

# The Eastern Script

*Shameless self-promotion since 2011*

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## PRESIDENTIAL ADDRESS



As is the case with many of you in the entertainment industry, we labour in remote locations far from where production is happening. So, we don't see costumes, on-set performances, set dressing, or any of the hustle and bustle that is an active set. When Murdoch Mysteries said it was going to Kingston again for a location shoot, a few of us were able to join them and see it all first-hand.

Many parts of the city evoke Murdoch's circa 1900 vibe regardless of the action on the street that day but to see that era recreated fully in our hometown is absolutely delightful. It is time travel, with the additional opportunity to put faces to names that we email to on a regular basis.

Speaking of time travel, our featured article in this issue discusses the portrayal of actual individuals and the issues related thereto. In many of the projects we read, those actual individuals are from another era, such as the many famous historical figures who become part of Murdoch's story lines, for example Thomas Edison and Mary Pickford. Do you need permission? It is a complex issue. These scripted scenarios are a prime example of when we advise clients—if they have not already—to consult with production counsel.

As we head into another winter, I want to thank you all for another year of keeping us in business. We appreciate your trust and the confidence of our many repeat clients, some of whom have been sending us work for almost thirty years. A hearty thank-you and a happy holiday season to all!

Anne Marie Murphy  
President



## PORTRAYING PUBLIC FIGURES AND CELEBRITIES: LEGAL CONSIDERATIONS

When reviewing scripts for clearance, we often encounter scripted portrayals of real-life celebrities and public figures. These can range from contemporary personalities, who may sometimes be directly involved in the production, to historical figures whose portrayals are often unauthorized. In either case, such depictions in a story or on screen can pose potential legal pitfalls that filmmakers and producers should consider to avoid significant risks.

Our job at Eastern Script is to note these portrayals and provide biographical and contact information for the clearance report (if you need a primer on clearance reports, go to [easternscript.com/assembling-a-clearance-report](https://easternscript.com/assembling-a-clearance-report)). Our typical entry in the report looks like this:

*“Indicated portrayal of xxx xxx,” (note their nationality, birth/death years, a description of their importance, and sometimes contact details). Assume that production counsel has been consulted regarding this portrayal.”*

Given the regularity of portrayals we encounter in our work and the growing popularity of biopics and historical fiction, we’ve become increasingly curious about how these depictions are managed after our reports are submitted for review. Additionally, we wanted to investigate the legal framework surrounding such portrayals, how it might affect obtaining errors and omissions insurance, and ways to protect a production from legal challenges.

While film and TV productions benefit from exceptions that allow them to depict public figures without explicit permission, there are conditions. When reviewing portrayals, it’s important to consider who is being portrayed, how individuals are depicted, what legal protections are tied to their likeness, and the type of production itself.

Public figures have legal rights connected to their identity, including:

- **Right of Publicity:** In the U.S., laws give individuals control over how their name, image, and other identifiable aspects of their likeness are used for commercial purposes.

- **Misappropriation of Personality:** In Canada, there are laws that may help protect individuals against the unauthorized commercial use of that person’s name, image and likeness.
- **Defamation:** When a portrayal is false and harms a person’s reputation, potentially leading to legal claims.
- **Privacy Concerns:** Even public figures have certain privacy rights that productions must be careful not to violate.

These rights influence the use of a person’s likeness for commercial purposes and can impact on-screen portrayals. Although ‘commercial purposes’ often means advertising and marketing, productions can be considered commercial due to revenue generated through ads, streaming, and distribution of physical media, therefore exposing productions to legal claims.

There are also different types of public figures. Celebrities—such as actors, musicians, and professional athletes—have arguably turned their names and images into a form of commercial “product” by actively licensing their names and images. In contrast, public figures like politicians, industry leaders, authors and experts may be prominent due to their roles in public life but may have not actively commercialized their identities.

While the framework above applies to both types, these differences, along with the way characters are depicted, can determine whether a portrayal be altered for legal reasons or, in some cases, removed altogether.

A production telling a true story needs thorough documentation. Keeping clear records of research sources can demonstrate due diligence and help counter any legal challenges that may arise. Historical fiction that includes a real historical figure may be assessed differently, again depending on the nature of the portrayal.

For example, if a portrayal is considered negative or controversial, production counsel may weigh in to assess the potential legal and ethical impact. Insurers will often require proof that the portrayal is grounded in well-documented

and widely accepted facts to mitigate potential defamation claims. Even if it is decided that the risk of defamation is low or nonexistent, you also need to be concerned about publicity/personality rights (see 'legal rights' list above).

