

Community rail artistic projects: advice on creative rights



Pic credit – The Friends of Buxton Station

Many community rail partnerships and station groups work with artists to develop and deliver creative projects, such as artworks at stations, promotional films, posters, leaflets, and logos. Mostly these projects are a great success, but issues can arise around copyright and other intellectual property rights.

This guidance contains important considerations for community rail partnerships and groups when commissioning creative works, to ensure you secure appropriate agreements for their use and distribution. We recommend considering the following points while planning projects and bidding for funding.

Disclaimer: copyright, intellectual property, and moral rights are complicated areas of the law, and this document provides general suggestions only on key considerations: it does not constitute legal advice. If you need specific advice on ensuring compliance in these areas, we recommend seeking independent legal advice.

Some key points to consider

Community rail partnerships and groups should always consider whether they need to licence and/or purchase intellectual property rights and/or copyright when commissioning creators to supply artistic works.

Artistic/creative works cover more than just 'art.' They are also logos, leaflets, posters, history boards, websites; anything original created by someone using their mind and expressed in a fixed material form.

Agreements for the transfer/licencing/purchase of intellectual property rights and/or copyright should be in writing – verbal agreements will not satisfy most funders (including Community Rail Network) if you are seeking grant funding to support an artistic commission.

It is worth asking yourself:

- **Do we need/want to control how this artistic work is distributed and/or reproduced?**
- **Do we need to have ownership of the artistic work or elements within it for further projects in future?**
- **Do we/our funders mind if the creator is able to sell other copies of the creative work we have commissioned?**
- **How long do we need an agreement with the creator to last?**
- **What scope does an agreement with the creator of an artistic work need to cover? All uses, or just some?**

Commissioning artists to produce artworks

While some artists might agree to provide work for free for community organisations such as those in community rail, this is not always the case, and where possible, artists should be paid for the work they do.

If running competitions to design artworks, for example, a competition geared towards amateur or professional artists/musicians/photographers/filmmakers, we recommend the winner is paid at least a contribution towards their time, and for the acquisition of rights to use the work.

There are some instances, such as the creation of a piece of artwork by a group of school children, for example, where payment would not be appropriate.

Community rail grants from Community Rail Network can be used to pay for artists’ time in creating artworks, providing our criteria are met.

Intellectual property

Creative works always remain the intellectual property of their creators unless there is an agreement in place that states otherwise. Intellectual property is, “something that you create using your mind - for example, a story, an invention, an artistic work or a symbol”.¹ Intellectual property can be protected through several means:

- Copyright
- Design right
- Trademarks
- Registered designs
- Patents

Both copyright and design rights are automatic, while the others require an application process via official bodies. Thinking about who owns (or should own) the copyright and wider intellectual property rights of a commissioned piece of artistic work – the creator or the community rail partnership/group that commissions it – is an issue you need to consider when working with a creator.



Pic credit – Emily Peasgood, Isle of Sound

Copyright

Copyright protects a creator’s work and stops it being used by other people without the creator’s permission. It is conferred automatically on a creator/artist when they create something and does not require a registration process. Ideas by themselves are not protected by copyright; only the expression of those ideas as fixed in a material form are protected.

Regardless of whether or not a creator states that their work is covered by copyright, it is covered. Don’t assume that the absence of a copyright symbol (©) means that the work is free of copyright: using the symbol isn’t obligatory to confer copyright.

Copyright prevents anyone but the creator of intellectual property from:

- Copying that work;
- Distributing copies of it, whether free of charge or for sale;
- Renting or lending copies of that work;
- Performing, showing, or playing that work in public;
- Making an adaptation of that work;
- Putting it on the internet.²

Copyright generally lasts for 70 years from the creator’s death, though it varies depending on the creative work involved. See here for a full list: <https://www.gov.uk/copyright/how-long-copyright-lasts>.

Be aware that more than one type of copyright, with potentially different owners, can exist in a single piece of work. For example, a film may have different copyright holders for its script, footage, and any music used.

Copyright, Designs and Patents Act 1988

The Act covers work created by any artistic and/or other intellectual endeavour. This can be original:

- literary, dramatic, musical, or artistic works;
- sound recordings, films, or broadcasts;
- typographical arrangements in editions.

The legal definition of ‘original’ simply requires that the work be created using some element of skill, labour, and/or judgment.



Pic credit: Severnside Community Rail Partnership

How does intellectual property and copyright affect community rail?

