

Keeping ad agency contracts on track



Every day, businesses fail to realize the anticipated returns on their marketing, advertising, and promotional spend. The reason? In many cases, the agency unintentionally fails to meet all their contractual agreements because of highly complex agency agreements that reflect the evolving nature of agency compensation models and changes in the approaches to digital advertising and social media. Whatever the case, the need to manage risks related to your advertising agency relationships is critical to achieving the full potential of your marketing, advertising, and promotional investments.

Marketing, advertising, and promotional expenditures represent a significant cost of doing business in today's competitive marketplace. The behind-the-scenes processes related to advertising agency performance are often an unknown for many businesses. With the growing importance of online advertising, measurement of agency and placement performance has become even more difficult. If you rely on your agency to self-report on contract compliance and proactively monitor media placements, it's important to consider how well it is doing the job. While most agency personnel are beyond reproach, executing and interpreting today's complex contracts can easily lead to mistakes—and overcharges. KPMG's Contract Compliance Services (CCS) professionals can help determine compliance of third-party contractual relationships to help protect your bottom line.



KPMG's Contract Compliance Services

KPMG was the first “Big Four” accounting, tax, and advisory firm to set up a dedicated CCS practice. For more than a decade, our CCS engagements have been helping companies across all industries identify and recover millions of dollars arising from noncompliance. Today, more than 450 full-time contract specialists in KPMG member firms in the United States, United Kingdom, Australia, and across Europe, Africa, Asia Pacific, and Latin America help clients with their contract management in order to increase performance and decrease risk.

Our CCS assistance features:

- **Integrated international teams:** KPMG's integrated international CCS teams comprise diversely skilled U.S. and global professionals with leading experience and in-depth industry knowledge of intellectual property and contract compliance issues.
- **Cross-cultural versatility:** We understand regional cultures and business practices as well as the language and cultural skills to operate effectively anywhere.
- **Contractual complexity:** We understand the complexities and nuances of a wide range of contract terms and conditions as well as the challenges of processes and procedures used by third parties attempting to comply with contractual requirements.
- **Multidisciplinary strengths:** Our professionals draw on skills from diverse disciplines—auditing, forensic accounting, information risk management, and complex data analysis, among others.
- **A nonadversarial approach:** KPMG structures CCS reports to present facts and critical details in a manner that facilitates resolution with your partners. Our nonadversarial approach helps avoid confrontation and mistrust, leads to quicker and more successful resolutions, and protects vital business relationships.

This approach has been successful on more than 1,000 CCS engagements.

Ad agency compliance engagements

Accurate and reliable reporting from your marketing, advertising, and promotional agencies is critical to understanding how your marketing budget is being spent and the impact it is having. While most advertising agencies do not purposely fail to deliver under the terms of their agreements, KPMG estimates that as much as 70 percent of self-reporting by business partners is inaccurate based on more than a thousand previous KPMG CCS reviews. Our professionals have the industry knowledge to perform ad agency compliance engagements that may help you recover lost value from inaccurate and incomplete self-reporting.

Common errors

KPMG's professionals have seen a pattern of agency and client oversights that have diminished the value of the advertising dollars being spent, including:

- A lack of coordination between creative, promotional, and media agencies responsible for elements of a given project resulting in duplicate billings to the advertiser
- Standard industry media commissions being erroneously charged to the advertiser in addition to an agreed-upon agency compensation methodology
- Missed ROI on media spend due to the agency not performing and reviewing a post-buy analysis to evaluate performance of the media versus audience targets and requesting make-goods where needed
- Failure to globally coordinate local Agency performance in accordance with global agreements in place between the agency and the advertiser.

How KPMG can help

KPMG CCS engagements seek out root causes of overcharges by evaluating:

General billing

- Fees and commissions
- Adherence to contract billing terms
- Discounts and rebates owed to clients
- Review of direct client expenses

Creative services

- Legal clearance procedures for creative work
- Licenses for intellectual property
- Advertising production charges
- Use of independent contractors

Media services

- Execution of approved media plans
- Placement confirmation
- Vendor credit procedures
- Post-buy analysis procedures

General operations

- Segregation of agency duties
- Internal controls
- Conflict of interest compliance
- Tracking of budgets versus actual charges.

Our professionals focus on industry risks such as undisclosed use of related-party advertisers that charge excessively high fees; unauthorized expenditures such as personal benefits to agency employees; nonplacement of ads; inappropriate calculations of total service costs; and expenditures through unauthorized media or locations, among others. Key potential benefits of a CCS engagement include:

- **Improvement** of approach/controls in monitoring relationships
- **Greater** internal process consistency and enhanced controls
- **Visible** return on investment (ROI)
- **Better** protection of intellectual property.

