

Warning! Co-Creation Hazard Ahead

By: [Maria Crimi Speth](#)

Brainstorming and collaborating frequently produces superior work. For that reason, it is not surprising that many creative works, in the art and literature world, as well as in the business world, are the result of co-creation. Unfortunately, it is common for disputes to arise over co-created materials. That is not to say you shouldn't collaborate. It is, however, essential that the collaborators agree upon the terms of the arrangement.

Whether you have a business partner, a co-inventor on a new product, or a co-author on a book, blog, or other writing, you should take some simple steps to avoid future disagreements over ownership. As human beings, we typically perceive our contribution to a project as being the most valuable. The financier always believes the key to the company's success is the financial capital, the visionary always believes it is the ideas and the person rolling up their sleeves to do the work believes that success is the result of hard work. Of course, a more objective observer knows that all of those were the ingredients of success.

The laws governing [intellectual property](#) do dictate the rights owned by co-authors and co-inventors, but those laws do not necessarily match the intentions of the parties. If two authors work together to author a book, they become joint owners in the copyright to the book. Unless the writing was separated in some easily discernable way, both authors own 50 percent of the work and each have all of the rights that a single author would have. For example, if both authors contributed to every chapter and worked together to decide on wording, there is no way to differentiate between their work and therefore no method to divide the copyright. On the other hand, if each author wrote certain chapters of the book and those chapters could be separated without destroying the work, then there might be a way to divide the copyright. Typically, that is not the case. The applicable federal law states that "a 'joint work' is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole."

Similarly, joint inventors on a patent each have all of the rights of an inventor. There is usually no easy or accurate way to separate out the contribution of each inventor to the invention.

Co-authorship and co-inventorship can be problematic because both creators have the right to commercialize and monetize the product and can easily and frequently do, interfere with one another's efforts if there is a lack of cooperation.

When co-authorship is contemplated, my recommendation to my clients is that they enter into a written assignment of the copyright to avoid joint ownership of the copyright. One of the authors can assign their rights to the other author in exchange for compensation, recognition, and other negotiated terms. If the co-authors cannot agree on one owner, they can both assign the copyright to a company in which they both have an ownership interest. The company, such as a limited liability company, should be governed by a written agreement between the owners. That agreement should include the rights and obligations of the respective members, how to deal with contingencies such as the death of one of the owners, buyout provisions by one owner of the other's interest as well as other operational matters.

When a creation is only owned by only one person or one entity, there is a clearer direction for commercialization of the work and there are far fewer disputes over the respective rights and obligations of the parties. The next time you are collaborating on a project that involves intellectual property, make sure you discuss ownership of the resulting product and consider consulting an intellectual property attorney to assist you in memorializing your agreements and assigning the ownership to a single person or entity. The cost of this preventative step will be a fraction of the cost of resolving a dispute later.

About the author: [Maria Crimi Speth](#) is an [intellectual property](#) attorney at the Phoenix, Arizona law firm of Jaburg Wilk. She has expertise in copyright law, trademark, trade name, Internet law and intellectual property litigation. Maria is the author of the book of [Protect Your Writings: A Legal Guide for Authors](#). She can be reached at 602.248.1000 or mcs@jaburgwilk.com.

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