

Filmmakers Insurance Handbook

Prepared for Members of:



Presented By:



Los Angeles, CA | Nashville, TN | Denver, CO | Vancouver, BC | Toronto, ON | Montreal, QC | Paris, FR

www.frontrowinsurance.com

About Front Row Insurance

Front Row is an Entertainment Insurance Broker specializing in: The Film industry, The Music Industry, Theatre Companies and Photographers with offices in Vancouver, Toronto, Montreal, Los Angeles and Nashville.

Front Row negotiates on your behalf to obtain the best coverage at the lowest premium from the insurance companies. We also insure: post houses, studios, theatres, and equipment rental houses. When you have a claim, we make sure the insurance company pays you all the money that you are owed. Front Row is the top choice for: filmmakers, musicians, photographers and theatre producers.

Short Term Production insurance can be arranged quickly through our online program for almost any production. This program is very popular with new and established film makers because of the low cost and the simple process to arrange a policy. Our secure website can offer insurance for rented equipment only if required.

Kent Hamilton - President



Kent is a respected entertainment insurance broker in the motion picture community. As Executive Vice President of the Truman

Van Dyke Company for over 25 years, he insured thousands of films, commercials and television productions throughout the US and in many countries of the world. Joining Front Row Insurance Brokers LLC as President, and Kent is backed by unparalleled experience and a well-trained team. Kent is excited to continue serving producers in solving problems and obtaining the proper insurance coverage for the best price.



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Mike Groner - Vice President



Mike began his insurance career in 2003 with C.M. Meiers Co. in Los Angeles, California. He worked alongside entertainment

business managers and provided the Hollywood elite, DICE productions and touring musicians with commercial insurance coverage. Mike then joined the Truman Van Dyke Company, one of the most respected film insurance brokerages in the US, in 2009. In 2011, Mike joined Front Row Insurance specializing in insurance and risk management for: film productions, film festivals, equipment operators, rental houses and musicians. Here he continues to fuel his passion for insuring the world's entertainment.



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Introduction

This Insurance Manual has been created to assist the Production Company with insurance-related problems and questions. What follows are brief descriptions of the various types of coverage available to the Entertainment Industry. These descriptions are general in nature and are not intended as a comprehensive explanation of the policies. Any words or phrases thought this book that are bold and underlined are links to more information on that topic that will link to **our website**.

Production insurance is vital to financing your project. Why is insurance needed for your production? The three basic reasons are: legal, contractual and property protection.

As for legal reasons, nearly every location and financier requires that a production company/filmmaker carry some form of insurance. A good example of this is the need for general liability insurance to cover property damage and bodily injury to third parties. A building owner will want to be protected for any damage caused to the location. The building owner would also want to be protected from any lawsuits brought forth from a passerby that tripped on electrical cables or from injuries sustained by gear that falls off a roof.

The contractual reason is simple. If you are under contract with a broadcaster or distributor, most likely the contract will require you to have insurance coverage before you can access your payment drawdowns.

Insurance for property protection covers you against damage and loss to assets such as the production equipment that you would be contractually responsible for as set out in a rental agreement with an equipment rental company.

The type of policy you need depends on the type of project you plan to produce. If you are making a short music video, the type of policy you want will differ from a filmmaker who aims to make a feature film. There are basically three types of production insurance packages: short-term, annual DICE Insurance, and annual. Short-term policies are used for single production, such as a commercial. A DICE Insurance Policy is used for several projects during a year period. DICE stands for Documentaries, Industrial Films, Commercials, and Educational Films.

Cast Insurance

Cast Coverage Reimburses the production company for any extra expense/costs necessary to complete the principal photography of a covered production due to the death, injury or

sickness of any declared/covered performer or director. This coverage can also include family bereavement (mourning). The limit for this coverage is up to the full Gross Production Budget. Standard cast coverage obligates you/the production company to recast and start over with another actor in the event you make a cast claim. In some instances, Essential Element Cast coverage will be required. Essential Element Cast coverage requires the insured performer to undergo a more extensive medical examination than that required for a standard cast member. Requirements are listed on “Cast Insurance Supplementary Medical Report” Form).

