

Protect Your Film Project by Considering Possible Errors & Omissions (E&O)

Since productions aren't necessarily shooting now because of the ongoing COVID-19 situation, filmmakers are likely more focused on the writing and pre-production stages of their projects. This would also be a good time to think about any potential errors and omissions (E&O) that you may be overlooking during the writing phase.

There are plenty of examples of film projects that overlooked E&O due diligence, resulting in some nasty legal disputes. And there are other projects that did their E&O due diligence, allowing them to more easily win court cases. We'll review some of those in this blog post, and discuss some E&O insurance options.

***The Matrix* (1999) copyright infringement cases**

The Matrix was sued twice for copyright infringement – once by a woman who claimed the directors stole her treatment after she responded to an ad they placed in the '80s, and again by a man who claimed the directors ripped off a script he had submitted to Warner Brothers in '93. Even though the claims may have been unfounded, the lawsuits were expensive.

A [film producer's E&O insurance policy](#) will provide legal defence costs if the producer is sued and will pay the judgment costs if the producer is found liable. Until a lawsuit happens, it provides the comfort of peace of mind.

***Avatar* (2009) copyright claim case**

Don't think you could be sued for copyright violations related to your film project? Think again. These things can and do happen! Take James Cameron's *Avatar* as a famous example. One day, a man spoke out and claimed that he pitched this multi-award winning movie to Cameron. Cameron eventually won the ensuing lawsuit.

In the event of a lawsuit over a situation like this, if you have E&O insurance in place, the insurance carrier will cover legal defence costs associated with the suit.

The tattoo lawsuit – *Hangover Pt. II* (2011)

This lawsuit should help filmmakers remember that they have to be very careful about *any and all* visuals displayed in their final film – yes, even tattoos!

A tattooist claimed that the tattoo on Ed Helms's face in *Hangover Pt. II* was an infringement on the one he had done for Mike Tyson. The tattooist and film studio eventually settled out of court.

A lawsuit such as this could potentially be avoided by following thorough film clearance procedures and purchasing what is known as a "[script clearance report](#)" in the pre-production stages. This type of report involves reading and breaking down a script and identifying all items that represent possible legal conflicts, if used as-is. These items include:

- character names
- business names
- logos
- slogans and quotes
- images and designs (yes, including tattoos!)
- *etc.*

Assuming the tattoo were adequately described in the script, this is something that could be identified as a potential legal issue early on.

“Own Your Power” and the importance of title search

Filmmakers will also want to think about getting a thorough title search done on their project, which will produce a [title report](#). The title report will indicate if the title you’re considering for your project is unique, and if not, what potential legal issues to consider.

No, a simple Google search isn’t enough! A proper title search process will unveil information that one cannot easily find through search engines.

Filmmakers also must consider more than other established film titles – they ought to consider potential copyrights in other industries too.

O, The Oprah Magazine learned this lesson the hard way when they began using the phrase “Own Your Power” on their magazine, website and social media. However, a life coach had already copyrighted the phrase for her business, *Own Your Power® Communications, Inc.*, and she decided to sue. The lawsuit was dismissed, reinstated, and dismissed again, finally, no doubt resulting in significant legal fees for all parties involved.

A good title search would have identified this issue... before it became an issue.

Note: Entertainment lawyers and insurers are increasingly requiring title search coverage in both Canada and the US *even if the property is licensed for broadcast into just one of the markets initially.*

FREE eBook on film producer’s E&O!

Interested in learning more about film producer’s E&O? It is a complex subject, and this blog post only scratches the surface. Consider downloading Front Row’s free eBook on film producer’s E&O, [E&O Insurance 101 – How to protect your film project](#).

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