



# Smithsonian Institution

Lawrence M. Small  
Secretary

April 27, 2006

Mr. Carl Malamud  
Senior Fellow/CTO  
Center for American Progress  
1333 H Street, NW, 10th Floor  
Washington, DC 20005

Dear Mr. Malamud:

I'm writing to respond to your letter of last week. It's most unfortunate there continues to be such a deep misunderstanding of *Smithsonian on Demand* despite the actual facts that have been given to you, the press, and other interested parties. Nevertheless, I appreciate the opportunity to explain to you the partnership with CBS/Showtime Networks, Inc. for our new channel.

Smithsonian's joint venture with CBS/Showtime Networks, Inc. will provide millions of dollars of incremental income to the very community you fear will be discouraged from creating projects. With over 100 programs expected to be produced and acquired every year by the venture, *Smithsonian on Demand* will provide a vital new media outlet. Independent producers can now distribute their programs on the new channel thereby encouraging, rather than discouraging, the creative process and work for the independent filmmaking community.

Access to the Smithsonian's many resources to scholars, journalists, educators, and filmmakers has been and will always be a hallmark of the Institution. I want to emphasize this new venture will not constrain the access or use of our content for academic, curriculum-based, or scholarly purposes, which will continue as they have under policy and procedures that have been in existence for quite some time. The Smithsonian has always managed access to our collections, people, and sites. We receive thousands of requests for access every year, and most of these requests are to conduct academic research, to work with the collections, and to exchange or lend artifacts. For 160 years, the Smithsonian has collaborated with the education and research communities and supported an enormous variety and volume of academic and curriculum-based programming. We have every intention of continuing to do so.

All access and use of our content for news and public affairs purposes will continue unaffected. And access and use of our content for non-commercial purposes, such as for programs to be distributed on local access channels (e.g., Montgomery County local access channel), C-span, by educational institutions, government entities, and scientific or research organizations are not limited in any way by the venture.

The area that appears to be the basis for actual concern is for filming rights at the Smithsonian, specifically for those who seek to use our resources for commercial purposes. The Smithsonian has always determined with whom and under what terms and conditions we would make available for filming Smithsonian collections, curatorial staff, and facilities. With regard to our archives and libraries, we always refer requests to use these resources for commercial products to our licensing specialists for evaluation. This is a common and necessary practice to manage the assets for which we serve as steward. Smithsonian filming access policy and procedures have followed standards and practices that were established long before the new venture was created and have always required third party filmmakers to identify the access and use which are being requested. This process is not

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changing. What is changing as a result of the new venture agreement is that Smithsonian will produce and distribute television programming through its own venture and, therefore, reserves the right to choose how commercial producers (whether they are independent producers or broadcasters) can use significant amounts of Smithsonian content and resources to create programs that will be sold to commercial distributors. By doing this, we will avoid competing with our own venture.

Thus, the only impact of this new venture will be on producers who wish to make significant use of the Smithsonian's resources and then sell their product to commercial media distributors. Over the last five years, only a handful of the 350 filming agreements entered into between the Smithsonian and independent producers would have fallen into this category. In actuality, the preponderance of filmmakers have not historically used Smithsonian content more than in an incidental way, as even Ken Burns now admits was the case for his films, and we wish to continue and encourage this kind of access and use. The work of documentary filmmakers is an important contribution to America's cultural heritage, and the Smithsonian is proud to participate in the small way that we have.

Your concern the Smithsonian will be infringing on the work of third parties who access our resources is also completely unfounded. There is no "first right" of the new venture or requirement of third parties to participate with the Smithsonian in any way as a condition of access. With regard to your perceived threat of the kidnapping of third party producers' ideas, the venture will not be held immune from standard business practices or copyright laws.

You state "Recent years have witnessed an explosion in the creation of documentary films" and "[m]any award-winning films have drawn on our collective heritage as maintained in the archives of the Smithsonian." We will continue to provide free and open access to the Smithsonian to the hundreds of documentary filmmakers who use our resources for research or to consult with Smithsonian scholars and curators each year.

You have requested the agreement be made public because of a perceived secrecy. This agreement was years in development, fully reviewed and vetted for its impact on Smithsonian mission activities prior to the final approval of the Board of Regents, the governing body of the Smithsonian (which includes the Vice President, the Chief Justice of the United States, six members of congress and nine citizens). While financial terms haven't been made public due to confidentiality provisions in the contract, the aspects of the contract relating to access to the Institution's collections, archives, and staff have been discussed and explained. The contract is subject to a confidentiality provision, not unusual for not-for-profit or for-profit organizations in their normal course of business.

Much of the criticism surrounding our new venture with CBS/Showtime Networks, Inc. has been perpetuated by a lack of understanding, and we appreciate the legitimate concerns raised. While we do expect the venture to produce significant long-term gain for the Institution to meet funding needs that otherwise would not be met, the new venture is crucial to the Smithsonian's mission since it will permit us, finally, to harness the power of television to touch the lives of millions of people we otherwise would not reach. This purpose is vital to our 160-year mission for the "increase and diffusion of knowledge." And we have had neither the financial resources nor the expertise to expand this reach, until now.

I hope that this clarification is helpful to you and that you will share this information with your colleagues.

All the best,

A handwritten signature in black ink, appearing to read 'Carl Malamud', written in a cursive style.