



A guide for organisations,  
communities and artists involved  
in collaborative arts projects

# Copyright, Moral Rights

**AND COMMUNITY  
CULTURAL  
DEVELOPMENT**

**C**reative partnerships can enhance our community and cultural life. They express identity and advance the skills and expertise of community members.

Community cultural development projects involve a number of professional artists and community members in their planning, management and implementation. It's understandable that artists and communities want to get on with the task at hand, but inadequate planning often leads to problems once the project is underway or even after it's finished. When the artworks that result from such projects have been a collaborative effort, the value of a clear and comprehensive agreement cannot be underestimated.

Community cultural development aims to strengthen communities, but disputes over ownership or copyright have the opposite effect. From the very beginning, everyone participating in the project should clearly understand the basis on which they are involved. Therefore, your project planning should include written agreements that consider each of the topics outlined in this guide.

Note that the Australia Council's application process for funding community cultural development projects includes a question on how applicants intend to deal with copyright and community ownership of materials resulting from the project.

Make sure that all the good work and goodwill of the project is not undone!

**Chris Tassell**  
**Chair, Community Cultural Development Board**

This guide does not cover every issue that may be relevant to you, and is not intended to substitute for specific legal advice.

# Copyright, Moral Rights AND COMMUNITY CULTURAL DEVELOPMENT

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# Agreements

Written agreements (or contracts) should set out the basis on which people are going to participate in a project. It is important that agreements are always in writing, and that they are signed before a person starts work on a project.

## Why have written agreements?

The people that develop and manage a community cultural development project have both a strong practical interest and an ethical obligation to ensure that everyone involved understands the terms and conditions on which they are to participate.

If an agreement is set out in writing it is much easier for people to see the terms and conditions, and to check that all the issues they are concerned about have been satisfactorily covered. A written agreement is therefore an essential first step in any project. Identify and discuss all the relevant issues during the planning stage, and get everyone's agreement in writing early on while it's easy to negotiate—don't leave it to be sorted out by lawyers later!

Sometimes it might be better for projects not to go ahead if fundamental copyright and moral rights issues cannot be satisfactorily negotiated before the project begins.

## What types of agreement are necessary?

Agreements that cover copyright and moral rights are probably necessary, both with freelance artist(s) involved in a project and with community participants. Confidentiality agreements may also be appropriate to cover information given during the discussion stage of projects.

There are a number of general points about copyright and moral rights agreements:

- Parties to an agreement usually should be legal entities—this means that people signing agreements must either sign as individuals or on behalf of an incorporated body.
- There should be a written agreement with everyone involved in a project, no matter how old or young they are—children and young people can own both copyright and moral rights.

- People should receive something of value in return for any copyright licences or moral rights consents they give, otherwise the agreement might not be contractually binding and could be revoked. Something as simple as a photo of an artwork created during the project could be sufficient.

Generally, you should get legal advice to help with writing agreements. You may also need advice on who are the right people to sign agreements. In some cases, advice is available from the contact organisations listed at the end of this guide.

## Get in early!

**The people developing a project should have draft agreements ready to offer anyone who is going to be involved in the project.**

It's a good idea to have a workshop for people who might get involved in a project, before the project gets properly underway, with information on copyright and moral rights issues. Anyone who is thinking about participating in the project can then make an informed decision about getting involved. If someone is offered an agreement, they should also be given the opportunity to seek their own legal advice, and to negotiate amendments to the agreement.

## Sample agreements

Sample agreements can be a good starting point for drafting your own agreements.

Agreements for *Artists in residence* and *Employment of an artist in a community context* are available from the Arts Law Centre of Australia. Also, the Australian Writers Guild publishes various 'standard' contracts, including a number relating to 'writers in community': see <[www.awg.com.au](http://www.awg.com.au)>.

For visual artists, there is information on issues relating to residencies and facilitating workshops in *The code of practice for the Australian visual arts and craft sector*, published by the National Association for the Visual Arts: see <[www.visualarts.net.au](http://www.visualarts.net.au)>.



A separate agreement for employees already employed on community cultural development projects is not necessary, as they will already be working under an employment contract.

