Production Process Shows Dearth of Transparency at Agencies

The ANA says marketers need to step up monitoring

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Marketers got a resounding wake-up call in 2016 with the release of the ANA's landmark report on transparency — or, more accurately, the lack thereof — in the media-buying ecosystem. In a second ANA report released in August 2017 that might have been titled "Transparency Redux," marketers got another alarm, albeit on a smaller scale.

The new report's most important takeaways for marketers were that they may not be getting the best value for their production dollars, or the best talent to meet their production needs, but there are concrete steps they can take to address those issues.

The report, "**Production Transparency in the U.S. Advertising Industry**," was spurred in part by production transparency concerns with multiple advertising agencies unearthed by K2 Intelligence during its work on the 2016 report, "**An Independent Study of Media Transparency in the U.S.**

Advertising Industry." But the issue had been percolating for several years prior.

In 2014, AICE, a trade association representing independent post-production firms, released a policy statement detailing concerns among its membership about the lack of transparency at many advertising agency in-house editorial and post-production services units. **It updated that statement in October 2016**.

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Transparency issues exist in the media production process; here's what marketers can do about it.

"The most significant change we saw (between 2014 and 2016) was the rise of holding company-owned facilities, which came with reported mandates that their agencies send a high volume of work to said facilities," says Rachelle Madden, executive director of AICE. "These mandates amplified the conflict of interest, appearing to confirm that agencies were routinely putting their own financial gain ahead of what might be best for a particular client or project, thus increasing the potential for unethical conduct."

AICE also noted an uptick in reports of questionable behavior, such as incentives for agency staff to steer work to in-house units, since 2014. Madden cites that, as well as **an investigation into alleged bid-rigging practices at five major agency holding companies launched by the U.S. Department of Justice last December**, as further evidence of an escalating problem.

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At the same time, concerns about non-transparent business practices in the production realm were on the rise among marketers. Members of two ANA committees, Production Management and Advertising Financial Management, were particularly vocal on this issue. In response, the ANA launched its **Production Transparency Task Force** in August 2016 to assess whether non-transparent advertising agency practices were being used in the U.S. production industry, and to assess marketers' advertising production management processes and develop recommendations to improve them.

The task force cast a wide net, tapping insights from 30 marketing executives at ANA member companies (all of whom participate in the association's committee system), and a dozen outside organizations with relevant experience in the advertising production industry. That group included Reed Smith (the ANA's legal counsel), K2 Intelligence, auditing firms, production industry consultants, and trade associations.

The report delivered two major conclusions:

1. Transparency issues do exist in the production ecosystem, but the report is not a conclusion that the behavioral concerns it identified are engaged in by every company in the ecosystem.
2. Improved advertising production management is within marketers' control, as long as they are willing to evaluate, upgrade, and restructure their disciplines, accountabilities, and controls for production in ways that substantially elevate decision-making quality and enhance disciplines and overall financial management.

Among the report's key findings related to transparency issues in the production ecosystem are:

- Transparency concerns exist at multiple agencies and holding companies.
- The use of agency in-house production resources is not always transparent to the advertiser.
- Situations where an agency controls the bidding process, but an agency-owned production unit is also competing for the business, can be dysfunctional and conflicted, since the buyer can also be the seller of the services.
- Non-transparent agency-controlled bidding can lead to costly, inefficient, and sub-optimal business decisions, resulting in a significant financial impact to marketers.
- Non-transparent practices can compromise the production and editing landscape and make it unreliable, jeopardizing the health and well-being of ecosystem participants.
- Lack of transparency in state commercial production incentive systems can result in advertisers not receiving financial benefits to which they are entitled.

Non-transparent bidding practices are an area of particular concern, having the potential to harm both marketers and independent post-production firms. During its investigation of non-transparent media-buying practices, K2 Intelligence found evidence of agency self-dealing in bidding practices for post-production work. Half a dozen unnamed producers and editors at independent post-production companies reported they had been asked by agencies to submit inflated "check bids" to create a paper trail to justify the awarding of work to an agency's in-house production facility, which would submit a lower bid.

Because independent post-production firms rely so heavily on agencies for the bulk of their work, most have been reluctant to speak publicly on this topic, but that's starting to change. Marshall Grupp, partner, COO, and sound designer at Sound Lounge, admits his company has been asked to submit check bids in the past. "But we don't play that game," he says. "I think this report is the beginning of opening people's eyes on what's going on in the industry."

