

Editorial Policy



Guidance Note

Access Agreements and Indemnity Forms

This guidance note should be read in conjunction with BBC Editorial Guidelines (www.bbc.co.uk/editorialguidelines) Section 5: Fairness, Contributors and Consent.

In cases of doubt, further assistance can be sought from the duty Editorial Policy Adviser by telephoning 0870 333 4550 or BBC extension (02) 81819.

All Guidance Notes can be found at edpol.gateway.bbc.co.uk/guidance_notes.shtml (BBC internal link) or www.bbc.co.uk/guidelines/editorialguidelines/advice/.

Introduction

Many organisations, ranging from police forces to schools, require the BBC to enter into written agreements in return for facilitating access to their premises or staff. This can be a useful way of formalising the terms under which consent for access or other contributions is granted. The contract may take the form of an Indemnity, which simply states the BBC's legal liability to the organisation providing facilities to the BBC, or it may be an access agreement covering a broad range of rights and obligations for both parties.

Indemnity Forms

Indemnity forms are the legal agreements by which an organisation providing a facility to the BBC clarifies liability if something goes wrong – either during recording or as a result of the broadcast. They may be stand-alone documents or an indemnity clause within a broader Access Agreement. An inappropriately worded indemnity could result in the BBC being held liable for actions outside its control or responsibility. Editorial Policy and/or Programme Legal Advice and/or Insurance Department may be consulted before agreeing an indemnity clause.

Police Forces in England and Wales

The Association of Chief Police Officers has a standard Indemnity Form that it recommends for use by all Police Forces in England and Wales when they are accompanied by media organisations. The wording of this form has been agreed with the BBC. It is acceptable to sign such a form provided that the wording is

identical to the agreed version available here (see notes below on checking the wording):

http://www.bbc.co.uk/guidelines/editorialguidelines/assets/forms/indemnity_form_april2004.doc

In addition, the BBC has agreed the wording of a separate and distinct indemnity/access form with **Kent Police**. Again, it is acceptable for programme makers and journalists to sign a form offered by Kent Police, provided it is identical to the agreed version available here:

http://www.bbc.co.uk/guidelines/editorialguidelines/assets/forms/kent_police_agreed_indemnity.doc

Notes on ACPO agreed form:

When ensuring an indemnity form matches the ACPO agreed version, particular attention should be given to the wording of clause 3 and the declaration at the end of the Note to Media Representatives.

Although this standard form is recommended by ACPO as good practice and has also been adopted by the Metropolitan Police, other individual forces are not obliged to use it and may still prefer to issue their own documents. With the exception of the Kent force, alternative forms are unlikely to have been agreed with the BBC and you will need to be sure that they are acceptable before signing (see guidance for “Other Organisations” below). If you are presented with an indemnity form or filming agreement that has particular difficulties, you may offer the standard ACPO form (available on the link above) as a substitute.

Other Organisations

The BBC has not agreed a standard wording for Indemnity Forms or clauses with any other organisation (although there is a standard access agreement, including indemnity clauses, with the Ministry of Defence – see below). However, it is reasonable to agree indemnity clauses on a case-by-case basis provided they do not over-state the BBC’s liability.

Programme makers need to ensure that the BBC is accepting liability only for problems its employees and agents have caused directly – either through their actions or through negligence. The BBC should not be left potentially liable for claims when it has had no direct involvement in whatever has gone wrong.

It is not acceptable for the BBC to agree to be liable for the actions or negligence of either the organisation providing the facility, or any other person with no relationship to the BBC. Similarly, the BBC should ensure that the organisation providing the facility does not try to exempt itself from liability for negligence.

Clauses seeking to regulate or restrict the BBC's responsibilities in relation to privacy or other Human Rights issues should not be agreed unless they strike an appropriate balance between the rights of privacy and freedom of expression, or similarly maintain the BBC's ability to make its own judgements as to what may be included in the programme.

Advice is available from Programme Legal Advice and Editorial Policy, who should be consulted, prior to signing, if any doubt exists about the wording of an indemnity form or clause.

Access Agreements

Access agreements (sometimes called Recording, Filming or Location Agreements) cover all the terms and conditions under which an organisation is prepared to grant a facility to programme makers (such as tag-along raids or any observational recording, use of pictures/films/recordings, pre-trial briefings etc.). At present, the BBC has negotiated standardised wording of such an agreement with the Ministry of Defence (see below), but not with any other organisation.

We must not sign access agreements that surrender the BBC's editorial control, or otherwise compromise our editorial integrity. Editorial control requires the BBC or Independents working for the BBC to retain the right to record and broadcast material as freely as possible, as well as to edit accurately, impartially and fairly.

