

Professional indemnity for multimedia (broadcasters and publishers)

Policy wording

The General terms and conditions and the following terms and conditions all apply to this section.

Special definitions for this section

Additional insured	Any third party, including but not limited to any printer, distributor, purchaser, exhibitor or licensee, that distributes, prints, disseminates, displays or broadcasts your media content, including but not limited to any films, music, television programmes, books, magazines, or newspapers falling within your business activities .
Advertising	Advertising, publicity, or promotion in or of your products or services performed within the geographical limits .
Applicable courts	The courts of competent jurisdiction in those countries stated as the 'applicable courts' in the schedule.
Business activities	The activities shown in the schedule, which you perform in the course of your business within the geographical limits .
Claim	Any written assertion of liability or any written demand for financial compensation or injunctive relief first made against you within the applicable courts .
Client	Any person or entity with whom you have contracted to provide services or deliverables that expressly fall within your business activities .
Defence costs	All reasonable and necessary lawyer's and experts fees and legal costs incurred with our prior written agreement in investigating, settling, defending, and/or appealing or defending an appeal against a covered claim but not including any overhead costs, general business expenses, salaries, or wages incurred by you or any other person or entity entitled to coverage under this section.
Employee	An individual performing employment duties solely on your behalf in the ordinary course of your business activities and who is subject to your sole control and direction and to whom you supply the instruments and place of work necessary to perform such business activities . You and your independent contractors will not be treated as employees under this section.
Existing subsidiary	Each and every entity identified in your proposal for this policy, but only if <ol style="list-style-type: none">the insured owns more than 50% of the book value of the assets or of the outstanding voting rights as of the first day of the period of insurance, andIts annual revenue and business activities are included in your proposal for this policy.
Insured	The entity stated as the "Insured" in the Schedule.
Limit of indemnity	The limit of indemnity shown in the Schedule.
Loss	Any financial harm caused to your business .
Potential claim	Any matter reasonably likely to lead to a claim covered under this section.
Retroactive date	The date stated as the "retroactive date" on the Schedule.
You / your	<ol style="list-style-type: none">The insured or any existing subsidiary;directors, officers, board members and senior managers of the insured and existing subsidiaries.

What is covered

Claims against you

If the performance of **business activities** or **advertising** on or after the **retroactive date** by **you** or anyone on **your** behalf, including **your** subcontractors or outsourcers or the dishonest acts of **employees**, results in a **claim** being first made against **you** during the **period of insurance** for any actual or alleged:

- a. intellectual property infringement (but not any patent infringement or trade secret misappropriation), including but not limited to copyright infringement, trademark infringement, trademark dilution, trade dress infringement, publicity rights violations, cyber squatting violations, moral rights violations, any act of passing-off, or any misappropriation of formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material, or artwork;
- b. breach of a license **you** have acquired to use a third party's trademark and/or copyrighted material, but only to the extent **your** use inadvertently exceeds express limitations in the license regarding the territory, duration, or media in which the material may be used and only if such breach is asserted in conjunction with and based on the same factual allegations as a **claim** for intellectual property infringement in a. above;
- c. negligence or breach of any duty to use reasonable care and skill, including but not limited to negligent misrepresentation or negligent loss of or damage to any third party document, data or information for which **you** are responsible;
- d. negligent transmission of a computer virus, worm, logic bomb or Trojan horse, or negligence in connection with a denial of service attack;
- e. breach of any duty of confidentiality, invasion of privacy, or violation of any other legal protections for personal information;
- f. defamation, including but not limited to libel, slander, trade libel, product disparagement, or malicious falsehood; or
- g. any other civil liability unless excluded by **What is not covered** below;

we will pay the amount agreed by **you** and **us** through good faith negotiation, mediation or some other form of alternative dispute resolution to settle a **claim** or the amount to satisfy a judgment or arbitration award against **you** including any judgment or award ordering the payment of claimant's lawyers fees and costs. Such amounts to be paid by **us** shall not include or be calculated based on any of **your** overhead expenses, **your** liability for taxes, lost costs or profits, salaries or wages, or any future cost of doing business, including but not limited to the cost of any future license or royalty, or costs of improving **your** security, or performing audits.

