Aspects of the Relationship Between Employer and Employee, *vis-à-vis* Copyright

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Author v. Owner

Author of Copyrightable Work:

- Creator of the work
- A person who creates work fixed in a tangible means of expression:
  - Author in case of literary or dramatic work
  - Composer in case of a musical work
  - Artist in case of a artistic work
  - Producer in case of a cinematographic film or sound recording
  - Computer generated work – the person who causes the work to be created
Owner of Copyrightable Work

- Employer is the first owner of a copyrightable work in case
  - The work is created by the author in the course of his employment
  - Employment is under a contract of service or apprenticeship
  - No contract to the contrary between employer & employee
• Contract of Service
  – Person employed as a part of business
  – Work done as an integral part of business

• Course of Employment
  – Work made in the course of that employment
COPYRIGHT LAW IN INDIA:
The Copyright Act, 1957: Section 17

Author of a work is the first owner of copyright therein except

- The proprietor of the newspaper/magazine – is the first owner of copyright for work made for publication in such newspaper/magazine *

- The person commissioning an artistic/cinematographic for valuable consideration is the first owner of the copyright*

- The Employer is the first owner of copyright for work made in the course of the author’s employment under a contract of service or apprenticeship

* not in UK Copyright, Designs and Patents Act, 1988
Employer: Proprietor of a newspaper/periodical/magazine

- Employer is the first owner of the work but for limited purpose
  - publication of the work in a newspaper/periodical/magazine or,
  - To the reproduction of the work for the purpose of its being so published.
Employer-Employee: Relationship

- Is based on the contractual relationship between the parties, and

- Statutory interpretation of such contractual relationship
Employer has all the exclusive rights to do or authorize the doing of inter alia any of the following acts:

- To reproduce the work in any material form
- To issue copies of the work to the public
- To perform/communicate the work in public
- To make any adaptation of the work
- To sell or give on hire or offer for sale or hire any copy of the cinematographic work
Employee (Author) Rights

• Author’s Special Rights:
  – To claim authorship of the work;
  – To restrain or claim damages in respect of any distortion, mutilation, modification or any act if the same is prejudicial to his honour or reputation.
• In V. T. Thomas & Ors. Vs. Malayala Manorama Co. Ltd, the Kerala High Court held

  – The term “author” occurring in Section 17 is defined under Section 2(d) of the Copyright Act, 1957

  – In relation to any artistic work, a person cannot be simultaneously the employer and the author
Case Study: I

• Artistic work made by an Author during the subsistence of employment
  – Passes on to the employer

• Termination of employment
  – the copyright vests with the Author.
In Khemraj Shrikrishandas vs. Garg & Co. & Anr., the Delhi High Court held:

- Work done by an author for consideration for a publisher
- The copyright vest in the publisher, subject to any contract to the contrary
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Thank You

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