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Copyright Ownership Issue: Who Owns The Rights In A Software Program?

[Kristie Prinz](#)

**Q.** I wrote software application that helped me produce reports and graphs analyzing a survey for a school. I gave the reports and graphs to the school, but not the software application. Is it legal for me to market this application to other schools, or does it fall in the public domain since it was done for a government agency?

-- Anonymous

**A.**

Based on the facts you have provided, you appear to own the rights in the software program you created.

Copyright protection exists in the author from the time that the work is created in fixed form, and ownership of the author's exclusive rights in the copyright can only be transferred by express written agreement or by "work for hire." In the case at hand, you have not mentioned transferring your rights to the school by written agreement, thus, you should still own the copyright in your work, provided that it was not developed as a "work made for hire."

What is a "work made for hire"? If the software was a "work made for hire," then this would mean that the school, rather than you as the developer, own the copyright in the work. The program would constitute a "work made for hire" if it was prepared by you as an employee within the scope of your employment, or if it was specially ordered or commissioned and you and the school expressly agreed in a signed written agreement that the work would constitute a "work made for hire."

In the case at hand, you have not indicated that you were an employee of the school, nor that you developed the software pursuant to a "work made for hire" agreement, so my assumption is that you were asked only to analyze the survey results for the school. If this is in fact the case, then you should still own the copyright in the software program that you created.

You should consider consulting with an intellectual property attorney licensed to practice in your area in

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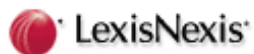
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order to discuss the specific facts of your situation in more detail, just to confirm that there are no other relevant issues to consider in this particular situation before you proceed. Also, an intellectual property attorney can advise you as to whether you should consider registering your software with the U.S. Copyright Office, and work with you on drafting an appropriate agreement under which you can license and sell your software to individual schools.

-- Kristie Prinz

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