## Copyright

Copyright protects a range of material, including:

- paintings, drawings, sculptures, craft and photos—*all protected as 'artistic works'*
- textual material such as short stories, novels, interviews and lyrics—*all protected as 'literary works', whether they are, for example, recorded on paper, film or tape*
- music, such as songs and jingles
- scripts for plays and films—*protected as 'dramatic works'.*

Copyright also protects sound recordings, and the footage and soundtracks of films and videos. These are protected separately from whatever copyright material might be captured on the recording, or in the footage or soundtrack.

Copyright doesn't protect ideas or information—it protects the way those ideas are expressed, such as in a mural or piece of writing. For example, the *idea* of getting people to paint a mural which shows their memories of a particular town is not protected by copyright, but the resulting *mural* will be protected as an *artistic work*.

A work doesn't have to be completed to be protected by copyright. Preliminary and draft materials, such as a design sketch, a plan in pencil, a story or film outline or any other jotting, can be protected as a literary, dramatic, artistic or musical work.

### What rights do copyright owners control?

Generally, copyright owners have the right to control whether their work will be reproduced (for example, in postcards, in books or in digital form), and whether or not their work will be put on the Internet.

In addition, people who own copyright in literary and

dramatic works can generally say whether or not their work will be performed publicly, and whether or not translations and other adaptations of their work will be made.

Anyone wanting to use something protected by copyright in one of the ways exclusively controlled by the copyright owner generally needs permission, either from the copyright owner or from someone authorised by the copyright owner to give permission.

### How do people get copyright?

Under Australian law, copyright protection is free and automatic. Although it's not legally necessary, you can use the internationally recognised symbol '©' to encourage respect for copyright, and to let people know who is claiming to own the copyright.

### Who owns copyright?

There are rules in the *Copyright Act* which set out who will own copyright. Generally, someone from the community who is creating something for a project will be the first owner of copyright in that material. Similarly, freelance artists who create something for projects will generally be the first owners of copyright in that material.

If lots of people create something together, they might jointly own copyright in the finished work, or they might own copyright in their own contributions (for example, in their particular story or poem which goes into an anthology). It is also possible for someone who would otherwise own copyright to have an agreement that gives their copyright to someone else.

Someone who only gives ideas or suggestions during a project might not qualify as a creator (or copyright owner), even though their contribution is important for the project.

Note that the copyright rules are different for:

- employees (people who are not freelance contractors)
- some types of commissioned material, including the footage and soundtrack components of films, and sound recordings.

For more information, see the Australian Copyright Council's *Ownership* information sheet.



A project involved community participants drawing their own designs, which were then worked into a large-scale artwork by an artist. Unless an agreement said otherwise, each community participant would own copyright in his or her own drawing, while the artist would own a separate copyright in the finished work. This means that if anyone (including the artist or any of the community participants) wants to use the finished work, they need to consider the copyright in the large-scale work as well as the underlying copyrights in each of the drawings by the community participants.

### How long does copyright last?

Generally, copyright lasts from the time the material is created until 50 years after the year in which the last of the creators of the material died. For more information, see the Australian Copyright Council's *Duration of copyright* information sheet.

The people involved in a project thought it would be a good idea to copy a portion of a local artist's painting and use it in a mural documenting the history of the area. That artist died in 1922, so permission to use the work in this way is not needed, as the copyright has expired.

## Dealing with copyright

There are two related issues when dealing with copyright: ownership and licensing (that is, giving permission to use project material).

Also, if the project will use material that has been created by people other than those participating in the project, someone on the project team will need to seek and record any copyright or moral rights 'permissions' that may be necessary (see 'Permissions' later in this guide).

### Ownership

As noted earlier, the Copyright Act has rules about who owns copyright. These will automatically apply unless the people involved in a project mutually decide otherwise. There are a number of issues that will affect what decision people involved in a project should reach about who will own copyright, namely:

- the nature of the material that is to be created or likely to be created
- whether any existing creative material—brought to the project by the artist or by community participants—has been used to make the work (such as paintings or designs, scripts, stories, poems, traditional dances or music)
- who has created or contributed to the creation of the material
- what are the interests of the various parties in the way it might subsequently be used or developed during the period of copyright.

Decisions about who will own copyright in material should only be made after considering the legitimate interests of each of the parties involved in the project.

