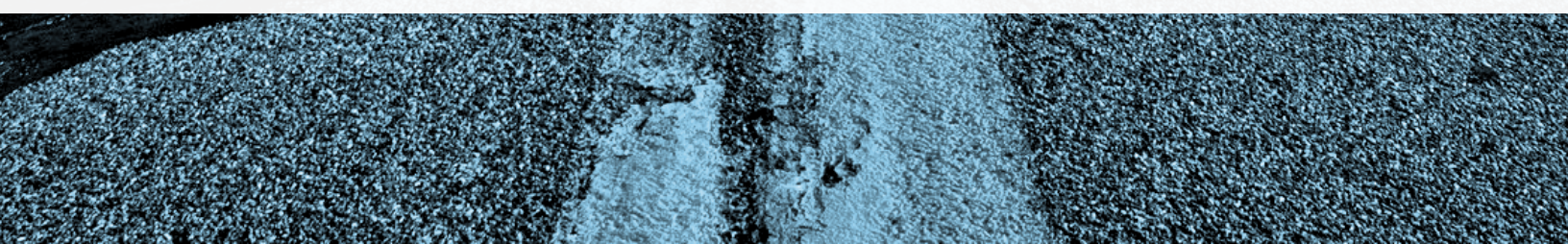


# CLEARANCE

## PROCEDURES



**THE CLEARANCE LAB**



# WELCOME TO PEACE OF MIND

Why should you utilize a clearance procedures checklist? Too many film and television projects run into delays, or even litigation, because producers have planned and budgeted for every aspect of their project—except for clearance. This checklist will guide you through the documents you need to obtain and the procedures you need to follow in order to avoid unnecessary legal problems, ease the E&O insurance application process, and make your distributors happy.

This helpful checklist guides you through the need-to-know clearance procedures process—from start to finish—so you won't have to guess or worry about whether you've missed a critical step in the clearance process.



## 1 ESTABLISH A RELATIONSHIP WITH THE CLEARANCE LAB

An experienced and solid clearance company can help you to prepare in advance for the necessary clearance steps for your project, allowing you to rest easy knowing that your project will not meet unintentional and easily avoidable road blocks throughout pre-production, production, post-production, and distribution. By thinking through clearance issues from the beginning of a project you can save money, time, and a lot of headaches. The best way to ensure you cover all your bases is with a [Clearance Package](#), bringing The Clearance Lab team on board from the beginning to guide you every step of the way.

## 2 IN HOUSE SCRIPT CLEANSING

As you whittle away at the script working towards your final shooting script, remember to pay close attention to material that may lead to clearance issues. Is anything in the script defamatory? Does it violate any rights of privacy or publicity? Can any characters be connected to real individuals? Will any props cause issues with trademark infringement? Who do you need to obtain rights from now so you're not scrambling after the fact in the hopes you don't have to resolve clearance issues in the editing room?

## 3 PROCURE ANNOTATION GUIDE

When contracting with your writer, be sure to include language which requires him or her to provide you with an annotation guide to the script. The annotation guide will identify every character, location, and event and state where the inspiration for each item originated. This will assist the you in determining what additional releases will be required.

## 4 DOCUMENT INSPIRATION AND SOURCES FOR ORIGINAL WORKS

Your script is an original, so you have nothing to worry about when it comes to infringement, right? Wrong. If you did not obtain an annotation guide from your scriptwriter it is important for the producer to sit down and glean from the writer the origins of his or her work. This would include the impetus for the idea, where the inspiration for characters arose from, and any other connection the original work may have to events, people, or places in the real world. Write down all of this information in an easy to read document and file it with your clearance materials.

## 5 ESTABLISH A SCRIPT SUBMISSION POLICY AND DOCUMENT SIMILAR WORKS

If your production company doesn't have a submission policy for solicited and unsolicited scripts, get one and publish it on your website. If you're not sure what needs to be included in such a policy, contact your entertainment attorney or [reach out to The Clearance Lab](#). For the purposes of each individual project, the producer needs to review submitted scripts (we highly recommend a database of some sort if you receive an abundance of scripts), and determine if anything received is similar in any way to the project at hand. If so, document the independent nature in which the current script was obtained by the production company. Discuss with your attorney whether or not there is any significant exposure to a law suit for infringement. To fully cover your bases, ask your attorney or The Clearance Lab for an opinion letter prior to principal photography so you don't waste time and resources on a project that may need to be changed dramatically before production.

