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Who actually owns your brand?

A framework for purpose-driven organisations

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This paper contains no survey findings. It argues from framework, from law, and from named studio practice. Where an assertion rests on observation rather than evidence, it says so — in the margin, where the qualifications live.

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CHAPTER 01

The question nobody asks

An ownership gap has no symptoms until the day it has consequences.

An organisation wins an award. Not a large one, but the kind the sector respects. By Wednesday a journalist has asked for the logo in vector format, at print resolution, for a feature running that weekend.

Nobody has it.

The communications lead has a PNG exported from a slide deck, 800 pixels wide. Someone remembers the identity was built four years ago by a designer recommended by a board member who has since left. There is an invoice, and a folder containing three JPEGs and a PDF of guidelines that opens with a page about brand values.

The feature runs with the PNG. It looks like what it is.

Not when it happens — when it surfaces

The question of who owns a brand almost never arises at the moment the brand is commissioned. It arises at a trigger event: an award, a merger, a rebrand, a funder asking during due diligence. By definition those are moments when an organisation needs the answer immediately and has no time to construct it.

And the answer is rarely clean. It is not that the organisation owns its brand, or that the designer does. It is that nobody wrote anything down, so the answer has to be reconstructed years later from invoices, emails, and the memory of people who have moved on.

This is not the reader's failure

It would be easy to write this as an indictment of organisations that did not ask the right question. That would be both unkind and wrong.

Nobody asks because the industry does not raise it. A design engagement is sold on outcome — a new identity, a clearer position, a website that works. Ownership is a legal question sitting underneath a creative purchase, and raising it at the point of sale introduces friction into a conversation both parties want to feel like collaboration. So it gets left, because leaving it is easier and nothing appears to break — for years. That is precisely the problem.

> **Most clients do not know who owns the work they commission. That is not their failure — it is the failure of an industry that learned to leave the question vague on purpose.**

A brand is legal infrastructure

A brand is not decoration. It is an asset with a chain of title, in the same category as a lease or a domain name. It can be owned, licensed, transferred and lost. When an organisation cannot produce that chain of title, it does not have a design problem. It has an asset it cannot prove it holds — and Chapter 03 sets out why this sector is worse placed than most.

COMPOSITE

The scenario opposite is drawn from patterns seen across multiple engagements. It is not an account of any single organisation, and no client is described.

WHAT THIS PAPER DOES

Defines three ownership arrangements and says what each gives and withholds. Explains where the law is settled and where it is not. Offers a self-audit. Describes what happens after delivery — the part contracts do not reach.

WHAT IT DOES NOT DO

Report survey findings. They do not exist yet. There is no sector-wide measurement of how commonly this fails, how it is distributed, or what it costs. **Chapter 06 explains what we are doing about that.**

CHAPTER 02

The three-tier framework

Your work-for-hire clause probably does nothing. Here is what does.

Ownership of commissioned creative work is not binary. It resolves into three arrangements, and naming which one applies — in writing, on day one — removes most of the risk in the previous chapter.

Before the three tiers, one correction. It is the most consequential thing in this paper and it contradicts what most people believe.

Your "work for hire" clause probably does nothing

Under United States copyright law, a work made for hire arises in only two situations. The first is a work prepared by an employee within the scope of his or her employment. The second is a work specially ordered or commissioned, where two conditions are **both** met: the parties sign a written instrument agreeing the work is made for hire, **and** the work falls within one of nine categories enumerated in the statute.

Those nine categories, in the statute's own words, cover 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.

Read that list again with a brand engagement in mind.

> **A logo is not on the list. Neither is an identity system, a guidelines document, a website, a photograph, or copy. A work-for-hire clause covering any of them is not partially effective. It is void.**

The written agreement is necessary but not sufficient — the work must independently fit a category. Courts have consistently declined to infer work-for-hire status where it does not. In the leading Supreme Court case the work was a sculpture, and it failed for exactly this reason. Retroactive designation is also rejected: the agreement must exist before creation.

