

# Standards of Practice







# Standards of Practice



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# 1: GENERAL

## Introduction

The Point of Purchase (P-O-P) industry is concerned with the design, production and distribution of advertising and merchandising materials for use at the point of purchase, the place where a customer makes the final decision to select a product or service.

POPAL is the only not-for-profit trade association exclusively committed to serving the interests of all those involved in the P-O-P industry. Founded in the USA in 1936, in Europe in 1988, and in the UK & Ireland in 1992, POPAL helps members make P-O-P advertising work more effectively, raises awareness of P-O-P as a specific medium, serves as a source of market research information, and contributes to training and education. POPAL also promotes the industry through an active PR programme and representation at leading industry events.

POPAL actively supports the professional development of the P-O-P industry, and has formed the Professional Policies and Standards Working Group. Its mission is to provide policies and guidelines to encourage members to maintain the highest standards of professional conduct; hence it has produced POPAL's Standards of Practice.

The P-O-P industry has developed rapidly since the first Standards of Practice was published, and now includes new areas such as digital communications and field marketing. P-O-P advertising has moved centre stage, and its importance in the marketing mix is now rated higher than most other forms of media. It delivers better value to advertisers, who are moving their budgets below the line at an increasingly fast pace. At the same time, they are demanding measurability to justify higher spends in-store and greater professionalism from their P-O-P suppliers. In recognition of this, the

*Professional Policies and Standards Working Group has updated these Standards of Practice. In these Standards of Practice: 'POPAL' refers to POPAL UK & Ireland Ltd, 'these Standards of Practice' refers to this document and any other version or replacement which may be introduced in future, and 'POPAL's memorandum and articles of association' refers to those which are in effect from time to time.*

## POPAL's Objectives

- To promote the importance of P-O-P in the total marketing mix
- To improve levels of education in the industry
- To develop and encourage high standards of practice
- To represent industry views
- To promote a better understanding of the medium
- To provide an opportunity to exchange ideas and experiences
- To conduct research for a more effective strategy

# POPAL Code of Conduct

As a condition of membership, each member is expected to:

- Meet the expectations of the POPAL Code of Conduct, these Standards and Practice, and any POPAL bye-laws in force at any time, and seek to achieve widespread acceptance of all these amongst their staff.
- Ensure that its staff comply with this Code of Conduct while engaged in the member's P-O-P and POPAL related activities, and encourage them to register as appropriate for any relevant POPAL courses on professional development.
- Uphold and enhance the standing of POPAL, never acting in a way which is detrimental to its interests or reputation.
- Maintain the highest level of integrity and honesty at all times, and adhere to good business practice.
- Be aware of, and adhere to, P-O-P industry trade practices and standards as issued from time to time by POPAL.
- Keep abreast of current industry practice, and act competently and diligently.
- Comply with all applicable laws and any relevant guidance, decisions and recommended practices which have legal status.
- Comply with the Ethical Code of The Chartered Institute of Purchasing and Supply (see next section).
- Communicate clearly and comprehensively all relevant company policies and terms and conditions before entering into a business relationship, including pricing and ownership issues.
- Wherever possible, encourage the conservation of energy and the recycling of used products, packaging and material.

*A member must not hold itself out as having POPAL's endorsement in connection with any activity unless it has first obtained POPAL's written approval. (The POPAL P-O-P reference manual contains guidelines for the correct use of the POPAL logo.) POPAL meetings provide an opportunity for networking, and members should expect business discussions there, but a member must not use these meetings as a platform for sales pitches or the distribution of brochures or other sales or marketing materials.*



# The Ethical Code Of The Chartered Institute Of Purchasing And Supply

*Reprinted by permission of the Chartered Institute of Purchasing and Supply. This Code was approved by the Council of CIPS on 16 October 1999, and was current at April 2007.*

## Introduction

Members of the Institute undertake to work to exceed the expectations of the following Code and will regard the Code as the basis of best conduct in the Purchasing and Supply profession.

Members should seek the commitment of their employer or employees to the Code and seek to achieve widespread acceptance of it amongst their fellow employees.

Members should raise any matter of concern of an ethical nature with their immediate supervisor or another senior colleague if appropriate, irrespective of whether it is explicitly addressed in the Code.

## Principles

Members shall always seek to uphold and enhance the standing of the Purchasing and Supply profession and will always act professionally and selflessly by:

- Maintaining the highest possible standard of integrity in all their business relationships both inside and outside the organisations where they work;
- Rejecting any business practice which might reasonably be deemed improper and never using their authority for personal gain;
- Enhancing the proficiency and stature of the profession by acquiring and maintaining current technical knowledge and the highest standards of ethical behaviour;
- Fostering the highest possible standards of professional competence amongst those for whom they are responsible;
- Optimising the use of resources which they influence and for which they are responsible to provide the maximum benefit to their employing organisation;
- Complying both with the letter and the spirit of:
  - the law of the country in which they practice;
  - Institute guidance on professional practice;
  - contractual obligations.
- Members should never allow themselves to be deflected from these principles.

