Film Location Releases

If you are filming on private property or in a public space (such as a park or council land), you may need a film location release. This information sheet when and why a film location release is important. Information is also provided on which parties should be contacted to obtain film location releases. Arts Law has two sample film location deeds of release (with payment and without payment).

Why you need a location release

Whenever a film is being shot outside a studio, the producer may need to obtain one or more location releases from the owners of the property where filming takes place. Whilst the Copyright Act allows you to film buildings without infringing copyright, other laws affect filming on public and private property. Failing to obtain a location release could expose the producer to liability such as for breach of council regulations or trespass.

Location releases are also important as many film festivals, funding bodies and distributors will insist that they are provided as part of the chain of title. They don't want to risk having to withdraw a film because of legal issues surrounding a failure to get permission to film in a particular place. Chain of title is a series of documents that establish the producer's right to put all the different components of the film together.

Whose approval do I need to film on private property

It is important to do your research and find out both the owner of the land or building you want to film on and also the current occupier. You may need permission from both. For example, if you are filming in a friend's rented house you should get permission from your friend who is renting the house (occupier) and his or her landlord (owner).

What if I can only contact the occupier?

You must have the permission of the occupier of the property to avoid liability for trespass. However, the terms of the occupier's agreement with the owner (landlord) might also affect whether you can film there so it is prudent also to ensure that the owner of the land has also given permission.

For example, your friend may permit you to film a party scene in the backyard of his rented house. But such filming may be in breach of his rental agreement and the landlord could be entitled to stop filming from proceeding. If you have the permission of both the occupier and the owner, this problem is avoided. Remember that there may be still be other issues from the local council and neighbours if there is excess noise or the filming creates a nuisance (water flooding neighbouring gardens).

Will I be trespassing if I don't get permission?

If you do not have permission from the occupier, there is a risk you could be trespassing. You will be liable for trespass whenever you enter private land without the permission of the occupier: whether or not your activities cause any damage.

Filming or photographing private property from outside that property such as from an adjacent property or from the air may still be problematic in some circumstances. For example, filming from the air can amount to trespass where the intrusion into the property's airspace interferes with the occupier's use of the land; such as through prolonged hovering in a helicopter. If the filming involves recording private conversations (as compared than scripted conversations of actors) this will be an offence in most States and Territories.

Do I need permission if I want to film in a public area?

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Many public authorities have a responsibility to ensure that private activities carried on in public areas have a minimum impact on the general public's access and enjoyment of those spaces. For example, local councils are accountable to their ratepayers and residents for the responsible use of council resources, land and community amenities. Many public authorities operate an approval system which applies to any filming activities on their property and it may be an offence to film without first obtaining such an approval. A fee may need to be paid.

Therefore, if you are shooting in a park, on public land, or in a street you should get permission from the local council. A fee usually applies and it is important to allow sufficient time for the application process.

Some activities which may require approval from the relevant public authority include:

- anything which will involve restricting the access of the general public to a public area (e.g. cordoning off part of a street or beach);
- the erection of structures (e.g. set construction);
- large numbers of people congregating in one place or parking and creating local traffic congestion (e.g. cast and crew, or trucks for catering);
- activities creating noise and pollution risks; and
- use of special equipment (e.g. cables on footpaths) and dangerous substances.

It is the producer's responsibility to find out if approval is needed and to obtain that approval. Whether approval can be obtained may depend on the nature of the film proposal and the status of the land. For example, a proposal involving a car accident and explosions may not be able to be filmed on a suburban street but may receive approval in a disused council warehouse space.

In some circumstances, a producer may be required to notify local residents or community that filming will take place, or agree that at the end of filming they will repair all damage, remove all rubbish and restore the location to its original condition prior to filming and to the satisfaction of the council.

Insurance

A common requirement in order to obtain a location release for a public area or building is sufficient public liability insurance. For further information on insurance, see *The Arts Law Insurance Handbook* available from Arts Law.

Special rules for certain locations or activities

Certain locations have special approval processes for filming activities.

· **National and State parks**–There is no general rule applicable to filming activities in National Parks. However, if your filming activity may involve killing, injuring, taking, or moving a member of a listed threatened species, listed migratory species, or listed marine species in or on a Commonwealth area, you will need a permit under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Otherwise, whether or not a permit is required will depend on the Management Plan and Rules for the particular National Park. You should contact the relevant park authority or Park Director. The Rules may prohibit or restrict the photography or filming generally or by a certain class (commercial photographers and filmmakers) or to specified times or for a specified period, and in all or part of the particular park[1]. For instance, the Director of the Uluru-Kata Tjuta National Park prohibits all filming of sacred sites whether commercial or non-commercial while the in the Booderee National Park, commercial filming or photography is only possible pursuant to a permit (fee $250 for filming and $10 for photography). A permit is also required for commercial filming in the Pulu Keeling National Park (fee $50).

Similarly, filming rules vary between different State parks. You will need to contact the relevant authority. For example, anyone professionally filming or photographing areas managed by Parks Victoria requires a permit. There is no fee for the annual landscape photography permit covering all Victorian parks but fees for a filming permit range between $600 to $2700

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per day depending on the nature of the film project.

For other major public places, contact the relevant authority. Some examples are set out below:

o **Sydney Opera House**– contact the Sydney Opera House Trust;

o **Royal Botanic Gardens and Domain**, Sydney NSW – contact the Royal Botanical Gardens and Domain Trust; or

o **Sydney Harbour Foreshore**– contact the Sydney Harbour Foreshore Authority.

