

## Elements of an Appearance Release

An appearance release is a document required to secure the appropriate rights from participants in your productions, so that you may use your footage in commercial settings. When you engage or hire people to participate in short audio-visual productions (such as sponsored promos, advertisements, webisodes, or documentaries), you should always have them sign an appearance release, even in instances where the individual's appearance is limited, such as a brief, one-time appearance on camera, even if the fee for the appearance is nominal (or the person performed without payment).

Here are the key elements to an appearance release:

Scope of the Release: The document should include all of the details on the use and scope of the appearance. Where will the appearance be used? Will the appearance be used in connection with any particular show or picture? In what media/territory will the appearance be used? Is there a time limit on when the appearance use must end? These are all key questions to ensure that the appearance release will cover the scope of the intended use.

Compensation: To be valid, a contract must have some element of consideration – an exchange of value between the parties. Consideration most often takes the form of a payment or other compensation. Overtime rules do not apply to professional actors, but the participants must be paid minimum wage for all hours worked. If there is no paid compensation, then the participant should acknowledge that the participant is a volunteer – and that the consideration is the opportunity for publicity associated with appearing in the production.

Works Made for Hire: Any works created, contributed to, or provided to the producer should be made on a “work made for hire” (WMFH) basis as defined in the United States Copyright Act (see [17 U.S.C. § 101](#)). Otherwise, the initial ownership will vest in the participant and the production company might not have the necessary rights to use the footage and materials.

No Obligation to Use: The production company should not be under any obligation to use the footage and materials in which the participant appears. The production company's use of the footage and materials should be at the production company's sole discretion.

Collective Bargaining Agreement: The participant should warrant and represent that the participant is not a member of any collective bargaining agreement that might have jurisdiction or control over the production at issue. Also, the participant should indemnify the production company for any breaches and cover any claims or monies that the production company is required to pay. A claim could occur, for example, if the participant is a member of SAG-AFTRA, but says that he/she is non-union. However, once the production company engages the participant, it would receive a claim from SAG-AFTRA that must be paid.

Required Relationship Disclosures: The participant cannot give or agree to give any member of the production staff and anyone associated in any manner with the production any portion of compensation or anything of value for the appearance without first disclosing it to the production company. Further, the participant cannot agree to

*This article is provided for educational purposes only to provide a basic understanding of the subject matter. Nothing on this website is intended as legal advice, and no attorney-client relationship is created by your access to this article. Please do not rely on the information presented in this article without consulting a lawyer for application to your specific facts and circumstances.*

promote any service, product, or venture on the air. These actions could violate federal law if the participant does not inform the production company.

Release of Claims/Indemnity: This is essentially the heart of the whole release. It's the language that says the participant will not sue the production company. Specifically, the release of claims releases the production company and any other released parties from any and all claims, demands, actions, and liabilities in connection with the appearance. The participant also agrees to help defend the production company if the participant breaches any of its promises made in the appearance release.

Alternative Dispute Resolution (ADR): Sometimes it may be beneficial to include an alternative dispute resolution provision in the release. This provision requires that the parties resolve disputes either via mediation or binding arbitration, which is typically faster, less expensive, and more confidential than bringing suit in federal or state court. However, ADR rulings can sometimes be appealed, so the production company might have to win an arbitration and still have to defend that award on appeal in court. Suing in court offers some degree of finality, but the process can take years and generates a public record that can be subject to media and tabloid scrutiny.

Assignment Rights: The production company must have the right to license, assign, and otherwise transfer the rights to the finished project (including the participant's appearance). To that end, the agreement must contain an express assignment of rights provision, granting any rights the participant may have (including any copyright interest), to the production company. Without this language, the production company would be required to obtain the participant's permission every time the company wants to do something with the project (or any part of the project).

Age Certification & Voluntariness: The release should certify that the participant is at least 18 years of age or older and that he or she understands the release and is signing it voluntarily. If the participant is under 18 years of age, his or her parents must sign the release on behalf of the participant. If the arrangement calls for money to be paid to the minor, then be mindful of certain legal requirements that may vary across jurisdictions (e.g., [California Family Code § 6750 et seq.](#)).

Counterparts: "Counterparts" means that the agreement is valid even though each party signs a different copy. In other words, each party can sign separately (even in different locations), and the agreement is binding once all parties have signed. Counterparts language is very common and frequently added to ensure that a facsimile or electronic copy will be just as effective as an original copy.

So, what should you do now? If you need an appearance release, consult with a production attorney to help put one together for you.

*This article is provided for educational purposes only to provide a basic understanding of the subject matter. Nothing on this website is intended as legal advice, and no attorney-client relationship is created by your access to this article. Please do not rely on the information presented in this article without consulting a lawyer for application to your specific facts and circumstances.*