# The CAP Code

POP AI UK & Ireland is proud of its successful track record of promoting high standards of self-regulation within the industry, without the need for external legislative intervention. As part of POP AI UK & Ireland commitment to marketing excellence and best practice, it recommends that all members comply fully with the spirit and letter of the regulations laid out within the CAP Code when producing P-O-P material, and that the Code should be viewed as applying to the content of any non-broadcast marketing communication, including in-store material.

The British Code of Advertising, Sales Promotion and Direct Marketing (the Code) is the rulebook for non-broadcast advertisements, sales promotions and direct marketing communications in the UK. Designed to protect consumers and create a level playing field for advertisers, the Code is primarily concerned with the content of marketing communications, rather than with terms of business or products themselves.

Brand and retailer members will already be aware of the CAP Code and the importance of ensuring that any P-O-P material they commission complies with its regulations. Indeed, many P-O-P campaigns utilise images and copy that echo above-the-line themes, with compliance to the Code having already been verified by the Advertising Agency and Client during campaign development.

Nevertheless, POP AI UK & Ireland is aware there is a sizable amount of P-O-P produced where suppliers will receive a brief from a brand or retailer to create original imagery, as part of an in-store programme. Clearly, it is therefore essential for POP AI members to have a sound understanding of the CAP Code, as it applies to our industry, and of their specific responsibilities under the terms of the Code. POP AI UK & Ireland recommends that, for the avoidance of doubt, P-O-P producers should include a clause into their approval process to the effect that clients confirm, during sign-off of any reproduction artwork, that the presented design solution conforms to CAP Code regulations.

The Code supplements the law, fills gaps where the law does not reach and often provides an easier way of resolving disputes than by civil litigation or criminal prosecution. In many cases, self-regulation ensures that onerous legislation is not necessary. Although advertisers, marketers, agencies and media may still wish to consult lawyers, compliance with the Code should go a long way to ensuring compliance with the law in areas covered by both the Code and the law.

By creating and following self-imposed rules, the P-O-P industry will continue to ensure the integrity of any advertising, promotions and communications produced for use within the in-store environment.

The Committee of Advertising Practice (CAP) is the self-regulatory body that creates, revises and enforces the Code. CAP's members include organisations that represent the advertising, sales promotion, direct marketing and media businesses. Through their membership of CAP or through contractual agreements with media publishers and carriers, businesses agree to comply with the Code to provide consumers with confidence in marketing communications that are legal, decent, honest and truthful.

The full text of the code can be found on [www.cap.org.uk](http://www.cap.org.uk)

# Membership

## Introduction

POPAl is a company limited by guarantee. Every member is a full legal member of the company, with all the rights and privileges that brings, and is bound by POPAl's memorandum and articles of association. Each member is liable to contribute a maximum of £1 in the event the company is wound up.

Membership is corporate, and all company employees are eligible to participate in POPAl activities. Each corporate member is required to designate an individual to act as its voting representative.

The membership database is made available on a restricted basis to companies who provide a tangible benefit to POPAl members, e.g.. The In-Store Show, which offers discounted rates for POPAl members.

## Categories

Membership categories are:

- Brands
- Designers
- Materials and technology suppliers
- Producers
- Distributors, installers, field marketing companies, fulfilment
- Houses
- Digital communications
- Retailers
- Related disciplines, e.g. agency, consultancy, education

## Application and Acceptance

All applicants are required to file a completed application with POPAl in the appropriate form. By doing so, an applicant accepts these Standards of Practice and promises to maintain the professional standards of the association by adhering to the POPAl Code of Conduct and by upholding these working practices.

An application will usually be accepted if no objection is received from an existing member, although POPAl reserves the right to require satisfactory references before granting membership. If an objection is received from an existing member, the application will be reviewed by the POPAl Board. The Board will seek representations from the applicant, the member who has objected, and any other person it wishes to consult, and it will take account of any representations it receives, but it is not required to give any reasons for its decision.

## Resignation

Any member may resign in accordance with the memorandum and articles of association. By doing so, a member forfeits its right or claim to any division of, or equity in, any monies or properties of POPAl. Resignation does not invalidate any agreement or contract between a member and POPAl, or relieve a member from its obligation to pay any monies which have become due.

# 1 GENERAL

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## *Revocation*

POPAl may revoke a member's membership in accordance with POPAl's memorandum and articles of association where POPAl reasonably believes one of the following applies:

- The member has failed to respect and observe the POPAl Code of Conduct, any other aspect of these Standards of Practice or any POPAl bye-law
- The member has brought, or is likely to bring, POPAl or the P-O-P industry into disrepute
- The member has ceased trading, is bankrupt or is insolvent
- The member is more than 90 days late in paying any monies
- Nothing in these Standards of Practice restricts any right POPAl may have under POPAl's memorandum and articles of association to revoke or suspend membership.