Joint copyright (that is, copyright owned by more than one person or organisation) can be unwieldy, because permission from each joint copyright owner is needed before anyone, including any joint owner, can use it. However, joint ownership of copyright can be workable if the community is represented by a properly constituted body, such as a local council, incorporated community theatre company or a workers cooperative, and provided that the licensing issues discussed in the next section are properly addressed. If people agree that copyright will be jointly owned with an incorporated body, it is important to specify what happens to that body's share of the copyright if the body ceases to exist.

Even if everybody agrees to follow the general guidelines in the Copyright Act, so that each person involved in a project retains copyright in what they create, it is still a good idea for the agreement to state this.



In the *Aftershocks* project, about the 1989 Newcastle earthquake, a writer worked with a trade union committee to devise a play. The writer and the committee signed a contract before the project commenced in which they agreed to joint ownership of copyright over the playscript, and to an equal split of all royalties earned from productions other than the first production (for which the writer received a fee).

Everyone agreed that the committee was an appropriate representative of the community because, among other things, its finances were exclusively directed to cultural development that would benefit the community. Therefore, it was considered that joint ownership of copyright was a fair arrangement that benefited everyone.

## Licensing

Licensing is when copyright is transferred from a person or group to another person or group.

Lawyers can usually advise how material created during a project can be used later. However, it's always better to have people sign a written agreement *before* they participate in the project which sets out what each party or person can do with the material used or created for the project.

Licensing must be considered when:

- pre-existing material is incorporated into the new material produced by the project
- a project is documented, with the documentation used for archival/research purposes later on
- project material might be used by people involved in the project for their own personal, corporate or business purposes
- other people might be interested in using project material in some way (for example, someone not involved in the project wants to publish a book, produce a documentary or print postcards).

Although these licensing issues could arise at any stage in the life of a project, they must be addressed *before* the project begins. If you leave them to be dealt with later, you may face difficult legal and practical problems, either because of misunderstandings and break-downs in communication or simply because the relevant people have moved on and cannot be contacted.

Consider each of these issues, remembering the legitimate interests of each of the parties involved in the project:

- What are the future uses the project partners themselves might want to make of project materials? Can these people use project material in certain ways without having to consult further?
- What are the future uses other people might want to make of project materials?
- Should commercial or quasi-commercial uses (such as merchandising of items) be treated differently to non-profit uses?
- Which party is best placed to deal with future licensing requests?
- Is it fair to state in the agreement that a copyright owner automatically gives permission to use materials if they cannot reasonably be located or contacted in the future?

An artist is commissioned by a local council to organise the painting of a mural. Later the council is approached to give permission for the artwork to be photographed for an ad. Without an agreement either specifying that the council owns copyright, or that the local council has the ability to license such uses of the mural, the local council cannot license the photography.

As part of a project she was facilitating, an artist created a logo which was used on flags, banners and promotional material. The following year the artist was surprised to see her logo being re-used on new banners, flags and brochures, with the year



'2002' replaced by '2003'. Her agreement with the auspicing body made no reference to re-use of the logo in following years, and if the auspicing body had told her it wanted to re-use the logo, she would have worked that in to the fee she was prepared to accept for working on the project.

## Permissions

In addition to the issues above, people involved in a project should identify:

- whether any additional copyright material is going to be incorporated in, or used in association with, the project
- whether permission will be needed from copyright owners for this (getting permission to use copyright material is sometimes referred to as getting 'clearances')
- who will be responsible for getting permissions.

Permissions are required when, for example, music (either live or recorded) is to be used in an installation, video or performance, and when poems and other text are worked into a project.

For more information, see the Australian Copyright Council's information sheets.

## Moral rights

Moral rights include the right of someone who has created an artistic, literary or dramatic work, or a film to be attributed as a creator of that material.

Moral rights also give creators the general right to object to people doing things with (or in relation to) their work that harms their reputation or honour. Such acts include altering, destroying or mutilating the work, or using it out of context.

You can have moral rights even if you don't own copyright. However, only individuals have moral rights, not organisations.

There are some situations in which moral rights don't have to be considered, including if consent has been obtained from the relevant creator. Also, the Copyright Act has procedures which can, in some cases, be followed to avoid what

otherwise might be an infringement of moral rights. These procedures relate to the removal, relocation or destruction of visual artworks, including sculptures and craft works.

For more information, see the Australian Copyright Council's *Moral rights* information sheet.

