



A - Z INDEX

[Back](#)

A - Z Index

Copyright that vests in wedding photographs

In terms of Copyright law, the general rule is that the author (or creator) of the work is the initial owner of the copyright vesting in that work. The owner is then entitled to reproduce, adapt or copy the work as he pleases.

The Copyright Act 98 of 1978 defines an "author", in relation to a photograph, as the person who is responsible for the composition of the photograph. In terms of the general rule then, the photographer at a wedding is the author of the photographs and thus ownership of the copyright in those photographs ought to vest in him.

There are, however, exceptions to the general rule as contained in section 21(1) of the Act. For purposes of this discussion, section 21(1)(c) is the most relevant. This section states that: Where a person commissions the taking of a photograph...and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, the person who commissions the work is the owner of the copyright in such work.

As a result of section 21(1)(c), it is clear that the person who commissions the taking of the photographs is the owner of the copyright vesting in those photographs. As such, the photographer is obliged to hand over all photographs that he has taken to the commissioner of the work, who is then entitled to reproduce, adapt or copy those prints as and when he pleases.

The exception to the general rule as contained in section 21(1)(c) is however variable by agreement between the parties. Practically then, the parties could agree that despite section 21(1)(c), the photographer will own the copyright vesting in the photographs.

As such, the commissioner of the work, when entering into an agreement with the photographer must take the utmost care that the agreement does not contain a clause to the effect that ownership of the photographs will vest solely in the photographer. If there is no such clause, the commissioner of the work may rely on section 21(1)(c) of the Act.

Prepared by J Michael Judin of attorneys Goldman Judin Inc of Johannesburg and Ms

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