



**Instructions for completing the
POST-SUIT KARAOKE LIBRARY AUDIT ACKNOWLEDGEMENT OF TERMS
AND QUESTIONNAIRE**

NOTE: This form can not be filled out on your computer

Please do the following:

1. Print this form so you have a physical copy (7 pages including this instruction sheet).
2. Fill out the form by hand by writing neatly and legibly, signing where indicated, and initialing at the bottom of each page.
3. Return it to us by one of the following methods (this instruction page does not need to be returned):
 - (a) Scan the documents and email to: brianp@phxep.com
 - (b) Fax to 704-588-8893

If you have any questions please call our customer service department at 1-800-788-4487.

Initials: _____

POST-SUIT KARAOKE LIBRARY AUDIT ACKNOWLEDGEMENT OF TERMS

THIS DOCUMENT MAY AFFECT YOUR LEGAL RIGHTS. DO NOT SIGN IT WITHOUT READING IT.

**THIS DOCUMENT IS NOT A SETTLEMENT AGREEMENT.
THIS DOCUMENT IS NOT BEING TENDERED AS PART OF SETTLEMENT NEGOTIATIONS.**

You have requested that your karaoke library be audited in order to have this information considered as one of the factors in resolving a dispute between you and Phoenix Entertainment Partners, LLC. ("PEP") whose address is 12245 Nations Ford Rd. Suite 505, Pineville, NC 28134, concerning SOUND CHOICE® karaoke recordings. Your signature below indicates your acknowledgement of the following terms for this audit:

1. **YOUR REQUEST FOR AUDIT.** Your signature below constitutes your request for an audit of your karaoke library. PEP has agreed to conduct this audit for the costs identified in paragraph 5.A. of this agreement.
2. **REJECTION OF POTENTIAL OR ACTUAL SETTLEMENT OFFER.** You acknowledge that PEP has mentioned the possibility of settling this matter on certain conditions. Your request for an audit constitutes a rejection of any potential or actual settlement offer that has already been made to you. If you fail this audit, it will cost you more to settle this case. You should consider carefully whether or not you can pass the audit.
3. **SCOPE OF AUDIT.** PEP will conduct an audit of your karaoke library to determine whether you had legitimately acquired a legal copy of every SOUND CHOICE® karaoke accompaniment track stored in your karaoke library at least nine months prior to the filing date of the lawsuit. A SOUND CHOICE® track is deemed to have been legitimately acquired only if you own an original CD+G (compact disc plus graphics) disc containing that track. If you have transferred the track to another format and/or media ("media-shifted"), you must own an original CD+G disc containing that track for each such system to which you have transferred that track, in order to be considered in compliance. As part of the terms of your audit you must email PEP: 1) a copy of your complete songbook listing in a searchable and sortable electronic format such as Microsoft Excel, 2) a complete list of every song on your hard drive(s), plus , 3) a listing of every original Sound Choice disc you owned and had in your possession prior to the filing date of the lawsuit in a searchable and sortable electronic format such as Microsoft Excel.
4. **RIGHT TO TERMINATE.** You have the right to terminate the audit at any time; however, you should be aware that PEP may use all available legal process, including obtaining a court order, to obtain the information it is collecting through this audit. **Deleting tracks or acquiring discs after the lawsuit is filed will be considered by the Court to be an attempt to destroy or alter evidence. Destruction or alteration of evidence, whether occurring before or after the audit, may subject you to sanctions from the Court.**
5. **AUDIT PROCEDURES.** The following procedures will be used to conduct the audit:
 - A. **EXPENSE.** There is a charge for this audit which helps offset the significant labor, management and legal expenses to provide this service. The cost for a Post-Suit in-person field audit and Covenant Not To Sue is \$500.00 (for up to a 3 hour audit; \$25.00 for each additional hour) regardless of whether or not you pass. The cost for additional systems is \$100.00 per each additional system. Most single system audits can be completed in less than 3 hours, depending on the quantity of Sound Choice discs in your collection. A Post-Suit audit could have been avoided by a request from you for a Voluntary Pre-Suit audit. Because this was not done, PEP's costs to verify and force compliance with our Media Shifting policies have increased significantly and are being passed on to you. However, if you pass your audit there are benefits to you. A certified KJ is listed on our website so any venue can confirm you meet the high standards necessary to be certified. In addition, you get official documents issued by PEP, Safe-Harbor Literature, a T-shirt and vinyl banner to hang at your venues showing that you were certified for your Sound Choice library. This helps you keep your gigs and defend your pricing, which you should be able to raise because as a compliant KJ you do not put the venue at risk for being sued for secondary infringement. This certification is also a great sales tool when you are soliciting new business from another venue who may be employing an infringing, non-certified KJ. More and more venues asking for proof that a host is legitimate before they hire them.

