



# APA MASTERCLASS

## CONTRACTS

*with Steve Davies & Charlotte Fraser*

Please have a copy of the PIBS & Direct to Client contract open on your laptop  
(available via APA Vital Docs on the Learning Platform)



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# MEMBER RESOURCES



## Adgreen

-  AdGreen Top Line
-  AdGreen Resources Guide
-  Introduction to Adgreen
-  Pre-Production and Shoot Checklist
-  Printable Signage

## Standard Commercials Production Contract

-  PIBS (Part 1) Standard May 2018
-  Contract (Part 2) Standard May 2018
-  PIBS (Part 1) AGENCY insuring May 2018
-  Contract (Part 2) AGENCY insuring May 2018

## Terrorism

-  APA IPA ISBA Terrorism Addendum
-  APA IPA Terrorism Guidelines

## Wrap Insurance

-  APA IPA CPI Wrap Addendum





## Music Production

- Music Production Booklet

## Children & Animals

-  Animals in Filming (2018)
-  Filming with Children
-  Child Protection Policy

## Health & Safety

-  H&S policy (office)
-  H&S policy (shoots)
-  Additional COVID-19 H&S and RA docs
-  First Aid on Film Set


## Non-Disclosure Agreement

-  APA IPA NDA

## Overseas Agency Agreement Template

-  Non-UK Agency Agreement Template

## Pre-PIBS

-  Pre PIBS information document



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# APA standard contract

## PIBS (Part 1) and Contract (Part 2)

When can you expect to receive these documents and from whom?



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# Contract templates

1. Direct to Client and Non-UK Agency Agreements
2. Music Video Production Agreement (MVPA)
3. Tripartite and Bipartite Covid Addendum
4. Wrap Insurance Addendum
5. Non Disclosure Agreements (NDAs)
6. Master Service Agreements (MSAs) and Statements of Work (SOWs)
7. Director's Engagement





# Why do you need a contract?



# Direct to Client contract

## Commercials Production Contract Client - Production Company

This Agreement is made on the:	[INSERT DATE]
Between: (the Advertiser)	[INSERT PROPER REGISTERED COMPANY NAME AND ADDRESS]
And: (the Production Company)	

### 1. Production of the commercial

The Production Company shall produce the Commercial(s) (as defined in Clause 2) for use in any medium anywhere in the world in accordance with the following requirements:

	Date:	Month:	Year:
*the attached script and/or treatment dated			
*the attached front page of the quote dated			
* The checklist in clause 15 below			

### 2. Details of Commercial(s)

Advertiser:	
Title:	
Format:	





# International agency contract

## Commercials Production Contract [APA Members contracting with a non-UK advertising agency]

This Agreement is made on the:	[insert date]
Between: (the Agency)	
And: (the Production Company)	

### 1. Production of the commercial

The Production Company shall produce the Commercial(s) (as defined in Clause 2) for use in any medium anywhere in the world in accordance with the following requirements:

	Date:	Month:	Year:
*the attached script and/or treatment dated			
*the attached front page of the quote dated			
* The checklist in clause 15 below			

### 2. Details of Commercial(s)

Agency:	
Title:	
Format:	



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3. State the **budget**/payment terms





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6. Set out what each party's **responsibilities** (see the PIBS checklist)



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7. Have clear and defined **postponement** and **cancellation** provisions





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8. Outline **Weather Day** provisions



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9. Deal with **Force Majeure**





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  - \* Costs incurred and committed to;
  - \* A percentage of the Director/Producer/Production fees (mark up)





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8. Outline **Weather Day** provisions
9. Deal with **Force Majeure**
10. Address **Covid-19** postponement and cancellation terms, including:
  - \* Costs incurred and committed to;
  - \* A percentage of the Director/Producer/Production fees (mark up)
11. Most importantly, you should **engage with the contract** to ensure it meets the specific needs of the production.
  - \* Always make sure it is factually **accurate** and that **you can comply** to the terms.





