

## Chapter 2: Legal Issues

Page

<b>A. Overview</b> .....	2:1
What does this chapter cover? .....	2:1
Where can I get additional information on these laws?.....	2:1
What are some frequently asked questions?.....	2:1
<b>B. Access and Use Legislation</b> .....	2:5
What laws affect the use of museum collections? .....	2:5
How do I address reference questions involving legal issues? .....	2:6
<b>C. Copyright Laws</b> .....	2:6
What is copyright?.....	2:6
What laws make up copyright? .....	2:7
What is covered by copyright?.....	2:7
Can a person copyright an idea or fact?.....	2:8
What is not protected by copyright?.....	2:8
Why are federal employees' works not protected by copyright?.....	2:8
Are the works of federal contractors, cooperators, partners, and volunteers protected by copyright? .....	2:9
When do copyright protections become active? .....	2:10
What is the duration of copyright protection?.....	2:10
When do I need to get copyright permissions? .....	2:12
What information do I need in order to obtain permission from the copyright owner?.....	2:13
If the park owns the material physically, does it also own the copyrights?.....	2:13
If the park doesn't own the copyright, but I want to use the materials in a publication, what do I do? .....	2:14
Can copyright be restored once it has lapsed? .....	2:15
What is fair use?.....	2:15
What criteria determine fair use? .....	2:16
How does fair use exemption impact me?.....	2:17
Are there additional copyright exemptions besides fair use?.....	2:18
What should I do if I'm uncertain of the copyright status of a work and the fair use quality of a reference request?.....	2:19
Is fair use different in a networked electronic environment?.....	2:21
Why and when must I place copyright notices on copies and copiers?.....	2:23
How do I handle unpublished materials? .....	2:24
What is the public domain? .....	2:24
When is a work in the public domain? .....	2:24
What is the right of "first sale"?.....	2:25
What are visual artist's moral rights? .....	2:25
<b>D. Freedom of Information Act</b> .....	2:25
What is the Freedom of Information Act (5 USC 552)? .....	2:25
What are federal records?.....	2:25
How does FOIA affect park museum collections? .....	2:26
What must I provide under FOIA? .....	2:26
What don't I have to provide under FOIA? .....	2:27
What do I do if I receive a FOIA request?.....	2:28
<b>E. Location Information</b> .....	2:28
How does the Archeological Resources Protection Act (ARPA) of 1979 (16 USC 470) affect use? .....	2:28
How does the National Historic Preservation Act of 1966, as amended	

16 USC 470-470t, 110) affect use? .....	2:29
How does the Executive Order 13007—Indian Sacred Sites (May 24, 1996) affect use? .....	2:30
How does the Federal Cave Resources Protection Act of 1988 (16 USC 4301-4309) affect use? .....	2:30
What do I need to know about the National Parks Omnibus Management Act of 1998 (PL105-391) .....	2:30
What do I need to know about the Endangered Species Act of 1973 as amended (16 USC 1531-1543)? .....	2:31
What do I need to know about protecting the location of paleontological sites? .....	2:31
<b>F. Privacy and Publicity Legislation</b> .....	2:31
How does privacy legislation (5 USC 552) affect park museum collections? .....	2:31
Who has little or no right to privacy? .....	2:33
What is covered under the right to privacy? .....	2:34
May I provide private information for fair use, such as education and research? .....	2:35
How does privacy law affect museum or archival collections? .....	2:35
How do I avoid rights problems when producing new products, such as photos? .....	2:35
How do I avoid rights problems when using old photographs and related materials? .....	2:36
What should I do if I have materials without signed releases? .....	2:36
How do the courts enforce state privacy laws? .....	2:37
What is the difference between publicity and privacy laws? .....	2:37
How do I know if use is potentially illegal? .....	2:38
How does publicity legislation affect park museum collections? .....	2:38
<b>G. Other Legal Issues</b> .....	2:38
How do donor restrictions affect use? .....	2:38
What is meant by sensitive information? .....	2:39
What slander and libel laws affect use of museum collections? .....	2:39
What is obscenity, and how does it concern museum collections? .....	2:39
What pictures of nudes are exempt from obscenity concerns? .....	2:40
How can I manage nude images that I have in my collection? .....	2:40
How does evolving case law affect my practices? .....	2:40
Do restrictions for National Defense, Foreign Policy, and Classified Data affect museum collection use? .....	2:40
What are the restrictions for access to Internal Personnel Rules and Practices? .....	2:40
<b>H. Patent Laws</b> .....	2:40
What are patents? .....	2:40
How do patents protect inventions? .....	2:41
What can be protected by patents? .....	2:41
How do patents affect museums and scholars? .....	2:41
What is the period of patent protection? .....	2:41
<b>I. Trademarks and Servicemarks</b> .....	2:41
What are trademarks? .....	2:41
How are trademarks different from servicemarks? .....	2:41
Why do businesses have trademarks and servicemarks? .....	2:41
How do trademarks and servicemarks affect museums? .....	2:41
Must I register for trademark and servicemark protection? .....	2:42
How long do trademark and servicemark protections last? .....	2:42
<b>J. List of Figures</b> .....	2:42
<b>K. Bibliography</b> .....	2:51

## CHAPTER 2: LEGAL ISSUES

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### A. Overview

1. *What does this chapter cover?*

This chapter lists and discusses the laws, regulations and other legal guidance that affect access and use of NPS museum and archival collections.
2. *Where can I get additional information on these laws?*

For a quick summary, see *Museum Handbook*, Part II (*MH-II*), Appendix A: Mandates and Standards for NPS Museum Collection Management. Many law school libraries have collections on these topics. An easy way to get an overview of applicable laws is to view the web sites in the bibliography, particularly the following, listed alphabetically:

  - American Association of Museums Registrars Committee Rights and Reproductions Information Network (RARIN) at <http://www.panix.com/~squigle/rarin/01rsite.ht>
  - Copyright charts: [www.copyright.cornell.edu/training/Hirtle\\_Public\\_Domain.html](http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.html)
  - Fair Use guidelines by documentary filmmakers, <http://www.centerforsocialmedia.org/rock/backgrounddocs/bestpractices.pdf>
  - Harvard University's Intellectual Property Primers at <http://cyber.law.harvard.edu/property/library/primerlib.html>
  - Legislation section of the NPS web site at <http://www.cr.nps.gov/linklaws.htm>
  - National Humanities Alliance's Basic Principles for Managing Intellectual Property in the Digital Environment at <http://www.ninch.org/#issues>
  - University of California at Berkeley's Copyright, Intellectual Property Rights, and Licensing Issues at <http://sunsite.berkeley.edu/Copyright/>
  - University of Texas at Austin's Copyright Crash Course at <http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>
  - Zorich, Diane, "Developing Intellectual Property Policies: A How To Guide for Museums" and Bibliography (2003) [http://www.chin.gc.ca/English/Intellectual\\_Property/Developing\\_Policies/index.html](http://www.chin.gc.ca/English/Intellectual_Property/Developing_Policies/index.html)

If Internet addresses should change, search on the keywords in the above Web addresses.
3. *What are some frequently asked questions?*

This section includes some recommendations on how to respond to frequently asked questions. Consult with your regional curator and the NPS solicitor or with the Park Museum Management Program office if

you have any concerns or are unsure of how to respond.

<p>1. <i>What do I need to know when considering requests to access and use collections?</i></p>	<p>Before responding to a request, find answers to the following questions:</p> <ul style="list-style-type: none"> <li>• Who owns the material?</li> <li>• Is there a title transfer document in the accession folder?</li> <li>• Is the material copyrighted?</li> <li>• Will release of information make the resource, both the object itself and other park resources, vulnerable?</li> <li>• If so, what laws and regulations protect the resource?</li> </ul> <p>This chapter provides guidance on how to respond to these questions. Consult with your regional curator or the NPS solicitor through the Park Museum Management Program, if you have any questions.</p>
<p>2. <i>How do I handle an NPS investigator's field notes, raw data, and unpublished manuscripts?</i></p>	<p>Field notes, raw data and unpublished manuscripts created by NPS employees within the scope of their employment are not protected by copyright and are, for purposes of copyright, in the public domain. (See 2.C.6). In general, requests to access or publish such materials may be granted.</p> <p>These materials, however, may be 'pre-decisional' and part of park planning efforts and not appropriate for public release under FOIA or other requests (2.D.4); or specific information may need to be withheld in accordance with the Archeological Resources Protection Act, the National Historic Preservation Act [see B.1.], National Parks Omnibus Management Act, or other legislation (see D.5.). Other factors, such as privacy laws (see F.1.), should be considered before granting permission to access or publish NPS-created materials.</p>
<p>3. <i>How do I handle a non-NPS investigator's field notes, raw data, and unpublished manuscripts?</i></p>	<p>While many permits, contracts, and agreements that NPS issues or signs include provisions that allow NPS to acquire field notes and other research products, you need to review the terms of the actual issued permit, contract, or agreement to determine the extent to which NPS may use such materials. Work with the responsible park staff to ensure that permits, contracts, and agreements that result in a collection 1) include a request for field notes and other research materials; and 2) specify unrestricted NPS use of the materials. See section C.7.</p> <p>Field notes, raw data and unpublished manuscripts created by non-NPS permittees doing research on NPS land and obtained by NPS through permit conditions may be subject to copyright protection. In most cases, the permittee is considered the creator or author of the work. Field notes and unpublished manuscripts likely have copyright protection. (See 2.C.23). The creators may donate their copyright to NPS.</p>

	<p>Generally, raw data itself will have little or no copyright protection (See 2.C.4). The presentation of raw data, if expressed in a unique manner, may have some copyright protection. However, raw data may contain sensitive information, which if disclosed, might harm the resource, and may be subject to other legislation that protects location information (see section E.).</p> <p>In general, requests to access such materials do not have copyright implications. Other issues, such as privacy rights (See 2.F.4-8), FOIA (see 2.D.4), and statutorily protected categories of information under ARPA and other laws (see 2.E.1-6) may arise when providing access.</p> <p>Copyright consideration must be given when there are requests to publish field notes and unpublished manuscripts. See 2.C.13 and 2.C.19 for further guidance on responding to publication requests.</p> <p>A non-NPS investigator who completed work on NPS lands that did not require a permit or worked in related localities, may donate field notes, raw data, and unpublished manuscripts, providing that the donation fits the park’s Scope of Collection Statement. The donor may convey copyright with the donation. Check the Deed of Gift in the accession file to determine copyright implications.</p>
<p>4. <i>Does the NPS own the copyright of letters in the park collections?</i></p>	<p>Generally not. For letters that private citizens and other private entities write to the government or to other recipients, the author holds the copyright even though the letters are in the park collection and are owned and managed by the NPS. To publish, electronically distribute or exhibit these letters, you must determine if the letters are under copyright protection (a function of who produced or ‘created’ them), whether they were registered or published, and when. Then you must find the copyright holder, and obtain written permission to use these letters. See C.12.</p>
<p>5. <i>How do I respond to a request for <b>access</b> to photos and other archival items that don’t have any associated information or rights transfer documents?</i></p>	<p>A request to have <i>access</i> to materials such as photos and letters (versus use, such as copying or publishing the material), does not have copyright implications (see 2.C.19). Other issues, such as privacy rights (See 2.F.4-8), FOIA (see 2.D.4), and statutorily protected categories of information under ARPA and other laws (see 2.E.1-6) may arise when providing access.</p>
<p>6. <i>How do I respond to a request to <b>publish</b> or otherwise <b>use</b> photos, documents and other works that don’t have any associated information or rights transfer documents, that is, ‘orphaned works?’</i></p>	<p>Give careful attention to requests to <i>publish or otherwise use</i> materials that do not have any copyright or owner information. These materials are referred to as “<i>orphan works</i>.” They occur when the owner of a copyrighted work can’t be identified and located by someone who wants to use the work in a manner that requires the copyright owner’s permission. Even where NPS has made a reasonably diligent effort to find the owner, if the owner is not found, NPS faces uncertainty. The NPS cannot determine whether or under what conditions the owner would permit use. Where the proposed use goes beyond an exemption or limitation to copyright, NPS cannot reduce the risk of copyright liability for such use, because there is</p>

	<p>always a possibility, however remote, that a copyright owner could bring an infringement action after that use has begun.</p> <p>The issue of orphan works and how to provide some certainty for their use is currently under consideration by the Copyright Office and Congress. Meanwhile, orphan works may be used in limited circumstances if the risk of infringement appears unlikely.</p> <p>Fair use considerations apply to orphan works (See 2.C. 15-16). Also, for dated works that were created before the effective date of the Copyright Act of 1976, a risk analysis regarding the duration of copyright, in consultation with the regional curator, regional solicitor, or the Park Museum Management Program and the Solicitor’s Office, can be done to determine whether use might be appropriate.</p>
<p>7. <i>How do I respond to a publication request for access to photos, letters, and other materials, in the collections where there are names but no rights transfers documents?</i></p>	<p>Treat a third party request to access materials for which NPS has ownership and background information as discussed above. The same access considerations, such as FOIA, privacy considerations and other laws governing access apply.</p> <p>When a request involves copyright concerns, grant a third party permission to publish or otherwise use materials that have limited information regarding potential ownership only after NPS has made an effort to determine its own rights in the material (see 2.C.10-13, 19 for further guidance).</p>
<p>8. <i>Are park collections considered ‘public domain?’</i></p>	<p>Not all park collections are in the public domain. Some collections may be in the public domain because they were developed or created by federal employees or the copyright has expired. However, NPS may hold copyrighted works that are transferred to a park, therefore, many of the park collections have existing copyrights and are not in the public domain (see. 2. C. 25-26). Requests for access to or to publish collections that are in the public domain do not have copyright implications. However, other issues, such as privacy rights (See 2.F.4-8), FOIA (see 2.D.4), and statutorily protected categories of information under ARPA and other laws (see 2.E.1-6) may still exist.</p>
<p>9. <i>a. If a child inherits a parent’s photo collection, does the child have the right to transfer copyright?</i></p> <p><i>b. Do I need to get rights transferred if the original copyright owner is an institution such as a newspaper that is now defunct?</i></p>	<p>No. Transfer of copyright ownership from one generation to the next by will, or otherwise, creates another class of problems involving individual copyright owners. Some heirs are completely unaware of their rights. Rights may be fractionally distributed among a variety of heirs, some or all of which may be remote from each other, or the potential user. In many cases, it is difficult to access information about an author’s (creator) estate. The copyrights may have been transferred prior to the author’s death or they may have been a work for hire. To determine current copyright ownership, the child and involved parties should be contacted for more information. Photos taken before 1978 may still have copyright protection (see 2.C. 9).</p> <p>If the newspaper is no longer in business, the intellectual property rights will likely have been transferred elsewhere during the dissolution of the business, for example, to a business that acquired</p>

