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Do Photos that I Took Before I Started Employment Belong to the Employer After I Leave That Employment?

[Kristie Prinz](#)**Q.**

What does "a work prepared by an employee within the scope of his or her employment" mean? I was a VP of a construction firm. Before being hired by that firm, I owned my own business doing the same kind of work. During my employment with the construction firm, I took photos of work I completed before being hired by that firm. During my employment I did allow the firm to use some photos of my pre-employment work in their advertising. I am now using the photos in my own advertising, and my former employer is claiming that the photos belong to them. Who is right and what can I do about it?

-- Dave

A.

Based on the facts you have provided, you likely still own all the rights in your photos and your former employer does not have the right to prevent you from using them.

Copyright ownership subsists in the author from the time the work exists in fixed form. The exception is when the work is made for hire, in which case the work would be owned by the employer and not the employee. According to the facts you have provided, however, the work was not made for hire, given the fact it was created prior to the commencement of your employment with the employer. Thus, you as the author would still own the work, unless you had expressly transferred your rights in the work by an assignment agreement with your employer. My assumption based on the facts is that no such assignment agreement exists.

The confusion in your case was of course caused by the fact that you allowed your employer to use some of the photos during the term of your employment, apparently without entering into a clear license agreement defining the terms of the permitted use. It is somewhat foreseeable that without such an agreement in place that a dispute might arise about the use of the photos.

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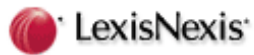
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What can you do at this point in time? My advice would be to retain an IP transactions attorney in your jurisdiction to contact the former employer on your behalf about the photos. This attorney will probably need to provide some information about when the photos were taken and will need to advise the former employer about the terms of the permitted use of the photos you provided to them. You may also want to get a contract in writing with the former employer defining the terms of the license to use the photos.

In the future, my advice would be to not allow third parties to use your work without first entering into a written license with each such party that expressly defines the terms of the permitted use of such work. By taking such a precaution, you should be able to protect against such dispute arising again in the future.

-- Kristie Prinz

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