

# THE BULLETPROOF AGENCY NETWORK



Newsletter **#10** | July 2023

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Bulletproof Agency Network was launched in February 2017, with a mission to unite industry experts and thought leaders on how to scale a thriving, profitable and robust digital agency.

A joint initiative between **MAP**, **RiskBox** and **GLAISYERS** (Formerly CLYDE&CO), Bulletproof Agency Network's Podcasts and Events have reached a wide and diverse audience over the past 3 years.

The Bulletproof newsletter is produced quarterly for your enjoyment, full of engaging tales from interesting agency folk and useful insights into the wonderful creative world.

## Newsletter#10 | July 2023

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RiskBox

GLAISYERS



MAP.



# How Do You Insure Your Business For Its Own Advertising?

## Marketing Strategy

Professional Indemnity insurance protects a marketing agency from being sued for mistakes or errors that occur while providing services to their clients. It covers the costs of legal defence and any financial losses that may result from a lawsuit.

In simple terms, it acts as a safety net for the agency in case something goes wrong during the marketing process, and a client holds the agency responsible for any damages.

And that's all well and good, but what happens if the agency is met with disaster when marketing itself?

### Own marketing extension

Most Professional Indemnity policies only protect an agency when delivering services to a client. So if something goes awry when marketing itself, any claims would be outside the scope of the policy.

Luckily, insurers have recognised this is a common potential gap in cover. As a result, comprehensive Professional Indemnity policies designed specifically for agencies often provide extensions to protect the agency's own marketing and advertising.

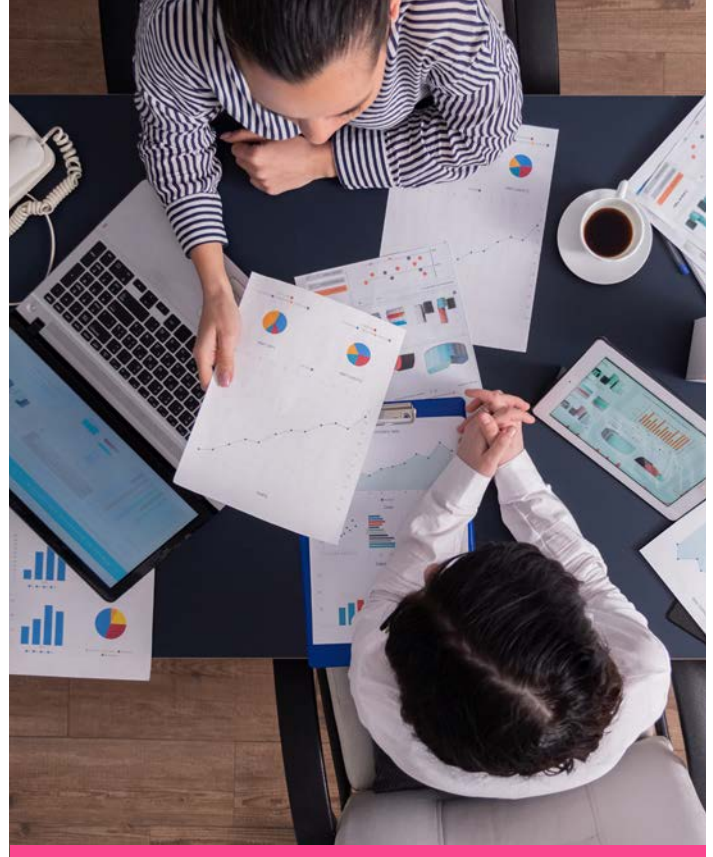
You'll find the extension is automatically included without a separate charge. And the limit is usually the same as the main Professional Indemnity cover limit, with rare instances where this might be sub-limited at a lower amount.

## Benefits

Putting in place insurance for your own marketing and advertising can provide financial protection in case something goes wrong. Policies can protect against potential legal issues, like copyright infringement in a marketing campaign. For example, someone might accuse your new branding as being an infringement of their copyright. Even using an image you didn't have permission to use can result in claims.

Comprehensive policies should also defend actions under defamation, like making statements within a blog or comments on social media that were reputationally damaging to a third party.

Insurance for your own advertising and marketing has the same benefits as other types of coverage, helping to mitigate risk and providing peace of mind.



## What might the policy exclude?

As with all insurance policies, the devil is in the details. So, you need to check the fine print carefully. Here are some key exclusions or restrictions to be aware of:

### Ignoring legal advice

A standard exclusion in most policies, insurers may not cover you if you ignore legal advice. After all, it would be considered reckless to publish content after the lawyers said it would be a bad idea.

