

The Eastern Script

Shameless self-promotion since 2011

IN THIS ISSUE

Presidential Address	1
(Script) clearance reports... not for documentary	2
555 numbers revisited	2
Sound trademarks	3
Public buildings on screen	4
Recent Projects	7

GET IN TOUCH

CANADIAN OFFICE

#223-829 NORWEST ROAD
KINGSTON ON K7P 2N3

U.S. OFFICE

41 HAVELOCK ROAD
WORCESTER MA 01602

WEBSITE: easternscript.com

EMAIL: amm@easternscript.com

TELEPHONE: 844.842.3999



[linkedin.com/company/eastern-script](https://www.linkedin.com/company/eastern-script)



[facebook.com/easternscript](https://www.facebook.com/easternscript)



[@easternscript](https://twitter.com/easternscript)

PRESIDENTIAL ADDRESS



We have crawled our way through another year of a global pandemic. I hope you have all stayed healthy this year. Although 2020's desperation over toilet paper supplies seemed to have faded as 2021 began, there were so many things about life this year that still weren't quite the same. I was going to make a little list of them here but, quite frankly, who among us needs or wants the reminders?

Thankfully, the entertainment industry has remained strong. We were busy at Eastern Script and for that we are all grateful. We lost one staff member to retirement but gained one back and added another brand new face to the fold. We'll be ready to help you in 2022. Thank you for your continued support!

This newsletter has an interesting piece on public buildings and the clearance issues related to them. It includes additional helpful remarks from a partner at Stohn Hay Cafazzo Dembroski Richmond LLP -- thank you to Erin Finlay for taking the time to help. There's some fun: check out the links to sound trademarks, a good late-afternoon brain break for you. We've also revisited NANPA (remember that big building full of phone numbers?) and the 555- phone number topic. Also, we answer the question: does your documentary need a clearance report?

Sending you all best wishes for a happy holiday season. We look forward to working with you again in the new year.

Anne Marie Murphy

President



(SCRIPT) CLEARANCE REPORTS... NOT FOR DOCUMENTARY



Photo by Tyler Casey on Unsplash

This question comes to us from time to time: “I need a clearance report for my documentary. Can I get that from you?”

We work on two types of projects here: script clearance reports and title searches. A script clearance report looks at the use of fictional characters, businesses, and product names. Think: tv cop drama, made-up names of the police officers, criminals, the district attorney. We look to make sure that the scripted names don't identify anyone or anything real. If they do, we come up with alternatives for you to use to avoid any conflict. So, for a script clearance report, we're looking at fictional story elements in a fiction project to make sure there are no accidental identifications of real people, companies, brands. This type of research is not needed for a documentary project.

For non-fiction, you instead want a discussion with the lawyer for your project about the paperwork you have collected to secure the rights for any music, film footage, photos, artwork, etc. you will feature. The word "clearance" is still involved but there is not a scripted fictional project that needs the "script clearance" work described above. The clearances needed instead are this type: did you "clear" (meaning: obtain the appropriate permission paperwork) for the use of anything in your documentary that you did not create yourself?

We have collected a list of referrals to lawyers here if you need this type of review: easternscript.com/resources. [Scroll down to Referrals | Law Firms.]

We do provide title searches which are needed for both fiction and documentary projects. They provide a full history of the use of the title you have selected for your project, listing its appearance in many media (film, television, publishing, theater, 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. And in the final confusing element of this clearances conversation, we don't provide "title clearance," we only provide the research document showing how the title has been used. Once again, a lawyer must weigh in to provide an opinion on whether the title is safe to use or not.

555 NUMBERS REVISITED

From the fall 2012 newsletter:

Yes it does sound like something from a movie, the 555- number. Unfortunately, there is no way around it. An organization called NANPA (North American Numbering Plan Administration) determines how phone numbering sequences will be assigned. The range set aside for fictional use by movie and television projects is from 555-0100 through 555-0199. There are NO area codes set aside exclusively for fictional media use.

