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COPYRIGHT IN WEDDING PHOTOGRAPHY: OWNERSHIP, AUTHORSHIP, AND COMMERCIAL EXPLOITATION IN THE DIGITAL AGE

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ABSTRACT

Wedding photography helps to identify an intersection of intellectual property law that is both novel and underexplored. The legal ownership of memories captured from wedding ceremonies and celebrations is not as simple as any layperson would assume. Who actually owns these images legally: the wedding photographer, the newlyweds, both of them, or maybe even neither of them? The purpose of this paper is to attempt to answer this question in the context of wedding photography. This paper is primarily interested in copyright and authorship in wedding photography, and copyright challenges of the digital age. The paper takes a look at the U.S. Copyright Act of 1976, the Indian Copyright Act of 1957 (as amended), and the relevant case law. This paper argues that default rights of the images are retained by wedding photographers, but copyright ownership is further complicated by the work-for-hire doctrine, contracts, and the Terms of Service of different social media platforms. This paper outlines copyright ownership dispute prevention strategies available to wedding photographers and newlyweds and suggests possible copyright ownership concerns of wedding industry reform.

Keywords: *Copyright, Wedding Photography, Authorship, Work for Hire, Digital Reproduction, Social Media, Commercial Exploitation, Intellectual Property.*

I. INTRODUCTION

The copyright of wedding photography is becoming a paradox of copyright law. Wedding photography captures the most important day in the lives of most people. However, wedding photography, like all other professional photography, is a series of commissioned creative services.

Reconciliation of both descriptors has proved difficult for the law, and the situation has been getting worse for the last several years.

Modern technology has made this situation worse for everyone, but especially for the wedding couple that has paid a photographer thousands of dollars or rupees to take their wedding pictures. The couple wants to share their wedding pictures to the world via WhatsApp, Instagram, or any other social media platform. The photographer may want to submit the pictures to a portfolio, wedding photography contests, or use the pictures to promote their work. Then there are the other, less likely scenarios, such as the photo being published by a magazine or the photo being sold as stock photography.

All of the situations that have been described are real and have happened. Many wedding couples and wedding photographers have taken their disputes to courts in the United States, India, and the United Kingdom. The results have not been as most people would expect, and there is a surprisingly large gap between what people think the law is and what the law is.

The purpose of this paper is to try to draw a picture of that gap. Part II explains basic Copyright laws as they pertain to photograph. Part III answers the question of, in most cases, who owns wedding photographs. Part IV looks at the work-for-hire doctrine and how it may change ownership. Part V focuses on contracts, the real world means by which these conflicts are often prevented or created. Part VI addresses some problems posed by digital and social media. Part VII examines the situation in India. Part VIII provides some final remarks.

II. THE COPYRIGHT FRAMEWORK APPLICABLE TO PHOTOGRAPHY

Before addressing who has the right to the copy of a wedding photo, it is important to know the system of copyright in the context of photos. In the US, as well as in India, a photo is protected by copyright as it is fixed in a tangible form. There is no need to register the photo. However, in the US, one must register the photo in order to file a lawsuit for infringement, and if the registration is done in a timely manner, the author can claim statutory damages.

In the US, the photo is covered by the Copyright Act of 1976. Section 102(a)(5) explicitly includes pictorial, graphic, and sculptural works in copyright. In Burrow-Giles Lithographic Co. v. Sarony, the US Supreme Court made a significant breakthrough in determining the standard of originality in photos by upholding that copyright can be granted to photos that capture a photographer's own idea. This was further clarified in Feist Publications, Inc. v. Rural Telephone Service Co., where the Court held that copyright can be granted if the work is not a mere copy

and has some level of creativity. A wedding photo, with its many creative choices regarding framing, lighting, and angle, meets this standard.

India offers similar protections under its Copyright Act of 1957, as amended by the Copyright (Amendment) Act of 2012. Section 13 of the Act includes photographs under its protected artistic works. The creativity threshold under Indian law has historically followed the 'skill and judgment' standard, however Indian courts have recognized, particularly after the Feist decision, that a creativity threshold lower than that would be acceptable.

In both jurisdictions, the person who created the work is generally the person who holds the copyright. In the case of photographs, this would refer to the photographer. It is a statement of fact that this is the case, however, as the following sections will illustrate, this statement of fact is not a given. Various contracts, employment contracts, or agreements with platforms can, and often do, alter this.

