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Copyright

Claimants

subsequent derivative work by one author is also a joint work.[6] It may well be the sole work of its author, even though it is also a derivative of the prior joint work.

Similarly, two separate works of authorship, each complete in itself, do not become a joint work just because they are useful with one another or function well together. If neither work has elements or portions common to the other, if neither incorporates or references the other, if neither requires the other, and if they are separately offered, they are separate works.[7]

[2] Works Made for Hire

At times a work may be created by one person as the employee of another. In such a case, the work likely would be a work made for hire.

The Copyright Act defines a work made for hire as either (1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned if (a) it is used in one of certain types of work, and (b) if the parties expressly agree in a written instrument signed by them that the work is a work made for hire.[9]

The second condition, by virtue of its terms, seldom presents much difficulty. It requires the work:

(1) To be specially ordered or commissioned;

(2) To be created as the result of an express agreement set forth in a written instrument signed by the parties that the work should be considered a work made for hire; and

(3) To be (a) a contribution to a collective work, (b) a part of a motion picture or other audiovisual work, (c) a translation, (d) a supplementary work, (e) a compilation, (f) an instructional text, (g) a test, (h) answer materials, for a test, or (i) an atlas. For such purposes a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by

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[6] Weissmann v. Freeman, 868 F.2d 1313, 1989 C.L.D. ¶ 26,390 (2d Cir. 1989).

[7] Cormack v. Sunshine Food Stores, Inc., 675 F. Supp. 374, 4 U.S.P.Q. 2d 1366 (E.D. Mich. 1987).

[8] [Reserved.]

[9] 17 U.S.C. § 101.