So an organisation holding a confident work-for-hire clause covering its logo is, in most cases, holding a clause that does nothing. What determines ownership is whatever else the contract says — and often it says nothing else.

NOT LEGAL ADVICE

David A. León Contreras is a creative director, not an attorney. This chapter describes contract practice from the commissioning side. It does not create a lawyer–client relationship and is not a substitute for advice on your own circumstances.

The law summarised here is that of the **United States and Canada**. If you operate elsewhere, none of it can be assumed to apply.

SOURCES

17 U.S.C. §§ 101, 201(b), 204(a). Verified verbatim against the official United States Code, uscode.house.gov.

Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989). *Effects Associates v. Cohen*, 908 F.2d 555 (9th Cir. 1990).

What actually transfers ownership

The statute is short enough to quote. A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.

No exceptions for informal industries, long relationships, or good-faith handshakes. The burden is slight: get a signature on paper. A one-line statement will do.

Tier 01 — Limited licence

Bounded use: by time, territory, medium, or a combination. The studio retains ownership of the underlying work. Right for genuinely campaign-specific work where the organisation has no long-term interest and the price reflects it. Wrong for anything that becomes the organisation's face.

Tier 02 — Exclusive licence

Unlimited use, and the assurance that nobody else — including the creator — will use the work. The studio retains ownership plus a portfolio right.

Note that an exclusive licence is itself a transfer of copyright ownership under the statute, so it requires a signed writing exactly as an assignment does. An exclusive licence agreed by email is not one. This is a common practitioner error.

Tier 03 — Full assignment

Ownership transfers on final payment. The creator keeps nothing beyond an agreed portfolio right. This is our default for brand architecture, and the argument for it is the previous chapter: a brand is legal infrastructure, and an organisation that cannot prove title to its own identity does not really have one.

TWO OF THREE NEED A WRITING

Assignment and exclusive licence are both **transfers of copyright ownership** under the statute. Both require a signed instrument.

Only the non-exclusive licence escapes that requirement — and it is the weakest position available.

The most common case: nothing in writing

Most engagements in this sector are governed by none of the three. They are governed by an invoice.

Where there is no written agreement, ownership does not pass. The creator retains copyright. What the organisation typically holds instead is an implied non-exclusive licence — permission inferred from conduct, because non-exclusive licences are the one category that does not require writing.

That is materially weaker than most organisations believe, and it is worth stating concretely. It does not let you stop someone else using the work. It does not give you a clean answer in due diligence. It is not something you can transfer to a merged entity as an asset. And its precise scope is whatever a court would later infer from the parties' conduct — a sentence nobody wants attached to their own logo.

Employees, contractors, volunteers

The employee route is the one that actually functions: work prepared by an employee within the scope of employment belongs to the employer automatically, with no written agreement required.

The difficulty is that "employee" is a legal determination, not a job title. Courts apply a multi-factor test — skill required, who supplies the tools, duration of the relationship, whether benefits are paid, tax treatment, and the hiring party's right to control the manner of the work. A long-term contractor may or may not be an employee, and the organisation does not decide by labelling.

In our experience this is where the sector is most exposed, because so much early creative work is produced by people whose status was never defined at all.

IN OUR EXPERIENCE

Where a claim rests on what we have seen rather than on law or published evidence, the text says so. That phrase is the difference between a practitioner paper and a fabricated one.

THE PRACTICAL RULE

Name the tier in writing, on day one.

Everything so far is United States law. It does not apply elsewhere — and Canada is stricter, not looser.

No commissioned-work exception

Until 2012, Canadian law gave first ownership of a commissioned engraving, photograph or portrait to whoever ordered and paid for it. The Copyright Modernization Act repealed that provision, in force 7 November 2012. Works commissioned before that date keep the old rule; everything after does not.

No work-for-hire for contractors at all

Under section 13(1) the author is first owner. Section 13(3) vests copyright in an employer only for work made in the course of employment, and the person must genuinely be an employee. Canada has no equivalent of the nine-category route.