III. DEFAULT OWNERSHIP: THE PHOTOGRAPHER AS AUTHOR

By virtue of a default rule, the copyright of a wedding photograph is held by the photographer, regardless of who commissioned the photograph, who financed it, or who is depicted in it. This means that the couple, no matter how central they are to the photograph, do not hold copyright in the wedding photographs.

In the United States, the default rule is that copyright of a work is initially vested in the author or coauthors of the work. In the case of photographs, the U.S. Copyright Office has maintained that the 'author' would be the person who operated the camera, and made the compositional and editorial decisions.

Under Indian Law, section 17 of the Copyright Act of 1957, states that copyright of a work is owned by the author first.

There is, what some call, the "wedding photo paradox." Couples are the subject, the reason to create the work, and the financial contributors, but they cannot claim copyright. In terms of copyright, this is not strange. The copyright protects the expression by the photographer and the copyright protects the choice by the photographer. The couple cannot claim copyright to their faces, wedding ceremony, or to their relationship.

This has a serious effect. Without a copyright assignment or a license, the couple cannot make any copies of the wedding photographs, cannot create any derivative photographs, and cannot post the photographs to their personal social media. The photographer can, without any legal repercussions, create any derivative work from the wedding photographs and publish them to a third party. The couple has no control over the photographs, and would have to pay the photographer to have any copyright to the photographs.

Most wedding photographers give their clients some form of copyright assignment and/or license, but many couples are not diligent enough to read the fine print.

IV. THE WORK-FOR-HIRE DOCTRINE AND ITS LIMITS IN WEDDING PHOTOGRAPHY

A reasonable assumption is that couples who hire and pay a photographer for their wedding will own the wedding photographs. This assumption is based on the work-for-hire doctrine, but the doctrine does not apply this way in most cases of wedding photography.

Section 101 and 101(2) of the Copyright Act of 1976 defines a work made for hire as (1) a work done by an employee as part of the employee's job, or (2) a work that is ordered or commissioned, but only if it is in one of nine specific categories, and if the parties agree, in a signed contract, that the work will be considered a work made for hire. Photographs do not fall in any of the nine categories of work that can be a work made for hire.

This is an important point. Even if a couple and a photographer sign a contract that makes the photographs a 'work for hire,' this would be legally ineffective in the U.S. because photographs are outside the enumerated categories. The only way a wedding photographer's work would be a commissioned work made for hire is if the photographer is treated as an employee, and if a wedding photographer is an independent contractor (which essentially all are), then this route would not be possible either.

Courts have analyzed the independent contractor vs employee distinction through the lens provided by Community for Creative Non-Violence v. Reid; this involves an agency law approach that incorporates several factors including who provides the tools and equipment, whether the contracted person has multiple clients, and the degree of control the contracting party has over the contracted person's work. By this measure, wedding photographers qualify as independent contractors. They provide cameras, lenses, and editing software. They have many clients and contracts, and they take pictures using their own professional judgment.

In India, the situation is different. Section 17 of the Copyright Act of 1957 states that where a work of Photography, Painting, Portraiture, Engraving, or a similar work made by the author at the instance of another and for valuable consideration, the person at whose instance the work is made shall, in the absence of any agreement to the contrary, be the first owner of the copyright. This provision used to be very broad, covering any couple hiring a wedding photographer. The provision was significantly modified in 2012, leaving its current scope coupled with the general principle of authorship, in some cases unclear.

Currently, the most favorable reading could be that the copyright for commissioned photographs in India could vest in the person who commissioned them, depending on the facts and in the absence of a written agreement. Therefore, the default rule in India benefits couples more than the American default rule.

V. CONTRACTUAL ARRANGEMENTS: WHERE MOST OF THE ACTION HAPPENS

Regardless of the statutory default, the modern wedding photography industry has a written contract that describes the relationship between the photographer and the couple. Therefore, for the most part, knowing what these contracts state, as well as how they should be drafted, is especially important.

A. Typical Contract Provisions

Most professionally drafted wedding photography contracts will cover three main, though related, subjects: delivery (when and in what form the couple will receive the photographs), the usage rights that the couple will receive, and what usage rights the couple will forego.

The most prevalent model in the U.S. and increasingly in India is that the photographer retains the copyright and the couple receives a license for personal, non-commercial usage. This means that the couple can print the photographs, share them on social media, and give them to family and friends; however, they cannot sell or license the photographs, or use them in any way that is commercial in nature, without the photographer's permission.