Community members contribute parts of a script for a community theatre production, but authorship of the play is attributed only to the professional writer in residence. The moral rights of the community members have been ignored.

A muralist is commissioned to paint a community mural on the wall of a large supermarket, but some time later the supermarket paints a large advertisement over one part of the mural. The moral rights of the muralist have been ignored.

## Dealing with moral rights

People involved in a community cultural development project should discuss the following questions, so that appropriate moral rights clauses and consents can be included in their agreements:

- Are all the creators and contributors going to be credited? If so, how?
- Do any creators wish to remain anonymous?
- To what extent can the material be later edited, altered, removed or developed without further consultation?
- If material is used in a different way or in a different context, do the initial creators have to be consulted?
- What needs to occur before material is later removed or destroyed (such as notification of participants or artists)? Is removal or destruction allowed after a certain number of years?

For visual artworks, the ongoing maintenance of the work should also be considered.



In the *Aftershocks* project, a team of researchers interviewed community members and recorded their stories on tape. A play was then developed by the writer, using verbatim extracts from the tapes. A professional cast and crew mounted the first production of the play.

A release letter had been used to obtain permission from those interviewed to use their stories in a number of specified ways, including as a stage play and for a radio program. In this way, the writer and the auspicing body for the project acquired a licence to develop and produce a creative work. Copyright over the interview tapes and transcripts was agreed to be jointly owned by interviewer and interviewee.

At this stage, no money was paid to those who told their stories but certain considerations were granted, including the right to receive a copy of the interview transcript and, most importantly, the right to be consulted if the material was to be used for a purpose other than those specified in the agreement. Later the material was re-developed as a film script—further consultations took place and a new contract was signed with each community participant. Each participant received a credit and a payment once the film was produced.

## Indigenous cultural and intellectual property

If an Aboriginal or Torres Strait Islander community or creator is involved with a cultural development project, consider including special provisions in the agreement which safeguard the Indigenous cultural and intellectual property concerns of that community or individual.

Auspicing bodies and artists should be aware that they can offend Indigenous people if an artistic style, a dreaming, or

other type of material associated with an Aboriginal or Torres Strait Islander culture is incorporated into a project without appropriate consultation and/or approval.

The Australia Council publishes several guides about using Indigenous material and working with Indigenous communities: see <[www.ozco.gov.au/atsia](http://www.ozco.gov.au/atsia)>.

See also *Writing about Indigenous Australia, Code of ethics checklist* and *Australian copyright vs Indigenous intellectual and cultural property rights* by Anita Heiss (Australian Society of Authors, <[www.asauthors.org](http://www.asauthors.org)>) and *Valuing art, respecting culture: Protocols for working with the Australian Indigenous visual arts and craft sector* by Doreen Mellor (ed.) and Terri Janke (National Association for the Visual Arts, 2001, <[www.visualarts.net.au](http://www.visualarts.net.au)>).

## Ideas and confidentiality

Ideas are not protected by copyright. However, in many cases when an idea is given to someone in confidence, that person may be obliged not to act on that idea (or give it to other people) without the permission of the person who gave it to them.

In these situations it is a good idea for people participating in the project to have a written agreement before the project starts that states who owns such ideas and who is entitled to use them. The sample agreement about confidentiality from the Arts Law Centre of Australia could be used to cover initial discussion before a project starts.

An artist spent lots of time working with the members of a community to develop a grant application. The money for the project was granted, but the community body which applied for the grant no longer wanted her to be involved in the project. She claimed they had stolen her idea; they claimed it was worked out by a committee and belonged to the community body.



## Dealing with problems

Unfortunately, community development projects don't always run smoothly, so it is essential to discuss what will happen if there is a conflict in the project team that is difficult to resolve, or if people leave the project.

- How will disputes be resolved?
- Are there suitable mediation clauses in the agreement?
- If someone leaves or is dismissed from a project, what are their rights to material they have contributed, and what can the remaining people do with that material?
- What moral rights will be owed to people who leave or are dismissed from a project?

It is also important to talk about whether there should be a procedure for community participants and the artist to 'sign off' on a project before it is made public, and if so what that procedure should be.

