

BDI Design Advisory Service

Design Directory_Appointing a Design Firm



Innovation Filter ◦ Open Innovation Challenge ◦ Innovation Bank

A guide to identifying and professionally appointing a design firm

Including copyright issues and how to avoid disputes

What is Design?

Many people have tried to succinctly summarise what 'design' is and have by and large failed as it can be both a simple and complex set of activities dependent on the individual skills and thought process of a 'Designer'.

So let's focus on designers not design

Some designers are highly creative individuals with fantastic visualisation skills who take brand owners communication requirements and translate them into marketing collateral that successfully enables a business to engage with its audience.

Other designers may have logic of mind that enables them to take disparate information be that technology, legislation, statistics, business, strategic and/or marketing plans and couple those with user-centered knowledge, needs and behaviours and translate all the facts, knowledge and variables into new services, products and brands.

Others might be niche specialists such as sound or light designers that have a high level of technical ability, logic and creativity in one specialist sector.

All designers will possess different levels of creativity both in their thought processes and visual skills. Those with highly creative design thinking skills but less capable visual skills are no less an able designer than those with great visual skills but less strategic skills.

That's perhaps where it gets complicated as the design industry is not one homogenous lump.

To help you we have categorised the design industry into *Organisation Types and created this simple advice guide on how best to approach your search and appointment process.

* See search tips and BDI Design Directory @ www.britishdesigninnovation.org or www.designdirectory.org

Design Advisory Service also includes other useful appointment documents:

[Design Brief template](#) and three agency recommendation service (free of charge)

[Appointment Scenarios Guide](#) (free of charge)

[Design Advisory Service](#) (charge may apply)

[Professional Practice documentation](#) (Complete set £300 plus vat)

[Innovation Filter](#) – 3 Minute and Proposition Pitch templates – free to Originators when submitting to BDI for idea Evaluation.

So how do you know what type of designer you are seeking and what type of design firm to hire?

The first thing not to do is to treat your design requirement as purely an isolated 'project'. In the vast majority of cases the design solution you are seeking is intrinsically linked with many other aspects of your business such as your brand, marketing, communication, customer service, operational procedures and/or finance.

Thereby we would advise that you complete our holistic business Design Brief before you begin to identify design firms. The brief will enable you to focus in on your business*, its requirement for moving forwards and how that requirement fits into or affects the other core components of your business.

Even if you are not sure whether you will proceed with the design process, it is still useful to attempt the Design Brief to enable you to focus on that decision before taking up your and design firms time in credentials meetings. The Design Brief is likely to be a first 'draft', as it may evolve with your and the designers input before you reach the final brief which will form a core part of your appointment contract.

** Please note if you are a start-up business, inventor or other type of lone Originator who has a business idea where you require assistance to bring it to market – please refer to our Innovation Filter Service at www.britishdesigninnovation.org and request the 3 Minute and Proposition Pitch documents*

Design Brief is part of the BDI Professional Practice documentation available through BDI and will be required if you utilise our Design Advisory Service.

To undertake your own search please use our Design Directory available @ www.britishdesigninnovation.org or www.designdirectory.org.

Or for search assistance please feel free to telephone 01273 621378 or email us: info@britishdesigninnovation.org

Once the draft Design Brief is complete you will be in a much better position to identify the actual design skills you are looking for.

It may be as straightforward as needing to identify a creative agency with experience of developing marketing collateral for an existing service.

It may be that you are seeking to launch a new brand for a product that requires structural packaging as well as branding, graphics, and web design services. Or you are seeking a complete retail interior re-fit and re-positioning of the brand to attract a younger clientele?

Or you may have new technology and are seeking market applications through product design development or the development of new services to be delivered through a new or existing or upgraded product.

Sometimes the skills sets that you require may not be vested within one company at which point you are likely to require two or more firms who happily complement each other and can work together.

Collaboration

There are key things to look out for when selecting design agencies to work collaboratively. Are their skill sets compatible and are their software and engineering programmes compatible? Location becomes an issue when trying to work collaboratively with your agencies.

They may need to be located near you and near each other to avoid increased travel and time costs. Or if the skill is very specialist and not located in your region you need to factor additional time and travel costs into your budget.

Splitting your brand development from your web development can work if you choose the right pair of agencies with compatible skills to work together but hire a knowledgeable independent project manager on your team to manage the process logically and technically. Or make one agency lead and take responsibility for the overall contract delivery on time and on-budget, if they have an account manager who understands the technical side of web development as well as the user-centred brand requirements. Unmanaged, one firm can easily let the other down.