Insured performers (and/or directors) must take a physical examination prior to being covered by this insurance. An underwriter approved physician should complete this examination. Cast members can be included for Accident Only coverage, pending receipt and review of the completed medical. It is the responsibility of the production company to inform us when individuals are cast.

By having medicals completed early, the production company is able to determine if an insured individual has a medical condition that affects his/her insurability. When a pre-existing medical condition results in the insurance company placing an exclusion on the cast coverage, the production company may wish to explore the cost to buy off the exclusion (if this is an option). If the insurer will not allow the production company to buy off the exclusion, then the production company must determine if they wish to recast the role or self-insure this exposure. Your ability to self-insure the exposure may be affected by restrictions placed by bonders or financiers.

Common issues that show up when medicals are completed include:

- Substance abuse problems (past and present)
- Pregnancy
- Heart Conditions
- Upper respiratory infection (cold/flu)
- High blood pressure
- Psychological disorders

As discussion of the above makes readily apparent, the producers must be given sufficient lead time in order to keep their options open. If a medical is done a couple days before the insured individual is to start working, the option of recasting the role may be taken away.

If a cast member has recently undergone a cast medical for a different production (within 30 days), this medical should be forwarded for consideration. A new examination may not be required.

- The physician completing the cast medical should not be the examinee's personal physician.
- The medical must be fully completed, signed, and legible.
- The medical must be signed by a parent or guardian if examinee is under 18 years of age.
- Any answers requiring additional information should be completed as accurately and in as much detail as possible.

Completed medical Forms should be forwarded to our office as soon as possible. Fax or email copies are acceptable and the original document can follow by mail. Once received, we forward the Cast Medical Form to underwriters for clearance and follow up with the production company with any terms and conditions of coverage, sometimes with Exclusions. Claims arising from any exclusion are not covered by the Cast Insurance.

Exclusions to Cast Coverage can be amended or removed through negotiations with underwriters. Additional premiums or higher deductibles may be required to amend or remove Cast Exclusions at the discretion of the underwriter. Cast medical examination fees are entirely the responsibility of the production company. Cast medical coverage normally begins two weeks prior to the beginning of principal photography, unless otherwise arranged.

The use of an approved cast doctor will save a film producer time and money when obtaining cast insurance for a film production.

Cast insurance covers against extra expenditures incurred by the production caused by death, sickness, disability or kidnapping of insured cast members, director, DOP, or anyone else designated under cast coverage. Financiers and distributors will usually require cast insurance before they release funds.

5 Reasons to Use an Approved Cast Doctor:

1. An approved doctor is trained to dig for more information when an actor is being evasive regarding a previous medical condition such as substance abuse or a bad back. This information is material to the insurance company and the producer as it will determine if the actor will be subject to additional premiums to become insurable.
2. An approved doctor will not be bullied or awed by a celebrity actor; they obtain better information.
3. An approved doctor knows what information a film insurance underwriter needs, and provides it. There is less back and forth questioning which saves everyone time.

4. An approved doctor will always answer all the questions on the cast medical form, which avoids delays.
5. Last but not least, an approved doctor was approved in the first place because they have legible handwriting!

Essential Elements

Essential Element is extended and enhanced cast insurance. If the designated actor was to become incapacitated halfway through the film and could not continue working, then you as a producer would have the option of abandoning the series or feature and receiving all the money back which you have spent to date in the form of an insurance claim.

Standard cast coverage obligates you to recast and start over with another actor. Given that you can walk away from the film when you have EE coverage, there is more risk for the insurance company and as a result there is an additional premium of \$5,000 to \$15,000 for each designated EE cast member. There are additional cast medical tests as well to arrange EE: urinalysis, blood work with a drug screen, EKG, and an x-ray.

