IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 22/2024

UNDER	Senior Courts Act 2016
IN THE MATTER	of an application for leave to appeal a decision of the Court of Appeal
BETWEEN	**SIRPA ELISE ALALÄÄKKÖLÄ**
	Appellant
AND	**PAUL ANTHONY PALMER**
	Respondent

SYNOPSIS OF SUBMISSIONS FOR RESPONDENT
22 AUGUST 2024

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MAY IT PLEASE THE COURT

1 Copyright in artistic works is a property right: Copyright Act 1994 (**CA**), s 14(1).

2 If there is any conflict between the CA and the Property (Relationships) Act 1976 (**PRA**) the PRA demands precedence,[1] and the CA concedes it.[2]

3 The copyright that attaches to those artistic works is property, as that term is defined in the PRA, s 2.

4 Copyright acquired out of artistic works created during the relationship and marriage are relationship property: PRA, s 8(1).

5 The respondent seeks division of the economic rights only. He does not seek to include moral rights in the pool of relationship property to be divided in this case (consistent with his position in the High Court and Court of Appeal).

6 The respondent is agreeable to an outcome whereby he is compensated for the value in the copyright, with the appellant retaining all the copyright. This was suggested by the respondent as an acceptable alternative in the Court of Appeal.[3]

Factual Narrative

7 The appellant is an artist who has created many original artworks (the Artworks) during her 20-year marriage to the respondent. Many of the Artworks were sold during the relationship, providing the main source of income for the family. The key issue is whether copyright in the Artworks (the Copyright) is relationship property or the appellant's separate property.[4]

Copyright as Property

8 The appellant submits that despite the apparent consistency between the CA and the PRA, the law can accommodate more than one meaning of property and should exclude copyright from the definition of property

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1 Property (Relationships) Act 1976, [[s 4A]].
2 Copyright Act 1994, [[s 225(1)(a)]].
3 Synopsis of Submissions for Respondent 23 February 2023 at [10], [29] and [74].
4 Court of Appeal decision appealed from at [2] [[101.0022]] at [[101.0024]].

under the PRA.[5] We submit that there is no species of non-property property in this context.

9 Copyright is a property right which vests automatically in certain categories of original works, irrespective of artistic merit.[6]

10 Copyright is a creature of statute.[7] The CA defines "copyright" as being a property right, but also as "personal, or moveable," property.[8] It is transmissible by operation of law.

11 The PRA is a code.[9] It takes precedence over other enactments unless the PRA or the other enactment expressly say otherwise.[10] The CA concedes precedence to other enactments.[11]

12 Section 2 of the PRA defines property as:

> property includes—
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> (a) real property:
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> (b) personal property:
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> (c) any estate or interest in any real property or personal property:
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> (d) any debt or any thing in action:
>
> (e) any other right or interest

13 The Court of Appeal, in *Z v Z*, considered the PRA's definition of property. The Court noted that the Act was 20 years old by that stage, and that the social and economic context had changed. While the Court was not "restricted *to* the words of the Act, it is confined *by* them."[12]

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5 Submissions of counsel for the appellant dated 26 July 2024 at [[10]].
6 James & Wells *Intellectual Property in New Zealand* (3rd Ed, Thomson Reuters, Wellington, 2017) at [[4.3]]; ss [[8]] and [[21]] of the Copyright Act 1994. See also judgment of Isac J at [32] [[101.0106]] at [[101.0115]]. "First, there is no doubt that copyright is a propriety right. Section 14 of the Copyright Act confirms that. The definition in s 2 of the Property (Relationships) Act 1976, and either the phrase 'personal property' or the phrase 'any other right or interest' at s2(e) captures copyright artworks."
7 Copyright Act 1994 s [[225(2)]], [[*Beasley Homes Ltd v Arrowsmith]]* [1978] 1 NZLR 394 (SC) at [[400]], [[*Brooker v John Friend Limited]]* [1936] NZLR 743, at [[746]]; [[*Donaldson v Beckett]]* (1774) 4 Burr 2048, 98 ER 257. See also judgment of Court of Appeal at [19] [[101.0131]].
8 Copyright Act 1994, ss [[14(1)]] and [[113]]. Judgment of Court of Appeal at [20]-[24] [[101.0131]].
9 Property (Relationships) Act 1976, [[s 4]].
10 Property (Relationships) Act 1976, [[s 4A]].
11 Copyright Act 1994, [[s 225(1)]].
12 *Z v Z (No 2)* [1997] 2 NZLR 258 (CA) at [[264]].

14 As personal property is expressly included under the PRA's definition of property, copyright, being personal property, is property under the PRA.

15 Failing that copyright is property under the PRA, being "any other right or interest". The words "any other" are expansive, not restrictive.[13]

16 The Court of Appeal in *Reid v Reid* held:

> The Matrimonial Property Act is not a technical statute. It is social legislation of the widest general application. It is obviously important that it should identify in the clearest terms the property which is to be subject to the matrimonial property sharing regime on the breakdown of marriage. These considerations should be kept in mind when questions of interpretation arise. As Lord Simon of Glaisdale pointed out in *Maunsell v Olins* [1975] AC 373, 391; [1975] 1 All ER 16, 25, where a statute is dealing with people in their everyday lives, the language is presumed to be used in its ordinary sense, unless this stultifies the purpose of the statute, or otherwise produces some injustice, absurdity, anomaly or contradiction. If the language is plain and points unmistakably to one conclusion, then that prima facie interpretation may be departed from only where that course is required to give effect to the clear intention of the legislature as manifested in the statute itself. So the first step is to consider the statutory language.[14]

17 The Court of Appeal in *Clayton v Clayton* described the definition of "Property" in s2 of the PRA as having an extended definition: [15]

> As already noted, "Property" is defined in s2 of the PRA as including "any other right or interest". This is an extended definition which should be interpreted consistently with the purpose and principles of the PRA which are to ensure a just division of relationship property by recognising the equal contributions of both spouses to the marriage partnership."[16]

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13 Contrary to the appellant's submissions at [[15]].
14 *Reid v Reid* [1979] 1 NZLR 572 (CA) at [[605]] per Richardson J; see also Woodhouse J at [[577]]; Cooke J at [[594]]. Affirmed *Reid v Reid* [1982] 1 NZLR 147 (PC) at [[151]]. Adopted *Z v Z (No 2)* at [[267]]. For a more detailed discussion see Bill Aitken [["What Kind of Property is Relationship Property"]] (2016) 47 VUWLR 345.
15 *Clayton v Clayton* [2015] NZCA 30; [2015] 3 NZLR 293 at [[36]]. This part of the judgment was not reversed on appeal – [[*Clayton v Clayton*]] [2016] NZSC 30, [2016] 3 NZLR 590. See also *Cooper v Pinney* [2023] NZCA 62; [2023] 2 NZLR 455 at [[48]] (per Miller J), on appeal to this Court SC 32/2023 decision reserved.
16 At [[111]], footnotes omitted.

