



**safe+secure**

**Handbook**

**Developed on behalf of the Documentary Funders Network by DOC SOCIETY**  
Made possible by the Ford Foundation and the Perspective Fund

**Getting to the heart of stories by asking the really tough questions and going places where no one wants to go. That's documentary at its best. This Safe+Secure Handbook has been designed to help filmmakers get there — and back — and get their stories into the public domain as safely as possible.**

The Documentary Funders behind this initiative want to help filmmakers identify threats, assess and manage risks, and put in place contingency plans to keep themselves, their production and their contributors safe and secure.

As supporters of great documentaries, we drew on what many of the best independent filmmakers told us they wished they had done differently. We also worked with the smartest journalism and legal professionals. All credit to everyone whose experience and wisdom we relied on: they are acknowledged [here](#).



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## Acknowledgments and Credits

### Thanks to everyone who has contributed so far

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## Introduction

The Safe+Secure Handbook is the companion to the **Safe+Secure Checklist** — a top line checklist that film teams can go through together — and with their funders and partners — to make sure that the most important questions have been asked and highlight any further training or preparation needed.

Challenging and bringing to account powerful states, institutions and individuals can be fraught with all manner of risk. It is therefore essential that organisations that fund such films accept their ethical and legal responsibility to ensure that the filmmakers are equipped with the necessary tools to safeguard themselves, their contributors and sources from both physical, legal and reputational harm. It is fallacy to believe that documenting such a framework and working collaboratively with filmmakers on mitigating such risks exposes funders to greater liability. Funders who engage and work with filmmakers have a better understanding of the risks and how to mitigate against them, as well as being better informed and prepared if problems arise later. This level of engagement can and does reduce costly and protracted litigation against filmmakers and funders, ensures a cohesive approach to risk management and avoids serious injury and harm. Ignorance is no defence and failing to engage with these issues in the hope that problems won't arise is short-sighted and dangerous. By standing together as funders, filmmakers and partners, we are a formidable force to be reckoned with.

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### What Can This Handbook Help Filmmakers Do?

- + Look after yourself, your team and your contributors better
- + Tell a story without getting sued for it
- + Get better legal help earlier — which helps keep legal bills lower overall
- + Improve your chances of reasonable E&O insurance
- + Get the training that you need and deserve
- + Get the additional funding you need to pay for your security needs
- + Have a wider team of funders and partners around you sharing the risk and looking out for you

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### Help Yourself...

This Handbook also contains downloadable resources and checklists, sourced from the best organisations working in this area, for filmmakers and their teams working in the field to use and revisit at different stages of production.

*Please use them but always consider whether sharing them digitally or physically may compromise your security, or that of your subjects or team. More on that question and others below.*

It is best practice to assume that any written paperwork attached to a project could be used in evidence against it. If a court case is brought against a film, such paperwork may be deemed discoverable evidence and have to be shared with the other side (this also applies to proposals, emails and other correspondence, notebooks, sizzle/ development reels and rushes). Discoverable material can be used to substantiate that a film project was not conducted in a fair and balanced way if the language used in any of these places is loose and prejudicial. Stick to neutral, factual and non-pejorative language.

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## ... And Please Share Your Errors of Ineptitude

Atul Gawande, a surgeon who pioneered new safety procedures in operating theatres (and wrote the [Checklist Manifesto](#) about risk reduction), makes a distinction between errors of ignorance (mistakes we make because we don't know enough), and errors of ineptitude (mistakes we made because we don't make proper use of what we know).

There will always be much that is unknown about a documentary production. Independent filmmakers have our deepest admiration because they are able to shoulder huge uncertainties and take creative, financial and other kinds of personal risks to bring back the stories they believe should be told. On that journey many unavoidable errors of ignorance will be made. Such is life. But let us work together, share our learnings and help reduce each other's errors of ineptitude.

*To that end, we hope you will give us your input so that we can keep improving this Handbook and the [Safe+Secure Checklist](#) and [Hostile Filming Protocol](#).*

*Please email us anytime: [contribute@safeandsecure.film](mailto:contribute@safeandsecure.film)*

# Section 1.

# Digital Security

It is possible to make a film without going anywhere, but it's pretty hard to do so without communicating with anyone. To make your film, you're going to coordinate with your team and then some combination of advisors, suppliers, subjects, funders, festivals, etc. And unless you opt for potentially having your communications under surveillance, you will need a digital security plan! That's why we've put this section first, to start assessing together whether your communications are sufficiently secure to protect yourself, your subjects, your team and make sure that your important work can reach the public and be as influential as possible.

In short, digital security affects us all and will only become a bigger concern as many governments pass new legislation granting them greater powers of digital surveillance. There has never been a better time to start learning about the risk that filmmakers are exposed to and how to protect yourself, your film, subjects and colleagues. Physical safety is often contingent on digital security.

Even though you may not think at the outset of a project that you need to protect your communications and rushes, this may become necessary as events unfold, so it's advisable to think ahead and plan for privacy wherever possible.

It's also important to note that technology is constantly changing and digital security safeguards are being compromised, so you have to be right up to date with the latest tools and understand fully what is no longer safe. Information received in a digital safety course taken last year might not be applicable today. It is also critical to know what sort of software or apps are illegal in certain countries — and which have anti-encryption legislation — as falling foul of these laws could lead to your equipment being seized and could even lead to imprisonment. There is no single, catch-all source to check for these regulations: you have to check country by country with reliable specialists and local sources.

*This following section draws heavily on guidelines and advice from the Freedom of the Press Foundation, Committee to Protect Journalists, the Rory Peck Trust and Tactical Technology. Links to key resources are included at the end of this and every chapter.*

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## 1.1 Assess Your Digital Risk

First things first, consider what you are trying to accomplish with your film project and what it is specifically that you might need to protect (i.e. confidential data, source identities, locations, film footage, etc) and who or what might threaten it — and how.

Take time with your team to think through both the digital security challenges you could be facing throughout the project and how you will communicate and share source material with your team members securely.

As recommended by the Freedom of the Press Foundation, work through what the digital threat model is to your project by assessing who your potential adversaries are, what their objectives might be and what would happen to you if they succeeded in achieving them. Try asking yourself, and others you work with these following questions:

- + Who would be most likely to target this project?
- + What resources (for example money, time, equipment and expertise) do they have to dedicate to targeting the project?
- + What is their objective money? Incriminating information? Access to my friends or other trusted contacts?
- + What would happen to me, my project and my contributors if they were successful?

From there, look first at how you normally communicate, and then try to assess where your processes are vulnerable to those specific threats and how you would mitigate them.

Consider where digital security breaches could occur - not forgetting situations such as working from internet cafes or on computers at business centres of hotels and airports, communicating information on social media platforms or speaking on an insecure (and therefore potentially “tapped”) telephone line. And remember that everyone in the project needs to adhere to the same, agreed digital security protocols. Your protocol is only as strong as its weakest link.

Whether in pre-production, production or postproduction, consider any specific local regulations or operating contexts that may be faced. Depending on the countries you are working in, you may find that use of encryption or the use of a particular digital security tool is against the law and so you may need to handle your digital security in another way.

*We are recommending digital risk assessment resources you can use from the Rory Peck Trust, Freedom of the Press Foundation and Tactical Technology in the Resources at the end of the section.*



## Suggested Team Discussion Points:

*These questions have been designed to provoke team conversation about the digital risks your production may face. These questions are not exhaustive and it is understood that each project has its own bespoke issues that will merit discussion.*

**Can you currently foresee any reason why you might be targeted for surveillance by an individual, a government, law enforcement agency, hackers or corporations?**

If yes, why?

**What is it you are specifically trying to protect? E.g. confidential data, source identities your location, video footage etc?**

**Who would be interested in accessing your sensitive information and why? Have they committed a crime; are they involved in corruption; perpetrating human rights abuses — or would the information be damaging or embarrassing in some way?**

**What methods could they use to get it? Could they access your internet or mobile service provider, hack your device, confiscate your equipment, use a court order, etc.? Could they access devices belonging to your sources or support staff?**

**What would happen if they succeed?**

Could you or your source or fixer/ translator/ driver (or others) be arrested, could filming be stopped, or could confidential information be used against others?

**What are the local regulations on protective software?**

Is encryption illegal? Do you need carnets for equipment like sat phones?

**Given your responses to these questions, do you need to perform a risk assessment on this project?**

There are some great resources available for both risk assessment and threat modelling from organisations such as the Rory Peck Trust and the Electronic Frontier Foundation — please see the end of the section for recommendations

## 1.2 Minimise Your Digital Risk

Of course, each documentary film project has its own bespoke requirements when it comes to safety and security and it's worth considering exactly what steps you and your team need to take to minimise the identified digital security risks. If you are at risk of surveillance:

- + You may need to avoid being traced by your mobile or sat telephone – consider using a burner phone (meaning a phone without any personal data on it or linking it to you, with an anonymous SIM (if possible, this is not legal in all countries) and which you'll use only for a particular trip or period of time)
- + While paper notepads are digitally secure, they cannot be encrypted and can be confiscated or stolen - so consider this, particularly when on location
- + Password managers can generate very hard to crack passwords, 1Password comes recommended (read [this](#) guide from Freedom of the Press Foundation on improving passwords). Never use the default or factory password (often 0000 or 1234) on any device or service.

Often sensitive material needs to be communicated in the quickest, most efficient way. Technology is

the go to habit, but it's important to be aware of how you communicate certain pieces of information if you do not want it shared by anyone else. Think about also how you will be recording and saving the information from your shoot – for example, will you be traveling with footage across borders that can be compromised? It's important to take a step back as a filmmaker and assess any elements of your story that may need to be protected.

If your project demands it, there are a number of encryption tools that can be deployed to protect aspects of your work by making it unreadable to all except the person who knows how to decrypt it such as:

- + Using an encrypted form of communication like the mobile (and Chrome plug-in) secure messaging application [Signal](#), an encrypted email like [ProtonMail](#) or the one-off encrypted communication, [One Time Secret](#) (available in a number of languages). Note that researchers found a vulnerability with PGP email encryption in May, 2018. Digital security experts recommend temporarily disabling PGP plugins for the time being. See the Electronic Frontier Foundation's guide on how to do so [here](#).
- + Sharing password protected sensitive encrypted files using [SpiderOak ShareRooms](#) or the disk encryption software, [VeraCrypt](#).
- + Using Freedom of the Press Foundation's [Secure Drop](#) to pass files between team members or from sources and subjects.
- + Implementing a secure web browser such as [TOR](#) or those recommended in [this article](#)

Remember that to function securely these applications need to be updated regularly. Remember also that even if your adversary cannot crack your encryption, they may well be able to see that a device or drive contains encrypted material – so as well as encrypting material, consider hiding it digitally, too.

Bear in mind that important as communication security is, physical theft of data and hardware often poses as great or greater risk in the field than remote surveillance.

You should also think about whether your project merits safe technology too, such as working from a clean laptop when in the field and using a burner phone, a prepaid phone bought for a specific purpose and paid for in cash and therefore untraceable.

There are some excellent resources at the end of the section, including the [Center for Investigative Journalism's 2016 guide to Information Security for Journalists](#).

Carefully consider what your project digital security needs are and then identify the tools that your team need to operate safely.

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### **Suggested Team Discussion Points:**

*These questions have been designed to provoke team conversation about the risks your production may face. These questions are not exclusive and it is understood that each project has its own bespoke issues that will merit discussion.*

**Will you, your sources and local support staff (e.g. fixer, translators, drivers) need to use encrypted communications as part of the filmmaking process?**

**Will you or members of your team need to leave your usual phone behind to avoid being tracked and surveilled?**

If this is the case, how will you protect yourself?

**Will you need to protect your documents on location and at home?**

And if so, for what duration?

**Should you be encrypting rushes at source on location? Will you be crossing borders?**

**Do you need to encrypt them in your edit room? Should your edit room be quarantined and off-line?**

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## 1.3 Online Profile Risks

It's crucial to undertake an evaluation of your team's online presence and the profile of your project, both in terms of search engines such as via Google, Yahoo, Bing and others as well as assessing any risks their social media profiles — e.g. on Facebook, LinkedIn, Twitter or any other personal or professional site or network service — may present.

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### Suggested Team Discussion Points:

**Do any search results put you or the film at risk?**

Which of the search results could put you at risk on your upcoming assignment? Are any of them under your control?

**Do your social media profiles put you or the film at risk?**

Does your team's social media presence jeopardise the project in any way? Would it be beneficial to ask them to change their profiles?

**Do you or any of your team members have any of your previous work accessible or listed online?**

Is that a risk to the project?

**Should you or your team members be using a different name on location vs what you use for your online presence to protect yourself and your subjects/ sources and their families?****Have you or your team members mentioned this project at all on any social media or blog in the past?**

Does this compromise the safety of you and /or your team?

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## 1.4 Experience & Training

Having established what the digital security risks are to your project might be, how knowledgeable are you and your team in understanding how to protect yourselves and your film from methods in which your communications could be compromised?

Before your project heads too far into pre-production, an assessment of your entire team's current level of experience with digital security is highly recommended to ascertain whether formal digital security training would be worthwhile. If there's sensitive material associated with your film project, it's important that anyone involved in communicating about it digitally — whether in the production office or on location — is fully up to speed on the most appropriate methods to be using.

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## 1.5 Digital Security Resources

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### Digital Risk Assessment

[Rory Peck Trust — Digital Security Guide](#)  
[Electronic Frontier Foundation — An Introduction To Threat Modelling](#)  
[Tactical Technology — Security Guides](#)  
[Tactical Technology — Research — Digital Security in Human Rights \[2014-2016\]](#)

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### Data Management

[Electronic Frontier Foundation — Data Safety](#)  
[Committee to Protect Journalists — Technology Security and Defending Your Data](#)  
[Freedom of the Press Foundation — How to Generate The Best Passwords](#)  
[Freedom of the Press Foundation — 11 tips for protecting your privacy and digital security in the age of Trump](#)

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### Mobile

[Freedom of the Press Foundation — Mobile Security Tips](#)  
[Freedom of the Press Foundation Rapid Responses for Confiscated Phones](#)  
[Rory Peck Trust — Mobile Security Guide](#)

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### Additional Digital Security Resources

[CPJ Digital Safety Kit \(July 2019\)](#)  
[Electronic Frontier Foundation](#)  
[Committee to Protect Journalists- Digital Safety Notes](#)  
[Committee to Protect Journalists — Related digital safety resources](#)  
[UNESCO Building Digital Safety for Journalism](#)  
[UNESCO — Publication Series on Internet Freedom](#)  
[Digital Security Exchange](#)  
[Online Privacy Guide for Journalists 2018](#)  
[PEN America Online Harassment Field Manual](#)

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### Communication

[Freedom of the Press Foundation — Security Tools](#)  
[Freedom of the Press Foundation — Anti-Phishing and Email Tips](#)  
[Center for Investigative Journalists — Information Security For Journalists](#)  
[Electronic Frontier Foundation — How to Circumvent Online Censorship](#)

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### When Things Go Wrong

[Access Now — Digital Security Helpline](#)  
\*(24/7 services are available with support in eight languages: English, Spanish, French, German, Portuguese, Russian, Tagalog, and Arabic. They apparently respond to all requests within two hours)  
[Committee to Protect Journalists — Digital support](#)

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## 1.6 Digital Security Training for Filmmakers

*We are only putting forward training that we have heard good things about from filmmakers. We want to hear from you if you have taken Digital Security Training that you can recommend to your fellow filmmakers. Email us anytime at: **contribute@safeandsecure.film***

Freedom of the Press Foundation organise trainings with the IDA and others and also do bespoke training with teams. [Freedom of the Press Foundation – Training – US](#)

In Europe we recommend: [Tactical Tech – Germany](#)

# Section 2.

## Journalistic Accountability

Documentary filmmakers may see themselves as journalists, and may have previous work experience or training in journalism. Equally a documentary filmmaker may regard themselves as fulfilling a totally different role and it's true that docs are often made with different goals in mind than traditional journalism. But regardless of whether you regard your work as journalist or not, if your film puts forward facts that are inaccurate, either because they didn't seem important to you or were not properly checked, that can have repercussions for you, the film and those involved with it.

In contrast to journalists, documentary filmmakers sometimes take advocacy positions. Nonetheless, filmmakers still have the same ethical and legal obligation to be truthful that journalists have. Presentation of inaccurate statements about subjects expose filmmakers to the risk of being sued for defamation: the unmerited undermining of an individual or organisation's reputation by making a false written or oral statement about them to a third party. Also bear in mind that laws vary according to the jurisdiction (see the resources at the end of this section for more information).

Ultimately, due diligence in research, fact-checking, good record keeping and acknowledgement of other's perspectives are all good journalistic practices that are good documentary filmmaking practices too and may ultimately help defend your case if your integrity as a filmmaker is ever questioned.

