

SAFETY WHILE SHOOTING

The ASMP Guide

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COVID-19

DISCLAIMER

Today we will be discussing the COVID-19 pandemic, and solutions for photographers and others in the visual industry who are grappling with these issues. We will be discussing HEALTH, SAFETY, and LEGAL concerns.

While I am an attorney, I am NOT a doctor or other health or safety professional. ASMP and Maddrey PLLC cannot guarantee or endorse the current accuracy of the information presented, try as we might to ensure this is up to date and comprehensive.

This is not specific legal advice. This is not safety advice. This is not health advice.

Further, ASMP and Maddrey PLLC accept no responsibility, and will not be liable for, the use of or reliance on the information provided.

Bottom line? Check and double check. Write your own policies. Do your own research. We strongly recommend it.

THE BACKGROUND

WHERE DID THIS INFO COME FROM?

- I spoke with dozens of health, safety, and legal minds in preparing this presentation.
- Many topics are things you have heard before. Many may be new. But all have been checked by myself and my staff before posting.
- Just a few of the people I spoke with include: health professionals at UT Southwestern Medical Center, OSHA, the Small Business Administration, and many others.



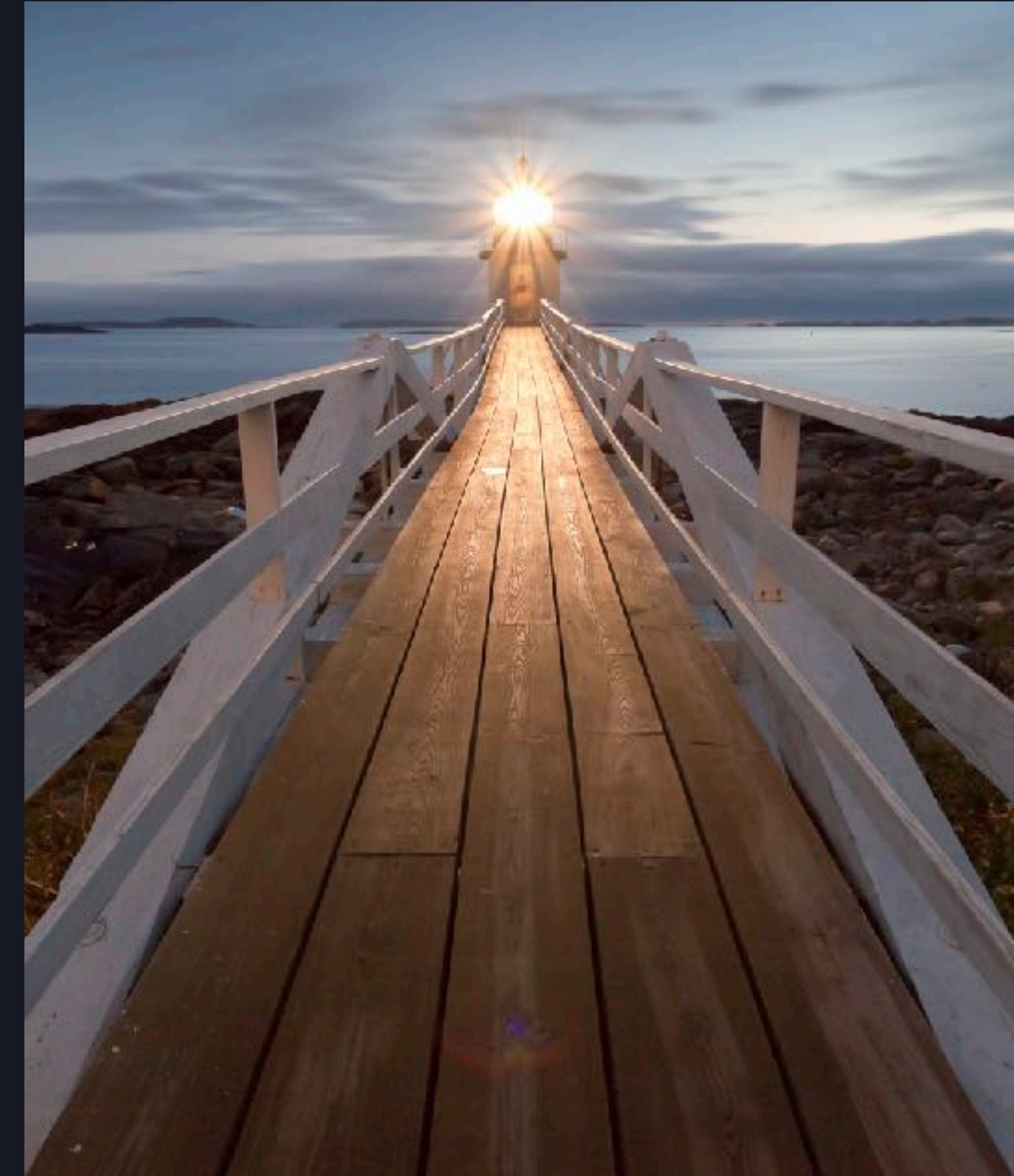


WHERE CAN I GO TO GET MORE INFO?

- CDC - www.cdc.gov
- OSHA - www.osha.gov
- ASMP COVID-19 Hub - bit.ly/asmp-covid-hub
- ASMP Town Halls - bit.ly/asmp-th9

- Photographers
- Models and Crew
- Producers
- Everyone who works in or around the visual industry

WHO IS THIS DESIGNED FOR?



POLICIES? PROCEDURES?

POLICIES / PROCEDURES

- It is CRITICAL that you have a set of Policies and Procedures that you can rely on to pass out to your crew, clients, models, etc.
- These policies can make or break your ability to defend yourself if anything ever comes up in the future.
- Additionally, these policies can help you differentiate yourself from your competition.
- Policies show evidence that employers implemented appropriate practices in the workplace and that employees were aware of these practices in case any concerns arise.
- These are especially important now that **employees expect employers** to take necessary precautions to protect them and others.

