

CREATIONS OF THE MIND:

California State Parks Intellectual Property Handbook



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2010

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Table of Contents

What is Intellectual Property?	1
General Policies Related to Intellectual Property	2
A Brief History of Intellectual Property	3
United States Copyright Laws	4
Copyrights and Trademarks	5
What is a Copyright?	5
Works Protected by Copyright	5
Works Not Protected by Copyright	6
What is a Trademark?	6
Copyright and Trademark Ownership	7
Copyright Ownership	7
Trademark Ownership	7
Department-Owned Intellectual Property	7
Copyright and Trademark Registration	10
Copyright Registration	10
Trademark Registration	10
Notice of Copyright and Trademark	11
Notice of Copyright	11
Notice of Trademark	11
License Agreements for Department-Owned Intellectual Property	13
Copyright Licenses	13
Trademark Licenses	14
Reproduction and License Fees	15
A Word about Media Use	15
Use of Intellectual Property Not Owned by the Department	16
Copyright License/Assignment Forms	16
Copyright License Agreements	16
Copyright Assignment	17
Credit for Use of Intellectual Property	18
Copy Equipment Posting	18

A Word about “Public Performance”	18
Public Domain	20
When Works Pass Into the Public Domain	21
Fair Use	22
Educational Use	23
Researching Intellectual Property Ownership.....	24
Why It Is Necessary to Determine Ownership	24
How to Determine the Status and Ownership of a Work	24
Good Faith Effort	25
Appendix A: Definitions.....	26
Appendix B: Contact Information	28
Appendix C: Process Flowcharts	29
External Use of Intellectual Property Owned by the Department	30
Department Use of Intellectual Property Owned by an External Source	31
Appendix D: Department Intellectual Property Policies	32
Appendix E: Visual Media and Photograph Documentation	43
Visual Media Consent Form (DPR 993)	43
Photograph Documentation	44
Policy	44
Photo Documentation Numbering	44
Appendix F: Commercial Photography and Filming in Parks	46
Definition of Commercial Filming	46
Documentary Photography	46
Public Service Announcements	46
Student Photography	46
Commercial Still Photography	47
Commercial Motion Picture, Video and Television Photography	47
Photography That Does Not Require a Permit.....	47
Personal Photography	47
News Media Photography	47

Appendix G: Museum Collections	49
Legal Title.....	49
Intellectual Property Rights	50
Study Copies	50
Licensing Department-Owned Intellectual Property Associated With Museum Objects.....	50
Site-Specific Policies and Procedures	51
Appendix H: Sample Forms	52
Appendix I: Sample Text.....	60
Appendix J: Sample Copy Equipment Posting.....	62
Appendix K: Resources.....	64
Books	64
Websites	65

What is Intellectual Property?



The term “intellectual property rights” refers to the legal rights extended to creations of the mind and can arise in connection with a variety of fields, including scientific, industrial, literary, artistic and commercial endeavors. Intellectual property is any product of the human intellect that is unique, novel, unobvious and fixed in a tangible form. Examples of intellectual property include, but are not limited to, an expression or creation such as writing, artwork, photographs, articles, brochures, reports, logos, videos, and music, or a name or slogan such as park names, our department name, or a department tagline.

Intellectual property rights are not predicated on or affected by the medium in which the intellectual property is being used. That is, there is no legal difference or distinction between intellectual property used in a publication, in an exhibit, in a video, in a presentation, or on the Internet. The same laws apply in all cases. So even if something may exist only in electronic format (such as in a presentation or on the Internet) rather than in “hard copy,” intellectual property laws and Department policies about intellectual property must be followed.

It is important to note that intellectual property rights exist completely separately and apart from issues related to physical property rights. Simply because someone may own a painting, for example, does not mean he or she owns the intellectual property associated with that painting. Another way to think about this would be in relation to any books or videos individuals may purchase—they own the actual book or video they bought (the physical property), but not the intellectual property associated with that item.