## *Refunds*

No monies will be refunded to any member whose membership ends for any reason.

## *Reinstatement*

A member who has resigned in good standing may re-apply for membership, and will be required to meet the requirements for membership at that time. Any member whose membership has been revoked for non-payment of monies owed may re-apply for membership only after paying the outstanding balance due at the time of the revocation.

## Disciplinary Procedure

The POPAI Board may call a member to account if it has breached the POPAI Code of Conduct, or the Board reasonably suspects it of having breached the Code. It may do so either of its own volition or following a complaint.

POPAI will not entertain a complaint against a member until the complainant has submitted a signed written complaint - with full particulars - to the Director General or a member of the Board.

Such a complaint will be the subject of a preliminary investigation by a panel consisting of three members of the Board designated by the Chairman. The member under investigation will be notified that a complaint has been filed, the details of the complaint, and that a preliminary investigation is proceeding.

Following a preliminary investigation, the panel will determine whether there is sufficient evidence that a breach of the POPAI Code of Conduct has occurred. If the panel determines that there is insufficient evidence to support the complaint, it will promptly notify both the member under investigation and the complainant.

If the panel determines that there is sufficient evidence to support the complaint, the matter will be submitted to the Professional Polices and Standards Committee, which will be composed of three member representatives selected by the Chairman. Wherever possible, the Chairman will appoint representatives from members who in his reasonable opinion are not in direct competition with the member under investigation. The member under investigation will be notified in writing of the complaint being considered by the Committee, and the identity of the members constituting the Committee, and will be allowed a reasonable opportunity to present its case at a hearing to be scheduled by the Committee. If the member wishes, it may be represented by a solicitor or barrister at any hearing.

If the Committee determines that the member under investigation has breached the POPAI Code of Conduct, it may impose such sanctions as it considers are appropriate to the severity of the breach. These sanctions may include any combination of censure, suspension and/or expulsion. A member who is the subject of such a determination may appeal to the full Board provided it submits to the Board a written notice of intent to appeal within twenty (20) days of receiving the Committee's decision.

If the Chairman of the Board is unavailable for any reason, or is himself the subject of a complaint, his role in the disciplinary procedure will be taken by the Director General or as the Board decides.

# 2: POINT OF PURCHASE

## Selecting A P-O-P Supplier

Much of the success of any P-O-P campaign depends upon the proper selection of a supplier. Members of POPAI welcome being judged on criteria such as those listed below:

- Experience in the industry
- Special knowledge of the advertiser's particular market sector
- Capable and experienced management team
- Skill, ingenuity and originality in designing & developing solutions
- Production, installation and project management facilities
- Adherence to production schedules and quality control techniques
- Past performance
- Record of business integrity and financial stability
- Client list
- Investment in personnel, technology and relevant areas
- Environmental awareness and policies
- Health and safety awareness and policies

When a marketing plan includes P-O-P advertising material, the advertiser may elect to assign the development of a retail communications programme to a P-O-P producer. Some producers have staff and facilities to plan, design, develop, produce and distribute. Others specialise in design and development, but contract with others for production and distribution, or the advertiser does the planning and development and contracts only for production and distribution. Because of these differences, it is most important that both parties are fully aware of just what each other's contribution will be before undertaking a particular project.

### *Planning Is A Co-operative Effort*

In the great majority of instances, planning and development of P-O-P advertising takes place with the producer, the advertiser, the agency and the retailer working together. Few advertisers find it economical to maintain a staff with the variety of skills necessary for the creation of their programmes. The most efficient planning takes place when a sense of teamwork is fostered among the advertiser, the producer, the agency and the retailer - who has the final say on whether P-O-P will be allowed in the store. For this reason, the producer should be consulted in the initial stages of the development of the entire marketing campaign.

# Planning A P-O-P Campaign

## *The Role Of The Advertiser*

Advertisers usually delegate the P-O-P planning phase to specialists within their companies. These specialists may be sales promotion managers, merchandising managers, brand managers, trade marketing managers, strategic planners or merchandising departments with responsibility for planning and development. They are guided by designated budgets in evaluating the development of P-O-P programmes which meet their objectives.

It is not unusual for companies to compile a roster of suppliers from which to make a selection for any given project. This can bring economies and efficiencies including, with fewer suppliers, enhanced knowledge of how each party operates. Part of any agreement might stipulate that, to avoid conflicts of interest, the supplier should not simultaneously work on a competitive product.

An advertiser's purchasing manager is sometimes charged with acquiring P-O-P. Such an individual is most often governed by strict policies\* and criteria surrounding the methods of purchasing, bidding and acquisition procedures. Purchasing managers may buy a variety of materials in addition to P-O-P advertising.

