



# PRODUCERS' OR DISTRIBUTORS' LIABILITY INSURANCE APPLICATION

**NOTICE:**

This is an application for a "specified cause of loss" claims-made policy. Except as provided in the policy, any insurance policy issued will be limited to coverage for only those claims that are first made against the Insured during the policy period and reported to the Company during the policy period. Please read and review this application carefully and discuss the coverage with your insurance broker, agent or legal representative.

This application should be completed on behalf of those entities that have significant control over creating and producing the insured production. *If there are multiple applicants who desire "named insured" status, Questions 1 through 4 should be answered separately for each such co-applicant.* Requests for coverage of any "additional insureds" cannot be made in Questions 1 through 4, but should be made through separate attachments or correspondence with your broker. (Additional insureds are protected, subject to Policy limitations, for the acts, errors and omissions of named insureds, but they are not covered for their own acts, errors or omissions).

**Note:** For purposes of the *Insurance Companies Act (Canada)*, this document was issued in the course of St. Paul Fire and Marine Insurance Company's insurance business in Canada.

1. Name of Applicant(s): \_\_\_\_\_

2. Street & Mailing Address (including postal/zip code): \_\_\_\_\_

3. The Applicant is a:  Corporation  Individual  Partnership  Joint Venture

Province/State of incorporation: \_\_\_\_\_

4. Names and titles of principal officers, partners or individuals: \_\_\_\_\_

5. Name of Producer (individual): \_\_\_\_\_

Executive Producer (individual): \_\_\_\_\_

6. Desired effective date: \_\_\_\_\_ Desired term of policy: \_\_\_\_\_ year

7. Title of production to be insured: \_\_\_\_\_

8. Has the Title Report been obtained for any one of the title clearance services?  Yes  No

If "Yes", name the clearance service: \_\_\_\_\_

*(Attach copy of report)*

9. Estimated dates for:

(a) Commencement and completion of principal photography: \_\_\_\_\_

(b) First release or air date: \_\_\_\_\_

10. Limits of desired coverage:  CDN\$  US\$ Each Wrongful Act: \$ \_\_\_\_\_

Total Limit: \$ \_\_\_\_\_

Deductible Amount: \$ \_\_\_\_\_

**Note:** Costs and expenses of claims handling and defence are inclusive within the Deductible Amount.

11. Will any of the following companion material be distributed in connection with the Production? *If "Yes", please complete the attached Supplemental Questionnaire.*  Yes  No

(a) Merchandising: *(If "Yes", please describe in detail):*  Yes  No

*If "Yes", Sublimit desired: \$ \_\_\_\_\_*

- (b) Loss of advertising or promotional expenses due to an injunction:  Yes  No
- (c) Book: (If "Yes", please describe in detail):  Yes  No
- 
- (d) Website: (If "Yes", please describe in detail):  Yes  No
- 
- (e) "Making of" documentary or other extra materials on DVD: (If "Yes", please describe in detail):  Yes  No
- 
- (f) Soundtrack: (If "Yes", please describe in detail):  Yes  No
- 
- (g) CD ROM or videogame: (If "Yes", please describe in detail):  Yes  No
- 
- (h) New media products (e.g. screensavers, wallpaper, ring and voice tones, mobile TV products, mobisodes): (If "Yes", please describe in detail):  Yes  No
- 
- Is Coverage desired for any of the above companion materials?  Yes  No

12. Synopsis of production: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. Names of authors and writers and their nationality:

- (a) Of underlying works: \_\_\_\_\_  
 \_\_\_\_\_
- (b) Of screenplays, etc.: \_\_\_\_\_  
 \_\_\_\_\_

14. Production is:

- Motion picture for initial theatrical release Running Time: \_\_\_\_\_
- Motion picture for initial television release Program Time: \_\_\_\_\_
- T.V. Pilot  T.V. Special  Radio Program Program Time: \_\_\_\_\_
- T.V. Series Number of Episodes: \_\_\_\_\_ Program Time: \_\_\_\_\_  
(Each Episode)
- Radio Series Number each week: \_\_\_\_\_ Number of weeks: \_\_\_\_\_ Program Time: \_\_\_\_\_  
(Each Episode)
- Videocassette
- Theatrical stage presentation
- Territory of broadcast or distribution: \_\_\_\_\_
- Other (e.g. Cable, Pay-T.V., Subscription, etc.) Please describe: \_\_\_\_\_  
 \_\_\_\_\_

