Chapter 6
Publishing and Presenting Research Photographs

A compelling story is critical to good qualitative work (Golden-Biddle & Locke, 2007) and an image can bring that story to life. This chapter introduces and discusses the storytelling potential of research photographs and how they can be effectively presented. This includes associated copyright and permission processes. While it is the ambition of every researcher to publish their findings, research photography is fraught with overly cautious publication practices leading to a preference to present narratives that explain the content of photographs, rather than presenting the photographs themselves (Holm, 2014). Banks and Zeitlyn (2015) offer two explanations for this: first is 'the problem of images' in that visual images are less well accepted than written narratives as valid research material and second is 'the problem of multivocality' of images, which refers to the idea that a single image carries different meanings to differing audiences. There is consequently a degree of nervousness among researchers to use their images in their publications out of concern that the polysemic nature of photographs invites misrepresentation and misinterpretations; as such they often revert to using words and numbers (Newbury, 2011).

Nevertheless, there is a growing consensus in the social sciences that scholarly research can be enhanced by the inclusion of visual images (Newbury, 2011). Part of this shift is attributable to the emergence of digital publication, which makes the inclusion of photographs easier and more economical. However, this carries new and increasingly complex processes for acquiring and seeking permission for the use of photographs. Those responsibilities and liabilities have become important to both researchers and publishers (Rowe, 2011). Academics often remain absent from this discussion and 'fair use' appears to be the popular argument used by academic researchers for justifying freedom to reproduce images. Researchers are now faced with questions about what kind of photographs to include, how many and for what reasons. This demands ever greater attention being paid to the publication potential of photographs.

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6.1 The Publication Potential of Photographs—Telling a Story

On 5 December 1979, the University of Provence in France awarded a Ph.D. to French photographer Lucien Clergue for his collection of photographs *Langage des Sables* (Language of the Sands) (Rowe, 1995). Dubbed '*The Wordless Doctoral Dissertation*', the scholarly value of his photography series without any accompanying text emerged through the ordering of images of sands and progression of its form to a process of 'becoming'. Clergue's photographs unfolded from 'streaming water to man-made object, on to debris of some plastic…as a substance endowed with plasticity' (Rowe, 1995, p. 21). Clergue's photographs were awarded this recognition, because they set out to tell a story of discovery from the sands and through it, the story of mankind and the progression of life on this planet (Clergue, 1980).

The publication potential of photographs lies in their ability to help tell a compelling story and contribute to a much more engaging storytelling process by the researcher and discovery process by the audience that makes interpretations and findings more engaging that rigorous scientific findings or narrative alone. The becomings of photographs with their enfolded layers of information draw audiences to interpret and unfold them, which in turn enables photographs to tell stories, rather than being simple anecdotes of a chronicle recorded (Bell, 2002). Although it might at first seem counter-intuitive to attribute *stories* to both research inquiries and scholarly value, dismissing 'stories' as its sole function of fictional narrative ignores the potential of photographs to communicate wider social issues and therefore demand the viewer's close attention. Stories unfold the layers enfolded in a photograph, with the support of the researcher's own imagination to fill in the blanks. With photographs, readers can see the findings for themselves, can stand in midst of the findings, rather than on the outskirts of it in terms of their interpretations. Participatory photography especially realises the storytelling potential of photographs, as its communication of lived experiences allows viewers and readers to enter the *spaces* of the participants' lives, material that is otherwise inaccessible and engaging viewers in socio-spatial lives of participants, enhancing our understanding of it, locating those spaces and viewing them in new ways (Winton, 2016).

However, to simply claim the storytelling potential of photographs by asserting that 'a picture is worth a thousand words' misses the true purpose of photography in scholarly publication and presentation. If we follow this claim, then a photograph used in scholarly presentation and publication merely indicates a strong unidirectional, monological medium of *transmission* for large volumes of information (Jessop, 2008; Rose, 2007). Photographs in scholarly publications then would only predominantly serve as *support* for written text, instead of becoming a carrier of information in their own right (Jessop, 2008). The far greater storytelling ability of photographs is its dialogical visual perception, which can be used to create, discover and present new knowledge (Jessop, 2008). Photographs are thus able to punctuate, impact and arrest the viewer more immediate than any of the following explanatory narratives (Warren, 2005). Once researchers realise the storytelling

potential of photographs and recognise them as *primary* means of presenting visual material, then photographs will become more commonly used in scholarly publications (Newbury, 2011).

In order for photographs to acquire a social life in publication and presentation, they need framings, storylines and human spokespersons (Warren, 2005). The power of a photograph therefore lies not only within the photograph itself but also its ability to provoke a response of wondering and questions within audiences. A photograph therefore is able to create narrative in the audiences' minds in that 'narrative' does not imply drama or the intention to create a deep emotional response within its readers (Olsen, 2017). Instead, a photograph creates a 'forward motion' in a narrative that places it in the context of larger, deeper questions (Olsen, 2017).

Presenting and publishing a photograph as more than a successful image or image series that capture data require the understanding of narrative in photographic storytelling, as developed narrative is a key success factor to good storytelling. Photographs can form narratives in different ways, such as photo-narratives, multiple still images grounded in text and individual images with or without texts (Soutter, 2000). In the next section, we are discussing photo-narratives and single-image narratives for research publications, as well as specifically using photographs in academic conferences. The question that researchers have to ask themselves is which storytelling approach will help the readers become more intimate with the participant's or the researcher's experiences.

6.2   Single-Photo Narrative and Multiple Single-Photo Narrative

A successful single photograph invites the viewer into its world and to travel through its different meanings (Scott, 2016). Nevertheless, the fact that a single photograph is able to tell a story does not immediately imply that the photograph is in and by itself a narrative (Speidel, 2013). A single-photo narrative can influence how researchers are seeking and composing research photographs. It can further serve as an anchor point around which a narrative draws specific attention to various aspects of the photograph or how it was taken. This can be done quite effectively via single-photo narratives being presented as vignettes to draw attention to larger inquiries and other contexts at hand. Furthermore, drawing multiple single-photo narratives together can further support or elicit overall points and directions, in which each photograph alone does not reveal. For example, in one of our earlier publications on dignity and photography in a research context (see Langmann & Pick, 2014), we presented a framework of dignity-in-process and dignity-in-outcome and to support this framework, we initially submitted accounts for three different vignettes without photographs and only provided textual descriptions. In their review letter, however, the publishers asked whether it is possible to send the photographs for possible inclusion to the manuscript. The final version of the article was published with both the photographs and accompanying

narrative, which shows that for the editors, the images drew additional value to the situations we described outside the narrative. We present these three vignettes here.

6.2.1 Single-Image Narrative Examples and Multiple Single-Image Narrative Example

Vignette 1: Chariot of Youth

The second case is that of an early afternoon on the streets of Chennai, where an elderly man was riding a bicycle rickshaw, transporting 11 preschool children back to their homes through the traffic and pollution (Fig. 6.1). Applying the principles associated with dignity-in-process, discussion with the man led to him agreeing that his photograph be taken, which was then shown to him and, with his consent, to the eager and curious children he was transporting home. The ensuing discussion about the photograph with the man resulted in additional data being collected about his visible happiness in taking the children to school and back home, and coping with the difficult working conditions in Tamil Nadu. Considering dignity-in-outcome raises the important consideration that research photography should not prettify people and their situation captured in an image as it could compromise their dignity. The situation captured in the photograph was not only data rich but also had an aesthetic quality in that the researcher and the participant were satisfied that it was a good photograph—a highly subjective but important aspect in protecting or

Fig. 6.1 'Chariot of Youth' © Sten Langmann (Reproduced with Permission)

enhancing the self-esteem of the participant. This demonstrates the task of the research photographer in taking into consideration the aesthetic quality of an image alongside the need to collect data about the phenomena they are researching. The photograph, accompanying the narrative contributed to achieving greater under-standing of an issue in Tamil Nadu, is authentic in its depiction of the situation (it is common for elderly people in Tamil Nadu to engage in demanding physical work) and did not demean the participant, as they were the main focus of the image.