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## 2.1 Journalistic Guidelines

This is a fascinating area of debate. Whilst documentaries perform a different function — and are often made in a radically different way and ultimately taking a different form from TV news or written journalism — it is important for filmmakers to know how traditional journalism is held accountable before deciding whether these frameworks do or do not apply to their work – and what the consequences of not adhering to them might be.

Fact checking is a vital part of the communication of any information. As the filmmaker, the responsibility to yourself, your team, your contributors and your funders is to ensure the information you're giving is correct and verified. Embracing a point of view or taking an advocacy stance without giving weight to both sides of a story is anathema to traditional journalism.

In the US, a perceived lack of balance can complicate a legal defense such as in the case of the U.S. feature documentary *Crude* where Chevron applied to subpoena 600 hours of the film's raw footage. The judge dismissed the filmmaker's position that invoked journalist privilege (*"a reporter's protection under constitutional or statutory law, from being compelled to testify about confidential information or sources"*). A spokesman for Chevron commenting that *"somewhere along the line, Joe Berlinger went from being an objective observer to an advocate"*.

The [Ethical Journalism Network](#) puts forward these 5 core principles of journalism which are worth considering how they might apply — or not- to you as a filmmaker:

1. Truth and Accuracy
2. Independence
3. Fairness and Impartiality
4. Humanity
5. Accountability

We encourage you to explore the relevant references and journalistic guidelines on the resource page at the end of this section that reflect on the nature of journalism.

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## 2.2 Journalistic Partnerships

Many filmmakers are exploring working in partnership with either individual journalists or with journalism institutions over their work. This can bring a number of advantages. Publications with digital platforms could provide budgets, resources, and potential partnerships (for example the *New York Times*, the *Guardian*, Field of Vision, etc). They can help with fact-checking and may partner on investigations. The Center for Investigative Reporting is partnering with more and more independent filmmakers, coming in as a partner to work already being made, but not as a publisher. They, too, have the media lawyers filmmakers may need already on tap.

Over the past few years, more and more traditional newspapers or news sites, as well as non-profit journalism outfits have taken an interest in independent documentary. It's a great time to pursue new partnerships.

There can also be a value in working with an individual journalist whose area of expertise overlaps with the film. Their role does not need to be on-camera but instead they can be paid a fee as a consultant or, if the relationship develops, come on board as an executive producer. As EP's share the legal risk of the film, that is another reason for them to help you make sure you have nailed the story fairly and accurately

Remember also that partnering with an organisation may require you to adhere to their legal and compliance frameworks - which may, or may not, be desirable.

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### **Suggested Team Discussion Points:**

*These questions have been designed to provoke team conversation about the risks your production may face. These questions are not exhaustive and it is understood that each project has its own bespoke issues that will merit discussion.*

**Do you consider yourselves journalists as well as filmmakers? To what extent is your film a form of journalism – whether wholly or partly?**

**Do you understand how your project might be perceived in court and what legal vulnerabilities it may have?**

**Would your project benefit from a journalist to assist with research helping to strengthen the journalistic content of your film project?**

**Would you be interested in a partnership with journalism organisations such as a newspaper or non-profit investigative organisation to provide strengthened journalistic standards to your film?**



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## 2.3 Journalistic Protections

This Guide, the protocol and its checklists should be useful to all filmmakers everywhere, but this first iteration has been developed with American and British filmmakers as the primary users, with their input. As we learn more and consult more widely, we will be able to adapt it to be more useful for our colleagues in other countries.

The notes in this first iteration below concern only the US and UK to date but please find a list of resources at the end of this section that will be helpful for those in other countries – and remember that journalistic protections vary from country to country, even for E.U. members. See the resources at the end of this section to identify specific legislation relating to journalists in the country you are filming in.

It is worth noting that if you will be filming at a public event or a private event that is open to the press then press credentials may be beneficial. Contact your national journalism organisation to register for a badge and understand what specific protections it may accord.

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### United States

In the US journalists have considerable constitutional protections. The good news is that to ensure that journalists remain protected, many lawyers are working to uphold your First Amendment rights (Congress shall make no law prohibiting the free exercise thereof or abridging the freedom of speech, or of the press). Nonetheless, there are still frequently instances in the US where journalists are arrested, impeded in their work, surveilled or pressured to reveal sources. Most worrisome is that as a documentary filmmaker, your legal rights as a journalist may be questioned or denied – as illustrated in the case of 'Crude'.

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### United Kingdom

Whilst journalists in the UK have legal protections, they also have to contend with notoriously draconian libel laws – that have caused the UK to become known as the number one 'libel tourism' destination. This refers to the practice of pursuing a case in England and Wales in preference to other jurisdictions, such as the United States, which provide more extensive defenses for those accused of making defamatory statements. Whilst the most notorious examples of 'libel tourism' have involved print journalists, it does not exclude documentary filmmakers.

In addition, UK Parliament has recently adopted the most extreme surveillance legislation in UK history, the [2016 Investigatory Powers Act](#) (also known as the 'Snoopers Charter') which dramatically reduces protection for whistleblowers, journalists, and their sources, potentially posing a serious threat to investigative journalism.

In 2017, the Law Commission proposed a new so-called '[Espionage Act](#)' which would make it easier to classify journalists as 'spies' for obtaining leaked information, along with the whistleblowers who provide it to them.

*It's worth noting that wherever you are in the world, if you are in possession of leaked documents of any sort, be aware of the legal implications in that particular jurisdiction; if the owner-organisation or government found out, could they injunct the film and/or could you be arrested for breaking the law?*

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## Where There Is No Rule Of Law

If and when you are filming in a country or state when there is weak rule of law, it is crucial to ensure you are even more aware of the risks that you and your team might face and how to mitigate against them. Please also take time to read through the Committee to Protect Journalists [Journalists Security Guide](#) as an additional resource.

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## Suggested Team Discussion Point

**Do you know your rights, both as a citizen and journalist, in the countries you will be operating in?**

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## 2.4 Undercover Filming

Undercover filming has specific risks and responsibilities attached to it. In general, covert recording of a conversation or a situation is considered an illegal invasion of privacy and its unlawful use can lead to criminal prosecution. When used in a journalistic context, it needs to adhere to local laws whilst editorially justified to be in the public interest it serves (i.e. it should not be something that is simply of interest) and deemed to be fair. Working with a lawyer to ensure the undercover filming has been set up in a legal way will help to mitigate against unnecessary legal risk.

Regardless, it can be very stressful and in such circumstances, mistakes are more likely. Before undertaking this type of filming, think carefully about the risks that your team or your subjects are undertaking, what can go wrong and what the consequences could be. You will need a clear action plan for every eventuality.

It's also important to take care that you have not filmed yourself speaking in a way that could be used against you if there is a legal case brought against the film. In this unfortunate eventuality, all your rushes would be discoverable, as well as notebooks, proposals, recce tapes and sizzle reels.

Please review the checklist at the end of this section and ensure an appropriate risk assessment form is filled out for each instance where undercover is deployed (such as the one accompanying this document).

It's also worth noting, that if you intend to incorporate any undercover filming provided by an external source, it needs to be verified and justified, using the same filters as you would apply for your own undercover filming.

See also guidance on page 30, below.

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### Suggested Team Discussion Points

*These questions have been designed to provoke team conversation about risks your production may face. These questions are not exclusive and it is understood that each project has its own bespoke issues that will merit discussion.*

**Are you intending to do undercover filming or audio recording? If so, have you consulted with a lawyer? Have you got a clear action plan for every eventuality agreed by key team members?**

**Are you aware of the different undercover technology available and have you picked the most suitable equipment for the situation you want to cover?**

**Are you aware of the laws around undercover filming in different US states and different countries you may be filming in?**

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## 2.5 Journalism Resources

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### Libel, Ethics And Fact Checking Resources

[Media Defence — Manual on European Defamation Law](#)  
[Kelly / Warner Law — US Defamation Laws and Statutes](#)  
[Kelly / Warner Law — International Defamation Law Database](#)  
[PolitiFact — 7 Steps to Better Fact-Checking](#)  
[Xindex — 10 Fact Checking Tips for Journalists](#)  
[PBS Frontline — Journalistic Guidelines](#)  
[Ted Talk — Paul Lewis: Citizen Journalism](#)  
[Committee to Protect Journalists — Press Freedom Support Organizations](#)  
[Committee to Protect Journalists — Journalism Resources and Manuals](#)  
[The Center For Media & Social Impact — Dangerous Documentaries Resources](#)  
[Mapping the Documentary-Journalism Landscape — Jonathan B. Murray Center for Documentary Journalism](#)

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### Journalistic Protection Resources

[First Amendment Institute \(US\)](#)  
[Reporters Committee for the Freedom of the Press \(US\)](#)  
[Media Legal Defence Initiative \(international\)](#)  
[Council of Europe — The Platform for the Protection of Journalism and the Safety of Journalists](#)  
[Defence Handbook for Journalists and Bloggers, — Reporters Without Borders, Paul Hastings LLP and Thomson Reuters Foundation](#)  
[Committee to Protect Journalists — Countries & Regions Resources](#)  
[International Press Institute — Media Law Database: Media Laws in the EU and EU Candidate Countries](#)  
[Columbia Journalism Review: Journalists in Ferguson: Case Study](#)  
[Reporters Without Borders — Country updates and World Press Freedom Index](#)

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### Undercover Filming Resources

[BBC — Journalism Safety Guide](#)  
[Videre — Undercover Filming Specialists](#)  
[Channel 4 — Secret Filming Guidelines](#)  
[Reporters Committee for Freedom of the Press](#)  
[Reporters without Borders in partnership with UNESCO — Safety Guide for Journalists](#)

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## 2.6 Journalism Training for Filmmakers

*We are only putting forward training that we have heard good things about from filmmakers. We want to hear from you if you have taken Journalism Training that you can recommend to your fellow filmmakers. Email us anytime at: **contribute@safeandsecure.film***

[The Investigative Reporting Program at UC Berkeley's Graduate School of Journalism](#) — 3 Day Journalism Workshops for filmmakers (US)

[Columbia School of Journalism offers a MS Documentary Program](#)

[Columbia School of Journalism — Summer Investigative Reporting Course](#)

# Section 3.

## Legal Security

Just another reminder that at launch, this Handbook was focused on US and UK based filmmakers whose work will primarily be distributed in the US and Europe. This chapter has subsequently been updated with sections on India and Brazilian jurisdictions and a more global perspective to make it more relevant for filmmakers everywhere. If you are from an international documentary organisation or have specific legal expertise in your jurisdiction and can help with future, more globally relevant editions, please get in touch:

**[contribute@safeandsecure.film](mailto:contribute@safeandsecure.film)**

We are seeing increasing numbers of legal challenges to independent documentary films, often to try to prevent distribution. It can be tough to withstand such legal challenges from much better funded adversaries, even when your film and its evidence is water-tight. But the less well prepared you are, and the later you leave it to uncover and address legal issues the more chance there is that you will find yourself up Shit Creek with fewer paddles than optimal.



**Please see examples of legal cases against documentary filmmakers at the end of this section.**

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## Key areas of law to get familiar with and how to find out about them

We encourage all film teams to think about their legal needs early on in a production and engage a lawyer to advise as the production unfolds, rather than waiting until deep in the edit to consult, at which point it may be too late or very expensive to get the film made legally safe and the Errors & Omissions (E&O) insurance in place. An E&O policy is usually a mandatory requirement for many funders and distributors who will require evidence of such a policy being in place before a film is published or otherwise exploited.

As a documentary filmmaker, you should be familiar with a few of the basic areas of law that you're likely to encounter during your work. Inform and educate yourself on these before you start any projects: it is so much better to start out prepared and knowing what you can expect. You don't need to be a legal expert, but it will be well worth your while to familiarise yourself with the law. For an international project, that means informing yourself of the law in the country or countries where you'll be working. There are specific sections on the jurisdictions of India and Brazil to bear in mind, plus more on specific areas of the law to get familiar with later in this chapter.

At a minimum, you should inform yourself of the laws that may be used against you - laws that can be used to stop you filming, or that can be used to take legal action against you to stop you from completing your project or sue you for damages. That includes defamation, privacy and data protection laws which may be used to try to stop you from making allegations or filming 'private' materials; public order legislation (for example, when you are covering protests); laws on the use of hidden cameras or recording devices; and, if you use anonymous sources, whether there are any laws that protect them. You should also be familiar with copyright laws and 'fair use' exemptions, both to protect your own rights and in case you're using materials that may belong to others.

You should also be aware that the law can be a tool for you. In a growing number of countries, there are 'freedom of information' or 'access to information' laws that give you the right to request information from governments and local authorities, subject to some exceptions. Stories that have been broken with the help of these laws include widely publicised scandals around expenses claimed by UK members of parliament, and reporting on the rollback of offshore drilling safety and environmental regulations under the US Trump administration. You should also be educated on your country's film classification and licensing laws, which can be a decisive factor in getting your film screened.

In addition to educating yourself on the law, we strongly recommend that early on you start to investigate insurance to cover your legal costs in case legal action is taken against you. This is known as "errors and omissions insurance", or E&O insurance for short. This is a kind of malpractice insurance for filmmakers, and policies typically protect you against claims of defamation, privacy, copyright infringement, and the unauthorized use of trademarks, amongst others. Initially available only in the US and UK, this type of insurance is increasingly available in other countries as well. You won't be able to do any distribution deals until you have E&O insurance in place, making it an essential requirement. We discuss E&O in detail below in [section 3.4](#).

There are a number of resources and organisations that can help you find this information. Books such as McNae's Essential Law for Journalists, free seminars run by organisations such as the Media Law Resource Centre in New York and similar organizations and law firms elsewhere, and websites such as Columbia University's Global Freedom of Expression Resources all have useful guides and information. A list is provided in [section 3.8](#) at the end of the chapter.

Remember, you do not need to educate yourself to degree standard, and don't presume that having read up on the law you won't ever need a professional lawyer. The goal is merely to be informed - and when the time comes that you do need a lawyer, knowing the basics of the law will help you ask questions and choose the right one.

**Keep reading to find out to find out more about these key areas we suggest it's worth knowing more about. But first...**

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## 3.1 Finding a Lawyer You can Trust – the Inside Track

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### Horses for Courses

If you identify that there may be legal issues with your film, consider what type of lawyer is best placed to help you dependent on need - be it a media lawyer to help with defamation; an IP lawyer for copyright; a human rights lawyer to represent one of your subjects who might be under threat; or a lawyer in the country you are filming in to act on the behalf of you and your team. If you are not yet working with a lawyer, work through the discussion points in this section to help identify the type of assistance you might require.

Having identified a lawyer to work with, being clear and transparent with them about what you want to achieve and how you want to achieve it is important - concealing information or intentions sets a bad precedent and is unlikely to be helpful as you build trust with this potentially key member of your team.

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### How to choose and find a lawyer who is right for you

At some point during the project, you will probably need the assistance of a lawyer. This may be for routine work such as drafting contracts or securing rights; but it may also be because you are being sued for defamation or threatened with other legal action.

It's important not to defer getting legal advice: good advice early on about possible legal pitfalls can help you head off risks and save you making mistakes or misjudgements that end up being expensive down the line. If you are worried about how to pay for this, remember that some lawyers will give advice early and defer payment until you raise the bulk of your budget.

How much to budget for legal expense depends on the specific legal risks of your film, but USD \$5k - \$10k is a sensible starting number. Bear in mind however that legally complex films can cost significantly more. Put realistic legal costs into your budget from the beginning so that your funders and other partners can more easily acknowledge your needs and help to plug the gap with you.

If you get a legal threat, for example a letter from a lawyer representing someone against whom you have made an allegation who now threatens to sue you for libel unless you retract the allegation, the first rule is: don't panic. Whilst this may be the first time that you have been threatened with the law, there are legal professionals ready to help and assist. Defending legal claims is their daily work and they know what they're doing. Your job is to find the right one for you - and this guide aims to help you in that.

Choosing the right lawyer takes careful planning and consideration.

**First, you'll need to consider what area of law it is that you require assistance with.** If you have been threatened with a defamation claim, you'll need a lawyer that knows about that area of law; if it is copyright you need assistance with, then a copyright lawyer is required; if you or one of your subjects is under threat, then a human rights or criminal defence lawyer may be required.

In a growing number of countries, law firms have been established that specialize in media law (often also known as entertainment law, or grouped together with technology law). These will have lawyers that specialize across the various different areas of law that a documentary filmmaker is likely to encounter and are a good first port of call. If there are no such law firms in your country, then you will need to find a lawyer that specializes in the right area of law. This is likely to involve sending emails, making phone calls



and speaking with a few different lawyers so you can compare and contrast them. You should observe the same security protocols when communicating with lawyers as you do for all other aspects of your production.

