COPYRIGHT OWNERSHIP: EMPLOYER’S RIGHT vs PHOTOGRAPHER’S CLAIM

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Abstract
Contentions often arise as to whom between the employer and the employee is the owner of copyright in works created by the employee in the course of employment. Similar contentions arise between commissioners and commissionees of copyrightable works. This work examined the legal issues relating to the authorship and ownership of copyright with emphasis on the dichotomies in such rights between commissioned and free-lance photographers. Employing the doctrinal method, the work established that the creation of a professional photograph involves significant artistic ingenuity and independence of thought hence it is logical for copyright ownership to vest in the photographer. However, whilst the author-ownership approach adopted by Nigeria’s Copyright Act is appropriate and indeed commendable in most cases, the rule may work injustice against the person who commissions a photograph. The work recommends that the person commissioning a work could protect his investment in sponsoring the creation of a work by including a clause in the contract to address copyright ownership and other ancillary rights.

Keywords: Copyright Ownership, Copyright Act, Employer’s right to copyright, Photographer, Commissioner of artistic work, IP Clause, contract of employment

1. Introduction
One of the greatest assets of any nation is the creative, innovative and inventive ability of its citizens. Intellectual property law is the area of law that is concerned with the protection of human creativity and effort. It is grouped into four major categories: copyright, trademark, patent and industrial designs.1 This paper deals with copyright in artistic works, specifically photographs. It is truism that a fundamental right attached to ownership is the right to control the use of the property owned. The owner determines the utility of the property and the person who utilizes it.2 These rights also accrue to an owner of copyrighted properties. A copyright owner is vested with various rights over

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the copyrighted work and where any act is done in violation of the rights of a copyright owner, an infringement occurs and the copyright owner has a right of action. For this reason, it is imperative that the owner of a copyright be identified in order to ascertain the person who has legal rights over the work.

Often times, the author of the copyrighted work is misconstrued as the only one vested with the ownership of the copyright in the work. However, there are circumstances where the author is not vested with copyright in his work or, even where he is vested with such right; he gives it up to another person. One major instance is where an employer engages and pays an artist for the purpose of producing artistic works. In such situations, copyright would vest in the employer rather than the employee artist. With regards to a photographer’s rights, this paper looks at the various circumstances surrounding the making of a picture by a photographer. On the one hand, a photographer may take freelance pictures of either still-life or real-life objects. He may decide to carry out a pictorial documentary all on his own initiative. On the other hand, a photographer may be commissioned by a client to take photo shoots of a person, still-life objects, make photographs for an advertisement or campaign, or to make a pictorial documentary of an event. In all of these circumstances, who has a claim on copyright over the photograph?

2. The Concept of Copyright

Black’s Law Dictionary defines Copyright as “a property right in an original work of authorship (such as literary, musical, dramatic choreographic, pictorial, graphic, sculptural architectural works; motion pictures and other audiovisual works and sound recordings) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform and display the work.” The World Intellectual Property Organization (WIPO) defines copyright as a legal term used to describe the rights that creators have over their literary and artistic works. In recounting the essence of copyright, Bouchoux stated: “copyright protects the works of authors and artist to ensure their product are not unlawfully reproduced, distributed, performed, or displayed, acts that would deprive them of revenue and discourage further creative work.” This definition highlights the importance of copyright to society. For one, it

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3 Infringement of copyright occurs when a person without the licence or authorization of the copyright owner does or causes any other person to do any of the acts reserved to the copyright owner under the Act. Infringing acts may vary depending on the type of work but commonly refer to direct reproduction, publication, performance, adaptation, commercial distribution, public performance and broadcasting of copyrighted works. Other activities, which are mainly of commercial nature, such as dealing with the infringing copies of a work, if they are done without the licence of the copyright owner, are described as secondary or indirect infringement. Copyright Act Section 15(1, s.)(a-g).


stimulates and promotes further creativity. When people benefit financially from their creative products, it propels them to do more work and produce more creative products for the benefit of society. Babafemi describes the primary function of copyright as the protection from annexation the fruits of a person’s work. The court in Adenuga v Ilesanmi Press and Sons (Nig) Ltd held that copyright is “the exclusive right to control, to do or authorise the doing of any of the acts restricted to the copyright owner.” It is a protection that is granted to authors of original creative works which have been fixed in a tangible form.

