

# Center for American Progress



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May 10, 2006

The Honorable John G. Roberts, Jr.  
Chief Justice of the United States  
Supreme Court of the United States  
1 First Street, NE  
Washington, D.C. 20543

Dear Chief Justice Roberts:

I am writing to you today in your role as Chancellor of the Board of Regents of the Smithsonian Institution.

As you are aware, there has been serious concern from a broad cross-section of the public about the recent Smithsonian Institution announcements concerning the joint venture with CBS/Showtime. A recurring theme in the concerns expressed by the public has to do with the secrecy surrounding the agreement and the decision making process. I am writing to you today to suggest that the culture of secrecy that has arisen in the Smithsonian Institution is counter-productive and is hurting the Institution's ability to reach decisions that have the support of all the stakeholders of this public trust.

The most specific example of the culture of secrecy is the Showtime contract. As you know, the Institution maintains that it cannot release the contract to the public. However, release of even a few more details about the arrangement might go a long way towards helping people understand the recent actions. For example:

- The Institution has reassured reporters that the contract with Showtime has a limited term, but refuses to specify the length of the contract.
- The Institution says the contract is good for the Smithsonian as they will receive a minimum yearly fee, but will not specify how much that fee is, nor whether the Institution will be able to share in the profits.
- The Institution has purportedly conducted a study that indicates that commercial filmmakers have not made non-incidental use of the archives in the past 5 years, but the study has not been released.
- Most importantly, the Institution assures us that it will be lenient in determining what "non-incidental use" is, but will not disclose the specific criteria it will use in making that determination.

Disclosure of a bit more information in each of these examples would be a sign that the Institution values a public dialogue on actions it takes.

The culture of secrecy goes beyond the specific example of the Showtime contract. As you know, the minutes of the meetings of the Regents are sent to the Congress for their review, but these minutes are not published for the public to view. During the recent exchange of letters with the Congress, the Smithsonian failed to post answers to the House Appropriations Committee for the public to view. And, while the Secretary briefed the press after the Regent's meeting, that briefing is not available on the web for the public to view.

Lack of specific details on the Showtime contract and a general pattern of not speaking to the public are disturbing for an instrumentality of the United States. As a public trust, the Smithsonian Institution receives many benefits, such as the large yearly infusion of funds from the people of the United States. With those benefits come some increased obligations, the most important of which is the requirement to conduct its affairs in the public eye. This is sometimes inconvenient, but a public process is an essential part of the bargain.

I am writing to you today to urge you to take actions to make the decision-making process at the Smithsonian more transparent. Regular publication of the minutes of the meetings of the Regents and more specific details of the Showtime contract are two such actions.

A more fundamental step would be a regular process of public hearings, which would be of great benefit in building a broader base of public support for the actions of the Institution. The Institution will surely find that these public hearings are a valuable source of information and may provide information about ways to raise money that the staff had not considered. For example, public hearings might have shed light on alternative distribution media to cable-on-demand, such as the Internet, which would have provided a better commercial/non-commercial balance and might provide a larger revenue stream for the Institution without limiting competition. It was unclear in the Regent's response to the letter from the Congress whether a commitment has been made to conduct such public hearings on a regular basis.

I hope you will take these suggestions in the spirit in which they are advanced, as constructive suggestions from a strong supporter of the Smithsonian, an admirer of the dedicated and highly talented staff, and a concerned member of the public.

Sincerely yours,

Carl Malamud  
Chief Technology Officer/CTO  
Center for American Progress

cc: Hon. Lawrence Small, Secretary of the Smithsonian Institution  
Members of the Board of Regents of the Smithsonian Institution