The important thing to remember is that if you commission a piece of creative work, you do not automatically hold the copyright to that work. Copyright remains with the creator unless there is a specific agreement in place to transfer it to you. Copyright applies to all creative works: not just pictures, but also audio works, audio-visual works, two and three-dimensional artworks, logos, and written works, to give just a few examples.

Copyright can be transferred to a new owner in a variety of ways and over varying time periods, depending on the agreement (often a licence) put in place. If the licence confers exclusive rights, the new owner of the copyrighted material is the only person who can use it for the duration of the agreement. That means that not even the original creator is allowed to use it. Or a licence might confer only limited rights, in which case the new owner of the material can only use it in specified ways and must seek a new agreement with the creator if they want to use it in different ways. Licences could be for the duration of the copyright protection, or a certain number of years.

Many community rail art projects involve different individuals (e.g. a group of students) submitting smaller pieces of artwork, which are then combined into a new artwork by an artist. Each person supplying their small artworks automatically owns the copyright, and possibly other intellectual property rights, over their contributions. The community rail partnership or group, or the artist, (whichever is responsible for collating the contributions) should seek agreement from each contributor to re-use their work in the combined artwork; agreeing a transfer of copyright for this purpose. This might not always be practical, for instance if contributions are dropped off at a stall the community rail partnership or group is managing as part of a larger event. In this case, every effort must be made to make it clear to people how their contributions will be reused, and preferably consent secured in writing (e.g. on a form).

Example

A community rail partnership or station group commissions a video artwork to be shown in a waiting room at a station, but doesn't agree a transfer or licence of the copyright. As a result, the artist is free to reproduce the artwork on their own website, in their own gallery, at other galleries, and they would also be free to sell copies of it.

Instead, the community rail partnership or group could commission the artwork along with a transfer of copyright, e.g. in the form of a written agreement between them and the artist. This would mean that redistribution/sale of copies of the artwork would only be possible with the agreement of the partnership or group, assuming that the transfer granted exclusive, rather than limited, rights. This would also ensure that the partnership or group had the necessary permission to use the video artwork as they initially intended.

Example

A community rail partnership commissions an artwork for a station which is duly delivered, but doesn't agree a transfer of licence of the copyright. They then later decide that they also want to produce postcards of the artwork, but the artist asks for additional payment for artwork to be reproduced in this way, e.g. as a share of the sale price, a cost which the partnership has not factored in or budgeted for. As a result, the postcards are never produced.

As an alternative, the community rail partnership could have agreed a transfer of the copyright or a licence that would allow it to produce postcards of the artwork, at the time of commissioning the original artwork. They would then have been free to develop ideas for further use of the work, and could have produced the postcards as planned without any additional cost.

Creative commons licences

A creator can also choose to release their work more widely under a creative commons licence. These licences allow varying sorts of re-use by other people, who do not then need to check with the creator before reusing the work, as long as it is in the way specified by the licence. When sourcing photos to illustrate leaflets and line guides, creative commons-licensed photographs can be a useful option for community rail: these can often be found on [Wikimedia Commons](#) or [Flickr](#) (where marked as such), amongst other websites.

Otherwise, publishing materials such as photos, or extracts of 'original' text, copied from the internet (including social media) infringes copyright, unless the copyright owner has consented to their use in this way.

Using photos from the internet might lead to an expensive bill later, levied by the copyright owner on you for unauthorised re-use – so be careful! There are dedicated agencies that pursue unauthorised use of images and other materials, which are unlikely to let you off the hook because you did so innocently or because you are a community group.

If you do use photos that you do not own yourself (i.e. images taken by a partner organisation) make sure you have permission to do so. Providers of photos may grant permission just to use them for a specific use, conditional on a photo credit being included, rather than giving you general permission to use them whenever you wish, so ensure the permission fits with your intended use. Permission should be sought and confirmed in writing, through an email exchange or a simple consent form.

Wider intellectual property rights

Copyright prevents the reproduction and redistribution of specific pieces of creative works. There are also wider rights associated with intellectual property, which prevent other people from appropriating characters, stories, plots, and symbols in a different piece of work. This is what stops members of the public from writing and selling a new *Thomas the Tank Engine* book. There might be no breach of copyright as no existing book is being copied, but the intellectual property of the *Thomas the Tank Engine* characters and stories is owned by someone else (Mattel in this case).

Example

A community rail partnership (CRP) commissions a video artwork to be shown in a waiting room at a station. It features a cartoon character intended to be a mascot for the community rail line in question. As part of the commission, the artist agrees to a transfer of the copyright of the video artwork, but the CRP does not ask for a transfer of the full intellectual property rights.