All over the world, copyright issues are governed by legislation. In Nigeria, the regulatory statute for copyright is the Copyright Act (herein after referred to as the Act). The Act does not give an informative definition of the term copyright. However, a thorough perusal of its provisions shows that the aforementioned definitions of the term, which indeed are the conventional definitions of copyright, are applicable to the Nigerian jurisdiction. The Act gives a list of works that are eligible for copyright to wit: Literary, Musical, Artistic and Cinematographic works, Sound recordings and Broadcasts. The implication of this provision is that any work that does not fall into these mentioned categories cannot enjoy copyright protection under the Act. The category of copyrightable works that forms the basis of this paper is artistic work. The Copyright Act describes artistic work to include among other things, photographs not comprised in a cinematograph film.

2.1 Eligibility of Works for Copyright Protection
Before a work can be eligible for copyright protection, it has to meet certain criteria. The Act states these criteria:

1. **Sufficient effort has been expended on making the work to give it an original character:** Originality in this sense does not mean that the work must be novel.

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8 [1991] 5 NWLR (pt 189) 82.
9 Cap C28, Laws of the Federation of Nigeria, 2004
10 In its interpretation section, it provides; “copyright means copyright under the Act” - Section 51 Copyright Act
11 Sections 6, 7 and 8
12**Section 1**
13 The Copyright Act, s. 51(1) provides thus: ‘Artistic work’ includes irrespective of artistic quality, any of the following works or works similar thereto – paintings, drawings, etchings, lithographs, woodcuts, engravings and prints; maps, plans and diagrams; works of sculpture; photographs not comprised in a cinematograph film; works of architecture in the form of building models; and works of artistic craftsmanship and also (subject to subsection 3 of Section 1 of this Act) pictorial woven tissues and articles of applied handicraft and industrial act.
14 Section 1 (2)
The standard for originality here is that the work must have been as a result of the independent creativity of the author and not mere a copy of a work already in existence. In this regard, a work can be original even if it is strikingly similar or identical to that of another. The English case of *University of London Press Ltd v University Tutorial Press Ltd* gives an explanation of the concept of originality in copyright works. In that case, Peterson J. stated: “the originality which is required relates to the expression of the thought… the work must not be copied from another work- that is, it should originate from the author.”

2. **Fixation:** The work has to be fixed in any definite medium of expression now known or later to be developed. This is the underlining factor behind the non-protection of ideas by copyright laws. The work has to be in a form where it can be perceived, reproduced or otherwise communicated and not be in some mere transient form.

3. **Authorship:** Before a work is conferred with copyright, the Act requires that the author or, in the case of a joint authorship, any of the authors is at the time when the work is done, a qualified person.

Copyright is also conferred on works with reference to country of origin and by reference to international agreements.

2.2 Rights Granted to Copyright Owners

When one claims ownership of copyright over a work, it invariably means that he enjoys certain rights over the work to the exclusion of others and that such rights are legally protected. The rights as contained in the Copyright Act with particular reference to artistic works entitle the owner to do or authorise the doing of the following:

1. Reproduce the work in any material form;
2. Publish the work;
3. Include the work in any cinematograph film;
4. Make any adaptation of the work;
5. Do, in relation to an adaptation of the work, any of the acts specified in relation to the work the aforementioned acts.

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15 D.E. Brouchoux, *ibid.* at 193
16 (1916) 2 Ch.601
17 Section 2 Copyright Act
18 A qualified person is an individual who is a citizen of or is domiciled in Nigeria or in the case of a body corporate, it is a body corporate incorporated by or under the laws of Nigeria
19 Sections 3 and 5 Copyright Act
20 The nature and scope of rights granted to a copyright owner can be gathered from the provisions of sections 6, 7 and 8 of the Copyright Act.
21 *Ladbroke (football) Ltd v Williamhill (football) Ltd* 1 (1964) 1 ALL ER 465 or 1 WLR 273
22 *Merchant Adventures Ltd. v M.Grew & Co Ltd* [1922]1CH 242
24 (Copyright Act, ss.6(1) and15(1)).
These rights are referred to as economic rights. Where any one does any of the aforementioned acts without the authorisation of the owner, the owner’s right over the work is said to have been infringed and thus, the owner has a course of action against the infringer. 25 The economic nature of these rights and the consequence of infringement show how important it is to identify who the owner of copyright in a work is. However, a work is first created before ownership issues arise and the creation or authorship of a work is just as important as is the ownership of copyright in such work.