Vignette 2: Family Gathering

The application of dignity-in-process in the production of ethically sound and dignifying research photographs is illustrated in this photograph. The photograph, titled '*Family Gathering*' (Fig. 6.2), was collected as a result of many visits to housing projects and slum areas in Chennai. Regular visits to the slum areas and being approached by children, young people and adults for photographs and engaging in dialogue gave us a mutual understanding of where we stood in relation to the people being researched and vice versa. The photograph shows one of many scenes typical for a weekend including families taking their meal outside their house sitting on plastic chairs or a wall, elders gathering and chatting at the local temple, people enjoying chatter on the street, children running and playing with toys and tyres, and families gathering at weekends to socialise. Ensuring the dignity of participants was preserved demanded that the data collected about them be authentic. One particular aspect of dignity-in-process that emerged was the angle at which a photograph is taken. This is because verbal and non-verbal cues have a role in determining and reinforcing power structures (Hall, Coats, & LeBeau, 2005) not

Fig. 6.2 'Family Gathering' © Sten Langmann (Reproduced with Permission)

just in real life but also in how people are portrayed in images (Tiemens, 1970); thus, the angle of a photograph (from above, from below or horizontally) affects how people evaluate the social status of the person being photographed.

Vignette 3: Trades People

The photograph, titled '*Trades People*' (Fig. 6.3), presents another dimension to dignity-in-process in that this photograph arose from visits to the slums in which data were gathered about trading and occupational practices in which people engage in front of, or in their homes. The photograph shows a woman sitting in front of her home putting together flowers from a basket on a string for the temples in company of her spouse. In this case, it was important to consider what impressions were being conveyed about the participants and their social environment as well as the value of an image to the research project before capturing an image. Experiencing the poorer areas of Chennai, it became clear that care must be taken to collect data that accurately and authentically portray their situation and dignify whatever they are doing. In this case, for example, it was found that collecting photographic data in this way provided valuable detail about work environments and practices, the context dependence of situations, and protected the dignity of participants.

Drawing these three cases together as a multiple single-image narrative in the original publication, we argue for an overall point that taking photographs of people in their social environment is something they cannot truly defend and that by spending time with people being researched and using the camera as a communication tool as well as a data collection tool, the barriers between the researcher and participants can be reduced helping to preserve and enhance their dignity. By being

Fig. 6.3 'Trades People' © Sten Langmann (Reproduced with Permission)

shown the photograph taken on the LCD screen at the back of the camera in all three cases, the person photographed can see exactly how they are being portrayed in that particular moment, allowing them to raise concerns about a particular image of them or their situation (which might end in the participant asking that the image be deleted). To do this, it was necessary to give as much time as participants wanted to view relevant photographs. While this might not apply to spontaneous snapshots of fleeting moments, time previously spent on understanding the social and cultural contexts of the scenes being photographed will help in the exercise of discretion when taking ethically sound research images. By adopting these approaches, the authenticity of photographs is ensured, while at the same time safeguarding the dignity of participants.

6.3   Photo-narrative

A photo-narrative is defined as a collection of photographic images that are arranged in sequence to present a story or create a storyline (Baetens and Ribière, 1995). The difference between a photo-narrative and a single- and multiple-photo narrative, as well as the general practice of photography lies in its framed and out-of-frame context. In single-photo narrative and photography, the edges of the frame represent an absolute break, spatialising and enfolding a unique moment, much done so by Henri Cartier-Bresson (Baetens, 1995). In photo-narratives as a presentation approach, the frame breaks transform from *absolute to relative*, as each photograph becomes a fragment, that is, 'preceded, surrounded or followed by other fragments' (Baetens, 1995, p. 283). Within photo-narratives, each photograph preserves and stabilises a fragment of the narrative experience signifying its specific moment in time (Riessman, 2008, p. 181). In that regard, photo-narratives present a movement from presence of a fragment to its absence and back again to another fragment. The careful arrangements of these fragments in photo-narrative create visual structures that allow researchers to communicate their interpretations and thoughts and for viewers to unfold those patterns and relationships (Jessop, 2008). Bell (2002) suggests that this arrangement can be either be in a chronological order of events or via a more abstract approach that combines related ideas. Although chronological ordering is the most common form of photo-narrative, alternative grouping could be thematic to highlight the importance of a particular theme, or the juxtaposition of selected images to reinforce specific points (Newbury, 2011).

A problem arises in determining how many photographs the researcher chooses to use in their narrative. Preliminary inquiry to either the intended academic journal or book publisher might prove useful in deciding the number of photographs and thus improving their chances to have their photo-narratives published. A smaller, well-chosen set of images is often superior to one that is large and unfocused (Newbury, 2011). This sometimes means that those photographs that might be striking and interesting must make way for that are less so but move the research narrative forward, develops an argument and/or provides essential evidence

(Newbury, 2011). It must be remembered though that simply displaying visual images without a purposeful arrangement will not suffice for photographs to obtain a status as a valid supportive source (Jessop, 2008) in a research publication or presentation otherwise.

6.3.1 Photo-narrative Example

The following section is a photo-narrative of a basic social problem and of how the people in this study experienced poverty. The basic social problem (BSP) forms a framework that inhibits people from escaping poverty, classified into educational inequalities, social (Non-gender) inequalities, gender-based inequalities and citizenship inequalities. The data was collected from predominantly insights by NGOs, which are involved with the problems faced by the poor and incorporates the perspectives of people working with the poor.

The collection of five photographs forms a part of a larger photo-narrative of 21 images, taken throughout the data collection process to understand the daily struggles of poor people and simultaneously granting the poor agency for themselves. The full photo-narrative can be seen in Langmann (2014, pp. 180–219). The photos represent first-hand insights into their lives and the context of their lives, allowing the poor agency to present a subsistence, to which they are exposed and have to live by, limiting their choices and freedoms. These photographs are symbolic of a larger problem, built on the concept of punctum and studium. Studium represents a cultural, linguistical or political interpretation of a photograph. Punctum emphasises a personal or touching detail, establishing a direct relationship between the object or person and the observer. The photographs were collected over the period of 1 year. To assist the reader in the interpretation of the photographs with regards to their relation to the BSP, this study uses the original BSP model, applying a colour code, depicted here again in Fig. 6.4. Each photograph is assessed against this model and determined in which category or categories it falls.
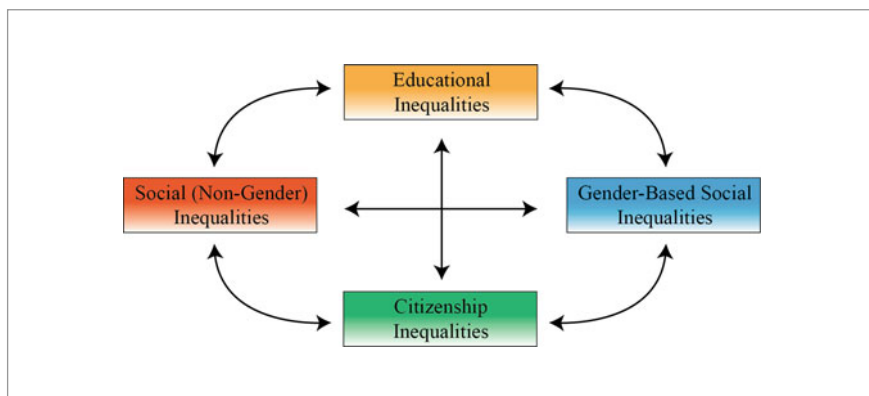

