

Collaborating in Harmony

Working in partnership provides arts organisations with the opportunity to reach new audiences, access funding from unexpected sources and generate exciting art. Suitable partners can be found in surprising places. The National Opera Studio teamed up with local voluntary group, the Wandsworth Cycling Campaign (WCC), to perform 'The Ring Cycle; an Operatic Extravaganza' in Trafalgar Square. Singers from the Wandsworth-based opera studio sang well-known operatic excerpts while cyclists dramatised them on bikes. A rickshaw, a '4 by 4' and a bicycling paramedic also featured in the entertainment. The result was broadcast on radio and regional television, generating well-deserved publicity for both the work of the National Opera Studio and WCC's vision of Wandsworth as a borough where cycling is a natural transport choice.

Considering risks

However, working in partnership involves significant legal risk, and the level of risk may be increased where the organisations involved vary in size. It is important that the aims of a project are clearly set out and understood by all parties. Failure to ensure that this is done regularly leads to failure or 'project drift' where the result bears little relation to the original plan. Often the difference between anticipated and eventual costs is similarly wide.

Projects are more likely to be successful where the contribution to be made by each organisation is closely defined. A large organisation might seek to support smaller organisations and defray its overheads by offering 'back office' services such as payroll administration at a competitive cost. A smaller organisation might offer much larger organisations specialist expertise or access to a particular audience. Arts organisations with a strong following from Black and minority ethnic communities, for example, will have a great deal to offer larger and more established organisations that have been less successful in reaching those communities.

As with any new project, it is vital that you ensure the partnership project is consistent with the organisation's stated purposes and strategic aims. Charities must ensure that new projects fall within their charitable objects. It is also important to consider whether the project would be better performed by a separately constituted trading subsidiary. This may be appropriate where the new project will involve a charity in trading outside its primary purposes. It may also be appropriate to establish a separate body to run the new project where significant risk will be involved and it is desirable to protect the organisation from that risk. This may involve considering new legal forms such as the Community Interest Company or the charitable incorporated organisation (introduced in the Charities Act).

Intellectual property

Who will own the copyright or other intellectual property rights created during the collaboration? There may be copyrights in many aspects of the work, including song lyrics, choreographic notation, or promotional material. A clear decision needs to be made as to how the ownership of these rights will be divided. Some flexibility can be provided by agreeing that ownership of specific items will be subject to a separate agreement. However, there should be a clear default position to avoid disputes where such an agreement is never in fact made.

It is often assumed that in a joint project it makes sense for copyright to be owned jointly. In my experience, this is rarely correct. The problem is that joint copyright can generally only be 'exploited' by one joint owner with the consent of the other owner(s). The result is that joint ownership works well where the owners enjoy an amicable relationship but when that relationship breaks down, deadlock results because nothing can be done unless the parties can reach an agreement.

If the project will be produced under a distinctive name or logo, or will have a distinctive design, it will be important to clarify the ownership of this. This should be done by registering the name, logo or other get-up as a trademark. The mark can be owned by either party and licensed to the other or owned jointly. The law relating to the joint ownership of trademarks differs from that in relation to copyright. The logo may also be protected by copyright, but trademark law provides much more powerful protection than copyright. Failure to register a name or logo as a trademark leaves it open to another organisation to register it and attempt to prevent you from using it.

Data matters

Failure to adequately safeguard the personal data of volunteers, audience members or other participants can expose the organisations concerned to considerable unfavourable publicity as well as the risk of enforcement action or a claim for damages. Appropriate procedures should be adopted to ensure that data is collected in a manner that meets the requirements of the law and the data protection policies of the organisations involved. Both organisations will need to ensure they hold an appropriate data protection notification, which will cover the use of data for the purposes envisaged in the project. It should also be remembered that data protection notification only applies to a particular legal entity. If the project involves establishing a subsidiary or other new legal entity, it will need a separate registration, and the participants will need to ensure that they can transfer data to the new organisation.

A related issue is the protection of confidential information. Clear limits should be set on the manner in which information will be exchanged between the two organisations. This can be achieved with a contractual requirement that commercial information about either charity, which becomes known to the other during the course of the agreement, must not be disclosed to any third party.

If new staff will be engaged to deliver the new project, it is important to agree which organisation will be responsible for them. They may be engaged by one of the partner organisations or by a new joint venture company. Clear contracts are particularly important if staff are seconded from one organisation to another. Otherwise, confusion around line management and disciplinary arrangements may cause disruption or even a claim of constructive dismissal. If ownership of the copyright in the project is divided, both parties will need to manage their staff to ensure that each organisation obtains ownership of the copyright in the materials that it brings to the project. The copyright in work produced by an employee in the course of his employment is owned by the employer.

However, this does not apply to self-employed artists, casual staff or employees who are working outside the normal course of their duties. If in doubt you should get a clear assignment of the copyright in any work produced. It is in fact possible to assign copyright in future works so a simple all-embracing document can be produced at the start of the project. If any of the copyright works are likely to be valuable it is important that records are kept to provide evidence of when the work is produced and the copyright position in order to support any future infringement claims.

Intentions

As with any joint venture, it is important to establish both how the project will be presented to others and the extent to which one organisation may bind the other. In the absence of an agreement on this issue, the common-law principles regarding partnership and agency will apply. These could create the undesirable result that one of the organisations involved in the project can commit the other to a significant and expensive contract, despite the fact that the other organisation was not aware of that contract and certainly did not consent to it.

To avoid this, the agreement between the organisations should clearly set out the extent to which one organisation may bind the other. In many circumstances it is sufficient to provide that neither organisation can represent itself as the agent or partner of the other, and then to include specific agreements as to the manner in which particular contracts will be dealt with. It is important that provisions are incorporated in any agreement to set out how it may be ended. Charities will often wish to ensure that they are able to withdraw immediately in the event that the other organisation involved does anything that is likely to bring the charity into disrepute.

Partnerships offer many benefits including the opportunity to explore new areas of activity at minimal cost. Time and care spent considering the issues reviewed above and establishing clear contractual arrangements will ensure that the relationship you establish is a mutually beneficial and truly harmonious partnership, rather than a mutually frustrating, and possibly costly, legal wrangle.

If you would like any more information in this, or indeed any other matter, then please contact;

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