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Common Copyright Conundrum – "Works Made for Hire"

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Legal Update

OK, let's go over it again—just because you hire and pay someone to write something for you, or to design a logo or a website, or to paint a portrait of the family dog, it does NOT mean that you own the copyright in the writing, logo, or canine portrait. You DO OWN the physical object you paid for, but you CANNOT make copies of it.

Of course, if you put your author on the payroll and make him or her a full-time employee, *then* you do own the copyright. But here we are talking about the one-off freelance job.

Now, let's face it, while this ophidian known as "work made for hire" is always lying in wait, often it never gets up out of the grass. Like so many legal problems, this one is avoidable with luck.

If you do not want to rely on luck, you should enter into a simple agreement with your author. If the "work" you are looking to get qualifies as a "work made for hire"—the list of nine eligible works in the Copyright Act includes such things as screenplays, translations, and atlases (but not the canine portrait)—you and the author need to agree in writing that the work is a "work made for hire." And then you own the copyright. If the contracted-for-work is not eligible to be a "work made for hire," then you and the author need to agree in writing that she is transferring the copyright to you. Simple—and a good way to address eminently preventable problems down the road.

No. 2 – Even Simpler

Just because you see it—image, article, photograph—on the Internet does not mean it is in the public domain and available for use without permission and free of charge.

This advisory was prepared by Nutter's Intellectual Property practice. For more information, please contact your Nutter attorney at 617.439.2000.