### Deliberate acts

Acting recklessly is also not acceptable. Essentially, if acting in an intentionally risky way with your own marketing and advertising, your insurance policy will not cover you.





### False advertising

Insurance also may not cover false, misleading, or deceptive statements in advertising, such as:

- **False claims** about a product's effectiveness
- **False comparisons** to other products
- **Misleading statements** about the product's composition or ingredients

False advertising is illegal under consumer protection laws. Businesses can face legal action, fines, or penalties. And therefore, protecting companies from such situations would be considered against public policy.

### Explicit content

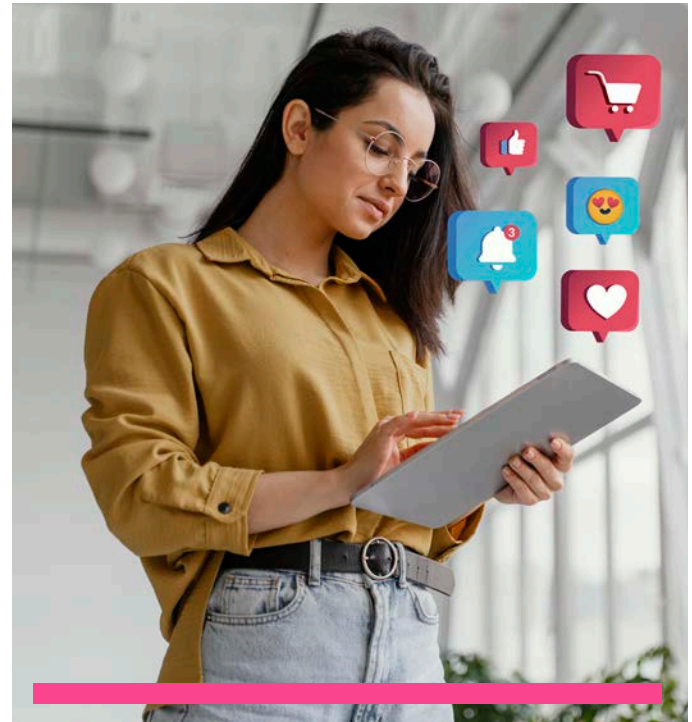
Actions arising from publishing obscene, pornographic, or blasphemous content is invariably excluded. Again, this is because to insure against it would be at odds with current public policy.

### Competitions

Any advertising and campaigns that rely on competitions are rarely covered – in particular, excluding any failures in their outcome, like non-delivery of prizes or actions relating to unfair results. This means any agencies looking to run competitions, lotteries, and promotions for themselves or their clients need to be extra careful.

### Passing off

Some policies will specifically exclude actions where the agency is accused of passing off content as their own, or for their unauthorised use of another company's trademark, name, or logo.



## Insuring your agency

Protecting yourself is vital – and knowing which level of cover you need is even more important. Speak to our friendly team to find out more about own marketing extensions for your agency – contact us on **0161 533 0411**. Alternatively, you can email us at [info@riskboxuk.com](mailto:info@riskboxuk.com) or fill in our online contact form and we'll get straight back to you.



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# Enter The Dragon

## Agencies With Audit Trails Won't Feel The Burn

Much as the creation of content comes from inspiration, clients value originality for several different reasons. The most obvious of which being that making use of your work won't lead to their getting threatened with or having to deal with Court Proceedings as a result of an infringement claim.

If you're working on a branding proposition, straplines or anything similar then you can at least check at the Intellectual Property Office Website to see if anyone has applied for a Registered Trade Mark. This would stop you or your Client from using it in the course of trade, but copyright over literary, artistic and other "works" of creativity comes into being when an original concept (not always the highest of hurdles to clear) is recorded in a permanent form.

This makes it an "unregistered" IP right which makes it difficult to carry a clearance search out against. Equally it doesn't require investment in a registration to be able to enforce (provided that the creator of a work can demonstrate when it was created and that they were responsible for doing so), then any business or other party making use of a "substantial part" of it (i.e. its most essential and valuable elements) can potentially be sued for infringement.

