

# What is Work for hire?

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## Work-for-Hire Agreements

The work-for-hire doctrine transfers copyright in the work from the creator to the hiring party. This happens by operation of law when an employee creates a work as part of his/her employment duties. No written document is needed. But in any other situation, copyright can only transfer from the creator of a work if that person signs an "assignment" or "work for hire agreement."

A work-for-hire agreement must be signed by both parties. It must describe the work specifically and fall into one of the following categories:

- a. a contribution to a collective work, such as a magazine, newspaper, encyclopedia or an anthology;
- b. a contribution used as part of a motion picture or other audiovisual work;
- c. a translation;
- d. a compilation, which is a work formed by collecting preexisting materials or data;
- e. an instructional text (defined as a literary, pictorial or graphic work prepared for publication and with the purpose of use in systematic instructional activities);
- f. a text or answer material for a test;
- g. an atlas; and
- h. a supplementary work, which is a work used to supplement a work by another author for such purposes as illustrating, explaining or assisting generally in the use of the author's work. Examples of supplementary works are forewords, pictorial illustrations, maps, charts, tables, editorial notes and indexes.

The terms "agree," "contract," and "writing," are interpreted broadly. A contract may be a check with the words, "endorsement constitutes payment in full for services rendered on a work-for-hire basis" scrawled on the back. An "agreement" may be the artist cashing such a check. A writing may be one that took place after the work was created but prior to payment. For example, in *Playboy Enterprises, Inc. v. Dumas*, 53 F.3d 549 (2nd Cir. 1995), the court held that a work-for-hire relationship existed between a publisher and an artist, notwithstanding the fact that the only writing between the parties was a check with work-for-hire language on the back, which had been rendered after the work was completed. The court held that although a work-for-hire relationship must be established prior to the creation of the work, the writing itself need not be.

Beyond the work-for-hire situation, the graphic designer can transfer his rights in a copyright by agreeing to do so. The transfer must be in writing and signed by the graphic designer, except for nonexclusive licenses, which can be oral. It is important to note that the sale of a tangible object does not constitute the transfer of the copyright, and the transfer of the copyright does not constitute sale of the tangible object. There must be an agreement to transfer both.