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[Representations and Warranties Provision in Entertainment Contracts](#)

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Probably, one of the most salient characteristics of any contract, especially entertainment-related ones, is allocation of risks among the parties involved. One of the areas where such risk allocation usually comes to the fore is representations and warranties provision. Let us explore, in some detail, the contents of representation and warranties provision often prudently prescribed for entertainment contracts involving granting of rights.

SOME BACKGROUND ON ENTERTAINMENT-RELATED CONTRACTS *RELATED TO GRANTING OF RIGHTS*

This is noteworthy entertainment involves intangibles. Such intangibles are usually intellectual property. Such intellectual property may result in a tangible property such as films or books. From the legal perspective, intellectual property encompasses copyrights, trademarks or privacy/publicity rights. The creative process of transforming intangibles into tangibles could be very complicated as various parties wield disparate negotiating prowess and often pursue divergent interests.

SOME BACKGROUND ON THE PURPOSE OF REPRESENTATIONS AND WARRANTIES PROVISION IN *CONTRACTS RELATED TO GRANTING OF RIGHTS*

Authors, producers, screenwriters, directors, editors, cinematographers, designers and others, are all often indispensable in an entertainment project. These players have to collaborate yet have to protect their respective rights and interests. Hence, a contract needs to contain a provision which not only seeks to protect the idea, but also seeks to determine who owns what and who has control over what and ensure rights are not infringed upon.

Consequently, given such concerns and considerations as elaborated earlier, representations and warranties provision seek to achieve the following in a contract related to granting rights:

1. To Ensure, to the extent possible, Protectability of Product
2. To Ensure, to the extent possible, the Intended Party Owns and Controls the Product.
And,
3. To Ensure the Product Does Not Infringe On the Rights of Others.

SOME CONCERNS OF AUTHORS AND PURCHASERS

1. SOME OF AUTHOR'S CONCERNS

- **ORIGINALITY:** Despite the fact an author's work **MUST** be "original", author might desire to limit this "originality" to the extent possible. On the other hand, the purchaser **MUST** ensure the product has necessary representations and warranties and the transfer of rights was properly made with respect to the underlying work.
- **INFRINGEMENT:** Despite the fact an author's work **MUST NOT INFRINGE** on other works, author should limit such infringement to knowing **AND** to the extent possible only "unconscious" infringements.
- **PUBLICITY/PRIVACY/LIBEL/SLANDER/OBSCENITY:** Despite the fact an author's work should not provoke lawsuits for libel, slander and the like, again author should seek to limit representations and warranties to only the cases where the author knowingly or intentionally have "defamed" or violated someone's "privacy". In addition, it is noteworthy fictional and non-fictional works are treated differently.

2. SOME OF PURCHASER'S CONCERNS

- **ORIGINALITY:** This is extremely important for the purchaser to ensure the work is original to be protectable. In fact, for the work to be copyrightable, the work **MUST** be original. Consequently, the originality requirement is paramount of importance to purchaser's rights and protections.
- **INFRINGEMENT:** This is extremely important for the purchaser to ensure the work does not infringe on any other works and expose the purchaser to litigation. Usually, author is the best person to know where the inspiration for the work comes from. Such knowledge should help purchaser in avoiding lawsuits.
- **PUBLICITY/PRIVACY/LIBEL/SLANDER/OBSCENITY:** This is extremely important for the purchaser to ensure the work is not a Pandora's Box replete with unexpected lawsuits. This concern is also very important even if the work is fictional since some of the characters might be recognizable.

CAVEAT

Please, note the concerns and considerations expounded on here represent ONLY a fraction of what Representations and Warranties provisions should encompass.

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