> **In the United States a client might at least argue a category applies. In Canada, a commissioned logo belongs to the designer unless there is a signed written assignment. Full stop.**

Moral rights, and why assignment is not enough

Under section 14.1(1) the author has the right to the integrity of the work and, where reasonable in the circumstances, the right to be associated with it by name or pseudonym, or to remain anonymous.

These rights may not be assigned. They may only be waived.

And section 14.1(3) states plainly that an assignment of copyright does not by that act alone waive any moral rights. An organisation holding a full, correctly drafted assignment may still face a claim if it modifies the work to the prejudice of the author's honour or reputation. A Canadian court prevented a shopping centre from altering a commissioned sculpture on exactly this basis.

An assignment clause without a moral rights waiver is an incomplete transfer. Both are needed, and one does not imply the other.

TWO QUALIFIERS

The integrity right is subject to s. 28.2 — the work must be distorted, mutilated or modified to the prejudice of honour or reputation. It is not a veto over every change.

The attribution right applies "where reasonable in the circumstances," which leaves room for not crediting a designer on every application of a logo.

REVERSION AFTER 25 YEARS

Section 14(1): where the author was first owner, no assignment is operative beyond twenty-five years from the author's death. The reversionary interest devolves on the estate notwithstanding any agreement, and any agreement disposing of it is void.

A perpetual assignment is not perpetual in Canada. Section 14(2) excepts collective works.

CHAPTER 03

Where this sector is exposed

This is not carelessness. It is structure — and structural problems do not respond to being told to be more careful.

The features that define purpose-driven organisations — donated labour, grant funding, volunteer governance, founder-produced early assets — are the same features that produce undocumented ownership.

The sector changed shape; the paperwork did not

In 2012 the Stanford Social Innovation Review published what remains the defining account of brand in this sector, arguing that nonprofits should treat brand as a strategic asset rather than a fundraising tool. It was right, and it moved the field. What it did not ask — what nobody has asked since — is who holds the asset.

Since then the population has changed by an order of magnitude. There were roughly 500 certified B Corporations in 2012. B Lab now reports more than 10,800 across 102 countries and 163 industries. Add social enterprises, fiscally sponsored projects and hybrid structures, and the sector has been building brands at scale for over a decade with no established norm for who ends up owning them.

> **A field that grew more than twenty-fold in fourteen years did not develop the ownership conventions that growth required. It inherited the informality of its smaller self.**

ON TURNOVER — NO FIGURE

We are deliberately not attaching a rate to vector three. Researchers working directly on nonprofit executive turnover note how little empirical evaluation exists; what there is, is qualitative or narrowly scoped.

The mechanism holds without a rate.

Five ways the exposure occurs

One — donated work is documented worse than paid work. A designer working free is doing the organisation a favour, and neither party wants to introduce contracts into a gesture of goodwill. The engagement often has no written agreement at all, which means ownership never transferred.

Two — the earliest assets are made by people whose status was never defined. Founders before incorporation. Board members. Interns. Volunteers. Each is a different legal relationship with a different consequence, and nobody made the determination because there was nothing yet to determine it for. Courts weigh tax treatment and benefits heavily; a volunteer has neither.

Three — leadership turnover surfaces the gap years later. When a founding executive leaves, the memory of who made the logo and on what terms leaves with them. The gap does not appear at departure. It appears the first time someone needs the file.

Four — mergers cannot carry an asset nobody can prove. The surviving entity inherits what can be documented. An identity with no chain of title is a question resolved under time pressure, usually by rebuilding.

Five — least capacity to recover, most to lose. Fixing a dispute means locating a former contractor or commissioning replacement work, paid from programme budget. And an organisation whose legitimacy rests on acting properly is judged harder for not owning its own name.

The asymmetry

A commercial company that finds an ownership gap has a legal budget and an incentive to fix it quietly. A purpose-driven organisation has a programme budget, a board that will ask why this was not handled, and funders whose due diligence is becoming more searching rather than less.