Fig. 6.4 The Basic Social Problem (BSP) Overview

**Fig. 6.5** 'Slums near a polluted river' © Sten Langmann (Reproduced with Permission)

Figure 6.5 shows a slum area in Chennai near a polluted river. The houses are very makeshift and lack any sanitation or facilities. Inhabitants are dependent on their own capabilities to create a living environment with very few tools and support. The river in the foreground serves mostly as a dump site for the residents and starts to smell badly, especially in summer. People who live in these slums are often from poor social backgrounds with little education, or forcibly re-settled in the name of development.
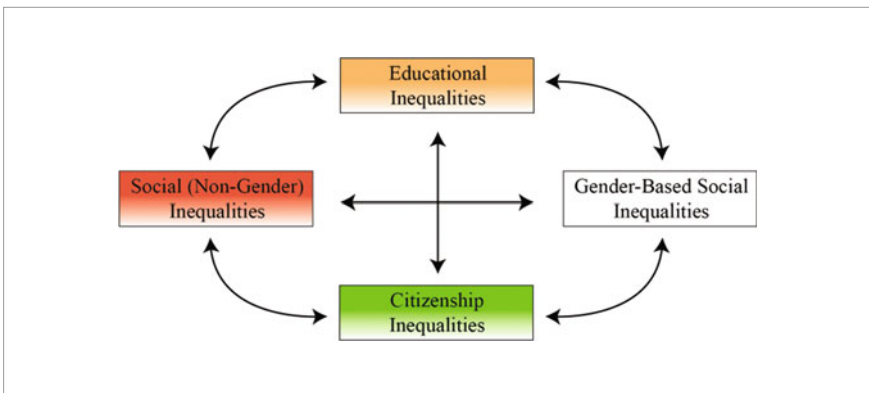
**Fig. 6.6** 'The crowded spaces of the slums' © Sten Langmann (Reproduced with Permission)

Figure 6.6 describes the general environment of the slums in Chennai. Spaces between houses are often used to span lines to hang up laundry, and various items, especially cooking items are kept outside near the walls. The congested space is a problem, as there is not much walking and living space, presenting a social and citizenship inequality of its inhabitants.
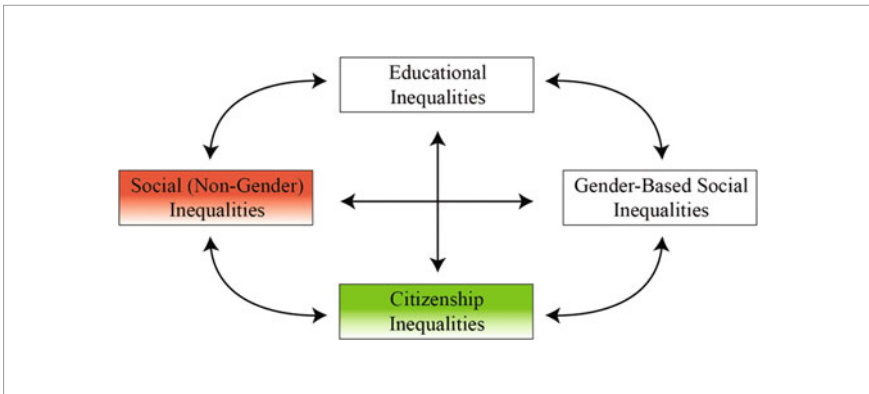
Fig. 6.7 'Woman fetching water from a public tab' © Sten Langmann (Reproduced with Permission)

Figure 6.7 describes a daily scene of a woman fetching water, which she collects in a plastic orange pot and carries to her house. These pots are a common storage container for people in the slums and have to be carried from the public tab to the home by the woman. This is often strenuous work and women all ages have been observed carrying them, a social conditioning and social inequality.
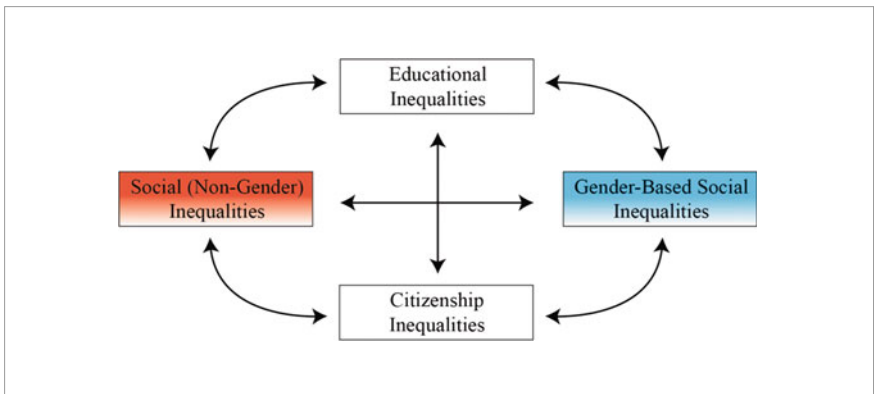
**Fig. 6.8** 'An industry worker and his working environment' © Sten Langmann (Reproduced with Permission)

Figure 6.8 *shows a worker who dismantles cars for spare parts. The working environment is very hazardous and he seemed to have been exposed to a lot of industrial chemicals. There are little health and safety regulations or protections for the workers. This is likely to become a problem later in their lives. People in those work environment often have not attended school and are subjected to some form of social inequality.*
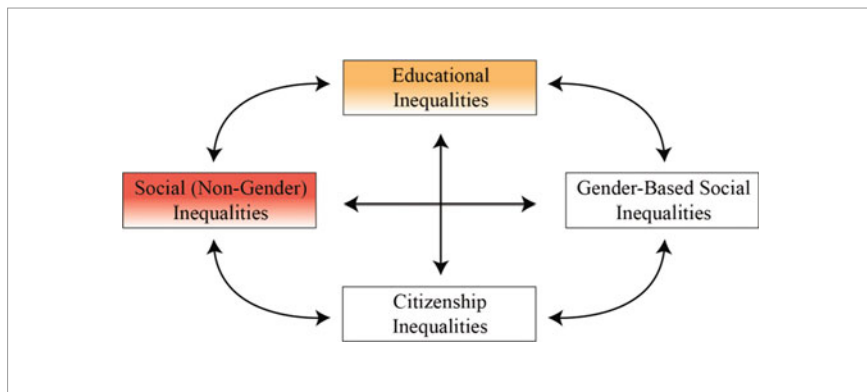
Fig. 6.9 'Men outside a liquor shop in Chennai' © Sten Langmann (Reproduced with Permission)

