

SHOULD YOU PAY THAT £1 OR NOT?

A short guide to Contributor Release Forms

The short answer is yes.

There are so many different Contributor Release Forms flying around our industry that it's little wonder that there is confusion about whether to include a payment of £1 and, if you do, whether you need to pay it. Every broadcaster has their own release forms for contributors; PACT has its version; every Indie large enough to have its own legal department has its own version too. This is an attempt to outline the principles involved.



A CONTRACT ...

In order to be a legally binding contract, a release form has to go both ways. If someone provides you with a service and you simply say “thank you”, no contract exists between you. However, if someone provides you with a service and you agree to pay for it or provide a service in return, then a contract exists.

It's all to do with “consideration”. It's tricky to define consideration, but to put it as briefly as possible, it means “something for something” rather than “something for nothing”. As long as both parties are getting something out of the agreement, then a contract probably exists between them.

It's also important to recognise that there is no need for the consideration to be equal in value to the service being provided (e.g. you can sell someone your vintage Rolls Royce for a fiver and the contract will be binding). As long as there is consideration, the contract should stand.

So the reason why your release form states that you'll pay your contributor £1 is simply to create a legally binding contract. If you don't pay up, then you're in breach and your contributor can sue or, more likely and more dangerous in our job, retract their permission for you to broadcast their contribution.

There's one Contributor Release Form which you might see with wording along these lines:

“In consideration of our agreeing to broadcast your contribution in “[the programme]”, you agree to assign to us all rights in your contribution.”

It's a tricky one to get your head round, but the consideration here is not money, but the benefit your contributor derives from their contribution being broadcast. This may sound like a desperate attempt to identify some kind of consideration where none really exists. If you then include a clause that says you're not obliged to broadcast the contribution (as most release forms do) then that presumably means your consideration has gone out the window. Tackle your lawyer about that one if you encounter it.



OR NOT A CONTRACT ...

HOWEVER ... not everyone agrees that a release form actually has to take the form of a contract anyway. It can be argued that the assignment of copyright isn't dependent on "consideration" and can be regarded more like a gift. Consequently, a release form serves as documentation of the understanding between two parties rather than a contract. On this basis a release form need make no mention of consideration or that pesky £1 fee, so you don't have to go through the embarrassment of giving your contributor that embarrassing coin and you don't have to explain the basic tenets of contract law.

Some of the release forms currently used by the BBC are worded on this basis and make no mention of consideration at all.

GOOD EDITORIAL PRACTICE

In the end, pragmatism tends to rule the day. Even if you have a contractual release form with your contributor but they subsequently express serious reluctance to appear in your programme and remain unpersuaded, you're unlikely to include them in your final cut. Sometimes it is just quicker and easier than fighting an injunction.