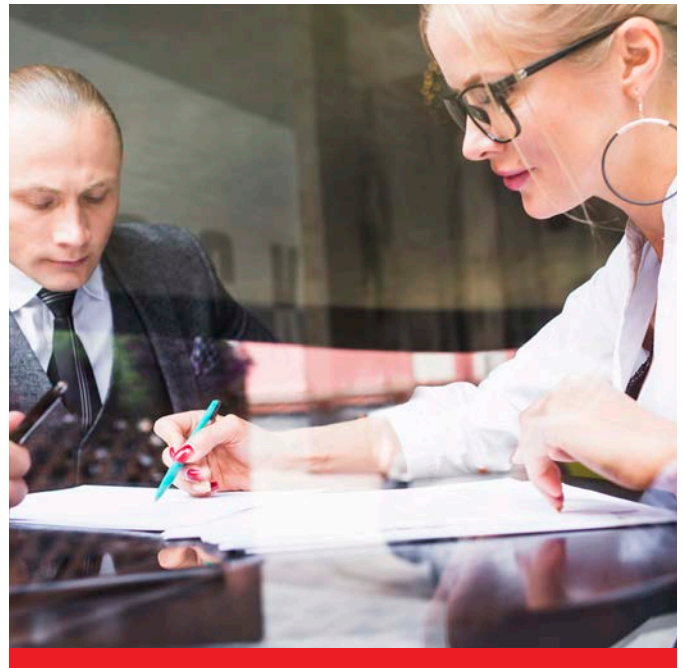
The party can be ordered by the Court to pay either an award in damages equal to the licence fee due had it been properly paid (which can include an award for "flagrancy" if its use creates an extraordinary benefit to a business), or a percentage of the profits generated through its (mis)use.

## Copyright law

One of the main quirks of copyright law which can lead to infringement disputes, is that it's entirely possible for two creators to come up with a similar work based on a similar idea provided that they do so independently and without having had access to the other's work. This lack of access led to Ed Sheeran's recent victory in a claim alleging that his song "Thinking Out Loud" infringed upon the copyright in Marvin Gaye's "Let's Get It On".

Still with us? Good. The reason this matters to Agencies in particular, over and above the fact that no-one wants to be sued for their own infringement is that the majority of Client contracts will ask you "warrant" (i.e. include an assurance or promise which can give rise to a claim for damages if later found to have been breached) that any work you create will be your own original work, and a corresponding "indemnity" - a protection against, or compensation for any liability incurred if the warranty is later breached.

Essentially, Clients will expect you to pick up the tab incurred in dealing with potentially even the threat of an infringement, potentially including their legal and professional fees as well as other significant losses. Even without a contractual indemnity, Agencies can still be drawn into infringement proceedings by Clients forced to deal with them and their senior teams potentially being named individually as part of a "common design" behind it.



Still with us? Excellent. Having established that copyright and other IP infringement could cause a dispute between an Agency, potentially its Leadership Team, and the original creator whose work you're accused of copying (as well as between an Agency and a Client who's made use of the allegedly infringing work), it's time to consider a recent example (and explain my choice of title).

## John Lewis Advert

Christmas is, for some, only kicked off by the premiere of that year's John Lewis Advert. In 2019, adam&eveDBB created its own version featuring what the Court described as "an excitable young dragon who can't help releasing fire", living in medieval times and inadvertently setting fire to a Christmas Tree.

So far, Game Of Thrones and so popular that "Excitable Edgar" was immortalized as a book and soft toy (still) sold in John Lewis Stores across the country.





In November 2021, Children's Author Fay Evans, writer of the self-published 2017 book "Fred The Fire-Sneezing Dragon", brought proceedings against both John Lewis and adam&eve for copyright infringement based upon a number of perceived "striking similarities" with the book which could only be accounted for by copying.

The Defendants claimed that the Advert was based on one of several concepts first drawn up by a member of adam&eve's staff sometime in 2016 before being pitched repeatedly to John Lewis over several years, providing to the Court a four-page document setting it out whose metadata confirmed its creation on 24 February that year, and that any similarities between the relevant works were as a result of being based on the same underlying concept.

They also provided evidence of having carried out a search for "dragon-themed books" before the Advert's launch to determine whether any could have had similarities to it, finding several which involved Dragons and the good - and bad use of their fire.

After a trial in January this year, judgment was handed down in April in which the Court found that John Lewis and adam&eve had not infringed upon Ms. Evans' copyright on the basis that none of the team working on it had seen her book until after the Advert was first shown and allegations of infringement first appeared on social media. As the judgment summarises:

***"There can be no copyright infringement without copying, and there can be no copying if the work alleged to have been copied has not been accessed (i.e., seen, in this case) by those said to have copied it."***

In this case, the Court was "extremely impressed by the professionalism, thoroughness, care and creativity" of those responsible for the creation of the Advert, describing them as "at the top of their game" and recognizing that allegations of copyright infringement can be particularly serious for anyone working in the creative industry.