POLICIES / PROCEDURES (CONT.)

- Policies and procedures SHOULD BE SPECIFIC TO YOUR SITUATION!
- Policies and procedures are different from waivers and contracts. Those are the overall clauses... policies are the thing that the clauses refer to.
- What COVID-19 Specific policies do you need?
 - If you HAVE NO employees:
 - Social Distancing Policy
 - Cancellation / Postponement / Refund Policy
 - If you HAVE employees:
 - Paid Sick Leave Policies
 - Work From Home Policy

SOCIAL DISTANCING POLICY

- Example language will be up on the ASMP COVID-19 Hub shortly and in the PDF soon to be released.
- **Main Topics Include:**
 - Introduction / Importance
 - Measures to Take
 - How the Policy Can Be Modified
 - How the Policy Will Be Enforced
 - How the Policy Affects Employment
 - Acknowledgements / Signatures
- **ALL POLICIES SHOULD BE SPECIFIC TO YOUR SITUATION!**

POLICY RESOURCE LINKS

- US Chamber of Commerce
 - <https://www.uschamber.com/co/start/strategy/small-business-coronavirus-reopening-guide>
 - <https://www.uschamber.com/article/state-by-state-business-reopening-guidance>
- OSHA
 - <https://www.osha.gov/Publications/OSHA3990.pdf>
- National Federation of Independent Businesses
 - <https://www.nfib.com/content/legal-compliance/healthcare/small-business-faqs-on-covid-19/>

HEALTH / SAFETY

COVID-19 BASICS

- A novel coronavirus is a new coronavirus that has not been previously identified. The virus causing coronavirus disease 2019 (COVID-19), is not the same as the coronaviruses that commonly circulate among humans and cause mild illness, like the common cold.
- The virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet).
- In light of new data about how COVID-19 spreads, along with evidence of widespread COVID-19 illness in communities across the country, CDC recommends that people wear a cloth face covering to cover their nose and mouth in the community setting.
- People with COVID-19 have had a wide range of symptoms reported – ranging from mild symptoms to severe illness. Symptoms may appear 2-14 days after exposure to the virus. People with these symptoms may have COVID-19:
 - Cough
 - Shortness of breath or difficulty breathing
 - Fever
 - Chills
 - Muscle pain
 - Sore throat
 - New loss of taste or smell

FOLLOW THE LAW!