Typically EE is required by a distributor that does not want the project without a particular actor or director involved: think the “Rocky” franchise. A distributor would probably not want “Rocky IV” if Sylvester Stallone was not able to complete filming. The distributor would not want the film with another actor.

Negative, Film, & Videotape Insurance

Coverage against all risks of direct physical loss, damage, or destruction of digital media, raw film or tape stock, exposed film (developed or undeveloped), recording videotape, sound tracks and tapes, up to the amount of the insured production cost. This coverage reimburses the additional expenses that the production company would incur in order to re-shoot/edit had the loss not occurred.

- Coverage does not include: loss caused by fogging; faulty camera or sound equipment, faulty developing, editing, processing, or manipulation by the cameraman; accidental exposure to light, dampness or temperature changes; or errors in judgment in exposure; lighting or sound recording, or from the use of incorrect type of camera, lens, raw film or tape stock.

Faulty Stock, Camera, & Processing Insurance

Covers loss, damage or destruction of digital media, raw film or tape stock, exposed film (developed or undeveloped), recorded video tape, sound tracks and tapes, caused by or resulting from fogging or the use of faulty equipment (including cameras and video tape

recorders); faulty sound equipment; faulty developing; faulty editing and faulty processing; and accidental erasure of video tape recording. This coverage reimburses the additional expenses that the production company would incur in order to re-shoot/edit had the loss not occurred.

- Coverage does not include: loss caused by errors of judgment in exposure, lighting or sound recording, from the use of incorrect type of camera, lens, raw film or tape stock.
- This coverage can only be purchased with Negative, Film, and Videotape coverage.

Digital Film Insurance and the Future

Insurance for digital features, TV series and documentaries is rapidly evolving. It's the case that many production companies now incorporate scenes in their films that were once captured live but are now being created, edited and manipulated digitally in post-production. What this means is that the need for negative/faulty insurance is becoming gradually reduced and will soon be replaced by digital image capture, processing and storage.

- In 2009, "Slumdog Millionaire" became the first movie shot mainly in digital to win the Academy Award for Best Cinematography.
- The highest grossing movie in the history of cinema, "Avatar", was also shot on digital cameras.

As digital cinematography shifts towards "tapeless" or "file based" workflows, insurers need to ensure that they are covering similar incidences of risk, tailored towards loss and/or damage to digital media.

What this means for Insurers? Digital data should be covered as software under the negative coverage policy definition, and though some policy wordings incorporate coverage for digital data, the wordings might still need to be formatted and reworded for digital media. Digital capture may occur on video tape, hard disks, flash memory, or other media which can record digital data; therefore, policy wordings need to reflect the new technology and storage devices. Presently, many do not.

If the film industry moves solely towards digital film, then the risk rating and pricing related to production packages will need to be reviewed given that the risk factor between the periods of principal photography and post production will be significantly reduced and the risk of loss will be shifted towards another area such as post production.

Typically insurers will require information relating to the lab and type of film used, whereas with digital cinematography the shift will be towards the type of camera being used and the experience of the operator in using an HD or Red Camera. Back up procedures will have more impact on the rating of a production.

Why will the policy rating change? Various technical considerations arise when contrasting film vs. digital cinematography, i.e.: when shooting on film, response to light is determined by what film stock is used, whereas with digital photography, response to light is determined by the CMOS or CCD sensor(s) in the camera, so the cinematographer needs familiarity with the specific camera model. Typical production packages are rated based on all costs incurred during principal photography and exclude many post production costs. Production company requirements are now shifting towards a significant portion of the risk stemming from post production activities.

Inferences

Technology innovation has meant that new vendors have emerged on the market such as RED and Silicon Imaging that are primarily focused on digital technology.

Impact on Claims/Losses

What this means for insurance losses is that innovative risk control and risk transfer methods need to be addressed that specifically relate to new exposures from digital media products. The types of losses that can result stem from transferring digital data to/from 2D to 3D conversion, losses resulting from migration of data from old forms of storage to new forms. Also, Care, Custody and Control issues relating to the migration and archiving of data can arise.

