

CLEARANCE PROCEDURES

The following is a guide – not a complete checklist – for the Applicant's attorney who should make certain that the undernoted points have been complied with prior to final cut or first exhibition of the production to be insured.

1. The script should be read prior to commencement of production to eliminate matter which is defamatory, invades privacy or is otherwise potentially actionable.
2. Unless the work is an unpublished original not based on any other work, a copyright report must be obtained.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 on copyright and renewals on any copyrighted underlying property.
3. If the script is an unpublished original, the origins of the work should be ascertained – basic idea, sequence of events and characters.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.
4. Prior to final title selection, a title report should be obtained.
5. Whether production is fictional (and location is identifiable) or factual, it should be made certain that no names, faces or likenesses of any recognisable 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 insurer with specific reasons, in writing, as to why such releases are unnecessary and such reasons are accepted by the insurer. 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.
6. Releases from living persons should contain language which gives the applicant 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, fictionalise 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.
7. If music is used, the applicant must obtain all necessary synchronization and performance licenses.
8. Written agreements must exist between the applicant and all creators, authors, writers, performers and other persons providing 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 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.).
11. Shooting script and rough cuts should be checked, if possible, to assure compliance of all the above. During photography persons may be photographed on location, dialogue added or other matter included which was not originally contemplated.
12. If the intent is to use the production to be insured on video disc, tape cassettes or other new technology, rights to manufacture, distribute and release the production should be obtained, including the above rights, from all writers, directors, actors, musicians, composers and others necessary therefor.
13. Film clips are dangerous unless clearances for the second use are obtained from those rendering 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.
14. Aside from living persons, even dead persons (through their personal representatives or heirs) have a "right of publicity" especially where there is considerable fictionalisation. Clearances should be obtained where necessary.