15. Name and address of Applicant's attorney: Individual: \_\_\_\_\_  
 Firm: \_\_\_\_\_  
 Phone No.: (\_\_\_\_) \_\_\_\_\_

16. Has Applicant's attorney read the Clearance Procedures attached to this application?  Yes  No  
 If "No", please explain: \_\_\_\_\_  
 \_\_\_\_\_

17. Has Applicant's attorney approved as adequate the Clearance Procedures used by the Applicant in connection with the production? *If "No", please explain:*  Yes  No
- 
18. Has a script research report been obtained (to clear character names, etc.)?  Yes  No  
*If "Yes", have suggested changes been made and suggested permissions obtained?*  Yes  No  
*If either question answered "No", please explain:* \_\_\_\_\_
- 
- Please provide name of research company: \_\_\_\_\_
- Is the script report supervised or reviewed by Applicant's lawyer?  Yes  No
19. Is the name or likeness of any living person used or is any living person portrayed (with or without use of name or likeness) in the production?  Yes  No  
*If "Yes", have clearances been obtained in all cases?*  Yes  No
- Is the name or likeness of any deceased person used or is any deceased person portrayed (with or without name or likeness) in the production?  Yes  No  
*If "Yes", have clearances been obtained in all cases from personal representatives, heirs or other owners of such rights?*  Yes  No
20. Is there a possible risk that a living person could claim (without regard to the merits) to be identifiable in the production, whether or not the person's name or likeness is used or the production purports to be fictional?  Yes  No  
*If "Yes", has a release been obtained from such person?*  Yes  No
21. Are actual events portrayed in the production?  Yes  No
22. Has Applicant or any of its agents bargained for (a) any rights in literary, musical or other material; or (b) releases from any persons in connection with any production, and been unable to obtain or refused an agreement or release? *If "Yes", please explain:*  Yes  No
- 
23. Is the production:  Entirely fictional  True portrayal of events or happenings  
 Entirely fictional but inspired by specific events or happenings  
 Portrayal of actual events or happenings, but which includes significant fictionalization  
 Based on another work. *If so, please specify title and author:* \_\_\_\_\_
- 
- Other: \_\_\_\_\_
24. Is the production:  Quiz or Panel  Interview or Forum  Variety  Musical  
 Dramatic  Children's Show  Documentary  Mini-Series  Docudrama  
 Other: \_\_\_\_\_
- 
25. Have submissions of any similar properties been received by the Applicant or someone closely involved with the Production? *If "Yes", please explain:*  Yes  No
- 
26. (a) Does the production use any literary, musical or other material whatsoever that was copyrighted before January 1, 1978?  Yes  No

26. (b) *If "Yes", list separately the title of the material and the date of initial and renewal copyright for each such copyrighted matter:*

<u>Title of Material Used</u>	<u>Date of Copyright</u> (MM/DD/YYYY)	<u>Date of Renewal</u> (MM/DD/YYYY)
_____	_____	_____
_____	_____	_____
_____	_____	_____

(c) Does the licence or assignment for all such material grant renewal rights?  Yes  No

(d) Was the copyright for such material renewed during the lifetime of the author?  Yes  No

27. Has a copyright report been obtained?  Yes  No

*If "No", please explain why not:* \_\_\_\_\_

Are there an ambiguities or gaps in the line of ownership? *If "Yes", please explain:*  Yes  No

28. Will any film clips be used in this production? *If "Yes", please describe:*  Yes  No

*If "Yes", have all licences and consents for the film clips been obtained as follows:*

From copyright owners?  Yes  No  N/A

From music owners?  Yes  No  N/A

From writers and/or others?  Yes  No  N/A

Have musical rights been obtained?  Yes  No  N/A

Recording & synchronization rights?  Yes  No  N/A

Performing rights?  Yes  No  N/A

From performers or persons appearing in the film?  Yes  No  N/A

*If "No" or "Not Applicable" to any of the foregoing, please explain:*

\_\_\_\_\_  
 \_\_\_\_\_

29. Have musical rights been cleared?  Yes  No

(a) Recording and synchronization rights?  Yes  No

(b) Performing rights?  Yes  No

*If "No", will these rights be obtained prior to release?* \_\_\_\_\_

30. If original music was commissioned, has a Hold Harmless been obtained from the composer? *If "No", please explain:*  Yes  No

