

PART FOUR

MORE LEGAL ISSUES IN CREATIVE PROJECTS

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PART FOUR: MORE LEGAL ISSUES IN CREATIVE PROJECTS

: P A G E :

In the previous section we considered some of the legal issues involved in working as an individual, group or organisation. Other legal issues commonly arising in creative projects are covered in this section.

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Community radio stations can't afford a defamation case and it can be easy to slip up or have someone you're interviewing say something defamatory, even on an arts show. You have to be pretty quick to delay their comments or fix it in the aftermath.

- Lou Smith; DIY Radio Show
LITERATURE, ZINE, OTHER PROJECTS

CENSORSHIP, DEFAMATION AND OBSCENITY

If you are producing events or publicity materials that certain members of the community might find offensive or inappropriate, or if you produce material that parodies or challenges somebody's reputation or image, it's important to check up on the various censorship, defamation and obscenity issues that are relevant to your project and your project's publicity.

Defamation and obscenity laws in Australia can be very tough and vary substantially from state to state. If you have any doubts discuss them with others and try and assess the level of risk involved. Unfortunately, these are highly subjective areas and obscenity laws are driven by current community standards that are constantly shifting. Defaming someone in Australia can be a very serious offence. Don't think that just because your project is small it won't be noticed. Sometimes controversy can bring a project to public attention. (Not that that's necessarily a bad thing!) And just because your project is small, this does not protect you from potential prosecution in the courts. Although not advised, if you do take risks in these areas make sure your project team are all equally aware of them and all in favour of doing so.

Seek legal guidance through state legal centres or Arts Law Australia, and check the legal contacts in the back of this book.

INSURANCE

Insurance provides a cover in case something goes wrong. This cover, called a policy, is specifically about certain sorts of risks. The type of project you are doing will dictate the sorts of insurance you might consider taking out:

- Public liability: covers the risk of injury to people as a result of you or your project team's negligence.
- Product liability: covers the risk of injury or damage as a result of any fault due to a product you've created.
- Professional indemnity: covers the risk of injury as a result of your professional instruction.
- Worker's compensation: covers the risk of injury to your employees as a result of a workplace accident (this will be required if you employ people).
- Fire and theft: covers the risk of fire and theft of your work equipment and goods on your premises.

Insurance has changed dramatically in the past few years. The need for public liability coverage is almost mandatory if using a park, holding a street party or hiring a building for a live event. Always check with the venue or site manager to see if you are going to need to arrange public liability cover. If you do, don't leave it until the last minute because it can sometimes take a few weeks to organise quotes and can then take up to a month to be approved. Various state and territory governments have begun offering schemes to cultural and community groups to help them with the spiralling costs of public liability insurance—contact your local arts ministry or city council to see what schemes might be in place to help you save on these costs.

Laws relating to worker's compensation insurance vary greatly from state to state and can be greatly confusing. Sometimes even brokers can be a little unclear as to the requirements, so phone your state or territory office responsible for work cover and ask them directly for advice and a clear outline of your obligations. Also, keep in mind that even if you are a company and only the directors are drawing salaries, worker's compensation insurance is still compulsory—just because you own a company, there's no reason you aren't going to injure yourself and need to draw compensation.

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PERMITS

Often there are specific permits required for your activity to take place. If using outdoor spaces (public and private) you will probably need a permit. Your local council will be able to tell you what type of permit you will need and how much it will cost. If using indoor space not usually used for the activity you have chosen, ensure that the venue operator gives permission for this particular use. Issues that might need to be addressed include enough emergency exits, fire extinguishers and provision of security. If you want to ensure that you meet all of the criteria for the sort of usage you have in mind, contact your local council for more information about their specific requirements.

If you are planning a large-scale project, or something that involves a major variation to the existing use of building or a block of land, your local council may require that you lodge a development application (DA)—even if it is only a temporary use. Filling out a DA is not that hard to do, but can involve a considerable amount of time (a month is not uncommon) and a fee that should be factored into your timelines and budgets.

NOISE LEVELS

In many parts of Australia there are neighbourhood noise levels. Policing of these maximum levels has become increasingly strict, particularly in many inner city venues, resulting in the cancelling of events and performances and even the closure of venues. It makes sense to pay attention to the issue of noise levels when planning your event.

If you have any doubts about local rules and laws relating to noise levels, particularly if you haven't seen a similar event in that location before, you will need to check with the owner of the venue, police or local authorities. Make sure all the performers and technical people involved in your event are informed of the maximum noise levels and have devised plans for sticking to them. Also devise back-up plans for dealing with the police or disgruntled punters. You may even have to shift to other venues if your event gets shut down. Staging events or performances right next to residential apartments and housing is obviously going to risk noise complaints. Try and suss out the kinds of people that live close by. Are they known to complain about noise levels? Consider knocking on their doors and personally inviting them to your event, so they are at least familiar with your project and less likely to complain about it. Even the largest events have fallen victim to an ill-placed retirement village.

SECURITY

A venue may provide or require you to provide security for an event or it may be required as part of getting permission to close a road or hold an event in a park somewhere. Ensure that you understand what is needed and that those costs are included in your budget.

