

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,

Carl Malamud
Senior Fellow/CTO
Center for American Progress

Vinton G. Cerf
Internet Pioneer

Gloria Tristani
President
Benton Foundation

Anna Deavere Smith
Actress, Writer, Teacher
New York University

Ken Burns
Filmmaker

Graeme Revell
Film Composer

Rick and Megan Prelinger
Prelinger Archives and Prelinger Library

Lawrence Lessig
Professor of Law
Stanford University

Prudence S. Adler
Associate Executive Director
Association of Research Libraries

Jacoba Atlas
Senior Vice President - Programming
PBS

Gigi B. Sohn
President
Public Knowledge

Alex Gibney
Director/Screenwriter/Producer

George C. Stoney
Goddard Professor of Cinema
Tisch School of the Arts at NYU

David J. Farber
Distinguished Career Professor
Carnegie Mellon University

Margaret Drain
Vice President, National Programming
WGBH

Alexander B. Magoun, Ph.D.
Executive Director
David Sarnoff Library

Mitchell Kapor
President and Chair
Open Source Applications Foundation

Tim O'Reilly
Founder and CEO
O'Reilly & Associates

Susan W. Lacy
Executive Producer, American Masters
WNET, New York

Paul Vixie
Internet Pioneer

Pamela Samuelson
Distinguished Professor of Law
University of California at Berkeley

Shelley Bookspan, Ph.D.
President
LifeStory Productions, Inc.

Gary Saretzky
President
Princeton Preservation Group

Lee W. Formwalt
Executive Director
Organization of American Historians

Patricia Mitchell
President & CEO
The Museum of Television and Radio

John F. Wilson
Co-Chief Programming Executive
PBS

Jeff Passe
President
National Council for the Social Studies

Michael Moore
Filmmaker

Shira Lee Katz
Doctoral Student
Harvard Graduate School of Education

Laurie Kahn-Leavitt
Documentary Filmmaker
Filmmakers Collaborative

Douglas Newcomb, CAE
Chief Policy Officer
Special Libraries Association

David C. Feingold
Assistant General Manager - Content
Nebraska Educational Telecommunications

Cory Doctorow
Novelist/Blogger/EFF Fellow/Fulbright Chair
Annenberg Center for Public Diplomacy
University of Southern California

Patricia Aufderheide
Professor and Director
Center for Social Media
School of Communication
American University

Howard Weinberg
President
The New York Film/Video Council

Lorie Conway
Producer/Writer
Boston Film and Video Productions

Peter Jaszi
Professor of Law
Washington College of Law
American University

Kirby Dick
Documentary Filmmaker
2005 Academy Award® Nominee

Siarkei Krasikau
Producer

Daniel Blake Smith
Professor of History
University of Kentucky
Phoenix Films, Inc.

Roy Rosenzweig
Professor of History
George Mason University

Anna K. Nelson
Distinguished Historian in Residence
American University

RJ Cutler
Filmmaker

Maria Agui Carter
Writer/Director
Iguana Films

Julie Corley
Filmmaker
LifeStory Productions, Inc.

Nancy F. Cott
Trumbull Professor of American History
Harvard University

Margit E. McGuire
Professor/Past President of NCSS
Seattle University

Julie Zammarchi
Independent Filmmaker

Tom Devine
Legal Director
Government Accountability Project

Jennifer M. Urban
Director, Intellectual Property Clinic
USC Gould School of Law

Michal Goldman
Filmmaker and President
Filmmakers Collaborative

Jeffrey Chester
Executive Director
Center for Digital Democracy

Sandra J. Ruch
Executive Director
International Documentary Association

Jonathan Lawson
Executive Director
Reclaim the Media

Dan Gillmor
Director
Center for Citizen Media

Thomas J. Simon
President
Fair Wind Pictures, Inc.

Robin Hessman
Filmmaker
Red Square Productions

Jonathan Rintels
Executive Director
Center for Creative Voices in Media

Tamara E. Robinson
Vice President and Director of Programming
WNET

Francesca Prada
Producer, Director, Writer

Alan Snitow and Deborah Kaufman
Snitow-Kaufman Productions

Barbara Attie
Attie and Goldwater Productions

Charlene Gilbert
Associate Professor of Film and Media Arts
American University

Diane Estelle Vicari
President
International Documentary Association

Kent Gibson
Executive Director
Non Fiction Exchange (NFX)

Catherine Herrera
Filmmaker

James B. Young
J.B. Young Photography

Gerald Jones
Filmmaker

Lisa Simmons
Film Producer

Joyce Appelby
Past President, American Historical Assc.
Professor of History, Emerita
UCLA

St.Clair Bourne
Producer-Director
Chamba Mediaworks, Inc.