Figure 6.9 is a night scene of men standing outside a liquor store (in local slang 'wine shop') to buy drinks. Most of them are manual labourers and rickshaw drivers, spending some of their daily income on local-brewed spirits. I have observed this often leading to violent behaviours and been told it often leads to wife abuse at their homes. This image probably represents best a combination of all four poverty dimensions in the BSP.
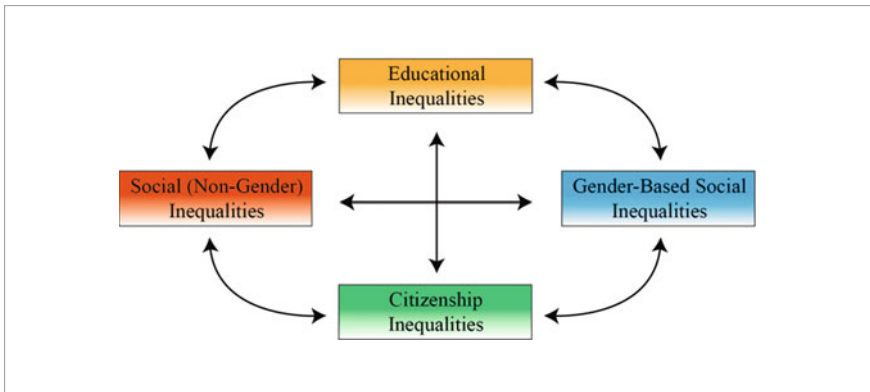
6.4   Conference Presentation and Publication

Academic conferences occupy an important position in academic communication where the forging and negotiation of knowledge begins. Discussing research photography in academic conferences is important as the core components of academic conferences are the *conference paper* and the *oral presentation* (Rowley-Jolivet, 2002). A striking feature of conference papers and presentations are the visual channels of communication, omnipresent throughout the talks via aids such as PowerPoint. This co-existence of the visual, written and spoken creates a single space that cannot be interpreted or understood selectively or in a nonlinear way (i.e. going back and forth in a conference paper), instead we are obliged to follow the linear progression of visual slides and the visual–verbal mix presented by the researcher (Rowley-Jolivet, 2002). Therefore, the presentation of photographic research at academic conferences carries an organisational and interactual burden.

The sizing of photographs can be another tool at the researcher's disposal to signify the importance of some images over others (Newbury, 2011). In this instance, the researcher is not dependent on the journal or publisher and even a single upsized photograph can provide a strong support that keeps reinforcing the researcher's findings in the presentation. Furthermore, that image then can trigger their own imaginings of 'before' and 'after' in this image, with the photograph simply spatializing this point in time, as the point of departure and point of return.

Rowley-Jolivet's (2002) observations of visual components at academic conferences let her subdivide the polysemic visuals, including photographs, into two subcategories—Figurative I and Figurative II types. Subtype I would comprise the photograph in their full composition, whereas Figurative II types enhance photographs to highlight single features.

We want to take this idea from the scientific domain and suggest that its application would also prove useful in the social science domains. Photographs often contain a lot of information that might be difficult for an audience to follow despite a researcher's written guide. For conference presentations especially, it might be advantageous for researchers to present photographs and key aspects of the image to which they want to draw attention to either sequentially in electronic presentations or as one in a poster presentation. As such, the overall Figurative I-type photographs can present the overall presentation or research focus, with Figurative II types presenting the *scriptural* component to the presentation, in terms of guiding the talk or summarising main conclusions or discoveries (Rowley-Jolivet, 2002). We wish to illustrate this with a practical example.

6.4.1   Conference Presentation Figurative I and Figurative II Example

Figurative I Presentation

The following photograph, titled '*Untitled*' (Fig. 6.10), can serve as a useful guide to draw attention to the lack of water access that people in the slums in Chennai face, especially during the summer. However, and more importantly, it also draws attention to a very collective procedure of people living in the slums, which could warrant closer attention and explanation by the researcher. Using the photograph for *Figurative I* can serve as an overview of the points that the researcher wishes to draw on, as seen the presentation of our photograph.

Figurative II Presentation

Based on the presentation of the photograph as a whole in Figurative I, we now suggest that these three points of interest can be taken out of the image and be used as a presentation guide, even with different titles.

(1) Collective Water Gathering

This scene in Fig. 6.11 provides the point of departure for a possible conference presentation, drawing attention to the water truck parked at the roadside. The people

Fig. 6.10 Figurative I 'Untitled' © Sten Langmann (Reproduced with Permission)

Fig. 6.11 'Collective Water Gathering' © Sten Langmann (Reproduced with Permission)

gather their water containers collectively and reveal that this collective chore is fulfilled mostly by women and daughters. The image does not reveal any men being involved in this process.

(2) Women carrying water containers

This scene in Fig. 6.12 acts as a reinforcement to that the water-gathering process of people living in the slums in Chennai appears to be predominantly carried out by women. The technique to carry the water container on their hips is commonly observed, as it helps with holding the weight of it. The presentation can use this part of the image to draw attention to wider social- and gender-based inequalities endured by poorer people, especially women.

(3) The water-pourer

This scene in Fig. 6.13 represents a very interesting occurrence and perhaps worthy a separate point of discussion in a conference presentation. We observed on many occasions that when water trucks arrive near the slums, they will only stay so for a limited time. To get the maximum amount of water, one person (in all instances of out observation this was a woman) would act as the water-pourer and simply grab the nearest container and fill it up, then onto the next and so on. Other women will come and collect those containers. The water-pourer will keep pouring containers until the truck is leaving.

Fig. 6.12 'Women carrying water containers' © Sten Langmann (Reproduced with Permission)

6.5   (Re)Presenting Research Participants

The potential impacts on research participants, both realised and unrealized, have to be considered in choosing the images and the argument that is being made (Newbury, 2011). For example, in Joanou's (2009) participatory photo study with young people working and living on the streets of Peru, she purposefully chose not

Fig. 6.13 'The Water-Pourer' © Sten Langmann (Reproduced with Permission)

to publish some the photographs discussed in the article, as their publication in an unconcealed state could have compromised the dignity of her participants. For example, some photographs revealed two young boys who were involved in the project engaging in drug abuse. While the photograph at the time was taken with consent and permission, Joanou (2009) decided not to publish them as in a sober state, the two boys would not wish to see themselves this way, with one arguing it brings back bad memories and the desire to return to the drug. Newbury (2011) urges the consideration (direct and indirect) of the role of participants in deciding

which images to publish and which to withhold. Our framework of consent at collection and consent at re-contact (see Chap. 3) might be helpful in actively including the participants as decision-makers and determining which images to include in the publication. In the case of the two boys in Joanou's (2009) study, they both would have most likely vetoed the publication of the photograph at the consent at re-contact phase. This way, including or non-inclusion of pictures, becomes less of a strategic and ethical choice of balance, and instead, researchers can refocus their efforts into determining whether showing the image will help the reader become more intimate with the participant's or the researcher's experiences and whether the image moves their arguments forward. This process of arriving at such decisions, the concern for photographs in their own right and how photographs can be used to make arguments and to communicate findings overall is that which Newbury (2011) refers to as *caring for images*.

6.6   Copyright Protection of Photographs

Copyright has long been an essential part of scholarly work (Morris, 1992). It is critical for researchers to understand the boundaries of copyright, fair use and the public domain, as inadequate permissions of use may prompt publishers to decline researchers the usage of photographs in their work, printers and libraries rejecting the work, and dissertations employing photographs being rejected altogether. Copyright is a form of intellectual property that grants rights to authors for the protection of both economic and distributive interests (Katsarova, 2015). Those *authors' rights* allow for controlled licensing of the work to third parties, usually in exchange for a license fee. Copyright in general is a territorial affair and different nations set different copyright standards, durations and exceptions; however, international copyright agreements have somewhat harmonised copyright laws while retaining some unique features of individual countries (Katsarova, 2015). The most notable and relevant international agreement for photographic scholars and minimum standards for intellectual property holders is the Berne Convention, which is administered by the World Intellectual Property Organisation (WIPO) (Jacobs, 2016; WIPO, 2017). The Berne Convention for the Protection of Literary and Artistic Works honours copyright protection to 'every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression' (Berne Convention, Article 2, Section 1). Under the Berne Convention, an author is further granted moral rights at the point of creation, which allows him or her to prevent revision, alteration or distortion of their work, irrespective of who owns it (Rowe, 2011). To qualify for copyright protection, a work needs to be original, where definition is not set in the Berne Convention (Margoni, 2016) and where the standards between individual nations and trading blocs differ.

