

The Eastern Script

Shameless self-promotion since 2011

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PRESIDENTIAL ADDRESS



We're gearing up to gear down for our annual week of being completely, entirely, thoroughly closed for business. This newsletter is a little stocking stuffer for all of you. Thank you for keeping us so very busy this year.

The different reports that are part of the clearance process can be a bit confusing so I thought I'd ramble on about that in a piece this month ("What is this thing called that I need?"). The mysteries of the dialogue references section are also addressed, wherein I attempt to explain what to do (and not to do) about the notes you'll find there ("Can we say this?"). I also took the cue from various client emails of the last few months ("Send us some stuff that's already clear") to explain why we don't have things on hand that we can automatically recycle. Finally we revisit the "Happy Birthday" saga with what we hope is a helpful compilation of updates regarding its quest for freedom ("Happy Birthday revisited").

Best holiday wishes to you all.

Anne Marie Murphy
President



WHAT IS THIS THING CALLED THAT I NEED?

Here's a recent comment from an in-house email:

"She just sent a question whether title searches are the same as clearance reports."

I'm not in any way including this to mock, it truly seemed like a good launching point for an article on what all this stuff is called. If you've never seen these different reports before, how would you know what's what? From what I've seen, it's not something that is typically explained in media arts training programs. Yet there you are staring at that checklist for the insurance company. Maybe this will help.

CLEARANCE REPORT

You have a narrative project — NOT a documentary — and you need someone to go through it line by line making sure that the writer has not accidentally used names of real people who might sue you, real business names that might be a problem, real brand names that might be even more trouble. Someone at a "clearance" or "script clearance" company reads the script, makes a lot of notes, researches all the items in question, and sends you a report telling you what's "clear" (ok to proceed with) and what's not clear. You need this research done to get *e&o* (errors and omissions) insurance.

COPYRIGHT SEARCH

The copyright searching we conduct for title searches consists of examining online records at the U.S. Copyright Office and Canadian Intellectual Property Office. This is different from the type of copyright search that an insurer may require for "chain of title" purposes. Chain-of-title copyright searching is needed when an insurer wants proof that there are no other potential owners of rights to your work, especially if the project is based on an existing work. If your work is original (and you can prove it) then you shouldn't need that searching. If your work is based on an existing property, the copyright search for "chain of title" uncovers the various potential owners of a work, such as in this scenario: magazine article written in 1955, adapted into a novel in 1974,

rights for novel assigned to someone for a screenplay in 1989, and so on. We don't offer chain-of-title copyright searching because we don't have staff in Ottawa and Washington where that searching has to happen—physical records (paper, microfilm, etc.) need to be searched

LOF

This is a "lube oil filter" check done by your automotive mechanic. We don't do these. I just wanted to make sure you were paying attention. :O)

OPINION LETTER

This goes with a title search. Here's some background on these from an email with a lawyer who does this work on a regular basis: "Regarding Opinion Letters, what actually happens in real life, is that I tell my clients to just do the search. Then I myself review the results and determine whether or not we need an opinion letter. If I determine that the results are such that it is too risky to proceed with the chosen title, I usually advise clients to change the title and they change it. In those VERY rare situations where the results show that the chosen title is risky AND my clients are refusing to change it, that I send out for an opinion." At our website you will find a list of lawyers who are able to prepare these opinions. www.easternscript.com/referrals.html

SCRIPT CLEARANCE REPORT

This is the same as a "clearance report". See previous entry for that description.

TITLE SEARCH

Title searches detail the history of the use of the title you have selected for your project, listing the extent of its appearance in many media (film, television, publishing, music, etc.). A good title search includes enough sources to give you confidence that your project title will not be confused with another when it is ready for release. While it is absolutely true that a title alone cannot get copyright protection, (only the work itself can get that protection) insurers want to see a title search report for a variety of reasons. They want to be confident that your project will not be released at the same time as another

by the same name to avoid confusion that could lead to loss of revenue for your project. They also want to make sure that your work is not using the “goodwill” of another in order to sell itself; for example, the estate of Margaret Mitchell might take exception to a film by the title Gone With the Wind of Arizona. Finally — insurance aside — having a unique title can help you sell your project, there will be no confusion at the streaming service interface with any other listing.

TRADEMARK SEARCH

This is research you need if you are going to launch a product line. The primary additional clearance concern for clients with animated children’s projects is merchandising. Producers of most kids’ television want to ensure that they will be able to market story elements if that opportunity presents itself. So our typical clearance report for an animated children’s show includes extra searching of international trademark databases. The searching also involves “common law” sources (in-house book collection and lots of internet searching) to see what else is out there without trademark registration that might nonetheless present a conflict. This type of search can be quite time-consuming and the additional billable fees for database searching can be significant.