- **Armed forces bases or buildings**– contact the Department of Defence and/or the relevant armed force service;
- **Airports and other ports**– contact the relevant State or Territory authority;
- **Filming on Aboriginal land:** contact Aboriginal Land Council responsible for the management of the proposed location:

o **New South Wales:**

Aboriginal Land Council (www.alc.org.au) Tel: (02) 9689 4444 Email: penwurru@alc.org.au

o **Northern Territory:**

Central Land Council (www.clc.org.au)

Jurisdiction over the southern half of the Northern Territory

Tel: (08) 8951 6211 Email: media@clc.org.au

Northern Land Council (www.nlc.org.au)

Jurisdiction over the top end of the Northern Territory

Tel: (08) 8920 51000

o **South Australia**

Anangu Pitjantjatjara (APY) Land Council (www.anangu.com.au)

Tel: (08) 8954 8111

o **Queensland**

Cape York Land Council (www.cylc.org.au)

Jurisdiction over Cape York Peninsula

Toll free: 1800 623 548 Email: reception@cycl.org.au

Torres Strait Authority (www.tsra.gov.au)

Jurisdiction over the tip of Cape York Peninsula in North Queensland to just south west coast of Papua New Guinea

Toll free: 1800 079 093 Email: info@tsra.gov.au

o **Western Australia**

Kimberley Land Council (www.klc.org.au)

Jurisdiction over the Kimberly Region

Tel (08) 9193 6199 Email: klc@klc.org.au

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Ngaanyatjarra Council Aboriginal Corporation

Jurisdiction over the Central Desert Region of Western Australia

Tel: (08) 8950 1711 Email: ngcouncil@ngaanyatjarra.org.au

- **Filming in Indigenous Protected Areas –** In some Indigenous Protected Areas, photographing and filming some places and objects is restricted for cultural reasons. For further information, consult the website www.environment.gov.au/indigenous/ipa/background.html or the State and Territory contacts listed below.

Northern Territory and South Australia: Marcus Sandford

Tel: 02 6274 2791 I Email: marcus.sandford@environment.gov.au

Western Australia: Lori Richardson

Tel: 02 6274 1724 I Email: lori.richardson@environment.gov.au

Queensland, New South Wales, Victoria and Tasmania: Marjorie Gant

Tel: 02 6102 7274 I Email marjorie.gant@environment.gov.au

There are also specific approval processes for certain types of activities such as:

- **regulation or diversion of traffic**– contact the State or Territory road and traffic authority;
- **filming in or on the water, or filming that will have an effect on the local environment or cause pollution**(including lighting a fire, smoke, loud noise, explosions, vibrations or the appearance of some form of water or air pollution) – contact the State or Territory waterways, environmental authority or land and water conservation authority;
- **discharging firearms**– contact the local police; and
- **filming on buses, ferries or trains**– contact the relevant State or Territory transit or rail authority.

In each State, Territory and local council area, there will be a different application process. Some States and Territories also have a department of local government protocol for filming. For example, the NSW Department of Local Government has developed the *Local Government Filming Protocol* to guide Councils and filmmakers. The protocol sets out a standard application and approvals process which was developed jointly by the film industry and local and State government in NSW. A copy of this protocol can be obtained from the NSW Department of Local Government or downloaded from the NSW Office of Fair Trading website **(www.fairtrading.nsw.gov.au).**

There are some activities that may not need approval

For example, in NSW under the *Local Government Act 1933,* no local council location release is required for:

- still photography;
- video recording of a wedding ceremony or other private celebration or event principally for the purpose of making a record for the participants in the ceremony, celebration or event; or
- filming for the immediate purposes of a current affairs or daily news television program.

Getting assistance

Does this all sound complicated? You can contact your State or Territory film body.

National

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Screen Australia(formerly Australian Film Commission) **(www.screenaustralia.gov.au/)**

Tel: 1800 213 099 Email: info@screenaustralia.gov.au

Screen Producers Association of Australia (www.spaa.org.au)

Tel: (02) 9360 8988 Email: spaa@spaa.org.au

States & Territories

Screen NSW (www.screen.nsw.gov.au)

Tel: (02) 8222 4844 Email: info@screen.nsw.gov.au

Screenwest (www.screenwest.com.au)

Tel: (08) 9224 7340 Email: info@screenwest.wa.gov.au

VicScreen (www.vicscreen.vic.gov.au)

Tel: (03) 9660 3200 Email: contact@film.vic.gov.au

Screen Tasmania (www.screen.tas.gov.au)

Tel: (03) 6233 6995 Email: info@screen.tas.gov.au

South Australian Film Corporation (www.safilm.com.au)

Tel: (08) 8348 9300 Email: safilm@safilm.com.au

Screen Queensland (www.screenqueensland.com.au)

Tel: (07) 3248 0500

Screen Territory (www.screenterritory.nt.gov.au/)

Tel: (08) 8952 5222 Email: film.office@nt.gov.au

Screen Canberra (www.screencanberra.com.au)

Tel: (02) 6247 4199 Email: info@screenact.com.au

Need more help?

If you have questions about Location Releases or would like a Location Release document reviewed contact Arts Law.

Telephone: (02) 9356 2566 or toll-free outside Sydney 1800 221 457

Also visit the Arts Law website **(www.artslaw.com.au)** for articles and information sheets.

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