3. Authorship and Ownership of Copyrightable Work

Who is an author?
Under copyright law, the author of a work is the person or persons who created the work. 26 He is the originator of a work, the one who puts the idea into a fixed form. The author does not have to be the person who physically exerts himself to create such work, it suffices he innovated or inspired it all or part of the work. For instance, a secretary who types notes dictated to him is not the author of the document, but the one whose thoughts are written down. 27 A work may have more than one author. 28 The Copyright Act identifies the author of various works, for instance the author of a work of literature is the person who writes it; the author of a piece of music is its composer; the author of a photograph is the photographer while the author of a compilation is the person who gathers or organizes the material contained within it and selects, orders and arranges that materials. 29 The law stipulates that copyright in the work shall belong in the first instance to the author unless otherwise stipulated in writing under the contract of employment. 30

For the purposes of a photographic work, the Act specifically ascribes authorship to the person who took the photograph, that is, the photographer. He is deemed as the creator of the image. The author of a work in which copyright exists has a right to claim authorship of his work. 31 He may assert that his authorship be indicated in connection with any of the acts referred to in section 6 32 of this Act, except when the work is included incidentally or accidentally when reporting current events by means of broadcasting. any act done with the act. He may also to object and seek relief in connection with any

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25 Copyright infringement is regulated by sections 15 and 16 of the Copyright Act
26 Section 10(1) Copyright Act
27 Cala Homes (South) Ltd v Alfred MC Alphine Homes East Ltd (1995) FSR 818
28 This gives rise to a work of joint authorship which is means a work produced by the collaboration of two or more authors in which the contribution of each author is inseparable from the contribution of the other author or authors.
30 Section 10(2) Ibid.
31 Section 12 Copyright Act
32 7 The acts referred to in section 6 of this Act includes exclusive right to control and authorize the copyright in the works of musical, literary, artistic and cinematograph film.
distortion, mutilation or other modification or derogatory action in relation to his work, where such action would be or is prejudicial to his honour or reputation. The rights of an author are often referred to as moral rights, they are perpetual and inalienable.

Ownership of Copyright
The concept of ownership of copyright is crucial to determining who may exploit the economic and other benefits accruing to the work. It is an owner of copyright that is legally entitled to exploit the work in numerous ways. He may grant a licence to allow another person to carry out certain acts in relation to the work such as making copies (in which case he retains ownership of copyright). Alternatively, the owners may assign the copyright to another, that is transfer the ownership of the copyright to a new owner, relinquishing the economic rights under copyright law. The line between an author and an owner of copyright often appears blurry because ownership flows from authorship. The person who makes the work is automatically presumed to be the owner of the copyright in the work but this is not always the case. Ownership goes beyond just creating a work because there are various circumstances in which the person vested with copyright ownership is not the author. The distinction between an author and an owner has been described as the difference is between one who expresses an idea in a material form and the other one who invests in the trading of the material form in which an idea is expressed.

Under the copyright law, the general rule is that ownership of copyright shall vest initially on the author. Subsequent owners of copyright derive their authority from the author. This position makes the identification of an author an important element in copyright. However, as has been stated earlier, an owner of copyright is quite distinct from the author of the work and the owner is not always the author. The author may assign his right to another person who though not being the author, becomes the owner of copyright in the work.

