



**Association
of illustrators**

AOI Guidance Notes to the Society of Artists Agents *Agency Terms* contract

These notes are intended to explain some clauses and to highlight others which may need to be discussed between particular artists and agents.

Agency definitions

'Must refer all business to the Agent...' This is necessary to avoid confusion. Illustrators should always leave negotiating the fee, deadline etc to the agent and not try to do it themselves. It goes without saying that artists should not accept commissions 'on the side', but should stick to the agreement they have with the agent.

1.1 It is important to read the letter of appointment, as it contains many of the details of your particular agreement.

'House accounts' Illustrators with established clients may need to define with the agent how these accounts are dealt with.

Quarterly fee The artist may wish to know what sort of expenditures these are. If so, ask.

Territory Some artists will wish to be represented by one agency worldwide. Others may prefer to have a different agent in some territories (e.g. an American agent). UK agencies vary in the presence they have in overseas territories.

Accounting procedure Most agencies will pay only when the client has paid. In the case of advertising work, this can be several months after invoicing. Editorial clients usually pay more promptly. The important thing is that the artist should know who has been invoiced, for what and for how much.

2.3 The importance of adhering to this clause cannot be overstated.

4.1 b) It is wise to make sure originals or proofs of which only one copy exists are not used as samples.

e) *'Keep the agency updated...'* It is important to let the agency know if you are unavailable for any significant period.

g) *'Complete all accepted commissions on time...'* If you think a piece of work is going to be late, let the agency know immediately.

h) *'Not to re-use any assignment...'* It may be impractical to obtain consent once assignment completed.

5.2 Schedules should be requested if not offered by the Agency.

5.4 *Marketing fees* Most agencies make a contribution to marketing fees equal to the percentage of their commission, and expect the artist to provide the rest, though this practice is not invariable. Your letter of appointment should tell you what the arrangement is.

5.5 The agency has a duty to do its best to get clients to pay up, but if in the end it does not succeed, the agency is not liable for the fee. The client is.

6.2 'Warranties' means 'guarantees'. Artists should be especially careful, when using photographic reference, that they are not infringing the photographer's copyright.

6.5 It has been known for employees of big agencies who have looked after important illustrators to leave, set up on their own, and take the important illustrators with them. Agencies are quite right to try to protect themselves against this, but the AOI consider it is more properly a matter between the agency and their employee. Also, as it stands, this clause may cover situations in which a former employee happens to now work for an agency which the illustrator wishes to move to, and not involve any inveigling by the former employee. There is a philosophical question involved too; as a matter of principle, should an artist be prevented from being represented by whomever he/she wishes?

In practice this clause is unlikely to be invoked in inappropriate situations, unless the artist and agent have parted on particularly bad terms. However some artists may wish to strike it out, and many agencies may be quite willing to do so. Others will not.

6.6 This is an important protection for the artist, and should always be included when one party holds money on behalf of another.

7.2 The AOI considers 12 months too long and prefers the USA Graphic Artists Guild Model, as follows:

' If the artist receives assignments after the termination date from clients originally obtained by the Agent during the term of this agreement the (standard) commission shall be payable to the Agent under the following circumstances: If the Agent has represented the Artist for six months or less, the Agent shall receive a commission on such assignments for ninety days after the termination. This period shall increase by thirty days for each additional six months that the Agent has represented the Artist, but in no event shall such period exceed 180 days.

7.3 This clause refers to long contracts – or re-uses - that may continue after the normal period, and allows the Agency to continue collecting a percentage of on-going payments, for the period of copyright. It also refers to royalty contracts, which commonly last for the period of copyright, and is similar to the terms used by literary agents. The question of how commission on royalty contracts should be calculated is a

difficult one, and is discussed in *The Illustrator's Guide to Law and Business Practice* published by AOI.

The illustrator may negotiate this clause to include a reasonable time limit on all on-going payments, such as one year from termination.

7.6 An important protection for the artist.

Breaking up can be hard

Break-ups between artists and agents are usually amicable, but can occasionally be contentious and unpleasant. A wise illustrator will discuss any problems she/he is having with the agency openly, rather than seethe then leave. When having such discussions it is important for both sides to be courteous and businesslike, and be prepared to give a fair hearing to the other person's point of view, even if in the end they cannot agree with it.