

Athletics Business Office Contracts

Intercollegiate Athletics



November 2015

**The University of Texas at Austin
Office of Internal Audits
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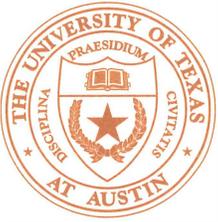
**The University of Texas at Austin
Office of Internal Audits**

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This report has been distributed to Internal Audit Committee members, the Legislative Budget Board, the State Auditor's Office, the Sunset Advisory Commission, the Governor's Office of Budget and Planning, and The University of Texas System Audit Office for distribution to the Audit, Compliance, and Management Review Committee of the Board of Regents.

**Athletics Business Office Contracts
Project Number: 15.022**



OFFICE OF INTERNAL AUDITS
THE UNIVERSITY OF TEXAS AT AUSTIN

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November 30, 2015

President Gregory L. Fenves
The University of Texas at Austin
Office of the President
P.O. Box T
Austin, Texas 78713

Dear President Fenves,

We have completed our audit of the *Texas Rights Agreement* (Agreement) between The University of Texas at Austin (UT Austin) and IMG College (IMG). Our scope included the Agreement with IMG College and related sponsorship agreements for the period of July 1, 2012 to August 31, 2013.

Based on the audit procedures performed, we conclude that the terms and conditions within the Agreement and related sponsorship agreements are generally being upheld by IMG and UT Austin. However, three opportunities for improvement were noted regarding prior written approval, completeness of sponsorship agreements, and confirmation of receipt of barbers and buybacks. Our audit report provides detailed observations for each area under review. Suggestions are offered throughout the report to assist in improving these areas.

We appreciate the cooperation and assistance of Intercollegiate Athletics and IMG staff throughout the audit and hope that the information presented herein is beneficial.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael W. Vandervort".

Michael W. Vandervort, CPA
Chief Audit Executive

cc: Institutional Audit Committee Members
Ms. Nancy Brazzil, Deputy to the President and Chief of Staff
Mr. Michael Perrin, Interim Athletics Director, Intercollegiate Athletics
Ms. Christine Plonsky, Women's Athletics Director and Executive Senior Associate
Athletics Director for External Services, Intercollegiate Athletics
Ms. Patricia Ohlendorf, Vice President for Legal Affairs
Mr. Jeff Treichel, Associate Director, Office of Internal Audits



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EXECUTIVE SUMMARY

Conclusion

Based on our audit of the *Texas Rights Agreement* (Agreement) between The University of Texas at Austin (UT Austin) and IMG College (IMG) covering years 2005–2022, the terms and conditions within the Agreement and related sponsorship agreements are generally being upheld by IMG and UT Austin.

It appears that the *Royalty Revenue Quarterly Report* (Royalty Report) calculations are based on agreed percentages. However, three recommendations were made to address prior written approval, completeness of sponsorship agreements, and confirmation of receipt of barbers and buybacks. This conclusion was based on a review of relevant sponsorship agreements and financial documentation related to the Royalty Report and the Agreement.

Summary of Recommendations

Each issue has been ranked according to The University of Texas System Administration (UT System) Audit Issue Ranking guidelines. Please see the Appendix for ranking definitions. The Office of Internal Audits (Internal Audits) identified one notable issue which led to the following recommendation:

UT Austin Intercollegiate Athletics (UT Athletics) management should ensure that IMG obtains prior written approval before engaging in any “Covered Activity” on behalf of UT Athletics per the Agreement. In addition, UT Athletics management should maintain documentation of their approval for a period of three years from the date of termination of the Agreement.

Two additional recommendations are included in the report, but are minor in significance.

Audit Scope and Objective

The scope of this audit included the Agreement with IMG (consisting of five amendments) and related sponsorship agreements from the period of July 1, 2012–August 31, 2013, to cover a complete fiscal year (FY) for both IMG and UT Austin. This audit was requested by UT Athletics management and was included as part of the Internal Audits FY15 Annual Audit Plan. The audit objective was to determine whether the terms and conditions within the Agreement and related sponsorship agreements are being upheld by IMG and UT Austin.

Background Summary

The Agreement between UT Austin and IMG went into effect July 1, 2005, and is scheduled to continue through June 30, 2022. IMG is a collegiate sports marketing company which serves universities nationwide. IMG was formed through the consolidation of several companies. The Agreement is a revenue sharing arrangement where IMG is granted the rights to obtain and execute sponsorship agreements on behalf of UT Athletics. UT Austin receives a percentage of the adjusted gross revenue collected based on the terms of the Agreement.