As almost 10 years have passed, we contacted NANPA again to find out if the fictional sequence assigned to the media industry has changed. It has not. Here is the most up-to-date policy, straight from the NANPA Help Desk:

“555 line numbers will remain reserved as fictitious, non-working numbers for use by the entertainment and advertising industries. These specific numbers are 555-01XX, i.e., numbers between and including 555-0100 and 555-0199.”

To learn about a production that did not adhere to those guidelines and had consequences, visit the “[Resources](#)” page of our website and read what happened with the feature film Bruce Almighty. There are other articles there on this same phone number topic (“Hold the Phone-That Fake Phone Number Works,” “Howard In Hot Water Again.”). More recently, the Netflix hit series Squid Game got into a phone number mess, this time with a Korean phone number.

www.indiewire.com/2021/10/netflix-editing-squid-game-remove-real-phone-number-1234669702/

When we see a phone number in a script, we have to steer you to the 555- numbers. Trust us, it’s for your own good! If the phone number is outside of the U.S. and Canada, we’ll do the research to find out what number you can show AND stay out of trouble.



Photo by Diogo Brandao on Unsplash

SOUND TRADEMARKS



Photo by Kelly-Sikkema on Wunderstock

Here’s some fun! We’ve come across some websites that discuss the world of trademarks that are granted (but not easily) for sounds rather than words or images.

www.activatedspace.com/Installations/endangered-sounds/USA%20Registered.html

A page listing current sound trademarks, or sensory marks, registered in the United States. It features details on some well-known sounds such as the famous Tarzan yell and the MGM lion’s roar; some obscure sounds such as “musical blips on audio tape” and some funny ones like the spoken term “cha-ching” owned by Rally’s Hamburgers.

www.huffpost.com/entry/can-you-trademark-a-sound_b_5635571

A succinct blog post about the difficulties businesses face trying to trademark sounds. Details the very first successful application for a sound mark by NBC in 1978 and discusses the arduous process of getting sounds trademarked. Talks about the merits of copyright protection over trying (and probably failing) to trademark sounds and offers the rather extreme case of Harley Davidson.

www.uspto.gov/trademarks/soundmarks/trademark-sound-mark-examples

The United States Patent and Trademark Office’s sound mark examples page. This page is enjoyable because you can click to hear some of the sounds as well as search for all the registrations in the United States. Some of our favorite sounds are the 20th Century Fox trumpet, drums and strings and, of course, the Tarzan yell!

PUBLIC BUILDINGS ON SCREEN



Photo by Tim Trad on Unsplash

In both Canadian and U.S. copyright law, public buildings – that is, buildings that can be seen (and filmed) from public spaces, accessible to the public or publicly owned – are copyright protected under the category of “architectural works”, a subsection of “artistic works”. This subsection was first included into United States law in 1990 and applies to buildings created on or after December 1, 1990; although it’s worth noting now that both copyright and trademark protection exists for buildings created before then. We’ll call them “special cases”. More on those below.

When it comes to the legality of filming and distributing films and images of buildings for commercial uses, both Canadian and U.S. copyright law is clear on the limitations of exclusive rights in architectural works. To paraphrase Section 120(a) of the Copyright Act (United States), rights for architectural works do not include the right of owners to throw a temper tantrum about “pictorial representations” and the public display of photos, paintings, videos etc. of any public

building. In other words, it is not copyright infringement to have a building appear in a film if it is in or visible from a public space.

This exception to normal copyright law is broadly referred to as the “Freedom of Panorama” and the rules of the law are straightforward as outlined above. Nonetheless, when it comes to clearances, things are rarely so light and breezy. Quoting from entertainment lawyer Bob Tarantino, the “clearance procedures [for buildings] of most film and TV errors and omissions insurance policies will require that clearance be obtained if the filmed footage will include elements which are separately copyrightable or trademarked.” Thus, even if due diligence is done and rights (e.g. location agreements) secured to film a building, there are other factors than can land you in trouble.

