



RELEASE AND AUTHORIZATION TO USE VOICE AND/OR LIKENESS & GUIDE

Included:

Overview

Dos and Don'ts Checklist

Release and Authorization to Record and Use Voice and/or Likeness Instructions

Sample Release and Authorization to Record and Use Voice and/or Likeness

1. Overview

A release is a written agreement between the person who is the subject of a picture or recording and the company that wants to use the image or sound for its own purposes. The release protects the company from lawsuits alleging it did not have the right to use those representations: by signing the release, the person is granting that right.

Whether or not a company needs a release is a complicated question. It depends on a number of factors, including how the end product will be used. However, it's a good idea to get a release whenever possible, both to protect yourself from later lawsuits and to increase the salability of your final product.

This package contains everything you'll need to draft your release. A written contract minimizes confusion, misunderstanding, and error, and sets forth expectations and fulfillment obligations. In every way, this promotes successful and profitable business arrangements.

2. Dos & Don'ts Checklist

- Although restrictions vary, all states recognize some type of "right of privacy," which may be characterized as the right for individuals to be left alone in their personal lives. This is not an absolute right – images or sounds used for news or other socially relevant purposes are not protected. However, it's a good idea to get releases in every instance.
- Note that it is not the mere taking of a picture or taping of a sound that requires a release. A release isn't needed until an image is published or a recording is aired. Thus, it is the publisher of the picture or broadcaster of the sound that is liable if a release is not obtained. As a practical matter, the photographer or recorder is in a better position to get the releases, and should require them as a matter of course (if only because the publishers or broadcasters will insist on them to protect their own interests).
- Releases should always be obtained if an image or recording will be used for trade or advertising purposes. Many buyers of commercial images are cautious, and will only purchase photos or sounds accompanied by a release.
- The enclosed document should be used only if the person whose image or voice is being used is an adult. Do not use this release form if your subject is under the age of 18.
- Although releases are most often of personal characteristics (like voices or images), it has become increasingly more common to release and authorize the use of private property (including buildings, land, and pets). This may be somewhat extreme, but having such releases will increase an image's earning potential, assuring potential buyers that they will be protected if they choose to publish. However, the enclosed form should not be used to authorize such uses.
- Allow each party to spend time reviewing the document. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any terms or how those might affect the agreement as a whole.

- Both parties should review the document carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly on the release.
- Sign two copies of the release, one for you and one for the other party.
- Depending on the nature of its terms, you may decide to have your release witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a release that will meet your specific needs.

3. Release and Authorization to Record and Use Voice and/or Likeness Instructions

The following provision-by-provision instructions will help you understand the terms of your release.

The numbers and letters below (e.g., Section 1, Section 2, etc.) correspond to the provisions in the document. Please review the entire document before starting your step-by-step process.

- **Introduction.** Identifies the document as a release and authorization of use. Write in the date on which the agreement will become effective (often the date on which it is signed). Identify the parties and, if applicable, what type of organization(s) they are. Note that each party is given a name (e.g., "Company") that will be used throughout the agreement. The party that will use the voice or likeness is called the "Company" and the party giving the release and authorization to use his or her image is called the "Releasor."

There is a blank space indicating the amount that the Company paid to the Releasor in exchange for the Company's right to use his or her image or recording. Enter the payment amount in the blank provided. Note that according to the language of the agreement, this payment has been completed. If you and the other party have agreed to a different payment structure, feel free to modify the language to suit your arrangement.

- **Section 1: Participation.** The Releasor's agreement to take part in recording or photography sessions with the Company, and to allow the Company to make those recordings or take those pictures.
- **Section 2: Grants.** A list of the rights being transferred with this document. This section is lengthy, and is meant to ensure that all rights are being provided, and that there is no limitation on future uses of those rights (e.g., an image can be used electronically and in print).
- **Section 3: Release.** The Releasor's promise not to object to any use of the recording that was made of his or her voice or image. This is the "release" of claims against the Company.
- **Section 4: No Obligation to Use.** A notation that although the Company has the rights to use the image or recording, it does not have to do so.

- **Section 5: Releasor’s Representations and Warranties.** Details the Releasor’s promises under the Release. Essentially, he or she is agreeing to enter into the arrangement based on the conditions listed in this section (e.g., that he or she is capable of entering the agreement and satisfying its terms).
- **Section 6: Entire Agreement.** The parties’ agreement that the document they’re signing is “the agreement” about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 7: Assignment.** Explains that the Company may assign its obligations and interests without obtaining the Releasor’s permission. However, the Releasor is not entitled to assign its own interests under the release.
- **Section 8: Modification.** Indicates that any changes to the document are ineffective unless they are made in writing and signed by both parties.
- **Section 9: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Company and the Releasor.
- **Section 10: Governing Law.** Allows the parties to choose the state laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write in the applicable state law in the blanks provided.
- **Section 11: Severability.** Protects the terms of the agreement as a whole, even if one part is later invalidated. For example, if a state law is passed prohibiting choice-of-law clauses, it will not undo the entire agreement. Instead, only the section dealing with choice of law would be invalidated, leaving the remainder of the agreement enforceable.
- **Section 12: Counterparts/Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the parties sign the agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.
- **Section 13: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the agreement.

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Form Sample

RELEASE AND AUTHORIZATION TO RECORD AND USE VOICE AND/OR LIKENESS

This Release and Authorization (the "Release") is entered into as of _____, 20____, by _____, a _____ (the "Releasor") in favor of _____, a _____ (the "Company," and together with the Releasor, the "Parties").

In consideration of the payment of \$ _____ (the "Payment") by the Company to the Releasor, the receipt and sufficiency of which is hereby acknowledged and without any further consideration due from the Company or any third party to the Releasor, the Releasor agrees to as follows:

1. PARTICIPATION.

The Releasor agrees to participate, from time to time, in certain photographs, video recordings, audio recordings, and/or other means of recording images and/or sound as arranged by the Company (the "Recordings"). The Releasor agrees that the Company (or its designee) has permission to record his/her voice, sounds, conversation, image, and likeness in the Recordings.

2. GRANTS.

The Releasor hereby grants to the Company, its affiliates, agents, successors, and assigns (collectively with Company, the "Company Affiliates") _____ worldwide, irrevocable, royalty-free, fully paid _____ of his/her likeness and/or voice _____ in and in _____