Need help? Send your completed Design Brief to BDI and utilise our Design Advisory Service. If you complete the Design Brief and simply require recommendation of up to four appropriate design firms against a straight forward criterion, the recommendations are free of charge. There may be charges for more in-depth advisory services for complicated requirements.

Using the Design Brief as part of the selection process

Once you have identified a number of design firms that match your requirement the completed Design Brief will come in very handy.

The Design Brief enables you to provide it to a short-list of design firms before or after a Chemistry or Credentials meeting. Dependent on the size of the project and budget, a short-list ought not to exceed four design firms.

It may be wise to request a non-disclosure/confidentiality letter to be signed and returned before you issue a brief. (BDI can provide this).



If you issue a Design Brief, set up a meeting for at least two weeks ahead, seeking to see your short-listed firms all on the same day or over a couple of days, preferably at their premises.

What can you expect at the first meeting?

If you have not provided a brief before the meeting, your first meeting will be limited to Chemistry or Credentials meeting. (Refer to Appointment Scenarios Guide)

If you have provided a written brief all you are seeking in the first instance is for the design firms to have considered your brief and to demonstrate to you, based on their knowledge of your sector and the focus of your project, why they feel they would be best placed to work with you.

Do not ask for any design solutions in any format to be available to you at the first meeting or anytime pre-appointment.

The most important element you are seeking to ascertain is whether there is a good skill and personality fit with you and your company. Any design firm worth its salt will have prepared a series of questions they have arrived at since reading your brief. This will give you a true insight into their thinking, logic and business acumen.

As they are a design firm you already know they can design. This isn't what you should be looking for them to prove pre-appointment. You need to know how they think and how they arrived at the questions they ask you. What is their knowledge of your industry sector and have they taken a basic look at brands, companies or propositions similar to yours and identified the right issues?

This approach is common practice in the design & advertising industry during the early stage of identifying the right agency to work with. It is often called a **Think Piece** which some design firms might support with what is known as **mood boards**.

Again this is **not** design solutions which you should not request or expect to be presented with before contract of appointment. It is simply an illustration of their logical thought process and one that you can expect to follow through when it comes to appointing them and working in partnership with them to arrive at your design solution.

The Think Piece will serve to establish whether you believe you can work with the agency and feel comfortable enough to entrust them with your business.

Another reason that it is best to avoid requesting design concepts at pre-appointment stage is that the Intellectual Property Rights* for non-paid work will rest with the design firm.

** also see Intellectual Property and how to avoid disputes pages 9/10*

Thereby, if you see something you think you like visually but do not gel with the team, you will not be able to use it. Neither are design concepts presented pre-appointment, likely to be thought through well enough to guarantee the design thinking and solutions are correct for your business. In fact design concepts at this stage will only serve to distract you and the design team from dealing with the real business issues.

BDI Professional Practice documentation contains a Design Firm Evaluation template to enable you to score firms on all important criteria, immediately after your meeting. This will ensure that post the meetings, you can logically compare the strengths and weaknesses of each design firm.

Its other purpose is to enable you to provide feedback to the non-successful firms (and the successful one) to enable them to learn what they got right and what they got wrong.

Too often design firms are left by the brand owner with no knowledge of why they were unsuccessful. Indeed brand owners can be discourteous by not informing non-successful agencies of their decision which can cause unnecessary ill feeling towards your brand.

Always remember that they and their friends, family and staff could be your customers too.

Once you have concluded that one or perhaps two design firms could be right for you, you need to then move forward to pre-appointment, contract development.

Contract development is critical and should include:

- details of how the design firm works with clients including the design team who will be working on your brief and the overall account manager;
- the stages of work involved;
- remuneration structure;
- Intellectual Property policy;
- details of any sub-contractors who might be employed and their IP policy;
- details of how third party suppliers such as printers are selected and how quotations are obtained;
- details of price exclusions; details of how additional charges are notified to you and sign-off procedure;
- details of professional indemnity insurance (if applicable)
- details of any professional bodies they belong too.

It is also wise to ask for three recent client references, including a long standing client, a current client, and a client with a similar size project and budget to your own.

BDI Professional Practice suite contains a Response to Brief document that agencies can use to structure its response into a pre-appointment contract. This forms the basis of the final contract between your firm and theirs. The final contract must be signed by both parties and be accompanied by a formal letter of appointment.

Budget

Always the big question – how much will it cost?

In most instances the brand owner actually knows how much they have available to spend on the design activity but hold back as they believe that telling the design firm means that they will spend up to the limit when the brand owner was quietly hoping prices might come in under budget.