33 Section 10 (1) op cit.
34 DE Brouchoux, ibid.
37 Section 10(1) Copyright Act
38 Another reason why the author of a work is important is because the duration of the copyright is usually tied to the death of the author. However, with regards to photographs, the duration of copyright is tied to the date the work was first published (the statutory date of expiration is fifty years after the end of the year in which the work was first published) - First Schedule to the Copyright Act.
3.2 Employers’ (Non)Ownership of Copyright in Nigeria

There are different approaches to ownership of copyright. One approach is the Anglo-American approach\(^\text{39}\) which vests the ownership of works created by an author in the course of his employment or in the course of carrying out a commissioned work on the author’s employer or the person who commissioned the work.\(^\text{40}\) In the United States, the copyright law defines a category of works called works for hire; the implication of this category is that where a work is made for hire, the author is considered to be the employer or the commissioning party and not the employee or the actual person who created the work.\(^\text{41}\) There are two types of works under this category and they are: works prepared by an employee within the scope of employment and certain categories of specially ordered or commissioned works.\(^\text{42}\) The approach in Nigeria is different from the Anglo-American approach. Nigeria practices the author-ownership model which says that the author is the owner of copyright even in circumstances where the work is commissioned by another or it is done in the course of employment unless there is a contrary agreement in writing.\(^\text{43}\)

For clarity, it would be beneficial to reproduce the relevant section 10(1)(2)(3) of the Copyright Act hereto illustrate the inter-play of copyright ownership

(1) Copyright conferred by sections 2 and 3 of this Act, shall vest initially in the author.

(2) Notwithstanding subsection (6) of section 10 of this Act where a work-

(a) is commissioned by a person who is not the author’s employer under a contract of service of apprenticeship; or

(b) not having been so commissioned, is made in the course of the author’s employment, the copyright shall belong in the first instance to the author, unless otherwise stipulated in writing under contract.

(3) Where a literary, artistic or musical work is 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 as is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor


\(^{40}\) Ibid Examples of countries with this approach include: Gambia, Ghana and Kenya.


\(^{42}\) Ibid

\(^{43}\) Section 10(2) Copyright Act
shall, in the absence of any agreement to the contrary, be the first owner of 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 been so published; but in all other respects, the author shall be the first owner of the copyright in the work.

3.3 Exceptions to the General Rule of Author-Ownership

The Nigerian Copyright Act is based on the philosophy of protecting the creator of the work from those who commission him to do the work. The emphasis is more on the protection of raw talent, creativity and industry rather than the entrepreneurial skills or business acumen of the commissioner or employer. Nigeria’s author-ownership of copyright is a contradiction to the more general rule of employer’s ownership of commissioned works. This does not however mean that the Copyright Act fails to protect the investment of time, materials and resources made by an employer or commissioner to facilitate creation of the work.

Section 10(3) Copyright Act is to the effect that where the literary, artistic or musical work is 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 proprietor shall be the first owner of copyright in the work, in the absence of any contrary agreement. An employee is deemed to be under a contract of service where he works exclusively for the employer, is under his control or supervision, using the employers’ tools and receives his payment in wages or salary (rather than as commission). The import of this subsection is that where the author is an employee under a contract of service (an employee) and was employed for the purpose of creating literary/artistic/musical works for publication by the employer, first ownership of copyright in such creative works vests directly in the employer. This position will stand whether or not the contract of employment specifically assigned the first copyright to the employer.

Section 10(2)(a) differs slightly from 10(3) because here, the work is created by an author who is under a contract for services, which makes him an independent contractor. The employer commissions the work and may even supervise it but he is not the authors’

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45 Emphasis mine
46 Ready Mixed Concrete [South East Ltd v. Minister of Pension of National Insurance QBD 8 Dec 1967.
employer⁴⁹ and is therefore, not entitled to copyright in the author’s creative output unless otherwise stipulated in writing under the contract for services.⁵⁰

Section 10(2)(b) states that where a work is made in the course of the author’s employment, the copyright shall belong in the first instance to the author, unless otherwise stipulated in writing under contract. This section does not specify whether the author is an employee in a contract of service or an independent contractor in a contract for services. It merely states the general rule that where work is commissioned, the commissioner (usually an employer) does not acquire ownership in of the copyright unless it is previously agreed between the parties. A good illustration of this position is the case of Joseph Ikhouria v Campaign Services Ltd and Anor⁵¹ where the plaintiff was held to have expressly assigned his copyright in the photograph he took on behalf his employer because there was a clause in his employment letter making provision for such an assignment. Thus, by the tenor of section 10(2) (b), the presumption of first ownership of the copyright in the work by the commissionee (author) is rebutted by an express assignment of same to the commissioner.⁵²