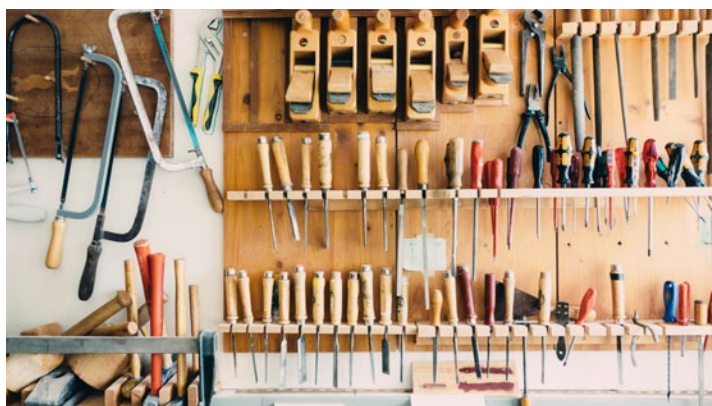


Photo by: Barn Images on Unsplash

CAN WE SAY THIS? ... ABOUT DIALOGUE REFERENCES



Photo by: King's Church International on Unsplash

We recently refined the language that is at the header of the “Dialogue References” section of our script clearance reports. For a novice especially it's a confusing section of a clearance report; what are you supposed to do about those comments? Here's our new introduction to that section, language we hope will offer a bit more explanation:

This section includes items that will be heard in dialogue. We will note references to brand names. Free speech laws allow you to make those references but internal considerations might dictate that you make them generic; we will not say “clear” or “not clear.” Once we note them, you decide if you want to mention a brand name product or not. Every project has a different policy on using brand names in dialogue. On the other hand, if we can tell that your intention was for the product name to be fictional, we check to see if it is or not. We assess your intention and proceed with either “reference to the brand name xxx” or “we’ve checked and we find xxx.” References to actual products, businesses, etc. may need consideration given contractual obligations. You might need to change them if you have a product placement agreement with a competitor. Derogatory references in dialogue may merit attention. We will flag these and production should consult with counsel on them.

Here's one of the reasons you might not want to use the names of registered trademarks in your script. I recall a long-running advertising campaign in The Hollywood Reporter some years ago. I believe that the ad's header was: "When you use 'Xerox' the way you use 'aspirin' it gives us a headache." When reading further on the topic for this article, I notice that the campaign continued with this: "If you use 'Xerox' the way you use 'zipper,' our trademark could be left wide open." With these advertisements, the Xerox Corporation intended to notify the film and television community that they would be doing what is known as "policing their mark." If trademark owners discover people using their registered trademarks as generic language, they need to send a letter asking that the practice stop. Trademark owners have a responsibility to send these letters, otherwise the brand name loses its trademark status and becomes generic language. The power of the trademark registration is thus lost. This has happened to many trademarks over the years in different countries, the previously-mentioned zipper and aspirin serving as two marquee examples.

SEND US SOME STUFF THAT'S ALREADY CLEAR

I'm reminded of the wise saying about never stepping into the same river twice. The same concept applies here, when an email arrives asking us if we have "stuff that's already cleared that we can use." As soon as we do the research, the answer can change — just like the river. So the answer is always "No, but we do have options that have worked in the past that we can re-check for you."

We have a vast collection of "stuff" that has cleared before. We obviously wouldn't offer you items that had a long and famous life as businesses or products in another project (think: DUFF beer, Dunder Mifflin) but we do have things that have spent a few seconds on-screen at one time and could come out again to play show business. Examples: (true! these are all true!) acne treatments, amusement park rides, bagel shops, billiard halls, breath mints, bug sprays, coffee shops...

the list goes on and on. We hang onto them in case they might work again someday, it's a big time saver.

Often they don't work again. We'll go to re-check and find conflict anew, then think to ourselves: "*Damn*, that was SUCH a good acne treatment name that an actual company STOLE IT FROM THAT TV SHOW PROP and registered their own trademark!" This seems to happen with beer brands all the time. I just looked at our list of previously-cleared beer brands and there are currently 104 items on the list. I can guarantee you that 14 of those will be registered trademarks within the year. Coincidence? I don't think so. We only clear good names.



Photo by: Grace Ho on Unsplash

HAPPY BIRTHDAY REVISITED



Photo by: Stephanie McCabe on Unsplash

I was recently teased for using Wikipedia as a source. My defense: any article at Wikipedia that is heavy on footnotes is as good a reference piece as any. So here I present you with their conclusion re: “Happy Birthday” followed by material directly from the U.S. court decision.

In 2013 ... Good Morning to You Productions, a company producing a documentary about "Good Morning to All", sued Warner/Chappell for falsely claiming copyright to the song. In September 2015, a federal judge declared that the Warner/Chappell copyright claim was invalid, ruling that the copyright registration applied only to a specific piano arrangement of the song, and not to its lyrics and melody. In 2016, Warner/Chappell settled for US \$14 million, and the court declared that “Happy Birthday to You” was in the public domain... Both the music and lyrics are in public domain in both the European Union and United States. The copyright expired in the European Union on January 1, 2017.

From: en.wikipedia.org/wiki/Happy_Birthday_to_You

The article includes a link to the decision in *Good Morning to You Productions v. Warner/Chappell Music, Inc.* (U.S. District Court for the Central District of California 2016) in which the following language appears:

The Court hereby declares that, as of the Final Settlement Date, the Song entitled Happy Birthday to You! will be in the public domain.