	<p>the newspaper. NPS will have to determine to whom or to what entity the rights were transferred before using the photos.</p>
<p>10. <i>How do I handle requests to film, videotape, record, or do photography that will be used for commercial purposes?</i></p>	<p>NPS permits commercial filming and still photography when it is consistent with the NPS mission and will not harm the resource or interfere with the visitor experience. <i>All</i> commercial filming activities taking place within a unit of the National Park system need a permit. Commercial filming includes capturing a moving image on film and video as well as still recordings. Still photographers require a permit when: 1) the activity takes place at location(s) during times when members of the public are allowed; or 2) the activity uses model(s), set(s), or prop(s) that are not a part of the location’s natural or cultural resources or administrative facilities; or 3) the park would incur additional administrative costs to monitor the activity.</p> <p>All commercial filming and still photography meeting the above requirements involving NPS museum collections require a permit. Refer to Chapter 6, Other Uses of Museum Collections.</p> <p>Potential permittees should contact the park administrative office to obtain information and a permit application. Requests by permittees to commercially film or photograph museum collections with copyrights, such as paintings, must be treated like any other requests to use or access museum collections. Before granting permission, NPS should ensure that there are no access restrictions and that NPS has appropriate copyrights and authority to grant permission.</p>
<p>11. <i>If the park has a historic photograph dating to the early 1900s, and there are identical prints held at other institutions, are the images ‘in the public domain’ and can the park make them available for publication?’</i></p>	<p>If the image was published prior to 1923, it is now in the public domain and not subject to copyright protection. The image may be made available for publication unless there are any privacy concerns. In general, privacy concerns protect living individuals that are identifiable in the image. (See 2.F.).</p>

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**B. Access and Use Legislation**

1. *What laws affect the use*

The primary provisions that affect access and use of NPS museum

*of museum collections?*

collections and their associated documentation include the following, listed in alphabetical order:

- American Indian Religious Freedom Act of 1978 (42 USC section 1996)
- Archeological Resources Protection Act (16 USC 470 aa-mm)
- The Copyright Act of 1976 (17 USC 101-810, 1001-1010)
- Defamation, including slander and libel (state law)
- Developing Case Law
- Executive Order 13007—Indian Sacred Sites (May 24, 1996)
- Endangered Species Act of 1973 as amended (16 USC 1531-1543)
- Federal Cave Protection Act of 1988 (16 USC 4301-4309)
- Freedom of Information Act (FOIA)
- Publicity laws (state common or statutory law in almost half the states)
- Native American Graves Protection and Repatriation Act (25 USC 3001-3013)
- National Historic Preservation Act of 1966, as amended (16 USC 470-470t, 110)
- National Parks Omnibus Management Act of 1998 (16 USC 5901-5937)
- The Patent Act (35 USC 101-376)
- The Lanham Act (Trademarks) (15 USC 1051 - 1127)
- The Privacy Act (5 USC 552a) and state common or statutory privacy laws
- Obscenity and Pornography (state law as well as federal, including the Child Protection Act of 1984)
- Publicity laws (state common or statutory law in almost half the states)
- Preservation Act of 1966, as amended (16 USC 470-470t, 110)  
National Historic

Further information on applicable legislation, including legal mandates for protecting, preserving, and documenting NPS museum collections, appears as Appendix A: Mandates and Standards for NPS Museum



Collections Management in the *Museum Handbook*, Parts I and II.

2. *How do I address questions involving legal issues?*

See the Access and Use Legal Action chart in Figure 2.1 as a guide for addressing various questions that may pose legal issues related to reference, publications and accessioning. Figure 2.1 describes the type of request in the first column, the applicable legislation in the second, and the suggested action by park staff in the third column. Also refer to MH-II for information on legal issues related to accessioning, deaccessioning and loans.

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## C. Copyright Laws

1. *What is copyright?*

The Copyright Act of 1976 grants creators (for example, authors, artists, photographers, and architects) exclusive rights to their creative work, from the moment the work is in fixed form. Copyrights relate to use. Copyrights are a bundle of rights given to creators, including the economic rights to:

- ***reproduce the work***
- ***distribute copies*** by sale, lease, rental, loan, or transfer of ownership (including the right to control the first public distribution or publication of the work)
- ***publicly perform the work*** by recital, playing, dancing, rendering the work in a public space or by a public transmission of images and sounds through technological means
- ***adapt and prepare derivative works from the original work***, including translations, art reproductions, spin-off products, images of the original work
- ***publicly display the work*** by showing more than a single copy of the work either directly or by means of a film, slide, television image or other device or process

The creator of a work may divide the rights to the work and transfer some or all of the rights to another at his or her discretion. The creator may give, sell, or license any right or rights (such as the right to prepare derivative works, such as posters or T-shirts) to another, while retaining other portions of the copyright. Copyright sales or transfers may be exclusive (all copyrights to Company X) or for a specific time or place (for example, a single edition of a book).

2. *What laws make up copyright?*

In the United States, the following laws and treaties govern copyright:

- United States Constitution (Article I, Section 8)
- Copyright Act of 1909
- Copyright Act of 1976

- International treaties:
  - Berne Convention for the Protection of Literary and Artistic Works

3. *What is covered by copyright?*

The Copyright Act of 1976 protects any original material in fixed form from the moment of creation, including:

- architectural designs, including drawings, plans, and structures
- archival and manuscript materials, including architectural plans, correspondence, graphic, oral histories, photos, and pictorial works
- audiovisual works
- computer software
- dramatic and literary works
- graphic and pictorial works
- motion pictures and videotaped works
- photographic works
- recorded or notated choreographic works and pantomime
- recorded or notated musical works and sound recordings
- sculptural works
- vessel hull designs

4. *Can a person copyright an idea or fact?*

No. Only the creator's unique, original expression (such as an author's words, an artist's painting, a photographer's image, object, or composition) is protected, *not* ideas, facts, or topics. Your photograph or words are protected, but other individuals can write about the same topic or photograph the same object. Copyright protects a unique work. The topic, scene, or scenario can't be copyrighted, only the particular work based upon the topic or scene. The original work must be in a fixed form.

5. *What is not protected by copyright?*

Copyright doesn't protect:

- copy images of works (including digital and photographic works) if the copies are slavish or lacking in originality (Bridgeman Art Library Ltd v. Corel Corporation 1999, 36 F. Supp. 2d 191 [SD NY 1999])
- works created by U.S. Government employees as part of an employee's official duties (See C.6 and 7 below for further guidance.)
- ideas or concepts (patents protect ideas or concepts)

- facts
- systems, procedures, or methods of operation
- common or standard works, such as:
  - height and weight charts
  - blank forms
- works with little creative authorship, such as
  - slogans and short phrases
  - names and titles
  - variations in typographic lettering, coloring, or ornamentation

6. *Why are federal employees' works not protected by copyright?*

Works produced by federal employees within the scope of their employment are *not* protected by copyright because the Copyright Act of 1976 specifically excludes this category of work from copyright protection. The federal government, however, may hold copyrights when such rights are transferred or assigned to the United States. Since federal government-produced works are *not* protected by copyright, this puts the works produced by federal employees within the scope of their employment in the public domain.

An image taken by the NPS employee is not entitled to copyright protection. However, that does not mean that it can be freely used or distributed. Any copyrights existing in the object that is the subject of the image need to be considered when that image is further used. NPS use of such an image for inventory/security or research purposes is likely considered fair use if NPS does not own the underlying copyright. Such an instance should be covered in a loan agreement. Refer to 2.15 for information on fair use.

When a work, such as a book, consists of chapters or figures by both federal and non-federal creators (artists, authors, or photographers, for example), place a notice in the introduction indicating what portion (particular chapters, pages, and figures) of the work is covered by copyright protection. A notice might look like the following sample:

*Copyright 1999, Susan Smith, Copyright claimed in chapters 5-7 and figures 5-1 through 7-30, exclusive of U.S. Government forms D-93 and D-333.*

The notice assists researchers who want to obtain permission to use the work. *Note:* If, on their own time, federal employees create original works that have no relationship to their duties, the employees may copyright the works. If the works in question are related to their federal duties, the employees should obtain clearance, preferably in writing, from their NPS ethics officer before publishing and copyrighting the works.

7. *Are the works of federal contractors, cooperators, partners, and volunteers protected by copyright?*

Generally, yes. Copyrights created by contractors, cooperators, partners and volunteers do not automatically belong to NPS, even if NPS is paying for the work. If you hire independent contractors or work with cooperators, volunteers, and partners who create source material (such as a publication, painting, or World Wide Web home pages), the works they create may be eligible for copyright protection. Therefore, *always execute a written contract, license, cooperative agreement, or other agreement that governs issues of copyright ownership and use of the work before the contractor or cooperator begins work.* See Figure 3.6 for a sample. *Have the agreement expressly state that the individual's work is a 'work-for-hire' and all copyrights belong to the National Park Service.* In a work-for-hire situation, the employer becomes the *de facto* creator in the eyes of the law. Thus the creator/employer owns the copyrights. If, for any reason the contractor's work is deemed not to be a work-for-hire, your contract should stipulate that the contractor transfers any and all rights that he or she might have to the NPS.

*Ensure that all your federal contracts, cooperative agreements, memorandums of understanding, volunteer-in-park, and similar agreements state that all copyrighted works and the copyrights of those works created as part of the contract belong to the National Park Service. Otherwise you may find that you are legally obligated to pay a royalty to the contractor, cooperator, partner, or volunteer each time you use the materials, as they will own the copyrights.*

8. *When do copyright protections become active?*

Under the Copyright Act of 1976, copyright protection becomes active the moment an item is placed in fixed form; for example, when a photographic negative is made, a digital image created, a document written, or a charcoal drawing first sketched.

For works published in the U.S. after March 1, 1989, copyright notice (the symbol ©, the author's name, and date) is not required for copyright protection. For works published prior to March 1, 1989, a copyright notice is required to preserve the copyright in the work.

9. *What is the duration of copyright protection?*

The duration of copyright protection in the U.S. depends on when the work was first created or published. The chart below summarizes the duration periods.

<b><i>“When Works Pass into the Public Domain”</i></b> [by Laura N. Gasaway]		
<b>Date of Work</b>	<b>Protected From</b>	<b>Term of Protection</b>
Created January 1, 1978, or after	The time the work first is fixed in a tangible medium of expression	Life of the creator plus 70 years (or, if work is made for hire or anonymous or pseudonymous, 95

		years from publication, or 120 years from creation, whichever is shorter).
Published prior to 1923	The time it was first published with a copyright notice	None. Now in the public domain.
Published 1923 - 1963	The time it was first published with a copyright notice	28 years protection for the first term, plus could be renewed for 47 years; in 1998 it was extended to 67 years for a total coverage of 95 years if renewed. If not renewed, it is now in the public domain.
Published between 1964 and 1977	The time it was first published with a copyright notice	95 years from publication.
Created before January 1, 1978, but not published	January 1, 1978, the effective date of the 1976 Act	Life of the creator plus 70 years, or if the author's death date is unknown 120 years from date of creation. If work was unpublished as of 12/31/02, the work is in the public domain.
Created before January 1, 1978, but published between then and December 31, 2002	January 1, 1978, the effective date of the Act	Life of the creator plus 70 years or 12/31/2047, whichever is greater.

**Note:** The above chart was adapted from a chart prepared in December 1996 (updated November 4, 2003) by Laura N. Gasaway. (See <http://www.unc.edu/~unc1ng/public-d.htm>.) The actual legal date of publication may be hard to determine in some cases. Consult the regional curator or NPS solicitor through the Park Museum Management Program, if you have questions.

Additional considerations:

Works created before January 1, 1978	<ul style="list-style-type: none"> <li>• If a work was published either anonymously or without a copyright symbol before January 1, 1978 or was published before 1923 or had a single term of copyright protection (28 years) before 1963 with no renewal, the work is likely to be in the public domain. Note: There is an exception for foreign works, which may have copyright restored after it lapses. Consult the Solicitor's Office to determine the copyright duration of a foreign work.</li> <li>• If the work is unpublished and was not registered for copyright protection with the U.S. Copyright Office, but created before January 1, 1978, the work is protected for the life of the creator, plus 70 years. If the work is anonymous or pseudonymous or a work made for hire, it is protected for 120 years from the date of creation. A work that remained unpublished as of 12/31/02 is in the public domain.</li> <li>• If the work is published for the first time before December 31, 2002, the term of protection will not</li> </ul>
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	<p>expire before the life of the author plus 70 years or December 31, 2047, whichever is greater.</p> <p>You can check with the Copyright Office of the Library of Congress to see when the copyright expires, if the work was published before January 1, 1978. Usually the coverage was 28 years from the date filed, with one renewal possible.</p>
Works produced on or after January 1, 1978	<ul style="list-style-type: none"> <li>• General copyright protection for works produced after January 1, 1978, endures for the life of the author plus 70 years.</li> <li>• Duration for joint works produced after January 1, 1978, is measured from the death of the last surviving author plus 70 years.</li> <li>• Anonymous works, pseudonymous works, and works made-for-hire produced after January 1, 1978, are protected for the greater of 95 years from first publication or 120 years from creation.</li> </ul>
Works published before March 1, 1989	<p>Works published before March 1, 1989, must contain a notice of copyright to be protected. Copyright notices usually consisted of the symbol © (or the word "copyright" or "copr."), the creator's name, and the date. Certain exceptions exist for foreign works.</p>
Works published on or after March 1, 1989	<p>Works published on or after March 1, 1989, do not require the notice, although most have it. Posting a notice gives the copyright holder certain additional benefits in the case of lawsuits if the work's copyright is infringed.</p>

For more information on copyright duration, request Copyright Circulars 15, 15a, and 15t from the Registrar of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559-6000, or call the hotline at (202) 707-9100.

10. *When do I need to get copyright permissions?*

Get all necessary permissions *before* using or authorizing the use of the material in publications, exhibits, performances, through reproductions, or in derivative works.

***There is a limited exception for exhibitions. If NPS owns a copy, including an original copy, lawfully made under the Copyright Act, it is entitled to display that copy publicly, either directly or by projection of no more than one image at a time, to viewers present at the place where the copy is located. This exhibition exception does not apply to putting digital images on the web.***

“Publication” includes offering to distribute copies of a work to the public for purposes of written publication, public performance, exhibition, or further

distribution. Public distribution or the offer to distribute is key to determining if publication has occurred.

While a single exhibition or display may not be considered a 'publication,' the right to display a copyrighted work is protected, and displaying the work, except under the exception mentioned above, requires permission from the copyright owner. Make sure you obtain the rights to exhibit or display collections in the appropriate accession documents.

Derivative works are alternative or variant versions of a work based upon an original piece such as:

- postcards made from graphic or photomechanical prints, photographs, or paintings
- posters made from original photographs
- art work based closely upon existing original photographs or other art work
- exhibition captions that quote or paraphrase existing work

If you are asked to grant permission before you are certain of the legal status of the work *and* you want to do so, agree only to grant those rights that the NPS has, not all rights.

11. *What information do I need in order to obtain permission from the copyright owner?*

If you want to use, display, exhibit, publish or distribute work protected by copyright that is not held by NPS, you *must* obtain the permission of the copyright owner, unless there is a reasonable basis for considering the use a fair use. Discover as much information as you can:

- Was the work created by a federal employee within the scope of his or her employment or by a federal contractor? If a contractor was the creator, what did his or her contract state about copyrights?
- Does your accession document specifically state that you received all copyrights? If not, revisit and update the accession folder in accordance with guidelines outlined in MH-II, Chapter 2, Accessioning.
- Who created the work and is the creator alive? If not, when did the creator die?

Generally, copyright lasts for the life of the creator, plus 70 years. Copyright belongs to the heirs of the creator for 70 years after the creator's death unless the creator has transferred it to another.

- Is it a joint work created by two or more authors?

If so, it is protected for 70 years from the death of the last surviving author. You need to determine which authors are living.

