

17.8 Copyright Interests—Authorship (17 U.S.C. § 201(a))

The creator of an original work is called the author of that work. An author originates or “masterminds” the original work, controlling the whole work’s creation and causing it to come into being.

Others may help or may make valuable or creative contributions to a work. However, such [a contributor cannot be the author of the work unless that contributor] [contributors cannot be the authors of the work unless they] caused the work to come into being. One must translate an idea into a fixed, tangible expression to be the author of the work. Merely giving an idea to another does not make the giver an author of a work embodying that idea.

Comment

“Authorship is a question of fact.” *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1086 (9th Cir. 1989) (citing *Del Madera Props. v. Rhodes & Gardner, Inc.*, 820 F.2d 973, 980 (9th Cir. 1987)).

For other instructions on particular types of authorship interests, see Instructions 17.9 (Copyright Interests—Joint Authors), 17.10 (Copyright Interests—Authors of Collective Works), and 17.11 (Copyright Interests—Work Made for Hire by Employee). For the requirement of an “original” work, see Instruction 17.14 (Copyright Infringement—Originality).

Copyright in a work “vests initially in the author or authors” of a work. 17 U.S.C. § 201(a). “As a general rule, the author is the party who actually creates the work” *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989). Integral to the concept of authorship is the translation of an idea into a fixed tangible medium of expression. See *S.O.S.*, 886 F.2d at 1087 (quoting *Reid*, 490 U.S. at 737); see also 17 U.S.C. § 102(b) (no copyright protection for ideas). A work is “fixed” in a tangible medium when its authorized embodiment occurs in a concrete form that is “sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160 (9th Cir. 2010) (quoting 17 U.S.C. § 101) (a photographic image stored in a computer’s server is fixed in a tangible medium of expression). Authorship is a designation for the “originator” of the work, who “causes something to come into being.” *Aalmuhammed v. Lee*, 202 F.3d 1227, 1232 (9th Cir. 2000). In *Aalmuhammed*, the court noted that the Supreme Court had defined “author” as the person “to whom the work owes its origin and who superintended the whole work, the ‘master mind.’” 202 F.3d at 1233 (citing *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58, 61 (1884)). The *Burrow-Giles* definition “is still good law.” *Id.*

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