You should treat the process of finding a lawyer as shopping around, and you're the one who's in charge of that process. Fellow filmmakers can be useful in this - your colleagues may have dealt with similar issues and can refer you to a good lawyer, or equally, tell you of negative experiences they have had with lawyers. But never choose a lawyer just because you've been referred to them by someone; talk with them and make up your own mind.

In many countries, there are high profile lawyers who take cases that promote progressive and human rights causes. They often have an international profile, and you may be tempted to ask them to represent you. Don't make this your default option, though, always consider your specific needs and the type of response that is most likely to resolve the legal situation you're in. Depending on the situation and politics in the country, in some cases a less high profile lawyer might be more appropriate, particularly if the legal situation you're looking to resolve is technical and a-political in nature. Getting a high profile campaigning lawyer in such a case might be counterproductive - unless you really want to get the media attention. Either way, you should remain in charge of the situation: you are the client, and whatever legal and media strategies are adopted should be fully agreed with you. Beware a lawyer who finds your case interesting and sees it as a potential test case to push the limits of the law - being a martyr for press freedom is no fun.

If you don't know where to start and you can't get any recommendations from others, every country has at least one professional lawyers association - often called the law society, bar association or bar council or something similar. Visit their website, which may have listings of lawyers, or phone them up and ask if they have lists of lawyers and their areas of specialisation.

Your next step should be to select a few lawyers that seem good on paper or that you have been referred to and talk to them. Conduct interviews. Remember, you're shopping around. What you need is a lawyer who will help you finalize your project, produce a great film and get it published. Ideally, this means a lawyer who understands and has an affinity with the business of documentary filmmaking, and who can give you a realistic assessment of your legal situation. If you struggle to find a lawyer with expertise in advising the media or documentary filmmakers, what you need at a minimum is a lawyer who will listen to you, can give you realistic assessment of your options, and will leave you informed to make the right choices. For every path of action suggested by the lawyer, ask what the likely consequences, pitfalls and advantages are.

**Finally, choosing a lawyer is also a personal decision.** They will be representing you and you need to be comfortable with them, confident that they have listened to you, that they understand your needs and that they are empathetic to your concerns. In short, you need someone who you think you can work with.

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## Can't Afford a Lawyer / Can't Afford Not to Have One:

### Pro bono, low bono and other fee structures

Like any other professional, lawyers will normally expect to get paid for their work. Journalists don't work for free, nor would you walk into an accountant's office expecting to get free accountancy services. You should therefore always budget legal costs into your project, including a contingency for unexpected legal services.

However, in a growing number of countries, lawyers may be willing to work 'pro bono' (that is lawyers' speak for, for free) if the work is considered to be of public interest. In some countries, professional lawyers' associations even require that lawyers do a certain number of hours of work 'pro bono'. In many states in the US, for example, there is an expectation that lawyers do at least 50 hours per year pro bono - equating to about a week's work. They have traditionally done such work for charities but increasingly there is interest from lawyers in getting involved in public service documentaries; while in the UK and elsewhere in Europe, there is also a growing culture of 'pro bono' legal work. It is certainly worth asking lawyers if they are willing to work 'pro bono'. It is well worth approaching firms and individual lawyers to explore possibilities in exchange for a credit and an invitation to the film festival launch.

Often, lawyers are more willing to do what they regard as 'easy' transactional work pro bono, such as drafting contracts which they know is unlikely to exceed a manageable number of hours, and they are less willing to take on the defence of legal actions such as defamation cases, which may well require them to commit hundreds of hours and draw on their law firm's resources.

A number of organisations have been established in recent years that function as pro bono 'clearing houses'. These organisations will assess your legal situation and then try to 'match' you with a lawyer who can work for you pro bono. Please refer to section 3.7 at the end of this chapter for a list of these organisations.

Large international law firms, particularly those with roots in the US, usually have sizeable pro bono practices and they may be keen to represent you. There are significant advantages to this, aside from the fact that they provide free legal representation: they will have significant resources to devote to your case; international links that might be useful in getting your film to international audiences; they are less likely to be susceptible to political pressure from your government; and sometimes the mere association with a large international law firm can provide you and your work with an umbrella of protection.

There are pitfalls to pro bono. If you are represented by a large firm, it is very likely that most of the actual work will be done by junior lawyers, albeit supervised by more senior lawyers. It may also be that, because the project is pro bono, your work has a lower level of priority than other, fee-paying, work; or that lawyers will only be able to do a certain amount of work pro bono or that they may be unwilling to make any changes once they feel that a project has been completed. It is very important that you ask about these things and that you have a clear understanding of what exactly the terms are on which you are getting the free legal advice. If you have an international firm representing you, it is crucial to make sure that they know the local context.

If a lawyer cannot or will not work pro bono, it is worth inquiring into other fee structures. Some are willing to work at reduced rates (sometimes known as 'low bono'), in recognition, again, of the public interest value of documentary filmmaking, or they may be able to do a certain number of hours pro bono but charge for additional work. In some cases, although this is rare, a lawyer may be able to take on legal work on a 'no win, no fee' basis. This means that you pay only if the case is won or settled on favourable terms - and usually it is the person suing you who is then liable to pay your lawyer's fees.

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## Organizations who can help you find and pay for a lawyer

In addition to the pro bono brokerage organizations referred to above, there are a number of international organizations who can help documentary filmmakers at risk find a lawyer, and often also pay for legal fees. A number of these groups style themselves as providing assistance to “journalists” or “the media”, which is a large professional family which documentary filmmakers should consider themselves part of.

Depending on the nature of the film project, a filmmaker might be classified as a ‘human rights defender’ and therefore be eligible to access specific human rights defender emergency support programs. The subjects of the film might also be classified as human rights defenders and therefore be able to benefit from assistance through these programs should they need it. Please see a list of prominent organizations that provide emergency legal assistance in section 3.7 at the end of this chapter.

Each of these organizations have their own procedures to apply for assistance and forms to fill in. This can seem bureaucratic but there is no way around it - it’s part of the due diligence that these organizations are required to do by their donors. Follow-up phone calls can help speed up requests for assistance - be sure to call as well as email soon after submitting a request for assistance (which is usually done through an online portal).

Most of the organizations listed at the end of the chapter are relatively small and specialized in providing emergency assistance. You can also approach one of the larger and better known human rights organizations for support, such as Amnesty International, Human Rights Watch or the freedom of expression advocacy group, ARTICLE 19. They have some resources and may be able to assist, although they tend not to advertise this on their websites.

One potential pitfall in working with any international organization is that you will need to make sure that you are in control of any publicity and advocacy around your case. Some organizations may want to run large publicity campaigns around your case. Sometimes this can be useful, but sometimes it’s not - it can be better to deal with legal threats quietly and below the radar. There may also be occasions when an international organization wants to focus on your case as part of a larger campaign. Only agree to this if you and your lawyer agree that this will help your case - this will depend on the individual circumstances of your situation. Always make sure therefore that you are in charge of any strategies that involve public advocacy.

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## Suggested Team Discussion Points:

*These questions have been designed to provoke team conversation about the risks your production may face. These questions are not exhaustive and it is understood that each project has its own bespoke issues that will merit discussion.*

**Do you need early legal advice? If so, in what areas of the law?**

**Can you afford a lawyer or do you have other means of sourcing pro-bono help?**

**Do you need legal help in more than one country - eg both where you are filming and where the production is based?**

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## 3.2 Legal And Compliance: Global (including UK and US)

This section outlines the main areas of media law you need to be aware of as a filmmaker, and steps you can take to minimise legal risk throughout production. This is not a comprehensive account of the law nor a substitute for engaging a suitably qualified lawyer at an early stage in production but aims to offer an overview of key areas to be aware of.

In most countries, the main areas of the law filmmakers need to understand are defamation, privacy, contempt, copyright, and the laws that govern certification and screening. In some countries, however, the law can be used for political purposes and as a tool of harassment. A range of laws can be invoked to this end, including criminal as well as civil laws. Even if there is little substance to arrests or legal cases brought against filmmakers, journalists or activists, defending cases still takes time and expertise. In these situations, it is important that you have a good overall awareness of the law and your rights, and that you have access to a lawyer.

When a work includes potentially defamatory coverage of individuals or companies who live or reside abroad, regard needs to be had to the laws of these countries as well since claims may be brought there. This is particularly true for the UK; London has a reputation as being the 'libel capital' of the world and courts have allowed actions to be taken there against journalists from the US, Russia and elsewhere.

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### Defamation — Libel and Slander

Defamation law exists in every country around the world to protect the reputation of a person, a group of persons or a company or organisation from defamatory statements made about them to a third party without lawful justification. The requirements for a defamation claim vary from country to country, and even different jurisdictions within a country (in the US, each state has its own law of defamation).

*Libel and slander are both types of defamation. Libel is an untrue defamatory statement that is made in writing. Slander is an untrue defamatory statement that is spoken.*

Generally speaking, a statement is defamatory if, when said about a person and published to a third party, it would make reasonable people think less of that person and would cause them 'serious harm' or would be likely to do so. For a company to sue for defamation, the company must be able to show that the defamatory statement caused the company serious financial loss or would be likely to do so. For an individual, reputational harm and emotional distress may be sufficient and, depending on the jurisdiction, some sorts of statements may be considered so damaging that they are deemed to be defamation per se even without additional evidence of harm.

For a person to sue they must show;

- + that defamatory language was used about them, meaning that what was said or published lowered the reputation of the claimant in the eyes of society;
- + that they were identified or identifiable; and
- + that the words were published to another, i.e. a third party.

In many but not all countries, the claimant also needs to show that the defamatory words caused them serious harm.

The requirement in English law, that in order to sue for defamation, claimants must show that a defamatory statement causes serious harm or would be likely to do so (or, for companies, serious financial loss) is relatively new. It was hoped that this new requirement would make it harder for claimants to sue for defamation, although recent case law suggests that the hurdle is not as high as some had hoped it would be. What it does mean though is that trivial matters are unlikely to be actionable.

It does not matter whether the statement is **intended** to be defamatory—what is important is that the statement itself is false, and that the publisher had some knowledge or reason to know it was false. In most cases, it also does not matter if you are republishing someone else’s defamatory statement—the republishing itself can be defamatory.

In most countries, once a claimant has shown the three elements referred to above - that a statement was published, that it refers to them, and that it is defamatory - you, the filmmaker (as the defendant), must be able to prove in a court of law that the defamatory statement you made in your film is backed up by evidence and can be proved to be true, or that you could avail yourself of some other defence. In other words, the person suing does not have to prove that the defamatory statement, said about them, is false.

If you are sued and the court finds against you, you would likely have to pay damages (a sum of money, which could be as high as several hundred thousand pounds depending on the seriousness of the libel), plus your own legal fees. In addition, in the UK, you would likely have to pay the claimant’s legal fees. Your film could also be subject to an injunction before, during or after the court hearing, in which case it would be prevented from being distributed.

The avoidance of defamatory statements is not intended to be a dampener on free speech — accuracy and fairness are essential aspects of ethical filmmaking.

Now let’s look at some examples of defamatory statements:

- + Donald has committed a criminal act...
- + Hillary is a liar, is dishonest or has committed a fraudulent act ...
- + Donald took a bribe; Donald tried to bribe Hillary ...
- + George stole from Bill; Bill is a thief ...
- + Hillary is violent or abusive in some way ...
- + Barack damaged George’s property ...
- + Ronald is a drug dealer, a drug user or, simply, ‘is involved in’ drugs ...
- + Harry is a hypocrite ...
- + Gerald is bankrupt; is nearly bankrupt

If your film alleges something potentially defamatory, of some identifiable individual or company, and you are sued, there are several possible responses. Two of the most common bars to a defamation claim are the truth of the statement, if it is factual, or that the statement asserts an *opinion* rather than a fact that is capable of being proved true or false, referred to as the *honest opinion* defence in the UK.

In addition, there are other defences for those who publish defamatory material in certain prescribed circumstances, such as in proceedings in court or in parliament, and when journalists are fairly and accurately reporting such proceedings. Depending on the jurisdiction, such defences may be referred to as an absolute or *qualified privilege* (UK and other common law<sup>1</sup> countries), or a *fair comment* or *fair report privilege* (US).

The following are some common assumptions which are not defences to defamation in most countries, including the US or the UK:

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<sup>1</sup> The so-called ‘common law’ system is a body of law derived from the decisions of courts and similar tribunals. The common law (which was so called because it was the law common to all the courts) originated in England after the Norman conquest in 1066 and spread to colonies of the UK, many of which have retained it when they gained independence.

- + **I didn't mean to defame X, it was accidental.** Intention is irrelevant. Defamation can still occur by juxtaposing images and words in a way that may accidentally defame someone.
- + **I didn't mention X by name.** If X is otherwise identifiable he/she is likely to be able to sue
- + **I just reported what someone else told me, but I don't necessarily believe what they are saying.** In most cases, someone repeating a defamatory statement is just as liable in law as the original speaker
- + **The statement was intended as a joke, it's obvious that we didn't mean it / it was satirical.** Intention is irrelevant. What is important is what would be understood by viewers, readers, listeners
- + **The statement has already been published elsewhere (on the Internet, in the newspaper, on the radio) and everyone knows it's true.**
- + Prior publication elsewhere is not a defence that will stack up in a court of law.

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## “Libel Tourism”

If a work has been shown widely, globally even, it is common for a litigant to choose the most favourable jurisdiction to sue in. Often this can be the UK, because its libel laws make it easy to launch claims. This has led to a phenomenon known as “libel tourism”. If your project covers a person, company, organisation or any other legal entity that is either based in the UK or has a presence there, and you make defamatory allegations about them (for example, accusing them of corruption), there is a risk that they may sue you there.

A court may decide to accept a claim brought by, say, an Indian business person in London if it is satisfied that there is a strong enough link with London. Examples of such a link might include business relationships, family links, or ownership of a house. In the past, English courts have allowed a Russian businessman to sue a Russian journalist for defamation on the basis that he had a house in London, some business relationships and intended to move to London at some point in the future.

You should be aware that defending defamation claims in the UK is very expensive - prohibitively expensive, even. Defending a defamation case at trial will cost tens if not hundreds of thousands of pounds, and you are potentially liable for the costs of the claimant's lawyer as well. If you get a defamation claim from a UK lawyer, you should immediately seek legal advice.

There is also a risk of getting sued in other foreign jurisdictions if defamatory allegations concern a person who has a link to one of those countries. Should you get a letter from a lawyer claiming defamation in one of those countries, you should seek legal advice from a lawyer in that specific jurisdiction.

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## Evidence

The best defence to defamation is to be able to prove that the statement is true. This ultimately comes down to rigorous fact checking, and ensuring that the relevant evidence is available to you if necessary.

If you are sued over defamatory material in your film, and you are looking to defend the claim by proving that your film is substantially true, you are going to need *evidence*. The best forms of evidence are witnesses' testimony i.e. of things they themselves have seen or heard; and documentary evidence, in other words - notes, letters, emails, documents - or even recce tapes, sizzlers and rushes - which prove particular facts. If you want to include potentially defamatory material within your film, one of the first and most important things is you, along with your lawyers, to consider what evidence would be available to you if you are sued. Newspaper cuttings etc are not *evidence*, in that they are not proof of the truth of their content - all that they prove is that the allegation has been previously printed in a newspaper, and as noted above, that is not a defence to a defamation charge.

Note that wherever potentially defamatory allegations are made—any allegations of wrongdoing, or incompetence, or other significant allegations—in some jurisdictions (including in the UK) it is very important to seek a *right of reply* from the subject of the allegations. Where a response is provided, either by interview, or in writing, this should normally be fairly reflected in the film.

How and when to approach subjects with the allegations needs very careful thought. Expert legal advice should always be sought before approaching subjects.

Ensuring that your facts are correct is always going to be extremely important.

Always research facts rigorously; ensure contributions are fairly and accurately edited and do not misrepresent the speaker. Seek a right of reply wherever significant allegations are made, and where relevant ensure that any responses provided are fairly included in your film.

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## Discoverable Information

If a court case is brought against a film, you may be required to share key documentation with the other side. Your production emails, documents, proposals and notebooks (including your Safe+Secure protocol and checklists) may be deemed discoverable evidence.

Such evidence may be used to substantiate a claim that the film started from a place of prejudice against an individual or organisation instead of proceeding in a fair and balanced way. A stitch-up rather than an investigation in other words.

It is therefore best practice to assume, right from the very beginning, that any written paperwork attached to a project could be used in evidence against it and make sure that you never use loose or prejudicial language.

For example, whilst filling in your risk assessment forms it is fine to say:

*“X company has a track record of bringing court cases against journalists writing about their operations. Given that we are investigating whether or not there has been corruption in their supply chains, we are at an increased risk of legal action”.*

It is not advisable to write: *“Given we are going to expose these scoundrels as corrupt, they will probably try to silence us with a court case”.*

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## Distinctions Under US Defamation Law

There are important distinctions for US law, which are summarised below; and for India and Brazil we refer to the separate entries for those countries in section 3.5 and 3.6 respectively.

