

Clearance Procedures

The Clearance Procedures provided below are intended to provide a general guideline to the steps which should be followed by the producer (“Filmmaker”) of a feature length or short film (the “Film”) which is delivered to AMG Visuals.

A ‘cleared’ film is a film that can be distributed, performed, copied, and otherwise exploited by Filmmaker (or its licensees/distributors) without infringing or violating, and without the likelihood of a claim of infringing or violating, some person or some entity’s rights.

Without proper clearance, a film is generally not distributable. Nothing in the Clearance Procedures implies that AMG Visuals will agree to distribute Filmmaker’s Film, but if AMG Visuals and Filmmaker do sign a written contract for AMG Visuals to distribute Filmmaker’s Film, AMG Visuals, like other distributors, will require Filmmaker to make warranties as to the clearance of Filmmaker’s Film for the rights Filmmaker grants to AMG Visuals, and provide supporting documentation. Because film clearance is an integral part of film production, even if Filmmaker does not distribute his or her film through AMG Visuals, we hope this is nonetheless helpful in filmmaking endeavor’s.

A little advice (including from the Filmmaker’s own attorney), time, and even money before production will be well worth it for a Film with any commercial potential because it is usually easier and cheaper to spot and avoid problems up-front than to pay damages or be subject to the threat of an injunction after a problem occurs and a film is already in distribution.

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These procedures are of course not exhaustive and certainly do not cover all of the situations that may arise in connection with any particular Film.

Rather than guess about how to handle a particular problem, or what to do if one of the procedures listed below doesn’t quite seem to fit, the Filmmaker should consult his or her own attorney.

If AMG Visuals and Filmmaker do sign a written contract for AMG Visuals to distribute the Film, the Filmmaker remains fully responsible and obligated to obtain all necessary releases, licenses, and agreements, in accordance with the terms of the written agreement or agreements between AMG Visuals and the Filmmaker, and

the fact that AMG Visuals has provided these procedures in no way shifts that responsibility to AMG Visuals.

AMG Visuals cannot and does not represent any Filmmaker in legal matters. Although AMG Visuals may, upon request, provide sample forms for guidance, because every situation is unique and each contract with AMG Visuals is individually negotiated, these forms are only that, illustrative examples that may not always be appropriate (either as drafted or even with modifications) even if AMG Visuals acquires distribution rights to Filmmaker's Film. They are intended to be illustrative of the type of legal issues applicable to independent filmmakers.

AMG Visuals offers the following information and forms "as is" with no express or implied warranties of performance, merchantability, and fitness of a particular purpose and cannot provide the Filmmaker with advice in connection with the information and/or forms.

The Filmmaker assumes all risk and responsibility in connection with use of the following information and any forms.

In General

1. The Filmmaker should continually monitor the Film at all stages, from inception through final cut, with the objective of eliminating material that could give rise to a claim. The Filmmaker is strongly advised to engage the services of an attorney experienced in clearance procedures, to work closely with Filmmaker in the implementation of these procedures. If the film is to be covered by Errors and Omissions ("E&O") insurance, the insurance carrier will generally require that an attorney be retained for this purpose.
2. If the intent is to exploit the Film over the internet, or on videotapes, videocassettes, videodiscs (DVD) or other new technology, rights to manufacture, distribute and release the Film in that manner should be obtained, including the rights discussed below, from all writers, directors, actors, musicians, composers and others necessary therefore, including proprietors of underlying materials. It is crucial that the Filmmaker be aware of any guild obligations as guild agreements contain a number of provisions that the Filmmaker will be bound by (e.g., minimum compensation requirements, crediting requirements, recognition of certain creative rights, work hour restrictions) and they also contain provisions that future distributors will be bound by (e.g., residual/reuse fees, supplemental market payments, limitations on the right to use clips, etc.).
3. Avoid Litigation. Consideration should be given to the likelihood of any claim or litigation. Is there a potential claimant portrayed in the Film who has sued before or is likely sue again? Is there a close copyright or other legal issue? Is the subject matter of the Film such as to require difficult and extensive discovery in the event of necessity to defend? Are sources reliable? Before relying on using a work or part of a work because of "fair use" or "public domain" the Filmmaker should consult an experience attorney to ascertain whether these concepts truly apply. The Filmmaker

should use this information to take all reasonable steps to avoid any possibility of a claim.