The photographer usually keeps the right to show images in his/her portfolio, submit images to competitions, and include images in advertisements.

B. The Problem of Vague Licenses

Disputes related to ambiguous contracts usually arise in two ways. The first is when the contract does not mention a specific use, and the second is when the contract is worded in a way that is not precise and the parties will interpret it differently. For example, does a contract saying that photographs can be used in a way that is personal, permit the personal use to be the posting of the photographs on Instagram, and would selling a wedding photograph to a newspaper that wants to publish a story about the couple be personal use (almost certainly no)?

When dealing with wedding photography contracts, most couples expect that they will be able to post the photographs on Instagram, even if the contract does not say this. However, there is a limit to how far courts will go to interpret the contract, and they will not allow the use to be for clear commercial purposes.

C. Full Assignment versus License

Some couples will want to negotiate for a full assignment of copyright instead of a license, and this is especially true of couples who are celebrities, or who are public figures or who work in journalism, or who create content. A legal assignment under U.S. law will require a contract and

the signing of the contract by the photographer. Under Indian law, assignment will also require that the contract is signed by the photographer.

VI. DIGITAL REPRODUCTION AND SOCIAL MEDIA: NEW COMPLICATIONS FOR OLD RULES

The practical effects of the digital revolution on copyright for wedding photography have changed the game, but the fundamentals of the law have not changed the same way. Three complications are social media terms, scraping, and the use of photos for AI.

A. Social Media Terms of Service

Uploading wedding photos to social media means the users have to comply with the terms and services of that social media, which have users grant the social media a reproduction and distribution license for the user's content. The users have to hold the rights in order for the social media to be able to grant this license, which in many cases they do not.

There is a potential for a problem when a couple uploads their wedding photos to social media. Even though people do not think of it this way, it is a violation of the photographers copyright. Most do not contest this because it is free advertising. Some even include a social media clause as part of their contract. However, when this relationship becomes contentious, the violation of copyright may also be contentious.

B. Unauthorized Use and Reverse Image Search

The problem can also be looked at in the reverse. Photographers that hold on to copyright and post their photos to social media may find there is a violation of the photographer's privacy and copyright due to the social media's terms of service. This is not strictly a violation of copyright, but it shows that the digital age has created challenges that copyright and contract law do not address fully.

Copyright law struggles to keep up with the use of photography in the digital age. The use of wedding photography as inspiration, or on stock photo and other aggregator sites, has become a huge problem. Weddings have become a popular event for people to post on social media, and photographers have found that using tools like Google Reverse Image Search to find unauthorized uses has become more popular.

In the U.S., the Digital Millennium Copyright Act (DMCA) offers a mechanism for copyright holders to request infringing content be removed from online platforms. This mechanism is quite accessible, albeit reactive. The Information Technology Act, 2000, has similar provisions, but as a matter of practice, enforcement is more difficult in India.

C. Artificial Intelligence and Wedding Photographs

The use of wedding photographs for the training of AI models for the generation of images is the most recent and most legally ambiguous issue in this area. Major AI companies have used publicly available wedding photographs from photographers' websites, Instagram, and other photography websites to train their models. Whether this is copyright infringement in the U.S., or fair use and the corresponding provisions in Indian law, is the subject of ongoing litigation and is currently unresolved.

It is well established, however, that the training of AI models constitutes a commercial use of wedding photographs, as well as photographs of the wedding couples portrayed therein, that has been done without the wedding photographers' permission. Whether AI training is considered 'transformative' use in the sense of fair use, as discussed in Campbell v. Acuff-Rose Music, Inc., will likely have a significant impact on the legal outcome.

VII. THE INDIAN LEGAL POSITION: SPECIFIC CONSIDERATIONS

The marriage of the multifaceted nature of Indian weddings and their scale leads to the establishment of a thriving ecosystem of Indian wedding photography. Indian copyright law on photography is at an early stage of development when compared to the American system.

In Part IV, it is shown that the proviso to Section 17 of the Copyright Act of 1957 creates a potential default ownership rule for the party to the marriage — the clients or the couple — in the absence of a contract to the contrary. It creates a significant distinction from the American default. Sometimes, Indian wedding photographers assume copyright ownership, and it is usually not the case. If clients commissioned a wedding, paid for it, and there is no contract on copyright, an Indian court is likely to find that the couple is the first owner.

