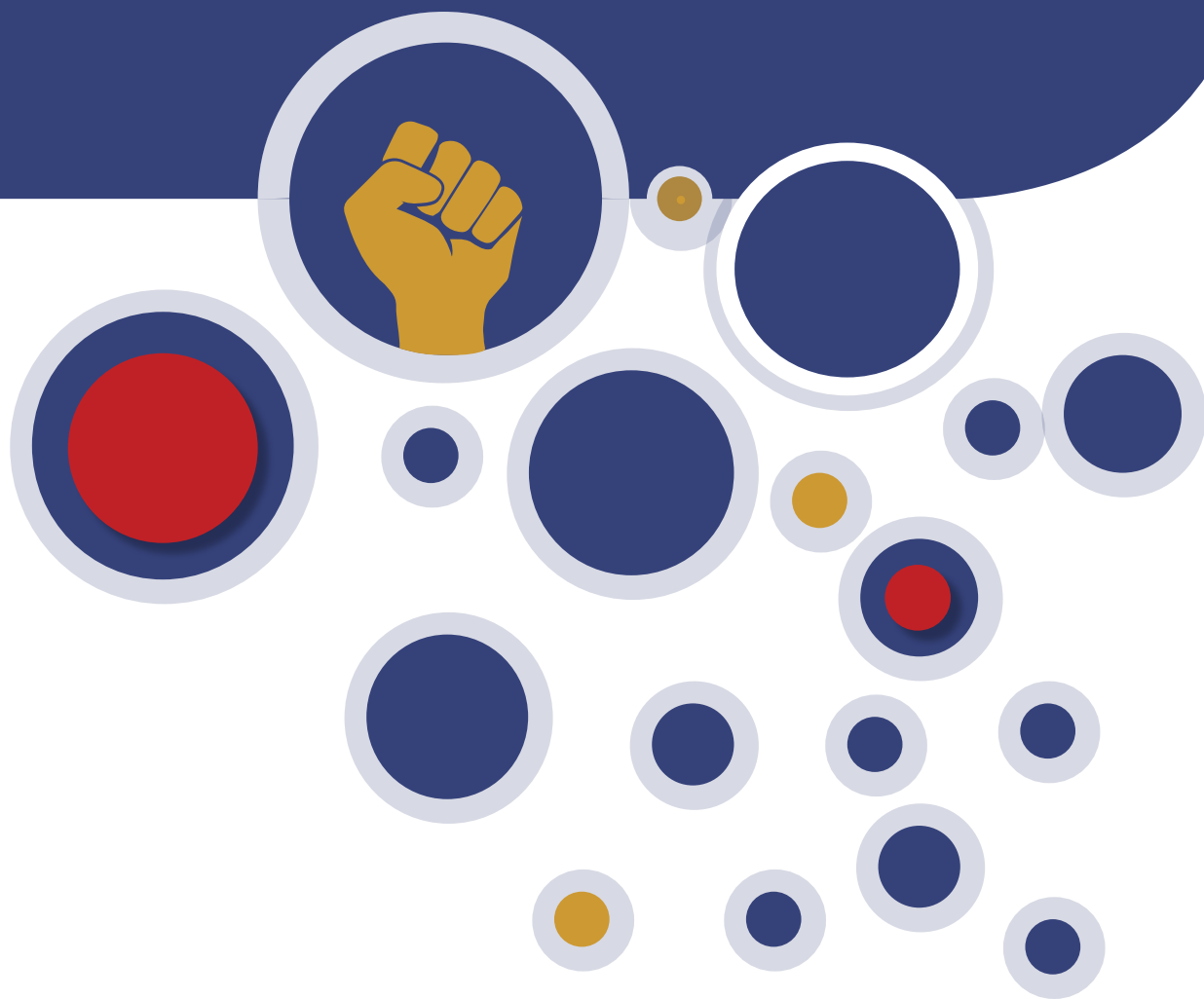


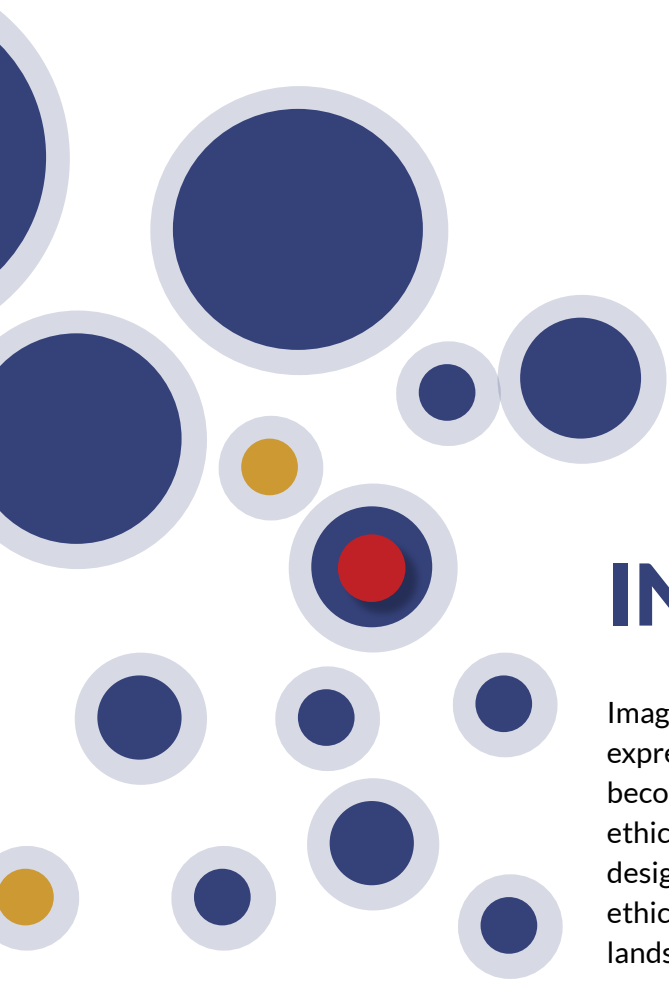
IMAGE RIGHTS -

Release Form Information Pack



Strathmore University

*Centre for Intellectual Property and
Information Technology Law*



INTRODUCTION

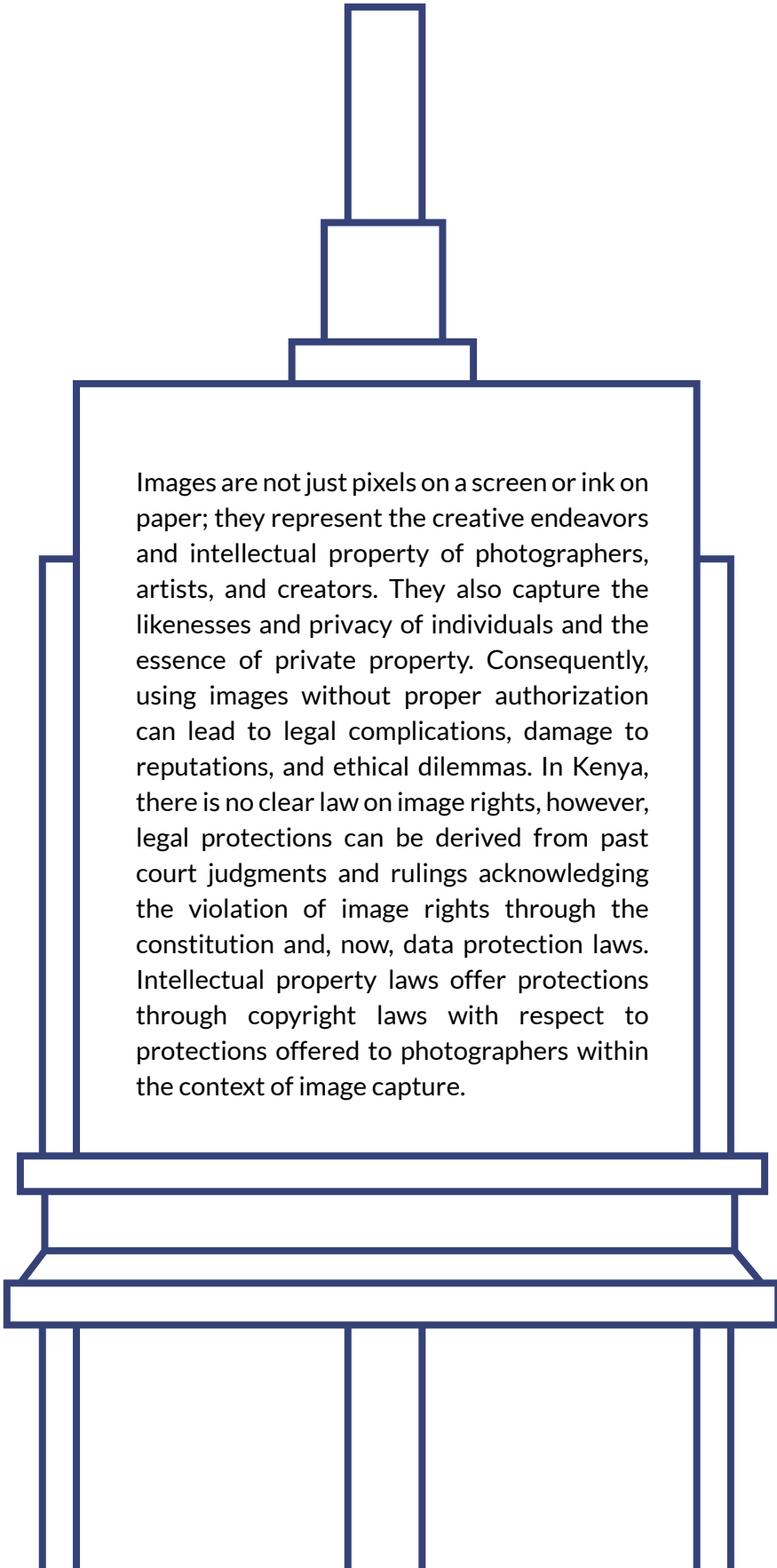
Images have become a powerful means of communication, creative expression, and storytelling. With the ever-evolving digital world, it becomes necessary to fully understand the intricate web of laws and ethics surrounding image rights. This information pack (“info pack”) is designed to be a compass offering you a clear understanding of legal, ethical, and practical aspects of using images in today’s diverse digital landscape.