The Future

As insurers revisit their policy wordings, they must ensure that their coverage and exclusions match the industry requirements, as the advances in digital technology will not slow down to wait out the process. While wordings might not currently exclude losses resulting from digital cinematography, insurers must ensure that new risk rating methods and coverages address the new risks that will arise during post production and storage of data.

Third Party Property Damage Liability

This coverage provides for the damage or destruction of property of others (including loss of use of the property) while the property is in the care, custody or control of the production company and is used or is to be used in an insured production.

Coverage does not apply to: liability for destruction of property caused by operation of any motor vehicle, aircraft or watercraft, including damage to the foregoing; liability for damage to any property rented or leased which may be covered under props, sets or wardrobe, or

miscellaneous equipment coverage (except, that loss of use of any such equipment is covered), will fall under those respective coverages instead.

This type of exposure is not covered under a Comprehensive Liability policy. Property Damage coverage written as part of the Commercial General Liability Policy excludes damage to any property in the production company's care, custody or control.

Production Equipment Insurance

Covers against all risks of direct physical loss, damage or destruction to cameras, electrical communications, sound, lighting and grip equipment which is owned by or rented to the production company.

Props, Sets, & Wardrobe Insurance

Provides coverage on props, sets, scenery, costumes, wardrobe and similar property against all risks of direct physical loss, damage, or destruction during the production.

Aircraft

Insurance coverage with respect to the use of aircraft is limited, so the production company should always advise our office well in advance of the anticipated use of same. You should never sign a contract with respect to the use of aircraft without first having our office review the document.

If the aircraft is being used as a prop/set and is not in motion, then insurance for damage to the aircraft itself would be provided under the Prop/Set/Wardrobe coverage subject to policy limits, and liability Insurance coverage would be provided under the Commercial General Liability policy. However, if the plane is in motion either under its own power or being propelled by any other means (i.e. being towed), then coverage may be compromised.

We recommend the following guidelines when using an aircraft:

- a) Require the company from whom you are renting/leasing the aircraft from to add the Production Company as an additional insured to their insurance policy.
- b) Request a waiver of subrogation with respect to hull damage.
- c) Request that their policy contains a Cross Liability Clause.
- d) Request that their policy includes coverage for passengers.
- e) Request a Certificate of Insurance showing the limits of coverage and confirming that items a, b, c, and d have been included in their insurance coverage.

- f) Obtain a Hold Harmless Agreement from the owner of the aircraft. This should be included as part of your rental agreement. Legal counsel should assist with this agreement.

Aircraft Questionnaire

If any aircraft are hired, we will have to arrange Non-Owned Aircraft Liability coverage protecting your legal liability for bodily injury and property damage to hired parties arising out of the use of the aircraft. In order to arrange this coverage, we will need the following information:

1. Exact dates of use
2. Location
3. Owner's Name
4. Description of the aircraft, including registration number
5. Name of the pilot and number of hours experienced in aircraft
6. Details concerning filming activities, i.e. storyboard
7. Number of persons in aircraft at any one time and relationship to the production company
8. The seating capacity of the aircraft
9. Value of hull if Hull Insurance is required on the aircraft.

Alternatively, the production company can be added as an Additional Insured to the Aircraft Owners Hull and Liability Policy.

Waiver of Subrogation: Definition: A condition of an insurance policy which states that the coverage will not be prejudiced if the insured has waived any rights of recovery from a responsible party in writing prior to a loss.

Cross Liability Clause: Definition: A clause within the insurance policy which states that 'except with respect to the Limits of Insurance and any rights or duties specifically assigned to the first named Insured, the insurance applies as if each Named Insured were the only named insured and separately to each insured against whom claim is made or 'action' is brought.'

Hold Harmless Agreement: Definition: A contract or agreement in which one party assumes legal responsibility for the acts of another.

Watercraft

Similar to the use of aircraft, coverage with respect to the use of watercraft is limited. The production company should always advise our office well in advance of the anticipated use of

any watercraft. You should never sign a contract with respect to the use of any watercraft without first having our office review the document.

