

# Revisiting Agency-Client Agreements

*The New Basics*

Candice Kersh

# Why now?

## Changes in the industry

- **Digital**
- **Social media**
- **Media**
- **Loss of control**
  - **Everyone's a publisher**
  - **Client**
  - **Consumer content**
- **The rise of the patent troll**

# Why does it matter?

**It comes down to compensation**

- **Are you getting what you think you're getting?**
  - **What are you agreeing to?**
  - **What are the potential liabilities?**

# Ownership

- **Framework for leveraging IP**
  - **Software and tools**
  - **Out of scope**
- **Ideas**

# Indemnification

- **Division of responsibility**
- **Client responsibility**
  - **Claims**
  - **Unanticipated use of materials**
    - **Preliminary materials**
  - **Misuse of materials**
  - **Client/consumer elements**
  - **Client responsibilities**
  - **Risks**
  - **Client products and services**

# Indemnification

- **Agency responsibility for IP claims**
  - **Things to consider**
    - **Loss of control**
    - **Final vs. preliminary**
    - **Use consistent with agreements**
    - **Territory**
      - **Legal clearance vs. rights clearance**
    - **Client/consumer elements**
- **Risks**

# Patent

- **Changes in the industry**
  - **Digital services**
  - **“Patent trolls”**
- **Prevention**
- **Cost**
- **Insurance**

# The agreement

- **Negotiation**
  - **The role of procurement and attorneys**
  - **It's all about what's reasonable**
    - **Understanding and education**
    - **Confidence and belief**
    - **Resolve**
    - **Fairness**
    - **Leverage**

# Questions?

**Candice Kersh**  
**(212) 826-5562**  
**ckersh@fkks.com**

**FRANKFURT KURNIT KLEIN & SELZ<sub>PC</sub>**

---

**FRANKFURT KURNIT KLEIN & SELZ<sub>PC</sub>**

---

*Remember, this is only an outline.*

*It is not an exhaustive discussion of the issues.*

*It is also not a substitute for legal advice,  
and it may not be applicable to all situations.*

*Consult your attorney for legal advice.*