US law is somewhat more protective of free speech rights than English law, owing to the First Amendment to the United States Constitution and similar provisions in State constitutions. This manifests itself in a few ways, most notably the degree of fault required for liability and the burden of proof. In the US, to be defamatory, a statement must be published with some level of **fault** on the part of the defendant. This requirement varies depending on whether the content concerns a public figure or a private figure.

If the statement is about a *public figure*, then the statement must be made with *knowledge* that it was false or with reckless disregard of whether it was false. This is called the “actual malice” standard. However, it is a knowledge requirement and does not refer to motive. If one honestly believes a



statement about a public figure to be true, publishing the statement out of spite and with intent to harm is not defamatory in the US, whereas if a statement is published with knowledge of its falsity, it will be defamatory even if the motivation was innocent.

The standard is less strict for private individuals. If a statement is about a *private figure*, it need only be made with *negligence* as to its falsity in order to give rise to liability for defamation.

In US defamation proceedings, the **burden of proof** may shift depending on what state the proceedings are in and whether the statement is about a public or private figure. It is common that, if the statement is about a public figure, the plaintiff (the person bringing the defamation suit) must prove that the statement was false in order to win their case. However, if the statement is about a private figure, the defendant may be required to prove that the statement was true.

If you are operating in the USA, it's also worth being aware that documentaries can become the target of a Strategic Lawsuit Against Public Participation (SLAPP) - a lawsuit that is intended to censor, intimidate and silence critics by burdening them with the cost of a legal defence until they abandon their criticism or opposition. Many jurisdictions have Anti-SLAPP legislation in place, which attempts to balance a plaintiff's right to bring a legal action with a defendant's right to free expression. Some US states have more robust anti-SLAPP protections than others.

*Example: Oscar-winning filmmaker Errol Morris, his producers and distributors were sued by the subject of his 2010 documentary 'Tabloid' after the subject alleged she was tricked for appearing in the film. Morris and his co-defendants brought an anti-SLAPP motion on grounds that the lawsuit served to stifle free speech. Ultimately, after a number of other accusations by the subject, the case was dismissed for lack of prosecution.*

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## Privacy / Public Interest

In the UK, the US, and most other countries around the world, individuals have a legal right to privacy. As filmmakers you also have the right to freedom of expression. Balancing these two rights is at the heart of understanding privacy law.

In most cases, the act of filming someone is an infringement of their privacy. If you film someone in their home that is almost certainly likely to infringe their right to privacy. Even in a public place, if you film someone engaged in a private act, that may also infringe privacy. Content related to a person's sexual habits are very likely to be an invasion of privacy and content related to their innermost thoughts and private life (e.g., illness, diaries, affectionate letters, conversations with family members) requires a very strong public interest in the content or else must already have been published by the persons themselves.

In the US, there are multiple types of privacy claims, which vary state by state. Examples of such claims are: public disclosure of private facts; false light invasion of privacy (i.e. portraying someone in a false light); intrusion into private affairs; and misappropriation of one's name or likeness.

In the UK and many other common law countries, privacy claims are similar although they go by different names - "breach of confidence", for example. A growing area of privacy law - and therefore an area of concern for journalists and filmmakers - is data protection law: this protects an individual's personal information. Originally found in EU countries, this concept has spread to many other countries as a corollary of EU trade agreements and can be used by individuals to stop journalists from publishing what is deemed to be 'personal data' unless they can show publication is for the purpose of journalism, academia, art or literature and that they believe publication would be in the public interest.

When contributors agree to appear in your film and sign a release form they are in effect consenting to



have their privacy infringed (by the act of filming them). When consent has not been given, you could be infringing that person's right to privacy.

Whenever film-makers infringe individuals' privacy rights, this must be warranted — either by having the individual's consent, or in some other way, e.g., because it is in the *public interest* (UK and many other common law countries) or is *newsworthy* (US).

If you infringe privacy, this may lead to you being sued. As with other areas of the law, if you are unsuccessful, this may lead to the court ordering that you pay money damages (which can be quite substantial) and imposing an injunction against your film, preventing you from showing it. Privacy law is an area of law where injunctions are common and in extreme circumstances could lead to your film sitting on a shelf for long periods of time.

**Secret Filming** is the most obvious example of where privacy rights are infringed. In some cases this can be justified by the *public interest*. If you are considering secret filming, it is very important that you seek expert legal advice before you carry it out. This ensures that it is set up correctly (i.e. legally) and allows it to be used in your film. Undertaking secret filming without advice could lead to that material being deemed unusable at a later date when you seek a legal opinion for your E&O insurance, so it is best to plan in advance in collaboration with your lawyer. We request that you follow these procedures in order to avoid making yourself vulnerable to legal challenge.

**'Door Stepping'** — this is where you turn up at somebody's house or place of work unannounced and attempt to film an interview with them. Such interviews without prior arrangement need careful thought — getting it wrong is likely to infringe privacy unwarrantably and could lead to an injunction.

**Public Interest.** As noted, secret filming and doorstepping (and indeed other infringements of privacy) can sometimes be justified by the 'public interest'. So, what does the public interest mean? Black's Legal Dictionary definition is rather vague "The welfare of the public as compared to the welfare of a private individual or company. All of society has a stake in this interest and the government recognises the promotion of and protection of the general public." The Ofcom Broadcasting Code – the code of the UK's media regulator — gives the following more specific examples of the public interest: revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public. Many other common law countries follow similar definitions, but you should be aware that there is an element of uncertainty inherent in this. If you are in doubt, it is best to seek legal advice.

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## **Newsworthiness (US)**

Determining whether an invasion of privacy will be defensible as newsworthy in the US is a complex legal question that is very dependent on the specific circumstances. When prominent figures such as politicians and celebrities are involved, courts have found some details of their private lives to be newsworthy. However, in the recent high-profile case *Terry Gene Bollea v. Heather Clem, et al*, (a.k.a. Hulk Hogan v. Gawker), a jury awarded Hulk Hogan \$115 million after Gawker published a sex tape depicting the famous wrestler, even though he had repeatedly appeared on radio programs publicly discussing issues of a personal and sexual nature.

Whenever you are seeking to rely on the public interest or newsworthiness to justify infringements of privacy or the revealing of confidential information, we request that you seek advice from a suitably qualified lawyer. If legal proceedings were brought against your film in such circumstances, it would be for a judge to decide ultimately if the public interest defence succeeded and justified the infringement of privacy.

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## Contempt (UK and most common law countries)

In the UK and most common law countries, the law of contempt exists to protect the integrity of the legal process and allows trials to proceed without undue outside influence. In particular, jurors deciding criminal trials in the Crown Court must be able to consider the facts of the case presented to them in court, and come to a verdict based on those facts, without being swayed by extra details and claims that may be in the public domain i.e. reported by the media. In some countries, such as India or Singapore, contempt laws also prohibit what is known as ‘scandalizing the court’. This has its origins in the common law and prohibits any attempt to bring the courts into contempt and lower their authority. In many countries this remains in active use and is used to protect the judiciary from criticism.

In the UK, contempt laws make it a criminal offence for filmmakers to publish information which amounts to a substantial risk of serious prejudice to certain active (current) legal proceedings. It is also a criminal offence to do an act in contravention of a specific reporting restriction or court order made by a judge.

In the UK, there are also laws about who can have access to certain documents which are created or supplied for the purposes of court proceedings. Breaching these laws is also a criminal offence.

Contempt rules in the UK and most other common law countries are more stringent than in some other countries e.g. the United States. However, wherever films touch upon legal proceedings, particularly current proceedings that are on-going, film-makers must check to see whether there are any legal restrictions on reporting those proceedings – whether contempt rules apply or whether a specific order has been made by the court restricting what can be reported or referred to.

What can be reported and what cannot varies according to the type of court and trial – a brief summary can be found on the [BBC Academy website here](#), but legal advice should always be sought.

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## 3.3 Securing Legal Rights

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### Copyright and Clearances

Filmmakers must begin clearance work at the inception of the film, continue during filming and complete it at final cut. The following are some of the clearance procedures an insurance company recommends a filmmaker follow:

- + When utilising underlying works such as book, scripts or screenplays, a copyright report should be obtained to make sure the chain of title of all works on which the production is based is thoroughly investigated and cleared back to the original copyright owners to determine that all grants or transfers in the chain of title permit you to assign or sub-license the material in your production.
- + Written agreements must exist between the producer, creators, authors, writers, performers and any other persons providing material.
- + Written releases must be obtained for faces and likenesses of any recognizable living persons. All releases must provide the producer with the rights to edit, modify, add to and/or delete material, change the sequence of events or of any questions posed and/or answers given and to fictionalize persons or events.
- + Musical rights must be obtained from the composer and/or performers of specially commissioned music and/or cleared with the owners of pre-existing music and/or recordings.
- + All licenses and consents must be obtained from the copyright owner and any person or entity depicted in the film clip and photographs. A documentary filmmaker will need to obtain permission from the copyright owner and permission from people being depicted in the film clip. If the Fair Use doctrine is to be utilised, a filmmaker must obtain a fair use opinion letter from an experienced clearance attorney.

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### Fair Use / Fair Dealing

Underlying rights in third party copyright works should normally be cleared/licensed. In exceptional circumstances however, you may be able to rely on fair use or fair dealing.

*Fair use* and *fair dealing* are defences to copyright infringement. Fair use is a US defence; fair dealing is a UK defence. These defences enable content producers, in certain prescribed circumstances, to use small parts of other people's copyright works without the copyright owner's consent, even where permission has been explicitly refused.

This is a complicated area of law which has received much scrutiny in the filmmaking space leading to many misconceptions and assumptions.

It is also important to note that fair use is an area of US law which has developed in a distinct direction from fair dealing — in other words they are not the same. Material which may fall within the fair use doctrine may not fall within fair dealing.

The Center for Social Media and Impact at the American University has provided a [comprehensive set of resources](#) to help US filmmakers navigate this area of the law.

If you are considering relying on fair use or fair dealing, you should familiarise yourself with the basics of the law and seek advice from a suitably qualified lawyer. Note that if you intend your film for worldwide distribution, you are unlikely to be able to rely on the fair dealing exception.

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## **Contracts**

Contracts with your contributors and crew are legally binding and need to be carefully drafted. It's important to note that any breach of contract by you is not covered by E&O insurance so any legal fees or financial penalty resulting from this would need to be covered out of your own pocket. Always hire a suitably qualified lawyer/professional to handle your contractual matters.

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## **Suggested Team Discussion Points:**

**Is there a risk of a defamation/ libel accusation being brought?**

**Have you had your work fact checked to make sure you have sufficient evidence?**

**Does any of your work infringe on the privacy of individuals - do you have an adequate legally recognised justification?**

**Are you keeping track of copyrighted materials and have a plan to either clear it or investigate Fair Dealing / Fair Use?**

**Do you need legal help with contracts for contributors and crew?**

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## 3.4 Media Liabilities / Errors And Omissions Insurance (E&O)

Errors & Omissions (E&O) protects filmmakers from lawsuits pertaining to theft of idea, copyright infringement, libel, slander, invasion of privacy, defamation, product disparagement, trade libel, infliction of emotional distress, right of publicity, outrage and outrageous conduct, false light, wrongful entry, false arrest or malicious prosecution. E&O insurance covers not only damages that a court may order a filmmaker to pay, but also legal costs.

Errors & Omissions is a mandatory requirement for distribution deals with studios, television, cable networks, DVD and Internet sites. These distributors of media require the filmmaker to protect them from claims that may result when the production is released and exploited. Distributors normally outline the required licensing terms and limits in their agreements -- for example, standard limits are £1,000,000 per claim (£3,000,000 aggregate) with an excess of £10,000.

Insurance companies will need a legal opinion in order to quote for worldwide E&O insurance. It is usually not possible for this opinion to be offered until picture lock on a film, when the film has been thoroughly 'legalled' (including the verification and presentation of all requisite contributor release forms and key contracts) and any required changes made. This period of time - when the film is finished but before insurance has been secured - is a vulnerable time for the filmmaker. This is particularly true if you are making a film about a powerful person / organisation and you have had to grant that person / organisation an opportunity to respond to potentially damaging allegations that you make in your film. It is possible for that person to seek an injunction of your film. Acting swiftly to secure E&O as soon as possible by providing a legal opinion to the insurance company from a suitably qualified lawyer - and one acceptable to the insurance company.

Because E&O insurance is only likely to be in place once the film has been completed, carefully consider what information is being shared about the film in the public domain and whether it may be legally prejudicial to the production or could dissuade E&O insurers from getting involved. This includes film website, social media, material associated with pitching forums and markets.

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### Finding The Right Broker

Only use an E&O broker who is experienced in providing insurance for non-fiction films. This ensures that your policy is fit for purpose and affords you proper protections. Brokers who mainly deal with fictional film may not be appropriate for your documentary. Your best source of information on brokers is your fellow filmmakers, ask them! Some recommended brokers include:

- + Media Insurance Brokers (UK)
- + Fractured Atlas (US)
- + Chubb (US)
- + Hiscox (UK)
- + Axis (UK)
- + One Beacon (US)

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## **Filling Out The Application Form**

The application form is likely to be long and detailed. If it is not, this is a red flag that your broker is not equipped to find insurance for you! You must fill out the form correctly - innocent mistakes could result in not getting cover, or the insurance company claiming at a later date that the insurance is invalid. Do not try to 'fudge' answers or second guess if you are unsure what the form is asking - if in doubt ask your lawyer to help you fill out the form, or seek clarification from the broker.

Do not intentionally leave out information that you feel could damage your chances of getting cover. This includes threats of claims against your film. You could find that your policy is invalidated further down the line.

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## **Understanding Deductibles**

A deductible is an 'excess' applied to your policy. An insurance company will often quote a high deductible if they think a film is risky and will attract claims. However, not only does this place you in the position of having to pay a high excess in the event of a claim, it can cause difficulties getting distribution; most distributors will require an E&O policy with a deductible of no greater than £25,000.

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## **Compare And Negotiate**

If possible, try to get more than one quote for your E&O policy as for low risk films the prices can vary considerably. Pay close attention to the deductible, how much the policy will pay per claim as well as the aggregate amount the policy covers and when selecting insurance and negotiating.

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## **Suggested Team Discussion Points**

**What are the differences between the different E&O options your broker has offered?**

**Do you need to seek external help from your lawyer or broker to ensure that you can get E&O in time for distribution at a reasonable price?**

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## 3.5 Legal And Compliance – India

This section outlines the main areas of media law you need to be aware of as a filmmaker working in India, and steps you can take to minimise legal risk throughout production. This is not a comprehensive account of the law and is not a substitute for engaging a suitably qualified lawyer at an early stage in production.

Filmmakers should be aware that there is a common practice across India of using the law for political purposes, as a tool of harassment. A range of laws can be invoked for this purpose, including criminal as well as civil laws. Even if there is little substance to arrests or legal cases brought against filmmakers, journalists or activists, but defending cases still takes expertise and time and it is important for filmmakers to both know the law and have access to a lawyer.

In addition to the main areas of the law filmmakers everywhere should understand, in India you need to also be aware of the law of sedition. You should also know that the laws relating to defamation, privacy, and contempt are subtly different in India from elsewhere. If you want your film to be shown in India, you also need to be aware of the process and requirements applied by the Central Board of Film Classification. The following paragraphs outline the main features.

Note that if your work includes potentially defamatory coverage of individuals or companies who live or reside abroad, regard needs to be had to the laws of these countries as well since claims may be brought there. This is particularly true for the UK; London has a reputation as being the ‘libel capital’ of the world and courts have allowed actions to be taken there against journalists from the US, Russia and elsewhere. You should refer to the section on ‘libel tourism’ in the main text of section 3.2, above.

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### Defamation - India

Defamation law exists to protect the reputation of a person (or company) from defamatory statements made about him/her to a third party without lawful justification.

*Libel and slander are both types of defamation. Libel is an untrue defamatory statement that is made in writing. Slander is an untrue defamatory statement that is spoken orally.*

A statement is defamatory if it is made to cause harm to the reputation of a person, company or organization, or if the person making the statement should have known that it would cause harm to reputation. Companies as well as individuals may sue for defamation, and even public bodies such as government departments (although in practice, it is usually public officials who would file a claim). Under Indian law, defamation is a criminal offence, meaning that an accused may be arrested, prosecuted and, if found guilty, punished with a fine or imprisonment for up to two years; as well as a civil matter, which means that a person may be sued for financial damages.