However, to create and maintain a fair balance between the interests of copyright holders of photographs and potential users, the protection of such copyright can be subject to two limitations, which vary depending on the laws of the country in

which the researcher is publishing. First, each work protected under copyright for a finite duration, which begins at the time when the work was created (Katsarova, 2015). Second, the use of an author's work, including photographs, might be permitted without a license of the copyright owner if it falls under the category of 'fair use' (Katsarova, 2015; Rowe, 2011). The discussion on copyright of photography in scholarly publishing needs to include 'fair use' and 'fair dealings', as confusion about the difference between copyright and fair use has created a culture of fear among scholars and publishers alike (Markham, 2012) and has dissuaded researchers from engaging in photographic research altogether. Many countries have their own definition of 'fair use' and 'fair dealings', as well as different standards relating to the moral rights authors have over their work, for example, the UK is different to the EU, because despite the UK being a part of the EU, its legal system is grounded in common law precedents rather than codified civil law. This and other issues are examined in the next sections.

6.7   U.S. Copyright, Moral Rights and 'Fair Use'

6.7.1   Copyrights

In the U.S., copyright for photographs is automatically assigned to authors if the work is (a) created with human effort and a minimal level of creativity, (b) is created by a U.S. citizen or person living in the USA, and/or (c) published in a country that shares copyright treaties with the U.S. (Harington, 2017; Rowe, 2011). Once a photograph is under copyright, the author may permit or restrict its reproduction, creation of derivative works, distribution and marketing, and public display via a license for each of the rights or as a whole (Rowe, 2011). Once the duration of the copyright finishes, the photograph enters the public domain with very little control of the photograph's use or distribution after (see *Public Domain*).

6.7.2   Moral Rights

Moral rights in U.S. legislation cover three abilities of the copyright holder to the use of photographic images. First, the author has the right to being associated with the work via accreditation in both display and publication. Second, the author has control over changes of the photograph that would impact the reputation of him or her, such as distortion, mutilation or change of intent or meaning of the photograph. Third, a copyright holder has the right to either withdraw or limit an association of a photograph with either a product, a service or a cause (Rowe, 2011).

6.7.3   'Fair Use'

In the USA, the concept of 'fair use' considers exemption for materials including photographs which are protected under copyright, if their intended purpose of use is of critical nature, commentary, news reporting, teaching, scholarship or research (Rowe, 2011). Fair use is codified in the US Constitution under 17 USC § 107 (U.S. Const., 17 USC, § 107) and considers four distinct factors that must be assessed to determine whether copyright is infringed or fair use applied. First, the *purpose* and intended use of the work need to be established including potential commercial uses or non-commercial uses. Second, the *nature* of the copyrighted work affects choices of fair use. Creative and imaginary works, as well as unpublished work, are less likely to follow under fair use than factual work (Harington, 2017). Third, the *amount* or portion used of the copyrighted work in relation to the whole work is assessed. 'Amount' here refers to both qualitative and quantitative amounts. Using an entire work by an author can be deemed fair play and in other contexts, even a small amount can be deemed not to be fair, as it might be 'the heart' of the work. Fourth, the fair use of the copyrighted work is determined by the impact of the use upon the potential market for or the value of the work (Harington, 2017). For example, commercial publication under fair use would be quite likely impact the potential market for the work in terms of fees the author can attract for it and potential opportunities for reproduction (Rowe, 2011).

6.8   Australian Copyright, Moral Rights and 'Fair Dealings'

6.8.1   Copyrights

In Australia, copyright protection for photographs is free and automatic at the time that the image is taken and no copyright protection notice is required (Australian Copyright Council, 2014a). 'Originality' in Australian Copyright, similar to that of the UK in that emphasis, is placed on a 'sweat of the brow' approach that recognises the effort that it took to create the work instead of a prescribed creativity or author's personality in its process (Australian Law Reform Commission, 2013b). Furthermore, the Berne Convention protects foreign copyright owners in Australia and Australian copyright holders in other signatory countries (Australian Copyright Council, 2014a). In terms of copyright ownership, the photographer is the first owner of copyright in Australia; however, the Australian Copyright Council (2014a) grants exemptions to this rule in a number of circumstances. First, if there is more than one creator of the photograph (owning the camera does not determine copyright), then copyright is shared equally among its creators. Second, when

photographs are taken under a contractual agreement, for example, a commission, copyright holdings stay with the photographer if the image is produced on or after 30 July 1998. However, photos taken for private and domestic purposes for clients make the client the first owner of copyright, unless negotiated otherwise prior to the work (Australian Copyright Council, 2014a). Third, photos taken in the course of employment will be the employer's copyright. However, if that employer is a newspaper or a magazine, the copyright remains that of the photographer if the image is produced on or after the 30 July 1998. Furthermore, photos taken for the government become the copyright of a Commonwealth, State or Territory government (Australian Copyright Council, 2014a).

6.8.2 Moral Rights

Moral rights of individual creators under the Australian *Copyright Amendment (Moral Rights) Act* (2000) (Cth) arise automatically at the time of creation including those of artistic works (photographs) and are non-transferrable (Cantatore and Johnston, 2016). The Australian Copyrights Council (2014b) covers three distinct aspects moral rights. First, authors have a right to be attributed and to be credited for their work when it is reproduced, published, exhibited, communicated or adapted (Australian Copyright Council, 2014b). Attribution should be clear and reasonable prominent. Second, authors have the right not to be falsely attributed by crediting the wrong person for the work. Third, the author has the right for their work not to be treated in a derogatory manner (Australian Copyright Council, 2014b). 'Derogatory' is any action that prejudices the author's honour and reputation, which falls under distorting, mutilating or presenting the work in a prejudice manner (Australian Copyright Council, 2014b).

6.8.3 'Fair Dealings'

In Australia, the concept of 'fair dealings' is similar to the 'fair use' concept employed in the USA (see Sect. 3.3) in the sense that exemptions to copyright permissions can be permitted, if they fall within a range of specific purposes. However, Australia does not take the consideration of 'unpublished' work into consideration and use of unpublished work can be granted under 'fair dealing', based on the four consideration factors: purpose, nature, amount and potential market impact (Australian Law Reform Commission, 2013a).

6.9   European Union Copyright, Moral Rights and Fair Use (?)

6.9.1   Copyright

Since all EU states are signatories of the Berne Convention for the Protection of Literary and Artistic Works, the copyright law of the EU cannot be seen separately to that of international law (Kuhlen, 2013). Copyright in the EU is automatically assigned to an author at the time of the creation of the work and does not require a copyright protection notice. Nevertheless, copyright in the EU is strongly based on an author's rights tradition (Kuhlen, 2013), however, can be acquired, for example, by an employer, through contract (Katsarova, 2015). This is different to the U.S. and Australia, for example, where third parties may be attributed directly with authorship without transfer requirements. To qualify for copyright protection in the EU, 'originality' of a work is strongly related to creativity and a display of the author's personality (Katsarova, 2015). Photographs in the Berne Convention fall under 'original' and therefore copyright protection 'if it is the author's own intellectual creation reflecting his personality, no other criteria such as merit or purpose being taken into account' (Council Directive 93/98/EEC, art. 17).