TARGET AUDIENCE

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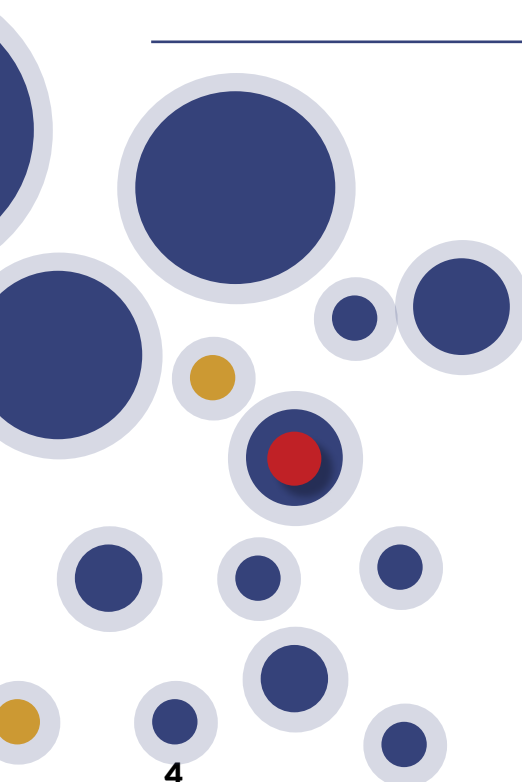
SIGNIFICANCE OF IMAGE RIGHTS



Images are not just pixels on a screen or ink on paper; they represent the creative endeavors and intellectual property of photographers, artists, and creators. They also capture the likenesses and privacy of individuals and the essence of private property. Consequently, using images without proper authorization can lead to legal complications, damage to reputations, and ethical dilemmas. In Kenya, there is no clear law on image rights, however, legal protections can be derived from past court judgments and rulings acknowledging the violation of image rights through the constitution and, now, data protection laws. Intellectual property laws offer protections through copyright laws with respect to protections offered to photographers within the context of image capture.

