

# Works Made for Hire

A copyrightable work is “made for hire” in two situations:

- When it is created by an employee as part of the employee’s regular duties
- When a certain type of work is created as a result of an express written agreement between the creator and a party specially ordering or commissioning it

When a work is a made for hire, the hiring or commissioning party is considered the author and the copyright owner.

To register a work with the U.S. Copyright Office, you generally must identify the author or authors of that work. In addition, you must identify the party that owns the copyright in the work. Ordinarily, the author is the person or persons who actually created the work you intend to register. “Works made for hire” are an exception to this rule.<sup>1</sup> For legal purposes, when a work is a “work made for hire,” the author is not the individual who actually created the work. Instead, the party that hired the individual is considered both the author and the copyright owner of the work.

Whether a work is a work made for hire is determined by facts in existence at the time the work is created. There are two situations in which a work made for hire is produced: (1) when the work is created by an employee as part of the employee’s regular duties and (2) when a certain type of work is created as a result of an express written agreement between the creator and a party specially ordering or commissioning the work. When a work is produced under these conditions, the employer or the party ordering or commissioning the work is considered the author and copyright owner.

The work made for hire concept can be complicated and has serious consequences for both the individual who creates a work and the hiring party who is considered to be the author and copyright owner of that work. This circular draws on the Copyright Act and judicial interpretation to provide a general introduction to this topic and answer common questions. For more information, see [chapter 500](#), section 506 or [chapter 600](#), section 614 of the *Compendium of U.S. Copyright Office Practices*.

## Definition in the Copyright Law

The definition of work made for hire in the Copyright Act applies to works created on or after January 1, 1978. For works created prior to 1978, see **chapter 2100** of the *Compendium of U.S. Copyright Office Practices*. Section 101 of the Copyright Act defines a “work made for hire” as

A. A work prepared by an employee within the scope of his or her employment

or

B. A work specially ordered or commissioned for use

1. as a contribution to a collective work,
2. as a part of a motion picture or other audiovisual work,
3. as a translation,
4. as a supplementary work,
5. as a compilation,
6. as an instructional text,
7. as a test,
8. as answer material for a test, or
9. as an atlas,

if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

A “collective work” is a work, such as a periodical, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A “motion picture” is an audiovisual work consisting of a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

An “audiovisual work” is a work consisting of a series of related images that are intrinsically intended to be shown by the use of machines or devices, together with accompanying sounds, if any. This definition holds regardless of the nature of the material objects in which the work is embodied.

A “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes.

A “compilation” is a work formed by the collection and assembling of preexisting material or data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.

An “instructional text” is a literary, pictorial, or graphic work prepared for publication and intended for use in systematic instructional activities.

## **“Scope of Employment”**

For an employee’s work to be considered a work made for hire, the work must be created within the employee’s “scope of employment.” The Copyright Act does not define the terms “employee,” “employer,” or “scope of employment.” In its decision in *Community for Creative Non-Violence v. Reed*, the U.S. Supreme Court held that Congress intended these terms “to be understood in light of agency law,” which governs employer-employee relationships, and that the courts should rely “on the general common law of agency, rather than on the law of any particular [s]tate, to give meaning to these terms.” Questions you may need to consider include:

- What skill was required to create the work?
- Where was the work created? Did the hiring party provide the space, materials, or tools to create the work?
- How long was the relationship between the parties? Did the hiring party have the right to assign other projects besides the one under review? Could the hiring party direct the creator when and how long to work?
- How was the creator paid? Did the hiring party offer employee benefits? Did the hiring party remove taxes from the creator’s pay?
- Does the creator have his or her own business? Was the creator able to hire and pay assistants?
- Was the work created as part of the regular business hours of the hiring party? Was the work created pursuant to the creator’s usual tasks? Was the work created during the creator’s authorized work time?

## **Specially Ordered or Commissioned Works**

A specially ordered or commissioned work is considered a work made for hire if it satisfies all of the following four criteria:

1. The work must fall within one of the nine categories of works listed above that are eligible to be specially ordered or commissioned as works made for hire.
2. There must be a written agreement between the party that ordered or commissioned the work and individual(s) who actually created the work.
3. In the written agreement, the parties must expressly agree that the work is to be considered a work made for hire.
4. The agreement must be signed by all parties.

If a work fails to satisfy any of these requirements, it is not a work made for hire.

## **Copyright in Works Made for Hire**

A work's status as a work made for hire affects the authorship, copyright ownership, copyright term, and termination rights in that work.