18 Any interpretation of a provision in a statute must be consistent with a statute book as a whole.[17] A reference to "property" in one statute should, unless the contrary is indicated, be consistent with "property" in others. More acerbically, Lord Sumpton in *Prest v Petrodel Resources Limited* stated:[18]

> Courts exercising family jurisdiction do not occupy a desert island in which general legal concepts are suspended or mean something different. If a right of property exists, it exists in every division of the High Court and in every jurisdiction of the county courts. If it does not exist, it does not exist anywhere.

19 Relationship property is defined in s 8 of the PRA.[19] Subsection 1(e) defines relationship property to include:

(e) subject to sections 9(2) to (6), 9A, and 10, all property acquired by either spouse or partner after their marriage, civil union, or de facto relationship began;

20 In addition, the PRA provides that relationship property includes all property acquired after the marriage began for the common use or common benefit of both spouses:[20]

(ee) subject to sections 9(3) to (6), 9A, and 10, all property acquired, after the marriage, civil union, or de facto relationship began, for the common use or common benefit of both spouses or partners, if—

(i) the property was acquired out of property owned by either spouse or partner or by both of them before the marriage, civil union, or de facto relationship began; or

(ii) the property was acquired out of the proceeds of any disposition of any property owned by either spouse or partner or by both of them before the marriage, civil union, or de facto relationship began;

21 Richardson J in *Reid v Reid* said, in respect of this:[21]

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17 *Agnew v Pardington* [2006] 2 NZLR 520 (CA) at [[41]] per Glazebrook J. See also *Johnson v Felton* [2006] 3 NZLR 475 (CA) at [[143]] and [[153]], Glazebrook & McGrath JJ interpreting s 47(2) of the Property (Relationships) Act 1976 in a way that "fits more easily" into the Act's scheme and the "general insolvency regime".
18 *Prest v Petrodel Resources Ltd* [2013] UKSC 34, [2013] 2 AC 415 at [[37]] (per Sumpton LJ) [[58]] (Per Newberger LJ) [[86]] (per Hale and Wilson LJJ).
19 PRA, [[s 8]].
20 PRA [[s 8(1)(ee)]].
21 *Reid v Reid* [1979] 1 NZLR 572 at [[605]] per Richardson J.

> The critical words of the first limb of s 8 (e) are perfectly plain and unambiguous. The section directs that subject to certain qualifications "all property acquired by either the husband or the wife after the marriage" is matrimonial property. It is *all* property without exception. The manner in which it was derived is irrelevant. The source of any funds used to acquire the property is irrelevant. So is the purpose for which it was acquired. No such limitations are expressed in the first limb. On its face it applies equally to property resulting from a change of investments as it does to property created from the efforts of one or both of the spouses. And it draws no distinction between property acquired out of matrimonial property and property acquired out of previously separate property.[22]

22 The evidence from both parties shows that paintings during the relationship were being produced and sold as a part of a business. The appellant states that for a large proportion of the relationship the sales of paintings were the couple's main income.[23] She also states that she had to become a commercial artist to keep the parties afloat financially. In her works, she sacrificed her career to become a painting machine to make money for the mortgage.[24]

23 The respondent describes the business as a collaboration, aided by his photographic and publishing background.[25]

24 Copyright is personal, moveable property. It is property under the PRA.

25 The question then becomes is it relationship property or separate property for the purposes of the PRA. Property that meets the definition in s 8 of the PRA is relationship property.

Relationship property can be personal

26 The appellant categorises that copyright inherent in her painting is personal. However, copyright does not only exist in the personal. In New Zealand, copyright has been found in the wooden models, moulds,

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[22] Some care needs to be taken with the statutory text referred to here. Section 8(e) of the then Matrimonial Property Act is similar to section 8(ee) of the PRA. See the Matrimonial Property Amendment Act 1980, [[s 2]].
[23] Exhibit to affidavit of Ms Alalääkkölä, 14 December 2018, [[301.0012]] at [[301.0013]] and Marriage Timeline prepared by Mr Palmer [[101.0048]].
[24] Exhibit to affidavit of Ms Alalääkkölä, 14 December 2018, [[301.0017]] at [[301.0019[].
[25] Affidavit of Mr Palmer, 13 February 2018 [[201.0045]] at [[201.0051]], and affidavit dated 5 November 2018 [[201.0064]] at [[201.0066]].

dies and plastic moulded products of a flying disc.[26] Computer programmes are literary works.[27] Copyright applies to both the personal and the impersonal.

27 Relationship property can be personal. A family home or family farm may have been in a family for generations but needs to be sold in order to meet a relationship property claim. The artworks themselves are personal but those created during the relationship will fall within Section 8 and consequently will be divided in accordance with the Act.

28 A designation that property is personal might be relevant to how the property is divided. It is not relevant to the definitions of property in s 2 or relationship property in s 8.

Copyright distinguished from skills and earning capacity

29 Copyright attaches to the expression of the work. It does not attach to ideas. It does not attach itself to the skills needed to manifest those ideas. This was affirmed by Wild CJ in *Martin v Polyplas Manufacturers Limited:*[28]

> "Copyright protection is given to literary, dramatic, musical and artistic works and not to ideas, and therefore it is original skill or labour in execution, and not originality of thought, which is required."

30 The appellant's argument at [14]-[21] of the submissions conflates the skill required to produce the artwork with a copyright in the artwork.[29] Copyright is personal, moveable property. Entirely personal characteristics which are part of an individual's overall make up such as intelligence, memory, physical strength or sporting prowess is not property.[30] Consequently, on the facts of *Z v Z* the increased earning capacity as an accountant was not property, but the value of the accountancy business was property even though that business was a product of the skills and expertise, some of which would be derived from skills which existed prior to the relationship.

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26 [[*Wham-O-MFC Co v Lincoln Industries Limited]]* [1984] 1 NZLR 641 (CA).
27 *Pacific Software Technology Ltd v Perry Group Ltd* [2004] 1 NZLR 164 (CA) at [[44]], [[79]].
28 *Martin v Polyplas Manufacturers Limited* [1969] NZLR 1046 (SC) at [[1050]].
29 Judgment of the Court of Appeal at [41]-[43] [[101.0122]] at [[101.0139]].
30 *Z v Z (No 2) [1997]* 2 NZLR 258 (CA) at [[279-280]].

31 A person's artistic skills, which are part of that individual's overall make up, are not property for the purposes of the PRA– they are not relationship property nor are they separate property; they are simply not property.

32 So too earning capacity is neither property nor "any other right or interest in terms of s 2 of the PRA".[31]

33 Ideas where no copyright has been created are not property. Property (including copyright) created before and after the relationship is separate property. Copyright created during the relationship is relationship property.

Tangible v Intangible property

34 At paragraph 23 of the submissions, the appellants argue that the definition of property in s 2 should be limited to tangible assets. That would mean that *Clayton v Clayton* was wrongly decided. Mr Clayton's powers under the trust deed were very much intangible.