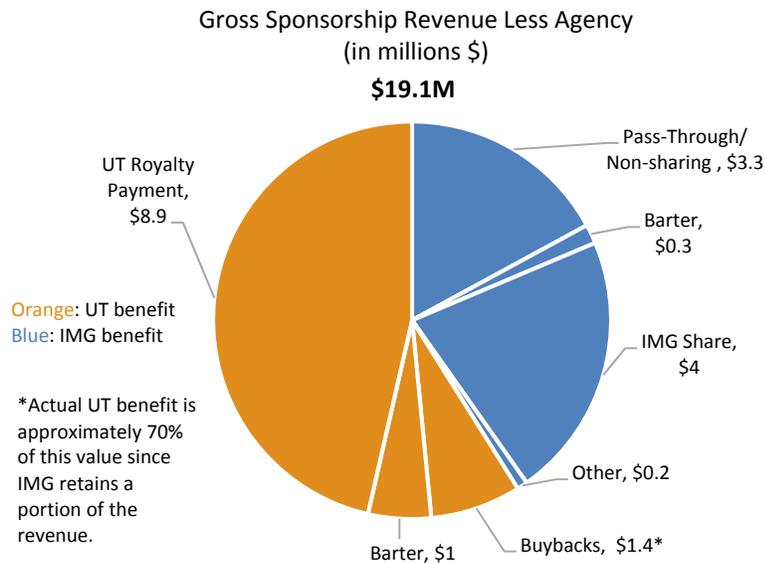
BACKGROUND

IMG is a collegiate sports marketing company which serves universities nationwide. IMG was formed through the consolidation of several companies, including Host Communications and IMG Worldwide. IMG Worldwide acquired Host Communications in November 2007. Host Communications began representing the National Collegiate Athletic Association in 1976.¹

UT Austin became a client of Host Communications in 1983.² The *Texas Rights Agreement* (Agreement) between The University of Texas at Austin (UT Austin) and IMG College (IMG) covers years 2005–2022. Local IMG personnel work directly with UT Austin Intercollegiate Athletics (UT Athletics) on a continuous basis, creating a close working relationship between the two entities.

The Agreement is a revenue sharing arrangement where IMG is granted the rights to obtain and execute sponsorship agreements on behalf of UT Athletics. The *Royalty Revenue Quarterly Report* (Royalty Report) is prepared by IMG and stipulates the royalty payment due to UT Austin. UT Austin receives a percentage of the adjusted gross revenue collected based on the terms of the Agreement. The adjusted gross revenue is composed of the gross revenue received from sponsors less applicable deductions (agency costs, pass-through costs, IMG benefit barters, and buybacks).

The gross sponsorship revenue less agency costs for IMG’s 2012-2013 fiscal year (FY) was approximately \$19.1 million.³ Of this amount, UT Austin received approximately \$8.9 million in royalty payments. The pie chart below illustrates the breakdown of gross revenue into the various deductions, barters, and revenue received by UT Austin and IMG. Please see Appendix B for a list of terms and definitions cited in the report.



¹ IMG College website located at <http://www.imgcollege.com/about/history>.

² IMG College website located at <http://www.imgcollege.com/our-properties/colleges-universities/university-of-texas>.

³ This figure represents gross sponsorship revenue from the October 2013 Royalty Revenue Quarterly Report excluding ESPN Longhorn Network which was out of scope for the audit.



SCOPE, OBJECTIVES, AND PROCEDURES

The scope of this audit included the Agreement with IMG (consisting of five amendments) and related sponsorship agreements from the period of July 1, 2012–August 31, 2013, to cover a complete fiscal year for both IMG and UT Austin.

The audit objective was to determine whether the terms and conditions within the Agreement and related sponsorship agreements are being upheld by IMG and UT Austin.

To achieve the objective, the Office of Internal Audits (Internal Audits):

- Compared the Agreement and related five amendments between UT Austin and IMG,
- Analyzed relevant sponsorship agreements, and
- Reviewed relevant financial documents.

This audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* and with *Government Auditing Standards*.

AUDIT RESULTS

It appears that the Royalty Report calculations are based on agreed percentages. Internal Audits recalculated the Royalty Report for mathematical accuracy and confirmed the percentages used matched the terms of the Agreement. In addition, Internal Audits ensured the payments actually received matched the payment amounts in the Royalty Report. However, three recommendations were made to address prior written approval, completeness of sponsorship agreements, and confirmation of receipt of barters and buybacks.

Each issue has been ranked according to The University of Texas System Administration (UT System) Audit Issue Ranking guidelines. Please see Appendix A for ranking definitions.

Prior Written Approvals **Audit Issue Ranking: High**

Documentation of UT Athletics prior written approval was incomplete for the following sections of the Agreement:

- Subcontractor agreements,
- Signage,
- Corporate marketing,
- Miscellaneous benefits and tickets,
- Barters and buybacks,
- Advertising space inventory, and
- Pass-through costs.



