

April 17, 2006

The Honorable Lawrence M. Small  
Secretary of the Smithsonian Institution  
100 Jefferson Drive, SW  
Washington, D.C. 20560

Dear Secretary Small:

We are writing to express our deep concern over the recent announcement of the creation of "Smithsonian Networks," a joint venture between the Institution's Smithsonian Business Ventures Unit and Showtime Networks.

According to Jeanny Kim, Vice President for Media Services at Smithsonian Business Ventures, filmmakers and researchers who wish to have "more than incidental" access to Smithsonian archives or Smithsonian curators or scientists would have to offer their project to this new business venture. This policy will discourage independent filmmakers from creating projects for other media outlets. Indeed, this policy will also discourage an independent filmmaker from making a documentary and releasing it on the Internet on a noncommercial basis.

We have several concerns about this new venture. First and foremost, the Smithsonian Institution has refused to disclose the details of this agreement. In a letter to members of the Smithsonian Institution, a spokesperson states: "This is a business contract that does not involve federal funds. Such contracts are confidential as they contain proprietary information that no company should have to share publicly."

The Smithsonian Institution is not merely a business venture. It is a publicly chartered guardian of our national heritage, created by the U.S. Congress "for the increase and diffusion of knowledge among men." In your FY2005 Annual Report, you noted that the Institution receives 75% of its revenue from federal appropriations, government grants, and government contracts. The Institution is governed by a Board of Regents appointed from all three branches of our government. The Smithsonian Institution is a public trust in the truest sense of the term.

The Institution, as a public trust, operates as custodian of our shared heritage. As Secretary Joseph Henry stated in his first annual report in 1847 in considering the role of the Institution in formally accepting the bequest of James Smithson: "The bequest is for the benefit of mankind. The Government of the United States is merely a trustee."

Because the arrangement with Showtime Networks has raised grave concerns among the public, we believe it is imperative that the Institution disclose all the details of this contract. The Smithsonian Institution, by subscribing to the "intent and spirit" of the Freedom of Information Act, should keep in mind that the aim of the law is "a general policy of full agency disclosure." The purpose of that law, as so eloquently stated by Justice Thurgood Marshall is to "ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." Disclosure of the terms of the contract that establishes Smithsonian Networks goes to the very heart of the "intent and spirit" of the Freedom of Information Act.

While disclosure of the terms of this contract is our first concern, our broader concern is the troubling principle established by the venture of a “right of first refusal.” The prospect of potentially requiring that an independent filmmaker, a video blogger on the Internet, a historian, or educator who makes “non-incidental” use of the collections or needs access to staff first present their project for commercial exploitation by this new business venture is an anticompetitive practice that is extremely troubling.

Recent years have witnessed an explosion in the creation of documentary films. Many award-winning films have drawn on our collective heritage as maintained in the archives of the Smithsonian Institution. Closing off one of the most important collections of source materials and limiting access to staff will have a chilling effect on creativity, will create disincentives for digitization of the collections for access by all Americans, and violates the mission and purpose of the Smithsonian Institution.

We ask that you take three actions today:

1. Disclose the terms of the contract with Showtime Networks and any other commercial agreements that limit access or use of the collections.
2. Annul the contract with Showtime Networks, as it was awarded without public comment and without a competitive procurement process.
3. Hold hearings to gather comment from a broad cross section of the public before undertaking any further actions that limit access to the collections for which the Smithsonian acts as guardian or limit access to the talented and highly capable staff of the Institution.

Sincerely yours,

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