

Intellectual Property Ownership in Model C Fiscal Sponsorships

This document is intended to assist CultureTrust Greater Philadelphia Board and staff in determining how and when to share intellectual property with a Model C Fiscal Sponsorship Grantee where the Grantee will not itself seek to operate as a charity.

Since CultureTrust is a tax-exempt, charitable organization, all CultureTrust funds and assets must be used for charitable and exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code (the “Code”). In order to prevent inappropriate private benefit arising from the use of charitable funds, the Code generally prohibits a charity from transferring funds or other assets to either for profit entities or individuals. The Code and IRS rulings describe only a few very limited exceptions that allow a charity to transfer money to a private individual or another organization that is not also a charity.

Given the cultural and heritage work that CultureTrust supports for the Philadelphia community, we suggest that CultureTrust Model C Projects would be most likely to qualify under one of two approved charitable categories:

- 1) Artists for whom philanthropic subsidies are necessary to support their creation of art; and
 - 2) Creators of educational material.
- In both of the above categories, the Model C Grantee must commit to making the resulting art or educational material available to the public, either for free or for a reasonable charge. It may not be limited to a private audience or commercialized without limit.
 - Model C Grantees in the second category must make the educational material available subject to a non-discrimination policy, such that anyone may choose to purchase it. The distribution of educational material may not be restricted through discrimination on the basis of race, color, or national or ethnic origin.

If the Model C Grantee does not fall into one of the above categories, CultureTrust should offer a different Model C arrangement whereby CultureTrust retains ownership of assets, including physical assets and intellectual property, that are generated or improved with CultureTrust funds.

To protect against an argument of facilitating commerciality with charitable funds, the form of Model C Fiscal Sponsorship Agreement requires Grantees to seek CultureTrust’s consent before selling, or licensing for use for a fee, the intellectual property created with CultureTrust funds to a third party. This language is drawn from model contracts offered by other industry leaders you identified, such as Fractured Atlas. This still allows the Grantee to own and themselves directly sell the property. To best position CultureTrust’s Model C Fiscal Sponsorship program for federal tax compliance, we also recommend that CultureTrust add questions and due diligence items to its current intake process to regularly identify and document facts for each Model C Grantee CultureTrust selects to support its qualification for either the ‘artist in need’ or the ‘educational materials’ categories described here.