

cultureONE

takeONE

entertainment insurance guide

designed for film, tv & digital producers

cultureONE Inc.  
Suite One, 3305 Harvester Road  
Burlington, ON L7N 3N2

[cultureone.com](http://cultureone.com)

p 905.631.0805

f 905.631.9377

t 855.222.4550

the risks facing producers of live-action feature films, television productions, commercials animated films, documentaries and any form of media production are continually evolving, but certain fundamental risk exposures will exist regardless what medium or technology is used to produce a project.

first, let's raise some important questions and issues... what would your financial loss be for?

- abandoning your production due to an outside cause such as the death or illness of a key cast member
- your liability to rental companies or other parties for damage to film or video equipment, automobiles, props, sets, wardrobe or shooting locations
- the cost to reshoot, recreate or reproduce production-media elements if your source material was lost or damaged, or your data becomes corrupted or unusable
- your legal liability to third parties for bodily injury or property damage through the use of filming locations or equipment, special effects or stunts
- your liability for personal injuries such as libel, slander, defamation of character or the unauthorized use of production elements such as music, title or script, or infringement of the intellectual property rights of another party

what are your insurance obligations to?

- broadcasters or distributors to carry media liability (errors & omissions) insurance
- lenders such as banks, public funders and other investors to insure cast, media-related risks and potential injuries while in production
- property owners of locations or municipalities to carry liability insurance noting their interest as an additional insured
- your crew for injuries while on location or set.

these are only a few of the exposures you face, a creatively designed insurance program can ensure that you have financial protection to continue despite a set back during all stages of your production.

our entertainment insurance guide will help you learn some of the easy things to focus on when arranging your production insurance so you can focus on what's really important to you.

## production package

a production insurance package, occasionally referred to as an entertainment insurance package, is essentially a bundle of insurance coverage designed to insure your property or the property of others that is under your care. we commonly refer to this form of insurance as first-party insurance; you are the first-party.

whether you choose to insure your projects individually or on an annual basis the essential coverage elements will remain the same. we generally find that producers of commercials, training films, animated films, corporate or music videos prefer an annual blanket policy to reduce the premium cost and administration involved in arranging coverage for specific projects. an annual policy will minimize the possibility that an oversight in arranging the necessary coverages may not be arranged.

## cast & talent

under the cast section of the policy you are required to specify the individuals that are to be insured. in the event that a cast member is prevented from appearing or performing due to death, injury or sickness the policy will pay your loss for interruption in production or the cost for additional production days.

insured cast members must undergo a short medical examination by a physician recognized by the insurance company.

in certain cases coverage limitations or exclusions may be imposed by the insurance company for pre-existing health conditions.

special consideration needs to be given when engaging children, elderly people or individuals with physical disabilities as insurance company's may provide limited or restricted coverage.

family bereavement coverage is generally provided to address interruptions in production schedules when an insured cast person's immediate family member dies during the production period.

consider cast coverage for voice-over talent, directors and other creative staff if you feel that their illness, accidental injury or death could result in the interruption of your production schedule.

if your key cast member is an animal, the four-legged variety, similar coverage can be arranged for animal mortality. all animals must be handled by qualified wranglers and have valid veterinarian certificates.

## production media: film, digital media, data + videotape

this section of the policy is intended to pay the additional production costs you incur to complete your production following damage to negative film, videotape, raw film or tape stock, digital media, cels & artwork / drawings, computer software and related material used for generating computer images.

the faulty stock, camera and processing extension covers loss caused by:

- fogging, use of faulty materials
- faulty cameras, videotape recordings or developing, editing or processing
- faulty sound equipment or sound tracks

it's important to ensure that your policy will respond to a claim related to loss of data related to your source material and while you are in post-production. consider the risks associated with other service-providers that you have engaged such as visual effects companies. ask questions about their internal protocols to protect your data.

many policies include camera operator error coverage to pay the costs associated with re-shooting live-action work when an error has been made with lighting, lense selection, focus or other technical camera issues related to the production.

## production equipment

your own or rented equipment is insured under this section of the policy. it is important to ensure that the policy provides a "replacement cost" valuation clause for both owned and rented equipment and that it will respond to any contractual obligations you may have with your rental company or the owner of the equipment.

## props, sets + wardrobe

the policy will pay you for loss or damage to props, sets, scenery, wardrobe, costumes and other similar property, which is owned by you or for which you are responsible.

your policy may limit the maximum payable for antiques, art, furs, jewellery, precious or semi-precious stones or metals; therefore, additional limits may be required.

