



An AICP White Paper:

On Intermediate Files for Post and Digital Production

The fundamental engagement of the editorial, design or post production company in marketing is to create, assemble and deliver one or more finished commercials, spots or other media to the agency or advertiser.

Using today's digital tools, the creation of this final product necessarily generates hundreds of working files; elements, sketches, mattes, misfires, 3D models and rigs, editorial select bins and working edit files, working animation, pipeline tools, code, intermediate composites and other work that represent the process required to create the final product. These pieces often contain or represent the thinking and working tools of artists and companies who have spent decades honing their craft and have developed methods and systems for organizing their creative thoughts independent of the project for which these intermediate materials have been generated.

Likewise, companies themselves often invest hundreds of thousands of dollars over many years creating "pipeline tools" and efficiency systems to help streamline their processes and look to see their investment in these tools amortized over a period of years. This investment has been made regardless of the job for which these tools are being used – and in many cases the tools themselves are developed into marketable Intellectual Property (IP); software that can be sold to other companies for profit as a part of the company's ongoing business model.

Historically, standard pricing guidelines have made no allowance for passing on this valuable IP with the occasional exception of work that is specifically paid for (as with a clearly specified "toolkit"), and companies working in post have billed for their services accordingly; based entirely on the delivery of the finished product. These files and pipeline tools have never been included in the price and can no more be turned over to advertisers for free than can the assembly line robots used by auto makers to the buyers of individual cars.

Given this reality, the AICP recommends that its members strenuously object to the inclusion of *any* contractual language from agencies or advertisers deeming these tools, systems or other IP be considered part of the contracted work product of any project or any work for hire agreement. Furthermore, unless this work is specifically paid for, no Master Services Agreement, Statement of Work or contract should, under any circumstances, be signed by member companies that does not include the following language or provision of similar effect:

*"Notwithstanding anything to the contrary contained herein, Supplier shall at all times maintain ownership of its "Intermediate Materials," defined to include the proprietary tools, methods or methodologies, software (in object code and source code form), systems, know how, concepts, technology, information, materials, techniques, expertise, methodologies, equipment, workflows, and processes, project files, bins, transcodes, 3D data, non-essential code and all other metadata files, all used or improved by the Supplier in rendering the services and/or providing the Material."*