35 Shares in a company are intangible. Goodwill is intangible. Other forms of intellectual property are intangible. An incorporeal hereditament is intangible. A bank deposit is intangible. Crypto currency is intangible. All these assets routinely form part of matrimonial property division.[32] It is enough that the right of interest can be given a money value.[33]

Moral rights not claimed by the respondent

36 The effect of the Court of Appeal's decision was to vest the economic rights with the appellant. As noted above, this was proposed by the respondent in the Court of Appeal as an alternative. The moral rights were not claimed in either the High Court or the Court of Appeal.[34] [35]

37 It would seem unlikely that a genuine commercial use of the copyright would conflict with moral rights. In any event this circumstance cannot arise in this case given that Court of Appeal determined the copyright should remain in the appellant's exclusive legal ownership, with the

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31 At [[282]].
32 Judgment of Court of Appeal at [26]-[28] [[101.0122]] at [[101.0134]].
33 *Z v Z (No 2)* [1997] 2 NZLR 258 (CA) at [[282]].
34 Judgment of Court of Appeal at [25] [[101.0122]] at [[101.0133]].
35 Conceptually moral rights could be property, but as the issue is not live in this case, we have not addressed this.

respondent receiving a compensatory adjustment from the relationship property. That decision has not been appealed.

38 We note that the moral rights preserved pursuant to Part 4 of the Copyright Act are limited. Treatment of a work is derogatory if "whether by distortion or mutilation of the work or otherwise, the treatment is prejudicial to the honour or reputation of the author or director."[36]

39 On the respondent's evidence, no question of a derogatory treatment arises in this case.[37]

Copyright is created and acquired at the same time

40 Contrary to the appellant's submissions at [96], we submit that at the time copyright is created in terms of the statutory code, it is "acquired" in terms of section 8(1)(e) of the PRA. An interpretation which suggests that copyright might be acquired under the PRA at a different time that it comes into existence under the CA is unsupportable.

41 In terms of the CA, a work cannot have an author until the work has been created.[38] In order to qualify for copyright the requirements of ss 18, 19 or 20 need to be satisfied:[39]

(a) For s 18 to apply, there must be an author. Consequently, the work must exist.

(b) For s 19 to apply, the work needs to be published. The work consequently needs to exist.

(c) For s 20 to apply, communication work needs to have been made.

42 While it is accepted that the date a right or interest is "acquired" may mean that when entitlement to that right or interest arise, rather than actual receipt of it, that distinction does not assist the appellant in this case.

43 We agree with the appellant's submissions at [92] that once an idea has been expressed in some form, copyright will come into existence. That is

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[36] Copyright Act 1994, [[s 98(1)(b)]].
[37] Affidavit of Mr Palmer, 13 February 2018 ("*I have no reason to damage or devalue them* [the artworks]") [[201.0045]] at [[201.0050]].
[38] Section [[5(1)]].
[39] Section [[17(1)]].

when the copyright is acquired (or created) for the purposes of the CA. That is when an author both receives, and becomes entitled to, the rights which are personal property. As a consequence, that is when the personal property is acquired for the purposes of the PRA.

44 Furthermore, care should be taken when referring to decisions concerning insurance policies and superannuation scheme entitlements.[40] Section 8(1)(g) and (i) are different to s 8(1)(e). Both of the latter paragraphs require the property to be "attributable to the marriage, civil union or de facto relationship". Section 8(1)(e) contains no such requirement.

Derivative works

45 At [94] of the written submissions, the appellants raised the problem of a situation where copyright of a work is derivative of an earlier work. It is in part answered by CA, s 14(2). To the extent that a work is a copy of another work, the copyright is owned by the copyright holder of the first work, not the second.

46 The circumstance where an author obtains copyright in a recognisable character which is then subject to a claim of relationship (community) property arose when Tom Clancy separated from Wanda King having written a series of novels in respect of the character Jack Ryan.[41] The same issue arose in the case of *Rodrigue*[42] in respect of the blue dog character.

47 Were the issue of derivative works to arise, the extent of the rights as against third parties would be determined under the CA. The division of relationship property would occur under the PRA.

Antecedent legislation

48 The intersection between copyright and domestic relationship law has been addressed in earlier New Zealand copyright legislation. The first copyright legislation in New Zealand was the Copyright Act 1842.[43] In

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[40] Appellant's submissions at [[84]-[88]].
[41] Sarah Coates 2022. "I Do, I Did, I'm Done: Copyright and Termination of Transfer in Divorce" (2022) *23* Or. Rev. Int'l L. 183.
[42] [[*Rodrigue v. Rodrigue*]], 55 F. Supp. 2d 534 (E.D. La. 1999), rev'd on other grounds, [[*Rodrigue v. Rodrigue*]] 218 F.3d 432 (5th Cir. 2000).
[43] [[Copyright Act 1842]] (5 Victoria 1842 No 18).

1913 legislation was enacted repealing the consolidated Copyright Act 1908.[44] The 1913 Act:

(a) Recognised that copyright was property in a matrimonial context; and

(b) Ensured, despite New Zealand's patriarchal property system of the time, a more equitable division.

49 In 1908 unmarried women (and men) had greater rights to own property than married women. Married women were entitled to hold "separate property" in terms of the Married Women's Property Act 1908. Section 22(4) of the Copyright Act 1913 stated:[45]

> (4) Where a married woman and her husband are joint authors for work, the interest of such married woman therein shall be her separate property.

50 Plainly this legislation only addressed the situation where a husband and wife were joint authors.

51 In the Law Reform Act 1936 there were substantial reform of the Married Women's Property Act 1908 which, for most purposes, prospectively removed any distinction between married and unmarried women in respect of the ownership of property. [46]

52 As part of those amendments, s 22(4) of the Copyright Act 1913 was amended by deleting the word "separate."[47] The 1936 Act referred to women's property as "property" rather than "separate property".

53 The Copyright Act 1913 was not repealed until the Copyright Act 1962. The 1962 Act contained provisions in respect of joint authorship of works. However, there was no longer a need to separately address whether a married woman was able to own a copyright as her property.

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[44] [[Copyright Act 1913]].
[45][[Section 22(4)]].
[46] The Law Reform Act 1936 is now more well known in the context of actions against insurance companies for causes of action for which their insureds are liable.
[47] Law Reform Act 1936, [[s 16(3)]].

54 New Zealand's first Married Woman's Property Act was passed in 1884.[48] In that Act[49] property was defined in s 2 as "property includes a thing in action."[50] That Act did not address copyright.

55 A year after the Copyright Act 1962 was passed, the Matrimonial Property Act 1963 was passed.

56 Section 2 of that Act defined "property" as meaning:[51]

> "Property" includes real and personal property and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest.

57 That definition, apart from its formatting, remains the definition of "property" in the PRA.

58 From this the following conclusions can be drawn:

(a) The history of copyright in New Zealand has been to create a property right;

(b) Parliament expressly addressed certain copyright acquired during marriages and described it, in terms of the legislation of the day, as first "separate property" and then "property";

(c) There is nothing in the legislative history which would suggest that copyright was not property in a matrimonial sense. Indeed the opposite is correct; and

(d) There is nothing in the definition of property from the various matrimonial statutes which might suggest that copyright is intended to be excluded.

