

## Understanding Intellectual Property Rights

If your ad agency, PR firm, freelance graphic designer, photographer or other creative entity states that you automatically own the rights to the creative work they do for you, don't believe it for a minute. Either they don't know the federal law, or they're just trying to look benevolent in your eyes. The truth -- and nothing but -- is this: under the 1977 Supreme Court Reid Decision, those who create a work, *own that work unless and until they willingly confer the rights for usage in writing to the client, or unless they sell the usage rights*. Regardless, the creative work still belongs to the creator. Even though it's been more than 25 years since this law went into effect, you can't imagine the shock and dismay this statement generates from clients who understandably believe that because they have paid to have the work produced, they own it. Seem unfair? Let's get to the heart of why this is so. Why did the Supreme Court feel compelled to "protect" artists and agencies?

Here's one example: suppose a client orders a new graphic look & branding program for his business from a creative company, then gives it to another creative, competitive company to render into a new form. Or worse, the client takes the work *himself* and attempts to place the design in other mediums without understanding how difficult this is to do correctly. Because the original creator no longer has control over the way the logo looks (color, proportions, typestyle, context, etc.) it may appear in print or on TV or on the web looking distorted, disproportionate or altered in color – a bad reflection on the original creator or agency's work. In most cases, only the original creator can properly place its own creative work. If a client leaves its current agency for another and tries to use work created by the first agency, it places both parties in a bad position. Neither agency benefits, and the creative work, in most cases, is compromised.

Here's another example, and it's a heartbreaker: the owners of a successful business ordered start-up graphics and a creative branding program to launch its new division.

After many hours of planning and development with the owners, we came up with some smashing work that we were proud of and that thoroughly pleased the client. Then, the owners put a new marketing director in place. The fellow didn't want to buy out the rights to all the work we had so carefully wrought...he wanted us to *give* him the rights. After all, he insisted, "We paid for it" and -- this is a good one: "We helped you develop it."

These are common reactions, but that don't have anything to do with the law of the land and the creative process as a saleable commodity. The client obviously didn't understand this, and we felt the goodwill of our agency was being challenged. We told him we had no problem conferring the usage rights if we were, indeed, going to remain their primary agency of record and continue to benefit from the work we had created. In addition, we would then be in the position to properly place the work we had done, ensuring the ongoing quality of the work. "No problem," he assured us with a victorious smile.

Guess what happened next? We conferred the rights in writing with confidence that the client would be true to his word, but learned soon after that the company was all along planning to expand into another market. And, no, he informed us, we would not be placing any of the media in the new market. They could do it all by themselves. Sorry. Case closed. See ya 'round.

-2-

Keep in mind that the main assets of any ad agency are the ideas, knowledge, brain power and creative thinking of its employees -- its "intellectual property." We don't sell widgets, we don't sell any other tangibles. Because this is so, the Supreme Court protects those assets from the exploitation described above.

You may ask for one-time usage rights, or unlimited use. You may even buy rights with a percentage-oriented commission to the agency or artist for usage. But even if you

negotiate these rights, understand that legally the original creator holds ownership of these materials and knows best how and where they should be displayed.

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