General Policies Related to Intellectual Property

As stated in California State Parks' Department Operations Manual (DOM) Chapter 0900, Interpretation and Education, it is the policy of the Department to:

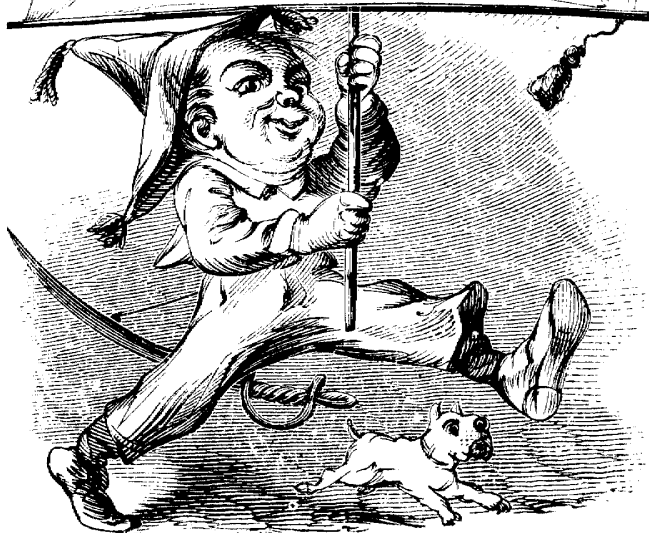
- Protect its intellectual property rights by properly documenting and, when appropriate, formally registering intellectual property created or acquired by the Department.
- Protect its intellectual property against unauthorized use, whether intentional or unintentional, by individuals or organizations, to the extent practicable.
- Obtain ownership or appropriate license rights to intellectual property created pursuant to contracts between the Department and external entities.
- Grant licenses for use of material copyrighted by the Department when it furthers the mission and goals of the Department and benefits the public. Copyright licensing should be consistent with providing maximum protection of the integrity of the copyrighted material while allowing public access and use under the appropriate conditions.
- Grant licenses for use of the Department's trademarks only when appropriate to promote the public's recognition of products and services associated with the Department, and increase the Department's visibility while also protecting the integrity of the Department, its goals and mission.
- Avoid infringing on intellectual property rights owned by others. The Department should use its best efforts to document ownership of copyrights in connection with materials in the Department's possession, and seek permission for use of material for which the Department does not own the copyright when required by applicable laws.
- Require that any person or entity using copyrighted material obtained from the Department take full responsibility for avoiding any infringement resulting from that use. Where the Department does not own the copyright for the material it provides, the Department should notify the prospective user and it will be the user's responsibility to obtain a license from the appropriate source.

What does it all come down to?

Simply put, we will:

- Protect our intellectual property; and
- Avoid infringing on the intellectual property rights of others.

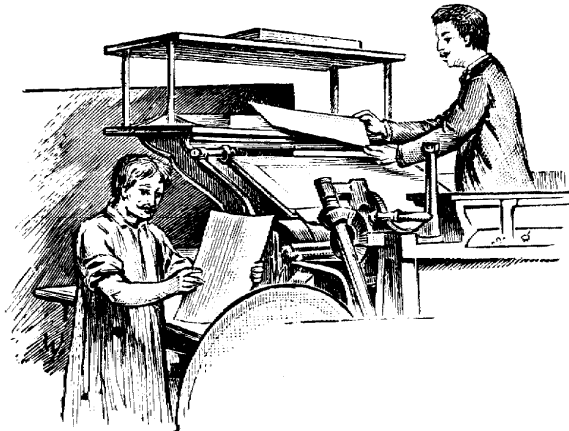
The rest of this handbook will help you in carrying out these policies.



A Brief History of Intellectual Property

The concept of “intellectual property” has been around for centuries, but the term has been in use only since the 1980s. Traditionally, intellectual property has been divided into two branches—“industrial property” that is protected through patents and trademarks, and “copyrights.”¹

The concept of copyright, or authorship, of a created work dates back to ancient times when scholars of ancient Greece and the Roman Empire were the first to be concerned about being recognized as the authors of their works. However, it was not until the late fifteenth century that the invention of the printing press prompted the establishment of a form of copyright protection for printed works.



Printing with movable type began in 1451 in Germany and was introduced in England about 1476. As the number of printers in England increased, royalty and the government recognized the threat that printing, unless controlled, presented to their rule. They began to regulate the book trade by rewarding favored individuals with exclusive monopolies over printing. The Licensing Act of 1662, which established a register of licensed books and required a copy of the published book to be licensed,

granted a charter to the Stationers Company, a guild of printers, with the right to seize books suspected of containing material hostile to the church or government and take legal action against the publishers. Although the Licensing Act was repealed in 1681, members of the guild continued to maintain that the printer of an authorized book had the right to profit from its distribution forever.