If the watercraft is being used as a prop/set and is not in motion, then damage to the watercraft itself would be provided under the Props/Sets/Wardrobe coverage. If the watercraft is in motion then there is a sublimit for physical damage to the watercraft. Please call our office for more specific information.

Liability coverage is provided under the Commercial General Liability policy but is limited to non-owned watercraft less than 26 feet in length. If the watercraft is in excess of this length limitation, or if you are required to indemnify the watercraft owner, then specific coverage arrangements must be made prior to the use of the vessel.

If you plan to use any watercraft please provide the following information in order that we may provide a quote/coverage for owned or rented watercraft used in the production, including Charter's Liability; Protection & Indemnity coverage; Hull Physical Damage:

Watercraft Questionnaire:

1. Watercraft scenes description(s)
2. Number of vessels
3. Length and name of each vessel
4. Type of each watercraft
5. Number of days used
6. Dates used
7. Where used (which body of water)
8. Copy of any contractual agreement
9. Are any watercraft operated by the Name insured? If so, please give a detailed description of the boat and where operated.
10. Are any watercraft stunts involved? If so, please describe.

Animals

When you use animals on a project you should always consider how the non-availability of the animal would affect your ability to shoot. If the inability of the animal to perform would result in substantial delays or cost overruns, then the producer should consider insuring the animal under Cast Coverage. As with cast insurance on people, the insurance company would require a medical to be performed on the animal by a veterinarian in order to obtain sickness coverage.

The company should also look very closely at the contract that is entered into between the production company and the animal wrangler/owner who is providing the animal. A copy of the contract should always be forwarded to our office prior to signing. We are looking to see if the contract contains any insurance provisions, indemnity clauses or hold harmless clauses.

You may also wish to consider purchasing coverage for legal liability for loss or injury to animals that are in your care, custody and control. Remember, animal mortality coverage only applies when an animal dies. No legal liability for injury to animals is covered unless specifically endorsed.

Animal Questionnaire

In order to obtain a quote/coverage for Animals, please provide answers to the following:

1. Dates of use
2. Location
3. List of animals
4. Values of animals
5. Current vet certificates
6. Description of use
7. Name and telephone number of trainer

Railroads

The production company should always advise our office well in advance of the anticipated use of any railway cars or equipment. You should never sign a contract with respect to use of trains without first having our office review the document.

If the train is being used as a prop/set and is not in motion, then damage to the train itself would be provided under Props/Sets/Wardrobe coverage. If the train is in motion a sublimit would be in effect for physical damage to the train. Please call us to discuss.

Liability coverage is provided under Commercial General Liability policy. If you are required to indemnify the train owner, then specific coverage arrangements must be made prior to the use of the train.

In order to provide a quote/coverage for Railway Cars and Equipment, please forward answers to the following:

Railroad Questionnaire

1. A copy of the railroads contractual agreement
2. Description of scenes involving railroad equipment

3. Dates equipment used
4. Locations of equipment:
 - a. Where is equipment stored?
 - b. Where is equipment moved to? Exact street address.
 - c. Where is equipment returned after use is over?
5. Type of equipment used? Please list.
6. Activities the production company has with the equipment.
7. How many people will be “on board”?
8. Distances travelled and speed the railcar is to travel at.
9. Any stunts? Please list. Please complete a stunt questionnaire.
10. Will main line tracks be used during filming days?
11. Please advise how the cast, crew, equipment, and public will be protected during filming.

Extra Expense Insurance

Reimburses the production company for any extra expense necessary to complete principal photography of the insured production due to loss of, damage to or destruction of property or facilities (props, sets, wardrobe or equipment) used in connection with the production. Coverage can be extended to include losses occurring from mechanical breakdown of equipment, disruption of outside power (North America only) and Union or Guild Strike subject to a maximum limit per individual policy conditions.

Office Contents Insurance

Provides coverage for business personal property, including furniture, equipment, fixtures, tenants’ improvements and betterments, against all risks of direct physical loss or damage (excluding loss of use).

