

WHAT IF EMPLOYEES OWNED THEIR COPYRIGHTS?

*Deborah Tussey**

2008 MICH. ST. L. REV. 233

TABLE OF CONTENTS

INTRODUCTION	233
I. THE INCENTIVES STORY	235
II. THE CONTRACTUAL ALTERNATIVE.....	240
CONCLUSION	243

INTRODUCTION

The mere asking of the question in the title implies—correctly—that employees usually do not own the copyrights in works they create for their employers. Under the provisions of the work for hire doctrine, the employer is the “author” as well as the copyright owner of works produced by its employees and by independent contractors it hires for special commissions or projects.¹ Thus, employees of most of the major collaborative copyright industries² seldom own copyrights in the many valuable works they create. The doctrine creates a legal fiction through which corporate employers take the place of the individual author usually envisioned by

* Professor, Oklahoma City University School of Law. The author would like to thank the participants at the 4th Annual Intellectual Property and Communications Law Program Symposium at Michigan State University College of Law for their helpful comments on the presentation that formed the basis for this Article. The writing of the Article was supported by a grant from the Kerr Foundation and Law Alumni Fund.

1. The doctrine contains a number of qualifications and requirements. For example, the doctrine applies to independent contractors only with respect to certain enumerated categories of works. *See* 17 U.S.C. §§ 101, 201(b) (2006). I will not review the requirements of the doctrine in detail herein. For a more comprehensive review of the doctrine, see Deborah Tussey, *Employers as Authors: Copyrights in Works Made for Hire*, in 1 *INTELLECTUAL PROPERTY AND INFORMATION WEALTH: ISSUES AND PRACTICES IN THE DIGITAL AGE* 71, 71-91 (Peter K. Yu ed., 2007).

2. Collaborative copyright industries include any industry in which many employees or independent contractors contribute to the production of particular copyrighted works. The description covers most of the major copyright industries, including film and music recording studios, newspapers and magazines, and television and radio broadcasting.