*\*See the Ethical Code of the Chartered Institute of Purchasing and Supply on Page 3.*

## *The Role of The Retailer*

Retailers have the last word when it comes to P-O-P display placement for all in-store campaigns. If the campaign does not meet their specific criteria for various display elements, it will not receive retail placement. In some cases a retailer may purchase P-O-P material as the advertiser.

## *The Role of The Producer*

In the planning stage, the producer advises the advertiser on such matters as size, form and function of the P-O-P materials. To do this the producer should have a working knowledge of marketing, manufacturing processes, limitations within different market sectors and store types, and the range of materials available to the industry.

The presentation of initial concept ideas takes the form agreed upon with the advertiser, and may include sketches, computer drawings and/or models for consideration.

## *Summary*

Successful P-O-P programmes result from proper planning and development. Good planning and development comes only through the proper performance of all the roles and responsibilities discussed in this section.

## 2 POINT OF PURCHASE

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### P-O-P Briefs

#### *The Briefing Process*

The briefing process is a critical part of any P-O-P programme. It is recommended that the advertiser and producer agree the most efficient way to handle the project. Past experience has shown that the best results are achieved when both advertiser and producer have a comprehensive understanding of all elements of the project.

The advertiser should prepare as much information as possible for the briefing. Experience shows that departments other than P-O-P marketing (e.g. national accounts, trade marketing etc) should be involved in this process.

Advertisers and producers are encouraged to develop preliminary checklists to help their employees. The following is a list of the key topics to be covered in any project briefing, although this is for guidance only, and the briefing should be tailored to meet specific project requirements:

#### *Marketing Considerations*

- What is the advertiser's marketing objective for the product or service?
- Who are the competition and what is their marketing strategy?
- What is the advertiser's in-store objective?
- Who are the target market?
- What is the specific purpose of the proposed P-O-P material?
- What is the theme of the total advertising programme, and, if it differs, of the P-O-P programme?
- Is the P-O-P to be co-ordinated with the total advertising programme?

#### *Practical Considerations*

- What features of the product pack itself must be seen or need highlighting to the consumer?
- What life expectancy is required?
- In what types of retail outlet will the materials be used?
- What is the budget for the project?
- Are development costs speculative, invoiced separately, or included in the production price?
- What are the terms of payment?
- What quantities are required?
- Will overs/unders be acceptable? At what %?
- Who has the purchase order responsibility?
- What is the project timetable for design, approval, production and distribution?
- How will the P-O-P be packed, shipped, distributed and installed?
- Have retail partners been approached to assist in compliance?
- Will the client be supplying graphics, and what message must the unit specifically communicate?
- What legal restrictions must be taken into consideration?



A suitable checklist might be as follows:

- Contact name**
- Brand name**
- Marketing objectives and background to brief**
- Overview of brief**
- Brand positioning**
- Product pricing strategy:** Economy, premium etc
- Consumer profile:** Target market
- Product benefits:** Detail of specific selling points
- Competition:** Key competitors
- Competitor positioning:** Marketing strategy of competitors
- Media activity:** Tie in with P-O-P?
- Product range:** All products requiring physical displays and how many facings (including competitors)
- Packaging requirements:** Hanging versus boxed, etc
- Physical pack:** Pack description (a sample with product if available would help graphic design on the unitary and assist constructional engineering)
- Stockholding:** Product load up
- Packaging hierarchy:** What feature of the pack itself must be seen or need highlighting to the consumer?
- Fixturing:** Overview of initial ideas for the units, e.g. permanent or temporary, wall mounted, freestanding, rotating, etc
- Placement:** Proposed in-store location - any known retailer restrictions.
- Graphics:** What will be supplied by the client? What messages must the unit communicate?
- Timescales:** Critical path to installation date
- Budget:** Development costs and unit costs
- Quantity:** Number needed and call off rate
- Distribution:** Will the units be dispatched to single or multi-point? Is special installation required?
- Retail outlets:** Details of distribution outlets. Addresses of a cross section for field research.
- Compliance:** Have retail partners been approached to ensure cooperation?
- Health & Safety:** Risk assessment and management. Compliance with regulations etc
- Disability issues:** Ease of access and use.
- Legal issues:** Ensure compliance with legislation covering issues such as the use of hazardous materials, health and safety, disability discrimination, and the promotion of alcohol and tobacco. Ensure the work to be undertaken is covered by an enforceable contract. Understand the commitments being undertaken, and the associated liabilities.

*Deal with intellectual property rights (see Page 19).*

# The Creative Function

### *Confidentiality Agreements*

Before a design brief is given, everyone involved should sign appropriate confidentiality agreements to protect any initial concepts and discussions about commercial issues. These agreements are also important for preserving the ability to register any designs and to patent any inventions. Those involved should clearly identify which aspects of the information they exchange are actually confidential: it is easy to jeopardise legal protection for important information by claiming protection for trivia.