A Comparative Law Approach

59 In all jurisdictions, both copyright law and relationship property regimes tend to be codified into statutes. While copyright law functions in a broadly similar way across international jurisdictions, relationship property regimes have far fewer similarities. In addition, how copyright

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[48] For a more detailed review see *Z v Z (No 2)*, [1997] 2 NZLR 258 (CA) at [[278]].
[49] And in the Law Reform Act 1936 and the Married Women's Property Act 1952.
[50] For completeness, the Married Women's Property Protection Act 1880 defined property in [[Section 2]] as "property includes money and real and personal estate of any kind".
[51] Matrimonial Property Act 1963, [[s 2]].

is regulated often has a constitutional dimension, a feature not shared by New Zealand.

60 New Zealand has a (deferred) community property regime.[52] The idea behind the community property regime has its roots in Visigothic Spain with influences from the German legal tradition.[53] The legal nature of the ownership is subordinated by its identification as relationship or separate property.[54] As an alternative, many international jurisdictions divide property without first creating a community.[55]

61 We annex a table, broken down by jurisdiction of relevant cases and authority. A review of cases and articles reveals the following:

(a) Typically, copyright is regulated at a federal, not a state level.[56]

(b) Each jurisdiction has its own relationship property regime with its own text and practice. How relationship property interacts with copyright law differs between jurisdictions.

(c) By way of example, some jurisdictions focus on the division of the asset, others on the division of the value of the asset and still others estimate and share the income stream anticipated to be generated from the asset.

(d) Some jurisdictions achieve equality (where that is the policy outcome intended) by requiring spousal maintenance payments to be made over time, as an alternative to the clean break principle which is the equivalent policy in New Zealand.[57]

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[52] Bill Aitken "Relationship Property" Chapter 14 M. Henagan (ed) *Family Law in New Zealand* (20th ed, Lexis Nexus NZ, Wellington, 2021), Vol 2 at page 1077.
[53] Grace Ganz Blumberg *Community Property in California [Connected ebook]* (8th ed, Aspen Publishing, Maryland, 2021) at [[1]].
[54] PRA [[s 8(1)]].
[55] These jurisdictions are often known as equitable and/or common law regimes as well as (some) civil law regimes.
[56] Canadian Constitution Act 1867, [[s 91(23)]]; US Constitution, [[Section 8]] "The Congress shall have the Power … to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Australia's constitution, [[section 51(xviii)]]. Australia also regulates family property at a federal level, whereas family property is regulated by state/provincial law in the United States of America and Canada.
[57] PRA, [[s 26A]].

(e) While there is some relevant appellate authority in the United States, almost without exception the remainder of the international authority is first instance decisions.[58]

62 With those cautions, the following trends are evident:

(a) Universally, all jurisdictions appear to regard copyright as property.[59] From the UK, *Jones v Skinner* defines 'property' in the context of a will expansively.[60] That approach was adopted in Jowitt's Dictionary of English Law,[61] which defines 'property' as including copyright. The Jowitt definition of 'property' has been referred to in the Canadian decisions of *Brinkos v. Brinkos,*[62] *Caratun v. Caratun,*[63] and *Waller v. Waller.*[64] In Australia, *Jones v Skinner* was referred to in the High Court of Australia decision of *Kennon v Spry,*[65] in the context of s 79 of the Family Law Act 1975 (Cth), the equivalent of the PRA in Australia. That led the Australian Family Court in *Pope & Pope* to conclude that music copyright licensing royalties were property as far as the Australian legislation was concerned.[66] The US cases all proceed on the basis that copyright is property.

(b) In the English-speaking world (including the former Spanish then French colony of Louisiana) either the copyright itself or the monies worth is divided between spouses on separation.[67] The same approach is taken in The Netherlands, Lithuania and Russia. In France,[68] Quebec, Portugal and Spain income from intellectual

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[59] Owing to the fact that 181 member states have joined the Berne Union that is not surprising. The Berne Convention for the Protection of Literary and Artistic Works was first adopted in 1886. New Zealand became a party to the Convention on 24 August 1928.
[60] *Jones v Skinner* [1835] 5 LJ Ch 87 at [[92]].
[61] Jowitt's Dictionary of English Law (2nd Ed, 1977) Vol 2 at [[1447]]. See also the 6th edition (2024) at [[2078]].
[62] *Brinkos v. Brinkos* (1989), 60 D.L.R. (4th) 556, 69 O.R. (2d) 225, 20 R.F.L. (3d) 445 (C.A.) at [[561]].
[63] *Caratun v. Caratun* (1992) 10 OR (3d) 385, 96 DLR (4th) 404 at [[409]].
[64] *Waller v. Waller* [1998] 8 WWR 96, 164 Sask R 161, 39 RFL (4th) 300 at [[104]].
[65] *Kennon v Spry* (2008) 238 CLR 366 at [[387]].
[66] *Pope & Pope* [2012] FamCA 204 (3 April 2012) at [[[117]]].
[67] [[*Rodrigue v. Rodrigue]]*, 55 F. Supp. 2d 534 (E.D. La. 1999), rev'd on other grounds, [[*Rodrigue v. Rodrigue]]* 218 F.3d 432 (5th Cir. 2000). We note that Louisiana's law comes from its Spanish origins, but the effect is the same for the purposes of this case.
[68] [[*Cinquin C Lecocq]]* Cour. de cassation [Cass.] [Supreme Court for Judicial Matters] Judgment de 25 Juin 1902, Civ., 1903 Recueil Periodique Siery [D.P.] 1.5 (Fr.); [[*Janin c. Dame Cana]]l* Cour d'appel de Paris, 28 février 1938

property rights (earned during the relationship) is considered as community assets.[69]

(c) In Austria, Bulgaria, Poland, Portugal, Slovakia[70] and Germany[71] intellectual property rights are classified as personal assets and are not divided as part of relationship property. While in Germany copyright is able to be licenced,[72] it is not able to be transferred except after death.[73] New Zealand's statutes do not adopt the monist German model. Comparisons to that model are inapt.[74]

(d) Like New Zealand, almost all jurisdictions appear to have contracting out arrangements.[75] The parties are free to contract for a specific outcome on dissolution. In France,[76] and in Quebec, the parties are required to select a particular mode of property division as part of the civil marriage process.

(e) The same approach is taken to division of intellectual property whether held by a company,[77] or held directly by individuals.

