

INSURANCE

There are several forms of insurance related to production, four of which (indicated in this chapter) are frequently acquired by projects supported by ITVS. These are General Liability, Videotape/Negative, Worker's Compensation, and Errors & Omissions insurance.

A list of insurance vendors that have previously provided coverage to ITVS programs is provided in Chapter 14: *Contacts*. You are not limited to this list. ITVS suggests you shop around to find a policy that meets the ITVS requirements at a good price. It is possible that one insurance vendor can provide for all or a number of your needs. You may choose to discuss this with each vendor when getting price quotes. Please see your ITVS Production License Agreement for the specific requirements of your production.

Types of Production Insurance

The following descriptions are only summaries. You must refer to the actual policies for specifics concerning coverage, exclusions, deductibles and other policy conditions.

General Liability Insurance

This is the most basic type of commercial insurance and is required for the duration of the project (production through editing). It covers liability claims of bodily injury, personal injury (such as libel, slander, or invasion of privacy not related to broadcast or distribution), and property damage.

Third-party property damage insurance covers damage to the property of others while the property is used or intended for use in your production. Make sure any general liability policy you purchase includes third-party property damage coverage.

Independent contractors may not be covered by your liability insurance. For example, if your gaffer who is hired as an independent contractor damages the generator, your insurance company may not pay the claim. Or worse, they may pay the claim and then sue the gaffer to recover the damages. Seriously consider requiring that your independent contractors provide you with proof of liability insurance—and even ask them to add you to their policy as an additional insured.

Videotape/Negative Insurance

This coverage reimburses costs for reshooting any portion of film/videotape that is unacceptable due to direct loss of film or negative, soundtracks, work prints, and/or tapes. If the subject matter is irreplaceable, reimbursement is made for costs incurred up to that point. Damage can be due to such things as environmental hazards or faulty equipment. The cost is based on expenses related to re-shooting such as travel, talent fees, equipment rental and production crew. Costs will vary from production to production. It is also possible in this rapidly changing digital world to get insurance for data if the program materials only exist digitally. Be aware that if you are at an advanced stage in your production process and have shot most of your footage, this type of

insurance may not be possible to acquire. It's also improbable that you'll be able to acquire this kind of insurance to cover footage that has already been shot. In both instances ITVS will request that you clone all of your tapes. If you have the cost of this insurance built into your budget you will need to apply that cost to cloning instead.

Workers Compensation Insurance (as required by state law)

This policy pays benefits to injured workers until they are able to be re-employed. Each state has specific requirements for workers compensation insurance so you must obtain a policy for the state in which you are paying people. Premiums are based on the total amount of payroll that is covered. Covered payroll should include salaried employees, temporary employees (production crew, talent), and people who work as independent contractors unless they can provide proof of other coverage. The cost of this insurance varies from state to state but is generally in the range of 2-3% of payroll. If you use a payroll service, the service often takes care of workers compensation in their bundle of services and charges.

As mentioned in the previous chapter, insurance coverage on independent contractors is often a gray area. If a person is classified as an independent contractor, they may not be covered by your worker's compensation insurance. It is safest to require that independent contractors show you proof that they hold their own worker's compensation insurance. Otherwise, make them an employee to be sure that they will be covered in case of injury.

Errors and Omissions Insurance (E&O) (required for broadcast)

Also known as a "Media Special Perils Policy," this coverage is worldwide and protects you from such things as accidental trademark and copyright infringement, libel, slander, invasion of privacy, defamation, plagiarism, misappropriation of ideas, and defense costs. You must have E&O coverage for broadcast distribution; no broadcaster will air your program without it. This insurance is specifically related to the program for which the policy is written unless you already have general E&O coverage.

E&O insurance is typically obtained at the end of the production cycle. The final binding of the policy cannot be done until the program is at least a fine cut or is completed. Your insurance company will tell you what procedures to follow to apply for E&O. The process usually involves submitting:

- A completed application. The application will ask specific questions about obtained releases and licenses, subject matter of your program, your experience as a filmmaker, planned distribution of your program, whether any claims have been made against you, and what kind of coverage you need.
- bio and or resume of the copyright holder/applicant
- title search report (for further details please read the next section: Title Search),
- financial statement or budget for the production.
- videotape or DVD of the project. The cut you send in should be at least a fine cut.

The limit of coverage your policy must cover is \$1 million for each occurrence, \$3 million of aggregate occurrences, and at least a \$10,000 deductible. E&O policies must cover, at minimum, the license period granted to ITVS and must name ITVS as an additional insured. Make sure you obtain a multiple year policy in the form of a distributor's endorsement to a policy. The actual policy is for one year and the distributor's endorsement has coverage in place at no additional premium for the length of the license period of the distributor's contract (in this case, the ITVS Agreement). You need to provide this information to the insurer at the time of coverage. ITVS will not accept annually renewable policies alone as sufficient coverage for the public television license period.

There are a few variables that may impact the cost of E&O:

- the experience level of the producer
- whether an attorney was used to secure clearances and licenses
- type of distribution
- coverage limits

*It is important to note that if the underwriter of your policy perceives any unacceptable risks they may exclude coverage based on these risks. Both ITVS and PBS will not accept exclusions on your E&O policy. To avoid this you must be very diligent with obtaining the correct clearances and licenses for music, appearance, acquired footage, and visual arts.

Please note that there are a very limited number of E&O underwriters. When getting insurance quotes, it is possible that two different companies may be seeking quotes from the same underwriter -- the underwriter will not want to re-rate the program. Let a broker know if you have already received an E&O quote and what company underwrote that previous quote.

Title Search

As part of your E&O application you will be required to provide a title search report. This report reveals other uses of the title for TV programs, films, books, articles, and etc. While titles cannot be protected by copyright, the concern is whether there may be confusion (and higher risk of lawsuits) caused by the existence of similar and similarly titled work. If your title is used elsewhere, it does not necessarily mean that you will need to change your title. The E&O insurer simply needs to know where, when and the extent to which the title has been used.

To obtain a title search report we suggest that you contact Thomson & Thomson Copyright Research Group. ITVS has negotiated a 10% discount on Thomson & Thomson current rates for ITVS Producers. You are free to use another search firm if you wish. At Thomson & Thomson a full title search that is delivered in 5 days is the least costly. Two day and next day searches are also available at higher rates. If you decide to use Thomson & Thomson, see Chapter 14: *Contact*, for more information. Identify yourself as an ITVS producer and give them your name and the working title of your program.

Additional Insurance

Depending on your circumstances and the particulars of your production, you may want to obtain coverage beyond the ITVS minimum requirements (In some cases, ITVS may require additional coverage — please see your Production License Agreement). There is a variety of other coverage available, including cast insurance (which is required for narrative projects), equipment insurance, weather insurance, extra expense insurance, and non-owned auto coverage.