Yet, it is not accurate to state that the Indian and the American positions on copyright are the same, and the Indian copyright position is the same as the American position. The proviso to Section 17 has been construed narrowly in various cases and the interplay between Section 17 and the definition of 'author' in Section 2(d)(vi), which refers to the person who took the photograph, remains unsettled. The more appropriate position, and the position that most legal practitioners would take, is that copyright should be dealt with in any agreement.

The Indian wedding photography market is also distinctive in that a significant portion of it operates informally, with photographers operating without written contracts and clients who are unfamiliar with copyright law. In this environment, disputes tend to be resolved commercially rather than legally, which means that the law's background rules matter primarily as a bargaining chip and a deterrent.

One area where Indian law may need development is in addressing the specific dynamics of destination weddings, which are increasingly common among Indian couples. When a couple with Indian domicile hires an American or European photographer for a wedding in Tuscany or Bali, the conflict of laws questions around which country's copyright rules apply can become genuinely complex. Indian courts have not yet addressed this question squarely in the wedding photography context.

VIII. MORAL RIGHTS IN WEDDING PHOTOGRAPHY

One dimension of copyright that deserves brief treatment, even in a paper focused on economic rights, is the question of moral rights. Many civil law jurisdictions recognize the author's moral right of integrity (the right to object to modifications of their work) and the right of attribution (the right to be identified as the author). India recognizes moral rights under Section 57 of the Copyright Act, 1957, and these rights cannot be waived or transferred even when the economic rights are assigned.
The moral rights dimension of wedding photography creates interesting practical complications.

A photographer who has assigned copyright to the couple may still object if the couple uses photo-editing software to radically alter the photographs in ways that distort the photographer's original artistic vision. A couple who crops a photograph for an Instagram story and fails to credit the photographer may be infringing the photographer's right of attribution under Indian law.
In the United States, moral rights protection is significantly narrower. The Visual Artists Rights Act of 1990 (VARA) provides moral rights protections only for visual art — a category defined so narrowly that it excludes photographs taken for commercial purposes, which would include virtually all wedding photography.[26] This is an area where U.S. law lags behind international standards under the Berne Convention.

IX. THE CASE FOR REFORM AND BEST PRACTICES

Having surveyed the existing legal landscape, it is worth asking whether reform is needed and, pending any reform, what best practices couples and photographers can adopt to avoid disputes.

A. The Case for Reform

There are several respects in which the current legal framework is unsatisfactory. First, the gap between public understanding and legal reality is very wide. Most people genuinely do not know that paying for a photographer's services does not give them copyright in the resulting photographs. This is the kind of outcome that undermines public confidence in the law. A reform that would make couples the presumptive owners of their wedding photographs — subject to photographers retaining an irrevocable portfolio license — would better match social expectations without fundamentally undermining photographers' legitimate interests.

Second, the current framework does nothing to address the explosion of unauthorized digital use. The DMCA takedown system is reactive, slow, and places the burden on individual copyright holders who often lack the resources to monitor the internet for infringement. A more efficient system — perhaps one modeled on the content ID systems that platforms like YouTube have developed — would provide better protection.

Third, the AI training issue urgently needs legislative attention. Neither the U.S. Copyright Act of 1976 nor the Indian Copyright Act of 1957 was drafted with AI training in mind, and courts are struggling to apply existing categories to a genuinely novel situation. Clarity on whether using copyrighted images to train an AI model constitutes reproduction, transformation, or something else entirely would benefit photographers, couples, and the broader creative economy.

B. Best Practices

Pending any such reforms, the most effective protection for both parties is a clear, comprehensive written contract. From the photographer's perspective, the contract should specify what files are delivered, in what format and resolution, on what timeline. It should clearly state that the photographer retains copyright, while granting the couple a named license — ideally one that specifically addresses social media use, which is the most common source of ambiguity. It should also address what the photographer can do with the images, including portfolio use, competition entry, and commercial promotions.

From the couple's perspective, the contract should be read in full before signing. If the couple wants broader rights — including the ability to use images in a family newsletter, give them to vendors, or license them to media — this should be negotiated before the event, not after. It is significantly harder to negotiate copyright terms after a wedding has already happened, because the couple's leverage essentially disappears the moment the event concludes.

