

NAMED PRODUCTION CLEARANCE PROCEDURES

The following is a guide and not a comprehensive checklist for the Insured's attorney who should make certain that proper clearance procedures have been followed prior to final cut or first exhibition of the named production(s). It may not cover all situations, which may arise, given the variety of productions. We urge all Insureds to review the following points carefully with their attorney and to continually monitor the production at all stages to make certain that the named production contains no material which could give rise to a claim:

1. The script should be read prior to commencement of production to eliminate material, which is defamatory, violates rights of privacy and publicity or is otherwise potentially actionable.
2. If the script is an unpublished original, the origins of the work should be ascertained - basic idea, sequence of events and characters.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 submission of any similar properties have been received by the Insured. If so, the circumstances as to why the party submitting the material would not claim theft or infringement should be described in detail.
3. The origin of the work should be traced and a copyright report must be obtained unless the work is an unpublished original not based on any other work. Both domestic and foreign copyrights and renewal rights should be checked. If a completed film is being acquired, a similar review should be made on copyright and renewals on any copyrighted underlying property.
4. Prior to final title selection, a title report should be obtained from a recognized source setting forth prior uses of the same or similar titles, and if there is a conflict, the title should be changed.
5. Whether production is factual or fictional, it should be certain that no names, faces or likenesses of any recognizable living persons (or locations) are used unless written releases have been obtained. A release is unnecessary if person is part of a crowd scene or shown in a fleeting background or if the location is not identifiable. Telephone books or other sources should be checked when necessary. If the recognizable or identifiable person is deceased, releases must be obtained from the personal representative or heirs of such person. Releases can only be dispensed with if the Insured provides the insurer with specific reasons in writing as to why such releases are unnecessary and the insurer accepts such reasons. The term "living persons" includes thinly disguised versions of living persons or persons who are readily identifiable because of identity of other characters or because of the factual, historical or geographic setting.
6. Releases from living persons should contain language which gives the Insured the right to edit, 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 Insured deems appropriate. If a minor, consent has to be legally binding.
7. If music is used, the Insured must obtain all necessary synchronization and performance licenses.
8. Written agreements must exist between the Insured and all creators, authors, writers, performers and any other persons providing or owning material (including quotations from copyrighted works) or on-screen services.
9. If distinctive locations, buildings, businesses, personal property or products are filmed, written releases should be secured. This is not necessary if non-distinctive background use is made of real property.

10. If the production involves actual events, it should be ascertained that the author's sources are in independent and primary (contemporaneous newspaper reports, court transcripts, public records, etc.) and not secondary (another author's copyrighted work, autobiographies, copyrighted magazine articles, etc.).
11. If the intent is to use the production to be insured on video discs, tape cassettes or other new technology, rights to manufacture distributed and release the production should be obtained, including the above rights, from all writers, directors, actors, musicians, composers, and others necessary therefor, including proprietors of underlying materials.
12. If the production contained any film clips, the Insured must obtain clearances for the second use which are to be obtained from the owner of the clip or those who have the right to grant such authorization who are supplying on-screen services or supplying material. Special attention should be paid to music rights, as publishers are taking the position that a new synchronization and performance license is required.
13. Aside from living persons, even dead persons (through their personal representatives or heirs) have a "right of publicity" especially where there is considerable fictionalization. Clearances should be obtained where necessary.
14. Prior to any public exhibition of the production, it should be previewed to assure that the Clearance Procedures have been followed.