This is true – a design firm will quote up to budget available – but at least it enables you to compare like for like in context of requirement and where they have allocated the budget; and it ensures that you can get everything you need from that budget. If the budget is under par versus your needs, then you will have an opportunity to reduce the amount of work or if you need to find more funds to meet your needs you will be doing so because you can justify it.

If you have an absolute fixed budget you must state it within the Design Brief, before the first meeting, to enable the design firm to reject the meeting and save their time and yours.

Also remember that good design is as expensive as bad design in terms of how bad design can end up costing you more in the long run. Getting it right from the beginning saves time and money. If your product or service is great, your customers' belief in it and thereby their purchase of it, relies upon its positioning being absolutely right.

Remuneration terms

The majority of design firms operate on a fee for services basis. There are some, about 15% of the industry, who, dependent on the proposition will consider a fee plus licensing, royalty, or even equity stake. If you are a start-up brand this could be very useful as it ensures that your design firm, if it is making a financial investment in your business, will give their full commitment and have every interest in the fast and continued success of your business.

However, in these circumstances you and they must be absolutely certain of the terms of such arrangements and ensure that expectations are fully understood on both sides; and documented. The agreement must be detailed in writing, preferably through a solicitor.

BDI Professional Practice documentation includes draft contracts for both fee for services and fee plus licensing, royalty and equity deals. These were produced in partnership with Harbottle and Lewis LLP.

Pitfalls to look out for

Insist on a written contract and read your contract in detail.

Pay attention to the design firm's policy on 'additional charges'. External costs such as photography, prototyping, printing and illustration are, most often, chargeable extras. Ensure that you make your budget explicit in terms of what it needs to include or better still, set aside a budget for production, separating it from design fees.

It is generally not possible for a design firm to give an exact estimate for external costs at the beginning of the process. The design concepts/solutions will determine the external production budget.

Most design firms manage the production process for you including selecting, briefing, managing and payment of external suppliers. This is safe and normal practice. Only if you are qualified in such activities as briefing a printer should you even consider managing this process. The Design Firm know what they are looking for in a print proof or prototype and if you manage it yourself and things go wrong you will have no recourse against your design firm.

In most instances the client is responsible for final approval of all concepts and print proofs, prototypes and any other external production items. If you are uncertain of any element, you can give power of attorney to your design firm for final approvals, but do ensure that they and the external contractors they are engaging on your behalf (e.g. printers and prototyping houses) have professional indemnity insurance (where applicable).

During the design development process, clients often become inspired by new directions. Ensure that if this happens potentially causing a departure from the original contract, that any additional work and costs involved are agreed in writing between you.

The BDI Professional Practice documentation contains an Additional Work Request Form for design firms to use in these circumstances. Often when a relationship is going well and everyone is settled in the client makes what they feel are minor requests for additional work or changes to stages of work.

Add the Additional Work Requests, signed by both parties, to the Original Contract.

Leaving important issues such as additional costs until you get the invoice for 'extras' can cause many a fall out between clients and design firms.

Do not request additional work to go ahead before you have the extra money discussion. Disputes arising can negatively affect your business and your relationship.

Intellectual Property

All design firms retain Intellectual Property on any work that has not been paid for and/or on any work produced until otherwise agreed, or as agreed in the original contract. Intellectual Property terms differ by design discipline where usage, territory, and extended and cross discipline or sector terms may also bring about specific agreements that must be determined in the original contract to avoid later disputes arising.

Below is basic best knowledge guidance by discipline but do not legally rely upon it as absolute without formal legal advice. Advice is also limited to UK law.

Branding and graphics firms tend to assign copyright in perpetuity to the client organisation on payment of all invoices. This is a good reason to ensure any work commissioned is confirmed in writing and paid for on time, within the payment terms agreed in the contract and/or purchase order.

It should also be noted that work created for a specific purpose (e.g. a brochure) involving visual imagery, photography or illustration, cannot be utilised for example across an advertisement campaign, without license or extended usage fees being negotiated. This tends not to relate to a 'brand identity' but relates to other commercial activity such as physical commercial product, for example, a clothing label, 3D product (such as a mobile phone), cover or bag, or any other item that goes on sale to the public. It should also be noted that photographers and illustrators retain copyright on all of their work and the creative industry is vigorous in pursuing breach of copyright. Design firms are bound by these terms and thereby so is the client.

Other than where your corporate or brand identity is designed exclusively for you and where payment of that work tends to include an in perpetuity copyright assignment, all other graphics work requires a copyright assignment agreement if you wish to be free to re-use graphics across marketing collateral or other product not included in the original contract agreement.