To avoid complications, here are some proactive measures producers should take when considering portrayals:

- **Consult Legal Professionals:** Before even getting into the script-writing phase of a production, having a preliminary session with an entertainment lawyer can provide valuable insights into the legal risks specific to your project.
- **Adjust Script as Needed:** Be prepared to adjust the script or portrayal to mitigate risk.
- **Use Disclaimers:** Including a disclaimer at the beginning of a film or series that clarifies the fictionalized nature of the story can help mitigate risks.

Most lawyers are conservative by nature and will advise caution when considering portrayals. Although including public figures and celebrities can enhance storytelling, a careful approach to the legal aspects will go a long way to getting insurance, distribution, and protecting the project from unexpected legal claims.

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[Thank you to Diana Cafazzo for providing valuable insight and advice for this article. Diana is a partner with the firm Stohn Hay Cafazzo Heim Finlay LLP in Toronto, ON. [stohnhay.com](http://stohnhay.com)]



Photo by Annie Spratt, Unsplash

## A LIKENESS FROM BEYOND THE GRAVE: PORTRAYING DECEASED HISTORICAL FIGURES

The article above investigated the basics of portraying public figures in film/TV productions. In this short segment, we will discuss the portrayal of deceased historical figures.

According to a lawyer contact, the dead cannot be defamed like the living. In other words, an unflattering portrayal of a deceased person cannot be considered defamation. However, that does not mean that the clearance process is clear for such portrayals.

Even if defamation isn't an issue, using a deceased person's name, image, or likeness for commercial purposes, like in advertising, can cause problems. For instance, in 1997, a Dirt Devil ad featured Fred Astaire dancing with a vacuum, which caused enough backlash and set a precedent that resulted in laws like the "Astaire Bill." This U.S. law requires permission from an estate or heirs to use a celebrity's likeness commercially.

Additionally, postmortem publicity rights have been snapped up by companies looking to profit from the commercial use of likeness. If you want to use the image of Einstein, you will need permission from the owner of his 'rights' (at time of writing Hebrew University). CMG Worldwide, a company that specializes in intellectual property licensing, also appears to represent the estates of James Dean, Ingrid Bergman, Jack Kerouac, Duke Ellington, Jesse Owens, and even people like Frank Lloyd Wright, Amelia Earhart and Malcolm X.

Beyond legalities, there's the ethical side of things. Imagine portraying a well-loved historical figure in a way that stirs controversy or offends fans or institutions tied to their legacy. Even if it's legally allowed, public opinion might not be so forgiving.

A lawyer we consulted suggested that producers use disclaimers and make details—like birth dates or nationalities—clear to avoid confusion or unnecessary backlash. The further back in history a person lived, the less

risky their portrayal tends to be. Portraying Cleopatra or Leonardo da Vinci is usually safer than dealing with someone more recent.

Portraying deceased historical figures in film and television involves navigating complex legal, ethical, and social considerations. While defamation laws don't apply to the deceased, postmortem publicity rights, commercial use, and estate permissions can present challenges. Additionally, the risk of offending public opinion, fans, and institutions connected to the figure's legacy should not be overlooked. By understanding these complexities and taking a respectful approach, filmmakers can create authentic portrayals while avoiding potential pitfalls and controversies.

## VEHICLES ON SCREEN, SOME ADDITIONAL NOTES...



Photo by Kal Visuals, Unsplash

If you read the last issue of the newsletter (May 2024), you learned about vehicle use on set: what the issues are, some of the solutions, how production manages that topic.

We were recently asked to provide a client with a comprehensive list of the car manufacturers' contacts in our rolodex. We have fairly detailed contact information there—email addresses, phone numbers, names of actual people!—for about fifty different car makers, much of it quite recent. A trend among them is the use of product placement

companies which are heavily represented in those rolodex entries... the gatekeeper for your use.

So, if you are being smart and planning ahead, give us a shout and we'll connect you with the right folks. Be prepared for the usual questions from those manufacturers and if you are not sure what those questions are, a pre-emptive visit here will walk you through that landscape: [easternscript.com/resources](https://easternscript.com/resources). At that page select "library of articles" and then proceed to the **{Product Placement}** section for more reading.

## EASTERN SCRIPT ON SET: MURDOCH MYSTERIES



Eastern Script on set

In the early days of October, we heard that Murdoch Mysteries would be filming in Kingston, ON. It's not the first time those of us living in the city have seen the crew around town, showing up every couple of years to use Kingston for its beautiful architecture. Eastern Script staffer, Erin, immediately reached out to the production team to see if our Kingston crew could visit the set and was given a big thumbs up from Production Manager, Jeremy Hood.

A few days later, Erin and fellow staffer Robyne found themselves in Kingston's town square, accompanied by Erin's mom, a faithful Murdoch Mysteries fan who couldn't resist this opportunity. They were happily greeted by producer

and writer, Keri Ferencz, who offered to take them on a little tour of the set.