Editorial integrity may be compromised by the following matters, commonly requested in access agreements:

Viewing/Listening Rights

The BBC does not offer the opportunity for contributors to see or hear programmes prior to transmission, save in exceptional circumstances. This may be to allow an organisation involved with the programme to offer advice (if the subject matter has security or safety implications, or is otherwise delicate), or to be aware of the programme's content to prepare for inquiries a programme may generate from other media.

Viewing or listening rights may also be offered when dealing with vulnerable contributors. (See Section 5: Fairness, Contributors and Consent).

Veto of Material

Any viewing or listening rights provided to contributors or facilitating organisations should not be accompanied by a right to demand changes. It is acceptable to allow for representations to be made on any matters of concern (particularly factual accuracy, impartiality and fairness) and for the programme makers to agree to give due consideration to any comments received, whilst operating to the standards of

the Editorial Guidelines, but editorial control and the decision on whether or not to change the programme must remain with the BBC.

Advice is available from Editorial Policy on any deviations to this principle, prior to signing an access agreement. It may be acceptable, in exceptional circumstances, to grant an organisation the right to request the removal of material that jeopardises security, safety or future undercover operations. However, any such exceptions require careful wording to ensure they do not allow for undue influence on editorial content which could undermine the programme's integrity.

Access agreements should not normally allow organisations the right to veto material they believe may influence any pending legal proceedings, but it is acceptable to sign an agreement to act within the requirements of the laws of Contempt.

Gathering Material

We need to retain editorial control to ensure that the audience can be given an accurate and impartial view of any organisation or individual who has allowed us to film or record. Access clauses which give contributors the right to demand that we stop recording at any time are not normally acceptable. Security concerns can usually be addressed in discussion with the organisation at (or before) the final edit stage. On exceptions when "stop recording" clauses are acceptable, they should be limited to specific circumstances and allow for recording to resume and the decision to be explained as close as possible to the time the stop instruction is given.

Any access clauses concerning consent of contributors should be in keeping with the BBC's Editorial Guidelines. We will normally seek the consent of people who contribute to our output. People recorded clearly committing an offence or behaving in an anti-social manner in a public place will not normally be asked for consent (although legal considerations may also prevent identification). (See Section 5: Fairness, Contributors and Consent – Contributors and Informed Consent)

Credits and Links

Credits and links should only be given in keeping with the BBC's Editorial Guidelines and Credits Guidelines and must remain under our editorial control; they cannot be offered or agreed as a requirement of the terms and conditions of access.

Transmitted and Untransmitted Material

We retain the rights in our material. Although it is usually acceptable to agree to supply copies of the transmitted programme to an organisation providing access, it should normally be specified that this is for private rather than commercial use. Copies should only be supplied after transmission.

(See Section 7: Crime and Anti-Social Behaviour – Requests for Transmitted Material)

Access agreements should not require the BBC to supply untransmitted material. (See Section 7: Crime and Anti-Social Behaviour – Requests for Untransmitted Material)

Arbitration

In the event of contractual disputes arising from an access agreement, some organisations will seek to oblige the BBC to participate in independent arbitration. Subject to the advice of Legal and Business Affairs, this may be an acceptable and cost-effective means of dispute resolution for the commercial aspects of a contract. However, any commitment to independent arbitration must be restricted so that it does not include disputes over clauses relating to the editorial content of the programme. Any failure to secure such a restriction could effectively hand final editorial control of a programme to a third party arbitrator, without possibility of appeal.

Other Conditions

In addition to the issues outlined above, there are many other conditions that may give cause for concern if imposed upon the BBC in return for access. In particular, attention should be paid to any indemnity clause. (See above: Indemnity Forms). It is often possible to negotiate on clauses in access contracts but, if unacceptable access terms are insisted upon, we should withdraw from the project.

Advice is available from Editorial Policy and Programme Legal Advice.

When access agreements cover non-editorial areas, including rights, re-use and facility fees, the relevant Legal and Business Affairs department should be consulted.

Ministry of Defence

The BBC negotiated a standard template for an access agreement with the Ministry of Defence in June 2006. This should be issued to all factual programme makers seeking to make programmes with the co-operation of the MOD.

Anyone seeking access from the MOD is advised to request the BBC-agreed template at the earliest opportunity, and then contact Jane Longley in TV Locations on x 02 61673 to confirm they have received the correct document. (This applies to all programme makers, including those in Audio & Music or Nations & Regions)

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