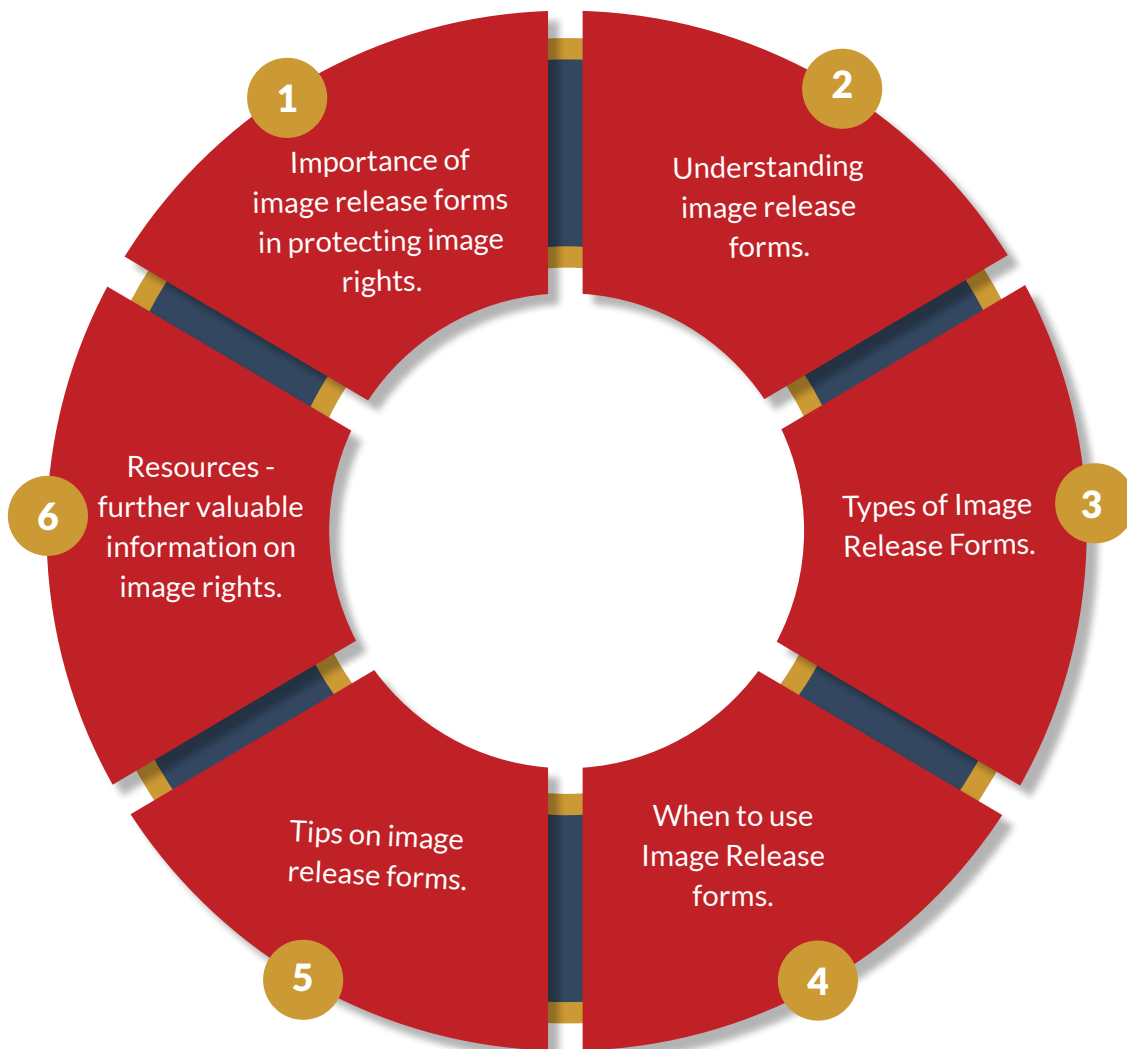
THE NEED FOR CLARITY

As technology advances and the digital realm expands, image rights have become increasingly complicated. Questions like “What can I use?” and “How do I protect my work?” are more relevant than ever. This info pack aims to provide answers and offer insights on how best to utilize release forms in ensuring relevant protections for image rights. For a more comprehensive understanding of image rights from other jurisdictions i.e. US, UK, EU, and Kenya, and the legal issues arising, please refer to the CIPIT Report titled [“Understanding the Law in Upholding Image Rights: Perspectives from Around the World and Kenya.”](#)



CONTENTS OF THE INFO PACK

This info pack is organized to provide a practical approach to understanding how to protect image rights through release forms. It will cover:





1 Importance of Image Release Forms in Protecting Image Rights

Image release forms, commonly referred to as model release forms or photo release forms, are legal documents that serve as a written agreement between the person, business or company using an individual's image (the photographer, filmmaker, or company) on the one part and the person whose image is being used (the model or subject) on the other part. These forms are of significant importance in various contexts, including commercial photography, filmmaking, and even amateur photography, due to several key reasons:

Protection of Rights: Image release forms protect the rights of both parties involved. They clarify the intended use of the images, ensure that there is an understanding and consent to how one's likeness (image) will be used, and help prevent potential legal disputes and conflicts. It protects both the photographer and the subject (model).

Legal Requirement: In many jurisdictions, using a person's likeness (image) for commercial or promotional purposes without their consent can lead to legal issues, including lawsuits for invasion of privacy or misappropriation of likeness. A signed release can be used as evidence of consent and terms by which the parties agreed on the use of the image of the model.

Commercial Use: For commercial purposes, such as advertising, marketing, or stock photography, image release forms are essential. Advertisers and marketers need assurance that they have the legal right to use the images of individuals in their campaigns. Release forms outline the legal rights to use of images, avoiding confusion and the possibility of conflict.

Artistic Freedom: Release forms offer creatives the threshold within which they can exercise their creative freedom especially when it comes to images captured. As release forms outline terms of the use of images, the artist becomes aware of the necessary legal protections that allow them to exercise their artistic freedom without fear of any underlying legal repercussions

Privacy and Consent: Image release forms uphold the principles of privacy and consent. They ensure that individuals have control over how their image is used and can choose whether or not to participate in a photo shoot or video recording.

