Kluwer Copyright Blog

Alaläääkkölä v Palmer: New Zealand Supreme Court confirms copyright is relationship property

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In March 2025 the New Zealand Supreme Court confirmed that copyright is relationship property, to be divided accordingly when a qualifying relationship ends. This decision has significant implications for copyright practice in New Zealand, and jurisdictions with similar regulatory frameworks for IP and family property (like the United Kingdom).

Image by Martina Bulková from Pixabay

Background

As recounted by Lyall (2024), Finnish artist Sirpa Alaläääkkölä and her husband Paul Palmer, who married in 1997 and separated some 20 years later, disputed the ownership of copyright in artworks she created during the course of their relationship. The Family Court, High Court and Court of Appeal all had to determine whether this copyright was property acquired during a relationship under the *Property (Relationships) Act 1976* ('**PRA**'), such that Mr Palmer was entitled to a 50% share in it.

The Supreme Court decision

While the High Court and Court of Appeal had ruled in Mr Palmer's favour, the Supreme Court considered two issues on appeal: (a) whether the copyright in her artworks be part of the relationship property division; and (b) how the artwork and underlying copyright should be valued. It addressed these questions as follows.

First, the Court confirmed copyright is personal property. It distinguished between economic rights (which are assignable) and moral rights (which are not assignable). Because economic rights can be assigned, copyright has 'a value realisable in money'. This brings it within the PRA's

definition of ‘personal property’ even though it is intangible.

Second, the Court rejected the argument against deeming copyright relationship property from policy. Doing so would not deter creativity. In fact, the relationship may well have driven more creativity. Property also does not transfer until the relationship ends, and if people can be assumed to enter relationships ‘hoping [they]…would endure’, it seems counterintuitive to treat the mere prospect of a relationship property division as a creativity disincentive.

The Court also considered including copyright as relationship property cohered with the PRA’s ‘social purpose’. Doing so recognises the partner’s contribution to any works generated during the relationship, as with any other relationship property.

Third, copyright was not separate property just because Ms Alalääkkölä’s creative skills predated her relationship. Those skills are not property; the works generated *using* those skills are property. The argument is further weakened by the possibility that the partner contributed to the work by virtue of ‘the division of effort within the marriage’.

Fourth, copyright is ‘acquired’ under the PRA if it is the product of creative activity. There is no reason to treat ‘acquire’ as not including creation, especially given ‘property’ is broadly defined. The PRA also includes ‘the acquisition or creation of relationship property’ as a possible contribution of a partner, suggesting drafters had in mind the possibility of property being created. In any case, *copyright* is not created, but acquired – it comes into effect when works are created. We can assume the Court was aware of, and gave an implied nod to, copyright subsistence requirements like originality.

Fifth, relationship property divisions of copyright must respect the artist’s moral rights, particularly in relation to unpublished works: to decide her work was complete and to show it publicly. Any value division in respect of copyright in unpublished works must reflect the artist retaining such control via moral rights, which may mean they have less value.

This approach did not, however, apply to a category of works which Ms Alalääkkölä had acknowledged she intended to sell before separating. The Court found she should effectively be held to that position when it came to valuing the works. It acknowledged, however, that valuing the copyright will generally be difficult, to the point that works might even need to be sold to more accurately establish their value.

Implications

The Family Court now must value and distribute the copyright as part of the body of relationship property. Ms Alalääkkölä already plans to leave New Zealand as a result, which is an understandable decision but one which deprives New Zealand of another source of high-quality art.

More broadly, this decision should make creators with copyright in New Zealand cautious about how their relationship status may impact their creative careers. Many creative markets operate on an exclusive licensing model – book and music publishing contracts typically involve exclusive licenses of rights for the duration of copyright, which is 50 years after the author’s death and will soon be twenty years more following NZ’s free trade agreements with the UK and EU.

Yet what happens to a book publishing license signed in 2018 and the author's relationship ends in 2027? The fact that a partner may own 50% of the copyright in 2027 makes the status of that license unclear from that point onwards. The license may even be in jeopardy if the partner decides to retain the rights and withhold permission for ongoing publication. The publisher may then be in the uneasy position of negotiating a new license with the joint owners.

Contractual practice may thus be affected. Publishers could start requiring author indemnifications against losses arising from a relationship split. Creators' relationship histories may become relevant to contractual negotiations. And contracting out agreements will become more important for creators to secure the whole copyright if a relationship ends.

To an extent we must now trust courts to divide relationship property, including copyright, to minimise these difficult consequences. But IP presents particular challenges to such divisions, suggesting statutory responses may be needed.

In the meantime, *Alalääkkölä* makes New Zealand a fascinating case study for jurisdictions grappling with the uneasy intersection between IP and family property. Its ripple effects are likely to be felt in New Zealand and beyond for some time.

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