

Board of Regents
The Chief Justice
of the United States,
Chancellor

May 9, 2006 1

Vice President
of the United States
Richard B. Cheney

The Honorable
Thad Cochran

The Honorable
Bill Frist, M.D.

The Honorable
Patrick J. Leahy

The Honorable
Xavier Becerra

The Honorable
Sam Johnson

The Honorable
Ralph Regula

Eli Broad

Anne d'Harnoncourt

Phillip Frost

Shirley Ann Jackson

Robert P. Kogod

Walter E. Massey

Roger W. Sant

Alan G. Spoon

Patricia Q. Stonesifer

The Honorable Charles Taylor
Chairman
Subcommittee on Interior,
Environment,
and Related Agencies
B-308 Rayburn House Office
Building
U.S. House of Representatives
Washington, DC 208515

The Honorable Norman D. Dicks
Ranking Minority Member
Subcommittee on Interior,
Environment,
and Related Agencies
1016 Longworth House Office
Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Taylor and Mr. Dicks:

As requested in your letter dated April 27, at the May 8 regular meeting of the Smithsonian Institution's Board of Regents, the Regents discussed the agreement with Showtime Networks, Inc. to form *Smithsonian on Demand*, a new digital, on-demand television network. This discussion was lengthy and detailed, and included all the issues raised in your letter. I'm pleased to convey to you the results of that discussion.

We reaffirm that the agreement affects only *use* of Smithsonian resources in films, not *access*. Scholars and researchers will not encounter restrictions under the agreement.

The Board of Regents reconsidered the entire issue and concluded that *Smithsonian on Demand* is not only consistent with but also significantly furthers founder James Smithson's directive for the "increase and diffusion of knowledge." It must be emphasized the agreement affects only *use* of Smithsonian resources in films, not *access*. The Regents have been involved in the formulation of this agreement from the beginning, and have discussed and considered the issues you raise.

Smithsonian on Demand will offer approximately 100 hours of programming every year to a potential audience currently estimated at 25 million households and growing, compared to virtually none today. This is a dramatic increase in the number of people who have seen programs based principally on the activities and collections of the Smithsonian in the past and equivalent to many times the total annual visitation of all the Smithsonian's museums.

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The Board concluded that the contract does “fully guarantee that its terms are limited to a narrow set of programs and not a bar to other legitimate commercial filmmakers who... have the right to reasonable access to the collections and staff” of the Smithsonian. The contract affects only a very minor percentage of the filming requests we receive. An analysis of approximately 900 media contracts signed between 2000 and 2005 shows the overwhelming use of Smithsonian resources is for academic, curriculum-based, or scholarly purposes, which are outside the scope of the agreement and will continue as they have in the past, or for incidental use in commercial films, which is permitted under the agreement. Only 17 agreements, or fewer than 2 percent, appear to have involved more than incidental use of Smithsonian resources and these were done with large entities which already have prominent, established positions on television. And in those cases, each year the Smithsonian retains the right to produce a number of programs of this type outside the venture.

As we have said, when a filming request involves significant, more than incidental use of Smithsonian content, the filmmaker has several options - approach the *Smithsonian on Demand* joint venture to see if the venture is interested in producing the film (a very attractive option to filmmakers who do not already have financing in place); as noted above, discuss a co-production with the Smithsonian Institution outside the venture; or reduce the proposed use of Smithsonian resources to an incidental component of the film. Again, should the filmmaker choose not to work with the venture, the Smithsonian has the ability to produce a number of films outside the venture each year. However, as has always been the case, there is the possibility that in rare cases, use of Smithsonian resources will not be possible.

Examples of past programs that would have been unaffected by the venture include: “Julia Child Retrospective,” Food Network, 2004; “Explorer: Nightmare at Jamestown,” National Geographic, 2002, and Ken Burns’s “Jazz,” PBS, 1999.

Access to Smithsonian resources is not affected by the agreement. Scholars, teachers, researchers, archivists, librarians, filmmakers, and others continue to have full access to Smithsonian resources. The agreement affects only proposals to film Smithsonian resources for commercial distribution and broadcast, where that proposed use is more than incidental. The Board plans to offer further guidance and specific

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examples to documentary producers and the general public regarding when the use and filming of Smithsonian resources will or will not be considered more than incidental.

It is important to note, however, that the Smithsonian has always controlled access to its resources, consistent with its obligation to care for the National Collections and to pursue its mission. This control has nothing to do with the *Smithsonian on Demand* agreement; it has always existed. Requests for access have always been reviewed for various considerations, including whether the proposal is consistent with Smithsonian goals and objectives, would pose a danger to collections, or would inappropriately divert staff from their normal duties. The Regents are pleased to see the statutory language included in your subcommittee action on May 4 recognizes the importance of this continued control.

Both your letter of April 27 and your statutory language of May 4 refer to a public process for discussion of proposals that would affect the public's access to Smithsonian resources. The Institution fully recognizes its obligation to work with Congress and in particular its committees of jurisdiction to keep them informed of our opportunities and challenges. This is one reason why the minutes of the Regents' meetings are shared with our committees of jurisdiction, as they were in this instance. In the future, we will discuss with you in advance any proposed agreements that relate to access to the collections. We agree it would be important and helpful for the Smithsonian executive staff – in consultation with the Regents – to enhance the process they follow as they consider any future proposals that would affect access and we would like to work with you to develop an effective approach to that end.

The Regents will be pleased to collaborate with you and your colleagues in Congress in helping the Smithsonian carry out its 160 year old mission to “increase and diffuse knowledge” and to do so in a way consistent with proper stewardship and cognizance of the Institution's need to serve the public by employing 21st Century technology.

Sincerely,

Roger W. Sant
Chairman of the Executive Committee

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