

Television Advertising Production Governance Guide

The television advertising production process is complex and technical. It involves a large number of agreement and contracts with third party companies and individuals. It also involves the creation and procurement of performance rights, intellectual property and any associated moral rights.

From a governance perspective, it is a potential minefield of risk, which is why most organisations and individuals are inclined to default to allowing their contracted agency to manage this on their behalf.

The TrinityP3 'Television Advertising Production Governance Guide' allows advertisers and their organisations to quickly and conveniently identify the areas of risk to good governance and due diligence in your television advertising production process.

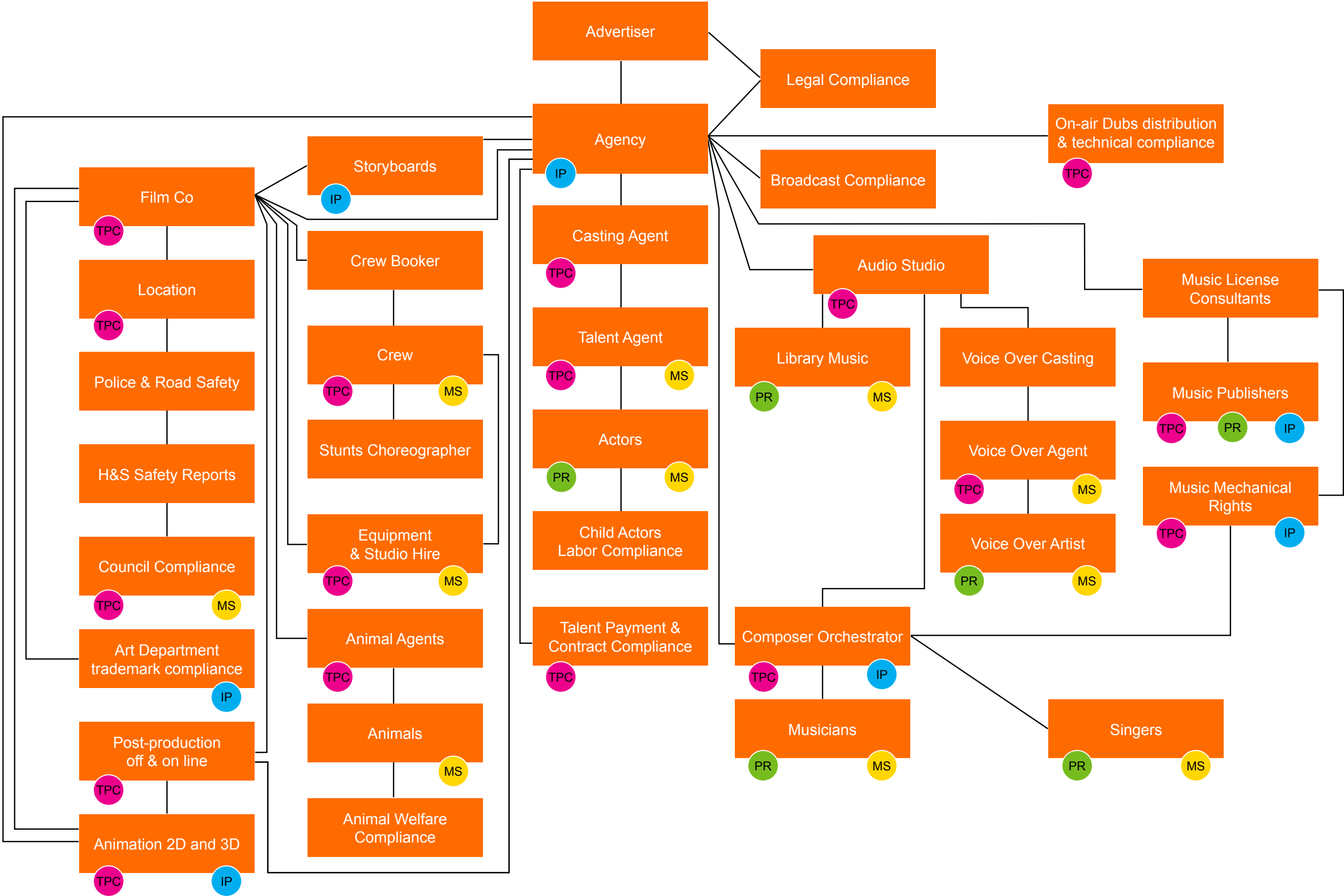
How to use it

The television advertising production map within provides a comprehensive map of the various stakeholders and suppliers in the television advertising production process. These are each then indicated with a color-coding to identify where:

1. Performance rights exist – these are separate to intellectual property rights and exist where the artist, actor or musician provide a personal performance.
2. Intellectual property rights – these can either be existing or arise as part of the production process and must be either licensed or assigned to the appropriate owner.
3. Third party contracts - these arise out of the advertising agency subcontracting to the various suppliers or can arise where the various subcontractors engage subcontractors to provide services required for the production.
4. Multiple suppliers – in many parts of this production process, there can be multiple suppliers involved at some steps, effectively increasing the level of complexity and the associated risks.