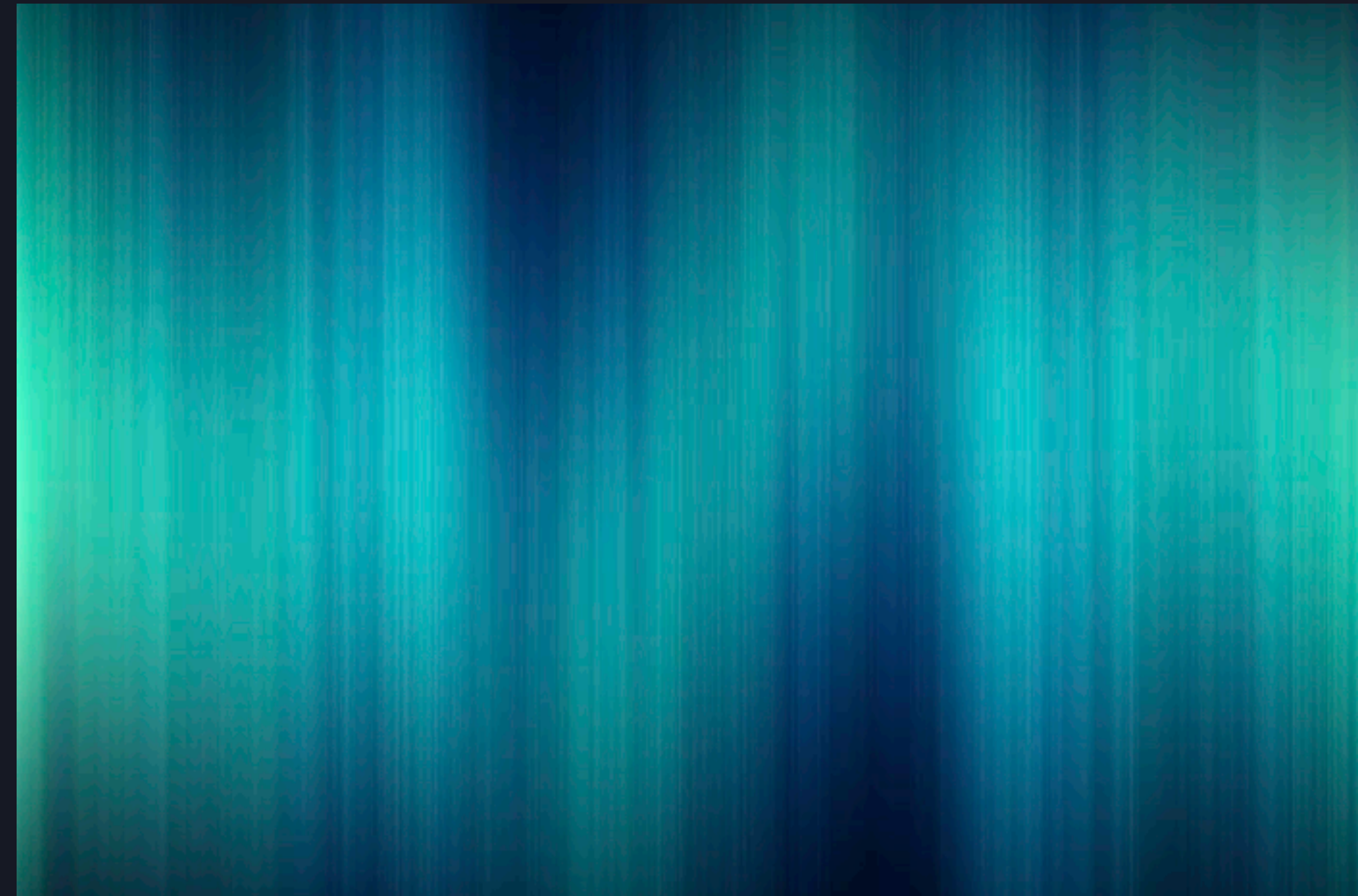
CLEANING V. DISINFECTING

- Cleaning with soap and water removes germs, dirt, and impurities from surfaces. It lowers the risk of spreading infection.
- Disinfecting kills germs on surfaces. By killing germs on a surface after cleaning, it can further lower the risk of spreading infection.
- Routine cleaning is the everyday cleaning practices that businesses and communities normally use to maintain a healthy environment. Surfaces frequently touched by multiple people, such as door handles, bathroom surfaces, and handrails, should be cleaned with soap and water or another detergent at least daily when facilities are in use. More frequent cleaning and disinfection may be required based on level of use.
- Cleaning removes dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs, but it reduces the number of germs on a surface.
- Cleaning does not kill germs, but by removing them, it lowers their numbers and the risk of spreading infection. If a surface may have gotten the virus on it from a person with or suspected to have COVID-19, the surface should be cleaned and disinfected. Disinfecting kills germs on surfaces.

CLEANING V. DISINFECTING (CONT.)

