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Copyright Law - Who Owns Software Created by an Employee on His Own Time?

[Kristie Prinz](#)

Q.

I am a college student studying computer science. I also work as a waiter for a large hotel chain to pay the bills. I have begun developing (on my own time) software that I think would be very useful to my employer. I am concerned about being able to charge them to use this product. The fact that I have gained extensive knowledge of their operation and computer systems allows me to be able to develop a uniquely useful product, but I fear that they may claim some degree of ownership of this information or even the final product. Where do I stand?

-- TJ

A.

You are asking the right question. However, the answer is a little less clear than you might like.

The general rule when it comes to copyright ownership is that the copyright in a work is the property of the creator of the work. However, an exception exists with respect to works made for hire.

Section 101 of Title 17 of the U.S. Code 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.

In the case at hand, the key issue is whether or not your software is "a work prepared by an employee within the scope of his or her employment." At first glance, you seem to have a good case that this was prepared

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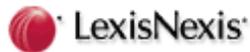
outside the scope of your employment, since you are a waiter and you say you have been developing this software on your own time. However, I am somewhat concerned by your statement that you have "gained extensive knowledge of their operation and computer systems." Is there room for the hotel chain to argue that this software was developed in the course of your employment? The facts you have provided are a bit unclear on this issue.

Also, you have not stated whether or not your employer ever made you sign any paperwork when you began your job, which might affect this issue. Since your job is with a hotel and not a technology-related business, it seems unlikely that your employer would have made you sign such a document; however, given your statement about your familiarity with the computer systems of the business, the possibility exists that you could have been asked to sign something that would impact this issue.

My advice is to consult with a copyright attorney in your jurisdiction regarding the specific facts of your situation. Such an attorney should be able to sort through the facts and advise you definitively as to whether or not you own the rights to your software. Assuming ownership in your software is established, then you should consider registering the copyright in your software with the U.S. Copyright Office. Also, you should plan to obtain a form software license agreement in the near future, so that you will be able to grant licenses in your work.

-- Kristie Prinz

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