See: assets.documentcloud.org/documents/2938811/76d56dc1-4b-7b-4d07-b6ab-351f79b4a8ca.pdf

One of the lawyers we correspond with here has mentioned to us that there are foreign-language lyrics that are not in the public domain — so please be aware of that should you be producing for outside North America.

The website techdirt.com (winner of both *Business Week's* and *Forbes'* “Best of the Web thought leader awards”) adds this:

And, right on cue, Jenn Nelson, the filmmaker who started to make a documentary about the song and eventually decided to challenge the copyright status on it, has put out a great 15-minute documentary about the fight to free Happy Birthday from the bogus copyright claims of Warner/Chappell.

From: techdirt.com/articles/20160701/17352234877/documentary-about-freeing-happy-birthday-copyfraud-comes-out-day-after-happy-birthday-officially-declared-public-domain.shtml

There's a link here to the Jenn Nelson project, well worth watching especially for anyone who appreciates a David vs. Goliath message:

www.theguardian.com/news/video/2016/jul/01/happy-birthday-song-campaign-song-jenn-nelson-warner-chappell-video?CMP=embed_video



RECENT PROJECTS

AMERICAN WOMAN – “Downsizing” breakout Hong Chau is in talks to star in an adaptation of ‘American Woman,’ which tells the tale of the women who cared for kidnapped newspaper heiress-turned-fugitive Patty Hearst.

Killer Films is producing with Mad Men producer Semi Chellas writing and directing the pic.

Justin Kroll, variety.com/2017/film/news/downsizing-hong-chau-patty-hearst-movie-american-woman-1202574857/

BALDY – “Martin Donovan, Kacey Rohl and Amber Anderson have been set to star in Baldy, an indie drama written and directed by Toronto-based Amy George and The Oxbow Incident duo Calvin Thomas and Yonah Lewis. The plot centers on a popular yet desperate university dance major (Rohl) who is faking cancer. Through her counterfeit fundraising, she has become a campus celebrity and found the community she always dreamed of... After applying for an academic scholarship, she learns she has one week to present medical records proving she has cancer or else she won’t receive the funding.”

Patrick Hipes, deadline.com/2018/11/baldy-movie-martin-donovan-kacey-rohl-cast-1202505503/

CLIFTON HILL – “Albert Shin is partnering with screenwriter James Schultz on his next feature film Clifton Hill. The psychological thriller tells the story of a pathological liar who becomes entangled with a childhood memory of witnessing a kidnapping. Shin’s debut feature In Her Place made its world premiere at TIFF ’14.”

Jordan Pinto, playbackonline.ca/2016/07/29/rhombus-sets-up-next-slate-of-films/

DEPARTURE – “Global has given a six-episode order to the drama series Departure, a Canada/U.K. coproduction starring Christopher Plummer and British actor Archie Panjabi. Production is underway in Toronto on the hour-long series ahead of a 2019 premiere on Global. Created by Vincent Shiao (Ransom) and produced by Shaftesbury and Greenpoint Productions, the drama follows the disappearance of Flight 716, a passenger plane that vanishes over the Atlantic Ocean. Malcolm MacRury (Saving Hope) serves as the showrunner.”

Lauren Malyk, playbackonline.ca/2018/11/13/global-commissions-canada-u-k-copro-departure/

GUEST OF HONOUR – “Atom Egoyan, the Oscar-nominated Canadian director, is set to direct ‘Guest of Honour,’ a twisted psychological drama which will be produced by Playtime, Elevation Pictures, Ego Film Arts and The Film Farm. Based on an original script by Egoyan, ‘Guest of Honour’ explores the relationship between a father and his 20-something year old daughter who wants to remain in jail for a sexual assault she knows she’s been wrongfully indicted for.”

Elsa Keslassy, variety.com/2018/film/global/atom-egoyan-guest-of-honour-playtime-elevation-toronto-1202933949/

LAMYA’S POEM – “Lamya’s Poem, God willing, will be UPF’s first-ever narrative movie and first ever animated film. It humanizes a terrible humanitarian crisis through the story of a 12-year old Syrian refugee girl named Lamya, interwoven with the life and words of one of the world’s most famous poets, Jalaluddin Rumi.”

www.upf.tv/million-points-fundraiser/

REMARKABLE MR. KING – “The Remarkable Mr. King (39 x 7 minutes), based on the Kids Can Press picture book series by Montreal author-illustrator Geneviève Côté, is aimed at kids two to five and will air in Fall 2019 on Treehouse. The preschool series follows a well-meaning, short sighted, little lion whose ‘big thinks’ sometimes cause big snags and tangles – but if Mr. King tries and fails, he tries again to make things right.”

AWN Staff Editor/unnamed, www.awn.com/news/nelvana-greenlights-three-new-preschool-series-ahead-mipcom

RUNNING WITH VIOLET – Season Two of the digital series. "A dark comedy about two women, a teenager and a toddler running from a small town drug ring."

www.indiegogo.com/projects/running-with-violet-a-digital-series#



Photo by: Brooke Lark on Unsplash