12. *If the park owns the material physically, does*

No, not necessarily. Physical ownership or possession of materials is *not* an indicator of ownership of corresponding copyrights. Check the

*it also own the copyrights?*

accession document to see which of the following your park acquired:

- Transfer of all rights, including copyrights and/or literary rights to the park, made in writing You should obtain all rights, including all copyrights, for the park when you acquire materials for the museum collections. See MH-II, Chapter 2, Accessioning.
- written permission by the creator or his or her heirs to use the materials in limited circumstances for certain purposes
- no copyrights, as nothing was written about copyright in the accession document

If you must know a work's copyright status for a NPS project, you must research it. Since copyright notice and registration aren't required for protection of unpublished works, you can't simply assume that works without a copyright notice are unprotected. Works are now protected from the moment the creator's pen is lifted from the finished work. Writing the U.S. Copyright Office may not be sufficient to establish the copyright status of collections of paintings, sculpture, photographs, personal papers, assembled manuscript collections, and similar materials created outside federal agencies.

For example, the copyrights to all letters written to the NPS by a private citizen are held by that private citizen, even though the documents are owned and managed by the NPS. To obtain permission to publish, electronically distribute, or exhibit these letters, you must determine if the letters are under copyright protection (a function of who produced them, whether they were registered or published, and when), find the copyright holder, and obtain written permission to use the letters. For further guidance on determining copyright ownership and duration, see Question 13, 'If the park doesn't own the copyright, but I want to use the materials in a publication, what do I do?' below.

13. *If the park doesn't own the copyright, but I want to use the materials in a publication, what do I do?*

Regardless of whether the request is from park staff or from outside requestors, if you have no copyright or only limited permission to use the material, or if you doubt the person who granted you the copyright actually had it (for example, if the donor was not the creator or his or her heirs):

- You must **not** publish the work or grant permission to publish the work without obtaining permission, a usage license, or copyright first. Publication is the distribution of copies of a work to the public by:
  - selling or transferring ownership
  - renting
  - leasing
  - lending



- sharing freely without charge or restrictions

If all rights are not transferred to NPS as part of an acquisition, avoid future copyright issues by ensuring that the source of accession signs a statement on the accession form giving the park the unrestricted right to exhibit, publish in an exhibit catalog, do publicity, or use the item for other park purposes. Refer to MH-II, Chapter 2, Accessioning and A.3.5. on orphaned works.

- Generally speaking, for third party requests, it is the researcher's responsibility to obtain permissions and rights. It is not your responsibility to tell the researcher how to do this, as you are not a lawyer. If appropriate, you may provide the researcher with source of accession information, **if** the source is the copyright holder, which allows him to pursue permission. Make sure not to provide information that may compromise the source of accession's privacy. Consult with your regional curator should this situation arise.
- If you want to determine the copyright status of a work, you should do the following:
  - Find out if and when the creator died.
  - Find out who owns the copyrights if they are still active (usually the creator or his or her heirs).
  - If you are accessioning a copyrighted work, if appropriate, have the copyright owner or his/her heir sign the gift form or statement noting that he/she is the heir, owns the copyrights, and transfers copyrights to the NPS.
  - Make a good faith attempt to track down the creator, his or her heirs, or any known copyright holder. (Cumulative international telephone directories on the Internet can help your search.)
  - Document your attempts to track down these individuals.

Request permission in writing to use the work when you locate the copyright holder. See Figure 3.5 for a sample use agreement. Additional information is contained in the U.S. Copyright Office publication entitled "How to Investigate the Copyright Status of a Work." at <http://www.copyright.gov/circs/circ22.html>.

- Once you find the copyright holder, explain why the material has value to your park and request, in writing, **all** copyrights.
- If the creator or his or her heirs won't grant you all copyrights, consider asking for a license or permission to use the materials for special purposes, such as on the Web, in park publications and exhibitions, and for scholarly external use. Be specific. Refer to the wording in the sample licensing agreement, Figure 2.2.

- If you cannot find the copyright holder, and you are aware that copyrights exist, you cannot publish the work or grant permission to publish the work. If no information regarding copyright or the owner of the work is available, the work may be considered an orphan work. See FAQ #6 for further guidance.

14. *Can copyright be restored once it has lapsed?*

Yes. Despite the combined resistance to such legislation by archivists, librarians, and curators, several recent trade agreements have provisions for restoring copyrights for some motion pictures and sound recordings.

- The North American Free Trade Agreement Implementation Act provided copyright restoration for certain motion pictures created or published in Mexico or Canada if they entered the public domain in the U.S. because they were published between January 1, 1978, and March 1, 1989, without a required copyright notice.
- The Uruguay Round Agreements Act (17 USC 104a and 109) restores some foreign copyrights in foreign work in the public domain in the U.S., including art, literature, and sound recordings fixed before February 15, 1972, if the works were protected in their source country on January 1, 1996.

More such copyright restoration legislation may be in the works. Read your professional journals and newspapers or watch the legal Web sites listed in the bibliography for updates.

15. *What is fair use?*

Fair use is a defense to a claim of copyright infringement. Under the Copyright Act, certain “fair” uses of a work do not require permission of the copyright owner if the use is limited, primarily noncommercial, and in the context of:

- teaching
- private study, scholarship, or research
- satire, parody, commentary, and criticism
- news reporting

*You may always copy or adaptively reuse facts and ideas, but NOT the specific words in which they were expressed.*

16. *What criteria determine fair use?*

Don't assume that simply because a proposed use is non-profit, educational, scholarly, for news reporting or purposes of satire or parody that it is automatically a fair use. Fair use is subject to a case-by-case analysis of the four factors listed below:

- ***The purpose and character of the use:*** To be judged fair use, a usage should be a "transformative" use that adds value to the work. Works that add significant new commentary, contextualization, or content to the work are more apt to be judged fair than would be a

simple quote. Generally, uses for personal research, criticism, satire, parody, or news reporting are more likely to be judged as fair uses.

Commercial uses are less likely to be judged fair, while nonprofit usage is more likely to be judged fair. Commercial means that money was made using the material in question, even if the institution that made the money was a non-profit.

Commentary is a fair use, while a quote may not be. Substantial quotes are frowned upon, particularly in a commercial setting. Simply stating that you are quoting the item for news reporting purposes when you substantially quote a work does not excuse or authorize your use. You must offer transformative commentary or report on the material, which adds value to the work.

- ***The nature of the copyrighted work:*** Is the work fact or fiction? Is the work published or unpublished? You may quote facts and concepts, but *not* particular wording, except for fair use purposes (such as commentary, parody, satire, criticism, news reporting, teaching, private study, scholarship, or research). All usages of creative, dramatic, or fictional works are more likely to be judged infringements than are non-fictional or conceptual quotes.

***The courts generally grant creators the right to control the first publication of their work, so infringements of unpublished materials tend to be dealt with more harshly if they involve a first publication situation by someone other than the creator or the creator's heirs.***

- ***The amount and significance of the portion of the work to be used:*** Fair use is based upon the amount of the work being copied *and* the significance of the portion being copied in relation to the entire work. Using a whole work or the most significant section of a work is frowned upon. There is no pre-set amount or percentage of an item that is always okay to publish. Copying five relatively insignificant pages of a 75-page document may be judged acceptable, while copying the single most significant page may not. One page letters or photographs clearly shouldn't be used in their entirety.

***Close paraphrasing of part or all of a document and other forms of plagiarism violate copyright protection unless you are simply repeating facts.***

- ***The relationship of the item's use to the market for the item:*** Might the use affect the current or future market for the item? If a usage affects sales, to what extent are sales affected?

If you begin distributing copies to people who normally buy the item, you are having a negative effect. A ranger may be allowed to copy a page of a publication for a free park course for staff as that will have a minimal effect on the future demand for the item. Usages that serve

as equivalents to the original item in the marketplace (also known as market substitutes) are generally not judged to be fair usage.

A commercial training organization's use of the same material repeatedly in a profit-making course may be judged an unacceptable use. It doesn't matter if the item is currently out-of-print, rare, or still being sold on the newsstand, copying may be viewed as affecting an existing or potential market for the work. The extent of the effect must be determined.

17. *How does the fair use exemption impact me?*

When you attempt to apply copyright law, it may seem ambiguous. If you are uncertain about whether your proposed use is a fair use, obtain permission from the copyright holder or don't use the item. Practically speaking, uses that don't affect the market for the work and which use a small portion of a work, are the least likely to have problems in court. Request help from the regional curator or WASO NPS solicitor if you have questions.

Case law determines how a balance is struck between the rights of the creator and the needs of the user. See the bibliography Web resource list, particularly FindLaw's site at <<http://www.findlaw.com/casecode/>>, for guidance on how to track appropriate case law developments.

A recent case addressed whether fair use applied to the widespread photocopying of journal articles by scientists engaged in research on behalf of their employer, a private corporation that subscribed to the journal for the scientists' use. The corporation did not obtain permission or pay additional compensation to the publisher of the journal for the photocopies.

The court held that such photocopying was *not* a fair use and infringed on the copyright held by the publisher of the journal. *American Geophysical Union v. Texaco Inc.*, 60 F.3d 913 (2<sup>nd</sup> Cir. 1994). This interpretation of fair use has ramifications for those in NPS who wish to reproduce materials subject to copyright for internal agency use, whether in electronic or print form, without the permission of, and possible compensation to, copyright owners. If you are not sure, obtain permission from the copyright holder or don't use the materials.

18. *Are there additional copyright exemptions besides fair use?*

Yes. The library/archival provision of the law (under section 108 of the Copyright Act of 1976) has several exemptions that allow archives and libraries to make copies of a copyrighted work in limited circumstances. NPS archival collections fall under this exemption. ***However, note that this exemption currently does not apply to museums. The Copyright Office is considering whether museums should be included.***

The section 108 exemptions include the following provisions:

1. The right to reproduce and distribute three copies or phonorecords of an **unpublished work** duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives if:
  - (a) the copy or phonorecord reproduced is currently in the collections of the library or archives; and
  - (b) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the

public in that format outside the premises of the library or archives.

2. The right to reproduce three copies or phonorecords of a **published work** duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if:

(a) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

(b) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

A format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

3. The right to reproduce and distribute a single copy, made from the collection of a library or archives, where the user (including other libraries/archives) makes his request of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, as long as the copy is used for purposes of study, scholarship or research, and a copyright notice is included with the provided copy.

4. The right to reproduce and distribute a single copy of the entire work, or a substantial part of it, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy of the work cannot be obtained at a fair price, as long as the copy is used for purposes of study, scholarship or research, and a copyright notice is included with the provided copy.

***Audiovisual, film, graphic, pictorial, musical, and sculptural works are not covered under this exemption and should NOT be copied under this provision of the copyright law.*** This limitation does not apply to (1) or (2) above, nor does it apply to pictorial or graphic works contained within works described in (3) and (4) above.

Up to three preservation copies in digital or analog form may be made of textual works when:

- the library or archives already has an original copy of the work (even if the original copy has been lost or stolen)
- the copy is solely for preservation, security, or deposit in another library
- the copy will be available only in the archives or library, not outside the archives or library. *Note:* There is one exception to this rule. Copies may be made for deposit in another library for purposes of preservation or security
- the format of the original has become obsolete, such as if equipment or devices necessary to play it are no longer manufactured or

commercially available

When libraries and archives want to copy works without infringing copyright, according to Section 108 of the Copyright Act, the institutions must:

- be open to the public without restrictions or to a specified portion of the public, such as a group of researchers on a particular topic
- not provide the copy for commercial purposes or for distribution outside of the premises of the repository other than for face-to-face teaching activities within a classroom
- include a copyright notice on or with the copies provided or a clear statement about the applicability of copyright to the work

19. *What should I do if I'm uncertain of the copyright status of a work and the fair use quality of a reference request?*

Copyright is a use, not an access, restriction. Subject to privacy or other applicable laws, anyone may look at the material at any time for research, study, private scholarship, satire, parody, criticism, and news reporting. Copyright law allows limited copying of small portions of copyrighted materials *for non-commercial purposes, if the copying qualifies as fair use*. Copyright also allows copying for security, preservation, and deposit in another institution.

So, if you are uncertain of the copyright status of a work, don't grant permission to:

- publish
- distribute
- reproduce
- produce derivative works from the original item.

*Never authorize public distribution, public performance, public display of multiple copies, or alterations or production of derivative works or publication in writing unless you are absolutely certain that:*

- you have the copyrights, *or*
- the copyrights have expired, *or*
- the copyrights never existed (as with government works), *or* the copyright holder has granted you a written license or permission to use the work, the terms of which allow you to grant permissions to others.

***Tell the requester he is responsible for obtaining the rights and permissions from the copyright holder, which is not necessarily the NPS. You may inform the requester that he may make a FOIA request for the source of accession information to pursue permission***

You should also:

- Ask the requester to sign an NPS researcher registration and duplication form and a copyright and privacy restrictions statement. See *MH-II*, Appendix D, Museum Archives and Manuscript Collections, Figures D.14-D.16 and the ANCS+ User Manual.
- Inform the requester that by signing the copyright and privacy restrictions form, he or she has indemnified your park.
- Place a warning concerning copyright restrictions in your research room on your own copy machine that states:

*The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.*

Contact the regional curator or the NPS solicitor through the Park Museum Management Program, if you have copyright questions.

20. *Is fair use different in a networked electronic environment?*

Although the concept of fair use is the same, applying it may be quite different. In addition, legislation and case law are only beginning to catch up with recent changes in technology. The Digital Millennium Copyright Act (DMCA) has addressed copyright issues involving newer forms of technology. The DMCA exempts online service providers from some copyright infringement claims, prohibits removal of identifying information from copyrighted works, prohibits technological removal or circumvention of devices designed to protect copyrights, and allows archives and libraries to make digital copies for archival purposes. See Section C.11 for how to legally use digital media for preservation.

In *Kelly v. Arriba Soft Corp.*, 336 F.3d 811 (9<sup>th</sup> Cir. 2003), the court held that a search engine's creation of small reproductions ("thumbnails") of images and placing them on its own website did not diminish the potential market for the sale or licensing of those images. The court reasoned that the thumbnails were much smaller and of much poorer quality than the original photos and provided an index of the images to facilitate public access to them. However, original creative electronic materials are protected by copyright. If you copy something electronically that doesn't meet the fair use criteria described in Question 10, it may constitute copyright infringement.

Because copyright issues in the electronic networked environment, such as

the examples discussed above and below, are relatively recent and just starting to be addressed by the courts, contact your regional curator or the NPS solicitor with any questions involving these areas.

Some examples of potential electronic infringements include:

- ***Quoting another person's message in its entirety in the body of your e-mail message:*** Instead, state in a summary sentence what the discussion was about.

In some contexts, such as commenting on the original message in the original electronic location, this may be an implied license (see below), because reasonable people expect comment on the information they post on public bulletin boards. Sending the quoted message to another electronic bulletin board, however, may be an infringement.

Messages produced by government employees during the scope of their work are not copyrighted. Such federally produced work is in the public domain. Many of the federally produced messages on government bulletin boards may be quoted or reproduced in their entirety without reservation.

Don't reproduce messages by non-federal correspondents in their entirety in your message or forward them to other bulletin boards without permission of the creator. Significant quotes from non-federal correspondents' messages should be done with discretion, and only when there is an implied license (see below). The legality of such unapproved uses is decided on a case-by-case basis.