As a result, advertising sales of \$19.1 million and deductions (e.g. \$3.3 million of pass-through costs) on the Royalty Report could not be tied in their entirety to prior written approval from UT Athletics.

Incomplete documentation of prior written approval appears to be a result of an informal agreement process between IMG and UT Athletics. Per discussions with IMG and UT Athletics, it appears approvals are provided informally via email, telephone, or meetings. In these cases, written approval was not obtained. There is a risk of loss of income for UT Athletics when the components of the Royalty Report are not verified and tied to agreed amounts via written approval. In addition, other terms (e.g. advertising space and miscellaneous benefits) may not be enforceable if documentation of prior written approval is not maintained.

Section X.H. of the Agreement states, “IMG shall not engage in any Covered Activity or otherwise conclude any agreement related thereto with a third party without first securing the University’s prior written approval pursuant to Section XX.B.”⁴ The following additional sections of the Agreement contain a statement requiring prior written approval:

- Subcontracting, Section VI.H,
- Signage, Section IX.A,
- Corporate Marketing, Section IX.K,
- Miscellaneous Benefits (Mailing Lists and Autographed Merchandise), Section XI E.F, and
- Barters and Buybacks, Section XVI.A.

Additionally, Section X.F. of the Agreement states, “The University and IMG shall agree upon an annual written inventory...” and Section I.Q. of the Agreement states, “All pass-through costs...shall be documented and subject to the University’s prior written approval.”

Finally, Section XXI.J. of the Agreement states, “Each party shall maintain written documentation of all transactions...[and] shall be maintained for a period of three (3) years from the date of termination of this Agreement.”

Recommendation 1: UT Athletics management should ensure that IMG has obtained prior written approval before engaging in any “Covered Activity.” In addition, UT Athletics management should maintain documentation of all approvals for a period of three years from the date of termination of the Agreement.

⁴ The Agreement, Section XX.B. states “...agreements between IMG and third parties, and any other statement or material required by the terms of this Agreement to have the prior written approval of the University under Section XX.B. shall be in writing...”



Alternately, UT Athletics management and IMG may decide to amend the Agreement and update the circumstances that require prior written approval as well as the acceptable methods of communication. Any changes to the Agreement should be reviewed and approved by appropriate administrators of both entities.

Management's Corrective Action Plan: UT and IMG will amend the current Agreement to allow written approvals to include email and permit verbal approvals as long as the verbal approvals are subsequently documented in writing (e.g., email). In addition, it is important to note that IMG's contract approval form that IMG/UT currently uses was in its infancy during the time period audited.

Responsible Person: Athletics Director and Chief Revenue Officer-Intercollegiate Athletics

Planned Implementation Date: UT and IMG will begin operating as stated above immediately (November 20, 2015) and ensure the contract is amended and effective for FY 2016-17.

Post Audit Review: Internal Audits will follow-up in the second quarter of FY16.

Completeness of Sponsorship Agreements

Audit Issue Ranking: Medium

Internal Audits identified incomplete agreements, as well as contract values between IMG and individual sponsors that were inconsistent with the royalty reports provided to UT Athletics.

Specifically, Internal Audits noted the following:

- Six (5%) of 116 contracts were missing at least one authorized signature;
- Four (3%) of 116 contracts had contract amounts for 2012-2013 that did not match revenue amounts on the royalty report. IMG explained that the revenue was recognized in other years to correspond with the delivery of inventory items, but could not provide an acknowledgement documenting the change;
- Fifteen (13%) of 116 contracts had the Texas portion of the multi-school agreement handwritten on the contract. IMG redacted the contract values to protect the privacy of other universities included in multi-school agreements but could not provide additional documentation to satisfy the requirement for independent verification of the handwritten numbers; and
- Sixty-four (55%) of 116 contracts appear to have been signed and dated after the beginning of the contract period.

These observations appear to be a result of an informal agreement process between IMG and potential sponsors. When contract terms or values are inconsistent or incomplete, there is an increased risk of the agreement not being properly performed, potentially resulting in a reduction in revenue to UT Austin.



Section XXI.J of the Agreement states, “Each party shall maintain written documentation of all transactions related to the performance of this Agreement.”

Recommendation 2: UT Athletics management should verify that IMG is completing sponsorship agreements, executing sponsorship agreements in a timely manner, and correctly recording contract amounts.

Since these agreements are between IMG and individual sponsors, UT Athletics management may decide to address risks associated with incomplete sponsorship agreements using other forms of documentation that reflect the intent of transactions between IMG and sponsors (e.g. a memorandum of understanding).

Management’s Corrective Action Plan: The incomplete signatures were due to missing records, since the agreements dated back several years. IMG currently has an electronic contract system in place to maintain all signed agreements. It should be noted that IMG and UT were paid on those very few contracts that were missing signatures. IMG does not think that the MOU method mentioned above is necessary or advisable. For sponsorships that have a different contract year than the fiscal year pursuant to the UT/IMG Rights Agreement, IMG will footnote these on the Royalty Report settlements in the future to explain any discrepancy in how the total amount is allocated to each UT/IMG Rights Agreement year.