(f) There is broad alignment across the jurisdictions that have adopted the dualist approach to copyright that copyright is separate from skills, and distinct from future effort.[78] In England, a bassist of a well-known band was not required to divide his property or share of future ticketing and merchandising income generated by touring (except for the purposes of maintenance) because that income stream was dependent on the bassist touring in the future, thereby undertaking post-separation work. However, the royalties for playing the band's songs (composed

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[69] Katharina Boele-Woelki and others *Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions*, (Intersentia, Cambridge, 2013), at [[234]].
[70] At [[234]].
[71] *Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz – UrhG)* § [[11]], [[29]] (Official translation into English provided).
[72] UrhG § [[31]].
[73] UrhG § [[28, 29]].
[74] Appellant's submissions at [[[54]-[72]]].
[75] Excluding Germany, Austria, Bulgaria, Poland, Portugal and Slovakia in respect of copyright.
[76] French Civil Code, [[Article 1393]].
[77] [[*Pope v Pope*]] [2012] FamCA 204, [[*Y.Z. v A.C*]], 2019 BCSC 1564, [[*CB v KB*]] [2019] EWFC 78, [2020] FLR 795, [2020] 2 FCR 1 and [[*W & W*]] [2007] FMCAfam 459 (6 July 2007), on appeal [[Wellings & Wellings]] [2008] FamCAFC 191 (8 December 2008).
[78] Again, this excludes Germany, Austria, Bulgaria, Poland, Portugal and Slovakia which have the monist approach to copyright and treat copyright differently. NZ has adopted the dualist approach.

and recorded during the relationship) on TV and radio and for the publishing and composition rights were divided as relationship property.[79] In Australia,[80] the royalty streams to which the husband was entitled as a consequence of forming part of a well-known entertainment group were found to be property,[81] and consequently part of the property pool to be divided.[82] In *Goble & Taylor* the royalty stream of a famous Australian songwriter was the primary asset to be divided.[83]

(g) In the French speaking world (Quebec and France)[84] the intellectual property asset is separate property. However, in Quebec, a 'rock star' husband was required to share in the income stream derived from his copyright as spousal maintenance.[85]

(h) A number of academic authors have suggested that there is a need for statutory reform in this area.[86] If different policy is to be pursued, it is appropriate for that to be addressed by Parliament.[87]

63 Certainly in the jurisdictions from which New Zealand law is generally compared, copyrights are divided in accordance with relationship property legislation as relationship property.

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[79] [[*CB v KB*]] [2019] EWFC 78, [2020] FLR 795, [2020] 2 FCR 1.
[80] [[*Pope & Pope*]] [2012] FamCA 204 (3 April 2012).
[81] At [[[116]]].
[82] At [[[118]]].
[83] *G & T* [2002] FamCA 613 (31 July 2002) at [[[11]]].
[84] [[*Y.H. c. W.H.A*]], 2006 QCCS 5215; [[*PD c JB*]] Droit de la famille — 112501, 2011 QCCS 4349; [[*Janin c. Dame Canal*]] Cour d'appel de Paris, 28 février 1938.
[85] [[*AC v ND*]] Droit de la famille — 151194, 2015 QCCS 2359
[86] Debora Polacheck, [["The Un-Worth-y Decision: The Characterization of a Copyright as Community Property"]] (1995) 17 Hastings Comm. & Ent. L.J. 601; Jospeh P. Reid [["Rodrigue v. Rodrigue: Another Copyright and Community Property Case Worth-y of Controversy"]] (2000) 75 Notre Dame L. Rev. 1183. J. Wesley Cochran [["It Takes Two to Tango: Problems with Community Property Ownership of Copyrights and Patents in Texas"]] (2010) 58 Baylor L. Rev. 407; Daniel H. Shulman and Angela Upchurch "Spousal Rights to Inventions: A Latent Threat to Corporate Patent Portfolios" (2019) 50 Seton Hall Law Review (1); Sarah Coates 2022. *[["*I Do, I Did, I'm Done: Copyright and Termination of Transfer in Divorce*"]]* (2022) 23 Or. Rev. Int'l L 183; Susan Corbett and Jessica C. Lai [["To Have and to Hold? Intellectual Property as Relationship Property"]] (December 2022) 30 NZULR (2),
[87] *Z v Z (No 2)* [1997] 2 NZLR 258 (CA) at [[264]].

What other orders should be made?

Vesting

64 We agree that this case is one where it is suitable for the copyrights to be vested in the appellant. Other approaches may be appropriate in other cases.

65 We observe that having made that decision, a valuation exercise is therefore required.

Valuation

66 The mechanism of valuation has not been addressed in any of the courts below. Valuation is essentially a factual exercise.[88] Identifying valuation principles in the absence of evidence and decisions from the Courts below seems to be fraught.[89]

67 Different valuation approaches have been used in different cases:

(a) In *Pope v Pope*[90] the Australian Family Court used a discounted cashflow approach to future royalty screens from musical copyright.

(b) In *CB v KB*[91] two different valuation approaches were taken to different income streams.

(c) In *YZ v AC*[92] patents for technology in a steel wool manufacturing company were valued as a proportion of the research and development costs.

68 Academic articles have been written on the question of valuing intellectual property in the context of domestic relationships.[93]

69 We submit that the question of valuation should be referred back to the Family Court, on the terms directed by the High Court at [56], as varied by the Court of Appeal at [79]-[80].

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88 *Reid v Reid* [1980] NZLR 270 (CA) at [[272]] per Woodhouse and Richardson JJ, upheld [[*Reid v Reid*]] [1982] 1 FLRNZ 193 (PC).
89 *Z v Z (No 2)* [1997] 2 NZLR 258 (CA) at [[292]].
90 [[*Pope & Pope]]* [2012] FamCA 204 (3 April 2012).
91 [[CB v KB]] [2019] EWFC 78, [2020] FLR 795, [2020] 2 FCR 1.
92 [[*Y.Z. v A.C]]*, 2019 BCSC 1564.
93 M. Pedroza [["Dividing the Intangible: An Examination of Community Property in a World of Contingent Revenue"]] (2020) 13. Est. Plan. & Cmty. Prop. LJ 547; S. A. Levitan and K. R. Willoughby [["Realizing the Full Value of Hard to Value Assets"]] (2021) 34 J.A.A.M.L. 133.

Costs

70 The respondent is not in receipt of legal aid. Costs should follow the event.

Date: 22 August 2024

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Q A M Davies/E-J M Tucker
Counsel for the Respondent

We have made appropriate enquiries to ascertain whether this submission contains any suppressed information. To the best of our knowledge, this submission is suitable for publication (that is, it does not contain any suppressed information).