For a person to sue they must show;

- + that a statement has been ‘published’ (that is, made to a person other than the claimant and the defendant);
- + that they were identified or identifiable; and
- + That it is defamatory, meaning that it tends to lower the reputation of the claimant in the eyes of society

When a claimant shows this, a judge can issue an injunction prohibiting further showing of the film until the matter is settled on the merits.

In a criminal defamation case, the prosecution must prove beyond reasonable doubt that the offence of defamation was committed with intent, or “with reckless disregard for the truth”.

Whereas, in a civil case, it does not matter whether the statement is **intended** to be defamatory—what is important is that the statement itself is false. In most cases, it also does not matter if you are republishing someone else’s defamatory statement—the republishing itself can be defamatory.

Once a claimant has shown the three elements referred to above - that a statement was published, that it refers to them, and that it is defamatory - the “burden of proof” is on the filmmaker (as the defendant) to prove that the defamatory statement you made in your film is backed up by evidence and can be proved to be true, or that you could avail yourself of another defence). In other words, the person suing does not have to prove that the defamatory statement, said about them, is false.

Under Indian law, the most common defences to a defamation claim are the truth of the statement, if it is factual, or that the statement was made in good faith and concerns an issue of public interest. In the case of a criminal defamation claim, a defence of truth applies only if the statement also concerns a matter of public interest. For example, if a defamatory allegation is made of a public official then for a defence of ‘truth’ to succeed, it would also need to be demonstrated that the allegation relates to that official’s public functions. If a defamatory allegation is made purely in relation to a public official’s private life, such that they are engaged in an adulterous affair, a judge may not be persuaded that publishing this is in the public interest.

In addition, there are other defences for those who publish defamatory material in certain prescribed circumstances, such as in proceedings in court or in parliament, and when journalists are fairly and accurately reporting such proceedings and concern an issue of public interest.

Prior publication elsewhere is not a defence that will stack up in a court of law.

If you are sued under civil law and the court found against you, you would likely have to pay financial damages (a sum of money, depending on the seriousness of the libel), plus your own legal fees. You would likely have to pay the claimant’s legal fees as well. Corporations are known to sue for high amounts - in the 100s of crores - and while courts do not often award high or punitive damages, the mere possibility that they might has a real chilling effect. If you are sued under criminal defamation laws, you face imprisonment for up to two years and a fine. For both civil and criminal cases, your film could also be subject to an injunction before, during or after the court hearing in which case it would be prevented from being distributed.

The avoidance of defamatory statements is not intended to be a dampener on free speech — accuracy and fairness are essential aspects of ethical filmmaking. Always research facts rigorously; ensure contributions are fairly and accurately edited and do not misrepresent the speaker.

While Indian law does not require it, it is nevertheless good practice to seek a reply whenever potentially defamatory allegations are made—any allegations of wrongdoing, or incompetence, or other significant allegations. Where a response is provided, either by interview, or in writing, this should normally be fairly reflected in the film.

How and when to approach subjects with allegations, needs very careful thought. Expert legal advice should always be sought.



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## “The process is the punishment”

One of the reasons that it is so important to seek legal advice immediately when a defamation claim is received is that the process of defending a claim can be very punitive in itself. In India, defamation cases can drag on for years, and it is common for claims to be lodged in cities hundreds of miles from the defendant's - your - residence, forcing you to make multiple return trips and invest time, money and effort that you should instead be spending on your films. The fact that the criminal law can be used for defamation is a further deterrent: the threat of criminal punishment looms heavy. An expert lawyer will help you navigate these obstacles and, as much as possible, ease the process of defending a claim.

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## Privacy

In India, the right to privacy is constitutionally protected. As filmmakers, you also have the right to freedom of expression. Balancing these two rights is at the heart of understanding privacy law.

In most cases, the act of filming someone is an infringement of their privacy. If you film someone in their home that is almost certainly likely to infringe privacy. Even in a public place, if you film someone engaged in a private act, that may also infringe privacy. Content related to a person's sexual habits are very likely to be an invasion of privacy and content related to their innermost thoughts and private life (e.g., illness, diaries, affectionate letters, conversations with family members) requires a very strong public interest in the content or else must already have been published by the persons themselves.

When contributors agree to appear in your film and sign a release form they are in effect consenting to have their privacy infringed (by the act of filming them). When consent has not been given, you could be infringing that person's right to privacy.

Whenever film-makers infringe individuals' privacy rights, this must be warranted. There are three possible exceptions: first, that a person has become a public figure by raising controversy or thrusting themselves into the public spotlight; second, if information considered private is in fact based on public records; and third, government officials cannot claim privacy in respect of the performance of their public functions.

If you infringe privacy, this may lead to you being sued. As with other areas of the law, if you are unsuccessful, this may lead to the court ordering that you pay financial damages (which can be quite substantial) and imposing an injunction against your film, preventing you from showing it. Privacy law is an area of law where injunctions may be issued and in extreme circumstances could lead to your film sitting on a shelf for long periods of time.

Secret Filming is the most obvious example of where privacy rights are infringed. Courts have held that in some cases this can be justified by the public interest and that the camera can be used as a tool for justice. However, whatever is filmed must be true and there can be no entrapment. If you are considering secret filming, please read more about it in section 3.2 and know that it is very important that you seek expert legal advice before you carry it out.

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## Sedition

India has strict public order laws that filmmakers should be aware of, particularly in relation to sedition, hate speech and for the prevention of terrorism.

“Sedition” is the offence of bringing the government into hatred or contempt, or exciting or attempting to excite disaffection towards the government. The expression “disaffection” includes disloyalty and all feelings of enmity. The offence dates from the colonial era and there is a clear tension between it and the

very concept of democracy - bringing the government into contempt could be said to be part of the core job description of opposition politicians. Yet, it has survived into the democratic era, in India as it has in many other countries (in the UK itself, seditious libel was abolished only in 2010), and cases are brought regularly: against cartoonists, political dissidents, and even against villagers protesting a nuclear power plant in Kerala.

A key exception is that the law does allow criticism of government policy or measures, “to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection.” This has been relied on by the courts to acquit defendants who expressed criticism in strong terms, but without inciting violence or seeking to start a revolution - for example the cartoonist referred to above was eventually acquitted. The problem for filmmakers (and other journalists) is that the offence still exists, and that prosecutions continue to be instigated, placing a heavy burden on defendants (as with defamation claims, it is common for sedition claims to be lodged hundreds of miles from where a defendant lives, forcing frequent travel back and forth). It is therefore important that filmmakers steer clear of the boundaries and seek legal advice on this point.

Indian filmmakers will be acutely aware that religious sentiments are running high. Individuals who have (been perceived to) criticise religions have been arrested whilst mobs have lynched individuals accused of disrespecting their religion. Separate penal code provisions prohibit religious hate speech, defined as “promoting enmity between different groups of the country on the grounds of religion, race, place of birth, residence, language, or any such grounds”; committing any act that is “prejudicial to the harmony of the public”; and “deliberate and malicious acts, intended to outrage religious feelings or any class by insulting its religion or religious beliefs”. As with sedition, not many prosecutions are successful but they are nevertheless instigated. If your project touches critically on issues of religion, you should consult your lawyer.

Filmmakers should also be aware of India’s strict anti-terror laws, particularly in Jammu and Kashmir, and in Jharkand and Chhattisgarh. You should consult a lawyer if you plan to film in any of these places, as well as draw up a security plan. There has also been a severe clampdown on armed revolutionary groups and all those suspected of sympathizing with them, which has resulted in the arrests of civil society activists. Any filmmakers planning projects on topics that touch on these issues should consult a lawyer.

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## The Central Board of Film Certification

In order for your film to be shown it needs to be certified by the Central Board of Film Certification. This body has a track record of making it difficult for documentary filmmakers to get their work out. In 2014, it refused to certify the documentary film *No Fire Zone*, about the Sri Lankan civil war. It had won a string of international film awards, including at human rights film festivals, but the Board refused to certify it on the grounds that it would ‘prejudice friendly relations’ between India and Sri Lanka.

Under the Cinematograph Act of 1952, the Board may refuse to certify a film if the Board deems that it is against the interests of the sovereignty, integrity or security of the State, friendly relations with foreign States, public order, decency or morality, involves defamation or contempt of court or is likely to incite the commission of an offence. The Board may also direct you to cut or otherwise change parts of the film that it deems to contravene any of these interests; it may require you to get additional clearances from persons featured in the film; or it may issue a restricted certification.

Decisions of the board can be appealed to a Tribunal, and documentary filmmakers have been able to overturn decisions of the Board in this way. It goes without saying that the assistance of a lawyer will be required in this.

The team behind “An Insignificant Man” managed this after meaningful international pressure and legal

assistance; When the team initially applied for a censor certificate, the Board asked the filmmakers to obtain “no objection” certificates from Prime Minister Narendra Modi, former Delhi Chief Minister Sheila Dixit and the protagonist Arvind Kejriwal, and to edit out the names of Congress and BJP politicians. This was unacceptable to the filmmakers who appealed to the Tribunal which eventually ruled in their favour, emphasizing that “requiring no objection certificates from public personalities would cull the documentary cinema, rather render the making of a documentary on political scenario nigh impossible.”

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## **Fair Use / Fair Dealing**

Underlying rights in third party copyright works should normally be cleared/licensed. In exceptional circumstances however, you may be able to rely on fair use or fair dealing. Under Indian law, fair dealing is allowed for the purposes of private use, including research; criticism or review; or for the reporting of current events and affairs. In India, as elsewhere, this is an area of law that is under development.

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## **Suggested Team Discussion Points:**

**Is there a risk of defamation/sedition being brought?**

**Have you had your work fact checked to make sure you have sufficient evidence?**

**Does any of your work infringe on the privacy of individuals - do you have an adequate legally recognised justification?**

**Are you keeping track of copyrighted materials and have a plan to either clear it or rely on any of the listed exceptions to copyright**

**Do you need legal help with contracts for contributors and crew?**

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## 3.6 Legal And Compliance – Brazil

This section outlines the main areas of media law you need to be aware of as a filmmaker working in Brazil, and steps you can take to minimise legal risk throughout production. This is not a comprehensive account of the law and is not a substitute for engaging a suitably qualified lawyer at an early stage in production.

The legal and political environment for independent filmmakers has deteriorated markedly since the inauguration of President Bolsonaro. There has been a strong emphasis on ‘enforcing’ public security, at the cost of the protection of human rights. Police violence has become an even bigger issue than it already was and the rule of law is in decline. The authorities have very little tolerance for criticism and press freedom is not respected. There has been politically motivated violence and arrests, including of journalists and activists. If your project touches on sensitive topics, such as crime, narcotrafficking or the environmental and land rights issues on which Bolsonaro has initiated controversial policies, or if you intend to film public protests, you should take appropriate legal and security precautions.

The main areas of the law that filmmakers in Brazil need to understand are defamation, privacy and copyright. You should be aware that defamation and the disclosure of confidential information are criminal offences punishable with imprisonment and/or a fine, although in practice most cases are brought under civil law statutes which provide for the claimant to be awarded financial compensation. Your film could be injunctioned - meaning it would sit on the shelf - pending resolution of a case.

Note that if your work includes potentially defamatory coverage of individuals or companies who live or reside abroad, regard needs to be had to the laws of these countries as well since claims may be brought there. This is particularly true for the UK; London has a reputation as being the ‘libel capital’ of the world and courts have allowed actions to be taken there against journalists from the US, Russia and elsewhere. You should refer to the section on ‘libel tourism’ in section 3.2, above.

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### **Defamation, calumny and injury**

Defamation law exists to protect the reputation of a person (or company) from defamatory statements made about him/her to a third party without lawful justification. Under Brazilian law, defamation is a criminal offence and can also be pursued under civil law. Under the criminal code, penalties of imprisonment and a fine are available (although imprisonment is seldom imposed) and the police can get involved; under civil law, the claimant can be awarded financial compensation and it’s the person claiming to have been defamed that pursues the case, not the police or state prosecutors. In practice, most cases are taken under the civil code.

There are three provisions in Brazil’s criminal code that deal with ‘defamation’: Article 138 prohibits ‘calumny’; Article 139 prohibits ‘defamation’; and Article 140 prohibits causing ‘injury’.

The criminal offence of calumny is committed by intentionally falsely accusing someone of a crime. Examples of convictions for calumny include the case of a newspaper that accused a judge of threatening them with fines and imprisonment of its staff but could not prove these accusations; and, in another case, unproven allegations of election fraud. The only defence to a charge of calumny is truth: the person making the allegation must be able to prove that it is true.

The criminal offence of defamation is committed when a false statement is made about a person that intends to harm their reputation. Examples of statements found to have been defamatory include a newspaper report that accused a mayor of not being transparent about municipal accounting procedures; and an accusation in another newspaper that a mayor was “mentally disordered”. But for criminal

defamation to stand up in court, the police/prosecution have to show that there was “intent” on the part of the filmmaker to defame and that can be really difficult to prove unless there is very clear evidence. A defence of ‘truth’ is available only if the person about whom the statement was made is a civil servant and the criticism concerned the exercise of their public functions.

The offence of ‘injury’ is committed when a statement is made that offends a person’s honour and dignity. This can be the mere use of words that express a negative image and that offend someone’s self-image. Whilst there is a public interest defence based on the constitutional right to freedom of expression, this will not allow for what can be perceived as ‘name calling’. For example, a news report that described a political candidate as a “hypocrite” and “false moralist” was held to be injurious because the court held that the intention had been to offend rather than make a criticism in the public interest. In another case, a journalist was convicted for referring to a local mayor as a “scoundrel”: the court held that this went beyond the permissible expression of criticism. On the other hand, calling a political opponent “selfish” and a “political opportunist” was found to constitute legitimate criticism. Similarly, referring to an elected politician as “incompetent” and “unable to exercise their function” was not held to be injurious because there had not been intent to cause injury, but instead to inform public debate.

Now let’s look at some examples of potentially defamatory, calumnious or injurious statements:

- + Donald has committed a criminal act...
- + Hillary is a liar, is dishonest or has committed a fraudulent act ...
- + Donald took a bribe; Donald tried to bribe Hillary ...
- + George stole from Bill; Bill is a thief ...
- + Hillary is violent or abusive in some way ...
- + Barack damaged George’s property ...
- + Ronald is a drug dealer, a drug user or, simply, ‘is involved in’ drugs ...
- + Harry is a hypocrite ...
- + Gerald is bankrupt; is nearly bankrupt

For calumny, injury and defamation it is considered an aggravating circumstance if the offence is committed against a public official, the President, or an elderly or disabled person, or if there are discriminatory elements to the allegations (for example, if the defamatory statement makes reference to someone’s ethnicity or religion).

The prosecution in criminal cases for calumny, defamation and injury must prove ‘intent’. This can be a high hurdle. For example, a journalist who had reported that proceedings had been instituted against an education institution was acquitted of defamation because the court held that the journalist’s intent had been to inform the community, not to defame.

Under civil law, a person may sue for financial damages for defamation, calumny or injury regardless of whether a criminal case has been lodged. There is a common practice of public officials and even judges suing for large sums in compensatory damages. Companies can and do also sue. Because of Brazil’s slow justice system, cases tend to take years to get resolved, leaving the threat of damages hanging over the head of the accused.

The avoidance of defamatory statements is not intended to be a dampener on free speech — accuracy and fairness are essential aspects of ethical filmmaking.

If your film alleges something potentially defamatory, of some identifiable individual or company, and you are sued, the two most common defences are (1) the truth of the statement, if it is factual; or (2) that the statement constitutes legitimate criticism in the public interest.

In addition, there are other defences for those who publish defamatory material in certain prescribed circumstances, such as in proceedings in court or in parliament, and when journalists are fairly and accurately reporting such proceedings.

The following are some common assumptions which are not defences to a charge of defamation, injury or calumny:

- + **I didn't mean to defame X, it was accidental.** It is possible to defame through negligence as well as through intention. Defamation can still occur by juxtaposing images and words in such a way that you should have known that this might accidentally defame someone.
- + **I didn't mention X by name.** If X is otherwise identifiable he/she is likely to be able to sue
- + **I just reported what someone else told me, but I don't necessarily believe what they are saying.** In most cases, someone repeating a defamatory statement is just as liable in law as the original speaker
- + **The statement was intended as a joke, it's obvious that we didn't mean it / it was satirical.** While there is an exception for satire if understood as legitimate public criticism, this is a narrow exception and must remain within the bounds of what an ordinary person would understand as acceptable. What is important is what would be understood by viewers, readers and listeners.
- + **The statement has already been published elsewhere (on the Internet, in the newspaper, on the radio) and everyone knows it's true.**
- + Prior publication elsewhere is not a defence that will stack up in a court of law.

Whenever potentially defamatory, injurious or calumnious allegations are made—any allegations of wrongdoing, or incompetence, or other significant allegations—it is good practice to seek a *reply* from the subject of the allegations. Where a response is provided, either by interview, or in writing, this should normally be fairly reflected in the film.