## 6 OBTAIN A SCRIPT CLEARANCE REPORT

Once you have your shooting script in hand, visit The Clearance Lab to order a [script clearance report](#). If you manage risk like a super professional, you may have purchased a clearance package when you first contacted The Clearance Lab and only need to send a copy of your shooting script to [info@theclearancelab.com](mailto:info@theclearancelab.com) so they can begin preparing your report for you. The report will research all character names, locations, and business names in your script to ensure that they do not infringe on any rights. It will also provide a scene by scene breakdown of your script so you can quickly access the clearance issues that arise in each scene and can tackle them head on during production. Additionally, the script clearance report will provide you with the contact information you need to obtain rights to use products, business names, etc.

## **7 REGISTER YOUR SCRIPT WITH THE U.S. COPYRIGHT OFFICE**

It is important to obtain official copyright registration of your script to document the production company as the sole and complete owner of the work. If your scriptwriter has already registered the script under his or her name, you will need to assign copyright ownership from the current owner to the production company and record this assignment with the copyright office. You can register or assign your script online at [www.copyright.gov/](http://www.copyright.gov/) or place an order with The Clearance Lab to handle the registration or assignment for you. If you need assistance with the assignment agreement itself, The Clearance Lab has you covered.

## **8 SPECIAL NOTE FOR STORIES TAKEN FROM REAL LIFE**

If your project depicts events that actually happened, or is based on actual events, it is crucial to determine your scriptwriter's sources. Were they primary and in the public domain such as newspaper articles, television news accounts, public records, etc.? Or were they secondary sources protected by copyright or otherwise protected works of third parties? If any non public domain secondary source material was used it is important for the producer to obtain a release from the owner of the material. For example, a film about a well-known but long deceased individual may provide a producer with a sense of calm about life story rights (be careful here about the right of publicity which passes to the estate in some U.S. states.) However, if the scriptwriter utilized a biography of the individual when writing the script the rights to this work will need to be obtained. For a public domain or fair use legal opinion, contact The Clearance Lab.

## **9 PROCURE RELEASES FROM INDIVIDUALS DEPICTED AS CHARACTERS IN THE PROJECT**

Even with a heavily fictionalized account of real people or events, it is important to obtain releases from anyone who may be even loosely recognizable in the final product. This includes both living and deceased individuals, as some states recognize a right of privacy and/or publicity even after death. Always err on the side of caution here, as the setting of the story, random facts or plot turns, and other characters may be enough to connect a random character to a real individual. Your errors and omissions insurance company, and even your distributor(s), will insist upon seeing these releases before underwriting your policy or distributing your work. When in doubt, always obtain a written release.

## **10 PROCURE RELEASES FROM ALL ON SCREEN TALENT**

Proper language releasing the use of a performer's likeness, image, name, and voice should be included in all of your talent agreements, as well as in the agreements signed by extras. Any extra whose face is recognizable on screen, even for a second, must have signed a release. When shooting in public areas, always post easily seen and read crowd releases, and take photos of the releases for your records. Pay particular attention to minors appearing on screen, as their guardian must sign on their behalf and some states require court involvement for the contract to be valid.

## **11 PROCURE RELEASES FROM ALL CONTRIBUTORS**

Even behind the scenes contributors to your project need to release their rights to the production company to ensure their contribution may be used in the project. This comes back to carefully drafted contracts for above and below the line contributors. Again, if you are unsure on what language needs to be utilized contact your entertainment attorney or reach out to The Clearance Lab for assistance. Distributors typically require very specific language to appear in all agreements before moving forward and the law governing this topic is constantly moving.

## **12 PROCURE LOCATION RELEASES**

Your script clearance report will help you determine which location requires a release but it is a good rule of thumb to obtain a release from any and all locations used in production. The key, as with extras, is whether or not a location is recognizable on screen. Have someone on set every day of shooting whose job is to secure these written releases at each location of you have not obtained them prior to the shoot day.

# 13

## **PROCURE PROP AND PRODUCT RELEASES**

It is important to obtain written releases for all props, wardrobe, and other materials that appear on film with recognizable logos, trademarks, or designs. The most common scenario is shooting in a bar. You have hundreds of different brand names staring the camera in the face from almost every angle. Do your best to avoid any protected marks from appearing on film, but it is always a best practice to obtain releases for any that do. Taking care of this during production is much easier than trying to backtrack after editing, even though many items appearing may end up on the cutting room floor. It is a common notion in the industry that businesses do not mind their logos being used so long as it is not in a derogatory manner. While it is true that many logos have appeared on screen without any release or waiver, it is a bad idea to rely on past behavior as an indicator for future action. The reality is that use of a logo without permission is infringement and you will be exposed if you do not obtain the proper release for its use. Better to have it and not need it than to . . .