In 1709 the passage of the Statute of Anne upset the monopoly held by printers on published works by recognizing the rights of the author. The Statute of Anne was the first copyright act to address the issue of the author as the owner of the copyright and to establish a fixed term of 14 years for the protection of published works.² Authors had the option of extending the copyright for another 14 years after its expiration. These concepts would form the basis for modern copyright law in the United States.

¹ *WIPO Intellectual Property Handbook: Policy, Law and Use*. Publication No.489 (E) (Geneva: World Intellectual Property Organization, 2004), 3.

² United Kingdom Patent Office, “Intellectual Property: A History of Copyright,” www.intellectual-property.gov.uk/std/resources/copyright/history.htm.

United States Copyright Laws

The United States government has been concerned with the issue of protection of intellectual properties since the drafting of the constitution. On August 18, 1787, James Madison submitted a provision to the framers of the constitution to “secure to literary authors their copyrights for a limited time.”³ This provision, along with one establishing patent laws, was incorporated in Article 1, Section 8 of the constitution, giving Congress power “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

Almost as soon as the Constitution was ratified, legislators proceeded to establish a patent law to protect monopolies on inventions. On April 10, 1790, the first patent law was enacted. In 1836 Congress created the U.S. Patent Office (now the U.S. Patent and Trademark Office) and established the basic principles of patent law. Under American patent law any process or device may be patented if it is novel and useful and if plans and a working model are supplied. Revisions to the patent law were incorporated in 1870 and 1952. The 1952 Patent Act established the current patent and trademark laws.⁴

Under the new U.S. Constitution the first copyright law was not enacted until May 31, 1790, providing protection for books, maps and charts. The law granted authors copyright of their work for a term of 14 years with the privilege of renewal for another 14 years. Copyright registration was made in the U.S. District Court where the owner resided.

The copyright law has undergone several revisions over the decades, extending the terms of copyrights and expanding the types of protected works. Despite these amendments, the requirement remained that a published work have a copyright notice visible in a specified place or it would fall into the public domain. For unpublished works, the copyright continued to be automatic and perpetual. The signing of the 1976 Copyright Law by President Gerald Ford altered these provisions by protecting a creator’s rights to his work, whether it is published or unpublished, for a duration of the life of the owner plus 50 years, regardless of whether the proper notice is affixed. Other provisions adopted at that time and since then have further modernized the law.

³ United States Copyright Office, Information Circular 1a “United States Copyright Office: a Brief Introduction and History,” www.copyright.gov/circs/circ1a.html.

⁴ “A Brief Overview & History of Intellectual Property Law,” www.cs.virginia.edu/~jones/tmp352/projects98/group5/History.html.

