

Fifteenth in a Series of Position Papers Addressing Key Industry Issues

I. Objective

This position paper addresses the confidentiality of media and marketing services information.

The competitive nature of an advertiser's marketing activities necessitates that strategic business initiatives, distinctive program elements, proprietary servicing arrangements, as well as contractually negotiated costs and rates be kept in confidence. Agencies that agree to work with and for an advertiser must remain vigilant to protect any and all confidential information related to that work. Recently, a range of industry tactics have emerged that potentially compromise the confidentiality of media and marketing services information.

The AAAA recommends that agencies remain vigilant in protecting confidential media and marketing services information arising in connection with the agency's work for its clients. Such information should not be disclosed, directly or indirectly, without at least obtaining the prior consent of all parties having a potential interest in protecting the information.

In advance of sharing confidential information with a customer, supplier or advisor (or a potential customer, supplier or advisor) the parties should formalize the terms of their confidentiality understanding in a binding agreement.

II. Background

The complexity and investment associated with client marketing activities has been expanding at an accelerating rate. Best-in-class marketers are aggressively evolving distinctive processes, custom resources and preemptive competencies that enhance the effectiveness, efficiency and speed-to-market of their marketing programs. Concurrently, marketers are being challenged to frame the reward–risk dynamics of each component of their marketing activities. As a result, an interdependent system has evolved to help address the marketer's need for content platforms, innovation, community venues and information.

The dynamics of an interdependent network of marketer resources entails media channels, research firms, marketing service agencies, analysts, systems providers and a host of specialist third-party advisors. The commercial relationships that exist within the marketing system can and do entail a broad range of business models, products and service offerings. Some of these relationships entail periodic, non-proprietary, standardized or subscription services; however, many of these relationships entail long-term, customized or proprietary products and services. But, when a client or any service provider shares

proprietary information with others or with third-party intermediaries, the confidentiality of proprietary information should nevertheless be protected.

III. Considerations

The diversity and scale of marketing activities has elevated the importance of integrating, benchmarking, verifying and measuring the client's marketing investments. These marketing processes can often be facilitated by the sharing of client business goals, marketing objectives, marketing budget and cost information, as well as marketing performance metrics information. However, competitive dynamics warrant that the dissemination of proprietary or Confidential Information (C.I.) among multiple parties should be limited by adhering to several fundamental principles:

- 1) Dissemination of C.I. should be restricted to those firms and individuals that need to know the information;
- 2) The use of C.I. should be limited to services or business applications that solely relate to a specific client-supplier scope of engagement; and
- 3) Access to and use of C.I. should be structured in order to adhere to all confidentiality arrangements and needs that have been established by the parties.

The definition of Confidential Information will vary depending upon the nature of the relationship between the parties. However, in the marketing industry Confidential Information will likely include strategic and development plans, business plans, co-developer identities, cost and rate data, business records, client lists, spending amounts, project records, market reports, employee lists and business manuals, policies and procedures, information related to processes, technologies or theory and other information which may be disclosed as a result of or in connection with an engagement.

There are a broad range of circumstances where Confidential Information is transmitted between parties where it is prudent for all participants, and especially agencies, to ensure that confidential information is protected:

- During the course of an agency's engagement by an advertiser, consultants and other intermediaries also retained by the advertiser may gain access to marketer, agency or media C.I. in order to assist the client in the evaluation of performance or cost dynamics of an arrangement. The intermediaries' access to and use of any advertiser, agency or media C.I. should be limited to the conduct of that specific engagement and use of C.I. for any other purpose should be prohibited. The protection of C.I. should include, but not be limited to, preventing the use of the C.I. outside of the engagement itself, or using the C.I. to establish a database separate from the engagement.

- Factors involved in formulating an RFP response are often unique to the business opportunity that is under consideration, and will often prompt an agency to provide C.I. relating to the agency's engagements with clients. Proprietary information submitted by agencies and suppliers when responding to an RFP should be treated as one type of C.I. with the same types of protections from disclosure.
- Stewardship of marketing activities is a priority for most sophisticated marketers. Best practice stewardship activities frequently include elements of verification, audit, analytics or performance assessment. Agencies should consider that the data, costs, metrics and other Confidential Information that are relied upon during the stewardship process should be protected by means of a comprehensive non-disclosure agreement.

The evolving dynamics of marketing relationships and new technologies have surfaced a number of new practices and alternative models that potentially redefine some parameters associated with access to and use of marketing information and costs. Media exchanges, ad networks, paid search, reverse auctions and production decoupling entail cost and pricing proposal submission mechanisms that could potentially compromise the confidentiality of participant information unless special care is taken.

Best Practice Guidance: Confidentiality to Protect Client Relationships

The AAAA recommends that agencies remain sensitive about disclosure of media and marketing services information that is generated within a confidential relationship. Such information should not be disclosed, directly or indirectly, without at least obtaining the prior consent of all parties having a potential interest in protecting the information from disclosure.

In advance of sharing Confidential Information with a customer, supplier or advisor (or a potential customer, supplier or advisor) the parties should:

- 1) Agree on the definition of what constitutes Confidential Information;
- 2) Clarify the purpose for sharing the C.I.;
- 3) Frame appropriate restrictions on access to and use of C.I.;
- 4) Specify requirements for the return or destruction of C.I. at the end of the engagement; and
- 5) Formalize the terms of the confidentiality understanding in a binding agreement (for example: a non-disclosure agreement or in the confidentiality provision of your agency-client contract).

Approved by the AAAA Board of Directors, January 27, 2009