Professionalism: Using image release forms demonstrates a high degree of professionalism especially in photography and videography. This practice establishes trust between the photographer or videographer and the subject as they have confidence in the fact that their images and or recordings will not be used for purposes other than what was intended or consented to.

Clear Communication: Release forms specify details of the agreement, compensation where applicable, intended use of images, duration of the agreement, and any restrictions. This clarifies to the parties their respective roles and responsibilities.

Cross-border Considerations: Laws regarding image rights and privacy vary from one country to another. Image release forms help ensure compliance with local regulations and international standards when working with subjects from different regions.

Preservation of Evidence: Image release forms serve as valuable evidence in case of disputes. They can be used to demonstrate willing participation in the project and consent to the use of their likeness in specific ways.

2 Key elements of an Image Release Form

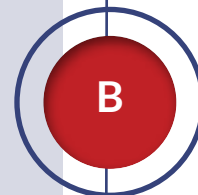
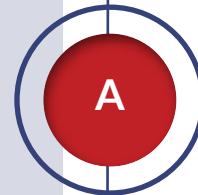
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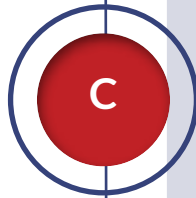
Parties involved (releasee and releasor)

This first clause identifies the parties involved. The parties involved often include a 'releasee', i.e. the party to whom image rights are being released to, like a photographer, videographer, filmmaker, or agency. The other party is the 'releasor', i.e. a model or subject who is the holder of the image rights.

Description of the image(s) or project

This clause should describe in detail the project for which the images will be used and or the images that are intended to be used. For photographers working in their own creative and artistic capacity, the clause should fully highlight the intention for use, the nature of images being captured, and what they will be used for. This could be an exhibition, documentary, or book feature. In this clause, one should also consider any unexpected uses of the photos to prevent future conflicts. For companies or agencies that hire photographers and use images for marketing and branding, this clause should equally be as specific as possible as to the use of images for a particular use, the number of selected images that will be used, and the mediums of branding, marketing, and communication they intend to use the images.





Ownership of rights - IP: photographer's rights/model's rights; work for hire, joint ownership, economic & moral rights

This clause specifies which party has ownership over the images captured or to be used. It further stipulates how either party can use the image and the rights given to either the photographer or contracting party/ agency.



In Kenya, copyright law protects photographs. The person responsible for the composition of the photo, owns the copyright. If an employee takes the photo as part of their job, their employer owns the copyright. If someone hires a photographer to take a picture, the person who pays the photographer owns the copyright. This copyright protection lasts for fifty years from when the photo was taken, first shown to the public, or first published, whichever is later. If multiple people work together to create a photo, they all share the copyright.

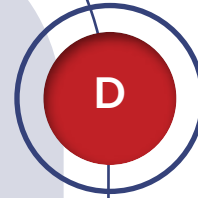
Copyright offers two types of rights: economic and moral.

Economic rights involve making money from a copyrighted work, including reproducing, distributing, translating, adapting, and sharing it with the public. These rights can be sold (assigned) or licensed to others.

On the other hand, **moral rights** are the author's right to claim authorship in the work and the ability to prevent any damage to the work's integrity or the author's reputation. Unlike economic rights, moral rights cannot be sold or licensed while the author is alive.

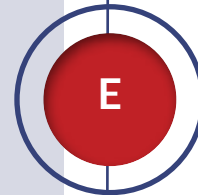
Consent to Use

This clause gives permission to the photographer or contracting party on the terms of use of images or video footage. This clause should explain that the subject or model agrees to use their image for the specific purposes mentioned in the release form after understanding the context.



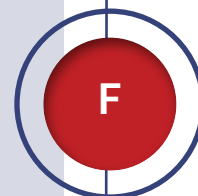
Scope of use, Limitation of use (Exclusivity of Image Use)

This clause highlights how the model/subject's likeness in whatever form or medium captured will be used. The clause must specify where necessary the specific images or video footage to be used, the duration of use, the medium through which the likeness will be used and presented, and the terms of sharing the likeness in any form or manner with third parties. This clause may also indicate where applicable any limitations that the subject/model may have related to the use of their likeness either with respect to sharing with third parties or presentation or generally any reservations as to use and presentation that would likely violate the rights of the model or subject.



Consideration or compensation

This clause highlights whether the subject/model is entitled to any compensation. It describes the type of compensation stating clearly the manner in which the compensation will be paid. Where no compensation is given the clause also notes that the model/subject will not be seeking any compensation in the future either.





G

Duration and Territory

This clause provides for the period within which rights released through the agreement will apply. This could be weeks, months or years, or in perpetuity. The clause further gives the geographical territory where the images can be used, this is especially important for organizations and companies that intend to distribute marketing material outside one country and into multiple countries.