- ***Downloading a Web publication and forwarding it to a bulletin board or newsgroup:*** Instead, post the uniform resource locator (URL) or Internet address. Downloading a copyright protected publication onto a permanent storage device (server, disk, or tape) is an infringement of the right to reproduction.
- ***Maintaining an online Web site of material pulled from other Web sites without obtaining a license or permission to use the material:*** Instead, list URLs, link to the existing materials, or obtain permission to use the material. This is an infringement of the copyright holder's right of reproduction.
- ***Modifying an image taken from another source and loading it onto a permanent storage device (such as a disk, hard drive, or server) infringes the copyright holder's rights of reproduction, distribution, and adaptation (or derivative rights).*** If the work dates from after June 1, 1991, and is visual art, the usage may also infringe the copyright holder's moral rights under the Visual Artist's Rights Act.
- ***Using the concept of implied license to authorize publication and distribution:*** The concept of implied license is often used to justify certain kinds of publications that don't fall under fair use. Implied license is when a creator (who holds copyright) acts in such a way



that you, as a reasonable individual, would assume you have permission to publish the piece. An example is when an individual writes a letter to the editor of a newspaper. It has been normal practice for newspapers to publish these letters without seeking additional permission. Since most of the world knows about this practice, sending a letter to the editor grants implied license. The implied license would not extend to those using such a letter in an archive. Only the newspaper received the implied license, based on the use the newspaper and the author intended.

Implied license doesn't justify new activities in the electronic realm, such as forwarding e-mail messages to individuals other than those to whom the creator sent the piece, copying messages from one electronic bulletin board and posting them on another, or similar activities. Apply the concept of implied license cautiously. Just because your site is secure and password-protected doesn't make copying of materials without permission a fair use. Even on a secured site you still need permission to use copyrighted materials. If you have questions, contact your regional curator or the NPS solicitor.

- ***Removing a “technological control”*** such as encryption used to protect copyrighted works or attached intellectual property rights management information from a file's metadata is a violation under the Digital Millennium Copyright Act (DMCA) for purposes other than fair use
- ***Removing the name of author(s) from a work***, is a violation under the DMCA and may be an infringement under the Visual Artist's Rights Act, if the work was created after June 1, 1991.
- ***Deep linking (that is linking to a lower level of a web site rather than the site's home page)*** may also pose problems as the creator/author's credit may be obscured, or the site content may change to potentially offensive material. Avoid links that avoid providing credit to the linked site's creators and sponsors. The Visual Artist's Rights Act partially protects these works. Follow the NPS policy on linking (DO 70, Internet and Intranet Publishing).
- ***Linking to another site without permission so that the link implies a connection, endorsement, or authorization*** that doesn't exist. Refer to Director's Order 70, Internet and Intranet Publishing at <http://data2.itc.nps.gov/npspolicy/DOrders.cfm>.
- ***Framing another Web site's text via the use of a border, window, or frame must be done only when you have that Web site creator's permission*** in writing. Generally you must keep the original credit line, captions, and intellectual property rights management information on the site or you will be infringing the Web site creator's rights to adapt or produce derivative works.

## 21. *Why and when must I place copyright notices on*

Although original works don't require a copyright notice to be protected, notices serve as an excellent warning when materials are protected,

*copies and copiers?*

particularly for copies. Such notices can protect archives, libraries, and museums from lawsuits. By law, copies provided for fair use purposes or under the library/archives exemption **MUST** be marked with a copyright statement. Each copy should carry one of the following notices:

- **If the original work already has a copyright notice**, place the following statement on the copy: “The work from which this copy was made included the following copyright notice: ‘[transcribe the original notice and place it here].’”
- **If the original work has no copyright notice**, place the following notice on the copy as a rubberstamp, typed transcription, or other marking: “The work from which this copy was made did not include a formal copyright notice. This work may be protected by U.S. copyright law (Title 17, U.S. Code), which governs reproduction, distribution, public display, and other uses of protected works. Uses may be allowed with permission from the copyright holder, or if the copyright on the work has expired, or if the use is “fair use” or within another exemption. The user of this work is responsible for compliance with the law.”
- Copiers and copy order desks should have the following notice posted:

*“The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be ‘used for any purpose other than private study, scholarship, or research.’ If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of ‘fair use,’ that user may be liable for copyright infringement. This institution reserves the right to refuse a copying order if, in its judgment, fulfillment of the order would involve violation of copyright.”*

- With regard to taking **photographs of original works of art**, such as paintings, you may consider posting a notice in the exhibit area that explains the NPS commercial filming and photography permit requirements. This notice could also remind visitors that copyrights may exist for some items on exhibit. However, NPS is not required to post such a notice since we aren’t providing the copies themselves or the means (such as a copy machine) to make copies.

For further guidance read *MH-II*, Appendix D, Museum Archives and Manuscript Collections, Section T, Providing Access to Archival and Manuscript Collections and Section U, Identifying Appropriate Restrictions for Archival and Manuscript Collections.

22. *How do I handle unpublished materials?*

Unpublished manuscripts, drawings, and other materials may still be subject to copyright protection.

Generally, unpublished materials created on or after January 1, 1978, are subject to copyright protection for the life of the creator plus 70 years. Copyrights for unpublished works made for hire or anonymous or pseudonymous works created on or after January 1, 1978, last 120 years from the date of creation.

Draft documents have the same potential for copyright protection as non-draft documents.

Copyright protection for unpublished materials created before 1978 lasts for the life of the author plus 70 years. However, if the work created before 1978 remained unpublished as of December 31, 2002, the copyright is expired.

If you wish to publish an unpublished work, get permission from the creator, copyright holder or his or her heirs. Contact the regional curator and the NPS solicitor for assistance on how to proceed.

23. *What is the public domain?*

Works are in the public domain if they have no copyright protections. This may occur for a variety of reasons. See 2.24, 'When is a work in the public domain?'

**Note:** Be cautious when assuming a work is in the public domain. In certain instances, works of foreign origin that once were in the public domain may have had their copyright protections extended.

24. *When is a work in the public domain?*

Work is in the public domain, available for general use without written permission or payment, when one of the following applies.

- It was created by federal employees as part of their official responsibilities. (Federal government work can't be copyrighted even though such work may appear occasionally in published volumes that are copyrighted. The federally produced portion of the material is not covered.)
- The copyright term has expired without renewal or restoration. See 2.9, 'What is the duration of copyright protection?'
- Copyright protection never existed, such as when a work was published before 1978 without a required notice of copyright.
- The work is ineligible for copyright protection, such as a work that consists solely of facts.
- The copyright owner relinquished all rights and effected an intent to place the work in the public domain.

25. *What is the right of "first sale?"*

The right of first sale is an exemption to the creator's copyright to sell a work. Any individual, who lawfully owns a copy of a work, has the right to "first sale" of the work. That is, a collector who has bought a work from a creator may sell or otherwise dispose of his or her lawful copy without permission from the creator who owns the copyright.

For example, if you purchased a copy of a poster, you may later resell or donate that poster to whomever you please without obtaining permission from the creator or other copyright holder. However, you may NOT duplicate, publicly distribute, perform, or exhibit multiples of that poster.

Most states (except California) don't require that a portion of revenues from sales of works automatically go to the original creator of the work if another owns the work being sold, such as a collector.

26. *What are visual artist's moral rights?*

Under Section 106(A) of the Copyright Law, artists and other creators of visual work (as defined by the statute) created after June 1, 1991, are given the additional "moral" rights of having:

- their works properly attributed (correct captions and credit lines)
- no works created by others (not the artist) wrongly attributed to the artist
- their works created after June 1, 1991, protected from destruction during the artist's lifetime
- the integrity of their works maintained (no destruction; no rearranging composition, color values, or picture elements)

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**D. Freedom of Information Act**

1. *What is the Freedom of Information Act (5 USC 552)?*

The Freedom of Information Act (FOIA) provides citizens with information on their government's actions through access to the documentary records of those actions. State FOIA laws, which exist in many states, do the same for state records. FOIA governs what federal records, including federal records in NPS museum collections and materials under records management control must be made accessible by law.

2. *What are federal records?*

Records include all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them. Excluded materials are extra copies of documents kept only for reference, stocks of publications and processed documents, and library or museum materials intended solely for reference or exhibit.(44 U.S.C. 3301)

3. *How does FOIA affect park museum collections?*

FOIA requires that NPS staff and other federal government agencies provide the public swift access to certain governmental records upon request, regardless of other priorities or the effect of sharing such information (with certain exemptions).

FOIA involves a quick response within 20 days to information requests that include:

- determining if the requested material exists
- locating the appropriate materials
- determining whether FOIA exemptions apply
- responding to the FOIA request within 20 days of receipt

4. *What must I provide under FOIA?*

In general, you must provide:

- any federal records already provided to outside users, such as the public, Congress, or the courts. Once provided, these materials are public records, available to all requesters
- any federal records, except those listed as exemptions in D.4.

Many organizations have found World Wide Web sites to be a cost-effective way of providing access to commonly requested information.

***FOIA gives the public access rights to government records. FOIA doesn't apply to museum collections, other than federal records that are managed in museum collections (such as resource management records) and museum records.***

***Don't attempt to answer FOIA requests on your own. Refer all such requests, whether written or oral, to the superintendent, administrative officer, and designated park FOIA officer. You may be asked to collect response data or to draft a response for the Superintendent's signature. Information requested under FOIA on collection storage location, appraisal and insurance values, or the donor or lender's address will in most cases, be withheld. Before denying any FOIA request, consult the Solicitor's Office and the regional curator.***

5. *What don't I have to provide under FOIA?*

You don't have to conduct original research to answer FOIA requests. Provide only existing records. You don't have to create records where none exist. Some federal records are legally exempt from FOIA requests. The FOIA exemptions include:

- matters of national defense, foreign policy, or intelligence (classified records)
- internal personnel rules and practices
- trade secrets, commercial, or financial information that might help a competitor
- privileged interagency or intra-agency memoranda or letters,

including pre-decisional and attorney-client privileged documents.

- personal information affecting an individual's privacy, such as medical, psychiatric, or employment records
- records compiled for law enforcement
- records of financial institutions
- geological and geophysical information concerning wells
- materials protected by other statutes, such as the Archeological Resources Protection Act, the National Historic Preservation Act, and the National Parks Omnibus Management Act of 1998, which allow withholding of information on the nature and location of certain resources

Confirm first with the regional curator, NPS solicitor, the affected park staff (for example, cultural or natural resource managers), the FOIA officer, the superintendent, and the regional public relations officer, the ability to withhold the following sensitive information before responding to a FOIA request for information noted below:

- location of nesting sites or other habitat information of threatened and endangered species, consistent with the Endangered Species Act (16 USC 1531 et seq.). See Section F, Question 14.
- museum collection storage location and appraisal and insurance values
- donor or lender addresses
- draft research and publications that haven't yet been completed, particularly scientific findings
- location information for archeological and paleontological sites
- information concerning the nature and specific location of a National Park System resource which is endangered, threatened, rare, or commercially valuable, of mineral or paleontological objects within units of the National Park System, or of objects of cultural patrimony within units of the National Park System

Information covered under these exemptions is only releasable under FOIA in limited circumstances, on a case-by-case basis. **If you get such a request, immediately contact the FOIA officer who may contact the NPS solicitor.**

*The Executive Order on Sacred Sites is NOT a FOIA exemption. A FOIA request for information covered under this Executive Order should be brought to the attention of the NPS solicitor as other legislation such as the National Historic Preservation Act may apply.*

6. *What do I do if I receive a FOIA request?*

*Alert your superintendent, and then work with your park or FOIA officer to develop an immediate response.* Be aware that the NPS solicitor must approve any denial of information that you make to a request. Removing a single word from a requested document (redacting text) is considered a denial, even though the deletion may be classified as an exemption. Provide the required documentation to the requester within 20 days, unless the request fits one of the exemptions listed above.

If you are unsure if you should fill the FOIA request, discuss this with the FOIA officer, the regional curator, and the regional public affairs officer immediately. A response letter stating that the application is under review must go out within 20 days of receipt of the request.

If the material requested originated with another federal agency or a non-federal entity, contact the FOIA office for special instructions.

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**E. Location Information**

1. *How does the Archeological Resources Protection Act (ARPA) of 1979 (16 USC 470) affect use?*

ARPA defines archeological resources as material remains of human life or activities that are 100 or more years old and capable of supporting humanistic or scientific studies of past human behavior and cultural adaptation through the application of scientific or scholarly techniques. In particular, ARPA protects archeological resources and their location, including *sites, field records, Geographic Information Systems and Global Positioning System documentation, databases, maps, notes, documentation, and location-notated objects*— on public and Indian lands by:

- requiring that information on the location and nature of archeological resources remain confidential if disclosure might harm the resource
- requiring permits for studies
- establishing penalties for damage, excavation, or removal of resources without a permit
- requiring that resources excavated on public land have all resulting materials preserved with their associated records in a suitable repository
- giving the Secretary of the Interior authority to issue regulations for the proper curation of federally owned and managed archeological collections

2. *How does the National Historic Preservation Act of 1966, as amended (16 USC 470-470t, 110) affect use?*

In Section 304, the National Historic Preservation Act provides a requirement to:

*"...withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may:*

- (1) cause a significant invasion of privacy*

(2) *risk harm to the historic resources; or*

(3) *impede the use of a traditional religious site by practitioners."*

The types of information that can be withheld according to a written opinion by Jerry Rogers, NPS Associate Director of Cultural Resources, in an October 18, 1993, letter to F. Dale Robertson, Chief of the U.S. Forest Service, includes:

- location information that identifies where a historic property was constructed or where a historic event occurred
- character information, such as the combination of qualities or features that make a resource significant, for example archeological artifacts or architectural ornamentation, which could attract theft or vandalism
- private ownership information, such as the owner's address

***Don't attempt to answer FOIA requests on your own. Refer all such requests, whether written or oral, to the superintendent, administrative officer, and designated park FOIA officer. You may be asked to collect response data or to draft a response for the Superintendent's signature.***

***Information requested under FOIA on collection storage location, appraisal and insurance values, or the donor or lender's address will in most cases, be withheld. Before denying any FOIA request, consult the Solicitor's Office and the regional curator.***

If you receive a request for information that is protected under this law, first check with your superintendent, regional public relations officer, and FOIA officer and the NPS solicitor, then follow the FOIA denial procedures. Write to the requester within 20 days, indicating the request is being denied under the National Historic Act Preservation Amendment.

3. *How does the Executive Order 13007—Indian Sacred Sites (May 24, 1996) affect use?*

The Executive Order states that where appropriate, agencies shall maintain the confidentiality of sacred sites. However, where there is conflict regarding the release of information under FOIA, FOIA governs and supersedes the Executive Order. Consequently, site information confidentiality cannot be guaranteed under FOIA. However, site location and other information may be withholdable under ARPA, NHPA, NPOMA (see E.4) or other legislation. Bring FOIA requests for sacred site location information to the attention of the NPS solicitor, as well as the FOIA officer, the regional public relations officer, and SO staff.

4. *How does the Federal Cave Resources Protection Act of 1988 (16 USC 4301-4309) affect use?*

The Federal Cave Resources Protection Act states that federal cave location information may not be made available to the public unless the Secretary of the Department of the Interior determines that further disclosure would serve departmental purposes and *not* create a substantial risk of harm, theft, or destruction of the cave.

The DOI Secretary may make information available regarding significant caves upon written request by:



- federal and state government agencies
- bona fide educational institutions
- research institutions

If you receive a request for information you wish to protect under this law, such as federally-protected cave location information, first check with your superintendent, regional public relations officer, FOIA officer, and the NPS solicitor, then follow the FOIA denial procedures. Write to the requester within 20 days, indicating that the request is being denied.