Both parties benefit from explicit provisions addressing digital and social media use, AI opt-out clauses (particularly for photographers who do not wish their work used in AI training), and a dispute resolution mechanism. Mediation clauses are increasingly common in wedding photography contracts and can save both parties the expense and distress of litigation.

X. CONCLUSION

Copyright in wedding photography is a subject that sits at the intersection of creative law, commercial contracts, digital technology, and deeply personal relationships. The existing legal framework — both in the United States and in India — provides a workable but imperfect foundation. The default rule of photographer ownership, while doctrinally coherent, diverges from widespread public expectation. The work-for-hire doctrine offers couples little protection in most wedding photography scenarios. And the digital age has introduced a range of new complications — from social media platform licensing to AI scraping — that existing law addresses inadequately.

What remains the most powerful tool available to both photographers and couples is the contract

itself. A well-drafted agreement that explicitly addresses ownership, licensing, digital use, and portfolio rights can prevent the vast majority of disputes before they arise. The law can only do so much; ultimately, clarity comes from conversation.

As AI tools become more integrated into both photography (editing, enhancement, generation) and the broader creative economy, the questions raised in this paper will only become more pressing. The legal system has historically been slow to respond to technological change in the copyright domain, and there is every reason to expect that legislatures in both countries will need to revisit the framework governing photographic works in the coming decade. When they do, the distinctive dynamics of wedding photography — the intersection of commerce and personal life, the digital distribution imperative, and the genuine creative artistry involved — deserve specific and thoughtful attention.

FOOTNOTES

1. Copyright Act of 1976, 17 U.S.C. §§ 101–810 (2018).
2. Id. § 102(a)(5).
3. Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53 (1884).
4. Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 345 (1991).
5. Copyright Act, No. 14 of 1957 (India), as amended by Copyright (Amendment) Act, No. 27 of 2012 (India).
6. See Eastern Book Co. v. D.B. Modak, (2008) 1 SCC 1 (India) (adopting a modicum of creativity standard for copyright protection).
7. U.S. Copyright Office, Compendium of U.S. Copyright Office Practices § 313.4(C) (3d ed. 2021).
8. Jessica Silbey, The Eureka Myth: Creators, Innovators, and Everyday Intellectual Property 142 (2015).
9. 17 U.S.C. § 101 (defining 'work made for hire'); id. § 201(b) (vesting ownership in employer or commissioning party).
10. The nine enumerated categories are: contributions to collective works, parts of motion pictures or audiovisual works, translations, supplementary works, compilations, instructional texts, tests, answer material for tests, and atlases. Photographs are not included. See id. § 101.
11. Cmty. for Creative Non-Violence v. Reid, 490 U.S. 730 (1989).
12. Copyright Act § 17, proviso (a) (India).
13. See Manu Bhandari v. Kala Vikas Pictures, AIR 1987 Del 13 (India) (examining the proviso's application to commissioned creative works).
14. See American Society of Media Photographers, ASMP Professional Business Practices in Photography 118–121 (7th ed. 2008).
15. See Greenberg v. Nat'l Geographic Soc'y, 244 F.3d 1267 (11th Cir. 2001) (discussing scope of photographic licenses in the context of ambiguous terms).
16. 17 U.S.C. § 204(a).
17. Copyright Act § 19(1) (India).

18. See Meta Platforms, Inc., Terms of Service ¶ 3 (effective Jan. 1, 2023), https://www.facebook.com/legal/terms (granting Meta a broad, royalty-free license to all user-uploaded content).
19. Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998) (codified at 17 U.S.C. § 512).
20. Information Technology Act, No. 21 of 2000, § 79 (India) (providing intermediary safe harbours with takedown obligations).
21. See Andersen v. Stability AI Ltd., No. 23-cv-00201 (N.D. Cal. filed Jan. 13, 2023) (challenging AI training on copyrighted photographs under the Copyright Act).
22. Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 578–79 (1994) (articulating the transformative use standard in fair use analysis).
23. See Najma Heptulla v. Orient Longman Ltd., AIR 1989 Del 63 (India) (interpreting the scope of Section 17's proviso in the context of commissioned works).
24. Copyright Act § 2(d)(vi) (India) (defining author of a photograph as 'the person who takes the photograph').
25. Id. § 57 (preserving author's moral rights of attribution and integrity even after assignment of copyright).
26. Visual Artists Rights Act of 1990, 17 U.S.C. § 106A; see also id. § 101 (defining 'work of visual art' to exclude works 'made for hire' and works not existing in limited editions).

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