Copyrights and Trademarks

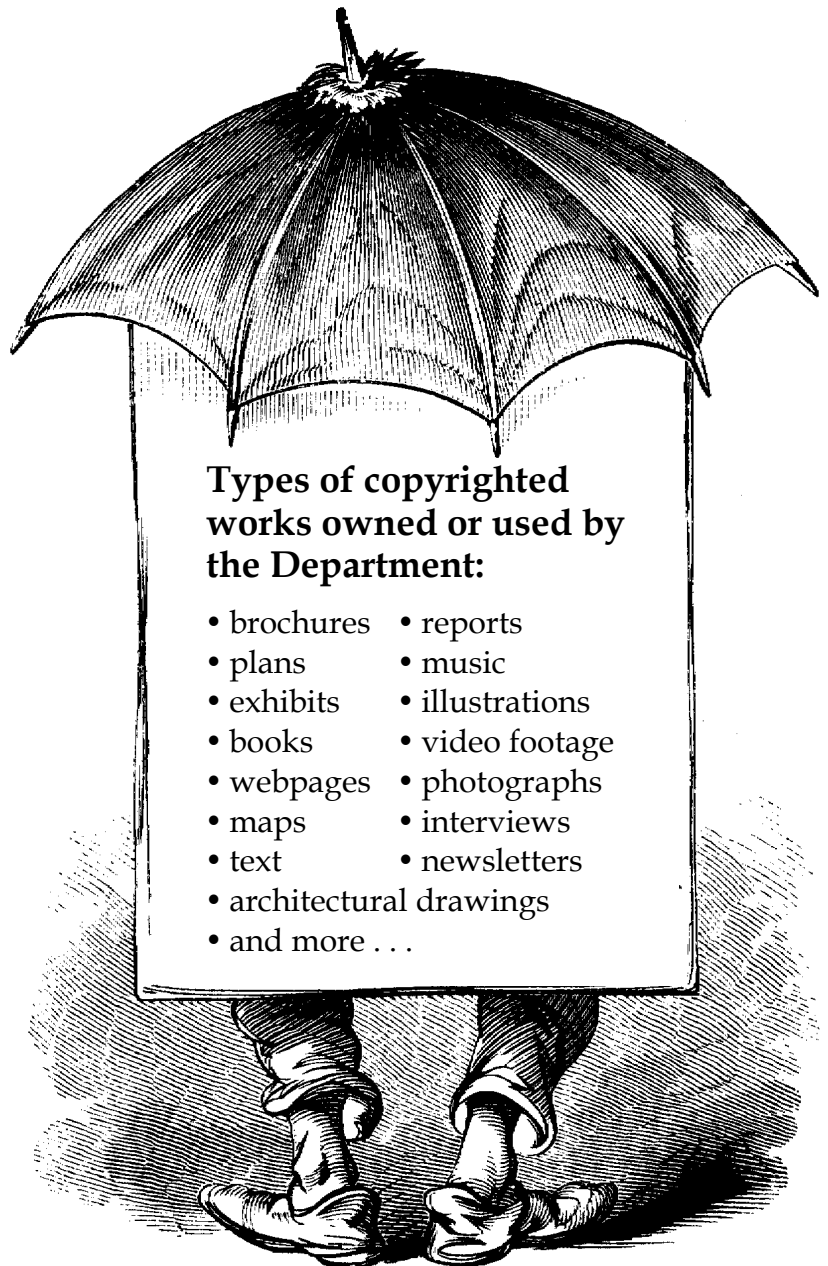
What is a Copyright?

Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to authors of "original works of authorship," including literary, dramatic, musical, artistic and certain other intellectual works. To be copyrightable, the work must be an original work of authorship that contains some creativity. Copyright protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to reproduce and prepare derivative works from, distribute, publicly perform or publicly display, the copyrighted work and to authorize others to do any of these things.

Works Protected by Copyright

Copyright protects the tangible expression of an idea, but not the idea itself. Examples of types of works that are protected by copyright include:

- literary works
- photographs, motion pictures and other audiovisual works
- pictorial, graphic and sculptural works
- architectural and cartographic works
- choreographic works
- dramatic works, including any music
- musical works, including any accompanying words
- sound recordings



Types of copyrighted works owned or used by the Department:

- brochures
- reports
- plans
- music
- exhibits
- illustrations
- books
- video footage
- webpages
- photographs
- maps
- interviews
- text
- newsletters
- architectural drawings
- and more . . .

Artistic craftsmanship such as jewelry, toys, fabric designs, furnishings and architectural elements may be protected, but only to the extent that they are not utilitarian.