Take, for example, the case of copyright infringement leveled at the film *Batman Forever* (1995 Warner Bros.). An office building in Los Angeles was used as a bank in the set design for Gotham City. Warner claimed it received permission from the building owner for use in the film. However, the building also featured prominent metal sculptures by the artist Andrew Leicester. Leicester filed a suit claiming that Warner had not sought permission from him to feature his sculptures in the set design. This time, Warner was fortunate. A federal judge concluded that the sculptures were architectural works and were part of the building.

Warner hasn't always been so lucky. In 1998 the studio was threatened with a lawsuit by sculptor Frederick Hart who claimed that the key prop featured in the film *The Devil's Advocate* was based on his sculpture "Ex Nihilo" that can be seen in the entrance to the Episcopal National Cathedral in Washington. Although the case never made it to court, a federal judge ruled that Hart would likely win the case and Warner was forced to settle and to make many cuts to the film before it went on sale. As the film's director Taylor Hackford said, "No filmmaker wants to see any changes to a film for which he has delivered the master print."

Remember those special cases we mentioned at the beginning? At the entrance to the Louvre – one of the largest and most famous museums in the world – is a pyramid constructed by Leoh Ming Pei. The use and display of any pictorial representation of the museum that includes the pyramid requires permission from the Louvre, who own the copyright for Pei's pyramid. Another example, in France again, is the Eiffel Tower. The image of the tower by day falls under public domain and may "be reproduced without prior authorization." However, the tower when illuminated is copyright protected and requires permission to use in film projects.

What other sites can land you in hot water? Christ the Redeemer in Rio de Janeiro, Grauman's Chinese Theater in Los Angeles, Radio City Music Hall in New York City, Brussels' Atomium, and St. Peter's Basilica in Rome are just some other famous sites that have copyright restrictions based around commercial and/or editorial usage.

To get an expert's insights on this topic, we contacted Erin Finlay, former Chief Legal Officer at the Canadian Media Producers Association (CMPA) and partner at Stohn Hay Cafazzo Dembroski Richmond LLP, for a Q&A.

ES: Please provide a brief introduction to yourself:

EF: I am a partner at the law firm Stohn Hay Cafazzo Dembroski Richmond LLP, a boutique entertainment law firm in Toronto, with a practice in copyright, film, television and music law and policy.

ES: Have you had to deal with any tricky clearance issues regarding showing buildings on screen?

EF: We often think of Canada and the U.S. first when dealing with building and architectural clearances. But it is important to remember that certain countries outside North America have special laws and restrictions, particularly when dealing with cultural institutions. You also need to consider whether the buildings are protected by trademarks. St. Peter's Basilica in Rome was built in the 1600's, so any conceivable term of copyright ought to have expired by now. Yet the Basilica claims that no commercial use is allowed. The Italian Code on Cultural Heritage and Landscape requires authorization (and a fee) to reproduce buildings that belong to Italian Cultural Heritage, and it can sometimes be difficult to determine the competent authority in charge of the building. One challenge can be identifying the buildings themselves onscreen – I don't know all the buildings in the world! So, it's a good thing that Eastern Script does.

ES: What, if any, are the differences between the U.S. and Canada in the interpretation of these guidelines for architectural works?

EF: Under the Canadian Copyright Act under "miscellaneous" for some reason, it is not an infringement of copyright for any person to reproduce an architectural building, structure or model in an audiovisual work. Canada does not appear to have the same "public space" limitation in its exception as the U.S. But, since the laws of the U.S. and other countries do have that limitation, and since we like it when our shows

travel the world, it's best to always film buildings from a public space. Architects in Canada also have moral rights. If the building is: 1) distorted, mutilated or modified in a way that is prejudicial to the honour or reputation of the architect; or 2) used in association with a product, service, cause or institution without the architect's permission; and the architect has not waived her moral rights (and how would you ever know if she has?), we've got a problem.