- CDC Recommendations
- Hard (non-porous) surfaces
 - Clean using detergent or soap and water prior to disinfection
 - For disinfection, most common EPA registered household disinfectants should be effective
 - Can use a bleach solution by mixing 5 tablespoons of bleach per gallon of water
- Soft surfaces (carpets and rugs)
 - Clean with carpet cleaners and then launder items
- Electronics
 - Consider using wipeable covers for electronics
 - Can use alcohol based wipes or sprays containing at least 70% alcohol and dry thoroughly

ON-SET V. ON-LOCATION



FOR ALL PHOTOGRAPHERS

- Practice social distancing.
- Wear a mask or face covering.
- Be careful about passing your equipment.
- Bring Personal Protective Equipment (PPE) for yourself, your crew, and your clients.
 - <https://www.osha.gov/Publications/osh3151.pdf>
- Do image reviews and editing off-site if possible.
- Stay up to date on current news and information from the CDC and OSHA (among others).
- **DO NOT LET ANYONE IN YOUR SHOOT IF YOU THINK THEY MAY BE SICK.**

FOR ALL PHOTOGRAPHERS (CONT.)

- Do as many meetings and pre-production events remotely.
- Use contactless payment methods.
- Clean your equipment.
 - Use alcohol wipes and soap... but don't submerge or damage your gear.
- Make sure you are clear and transparent with your clients, crew, and anyone else involved.
- Think of shoots right now as doing maximum work in minimal time.
 - **Get in and get out.**

ON-SET GUIDELINES

When you have more control.

ON-SET GUIDELINES

- Know the symptoms.
 - Control your set and studio.
- Make sure you have a policy in place for cleaning and disinfecting.
- Limit the number of sessions / set-ups / clients you have to ensure you have time to clean and disinfect between shoots.
- Enforce schedules for clients, crew, and staff.
- Realize this all takes longer than you think. You will not be running at full capacity.
- It is a good idea to take and keep a record of you and your crew's temperature before and after a shoot.
- **YOU MUST KEEP RECORDS!**

ON-SET (CONT.)

- Limit areas that different groups can enter.
- Limit deliveries to specified areas.
- Post signs to remind people about social distancing and basic practices.
- Deep clean / sanitize all surfaces before and after every session.
- If possible, provide hand sanitizer to everyone.
- Remove the following:
 - Pens, water, magazines, portfolios... basically anything people would touch that is communal in nature.

ON-LOCATION GUIDELINES

When you have to make decisions in changing places.

ON-LOCATION GUIDELINES

- Don't carpool. Even if you are changing locations frequently.
- Using communication equipment? Assign specific equipment to specific people and don't share.
- If you can shoot outside, shoot outside.
- Have locations scouted, equipment prepped, and shoots planned. You must minimize the time spent on set.
 - Use Zoom or other conferencing apps to meet in advance.
 - Can't say it enough, minimize time.

HAIR / MAKE UP ARTISTS?

- HMUA's face a particularly hard issue. Some things you can do to ensure that you are keeping things as safe as possible.
 - Ensure that all HMUA's have proper PPE.
 - Ask in advance what their policies and procedures are at this time and ask for a copy of those policies. If they don't have this info, think hard about if you want them on this shoot.
- Instruct them to minimize the time spent with the models / subjects. Possibly have the subjects do a majority of their own HMU and have the Artist come in to do the clean-up / final touches.
- Have a list of policies that HMUA's sign including minimizing contact, talking, etc.
 - Yes. This changes everything on set.

MODELS / SUBJECTS?

- Should models wear masks?
 - Yes, except for the exact time they are shooting.
 - The only time they should be without proper PPE is when you are socially distanced.
- Be sure to determine if masks are required in your area.
- Take the temperature of the models upon arrival, ask for a checklist of symptoms, and ensure minimal crew on set.
- **RECORD ALL THIS DATA!**

BOTTOM LINE?
**YOU ARE IN CONTROL OF YOUR
SHOOT, AND RESPONSIBLE FOR
EVERYONE. ACT LIKE IT.**

LEGAL

LEGAL CONCERNS

- What your policies and contracts currently say.
- What you need to protect you and your team.
 - Models? HMUA's? Clients?

