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Work for Hire: When A Company Hires A Software Developer And Then Goes Out Of Business, Who Owns The Software?

[Kristie Prinz](#)

**Q.** I performed contract software development work for a company, who recently went out of business. I did not have a work for hire agreement with this company, nor did I ever transfer ownership of the software I developed. Can I copyright this software under my name, since I was not paid in full for the project?

-- David

**A.**

Based on the facts you have provided, you appear to still own the copyright in the software you developed.

Copyright protection exists from the moment that a work is created in fixed form, and ownership of the copyright immediately vests in the author creating the work. A work is "made for hire" if it is prepared by an employee in the scope of employment or if it is specially ordered or commissioned for use, provided that the parties expressly agree in a written instrument signed by them that the work shall be considered a "work made for hire." While the rights in a copyrighted work may be transferred on a nonexclusive basis without a written agreement, the copyright owner's exclusive rights in a work cannot be transferred unless there is a signed writing by the owner of the work, which expressly transfers his or her rights.

In the case at hand, the company who hired you on a contract basis to do software development work for them should have entered into a written agreement with you memorializing the fact that your work was being performed on a "work for hire" basis and expressly transferring your rights in the software to the company. Since the company failed to enter into an appropriate contract with you while it was still in business, you likely never transferred any of your rights over to the company and should be entitled to register your copyright in the software with the U.S. Copyright Office.

My advice would be to consult with an intellectual property attorney in your jurisdiction regarding the specific facts of your case, just to make certain that there are no other relevant facts to consider before proceeding. You also may want to seek his or her advice with respect to whether or not registration of your copyright in the software is appropriate. As you may be aware, there is some controversy as to whether or not obtaining

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a copyright registration in software is a good idea, and many companies in the industry have a policy of not registering unless a copyright infringement issue has arisen. An intellectual property attorney would be able to advise you regarding these issues in more detail, so that you can make the right decision for you in your particular situation.

-- Kristie Prinz

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