H

Indemnification and liability

This clause relieves the released party of any responsibility, liability, or reimbursements that may arise in the event any legal action or claim is brought against them in connection with the terms covered in the release form.

I

Waiver of rights

This clause stipulates that both parties give up their rights to hold each other legally responsible and to bring any legal action against the other in exchange for compensation.

3 When to Use Image Release Forms

Image release forms should be used where you intend to use an individual's likeness i.e. photograph or video footage for purposes other than personal use. These scenarios include:

A. Photography and Videography:

Portraits and headshots:

These photos serve models, agencies, and occasionally recruitment firms, while travel or documentary photographers may exhibit or sell them online, making consent from individuals in the images important due to intellectual property rights.

Commercial shoots and advertising campaigns

Release forms are essential in commercial photography and advertising when a model's likeness is used for marketing, ads, branding, or merchandising; if a third-party company owns the intellectual property in the photos, they must secure the model's consent and obtain release forms.

Stock photography

Release forms are necessary for taking stock photos, available on platforms like Shutterstock, Adobe Stock, Unsplash, etc. These are licensed for commercial use, offering a convenient alternative to conducting photoshoots for marketing, design, and various creative needs.

B. Social Media and Online Platforms:

User-generated content with recognizable individuals

User-generated content (UGC) encompasses various content forms created by users on online platforms. Unauthorized commercial use of UGC without consent, attribution, or compensation to the creator can lead to legal issues, necessitating a release form between the creator and the commercial user.

Influencer Marketing and Sponsored Posts

The considerations of image rights and use of release forms apply in the same capacity for social media marketing and sponsored posts. Influencers should obtain consent from individuals featured in their posts, whether through photos, videos, reels, or stories, ensuring explicit permission for promotional use. Additionally, influencers working with brands should sign release forms, clearly outlining content ownership and terms of use for materials created.

C. Print and Digital Publications:

Magazine covers and editorial features:

Release forms are crucial in determining and clarifying permissions, including compensation, image copyright, modifications, and the extent of use (e.g., publication, distribution, marketing, advertising, and promotion).

The book covers and illustrations

Release forms also apply to book covers and illustrations, including situations where contracted photographers capture individuals' likenesses. They should specify compensation, scope, purpose, modifications, and limitations. In cases where stock images are used, proper attribution and adherence to purchased licenses should be specified.

Online articles and blogs

Online articles and blog posts often use stock images, which should be used as highlighted above. In cases of online news articles, pictures of people are used for journalistic reasons, and a release form might not be necessary. However, if the image is intended for commercial use, a release form is essential. Regardless of the need for a release form, it's crucial to respect an individual's privacy and avoid any potential defamation, which could lead to legal action. It is also advisable to use stock images with a Creative Commons license, which are often free.

4 Types of Image Release Forms

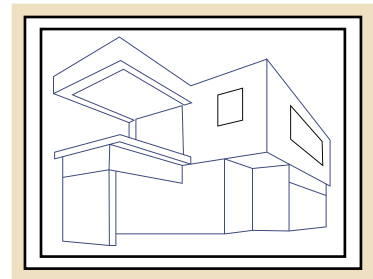
a. Photography Release Form / Model Release Form

A photography or model release form is important for both individuals and photography businesses. It safeguards their rights to use photos taken during client sessions, granting the photographer (the copyright holder) permission to use the pictures as agreed, excluding any degrading, illegal, or morally objectionable uses. In this agreement, the model (the photo subject) gives up all agreed-upon rights, including intellectual property rights, and agrees not to seek additional compensation. The form is legally binding and ensures the model/subject's personal information remains confidential.



b. Property Release Form (for recognizable locations or private properties)

On occasion, a photographer may wish to incorporate specific locations or private properties into their photographs. A property release form serves as an agreement between the property owner and the photographer, granting permission for use and specifying any commercial or profit-sharing arrangements.



c. Group Release Form (for a group of individuals in the photograph)

In certain instances, photographers take commercial photos where individuals appear in the background. It is essential to inform all these individuals that their likeness has been captured and to respect their control over its use. A group release form serves as an agreement between the photographer and the individuals in the background, notifying them and obtaining their consent for the photo's use. Often, crowd notices are used to alert people that by entering a space, their likeness may be used without requiring their explicit permission.





d. Minor release form (for individuals under 18 years old)

In Kenya, a minor is any person who is under 18 years old. When dealing with images of minors extra care should be taken. A minor release form serves the purpose of obtaining permission to use their likeness. Minors do not possess the legal capacity to enter into binding contracts and as such permission is given by their legal guardian or parent.



e. Editorial release form (for images used in news or editorial content)

This release form is used when an organization, news/media house or any person wants to use a person's likeness in any type of media be it written, audio or visual. Like all other release forms explicit consent must be obtained from the model, i.e. the person allowing their likeness to be used. The form must also state the intended purpose of the content.