How and when to approach subjects with the allegations needs very careful thought. Expert legal advice should always be sought.

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## Privacy / Public Interest

Brazil's constitution recognizes that all individuals have a right to privacy. As filmmakers you also have the right to freedom of expression. Balancing these two rights is at the heart of understanding privacy law.

There are multiple types of privacy claims. Examples of such claims are: public disclosure of private facts; false light invasion of privacy (i.e. portraying someone in a false light); intrusion into private affairs; and misappropriation of one's name or likeness. You should be aware that the disclosure of confidential information is a criminal offence, unless justified in the public interest.

In most cases, the act of filming someone is an infringement of their privacy; Brazilian law grants strong protection to individuals over the use of their image. If you film someone in their home that is almost certainly likely to infringe privacy. Even in a public place, if you film someone engaged in a private act, that may also infringe privacy. Content related to a person's sexual habits are very likely to be an invasion of privacy and content related to their innermost thoughts and private life (e.g., illness, diaries, affectionate letters, conversations with family members) requires a very strong public interest in the content or else must already have been published by the persons themselves.

When contributors agree to appear in your film and sign a release form they are in effect consenting to have their privacy infringed (by the act of filming them). When consent has not been given, you could be infringing that person's right to privacy.

Whenever film-makers infringe individuals' privacy rights, this must be warranted – either by having the individual's consent, or because it is in the *public interest*.

If you infringe privacy, this may lead to you being sued. As with other areas of the law, if you are unsuccessful, this may lead to the court ordering that you pay money damages (which can be quite substantial) and imposing an injunction against your film, preventing you from showing it. Privacy law is an area of law where injunctions are common and in extreme circumstances could lead to your film sitting on a shelf for long periods of time.

Secret Filming is the most obvious example of where privacy rights are infringed. In some cases this can be justified by the *public interest*. If you are considering secret filming, it is very important that you seek expert legal advice before you carry it out. Please also see the earlier section on Secret Filming for more general information.

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## Exceptions to copyright

Underlying rights in third party copyright works should normally be cleared/licensed.

You need to be aware that unlike in the US or UK, Brazilian law does not recognize the concepts of 'fair use' or 'fair dealing'. Instead, the law lists several limitations on the rights of the authors, which can be relied upon if you are challenged (including in litigation). This list includes the following:

- + the reproduction of a news article, naming the author;
- + the reproductions of speeches given at a public event;
- + the quotation of a passage for the purpose of criticism or debate, naming the author;
- + the reproduction of short excerpts provided that it does not adversely affect the normal exploitation of the work or causes harm to the interests of the authors;
- + paraphrases and parodies, so long as they are not true reproductions nor discredit the original work.

Any copyrighted works that are on permanent display in public places may be freely filmed.

If you are considering relying on these exceptions, you should seek advice from a suitably qualified lawyer.

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## Suggested Team Discussion Points:

**Is there a risk of a calumny/defamation/injury accusation being brought?**

**Have you had your work fact checked to make sure you have sufficient evidence?**

**Does any of your work infringe on the privacy of individuals - do you have an adequate legally recognised justification?**

**Are you keeping track of copyrighted materials and have a plan to either clear it or rely on any of the listed exceptions to copyright**

**Do you need legal help with contracts for contributors and crew?**



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## 3.7 Legal Security Resources

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### Emergency legal assistance to journalists / filmmakers

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The following are the most prominent of the organizations that provide emergency assistance to journalists:

#### Global

- + The Committee to Protect Journalists provides on-the-ground advocacy and rapid response support to journalists who are injured, imprisoned, or forced to flee because of their work: <https://cpj.org/emergency-response/how-to-get-help.php>
- + The International Federation of Journalists' Safety Fund is a lifeline for journalists in need or under threat, and can provide assistance to help pay for lawyers: <https://www.ifj.org/donate.html>
- + The International Women's Media Foundation has an Emergency Fund through which they provide women journalists with a lifeline of support in times of crisis, including to provide legal aid: <https://www.iwmf.org/programs/emergency-fund/>
- + The Assistance Desk of Reporters Without Borders (RSF) provides financial and administrative assistance to journalists who have been the victims of reprisals because of their reporting, including to pay their legal fees: <https://rsf.org/en/individual-support>
- + The Qatar-based Doha Center for Media Freedom can provide funding to help journalists find and pay for lawyers: <https://www.dc4mf.org/en/programmes/assistance/advocacy/>

#### USA/Canada

- + The US Reporters Committee for Freedom of the Press provides free legal representation and other legal resources to protect the rights of journalists: <https://www.rcfp.org/what-we-do/>
- + The Cardozo Indie Film Clinic provides free legal services to filmmakers producing independent, documentary and student films and to artists providing services in independent and documentary film: <https://cardozo.yu.edu/clinics-professional-skills/clinics/indie-film-clinic>
- + Volunteer Lawyers for the Arts provides access to dedicated legal representation and focused education programs for artists including filmmakers: <https://vlany.org/>
- + The US Society of Professional Journalists has a Legal Defense Fund that can be used to provide journalists with legal or direct financial assistance: <https://www.spj.org/ldf.asp>
- + The US-based Press Freedom Defense Fund provides essential legal support for journalists who are targeted by powerful figures because they have tried to bring to light information that is in the public interest and necessary for a functioning democracy: <https://www.pressfreedomdefensefund.org/>
- + The Canadian Journalists for Free Expression's Journalists in Distress program provides humanitarian assistance to journalists around the world whose lives and well-being are threatened because of their work, and can help pay for legal fees: [https://www.cjfe.org/journalists\\_in\\_distress\\_fund](https://www.cjfe.org/journalists_in_distress_fund)
- + Based in Canada and established by a journalist who was imprisoned in Egypt, the Fahmy Foundation provides advocacy and financial assistance for journalists at risk, including for legal defence: <http://www.fahmyfoundation.org/resources-advocacy.html>

#### UK

- + Headquartered in London but partnered with specialist media lawyers around the world, the Media Legal Defence Initiative can help you find *and* pay for a lawyer if you are being sued or if you have been attacked and need a lawyer: <https://www.mediadefence.org/get-help>
- + The UK-based Rory Peck Trust provides grants to freelance journalists and their families in crisis, including to pay for legal costs: <https://rorypecktrust.org/freelance-assistance/Assistance-Grants>



## Europe

- + The Netherlands-based organization, Free Press Unlimited, runs a legal defence fund that provides support to journalists who face prosecution or imprisonment and who are unable to afford a lawyer or trial costs: <https://www.freepressunlimited.org/en/safety-for-journalists/legal-defence-fund-for-journalists>
- + The Danish organization, International Media Support, runs a Safety Fund which provides immediate support for journalists who are victimised as a direct result of their work, including to pay for lawyers: <https://www.mediasupport.org/what-we-do/safety-for-journalists/#safety-fund>
- + The Germany-based organization, Journalists help Journalists, provides emergency assistance to journalists in need, including for legal defence: <http://journalistenhelfen.org/english/>
- + The Russia-based Mass Media Defence Centre provides legal assistance to journalists at risk: <https://mmdc.ru>

## And here are some of the most prominent international human rights defender organisations who could help with legal assistance:

- + Frontline Defenders provides rapid and practical financial support including to help pay for legal fees for human rights defenders at risk: <https://www.frontlinedefenders.org/en/programme/protection-grants>
- + Freedom House can provide emergency assistance to human rights defenders, including providing funding for legal defence: <https://freedomhouse.org/program/emergency-assistance-programs>
- + FIDH, the international Federation for the Protection of Human Rights, has an emergency fund for Human Rights Defenders at risk through which it can provide support for legal assistance: <https://www.fidh.org/en/issues/human-rights-defenders/financial-support/grant-application-for-human-rights-defenders-at-risk>
- + The French organization, Agir Ensemble pour les Droits de l'Homme, runs an emergency fund for human rights defenders at risk, including to pay for lawyers: <http://www.aedh.org/en/home/what-we-do/emergency-fund-for-human-rights-defenders> The Urgent Action Fund for Women's Human Rights provides emergency assistance to women human rights defenders at risk, including for legal defence: <https://urgentactionfund.org/apply-for-a-grant/>
- + The Euro-Mediterranean Human Rights Foundation provides emergency grants to human rights defenders at risk, including to pay for legal defence: <http://emhrf.org/urgent-grants/>
- + The East and Horn of Africa Human Rights Defenders Project provides emergency protection to human rights defenders in the region who are at risk, including through finding and paying for lawyers: <https://www.defenddefenders.org/get-help/>
- + The World Organisation Against Torture provides emergency support to human rights defenders at risk, including for legal defence: <http://www.omct.org/human-rights-defenders/financial-support/>
- + The women's rights organisation MADRE provides Crisis Response for Human Rights Defenders, funding emergency legal aid to human rights defenders under threat: <https://www.madre.org/grantmaking>

## Pro bono "clearing houses" include:

- + Cardozo Law has an [Indie Film Clinic](#) in NY where you can apply for free help, supported by Laurie M. Tisch Illumination Fund.
- + i-Probono, an organization works worldwide but has particular strengths in South Asia connecting individuals and civil society organizations with lawyers. They have a track record of providing journalists and documentary filmmakers with legal defence: <https://www.i-probono.com/about-us>
- + The International Senior Lawyers Project, which has a specialist media lawyers program: <http://islp.org/>
- + The Global Network for Public Interest Law, PILNet, which has a global pro bono lawyers clearinghouse as well as country-specific programs in Hungary, Russia and China: <https://www.pilnet.org/public-interest-law/contact-public-interest-law-institute.html>
- + TrustLaw, a global pro bono law program run by the Thomson Reuters Foundation: <http://www.trust.org/trustlaw/>

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## Legal Guides

[The Law Offices of Mark Litwak and Associates: A Basic E&O Checklist](#)  
[Indiewire - A Guide to E&O Law](#)  
[Desktop Documentaries - Guide to Different Types of Insurance](#)  
[Rory Peck Trust - Insurance for Journalists Guide](#)  
[Channel 4 - Media Law Book](#)  
[Media Defence - Manual on EU Defamation Law](#)  
[Fair Use, Free Speech & Intellectual Property - CMSI guide](#)  
[Mapping the Documentary-Journalism Landscape - Jonathan B. Murray Center for Documentary Journalism](#)  
[Reporters Committee for the Freedom of the Press \(US\)](#)

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## Legal Blogs

[Penn Law - Docs & The Law Blog](#)  
[Zoom In - Legal Online Magazine for Film and TV \(Abbas Media Law\)](#)

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## Legal Case Studies

[Filmmaker of CRUDE has footage subpoenaed by Chevron](#)  
[The subject of QUEEN OF VERSAILLES sues for defamation](#)  
[Gun rights group sues Katie Couric and filmmakers for defamation](#)  
[Lily Tomlin claims damages against Nick Broomfield](#)

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## 3.8 Legal Training Resources for Filmmakers

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### Legal Training

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US law schools like Yale and Penn are increasingly teaching courses on visual media and documentary to law students. And MA documentary courses usually include a legal component.

The Media Law Resource Center hold occasional trainings for journalists:

[Media Law Resource Center one day training](#)

**If you know of any short legal courses or workshops for documentary filmmakers, please let us know: [contribute@safeandsecure.film](mailto:contribute@safeandsecure.film)**

# Section 4.

## High Risk Locations

The definition of ‘Hostile Environment’ is often wrongly assumed only to be a country overseas where there are threats arising out of conflict or violence. **This is not the case:** *all* locations have the potential to become hostile environments.

It also needs to be underlined and understood that locations do not only become “hostile” because of war or and armed conflict. Filming in a ‘deep state’ (where surveillance may be prevalent), or filming a volatile and violent domestic protest or civil unrest (where tensions can run high, especially if you are in a vulnerable demographic) can present similar threats and risks as those experienced in traditional conflict scenarios. *All* potentially hostile filming scenarios benefit from careful planning and risk mitigation.

In addition, remote and austere locations (with or without the presence of conflict-related risks) can also present hostile environmental challenges to filmmakers every bit as severe as frontline filmmaking.

Although some locations are obviously hostile environments (for example, an active front line, or ongoing violent civil disturbance), some locations may not be so clear cut (for example, filming in a country not at war, but which borders a conflict zone). In addition, some countries that contain hostile areas of violent conflict may be mainly peaceful elsewhere and even have a developed and ongoing tourist industry.

For productions that may find themselves in a hostile environment, please see this separate **S+S Hostile Filming Protocol**, a detailed security assessment that should be completed in advance of any filming in “high risk” locations.

The purpose of conducting a security assessment and putting together a hostile filming protocol for your production is *not* to tell you what you think you already know. It is to help you determine *whether or not* the location you are visiting *is* a hostile environment and if so, *how* it might affect you and what you can do to lessen and manage those effects.

A key part of risk assessment is to draw on the local knowledge of fixers, local NGOs and others connected with the project to anticipate the risks that you may face in any of your locations whether it be physical risk, risk to data or risk to others.

It’s also crucial to carefully assess the current level of experience of your team (from producers to camera people, fixers, drivers and translators), noting the sensitivity of their approach to working in high risk locations ahead of time. Just because you are working with team members who have worked on many high risk projects, does not necessarily mean that they will work more safely than newer team members, who might be more cautious.

A thorough Hostile Filming Protocol will help you identify hazards and potential threats; anticipate and assess the risks posed by those threats; manage and mitigate those risks; and put in place a viable plan of action. You can read more about how to prepare a Hostile Filming Protocol and download the [Safe + Secure Hostile Filming Protocol](#) template [here](#).

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### **Suggested Team Discussion Points:**

**What hazards have you identified? How might they become threats for you team?  
What risks might your production then be exposed to?**

**What are your mitigation strategies?**

**How would you rate the experience and competence of your team for working in high risk locations?**

**Has anyone on the team already been to the high risk locations on the project? Who else have you spoken to who has? What are their insights?**

**How important is it for a team member to speak the local language?**

**How will decisions be made? By consensus? Will the group respect the reservations of more cautious team members? Will there be a team leader who makes the ultimate decisions?**

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## 4.1 Training

Ahead of embarking on filming in a high risk location, assessing your team's needs for specialist training according to the situations that could be faced is an important part of planning – whether they are old hands or newbies. Hostile environment or high risk training should always incorporate the following elements: threat identification; risk assessment of a wide variety of situations and their requisite contingency planning (be it kidnapping, accidents, terrorism, etcetera) plus other forms of training such as first aid and medical trauma training, planning, preparation and risk, reacting to threats from weapons, safety equipment, working in crowds, hiding your identity or that of your contributors, abduction, hiding cameras and/ or radio mics, rushes and information, landmines, dealing with bribes and other unforeseen circumstances.

Other essential skills are: digital security, rape prevention and resilience, emotional resilience and protection from psychological trauma, defensive driving, cybersecurity, negotiating/ setting verbal boundaries with hostile parties, civil unrest.

It is important to note that retaining these skills requires ritual maintenance, practice and refresher courses will greatly help.

Training options for US or UK based teams are given at the end of this section.

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### **Suggested Team Discussion Points:**

**Do you and your team need to complete hostile environment training or other? If you already undertaken, would a refresher be beneficial?**

**Might it be advantageous for the team to be (re-)trained together?**

## 4.2 Profile Risks

Your profile is not just about how you perceive yourself, but how others perceive you. Be aware of your image and presence online, and consider any past affiliations, jobs, and assignments that may compromise your safety or the safety of your crew and contributors. The same questions apply to those accompanying you, including fixers, translators and drivers. If you are a female filmmaker, please review [these](#) safety tips provided by Judith Matloff for the Columbia Journalism Review.

### Suggested Team Discussion Points:

**Is there an increased risk for any of the team as a result of their gender, race, age, ethnicity, sexuality, religious beliefs, nationality, disability or for some other reason? What about those accompanying you, and how does your profile affect them?**

**Name and describe the profile risks for each team member (including fixers, translators and drivers).**

**How likely is each risk on this scale?**

1 = only slightly more likely than hell freezing over

5 = honestly, a pretty fair chance

10 = pretty much an expected outcome

1   2   3   4   5   6   7   8   9   10

**What measures are you taking to reduce the chance and severity that crew profiles will negatively affect production?**

**Do you understand who might be affected if you are kidnapped and what the contingencies would be if this was to happen? (For example, some governments have policies that prohibit paying ransoms).**

## 4.3 Fixers And Locally Hired Freelancers

Remember, the people you work with may create risks for you, and you may create risks for them. Pick your colleagues carefully and then take responsibility for their safety as part of your team.

For their own security your fixer and/or driver may not need to know all the details of your project, but they must know enough to give informed consent to participate in the project and they must understand the risks they are taking. Discuss with them safety measures and the consequences of getting into trouble.

