



North Carolina Law Life

Work Made for Hire Agreements Save Time, Uncertainty and Money

By: Donna Ray Berkelhammer on *Monday, October 8th, 2012*

We often receive calls from clients who — way back when — hired web site designers, graphic artists, photographers, videographers or web site hosts, now want something updated, and received outlandish payment demands from the vendor to have “their” content modified. What is going on, and how can you avoid this scenario?



(Photo credit: Mr.Tea)

Many business owners assume when they hire an outside source to produce content (logo, artwork, web site design, training video or materials, blogs, web site copy, photographs, web site domain name registration), the company owns the resulting work product because it paid to have the work custom-made. This is not true.

The US Copyright law in this area is arcane, counter-intuitive and not helpful.

While companies typically own the work product developed by their employees, only certain works specified in the Copyright Act are considered “works made for hire” that are owned by the hiring party, and only if the parties agree up front in writing that the work will be a “work made for hire”.

Section 101 of the Copyright Act defines a “**work made for hire**” as a work specially ordered or commissioned for use:

- as a contribution to a collective work,
- as a part of a motion picture or other audiovisual work,
- as a translation,
- as a supplementary work,
- as a compilation,

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- as an instructional text,
- as a test,
- as answer material for a test, or
- as an atlas,

but only if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

This statute sorely needs updating to be relevant to the current business environment and reasonable expectations of business owners. In some instances, the company may have an **implied license** to use the work it commissioned, but the best practice is to use Work Made For Hire Agreements any time your company is commissioning creative work of any type. These agreements clarify the ownership of the work product, and also what the specifications are, cost, payment terms, and recourse for improperly completed work or work that turns out not to be original.

If you have questions, contact one of our **business** or **intellectual property** attorneys.

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