5 Tips for Drafting Image Release Forms

a

Clearly define the purpose and scope of the release

When creating or reviewing an image release form, it's crucial to clarify its purpose. Is it for photography? What's the intended use of the image? Is the photographer working directly with the model or subject, or is there an agency involved? This information determines the scope of responsibilities for all parties involved and the limits on how the image can be used.

b

Use clear and understandable language

Using straightforward and understandable language benefits both parties by ensuring a clear understanding of the release form's terms. If the form contains legal jargon, the party responsible for drafting, whether an individual or legal representative, must simplify or explain these terms. If any terms seem too complex, it's important to seek clarification and understanding before signing.

c

Specify the permitted uses and any restrictions

Include a clause that clearly outlines the allowed uses, duration, and any restrictions regarding the use of the images. This is an important section in the release form as it explains how the images can be used and what uses are prohibited. Additionally, it should specify the number of images permissible and any geographic limitations, particularly for branding and marketing purposes.

d

Obtain proper consent

Consent is the hallmark of the protection of image rights. Therefore, this clause should clearly and plainly state whether the subject agrees to the specified image use outlined in the release form. The consent must be explicit and informed, meaning the subject fully comprehends why consent is sought and granted, fully understands the release form's terms, and is aware of the extent to which their likeness will be utilized. This differs from implied consent, which may assume agreement based on just one aspect of the agreement.

e

Consider local laws and regulations

Include a clause in the release form that specifies the applicable laws in case of a dispute. Many release forms lack this provision, which can lead to legal issues in situations where local laws, such as permits for property photography, must be adhered to. Ignorance of the law is not a valid defense. Especially when working across different countries or jurisdictions, it's essential for both parties, whether photographers, videographers, or filmmakers, to clearly understand which laws will govern in case of a conflict.

f

Consult legal professionals for complex or specific cases

While you can find release forms online for various purposes, it may be difficult to decide on the best template to use to best capture the interest of both parties ensuring that both parties understand the terms of release. In such cases, it's advisable to consult with legal professionals for guidance. This is especially crucial when substantial monetary compensation is involved, serving as a safeguard and ensuring legal checks and balances are in place as a precautionary measure.

g

Educate employees and collaborators

Companies, agencies, and teams dealing with models, content creators, and marketing rely heavily on visual content. It's essential to educate them about the significance and appropriate use of release forms. This ensures the protection of subjects' image rights and safeguards the organization's interests, preventing potential legal issues.

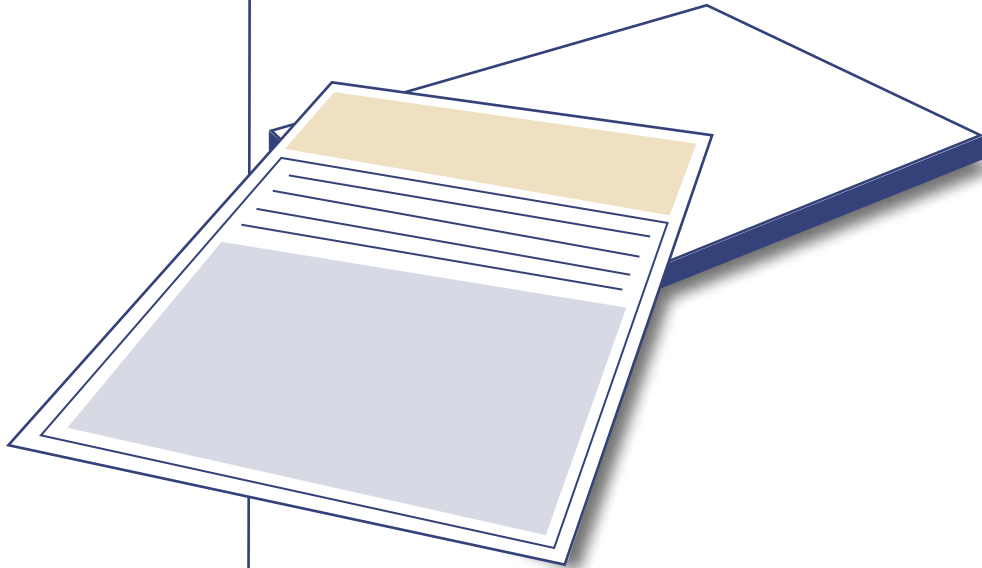
6 Resources

[Copyright Act](#)

[Advisory on the Use
of Memes and
Copyright Law](#)

[Advisory on Use of
Third Party
Photographs and
Images](#)

[Creatives
Commons Licences](#)



Examples of Release Forms

Disclaimer: Please note that the examples provided here are for illustrative purposes and should not solely be relied on without the guidance of a legal professional so as to ensure the clauses align with the Jurisdiction's statutory requirements.

