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Bankruptcy

Family Law

Labor and Employment Law

Personal Injury

Real Estate

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- [Do I Really Need a Lawyer?](#)
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- [Lawyers' & Clients' Responsibilities to Each Other](#)

Ask a Lawyer > Question & Answer Archive

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Can a Corporation Purchase Copies of Photos and Then Use Those Photos in a For-Profit Context Without First Obtaining Permission?

[Kristie Prinz](#)

Q.

Is it legal for a corporation to use my photos for marketing and profit without my permission or without giving me credit? I sold the photos for \$200 with the condition that I still had rights to sell them myself if I wished. The company was allowed to use my images for non-profit use (ie. newsletters or media items that were not sold for profit). The company is now using my images in a for-profit context in a calendar. All of the other images in the calendar give credit to the authors' names. Is this worth pursuing?

-- dave

A.

If the corporation is not the owner of the copyright in the photos, then such corporation will generally not have the right to use the photos, except upon the express permission of the copyright owner.

[Section 106 of the Copyright Act](#) provides that only the exclusive owner of the copyright in a work has the right to 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.

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While the corporation may have purchased the photos, such corporation would not have become the exclusive owner of the intellectual property rights in the photos, unless you entered into either a written assignment agreement with the corporation transferring your rights in the works or a work for hire agreement with the corporation, in which you expressly assigned your rights in the works to the corporation.

If no such assignment or work for hire agreement exists, then the corporation is most likely infringing on your copyright in the photos, unless it is using them with your express permission.

Are there any exceptions that might apply here? To the extent it applied in this case, the doctrine of fair use could provide an exception to the rule on copyright infringement. Section 107 of the Copyright Act sets forth the doctrine of fair use below:

[T]he fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

It is not clear from the facts you have provided as to whether or not the fair use doctrine would be applicable in the current situation, but if it were to apply, then it would enable the third party to use your works without infringing your copyright.

My recommendation is that you consult with a [copyright attorney](#) in your jurisdiction regarding the specific facts of your case, including the specific terms of any agreement you had with the corporation regarding the photos. Once that attorney has had the opportunity to review the facts at issue, he should be in a position to advise you on how to best move forward. At that point, you can decide whether this matter is "worth pursuing" as stated in your initial question.

-- Kristie Prinz



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