	Website
Alamy	Yes	Yes	http://www.alamy.com/
Corbis Images	Yes	Yes	http://www.corbisimages.com/
Getty Images	Yes	Yes	http://www.gettyimages.co.uk/
The Kennel Club	Yes	Yes	http://www.thekennelclub.org.uk/services/public/picturelibrary/Default.aspx
Press Association Images	Yes	Yes	http://paimages.co.uk/
StockFood	Yes	Yes	http://www.stockfood.co.uk/

BAPLA Pricing Trends Survey 2008 (distributed to BAPLA members only)

1.2 Comments from BAPLA members:

- 64% of respondents generally said that the territory or country plays a major part in deciding pricing for their overseas clients (with a few referring specifically to the USA as a nation they apply higher rates to);
- 12% said the local economy of the country in question will be a factor in determining the fees they charge;
- 11% specifically mentioned developing (or less wealthy) countries as those, which they reduce their prices for;
- 9% said they charge more to their overseas clients to cover costs such as postage and packing, BACS payments and fluctuating exchange rates, etc.;
- A couple of respondents mentioned medium of use, limited language print runs and language rights in general (e.g. *“World Catalan would be priced differently to World English”*) as factors which affect their overseas pricing;

- Another comment from a member states: *“overseas clients tend to have lower budgets and therefore our pricing has to be more flexible”*.

2.1 Comments from BAPLA members:

Referring to the BAPLA Pricing Trend (2008), when members were asked which factors had significant influences on the prices charged, 110 members responded to question. Overwhelmingly 72% stated that client demands had the most significant influence: *“Market forces. Picture businesses who get a reputation for being inflexible don't get their images used, however good the images may be.”*

2.2 Comments from BAPLA's reciprocal trade organisation CEPIC

(<http://www.cepic.org>)

When questions were posed to members of our European trade representative CEPIC⁹, out of 111 responses in relation to the main factors influencing pricing trends in their territory, the largest response was again client demands: 67%, with 52% citing international competition.

2.3 Comments from a selection of BAPLA members' anonymous customers

BAPLA asked the same question from their members' clients' perspective, 66% also stated that clients had the greater influence on prices.

We asked our international associates via CEPIC, during the same period, whether there were many companies selling into their country from overseas, out of 98 responses 61% said yes, and when asked whether any directed business outside their own country, out of 100 responses, 82% said they did. When asked about factors involved in selling to overseas markets, such as whether they had their own pricing structure or whether they relied on prices in that country to determine fees, out of 91 responses, 52% said the latter.

A comment from one anonymous picture library in 2008 clearly identified strong competition amongst each other to provide choice to clients as the market demands, with an enlightened vision of the question currently posed by EU parliamentarians: *“The market becomes wilder and wider, the competition fiercer. The ubiquity of digital photography, the low price of microstock and low quality RF collections slowly but surely engenders the belief that all photography should cost the same, irrespective of image quality. Clients become increasingly price led to the detriment of our medium as a whole.”*

3. Comments from BAPLA members:

When members were asked during the last major BAPLA survey (2008), whether fees were influenced by client's budgets, their own price list (rated at the value of their archive) or competitor pricing, overwhelmingly 93% selected client's budgets as the main influence, with the latter two as equally important secondary issue. Other factors mentioned included the volume of images ordered (either at the time or as a promise of future orders), whether or not the client is of a charitable or academic nature and the complexity of the job as a whole. One respondent indicated that they do (or are prepared to) negotiate to some extent on most prices.

The responses on European rights ranged from:

- Depending on the country concerned, between one and three respondents said that their overseas clients were dealt with either by their overseas office or an agency based in that country.

⁹ CEPIC Member Agencies: http://www.cepic.org/directory/member_agencies

- One respondent said that French prices are 10% lower than UK prices, four respondents said that Spanish prices are lower than UK prices (with the average difference being 28%), three respondents said that Italian prices are lower than UK prices (average difference 22%), six respondents said that American prices are higher than UK prices (with 25% being the most common figure quoted), three respondents said that Australian prices are lower than UK prices (average difference 20%) and six respondents pointed out that their fees vary according to the country they are dealing with (particular mention was made here of discounting fees for poorer or developing nations, with such discounts generally being in the region of 25%). One respondent simply said that prices were 'different' for all the named countries.
- One respondent said that they either apply a flat fee or negotiate when dealing with their German, American and Australian clients.
- The majority of respondents said that (in the main) they trade in the currency of the country they are dealing with. Exceptions to this rule were Australia (where Sterling is the predominant currency used) and the USA (in which the Dollar is the principal currency used, although a couple of respondents also trade in Sterling).
- Other respondents noted that Dutch and Scandinavian rates are 'usually pretty good', that the Japanese market is the same as the UK market and that administration fees are sometimes applied to cover bank charges when dealing with foreign payments.
- One respondent commented that they tend to do more bulk deals with their Spanish clients than with their other overseas clients.

4. Comments from BAPLA members on European rights:

- 61% of respondents confirmed that they do make an additional charge for extending rights to Europe.
 - 15% of respondents said they make no additional charge for extending rights to Europe.
- On World rights, English language:
- 48% of respondents confirmed that they do make such a charge.
 - 18% said they'd make no extra charge for such a usage.
- World rights, all languages:
- 70% of respondents confirmed that that they do make an additional charge for extending rights to the rest of the world.
 - 12% of respondents said they would make no additional charge for such a usage.
- When asked if members had a different fee structure for magazine clients in other territories, out of 50 responses, 44% said yes.
- Of the respondents who answered 'yes' to this question, a third said their fees were in line with what the going rate was in the country in which the magazine would be sold.
 - A quarter made use of a broad territorial rate card that they have (e.g. EU, Eastern European, South America etc.).
 - The remainder said they generally charge less without going into specific details.
- When asked what factors members use when calculating prices for advertising and promotion: 42% mentioned the territory/coverage of the publication and 30% mentioned the type of publication the advertisement is to appear in as a determining factor (e.g. trade, local, national, etc.).