

**DISTRIBUTORS'  
ERRORS & OMISSIONS LIABILITY INSURANCE**

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**NOTICE: THIS IS AN APPLICATION FOR A "NAMED PERILS" CLAIMS MADE POLICY. EXCEPT AS MAY BE PROVIDED IN THE POLICY, ANY INSURANCE POLICY WHICH MAY ISSUE HEREAFTER WILL BE LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR WITHIN SIXTY DAYS AFTER THE TERMINATION OF THE POLICY PERIOD SUBJECT TO THE SPECIAL 36 MONTH REPORTING PROVISION. PLEASE READ AND REVIEW THIS APPLICATION CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT, BROKER OR LEGAL REPRESENTATIVE.**

1. Name of Applicant: \_\_\_\_\_

2. Street & Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

3. Applicant is a:      Corporation      Individual      Partnership

4. Names and Titles of Principal Officers, Partners or Individuals: \_\_\_\_\_  
\_\_\_\_\_

5. Names and Addresses of all Subsidiaries, State of Incorporation, and Percentage of Ownership by Applicant: \_\_\_\_\_  
\_\_\_\_\_

6. How long has Applicant been in Business? Under Present Management? \_\_\_\_\_

7. Desired Effective Date: \_\_\_\_\_ for a term of \_\_\_\_\_

8. Limits of Desired Coverage:   Each Wrongful Act: \$ \_\_\_\_\_  
  Total Limit:           \$ \_\_\_\_\_  
  Deductible amount: \$ \_\_\_\_\_

**NOTE:** Costs and Expenses of claims handling and defense are inclusive within the Deductible Amount.

9. State Applicant's estimated Annual Gross Receipts from all Sources:

Next Year: \_\_\_\_\_ Two Years Ago: \_\_\_\_\_

This Year: \_\_\_\_\_ Three Years Ago: \_\_\_\_\_

Last Year: \_\_\_\_\_ Four Years Ago: \_\_\_\_\_

10. Premium and Loss Record for the last Five (5) Years:

	Name of Insurer	Premium	Number of Losses	Total Amount of Losses Paid and/or Reserved
This Year	_____	\$ _____	_____	\$ _____
One Year Ago	_____	\$ _____	_____	\$ _____
Two Years Ago	_____	\$ _____	_____	\$ _____
Three Years Ago	_____	\$ _____	_____	\$ _____
Four Years Ago	_____	\$ _____	_____	\$ _____

Describe any Losses over \$5,000 in detail (attach separate sheet if necessary): \_\_\_\_\_

11. Estimated Number and Types of Productions to be Distributed Annually:

- (a) Features for Theatrical Release: \_\_\_\_\_
- (b) Features for Television Release: \_\_\_\_\_
- (c) Television Pilots and Specials: \_\_\_\_\_
- (d) Television Series: \_\_\_\_\_
- (e) Episodes of Series: \_\_\_\_\_
- (f) Mini-Series & Docu-Dramas: \_\_\_\_\_
- (g) Documentaries: \_\_\_\_\_
- (h) Industrial & Training Films: \_\_\_\_\_
- (i) Short Subjects: \_\_\_\_\_
- (j) Other (Describe): \_\_\_\_\_

12. Describe in detail the Planned Distribution and Exhibition of the Insured Productions: \_\_\_\_\_

- (a) Is Distribution to be to the Public at large?  Yes  No  
 To a Specified Smaller Group?  Yes  No Explain Fully: \_\_\_\_\_

(b) How many Prints of each Production are made (on average)? \_\_\_\_\_

(c) Are the Prints for sale to the Public?  Yes  No

(d) Any Television Releases?  Yes  No

(e) Any Theatrical Releases?  Yes  No

13. Territory in which Product is to be distributed (Also respond on attached Schedule "A"): \_\_\_\_\_

14. Rights acquired (Theatrical, Television, Pay-TV, etc.): \_\_\_\_\_

15. Have all Productions been previously exhibited?  Yes  No Describe Where and When each Production was released (Also respond on attached Schedule "A"): \_\_\_\_\_

16. 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 any Production?  Yes  No If so, have Clearances

been obtained in all cases?  Yes  No (Also respond on attached Schedule "A")

17. Are Actual Events portrayed in any Production?  Yes  No Describe Fully: \_\_\_\_\_  
\_\_\_\_\_ (Also respond on attached Schedule "A")

18. Give brief Summary of Production (Also respond on attached Schedule "A"): \_\_\_\_\_  
\_\_\_\_\_

19. With respect to each Production, please provide the copyright and renewal data requested in Supplemental Schedule A.

20. Name, Address & Phone of Applicant's Attorney who clears Acquisitions, Rights & Contracts: \_\_\_\_\_  
\_\_\_\_\_  
INDIVIDUAL: \_\_\_\_\_ PHONE: \_\_\_\_\_

21. Did Applicant's Attorney approve as adequate the steps taken for Clearance Procedures in connection with the acquisition of each Production?  Yes  No  
If "No", Explain: \_\_\_\_\_

22. Does Applicant obtain full indemnities from Sellers or Licensers against Liability arising out of the Distribution, Exhibition or other use of the Productions Distributed?  Yes  No  
If "No", Explain (Also respond on attached Schedule "A"): \_\_\_\_\_