5. *What do I need to know about the National Parks Omnibus Management Act of 1998 (P.L. 105-391)?*

The National Parks Omnibus Management Act of 1998 (NPOMA) addresses information in two ways. It establishes a research mandate to expand information on resources of the National Park System to benefit science and resource management and provides for control of that information to protect resources. The section on confidentiality of information states:

*Confidentiality of Information. Information concerning the nature and specific location of a National Park System resource which is endangered, threatened, rare, or commercially valuable, of mineral, or paleontological objects within units of the National Park System, or of objects of cultural patrimony within units of the National Park System, may be withheld from the public in response to a request under section 552 of title 5, United States Code, unless the Secretary determines that (1) disclosure of the information would further the purposes of the unit of the National Park System in which the resource or object is located and would not create an unreasonable risk of harm, theft, or destruction of the resource or object, including the individual organic or inorganic specimens; and (2) disclosure is consistent with other applicable laws protecting the resource or object.*

If you receive a request for information that falls under this category, such as the location or nature of mineral or paleontological specimens that are threatened, endangered, rare, or commercially valuable, you may restrict this information. Consult with your regional curator when receiving a request for this type of information.

You may also restrict access to objects of cultural patrimony and the information related to those objects. Objects of cultural patrimony may be any items which have been identified by the NPS as having importance for archeology, history, ethnography, literature, art, physical or natural sciences, or culturally affiliated groups. This definition includes, but may not be limited to, the definition of “objects of cultural patrimony” used in 25 USC Sect. 3001-3013 for certain objects associated with Native American groups or cultures.

If the request comes as a FOIA request, contact your park FOIA officer, as well as the park's natural resource manager, regional public relations officer, regional curator, the WASO threatened and endangered species coordinator, and the NPS solicitor. Work with these professionals to

discover if the request can be denied under the National Parks Omnibus Management Act of 1998 confidentiality provision. The FOIA officer will make the decision on a case-by-case basis. For information, see Chapter 1, Section F, Scientific Issues.

6. *What do I need to know about the Endangered Species Act of 1973 as amended (16 USC 1531-1543)?*

Location information on nesting sites or specific habitat of threatened, endangered, rare, or commercially valuable species is extremely sensitive. Restrict general access to this information. If you receive a FOIA request for this information, contact your park FOIA officer, regional curator, the WASO threatened and endangered species coordinator, and the NPS solicitor immediately to determine whether the information can be withheld under FOIA.

The FOIA officer makes the final decision. See Chapter 1, Section F, Scientific Issues.

7. *What do I need to know about protecting the location of paleontological sites?*

Location information on paleontological sites is protected by NPOMA described above. You should restrict access to this information to protect paleontological resources unless the park superintendent and paleontologist determine otherwise. Make these data available only after a careful review process.

If you receive a FOIA request, contact your park FOIA officer, the regional public relations officer, the park's paleontologist or natural resource manager, your regional curator, and the NPS solicitor immediately. See Chapter 1, Section F, Scientific Issues.

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## **F. Privacy and Publicity Legislation**

1. *How does privacy legislation affect park museum collections?*

Federal and state privacy laws protect living private individuals by giving them a legal right to be left alone without intrusion into their personal affairs. There are four components of privacy protection:

- Protection from public intrusion on a private living individual's personal or private life
- Protection from public disclosure of private, potentially embarrassing information, such as medical, legal, or counseling information
- Protection from the circulation of misleading information about a private living individual or the placing of true information about the private living individual in a misleading light that implies something that is not true about the individual
- Protection from the use or appropriation of a private living individual's name or likeness by another, particularly for gain

Privacy protections are not absolute and without limits. To be judged illegal, a usage must be distasteful, embarrassing, or objectionable to a person of normal sensibilities. Public figures are generally judged to have a lesser right to privacy protections as they have a lesser expectation of privacy. Unlike copyright, an individual's right to privacy ends at death.

The level of protection applicable to a situation may vary. Documentation of private living individuals produced when an individual has an expectation of privacy, such as in their own home, has a higher level of protection. Documentation of the same individual produced in a public arena might be treated differently by the courts. For example, a photograph taken while the same private person was walking in a public visitor center in a park, is generally somewhat less well protected (as the individual had a lesser expectation of privacy) than a similar image taken in a private locale (where the person had a greater expectation of privacy).

Some private information may be withheld under FOIA. However, where FOIA provisions and state privacy laws conflict, the FOIA provisions will govern.

Practically speaking, privacy legislation stops museums from publicly disclosing private data. Privacy legislation also limits how museum staff may provide access to certain documentation on private, living individuals including:

- medical and psychiatric records
- employment records
- legal records
- oral and video histories (transcripts and tapes) [unless a release authorizing NPS has been signed]
- photographs (including portraits, candid shots, and images of private residences)
- motion pictures (including amateur and professional footage, both posed and candid)
- video and audio tapes (including amateur and professional footage, both posed and candid)

To use materials that document private, living individuals, you need to obtain signed release forms or permission statements from the documented individuals. Releases and transfers of rights, including copyrights, should be obtained when material is accessioned into the museum collections. See Figure 3.6 and 3.7 for sample release documents. Obtain releases from both interviewees and interviewers *prior* to allowing access or publication. Without the release forms, your park may be subject to lawsuits for invasion of privacy.

Special areas of concern for privacy issues are:

- material that intrudes on one's seclusion or private affairs
- any material usage that publicly discloses private information

- material that places a person in a misleading or false light; for example, a published statement that implies an individual was wealthy, a spy, a police officer, or a criminal when the individual was none of those things
- any material that places a private individual in an embarrassing situation
- any material that contains nudity (whether of adults or children)
- any commercial usage of any private information

For all of these materials, the researcher will need to obtain permission to use these materials and information about the individual from the subject. Remember, fair use applies only to copyright and *not* to publicity and privacy claims

Your researcher duplication form should include an indemnification statement that the researcher must sign agreeing to pay all court and legal costs in case of a lawsuit. See *MH-II*, Appendix D, Figure D.14, Researcher Duplication Form.

As with copyright, the burden of obtaining the permission to use private information is on the researcher. You must notify the researcher in writing (such as on your researcher registration and duplication forms) that he or she is responsible for obtaining the necessary permissions from the individuals documented before the park can grant permission to publish. If the documented individuals refuse to grant permission, or the researcher is unable to locate them to obtain permission, don't grant permission to publish, distribute, or otherwise use the material until all private individuals documented in the materials are deceased.

## 2. *Who has little or no right to privacy?*

In general, the dead have no rights to privacy. However, in limited circumstances, privacy concerns may arise for the living relatives of the deceased individual. For example, personnel records might indicate psychiatric or medical histories that the family does not want to share with the public.

In many court cases, famous people have been judged to have less than full right to privacy, including:

- movie and TV stars
- famous singers and musicians
- well-known criminals
- other well-publicized individuals

In the case of famous individuals, it is wise to take a conservative approach to avoid lawsuits. Request permission to use materials that may be construed by the courts to be private from all living individuals, even if

the individual portrayed is famous.

3. *What is covered under the right to privacy?*

Generally, the right to privacy provided by state laws protects private, living individuals from intrusion, including:

- audio- and videotaping of their conversations
- photographing, filming, or taping of the person or home
- public disclosure of private information, such as:
  - medical and psychiatric history
  - personnel records and employment history
  - confidential lawyer-client and clergy-client discussions
  - information that embarrasses an individual, even though the information may be true
  - information that places a person in a false light or an untrue or misleading situation

*Note:* This is similar to defamation laws (also known as libel and slander laws); although in libel and slander laws the individual is protected only from the disclosure of information that is both false and willfully misleading. Unpleasant but true information may not be defamatory, although disclosure of that information may be an invasion of privacy, depending on the facts of the case.

- The right to privacy also includes freedom from having anyone else use any aspect of your persona or your information for gain, including your:
  - name
  - face
  - nude image (adult or children)
  - fingerprints
  - house (images)
  - private words

4. *May I provide private information for fair use, such as education and research?*

No. Privacy is an access as well as a use restriction. *In most states, the fair use clause does not allow access to private information.* Researchers may not have access to private information about other private, living individuals for the following reasons:

- The general public has no legal right to private information about individuals other than themselves.

- FOIA has a privacy restriction to ensure private information is not wrongly provided as the result of a FOIA request.

5. *How does privacy law affect museum or archival collections?*

Two broad categories of museum materials may pose privacy problems:

- oral and video history tapes and transcripts without signed release forms from all participants, including the interviewers and the interviewees
- photos, videotapes, digital files, and motion picture film footage without signed release forms from all individuals shown

Don't provide these materials unless you have signed release forms or permission statements from the individuals (interviewees and interviewers) documented in the tapes, transcripts, files, and other documents.

If you are involved in creating oral or video histories, you should get an oral release statement on the tape itself from both the interviewer and the interviewee at the start of the interview. Have a formal release signed by both parties once the tape has been recorded and transcribed and edited by the interviewee. Once the transcript is prepared have both the interviewer and the interviewee sign a separate release form for the transcript. Include a copy of the release form in the accession folder.

6. *How do I avoid rights problems when producing new products, such as photos?*

Have all private individuals who are taped, transcribed, filmed, or photographed sign a release form giving you all copyrights and written permission to use this material in any way you wish (also called a release form). See Chapter 3, Figures 3.6 and 3.7 for sample release forms

Documenting federal staff during work hours is generally considered part of the documented person's job. For example, videotaping interpretive rangers for training purposes may be considered part of their job.

***Always have individuals who are being taped, filmed, photographed or transcribed, sign a release form.***

If a private individual gives you permission to use material in one setting, such as an interpretive slide show, ***don't*** assume that you may use it in another setting, such as on the World Wide Web or in another publication, without getting additional permission. You must either have the individual sign a general release form, or receive written permission for each new type of use.

7. *How do I avoid privacy rights problems when using old photographs and related materials?*

Obtain written permission from the rights holder where possible. You or your researchers may need to obtain multiple permissions to use a single work within your collections in publications or exhibitions. If you do not know who the rights holder is and you want to use the work, consult the Solicitor's Office for advice regarding the level of legal risk associated with using the material.

The risk of violating the right of privacy is minimal in the case of a celebrity or public official because both seek public attention and

voluntarily live in the public eye. The right of privacy tends to relate more to private persons because they generally do not seek public attention. A private person may lose protection if the individual becomes the subject of newsworthy attention; this balances privacy interests with First Amendment concerns.

The risk of violating the right of privacy is also minimal with respect to deceased individuals. However, even when the individual documented is deceased, you have to judge what problems the records might cause living relatives of the individual.

8. *What should I do if I have materials without signed releases?*

Take the following steps to protect your park:

- ***Inform researchers they must obtain permission from the relevant individual(s).***
- ***Follow the NPS records schedule in the Records Management Guideline*** (formerly NPS-19) to transfer or dispose of employment, law enforcement, medical, and similar records as required by law.

Most NPS records with privacy issues, such as employment and medical records, shouldn't become part of museum collections, but instead should go to the National Archives and Records Administration (NARA). For records of related organizations, such as concessionaires, don't make the materials available unless the persons involved are no longer living.

Even when the individual documented is deceased, you have to judge what problems the records might cause relatives of the individual. For example, personnel records might indicate psychiatric or medical histories that the family does not want to share with the public. These decisions should be made on a case-by-case basis during the appraisal process prior to accessioning.

- ***Don't provide access to medical, legal, psychiatric, personnel, or other private records,*** except for subpoenas and federal audits. Requests for employee records found in corporate archives or personal papers within NPS collections, such as the Thomas A. Edison or Frederick Law Olmsted papers, should be referred to your solicitor, administrative officer, and, where appropriate, FOIA officer. Records of living federally employed individuals should be in the personnel office, not the museum collection. Refer all such requests for records of federal employees to your administrative officer, through your superintendent.
- ***Talk to the NPS solicitor and FOIA officer*** about potentially private materials. Be conservative with private information. Don't allow use of these records without the NPS solicitor's approval.
- ***Don't publish, exhibit, distribute, or authorize others to use this potentially private material*** in publications, exhibitions, or other public distributions, such as the World Wide Web, without the subject's permission (even if the individual documented was a child

when the materials were produced).

- ***Consult with the appropriate discipline specialist if the materials document a particular culture, but you can't locate the individuals documented.*** Working with the anthropologist or ethnographer, contact the appropriate cultural group to identify the individuals documented, obtain permissions, and determine if the use is appropriate. If permission from identifiable individuals in the material is not available, do not publish, exhibit or authorize others to do so.

See Chapter 1: Evaluating and Documenting Museum Collections Use, Section E, Cultural Issues.

9. *How do the courts enforce state privacy laws?*

Each case is decided on its own merits. Generally speaking, courts are particularly hard on any uses that:

- place a private person or group in a misleading light
- embarrass a private person or group
- include any nudity
- result from intrusion on private space or affairs
- disclose medical, psychiatric, employment, or related information

10. *What is the difference between publicity and privacy laws?*

Publicity legislation, which exists in almost half the states, protects the rights of celebrities to benefit from any use of their name, face, image, voice, and other aspects of their image or persona for commercial gain. These state laws, which apply to federal entities within the state, limit commercial use of museum objects that illustrate or capture the image, voice, or persona of celebrities without permission of the celebrities portrayed or their estates.

***State privacy legislation overlaps somewhat with publicity legislation enacted by such states as California, New York, and Tennessee. Both privacy and publicity legislation are state laws that may vary in content from state to state. These laws may apply to federal collections within the state.***

Two major differences exist between privacy and publicity legislation:

- Privacy is a non-commercial right, while publicity is a commercial right.
- In some states, publicity rights extend after death and may be enforced by the estates of celebrities, while privacy rights always end at death.

Whether and how the publicity right applies depends on the applicable state law—some states do not recognize it, and no federal law applies. However, the number of states recognizing some version of publicity law



is growing rapidly. NPS staff should seek written permission from celebrities or their families (some states extend the right for a period after death) for all NPS uses of their persona, particularly if a proposed use is more commercial than educational. If a researcher wishes to use such materials, don't authorize such use until the researcher has obtained written permission from the celebrity.

11. *How do I know if use is potentially illegal?*

First, read this chapter. Then consult with the NPS solicitor and regional curator for guidance if you feel a usage may be illegal. In general, obtain written permission to use the material from celebrities or their heirs, particularly for all commercial uses to avoid potential lawsuits.

12. *How does publicity legislation affect park museum collections?*

Parks in states with publicity legislation should be aware that they must be particularly careful how they use images of celebrities, living or dead. Avoid authorizing such use in writing unless the researcher has obtained written permission from celebrities or their estates. Discuss all commercial or electronic uses of celebrity-related materials with NPS solicitors and regional curators.

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## G. Other Legal Issues

1. *How do donor restrictions affect use?*

Prior to 1984, parks were advised that donor letters should contain a statement that gifts are unconditional. (See *Manual for Museums*, Chapter 2, How to Acquire.) Since 1984, NPS policy, as noted in *MH-II*, Chapter 2, Accessions, Figure 2: Deed of Gift, is to accession only unrestricted donations. Although counter to NPS policy, some materials may have been received with donor restrictions. Donor restrictions act as a binding contract between the museum and the donor. If you discover materials within your collection that have donor restrictions, honor them to the extent allowed by law. *Note:* at the time of the accession, park staff need to inform donors/sources of accession that files are protected to the extent of the law.

