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COMPARATIVE STUDY- DOCTRINE OF WORK FOR HIRE

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ABSTRACT

Copyright is a branch of Intellectual Property Law that grants the author an exclusive legal right on his creation granted by the judiciary. Every creator of any form of content has the right to protect the same with the help of intellectual property laws, copyrights in specific. Violations of copyright law will result in a number of legal ramifications. While the protection under intellectual property provides exclusivity to the person who creates such content, some of it is created under short term or long-term work contracts. This is dealt with under Doctrine of Work for Hire. In the absence of an explicit written agreement between the parties, the Doctrine of Work for Hire governs copyright ownership. The article in hand will focus on Work for Hire, landmark cases and a comparative study of three major states i.e. India, USA and the UK that have their own laws and regulations to deal with the Doctrine of Work for Hire, some notable points that disclose the similarities and differences and suggestions based on the intense research.

Keywords - Work for hire, India, USA, UK, copyright, content, intellectual property

INTRODUCTION

Copyright, also known as an author's right, refers to the rights that writers have over the job they create. The job falls into one of two categories: literary or artistic. Books, paintings, music, sculpture, and movies are all examples of works protected by copyrights and copyright law, as are computer systems, databases, advertising, graphs, and technical drawings. The law related to copyrights in India is covered by The Copyrights Act, 1957.

Work for hire is a term recognised under law. Now, there are two types of work for hire:

A. Works made under a contract of employment or apprenticeship;
B. Works which were specially commissioned.

Each country, as other laws, has its own ways to govern work for hire. This article will concentrate on three jurisdictions and the situation laws which govern them to explain how work-for-hire arrangements function in their various jurisdictions.

INDIA

The definition of work for hire is given in the following clauses of the Indian Copyrights Act, 1957.

1. Section 17(b)- in case of job is created by an author at the request of an individual, then such individual shall be the first owner of the copyright in case of the lack of an agreement between the parties.
2. Section 17(c)- employer shall be the initial owner of the copyright in case of the lack of an agreement between the parties concerned- in case of job is created by an author in the course of employment under a contract of service or apprenticeship.

In *Indian Performing Right Society Ltd.. v.. Eastern Indian Motion Pictures Association and Ors. AIR1977SC1443* in 1977, the Supreme Court stated that the key to finding a solution to the issue whether a film maker can defeat the right of a music composer or a lyricist by engaging them, lies in sub-clause (b) and (c) of Section 17 of the Act, which bring the matter into question. Within the first of these clauses, viz. Proviso (b) -A cinematographic film becomes the first person when he or she contracts a music composer or lyricist for a consideration. According to clause (c) the consequence would be same whether the composer of music or lyrics is employed to compose the work under a service or apprenticeship contract. As a result, it is clear that in the manner provided for in Section 17(b) and (c) of the Act, the rights of a music composer or lyricist may be defeated by the producer of a cinematographic picture.

Khemraj Shrikishnadass v M/s Garg & Co25 stated that, when a job is done for consideration by an author for a writer, the copyright it could typically be given to the publisher, subject to any contract to the contrary. Contractual obligations place the burden of getting out of those responsibilities on the parties concerned. As a result, under Indian law, because there isn't any

contractual liability, freelancers are the initial owners of copyrights, while owners of periodicals, magazines, and newspapers are the first owners of works made by staff in the course of their job under a service contract.

UNITED STATES OF AMERICA

Section 101 of the Copyright Act (Title 17 of the United States Code) specified in US laws and regulations which 'work made for hire could be described in two parts:

a) a work made by an employee while at work, or
b) a work specially ordered or commissioned for use

In the event of Community for Creative Non-Violence V. Reed, the Court ruled it should first be determined whether a project was prepared by (a) an employee or (b) an independent contractor. If the job is generated by an employee, Part 1 of the above definition applies, and the job would usually be known as work made for hire.

In *Marco v. Accent Publishing Co., 969 F.2d 1547 (3d Cir. 1992),* the Third Circuit ruled that a freelance photographer is an independent contractor. Marco was hired to picture jewellery, for the monthly trade journal for the costume jewellery sector of Accent Magazine. Accent supplied the jewels and props, sketched the shots, and retained the capability to redo disappointing shots. Marco worked in his studio separately, subject to the deadlines set by Accent. Accent's art director also provided live models for the shoot at many occasions. Marco moved for a temporary injunction to prohibit Accent from reproducing his images after a dispute arose over copyright ownership. The district court stated that the art director of Accent had properly directed, supervised, and contributed visually into the photographic work, and denied the injunction, without employee rewards, for discreet assignments rather than for periodic work.