31. Will a soundtrack album or tape be produced?  Yes  No

32. Will the production be exhibited on the Internet or other on-line communications systems or distributed to the public on videotapes, videocassettes, videodiscs or other technology?  Yes  No

*If "Yes", has Applicant acquired necessary music and all other licences and consents therefor?*  Yes  No

33. Has Applicant had prior copyright, libel, etc. (producers' liability) insurance on the production to be insured? **(If "Yes", attach a copy of prior Policy)**  Yes  No
34. Has the Applicant or any Officer(s), Director(s) or Partner(s) ever been refused similar insurance for this production or any other production? *If "Yes", please explain:*  Yes  No

35. Applicant represents that neither it, nor any of its Officers, Directors or Partners, or their Counsel, have any knowledge, actual or constructive:

(a) of any claims or legal proceedings made or commenced against the Applicant, or any Officers, Directors, Partners, or subsidiary or affiliated corporations within the last five (5) years for invasion of privacy, infringement of copyright (statutory or common law), defamation, unauthorized use of titles, formats, ideas, characters, plots or other program material embodied in any production, or breach of implied contract arising out of alleged submission of any literary or musical material.

If no exceptions, please initial

Except as follows: (attach a separate sheet if necessary) \_\_\_\_\_

(b) of any threatened claims or legal proceedings against the Applicant or any Officers, Directors, subsidiaries or Partners or against any other person, firm or corporation arising out of or based upon any Production including title thereof, or any material upon which any Production is or will be based, that would be covered by the Policy sought to be obtained by the Applicant.

If no exceptions, please initial

Except as follows: \_\_\_\_\_

(c) of any facts, circumstances or prior negotiations by reason of which they, or any of them, believe that a claim might reasonably be asserted or legal proceedings instituted against the Applicant that would be covered by the Policy sought to be obtained by the Applicant.

If no exceptions, please initial

Except as follows: \_\_\_\_\_

36. **Attach separate schedule of all known, suspected or reported claims.**

37. Applicant agrees to obtain from third parties from whom it obtains matter, material or services for the Production written warranties, representations and indemnities against claims arising out of the use of such matter, material or services, including advertising agencies, advertisers, independent contractors and others providing copy, music, photographs, artwork and other material to be used in the Insured Productions.

Please initial

38. Applicant agrees that it will use due diligence to determine whether any matter or materials to be used in any Production are protected by law, and, where necessary, to obtain from parties owning rights therein the right to use the same in connection with the Production.

Please initial

39. **COVERAGE CONFLICTS, ETC.**

Applicant understands that there will be special provisions in the Policy (General Condition F.) covering the respective obligations of the Company and Applicant to provide DEFENCE and INDEMNITY where coverage issues or conflicts of interest are or may be present.

39. Applicant acknowledges that claims and lawsuits may be brought which may combine covered and uncovered claims or forms of relief and that conflicts of interest may arise as between one Insured and another Insured under the Policy, with respect to the Company or otherwise. In all such circumstances, Applicant recognizes that, under the Policy, the Company's obligation is only to provide one (1) counsel for defence of all claims and if any further counsel are desired by Applicant, they may be retained by Applicant, but the costs and expenses of such counsel shall be shared fifty percent (50%) by the Company and fifty percent (50%) by Applicant, fees shall be limited to amounts generally paid by the Company and representation shall be subject to further terms and conditions contained in the Policy. Applicant understands that the premiums set forth herein, the deductible, and the balance of the terms of the Policy have been specifically set and determined with the foregoing provisions in mind and acknowledges that it has agreed to such method of payment for any additional counsel desired to be retained by Applicant.