# What makes a good production contract?

## Additional points to note

Client should deal with ad regulations

### 9. Legal and Technical Requirements

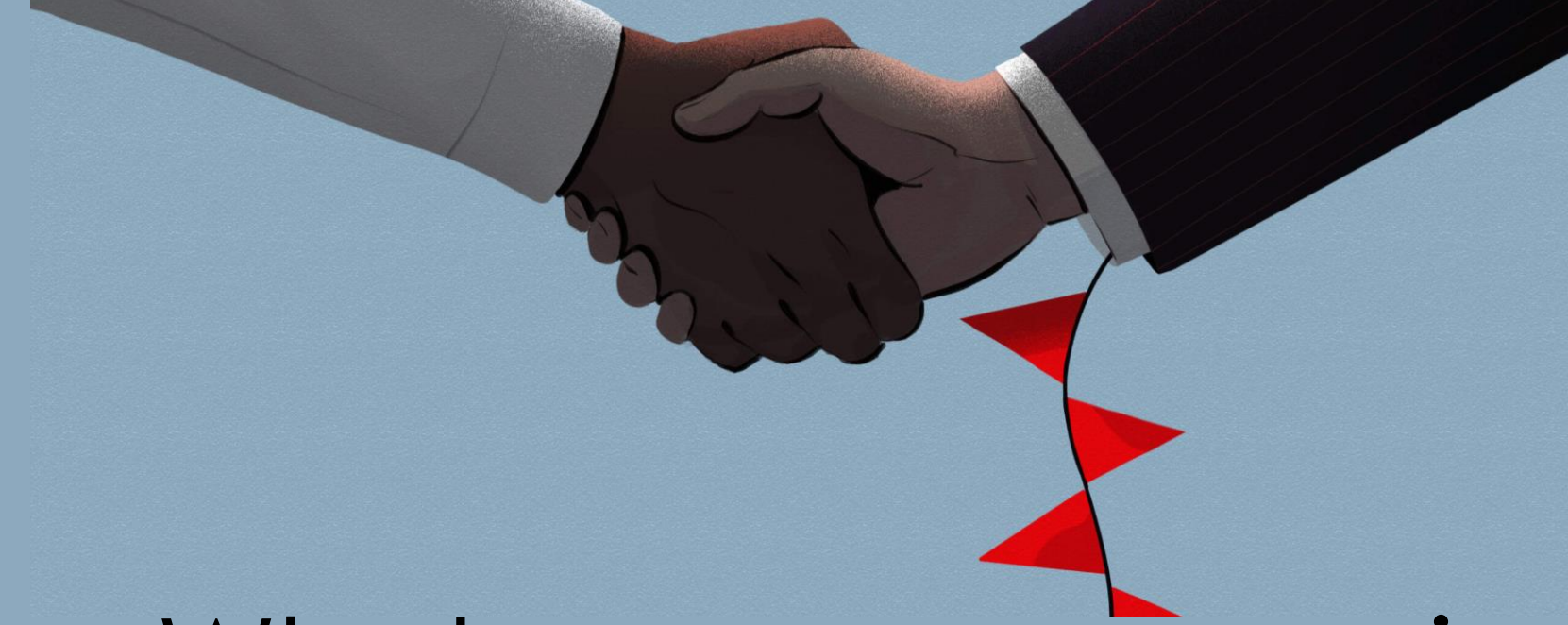
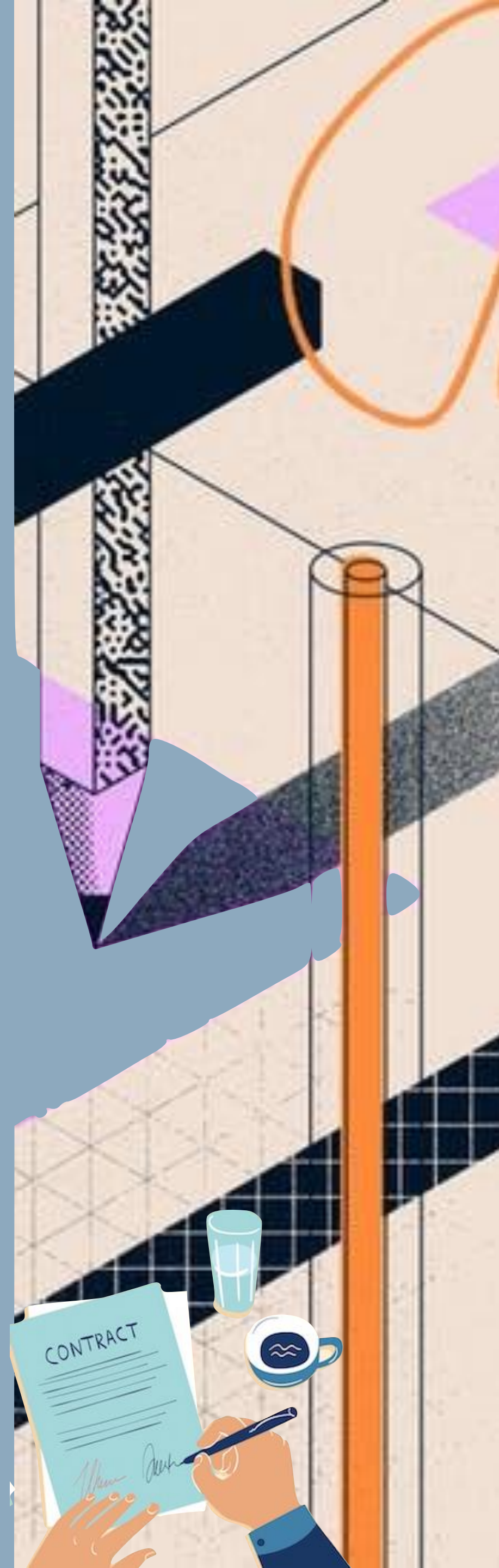
The Advertiser shall be responsible for ensuring that the Commercial(s) comply with any legal or regulatory requirements relating to content.