## property damage liability

when using studios or stages, private residences, commercial buildings or other property owned by others, liability can be imposed by law or contract for property damage the property is under your care, custody or control.

it is very important to know that general liability policies exclude damage to property that is under your care, custody or control -- making property damage liability crucial when you are assuming control or responsibility for any building, structure or facility.

think about the value of the property when you consider the amount of insurance you are buying. even if your general liability insurance is higher than your production package's property damage liability coverage you will not be able to use it to pay for this damage to these properties.

## office equipment

your owned or rented office equipment used in connection with your production offices is insured under this section of the policy. it is important to ensure that the policy provides a "replacement cost" valuation clause for both owned and rented equipment and that it will respond to any contractual obligations you may have with your rental company or the owner of the equipment.

## extra expense

this section of the policy will pay additional costs you incur to complete your production as a result of facilities or equipment being damaged through a cause insured by your policy, or theft of equipment being used in connection with your production.

## picture + production vehicles

when using automobiles or trucks in connection with your production this coverage will pay for loss or damage to the vehicles while under your care.

generally, automobile rental companies will provide an option to purchase physical damage coverage directly from their company. as a means of cost control it is advisable to waive their coverage and arrange for the protection under your production insurance package.

liability insurance for the use of vehicles is discussed under the general liability & non-owned automobile liability section.

## general liability

the general liability portion of your program will respond to legal actions brought by third parties as a result of bodily injury or property damage caused by you during the course of filming.

when considering a limit of insurance you should confirm that your policy will pay defense costs, legal fees and other claims costs in addition to the amount of insurance.

some policies will include these costs within the amount of insurance. be careful if these costs are included in your insurance limit as the payment of these fees will erode the amount insurance available to pay a final judgment or settlement.

also, consider the currency of your limit -- remember the currency exchange rates can significantly reduce your limit when filming outside of canada.

in most situations where you are filming on public properties, those owned by municipalities or government agencies, or obtaining filming permits through a local liaison office, they will require a minimum limit of insurance of \$2,000,000.

further, they may require that their interest be noted as an additional insured to ensure that any claim expenses incurred by them are paid under your policy.

your general liability policy should include the following extensions:

- contractual liability: liability assumed by you through a contract
- employers' liability: coverage for legal actions brought by an employee, not covered by workers' compensation, for injuries occurring on set or location
- contingent employers' liability: coverage for legal actions brought by an employee for which workers' compensation has been arranged, but their claim has been denied by the workers' compensation authority or insurer
- employees and freelancers as additional insureds: will ensure that the actions of these individuals will be covered by your policy and that they will receive protection as an insured person

production staff using their own vehicles, rented trucks or automobiles during the course of production presents a non-owned automobile liability exposure to your company. non-owned automobile liability coverage can be incorporated into your general liability program to cover third party actions for bodily injury or property damage claims that have resulted from the use or operation of vehicles not owned by your company.

a careful review of automobile rental agreements is necessary as rental agencies vary the manner in which they handle liability insurance. the rental agency may require a “primary automobile liability” policy. should this be the case the non-owned automobile coverage discussed in this section will not be sufficient to insure the exposure and a specific automobile policy will need to be arranged for the rental period.

## media liability, aka, producer’s errors & omissions liability

many broadcast & distribution agreements require that a producer carry media liability / producers’ liability / errors & omissions insurance.

the term errors & omissions is somewhat of a misnomer. most policies clearly stipulate the type of claims which will be covered by the policy -- these are:

- invasion or infringement of, or interference with, the right of privacy or publicity;
- infringement of copyright or trademark;
- libel, slander, defamation of character;
- plagiarism, piracy or unfair competition result from the unauthorized use of titles, formats, ideas, characters, plots, performances of artists or performers of other material;
- breach of implied contract resulting from the alleged submission, acquisition or use of program, musical or literary material used in the production.

instructional videos, industrial, corporate or technical programs such as medical videos, inadvertent errors or omissions in information can result in claims for bodily injury or property damage being made against you. recent policy enhancements by some insurance companies have now extended coverage to include bodily injury or property damage arising from errors & omissions in content or the use of the content so this should be explored if you consider this exposure may exist.

many media liability policies are written on a claims-made basis, meaning that the policy will only respond to those claims made while the policy is in force. for this reason, producers liability policies are often purchased with a multi-year policy period (commonly 5 years) to expand the “window” of time in which a claim can be reported.

alternatively, an occurrence based policy can be purchased which will respond to an incident which occurred during the period of coverage, regardless of when the claim is brought against the producer or reported to the insurer. occurrence policies offer an extended period of claim reporting as most insurance companies will consider the initial broadcast or release date to be the occurrence date for the purpose of triggering coverage under the policy.

in terms of limits of insurance, the most common limits required by broadcasters & distributors are: \$1,000,000 for each claim, a \$3,000,000 aggregate (the maximum that will be paid for all claims during the policy period) and a \$10,000 deductible. these limits should be viewed as minimums only. most policies include the defense and claims costs within the limit of insurance; therefore, a claim requiring significant litigation or legal time can quickly erode the amount available to pay a settlement or judgment. any uninsured amount will remain your responsibility and may result in a major financial liability.