The NPS must follow FOIA procedures and may not deny materials requested through FOIA or subpoena automatically because of donor restrictions. Occasionally, FOIA and donor restrictions clash, with FOIA requiring access to materials that are denied under donor restrictions. When donor restricted materials are requested under FOIA, the case must be decided individually. Ask your superintendent, NPS solicitor, FOIA officer, and regional curator for guidance.

2. *What is meant by sensitive information?*

In general, sensitive information is a catch-all category of privileged, exclusive, private, or restricted information that isn't protected by law(s). Restricting access to such information rarely has any legal basis. You need to honor restrictions to the extent permitted by law. However, in the absence of a donor restriction or a legal basis, sensitive information must be provided when requested by FOIA. Contact the NPS FOIA officer and solicitor for guidance. For more information see Chapter 1, Section D, Ethical Issues, and E, Cultural Issues.

3. *What slander and libel laws affect use of*

State defamation law generally provides recourse for publication (communication to a third party) of *false* written (libel) or spoken (slander)

*museum collections?*

remarks that hold *living* persons or corporations up to hatred, contempt, or ridicule. Most state defamation law doesn't apply to the dead, allowing unlimited commentary without recourse. The medium and method of communication can sometimes affect whether a statement is viewed as defamatory or not.

Materials most frequently affected by slander and libel laws are:

- oral and video history tapes and transcripts
- correspondence, particularly informal correspondence, such as memos and e-mail
- diaries

Of these materials, the most likely to pose problems for park museum staff are back-up tapes from e-mail systems requested via FOIA and oral and video history tapes and transcripts. If you have such materials that contain defamatory content, contact your regional curator. If you receive FOIA requests for this material, also contact your park FOIA officer and the NPS solicitor.

4. *What is obscenity, and how does it concern museum collections?*

Obscenity is indecent, lewd, or offensive expression. There are state and federal criminal penalties for those who provide obscene material to the public. Laws and standards dealing with obscenity vary by state. Generally, the following are obscene:

- ***Nudity***, particularly in photographs, is often judged to be obscene by state and local courts. Nude images of children are particularly inflammatory according to recent legal rulings. Don't publish nudes of children unless they are essential to your work and you have cleared the use with the NPS solicitor and your Regional curator.
- ***Visual depiction of a minor engaged in sexually explicit conduct***, including "lascivious exhibition of the genitals," should *not* be reproduced, exhibited, or distributed (such as on the Internet) without first obtaining the consent of the NPS solicitor and consulting with an appropriate discipline specialist. Criminal penalties for child pornography make it advisable to avoid exhibiting, publishing, or distributing depictions of nude children, even if disseminated for academic purposes. Dissemination of an image (not just the solicitation of a minor to pose for such images) may result in criminal penalty, even in the absence of any commercial purpose.

5. *What pictures of nudes are exempt from obscenity concerns?*

Practically speaking, none are exempt although educational, medical, or scientific images disseminated for legitimate academic purposes are less likely to be judged sexually explicit. For example, facing a court challenge for displaying a Renoir nude in a fine art museum is unlikely. An equivalently posed nude taken as a contemporary color photograph and distributed online without context is more likely to receive an obscenity challenge.

If, however, the photo is the source material for a painting held by the

NPS that is being critically studied in the publication, the danger again recedes. Handling concerns of this nature is a matter of risk management and should be done in conjunction with a NPS solicitor familiar with these concerns.

6. *How can I manage nude images that I have in my collection?*

If your collections or potential donations contain images that depict nudity, consider consulting a group of discipline specialists. An informal, professional advisory group can substantively evaluate the artistic, scientific, or educational merit of disseminating particular materials and ensure that all delicate matters and culturally sensitive materials are presented appropriately.

Such good-faith efforts will stand you in good stead if you are ever taken to court. Your access and use policy should recognize these issues, require an evaluation of the reason for and merit of disseminating sensitive images, and direct staff to consult with the NPS solicitor for assistance.

7. *How does evolving case law affect my practices?*

Case law can totally change the meaning of an act or how a piece of legislation is interpreted. Case law, unfortunately, is fluid and changes rapidly. You can learn about recent changes by reading professional museum publications and a major newspaper, and by consulting with the NPS solicitor.

8. *Do restrictions for National Defense, Foreign Policy, and Classified Data affect museum collection use?*

Yes, particularly former military installations such as forts or bases, may encounter this problem. If you find classified, national defense, or foreign policy documents or objects in your collections marked with restrictions, replace them with a separation sheet or “object temporarily removed” tag, lock up the originals, and contact the NPS solicitor and your regional curator. They can help you determine how to contact the appropriate government agency for declassification or review, regardless of the document's age. See MH-II, Appendix D, Figure D.5, for separation sheets.

9. *What are the restrictions for access to internal personnel rules and practices?*

Refer requests for information concerning internal personnel rules and practices to your administrative officer. If the request is a FOIA request, also check with your FOIA officer, superintendent, and regional public relations officer. In general, policy documents are provided upon request under FOIA.

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## H. Patent Laws

1. *What are patents?*

Patents (U.S. Constitution, Article I, Section 8 and 35 USC 101-376) are a form of intellectual property protection for machines, objects, and processes. Patents are authorizations granted by the government to inventors and/or their employers to exclusively produce, sell, or use an invention within the United States.

2. *How do patents protect inventions?*

Patents prohibit individuals other than creators of an item from making, using, selling, or offering for sale patent protected items in the United States.

3. *What can be protected by*

Inventions, such as machines, objects, and processes can be protected by

*patents?*

patents. Ideas, suggestions, and natural or physical processes may NOT be patented.

4. *How do patents affect museums and scholars?*

Patents have relatively little impact on museums. There are no restrictions on viewing, exhibiting, or documenting patented items. In fact, once an item is patented anyone may request and purchase detailed drawings of the patented item from the U.S. Patent Office. However, museums may NOT make working replicas or 3-D reproductions of patented items without permission from the patent holder.

5. *What is the period of patent protection?*

Utility patents, protecting the way an invention is used and works, are for 20 years from the date of the filing of the patent application for applications filed on or after June 8, 1995, or if the application contains a specific reference to an earlier application under 35 USC 120, 121, or 365(c), 20 years from the earliest effective U.S. filing date. Design patents, protecting the way an article looks, are for 14 years from the date the patent is granted.

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## **I. Trademarks and Servicemarks**

1. *What are trademarks?*

Trademarks are distinctive symbols, logos, and/or words used by businesses or other organizations to identify the source of a product or service. Businesses create trademarks so that their products can be easily distinguished from their competitor's products.

2. *How are trademarks different from servicemarks?*

Trademarks appear only on products as indications of the source of goods. Servicemarks are used to distinguish the source of services. Both measures are "branding" tools that indicate sources and qualities of either goods or services provided by merchants and organizations.

3. *Why do businesses have trademarks and servicemarks?*

Trademarks and servicemarks protect the reputation of a company and make it easy to distinguish a company's products and services from those of competitors. Use of a trade or servicemark serves the purpose of crediting the group that created the object or offered the service, keeping others from claiming credit or misleading potential customers as to the type or quality of materials and services offered.

4. *How do trademarks and servicemarks affect museums?*

Museums may claim trademark or servicemark protection for the name of the museum and any logos associated with the museum, including special exhibitions, when used in connection with a product or service provided by the museum, such as museum store items or restaurant operations. NPS protects the NPS arrowhead and DOI logos as trademarks.

When using another organization's trademark, such as on a website or identifying a NPS partner in exhibit materials, NPS must request permission to use the trademark.

5. *Must I register for trademark and servicemark protection?*

No. As soon as an organization uses a distinctive mark regularly and consistently the organization has common law trademark and servicemark protection. However, the mark must be distinct from that of other organizations and the museum must be the first organization to use that mark.

If another organization can show prior use, ownership, or a significant amount of consumer confusion as to the ownership or source of the mark, the mark's validity can be revoked or ownership can be reappraised. Federal registration grants additional rights in case of a legal conflict. Many states also offer some form of trademark and/or servicemark protection.

6. *How long do trademark or servicemark protections last?*

Trademarks and servicemarks registered prior to November 16, 1989 are initially protected for 20 years while those subsequently registered are initially protected for 10 years. Trademarks and servicemarks may be renewed indefinitely for additional 10 year periods as long as the mark is still being used in commerce.

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**J. List of Figures**

2.1 Access and Use Legal Action Chart.....	2:43
2.2 Sample License Agreement. ....	2:50

Figure 2.1. Access and Use Legal Action

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action  You, as Park Staff, should . . .
<p>Any work (published or unpublished) produced by NPS staff, contractors, volunteers or other federal employees as part of their normal work, including:</p> <ul style="list-style-type: none"> <li>• art works</li> <li>• audiotapes</li> <li>• field notes</li> <li>• photographs</li> <li>• published and unpublished writings</li> <li>• reports</li> <li>• research notes</li> <li>• videotapes</li> </ul> <p><i>Note:</i> NPS contract work may also fall in this category depending upon the terms of the contract. See C.7.</p>	<ul style="list-style-type: none"> <li>• Archeological Resources Protection Act</li> <li>• Endangered Species Act of 1973 as amended (16 USC 1531-1543)</li> <li>• FOIA</li> <li>• Federal Cave Protection Act of 1988 (16 USC 4301-4309)</li> <li>• National Historic Preservation Act</li> <li>• National Parks Omnibus Management Act of 1998</li> <li>• Obscenity and Pornography</li> <li>• Privacy</li> <li>• Publicity</li> <li>• Slander and libel</li> <li>• Visual Artist’s Rights Act</li> <li>• Cultural restrictions</li> <li>• Ethical restrictions</li> </ul>	<ul style="list-style-type: none"> <li>• Allow the researcher to use the work without copyright restrictions as all federally produced work is in the public domain, as long as there are no other restrictions (cultural or natural resource management protection, ethical, or legal restrictions).</li> <li>• Credit all works appropriately to the correct creator.</li> <li>• Instruct the researcher in writing to obtain written permission (also called a release) from any private non-federal individuals illustrated, taped, or documented before copying, publishing, distributing, preparing derivative works, or exhibiting.</li> <li>• Instruct the researcher in writing to obtain written permission from a celebrity or a celebrity's estate <i>before</i> using the material commercially or in a publication.</li> <li>• Contact your superintendent, regional public affairs officer, regional curator, and FOIA officer immediately if the reference request comes via FOIA.</li> <li>• Review the publication context with subject specialists and the NPS solicitor <i>before</i> allowing publication of any images of nudes or potentially defamatory materials.</li> <li>• See archeological research below.</li> <li>• Have the researcher sign a researcher registration form and a copyright/privacy statement <i>before</i> authorizing use. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)</li> </ul>
<p>Any work held by NPS museum collections that has a donor restriction</p> <p><i>Note:</i> NPS policy (as noted in <i>MH-II</i>, Chapter 2, Deed of Gift) is to accept only unrestricted gifts. The NPS will honor existing donor restrictions to the extent permitted by law.</p>	<ul style="list-style-type: none"> <li>• All of the above</li> <li>• Donor restriction</li> </ul>	<ul style="list-style-type: none"> <li>• Check for donor, legal, cultural, natural and cultural resource management, and ethical restrictions <i>before</i> providing access.</li> <li>• Honor restrictions to the fullest extent allowed by the law.</li> <li>• Consult with the NPS solicitor to determine to what extent the law allows you to honor the restriction. Also speak to your regional curator and any associated groups, if appropriate.</li> <li>• Consult with your superintendent, regional public affairs officer, regional curator, and FOIA officer if the reference request comes via FOIA. You <i>must</i> respond to the FOIA request within 20 days.</li> <li>• Have the researcher sign a researcher registration form and a copyright/privacy statement <i>before</i> authorizing use. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)</li> </ul>

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action  You, as Park Staff, should . . .
<p>Moving or still audio-visual images or recorded words of living recognizable people or celebrities (living or dead) taken by individuals other than NPS staff including:</p> <ul style="list-style-type: none"> <li>• audiotapes</li> <li>• electronic audio/video files</li> <li>• motion picture recordings</li> <li>• oral history audiotapes</li> <li>• oral history transcripts</li> <li>• still images, including photographs</li> <li>• video history videotapes</li> <li>• video history transcripts</li> </ul>	<ul style="list-style-type: none"> <li>• Donor restriction</li> <li>• Copyright</li> <li>• Privacy</li> <li>• Publicity</li> <li>• FOIA</li> <li>• Obscenity and Pornography</li> <li>• Slander and libel</li> <li>• Cultural restrictions</li> <li>• Ethical restrictions</li> </ul>	<ul style="list-style-type: none"> <li>• Check for donor, cultural, ethical, or legal restrictions <i>before</i> providing access.</li> <li>• Consult with your regional curator and the NPS solicitor.</li> <li>• Honor restrictions to the fullest extent allowed by the law.</li> <li>• Allow the researcher to view and use materials for fair use purposes <i>if</i> no restrictions exist.</li> <li>• Don't authorize publication unless the work is in the public domain or the park has the copyright or permission to allow publication from the copyright holder.</li> <li>• Instruct the researcher in writing to obtain written permission from the celebrity or the celebrity's estate before using the material commercially or in a publication.</li> <li>• Talk to your superintendent, regional public affairs officer, regional curator, and FOIA officer if the reference request comes via FOIA. See if a FOIA exemption, such as the privacy exemption, applies.</li> <li>• Review the situation with subject specialists and the NPS solicitor before allowing publication of any images of nudes or potentially defamatory materials.</li> <li>• Have the researcher sign a researcher registration form and a copyright and privacy statement <i>before</i> authorizing use. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)</li> </ul>