New Zealand

Statutes
[[Copyright Act 1842]] (5 Victoriae 1842 No 18)
[[Copyright Act 1913]] (4 GEO V 1913 No 4)
[[Copyright Act 1962]]
Copyright Act 1994 Parts [[1 and 2]], [[4 and 5]], [[11]]
[[Law Reform Act 1936]] (1 EDW VIII 1936 No 31)
[[Married Women's Property Act]] 1952
[[Married Women's Property Protection Act 1880]] (44 VICT 1880 No 14)
[[Matrimonial Property Act 1963]]
[[Matrimonial Property Amendment Act 1980]]
[[Property (Relationships) Act 1976]]
Cases
[[Agnew v Pardington]] [2006] 2 NZLR 520 (CA)
[[Beasley Homes Ltd v Arrowsmith]] [1978] 1 NZLR 394 (SC)
[[Brooker v John Friend Limited]] [1936] NZLR 743
[[Clayton v Clayton]] [2015] NZCA 30; [2015] 3 NZLR 293
[[Clayton v Clayton]] [2016] NZSC 30, [2016] 3 NZLR 590
[[Cooper v Pinney]] [2023] NZCA 62; [2023] 2 NZLR 455
[[Johnson v Felton]] [2006] 3 NZLR 475 (CA)
[[Martin v Polyplas Manufacturers Limited]] [1969] NZLR 1046 (SC)
[[Pacific Software Technology Ltd v Perry Group Ltd]] [2004] 1 NZLR 164 (CA)
[[Reid v Reid]] [1979] 1 NZLR 572 (CA)
[[Reid v Reid]] [1980] 2 NZLR 270 (CA)
[[Reid v Reid]] [1982] 1 NZLR 147 (PC)
[[Wham-O-MFC Co v Lincoln Industries Limited]] [1984] 1 NZLR 641 (CA)
[[Z v Z (No 2)]] [1997] 2 NZLR 258 (CA)
Texts and articles
Bill Aitken [["Relationship Property"]] Chapter 14 M. Henagan (ed) *Family Law in New Zealand* (20th ed, Lexis Nexus NZ, Wellington, 2021), Vol 2
Aitken, B. [["What Kind of Property is Relationship Property"]] (2016) 47 VUWLR 345
Susan Corbett and Jessica C. Lai [["To Have and to Hold? Intellectual Property as Relationship Property"]] (December 2022) 30 NZULR (2),
James & Wells [[*Intellectual Property in New Zealand*]] (3rd Ed, Thomson Reuters, Wellington, 2017) at 4.3
International Conventions to which New Zealand is a signatory
[[The Berne Convention for the Protection of Literary and Artistic Works]]

United States

Citation (United States), ordered by date	Comment
[[Constitution of the United States]] Article I Section 8	
[[In re Marriage of Worth]], 241 Cal. Rptr. 135 (Cal. Ct. App.1987) (**California**)	Artistic work (Complete Unabridged Super Trivia Encyclopaedia (1977) and The Complete Super Trivia Encyclopaedia, Volume II (1981)) created during marriage is community property.
[[*Curtis v. Curtis*]] 208 Cal.App.3d 387, 256 Cal. Rptr. 76, 78 (1989) (**California**)	Future residuals from performances during marriage are community property
Carla M Roberts [["Worthy of Rejection: Copyright as Community Property"]] (1991) 100(4) Yale LJ 1053	Treating copyright ownership as community property is contrary to the basic policy of federal copyright law, which is to provide authors with incentives to create. Nonauthor spouses are protected adequately by granting a community property interest in the income derived from copyrights, as opposed to ownership rights.
Debora Polacheck [["The Un-Worth-y Decision: The Characterization of a Copyright as Community Property"]](1995) 17 Hastings Comm. & Ent. L.J. 601	Considers *Worth*. Raises question of the wider effect on the entertainment industry. Proposes that the author spouse retains the copyright, and the non-author spouse would be awarded other real or personal community property of equal value. 629
[[*In re Monslow*]] 259 Kan. 412, 912 P.2d 735 (1996) (**Kansas**)	"Video on Demand" concept patented during marriage is marital property subject to division – [[741-747]], but awarded the husband 60% (and the wife 40%) of future income after expenses, to take account of anticipated future efforts toward maturation and marketing of the concept. 747
[[*In re Perkel*]] 963 S.W.2d 445, 451 (Mo.Ct.App.1998) (**Missouri**)	Computer software written by husband is marital property
[[*Rodrigue v. Rodrigue*]] 55 F. Supp. 2d 534 (E.D. La. 1999), rev'd on other grounds, [[*Rodrigue v. Rodrigue*]] 218 F.3d 432 (5th Cir. 2000) (**Louisiana**)	George Rodrigue was a painter. Question was whether he held all ownership rights in intellectual property that he created during the parties' marriage, to the exclusion of any rights his wife might otherwise have in those creations by virtue of community

Citation (United States), ordered by date	Comment
	property law. "… the economic benefits of the copyrighted work belong to the community while it exists and to the former spouses in indivision thereafter …"
D.S. Ciolino [["Why copyrights are not community property"]] (1999) 60 La. L. Rev. 127	Considers *Worth and Rodrigue*, federal redemption and preference for the copyright to be retained by the author spouse. Refers to divorce of *Roddenberry* (Star Trek), *Wanda King and Tom Clancy* (Novelist) and creator of a Blue Dog character (*Rodrigue*)
Jospeh P. Reid [["Rodrigue v. Rodrigue: Another Copyright and Community Property Case Worth-y of Controversy*"]]* (2000) 75 Notre Dame L. Rev. 1183	Considers *Worth and Rodrigue*. Careful case note of both decisions. Suggests federal legislative reform is the preferable way of resolving issue.
A. Bartow [["Intellectual property and domestic relations: issues to consider when there is an artist, author, inventor, or celebrity in the family"]] (2001) 35(3) FAM.L.Q. 383.	Considers *Worth and Rodrigue*. Discusses the conceptual differences between dividing the economic benefits (*fructus*) from the exclusive right to the naked asset (*usus and abusus*) [[400-401]].
[[*Alsenz v. Alsenz*]] 101 SW 3d 648 (2003) (**Texas**)	Husband's refrigeration patents acquired before marriage. "It is unquestionable that, had these patents been taken out during the marriage, the patents and the income they generated would be community property. In this, we would join other jurisdictions in which the courts treat the income from intellectual property created during marriage as marital or community property" [[653]].
J Wesley Cochran [["It Takes Two to Tango: Problems with Community Property Ownership of Copyrights and Patents in Texas*"]]* (2010) 58 Baylor L. Rev., 407	Considers *Worth and Rodrigue* and Texas cases such as *Alsenz*. Supports federal legislative reform, and a review of Texas legislation.
Jane Foulser-McFarlane [["For Richer For Poorer"]] (2009) 159(7384) NLJ 1246	
J.W. Wolfe and K.L. Gallo [["The Treatment of Intellectual Property in Divorce"]] (2009) 258 N.J.Law 24	Focussed on the law of New Jersey, a state with an equitable distribution statute. Considers *Monslow*.