6.9.2   Moral Rights

Under EU legislation, moral rights will always remain those of the authors and cannot be relinquished via contract, unlike its copyright (Katsarova, 2015). Moral rights in the EU cover four distinct aspects. First, the right to attribution, covers the author's right to decide to whether or not their name should be associated with the work and whether the work should be made available to the public (Katsarova, 2015). Second, the right to integrity, protects the work from distortion, mutilation or any derogatory action, which prejudices the author's reputation (Katsarova, 2015). Third, the right of disclosure, allows authors to specify if a work can be made public for the *first time*, and if so, under which terms and in what form (Katsarova, 2015). Finally, an author's right to withdrawal allows him or her to remove the work from the market if he or she deems that it no longer reflects his or her intellectual or artistic point of view (Katsarova, 2015).

6.9.3   Fair Use (?)

Under EU copyright legislation, there is no principle that compares the use of fair play/dealings like the USA, UK and Australia (Kuhlen, 2013). Copyright experts in the EU argue that a 'fair use'-like principle is not needed and that traditions of

limitations and exceptions to copyright provide sufficient flexibility and adaptability to new challenges, technology and moral behaviour (Kuhlen, 2013). Users and consumers though argue that EU copyright industries abuse copyright limitations for the purposes of retaining intellectual monopolies and that an increasing mismatch between EU copyright law and technological changes and social norms exist (Hugenholtz, 2013). However, since all European Union Member States are signatories of the Berne Convention, a 'three-step-test' by the convention serves as a basis of limitations and exceptions to copyright (Katsarova, 2015). The 'three-step-test' grants exceptions to copyright in (a) special cases, (b) when not in conflict with normal use and exploitation of the work, and (c) if it does not prejudice legitimate interests of the rights holder (Katsarova, 2015).

6.10   UK Copyright, Moral Rights and Fair Dealings

6.10.1   Copyright

As the UK is a signatory to the Berne Convention, the same legislation as to the EU applies in terms of copyright. The person who creates the image is generally the copyright holder; however, when the image is created as part of the author's employment, UK legislation can grant transfers of copyright to the employer (Wiles, Clark, & Prosser, 2011). Copyright may further be contractually transferred to another person similar to the EU. In the UK context, a work is original if the author exercised 'skill, judgement and/or labour' in its production (Margoni, 2016, p. 88).

6.10.2   Moral Rights

In the UK, the 1988 Act has brought moral right provisions for authors into legislation (Zhou, 2014) and recognises four distinct moral rights, not dissimilar to those under EU legislation. The first three moral rights—right to be identified, right to object to derogatory treatment of the work and protection against false attribution of the work—are the same as the EU moral rights (Zhou, 2014). However, the fourth moral right is the right to privacy of certain photographs and films, which fundamentally grants the author the right to withdraw public display of the photograph. Unlike EU legislation, which deals with the moral rights of the author, UK legislation allows photograph retraction to extend beyond the author and includes reasons to 'protect the privacy of the person in the photograph' (Zhou, 2014, p. 109).

6.11 'Exceptions to Copyright'

UK legislation offers a set of exceptions to copyright, which apply if the 'use of the work is a "fair dealing"' (Intellectual Property Office, 2014, p. 3), for example, scholarly use, criticism, reviewing or news reporting. This is different to the 'fair dealing' principle of Australia, which is anchored in the legislation, whereas the courts in the UK have identified factors in determining whether a particular dealing with a work or photograph is indeed 'fair' (Intellectual Property Office, 2014). A notable difference between Australian and UK-based fair dealings is that while Australia assessed fair dealings against the same four factors as in the USA, the UK focuses primarily on the use of the work affecting the market value and the loss of revenue to the owner and secondary on the reasonable and appropriate amount of the work used (Intellectual Property Office, 2014). Otherwise, the three factors of exemption under the Berne Convention apply.

6.12 Fair Use/Dealings in the Digital Environment

The digital environment has created new challenges for the general fair use of photographs. While the previous legislations and interpretations of fair use/dealings and the three-step-test remain, we argue that it will be much harder to obtain photographs for scholarly use under those exceptions. Building a case for 'fair use' with photographs can present significant challenges, especially in terms of market impact (Rowe, 2011). Publishing a digital photograph, more so a high-resolution photograph online or in print, would present great difficulties in showing how this release would not have an effect on the potential market and further commercial opportunities for the author and the image release (Rowe, 2011). Understanding the potential uses and audiences of photographs is therefore essential in determining whether a photograph for publication would fall under fair use. Fair use and fair dealings with digital and also analogue photographs (digitising analogue photographs create a derivative work) remain a grey area and will always be subject to both the contexts and outlets they are used in, as well as the publisher's policies on dealing with published photographs (Markham, 2012). For scholars and publishers alike, the safest, yet also the most time- and resource-consuming approach, remains obtaining a copyright or permission to use from the copyright owner.

6.13 Copyright in the Public Domain

An alternative for researchers who wish to utilise and publish photographs is to use photographs that are in the *public domain*. Defining the public domain has been subject to debate and the boundaries of public domain are often placed in binary opposition to copyright regulatory frameworks (Taubman, 2007). The public domain of copyright essentially forms a space that allows authors to use photographs and other works without the need to ask for permission (Erickson et al., 2015; Lessig, 2006; Stim, 2010; Taubman, 2007). Deazley (2007) distinctly points out the difference between a work being *publicly accessible* and *use without permission*. For example, a photograph might be publicly accessible on the internet and authors might be able to freely view the photograph on their screens; however, this does not imply that no restrictions or limitations in terms of how one intends to use this photograph exist. For example, take a collection of photographs in the public domain. Although no copyright protection might apply to the individual photographs, an author, who has collected and creatively arranged the photographs into book or website, may infringe a 'collective works' copyright if a person uses or distributes a large proportion of the entire book without permission (Stim, 2010). Therefore, the absence of rights of the public domain is insufficient to understand it (Taubman, 2007).

We need to understand *how* creative works, including photographs, can enter the public domain and their possible usage limitations to clear up ambiguities of 'permission free' and introduce the possibilities of other limitations outside the scope of copyright. Deazley (2007) has divided the works that enter the public domain as a series of categories—(i) works that have not qualified for copyright protection in the first place; (ii) works, which copyright has expired; (iii) works that have been released by a copyright owner a priori (beforehand) and (iv) works or part of works that follow the line of idea–expression and are therefore unprotectable. In the context of photography and scholarly presentation and publication, only two of the four releases—(i) copyright expired and (ii) a priori (released beforehand)—are relevant.

6.13.1 Expired Copyright

Once a photograph's copyright duration has expired, it enters the public domain. For signatory countries of the Berne Convention, copyright extends to the lifetime of the author plus 50 years after his or her death (Katsarova, 2015). However, the EU, the USA, the UK and Australia have extended the copyright to 70 years after the author's death (Harington, 2017; Katsarova, 2015). Once a work's copyright is

expired, it falls into the category of public domain and can be freely accessed and used by academics and other publishing bodies and may be used and distributed commercially or non-commercially. Researchers are thus able to scan, exhibit, distribute or include those photographs in their publication and make them available either commercially or non-commercially.
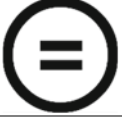
6.13.2   Permission Granted 'A Priori'

Photographs and other creative works can further enter the public domain if it has been willingly released by its creator via an unrestricted GNU Lesser General Public Licence, or via the creative common (CC) licensing system (Erickson, Heald, Homberg, Kretschmer, & Mendis, 2015). Those licensing systems, especially the CC system, allow creators to make their work accessible to a public domain, yet specify different conditions, under which the work maybe used (Erickson et al., 2015). Hence, the slogan of the creative commons licensing system is 'Some Rights Reserved' (Lessig, 2006, p. 20). We want to expand the understanding of CC licensing here, as it provides a good understanding for researchers to navigate the creative public domain and to easily ascertain and understand the restrictions that are placed on photographs they find in the public domain.