ON MERGERS — THE FIGURE CUTS THE OTHER WAY

Nonprofit mergers are **not** common. Bridgespan's analysis across four states over eleven years found a cumulative rate of roughly 1.5% — close to the for-profit figure — and follow-up work found it flat.

That sharpens the point rather than weakening it. A merger is a low-frequency, high-consequence event, and nobody builds documentation habits around something that happens once in a generation.

CHAPTER 04

A seven-point self-audit

An afternoon, no lawyer. A "don't know" is not a failure — it is the finding.

01

Can you produce your logo as a vector file today, without asking anyone outside the organisation?

Not a PNG. An .ai, .eps or .svg a printer could use.

Don't know means you have never tested it. Cheapest question here, and the most likely to surprise you.

02

Is there a signed written agreement with whoever created your visual identity?

An invoice is not an agreement. An email thread is not a signed agreement.

Don't know means check before you need it. No signed writing means ownership did not transfer.

03

If that agreement exists, does it say the copyright was assigned to you?

Look for **assignment** or **transfer**. If it says only "work made for hire," read Chapter 02.

Don't know means nobody has read it for this purpose. Twenty minutes.

04

Who made your earliest assets, and what was their relationship to the organisation?

Employee, contractor, volunteer, board member, founder before incorporation. Not interchangeable.

Don't know means ask someone who was there, while someone who was there is reachable.

05

Has the organisation merged, changed name, or been fiscally sponsored since?

Rights follow entities. If the entity that commissioned is not the entity using, there is a step to document.

Don't know means someone in finance or governance knows. Ask them.

06

Is your name or logo registered as a trademark?

State incorporation is not registration. Nonprofit status is not registration.

Don't know means the register is public and searchable. Ten minutes.

07

If the person who made your brand became unreachable tomorrow, what would you lose?

Working files, font licences, the reasoning behind decisions, the ability to extend rather than repeat.

Don't know means this is the risk you are carrying, and it appears on no balance sheet.

NO SCORE, DELIBERATELY

A scoring system would imply we know what a good result looks like across the sector. We do not — that is what the survey is for.

READING YOUR ANSWERS

Questions **1, 3 and 6** are answerable this week by someone already on staff.

Questions **2, 4 and 5** may require finding a document or a person.

Question **7** cannot be resolved by research. It is a decision about how much continuity risk you are willing to hold.

IF MOST ARE "DON'T KNOW"

That is the ordinary condition of organisations in this sector, and it is fixable. If most are "no," the next step is a conversation with counsel rather than with a designer.

CHAPTER 05

After delivery

Nobody decides to abandon a brand system. It is abandoned one reasonable exception at a time.

Ownership settled on day one is necessary. It is not sufficient. A brand is not a file you take delivery of; it is a system that has to be operated — and most of what goes wrong goes wrong after the engagement ends.

Deliver-and-vanish

The dominant model is that a studio builds an identity, hands over a folder and a guidelines PDF, and leaves. This is not a scandal — it is what most clients ask for and what most budgets support. But it produces a predictable failure with a recognisable shape.

The guidelines document is written by people who have spent months thinking about the brand, for people who will read it once. It answers the questions the studio anticipated. It cannot answer the question that arrives eight months later, from a programme manager who needs a layout nobody designed, on a deadline, with no one to ask.

So they improvise. Reasonably, and in good faith. And the improvisation becomes precedent.

Brand drift, defined

Brand drift is the accumulation of small, individually reasonable departures from a system, none of which would be worth objecting to alone.

A colour picked by eye because the swatch was not to hand. A typeface substituted because the licensed one would not load on a volunteer's laptop. A logo stretched to fill a space it was not drawn for. A tone of voice softened for one audience and never restored. Cumulatively, over two or three years, they produce an organisation whose materials no longer look like they come from the same place.

The cost is real but hard to see, because there is no moment at which it occurs. What an organisation notices is that its materials feel inconsistent, that new staff are uncertain what is correct, and that the identity it paid for no longer seems to be doing anything.