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**Suggested Team Discussion Points:**

**What are the film project risks related to your locally hired professional support?**

**What are the credentials and experience of your local fixer/driver/translator that make them suitable for this assignment?**

**Know the people you will be working with and relying on. Do you trust them?**

**What are their risks in working with you both during filming and later when the work is released? Have these been acknowledged and discussed with them?**

**Have you identified where you could seek help for them in case of arrest, injury or attack?**

**How far are you willing to go to spring them from jail, replace damaged cars or equipment or pay for medical care?**

**Are you going to provide them safety equipment?**

**Will you ask them to sign waivers and disclaimers?**

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## 4.4 Protecting Rushes And Documents

Traveling with rushes and documents is always a risk. Making sure your rushes, documents, notepads and other materials come safely out the country without being destroyed, copied or confiscated is a key priority. Evaluate how you will do so and what will be a backup plan if anything is confiscated. Here, it's important to go back to Section 1 on Digital Security and reference what is needed overall vs what is needed location to location.

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**Suggested Team Discussion Points:**

**Given the risks your film project may face, what is the best way to keep your rushes secure and backed up whilst on location?**

**Are there risks in getting your material out of this country/location without it being confiscated, copied or incriminating you, your local team or subjects? If so, how can these be mitigated?**

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## 4.5 Personal Protection Equipment (PPE)

Assess what safety clothing and equipment you may need to take with you. It's important to think ahead: what will you need to protect you and your team from both conflict and environmental factors?. Will you be in a war zone vulnerable to attack by live ammunition, blast fragmentation, tear gas, chemical weapons, or even falling pieces of masonry? Will you be in a location prone to flooding or extreme weather? Take a step back and evaluate in total what you may need to protect yourself and your team from the conditions you'll be exposed to.

**NB:** wearing PPE can increase as well as decrease your risk profile. Think carefully before openly wearing flak jackets and helmets or masks and respirators. Will doing so make you a target? What are the norms on location?

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### Suggested Team Discussion Points:

**What safety equipment do you need for the situations that may be faced (including fixers and drivers)?** E.g. flak jacket, tear gas goggles, helmet, facemasks, ear protectors etc

**How will you obtain it?**

**What is the risk of obtaining this equipment at the location? What condition will it be in?**

**What is the risk of travelling with this equipment?** Is it legal/ advisable to import it?

## 4.6 Travel And Accommodation Risks

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### Travel Logistics

Think about how you are getting to your destination and how you will be travelling around inside the country. Do you need a visa to enter the country? If so, what kind of visa do you require both to film and remain within the of law of the location you are working in? In general, having an official journalist visa is preferential, legitimising the use of official channels to get you and your team out of a situation if things go wrong – but in some situations it's simply not possible to obtain an official permit, or, if it is, it is not possible to film credibly with one owing to state surveillance. Special care needs to be taken when filming on a tourist visa – which will require a strong public interest argument for many broadcasters (and not simply that it was more expensive or time consuming to get an official filming visa or permit). Filming on a tourist visa may allow you to move more freely – but it can have very significant security implications, for you and for the people you are working with. Will you be able to import camera equipment? Will you be able to film openly? Will filming on a tourist visa invalidate your insurance? Will being caught filming on a tourist visa lay you open to criminal charges, including espionage?

Plan your itinerary carefully and research the safest means of travel. Road traffic collisions are of course a leading risk everywhere, not only developing countries. Make sure your car is insured, in good working order, fuelled properly and is well equipped with seat belts, a spare tyre, jack, water, medical and distress kit and oil. Do not rely on public transportation: whenever possible always try to be in control



of your means of travel. Check your route carefully and find a driver that is cautious, experienced and has the language skills you need and who is not from an ethnic or political group that could put the team in danger with hostile parties. Consider as well if there are any relevant events not related with your assignment that could affect your travel (for instance a strike, public holiday or celebration – or an environmental event like heavy rains or flooding).

Always have an exit plan and a backup exit plan: on the ground situations may change, and you may not feel comfortable with your initial plan. Never make cost a factor over safety!

If you are travelling overseas, it may be advisable to check in with your country’s nearest embassy or consulate. You need to decide whether you are above or below the radar. Ask around with others working in the area before deciding – there are advantages and disadvantages with each approach. Always know how to contact diplomats in case of emergency and make sure you understand what the official procedure for the evacuation of foreign national is.

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### Suggested Team Discussion Points:

**Consider the risks involved in your travel arrangements – both air and ground transport – and what measures you are taking to reduce their chance and severity.**

**Name and describe the transport risk for everyone on the team (including fixers, translators and drivers) – both air and ground transport.**

**How likely is each risk on this scale?**

1 = only slightly more likely than hell freezing over

5 = honestly, a pretty fair chance

10 = pretty much an expected outcome

1   2   3   4   5   6   7   8   9   10

What measures are you taking to reduce the chance and severity?

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### Accommodation Planning

Securing accommodation on location – for you, your crew and your rushes – is vital, though not always easy to find or to afford. Consider not only where you stay, but the travel time and potential exposure risks of travelling from where you are staying to where you will be working. Well known hotels, small guest houses or a friend’s flat all pose advantages and disadvantages in terms of risk and safety. Be aware of these risks, assess what your best option is and always be careful who you trust.

*Example: In some situations, it can help to make friends with porters who will recognise you and your team as you come and go from a building. However in others, it could be the case that they may be working with local criminal groups or security services. A door wedge can help prevent unexpected intrusions into a hotel room, but may not be enough to stop the most determined intruders.*

Whatever you do, do not make cost a factor over safety. Here is a checklist of considerations that are worth reflecting on regarding the safety and security of the accommodation you are staying in:

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## Suggested Team Discussion Points

**Are there already some security measures in place where you will be staying (e.g. security guards; check points)?**

**NB: your point of maximum vulnerability will always be the first point at which your vehicle is *required* to stop when approaching your accommodation.**

**What are the other guests like? (e.g. diplomats, other journalists, tourists)?**

**How close are you to potential terrorist targets (e.g. embassies, tourist destination, barracks, etc.)**

**How might your accommodation affect your profile?**

**How easy would access and egress be in the event of an emergency?**

**How able is the building to withstand attack, do you need to tape the windows, is there a basement?**

**Does the building, area, have a history of problems/incidents?**

**What are communications at the building? Can you get wifi, food, water and power 24/7?**

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## 4.7 Medical Risks

Medical risks can occur at any time and it is important to consider all potential threats, such as access to safe drinking water and extreme weather conditions as well as illnesses that could be contracted overseas or unexpected accidents and know how to respond to them.

First aid training is often included in Hostile Environment training courses, but if there are specific risks that your film team might face then it's important to ensure that you have adequately prepared for all scenarios. We recommend reading through the Committee To Protect Journalists' excellent [first aid kit checklist](#) to identify items take with you on your shoot and to take specialist advice when planning to work in a hostile environment.

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### Physical Health

If you rely on epi-pens, inhalers, medications, have life-threatening allergies, diabetes, asthma, HIV or pre-existing conditions it is worthwhile having a medical exam to ensure the health of you and your team is of an appropriate level to travel to a hostile environment. Honestly assess whether your health or life would be endangered if you were separated from your medications.

Take into account that some assignments may be physically demanding. Have regular medical and dental check-ups. If any special medication is needed, check whether it will be locally available or if it can be taken with you (some countries have severe restrictions on the import of medical items). If necessary, bring a letter from your doctor and the medication leaflet with details of the active components.

It is also important to have a backup plan to access medication should you or your team if something happens (luggage lost, hotel burns down, room burgled etc). Potentially, it is worth considering leaving details of a prescription with a trusted colleague or staffer in an emergency project file. Additionally, we recommend that you use a [medical checklist](#) to prepare for each shoot.

**NB.** Please also see the [Hostile Filming Protocol](#)

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## Suggested Team Discussion Points

**Has every member of the location team had emergency first aid training? And is it up to date?**

**Does any member of the team have any medical conditions that need to be taken into account and/or pose a risk? Or necessary medications that must be taken?**

**Will you have access to a hospital with international standards? How far and how difficult will it be for you to reach this hospital?**

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## Mental Health

We take your mental health seriously and we want you too as well. The Dart Center for Journalism and Trauma (part of the Columbia School of Journalism) has done a lot of great work in this area. They advocate ethical and thorough reporting of trauma; compassionate, professional treatment of victims and survivors by journalists; and greater awareness by media organizations of the impact of trauma coverage on both news professionals and news consumers.

Independent documentary filmmakers can be at special risk as they are often immersed in their work for long periods of time.

Always consider pressure and stress when planning work activities, particularly: production schedules; rotas, shifts and working patterns; travel to and from locations; hours of work. Build in sufficient rest periods, time off duty and include contingency plans to manage overruns. Monitor schedules and make changes if necessary.

Look out for signs and symptoms in colleagues. This can include unusual mood swings & irritability, poor concentration/ memory, increased emotional reactions, fatigue, headaches, nightmares, flashbacks of past upsetting events, social withdrawal, survivors' guilt, impulsive risk taking, substance abuse, depression, panic attacks and changes in attendance. Emotional exhaustion and distress can impair sound decision-making and productivity.

Post-Traumatic Stress Disorder (PTSD) is rare, but can occur when these early symptoms do not resolve and become entrenched. Symptoms usually appear within 6 months of the traumatic event and can vary. People can feel depressed, anxious, grief stricken, guilty and angry. They may have symptoms of intrusive flashbacks to the event and nightmares, avoidance and distraction from the event or become defensive in their surroundings.

Take a step back and assess where you and your team are with this project with regards safeguarding your mental health:

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## Suggested Team Discussion Points:

**Would it help to bring in a counsellor, either before or after filming to help consider / address any psychological implications the project may generate? This especially applies to undercover filming undertaken over a long duration**

**Does your insurance cover psychological counselling? Do you know where to find a qualified therapist whilst in the field? Will having someone at the end of a phone for you or your team to speak with be helpful?**

**Does anyone on the team have a past history of PTSD and is there a risk that extreme emotional distress could be triggered by this assignment?**

**Often trauma can occur much later – do you and your team have the ability to access counselling once the project has officially wrapped?**

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## 4.8 Production Insurance

Much like how you obtain travel insurance for leisure trips, it's vital you obtain production insurance for your project before you start filming. While E&O covers what's needed to prepare the film for release, production insurance covers everything that happens during the making of the film – should anything go wrong during filming or post-production. There are various types of policies out there so be sure to read your policy carefully and be aware of the limits of your coverage and whether they speak to your project's needs. For example, medical evacuation insurance is important to consider if there is a lack of adequate facilities where you are filming. Kidnap and ransom insurance, whilst expensive, can be worthwhile when filming in high risk places.

There are many options for production insurance, but it can be expensive. Independent filmmakers often forgo insurance because it will eat too much of a development budget but we believe that funders need to step up and contribute the extra needed for this vital cost.

There are also parts of the world where it is harder (or impossible) to get insurance. In these cases it is worth digging a little harder into specialist insurance options such as Insurance for Journalists, the Insurance partner of the International Federation of Journalists (IFJ) which covers both extreme risk areas such as Syria and Afghanistan, which some conventional insurers may not extend to. In the situation where a team decide to travel despite not being able to obtain insurance, the potential consequences and mitigation plans should be discussed with all team members travelling and their dependents made aware.

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## 4.9 Communication Planning

It is crucial that a team in a high risk location has a nominated **key contact** (who has been involved in completing these protocols) back at base who is responsible for confidential and crucial information about the production and the team.

The key contact must know where the team are and how/when they can be contacted. They should also

know how to get in touch with family members and funders of the film project – and understand the circumstances in which to do so.

As communications are often difficult in such locations and during filming, a clear **communications plan** will establish when the key contact should expect to get check-ins from the team and what they should do and who to contact if a check-in fails to occur. To learn more about creating a communications plan, please see the template and breakdown created by our friends at the [Rory Peck Trust](#).

Similarly, ahead of leaving for a hostile location each team member should complete a Proof of Life document (always held separately to the main Hostile Filming Protocol) that contains confidential information that can be referred to in order to confirm whether a person is still alive in case of kidnapping, abduction or detention. Even if there is a low risk of kidnapping the Rory Peck Trust advise creating a Proof of Life Document. Find out more [here](#).

Separately, you should set up a **personal contact** who knows your passwords and where your last will and testament and financial documents are located. The contact should also have the serial numbers of equipment should it be stolen or seized. Additionally, there should be shared access to secure password-protected sites, such as Basecamp.

**NB:** Please also see the [Hostile Filming Protocol](#)

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## Modes Of Communication

Consider here the availability and risk associated with your means of communication – internet, international mobile phone, local SIM card, landline, satellite. Think carefully how you will be communicating during your assignment, how you will be communicating with your key security contact and what your back-up mode of communication might be in an emergency.

And as outlined in the Digital Security section, please ensure that, if identified as being risky, all communications are made securely using encrypted SMS e.g. Signal or WhatsApp. Ideally a dedicated “burner” phone should be used, stripped of anything not necessary for the job in order to avoid any free apps leaking information to third parties. The Hostile Filming Protocol should be removed from ALL devices prior to travel, encrypted or otherwise.

Many countries demand that filming equipment crossing their borders is documented in a carnet (an international customs and temporary export-import document) and will require communications equipment such as satellite phones to be mentioned on the document. This of course can draw attention to the purpose of the trip and potentially heighten the risk of being asked for bribes.

The advice of other journalists and communications experts is vital in assessing the risk associated with communications. Please also see the resources in the Digital Security section to help assess potential risks ahead of time.

**NB:** Encryption technology evolves fast; as does any given state’s ability to bypass or compromise it. Make sure you and your advisors are 100% up-to-date in your planning and resources.

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## Suggested Team Discussion Points:

**How will you communicate with your safety contacts, sources, colleagues and others?**

(eg: email, mobile, land line phone, post, voice over internet, online, file-sharing, satellite phone etc)

**Could any of these methods be compromised or compromise your safety and/or that of others?**

What is your contingency plan? Is a satellite phone needed or temporary phone and new SIM cards?

**Is encryption illegal where you are filming and / or does it send up a red flag with authorities?**

e.g. it's illegal in Pakistan and is cause for detention in Turkey

**Do you have the necessary carnets to take equipment into the country?**

e.g. Satellite phones can be seized if you don't have a it on the carnet in Rwanda and other countries have similar regulations

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## Communications Plan

When determining your key contact who will remain at base, be sure to consider how they will communicate safely and securely with the film team on location (including local drivers and fixers). Whilst it makes sense to have a point person on location who can provide regular check-ins, it's important to ensure any team member can communicate with the key contact if needed.

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## Suggested Team Discussion Points:

**How will the team members be able to communicate with your key contact while you are on location?**

**Who is the point person on location and how often will there be check-ins?**

This will be entirely contingent on the specific circumstances of the location being filmed in. We recommend every 24 hours as an absolute minimum - though more often or not twice a day or more will be necessary. Likewise "grace" periods after a failed check-in will vary according to circumstance but will always be agreed in advance. There is no standard period.

**Is it agreed what actions they should take if you fail to check in – or check in with an urgent safety need?**

E.g. Call the embassy, call a trusted source if you miss your call in by several hours or an agreed variance.

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## Emergency Communications Plan

It's important that your key contact knows who to reach in an emergency. Given the risks that you have outlined above, make a plan for those eventualities. You may also want to think about having a coded message to relay that there is an emergency.

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## Emergency Extraction Plan

It's also important that your key contact knows what to do if you and your team contact them in an emergency, needing external help to get out of a filming situation, be that for medical or other reasons.

Your key contact must have full details of your insurance cover (and any relevant coverage regarding medical evacuation, and kidnap and ransom insurance), your lawyer and who to speak to on the ground (for example, a local lawyer and/or relevant diplomatic contacts).