Works Not Protected by Copyright

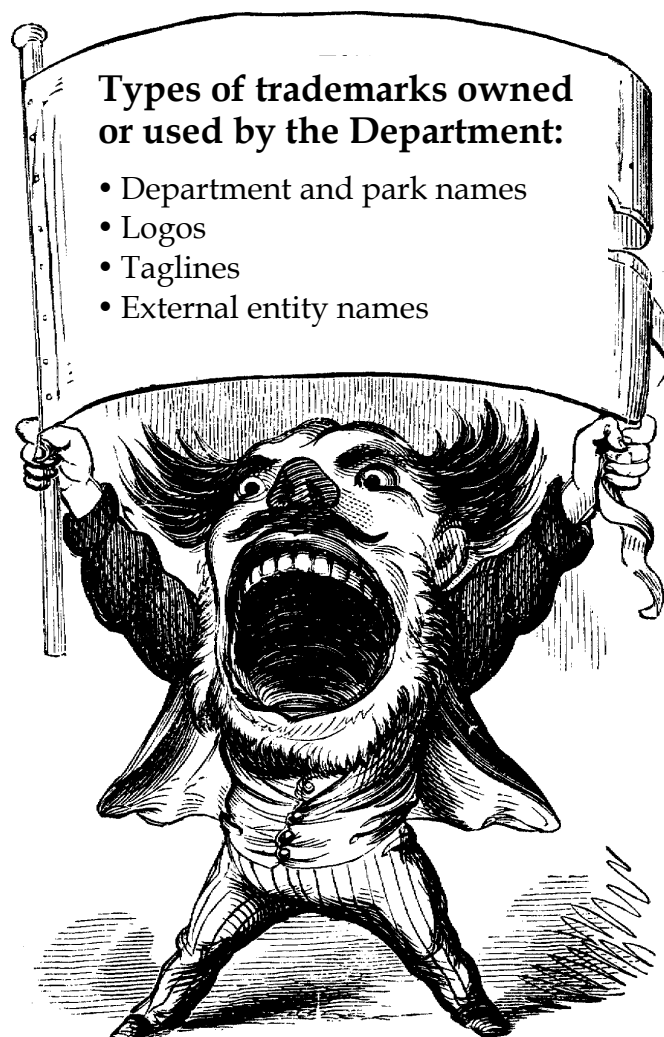
Works that have not been created in a tangible form of expression are not protected by copyright. For example, the idea to create a photograph of a landscape is not eligible for copyright, but once the photograph has been created (after the photographer snaps the shutter) the owner of the copyright can control certain uses of the photograph. Examples of types of work that are not protected by copyright:

- Titles, names, expressions, slogans, familiar symbols or designs, fonts, listings of ingredients
- Ideas, procedures, methods, systems, processes, concepts, principles
- Works that consist entirely of common or standard information (e.g., calendars, units of measure, height and weight charts, lists or tables taken from public documents)

What is a Trademark?

A trademark can be any word, name, symbol or device, or a combination of these, that is used in commerce to identify and distinguish the goods of one source from those of another. Logos, business names and taglines are all examples of trademarks. (A service mark is the same as a trademark except that it identifies and distinguishes the source of a service rather than goods. The term “trademark” is commonly used to include service marks.)

A trademark symbolizes the quality, reputation and good will of the owner of the trademark. A trademark must be distinctive and used as such by its owner. If the public is continuously allowed to refer to a product generically without objection from the trademark owner, rather than to identify the source of the product or service, the trademark may eventually be lost because it has become too



generic. A trademark may also be weakened by overuse or use on inferior products. To avoid this, the owner of a trademark should actively monitor how the trademark is used and should not allow others to use the mark unless they have been granted a license from the owner.

Like copyright, trademark rights can exist without formal registration. However, state and/or federal registration of a trademark formalizes the validity of the registered mark, the registrant's ownership of the mark, and the registrant's exclusive right to use the registered mark. Both state and federal registration also carry procedural and monetary advantages in the event of infringement.

Copyright and Trademark Ownership

Copyright Ownership

A copyright is usually owned by the author(s) or creator(s) immediately upon creation of a work because copyrights now attach to a qualifying work automatically under the law, without the requirement of registration. However, when an employee creates a product in the scope of his/her employment, the product is a work made for hire and the copyright is owned by the employer absent a written agreement that specifies otherwise. (See the Department-Owned Intellectual Property section below for more information about how the work made for hire issue applies to Department property.)

Ownership of a copyright is separate from ownership of a physical object that is the subject of a copyright. A copyright owner may license or transfer the rights granted by copyright. It is important to note that ownership of the work does not automatically control ownership of all copyrights. The transfer of ownership of any work does not in itself convey any rights in the copyright.

Trademark Ownership

Trademark rights are acquired when a mark is used on specific goods or services in commerce. In general, the first user has a superior right to later users, but use of the mark must be continuous. Registration is not required for ownership, but registration is evidence of the validity and priority of ownership and may also provide the benefit of protecting the mark in a greater geographical area.

Department-Owned Intellectual Property

Generally, the department owns the rights to all intellectual property created by employees in the scope of their employment; by volunteers who create property on volunteer time and have a current, signed Volunteer Service Agreement in place; by contractors; and by cooperating associations. In these instances, the product is considered a work made for hire and the intellectual property is owned by the Department unless there is a separate written agreement that specifies otherwise.

