

## Coping with copyright

**If you pay for something to be created, is it reasonable to assume that it is yours to keep and to use as you wish? Most of us would think that the answer is obvious – but it may not always be the case.**



If what you have paid for involves an element of copyright then, more often than not, the copyright in what has been created will continue to belong to the person who did the work – even after they have been paid in full.

You might be tempted to question the relevance of this to your business. But what about the photographs you commissioned for your latest brochure? Your new company logo? Your website? Or even the bespoke piece of software you have developed? All of these are creative works for which you will probably have used the services of an independent contractor and, as creator of the work, the contractor will be the owner of the copyright in it.

The reason for this apparent anomaly lies in the **Copyright Designs and Patents Act 1988** ('the Act') which provides that the copyright in a creative work belongs to the person who created it and that any subsequent transfer of ownership must be in writing. There is an exception in the case of works created by employees, where the copyright will generally belong to the employer – but this may not apply if the job of creating the work falls outside the scope of an employee's normal duties.

A creator also has 'Moral Rights' in a copyright work under the Act. These give the creator the right to require to be identified on every copy of the work and to object to certain uses of the work. Moral Rights are commonly used by published authors (a check through the copyright notice at the beginning of the next book you read will almost certainly reveal a statement that the author has asserted them).

However, whilst this may be expected in relation to a published book, it could prove rather inconvenient if it arose in relation to your brochure or company logo. Thankfully Moral Rights do not apply to computer programs or computer generated works – which will include your website and software.

Having highlighted the potential issues the question is whether there is anything that can be done to avoid them? The answer is yes, and relatively simply.

In relation to copyright, the ideal solution is to agree with your contractor at the outset that the copyright will be assigned to you when the work is completed and you have paid for it. The Act provides that any agreement must be in writing and signed by the copyright owner but beyond that there are no restrictions, so even a few handwritten sentences would do at a push. Some contractors do not, as a matter of policy, agree to assign their copyright – which may be understandable where creativity is their stock in trade. In those circumstances you should agree in writing that you will have a licence to use the copyright however you wish.

With Moral Rights, the solution is to agree that the creator will release or waive them as a condition of getting the work. Again the agreement should be in writing but there is no particular wording that must be used.

And what about those copyrights you already use but don't own? Well, if the question ever arises, the answer will probably be that you have an implied licence to use the work for whatever purpose you originally made known to its creator – but you may find that those purposes are rather more limited than you had imagined and it may prove costly to resolve the issue for certain.

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