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What Are My Rights In A Portrait I Commissioned Of My Dog?

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

I commissioned a portrait of my dog for which I signed no agreement, but paid \$5,000. I assumed that since this was, per her marketing brochure, a "Private Commissioned Original Portrait" that I would own the rights of reproduction, etc.. The artist claims she has those rights, and is beginning to reproduce Limited Editions, notecards, etc.. With no contractual arrangement, where do I stand?

-- *Barbara***A.**

This is a fact pattern that I often receive calls on: whether you own the rights to photographs or paintings that you commissioned, where there was no written agreement between the parties.

Unfortunately, the fact that you commission or pay for a work does not mean you have obtained the rights to the work.

As a general rule, the ownership of the copyright in a work belongs to the creator of that work. The exception is when the work is a "work for hire" or when it is transferred by an assignment of rights in the work.

Section 101 of the U.S. Copyright Act defines a "work for hire" as the following:

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. . . .

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Thus, works prepared by an employee at work are going to constitute "works for hire," but in the case of a work ordered or commissioned, the work will only constitute a "work for hire" if the parties expressly agree in a signed written agreement that the work is a work made for hire.

In the case at hand, you have indicated that you did not enter into a written agreement with the artist. Thus, your work does not constitute a "work made for hire" and the artist has the rights to reproduce the work.

What can you do after the fact if you have commissioned a work but failed to obtain the rights to that work?

My advice would be to consult with a copyright attorney in your jurisdiction about obtaining a copyright assignment agreement transferring the artist's rights in the copyright to you. A copyright attorney should be able to make some calls for you in order to see if you can negotiate a copyright assignment agreement with the artist, or in the alternative, advise you on how to negotiate such an agreement yourself.

If, as in this scenario, the work has already been reproduced or used in a way that you would not have sanctioned, what can you do? In addition to negotiating a copyright assignment, if the work is a photograph or representation of you, you may have grounds in tort law to take legal action against the artist. Unfortunately, those rights will probably not extend to your dog (though as a pet lover myself, I take issue with this fact). If this is your situation, you should consult a general practice litigator in your jurisdiction, who can advise you on your best course of action.

-- *Kristie Prinz*

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