We will also pay covered **defence costs** on **your** behalf but **we** will not pay **defence costs** for any part of a **claim** not covered by this **policy**.

Payments toward claims against an additional insured

Subject to **your** written request following **your** review of a **claim** against an **additional insured**, **we** will pay sums as described in **What is covered** incurred by **your additional insured** due to a **claim** being made against such **additional insured** that directly arises from media content supplied and created by **you** in the performance of **your business activities**, but only if **you** contracted to indemnify the **additional insured** for such a **claim** prior to it first being made against such **additional insured**. The only payments **we** will make toward a **claim** against **your additional insured** are payments to which **you** would be entitled under this section if the same **claim** against **your additional insured** had been made against **you**. However, **we** will not deny cover for payments toward a **claim** against **your additional insured** due to any failure by **you** to comply with **Your obligations** – If a problem arises where the failure is solely attributable to **your additional insured's** failure to notify **you** of the **claim** against such **additional insured** as soon as practicable.

We will not pay for any portion of any **claim** against **your additional insured** that:

- a. arises out of any matter that prior to the first day of the **period of insurance** (or if this **policy** is a renewal then prior to the first date of the first policy issued to **you** by **us** and from which the current **policy** forms an unbroken chain of successive policies issued to **you** by **us**), **you** knew or reasonably ought to have known would be likely to lead to a **claim** against **you** or **your additional insured**; or
- b. relates in whole or in part from an **additional insured's** refusal to co-operate with the defence of a **claim**; or

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- c. arises out of any material created by an **additional insured** or any act error or omission committed by the **additional insured**.

Your own losses

Losses from dishonesty

If during the **period of insurance**, and in the performance of **your business activities** within the **geographical limits**, **you** suffer a loss from the dishonesty of **your employees** or self-employed freelancers directly contracted to **you** and under **your** supervision, where there was a clear intention to cause **you** loss or damage and to obtain a personal financial gain over and above any salary, bonus or commission, **we** will indemnify **you** against **your** direct financial loss.

Loss of documents

If during the **period of insurance** any document, information or data of **yours** which is necessary for the performance of **your business activities** is lost, damaged or destroyed while in **your** possession, **we** will cover **you** against the cost of restoring or replacing it. This does not include any data held electronically.

Subpoena defence costs

We will pay any reasonable legal expenses incurred by **you** to quash or challenge the scope of any subpoena to a court of England or Wales ordering **you** to disclose or produce any information or material relating to any confidential source used by **you** provided such information and material was disseminated by **you** during the performance of **your business activities**.

Withdrawal costs

If **you** have to withdraw and destroy **your** publication as a result of a civil court order, **we** will pay **your** reasonable expenses incurred with **our** prior written consent in withdrawing and destroying that publication.

What is not covered

We will not make any payment for any **claim** (including **defence costs**) or **loss** directly or indirectly:

Matters specific to your business

1. for, alleging or arising from any contractual liability;
2. for, alleging, or arising from any governmental enforcement of any regulation or governmental provision; however, this exclusion shall not apply to any otherwise covered **claim** from a federal, national, state, local or foreign government, agency or entity that is a **client of yours** and has asserted the **claim** in its capacity as a **client** and not in its official governmental capacity;
3. for, alleging, or arising from any infringement, use, or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret;
4. for, alleging or arising from a statement or other content that **you** were directly advised by **your** legal counsel to not publish or to not publish without revision;
5. for, alleging, or arising from any death or bodily injury or disease suffered or alleged to be suffered by anyone; however, this exclusion does not apply to any portion of any **claim** seeking damages for mental anguish or distress where such damages solely stem from a covered cause of action for defamation, breach of privacy, or negligent publication;
6. for, alleging, or arising from the loss, damage or destruction or loss of use of any tangible property; however, this exclusion does not apply to any **claim**:
 - a. for alleging or arising from damage to electronic data,
 - b. for your own **losses** directly arising from any document of **yours** which is necessary for the performance of **your business activities** and lost, damaged or destroyed while in **your** possession
7. for, alleging, or arising from any payment owed to a licensor under a license; however, this exclusion will not apply to any covered portion(s) of any copyright and/ or trademark claim that results in a damage award that is measured by the amount a claimant would have received had **you** paid for a license to use the claimant's infringed work and/or mark;
8. for, alleging, or arising from any false or misleading advertisement about **your** products or services that is published or broadcast to the general public or a specific marketing segment for the purpose of promoting any aspect of **your business**; however, this exclusion will not apply to any covered portion of any **claim** based on **your** alleged unauthorised use of another's trademark;
9. for, alleging, or arising from any self-replicating, malicious code that was not specifically targeted to **your** system; however, this exclusion will not apply to any covered portion of

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any **claim** for negligent transmission of a computer virus, worm, logic bomb, or Trojan horse;

10. for, alleging, or arising from any failure or interruption of service provided by an internet service provider, telecommunications provider or other utility provider except to the extent **you** provide those services as part of **your business activities**;
11. for, alleging, or arising from any governmental enforcement of any regulation or governmental provision; however, this exclusion shall not apply to any otherwise covered **claim** from a federal, national, state, local or foreign government, agency or entity that is a **client of yours** and has asserted the **claim** in its capacity as a **client** and not in its official governmental capacity;
12. for, alleging, or arising from any:
 - a. liability or breach of any duty or obligation owed by **you** regarding the sale or purchase of any stocks, shares, or other securities, or the misuse of any information relating to them, including breach or alleged breach of any related legislation or regulation;
 - b. liability or breach of any duty or obligation owed by **you** regarding any statement or representation (express or implied) contained in **your** accounts, reports or financial statements, or concerning **your** financial viability;
 - c. violation of any taxation, competition, restraint of trade or anti-trust law or regulation(s);
 - d. breach of any fiduciary duty owed by **you**;
13. for, alleging, or arising from any:
 - a. liability or breach of any duty or obligation owed by **you** in connection with the operation or administration of any health, pension or employee benefit scheme, plan, trust or fund;
 - b. liability or breach of any duty or obligation owed by **you** as an employer, including but not limited to any allegation of discrimination, harassment, or wrongful termination;
 - c. liability or breach of any duty or obligation owed to **you** and/or **your** shareholders by any of **your** directors, officers, trustees, or board members, including but not limited to any allegation of insider trading or breach of any duty of corporate loyalty;
 - d. personal liability incurred by any director, officer, trustee, or board member of **yours** when acting in that capacity or managing **your business**;
14. for, alleging, or arising from **your** insolvency or the insolvency of **your** suppliers;
15. for, alleging or arising from **your** provision of any sweepstakes, gambling activities, or lotteries;

Matters insurable elsewhere

16. for, alleging or arising from the ownership, possession or use of any land or building, any animal, any aircraft, watercraft or any motor vehicle;
17. for, alleging, or arising from any product liability, safety or health-related liability, or any other liability arising out of the sale, manufacture, supply, use or consumption of any product;
18. for, alleging, or arising from property owner's liability;
19. for the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper;

Reckless or dishonest acts

20. for, alleging, or arising from any fraudulent conduct, dishonest conduct, criminal conduct, malicious conduct, conduct committed in reckless disregard of another's rights (but not in respect of a defamation **claim**), conduct intended to cause harm to another person or business, or any knowing or wilful violation of a law, whether committed by **you** or committed by another whose conduct or violation of the law **you** have ratified or actively condoned or any act **you** knew, at the time **you** performed it, would give rise to a **claim** or **loss**.