Valuable Papers and Records includes written film tape, disc, drum, cell, printed or otherwise inscribed documents and records, including books, maps, abstracts, deeds, manuscripts or other magnetic recording or storage media.

Accounts Receivable

This coverage insures all risks of direct physical loss or damage to the Insured’s records of accounts receivable, occurring during the policy period, except where specifically excluded in the policy conditions.

Money and Securities

Protects the production company against loss or destruction of funds handled while at production locations. Also provides coverage for money and securities used in connection with the declared production, on and off premises and not exceeding the limits agreed in the insurance policy.

Commercial Vehicle Physical Damage Insurance

Covers hired automobiles which are the property of others and for which the insured is liable and which are lost, damaged or destroyed during the term of coverage while such property is used or to be used in connection with the declared production.

Commercial General Liability

Protects the production company against claims for bodily injury or property damage liability arising out of filming the picture. Coverage also includes auto liability for non-owned vehicles (both on and off camera). Non-owned auto liability only applies as primary insurance in jurisdictions where the auto insurance industry is privatized (such as Ontario, Alberta, and the United States), otherwise it applies as excess insurance and another liability policy must be in force (although this is often maintained by the vehicle owner/lessor). This coverage will be required prior to filming on any city or provincial roadways, or any locations sites requiring filming permits.

Coverage does not apply to use of any aircraft or watercraft. These must be separately insured before any coverage will apply.

Workers' Compensation

Crew members on film productions, short films, commercials, documentaries and music videos should always be covered by work comp insurance - the risk of going without is too great.

If you are a crew member working on a low or micro budget film production, you should always ask the producer if they have workers' compensation coverage for the crew and general liability coverage for the production in general.

Workers comp. will provides benefits to workers injured on the job such as: medical costs, rehab costs and loss of future earnings all per the policy wording. In most states and provinces the film maker is obligated to provide coverage for any cast or crew that they hire. In some cases coverage is arranged through a private entertainment insurance broker and in

some cases it is arranged directly through the state or provincial agency responsible for providing workers' comp.

The benefit to the producer is that once the injured crew member accepts the workers' comp benefits, they usually waive the right to sue the producer. This is good insurance for the producer.

Sometimes the insurance company or government workers' comp agency will not provide coverage if the crew and cast are not being paid, as there is no way to determine loss of future earnings. For this reason, the producer should arrange to at least make nominal payments to cast and crew.

If you are a crew member that gets hurt on the job and there are no work comp benefits available to you, then you are faced with the prospect of suing the producer while recovering from your injuries - difficult and unpleasant.

Always ask the producer if you will be covered by workers' comp even when volunteering on a short shoot in any capacity.

Guild / Union Travel Accident

Provides Motion Picture/Television (IATSE/NABET/SAG/DGA) and other Guild or Union contract requirements for accidental death, dismemberment and/or disability insurance to all production company cast or crew members. Coverage is blanket and the limits of liability meet all signatory requirements. It covers various modes of transportation; including extra-hazardous work, underwater filming, etc. as recited in various Guild agreements.

Foreign Locations

When production activities occur outside of Canada, there may be additional insurance coverages that are either mandatory or that should be considered. Requirements and recommendations will vary depending on the country in question and the type of activity occurring there. A list of some of the most commonly purchased coverages outside of Canada are as follows:

- US Workers' Compensation
- Foreign Voluntary Workers Compensation
- US Auto Liability
- Foreign Difference in Conditions/ Excess Auto Liability Insurance
- Out of Country Medical Insurance
- Locally Admitted Foreign Liability Insurance

- Political Risk/ War Risk Insurance
- Civil Commotion/Riot Insurance
- Weather Insurance
- Kidnap & Ransom Insurance

If you intend to film outside of Canada, please forward answers to the following questions in order that a quote/coverage can be obtained prior to travel:

Foreign Questionnaire

1. Dates of Travel
2. Location
3. a. Number of US hires (individuals)
b. Number of Canadian hires (individuals)
4. Number of weeks outside of Canada
5. Number of third country nationals
6. Any local hires from the vicinity of the international filming location?
7. Name and telephone of contact outside of Canada.