23. Does Applicant require Seller or Licensor to maintain current and continuous in-force Producers' Errors & Omissions Liability Insurance on each Production acquired for Distribution?  Yes  No  
If "No", Explain (Also respond on attached Schedule "A"): \_\_\_\_\_

24. Does Applicant generally Finance or otherwise participate in Production of Films Distributed?  
 Yes  No If "Yes", Explain: \_\_\_\_\_

25. (a) Number of Productions presently on hand for Distribution: \_\_\_\_\_  
(b) Average Number of Additional Productions to be acquired Per Year: \_\_\_\_\_

26. Applicant is a member of which Professional Organizations: \_\_\_\_\_  
\_\_\_\_\_

27. Applicant represents that neither it, nor any of its Officers, Directors or Partners, or their counsel, have any knowledge, actual or constructive, of any facts, circumstances or prior negotiations by reason of which they, or any of them, believe that a claim previously has been made or might reasonably be asserted hereafter or of any threatened claims or legal proceedings against the Applicant or any Officers, Directors, Partners or Subsidiaries or against any other person, firm or corporation arising out of or based upon any Productions, including titles thereof, set forth in SCHEDULE "A" or "B" or upon any material upon which said productions were based, that would be covered by the policy sought to be obtained by the Applicant except: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

28. Has Applicant been sued or have claims been made in the past five years for defamation, invasion of privacy, plagiarism, piracy, copyright infringement or unfair competition?  Yes  No  
If "Yes", Please Describe fully (**Attach complete detailed loss history**): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

29. 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 DEFENSE and INDEMNITY where coverage issues or conflicts of interest are or may be present.

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 defense 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

30. Applicant agrees to obtain from all third parties from whom it obtains any matter, material or services for the Insured Product and/or Operations written warranties and indemnities against claims arising out of the use of such matter, material or services.

Please Initial

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

Please Initial

32. It is understood that this Application is for insurance covering the productions set forth in SCHEDULE "A" as attached hereto. If Applicant desires coverage on future acquisitions, a separate Application (Schedule "B") must be filed and approved by counsel for the Insurer on each such Production and endorsed onto the Policy.

Please Initial

33. **ATTACH STANDARD FORMS OF AGREEMENTS UTILIZED BY APPLICANT.**

34. **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 defense 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.

35. **LIST AND COMPLETE ON SEPARATE SCHEDULE "A", ALL OF THE PRODUCTIONS NOW OWNED OR IN DISTRIBUTION BY APPLICANT. ATTACH COMPLETE CATALOGUE AND SALES SHEETS DESCRIBING SAME.**

36. It is understood that any Policy to be issued will cover:

- 1) Present catalogue of product held for distribution as set forth in Schedule A.
- 2) Future acquired product but only after the application in the form of Distributors' Schedule B is signed, approved by the Company and endorsed onto the Policy.
- 3) Future product produced by applicant but only after a Producers' Application in the form of Distributors' Schedule B is signed, approved by the Company and endorsed onto the Policy.

37. This Application shall be attached to and become a part of any Policy, should a Policy be issued as a result of this Application, which shall then be deemed a Schedule to such Policy as well, but the signing hereunder does not bind the Applicant or the Insurer to complete the Insurance unless and until a Policy of Insurance is issued in response to this Application.

**FRAUD WARNING -ARKANSAS, FLORIDA, KENTUCKY, MICHIGAN, MINNESOTA, NEW JERSEY, NEW YORK, AND PENNSYLVANIA:** Any person who knowingly and with intent to defraud any insurance company or another person files an application for insurance containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and subjects the person to (NY: substantial) criminal and civil penalties.

**COLORADO FRAUD WARNING:** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policy holder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

**OHIO FRAUD WARNING:** Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

Date Signed: \_\_\_\_\_

Applicant's Signature: \_\_\_\_\_

(Authorized Representative)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Agent/Broker: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Telex: \_\_\_\_\_ Telefax: \_\_\_\_\_



**SUPPLEMENTAL SCHEDULE "A"**

1. As to each Production which uses literary, musical or other material whatsoever that was copyrighted before January 1, 1978, list separately the title of the material and the date of initial and renewal copyright for such material:

<u>PRODUCTION</u>	<u>TITLE OF MATERIAL USED</u>	<u>DATE OF COPYRIGHT (Mo./Day/Yr.)</u>	<u>DATE OF RENEWAL (Mo./Day/Yr.)</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. Does the license or assignment for all such material grant renewal rights?  Yes  No
3. Was the copyright for such material renewed during the lifetime of the author?  Yes  No

## 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 should be read prior to commencement of production to eliminate matter which is defamatory, invades privacy or is otherwise potentially actionable.
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.
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. Telephone books or other sources should be checked when necessary. 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.
8. If music is used, the applicant must obtain all necessary synchronization and performance licenses from composers or copyright proprietors. Licenses must also be obtained on prerecorded 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 should 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 should 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 licenses and authorizations for the second use are obtained from the owner of the clip or party authorized to license the same, as well as licenses 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.