Copyright assignment

### 8. Copyright and Other Rights

- a. **Upon receipt by the Production Company of the total cost** specified in Clause 5 and any extra charges under Clauses 5 and 10 the Production Company hereby assigns to the Advertiser by way of present and future assignment all copyright and similar rights throughout the world for all purposes and for their full duration ('Copyright') in the Commercial(s) and in all other footage shot by the Production Company in the production of the Commercial(s) whether or not included in the completed Commercial(s).





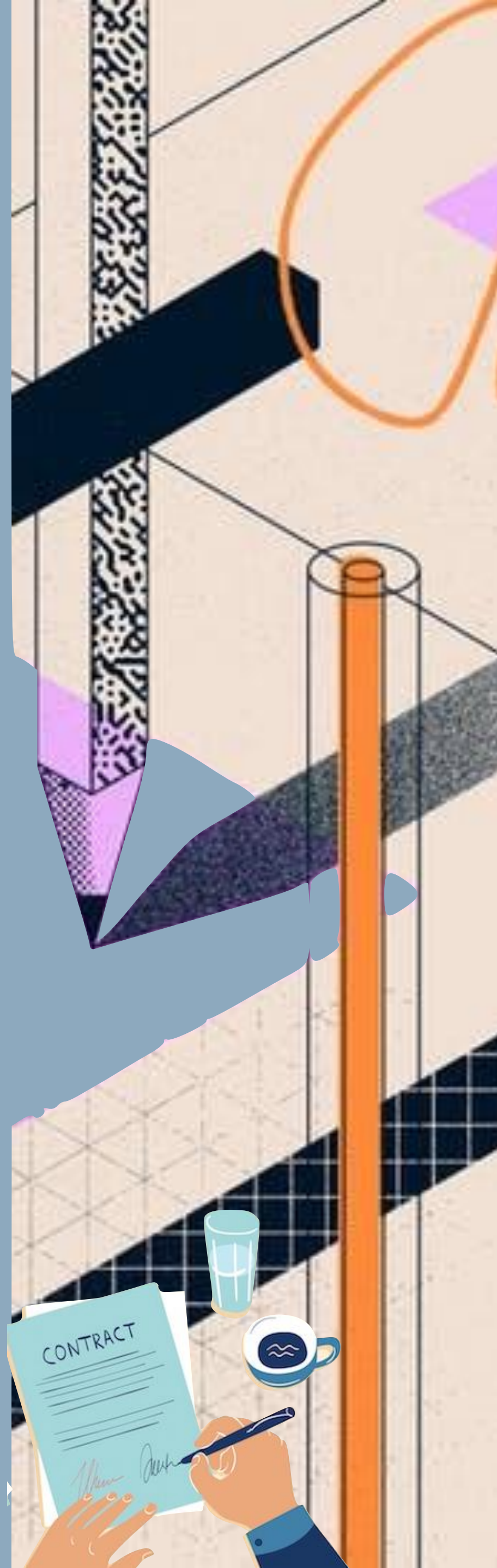
What are some warning signs of a **bad contract**?