However, this exclusion will not apply unless:

- a. such conduct or wilful violation of the law has been established by a final adjudication in any judicial, administrative, or alternative dispute resolution proceeding; or

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	<p>b. such conduct or wilful violation of the law has been established by your admission in a proceeding or otherwise; or</p> <p>c. you or we discover evidence of such conduct or willful violation of the law;</p> <p>at which time you shall reimburse us for all payments made by us in connection with such conduct or wilful violation of the law and all of our duties in respect of that entire claim shall cease;</p>
Pre-existing problems	21. arising out of any matter that prior to the first date of the period of insurance you knew or reasonably ought to have known would be likely to lead to a claim or loss ;
War, terrorism and nuclear	22. for, alleging or arising from war, terrorism or nuclear risks ;
Asbestos	23. for, alleging or arising from asbestos risks ;
Pollution	24. for, alleging, or arising from any pollution, contamination or toxic exposure, including but not limited to any pollution, contamination or toxic exposure caused by or arising out of the following: noise, electromagnetic fields, radio waves, nuclear radiation, or radioactive contamination;
Claims brought by a related party	<p>25. brought by any person or entity falling within the definition of you or any party with a financial, executive or managerial interest in you, including any parent company or any party in which you have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a claim based on a liability to an independent third party directly arising out of the performance of your business activities;</p> <p>26. made against you by any person or entity that you currently employ or formerly employed, including but not limited to employees, freelancers, and independent contractors; however, this exclusion will not apply to any portion of any claim solely based on business activities performed when such person or entity was not working for you;</p>
Non-compensatory payments	<p>27. for which you are legally obligated to pay punitive and/or exemplary damages; however we will pay an award of such damages if insurable in the jurisdiction where such award was first ordered;</p> <p>28. for which you are legally obligated to pay criminal, civil, or regulatory sanctions, fines, penalties, disgorgement of profits, treble damages, and/or multiple damages, including but not limited to those imposed by any national, federal, state, or local governmental body or by the Mechanical Copyright Protection Society (MCPS)-Performing Rights Society (PRS) Alliance, American Society of Composers Authors and Publishers (ASCAP), Broadcasting Music Inc. (BMI), Society of European Stage Authors and Composers (SESAC), or other similar licensing organisation;</p>
Claims outside the applicable courts	29. brought outside the countries set out in the Schedule under applicable courts , including arbitration. This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts ;
Other losses	30. For, alleging or arising out of any trading loss or trading liability including those arising from the loss of any client , account or business.

How much we will pay

We will pay up to the **limit of indemnity** shown in the Schedule unless limited below. **We** will also pay for **defence costs** incurred with **our** prior written agreement. However, if a payment greater than the **limit of indemnity** has to be made for a **claim our** liability for **defence costs** will be limited to the same proportion that the **limit of indemnity** bears to the amount paid.

You must pay the relevant **excess** shown in the schedule and **our** duty to make any payment under this section will only arise after the applicable **excess** is fully paid. The **excess** will only be eroded by the covered part of the **claim**.

When **we** settle **your** own losses from dishonesty, **we** will deduct any sums **you** owe or the value of any property **you** hold belonging to the perpetrator.

For lost, damaged or destroyed documents, information or data, **we** will pay the reasonable expenses **you** incur with **our** prior written consent in restoring or replacing them.

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Multiple claims from a single source

All **claims**, **losses** and **potential claims** which arise from:

- a. the same original cause, a single source or a repeated or continuing problem in your work; or additionally
- b. in relation to defamatory statements, a single or continuing investigation or a common set of facts or state of affairs;

will be treated as a single **claim**, **loss** or **potential claim**. **You** will pay a single **excess** and **we** will pay a maximum of a single **limit of indemnity** for these related **claims**. All of the notifications which are related will be considered as having been made on the date of the first notification to **us**.