ES: From your experience, are you able to add to the list of "buildings that can land you in hot water" that we mention above (final paragraph of article)?

EF: We never land our clients in hot water! As a general rule, consider both trademarks and copyright, as well as local laws and restrictions for any cultural or well-known buildings. Do your research!

ES: Are there any special guidelines for portraying prominent architectural landmarks such as the Washington Monument in the States, or the CN Tower in Toronto?

EF: First, always make sure to film the landmarks from a public space. Second, watch for the artwork and sculptures in or around the landmarks. (Canada and the U.S. seem to treat sculptures differently, and it may depend on whether the sculpture is a permanent fixture or a temporary one). The CN Tower is protected as both an official mark and a trademark, so while it's generally ok to depict it as part of the Toronto skyline, commercial uses such as merchandise, ugly plastic replicas and in advertising and media require a trademark license.



Photo by Kate Hliznitsova on Unsplash

ES: Do you have any helpful general advice for filmmakers on this topic?

EF: It's always best to avoid the use of buildings in promos and advertising. Don't defame or disparage (or blow up) the building unless you are certain that there is no copyright protection in (or restrictions on) the building. Be careful of misrepresenting a real place of business in a fictional story - capturing trademarks, signage or logos of real businesses on your building may give rise to claims of passing off, trademark infringement or even trade libel.

And finally, be careful of capturing artwork on a building (think graffiti, photographs etc.) which may be separately protected by copyright. The exceptions available for architectural buildings are narrow, and do not necessarily extend to artwork that may be on the building itself.

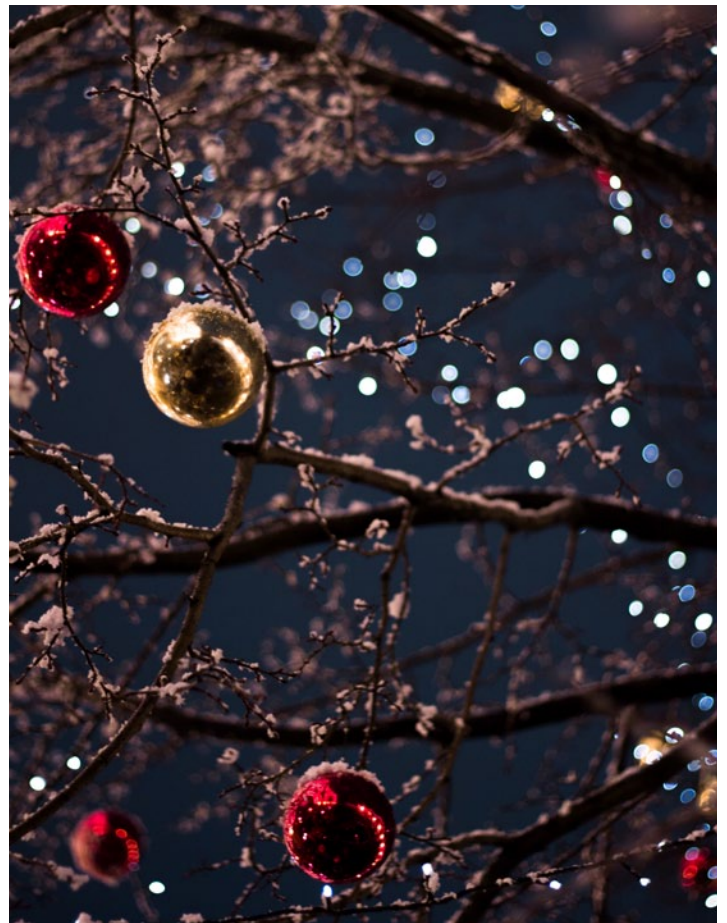


Photo by Anton Scherbakov on Unsplash

RECENT PROJECTS

DEAR DAVID – “Based on a true story and one of the first Twitter urban legends, Dear David will tell the story of Adam Ellis, a former BuzzFeed employee and social media content creator who becomes haunted by the ghost of a boy possessed by a demonic entity. In 2018, Ellis’s Twitter thread about his experiences with the ghost he called ‘Dear David’ went viral, gaining him more than a million followers on the platform.”

