



AMERICAN ASSOCIATION  
of ADVERTISING AGENCIES

Thomas A. Finneran  
Executive Vice President

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### **4A's New Business Committee Request**

Dear Agency Search Consultant:

I am writing to you on behalf of members of the 4A's new business committees. We are reaching out to you because of your involvement with agency search and selection and your interest in fostering mutually beneficial advertiser-agency relationships.

*Members of the 4A's new business committees would like to encourage you to consider including a stipulation in all of your agency search agreements that specifies that the rights to Intellectual Property (IP) created by agencies during the review process remain the property of the agency until the marketer either hires the agency to execute the work or the parties agree to a commercially equitable payment for the assignment of usage rights.*

In the past the Association has provided background information pertaining to agency new business ownership and usage rights dynamics. The Association has also constructed guidance materials and illustrative contract provisions that equitably address both agency and marketer agency search IP considerations. For your convenience we have included access to some of this material as part of this correspondence (links are provided below). This information is provided for your consideration and use.

#### **» Best Practice Guidance: Ownership of Agency Ideas, Plans and Work Developed During the New-Business Process**

While the matter is one to be decided by agencies acting individually, the 4A's recommends that agencies preserve ownership of new business-search ideas, plans and work product.

#### **» Best Practice Guidance: Agency Search Agreements**

The 4A's recommends that agencies execute new business agreements with client prospects at the outset of every agency search.

4A's new business committee members are reaching out to you at this time because the dynamics of agency search-new business are rapidly evolving: Agency-client relationships are shorter in duration. There is increased pressure on agency compensation. Clients are often retaining multiple

agencies to execute marketing programs across a proliferating number of media channels. There are more reviews. There are more reviews that request some form of speculative agency work. Because of the economics associated with changing industry dynamics the importance of equitably structuring agency developed new business IP has become more compelling.

Committee members believe that the best interests of all constituents in the marketing community will be well served by adherence to clear equitable agreement on new business IP. We seek your help in eliminating the practice of including ownership assignment provisions in non-disclosure agreements and requiring agencies to assign rights to the agency's work product as a pre-condition to participating in a review. Members of the 4A's new business committees are reaching out to you at this time because you are a thought leader in our industry and you actively participate in the dialog on critical industry economic and relationships matters.

The agencies referenced in the appendix to this letter believe in principle that it is imprudent and inequitable to participate in reviews that require the assignment of agency developed new business ideas and work product. These committee members understand that there are inherent risks and resource investments that are required in the process of their agency's business development. These agencies understand that when new business ideation or speculative work product is included as an agency search mechanism it can help the parties assess capabilities and compatibility. However, the inclusion of new business ideation or speculative work product as a review evaluation mechanism should not include conveyance of valuable intellectual property under commercially unreasonable terms.

Members of the committees respectfully request that you review your agency search agreements and consider, as a matter of principle, advocating agency search agreements specifying that the rights to Intellectual Property (IP) created by agencies during the review process remain the property of the agency until the marketer either hires the agency to execute the work or the parties agree to a commercially equitable payment for the assignment of usage rights.

Thank you for your consideration and ongoing interest in fostering industry beneficial collaboration.

Tom

## Appendix

The following agency members of the 4A's new business committees believe in principle that it is imprudent and inequitable to participate in reviews that require the assignment of agency developed new business ideas and work product. These members request that you review your agency search agreements and consider, as a matter of principle, advocating agency search agreements specifying that the rights to Intellectual Property (IP) created by agencies during the review process remain the property of the agency until the marketer either hires the agency to execute the work or the parties agree to a commercially equitable payment for the assignment of usage rights.

AccentMarketing	Kolar Advertising and Marketing
Adamson Advertising	Kirshenbaum Bond Senecal + Partners
Allen & Gerritsen, Inc.	Leo Burnett Worldwide
Anomaly Communications LLC	Laughlin/Constable New York
Arnold Worldwide	Luckie & Company
BBDO Worldwide, Inc.	The Martin Agency Inc.
BBH	McGarry Bowen LLC
Bernstein-Rein	McCann Erickson
BOHAN Advertising/Marketing	
Brunner	Mediasmith, Inc.
	Merkley
DDB	MRM Worldwide
Dentsu America Inc.	Mullen
Deutsch Inc.	O&M Worldwide
Doremus	Partners + Napier
Draftfcb	Publicis USA
Euro RSCG	R&R Partners, Inc.
Eric Mower and Associates	R/GA
Fullhouse	The Richards Group
The Gate Worldwide	
Grey Worldwide	TBWA Worldwide
	VitroRobertson
Hill Holliday	White & Partners
JWT	Wunderman
The Kaplan Thaler Group, Ltd.	Y&R and Y&R Brands