### *Costs*

A variety of expenses are incurred in providing creative services, including the maintenance of a talented design and engineering staff and other facilities to provide illustration, copy, detailed layout, and engineering and structural features as required. To maintain these so that they are available as and when they are needed requires a substantial annual investment which has to be recovered – either as a separate charge or in the unit price for the P-O-P materials.

It is good practice to agree design costs at the briefing stage. It should also be agreed as to what form the initial presentation is to take, (e.g. sketches, computer renderings or prototypes), and whether their cost is to be borne by the advertiser as a separate item. The producer should not proceed past the agreed stage without the advertiser's approval.

If the advertiser is briefing a number of producers, this should be made clear at the time of briefing. This is especially important if the brief is speculative (i.e. the advertiser is not prepared to pay design costs), as this will assist the producer in the evaluation of the brief and its potential.

### *Presentation Of Initial Proposals*

The producer normally presents sketches or computer renderings (in some cases blank models) to show how it is proposed to solve a particular merchandising problem. Such presentations represent a preliminary study of the advertiser's merchandising problem by the producer.

It may be necessary to prepare a complete mock-up in order to make sure the unit is practical and to ensure a realistic price quotation. The rough sketch itself may represent only a fraction of the expense incurred in preparing the presentation.

For the experienced advertiser, rough sketches are usually sufficient to be able to approve further developments or to suggest a new approach. Any further development should be agreed upon before proceeding.

# Production Of P-O-P Materials

The following are considered good practice regarding terms of production. They do not necessarily reflect the legal position.

## *A Signed Contract*

It is strongly recommended that a signed agreement is put in place before any work is done. A good agreement serves three main purposes:

- It ensures that everyone knows what to do and what to expect.
- It covers the relevant issues more appropriately, and with greater legal certainty, than does the general law.
- It provides a solid basis for managing and resolving any disputes which might arise - preferably without litigation, which is always more likely where there is no signed agreement.

## *Quality*

The standard and quality of any work, materials and finished products should be specified.

## *Timescales*

A clear timetable should be agreed, and it should be agreed whether this is a firm commitment or merely a target.

## *Delivery*

This refers to when and where the finished materials are legally transferred from one person to another, which may not be when the materials are physically handed to the recipient. This should be agreed as it has implications for risk of loss and damage and insurance. The International Chamber of Commerce Incoterms provide some useful and internationally accepted definitions for various standard delivery terms, and advertisers and producers should consider which are the most appropriate terms in the particular circumstances.

## *Ownership*

The ownership of any tangible materials - such as drawings, CDROMs, DVDs, tooling, prototypes, etc - and of the legal rights in the underlying design and creative work should all be agreed: payment does not automatically result in ownership, and ownership of one does not automatically mean ownership of the other. See 'Ownership of Designs and Materials' on Page 15 and 'INTELLECTUAL PROPERTY RIGHTS' on Page 19.

## *Payment Terms*

As a general rule, orders are accepted for shipment and/or invoicing as soon as the material is manufactured, unless otherwise negotiated in the original agreement. Generally terms are ex-works, net, 30 days. In view of the fact that many producers are small-to-medium size companies, advertisers should strive to meet these terms as cash flow is of extreme importance to the smooth running of these companies and their ability to provide the level of service required.

## 2 POINT OF PURCHASE

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### *Modifications*

Changes or additions by the advertiser to the approved design or specification are made at the expense of the advertiser. Additional charges can result from delays in the advertiser supplying instructions, copy material or other information which should come from the advertiser. The producer should advise the advertiser of the impact any proposed changes is likely to have on costs and schedules.

### *Overruns and Underruns*

Overruns and underruns are normally charged or allowed at the unit price of the order. To avoid subsequent misunderstanding, the percentage of these should be agreed upon at the time of briefing and before quotation. Due to manufacturing considerations, and the need to produce more components than are actually needed to complete the order quantity (to allow for spoilage during the manufacturing process), the advertiser should inform the producer at the design stage if exact quantities are required.

### *Cancellations*

If the parties have agreed on a right of cancellation, and the advertiser cancels the order, the producer would normally be entitled to compensation for all material and work already ordered or completed at the time of cancellation.

### *Liabilities*

It is essential that everyone agrees their liabilities in the unfortunate event of a breach of contract: compensation could run to millions of pounds for a product recall, or if a window of promotional opportunity is missed (such as where a promotion is linked with a national or international event). This is not a simple matter, and it is questionable whether many of the standard terms and conditions in use would be effective if tested in court. As the objective is to avoid excessive risk - either to the profitability of a business or to its very survival - members should obtain legal advice on this crucial issue.

