

Professional Standards Advisory PS-14 (Month 2010)

EXPROPRIATION OF THE INTELLECTUAL PROPERTY OF OTHERS

PRSA members pledge adherence to the Society's Member Code of Ethics. As issues arise relating to the practice of public relations, the Board of Ethics and Professional Standards (BEPS) is charged with providing guidance on such issues within the framework of the Code provisions. The PRSA Board of Directors then announces these guidelines through this series of professional standards advisories. The PRSA Member Code of Ethics may be found [online](#).

ISSUE: All too frequently, a prospective client takes ideas from a new business presentation, but fails to hire, compensate or get permission from the proposing consultant or organization. This practice is unethical and can trigger serious legal and reputational consequences. The situation is exacerbated by the increasing use of blanket confidentiality agreements, which state that all ideas shared, shown or suggested become the property of the soliciting party by simply responding to a Request for Proposal (RFP).

BACKGROUND: The problem of expropriation of intellectual property extends to all consulting fields. This PSA is limited to the ethical practices of client-side public relations practitioners in whatever client setting they find themselves. Expropriation can occur in virtually every arena in which public relations and the generation of ideas plays a role. The goal has to be to foster respect for intellectual property and improve agency-client relationships. It is entirely likely that different agencies could submit similar, if not identical, ideas to the same prospective client. By ensuring, up front, the obligation to negotiate or clear up any questionable uses of intellectual property, much of the uncertainty can be eliminated and greater clarity introduced into the consultant-client relationship.

Definitions

Competition. A core principle promoting healthy and fair competition among professionals preserves an ethical client while fostering a robust business environment. Members are obligated to preserve intellectual property rights in the marketplace.

Confidentiality Agreements. Usually presented by a prospective client to ensure that information a proposing agency obtains, in preparation for a presentation, is carefully guarded and returned to its original owner while prohibiting the proposing agency from its use under any circumstances.

Expropriation. Taking possession of something of value for use by another, generally without the participation or permission of the original owner or creator. Another approach is to take something from another's possession for one's own use, or to arbitrarily transfer someone else's property to one's self. This term is more generally used when government is the taker. (Courtesy of dictionary.com.)

Speculative Presentation. This is a voluntarily developed creative effort or offering presented at the expense and risk of a proposing agency or individual for which there is no compensation.

RELEVANT SECTIONS OF THE PRSA CODE: Three Code provisions and several professional values relate to the issue of expropriation. They are:

Code Provisions

Competition. The need to promote healthy and fair competition among professionals, and to serve the public interest by preserving and protecting intellectual property rights in the marketplace.

Disclosure of Information. Society members are obligated to avoid deceptive practices.

Enhancing the Profession. To build respect and credibility with the public for the profession of public relations.

Professional Values

Honesty. We adhere to the highest standards of accuracy and truth in advancing the interests of those we represent and in communicating with the public.

Fairness. We deal fairly with clients, employers, competitors, peers, vendors, the media and the general public. We respect all opinions and support the right of free expression.

EXAMPLES OF IMPROPER PRACTICES WITH SOLUTIONS:

- Your RFPs contains language that expropriates the intellectual content of proposers:
 - Clearly inform those making proposals that you intend to take ownership or possession of their ideas as a part of the interaction.
 - Highlight or otherwise call out such language in any RFP.
- Failure to affirmatively address this issue with prospective proposer.

RECOMMENDED BEST PRACTICES FOR CLIENT SIDE:

- Advise proposers to clarify their own intentions with ideas proposed and content disclosed.
- Clearly state that any ideas presented for consideration by agencies or consultants remain at all times the sole property of the agency and/or consultant and can only be implemented by the client or their assigns in the event that similar or identical concepts are presented simultaneously by competing consultants or agencies.
- Advise proposers of the notification procedure to be used when similar or identical concepts and ideas are proposed by different responders.

RECOMMENDED BEST PRACTICES FOR PRACTITIONERS RESPONDING TO RFPs:

Sharing ideas with anyone is risky because the protection and proper use of those ideas depends on the integrity of the recipients. You can, however, take steps to protect yourself and your intellectual property from predatory business practices:

- Notify the prospective client in writing and verbally that your ideas are protected and may only be used after suitable and equitable arrangements have been agreed upon in writing and in advance.
- Post a copyright notice on all presentation and creative materials you develop to signal that you consider these materials your intellectual property. (Once an agreement has been reached, you may transfer those rights to the client, or negotiate what portions you will retain what will transfer to the client.)
- Have the following language (shown below as a sample) on every page of your proposal.

Notice of Proprietary and Confidential Content:

Copyright © 2010, XYZ Public Relations Group Inc. All rights reserved.

This proposal, and the ideas and concepts it contains, are proprietary and the exclusive property of XYZ Public Relations Group Inc. Recipients are prohibited from transferring these ideas to others or copying them, and the proposal must be returned upon request. This proposal is loaned solely for confidential consideration in the selection of a public relations firm, and with the mutual understanding that the proposal recipient is prohibited from using any of the content of this proposal, in any manner detrimental to the interests of XYZ Public Relations Group Inc., until appropriate compensation arrangements have been agreed upon in writing.

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