Joanna Rudnick and Gordon Quinn
Development Director and President
Kartemquin Films

Rebecca Tabasky
Outreach Organizer
Carnavalesque Films

Brian Newman
Executive Director
National Video Resources

Juan Mandelbaum
President
Geovision

Linda Harrar
Producer/Director/Writer
Linda Harrar Productions LLC

Melissa D. Bucklin
Senior Producer
Nebraska Public Television

Michael Benefiel
Advisor
Persuasive Information

Tom Cappello
Crazy Legs Productions

Debra Zimmerman
Executive Director
Women Make Movies

Jill Godmilow
Professor, Filmmaker
Department of Film, Television & Theatre
University of Notre Dame

Erica Ginsberg
Co-Founder, Docs in Progress
President, CineCitizen Media

Ed and Mary Ann Southern
Historian and Librarian

Malkia K. Lydia
Independent Filmmaker
Kuyamba, Inc.

Frances Reid
Director
Iris Films

Laurel Thatcher Ulrich
University Professor
Phillips Professor of Early American History
Harvard University

Johnny Symons
Independent Documentary Filmmaker

Kristine Samuelson
Professor
Director, Documentary Film & Video Program
Department of Communication
Stanford University

Nina Gilden Seavey
Director
The Documentary Center
George Washington University

Pamela Yates
President
Skylight Pictures, Inc.

Karen Thomas
Executive Producer
Film Odyssey, Inc.

Joseph Turow
Robert Lewis Shayon Professor
Associate Dean for Graduate Studies
Annenberg School for Communication
University of Pennsylvania

Betsy A. McLane, Ph.D.
Director Emerita
International Documentary Association

Alison Guss
True Aim Productions

Paula Manley
Chair, Board of Directors
Assoc. of Independent Video and Filmmakers

Max Alvarez
Film Historian, Lecturer, Curator

JoAnna Baldwin Mallory
Film Producer
Director, Office of New Ventures
Partners HealthCare

Joseph Finneran
Creative Director
Group Dynamics

Carl Byker
Series Producer, "The Great War"
Producer, "The Duel" and "Woodrow Wilson"

Robert H. Johnson
Executive Director
New Mexico Foundation for Open Govt.

Joan Mandell
Director
Olive Branch Productions

Marcia Jarmel and Ken Schneider
PatchWorks Films

Megan Mylan
Documentary Filmmaker

Phylis Geller
President
Norman Star Media

Paul Atkins
Director of Photography
Moana Productions, Inc.

Celia Wexler
Vice President for Advocacy
Common Cause

Michael Ehrenzweig
Independent Film Producer

Deborah Hoffmann
Documentary Film Maker

Rick Tejada-Flores
Producer

Roger Weisberg
Producer/Director
Public Policy Productions

Joseph P. Shannon
Producer
Real Arts Media

Jessica Bricker
Producer

Robert Stone
Documentary Filmmaker
Robert Stone Productions

Janis Plotkin
Interim Executive Director
Film Arts Foundation

Nadia Tomisova
MA Candidate Film and Video
American University

Kenn Rabin
President
Fulcrum Media Service
Series Archivist, "Eyes on the Prize"

Jesse Boggs
Independent Producer
Former Producer and Host
Radio Smithsonian

Geoffrey A. Huth
Chair
Mid-Atlantic Regional Archives Conference

Robert Gordon
Filmmaker

Anny Lowery Meza
Film Editor

Jay Rosenblatt
Filmmaker

Steve Mencher
Mensch Media

Barbara Abrash
Producer and Curator

Susan C. Ivers
Independent Media Specialist

Joan Widdifield
Producer/Director
Documentary Films

Maryam Arif
Researcher
CNN/ImageSource

Elizabeth Thompson
Producer/Director
Thompson Films

Lucie Faulknor
Producer
Serendipity Films, LLC

Joseph A. DeFrancesco
Documentary Filmmaker

Gene Aanenson
President
North Dakota Council for the Social Studies

Shirley K. Sneve
Director of Radio and Television
Native American Public Telecommunications

David Van Taylor
Vice President
Lumiere Productions, Inc.

Linda DiFelicianantonio
President
Naked Eye Productions, Ltd.

Richard S. Butler
President
High Road Media, Inc.

Mike Hazard
The Center for International Education

Janet Cole
Producer

Robert M. Goodman
Producer
Stone Reader

Steven H. York
Senior Producer
York Zimmerman Inc.

William Greaves
Filmmaker
William Greaves Productions

Muffie Meyer
President
Middlemarch Films, Inc.