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- B. **TIME/PLACE.** A PEP representative will contact you to arrange for a mutually acceptable time and place for the audit. The “Post-Suit Karaoke Library Audit Acknowledgement of Terms” and Attachment A, (the “Phoenix Entertainment Partners Karaoke System Audit Questionnaire”), must both be completed fully, truthfully and accurately and returned to us within 3 calendar days of their receipt by you, along with the three lists noted in Paragraph 3, Scope of Audit . Any falsification or misrepresentation will be considered grounds for failing the audit.
- C. **EQUIPMENT/DISCS.** You should assemble for inspection all of your karaoke discs, CAVS/RSQ machines if they have internal memory, computers (including laptops), and any other apparatus, such as SD cards, any and all manner of external drives, etc., containing karaoke media, whether being used for active or backup purposes, in the designated location at the designated time. If any additional equipment is necessary to access the media (including but not limited to laptop, keyboard/mouse, monitor, or CAVS/RSQ machine), you should bring that equipment as well.
- D. **DOCUMENTS/BOOKS.** You should also assemble for inspection at least three of your song books and all song lists and receipts from disc purchases. Receipts for disc purchases may be verified against seller records to prevent falsification. Discs acquired after PEP’s initial investigation will be matched against load dates on your system to determine whether infringement occurred prior to acquisition of the disc.
- E. **MARKING.** Each disc will be identified by stamping an indelible and nearly invisible but unique audit number traceable to you on the hub of the disc. Either you will stamp the discs in advance of the audit, and/or PEP will stamp the discs at the time of the audit, depending on the number of discs and time constraints. This marking will not interfere with your ability to play the disc but will prevent that disc from being re-used in an audit of another company. If we determine that you have “shared” discs (either borrowed or lent) you will fail the audit and any parties involved will be subject to a lawsuit.
- F. **SOFTWARE INSPECTION.** PEP will employ software designed to examine any hard drives in your possession to determine whether there has been any alteration of evidence of the songs on your system or changes in possession of original discs after PEP’s investigation began. In addition, PEP may make a forensic analysis image of your equipment which may be sent to a digital forensic analysis lab for examination by a certified forensic professional. **The alteration of evidence may be held against you by the Court.**
- G. **YOUR PARTICIPATION.** You should be prepared to explain the process you used to move tracks from CDs to another medium. If you purchased a pre-loaded hard drive or karaoke machine with an internal memory, such as a CAVS or RSQ machine, you should be aware that PEP has never authorized a transfer of that type. In that situation, an audit would be inappropriate. Instead, we would suggest that you reach a settlement with us that allows you to acquire discs. We may be willing to agree to a “no-disc” settlement if you can show that you have acquired a substantial number of discs legitimately.
6. **SUCCESSFUL AUDIT.** The target you should be shooting for is where for every audited track, you owned one legitimately acquired original disc containing that track for every individual machine (CAVS/RSQ machine, laptop, or other device you use for media storage for a karaoke show) that contains that track for at least nine months prior to the lawsuit filing date. This is known as “1:1 correspondence.” We recognize that discs do get lost, stolen, damaged, or destroyed from time to time. So in the absence of any other proof that you have altered evidence regarding being in strict 1:1 compliance prior to the filing of the lawsuit, a successful audit means that at least 98% of the tracks stored on your hard drive can be traced to a unique disc. Of course, you will still need to delete the tracks that you don’t have a disc for.
7. **DISMISSAL OF SUIT.** If you successfully complete the audit, PEP will be willing to dismiss the suit against you provided that you agree to adhere to all applicable copyright and trademark laws with regard to the use of SOUND CHOICE® accompaniment tracks and to submit to future audits at PEP’s reasonable request.
8. **USE OF AUDIT RESULTS.** You acknowledge that PEP may use the results of the audit it conducts in any way it deems appropriate, including as evidence against you in the pending suit. If you pass your audit, we will promote you on our website as being “certified” for being 1:1 compliant and your song book/song list will be posted on-line. If you legitimately add to your library via the purchase of additional discs, we encourage you to contact us for a “mini-

audit" so that we can keep your certification up-to date, which can be as easy as sending photos of the new discs (marked) and your receipts and the new song list you want posted.

9. **FAILED AUDIT.** At the conclusion of a failed audit, PEP may or may not tender you a settlement offer. Our usual practice after a failed audit is to set a settlement demand higher than the most recent potential or actual settlement offer, but that decision and the amount of any increase will be made based upon the particular circumstances. In any event, you should be aware that PEP may pursue statutory damages for trademark counterfeiting, which in cases of willful infringement can be as high as \$2,000,000 per trademark per type of goods or services sold, offered for sale, or distributed (there are four federally registered trademarks at issue here and at least one type of goods used, for a total of \$8,000,000). Recent case law suggests that even minor cases of non-commercial trademark counterfeiting can result in significant damage awards.
10. **ADVICE OF COUNSEL.** You acknowledge that you have had the opportunity to review this document and to obtain an opinion of counsel regarding it prior to signing it.

Your signature below constitutes a rejection of any and all potential or actual settlement offers from PEP and an acknowledgement of the terms of audit.

IF YOU ARE NOT IN AGREEMENT WITH ALL OF THE TERMS ABOVE, DO NOT SIGN THIS DOCUMENT.

