

**B.A.LL.B. VIII SEMESTER**  
**INTELLECTUAL PROPERTY LAW**  
**BL- 803**

**TOPIC: OWNERSHIP OF COPYRIGHT**

Sec.17. **First owner of copyright.**—Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: Provided that—

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

Explanation.—For the purposes of this clause and section 28A, “public undertaking” means— (i) an undertaking owned or controlled by Government; or

(ii) a Government company as defined in section 617 of the Companies Act, 1956 or (iii) a body corporate established by or under any Central, Provincial or State Act;

(e) in the case of a work to which the provisions of section 41 apply, the international organization concerned shall be the first owner of the copyright therein.

Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of section 13.

Generally the author is the first owner of the copyright.

The owner of the copyright means person who possess and enjoys the legal right. The definition given to the author in the context of copyright protection depends on the nature of the work & **sec.2 (d)**<sup>1</sup> defines 'author'. The creator of the work can also be joint authors, but dilemma lies in determining the criteria for joint authorship. Sec. 2(z) of the Copyright Act defines work of joint authorship which means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of other author or authors.

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<sup>1</sup> Sec. 2(d) defines author, it says "Author" means, -

- (1) In relation to a literary or dramatic work, the author of the work;
- (2) In relation to a music work, the composer;
- (3) In relation to artistic work other than a photograph, the artist;
- (4) In relation to photograph, the person taking the photograph, the artist;
- (5) In relation to a cinematograph film or sound recording, the producer; and
- (6) In relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created.

## **Imp. Case Laws**

**Najma Heptulla v/s. Orient longman Ltd. AIR 1989 Delhi 63**

**Hardly v/s. Kemp (1999) E.M.L.R. 589**

**Gee Pee Films(p) Ltd. v/s. Pratik Chowdhary (2002)**

**V.T Thomas v/s. Malayala Manorama A.I.R. 1989 KERLA 49**

**Zee Entertainment Enterprises Ltd v/s. Gajendra Singh & Others (2008)**

**University of London Press v/s. University Tutorial Press (1916)**

**IPRS v/s. Eastern India Motion Pictures (1977)**

**BM Piros v/s. State of Kerala (2004)**

**Eastern book comp. v/s Navin J Desai (2001)**

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