

**These procedures are from an insurance company's errors and omission policy application. They are the insurance company's view of what procedures a producer should follow in order to have a work that is insurable. Even if you are not planning to get insurance, following these procedures is good practice and may avoid problems later.**

### **CLEARANCE PROCEDURES**

The Clearance Procedures below should not be construed as exhaustive and they do not cover all situations which may arise in any particular circumstances of any particular Production.

1. Applicant and its counsel should continually monitor the Production at all stages, from inception through final cut, with a view to eliminating material which could give rise to a claim.

2. The script should be read prior to commencement of Production to eliminate matter which is defamatory, invades privacy, or is otherwise potentially actionable.

3. Unless work is an unpublished original not based on any other work, a copyright report must be obtained. Both domestic and foreign copyrights should be checked. If completed film is being acquired, a similar review should be made of copyright and renewals on any copyrighted underlying property.

4. If the script is an unpublished original, the origins of the work should be ascertained — basic idea, sequence of events and characters. It should be ascertained if submissions of any similar properties have been received by the Applicant and, if so, the circumstances as to why the submitting party may not claim theft or infringement should be described in detail.

5. Prior to final title selection, a Title Report must be obtained.

6. Whether Production is fictional (and location is identifiable) or factual, it should be made certain that no names, faces or likenesses of any recognizable living persons are used unless written releases have been obtained. Release is unnecessary if person is part of a crowd scene or shown in a fleeting background. Telephone books or other sources should be checked when necessary. Releases can only be dispensed with if the Applicant provides the Company with specific reasons, in writing, as to why such releases are unnecessary and such reasons are accepted by the Company. The term "living persons" includes thinly disguised versions of living persons or living persons who are readily identifiable because of identity of other characters or because of the factual, historical or geographic setting.

7. All releases must give the Applicant the right to edit, modify, add to and/or delete material, juxtapose any part of the film with any other film, change the sequence of events or of any questions posed and/or answers, fictionalize persons or events including the releasee, and to make any other changes in the film that the Applicant deems appropriate. If a minor, consent has to be legally binding.

8. If music is used, Applicant must obtain all necessary synchronization and performance licenses from composers or copyright proprietors. Licenses must also be obtained on prerecorded music.

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9. Written agreements must exist between the Applicant and all creators, authors, writers, performers, and any other persons providing material (including quotations from copyrighted works) or on-screen services.

10. If distinctive locations, buildings, businesses, personal property or products are filmed, written releases must be secured. This is not necessary if non-distinctive background use is made of real property.

11. If the Production involves actual events, it should be ascertained that the author's sources are independent and primary (contemporaneous newspaper reports, court transcripts, interviews with witnesses, etc.) and not secondary (another author's copyrighted work, autobiographies, copyrights magazine articles, etc.).

12. Shooting script and rough cuts should be checked, if possible, to assure compliance with all of the above. During photography, persons might be photographed on location, dialogue added or other matter included which was not originally contemplated.

13. If the intent is to use the Production to be insured on Videotapes, Videocassettes, Videodiscs or other technology, rights to manufacture, distribute and release the Production must be obtained, including the above rights, from all writers, directors, actors, musicians, composers, and other necessary therefor, **including proprietors of underlying materials.**

14. Film clips are dangerous unless licenses and authorization for the second use are obtained from the owner of the clip or party authorized to license the same, as well as licenses from all persons rendering services in or supplying material contained in the film clip; e.g., underlying literary rights, performances of actors or musicians. Special attention should be paid to music rights as publishers are taking the position that new synchronization and performance licenses are required.

15. Aside from living persons, even dead persons (through their personal representatives or heirs) have a "right of publicity", especially where there is considerable fictionalization. Clearance must be obtained where necessary. Where the work is fictional in whole or in part, the names of all characters must be fictional. If for some special reason particular named need not be fictional, full details must be provided to the Company in an attachment to the Application.

16. Consideration should be given to the likelihood of any claim or litigation. Is there a potential claimant portrayed in the Production who has sued before or is likely to sue again? Is there a close copyright or other legal issue? Is the subject matter of the Production such as to require difficult and extensive discovery in the event of necessity to defend? Are sources reliable? The above factors should be considered in your clearance procedures and recommendations.

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