## Poor cancellation terms

- What are poor cancellation terms?
- What are the consequences?
- How are crew costs handled in case of cancellation?







# Warning signs of a bad contract

Long payment terms







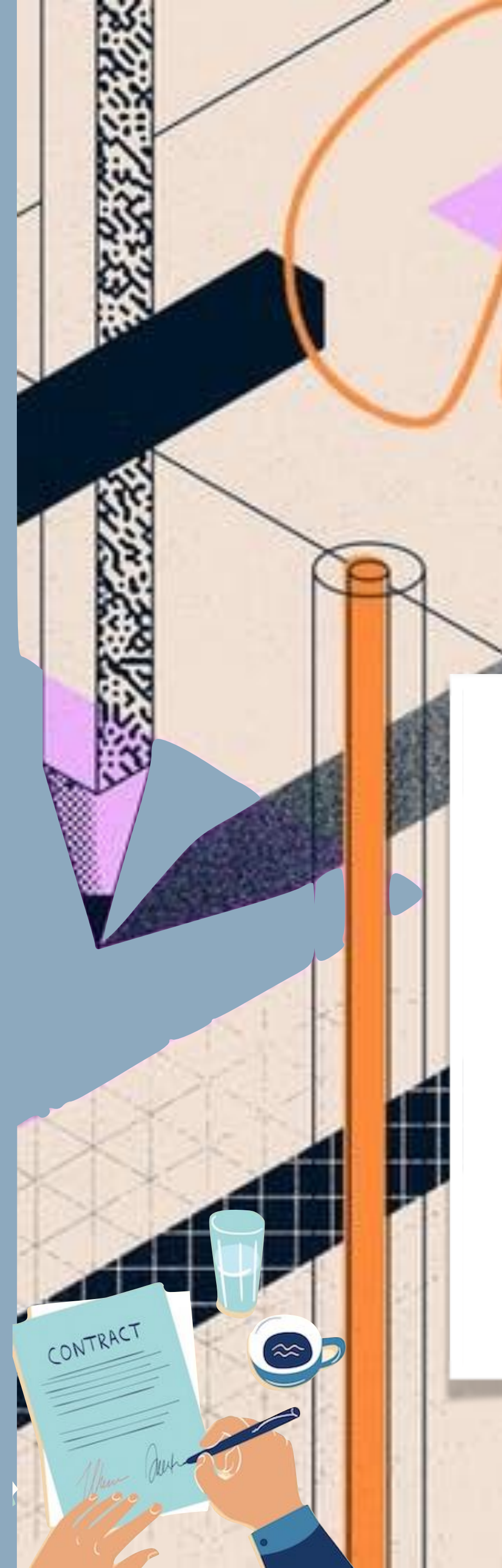
# Warning signs of a bad contract

Long payment terms

### **3.3. Payment Terms.**

Supplier will not issue an invoice until the Client provides a purchase order. To be valid, an invoice must:

- (i) include the Client purchase order number and be sent to the address provided in the purchase order;
- (ii) include only the fees or costs provided in the applicable Order or SoW;
- (iii) not be sent before the completion of Services as provided in the SoW (if applicable); and
- (iv) be received by the Client as instructed in the purchase order not later than thirty (30) days after the provision of Services or execution of an Order, as applicable. **The Client will pay undisputed amounts within sixty (60) days of proper receipt of a valid, undisputed invoice.** Payment will be in United States Dollars (“USD” or “US \$”) unless the Parties otherwise agree in writing (e.g., in an Order or SoW).