[Model
Release
form](#)

[Group
Release
Form](#)

[Minor
Release
Form](#)

[Editorial
Release](#)



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We thank the organization for their continued support.

Contributors

Florence A. Ogonjo, Nelly Chepgetich, Chebet Koros, Calvin Mulindwa,

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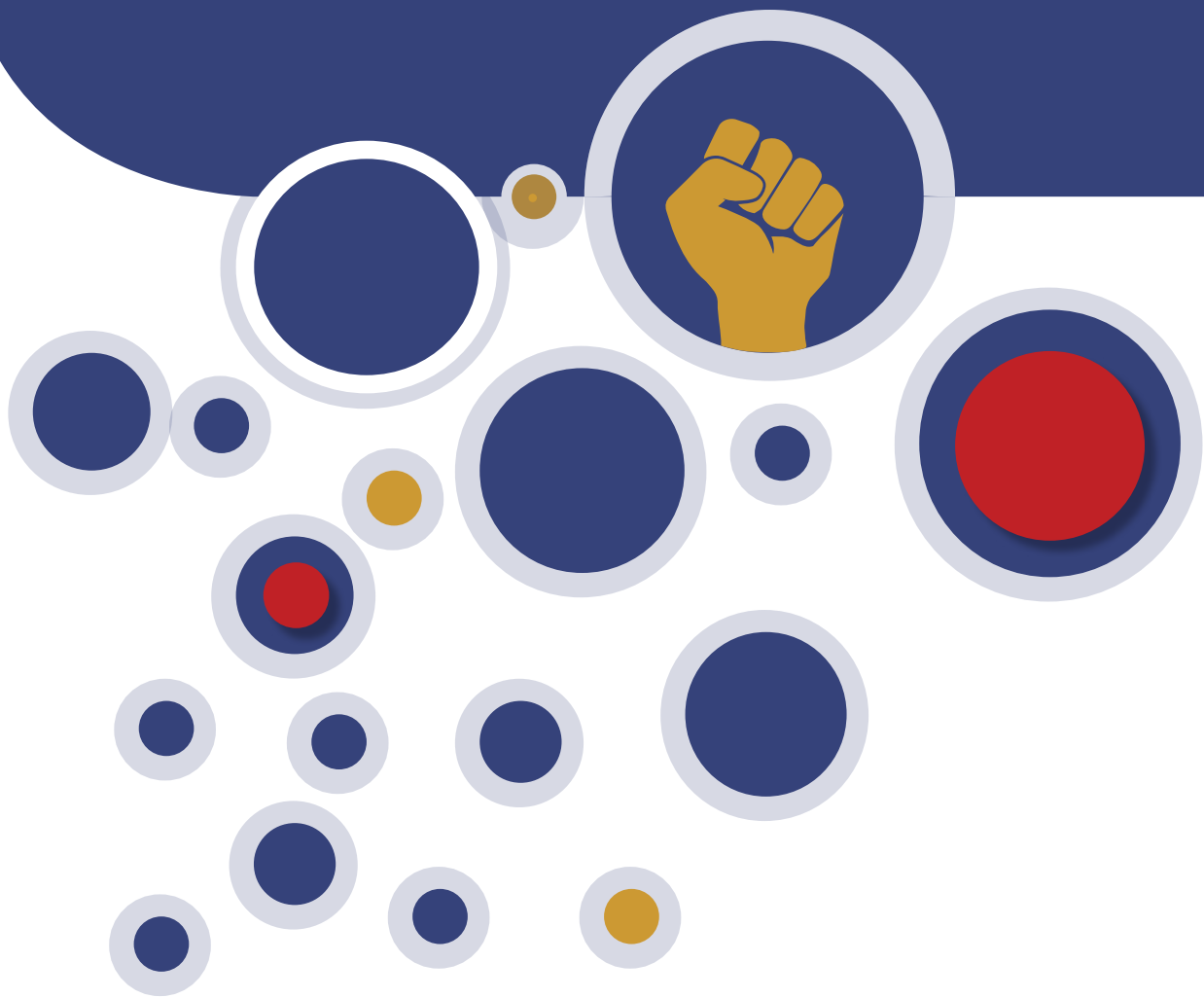
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LEGAL DISCLAIMER

This document does not constitute legal advice. Before engaging in any contractual agreements as a model, photographer, videographer, agency, or any other role, it is strongly recommended to consult with a qualified legal expert for professional guidance.



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