(See Part Three: Specific information for specific kinds of projects—Organising an event)

CONTRACTS AND LETTERS OF AGREEMENT

It is always a good idea to prepare a simple letter that describes any relationship between the people and the organisations involved in the project. It can be a useful tool for ensuring that everyone understands what is expected and can be handy to refer back to if disputes occur later. Examples include: letters of agreement between you and project team members, sponsors, funding bodies and venue owners. Letters of agreement can be as simple as listing the roles and responsibilities of the people concerned, the payment to be made and—if appropriate—a schedule for their contribution to the project. There is no need to confuse the issue through adding a great deal of legalese, but it is important, where there may be some confusion in the future, to ensure that things are in writing, so as to cover yourself. When given contracts by others read them carefully. If you don't understand any of the issues in the contract, or if you don't understand the implications of any of the issues, seek legal advice. Don't sign anything you don't fully understand.

COPYRIGHT AND INTELLECTUAL PROPERTY

If you are using photographs, footage, reviews, writings, media clippings or images of an artist's work within your project itself (or in materials used to promote or publicise your project), definitely become familiar with copyright.

Copyright is a bundle of legal rights that allows creators to benefit financially from the works that they produce. The owner of copyright in a work has the exclusive right to reproduce, publish, perform, broadcast or adapt the work. Copyright does not protect ideas, only works that exist in some material form. A work is protected automatically from the time it is first expressed in an original material form. Creators of works can use the internationally recognised symbol © to encourage respect for copyright, although this is not a legal requirement. In most cases copyright lasts from the time the material is created until 50 years after the creator's death.

Consider the issues surrounding copyright both in relation to the work you create (who owns the rights to it if more than one person is involved) and the rights of any works you may be using or adapting. For example, it can be a violation of copyright to incorporate someone else's story into a play, use someone else's design on a t-shirt or a poster, or to film someone else's performance without permission. Always ensure you have legal permission from the original creator of the work for its use in the project. Films or videos of performances actually require a release from every single person who appears in it (specifying consent to be used for archival, reproduction or promotional purposes). In film and video footage even things like fragments of songs playing in the street or on the radio, posters in the background or the use of brand name products in shot might need to get copyright clearance. Be thorough.

If there are many people contributing to the original work that you are developing for your project, it is advisable to get some sort of written agreement from all of the people involved about who owns the copyright in the work. Generally artists will expect to retain the copyright of their works and you must then ask for their permission each time you want to use and reuse it, sometimes at a cost. Find out how similar projects to yours deal with copyright. This will help you to figure out the copyright arrangements that are in the best interests of your project and all of the people involved in it.

Many creative works being developed today involve the adaptive reuse of other people's work—through samples of existing audio, video, images and text. This area of creative work is extremely complex under copyright law. The factors involved depend on how little or how much of the original work you use and how you use the work. If your project predominantly relies on this sort of work, what you are doing may be illegal under copyright law unless you seek permission from the original artists whose work you are modifying. For more information contact the Copyright Council at www.copyright.org.au

“ Creators of works can use the internationally recognised symbol © to encourage respect for copyright, although this is not a legal requirement. ”

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MORAL AND ETHICAL RIGHTS: INDIGENOUS WORKS AND CULTURALLY SENSITIVE MATERIALS

The use of traditional Indigenous materials and artworks is a sensitive area. Inappropriate use for commercial purposes can cause huge concern and hurt. Because of this, there are specific protocols that should be followed if you intend to use Indigenous materials either individually or in collaboration with communities. The National Association for Visual Arts (NAVA), The NSW Ministry for the Arts and The Australia Council offer advice and guidelines that are available from their websites or in print. As a general rule cultural and religious sensitivities should be acknowledged whether working in commercial or non-commercial settings.

HEALTH AND SAFETY ISSUES

Safety is critical both for your workers and your audience. Whether it is physical risk or materials with unacceptably high levels of toxins, it is your responsibility to ensure that steps are taken to protect those working with you on the project or those in immediate danger, such as your neighbours. If you are unclear about these dangers, some TAFEs now offer short courses in Health and Safety in the workplace. If there is a high level of risk involved in your project there should be one person, at least, who has enough knowledge to monitor the risks. That person should then take all decisions about what level of risk is acceptable. Also remember that you have responsibilities towards your audience. In putting an event together you may need to consider contingencies. If part of the project is to whip up the audience into a very excited state, there might need to be a plan to cool them off again. Consider also that some material may cause strong emotional reactions in an audience and prepare for the consequences.

For more information contact the work cover organisation in your state or territory.

WORKING CONDITIONS

If you are employing people there are employment standards regarding rates of pay, hours and general working conditions for particular professions, trades and activities. Information about these can be found by contacting the relevant organisations covering the activity being undertaken. Contacting their representatives in your state will assist you to set up appropriate working conditions for those you are employing. The major organisations are the Media, Entertainment and Arts Alliance (performers, journalists, film/TV production), The Musicians Union (musicians), State Writers Centres (may be able to assist with writing rates), and NAVA for advice on rates for visual artists.