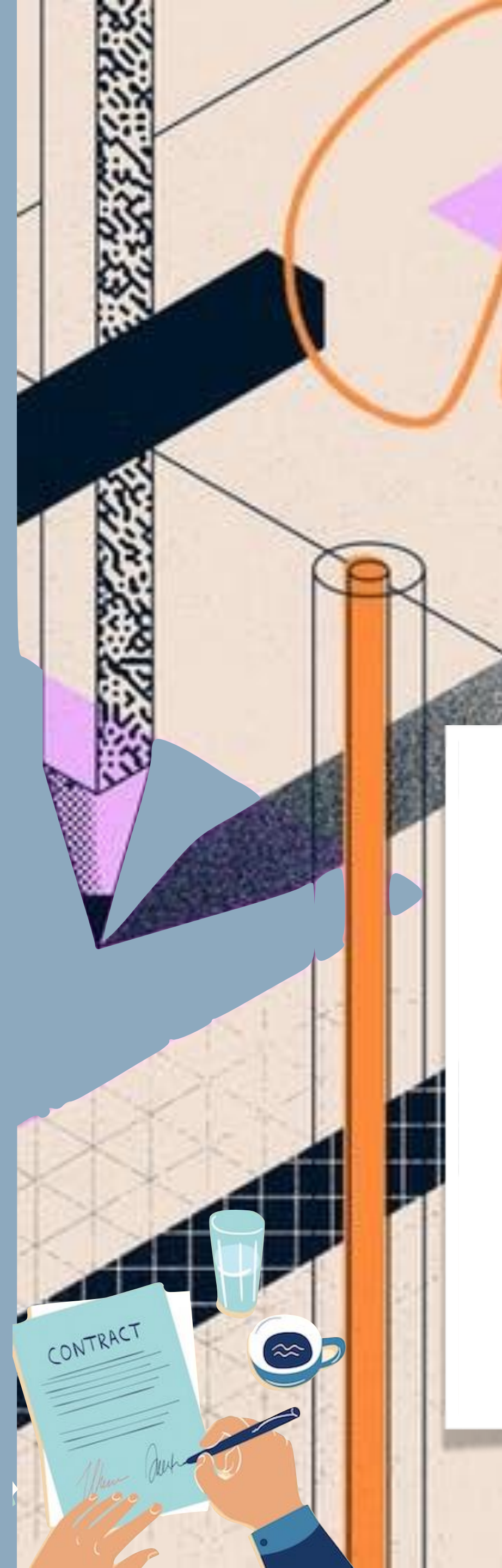


# Warning signs of a bad contract

Sequential payment terms

## SECTION 4. DISCLOSED AGENT

Unless the first page of the Agreement indicates otherwise, Agency is acting as an agent on behalf of the Advertiser (a disclosed principal). In such case, Agency will only be liable for the cost of the goods and services purchased and other obligations to the extent Agency has been paid by Advertiser for any amount payable to the Contractor (“Sequential Liability”); provided that, in any event, Agency shall use its best reasonable commercial efforts and otherwise diligently seek payment from the Advertiser. In the event that Agency has not received payment from Advertiser as of thirty (30) days after a payment to Contractor is due, upon the written request of Contractor, Agency shall provide to the Contractor the Advertiser’s contact information to enable Contractor to seek payment directly from the Advertiser, pursuant to this paragraph.





# Warning signs of a bad contract

## Client responsibilities

### I: Checklist See clause 16 of Contract Terms

The purpose of this checklist is to enable the parties to confirm which of them will be responsible for providing and paying for the items listed.

Please ensure this is completed accurately.

1	Location Recce	<input type="checkbox"/>	Agency	<input type="checkbox"/>	Production Company	<input type="checkbox"/>	N/A
2	Casting no. of sessions required (insert amount below) <input type="text"/>	<input type="checkbox"/>	Agency	<input type="checkbox"/>	Production Company	<input type="checkbox"/>	N/A
3	Artists Tests - Fees	<input type="checkbox"/>	Agency	<input type="checkbox"/>	Production Company	<input type="checkbox"/>	N/A
4	Artists Fees - Featured (BSF)	<input type="checkbox"/>	Agency	<input type="checkbox"/>	Production Company	<input type="checkbox"/>	N/A
5	Artists Fees - Background and Walk-ons	<input type="checkbox"/>	Agency	<input type="checkbox"/>	Production Company	<input type="checkbox"/>	N/A
6	Artists Fees - Stand Ins	<input type="checkbox"/>	Agency	<input type="checkbox"/>	Production Company	<input type="checkbox"/>	N/A
7	Artists Fees - Stunts (BSF only)	<input type="checkbox"/>	Agency	<input type="checkbox"/>	Production Company	<input type="checkbox"/>	N/A





# How to address amendments

- It's often easier to assess what's wrong with a contract vs. what's missing
- Have a conversation with the client
- Tips on what to say ('As per APA, these are the standard terms...')