Prior to Filming:

1. Script Clearance.

The script and, if applicable, story board should be read and thoroughly reviewed prior to commencement of the Film to eliminate matter which, with reference to a particular individual or a small or moderate size group of individuals that are real (e.g., whether living or dead), or an existing business or other entity, is arguably false or fictional, injurious to reputation, offensive, or revelatory of facts not generally known by the public.

Where the Film is fictional in whole or in part, the names of all characters shall be fictional (it is important to submit the script to a script clearance company, as discussed in the next paragraph, to avoid inadvertently using a real person's name as the name of your fictional characters). To the extent that the script is not based upon previously exploited material, the script--writer should be interviewed concerning these matters (including, that the script will not accidentally include characters who, regardless of the names of the characters, may be identifiable with living people, for example, because they were suggested by the writer's real life experiences).

In addition to the foregoing, prior to the commencement of filming, the Filmmaker should (i) submit what the Filmmaker intends to be the final version of the script to a reputable script clearance company and (ii) follow the recommendations of the clearance company and make any suggested changes to the script. Further, the Filmmaker should submit this report to the Filmmaker's attorney for analysis and then follow the recommendations, if any, of the attorney.

Some clearance companies include:

Premiere Script Research: (626) 798-1920

Act 1 Script Research: (818) 240-2418

Joan Pearce Research: (323) 655-5464

Marshall Plumb Research: (818) 848--7071

Unless the Film is an unpublished original not based on any other work, prior to the commencement of filming, a copyright report should be obtained from a recognized service for all underlying works. Both domestic and foreign copyrights and renewal rights should be checked for all underlying works.

Some companies that can provide copyright reports are:

Thomson & Thomson: (800) 356-8630.

Dennis Angel: (914) 472-0820

If the Film involves actual events, the script-writer should deliver a fully annotated script to Filmmaker's counsel for review along with copies of all source material (e.g. newspaper reports, books, articles, court transcripts, interviews with witnesses, etc.).

The origins of the Film and the artistic/animated element in the Film should be ascertained – basic idea, sequence of events and characters, and, if applicable, animation elements, for the purpose, among others, of avoiding copyright and idea submission claims.

It should be ascertained if submissions of any similar properties have been received by the Filmmaker or anyone else involved in the production and, if so, Filmmaker must be able to show the circumstances as to why the submitting party may not claim theft or infringement.

The Filmmaker should consider registering the script with the Writers Guild of America and Writers Guild of Canada. For more information go to www.wga.org.

2. Talent and Other Agreements.

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

If Filmmaker does not have such an agreement, Filmmaker should contact its legal counsel.

3. Title Selection.

Prior to final title selection, a title report should be obtained from a recognized service to ensure that the proposed title is clear to use.

Some companies that provide title reports are:

Thomson & Thomson: (800) 356--8630.

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Prior to or During Filming

4. Publicity/Privacy Releases from All Individuals.

Whether the Film is fictional or factual, it should be made certain that no-names, faces, likenesses, or other indicia of identity of any recognizable living persons are used or depicted unless written releases have been obtained. A release is unnecessary if a person is part of a crowd scene or shown in a fleeting background.

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. Aside from living persons, even dead persons (through their personal representatives or heirs) may have a “right of publicity” claim under certain circumstances (particularly involving commercial exploitation outside of the Film itself).

Furthermore the family and/or successors of deceased persons may under the laws of certain foreign jurisdictions have the right to bring actions akin to defamation.

Clearances should be obtained for the right to portray deceased persons unless the Filmmaker’s counsel has concluded that the law clearly does not require such releases.

5. Trademark/Product and Business Releases.

The same principle is generally applicable to the names, logos and other indicia of identity of business and other entities.

Telephone books or other sources should be checked when necessary, to identify if any real businesses and/or individuals have the same name as the fictional business and individuals in the Film (and, if so, those names should be changed).

6. Releases in General.

All releases must give the Filmmaker the sub-licensable and assignable right to edit, add to and/or delete material, juxtapose any part of the Film with any other film or work, 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 Filmmaker deems appropriate.

Releases should include an express waiver of defamation, libel and waiver of privacy claims. If a minor gives consent, the Filmmaker and its counsel must be able to verify and confirm that the consent is legally binding on the minor, or secure an appropriate parental guarantee after determining that the guaranteeing parent[s] is/are clearly credit worthy.

7. Music.

If music is used, the Filmmaker must obtain all necessary synchronization and public performance licenses from copyright proprietors of music and lyrics.

Licenses must also be obtained on pre-recorded music from the owner of the master as well as from the copyright proprietors of the music and lyrics. Music is complicated. These rights are often owned or controlled by different entities (such as a publishing company owning the copyright and a record company owning the master).

