

Advertisers have been accused of bullying ad agencies out of their intellectual property during the pitch process for a token fee. Woolworths, government departments and juice giant Berri are among marketers to recently offer ad agencies a nominal fee on the proviso they get to keep all ideas presented at the pitch. The practice is resulting in hundreds of creative concepts being left on the cutting room floor ever year – unable to be repitched to another client. Agency heads say they lose all bargaining power in a pitch, so hand over IP when asked to do so. The Advertising Federation of Australia has scolded agencies for giving up IP for fees that often range from \$5,000 to \$10,000, but what we want to know is:

SHOULD AD AGENCIES BE ABLE TO RETAIN THEIR INTELLECTUAL PROPERTY DURING THE PITCH PROCESS? IF SO, HOW?

MELINDA GEERTZ, MANAGING DIRECTOR, LEO BURNETT MELBOURNE

We are very clear about this. There's no grey. Pitching new business costs agencies a lot of money. Pitch fees simply help us cover some of those costs. A pitch fee has nothing to do with intellectual property, which is ours unless the client appoints us.

Everyone wants new business but if we're prepared to give away our product for a token pitch fee, we devalue our entire reason for being. We have to be strong enough to defend the core of what we do. Saying "no" in that context shouldn't be so hard.

DARREN WOOLLEY, FOUNDER, P3

Of course they should be able to – by law, they can only lose their IP if they choose to assign it to another party. If the client wants them to assign their IP in a pitch they should:

1. Ask the client why they want to own the IP.
2. Ask the client if they intend to use the IP even if the agency is unsuccessful.
3. Explain to the client that their IP is the core value of their business and will only be assigned for a fair and reasonable price.

If the client is using the pitch to fish for a range of ideas on the cheap, the agency can then decide if this is the type of client they want to work with.

If the client says they need to own the IP to protect themselves from wrongful claims if two agencies present similar ideas, the agency should offer instead to provide the client with a guarantee not to take legal action over copyright if the client warrants they will not knowingly breach the agency's rights.

If the client is serious, they will respect the agency for their belief in the value of their work and either pay a reasonable price or choose not to pay and not to demand the IP.

It seems ridiculous that in a business based on ideas the best people can come up with is devaluing the very value of the industry – intellectual property.

BEN LILLEY, CEO, SMART

The real question is why do we need to retain our intellectual property from the pitch process? Agencies who whinge that by signing away their IP they are forfeiting their right to repitch their ideas to another client, obviously don't subscribe to the idea of a unique strategic insight and brand voice leading to a unique and creative solution for every brand.

No wonder they're losing their pitches. And any client wishing to "cut and paste" a winning campaign from the various great ideas that have been pitched to them clearly also hasn't grasped this most basic tenet of brand communications. Good luck to 'em.

The bottom line is, if the client wants you or your ideas, they'll hire you. Otherwise, if you lose the pitch, your ideas are worthless to you anyway. Don't like it? Don't pitch.

CHRISTINE BARNES, MANAGING DIRECTOR, FOOTE CONE & BELDING MELBOURNE

Pitch fees, in my opinion, are not payment for the ideas presented – they are payment for the time invested by our people in developing the ideas and help cover external costs we may have incurred during the pitch process.

As an industry, I think it's really important that we resist allowing ourselves to be boxed into this corner, and if the potential client is so disrespectful of what we do and the value of our ideas, where on earth is there to go? I'd rather not pitch in the first place if it's on those terms.

SEAN CUMMINS, CEO, CUMMINS&PARTNERS

Don't accept a fee, nominal or otherwise, and then there is no consideration for the transference of intellectual property.

Agencies complain they don't get paid for pitches. Some clients pay pitch fees and want something for that payment . . . so naturally they will want to own the pitch work. Don't accept a fee. It never covers the outlay, anyway. Then there's the issue of moral rights . . .



"Saying no shouldn't be hard."

Melinda Geertz, managing director, Leo Burnett Melbourne



"Decide if the client is worth it."

Darren Woolley, founder, P3



"Why do we need to retain our IP?"

Ben Lilley, CEO, Smart



"Pitch fees are not payment for IP."

Christine Barnes, managing director, FCB Melbourne



"Don't accept a fee."

Sean Cummins, CEO, cummins&partners