THE SHAPE OF THE FAILURE

The guidelines document answers the questions the studio anticipated. It cannot answer the one that arrives eight months later, on a deadline, with no one to ask.

What custodianship consists of

Someone is responsible. A named person who reviews what goes out — not to police it, but to catch drift while it is still one exception rather than a pattern.

The system is maintained, not just documented. New applications get designed properly the first time they are needed, rather than improvised and then inherited.

The legal position is kept current. Assets registered where warranted, licences tracked, new work brought under the same terms as the original.

Decisions are recorded with their reasoning. A rule whose reason is lost gets broken the first time it is inconvenient.

The honest version

A retainer is right for organisations whose brand is central to their commercial position and whose internal capacity is thin. That is a smaller category than a studio would like.

For most purpose-driven organisations the better answer is to name someone internally, give them authority to say no, and hold a small annual budget for applications that genuinely need designing. That costs a fraction of a retainer and captures most of the benefit.

What does not work is the current default: nobody responsible, no budget, and a guidelines PDF answering questions nobody is asking. That is not a decision to handle brand internally. It is the absence of a decision.

COMMERCIAL DISCLOSURE

4to Studio sells this. Our Brand Guardianship retainer is a post-delivery custodianship service and a meaningful part of our revenue.

This chapter argues for a category of work we are paid to do, and you should read it knowing that. We have tried to write it so the argument holds regardless of who performs the work — including the option that involves paying us nothing.

THE QUESTION THIS CHAPTER ASKS

Not whether to hire a custodian. Whether anyone in your organisation currently has the job — **and whether they know they have it.**

CHAPTER 06

What we don't know yet

Everything preceding this is framework, law, and what we have observed. None of it is measurement.

We have said repeatedly that ownership gaps are common in this sector. We believe that, and we have seen it often enough to build a practice around it. But we cannot tell you how common.

Or which kinds of organisation are most affected. Or whether the pattern we see reflects the sector, or only reflects the organisations that come to us.

Nobody can, because nobody has asked.

What the survey will establish

- How commonly organisations can produce documented ownership of their own identity
- What contractual arrangements are actually in use, as against what people believe is in use
- Whether exposure varies by organisation type, size, or how early creative work was produced
- What happens after delivery — who holds custodianship, and whether anyone does

What we commit to

Full methodology published alongside the findings, including the ways the sample is limited. This is a self-selected sample, not a representative one, and the report will say so in the body rather than only in an appendix.

Findings free to everyone, whether or not they took part.

Results that cut against us get published too. If the data shows the problem is smaller than we have argued, or that custodianship makes less difference than we claim, that goes in the report. A study whose findings can only support the author is not a study.

Take part

Nine to twelve minutes. Open to any purpose-driven organisation — nonprofit, charity, B Corp, social enterprise, foundation. **You do not need your paperwork in order to answer.** The organisations that do not are the ones we most need to hear from.

THE SURVEY

4tostudio.com /survey-2026

FIELD DATES

Open now. Closes **20 November 2026**. You may withdraw your response at any point up to that date.

FINDINGS

Published Q1 2027, with the full questionnaire, field dates, achieved sample size, and the limits of the method.

QUESTIONS FIRST

hello@4tostudio.com

COLOPHON

Research you cannot check is marketing.

NOT LEGAL ADVICE

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COMMERCIAL DISCLOSURE

4to Studio LLC sells brand development and a post-delivery custodianship retainer. Chapter 05 argues for a category of service the studio is paid to provide. The disclosure appears in that chapter at the point of argument, and is repeated here.

SOURCES

17 U.S.C. §§ 101, 201(b), 204(a) · Copyright Act (Canada) ss. 13, 14, 14.1 · Copyright Modernization Act S.C. 2012 c. 20 · *CCNV v. Reid* · *Effects Associates v. Cohen* · *Robertson v. Thomson* · Kylander & Stone, SSIR 2012 · B Lab · Bridgespan Group.