A license to incorporate a composition into a film is known as a “synch” license. A license to use a particular sound recording is known as a “master use” license. A license to a composition does not include a license to a sound recording of it, and vice versa.

Depending on the terms of any agreement Filmmaker signs with AMG Visuals, Filmmaker will need the appropriate music rights. The Filmmaker is strongly encouraged to obtain all such rights as early as possible, and before Filmmaker incorporates any music in the Film.

The Filmmaker should assume obtaining rights to music from established bands will be complex and expensive. The Filmmaker should consider working with unsigned bands, music stock sources and/or independent music publishing catalogs that provide music and licenses.

All agreements need to be closely reviewed by Filmmaker counsel to ensure the proper rights are being granted. Filmmaker should also consider an inexpensive back-up if Filmmaker cannot obtain the rights to the music desired.

Some stock music companies include:

www.attacktrax.com online Music Supervision: (416) 340-9111

AMG Music Supervision: (416) 340-9111

Some composers/musicians include:

Please contact AMG for a complete list of scoring clients.

8. Location Releases.

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 only is made of real property, provided the filming is from a publicly owned area or an area on which the Filmmaker has the right to be.

If Filmmaker’s counsel has concluded that the law clearly does not require such releases, the Filmmaker must be able to provide written support for such conclusion.

9. Material Used On Set.

If in the set dressing (including, without limitation, any props, no matter how inconsequential) or in any other manner, pre-existing material is used which maybe protected by copyright, such as paintings, photographs, art objects, articles, book covers, magazines, newspapers, and even items of décor such as wallpaper (and the list could go on for pages) the written consent of the copyright proprietor of any such material must be secured.

Note that the permission of the owner of the original or of a duplicate of the physical material is not sufficient.

Thus a release to film in a particular location is not sufficient to cover the use of any artwork which may be present in that location– the permission of the copyright proprietor of that artwork is mandatory.

Sometimes the “fair use” defense will apply, however Filmmaker should never rely on this limited defense without consulting an experienced attorney.

10. Shooting Script.

Shooting script should be checked to assure compliance with all of the above. Since during actual production individuals, dialogue, and/or other matters may be added which were not originally contemplated in the shooting script, checking procedures should be followed until the Film is locked.

11. Film and Audio Clips.

Film and audio clips are dangerous unless licenses and authorizations for the second use are obtained from not only from the owner of the clip or party authorized to license the same, but also from all persons rendering services on, 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 when clips are used. In addition, use of clips often implicates re- use and residual payment obligations to guilds and unions.

If you cannot obtain a release for one of the items listed above, we strongly suggest that you **DO NOT USE THE ITEM IN CONNECTION WITH YOUR FILM**. There are many other substitutes available. If your film is not cleared, it will greatly decrease the likelihood that you will obtain distribution for your film. Ever.
After Filming

12. Copyright Registration.

Filmmaker should register his or her Film with the US Copyright Office using form PA. The script can and should also be separately registered.
Go to <http://lcweb.loc.gov/copyright>.

13. Chain of Title Recordation.

Filmmaker should record with the US Copyright Office any documents evidencing any change in ownership from the original author of the Film to the finished Film to be licensed by Filmmaker.

For example, assume Bob wrote the script and the film was produced by a partnership made up of Bob and Mary. Chain of title in the film would be shown by (1) a certificate of authorship signed by Bob indicating that the script is original, written by Bob, and that no rights have previously been granted, (2) a copyright certificate in Bob's name for the script, (3) an assignment or other written transfer of the right to make a film based on the script from Bob to the partnership, and (4) a copyright certificate for the film registered in the name of the partnership. This may seem like a hassle, but it is typically required for any television or theatrical distribution.

14. Insurance.

Filmmakers should seriously consider obtaining E&O insurance since they will remain liable for any claims that arise, even in the event a distributor such as AMG Visuals is sued.

E&O insurance is meant to protect the insured (i.e. the Filmmaker) from third parties claims that arise in connection with the Film, such as violations of publicity/privacy rights or copyrights.

If you want more information: In addition to the information above and advice from Filmmaker's own attorney, there are several books that may provide further assistance, including "Clearance & Copyright: Everything the Independent Filmmaker Needs to Know" by Michael C. Donald (Silman--James Press) and "Getting Permission: How to License and Clear Copyrighted Materials Online & Off" by Richard Stim (Nolo Press).[s] is/are clearly credit worthy.

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