



Expression  
Copyright

## Ownership of Copyrights (Including Works Made for Hire, Assignments, Transfers)

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Konomark  
Most rights sharable

### IP PITFALL:

Not securing copyright  
ownership despite  
paying for it

## **Some important context: Transfers and licenses:**

- Copyright transfers (assignments and exclusive licenses) require a signed writing.
- Non-exclusive licenses need not be in writing and can be implied.
- With works made for hire, the employer is the author, and no assignment from worker to hirer is necessary.

## **Who owns the copyright?**

- The general rule: The author (creator) of 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 tend to be 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. (*CCNV v. Reid*)
- A few of the factors courts look at:
  - Employer’s control over the work
  - Employer’s control over the employee
  - Employer is in the business of producing such works
  - Indicia of employment: Taxes withheld from employee’s pay check, etc.
  - *More on next slide ...*

## **Employment vs. Independent Contractor Under Agency Principles (CCNV)**

- hiring party's right to control the manner and means by which the product is accomplished
  - the skill required
  - the source of the instrumentalities and tools
  - the location of the work
  - the duration of the relationship between the parties
  - whether the hiring party has the right to assign additional projects to the hired party
  - the extent of the hired party's discretion over when and how long to work
  - the method of payment
  - the hired party's role in hiring and paying assistants
  - whether the work is part of the regular business of the hiring party
  - whether the hiring party is in business
  - the provision of employee benefits
  - the tax treatment of the hired party
- No one of these factors is determinative.

## **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

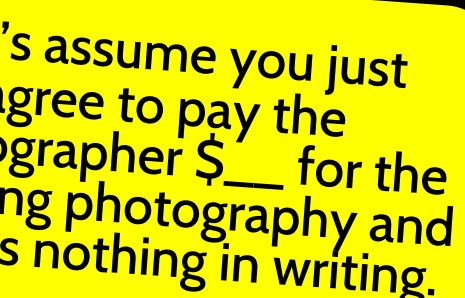
- Even without qualifying for work-made-for-hire doctrine, a hirer can still get the copyright through an assignment.
- An assignment requires a writing signed by the assignor with express words of assignment.
- But being an assignee is not as good as being the author under work-made-for-hire doctrine ...
  - 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?



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Let's assume you just  
agree to pay the  
photographer \$\_\_\_ for the  
wedding photography and  
there's nothing in writing.

## Employee/scope-of-employment works

Review

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In this case, the photographer owns the copyright. That means they could commercially exploit your photos, selling them as stock photos.

Review

Would a photographer really sell your wedding photos as stock photography?



Yes.

Would a photographer really sell your wedding photos as stock photography?



(Note lack of faces.  
Copyright and right of  
publicity are separate.)

Yes.

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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Review

## 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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Company agrees to execute and deliver to University, its successors and assigns, all documents and instruments as University may deem necessary to carry out the intent and purpose of the foregoing, and to assign and transfer to University, its successors and assigns, the rights herein assigned.

(From: "Miscellaneous")

FWIW, this typo is original to the UT language. I originally accessed this in 2013, and in 2022, it's still there on their website.

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This is the belt-and-suspenders approach.

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(system")

## Work-for-hire + assignment provision

I like to add something that speaks to a specific category of specially commissioned work, such as “collective work”:

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

**This is the belt-and-suspenders approach.**

(From: “Miscellaneous”) (system”)

## Work-for-hire + assignment provision

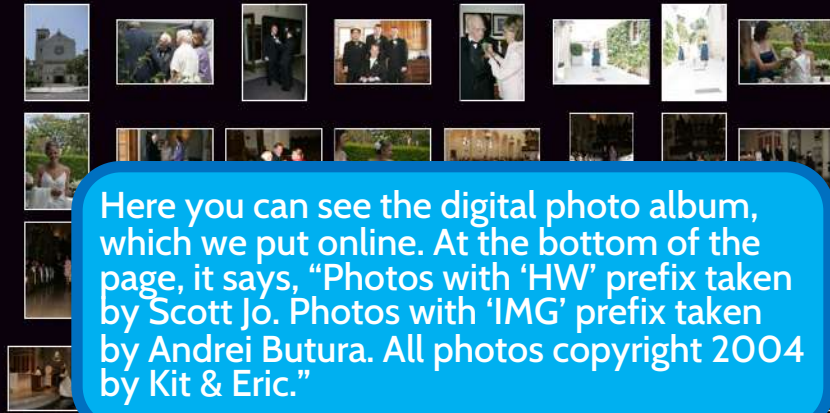
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**That, in fact, is what I did for my own wedding. And yes, they really were for a collective work ...**