Contact APA



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# NDA's

(usually received at pitch stage)

[PRODUCTION COMPANY]  
[ADDRESS]  
[DATE]

*[Drafting note: as with any standard document, this letter is intended as a starting point only and will need to be tailored to the user's specific requirements. For example, any clauses which are not required should be removed and wording within square brackets considered and clarified.]*

Dear [NAME OF CONTACT]

## Agency/Producer Confidentiality Agreement

I write further to our recent discussions regarding *[insert brief description of services to be provided]* to be provided by *[insert full name of production company]* (the "Company") for and on behalf of *[insert full name of agency]* (the "Agency") and our client *[insert name of client]* in respect of an advertising campaign for *[insert client advertiser name/brand]* (the "Project"). To ensure that Confidential Information (as defined below) is protected, and in consideration of the mutual rights and obligations set out below, both parties agree to comply with the terms of this letter agreement.

### 1. Meaning of Confidential Information

- 1.1 For the purposes of this agreement, "Confidential Information" means all information that ought reasonably to be considered confidential, including information relating to business operations, processes and plans, trade secrets, product information and pricing, and any content created in respect of the Project such as scripts, photographs, film and other creative products in whatever form.
- 1.2 Confidential Information will not include any information that:
  - (a) is or becomes generally available to the public other than as a result of breach of this agreement; or
  - (b) the Recipient can establish, to the reasonable satisfaction of the Owner (as both terms are defined in 1.3 below), was received lawfully from a source not connected with the Owner and in respect of which the source is not under any obligation of confidence, or was known to the Recipient before the date of this agreement and in respect of which it was not under any obligation of confidence; or
  - (c) the parties agree in writing is not confidential.
- 1.3 For the purposes of this letter, "Owner" means whichever of Agency and Company discloses or otherwise makes available its Confidential Information to the other (or their Representative, meaning any employee, agent, sub-contractor or other representative), and "Recipient" means whichever of Agency and Company (or their Representative) receives or otherwise obtains the Owner's Confidential Information, as the case may be.