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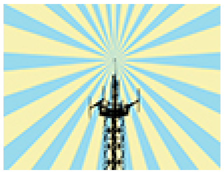

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However, Grupp believes the report is "missing an integral transparency component regarding the talent and the craft. What type of talent are advertisers getting from the post facility they go with? Do advertisers know how greatly the talent pool varies?"

AICE's Madden agrees. Even if "the specter of a potentially rigged bid system" is removed by preventing agencies from acting as both player and referee, "there is a huge value differential between the offering from most agency in-house facilities and the independent companies in this space," she says. "The top talent in our industry is not found at in-house facilities, and marketers need to factor that in when making decisions on where to award their work."

Robert Green, chief creative officer at The Ripple Collective, contends that the in-house trend is bad for marketers for yet another reason. He argues that the tension developed between creative and production teams during post is healthy and necessary to achieve the best work possible. Solving problems is "much more effective with a third-party who is willing to challenge the ideas and the process," he says. "In-house production teams are always the afterthought, kowtowing to whatever the account manager wants them to do. This makes for worse content and opaque budgeting, as money flies internally from one budget to the next."

> Just 43 percent of marketers require their agencies to disclose if they are bidding a production job to an in-house or affiliated company.

To get a handle on the current state of marketers' advertising production management practices, the ANA surveyed its members in the spring of 2017. The results, which are outlined in August's transparency report, were a mixed bag.

On the positive side, about two-thirds of respondents have a dedicated internal team or person responsible for managing advertising production costs, almost half use an outside production consultant, 75 percent have internal controls in place to manage production costs, and 63 percent believe those responsible for making advertising production spending decisions at their company are "very/moderately" knowledgeable about production.

Deeper inquiry revealed some key deficiencies, however. Just 43 percent require their agencies to disclose if they are bidding a production job to an in-house or affiliated company, and 62 percent either don't require their agencies to pass rebates and incentives back to them or don't know if their contracts include that requirement.

Other areas of concern uncovered in the survey include marketers' level of clarity about if or when agencies acted as principals with production suppliers on their business, and their lack of familiarity with state commercial production incentives and whether or not they were benefiting from them.

Task force members say some of the survey's results were expected, but they were surprised by others. One member, the head of agency strategy and management at a large technology firm, says extensive involvement in this area for several years meant he was already familiar with most of the issues that emerged. "If anything did surprise me, it was the lack of knowledge on state production incentives and whether advertisers' contracts required those rebates to be passed back," he says.

Another task force member, a risk specialist at a big auditing firm, says that 15 years of performing compliance audits of agencies prepared him for the scope of non-transparent production activities that were reported. "We see examples of this daily," he says. "What was surprising was to hear the number of stories — especially from the trade groups — that spoke to the breadth and depth of this behavior."

The report offers several recommendations for advertisers to protect themselves from non-transparent production business practices, including:

- Know, by name, the specific in-house resources of your holding companies, agencies, and affiliates.
- Require pre-bid agency disclosure when in-house resources are being considered for a project; establish protocols to avoid conflicts of interest when in-house facilities are part of a competitive bidding process.
- Review production bid specifications and scope prior to the specs being submitted to vendors; obtain and review originally submitted vendor estimates and invoices to pre-empt unauthorized markup.
- Read the **2012** and **2014** ANA white papers on state commercial production incentives to learn about the significant savings they may offer.
- Review and update creative agency contracts; refer to the Reed Smith LLP recommended approaches for creative agency contracts in the appendix of "Production Transparency in the U.S. Advertising Industry."
- Trust but verify, using compliance reviews from independent, qualified, objective auditors.
- Publish and consistently adhere to formal production guidelines.
- Make procurement an internal partner in establishing guidelines and monitoring practices for production transparency.
- Understand that the higher the level of control an advertiser exercises in this area, the greater transparency it is likely to achieve.

One of the most damaging effects of the recent transparency crisis has been the breakdown of trust between advertisers and agencies, says Bill Duggan, group EVP at the ANA. While advertisers need to improve their stewardship and oversight of the production process by adopting the recommendations above, agencies have an important role to play, too. "It's time for the agency community to acknowledge and address these issues, rather than continuing to issue denials," he says. "Only then can we begin the much-needed process of restoring trust."

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