Stunts and Special Effects

The Film Production insurance policy contains an exclusion under the Cast Insurance coverage for a person injured when taking part in a hazardous stunt or any special effect in the declared production, without the prior consent of the insurance company.

Although these types of activities are usually reserved for stunt performers, the producer and the director should be aware of this exclusion. If actors are involved in hazardous stunts or special effects, please advise your broker well in advance so that they can make the appropriate arrangements with the insurance company.

In order to properly evaluate the hazards involving stunts used in filming, please provide answers to the following:

1. Synopsis of scenes being filmed.
2. List stunts by tape, location and date.
3. Protective measures used to protect participants and public, equipment and property.
4. What is the experience of the Stunt Coordinator - please attach a resume.
5. How many people are involved in each stunt scene?

Additional information may be requested. The underwriters may cover the scene based on the strength of the information - the stunt coordinator resume is particularly important; otherwise, the underwriter may charge an additional premium, or apply a higher deductible or impose a sub-limit on the limit of coverage, or, they may use a combination of all three to address the risk.

If you are comfortable with a high deductible and sub limit you can often save the cost of an additional premium being charged.

Be sure to talk to your Entertainment Insurance broker before you film any stunts or SPFX scenes that were not originally in the script that your broker provided the insurance company.

Producers' Liability (Errors & Omissions)

Covers legal liability and defense for the production company against lawsuits alleging unauthorized use of titles, formats, ideas, characters, plots, plagiarism, unfair competition or piracy, breach of contract. Also protects for alleged libel, slander, defamation of character or invasion of privacy. This coverage will usually be required by a distributor prior to the release of any theatrical or television production.

If coverage is required for the title, you must obtain a 'Title Report & Opinion' from a recognized Film Title Clearance Company offering this service and submit the report to underwriters for final approval.

Premium indications provided prior to actual quotes can differ from each other when coverage is offered.

Upon instructions from the Production Company, we will begin clearance procedures: the attorney for the underwriter will review and clear the project – there is a fee for this service which is included in the final premium. If coverage is not bound, the fee is payable to the Underwriters' attorney and an invoice will be issued accordingly.

You should check your production/distribution etc. agreements regarding the start date for Errors & Omissions coverage. Some financiers require Errors & Omissions coverage to be in place for the first day of principal photography.

NOTE: it can take up to ten (10) working days for a project to be cleared and coverage take effect.

E&O Clearance Procedures Explained

Good film E&O clearance procedures will result in the lowest possible premium and the simplest claims settlement in the event of a loss. The Clearance Procedures below should not be construed as exhaustive and they do not cover all situations which may arise in any particular circumstance or 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 the work is an unpublished original not based on any other work, a copyright report must be obtained. Both domestic and foreign copyrights and renewal rights should be checked. If a 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 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 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 release and to make any other changes in the film that the applicant deems appropriate. If the person is a minor, consent has to be legally binding.
8. If music is used, the applicant must obtain all necessary synchronization and performance licenses from composers or copyright proprietors. Licenses must also be obtained on pre-recorded music.

9. Written agreements must exist between the applicant and creators, authors, writers, performers and any other persons providing material (including quotations from copyrighted works) or on-screen services.
10. Whether the production is factual or fictional, 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, copyrighted magazine articles, etc.).
12. 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, copyrighted magazine articles, etc.).
13. 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.
14. If the intent is to use the Production 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 others connected to the work, including proprietors of underlying materials.
15. Film Clips should not be used unless licenses and authorizations 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.
16. In addition, dead persons (through their personal representatives or heirs) have a "right of publicity", especially where there is considerable fictionalization. Clearances 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 names need not be fictional, full details must be provided to the Company in an attachment to the Application.
17. 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 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.