You might also be best advised to ask your design firm to negotiate a copyright 'buy-out' fee of any illustrative, photographic or design imagery developed in context of your design brief. This will enable you to re-use imagery across other commercial applications without constantly returning

to your design firm and their illustration and photographic sub contractors to re-negotiate usage fees for each additional commercial application.

This is common practice in all creative industry sectors such as advertising, music, film, radio, photography, illustration and all forms of editorial publishing. For example, a jingle written for a radio format may not be re-used for a TV advertising campaign without an additional usage or license fee payable to the Originator. Similarly, a photographic image created for an annual report, may not be re-used for a poster campaign without payment of an additional usage or license fee to the photographer.

Extended usage fees

You need to establish with your design firm their copyright and extended usage fees policy. Apart from your corporate or brand identity where copyright tends to be automatically assigned on payment of original creation fee additional usage fees where imagery created for one purpose, for example, a brochure, is applied to for example, a magazine advertising campaign or a 3D object, tends to attract usage fees unless otherwise agreed in the original terms of your contract or where a fully inclusive or exclusive copyright assignment fee has been negotiated and paid.

Photographers and illustrators extended usage fees tend to be determined by the type of usage and audience reach. The trade associations, agents and representatives have set the usage fees and they tend to be universal. Graphic firms own created imagery is likely to work to the same extended usage terms and fees as those of photographers and illustrators. This tends to apply only when their imagery created for one commercial purpose is provided to your in-house team or another third party creative firm. If the design firm is commissioned to produce the extended materials usage fees tend to fall within extended design and production budgets.

Copyright buy-out fees in all instances are by negotiation

Terms differ design firm by design firm, so ensure copyright and extended usage fees form a fundamental part of your original contract agreement.

Product design development firms retain Intellectual Property where they create it or enhance it (IP arising) in all instances.

Where you already own the IP (patent protected), design fees tend to include assignment of copyright once full fees have been paid. Where a brief leads to original IP creation or arising, it is common to agree an IP assignment fee or agree fee plus licensing or royalty payment. Licensing and royalty fees can range between 1% and 15% of the product, ex-factory price inclusive of VAT. Percentages vary according to the product sector, (e.g. pharmaceuticals) the original design fee paid, IP ownership,

minimum unit production runs, shelf life of the product, status of the brand owner and their marketing prowess and routes to market.

The Licensing Executive Society can provide some guidance figures on licensing percentages by sector and product category.

Product development firms do not always wish to retain ownership of the IP due to registration, patent, and policing costs associated with ownership. Therefore they are often agreeable to an IP buy-out fee, or assignment of IP within a fixed-term royalty deal.

Such deals can be negotiated for an outright assignment, exclusivity deal. Others may be an assignment of the IP for your market, sector and product category, but retention of the IP for other markets, sectors and product categories.

In web development graphics firms tend to assign copyright on payment of fees, but engineering firms tend to retain copyright over engineering code. Within your contract you need to be clear about who owns what. If at a later date you wanted to move your web site development to another company you need to be sure that you own the code or be faced with starting again. It would be prudent to request an assignment of copyright of both the engineering code and the graphics within the original contract. If you agree copyright assignment, always insist on being provided with an unencrypted copy of your web site on completion and payment of fees. There is little point in having a copyright assignment if you do not have unencrypted access to the code.

Designer-makers commissioned to develop a product for manufacture and/or for a retailer, most often retain copyright and only license their designs on a non-exclusive or exclusive basis. Some designer-makers do work on fee plus royalty.

Retail designers own copyright on their 3D fixtures and graphic imagery and assign it to the client on payment of all fees for the original store and tend to agree a license fee per store in a roll-out, unless the original contract states otherwise. Retail designers who sub-contract production of bespoke 3D fixtures and fittings may be co-joined in the sub-contractors IP ownership terms.

In Graphic Packaging design, the norm tends to be that the design solution is created for a specific product with assignment of copyright on payment of fees. If design concepts are later required for usage by the brand owner for an extended product range, other product range, or marketing collateral to be supplied to another creative firm (e.g. your advertising agency) then extended usage or license fees are likely to become payable, unless otherwise agreed. **Structural packaging** that results in IP arising is subject to the same terms as product design development.

Service designers tend to own copyright over the collateral and vehicles developed to deliver the service such as the user journey and web development and coding. A difficulty faced by both service designers and their clients is the absence of copyright over business models. This issue is still being debated in the European legal system which currently does not recognise business models as being covered by copyright law. This continues to cause frustration for service designers and brand owners alike when they see their business model replicated quickly by competitors. Copyright does exist for 'business processes' and some forms of business model can be protected in the USA.

