



Expression  
Copyright

# Work for Hire Doctrine

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Konomark  
Most rights sharable

## Who owns the copyright?

- The general rule: The author (creator) or a copyrighted work owns the copyright.
  - Copyright can be assigned to another person, however.
- Exception: “works made for hire”
  - The copyright to a work made for hire is owned by the hiring party.
  - The hiring party is considered the author of a work made for hire.
  - Determined by 17 U.S.C. § 101.
  - Courts are very strict in applying the statutory requirements.

## Two ways a work can constitute a “work made for hire”

- The work is prepared by an employee within the scope of employment
- The work is specially commissioned, under certain circumstances

## Employee/scope-of-employment works

- To qualify, there must be a real, bona fide employee/employer relationship.
- The agreement of the parties about the status of their relationship does not control.
- Employment status is determined under the common law of agency.
- Factors courts look at:
  - Employer’s control over the work
  - Employer’s control over the employee
  - Employer is in the business of producing works.
  - Indicia of employment: Taxes withheld from employee’s pay check, etc.

## Specially commissioned works

- There must be an express written agreement saying that the work will be considered a work made for hire, signed by both parties, and
- The work must be for use as one of the following:
  - a contribution to a collective work
  - a part of a motion picture or other audiovisual work
  - a translation
  - a supplementary work (e.g., forewords, charts, tables, appendixes, indexes that would accompany the author's main text in a book)
  - a compilation
  - an instructional text
  - a test
  - answer material for a test
  - an atlas

## Assignments

- Even without qualifying for work-made-for-hire doctrine, a hirer can still get the copyright through an assignment.
- An assignment requires a writing signed by the assignor with express words of assignment.
- But an assignment is not as good as being the author under work-made-for-hire doctrine ...
  - An author/assignor can recapture copyright around 35-40 years later through 17 U.S.C. § 203.
  - But if a work is a work-made-for-hire, then there is no statutory recapture.

## Question: Who owns the copyright to wedding photos?



## Employee/scope-of-employment works

Review

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## How can the hirer get the copyright?



How can the hirer end up with the copyright to the work of the hired person?

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## Work-for-hire + assignment provision

22.1 Title. Company and University intend this to be a contract for services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Company hereunder to be a work made for hire. Company acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of University.

22.2 Copyright Assignment. If for any reason the Work would not be considered a work-for-hire under applicable law, Company does hereby sell, assign, and transfer to University, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world.

Company agrees to execute all papers and to perform such other proper acts as University may deem necessary to secure for University or its designee the rights herein assigned.

*(From: "Miscellaneous Sample Clauses - University of Texas System")*

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I like to add something that speaks to the specific category of specially commissioned work, such as:

The parties acknowledge that Photographer's work and services hereunder have been specially ordered or commissioned by Hirer for use by as a contribution to a collective work.

Company agrees to execute all papers and to perform such other proper acts as University may deem necessary to secure for University or its designee the rights herein assigned.

*(From: "Miscellaneous Sample Clauses - University of Texas System")*

**Bonus tidbit about publicity rights, waivers, and model releases ...**



# How can a hired party commercially exploit photos with faces?



wedding or event; third offers: Photographer will end wedding coverage immediately upon receipt of such offer. Photographer shall be entitled to retain all monies paid hereunder and client agrees to relieve and hold Photographer harmless as a result of such offer. Photographer shall be entitled to retain all monies paid hereunder and client agrees to relieve and hold Photographer harmless as a result of such offer.

**Coverage:** Photographer will provide coverage for the dates, locations and conditions specified in this Agreement. Additional travel or coverage hours may be added by agreement on the wedding day and must be paid in full before the wedding. Images released to the Client. Every reasonable effort will be made to take requested pictures, but no specific pose or photograph can be guaranteed. Images supplied will be used for organizational purposes only. Images determined by the photographer to be substandard or duplicated may not be delivered. Photographer will use her professional judgment and sole discretion to select which photos to deliver. Such selection shall constitute the entire release of images available to Client.

**Image Processing/printing:** Unless agreed upon prior to the wedding, all images will be delivered in high resolution digital format. High resolution digital files may contain a mixture of color, and black and white. An alternate color version of a photo may be purchased at an additional cost. Limited color correction and/or retouching are included at Photographer's discretion. Client may request further changes for on order prints. Photographer is not responsible for any prints that are not ordered directly from her. For best results, clients with the high-resolution files should order from a reputable lab.

**Model Release:** This contract serves as a model release giving the Photographer the irrevocable right to use the photographs in all forms and in all media and in all manners, without any restriction as to changes or alterations, for advertising, trade, promotion, exhibition, or any other lawful purposes. The Photographer can grant use of the images to third parties and all compensation for use and credit for the images remain the property of the photographer. Client waives any right to inspect or approve the photograph(s), finished version(s) incorporating the photograph(s), or the use to which it may be applied, including written copy that may be created and appear in connection therewith. This release is binding on the Client, their legal representatives, heirs, and assigns. Initials \_\_\_\_\_

**Copyright:** All photographs taken by Crystal Smith are her property, will remain her property and are protected by United States Copyright Laws (17 USC Title 17). Client hereby waives any claims for ownership, income, editorial control and use of the images. Violators of this federal law will be subject to its civil and criminal penalties.

I have read, understand and agree to the terms and conditions of this Agreement. Each person signing as Client below shall be fully responsible for ensuring that full payment is made pursuant to the terms of this Agreement.

Total for Services due: \_\_\_\_\_ Deposit Paid: \_\_\_\_\_ Date: \_\_\_\_\_

Photographer: \_\_\_\_\_ Client: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

The total balance is due 30 days before wedding date.

Crystal Smith's Glamour & Studio

**model release!**