<b>Access and Use Legal Action Chart</b>		
<b>Type of Request The Researcher (NPS or External) asks for . . .</b>	<b>Applicable Legislation or Restrictions</b>	<b>Appropriate Action  You, as Park Staff, should . . .</b>
<p>Unpublished written materials, by individuals <i>other</i> than NPS staff, such as:</p> <ul style="list-style-type: none"> <li>• correspondence</li> <li>• diaries</li> <li>• daybooks</li> <li>• ledgers</li> <li>• lists</li> <li>• manuscripts</li> <li>• notes</li> </ul>	<ul style="list-style-type: none"> <li>• Donor restrictions</li> <li>• Copyright</li> <li>• FOIA</li> <li>• Privacy</li> <li>• Publicity</li> <li>• Obscenity and pornography</li> <li>• Libel</li> <li>• Cultural restrictions</li> <li>• Ethical restrictions</li> <li>• Archeological Resources Protection Act</li> <li>• National Parks Omnibus Management Act of 1998</li> <li>• National Historic Preservation Act</li> </ul>	<ul style="list-style-type: none"> <li>• Check for donor, cultural, natural and cultural resource management, ethical, or legal restrictions <i>before</i> providing access.</li> <li>• Determine if a FOIA exemption applies.</li> <li>• Talk to the NPS solicitor and your regional curator.</li> <li>• Honor restrictions to the fullest extent allowed by the law.</li> <li>• Allow the researcher to view and use copyright-protected work only for fair use purposes (if no other restrictions exist).</li> <li>• Don't authorize publication (grant permission to publish) unless the work is in the public domain or the park has the copyright or permission to allow publication from the copyright holder</li> <li>• Allow unlimited use of unrestricted materials that are in the public domain.</li> <li>• Talk to your superintendent, regional public affairs officer, regional curator, and FOIA officer if the reference request comes via FOIA.</li> <li>• Instruct the researcher to obtain written permission from the person quoted or shown or his or her heirs <i>before</i> the researcher publishes, distributes, or otherwise uses the item if the person shown is either a celebrity or a living, private individual.</li> <li>• Review the request with subject specialists and the NPS solicitor <i>before</i> allowing publication of any nudes or potentially defamatory materials.</li> <li>• Have the researcher sign a researcher registration form and a copyright/privacy restrictions statement <i>before</i> authorizing use. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)</li> </ul>
<p>Published written or recorded materials produced by non-NPS individuals, such as:</p> <ul style="list-style-type: none"> <li>• articles</li> <li>• books</li> <li>• exhibit catalogs</li> <li>• pamphlets</li> <li>• published manuscripts</li> <li>• reports created by individuals <i>other</i> than NPS staff</li> </ul>	<ul style="list-style-type: none"> <li>• Copyright</li> <li>• FOIA</li> <li>• Donor restrictions</li> <li>• Cultural restrictions</li> <li>• Ethical restrictions</li> </ul>	<ul style="list-style-type: none"> <li>• Allow the researcher to view, use for fair use purposes, and make a limited number of copies of a <i>small or insignificant</i> portion of the work if no restrictions apply. For example: let researchers copy a few pages of a long manuscript if the work is not in the public domain. See Section C, Questions 9 and 10.</li> <li>• Instruct the researcher to obtain written permission from the holder of the copyright <i>before</i> the researcher copies, publishes, distributes, prepares derivative works, performs, or exhibits.</li> <li>• Don't authorize re-publication in any format (including published use of extensive quotes) unless the work is in the public domain, <i>or</i> the NPS has the copyrights <i>or</i> permission to allow publication from the holder of the copyrights.</li> <li>• Talk to your superintendent, regional public affairs officer, regional curator, and FOIA officer if the reference request comes via FOIA. Determine if there is a FOIA exemption that applies.</li> </ul>



Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action  You, as Park Staff, should . . .
		<ul style="list-style-type: none"> <li>• Ensure the researcher signs a researcher registration form and a copyright/privacy restriction statement <i>before</i> authorizing use. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)</li> </ul>
<p>Archeological research materials such as:</p> <ul style="list-style-type: none"> <li>• charts</li> <li>• databases</li> <li>• field diaries</li> <li>• geographic information system records</li> <li>• graphics</li> <li>• journals or day books</li> <li>• maps</li> <li>• notes</li> <li>• photographs</li> </ul> <p><i>Note:</i> You must deny access to records (including catalog records and databases unless they are set up to electronically block the fields) containing archeological location information such as:</p> <ul style="list-style-type: none"> <li>• archeological resources, including excavations and shipwrecks</li> <li>• caves and cave resources</li> <li>• historic resources at risk of harm, theft, or destruction</li> </ul>	<ul style="list-style-type: none"> <li>• Archeological Resources Protection Act (ARPA) of 1979 (16 USC 470)</li> <li>• Executive Order 13007—Indian Sacred Sites</li> <li>• Federal Cave Protection Act of 1988 (16 USC 4301-4309)</li> <li>• National Historic Preservation Act of 1966, as amended (16 USC 470-470t,110)</li> <li>• National Parks Omnibus Management Act of 1998</li> <li>• FOIA</li> <li>• Copyright</li> <li>• Donor restrictions</li> <li>• Cultural restrictions</li> <li>• Ethical restrictions</li> </ul>	<ul style="list-style-type: none"> <li>• Withhold location information on archeological sites or shipwrecks to prevent looting.</li> <li>• Withhold location information on sacred sites.</li> <li>• Withhold location information on federally-protected caves if disclosure would create a risk of harm, theft, or destruction.</li> <li>• Withhold information on historic resource location, ownership, or character, if the disclosure creates a substantial risk of harm, theft, or destruction of such resources or the area or place where they are located</li> <li>• Deny access to the above-described materials, <i>including</i> access for scholarly research. Replace restricted items with a separation sheet and lock up the originals if they pose a disclosure problem. <b>Block the restricted information on catalog cards, databases and the Web Catalog.</b> Don't restrict the entire collection or unblocked data. <i>Don't alter originals.</i></li> <li>• Consult with the NPS solicitor, FOIA officer, your superintendent, regional public relations officer, and your regional curator. Follow FOIA denial procedures for both NHPA and FOIA.</li> <li>• Work with subject specialists to determine if a portion of the information can be provided <b>as long as no location information is included.</b></li> <li>• Have the researcher sign a researcher registration form and a copyright/privacy restrictions statement before authorizing use if some information is provided (see <i>MH-II</i>, Appendix D, Figure D.15 and 16).</li> <li>• Determine if the records were produced by NPS staff during work hours and are Federal records with no copyright protection or by non-Federal staff or contractors without a copyright statement in their contract. If the latter, copyright permissions may be necessary before providing materials.</li> </ul>
<p>Ethnological field records that incorporate information of a sensitive, sacred, or subsistence-related character including:</p> <ul style="list-style-type: none"> <li>• charts</li> <li>• databases</li> <li>• field diaries</li> <li>• geographic information system records</li> </ul>	<ul style="list-style-type: none"> <li>• Archeological Resources Protection Act (ARPA) of 1979 (16 USC 470)</li> <li>• Copyright</li> <li>• Executive Order 13007 Indian Sacred Sites</li> <li>• National Historic Preservation Act of 1966, as amended</li> </ul>	<ul style="list-style-type: none"> <li>• Check for donor, cultural, ethical, and legal restrictions <i>before</i> providing access.</li> <li>• Talk to the NPS solicitor, regional curator, and the associated group when devising access policies and when questions arise.</li> <li>• Honor restrictions to the fullest extent allowed by the law.</li> <li>• Consult with your superintendent, regional public relations officer, Regional curator, and FOIA officer if the reference request comes via FOIA. Determine if a statutory exemption to FOIA is applicable, such as the privacy exemption.</li> </ul>

### Access and Use Legal Action Chart

Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action  You, as Park Staff, should . . .
<ul style="list-style-type: none"> <li>• graphics</li> <li>• journals or day books</li> <li>• maps</li> <li>• notes</li> <li>• photographs</li> <li>• oral histories</li> <li>• videotapes</li> </ul>	<p>(16 USC 470-470t,110)</p> <ul style="list-style-type: none"> <li>• National Parks Omnibus Management Act of 1998</li> <li>• Donor restrictions</li> <li>• FOIA</li> <li>• Privacy</li> <li>• Publicity</li> <li>• Cultural restrictions</li> <li>• Ethical restrictions</li> </ul>	<ul style="list-style-type: none"> <li>• Withhold information on historic resource location if the disclosure creates a substantial risk of harm, theft, or destruction of such resources or the area where they are located.</li> <li>• Inform researchers in writing that they may need to obtain written permission from the person(s) quoted or shown, or his heirs <i>before</i> publishing, distributing, producing derivative works, etc., if the person shown is a celebrity or a living, private individual.</li> <li>• Have the researcher sign a researcher registration form and a copyright/privacy restriction statement <i>before</i> authorizing use. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)</li> <li>• Determine if the records were produced by NPS staff during work hours and are federal records with no copyright protection, <i>or</i> by contractors without a copyright statement in their contract (may be copyrighted). If the latter, copyright permissions may be necessary before providing materials for use.</li> </ul>
<p>Photographic, digital, micrographic, or xerographic copies of NPS-owned museum objects requested for:</p> <ul style="list-style-type: none"> <li>• potential publication</li> <li>• exhibition</li> <li>• performance</li> <li>• distribution</li> <li>• production of derivative works, such as postcards of paintings.</li> </ul> <p>Requested materials for copies might include:</p> <ul style="list-style-type: none"> <li>• architectural drawings</li> <li>• bound volumes</li> <li>• drawings</li> <li>• exhibits</li> <li>• graphic prints</li> <li>• herbarium specimens</li> <li>• manuscripts of poems and plays</li> <li>• maps</li> <li>• mounted animals</li> <li>• paintings</li> <li>• photographs</li> <li>• sculpture</li> <li>• other original works</li> </ul>	<ul style="list-style-type: none"> <li>• Donor restrictions</li> <li>• Copyright</li> <li>• Privacy</li> <li>• Publicity</li> <li>• FOIA</li> <li>• Cultural restrictions</li> <li>• Ethical restrictions</li> <li>• National Park Omnibus Management Act</li> <li>• Obscenity and Pornography</li> <li>• Slander and libel</li> </ul>	<ul style="list-style-type: none"> <li>• Check for donor, cultural, ethical, natural and cultural resource management, and legal restrictions <i>before</i> providing copies.</li> <li>• Consult with the NPS solicitor and your regional curator.</li> <li>• Honor restrictions to the fullest extent allowed by the law.</li> <li>• Allow the researcher to view and obtain limited copies for fair use purposes if no donor restrictions apply. Don't authorize copying, publication, distribution, or the production of derivative works <i>unless</i> the work is in the public domain <i>or</i> the park has the copyrights <i>or</i> permission to allow these activities from the copyrights holder.</li> <li>• Inform the researcher that according to Section 106(A) of the Copyright Act of 1976, some visual artists have a right to proper attribution (credit) to their works and maintenance of the integrity of their works (no image modifications such as “morphing”).</li> <li>• Instruct the researcher in writing to obtain written permission from the persons quoted or shown or their estates <i>before</i> publishing or distributing the materials.</li> <li>• Talk to your superintendent, regional public relations officer, regional curator, and FOIA officer if the reference request comes via FOIA. Determine if a statutory exemption to FOIA applies, such as the privacy exemption.</li> <li>• Review carefully the situation with subject specialists and the NPS solicitor before allowing publication of any nudes or potentially defamatory materials.</li> <li>• Restrict access to information on objects of cultural patrimony, as well as documents containing information on the specific nature and location of a threatened, rare, or commercially valuable mineral, or paleontological</li> </ul>

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action  You, as Park Staff, should . . .
		<p>specimens, unless the Service determines, in writing, that disclosure would further the park mission and not create an unreasonable risk of harm, theft, or destruction to the resource, and would be consistent with other applicable laws. Consult with the regional curator and the NPS solicitor before releasing such information.</p> <ul style="list-style-type: none"> <li>• Have the researcher sign a researcher registration form and a copyright/privacy restrictions statement <i>before</i> authorizing use. (See <i>MH-II</i>, App D, Figures D.15 and D.16.)</li> </ul>
<p>Permission to create facsimile (near identical copies in the same media, same process, and same format) reproductions of original works of creativity, such as:</p> <ul style="list-style-type: none"> <li>• furniture</li> <li>• graphic prints</li> <li>• paintings</li> <li>• photography</li> <li>• sculpture</li> <li>• wallpaper</li> <li>• ceramics</li> <li>• beadwork</li> <li>• quilts</li> <li>• costumes</li> </ul>	<ul style="list-style-type: none"> <li>• Donor restrictions</li> <li>• Copyright</li> <li>• FOIA</li> <li>• Privacy</li> <li>• Publicity</li> <li>• Obscenity and pornography</li> <li>• Cultural restrictions</li> <li>• Ethical restrictions</li> </ul>	<ul style="list-style-type: none"> <li>• Check for donor, cultural, ethical, natural and cultural resource management, and legal restrictions <i>before</i> providing permission.</li> <li>• Talk to the NPS solicitor and regional curator.</li> <li>• Honor restrictions to the fullest extent allowed by the law.</li> <li>• Allow the researcher to view and use for fair use purposes if no restrictions apply. Making facsimiles or reproductions for sale is <i>not</i> a fair use.</li> <li>• Instruct the researcher to obtain permission from the copyright holder, unless the facsimiles are being made for preservation, security, or deposit in another repository.</li> <li>• Not authorize reproductions in writing unless you are certain the work is in the public domain <i>or</i> the park owns the copyright, <i>or</i> the park has appropriate written permissions from the copyright holder.</li> <li>• Inform the researcher that according to Section 106(A) of the Copyright Act of 1976, visual artists have a right to proper attribution (credit) of their works and maintenance of the integrity of their works (no modifications such as morphing, digital image manipulation).</li> <li>• Consult with your superintendent, regional public relations officer, regional curator, and FOIA officer to discover if a statutory exemption to FOIA is applicable, such as the privacy exemption, if the reference request comes via FOIA.</li> <li>• Instruct the researchers in writing that they may need to obtain written permission from the persons quoted or shown (identifiable models) before publishing or using commercially.</li> <li>• Not authorize facsimiles <i>until</i> permission is obtained unless the model shown is both dead and not a celebrity and your state law allows this.</li> <li>• Review the situation with subject specialists and the NPS solicitor <i>before</i> allowing publication of any images of nudes or potentially defamatory materials.</li> </ul>

Access and Use Legal Action Chart		
Type of Request The Researcher (NPS or External) asks for . . .	Applicable Legislation or Restrictions	Appropriate Action  You, as Park Staff, should . . .
Information or files that are labeled "classified" or "restricted" by the U.S. military or intelligence community, regardless of the date of the material.	<ul style="list-style-type: none"> <li>FOIA</li> </ul>	<ul style="list-style-type: none"> <li>Withhold this information.</li> <li>Replace the original document with a completed separation sheet. Lock up the original. If the restricted information is in electronic format, make a copy for access and redact (delete) the restricted information on the copy. Only the classified or restricted material is restricted, not the entire collection or file.</li> <li>Consult with the NPS solicitor and your regional curator about how to make arrangements for declassifying or unrestricting the document with the appropriate branch of the government. You may also ask for help from the National Archives and Records Administration to determine how best to proceed.</li> <li>Work with your superintendent, regional public relations officer, regional curator, and FOIA officer if the request has come through FOIA to ensure proper procedures are followed in denying the request.</li> </ul>
Information protected by other FOIA exemptions, including: <ul style="list-style-type: none"> <li>Files of privileged intra-agency communications (<i>Note</i>: Covers very little.)</li> <li>Trade secrets of concessionaires held by the park in trust</li> <li>Financial records</li> <li>Personnel records of living individuals</li> <li>Psychiatric, medical, or counseling records of living individuals</li> <li>Law enforcement and investigatory records that include documentation on living individuals</li> </ul>	<ul style="list-style-type: none"> <li>FOIA</li> <li>Privacy</li> </ul>	<ul style="list-style-type: none"> <li>Withhold this information.</li> <li>Consult with the NPS solicitor and your regional curator about how to proceed.</li> <li>Replace the document with a completed separation sheet. Lock up the original. If in electronic format, make a copy for access purposes with the restricted materials deleted on the copy. Only the problematic material is restricted, not the entire collection.</li> <li>Work with your superintendent, regional public relations officer, regional curator, and FOIA officer if the request has come through FOIA to ensure that all the proper procedures are followed in denying the request.</li> <li>Work with subject specialists and the NPS solicitor to determine if a portion of the information can be provided, while still maintaining the secrecy of the restricted materials.</li> </ul>
Materials, such as files, tapes, or videotapes that contain false and misleading information about a third party that may defame that third party.  <i>Note</i> : This is one reason why you should discourage access to unprocessed (unaccessioned, uncataloged, unarranged, and undescribed archival and manuscript) materials.	<ul style="list-style-type: none"> <li>Slander and libel</li> <li>Privacy</li> <li>FOIA</li> </ul>	<ul style="list-style-type: none"> <li>Allow access if the individuals referenced are dead. If the individuals referenced are alive, <i>don't</i> allow copying or publication. Ask your solicitor if state defamation law restricts the material.</li> <li>Call the NPS solicitor and your regional curator immediately.</li> <li>Work with your superintendent, regional public relations officer, regional curator, and FOIA officer if the request has come through FOIA to ensure proper procedures are followed in denying the request. Work with subject specialists and the NPS solicitor to determine if a portion of the information can be provided while still preventing a defamation lawsuit.</li> </ul>

