

## “I PAID, SO IT IS MINE!” – MISCONCEPTIONS REGARDING OWNERSHIP OF COPYRIGHT IN COMMISSIONED WORK

Who is the owner of the copyright that vests in a couples wedding photos? Or if one commissions a graphic designer to design a new logo for one's company?

There mainly is a misconception that if one pays a third party for work done that the copyright that vests in the work will automatically become that of the party paying for the work to be created. However, this is not the case.

Generally, the author is the first owner of the copyright that vests in a work eligible for copyright protection. The author being the person who makes or creates the work using its own effort, time and skill. The Copyright Act, 1978 (“the Act”), however, specifically defines who the “author” is in respect of each type of work eligible for copyright protection and is not always as straight forward as one might think. The Act makes provision for certain exceptions as to the general rule, that being:-

- a) where literary or artistic work is made during the course of the author's employment at a newspaper, magazine or similar periodical under a contract of service, the owner of the copyright will be the proprietor of the newspaper, magazine or similar periodical;
- b) where a person commissions the taking of a photograph, the painting or drawing of a portrait, the making of a gravure, the making of a cinematograph film or the making of a sound recording and pays for it in money, the owner of the copyright will be the person who commissions the work mentioned before; or
- c) where a work is made in the course of the author's employment by another person under contract of service, the other person shall be the owner of the copyright subsisting in the work.

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Scenarios (a) and (c) are usually not problematic as the contracts of service will usually contain a clause dealing with the ownership of copyright for work created during the course of employment.

The misconceptions set in with regard to scenario (b). The Act is very clear that the owner of the copyright that vests in the specific commissioned works listed in (b) only, will be the person who commissioned a third party to create the work and paid for it. Therefore, the couple who commissioned a photographer to take their wedding photos and pay for it, will be the copyright owner. On the other hand, the director of a company who commissions a graphic designer to create a new logo for his/her company and pays for it will not be the owner of the copyright that vests in the new logo. The graphic designed is the author and owner of the

copyright. The copyright will have to be assigned (transferred) to the company. It is important to note that the Act specifically states that in order for copyright to be transferred to another person, it must be recorded in writing.

Please note that the exceptions can only be altered by way of written agreement.

We, therefore, suggest that an IP attorney should be consulted to ensure that the party paying for work created by a third party who has been commissioned to do so is the owner of the copyright that vests in the work.

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