Responsible Person: Athletics Director and Chief Revenue Officer-Intercollegiate Athletics

Planned Implementation Date: Immediate (November 20, 2015)

Post Audit Review: Internal Audits will follow-up in the second quarter of FY16.

Confirmation of Receipt of Barters and Buybacks

Audit Issue Ranking: Medium

Neither IMG nor UT Athletics appear to be maintaining written documentation of all transactions related to the performance of barter and buyback agreements. For six (54%) of 11 buybacks and seven (50%) of 14 UT Austin benefit barters, receipt of goods and services could not be confirmed by UT Athletics. UT Athletics does not appear to have a formal process for tracking the receipt of these items. If the receipt of goods and services is not accurately tracked, then there is an increased risk of not receiving the agreed upon amount. As a result, UT Athletics could experience loss or misuse of these contracted items.

Section XXI.J of the Agreement states, “Each party shall maintain written documentation of all transactions related to the performance of this Agreement. The books, records, and documents of either party, insofar as they relate to work performed under this Agreement, shall be maintained for a period of three (3) years from the date of termination of this Agreement or an extension thereof.”



Recommendation 3: UT Athletics management should implement a process to ensure proper recording and documentation of receipt of goods and services contracted each year through barter and buyback agreements.

Management's Corrective Action Plan: Texas Athletics will identify an individual to oversee the barter and buyback agreements and receipt of goods and services. The individual will develop a mechanism to track the receipt of all goods and services and provide monthly reports to appropriate management.

Responsible Person: Athletics Director and Chief Revenue Officer-Intercollegiate Athletics

Planned Implementation Date: January 1, 2016

Post Audit Review: Internal Audits will follow-up in the second quarter of FY16.

CONCLUSION

Based on our audit of the Agreement between UT Austin and IMG covering years 2005–2022, the terms and conditions within the Agreement and related sponsorship agreements are generally being upheld by IMG and UT Austin.

It appears that the Royalty Report calculations are based on agreed percentages. However, three recommendations were made to address prior written approval, completeness of sponsorship agreements, and confirmation of receipt of barter and buybacks. In accordance with directives from The University of Texas System Board of Regents, the Office of Internal Audits will perform follow-up procedures to confirm that audit recommendations have been implemented.



APPENDIX A

Audit Issue Ranking

Audit issues are ranked according to the following definitions, consistent with UT System Audit Office guidance. These determinations are based on overall risk to UT System, UT Austin, and/or the individual college/school/unit if the issues are left uncorrected. These audit issues and rankings are reported to UT System directly.

- **Priority** – A Priority Issue is an issue that, if not addressed immediately, has a high probability to directly impact achievement of a strategic or important operational objective of UT Austin or the UT System as a whole.
- **High** – An issue that is considered to have a medium to high probability of adverse effects to UT Austin either as a whole or to a significant college/school/unit level.
- **Medium** – An issue that is considered to have a low to medium probability of adverse effects to UT Austin either as a whole or to a college/school/unit level.
- **Low** – An issue that is considered to have minimal probability of adverse effects to UT Austin either as a whole or to a college/school/unit level. Issues with a ranking of “Low” are reported verbally to the unit and are not included in the final report.



APPENDIX B

Terms and Definitions

Adjusted Gross Revenue	Gross revenue actually collected by IMG less applicable deductions such as third party agency commissions, pass-through costs, and other expenses mutually agreed upon by UT Austin and IMG such as goods and services received through barter and buyback agreements.
Agency Costs	Commissions paid externally or through a third party for their assistance in sales for UT Austin.
Barter Agreements	Trade agreements used to offset expenses.
Buyback Agreements	Agreements that can result in UT Austin receiving goods or services to support Men's Athletics and/or Women's Athletics. IMG receives cash from a sponsor and uses the proceeds to purchase these items for UT Austin.
"Covered Activities"	Rights and privileges granted to IMG by UT Austin per the Agreement.
Gross Revenue	All revenue collected by IMG as a result of its sales and marketing of the rights and licenses granted to it by UT Austin under the Agreement.
Pass-Through Costs	Costs incurred when an advertiser remits revenue to IMG and IMG is required to purchase items for the advertiser with the revenue.
Sponsorship Agreements	Agreements entered into between IMG and individual sponsors as a result of IMG's sales and marketing of the rights and licenses granted to it by UT Austin under the Agreement.
<i>Texas Rights Agreement</i> (the Agreement)	A rights agreement entered into between UT Austin and IMG that specifies the rights, covenants, privileges, benefits, terms, and consideration paid by IMG to UT Austin.