P. Alexander Gibney
President
Jigsaw Educational Productions, Inc.

Dianne Cleare
Production Manager

Brian Fulford
Senior Licensing Agent
CNN/Imagesource

Wenonah Elms
Senior Research Associate
LECG

Julie S. Omelchuck
Founding Member
Oregon Alliance to Reform Media

Robert Hillmann
Cinergy Media LLC

Justine Shapiro
Promises Films
The Saul Zaentz Media Center

David e. Delk
Co-Chair
Alliance for Democracy - Portland Chapter

Ricki Green
Producer and Journalist
Ever Green Communications

Connie Wilkerson
Division of Film Studies
University of Utah

Sara Altherr
Former PBS Publicist for Documentaries

David Grubin
Producer, Director, Writer, Cinematographer

Kevin Henry
Filmmaker

Sharon Sachs
Editor

Kathryn Barnier
Documentary Filmmaker

David M. Schneider, MD
Faculty Physician
Family Practice Residency Program
Sutter Medical Center

Katy Chevigny
Arts Engine

Cornelius Moore
California Newsreel

Judy Chaikin
One Step Productions

James Campbell
Producer

Mateen Kemet
Director / Writer
Runaway filmworX

Sharon Wood
JAK Films

Karen Marek
Associate Director of Gift Planning
KQED, Inc.

Gene Thomas
Owner and President
Lifespan Video Portraits, Inc.

Rena C. Kosersky
Music Supervisor for Documentaries

Michael C. Donaldson
Advocate and Former President
International Documentary Association

Michelle Peticolas
Independent Documentary Producer
On the Edge Production

Carolina Loyola-Garcia
Assistant Professor
Media Arts Department
Robert Morris University

Richard Benjamin
Senior Fellow
Demos

Mimi Pickering
Appalshop

Lisa Gottlieb
Instructor
Columbia College Chicago

Amy Taubin
Contributing Editor
Film Comment Magazine

Megan Simpson
Director

Lucille Carra
Documentary Filmmaker
Travelfilm Company

Kara van Malssen
Audiovisual Archivist

James R. Adams
History Teacher
President
Wisconsin Council for the Social Studies

Matt McDevitt
Student
University of Iowa

Jim Hubbard
Filmmaker

Howard Besser
Professor and Director
Moving Image Archive and Preservation
NYU's Tisch School of the Arts

Dr. Robert Benedetti
Producer, Writer, Educator

Stephanie Black
Producer/Director

Joan M. Mathys
MJM Picture and Film Research

Sheridan Tatsuno
Board Member
Cinemar

William H. Gilcher
Independent Producer

Jeffrey Friedman
Producer-Director
Telling Pictures

Nate George
University of Iowa

Sasha Waters Freyer
Assistant Professor
University of Iowa

Faye Douglas Johnson
Interim Director
Cinemar

Paul Arthur
Professor of English and Film Studies
Montclair State University

Jim McSilver
Producer/Editor

Chris Housh
Director/Producer
Repressed Society Productions

Lawrence Daressa
California Newsreel

Cable Hardin
Assistant Director
Media Arts and Animation
The Art Institute of Washington

Linda Blackaby
Director of Programming
San Francisco International Film Festival

June Cross
Assistant Professor
Graduate School of Journalism
Columbia University

Lewis Erskine
Film Editor

Abra Bigham
Writer and Filmmaker

Terry Lamb
Director
Videosyncracy Productions

Ron Merk
Filmmaker

John P. King
Independent Producer
Vice President Development
Story House Productions

Scott Sanders
Chicago Media Action

Jessie Warner
Attorney

Mark H. Dorfman
Environmental Scientist

Jennifer Jenkins
Director
Center for the Study of the Public Domain
Duke University Law School

Ryan Pflieger
Independent Documentary Filmmaker

Linda Srivastava
Assoc. of Independent Video & Filmmakers

Kembrew McLeod
Associate Professor
Department of Communication Studies
University of Iowa

Abigail Porter
Exhibit Developer

Jeff Martin
Archivist/Documentary Filmmaker

Heather Carawan
Filmmaker

Christopher Klemek, Ph.D.
Assistant Professor of History
George Washington History

Amanda Benchley
Producer

J. Mark Wynns
Media Consultant

Veronica Selver
Documentary Editor, Producer, Director

Jenny Toomey
Executive Director
Future of Music Coalition

Ray Schmitt
Real Earth Productions

John H. Terry
Dean of Fine Arts
Rhode Island School of Design

Chana Gzit
Producer
Steward/Gazit Productions

Karen McMillen
Senior Producer
Northern Light Productions

James Rapp
Producer/Director
Creative Paradigm Productions

Laurel Kendall
Curator
Anthropology Department
American Museum of Natural History

Michael Gorman
President
American Library Association

Lorraine Hess
Director of Program Acquisitions
LinkTV

Alfred Hillman and Michal Brand Carr
President and Vice President
Hillmann & Carr, Inc.

Gerardine Wurzburg
President
State of the Art, Inc.

Judy Richardson
Senior Producer
Northern Light Productions

Anthony Radanovich
Rural Media Arts and Education Project

Tom Weidlinger
Moira Productions

Kathryn Dietz and Sue Williams
Producer and Producer/Director
Ambrica Productions

Kate Geis
Producer

Helen De Michiel and Jack Walsh
Co-Directors
National Alliance for Media Arts and Culture

Glen Hoptman
Executive Producer
Lightbeam Studio Institute

Alfred Hillmann and Michal B. Carr
President & Vice President
Hillmann & Carr, Inc.