YOUR CONTRACTS

- Long before the shoot, your contracts need to be responsive to the COVID-19 pandemic.
- This means specialized clauses such as:
 - Force Majeure Clauses
 - Cancellation / Termination / Postponement Clauses
 - Refund Clauses
 - Liability / Indemnification Provisions
- **Deal with this BEFORE the incidents and you won't have to deal with this AFTER.**

FORCE MAJEURE

- A force majeure clause is a contractual provision which excuses one or both parties' performance obligations when circumstances arise which are beyond the parties' control and make performance of the contract impractical or impossible.
- "Seller shall not be liable or responsible to buyer nor be deemed to have defaulted under or breached this Agreement, for failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation:
 - (a) acts of God;
 - (b) flood, fire, earthquake or explosion;
 - (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest;
 - (d) Law;
 - (e) actions, embargoes or blockades in effect on or after the date of this Agreement;
 - (f) action by any Governmental Authority;
 - (g) national or regional emergency; and,
 - (h) strikes, labor stoppages, or slowdowns or other industrial disturbances (each a "Force Majeure Event").

CANCELLATION / TERMINATION / REFUND

- Determine notice period.
- Figure out if your *force majeure* clause needs to have these attachments.
- Be careful with language about "deposits v. retainers" ...
- Can you cancel? Can they?
- Big legal difference between "cancelling," "postponing," and "rescheduling."
- Make sure you know which one you mean and which one you need to do.

LIABILITY RELEASE WAIVERS

- Example language up at asmp.org in the article accompanying this presentation.
- Different forms for your clients (either public or those on set who are not being photographed) and models / crew.
- You have Liability Release waivers for your clients, and Assumption of Risk waivers for models / crew.
- **These are separate documents and both are critical.**

QUESTIONS

Q: How should I balance COVID-19 risk with the financial risk of not shooting?

- *Sarah G.*

Q: What if I [or one of my crew] feel sick
the night before a shoot?

- *Kat B.*

Q: What is the new role of a producer? Are we expected to be janitors and medics as well as managers of our productions?

- Annette S.

Q: Can shooting indoors be safe? It seems like the virus might build up in the air over time, even with appropriate distancing.

- Peter B.

Q: Are liability waivers even legal or enforceable? Beyond that, are they ethical?

- Billy D.

Q: Assuming safety [policies and procedures] are in place, are there any legal repercussions to operating in a studio space with clients?

- *Jacquelyn C.*

Q: Who is responsible for PPE?

- *Mary D.*

Q: Will there be legislation that helps employers with liability?

- Inna K.

Q: How can I keep clients who are present during shooting as observant of distancing as I am (without insulting them)?

- *David S.*

Q: I have a waiver, but do I also need to get anyone on set to sign my “safe set protocol” as well?

- Amy S.

WHAT ASMP IS DOING

WHAT ASMP IS DOING

- This presentation is currently available at bit.ly/asmp-sws-guide
- This video will be up by Friday if not sooner and can be found at www.asmp.org and the link above.
- On Friday, May 15 @ 3pm EST, our *ninth* weekly Town Hall occurs. Register at: bit.ly/asmp-th9
- Article by Barry Schwartz - "When Work Begins Again" bit.ly/asmp-work-begins
- ASMP Foundation Emergency Cash Grant Program - bit.ly/asmp-foundation-grant
- **ASMP COVID-19 Hub**
bit.ly/asmp-covid-hub

UPCOMING EVENTS

- On **Friday, May 15 @ 2pm EST**, Photographer and ASMP Member **Samantha Isom** will be hosting a paid “Production Infection Control Course” with John Cordes, OSHA Authorized Outreach Safety Trainer from **Rightway Consulting**.
 - Certificate of Course Completion
 - Register at: bit.ly/isom-rightway
- On **Friday, May 15 @ 3pm EST**, don’t miss our Town Hall where you can ask any question you can think of related to PPP, EIDL, Safety on Set, business, legal, or work practices — and get the latest look at our advocacy efforts.
 - Register at: bit.ly/asmp-th9
 - Executive Director Tom Kennedy, General Counsel Tom Maddrey, and Copyright Counsel Mike Klipper

ASMP LEGAL/ADVOCACY FUND

bit.ly/asmp-support

RESOURCES

- An ever-growing list of resources can be found at the ASMP COVID-19 Hub at: bit.ly/asmp-covid-hub.
 - New articles, videos, and commentary on best practices will be updated there regularly.
 - legal@asmp.org
 - www.asmp.org
- My firm, Maddrey PLLC, is also available to help in any way we can for more specific legal needs.
 - help@maddreypllc.com
 - www.maddreypllc.com

bit.ly/asmp-covid-hub

THANK YOU