

# Copyright and Collective Authorship: Locating the Authors of Collaborative Work

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## Subject

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**\*I.P.Q. 315** A detailed and rigorous exploration of copyright provisions for locating authorship and ownership in the face of large-scale collaborations, Daniela Simone's monograph provides an accessible and admirable assessment of copyright provisions and the difficulty of locating the authors of collaborative works. As multi-author collaborations increase with digital working, the importance of locating the authors of collective works becomes clear; Simone's timely work uses four case studies to highlight how copyright law currently fails to make this clear, before suggesting an alternative approach.

The book begins with an introduction, setting out a roadmap for the discussion to come. Succinct and focused, Ch.2 then moves to deal with setting the scene through theoretical and doctrinal analysis of the concepts and joint authorship in copyright law in the UK. Simone analyses the statutory provisions, CJEU jurisprudence and case law concerning cases of joint authorship. She identifies three key themes here: the factual specificity of the joint authorship test, the pragmatic instrumental approach to the implementation of the test, and the preoccupation with aesthetic neutrality, concluding that the prevailing approach to joint authorship is insufficiently clear, and fails to meet the aims of the CDPA. Instead, she lays the groundwork for a more nuanced analysis of the key question—that is, what constitutes protectable authorship?

In answering this question, Simone presents four in-depth case studies of collaborative authorship. Through these case studies, she explores the regulation of the attribution of authorship, and the benefits and responsibilities of authorship. Chapter 3 (Wikipedia), Chapter 4 (Australian Indigenous Art), Chapter 5 (Scientific Collaborations) and Chapter 6 (Film) each take on a similar structure. First, the dynamics of creativity and social norms in attributing authorship in these large-scale collaborations are identified. Second, copyright's subsistence rules are applied, and any gaps or uncertainties are addressed. Third, any private ordering mitigations of these gaps or uncertainties are identified (or, where appropriate, these two points are reversed). Finally, each of these four chapters presents insights from the case studies, which could be applied to copyright law more generally.

Chapter 7, then, brings together analyses from the four case studies to present a broader picture of collaborative authorship and the role of copyright in its regulation. Five broad themes are laid out and discussed: 1. The nature of collective authorship; 2. The different meanings of authorship; 3. The gap between copyright law's assumptions about authorship and creative reality; 4. Bridging that gap with private ordering; and 5. The role of copyright law and its concepts. This chapter is particularly valuable in bringing together the foregoing analysis, especially as it highlights with clarity the difficulties of locating the authors of collective works for copyright purposes, and the variety of guises this difficulty can pose. It brings together lessons learned from the often inadequate role of copyright law in locating and rewarding the authors of collective works, and highlights where alternative mechanisms are necessary to regulate this growing collaborative form of creativity.

In Ch.8, the final chapter, the author takes the collected lessons from the case studies and applies them to the analysis from Ch.2—that is to say, she brings together all of the previous work to answer the question of what constitutes protectable authorship. She proposes that her working suggestion from the beginning of the book—that a work of joint authorship is one which is greater than the sum or its parts—is a good fit for collective and collaborative authorship also. Taking this point, the chapter then proposes an inclusive, contextual approach to the joint authorship test, realigning the legal test with the reality as it stands. She advocates a framework which allows the integration of social norms into legal decision-making, with a **\*I.P.Q. 316** series of controls so that they are only used where appropriate. This analytical framework then allows the legal test for joint authorship to be aligned with the reality of collaborative working, and further provides a framework for judicial reasoning. The chapter touches on the inevitable implications of reworking joint authorship for joint ownership, before concluding with

a brief discussion of the need to re-explore motivations for copyright outside economic motivations, particularly where they fall squarely inside copyright's "positive spaces".

This is a confident, thorough, assured, and insightful monograph, which presents a valuable analysis of the law on joint authorship of copyright works. The author mentions in Ch.1 that it is her hope that the book will "provide a useful analytical framework to promote greater clarity in judicial decision-making". In the brief time since its publication, it has already begun to do so, as it was cited with approval in *Kogan v Martin* [2019] EWCA 1645. *Copyright and Collective Authorship* creates a compelling argument for reworking the joint authorship test, a confident mechanism for its replacement, and a solid theoretical framework underpinning that test, making it a valuable addition to the shelf of any copyright lawyer.

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