The creative commons is an American non-profit organisation, which offers a licensing system that aims to expand the range of accessibility and availability of creative works for others to legally share and build upon (Creative Commons, 2017a, b). Only works that are eligible for copyright are able to be released into the public domain under such a license (Erickson et al., 2015). CC derives its enforceability from the underlying copyright that its owner possesses. Free licenses, such as CC, still set certain conditions to its use and a violation of those conditions removes the license from the work and simply puts the intended user into a situation of copyright infringement (Erickson et al., 2015). In other words, though works under CC might be 'public domain', potential users have to adhere to a preset CC license set by the owner or risk infringement. It is important to understand that CC licenses are *non-revocable* and once the owner has set certain conditions to a work being released, however, wants to change it for future users or due to a change of mind, any user who accessed it under the old agreement may use and distribute the work under the former conditions (Erickson et al., 2015).

CCs grant *baseline permissions* in that photographs or other creative works may be copied, distributed and displayed. Upon release into the public domain, the copyright holder may place *core conditions* as part of the license, which future users must comply with. Those conditions are the *Attribution* condition, the *Non-commercial*

Table 6.1 Creative commons core conditions

	Attribution (BY)	The original creator and other nominated parties must be credited and the source linked to
	Non-commercial (NC)	Allows for copying, distribution, display or performance of the work for non-commercial purposes only
	No derivative works (ND)	Only verbatim copies of the work may be distributed. Changes and adaptations are not permitted
	Share alike (SA)	Allows adaptation, remixing and building on the work, however, they must share the derivative work under the same license as the original work

Creative commons license buttons by creativecommons.org CC0-4.0 https://creativecommons.org/about/downloads/

condition, the *No Derivatives* condition and the *Share Alike* condition. Table 6.1 presents a descriptive summary of CC core conditions.

From those core conditions, authors may pick and choose under which their creative works are released into the public domain. Figure 6.1 provides a spectrum of how authors may mix and match conditions, as well as what those conditions mean for any potential user. It is important for researchers to be able to 'read' these licenses, as it will allow them to determine which photographs or supporting images they can use in presentations and publications and under which conditions. For example, the creative commons spectrum in Fig. 6.14 was released under CC-BY-4.0. This means that the work can be copied and distributed on the condition that the author, in this case Shaddim, is acknowledged (the BY condition). The absence of the NC condition in the license clears this work for commercial use and was therefore allowed to be used in this book. The absence of the ND clause would clear the work for changes and adaptations to be made and no SA conditions mean that the work maybe used in combination with other work if need be.

In summary, not every work that is released a priori into the public domain is by default fully 'public', especially those works that are prohibited from commercial application (Erickson et al., 2015). It is up to the researcher to ascertain the restrictions placed on the work and whether the publisher accepts those restrictions as part of their publication process.
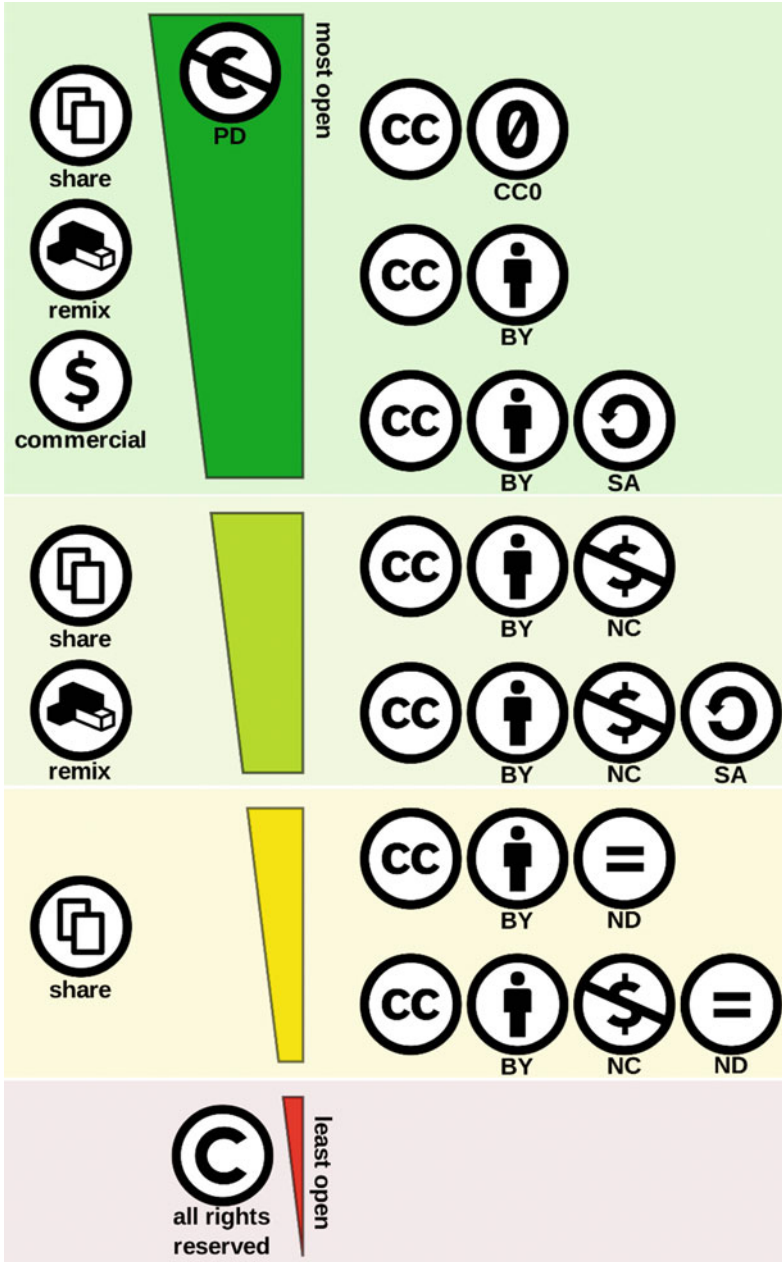
Fig. 6.14 Creative Commons Spectrum by Shaddim CC-BY-4.0, https://commons.wikimedia.org/wiki/File:Creative_commons_license_spectrum.svg

6.14   Conclusion

This chapter discussed the notion that photographs are becoming increasingly important in social research. They bear a powerful storytelling attribute that transcends written narrative interpretations by researchers and engage readers more than written narrative would do alone. The different approaches how to utilise images, be it single-image or multiple-image narratives, photo-narratives or as part of a conference presentation, urges researchers to think carefully about how they use photographs to communicate arguments and ideas. This increasing use of photographs in social research publications and presentations introduced questions and issues of copyright and permission to use photographs for scholarly non-profit production and educational use. Photographic researchers must engage and understand copyright of images, its fair use policies and the many faces of the public domain to utilise these resources with minimal problems that ensure successful publication with publishers.

References

Australian Copyright Council. (2014a). *Photographers & copyright: Information sheet G011v18*. Retrieved from http://www.copyright.org.au/acc_prod/AsiCommon/Controls/BSA/Downloader. aspx?iDocumentStorageKey=960d14ff-e42f-42a7-9789-c92e38a1a4c3&iFileTypeCode=PDF& iFileName=Photographers%20&%20Copyright.

Australian Copyright Council. (2014b). *Moral rights: Information sheet g043v14*. Retrieved from http://www.copyright.org.au/acc_prod/AsiCommon/Controls/BSA/Downloader.aspx?iDocum entStorageKey=77905fc6-ac1d-43f9-9ac3-e7179aefd46b&iFileTypeCode=PDF&iFileName= Moral%20Rights.