Special limits

- a. For **claims** and **your** own losses arising from dishonesty and from the physical loss or destruction of or damage to tangible property and from the death, disease or bodily or mental injury of anyone, the most **we** will pay is a single **limit of indemnity** for the total of all such **claims**, their **defence costs** and **your** own losses. **You** must pay the relevant **excess** shown in the schedule.
- b. The most **we** will pay for the withdrawal and destruction of all publications in response to court orders is a single **limit of indemnity** shown in the schedule. **You** must pay the relevant **excess** shown in the schedule.
- c. The most **we** will pay in total for all subpoenas and court proceedings compelling **you** to produce documentation or evidence is a single **limit of indemnity** shown in the Schedule. **You** must pay the relevant **excess** shown in the schedule.

Paying out the limit of indemnity

At any stage of a **claim** **we** can pay **you** the applicable **limit of indemnity** or what remains after any earlier payment from that limit. **We** will pay **defence costs** already incurred at the date of **our** payment. **We** will then have no further liability for that **claim** or its **defence costs**.

Refusal to reveal a source

The right to payments under this section shall not be prejudiced by **your** refusal to reveal the identity of a confidential, newsgathering source.

Your obligations

If a problem arises

You must notify **us** of any **claim** made against **you** or any **loss** as soon as practicable and within the **period of insurance** or at the latest within 14 days after it expires for any **claim** or **loss** **you** first became aware of in the 7 days before expiry.

You must also notify **us** of **potential claims** under this section, such notification must be as soon as practicable and within the **period of insurance**, and must to the fullest extent possible identify the particulars of the **potential claim**, including identifying the potential claimant(s), the likely basis for liability, the likely demand for relief and any additional information about the **potential claim** that **we** reasonably request. If such a **potential claim** notification is made to **us** then **we** will treat any **claim** arising from the same particulars as that notification as if it had first been made against **you** on the date **you** properly notified **us** of it as a **potential claim**, even if that **claim** is first made against **you** after the **period of insurance** has expired.

We will not make any payment, including any **defence cost** payment, toward any portion of any **claim** if you:

1. fail to ensure that **our** rights of recovery, including but not limited to any subrogated rights of recovery, against a third party are not unduly restricted or financially limited by any term in any of **your** contracts;
2. reveal the amount of cover available under this insurance, unless **you** had to give these details in negotiating a contract with **your client** or **you** are required by law or compelled by a court, or **you** otherwise have **our** prior written consent;
3. admit liability in connection with, make any settlement offer with respect to, or settle any **claim** under this **policy** without **our** prior consent.

Control of defence

Defence arrangements

This is a duty to defend section. This means that **we** have the right and duty to defend **you** against any **claim** which is covered in its entirety. If **we** think it necessary **we** will appoint an adjuster, solicitor or any other appropriate person to deal with the **claim**. **We** may appoint **your** own solicitor but on a similar fee basis as **our** solicitor and only for work done with **our** prior written approval.

If a **claim** which is only partially covered is made against **you**, **we** have the right and duty to defend **you**, but amounts relating to non-covered portions of **claims** will be deducted from **our** final settlement.

However, for **claims** or portions of **claims** which allege or arise from any infringement, use or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret, **we** and **you** agree to allocate all amounts, including **defence costs**, upon **our** receipt of the **claim** or **potential claim**.

We and **you** agree to use best efforts to determine a fair allocation of covered and non covered portions of **claims**. If **you** and **we** cannot agree on a fair allocation **you** and **we** agree to follow the dispute resolution process in the General terms and conditions of this **policy**.

If a covered or partially covered **claim** is made against **you**, then **we** have the right to appoint suitably qualified legal representation to defend **you**. **Your** rights under this **policy** shall not be prejudiced by **your** refusal to reveal the identity of a confidential source.

We have no duty to defend **you** against **claims** where:

- a. no portion of the **claim** is covered; or
- b. we pay **you** the **limit of indemnity** as described in **How much we will pay** – Paying out the limit of indemnity.

Our duty to make a payment under this section arises only after the applicable **excess** is fully paid. The **excess** will only be eroded by the covered portion(s) of a **claim**.