Citation (United States), ordered by date	Comment
[[*Gulbrandsen v. Gulbrandsen*]] 22 So. 3d 640 (2009) (**Florida**)	"… a patent [application, for a device which collates paper inserts with newspapers and other periodicals] is personal property that may be the subject of equitable distribution when the inventor and his or her spouse dissolve their marriage" [[644]].
[[*Berry v. Berry*]] 277 P.3d 968, 127 Haw. 243 (2012) (**Hawaii**)	Motion to set aside. Considers *Re Marriage of Worth and Rodrigue v Rodrigue*. However, held any community property interest in copyright ownership is pre-empted by the federal Copyright Act's protection of authorship.
L.J. Gibbons [["Love's Labor's Lost: Marry for Love, Copyright Work Made-for-Hire, and Alienate at Your Leisure"]] (2012) 101 Ky.L.J. 113	Considers *Worth and Rodrigue*. "… a less romantic view of the commerce of the marital relationship and a more commercial view of romantic marriage as a business entity will better effectuate the public policies concerning marriage as an economic institution and the use of copyrights' constitutional polices to promote the progress of science and the useful arts" [[115]].
L. J. Gibbons [["Then, You Had It, Now It's Gone: Interspousal or Community Property Transfer and Termination of an Illusory Ephemeral State Law Right or Interest in Copyright"]] (2013) 24(1) Fordham Intell. Prop. Media & Ent. L.J. 95	Considers in *Re Marriage of Worth and Rodrigue v Rodrigue*. "… in the context of copyright termination, the domestic relationship, and state law, the author-spouse will always be able to nullify the carefully ordered state law presumptions for domestic relations and the possible ensuing dissolution of the marital union."
M. Pedroza [["Dividing the Intangible: An Examination of Community Property in a World of Contingent Revenue"]] (2020) 13. Est. Plan. & Cmty. Prop. LJ 547	"The needs and interests of consumers across the nation are continually and rapidly changing, making revenue from creative works heavily trend-based. This difficulty in characterization demonstrates that traditional methods used by courts are outdated and should not be used to determine property distribution of revenue from creative works at the time of divorce." [[567]].
[[In Re Marriage of D'Souza and D'Souza]] No. D072564 (Cal. Ct. App. Aug. 26, 2020) (**California**)	Husband was a prolific author of conservative political and religious works. He published four books before marriage: separate property; he published 13 books during or shortly after the marital period: community property; and he published two books (America and Stealing America) after separation: separate property. Royalties from the community property books were divided equally, while earnings from his separate property books were not.

Citation (United States), ordered by date	Comment
Daniel H. Shulman and Angela Upchurch [["Spousal Rights to Inventions: A Latent Threat to Corporate Patent Portfolios"]] (2019) 50 Seton Hall Law Review (1)	Considers the impact of community property regimes on patents. Suggests that companies should ensure that they obtain all intellectual property rights not only from employees but also their spouses. Proposes that Congress should act to resolve unpredictable patent ownership outcomes occurring at the intersection of marital property law and patent law.
S. A. Levitan and K. R. Willoughby [["Realizing the Full Value of Hard to Value Assets"]] (2021) 34 J.A.A.M.L. 133.	Discussion on valuation techniques to be used for intellectual property. "… each valuation methodology is susceptible to significant inaccuracy due to the lack of information regarding the net value of intellectual property both during development and at all stages of the property's useful lifetime."
Grace Ganz Blumberg [[*Community Property in California*]] *[Connected ebook]* (8th ed, Aspen Publishing, Maryland, 2021)	Identifies the histories of the various family property traditions, including Germanic and Visigothic legal protections for the property rights of married women, the Norman common law system of ownership and the Roman-Dutch system of community property.
Sarah Coates 2022. [[*"*I Do, I Did, I'm Done: Copyright and Termination of Transfer in Divorce*"*]] *(2022) 23* Or. Rev. Int'l L. 183.	Discusses *Wanda King / Tom Clancy*. Clancy and King divorced under Maryland law, which dictates that spouses divide assets equitably rather than equally. Argues for "… a bifurcated approach that would more clearly separate financial interests from managerial ones …", similar to Gibbons above.

Canada

Citation (Canada), ordered by date	Comment
[[Canadian Constitution Act 1867]] Section 91	
[[*Brinkos v. Brinkos*]] (1989), 60 D.L.R. (4th) 556, 69 O.R. (2d) 225, 20 R.F.L. (3d) 445 (C.A.) (**Ontario**)	In its largest sense property signifies things and rights considered as having a money value, especially with reference to transfer or succession, and to their capacity of being injured. Property includes not only ownership, estates, and interests in corporeal things, but also rights such as trademarks, copyrights, patents, and rights in

Citation (Canada), ordered by date	Comment
	personam capable of transfer or transmission, such as debts. (quoting from Jowitt's Dictionary of English Law, 2nd ed. (1977), at p. 1447),
[[*Caratun v. Caratun*]] (1992) 10 OR (3d) 385, 96 DLR (4th) 404 (**Ontario**)	Property includes copyrights (quoting *Brinkos*) but within the meaning of s. 4 of the Family Law Act, 1986, excludes the husband's professional licence
[[*Waller v. Waller*]] [1998] 8 WWR 96, 164 Sask R 161, 39 RFL (4th) 300 (**Saskatchewan**)	Quotes *Brinkos*. The value of the interest in the husband's legal practice (partnership) was subject to division. Distinction was made with an occupation (which is not property)
[[*MacLellan v. MacLellan*]] 2001 NBCA 82, 18 RFL (5th) 322 — [2001] NBJ No 266 (**New Brunswick**)	Trial judge had divided the "sale of intellectual property" to the husband's former employer as a marital asset. Not disturbed on appeal. [[[10]]].
[[*P.D.B. v. L.K.A*]] 2003 BCSC 1028 (**British Columbia**)	Husband received royalties from 10 children's books, written during the relationship, which was divided by agreement. [[[51]]].
[[*Y.H. c. W.H.A.*]], 2006 QCCS 5215 (**Quebec**)	Spouses married under the 1967 regime of legal community, which continues to apply despite its later repeal [4]. Husband wrote a computer program which predicts incidence of icing of aircraft wings [52], the intellectual property of which was transferred to a company. Applying French doctrine, the company was the husband's private property and did not form part of the community of property [[[73]]].
[[*Carlson v. Carlson*]], 2007 ABQB 5 (**Alberta**)	Husband wrote a text book on reservoir engineering and received royalties [[[40]]]. Appears to have been included in the division of family property
[[*Pelot v. Saagh-Pelot*]] 2008 NSSC 80 (**Nova Scotia**)	Husband wrote a text book on engineering economics and received royalties [[[8]]]. Appears to have been included in the division of family property
[[*PD c JB*]] Droit de la famille — 112501, 2011 QCCS 4349 (**Quebec**)	Follows *Y.H.* Concerns husband's intellectual property in a data logger. Applies articles 450(1) and 458 Civil Code of Quebec. Husband's sole property [[[105]]].

Citation (Canada), ordered by date	Comment
[[*Clarke v. Clarke*]] 2014 BCSC 1617 (**British Columbia**)	Royalties (arising from the husband's oil and gas lease) were included in the division of family property but offset against the wife's pension [[[85]]].
[[*AC v ND*]] Droit de la famille — 151194, 2015 QCCS 2359 (**Quebec**)	Spousal maintenance, not division of property [1]."Rock star" husband. His main source of income is now royalties [73]. Division of that income in light of the facts [[[76]]].
[[*Wilton v. Myhr*]] 2019 ONSC 77 (**Ontario**)	Citing *Clarke*, royalties earned from husband's musical compositions (copyright – [44]) were included in the division of family property (at [[[54]]])
[[*Y.Z. v A.C*]] 2019 BCSC 1564 (**British Columbia**)	Value of patents held as part of company assets discussed [123]. Value ascribed to patents being half of research and development cost incurred in its development. Six family businesses divided by mutual agreement between parties. Husband retaining ownership over GSM (patent owning company) [[[149]]].