Please initial

40. **THIS APPLICATION IS SUBMITTED WITH THE FOLLOWING SPECIFIC UNDERSTANDING:**

- (a) Applicant represents that the above answers and statements are in all respects true and material to the issuance of an Insurance Policy and that Applicant has not omitted, suppressed or misstated any facts.
- (b) If any claims, threatened claims, or other matters which might affect issuance of a Policy come to the attention of Applicant after execution or filing of this Application with the Insurer but before a Policy issues, Applicant must notify the Insurer immediately.
- (c) All exclusions in the Policy apply regardless of any answers or statements in this Application.
- (d) Deductible Provision - Please note that the Policy stipulates that any deductible or retention shall apply to investigation expenses and defence costs as well as indemnity.
- (e) Applicant understands that the limit of liability, deductible, term of coverage and other terms and conditions in any Policy issued in response hereto may be different than those requested herein and Applicant agrees to such differences.

41. This application shall be attached to and become a part of any Policy, should a policy be issued as a result of this application. The application shall be deemed a schedule to such Policy, but the signing of this application does not bind the Applicant or the Company unless and until a Policy of Insurance is issued in response to this application.

Date Signed: _____	Applicant's Signature: _____ <i>(Authorized Representative)</i>
By: _____	Title: _____
Account Executive: _____	Broker/Agent: _____
Address: _____	Telephone No.: _____
	Telex: _____
	Telefax: _____

Statement by Applicant's lawyer. Neither I nor my firm (if applicable) are principals in this Production nor are we guarantors in relation to it. I have reviewed this application and the Applicant's clearance procedures and am not aware of any deficiencies, inaccuracies or omissions.

Date Signed: \_\_\_\_\_ Signature of Applicant's lawyer: \_\_\_\_\_

***NOTE: Please be sure to attach five (5) years loss experience in detail of the Applicant or of any Officer, Director or Partner for any production in which they were included.***

***(SEE ATTACHED FOR CLEARANCE PROCEDURES)***

## CLEARANCE PROCEDURES

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 states, from inception through final cut, with a view to eliminating material which could give rise to a claim.
2. The script and script research report should be read prior to commencement of production to eliminate matter which is defamatory, invades privacy or is otherwise potentially actionable.
  - (i) A script research report should also be prepared *before* filming to alert the Applicant to potential problems. Such problems may include: names of fictional characters that are coincidentally similar to real people; script references to real products, businesses or people if not cleared; or uses of copyrighted or other protected materials, etc. Fictional character names should be checked in relevant telephone directories, professional directories or other sources to minimize the risk of accidental identification of real people. Similar checks should be done for the names of businesses, organizations and products used in the Production. Special care should be taken to check names of persons, businesses, etc. that are negatively portrayed. The Applicant also must be alert to elements that do not appear in the script (such as art works used on the set) but that may need clearances.
  - (ii) If the Production is a documentary and there is no script, the Applicant should provide its counsel with a detailed synopsis of the project in advance of production. (If it is a documentary series, the lawyer should receive a detailed synopsis of each episode). If the Production will involve negative statements about people or businesses, the Applicant should provide counsel with full details about the allegations and their merit. Problem statements can then be identified and thus avoided while filming. During filming, the Applicant should be careful to avoid (or consult with counsel about) possible problem areas. (Examples include: filming identifiable copyrighted items or performances, trademarks, persons who have not specifically consented to be filmed, or minors). Relevant laws differ from place to place: some jurisdictions have very restrictive rules about filming persons, signs, buildings, public art, etc. Also, be careful to avoid narration or editing that accidentally implies negative things about pictures, people, products or businesses.
3. Unless 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.
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 should be obtained and reviewed by the Applicant and Applicant's lawyer.
6. Whether production is fictional (and location is identifiable) 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. 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 identity 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 a minor, consent has to be legally binding.

## CLEARANCE PROCEDURES (Continued)

8. If music is used, the Applicant must obtain all necessary synchronization and performance licences from composers or copyright proprietors. Licences must also be obtained on pre-recorded music.
9. Written agreements must exist between the Applicant and all creators, authors, writers, performers and any other persons providing material (including quotations from copyrighted works) or on-screen services.
10. 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. Shooting script and rough cuts should be checked, if possible, to assure compliance of all of the above. During photography, persons might be photographed on location, dialogue added or other matter included which was not originally contemplated.
13. If the intent is to use the production to be insured on videotapes, videocassettes, videodiscs or other new 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 necessary therefore, **including proprietors of underlying materials**.
14. Film clips are dangerous unless licences and authorizations for the second use are obtained from the owner of the clip or party authorized to licence the same, as well as licences 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.
15. 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. 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.
16. 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 there a close copyright or other legal issue? 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.