The event of *Aymes v. Bonelli, 980 F.2d 857 (2d Cir. 1992)*, also determined that the defendant, a computer engineer, was a freelance contractor. In 1980, Aymes was hired by the defendant, Bonelli, a department store that sold swimming pools, to set up a computer programme. Throughout his two years working for Bonelli, Aymes developed a series of methods for keeping

track of receipts, inventory, sales statistics, and other bookkeeping data. In September 1982, Aymes left the island following Bonelli chose to reduce Aymes hours. Bonelli refused to repay Aymes except for the use of the programme until Aymes signed a waiver of his rights to the programme. The Third Circuit determined that these factors are important in any situation:

(1) the right of the recruiting individual/organization to regulate the way and means of creation;

(2) the skills required;

(3) the provision of compensation to workers;

(4) the tax treatment of the employee;

(5) whether the contracting party enjoys the right to assign new projects to the contracting party.

These factors must be given higher weight in the analysis since they are generally extremely conclusive of their authentic essence of the employment connection.

UNITED KINGDOM

Section 11 of the Copyright, Designs, and Patents Act of 1988 states that when an employee creates a literary, dramatic, musical, or artistic work or film during his employment, his employer is the first owner of the rights to the job, irrespective of any agreement to the contrary.

When one asks or commissions another individual or organisation to make a copyright work for them, the individual or organisation which created the job, not the Commissioner, is the first legal owner of the copyright unless they agree otherwise in writing. However, in some instances, like where copyright is not addressed in the arrangement for commissioning the job, courts are going to be able to infer that there is an implied licence allowing the commissioner to utilize the work for the purpose for which it was commissioned. This doesn't lead to a transfer of possession. Rather, the work commissioner can only obtain a limited, non-exclusive licence. This situation demonstrates the significance of deciding who owns the copyright in a contract.

In the event of *Noah v Shuba [1991] FSR 14*, Dr Noah was a medical doctor as well as a researcher at the PHLS. He composed a medical booklet called A Guide to Hygienic Skin Piercing while working for the PHLS. The PHLS explained that as Dr Noah's employee, it had copyright in the pamphlet. PHLS cites several arguments in support of this claim: Dr Noah had discussed the material of this booklet together with his co-workers; he had used the PHLS library to study his manuscript; he had asked his assistant to write the manuscript; the PHLS had agreed to cover the costs of printing and editing the Guide together with Dr Noah. Dr Noah did not accept. He stated that although he is a PHLS employee, the thesis hadn't been published during his job. Dr Noah's point of view was shared by the judge. The judge wanted to emphasise that Dr Noah had composed his manuscript in the home on evenings and weekends and that he had done so on his initiative rather than at the behest or commission of his employers.

To determine the copyright of a job, the case of *Stevenson Jordan Harrison Ltd v MacDonald & Evans [1952] 1 TLR 10* established the definition of an employee in the form of a 'contract of service.' An engineer wrote a book based on his experience working for an organisation in multiple occupations. According to Section 5(1) of the Copyright Act 1911, if the author of this work is under a "contract of service," the individual who employed the author is the first owner of this copyright. The question was whether the individual was considered an employee under a "contract of service" to grant the employer copyright under Section 5(1) of the Copyright Act 1911. The Court distinguished between the service contract given to the business and the service contract supplied to the provider. The Court applied the traditional 'control test' to determine whether an employer has the right to control how a worker functions. The Court has stated that an individual is considered an employee under a service contract because the job is integrated into that of the company and is believed to be an essential part of the business, while an independent contractor for services is simply an attachment to the business and therefore not an employee dependent on the details of this situation, the engineer's contract was split between the two at various points, according to the Court. It was determined that the engineer was the author of this work, but the particulars he received while working for the firm surpassed the scope of the Copyright Act 1911 and ought to be excluded from publication.

CONCLUSION AND SUGGESTIONS

Intellectual Property Rights can be considered a major stepping stone towards the development in the filed of law. It tells us that the end result which we have created with sheer hard work and sweat can be protected and given exclusivity to. A lot of regulations are codified, but some of those which are not, are important within themselves.

The Doctrine of Work for Hire is one of it. In the states we have seen above, Work for Hire is not codified yet. The above comparison was extremely essential to note down some points, one of the major points being that despite lack of codification, the doctrine works almost similarly everywhere with some minor differences. All three countries acknowledge at least on limited basis copyright in an employer when the employee creates the work within the scope of his employment.

The main concept remains the same, where the employer or the contractor is the first owner of any intellectual property acquired on the work, except when specifically worked on the contract which states otherwise. If the authors of this paper have something to suggest, the sole area of focus under Work for Hire shall be the codification of the same, to avoid a majority of confusion and law suits that might come forth.

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