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Who Owns the Software?
By Gary Oberst

Independent computer consultants sometimes use the services of other programmers to write or modify software. These consultants then expect that they can make as many copies as they want; often coming up with the idea of selling copies. When I ask them, "Who owns the software?" they always reply that they do. They assume that since they paid for it, they own it.

That is not necessarily the case. In general, the programmer is the owner until he transfers his rights of ownership. An exception is when the programmer is an employee. The definition of an employee, however, is not always clear.

Another exception is when a work is expressly to be owned by the party paying the development costs. This must be stated in a written contract, and the word "made for hire" used. Failing the above, the one who funds the development may find that he is not the owner.

Consultants using subcontractors are especially vulnerable. If you contract to produce software that your client will own, your subcontractor may, in fact, own it. If you contract to produce software that you will own, your subcontractor may, in fact, own it.

It behooves all parties to obtain a clear written contract defining "Who owns the software?" before beginning programming.

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