**A group of women created a video with a filmmaker, who edited the rough footage to make the finished program. The group didn't like the work of the filmmaker, but there were no agreements between the women and the filmmaker which provided a clear way to resolve their disagreement.**

**An artist initiates a project and a community successfully applies for funding, with only a brief letter of agreement to establish the relationship between the community and the artist. Together, the artist and the community start creative development. But the relationship breaks down—the first artist leaves the project and a new artist is employed. The first artist loses 'ownership' of the creative process, while the community and the new artist are unclear about what they can do with material created by the first artist.**

## Common terms in community cultural development

### Community

A community can be any group of people who choose to identify with each other. Communities can be created through anything people have in common, whether it's geographical location, interest, their demographic group, shared cultural heritage, or simply wanting to come together.

### Artist/facilitator

The person(s) engaged for the purpose of facilitating the community's creative expression, providing artistic leadership to the project's participants.

### Project management

The organisation, agency, group or person who has responsibility for ensuring the project is managed efficiently and effectively, and that the conditions of all relevant agreements are met.

### Stakeholders

Any person or group of people who have some direct connection with the project. Stakeholders are the three roles listed above, and could also include a local council, a funding body or sponsor, an institution or a property owner.

### Auspecting body

The minimum requirements of an auspecting body (for the administration of an Australia Council grant) are to monitor how grant monies are spent, and to provide a financial report to the grant recipient when the project is finished. An auspecting body is usually used when the grant recipient does not have appropriate legal status, but the Project Management may choose to have an auspecting body to provide administrative and support services.



## Contact organisations

### Arts Law Centre of Australia

The Arts Law Centre is the national community legal centre for the arts. Arts Law gives preliminary advice and information to artists and arts organisations across all artforms on a wide range of arts-related legal and business matters, including contracts, copyright, taxation, business names and structures, defamation, insurance and employment.

Free preliminary advice is given by telephone. If appropriate, Arts Law subscribers can have a face-to-face or telephone Legal Advice Night consultation with a volunteer lawyer from a private practice. The Arts Law Centre also offers a mediation service, designed to provide affordable and accessible mediation for creators and arts organisations.

Arts Law publishes a range of materials to assist arts practitioners, including free information sheets, guides, checklists, sample contracts with explanatory notes, seminar papers and booklets.

The Gunnergy

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### Arts Law Centre of Queensland

Arts Law Centre of Queensland (ALCQ) is a non-profit association incorporated in 1991 to help Queensland artists protect their legal rights and financial interests. It is not associated with the Arts Law Centre of Australia.

ALCQ conducts advice and education programs, and advocates in respect of law reform for members of the association and affiliate organisations.

Its advice and programs are delivered by professionals who volunteer their time outside working hours to assist artists and advance culture throughout Queensland. ALCQ volunteers can provide advice in general terms only and cannot provide written legal opinions, draft or modify contracts or other documents, or represent clients in negotiations, litigation, mediation or arbitration.

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Web [www.artslawqld.org.au](http://www.artslawqld.org.au)

### Australian Copyright Council

The Australian Copyright Council assists creators and other copyright owners to exercise their rights effectively; raises awareness in the community about the importance of copyright; researches and identifies areas of copyright law which are inadequate or unfair; seeks changes to law and practice to enhance the effectiveness and fairness of copyright; and fosters cooperation between bodies representing creators and owners of copyright.

The Australian Copyright Council offers advice to people working in the arts on copyright issues and publishes an extensive range of information sheets, available for free from its website. It also sells more detailed publications about copyright, including a practical guide entitled *Community arts & copyright*.

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This brochure is an initiative of the Community Cultural Development Board of the Australia Council.

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Copyright, moral rights and community cultural development : a guide for organisations, communities and artists involved in collaborative arts projects.

ISBN 1 920784 04 7.

1. Copyright - Art - Australia. 2. Copyright - Moral rights - Australia.

I. Australia Council.

346.940482

Published by the Australia Council

PO Box 788 Strawberry Hills NSW 2012

Tel 02 9215 9000

Toll free 1800 226 912

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This publication is available online at <[www.ozco.gov.au](http://www.ozco.gov.au)>.

Please direct enquiries to <[ccd@ozco.gov.au](mailto:ccd@ozco.gov.au)>.

Text: First edition by Paul Brown, revised by Ian McDonald

Design: i2i Design, Sydney



The Australia Council is the Federal Government's arts funding and advisory body. It supports and promotes the practice and enjoyment of the arts.



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