## clearance process

insurance companies require that your script, title and various production elements be properly cleared by a lawyer for use prior to the release or broadcast of your production.

application forms are used by all insurance companies to gather information about your production. some applications are folded into the policy which means that the answers to your questions are warranted statements and can be used to deny coverage in the event of claim. be very careful to accurately answer all of the questions and when necessary include an addendum to the question to allow you elaborate on your answer.

your lawyer will ensure that all copyrights and rights have been obtained for story, script, music, media, film & videoclips and that proper releases and title reports are obtained. they will identify issues with respect to privacy, defamation, slander and other risks associated with intellectual property being used in

it is important to seek and employ the services of an entertainment lawyer to counsel you before you begin your production. identifying exposures early can avoid costly or disappointing changes later on.

many insurance companies will have their lawyer communicate directly with your lawyer to ensure that they are comfortable with the completed clearances prior to granting final approval for your coverage.

## employee or freelance crew injury

recently, there have been a number of accidents on locations and sets that have resulted in death or injury to crew members. one of your most valuable assets on a production is your crew; therefore, you should consider arranging insurance for accidental injuries.

union requirements often mandate that workers' compensation insurance must be purchased for union-members. in canada, workers' compensation insurance is delivered through provincial government-managed systems, whereas in the usa private insurers provide coverage to employers..



when working with non-union crew, you may want to consider purchasing an occupational accidental death & dismemberment policy to insure the crew members for death or disability. a variety of programs are available which offer cost effective ways of providing this coverage.

keep in mind, that in Canada there is statutory protection granted to employers under the current workers compensation legislation and this will protect you from claims brought by your employees.

## a bit about the fine print

as is the case with all contracts, insurance policies contain terms and conditions, which can exclude potential claims or limit the amounts paid by the policy. although not exhaustive the following list may help bring some of the fine print into focus...

- most production packages and general liability policies provide coverage only while you are filming in canada or the usa. international coverage should be arranged for productions outside of this territory.
- production packages and general liability polices do not cover, or provide very limited coverage for, aircraft, watercraft or automobiles used on your production and specific coverage must be arranged.
- when hiring or chartering aircraft or watercraft you are faced with a “non-owned” liability exposure and specific should be arranged.
- all cameras, lenses, computers and other equipment must be tested prior to their use to ensure they are in good working order.
- equipment may not be covered for damage by short-circuit or electrical injury unless followed by a fire, and then coverage may only be available for the damage caused by the fire.
- equipment may not be covered for damage caused by mechanical or structural defect, wear & tear, changes in temperature, rain, sleet, snow or hail; or damage to equipment resulting from intentional acts by you or at your direction.
- all artwork, drawings, software or related material used to generate computer images must be kept until you have a protection print of your negative.
- unprocessed negative cannot accumulate for more than a specified period of time (usually 5 shooting days or 7 consecutive days) – use caution when filming in remote or foreign locations.

- production media coverage does not automatically cover library stock, errors in judgment relating to exposure, lighting, sound recording or from the incorrect use of a camera, lens, raw film or tape stock.
- negative film may not be covered if accidentally exposed to light.
- cast coverage may be restricted or excluded for:
  - cast members involved in flying (other than as a passenger), stunts or special effects;
  - claims from allergies or facial herpes
  - childhood illnesses such as chickenpox, measles, mumps, whooping cough;
  - claims from pregnancy, menstruation or child birth
  - cast medicals must be performed immediately prior to beginning principal photography (usually no more than 21 days)
  - during pre-production cast members are covered only for the period stated in your insurance application -- additional coverage can be purchased if you plan to have an extended period of pre-production
- premiums are generally considered to be deposits only and insurers have the right to request the final production costs or budgets and make additional premium charges should your costs exceed the original estimates.

this document is intended to provide general information only and is not intended to override policy terms and conditions which vary among insurance companies. it is always recommended that reference be made to the policy wording to determine the extent of coverage.