Notes on Intellectual Property and Copyright
Based on best practices from the Americans for the Arts

“Copyright
The artist retains all rights under the Copyright Act of 1976 (17 USC Section 101) as the sole author of the work for the duration of the copyright. The duration of copyright in the United States is currently the life of the author plus seventy (70) years. Title to the artwork passes to the client or commissioning agency/organization upon their written acceptance of and payment for the work; copyright belongs to and remains with the artist.

Although the client may own the work of art, the artist who created the work owns the copyright to the work of art, including all ways in which the work is represented, other than in situ. Artists may wish to register their copyright with the Federal government. Clients should not request that artists waive or share any of their legal copyright privileges as defined and awarded by the Federal government.

Visual Artists Rights Act (VARA)
The Visual Artists Rights Act of 1990, known as VARA, (17 USC Section 106A) assures an artist’s protection of his/her visual art especially as it effects post-sale rights including all drawings, sketches, and prototypes. Under VARA, artists have the right to prevent any intentional distortion, mutilation, or other modification to their work. In some cases where the art is integrated (building, landscape, infrastructure, etc.) the client or commissioning agency/organization may ask the artist to waive their VARA rights.

Rights to Reproduce the Work
The artist and client or commissioning agency must each agree to the right to reproduce the artwork in any and all forms. Typically, artists grant the client or commissioning agency/organization license to make two-dimensional reproductions of the work for non-commercial and educational purposes. The client or commissioning agency/organization in turns agrees to include a credit to the artist and a notice of copyright on all such reproductions.

Additional Rights
It is standard professional practice that agencies agree not to intentionally alter, modify, change, destroy, or damage the work of art without first obtaining permission from the artist. If the artist’s work is accidentally damaged, the artist has the right to request that the work not be attributed to the artist until such time as the work is fully restored.

Conflicts of Interest
Anyone in a position to receive financial gain from the selection of artist(s) will be ineligible to serve on a selection panel. Panelists must declare any conflict of interest and recuse themselves if a conflict of interest arises.

Insurance Requirements
Contracting agencies may request that the selected artist carry Liability Insurance. It is standard practice for artists to hold $2,000,000 (two million dollars) in coverage per incident regardless of the size of the contract or project budget.

Payment Schedules
The PAN Council’s opinion about Payment Schedules is to encourage a payment of approximately 10% upon signing the contract, the balance on completion and a retainage of approximately 5% until title is transferred to the client. Commissioning organizations and agencies should withhold final acceptance of the artwork until the artist has provided a maintenance plan. It is further encouraged that site plans and drawings be provided to the owner so that it is understood how to maintain the site as conceived by the artist.”