### ***Authorship***

If a work is a work made for hire, the employer or the party that specially ordered or commissioned that work is the author of that work.

### ***Copyright Ownership***

If a work is made for hire, the employer or the party that specially ordered or commissioned that work is the initial owner of the copyright in the work unless the employer or the commissioning party has signed a written agreement to the contrary with the work's creator.

### ***Copyright Term***

The term of copyright protection in a work made for hire is 95 years from the date of publication or 120 years from the date of creation, whichever expires first. For information about copyright term, see *Duration of Copyright (Circular 15A)*.

### ***Termination Rights***

Under certain circumstances, an author or the author's heirs can terminate an exclusive or nonexclusive transfer or license of the copyright in a particular work under sections 203, 304(c), and/or 304(d) of the Copyright Act. These termination provisions, however, do not apply to works made for hire. For more information, see **chapter 2300**, section 2310 of the *Compendium*.

### ***Registration***

When you apply to register a work, you, not the Copyright Office, must determine whether the work is a work made for hire. You should base your determination on the facts that existed when the work was created. The examiner will generally accept your representation that a work is a work made for hire unless your representation is contradicted by information known to the examiner or available in the registration materials or the Office's records. If your claim appears unusual or implausible, the examiner may communicate with you or refuse registration. For more information, see **chapter 500**, section 506, and **chapter 600**, section 614, of the *Compendium*.

### ***Questionnaire***

The parties involved must determine whether or not a work is a work made for hire. The Copyright Office cannot provide legal advice about the status of a work. However, the following questions may help you decide if a work created on or after January 1, 1978, fits within the law's definition of a work made for hire. The questions are derived from chapter 500, section 506, of the *Compendium*, which contains examples illustrating some of the factors that indicate whether a work does or does not qualify as a work made for hire.

**QUESTION 1:** Was the work created by an employee?

Yes? Proceed to Question 2.

No? Proceed to Question 3.

**QUESTION 2:** Did the employee create the work while acting within the scope of employment?

Yes? The work is a work made for hire.

No? Proceed to Question 3.

**QUESTION 3:** Is there a written agreement between the commissioning party and the creator of the work?

Yes? Proceed to Question 4.

No? The work is not a work made for hire.

**QUESTION 4:** Was the written agreement signed by the commissioning party?

Yes? Proceed to Question 5.

No? The work is not a work made for hire.

**QUESTION 5:** Was the written agreement signed by the creator of the work?

Yes? Proceed to Question 6.

No? The work is not a work made for hire.

**QUESTION 6:** Did the parties expressly agree that the work shall be considered a “work made for hire”?

Yes? Proceed to Question 7.

No? The work is not a work made for hire.

**QUESTION 7:** Does the work fall into one or more of the following categories?

- An atlas
- A test
- Answer material for a test
- A translation
- A part of a motion picture or other audiovisual work
- A compilation
- A contribution to a collective work
- A supplementary work
- An instructional test

Yes? The work is a work made for hire.

No? The work is not a work made for hire.

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**NOTE**

1. This circular is intended as an overview of works made for hire. The authoritative source for U.S. copyright law is the Copyright Act, codified in Title 17 of the *United States Code*. Copyright Office regulations are codified in Title 37 of the *Code of Federal Regulations*. Copyright Office practices and procedures are summarized in the third edition of the *Compendium of U.S. Copyright Office Practices*, cited as the *Compendium*. The copyright law, regulations, and the *Compendium* are available on the Copyright Office website at [www.copyright.gov](http://www.copyright.gov).

## **For Further Information**

### ***By Internet***

The copyright law, the *Compendium*, electronic registration, application forms, regulations, and related materials are available on the Copyright Office website at [www.copyright.gov](http://www.copyright.gov).

### ***By Email***

To send an email inquiry, click the *Contact Us* link on the Copyright Office website.

### ***By Telephone***

For general information, call the Copyright Public Information Office at (202) 707-3000 or 1-877-476-0778 (toll free). Staff members are on duty from 8:30 am to 5:00 pm, eastern time, Monday through Friday, except federal holidays. To request application forms or circulars by postal mail, call (202) 707-9100 or 1-877-476-0778 and leave a recorded message.

### ***By Regular Mail***

Write to

Library of Congress  
U.S. Copyright Office  
Outreach and Education Section  
101 Independence Avenue, SE #6304  
Washington, DC 20559-6304