France

Citation (France)	Comment
French Civil Code [[Article 1393]]	
[[*Cinquin C. Lecocq*]] Cour. de cassation [Cass.] [Supreme Court for Judicial Matters] Judgment de 25 Juin 1902 Cinquin C. Lecocq, Civ., 1903 Recueil Periodique Siery [D.P.] 1.5 (Fr.)	Literary property is included in the total estate to be divided, but author controls (what we now know as) the moral rights.
[[*Janin c. Dame Canal*]] Cour d'appel de Paris, 28 février 1938	Musical works composed by a wife before and during the marriage which her ex-husband proposed to exploit commercially after their divorce. The wife sought and obtained a judicial declaration that the right to the works in question belonged to her as her private property, following her renunciation of the community. Uncollected proceeds of editions or performances prior to the dissolution of the marriage were community property.

Israel

Citation (Israel)	Comment
Tal Itkin [["When Love Ends: The Division of Copyright Between Spouses"]] (2022) 26 Marq. Intell. Prop. & Innovation L. Rev. 97	Discusses the importance of the family unit to the creative process. Describes the 'individual creator' as a romantic myth. In Israel, the Supreme Court in principle recognises spousal rights to the 'personal goodwill' of their spouse. Also compares US, French and (French) Canadian position

Indonesia

Citation (Indonesia)	Comment
Anis Mashdurohatun, Jamadi and Eman Suparman [["Developing Intellectual Property Rights as Joint Assets Post Marriage Decisions Based on Justice"]] (2022) 5(12) Sch Int J Law Crime Justice 527	Discusses the divorce of the US actor Michael Douglas and his wife Diandra in California. Diandra entitled to 50% of royalties from films made during the marriage. Question subsequently arose whether Diandra entitled to copy royalties for 'spin-off' movies. In Indonesia, division depends on whether Islamic law, customary law or Article 128 of the Civil Code applies. In principle the authors consider that intellectual property rights form part of the community property, but their division will depend on the facts of any given case.

Australia

(Cth) Citation (Australia), ordered by date	Comment
Australia's constitution, [[section 51(xviii)]]	
[[*G & T*]] [2002] FamCA 613 (31 July 2002)	Husband is 'Australia's most successful international songwriter and a key figure in one of the world's leading chart bands of the seventies and early eighties' [71] and one of the founding members of a band. [2] Royalties for songs written during the relationship are the primary asset to be divided. [[[11]]] Husband's special talent

(Cth) Citation (Australia), ordered by date	Comment
	considered 'in the mix' but only a small amount allowed in this regard [84]. Pre-marital assets encompass more than 16% of the asset pool. [88] Husband has primary responsibility for the parties' children [102]. "I take into account Mr G's emotional attachment to his works and to the income received from them. However, where his emotions conflict with a just financial outcome for the wife, it is his feelings which need give way." [[[109]]] Wife retains 37.5% of the asset pool. [111]
[[W & W]] [2007] FMCAfam 459 (6 July 2007), on appeal [[*Wellings & Wellings*]] [2008] FamCAFC 191; (8 December 2008)	Husband claimed intellectual property in a gambling system was a pre-marital asset. [[[54]]] Refers to G *& T*. [85] Adjustment made to contribution so that husband's entitlement is 61% or in effect an adjustment for the husband to have the first 22% of the pool of $5,381,732 or $1,183,981." [88]. On appeal, the ratio was adjusted: 33% to the wife and 67% to the husband. [[[66]]]
[[*Kennon v Spry*]] (2008) 238 CLR 366	Definition of property in the context of the Family Law Act 1975 (Cth).
[[*Pope & Pope*]] [2012] FamCA 204 (3 April 2012)	Husband as a founding member of an entertainment group. Copyright royalties derived from the group, except APRA royalty stream, were held by a company of which both spouses were directors and shareholders. [19] Both valued [102]. Husband argued that due to the uncertainty surrounding valuation, future royalties should not be treated as property [[[115]]]. Discusses nature of property [116]. Royalties are property [[[117]]]]. Husband retained royalties [[[188]]] subject to equalisation payment [190].

England and Wales

Citation (England and Wales), ordered by date	Comment
[[Donaldson v Beckett]] (1774) 4 Burr 2048, 98 ER 257	Copyright is statutory. The common law, which provided a right in perpetuity, had been codified by statute of 8 Ann, c. 19.
[[Jones v Skinner]] [1835] 5 LJ Ch 87	Definition of property in the context of a will
[[Prest v Petrodel Resources Ltd]] [2013] UKSC 34, [2013] 2 AC 415	Definition of property in the context of the Matrimonial Causes Act 1973.
[[CB v KB]] [2019] EWFC 78, [2020] FLR 795, [2020] 2 FCR 1	The husband is the bass player in a well-known band [6]. The Court divided the present value of publishing or composition royalties in respect of the three songs written by him (and a share of the lead singer's), equitable remuneration (also called neighbouring rights) in respect of broadcasts of the band's songs on radio and TV and one-third share of the recording royalties [[[11]]]. The share of future ticketing and merchandising income generated by touring was not divided but was relevant to maintenance [[[43]]].
[[*Martin v Kogan*]] *(Rev 1)* [2019] EWCA Civ 1645; [2020] EMLR 4 [[*Martin v Kogan*]] [2021] EWHC 24 (Ch); [2021] FSR 10	Tangential. Claim for a share of the copyright. Couple in domestic relationship of approximately 3 years, during the early but not the later revisions of the screen-play for *Florence Foster Jenkins* were written. Mr Martin was the primary author of a screenplay. Ms Kogan was found to have contributed 20%. No discussion of relationship property.

Germany

Citation (Germany)	Comment
[[*Gesetz über Urheberrecht und verwandte Schutzrechte*]] *(Urheberrechtsgesetz – UrhG)* Pat 1 Divisions 1-5, Original German and English translation	Statute codifying copyright (literally 'author's right') in Germany

Europe

Citation (Europe)	Comment
Katharina Boele-Woelki and others [[*Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions*]] (Intersentia, Cambridge, 2013)	"So far as intellectual rights are concerned, where these are provided for, they are classified as personal assets in Austria, Bulgaria (where all economic rights apart from property rights are treated as personal), Poland, Portugal (which refers to moral authorship rights, but see below) and Slovakia (as established by case-law). In contrast, intellectual property rights fall within the community in The Netherlands, while in Lithuania and Russia, although the objects of intellectual property themselves are personal property for the author, income received as a result of the exploitation of such objects is regarded as community property. In Belgium (where the Capital Code refers to industrial property rights as well as literary and artistic rights), France, Portugal and Spain too, income from intellectual property rights are considered as community assets." [[234]]