Film Production Insurance: How the Premium is Determined

Usually the cost of film production insurance is determined by charging a pre-determined rate against the net insurable budget of the production. The net insurable budget is calculated by removing those items out of the gross budget that the client does not want to insure (i.e. Unit Publicity, Insurance, and General Expense). The rate will vary from production to production and depend on things such as:

- Type of production (i.e. Feature vs. TV series)
- Inclusion of any stunts or special effects
- Any work in or around water
- Aerial work
- Locations outside Canada/US

Most of these things will cause the rate to increase. The rate that the Insurance Company determines and the net insurable budget determine the final premium. The number of episodes and length of production rarely have an impact on price. The only time this would have an impact is if it was a very short shoot and we could offer a short term policy. This type of policy would offer very limited coverages and would usually only offer coverage for 7 days or less.

In addition to the rate and net insurable amount, the Insurance Companies have a minimum premium that they have to charge for a policy to ensure they can cover all of the administration costs of issuing and servicing the policies. Their minimum premium threshold might cause two different projects which have different budgets to still have the same premium. This is usually the case in lower budget projects. The Insurance Company is stuck charging a minimum premium as they have to endure the same administrative costs no matter the budget of the production.

Title Reports: Who Needs Them?

One of the least understood areas dealt with in the hectic world of film and television production is that of Title research and E&O insurance. Entertainment Lawyers often comment on how often their Clients ask "Why do we need a Title Search?", as well as "Why is a Title Report for financing so expensive?" Herein, I will attempt to provide simple answers to these excellent, oft-asked questions.

Over the past decade, the huge expansion in both modes of broadcast transmission and new channels, of distribution of content via cable, internet and satellite has made it virtually impossible to completely control by whom as well as where a television program or film property will be seen. Hence, the possibility of potential Title, Copyright of Trademark infringement suits has expanded immeasurable over the past decade.

In order to avoid lawsuits over conflict due to previously used Titles, the insurer underwriting the financing of the production requires a Title Search. The report generated by this search is thus an attempt to reduce the risk of a lawsuit by meeting the insurance application requirements and ensuring as much as is possible the uniqueness of your Title. Increasingly, due to the rapid growth of media content spill-over into neighboring foreign markets, Entertainment Lawyers and Insurers are requiring basic Title Search coverage in both Canada in the US, even if the property is licensed for broadcast into just one of the markets initially.

Since 1923, the foremost provider of North American Title and Copyright Reports has been Thomson CompuMark. Initially known as Thomson & Thomson, the Boston-based firm now offers research offices in Washington, Boston, and Montreal, as well as local sales offices in 9 cities across North America, Europe and Japan. These capabilities, tied to the numerous proprietary Thomson Corp. databases and continuous major capital investment have enabled Thomson CompuMark to lead the world in Title, Copyright, and Trade-Mark research for close to a century!

Coupled with their initial question of "Why is Title Search coverage is required?", the curious producer is then likely to ask "what is being investigated?" In the provision of a Title Report in Canada, the research includes searching all registered and unregistered Canadian trade-marks, the Canadian Copyright Registry, titles in the National Libraries of Canada and Quebec, as well as numerous online sources and proprietary databases. Similarly, in the United States, research is done not just on registered and common law US Federal and State trade-marks, but also titles found in the US copyright Office, the Library of Congress and numerous other online and proprietary sources.

As the world shrinks, International Title coverage is emerging as a major new concern. Thomson CompuMark has responded to this new challenge by introducing their new International Title Search services in early 2006. This new capability enables them to officiate Title reports for such vital entertainment markers as the UK, Australia & new Zealand, the European Union, China, Japan and South Korea, as well as South Central America! For each Title, they research common law for exact and closely similar title usage across multiple media including film, television and computer games.

Ensure that your television or film production successfully finds distribution without costly delays or lawsuits: use a world-class provider to ensure the smooth, timely progression of your work from pre-productions to successful distribution and release!

Clearance Unlimited:

<http://www.suzyvaughan.com/>

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