A noteworthy point about Section 10(2)(b) is that it should stand to encourage employers and commissioners of copyrightable works to provide intellectual property (IP) clauses in their employment contracts. An intellectual property clause is a strategic way to protect employers from the claims of exploitative staff who use the employer’s resources to create unique works but hide under the concept of creator-authorship to monopolize the gains of such enterprise. Some employees go as far as selling their creations to the employer’s business competitors for personal gain. An employment contract should include clauses on ownership of intellectual property created by an employee in the course of his employment as this would prevent disputes and possible infringement, which may negatively impact on the business.⁵³ The IP clause may either restate the provision of the law in relation to ownership of copyrights or provide for the transfer of the rights based on the terms agreed by the parties. The clause may only be used to transfer or license economic rights but cannot be used to assign or licence the moral rights in a copyrighted work as they are exclusive to the author and inalienable.⁵⁴

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⁴⁹ The legal import of this distinction is best appreciated when the incidence employer’s liability is brough to play. With a few exceptions, the employer is not liable for the acts of an independent contractor whose services he procures.

⁵⁰ Section 10(2)(a)

⁵¹ (1986)1 FHCR 308.

⁵² JO Odion, ibid.


⁵⁴ Section 12(1) and (2) of the Act; Scott, ibid.
4. Copyright Issues in Photography

There is no gainsaying that photography is art that requires distinct creative processes especially with the evolution of photography in modern times. The case of Painer v. Standard Verlags GmbH\(^{55}\) illustrates this point. The Court of Justice of the European Union stated that “in the preparation phase, the photographer can choose the background, the subject’s pose and the lighting...he can choose the framing, the angle of view and the atmosphere created...” These are ways in which the photographer is able to express his creative abilities.\(^{56}\) The final outcome of this process is indeed worthy of copyright protection. Any violation of the rights of the copyright right owner will be treated as an infringement. Photographers have exercised their rights in courts when these rights are violated. For instance, in the American case of Andrew Paul Leonard v. Stemtech Health Sciences, Inc,\(^{57}\) the plaintiff, a microphotography expert, took pictures of bone marrow stem cells and his photographs were stolen and used on the defendant’s website and other marketing materials. The court ruled in favour of the plaintiff and awarded damages against the defendants. Another instance of copyright infringement was the issue of determination in the case of Agence France Presse v. Morel\(^{58}\), a jury found that Agence France Presse and Getty Images (US), Inc had wilfully infringed Daniel Morel’s copyright in eight photographs taken in the aftermath of the January 2010 Haiti earthquake and awarded damages.

The preceding paragraphs have established the fact that a photograph is a copyrightable work. It is regarded as an artistic work and irrespective of the quality of the work; it is eligible for copyright protection. Furthermore, the author of such work is the photographer. Flowing from the approach adopted by the Nigeria copyright act with regards to the ownership of copyright, the photographer being the author is vested with the first ownership of copyright. As straight forward as this may seem, there are complex issues concerning copyright ownership in photographs. For instance, who should own copyright of a photograph where a photographer is contracted to take photo shots of a person, event or to make images for an advert/campaign? Who should own copyright in a photograph where the photographer engages in a freelance/personal project?


\(^{56}\) Ibid


4.1 Where a Photographer is Commissioned for a Work

A commission in the sense in which it is used in this paper is an order for someone to do something and get paid.\(^59\) When you commission someone to do something, you formally arrange for the person to do a piece of work for you.\(^60\) It is a common practice that individuals/organisations contact photographers to take pictures of and for them on special occasions. Photographers are also commissioned to make pictures for advertisements and campaigns. The commissioning party pays for the expertise of the photographer and the final product which is the photograph. In a sense, a contract comes into existence between the commissioning party and the photographer. When these photographs are made, it is usually accompanied with the signature of the photographer which is watermarked on the photographs. These watermarks serve as an acknowledgement of the photographer’s authorship. However, in most cases, the photographers, for an additional fee, agree to exclude the insertion of the watermark on the photograph. In cases involving photo shoot sessions of a makeup artist’s art or a food vendor’s art, the photograph often contains the watermark of the artist and not the photographer. The general rule in Nigeria as encapsulated under Section 10(2) of the Copyright Act is to the effect that the author owns the copyright in the works. The exception to this is where there is a written agreement to the contrary.