SIGNATURE

PRINTED NAME

COMPANY NAME

TITLE

DATE

E-MAIL ADDRESS

TELEPHONE NUMBER

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SECTION 3. REPRESENTATIONS. Please indicate which of the following statements are TRUE, FALSE, or do not apply to you (N/A):

If you believe any of your answers need further explanation, please add supplemental pages with your clarifications or information.

	TRUE	FALSE	N/A
My hard drive/CAVS/RSQ system came pre-loaded with Sound Choice branded tracks when I purchased/acquired it.			
I had an original Sound Choice disc for every karaoke track stored on my hard drive system(s) for at least nine months prior to the date of the lawsuit.			
I have the ability to produce more than one karaoke show at the same time (i.e., multiple hard drives/systems).			
I own and use multiple hard drives, and the contents of those hard drives are identical or nearly identical.			
In order to put Sound Choice branded tracks onto my hard drive, I ripped the tracks from my original Sound Choice discs myself, or I had this done by a third party who did this for me at my direction.			
I store my Sound Choice branded tracks on more than one hard drive at one time.			
Some of my original Sound Choice discs have been lost, damaged, stolen, or destroyed.			
As instructed in the Summons cover letter, I have not altered, added or deleted any of the Sound Choice karaoke files on my computer since the date of the lawsuit.			
I am sometimes asked by patrons to play a track from a disc the patron supplies.			
I sometimes store tracks from patrons' discs on my hard drive to make it easier to play those tracks the next time the patron wants to sing.			
I sometimes make copies of songs for my patrons.			
I sometimes offer video or audio recordings of my patrons' renditions for sale or give-away.			
I produce a song book listing all (or almost all) of the songs available for my patrons to sing.			

If you believe any of your answers need further explanation, please add supplemental pages with your clarifications or information.

- Is the computer and external hard drive (if you use an external hard drive) you will be presenting for the audit the same equipment that was in use at the time the lawsuit was filed? YES _____ NO _____
- If you checked NO to question 1, provide in the space below a complete explanation including (a) the year and month you replaced the computer or hard drive, (b) the reason for doing so, and (c) the method you used for transferring the songs from one system to the other.
- Is the computer and external hard drive (if you use an external hard drive) you will be presenting for the audit the same equipment that was in use for at least nine months prior to the time the lawsuit was filed? YES _____ NO _____
- If you checked NO to question 3, provide in the space below a complete explanation including (a) the approximate date you replaced the computer or hard drive, (b) the reason for doing so, and (c) the method you used for transferring the songs from one system to the other.
- Have you downloaded any Sound Choice branded tracks from www.buykaraoke.com, youtube.com or any website in the world? YES _____ NO _____
- If you answered YES to question 5, provide in the space below a complete explanation including (a) the URL of the website; (b) approximate number of Sound Choice branded tracks downloaded, (c) the song titles (d) the time period during which this was done and (e) the price you paid,

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7. Have you acquired any Sound Choice branded tracks from internet sites, including but not limited to IRC Channels, Bit torrent sites, or other file sharing sites? YES _____ NO _____

8. If you answered YES to question 7, provide in the space below a complete explanation including (a) the URL of the website; (b) approximate number of Sound Choice branded tracks downloaded, (c) the song titles (d) the time period during which this was done

9. Have you loaded any Sound Choice branded tracks onto your computer or external hard from another hard drive? YES _____ NO _____

10. If you answered YES to question 9, provide in the space below a complete explanation including (a) approximate number of Sound Choice branded tracks loaded, (b) the circumstances under which you acquired access to this hard drive, and (c) the time period during which this was done.

SECTION 4. WARRANTIES, REPRESENTATIONS, ACKNOWLEDGEMENTS, AND AUTHORIZATIONS.

By signing this document:

- I hereby warrant, represent, and declare under penalty of perjury that the statements above are true to the best of my knowledge and information, and that I believe them to be true.
- I represent that I believe my karaoke systems are fully compliant with all applicable laws regarding trademarks and copyrights, and that I believe I am in full compliance with PEP's policy regarding media-shifting and compliant operation.
- I authorize PEP to take reasonable steps, including the creation of a forensic analysis image of my equipment and the submission of those images to a digital forensic analysis lab for examination by a certified forensic professional, to verify that the statements made above are true.
- I acknowledge that I have been given the opportunity to review PEP's policies regarding media-shifting and compliant operation, and that I may have this document reviewed by counsel at my own expense prior to signing it.
- I acknowledge that my participation in this audit and my completion of this questionnaire are entirely voluntary.
- I acknowledge that my agreement to participate in this audit and to complete this questionnaire does not imply any covenant by PEP not to sue me in the event that I am not operating in compliance with applicable laws.
- I acknowledge that the information provided herein may be used freely by PEP in connection with its efforts to enforce its intellectual property rights.
- If I am signing this document on behalf of a corporate entity, LLC, or partnership, I am authorized to sign it on behalf of that entity.

AUTHORIZED SIGNER

DATE

PRINTED NAME

TITLE

Initials: _____