

MEDIA, ANALYSIS, OPINIONS

Darren Woolley | Jun 12, 2020

## Media agency contracts may not be worth the paper they are written on

Not made to 'set and forget', your media contracts should be reviewed regularly; the founder and CEO of Trinity P3 advises.



Hollywood mogul Sam Goldwyn is famously quoted as saying "a verbal contract is not worth the paper it is written on". But when it comes to media agency contracts, even some of the written contracts are worth about the same as verbal ones.

With so much focus on media agencies and their contracts since the [ANA/K2 Intelligence report](#) in 2016, you would think that media agency contracts would be as close to perfect as any contract could be. This is a trillion-dollar global business, after all.

Now before you smile about Sam's joke on verbal contracts, believe me, there are still many advertisers who do not have a contract in place with their media agency. As unbelievable as this seems, we regularly see million-dollar media spends undertaken without a current written contract of any kind.

### Know your contracts

The alternative of course is the **agency written contract**, also known as 'all care, no responsibility'. This contract largely looks after the interests of the agency, in a sea of largely legally meaningless words to create the appearance that it is also protecting the advertiser.

Then there is the **services contract**. This is the off-the-shelf services agreement designed to cover everything from photocopying / printer servicing to million-dollar consulting projects and everything in between. The trouble is that media planning and buying has some very complex and essential aspects not usually found in the standard services agreement.

Then, since 2015, we have the **industry best practice contract**, prepared by an industry association with the input of various industry advisors including lawyers and auditors. These are an excellent distillation of the legal clauses that could and can be used, but often when applied through a cookie-cutter approach, work against the specific interests of the very group they are expected to protect when it comes to transparency.

### So, what should advertisers do about their media agency contracts?

First, check your contract. If you don't have one, get one. If you have a contract more than five years old, take steps to implement a new one. Too often we have found advertisers who simply assume they have a contract in place with their media agency, only to discover that there is no contract, or the current contract is hopelessly out of date. No matter how much you are investing in media, if you are placing it in the hands of an agent or third party to manage on your behalf, you need a contract.

Second, review any existing or proposed media contract in terms of what you want the media agency to do on your behalf and define what success would look like. The best media agency contracts define the relationship between the advertiser and their agency. Therefore, in defining what a successful relationship looks like you will create a successful media agency contract.

Then, if you are using a standard services contract, check that it is a service-based contract and not a manufacturing contract. The two are quite different. Mark up all of the clauses not relevant to the media agency relationship to make room for all of the clauses required specifically for the media agency relationship.

Next you will want to access a source of best practice advice. This could be a specialist law firm. But many industry bodies: including the ANA in the USA, ISBA in the UK, WFA out of Brussels and the AANA in Australia, provide resources for best practice media agency contracting. But remember, these are written to provide advice for specific jurisdictions and either try to cover every contingency or may overlook specific issues you are confronting.

A prime, and possibly extreme example of this, is a contract dispute where the advertiser had selected the media agency based on its ability to deliver exceptionally low media costs, but the contract required the agency to provide complete transparency across the entire supply chain, something that was only realistically possible in private markets at an increase in cost. This is why the second step is so important.

Penultimately, make sure the contract is drafted and reviewed by specialist legal counsel in the jurisdiction of the contract. This is a legal document, and its efficacy is dependent on it being enforceable in law. Beyond defining the scope and terms of the relationship and engagement, the contract is largely pointless if it cannot compel both parties to abide by the terms of the contract.

Finally, and this is often overlooked, regularly go back to step two. At least annually. Review the existing media contract in terms of what you want the media agency to do on your behalf and define what success would look



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like. What has changed? As I said, the best media agency contracts define the relationship between the advertiser and their agency. Therefore, in defining what a successful relationship looks like you will create a successful media agency contract. Anything less and it could end up not worth the paper it is written on.

Darren Woolley is the founder and CEO of marketing consultancy TrinityP3.



Source: Campaign Asia-Pacific

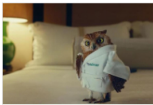
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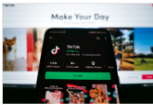


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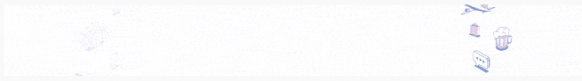
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