Considering the nature of copyrights, vesting a photographer with ownership would give the photographer the right to use the work in accordance with Section 6 of the Copyright Act. This would mean that the pictures of clients could be reproduced, published, included in any cinematograph film or made into an adaptation without their consent. While these acts bring more economic benefits to the photographer, the client derives no economic value for their use. Against this background, it is submitted that this position is disadvantageous to persons who have commissioned a work. The requirement of a written agreement to transfer ownership appears to be a bottleneck in such a simple contract between a photographer and his commissioning client. An implied conduct of transfer would suffice in these circumstances. The payment for the services of the photographer should serve as an implied transfer of his ownership of copyright in such instances. If the moral right of authorship of the photographer evidenced by the watermark affixed on the photograph can be excluded upon payment or some sort of agreement, the economic rights should also be passed to the person who has paid for the work. The copyright practice in Ghana supports this submission. Section 7 of the Ghanaian Copy Right Act, 2005 provides thus: “in the absence of any contract to the contrary, the economic right of a work shall vest in an employer or a person who commissions the work where the employed or commissioned author has created the work in the course of the employment or commission.”

\(^{59}\) Vocabulary.com <http://www.vocabulary.com/dictionary/commission> accessed on 16 March 2020

4.2 Where a Photographer Engages in a Freelance Project
Photographers often engage in independent works without being employed or commissioned to do these works. This is what is referred to as freelance projects. In carrying out this project, it is not unusual for the photographer to commission the services of others. For example, the photographer could commission an individual to serve as a model while he tries to create an artistic idea. The photographer could also make photo documentaries of events. Furthermore, he may decide to make a photo-book. These works could be carried out for several purposes. It could be for the purpose of improving or advertising his art or for sale to the public. In determining the owner of copyright in these circumstances, reference is again made to the general rule. In essence, the photographer as author is the owner of copyright in the works produced in these circumstances. This position is indeed appropriate as it protects the economic rights of the photographer who has shown a measure of originality in producing creative works. He should be vested with the right to determine how his works, which he produced independent of any affiliation or commission, are used. It is true that certain issues may arise with regards to the freelance activity of a photographer. There may be issues of lack of consent where he takes random photographs of people or even copyright infringement where the objects of his photography are copyrighted works. While these are genuine concerns, a consideration of these issues is beyond the scope of this paper.

5. Conclusion and Recommendations
Intellectual works are important to the society and the protection of the rights of the creators of these works ensures that more intellectual works are made. Creativity takes effort, time and money. Hence, it is only fair that the law seeks to protect the creators by giving them a level of control over these works. The moral and economic rights that accompany copyrightable works prove just how important these works are. In Nigeria, the general rule with regards to the ownership of copyright is that the author of the work is the owner of the copyright in the work. An exception is however captured in Section 10(3) Copyright Act with respect to works created by author in the course of employment by the proprietor of a newspaper, magazine or similar periodical and such work is for publication the newspaper, magazine or periodical.

Applying this to the standing of a photographer in copyright claims, the position in Nigeria is that, subject to the statutory exception in Section 10(3), the photographer owns the copyright in the photographs, and in cases where he has been commissioned to do the work, his right to ownership can be transferred only by a written agreement. Based on the consideration of certain circumstances that give rise to the creation of photographs, the submission is that the practice of copyright right ownership in Nigeria is not desirable

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61 Photo-books which are often used as coffee table books are books which have photographs as the overall content.
62 Section 10 (2) Copyright Act
in certain circumstances. This is with particular reference to cases where the photographer has been commissioned to take the photographs. In these circumstances, it is submitted that the practice of copyright ownership in Nigeria should be amended to accommodate the Anglo-American approach which will vest the copyright on the commissioning party.

Other than the adoption of the Anglo-American approach to protect the commissioner of a work, another tactic would be to recognise an implied transfer of copyright ownership as opposed to the requirement that such transfer must be done by a written agreement. Where the photographer makes photographs without an affiliation or commission, he should indeed be the owner of copyright. In essence, there are two sides to the coin of the right of ownership. While it is fair that the photographer be vested with the first ownership considering the creativity involved in making a picture, there should be a provision for a shift in ownership, other than the exception stipulated in the Act, in certain circumstances.