## Pre-Production Samples

Pre-production samples can fall into two categories: prototypes with artwork, and production first-offs (actual production units/press proofs/mould shots/tool samples).

It is good practice for the producer to provide two 'first-off' units for approval by the advertiser. These first-off units should be exact samples of the unit to be manufactured in quantity. They should show the form and quality of the units to be produced, and should be approved for production by the application of a sticker bearing the signature of the advertiser's representative and the date of approval. One first-off unit should be retained by the advertiser and one by the producer. In the event of a dispute arising, these units may be used to evaluate any discrepancies.

Where the cost of producing first-off units is prohibitively high, the advertiser and producer should agree what constitutes an approval to manufacture.

# Ownership of Designs and Materials, and Related Issues

## *Furnished Materials*

Materials furnished to the producer are usually accepted at a previously agreed handling and storage charge. The producer must exercise reasonable care of these materials, and responsibility for them should be agreed in advance. Those furnishing materials should obtain assurances that their materials will be protected, and it is good practice to insure them.

Production spoilage is allowed only as agreed, but under normal contractual arrangements the producer has the right to invoice for full order quantity if spoilage of furnished materials is not the producer's fault.

## *Ownership of Materials*

With some projects, it may be appropriate to agree who owns which materials at various stages. For example, a producer may be able to re-use certain materials and might wish to be able to do so if the advertiser does not pay when it should. And after cancelling an order, an advertiser might want the ability to reclaim any materials it has furnished to a producer, and perhaps the ability to make use of any material it has had to pay for.

## *Design Issues*

As many aspects of a design are legally protected against copying, copying someone else's work is clearly to be avoided. (It is worth noting that many instances of what designers might consider to be 'taking inspiration' are treated as copying by the courts.) But as someone may 'own' a design, in the sense that he may be able to stop anyone else using it (or one which is too similar), it is good practice to search the relevant registers before taking a design into production. For those who are not familiar with intellectual property, a short introduction to the subject can be found on Page 19.

New designs are likely to result in potentially valuable intellectual property which those responsible for the design are likely to want to own, or at least be rewarded for. Many producers will seek to build a portfolio of intellectual property in order to be able to re-use and refine designs, and to add value to the business. Advertisers will have their own interests to protect, ranging from the protection of brands to a desire for some degree of exclusivity in the design of new P-O-P material.

It is often unclear who owns intellectual property unless this is covered in a signed agreement. It will not necessarily belong to the person paying, and it will probably not all belong to just one person, which can have awkward consequences. Many producers use self employed 'contract designers' in addition to regular employees, and this can cause further problems: while almost everything created by an employee belongs to the employer, this is not the case with contract designers.

All this makes any exploitation of a design unnecessarily complex, and the result can be time consuming disputes, soured relationships, and expensive litigation unless intellectual property is covered properly in signed agreements between all those involved. It is also good practice to keep a full history of a project: the brief, the terms of the commission, exactly what the new design is, who created it, when they created it, how it evolved, correspondence, minutes of meetings etc.

## 2 POINT OF PURCHASE

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### *Furnished Designs*

If an advertiser supplies a design to the producer, whether finished or early stage, it should provide contractual assurances that the producer's use of that design will not infringe anyone's intellectual property rights. An advertiser which changes producer should be wary of re-using existing designs - even if these are to be updated, 'refreshed' or 're-invigorated'. Unless all the legal issues have been covered, expensive disputes and litigation are a very real possibility, as several members have recently discovered.

A newly appointed producer should be just as wary, as it too could become embroiled in a dispute with the previous producer. In many instances liability is strict, which means that ignorance of the legal issues and the history of the project is not a defence, though actual knowledge can make the consequences worse. Producers should generally refrain from bidding on, or reproducing, designs or models created by other producers unless the advertiser or agency has secured a release or a licence from the original producer. In these situations, any potential problems should be covered in a signed agreement.

## Environmental Issues

Advertisers and producers should, wherever possible, encourage the conservation of energy and the recycling of used products, packaging and materials used in manufacturing P-O-P materials. As most packaging is recyclable, this makes good sense, but industry has also had to work with packaging minimisation measures since 1994. The obligation to recover and recycle specified tonnages of packaging waste every year falls on businesses that meet two threshold tests: those handling more than 50 tonnes packaging, and those having a financial turnover of more than £2 million. The amount each business has to recover depends on three factors: the amount of packaging the business handles, the activity the business carries out on packaging, and the business recovery and recycling targets for the year (annual business targets are set and the producer is given a percentage of that target to meet).

Businesses may comply with their obligations themselves, but it is more usual to do so through one of the registered compliance schemes: compliance is demonstrated by obtaining packaging waste recovery and export notes, known as PRNs and PERNs.