# 14

## **PAY SPECIAL ATTENTION TO ARTWORK**

The simplest method for avoiding infringement when using artwork in a shot is to hire an experienced and professional art director. However, even when a top notch art director is employed by production it is important for the producer to fact check every piece of art recognizable on screen. Determining who holds the copyright to a work can be difficult, and if it cannot be determined it is a best practice to remove that piece of art from the scene altogether. The same holds true for photographs, posters, and other similar artwork. These items add an extra layer of potential infringement if people appear in the photograph or poster. You will need to clear both the artist's rights and if they do not own the rights for the people appearing in the photograph you will need their release as well.

# 15

## **PROCURE LICENSES FOR STOCK FOOTAGE**

Stock footage that is not in the public domain must be cleared to be used in your project. Remember that you cannot rely on a source like Wikipedia to determine whether or not anything you are researching clearance for is in the public domain. There is a lot of false information floating around the Internet, so tread carefully. It is also important to insure that the owner of the stock footage warrants that they own the rights to everything in the footage, including music, performers, props, artwork, etc. and indemnifies production against any claims of infringement for these uses.

# 16

## **PROCURE MUSIC LICENSES**

There are a multitude of rights attached to a single piece of music. The composition rights, performance rights, master use rights, synchronization rights, etc. to one piece of music may be held by a number of different people or entities. Take extra care to assure that you have obtained all rights necessary to use the music in your project. If you utilize a composer for your project the proper language needs to be in their agreement ensuring that all rights necessary have been transferred or otherwise licensed by the production company. Music licensing can be the most difficult negotiation and contract drafting for the entire project, especially when you are not dealing directly with a clearing house like ASCAP or BMI. Contact your entertainment attorney or The Clearance Lab if you are uncertain about requests coming from your music providers.

# 17

## **CHAIN OF TITLE AND CHAIN OF TITLE OPINION**

It is crucial that every person who contributes anything to the project has properly assigned, transferred, or otherwise waived their rights to their contribution to the project. Chain of title documents include, but are not limited to, your operating agreement, any copyright registrations or assignments, above the line agreements, below the line agreements, licenses, waivers, and assignments of stock footage, stills, product placement, artwork, and any other item requiring clearance. Once these documents are obtained you will need a [chain of title outline and opinion](#). This is often a required deliverable for E&O insurance and distribution. Contact The Clearance Lab to obtain this document if you have not already purchased a clearance package. It is important that you have your eye on chain of title from the absolute beginning of the project.

# 18

## REGISTER YOUR FINISHED PRODUCT WITH THE U.S. COPYRIGHT OFFICE

It is important to obtain official copyright registration of your completed motion picture or television program to document the production company as the sole and complete owner of the work. This is not the same as the registration of the script itself. This registration will cover all of the creative contributions, visual and otherwise, in the finished product. You can register your project online at <http://copyright.gov/> or place an order with The Clearance Lab to handle the registration for you.

# 19

## PROCURE A COPYRIGHT REPORT

Contact The Clearance Lab to order a [copyright report](#). The copyright report is a common deliverable for distributors and E&O carriers and will document ownership of copyright in the project and put your distributors' minds at ease that you have followed protocol throughout the project and no one else may have a claim to your work.

# 20

## PROCURE A TITLE REPORT

Contact The Clearance Lab to order a [title report](#). This is always a required deliverable for E&O insurance and distribution. The title report is a comprehensive search for all prior uses of the same or similar titles. The key issue here is trademark infringement. While a title that is not a part of a series cannot file for a registered trademark, there is still trademark protection provided through statutory and common law. The report will document any prior registered and nonregistered use of your title so a determination can be made whether or not the title needs to be changed. In conjunction with the title report, a title opinion should also be procured.

# 21

## PROCURE A TITLE OPINION

Contact The Clearance Lab to order a [title opinion](#). An attorney will review the title report and issue a legal opinion on whether or not there is potential for infringement with use of the title. This is another required deliverable for E&O insurance and distribution.

# 22

## PROCURE A CLEARANCE REVIEW

Before you exhibit your project through any media, whether theatrical, DVD/Blu-Ray, VOD, or even YouTube, have an attorney experienced in clearance issues review your finished project. Contact The Clearance Lab to order an [Attorney Clearance Review](#) of your project by a seasoned entertainment attorney. This review involves the viewing of your project alongside copies of all of your clearance documents to ensure every necessary clearance issue has been addressed. Upon completion, and after any necessary additional clearances are obtained, an opinion letter will be drafted which can be delivered to your distributor and/or insurance carrier to provide solid evidence that you have managed the risk to exposure for your project professionally and completely.



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