

NINE TO FIVE

As a digital creator, how can I protect my content and make sure I get credit for my own ideas?


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SPECIAL TO THE GLOBE AND MAIL

PUBLISHED 4 HOURS AGO

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THE QUESTION

I am a digital creator (blog posts, YouTube videos, etc.) and I am wondering how can I protect my content and get credit for my own ideas. Let's say I work for a digital marketing agency and my tasks are to create content for clients. Is the employer or client always the owner of the content?

THE FIRST ANSWER

George Cottrelle, Partner, Keel Cottrelle LLP, Toronto: If you are working as an independent contractor, you are the owner of the copyright in your original creative work, assuming you have not assigned your rights under a contract. Copyright registration is preferable, but not mandatory, and you could also protect your IP rights by marking the work with your name or a watermark, etc.

Different considerations apply if your digital media work is created in your employment. Absent an agreement to the contrary, ownership of work that is made in the “course of employment” is presumed to be owned by the employer, under the Copyright Act. It can be a complex question to determine whether work is created in the course of employment, particularly as many employees work 24/7 and away from the employer’s workplace. The legal determination of whether a person is an employee or an independent contractor is based upon an analysis of the substance of the relationship.

While an employee may not own the copyright in their creative works, as the author they retain “moral rights” in their works, unless waived, protecting the integrity and authorship of their work from prejudicial modification or use.

Employment agreements are now the norm, and in the context of an employee who is a digital creator, would typically contain broad scope intellectual property provisions, confirming the employer is the owner of all works created by the employee relating to their job, whether or not done in the workplace.

If you are an employee and want to own the IP rights in your creative work, you need to have an agreement with your employer, preferably in writing, before you create original digital content.