The small section of Kingston was being transformed into London, UK, for an upcoming season 18 episode, Kerie explained as they wandered down the street admiring all the displays, signs, props, and cast in their early 1900s costumes. They were even able to spot a few shop names that had recently been sent into ES for clearance. The group was delighted to have actress Arwen Humphreys, also known as Margaret Brackenreid to followers of the show, join them on the rest of the tour.

After an enjoyable walk around, and a few failed attempts at trying to catch a glimpse of the horses (which apparently were too busy preparing for their onscreen debut to allow for a meet and greet), filming was about to begin, and all went quiet on the set. This allowed for the quick opportunity to say hello to Director Eleanore Lindo and quietly watch her in action. During a film break, William Murdoch himself came by to give welcome. Yannick Bisson was a pleasure to meet and was keen to learn about the script clearance process and how we do what we do.



Eastern Script on set

A big thank you to Jeremy, Keri, Arwen, Yannick, Eleanore and the rest of the production cast and crew for giving our colleagues such a neat and wonderful experience.

It was a blast! ■

## RECENT PROJECTS

### LATE BLOOMER SEASON 2 (TV series)

“Production on Season 2 recently got underway in the greater Toronto region, starring Raina as Jasmeet Dutta, a Punjabi Sikh millennial and burgeoning online content creator trying to balance his ambitions for success with his commitment to his family, community and culture. It is inspired by Raina’s life.”

By Jesse Whittock November 18, 2024. [deadline.com](https://deadline.com)

### SLASHER SEASON 6 (TV series)

“Slasher’ will return with another deadly tale of serial killings! The Cinemaholic has learned that Shudder has renewed the popular horror anthology series for its sixth season. The upcoming installment’s filming will start in Sudbury on an undisclosed date. The show’s creator, Aaron Martin, will continue to lead the writers’ room, with Adam MacDonald, who helmed the last three seasons, expected to return to direct the forthcoming episodes.”

Aman Goyal, June 22, 2024. [thecinemaholic.com](https://thecinemaholic.com)

### SKITE’KMUJUEKAT’IK (PLACE OF GHOSTS) (feature film)

“Principal photography is underway on Wildhood writer-director Bretten Hannam’s third feature, the supernatural thriller Place of Ghosts. Filming began on Aug. 7 and is taking place in and around Halifax. The production is expected to wrap on Sept. 11. Place of Ghosts follows siblings that have drifted apart until a malevolent spirit begins tormenting them and they are forced to reunite and journey into Skite’kmujuekatik: the “Place of Ghosts.””

By Kim Izzo, August 28, 2024. [playbackonline.ca](https://playbackonline.ca)

### SAINT-PIERRE (TV series)

“Saint-Pierre is a police procedural with French star Josephine Jobert (Death in Paradise) as Arch and Canadian star Allan Hawco (Republic of Doyle, Caught, Jack Ryan) as Fitz, and James Purefoy (Rome, Sex Education, Pennyworth) rounding out the stellar team. As if by fate, these two seasoned officers — with very different policing skills and approaches — are forced together to solve unique and exciting crimes.”

Per [cbc.ca/mediacentre/program/saint-pierre](https://cbc.ca/mediacentre/program/saint-pierre)

### A TRIBE CALLED LOVE (feature film)

“Principal photography began on the directorial debut of Mohamed Ahmed, A Tribe Called Love. Inspired by Baz Luhrmann’s Romeo + Juliet and Spike Lee’s Do The Right Thing, the romantic drama is written and directed by Ahmed. Dalmar Abuzeid (Degrassi: The Next Generation, pictured left), Feaven Abera (Mayor of Kingstown, Sort of, pictured, right) and Omar Abdi (The Gravedigger’s Wife) star. The team behind the project include executive producer Jeremy Hood, producer Andy Marshall and associate producer Ladan M Siad. Ahmed is acting as co-producer.”

By Kim Izzo, May 30, 2024. [playbackonline.ca](https://playbackonline.ca)

### UNDERBELLY (TV series)

“Crave announced today the new, six-episode, one-hour crime drama UNDERBELLY. Also announced today are the series’ stars Stephen Amell (ARROW) as Officer Henry~Roland, Hamza Haq (TRANSPLANT) as Tommy, and Emmy® and Academy Award®-nominee Minnie Driver (THE SERPENT QUEEN) as May, the residents of a tranquil riverside town in the Thousand Islands region of Ontario, who are caught up in a dark, twisted mystery centred around an international drug ring.”

Oct 22, 2024. [newswire.ca](https://newswire.ca)



Photo by Mel Poole, Unsplash