**This is the belt-and-suspenders approach.**

(From: “Miscellaneous”) (system”)



Here you can see the digital photo album, which we put online. At the bottom of the page, it says, "Photos with 'HW' prefix taken by Scott Jo. Photos with 'IMG' prefix taken by Andrei Butura. All photos copyright 2004 by Kit & Eric."

Photos with "HW" prefix taken by Scott Jo. Photos with "IMG" prefix taken by Andrei Butura.  
All photos copyright 2004 by Kit & Eric.



© 2004 Kit & Eric

**And now for a  
bonus tidbit about  
publicity rights,  
waivers, and model  
releases ...**

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



**Crystal Smith's Photography**

WEDDING DATE: \_\_\_\_\_  
Wedding Photography

Print TWO copies: fill in the following information, read and initial all pages and return. Both bride and groom must sign, the photographer is not responsible for mistakes due to missing or incorrect information.

Bride's name: \_\_\_\_\_ email: \_\_\_\_\_ phone: \_\_\_\_\_  
Groom's name: \_\_\_\_\_

Location 1: \_\_\_\_\_ (location time for edits)  
Hour Total: \_\_\_\_\_

Location 2: TIMES ( : )to ( : ) Address: \_\_\_\_\_ Hour Total: \_\_\_\_\_  
Event being shot: \_\_\_\_\_

Location 3: TIMES ( : )to ( : ) Address: \_\_\_\_\_ Hour Total: \_\_\_\_\_

This is a real wedding photography written agreement I found on the website of a wedding photographer.

wedding or event; third offense: Photographer will end wedding coverage immediately and refund all monies paid hereunder and client agrees to relieve and hold Photographer harmless as a result of this termination of wedding or event photography coverage.

**Coverage:** Photographer will provide coverage for the dates, locations and coverage hours 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. All images supplied are 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 be deleted. Photographer will use her professional judgment and sole discretion to select which photos to deliver. Such selection shall constitute all images available to Client.

**Image Processing/Printing:** Unless agreed upon prior to the wedding, high-resolution discs and/or proof sets may contain a mixture of color, and black and white. An alternate color version of a photo may be purchased. Limited color correction and/or retouching are included at Photographer's discretion. Client may request further changes for an additional fee. 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 them 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 (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.

CrystalSmithsGlamourStudio

model release!

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But would a photographer *really* sell your wedding photos showing your faces as stock photography?

**Yes.**

**model release!**

PHOTOS FOOTAGE 1-888-663-3954 English Start Downloading Sign In

shutterstock Search keywords or image id...

Photo: Bride and groom drinking wine at an outdoor cafe

Image ID: 128725579

Release Information: Signed model release filed with Shutterstock, Inc.

Copyright: MNStudio

Standard License JPG License TIFF

Size	Resolution	File Size
Small	500 x 333	195 KB
Med	1200 x 800	595 KB
Large	4028 x 3396	10.1 MB

Download

Save to favorites Find similar images Share

Same Model See All

happy bride and groom bride and groom at bride and groom at groom sampling his happy bride and groom adjusting gowns beautiful bride and groom

But would a photographer *really* sell  
your wedding photos showing your  
faces as stock photos?

Yes.

Note: I don't know the circumstances of this photo. It's possible that this was staged and was not a real wedding, but based on the context of all the other photos of these two people, that seems unlikely. Regardless, with the way U.S. copyright law works regarding ownership, and with the commonness of model releases, it's very plausible that wedding photographers could try to commercially exploit any given couple's wedding photos.