A summary of these obligations can be found at: [www.defra.gov.uk/environment/waste](http://www.defra.gov.uk/environment/waste)

## Summary

The advertiser-producer relationship is a very important one, due at least in part to the importance of P-O-P in the marketing mix, and it follows that this relationship should be fostered whenever possible. Producers should be encouraged to gain a deep understanding of their client's business to enable them to provide the best solutions to creative briefs.

Advertisers should consider showing a high degree of loyalty to producers who fulfil their requirements satisfactorily, to encourage those producers to commit a high level of resources and to give the best solutions possible.

# 3: DIGITAL COMMUNICATIONS

## Introduction

The digital P-O-P sector is comparatively new in the UK, and as such formal regulation for the industry does not exist through one body. However, POPAI's specialist group, POPAI digital, is seen as a leader in this field by POPAI Chapters around the world.

Those involved in this sector have to comply with more specialist regulations as well as all the usual ones. Examples include those concerned with computer hardware, software, and programme content. Some of these are noted below, but this is not an exhaustive list or a substitute for specialist legal advice.

## Standards

Some relevant standards are:

- IET (Institute of Engineering and Technology) wiring regulations and certification.
- CE regulations for IT and associated electrical equipment.

## Programme Content

A typical music or video recording is protected by several copyrights and other rights, including those in the recording itself and those in the underlying music, lyrics, choreography and performances. Playing a recording in public - such as in a shopping area - without an appropriate licence will infringe these intellectual property rights, and those liable for these infringements potentially include all those who control the premises, supply the equipment, operate the equipment, and supply the content.

A number of licensing schemes exist where the rights owners have pooled their rights in order to enable a few organisations to grant licences covering a vast amount of material. These include:

- **MCPS licence** - an ad hoc licence administered (for a fee) by the Mechanical Copyright Protection Society.
- **Society**. Broadly speaking, a licence is needed when music is transferred to a different format - such as a CD.
- **PRS licence** - an annual licence administered (for a fee) by the Performing Right Society. This is needed for the playing of recorded music in public places. Most retail outlets will already have such a licence.
- **PPL licence** - an annual licence administered (for a fee) by Phonographic Performance Ltd. This is needed for the playing of recorded music in public places. The fee structure has changed recently, and many outlets may need to review their licences.
- **VPL licence** - an annual licence administered (for a fee) by Video Performance Ltd. This is needed for the playing of music videos in public places.
- It will often be necessary to obtain a licence under more than one scheme. The licences needed, and the level of fees to be paid, depends on a number of factors, including the user, the sector and the delivery channel.

### Environmental Issues

In addition to the issues discussed on Page 17, members involved in digital communications must take account of further regulations which cover the use of certain hazardous substances in electrical and electronic equipment and the collection and recycling of waste electrical and electronic equipment. These regulations potentially affect all parts of the supply chain.





# 4: INTELLECTUAL PROPERTY RIGHTS

## Introduction

Whereas intellectual property was once an obscure subject, ignored by many, it should now be on every member's agenda. For many, the value of their business reflects their intellectual property as much as their client list, and an increasing number are becoming embroiled in intellectual property disputes. This guide is an introduction to some of the legal issues in the United Kingdom: it is not comprehensive and it is no substitute for specialist legal advice.

An idea or design may be protected legally by one or more intellectual property rights. These are a serious matter: a court will almost inevitably order an infringer to stop infringing, to compensate the claimant, and to pay the legal costs. In more serious cases, the legal costs alone are likely to approach (or exceed) £100,000. The court may well order any infringing material to be destroyed, which could involve high recall and replacement costs. Some infringements are criminal offences, which means an infringer may be prosecuted by the police, the company and its managers may be fined, and in principle the managers can be imprisoned for up to 10 years. The mere fact of a conviction may cause problems for many individuals. All this makes it easy for a rights owner to make unreasonable but successful demands for payment.

## *Designs*

Some aspects of a product's shape and finish are automatically protected against copying – this protection extends far beyond slavish copying - but this does not prevent someone arriving at the same design independently. Some aspects which create a different impression to that created by previous designs can be registered, which does provide protection against independent design and gives the owner a legal monopoly (in effect, ownership of the design). Registration is likely to cost between £300 and £1,000 when professional fees are taken into account, which is a relatively modest sum for keeping a certain image or style exclusive to a brand. A design can be registered up to one year after it has been disclosed, which enables the commercial success and value of a design to be tested before time and money are spent on registration, but there are some risks with this approach and early registration is advisable.

## 4 INTELLECTUAL PROPERTY RIGHTS

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### Interventions

Inventions transcend a single design: they are new ideas which can be applied in a practical way, and they can be patented if they would not have been obvious to someone working in the relevant field.