Focus on performance

KPMG's CCS professionals focus on the specifics of your business. To learn more about how your partners self-report on advertising production and placement, we obtain answers to questions such as:

- Have you evaluated the ROI of your advertising spend?
- Has your advertising become increasingly fragmented between alternative channels of advertising such as TV, Internet, print, etc.?
- How much do you spend with creative, marketing strategy, promotional and media agencies every year? Is your spend coordinated across these various types of agencies? Are agency invoices reviewed on an individual agency basis or an aggregate project basis across agencies?
- How has your mix of agency fees and commissions versus media spend changed over time? Is your advertising budget increasing? Are there significant variances in advertising budgets compared to actual expenditures?
- Do your agreements with creative, marketing strategy, promotional, and media agencies require them to submit periodic reports on the media billings, production expenses, and time reported to support the total service costs?
- Has the advertising agency honored and made adjustments for any "true up" clause in the contract by reconciling hours estimated with actual hours worked?
- Has the advertising agency provided you with any documentation of media reconciliation (from the agency itself or from a third party) validating that advertisements are being placed?
- Are your agreements with advertising agencies centrally managed? Do they contain a right to audit?

KPMG emphasizes strong communication

KPMG structures the CCS engagement to provide informed communication at all levels:

- **Planning and coordination:** We establish open communication and set client expectations.
- **Scope of work:** We determine key risks and agree on the scope of the engagement.
- **Pre-fieldwork data collection and analysis:** We gain an understanding of the agreement, obtain client and third party documentation, conduct planning meetings, perform document analysis, and develop a detailed work plan.
- **On-site fieldwork:** We conduct an input meeting, remain in constant communication with the client, conduct interviews, document reporting procedures, perform tests to validate findings, and ultimately organize an exit meeting.
- **Post-fieldwork and reporting:** We finalize our deliverable and provide follow-up assistance as needed.

Our results can help benefit your business

If ad agency contractual partners have divergent understandings of key contract terms, they commonly disagree on amounts owed. Because KPMG's nonadversarial approach focuses on the collection and analysis of facts, we often can help the parties identify the source of disagreement, such as a previously unknown agreement, communication, or practice. This also enables the parties to more clearly understand the nature of their disagreement and focus their negotiation on the elements of greatest significance. Toward this end, clients sometimes request that we report our findings based on alternative interpretations of the contract.

In short, our nonadversarial approach can help ad agency business partners resolve different interpretations without conflict, helping to ensure our clients obtain full business benefits now with fewer compliance risks later.





Case study one: Global consumer products

A large consumer products brand engaged KPMG to perform a global review of its advertising agency to determine whether the agency was in compliance with the terms and conditions of its media buying agreement. The engagement involved a substantive review of billings to the client, testing of fees charged in respect of FTEs, and testing to determine whether all rebates and discounts received were being passed back appropriately.

Results

KPMG's CCS professionals identified some discrepancies in billing, staffing, and rebates. Disallowable costs and commissions had been passed back to our client, while certain credits had not. Because the agency did not monitor FTE levels in each country, it was not delivering the correct number of FTEs. The fact that not all countries were required to fill out timesheets posed a control issue. In addition, we identified a significant level of cash rebates and free space that could be passed back to our client. The findings represented a 60 to 1 return on investment (recovery/KPMG fees). In addition, KPMG was able to suggest some areas where the client could consider modifying the language of the agreement to facilitate future evaluations of agency accuracy.



Case study two: Global telecommunications

A large telecommunications company engaged KPMG to review the books and records of an advertising agency to determine whether the agency's billings complied with contractual requirements.

Results

KPMG's CCS professionals found some discrepancies. The agency lacked documentation to confirm that it had provided the contractually required number of advertising hours and services for which it was paid an annual service fee. The review also determined the agency had billed for services that, contractually, should have been covered by the annual fee, and there had been violations of a provision of the agreement that required subcontractor costs to be passed through with no mark-up. Both parties desired to continue the business relationship. Based on KPMG's findings, the agency worked with the client, agreeing to pay an appropriate financial settlement that was satisfied through reductions of future invoices. The resolution represented an 8 to 1 return on investment (recovery/KPMG fees). In addition, the agency agreed to pay KPMG's fees for the engagement.

Contact

KPMG's CCS professionals serve clients across a wide range of industries. We understand the complexities and nuances of diverse business contracts, licensing agreements, and reporting methodologies and can effectively coordinate services to review compliance with agreements on behalf of ad agency clients and/or ad agency business partners. We are one of the leaders in compliance with a global reach. For more information about Ad Agency Contract Compliance, contact:

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