Andreas Wiseman, Deadline.com, deadline.com/2021/11/dear-david-movie-buzzfeed-ghost-story-viral-lionsgate-1234876024/

A CHRISTMAS LETTER – “Canadian-born actor David Lipper is one step closer to bringing A Christmas Letter to life, as the film’s writer, lead actor and producer prepares to begin shooting in Sault Ste. Marie next week. Lipper tells SooToday that his film has been in the works for more than a decade, and was even optioned a couple of times prior to Lipper joining forces with Sault-based 180 Sisterhood Productions in order to work on the film, which is working with a budget less than \$2 million dollars. The film production also received assistance in the form of a \$500,000 grant from the Northern Ontario Heritage Fund Corporation.”

By James Hopkin, SooToday.com, www.sootoday.com/arts-culture/production-to-start-on-christmas-themed-flick-in-the-sault-next-week-3760656

LIL GLOOSCAP AND THE LEGENDS OF TURTLE ISLAND – “Tara has received many awards for her films and book illustrations; her comic, Lost Innocence, was part of the Truth and Reconciliation Commission events, and a copy has been placed in the Archives of Canada; and, her new TV show on APTN, which she wrote, directed and produced, called Lil Glooscap and the Legends of Turtle Island, is set to air in 2022.”

Created by Tara Audibert, Founder of Moxy Fox Studio and Ni’gweg Collective, NB., www.powwowpitch.org/tara-audibert-wins-the-entrepreneur-spirit-award/

LOS FRIKIS – “Adria Arjona will star and executive produce the drama Los Frikis, with Tyler Nilson and Michael Schwartz writing and directing. New Slate is financing, and Nilson and Schwartz will produce alongside Phil Lord,

Christopher Miller and Rebecca Tomlinson for Lord Miller. The film is based on the true story of punk-rock teenagers in Havana who deliberately inject themselves with HIV to escape the oppression of “Special Period” Cuba.”

By Justin Kroll, Deadline.com, deadline.com/2021/10/morbius-adria-arjona-los-frikis-1234859906/

RUBY AND THE WELL – “Ruby and the Well is a family show about 12-year-old Ruby and her father inheriting an apple orchard. The pair is disappointed to discover that the orchard and the surrounding region are ‘dried up.’ There seems to be no way forward until Ruby finds an enchanted wishing well on the property and becomes the well’s new ‘keeper.’ The main plot of the show being that it is Ruby’s responsibility to grant all of the unfulfilled wishes in the well to rejuvenate the orchard and the valley around it”

dufferinsspotlight.ca/2021/06/12/more-filming-of-ruby-and-the-well-in-grand-valley/

SON OF A CRITCH – “Lionsgate has teamed with Canadian broadcaster CBC to bring comedy series Son of a Critch to the U.S. and the world. The half-hour series is based on Mark Critch’s memoir, Son of a Critch: A Childish Newfoundland Memoir and he will star alongside Benjamin Evan Ainsworth, Malcolm McDowell, Claire Rankin and newcomers Sophia Powers and Mark Rivera.”

By Peter White, Deadline.com, deadline.com/2021/07/lionsgate-schitts-creek-canadian-comedy-son-of-a-critch-mark-critch-malcolm-mcdowell-benjamin-evan-ainsworth-1234801777/

STRANGERS IN A ROOM – “Shreya [Patel] is leading in the film Strangers in a Room. The film is directed by Andre Rehal and will tell the story of a veteran second-generation Korean actor who exiles himself in his apartment after a bad audition. Shreya Patel is also working on a documentary title Eakk as a creative editor. The documentary is about Transgender rights and education in India.”

www.truescoopnews.com/newsdetail/layla-is-relevant-actorfilmmaker-shreya-patels-new-mockumentary-shoot-to-begin-in-august