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Does Your Graphic Artist Own Your Logo?

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The photographic arts community is buzzing about this photo of an unidentified man following the bronze mambo steps embedded in a Seattle sidewalk. The sculptor has sued the photographer for copyright infringement. These Mambo Steps (part of 12 dance-step panels installed along Broadway in Seattle) were commissioned by the City and paid for with public funds. Yet the copyright was retained by the private artist.

It is not always easy to determine who a copyright owner is, particularly where a business hires someone to produce a "work of art" (such as software, logos or other graphic design or a web site). If the work is a "work-made-for-hire," it is owned by the company commissioning the work.

Section 101 of the Copyright Act defines a "work made for hire" as:

- a work prepared by an employee within the scope of his or her employment; or
- a work specially ordered or commissioned for use:
  as a contribution to a collective work,
  as a part of a motion picture or other audiovisual work,
  as a translation,
  as a supplementary work,
  as a compilation,
  as an instructional text,
  as a test, as answer material for a test, or
  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.

This is a rather esoteric list, and the upshot is that an independent contractor graphic artist or web designer may end up owning the software, logo or web site that was commissioned. Many companies assume since they paid for the work, they automatically own it. Other companies never even realize there is an issue. Complicating matters is that if an employee creates the work, the employer does automatically own it, but if a contractor creates the work, it is likely that the contractor owns it.

While there may be implied licenses, it is important for companies to address ownership issues up front via contract.