Australian Law Reform Commission. (2013a). *Copyright and the digital economy*. Retrieved from https://www.alrc.gov.au/sites/default/files/pdfs/publications/final_report_alrc_122_2nd_december_ 2013_.pdf.

Australian Law Reform Commission. (2013b). *Copyright and the digital economy council directive no. 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights*.

Baetens, J. (1995). John Berger and Jean Mohr: From photography to photo narrative. *History of Photography, 19*(4), 283–285.

Baetens, J., & Ribière, M. (1995). The Calaceite conference on photo narrative. *History of Photography, 19*(4), 314–315.

Banks, M., & Zeitlyn, D. (2015). *Visual methods in social research*. London: Sage Publications.

Bell, S. E. (2002). Photo images: Jo Spence's narratives of living with illness. *Health, 6*(1), 5–30.

Cantatore, F., & Johnston, J. (2016). Moral rights: Exploring the myths, meanings and misunderstandings in Australian copyright law. *Deakin Law Review, 21*(1), 71.

Clergue, L. (1980). *Lucien Clergue: langage des sables*. USA: AGEP.

Copyright Amendment (Moral Rights) Act (Cth). (2000).

Creative Commons. (2017a). *Learn about CC*. Retrieved from http://creativecommons.org.au/ learn/.

Creative Commons. (2017b). *About the licences*. Retrieved from http://creativecommons.org.au/ learn/licences/.

Deazley, R. (2007). Copyright's public domain. In C. MacQueen & H. Waelde (Eds.), *Intellectual property: The many faces of the public domain.* (pp. 21–34). UK: Edward Elgar.

Erickson, K., Heald, P., Homberg, F., Kretschmer, M., & Mendis, D. (2015). *Copyright and the value of the public domain: An empirical assessment.* Intellectual Property Office Research Paper, 2015 Forthcoming; University of Illinois College of Law Legal Studies Research Paper No. 15–16. Available at SSRN: https://ssrn.com/abstract=2571220.

Golden-Biddle, K., & Locke, K. (2007). *Composing qualitative research*. London: Sage Publications.

Hall, J. A., Coats, E. J., & LeBeau, L. S. (2005). Nonverbal behavior and the vertical dimension of social relations: A meta-analysis. *Psychological Bulletin, 131*(6), 898–924.

Harington, R. (2017). The value of copyright: A publisher's perspective. Retrieved from https://scholarlykitchen.sspnet.org/2017/02/07/the-value-of-copyright-a-publishers-perspective/.

Holm, G. (2014). Photography as a Research Method. In P. Levy (Ed.), *The Oxford handbook of qualitative research* (pp. 380–402). New York: Oxford University Press.

Hugenholtz, P. B. (2013). Law and technology fair use in Europe. *Communications of the ACM, 56*(5), 26–28.

Intellectual Property Office. (2014). Exceptions to copyright. Retrieved from https://www.gov.uk/guidance/exceptions-to-copyright.

Jacobs, S. (2016). The effect of the 1886 Berne convention on the US copyright system's treatment of moral rights and copyright term, and where that leaves us today. *Michigan Telecommunications & Technology Law Review, 23*(1), 169–190.

Jessop, M. (2008). Digital visualization as a scholarly activity. *Literary and Linguistic Computing, 23*(3), 281–293.

Joanou, J. P. (2009). The bad and the ugly: Ethical concerns in participatory photographic methods with children living and working on the streets of Lima. *Peru. Visual Studies, 24*(3), 214–223.

Katsarova, I. (2015). The challenges of copyright in the EU. *EPRS|European Parliamentary Research Service*, 1–12.

Kuhlen, R. (2013). Copyright issues in the European Union: towards a science-and education-friendly copyright. Retrieved from https://kops.uni-konstanz.de/handle/123456789/27083.

Langmann, S. (2014). *NGOs and poverty reduction in Tamil Nadu: Exploring a knowledge-sharing for development framework*. Western Australia: Curtin University.

Langmann, S., & Pick, D. (2014). Dignity and ethics in research photography. *International Journal of Social Research Methodology, 17*(6), 709–721.

Lessig, L. (2006). Re-crafting a public domain. *Yale Journal of Law & the Humanities, 18*(3), 56–83.

Margoni, T. (2016). The harmonisation of EU copyright law: the originality standard. In Global Governance of Intellectual Property in the 21st Century (pp. 85–105). Dordrecht: Springer International Publishing.

Markham, A. (2012). *Fair use of images in scholarly publishing*. Retrieved from http://annettemarkham.com/2012/02/fair-use-of-images-in-scholarly-publishing/.

Morris, R. G. (1992). Use of copyrighted images in academic scholarship and creative work: The problems of new technologies and a proposed scholarly license. *IDEA, 33,* 123.

Newbury, D. (2011). Making arguments with images: Visual scholarship and academic publishing. In E. Margolis, & Luc Pauwels (Eds.), *The sage handbook of visual research methods*. London: Sage Publications.

Olsen, S. W. (2017). Single *frame narrative photography: An essay*. Retrieved from https://www.lensculture.com/articles/w-scott-olsen-single-frame-narrative-photography-an-essay.

Riessman, C. K. (2008). *Narrative methods for the human sciences*. Thousand Oaks: Sage Publications.

Rose, G. (2007). *Visual methodologies: An introduction to researching with visual materials* (2nd ed.). London: Sage Publications.

Rowe, J. (2011). Legal issues of using images in research. In E. Margolis & Luc Pauwels (Eds.) *The Sage handbook of visual methods* (pp. 707–722). London: Sage Publications.

Rowe, W. (1995). The wordless doctoral dissertation: Photography as scholarship. *The Cal Poly Pomona Journal of Interdisciplinary Studies, 8,* 21–30.

Rowley-Jolivet, E. (2002). Visual discourse in scientific conference papers A genre-based study. *English for Specific Purposes, 21*(1), 19–40.

Scott, G. (2016). The single image narrative: Sometimes it chooses you. *United Nations of Photography.*

Soutter, L. (2000). Dial" P" for panties: Narrative photography in the 1990s. *Afterimage, 27*(4), 9–12.

Speidel, K. (2013). Can a single still picture tell a story? Definitions of narrative and the alleged problem of time with single still pictures. *Diegesis, 2*(1), 1–22.

Stim, R. (2010). Welcome to the public domain. *Standford University Libraries.* Retrieved from http://fairuse.stanford.edu/overview/public-domain/welcome/.

Taubman, A. S. (2007). The public domain and international intellectual property law treaties. In C. Waelde, H. L. MacQueen (Eds.), *Intellectual property: The many faces of the public domain* (pp. 53–85). Cheltenham: Edward Elgar Publishing.

Tiemens, R. K. (1970). Some relationships of camera angle to communicator credibility. *Journal of Broadcasting & Electronic Media, 14*(4), 483–490.

U.S. Constitution (Vol. 17 USC).

Warren, S. (2005). Photography and voice in critical qualitative management research. *Accounting, Auditing & Accountability Journal, 18*(6), 861–882.

Wiles, R., Clark, A., & Prosser, J. (2011). Visual research ethics at the crossroads. In J. Hughes (Ed.), *Sage visual methods volume I: Principles, issues, debates and controversies in visual research.* Los Angeles: Sage Publications.

Winton, A. (2016). Using photography as a creative, Collaborative Research Tool. *The Qualitative Report, 21*(2), 428.

Zhou, Y. (2014). Moral Rights in the Information Society. *Beijing Law Review, 5,* 107–113.