This means the CRP can control how this particular film is copied and redistributed. However, the artist is free to make different artworks featuring the mascot character because they still own the intellectual property relating to it. The CRP cannot reuse the mascot on any of their other marketing materials because they do not own the intellectual property relating to it.

Instead, the CRP could have commissioned the artwork along with a full transfer of all intellectual property rights including copyright, e.g. in the form of a written agreement between them and the artist. This would mean that redistribution of the video and use of the mascot would only be possible with the agreement of the CRP, and the mascot could be used freely by the CRP on any other marketing materials.

Moral rights

Regardless of any transfer of intellectual property rights, the creator/artist of any piece of artistic work will almost always retain moral rights in the work. These cannot be sold or transferred in the same way as the copyright, and last for as long as the copyright. These moral rights include the rights to:

- Be recognised as the creator of the work when copies are made available to the public;
- Object to the work being altered in a way that has a negative effect on their reputation;
- Not have someone else's work falsely attributed to them.³

So, community rail partnerships and groups, even if they have licenced the intellectual property

rights/copyright to a piece of work, should make sure that when they use that work, the creator is properly attributed, e.g. they are named as its creator, and that the use of the work does not impact negatively on their reputation.

Seeking grants for artistic projects

Many grant funders will seek evidence that the transfer of intellectual property rights regarding artworks has been agreed between artist and client before they will award funding for artistic projects. Community Rail Network now asks for evidence of a written agreement transferring intellectual property rights/copyright (as appropriate) when members make bids to our **funding schemes**, where such an agreement would be necessary for the member to make use of the artwork in the way it intends to.

Pic credit – Friends of Buxton Station



To recap

By considering the key issues raised in this guidance, it should be relatively straightforward for community rail partnerships and groups to develop mutually beneficial working relationships with partners involved in artistic/creative projects. It is important to be open and transparent from the start, so the relationship can be established, and any relevant consents and permissions clarified. This need not be a complicated process, and can be agreed via a simple consent form, such as in the example below.

Example consent form for written and spoken words – Friends of Buxton Station

Consent Form - written and spoken words

The Friends of Buxton Station (FoBS) are a voluntary community group. Sometimes, their work includes other people who are not members or associates, and it is good practice for the group to obtain permission to use any recording(s), whether written or spoken.

This form is used to record the fact that someone has given their permission, otherwise known as consent. It allows FoBS to retain permanently, share and use the recording(s).

FoBS make clear that they will not use the recording(s) in any derogatory manner; it is not their intention to embarrass or harm you in any way. Unless you indicate otherwise, your name will be associated with the recording(s) as the author.

I confirm that:

- I am the owner of the words spoken and/or written.
- I give FoBS the right to use, edit, share, and make available the content of the recording(s) in the following way(s) - please tick all those that apply.

- Educational and research purposes
- Public talks and exhibitions
- Use in libraries, museums, and archives
- Publication in any format
- Use on radio or television
- Use on the Internet
- Use in any commercial setting

- I agree to my name being acknowledged (Please delete one)
- I understand that no payment is due to me for this assignment and consent.

Signed: Print name:

Tel:

Email:

Date:



FoBS wish to record thanks to Anne Rogerson and the Oral History Group of Buxton & District's U3A for permission to adapt their Consent Form. February 2021

Further reading

The gov.uk website has a lot of information about intellectual property, which we drew on when writing this guidance note. Start at: <https://www.gov.uk/intellectual-property-an-overview>

The government's Intellectual Property Office is responsible for intellectual property rights in the UK. Its website is: <https://www.gov.uk/government/organisations/intellectual-property-office/about>

This guide to copyright from the Tate is helpful and considers additional issues beyond the scope of this guidance: <https://www.tate.org.uk/file/guide-copyright>

Frequently asked questions about copyright and moral rights by The Design and Artists Copyright Society: <https://www.dacs.org.uk/knowledge-base/frequently-asked-questions#FAQ144>

Guidance on digital content copyright issues, aimed at the heritage sector but with transferable information: <https://charitydigital.org.uk/resources/resources/digital-guide-working-with-suppliers-to-create-digital-content>

Information on how The Artists Information Company, the largest artists' membership organisation in the UK, can support your organisation: <https://www.artscouncil.org.uk/art-leadership/n-artists-information-company>

References

1. <https://www.gov.uk/intellectual-property-an-overview>
2. <https://www.gov.uk/copyright>
3. <https://www.gov.uk/using-somebody-elses-intellectual-property/copyright>



T 01484 481052
E info@communityrail.org.uk
W communityrail.org.uk