Patents provide legal protection against both copying and independent design - they provide a legal monopoly (in effect, ownership of the idea). Many people tend to associate patents with hi-tech inventions, but most patents cover far simpler ideas. Obtaining a patent tends to be more expensive than registering a design, and many P-O-P related patents are likely to cost £1,000 - £5,000 when professional fees are taken into account. While not every new idea will justify this expense, patents can offer excellent value for money when the idea provides a real advantage which can be licensed to others so as to generate some royalty income.

A valid patent cannot be obtained if the idea has been disclosed before an application has been filed, so if there is any possibility of applying for a patent it is essential that the idea is kept secret and is only discussed under the cover of an effective confidentiality agreement.

Even ideas which are not patentable might be very original in the marketplace, and so very valuable. Any protection for these will have to come from keeping them secret. But in practice secrets have to be shared: an advertiser may share its ideas for a new promotion with its agency, or an agency may reveal its ideas at a competitive pitch for the advertiser's business. A good confidentiality agreement can provide useful protection in this situation too.

### Markings

Once an application for a patent, or for the registration of a design, has been filed, the relevant products should be marked accordingly: this may affect the amount of compensation the owner is entitled to, and it is likely to reduce the level of copying in the first place. Similarly, trade marks used on P-O-P material should be identified as such, using ® for registered marks and ™ for unregistered marks. There are rules governing the use of markings, and specialist advice should be sought.

# 5: DEALINGS WITH COMPETITORS

## Introduction

Competition law is another issue which has assumed much greater significance in recent years. It reflects the public policy assumption that competition is good for customers in the short term and good for suppliers in the long term, and in order to promote competition it makes certain activities unlawful. These include: directly or indirectly agreeing prices, dividing up customers, and adopting similar terms or business (which is one reason why POPAI has not issued a set of industry standard terms of business).

It is not just formal agreements which are caught: certain behaviours can be too, such as when members of a group follow the pricing or terms of one of their number. And while the absence of any intention to cause any harm might reduce the fine, it is not a defence.

## The Consequences of Anti-Competitive Activity

The Office of Fair Trading (OFT) has wide ranging powers to investigate complaints, to order businesses to change their behaviour, to fine them up to 10% of their entire group's turnover, and to apply for an order preventing the managers involved from being involved in the management of any business for up to 15 years. Any agreement which breaches these rules is automatically unenforceable, and any customers and other suppliers who have been affected by the arrangement can claim compensation.

Legal advice is essential if a member is contacted by the OFT – who might arrive without warning to remove vital company records. As it is a criminal offence to obstruct them, and they may allow the organisation they are visiting just 30-60 minutes in which to obtain legal advice, even members who have behaved perfectly properly should be prepared for such a visit so as to minimise the inevitable disruption.

## Trade Associations

Trade associations are beneficial for a variety of reasons: they enhance the conduct of a business, the industry and therefore the economy; and they provide a useful forum for ideas to be shared. But they can be abused. This is why POPAI meetings may not be used as a forum for discussing certain issues. Members would be well advised to avoid any such discussions at any venue, and to obtain expert advice if any potentially anti-competitive issues do ever arise.

## 5 DEALINGS WITH COMPETITORS

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### Good Practice

The following are general guidelines, and it may be appropriate to depart from them in some circumstances.

- Do not divide up markets with competitors by way of customers, geographical area, products or work to be undertaken.
- Do not discuss pricing with competitors. Price fixing (or 'stabilisation' as it is sometimes euphemistically called) is unlawful, whether prices are kept steady or made higher or lower.
- Do not charge different customers different prices except where this can be objectively justified - such as for volume discounts.
- Do not insist that a customer buys exclusively from you. For example, do not make sales or purchases conditional upon sales or purchases of other products.
- Do not place restrictions on the re-sale activity of a customer. Relationships with intermediaries, agents and distributors should be governed by the principles of fair dealing and they should be permitted to determine their own resale prices and to deal in competitive goods within territories of their own choice.
- Do not discuss with a customer how you will sell to other customers.
- Ensure that full minutes are kept of any trade association meetings and meetings with competitors.

# Bribery

The Bribery Act 2010 criminalised several business activities, including giving a bribe, receiving a bribe, and failing to prevent bribery. These are all extremely serious offences, and carry a maximum sentence of 10 years imprisonment and an unlimited fine.

The Act's definition of a 'bribe' embraces many activities, including those which take place abroad. It covers much more than the payment of money in return for a contract. Furthermore, an offence will have been committed even if the bribe is rejected. Members will need to consider carefully whether their corporate entertainment activities could fall foul of these rules.

Perhaps the most difficult area is the offence of failing to prevent bribery. Both a company and its senior management can be prosecuted for this offence even if they are unaware of what their staff are doing.

To avoid conviction, they need to be able to show that there were adequate procedures in place to prevent bribery occurring. These should include a top-level commitment, a proper risk assessment, the clear communication of the company's anti-bribery policy throughout the whole organisation, and taking effective steps to prevent bribery and to punish it when it is discovered.

