**Copyright: Authorship and ownership**

The author of a work is usually the first owner of the copyright in the work. There is no requirement of registration, and copyright will arise automatically with the creation of the work. The author is the person who creates the literary, dramatic, musical and artistic work and is generally the person who expends the right sort of originality. There is a presumption that the author is the person whose name appears on copies of a literary, dramatic, musical, or artistic work when published or made.

It is important to note at this point that the author of the copyright, and the owner of the copyright can be, and often are, two different people. The author, as noted, is the person who expends the right sort of originality in creating the work. The author might then assign the copyright in a work to a third party – who would become the owner. Or the author may licence certain of the rights in the work to a third party. Or the author may be an employee, and develop the work in the course of employment. In this case, the employer would be the owner of the copyright in the work.

Licensing will be considered in more detail in the next section.

**Question**

Who may be treated as the author of the copyright in a dance?

**Joint authorship**

The law recognises that a work may have more than one author. There may be joint authorship of a work where it is produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors. The essence of joint authorship is collaboration in the execution of the work in the furtherance of a common design to produce a work and even if one carries out a larger share of work than the other, each author is required to make a ‘significant contribution’. However, the authors’ contributions should not be separate or distinct – if they are, then each is the author of their own distinct piece. A common intention to produce a joint work is not a requirement for a work of joint authorship.

The decision as to whether or not there is joint authorship will be determined by looking at the nature of each of the contributions, linked to the fundamental concepts of originality and that copyright subsisting in the form of expression but not in ideas and information. Did one person supply only ideas and material which were translated into a work by the other, or did the former’s contribution amount to a part in formulating the expression, that is, authorship? In cases where clearly one person supplies ideas and information and another puts these into literary or artistic form, the latter is author and owner of the copyright.

So, a person who supplied the ideas for the plot of a play, a director who added ideas during the rehearsals and development of a play’s script, and a person who had had the idea of using an outline drawing of a human hand as an indicator on a ballot paper, were all held not entitled to the copyright in the resultant works. By contrast the ghostwriter of a jockey’s memoirs was held to be the owner of the copyright as the person responsible for the language in which the work was cast.

When considering the authorship of photographs in a photoshoot, it was found that the person who gave general instructions, and accepted that the event was a team effort, did not result in joint authorship. The photographer was the only person with sufficient control over taking the photograph to result in authorship and so was found to be the sole author of the copyright.

**Key points on joint authorship**

• Arises where more than one person collaborates in the execution of a work (ie in formulating the expression) and the contributions are indistinguishable in the final work

• Supply of ideas/information is insufficient to make one a joint author

• Improvement/amendment/editing of another’s work not enough to make one a joint author

**Co-authorship**

A work may also be co-authored. That is, a work may be produced by collaboration where the contributions of the collaborators are separate from each other and remain distinct. A song in which the words are written by one person, and the music by another, where they are created to be used together, is treated by the law as a work of co-authorship. In a co-authored work each contributor has a separate copyright as the author of her part of the work.

**Question**

Can you give examples in which a dance might be a work of joint authorship, and when a dance might be co-authored and who the authors might be?

**Employment and contract**

Where a literary, dramatic, musical, or artistic work is made in the course of the author’s employment, the employer is entitled to the ownership of the copyright in the work. This is particularly important with respect to commissions: where a work is commissioned, the copyright remains with the author. That is unless there is an agreement (contract) to the contrary – which may be the case where a dance work is commissioned.

**Question**

Give examples of employer/employee relations in the dance community where copyright will be owned by the employer. Who is the employer?

**Important points**

* For an employer to claim the copyright in an employees’ work, the work must have been made in the course of employment
* Even if the author of the copyright work is not an employee, she may have entered into a contract assigning or licensing the copyright in the work to a third party