To work out what your extraction plan would be, work through the following scenarios and gather additional information from film crews who have recently filmed in similar scenarios:

- + Medical emergency
- + Arrest and detention (by the state or non-state actors like rebel groups)
- + Kidnap and ransom

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## Suggested Team Discussion Points:

**In what circumstances should (or shouldn't) the team's families be contacted?  
Have contact details already been obtained?**

**In what circumstances should law enforcement and /or the embassy be contacted?  
Have the correct contacts been obtained?**

**In what circumstances should a medical evacuation be initiated?  
Who should be contacted?**

**In what circumstances should a local lawyer be contacted? Who should be contacted?**

**In what circumstances should the film's funders be contacted for help?  
Are the contacts and details to hand?**

**What is planned for the local team if there is an emergency?  
Who to contact if the fixer is arrested or the driver is injured?**

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## Overview Responsibilities Of Key Contact

- + Maintain constant secure communication with filmmaker and producer
- + Monitoring local activity on location day-to-day (news alerts, weather, etc)
- + Helping film team assess new risks (a calm voice outside the situation)
- + Ensuring the Emergency File for Filmmaker and Team is complete.
- + Calling the cavalry when they are needed

The key contact will always hold a copy of the Hostile Filming Protocol – which among other information also contains the:

- + Emergency communications plan
- + Emergency extraction plan
- + Copies of the team's Passports and Visas
- + Blood Type and Medical Information (including allergies, medical conditions, etc)
- + Insurance Policy details (health and traveler's)
- + Flight details/ Itinerary/schedule
- + Emergency communications plan (see below)
- + Emergency contact information of a close family member or partner in case of kidnapping, detention or murder
- + Production lawyer and local lawyers contact information

And, separately:

- + Proof of life Questions



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## 4.10 High Risk Locations Resources

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### Hostile Environments Resources

[Rory Peck Trust — Risk Assessment Forms](#)

[Dart Center for Journalism and Trauma](#)

[BBC — High Risk Guide](#)

[Rory Peck Trust — Types of Safety Training](#)

[Committee to Protect Journalists — Security Guide](#)

[Committee to Protect Journalists — Emergency Response Resource Center](#)

[Witness- Guides for covering protests](#)

[ACLU- Apps for recording police conduct](#)

[News University — Online Training course \(in partnership with the Dart Center\): Journalism and Trauma](#)

[ACOS Alliance's Freelance Journalist Safety Checklist](#)

[PEN America — Artists at Risk Connection \(ARC\)](#)

[International Media Support \(IMS\)- Safety in Journalism](#)

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### Travel Risk Resources

[BBC Safety App for International Travel](#)

[UK Foreign Office Advice for Travellers](#)

[The US Department of Homeland Security — Travel Alerts and Warnings](#)

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### Physical Health Resources

[World Health Organization — International Travel and Health Overview](#)

[World Health Organization — Medical Kit List](#)

[Centers for Disease Control and Prevention — Interactive Destinations Guide](#)

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### Medical Resources

[Dart Center for Journalism and Trauma — Resources for Self Care & Peer Support](#)

[BBC — Journalism Safety Guideline to Trauma and PTSD:](#)

[Committee to Protect Journalists — Stress Reaction Guide](#)

[International Center for Journalists Journalism and Trauma Guide](#)

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### Insurance Resources:

[Rory Peck Trust — Insurance Resource](#)

[Committee to Protect Journalists — Recommended List of Insurance Providers](#)

[Desktop Documentaries — Video and Film Insurance](#)

[Rory Peck Trust — Types of Coverage](#)

[International News Safety Institute — List of Providers for Insurance for Freelancers](#)

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## 4.11 High Risk Locations Training Resources for Filmmakers

*We are only putting forward training that we have heard good things about from filmmakers. We want to hear from you if you have taken any high risk location type training that you can recommend to your fellow filmmakers. Email us anytime at: [contribute@safeandsecure.film](mailto:contribute@safeandsecure.film)*

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### Hostile Environment Training

Judith Matloff who is a key advisor to Safe and Secure runs this excellent course at Columbia School of Journalism. It also covers First Aid, Digital Security and Sexual Assault Prevention.

[Reporting Safely in Crisis Zones — Columbia School of Journalism](#) — Four days. Rape prevention/. boundary setting, risk analysis, contingency planning, battlefield first aid (share trainers with RISC), digital security. Emphasis is on prevention rather than military-style tactics. Rory Peck provides bursaries for qualified freelancers

And there are others out there — we'd welcome feedback from filmmakers who have taken them..

[The Pulitzer Center Freelancer Hostile Environment Training — with ACOS \(US\)](#)

[Recommendations provided by Rory Peck Trust \(UK\)](#)

[Rory Peck Trust international partner organisations](#)

[Recommendations provided by Committee to Protect Journalists](#)

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### Sign Up to Hear About Safety Training Opportunities

[ACOS \(A Culture of Safety\) Alliance](#) is an unprecedented coalition of news organizations, freelance journalist associations and press freedom organizations working together to champion safe and responsible journalistic practices for freelance and local journalists worldwide. ACOS works to help freelance journalists access training courses.

[This Standard Application Form](#) aims at building a database of freelance journalists in need of safety training. This form should help us to reach out to individual freelancers when relevant opportunities for safety training arise, and to coordinate a response to current needs in partnership with news organizations and NGOs.

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### First Aid Training

[National Safety Council](#)

[RISC Training](#) is a free, four-day first aid course that recently expanded to include an additional two-day security component. HQ in NYC, trainings rotate around the world.

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### Emotional Trauma Resilience

[Dart Center fellowships, retreats and training](#) are in Europe, Asia, NYC and other US cities.

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## **Bursaries/ Emergency Funds**

### [Canadian Journalism Forum on Violence and Trauma](#)

Offers bursaries to Canadian documentary filmmakers and journalists for HE and trauma training.

### [Rory Peck Training Fund](#)

Bursaries for freelancers who work internationally. You will need to have worked as a freelancer in newsgathering and/or current affairs for a minimum of 18 months. Priority is given to freelancers whose work habitually takes them into hostile environments, and to those with a forthcoming confirmed assignment.

### [Rory Peck Assistance Grants](#)

Grants to freelance journalists and their families who find themselves in a critical situation. This may include freelancers who have been threatened, imprisoned, injured, forced into hiding or exile, or killed.

### [International Women's Media Foundation – Emergency Fund](#)

We established the IWMF Emergency Fund in 2013 to provide women journalists with a lifeline of support in times of crisis.

# Section 5.

# Subjects And Security

## What Are Your Responsibilities?

A filmmaker may have many different kinds of relationships with the subjects of their films. They may be the very people you are investigating and whose actions you are exposing; they may be people to whom you have grown close over many years; or they may play an incidental role in the your film, providing a single interview or being caught on camera during a scene.

At a minimum, all filmmakers have legal obligations to the subjects of their films to ensure that they are both appropriately and fairly represented in the documentary. But in the case of subjects who are made vulnerable as a result of filming, most filmmakers want to consider their ethical responsibilities too (or a 'duty of care'). This may include protection to their identity and location, or offering practical help and reassurance through the film's release and beyond.

Merely being filmed may expose them to risk, or risk may emerge when the film is shown. The consequences could be serious — physical violence or imprisonment at worst, but can also include loss of family relationships, loss of employment, legal harassment and discrimination etc.

In every case, it is the responsibility of the filmmaker to, at minimum, think through and discuss within the team the consequences for them of taking part in your film. Particularly if you have a subject or subjects who seek to remain anonymous. At most, you should discuss the risks with the subject in detail and make contingency plans with them for these eventualities, in particular should their anonymity be breached.

## 5.1 What Is Consent?

Extra responsibility applies where the subject is especially vulnerable. Their age, mental disability or mental condition may undermine their ability to give true consent to filming. In this circumstance, it's especially important that a clear description of the film's aims and content be provided (and potentially repeated at subsequent meetings). Consider including friends or family of the subject who can act on their behalf and ensure that any consent they give to participate in filming is considered 'Informed Consent'. In addition, it may be helpful to keep contemporaneous note of conversations that take place should the filming ever be questioned and potentially (in circumstances that demand it), to show a rough cut of the film to the subject to ensure they have an understanding of their representation.

It is usually a good idea to have all contributors to your film sign interview release forms to signify their legal consent to participate. These forms will be required by E&O insurers to verify that the film is legally watertight. As a back-up you can use on-camera consents where you film your subject whilst explaining what you are doing, but many insurers will require signed forms. A consent form can also be very useful in a situation where an interviewee later claims they did not consent or were misled about the project.

### Suggested Team Discussion Points:

**Do you understand what 'informed consent' is? To what extent can you or are you prepared to help the subjects of your film beyond filming?**

**How would you describe your relationship with the subject(s) now?  
Are any of them hostile to you or the film?**

If so, see the section 3 of this guide about legal security

**Might your film subjects be adversely affected by your film? If so, why?**

**Have you discussed these risks with any of them? Y/N**

If so, what was the outcome?

**Might the subjects of your films require additional help (such as relocation or legal aid) and financing because of the film, which you think your team has at least partial responsibility for and that are currently outside your resources?**

If so, how might this be managed?

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## 5.2 Subject Security Resources

[Doc Society's Impact Field Guide – Consider Your Subjects](#)

[Committee to Protect Journalists – Organized Crime and Corruption](#)

[Center for Media and Social Impact – Honest Truths report on Documentary Ethics](#)

[BBC – Editorial Guidelines: Working With Vulnerable Contributors](#)

[Witness – Working as a Filmmaker with Survivors of Sexual Violence](#)

[UK Foreign & Commonwealth Office – International Protocol on Sexual Violence Documentation](#)

[Radio Lab – Getting the Story: Working with Victims of Conflict, Human Rights Abuses and Trauma](#)

[Dart Center – Conducting Interviews with Survivors of Sexual Violence](#)

# Section 6. Public Relations Risks

## 6.1 PR Planning & PR Crisis Management

Finally, it's never too early to start thinking about PR risks. For many projects, the PR risks only materialise when the film premieres at a festival or other screenings. For some films, the PR battles begin much earlier--during or even before production. This might be the case particularly if you are dealing with a controversial or newsworthy story, have high profile subjects or if the filmmaker themselves is high profile.

Throughout the production, it is worth continually revising some concise language about the content about narrative of the film and the issues it raises that could be used for publication. This will be useful to inform a future synopsis or summary of the film ahead of release.

However, in the unusual circumstance of the film being caught in a PR crisis, external crisis management may be required. If it's on release of the film, you may already have PR support to help navigate. But if it's earlier in the filmmaking process, it's important to discuss with Executive Producer(s) or funder(s) as soon as something may be brewing so that a mitigation plan can be quickly pulled together and any issues headed off. It pays to be prepared.

*One example of an unanticipated PR crisis is '9.7,' a film about Colombian farmers who had 70 tonnes of seeds — essentially, their livelihoods — seized and destroyed by the Colombian government. It went from being a film about a grassroots movement to a media phenomenon that involved the filmmakers in a PR battle. A short version of the film was released on YouTube and after having thousands of shares and much press attention, the director decided to go public in order to avoid having the film receive potential rebuttals and stigmatization. Her image and words went viral and, as a result, a leading figure in Colombian agriculture publicly denied the facts of the film and threatened legal action.*

### Suggested Team Discussion Points:

**Are the filmmakers comfortable being the public face of this project?**

**Have you discussed the attention that may come to the subjects of the film with them? Are they comfortable participating in press?**

**Are your subjects a legal or reputational risk to the project if they do speak in public/ to press?**

**Have you worked with a PR firm on a previous film?**

**Do you have one in mind for this film? Do they have the appropriate experience for your film's needs? Are they already on board?**

**Have you worked with a crisis communications firm on a previous project? Might you need one on this film?**

**Given the nature of your film, could there be a PR battle with antagonists? Are those antagonists well-resourced in the PR department?**



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## 6.2 PR Safety Resources

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### **Guides**

[Media Trust — PR Guide](#)

[International Documentary Association — What a Successful PR Strategy Can Do For Your Film](#)

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### **Checklists**

[International Documentary Association — A Pre-Production Publicity Checklist](#)

# Section 7. What Next?

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## 7.1 Checklists

We hope this guide has not left you feeling daunted but rather feeling informed and empowered. There are two things we recommend you do now.

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### Fill Out The Safe And Secure Checklist

Download and fill out this form with your team (as always being mindful about how you share and store sensitive documents). That will help you zero in on the key risks that you need to prepare for in your current production.

Then, if necessary, go on to complete a full [Hostile Filming Protocol](#).

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## 7.2 Identify Your Training Needs

One key take away from the Protocol is the identification of useful training that you and your team members should seek.

*So, below (and at the end of each relevant chapter in this handbook) is a list of training and training providers that we have heard good things about. We are actively seeking further recommendations of other good trainings, adapted specifically for independent documentary filmmakers, available at reasonable costs. Please let us know of any you would recommend: [contribute@safeandsecure.film](mailto:contribute@safeandsecure.film)*

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### Digital Security Training

Freedom of the Press Foundation organise trainings with the IDA and others and also do bespoke training with teams. [Freedom of the Press Foundation – Training – US](#)

In Europe we recommend: [Tactical Tech – Germany](#)

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### Journalism Training For Filmmakers

[The Investigative Reporting Program at UC Berkeley’s Graduate School of Journalism – 3 Day Journalism Workshops for filmmakers \(US\)](#)

[Columbia School of Journalism offers a MS Documentary Program](#)

[Columbia School of Journalism – Summer Investigative Reporting Course](#)

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## Legal Training

Law schools like Yale and Penn are increasingly teaching courses on visual media and documentary to law students. And MA documentary courses usually include a legal component.

[Cardozo Law School – Indie Film Clinic](#)  
[Media Law Resource Center one day training](#)

If you know of any short legal courses or workshops for documentary filmmakers, please let us know.

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### [International Women's Media Foundation – Emergency Fund](#)

The IWMF Emergency Fund provides women journalists with a lifeline of support in times of crisis.

# Acknowledgements & Credits

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## The Doc Funders Network

This safety initiative has been brought to you by a wide group of independent documentary funders, who came together to address field-wide security issues and try to better serve the filmmakers we believe in.

That group is **A&E, Bertha Foundation, Catapult Fund, Chicken & Egg, Chicago Media Project, Compton Foundation, Doc Society, Field of Vision, Filmmaker Fund, First Look, Fledgling Fund, Ford Foundation, Hartley Film Fund, HBO, IDA, Impact Partners, ITVS, Media Impact Funders, Perspective Fund, POV, Tribeca Film Institute, Sundance Institute, Wyncote Foundation.**

The initiative has been supported by the **Ford Foundation** and the **Perspective Fund**.

The Safe and Secure team at Doc Society are **Jess Search, Jessica Edwards, Marjon Javadi, Oliver Rivers, Sandra Whipham** and **Sara Rafsky**.

But we relied on the expertise of others...

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## Bring on the Experts

We were inspired by the seminal 2015 report, **“Dangerous Documentaries — Reducing Risk When Telling Truth To Power”** by the Center for Media & Social Impact at the American University in Washington D.C.. The report found that the risks of telling stories that powerful people or institutions don’t want made public are not as well-established in the documentary film community as they are in the investigative journalism community. **Professor Pat Aufderheide** was the principal investigator of that report and was the first consultant to join this project.

The second expert to join our team was security and journalism expert **Professor Judith Matloff** from the Columbia School of Journalism. Judith Matloff has pioneered safety training for media workers around the world. She has taught workshops in Europe, Africa, Latin America and the United States.

Journalist, documentary filmmaker and security expert **James Brabazon** provided essential input to the second version of the Safe + Secure Handbook and **Checklist** and compiled the **Hostile Filming Protocol**.

Big thanks for the input and field-experience of inspiring filmmakers: Marilyn Ness, Kirsten Johnson, Callum Macrae, Havana Marking, Liz Mermin, Orlando Von Eisendel, Matt Heineman, Brenda Coughlin, Lyric Cabral, Hollie Fifer, Sabaah Folayan, Nanfu Wang, Victoria Solano and Marco Cartolano.

Thanks to the brilliant lawyers who came on board as advisors, particularly **Thomas Burke** from Davis Wright Tremaine, **Kayvan Saghedi** at Morrison Foerster who stepped up to offer his support to independent filmmakers, Peter Noorlander, who was the founding legal director of the Media Legal Defence Initiative, and **Prash Naik** who brings 23 years of experience as media lawyer at Channel 4 in the UK to the project.

And respect to the many brilliant organisations who have taken a lead in protecting journalists and finding solutions to new threats. We put this protocol together by combining the best work out there, predominantly from **The Rory Peck Trust, Freedom of the Press Foundation, Videre, Dart Center for Journalism and Trauma, International Documentary Association, Center for Media and Social Impact, Committee to Protect Journalists, Columbia Journalism Review, Tactical Technology Collective, Channel 4** and the **BBC**. Links to their forms and checklists are also throughout the accompanying handbook. Thanks to all those organisations for their fine work.

Thanks also to **Peter Dale**, our long-time muse and mentor, who delivered his brilliant hypothetical documentary disaster scenario SHIT CREEK at the IDA Getting Real conference and again at Sheffield Doc Fest to launch this initiative.

And last but not least, our thinking has, in part, been inspired by acclaimed surgeon and best-selling author, **Atul Gawande's** book, *The Checklist Manifesto*. The book is inspiring and persuasive account of the striking improvements a humble checklist brings to getting things right. The book makes a distinction between errors of ignorance (mistakes we make because we don't know enough), and errors of ineptitude (mistakes we made because we don't make proper use of what we know).

There will always be much that is unknown about a documentary production. Independent filmmakers have our deepest admiration because they are able to shoulder huge uncertainties and take creative, financial and other kinds of personal risks to bring back the stories they believe should be told. On that journey many unavoidable errors of ignorance will be made. Such is life. But let us work together, share our learnings and help reduce each other's errors of ineptitude.