The Department may also come into ownership of intellectual property as a result of it being given to us through use of the Copyright Assignment form (DPR 992B). For information about using this form to allow someone to turn over intellectual property rights to the Department, see pages 17-18.

Employees

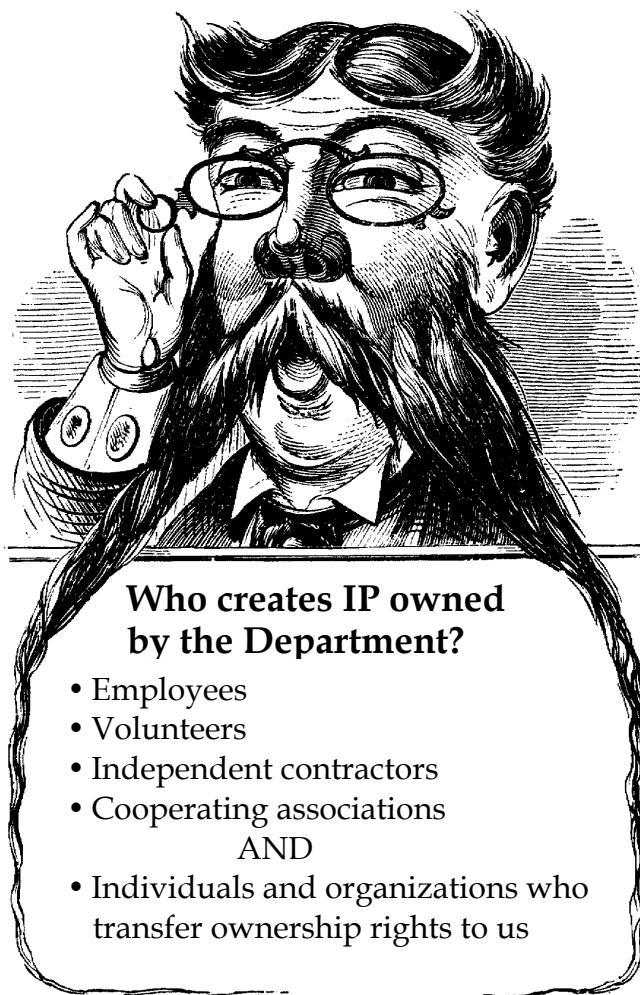
The Department generally owns the intellectual property rights to works created by its employees within the scope of their employment (some factors to consider when determining ownership include whether the works were created during work time and/or using state resources). Employees seeking to retain ownership of intellectual property created on their own time, using their own equipment, and through no special access must follow all rules and regulations required of any member of the general public (e.g., obtain the necessary permit from the California Film Commission for filming and commercial photography on State property). Additionally, employees must ensure they meet the criteria contained in the Department's Conflict of Interest and Incompatible Activities policies (see Department Administrative Manual Chapters 0200, Incompatible Activities, and 1500, Labor Relations.)

Volunteers

Volunteers usually sign an agreement giving the Department ownership of intellectual property they create within the scope of their volunteer duties. The Department does not claim an ownership interest in works created outside these volunteer duties and/or hours. To ensure that the Department owns the copyrights to materials that it intends to rely on, districts should be consistent in requiring all long-term volunteers to sign such an agreement. (The Department Volunteer Services Agreement has a boilerplate provision covering intellectual property; if the language in this agreement is amended, it must be approved by the Chief of the Interpretation and Education Division.)

Independent Contractors

Certain types of works created by independent contractors may be considered works for hire, and the party contracting for the work owns the intellectual property rights if there is an express written agreement that the work is intended to be a work for hire. Thus,



whenever the Department enters into a contract that involves an outside party's production of any kind of creative work for the Department, the contract should include an express agreement that the works are intended to be works for hire and that the Department will be the owner of the intellectual property rights associated with those works, both the completed product and any drafts or working materials. This language appears in the Department's standard services agreement. An assignment of copyright interests by the contractor to the Department may also be necessary depending on the nature of the work and the language in the contract. (See further discussion regarding copyright assignment below.) If a contractor requests to use either completed products or drafts or working materials in the future (such as for advertising or other promotional purposes), the Department may grant them license to do so by using a copyright license agreement (DPR 990 or 990A).