They went as far to say that "they exit this litigation without the slightest hint or shadow of a stain on their creative integrity" and ordering that Ms. Evans publicise its declaration of non-infringement and the judgment on her website in the wake of her regular posts relating to the claim on social media.





## Audit trial

What undeniably made the difference in this case, and led to the claim's dismissal, was adam&eve's audit trial of not only the Advert's creation but also its pre-launch clearance searches – ultimately protecting both them and their client.

When creating unregistered IP, evidence of development and ownership is key to proving its ownership, allowing for successful exploitation and either deterring or defending its infringement. That rigour likely also led to the continuation of a very valuable client relationship and the defence of hard-won reputations within the industry and retention of fees generated as a result.

Showing your working behind the creation and clearance of content not only goes to show how much time and effort went into it but is also a particularly effective shield against what could be a very public, time-consuming, and expensive and multi-faceted dispute to resolve. Your work is worth it.

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# Using data to understand and scale your agency

In an ever increasingly competitive market, it is critical that agencies and their owners make the best decisions possible to continue heading towards their vision and achieve financial success.

Data should be a key component in your decision making as it can help increase your understanding of your agency, how profitable your clients actually are, and ultimately drive your profitability.

## Why should you care about your data?

It is easy to overlook your own data as you focus all your time and energy on delivering exceptional outcomes for your clients. Through using data effectively you can ultimately drive improved profitability, this can be done in many different ways;

- **Greater insight** - The more data you have access to, the more you can understand the performance and trends of your agency. Once you know how your agency is performing you can start to ask the simplest of questions - Why?
- **Better decision making** - If you know what is happening in your agency and also why, you are able to make much more informed decisions.
- **Improved operations** - With better decision making comes more improved outcomes, performance and operational efficiencies. You can also measure the change in your agency and quantify the benefit created.
- **Informed strategy** - A clear and holistic view of your agency's performance should feed into your strategy and challenge you to think how do you improve your agency as a whole? What are the key issues facing us and where are the opportunities for us to grow?



## Why time tracking is your most important data

For most agencies, people and time are your products and unless you understand and make effective use of them, you may never be able to fulfil your potential.

Through a statement of work you know what has been sold to a client, but without time tracking you don't know how much effort has been put into its delivery. It's like a retailer selling you a bottle of wine but not knowing how many bottles you have taken out of the store!

Our **Time Tracking Template** should be a great way to accelerate your understanding and insight into your team's time.

Employee	Team	£ Daily Rate Card	Contracted Hours Per Week	Annual Leave, Sickness and Training Hours	Total Worked Hours
Employee 1	Team A	£1,000	35.0	0.0	35.0
Employee 2	Team A	£900	35.0	0.0	35.0
Employee 3	Team A	£800	35.0	0.0	35.0
Employee 4	Team A	£700	35.0	0.0	35.0
Employee 5	Team B	£700	35.0	0.0	35.0
Employee 6	Team B	£1,000	35.0	0.0	35.0
Employee 7	Team B	£900	21.0	0.0	21.0

However, time tracking shouldn't just be about collecting time sheets from your team, you need to be thinking about how you can report on time data but more importantly use the data to drive real change for your agency:

- **Improve your statements of work** - making them more reflective of how long things actually take
- **Improve your project delivery** - getting full visibility for you and your team about progress, blockers and issues
- **Improved resource management** - creating visibility of bottlenecks and spare capacity and maximising your teams utilisation rates
- **Understanding client performance** - make sure the juice is worth the squeeze by analysing the time you spend on client work versus the amount you get paid
- **Forecasting and planning for the future** - understand your current potential revenue capacity and plan for future recruitment and strategic initiatives with our **Revenue Capacity Template**.

## Understanding client and service profitability

Understanding client and service profitability is one of the biggest challenges for an agency and whilst clients should not be judged solely on profitability, at the very least you want to know whether a client is adding some profit to your agency.

Before you start looking at client profitability, it's always a good start to put in place financial budgets and forecasts for your clients to get you thinking in advance about how much revenue and value they might bring to you.





## Recovery Rate

Recovery rate is the single most important metric for understanding client profitability. It highlights the percentage of time that you spend on a piece of work that you successfully bill for.

It is calculated by looking at  $\text{£ Total Time Spent} / \text{£ Total Invoiced Value}$ .

