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Can I Make Prints And Sell Them Of Original Sketches Purchase From A Local Artist?

[Kristie Prinz](#)

Q.

I purchased original sketches from a local artist. Since there was no stipulation of how I could use the art work, can I make prints of the work and sell them?

-- *Anonymous*

A.

Unless the sketches constituted a "work for hire," you would only have the right to make prints of the work and sell them, if you did so pursuant to the express authorization of the artist.

The general rule on copyright law is that ownership of the copyright subsists in the creator of the work from the time it is created in fixed form. The exception is when the work is created as a "work for hire."

Section 101 of the Copyright Act defines "work made for hire" as:

1. a work prepared by an employee within the scope of his or her employment; or
2. 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, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. . . .

Thus, in the case at hand, the artist of the sketches owns the copyright in the works, unless that artist was your employee and he or she prepared the works in the scope of his or her employment, or unless you commissioned him or her to create the work and you entered into a written agreement with him or her, expressly stating that the work constituted a "work for hire."

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My assumption based on the facts that you have provided is that the artist still owns the copyright in the sketches. If so, as previously stated, you would only be able to create reprints and sell them if you created them pursuant to the written authorization of the artist.

Section 106 of the Copyright Act provides the rule on the copyright owner's exclusive rights as follows:

[T]he owner of copyright has the exclusive rights to do and to authorize any of the following:

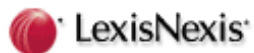
1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Prints of a sketch are clearly a derivative work, and thus only the copyright owner would have the right to authorize their creation.

My recommendation would be to approach the artist and inquire about the possibility of licensing the right to create reprints of the sketches and sell them. If the artist agrees to discuss your licensing the work, then you should retain a licensing attorney in your jurisdiction who can advise you on how best to negotiate and draft the terms and conditions of a license agreement with the artist.

-- *Kristie Prinz*

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