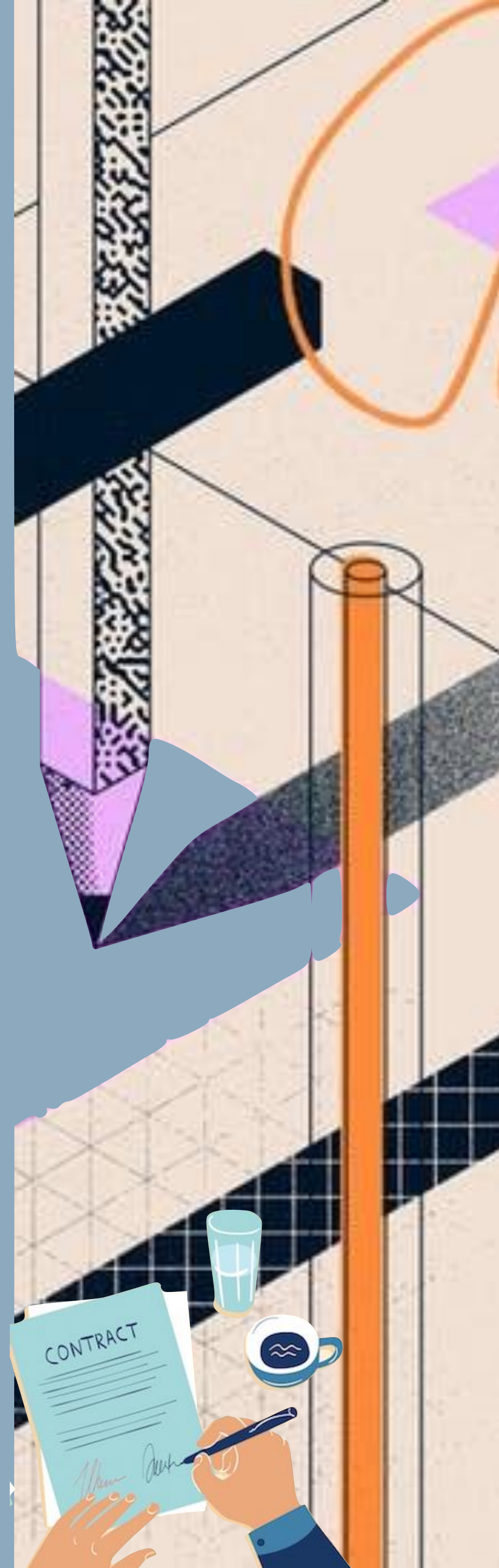
### 2. Obligations

- 2.1 The Recipient shall keep all Confidential Information of the Owner confidential and, except with the prior written consent of the Owner, shall not either itself or through any Representative:
  - (a) use any such Confidential Information in any way except in respect of the Project; or
  - (b) disclose or make available any such Confidential Information in whole or in part to any third party, except as expressly permitted by this agreement; or
  - (c) copy, reproduce or otherwise record any such Confidential Information, except as strictly necessary for the Project; or
  - (d) use any such Confidential Information for its own promotional or other purposes.



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# NDAs

## Red flags

- Long duration period
- Penalty clause
- Non-compete clause
- Transfer of IP rights





# COPYRIGHT





# COPYRIGHT

- What is copyright vs. intellectual property?
- How should copyright assignment be handled in a production contract?
- What are some other types of IP?
- Trademark infringement; passing off
- Copyright infringement vs. taking inspiration

**Another question, we are creating an alternative universe where everything is a square.**

**The director wants to make film posters of famous film posters, but change them from the following:**

**The Lord of The Rings to - The Lord of The Squares**

**The Ring - The Square etc etc**

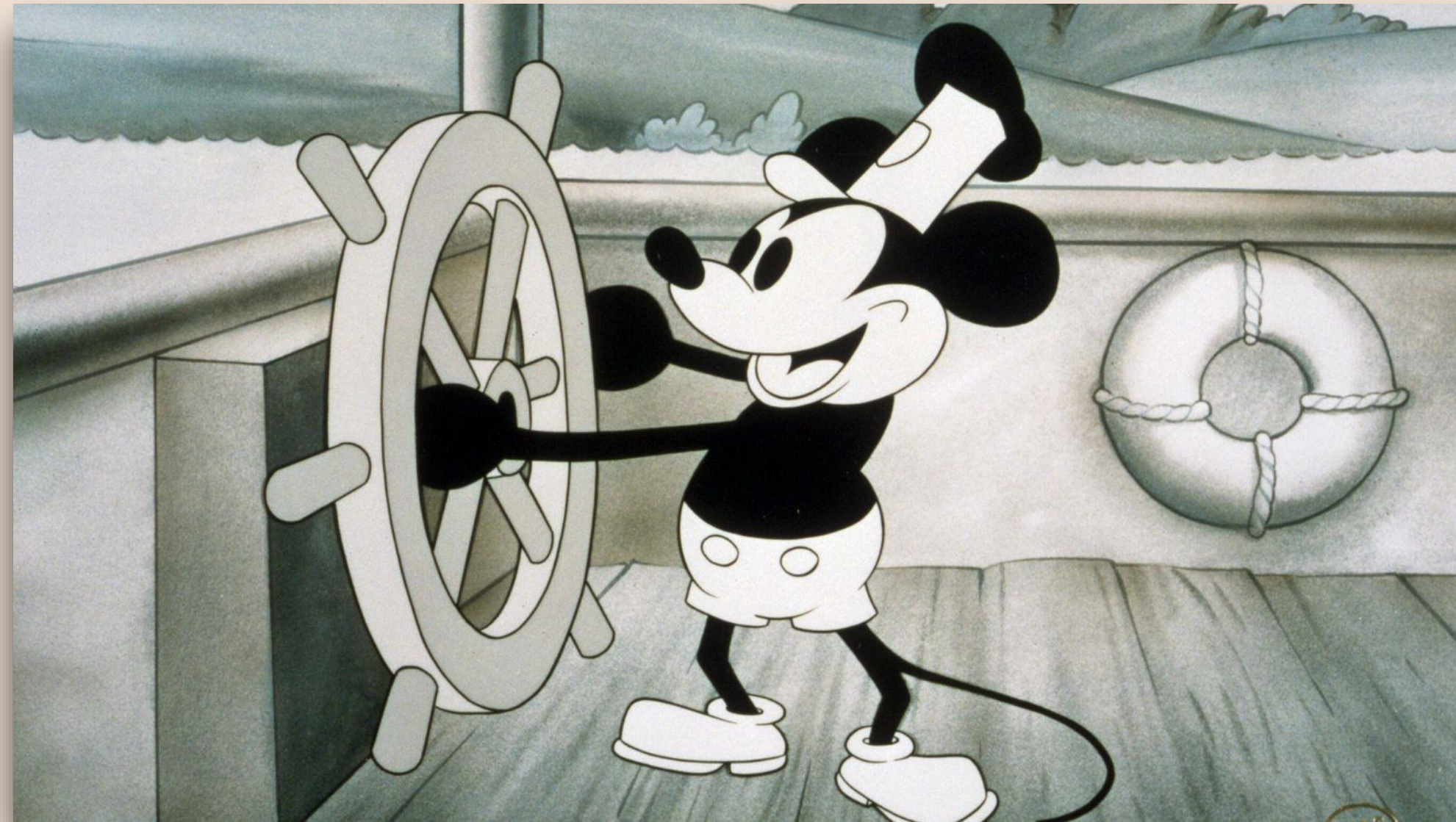
**Is this doable without running into licensing problems?**