<b>Access and Use Legal Action Chart</b>		
<b>Type of Request The Researcher (NPS or External) asks for . . .</b>	<b>Applicable Legislation or Restrictions</b>	<b>Appropriate Action  You, as Park Staff, should . . .</b>
		<ul style="list-style-type: none"> <li>• Have the researcher sign a researcher registration form and a copyright/privacy restrictions statement <i>before</i> you authorize use of any information. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)</li> </ul>
<p>Paintings, sculptures, and photographs (including historical anthropological photography) of nude people (particularly children) and similar materials that may be judged obscene or pornographic.</p>	<ul style="list-style-type: none"> <li>• Obscenity and pornography</li> <li>• FOIA</li> </ul>	<ul style="list-style-type: none"> <li>• Not allow copying or publication of materials that may be judged obscene or pornographic, particularly nudes of children. Talk to your regional curator and the NPS solicitor before allowing any copying or publication of such materials.</li> <li>• Work with subject specialists to provide an appropriate scientific, fine art, or equivalent context for nude imagery.</li> <li>• Work with your superintendent, regional public relations officer, FOIA officer, the NPS solicitor, and your Regional curator to determine how to proceed if a request for this material comes via FOIA (applicable only to documents or photos).</li> <li>• Have the researcher sign a researcher registration form and a copyright/privacy restrictions statement <i>before</i> authorizing use if some information is provided. (See <i>MH-II</i>, Appendix D, Figures D.15 and D.16.)</li> </ul>
Files that have been subpoenaed.		<ul style="list-style-type: none"> <li>• Call your regional curator and the NPS solicitor immediately for advice.</li> </ul>
Information on the nature and specific location of a NPS resource which is endangered, threatened, rare, or commercially valuable of mineral or paleontological objects or objects of cultural patrimony within the NPS or of an archeological site or burial.	<ul style="list-style-type: none"> <li>• National Parks Omnibus Management Act of 1998</li> <li>• ARPA</li> <li>• National Historic Preservation Act of 1966, as amended (16 USC 470-470t,110)</li> </ul>	<p>Consult with your regional curator on receiving such a request. Refer all such requests, whether written or oral, to the superintendent, park T &amp; E officer, and archeologist or paleontologist. You may be asked to collect response data or to draft a response for the Superintendent's signature.</p> <ul style="list-style-type: none"> <li>• Restrict information and records containing information on the nature and location of archeological sites.</li> <li>• Restrict information and records containing the nature and location of mineral and paleontological sites if rare, endangered, threatened, or commercially valuable.</li> <li>• Restrict information or records containing the nature and location of objects of cultural patrimony found within the NPS.</li> </ul>
Information and files as part of a federal audit process.		<ul style="list-style-type: none"> <li>• Provide the information, unless it falls into a FOIA exemption category (such as classified, protected cave and well location, and archeological site location) in which case you should withhold it.</li> <li>• Withhold the information until you check with the superintendent, NPS solicitor, FOIA officer, and your Regional curator if you are uncertain about whether there is a restriction. Check <i>very</i> rapidly.</li> </ul>

**Figure 2.2. Sample License Agreement**

<b>LICENSE AGREEMENT</b>		
<p>I, _____, am the owner or am authorized to act on behalf of the owner of certain materials described below, including copyright that the National Park Service has requested to use and reproduce. (If not the copyright owner, please specify in the space below any additional permissions needed, if any, to grant these rights.) I hereby grant to the National Park Service a royalty-free, irrevocable, and non-exclusive license to use the materials specified herein for non-profit National Park Service uses, including educational, exhibition, archival, and research uses. These materials may be used, reproduced and displayed for these purposes in any and all medium including, but not limited to, the World Wide Web.</p>		
<b>Restrictions on Use of Materials, if any:</b> _____.		
<b>Types of Materials (please check):</b>		
Photographs _____	Illustrations _____	Textual materials _____ Oral History/Interviews _____
Audiotape _____	Videotape _____	Other (describe) _____
<b>Detailed Description of Materials:</b> _____.		
<b>Credit Line and/or Caption:</b> _____.		
<b>Additional Permissions Needed, if any</b> (for example, copyright owner, subjects in photographs, illustrations, and in text): _____.		
<b>Disposition of Materials After Use</b> (please check one): _____ Return to owner: _____ May be retained		
<b>Warranty:</b> I warrant and represent that I am or legally represent the owner of the materials described, including copyright, and that I have the full authority to grant the requested license. If the materials include materials for which multiple permissions are required, I warrant that I have obtained all necessary permissions, including without limitation, copyright and rights of privacy and publicity, from the rights-holders or have specified on the "Additional Permissions" line, above, all additional permissions that the National Park Service must obtain to fully exercise the rights granted herein.		
_____ Name (please print)	_____ Signature	_____ Date
Address		
Telephone Number:		
Fax Number:		
Email:		

**Figure 2.2. Sample License Agreement**

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#### **Web Sites:**

*Administrative Codes and Registers for States* (not federal government) is at  
<<http://www.nass.org/acr/acrdir.htm>>.

*American Association of Law Libraries* is at <<http://www.aallnet.org>>.

*American Association of Museums* is at <<http://www.aam-us.org/>>.

*American Association of Museums Registrars Committee (RARIN) Rights and Reproduction Information Network* is at  
<<http://www.panix.com/~squigle/rarin/01rcsite.html>>.

*American Bar Association* is at <<http://www.abanet.org>> .

*American Law Institute-American Bar Association* is at <<http://www.ali-aba.org>> .

*American Library Association* is at <<http://www.ala.org>> .

*American Law Sources Online (ALSO)* at <<http://www.lawsource.com/also>> is a great tool for searching state laws.

*Association of American Publishers, Inc.* at <<http://www.publishers.org>> provides useful information on how to obtain permission from publishers and authors to use copyrighted works.

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*CataLaw* at <<http://www.catalaw.com>> is a basic gateway site for legal information.

*Code of Federal Regulations* is searchable on the Web at <<http://www.access.gpo.gov/nara/cfr>>

*Conference on Fair Use (CONFU)* report is at <<http://www.uspto.gov/web/offices/dcom/olia/confu/indexx.html>> .  
CONFU is listed on the U.S. Patent and Trademark Office, which is one of the major players in the ongoing effort to revise and update copyright legislation.

*Copyright Clearance Center, Inc (CCC)* at <<http://www.copyright.com>> CCC is a licensing agency that provides useful linkages to other copyright guidance via its Web site.

*Copyright, Intellectual Property Rights, and Licensing Issues* at <<http://sunsite.berkeley.edu/Copyright>> is a UC Berkeley Web page that focuses on digital copyright issues.

*Cornell University's Legal Information Institute* at <<http://www.law.cornell.edu>> is a great place to begin your legal research.

*Digital Future Coalition* at <<http://www.dfc.org>> is a non-profit organization that focuses on copyright ownership and access rights in a digital environment.

*Federal Register* is available via the Government Printing Office Web site at  
<[http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html)> .

*Federal-State Court Directory* of the West Publishing Company is at <<http://www.courts.com/directory.html>> .

*Federal Web Locator* at <<http://www.infoctr.edu/fwl>> provides a links list for online federal agencies, which frequently list publication, regulations, and court or agency decisions.

*FindLaw* at <<http://www.findlaw.com>> is a general starting point for legal research, particularly the FindLaw Legal News at <<http://legalnews.findlaw.com>> .

*Government Printing Office* is at <[http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs)> . Also see the Federal Register page at:  
<[http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html)> .

*Great American Web Site* at <<http://www.uncle-sam.com>> provides good coverage of federal agencies regulations.

Harvard Law School's *Basic Intellectual Property Primers* are at  
<<http://cyber.law.harvard.edu/property/library/primerlib.html>> . Harvard Law School's Berkman Center for

Internet and Society offers helpful links to intellectual property guidance on such topics as copyright, privacy legislation, publicity legislation, and patent/trademark legislation.

*Hieros Gamos* at <<http://www.hg.org/hg2.html>> provides a fine gateway to legal information available.

*Intellectual Property Information Mall* at <<http://www.ipmall.fplc.edu/iptools/NEWMAL2.htm>> provides useful copyright information and links to other information sources.

*Internet Legal Resource Guide* at <<http://www.ilrg.com>> is a good gateway site leading you to many other legal sites.

*Law Journal Extra!* provides legal news and updates at: <<http://www.ljx.com>>.

*Legal Information Institute* at <<http://www4.law.cornell.edu/uscode>> provides excellent basic legal information, such as their copy of the *United States Code*.

*Legislative History Resources on the Web* include:

Library of Congress's Thomas site is at <<http://thomas.loc.gov>>.

University of Michigan's Legislative History Site is at

<<http://www.lib.umicy.edu/libhome/Documents.center/legishis.html>>.

Library of Congress. *Copyright Law of the United States of America*. Copyright Office. Library of Congress <<http://lcweb.loc.gov/copyright/title17/#top>>. Also see the *THOMAS: Legislative Information on the Internet* at: <[thomas.loc.gov/](http://thomas.loc.gov/)>. and the *U.S. Copyright Office* at <[lcweb.loc.gov/copyright/](http://lcweb.loc.gov/copyright/)>.

Louis-Jacques, Lyolette. *Listserv Lists*: These are Law Listservs at <<http://www.lib.uchicago.edu/~llou/lawlists/info.html>>.

*Louisiana State University Libraries' U.S. Federal Government Agencies Page* is at <<http://www.lib.lsu.edu/gov/fedgov.html>>.

*National Association of State Information Resource Executives' State Search*, is a topical links page to state agencies that is available at <<http://www.nasire.org/stateSearch>>.

*National Initiative for a Networked Cultural Heritage* is at <<http://www.ninch.org/#issues>>. NINCH is a non-profit organization that offers useful information on digital copyright legislation and intellectual property rights issues. Note: particularly check out their Basic Principles for Managing Intellectual Property in the Digital Environment, National Humanities Alliance of March 24, 1997, at <<http://www.ninch.org/#issues>>.

*Online Legal Guidebooks and Directories* available include Martindale-Hubbell at <<http://www.martindale.com>> and West's Legal Directory at: <<http://www.wld.com>>

*Piper Resources' State and Local Government Resources on the Net* features extensive links to state agencies on the Web at <<http://www.piperinfo.com/state/states.html>>.

*Regulation Home Page* at <<http://www.regulation.org>> features a guide to information, statistics, and studies on regulations

*Rights and Reproductions Information Network* taskforce of the Registrars Committee - a Standing Professional Committee of the American Association of Museums. <http://www.panix.com/~squigle/rarin/01rcsite.html>

*Stanford University's Copyright and Fair Use Site* at <<http://fairuse.stanford.edu>> is Stanford's Web site offering guidance on copyright including laws, opinions, and links to other sites.

*State Court Decisions* at American Law Sources Online (ALSO) is at < <http://www.lawsource.com/also> > and < <http://www.wolfenet.com/~dhillis/caselink.htm> > .

*State Legislative:*

State Legislative Comparisons in chart format is at < <http://www.multistate.com/weblis.htm> > .

State Statutes and Legislation is at < <http://www.prairienet.org/~scruffy/f.htm> > . (Full text)

University of Pennsylvania's Drafts of Uniform and Model State Acts is at

< <http://www.law.upenn.edu/bll/ulc/ulc.htm> > .

*THOMAS* at < <http://thomas.loc.gov> > is a Library of Congress Web site with summaries and text of new bills and statutes. This is also one of the best places to put together a legislative history.

UNESCO, Collection of National Copyright Laws. [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=14076&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=14076&URL_DO=DO_TOPIC&URL_SECTION=201.html)

*United States Code* (at U.S. House of Representatives Law Library) is available at

< <http://uscode.house.gov/usc.htm> > . Also available from Cornell at the Legal Information Institute at

< <http://www4.law.cornell.edu/uscode> > .

*U.S. Copyright Office* is at < <http://lcweb.loc.gov/copyright> > . This useful site provides guidance on copyright including registration forms, overviews and summaries, and full text of the laws, plus the ever *useful Copyright Office Information Circulars and Form Letters*, available at < <http://www.loc.gov/copyright/circs/> > .

*United States Federal Court Decisions and Appeals* may be found at:

< <http://www.law.vill.edu/Fed-Ct/fedcourt.html> > . (This is from Villanova's Center for Law & Information Policy.)

< <http://www.law.emory.edu/FEDCTS> > . (This is the Federal Courts Finder at Emory Law School, which connects to individual U.S. Courts of Appeals.)

*U.S. House of Representatives Internet Law Library* is online at < <http://law.house.gov> > .

*U.S. Patent and Trademark Office* is at < <http://www.uspto.gov/> > . See *Basic Facts about Registering a Trademark* at < <http://www.uspto.gov/web/offices/tac/doc/basic/> > .

*United States Supreme Court Cases and Arguments* may be found at the following Web sites:

< <http://www.findlaw.com/cascode/supreme.html> >

< <http://www.law.vill.edu/Fed-Ct/sct.html> >

< <http://www.fedworld.gov/supcourt> >

< <http://supct.law.cornell.edu/supct> >

< <http://oyez.nwu.edu> >

*University of California at Berkeley's Copyright, Intellectual Property Rights, and Licensing Issues* Section of the Berkeley Digital Library is at < <http://sunsite.berkeley.edu/Copyright/> > .

*University of Michigan's guide to preparing United States Congress Legislative Histories* is at

< <http://www.lib.umich.edu/libhome/Documents.center/legishis.html> > .

*University of Michigan Documents Center for locating government documents is online at*

< <http://www.lib.umich.edu/libhome/Documents.center> > .

*University of Pennsylvania's Drafts of Uniform and Model Acts* is at < <http://www.law.upenn.edu/bll/ulc/ulc.htm> > .

*University of Texas Copyright Crash Course* is at < <http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm> > .

*University of Virginia Library's Government Information Resources* at <<http://www.lib.virginia.edu/govdocs>> is a guide to government documents.

*Volunteer Lawyers for the Arts* is at <<http://www.artlaw.org>>

*Washburn University's WashLaw* is at <<http://washlaw.edu>> is another good gateway site for legal information.

*World Intellectual Property Organization (WIPO)* is at <<http://www.wipo.org/>> .

*WWW Virtual Law Library* at <<http://www.law.indiana.edu/law/v-lib/lawindex.html>> is an excellent gateway to legal information of all sorts.

Yale University Library. *How to Find Government Information*, a topical guide to government documents, is online at <<http://www.library.yale.edu/govdocs/govdoc.html>> . Also see *LibLicense: Licensing Digital Information* at <<http://www.library.yale.edu/~llicense/index.shtml>> .

Zorich, Diane *A Survey of Digital Cultural Heritage Initiatives and Their Sustainability Concerns*. Washington, D.C.: Council on Library and Information Resources, 2003.

*A Museum Guide to Copyright and Trademark*. American Association of Museums. 1999

*Developing Intellectual Property Policies: A Guide for Museums*, Canadian Heritage Information Network/National Initiative for a Networked Cultural Heritage