Use the chart as a practical tool to chart the current processes to ensure that your agency suppliers, contracted to provide television advertising production services, have the appropriate processes and documentation in place to ensure acceptable compliance and rigor in their contract management and procurement process.

TV Production Map



What should you be looking for and assessing?

Performance Rights

These are rights separate to intellectual property (IP) and are related to the rights associated with the creative performance of actors, musicians, singers etc.

- Are the performance contracts well defined and complete? (Sometimes contracts are lost, not filed or even non-existent so it is important to ensure that the process ensures accountability)
- Is the contract aligned to industry best practice and conform with advertiser expectations (See third party contracts below as many performance rights contracts are drafted by the supplier's representatives to represent their interests alone)
- Does the agreement define the usage including media channels, period, geographies clearly? (Some contracts are complex and confusing in regards to the specific terms and can mean that often the advertiser is not aware of their rights and obligations)
- Are the fees (roll overs or residuals depending on the agreement) and the implications clearly documented and communicated to all parties? (Again the implications of the agreement should be clearly detailed so that the advertiser is aware of their rights and payment obligations under the agreement)

Intellectual Property Rights

The television production process creates and procures significant amounts of intellectual property as part of the process. With the majority of contracts between advertisers and their agencies requiring this IP to be defined and assigned to the advertiser's organisation it is important to review the following:

- Is all IP considered in the process and at all levels of the production process? (Often some areas are overlooked as they are considered too small or too complex to manage)
- Is existing IP included or excluded from the requirements to have the IP assigned to the advertiser? (Some contracts require all IP to be assigned while others only require IP created in the project to be assigned)
- If existing IP is to be assigned, how is the cost assessed to ensure this is commercial viable? (The payment to obtain assignment of existing IP can be significant)
- If existing IP is not assigned how are licensing agreements implemented and managed? (Often the terms and fees associated with these agreement can make it cost prohibitive to continue to use the IP)
- How are the costs of licensing agreements accounted if they fall over successive years? (If there is an intention to continue to license the IP in successive periods, this needs to be accounted for in the agreement and the advertising budget)

Third Party Contracts

Where third party contract are being used:

- Do the contracts conform to the standards and policies of the advertiser organisation? (Policies on discrimination, privacy etc. should reflect the advertisers policy on these matters)
- Are the contracts fair and protect the interests of both parties? (Many of these contracts are provided by the supplier and drafted with the interests of the supplier or subcontractor only)
- Do the appropriate and relevant parties sign the contract? (Some supplier created contracts do not even require signing to be binding to the advertiser)
- Do the parties have the authority to sign the contract on behalf of the advertiser? (Many agency contracts do not allow the agency to enter into contracts on behalf of their client)
- If subcontracting, do the subcontracted parties need to be approved by a representative of the advertiser organisation? (Many agency contracts require subcontractors to be approved in writing by the advertisers organisation)
- Are their suitable and appropriate clauses within the contracts to reflect the terms of business the advertiser organisation requires? (Many supplier contracts will demand 7 or 14 day payment terms counter to the standard terms of the advertiser organisation)

Multiple Suppliers

Where there is either multiple suppliers or a selection process of a supplier from multiple suppliers:

- What is the selection process? (Often there is no process beyond supplier recommendation)
- Is the process well detailed and documented? (There is often no documented process)
- Does it ensure any vested interests are clearly detailed and declared? (Within the production category there are many undeclared vested interests)
- Do all parties adhere to the process? (Even where there is a documented process, often it is never followed except when subjected to a process and financial audit)
- Does the process produce an audit trail of documentation? (Most of these processes are difficult or impossible to audit as much is done on handshake agreements)
- What happens if disputes arise? (The issue is that disputes will often bind the advertiser and their organisation, even though they are often not party to the agreement)
- Is there an acceptable level of transparency and accountability in the process?

About this

Clive Duncan and Darren Woolley at TrinityP3 Marketing Management Consultants developed the Television Advertising Production Governance Guide.