



Commissioned Works

The issue of whether a work was commissioned is relevant to the question of the first ownership of copyright in the work.

However, the duration of copyright protection for commissioned works is calculated according to the 1995 Regulations.

Works commissioned on or after 1 August 1989.

There are no specific provisions in the Copyright, Designs and Patents Act 1988 regarding commissioned works, and hence copyright in commissioned works vests in the artist creating the work unless there is a written agreement to the contrary by which the copyright is assigned.

A commissioner, however, might well have an implied licence to use the work, at least for the purposes contemplated by the terms of the commission.

Where an author is employed and creates a work during the course of his or her employment, the copyright will, however vest in the employer.

For older works, however, one must look at the law in force at the time the work was made.

Works commissioned on or after 1 June 1957 until 31 July 1989

The 1956 Copyright Act provides that where a person commissioned the taking of a photograph, the painting or drawing of a portrait or the making of an engraving and paid or agreed to pay for the work with money or money's worth, copyright vests in the commissioner.

The Act does not define what a portrait is, but it has generally been held to be a picture in which a person is the main subject. However, the fact that real persons happen to be delineated in a picture does not necessarily make it a portrait.

An engraving is defined in the Act as any etching, lithograph, woodcut, print or similar.

It should be noted that copyright in works created by an artist in the course of employment where they are employed by the proprietor of a newspaper, magazine or periodical vests, in the proprietor but only for the purpose of publication in a newspaper, magazine or periodical, the balance remains vested in the artist. Other than these circumstances the rules about employers was the same as referred to above.

Works created on or after 1 July 1912 until 31 May 1957

The 1911 Copyright Act contained similar provisions to those described immediately above, that is, in the case of an engraving, photograph or portrait where the plate or original was ordered by some other person and was made for valuable consideration the copyright vests in the person placing the order, unless there is agreement to the contrary.

Works created prior to 1 July 1912

The 1862 Fine Arts Copyright Act provided that where a painting, drawing or photograph was made or executed for or on behalf of another for good and valuable consideration the copyright vests in the commissioner.

Note: The copyright period in a work is not affected by the fact that the copyright is vested in a commissioner rather than the artist (but see fact sheet 13 and fact sheet 17 relating to engravings) .