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Who Owns The Copyrights In Commissioned Artwork?

[Kristie Prinz](#)

**Q.** In past two years I have produced a book covers and web design graphics for an author. My digital art work was never registered, and I never signed any assignment or work for hire agreement with the author. Our business relationship is now at a separation stage. May I request remove all my art work from her website and any other media, that she is using for her promotions? She says that since she paid me to produce promotional items, she owns the copyrights in my work.

-- Yelena

**A.**

Assuming that you were an independent contractor and not an employee at the time you produced this artwork on behalf of the author, then you likely still own the copyrights in your artwork, based on the facts you have provided.

Copyright protection exists immediately at the time the work is created in fixed form, and the creator or author of the work immediately owns the copyright in such work at the time of creation.

The exception to this rule is when the work is a "work for hire." Artwork would constitute a "work for hire" if (i) it is prepared by an employee in the scope of employment, or (ii) if it is specially ordered or commissioned for use as a contribution to a collective work, a part of a motion picture or other audiovisual work, a translation, a supplementary work, a compilation, an instructional text, a test, answer material for a test, or an atlas, provided that the parties have expressly agreed in a written instrument signed by them that the work will constitute a "work for hire."

Based on the facts of your case, since there is no signed written agreement that your artwork would constitute a "work for hire," you should still be the owner of the copyright, provided that you had not been an employee acting in the scope of employment when you created the artwork and that you have not signed an assignment of your copyright in the works to the author.

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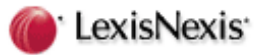
With respect to your question as to whether or not you can request that she return your artwork and discontinue all use of it, however, the answer is a little less clear. From the facts you have provided, I assume that you granted this author the rights to use your artwork under an oral license agreement, but you have provided no information regarding any specific terms of that oral understanding, nor is it clear as to what other evidence, if any, you have in hand to support your understanding of the terms of the agreement. Given this fact, you would probably be best advised to consult the caselaw of your jurisdiction before making a decision about how to proceed with your request.

My advice would be to consult with an intellectual property attorney in your jurisdiction who specializes in copyright law and intellectual property licensing and discuss with him, or her, the specific facts of your case. Once this attorney is familiar with the specifics of your case, he or she should be in a position to advise you on your rights to terminate this copyright license agreement, based on the caselaw of your particular jurisdiction.

-- *Kristie Prinz*

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