

# WHOSE BRATZ IS IT? THE INTEGRATION OF COPYRIGHT AND EMPLOYMENT LAW

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## *Abstract*

*Copyright law allocates the initial ownership of works made by employees within the scope of employment to the employer. The work-made-for-hire doctrine is based on agency law, which in turn is based on tort law. This article revisits the doctrine and proposes an obvious—yet novel—basis, which integrates copyright law and employment law. After drawing a spectrum of possible allocations of initial ownership, the article examines copyright law through an economic prism and employment law through a fairness prism.*

*The article argues that an allocation which is both efficient and fair is to award initial ownership to the party who bears the risk associated with making the work. Building on a Coasean analysis, the article suggests that the law should avoid allocations that the market is likely to correct instantly in a costless manner. The analysis explains why penalty default rules are not suitable for the employment context, and instead, it offers to address information deficiencies with interpretive rules, by relying on the typical cases and with greater emphasis on job descriptions. Proposed criteria are based on the kind of work, employer and employee. The discussion moderately supports current doctrine, with some modifications and illustrates yet another situation in which copyright law should not be developed in isolation from other fields of law.*