When you know your recovery rate, you can start to understand how profitable a client is to you, but also start to think about how you can improve that profitability both for a client, a service or your entire agency.

There are three main data points that will flow through your analysis and help you understand client profitability;

- **Role** - What role is being sold to the client
- **Rate card** - How much revenue do I generate for each role per day
- **Effort** - How many days effort has either been sold or worked

Once you have access to this information, you are simply trying to knit together lots of different data sources;

- **Statements of work** - What has actually been sold to a client
- **Resource allocation** - How much time has been allocated to statement of work
- **Time spent** - How much time has been spent delivering a statement of work
- **Invoices sent** - How much has actually been invoiced for delivering a statement of work

With this information you will be able to calculate something called Recovery Rate.

- **Recovery rates above 80%** means you are likely generating net profit
- **Recovery rates between 60% and 80%** means you are likely generating gross profit
- **Recovery rates below 60%** means you are likely losing money

To help, we have created a **Client Profitability Template** for how we would recommend tracking and reporting on your team's time.

Month	Apr-23	May-23	Jun-23
<b>£ Budget</b>	£10,000	£10,000	£10,000
<b>£ Forecast</b>	£8,000	£7,000	£12,000
<b>£ Variance</b>	-£2,000	-£3,000	£2,000
<b>% Variance to Forecast</b>	-25%	-43%	17%
<b>£ Allocated/Booked Resource</b>	£8,500	£8,500	£12,000
<b>£ Variance to Forecast</b>	£500	£1,500	£0
<b>% Variance to Forecast</b>	6%	21%	0%
<b>£ Time Spent</b>	£10,000	£15,000	£11,000
<b>£ Variance to Forecast</b>	£2,000	£8,000	-£1,000
<b>% Variance to Forecast</b>	25%	114%	-8%

## Create the right measures to understand your agency's performance

It is important that you use data to get a holistic understanding of how your agency is performing to help keep people informed, create accountability and drive performance.

Too often you are reliant on financial metrics to tell us how your agency is performing and whilst that is a critical metric, there is huge value in understanding how your agency is performing at an operational and strategic level.

Whilst it can be daunting to start collecting data and reporting on these operational and strategic metrics, when you start you will realise the huge value it creates and how using data effectively can give you the best chance of achieving your short term revenue targets and mid-to-long term objectives.

### Strategic metrics

At a strategic level, we would always recommend trying to create metrics that help drive and support your vision. This can be done by thinking about how your vision cascades down into your strategy, objectives and key results (OKRs).

An example would be;

What	Description	Example
Vision	What do you want to achieve in the future	To be the UK's best agency in your specialism
Strategy	How will you achieve your vision	To be recognised industry leaders in your special
Objectives	How will you measure your strategy	To increase inbound leads
Key Results	What are the time bound targets for your objectives	To increase inbound leads to 10 by the end of Q2, 2023



We would always recommend using a Balanced Scorecard report to help visualise your strategy and progress against your vision. It's a great tool for using in board meetings as well as sharing with your teams to show progress and areas of concern. To help get you started, we have created a [Balanced Scorecard Template](#).

### Operational metrics

At an operational level you are really trying to understand the key metrics that best describe how your agency is performing on a day-to-day basis.

Whilst some of these metrics might be finance related, such as your revenue forecast or invoices sent this month, you are likely to want to look at metrics that relate to your people and processes.

You should think about metrics that highlight what has happened in the past, what are you currently experiencing as well as thinking about future facing metrics to help inform the future.

All agencies are different, but the important thing is to create the right metrics for you and ensure you have the right rigours and processes in place to interrogate what the metrics are telling you and drive quick change.



## So what should I do now?

If you want to get more out of your data and help grow your agency, it's good to take things slowly. Think about the one or two things that you want to improve, either at a strategic or operational level, start collecting your data and start asking your team questions.

If you can create an environment where the whole team understands that numbers are good as they help you understand performance, generate insight and drive change then you are halfway there.

You don't always need to be on the lookout for huge wins, sometimes it's a case of finding things that can make that 1% improvement to your agency. A few of those every year and you will quickly start to reap the benefits.

Tom Fitzgibbons has spent his career in digital, retail, publishing, marketing and IT roles. He spent 6 years as an Agency Managing Director, where he scaled operations from 30 to 90 people, operating in 3 countries and increasing revenues by 2.5x.

He founded cady in 2023 and is focussed on supporting agencies to develop and achieve their potential.

See Tom's LinkedIn profile and get in touch with him [here](#).

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**MAP.**



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