2D graphics and web coding are protected by standard copyright laws.

What causes copyright disputes?

The most common copyright disputes arise when a brand owner uses work created for a specific purpose by one firm and provides files to another creative firm for application to other products, services, or marketing collateral without an extended usage fee to the Originator (your design firm, photographer, illustrator, musician, and author).

Disputes can also arise if you get involved in bad practice such as free pitching (unpaid concepts) where ideas submitted by one design firm are passed across to an incumbent, winning creative firm or your in-house team. This is another good reason for not conducting free pitches as they can cause more trouble than they are worth.

The design firms position and the law is explicit in this area, any work produced by the design firm in context of a free pitch that is thereby not paid for by the brand owner is absolutely the copyright ownership of the design firm.

Disputes can arise in product design development where the product design firm has generated IP and or IP arising and that work is utilised across another product range or sector without an IP buy-out agreement in place between the product design firm and the brand owner.

Royalty payment disputes can arise when a fixed term royalty deal has been agreed but the brand owner due to reasons unconnected with the design firm pulls a product from market before end of term. This is likely to lead to a breach of contract and loss of revenue claims from the design firm affected.

Disputes can arise where a design firm has been contracted to develop concepts for a specific purpose on a fixed fee and that concept/imagery is utilised by the client for another commercial purpose, without reference or payment to the Originator.

Legal Case Study example of copyright breach

A design firm created an invitation for a fashion show and were paid a small fee for that invitation which included a striking background image. The brand-owners in-house team later used that exact striking image in three colour-ways applied to a clutch bag that went on sale supported by a Christmas advertising campaign through a women's magazine with a strap line claiming 'exclusively designed for XYZ magazine readers by XYZ brand owner'

The copyright position was that the design firm were contractually paid to produce a fashion show invitation and had not assigned copyright ownership to the brand owner for other commercial applications.

Thereby the brand owner had no copyright agreement in place to use the same imagery applied to a physical and commercial 3D product or to provide files to a third party advertising agency to utilise in a 2D advertising campaign.

The design firm requested a modest usage fee for the imagery but the brand owner refuted the claim.

The lawyers ruled in favour of the design firm and instead of a payment of a £1,500 extended usage fee and copyright assignment the brand owner eventually settled out of court for £17,000 as a percentage of sales gained through sale of product utilising the design firms concept, plus their and the design firms legal fees amounting to £30,000 in total.

Design firms rarely, if ever, unreasonably withhold copyright assignment or over-charge for extended usage fees or licence fees based on a percentage of commercial sales achieved utilising their imagery or IP generated or arising.

The overall message is to act ethically and fairly and agree IP policies & terms in your appointment contract. The Heads of Agreement and or full legal contract will set out terms of usage across specific marketing collateral, 3D product and territories. Ensure you have a contract in place where such terms are explicit.

BDI Professional Practice documentation at £300 plus vat includes these contracts, where their utilisation will ensure that copyright agreements are understood by both parties and avoid breach of copyright disputes arising.

Summary

Your design firm is an important partner to your business. Finding the right partner and ensuring that both you and they have a solid understanding of the expectations and a firm brief and contract in place will pay dividends for your business.

Leaving things loose is likely to cause relationship problems. All design firms can design – that's what they do. Thereby selecting the most qualified firm for your needs is so important. Design is not a cheap commodity. Often it feels expensive as you are buying a lot of time and expertise in one chunk where other professional services might be spread over a 12 month period, such as accountancy. However, unlike accountancy or other professional services your design firm most often has a direct impact on your sales income. Thereby it is one of the most important facets of your business.

Designers will most often inspire you and add value by virtue of their knowledge and skill base, experience of your sector, contacts with broader industry and simply by seeing things from a different angle to you. You may know your business and your sector inside and out but what you want your design firm to do is to take your knowledge and other variables and translate that into a tangible story – however that physically manifests itself – which engages your target customer and leads them to buy from you.

It's a complex journey but it's also that simple.

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About the author

Maxine J horn is one of the most respected and knowledgeable individuals within the UK design industry. She set up BDI in its original guise in 1993 and has evolved it through to the organisation it is today – a hugely influential resource for the design and innovation community.

She has built BDI to attract over 1.2 million unique users a year and over 2 million hits a month. Her underlying philosophy for BDI and thereby its members is that no product or service, process, technology, or proposition ever came to market without the collective expertise of several core parties.

She is a thinker and linker and has time and respect for all other thinkers and linkers.



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