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INTELLECTUAL PROPERTY

Do you own the copyright that you have paid for?

29 June 2018 *2 min read*

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The rights of copyright are incredibly powerful once they come into being, the requirements for which are that the work must be original and in a material form. There is no registration process.

It sometimes happens that the copyright which you have paid to create, even at a huge expense, will not be yours to own. The rule of thumb is that the creator of a work is the owner of the work except –

- If created by an employee in the course and scope of employment;
- If created on commission in relation to specific works set out below for which the commissioning party pays –
    - the taking of a photograph;
    - the painting or drawing of a portrait;
    - the making of a gravure;
    - a film or sound recording.

With regards to a computer programme, the Copyright Act provides that the person exercising control over the making of the programme will be the owner, which will have to be determined by the facts of each case.

All other works belong to the person who creates the work which would mean that all other artistic works such as logos, drawings and diagrams which form part of packaging, for example, and literary works such as advertising copy will belong to the author of the work, despite the fact that you have paid for the work. The Copyright Act provides that the rights of copyright can only be assigned if in writing and signed by the owner of the work.

It is therefore crucial to ensure that all parties who are appointed to create any work on your behalf are appointed in writing in which the document includes a clause to the effect that all intellectual property created during such commission, including copyright, belongs to you. This document must be physically signed by the owner of the copyright and not by way of email or any other means of electronic communication.

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