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What Rights Do I Have To Photos I Took For A Client's Brochure?

[Kristie Prinz](#)

**Q.**

I was hired to create a leaflet for a printing company's client (a jeweler) and quoted the printer an amount to do the design (which included photography). No contract was signed.

I was thereafter put in contact with the jeweler directly, but we did not speak of pricing. On completion of the project the printer paid me cash for the project. I thereafter utilized the pictures I had taken of the jeweler's jewelry in a magazine project, as page dressing for a jewelry article - not an advertisement for a competitor. No mention was made of the source of the jewelry or the jeweler.

The jeweler in turn saw this article and now wants to sue me for everything I've got as he says I had no right to use 'his' pictures.

While doing the leaflet layout, extensive work was done with retouching the pictures etc... He has now also requested the final files and the photography.

What are my rights and what are his?

-- *Anonymous*

**A.**

Based on the facts you have provided, you had the right to reuse the photos however you chose to use them. So, the jeweler really doesn't have much recourse on this issue, particularly since the photos are of jewelry and not of him personally.

Why is this the case when he paid you for your work, which included taking the photos?

U.S. Copyright Law provides for copyright protection to subsist in the author of a work, immediately when it

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is created in fixed form. Once created, the ownership of the work can only be transferred by assignment or pursuant to a work for hire agreement.

Section 101 of the U.S. Copyright Act sets forth the definition of "work for hire agreement" as follows:

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, there is no assignment agreement, nor was a "work for hire" agreement ever signed. Thus, the photos continue to be your photos, and you have the right to do what you wish with them.

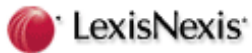
With respect to your client's final files and photography, your client certainly has the right to request a copy of or even the originals of his files and any photos; however, since no contract is in place with such client, you have no legal obligation to turn over the exclusive copy or originals of those files and photos.

Having said this, while there may not be legal reasons compelling you to turn over your client's photos and files, it may still be in the best interest of your business to accommodate your past client's request. Ultimately, your business is a service business, and it is often simply good business sense to accommodate rather than antagonize past and present clients, to the extent possible. This may be your best business option in the case at hand.

-- *Kristie Prinz*

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