# COPYRIGHT

How long does copyright last?



Filmmakers are now legally free to use the works of author A.A. Milne for inspiration and adapt some of his characters for new projects.

Disney also holds a separate trademark on Mickey as a corporate mascot and brand identifier.



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# COPYRIGHT & RISK ASSESSMENT PAINTINGS





# COPYRIGHT & RISK ASSESSMENT BUILDINGS





# COPYRIGHT & RISK ASSESSMENT ALCOHOL





# COPYRIGHT & RISK ASSESSMENT

VEHICLES; NUMBER PLATES





# AI

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

GETTY IMAGES (US), INC. )

Plaintiff, )

v. )

STABILITY AI, INC. )

Defendant. )

C.A. No.:

**DEMAND FOR JURY TRIAL**

**COMPLAINT**

Plaintiff Getty Images (US), Inc. (“Getty Images” or “Plaintiff”), by and through its undersigned attorneys, for its Complaint against Defendant Stability AI, Inc. (“Stability AI” or “Defendant”), hereby alleges as follows:

**NATURE OF ACTION**

1. This case arises from Stability AI’s brazen infringement of Getty Images’ intellectual property on a staggering scale. Upon information and belief, Stability AI has copied *more than 12 million* photographs from Getty Images’ collection, along with the associated





# AI

You warrant and represent that: (i) In your provision of services hereunder, including the Video and any other Subject Materials hereunder, you will not utilize, incorporate or include Generative AI Tools and/or the resulting products therefrom without the Client's prior written approval; and (ii) In the event the Client provides its approval per subsection 8(b)(i) above, you will:

- a) comply with the terms and conditions pertaining to such Generative AI Tools;
- b) keep and deliver to the Client clear, accurate and up to date records of exactly which Generative AI Tools have been used in the course of providing your services hereunder, including the purpose for which such tools were used and the outputs thereof;
- c) not input any of the Client's confidential information or the Client's data (including, without limitation any Music, song lyrics and/or other musical materials) into any Generative AI Tool;
- d) clearly indicate to the Client those aspects of your services and/or the Subject Materials for which Generative AI Tools were used;
- e) have obtained all necessary rights to include the outputs thereof in the Video and any other Subject Materials hereunder; and
- f) ensure that the Client shall be able to use the Subject Materials freely in all media without restriction and/or claim by any third-party person and/or entity (collectively, the "AI Protocols").







**Thank you**

**Any questions?**

*Steve Davies & Charlotte Fraser*



**APA**

