



**DEWITT STERN GROUP**

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## **Errors & Omissions to the Rescue!!!**

“Quick, I just got a distribution deal; I need Errors & Omissions coverage NOW!” This phrase from any film producer, transforms me from a mild mannered insurance broker to “Super Broker” able to quote competitively and bind coverage within a single day...sigh ... in my dreams.

Errors & Omissions (E & O) coverage is a key element for all producers when establishing their distribution deals with studios, broadcasters and direct to video markets. These distributors of media require the film producer to indemnify them for claims that might result from the content of their production. Hence, the producer completes an application, determines the limits and deductibles the distributor requires (Standard Limits \$1MM/\$3MM – Deductible: \$10,000) obtains a title report, receives an insurance quotation...ponders how to pay for it and with chagrin purchases the E & O coverage. A certificate including your distributor as an additional insured is sent and “Voila” You’ve achieved delivery! Think this process happens overnight? Believe it or not, the process of securing Errors & Omissions takes at least 3-5 days to accomplish and even longer if certain rights or releases, title report and music clearance have not been obtained.

If you wish for a better experience, it would be best that you begin your clearance work at the film’s inception, continue during filming and be finalized at final cut. The following are some of the clearance procedures an insurance company recommends:

1. For a fictional film, a script research report should be prepared. This is necessary to determine if the script references names of fictional characters that are similar to real people; if there are references to real products or businesses; or uses of copyrighted or other protected materials.

For a documentary, a detailed synopsis of the project should be prepared. Special consideration should be made for filming identifiable copyrighted items or performances, trademarks, persons who have not specifically consented to be filmed, or minors.

2. Written agreements must exist between the producer, creators, authors, writers, performers and any other persons providing material.

3. Written releases should be obtained for faces and likenesses of any recognizable living persons. All releases must provide the producer with the rights to edit, modify, add to and/or delete material, change the sequence of events or of any questions posed and/or answers given, fictionalize persons or events.

4. If music (pre-existing or original) is used, the producer must obtain all necessary synchronization and performance licenses from copyright proprietors.

5. Upon selection of the title, a title report must be obtained in order to clear its use. Title search companies should be consulted.

In addition, it is a good idea to have the Errors & Omissions application on hand so that it can be completed prior to the completion of photography. If all goes accordingly, you should have answers to all questions on the application with the exception of the music and title report since those elements usually occur in post production. When submitting your completed application, the insurance company requires:

1. Bio/Resume of the Producer.
2. Script, synopsis or VHS/DVD of the production.
3. Copy of Standard contract with authors, people appearing on camera, distributors, etc.
4. Current Title report.

Once the above materials are received, "Super Broker" ventures into the underwriting process which is much like arguing before a judge. Word to the wise, nothing delays the process like Kryptonite then unresolved clearance issues. With each submission, I must present my case to the underwriter relay the intended distribution of the film i.e. theatrical, direct to video, cable, TV, tout the experience level of the application, reveal the nature of the production i.e. fictional, docudrama, documentary, point out the producer consulted an attorney to assist with clearance issues, verify that all the rights and releases have been obtained for living beings (names likeness), film clips, music and titles. The verdict of this deliberation is a competitive Errors & Omissions quotation and coverage is put in place– Hooray!

Please be aware that your Errors & Omissions policy provides other salient benefits. This policy covers a producer for libel, slander, invasion of privacy, copyright infringement, plagiarism, piracy and misappropriation of ideas, but also any form of defamation, product disparagement, trade libel, infliction of emotional distress, right of publicity, outrage and outrageous conduct, false light, wrongful entry, false arrest or malicious prosecution. Impressive list you say, but there's NO way any lawsuits will be brought forth on this project – I have all the necessary rights and releases. Unfortunately, due to our litigious society, volumes of claims do surface against the producer/production company. Upon notification of a claim the insurance company will assist in vindicating you and will pay for your defense costs. The following are examples of claim scenarios:

- Screenwriter claims movie was copied from his original screenplay.
- Individual files defamation suit claiming they were portrayed in bad light.
- Movie sparked an individual to kill another.
- A release was not obtained for artwork in film.
- A release was not obtained for music in the film.

With the combination of record losses and payment of defense costs, Errors & Omissions premiums have risen substantially and many insurance carriers are now unable to accommodate the higher limits that are being required by film distributors. In order to remedy the dilemma of high premiums and limit requirements, Dewitt Stern Group (DSG) took the proactive approach and created a Film Association Errors & Omissions program. This program is currently designed exclusively for members of Film Independent/FIND and the International Documentary Association. We now provide the best any client deserves, superior policy form, availability of increased limits and economical premiums. Now, please excuse me...I need to get my red cape to the cleaners!

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