It is extremely important to thoroughly consider how a product or work will be used in order to ensure you have the needed rights to use the product as you intend to, or envision you might in the future. This is especially true in relation to items that might be sold, such as videos, and to all the underlying intellectual property that makes up such items (that is, you must ensure that all the intellectual property that is included in a larger work carries with it the right to sell the work).

Cooperating Associations

Under the standard cooperating association contract language, intellectual property created by a cooperating association is the property of the Department unless there is a separate written agreement that specifies otherwise. This protects the Department's ability to use and reproduce the intellectual property in the future in spite of any termination of the cooperating association or its relationship with the Department. Any changes to the cooperating association standard contract language in relation to intellectual property rights must be approved by the Department's Legal Office. In special situations where an item of intellectual property is to be owned by a cooperating association and the Department wants to have the ability to use the work, the Department shall strive to obtain a license from the association for the Department's convenient use of the material.

Credits for Department-Owned Intellectual Property

Listing credits for Department-owned intellectual property created by employees, volunteers or contractors shall be determined by the applicable District Superintendent or Division Chief. Issues that should be taken into consideration include whether there is a clear author or creator of the intellectual property (as opposed to a team of people), whether space allows for credits given the nature of the product in question, and whether the location of credits will affect the overall design and appeal of the product.

Copyright and Trademark Registration

Copyright Registration

The moment a copyrightable work is created in a tangible form it is automatically eligible for federal copyright protection. Formal registration of copyrights with the federal government is not required, but it can provide procedural and monetary advantages in the event of infringement, and registration is required for enforcement. Consider registration for those items you have reason to believe may be susceptible to infringement.

Registration requires filing of an application form, payment of a fee and a deposit of the work, submitted to the United States Copyright Office in Washington, D.C. The forms and fee are subject to change. Updated information can be verified at the Copyright Office Website at www.copyright.gov. To register a copyright owned by the Department, contact the Department's Legal Office for assistance. Copyright registration is necessary prior to the filing of an infringement suit.

Remember, ownership of a work does not give the possessor the copyright. The copyright law provides for the transfer of ownership of any protected work separately from the conveyance of related copyrights. A specific statement as to the transfer of partial or entire copyrights must be stated in writing. This can be done by license or assignment, as more fully discussed later in this handbook.

Trademark Registration

Trademarks may be registered in California with the Secretary of State, and/or federally registered with the U.S. Patent and Trademark Office. State registration protects the mark in California. Federal registration offers nationwide protection. In general, in order to register a trademark you will need to provide the date of first use, the date of first use in commerce, samples of use in each category of goods or services and filing fees. Federal trademark applications may also be submitted as "Intent to Use" applications where the mark is not yet in use.

In addition to the logo, the Department has registered a number of trademarks (including, but not limited to the names Asilomar[®], Hearst Castle[®], Anza-Borrego Desert State Park[®], California Escapes[®] and FamCamp[®] and the logos for the Junior Ranger Program and the Children in Nature Initiative). Registration is recommended for names and logos the use of which the Department may want to control or protect so they are not trademarked by another entity (for example, in connection with concession opportunities). To register a trademark, contact the Department's Legal Office. Be aware, however, that when a trademark is registered, the Department will be required to formally license its use by external entities. The District or Division who manages the program or property associated with the trademark will be responsible for that licensing.

Notice of Copyright and Trademark

Notice of Copyright

The use of a copyright notice is no longer required under U.S. law, although it is often beneficial. Notice was required under the 1976 Copyright Act. This requirement was eliminated when the United States adhered to the Berne Convention, effective March 1, 1989. Although it is no longer legally required, use of the notice is important because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication.

To protect a copyright, notice of copyright should be placed on publicly distributed or displayed copyrighted material. This notice

must include the copyright symbol (©), followed by year of first publication and the name of the copyright owner (and the month and year of last revision if applicable). For example, © 2000 California State Parks (rev. 2004). In lieu of using the copyright symbol (©) the word “Copyright” or the abbreviation “Copr.” may also be used, but only if there is a good reason for not using the copyright symbol.



Bet you didn't know . . .

From the moment it was released, the movie *Night of the Living Dead* (1968) has been in the public domain. The reason: The theatrical distributor neglected to include a notice of copyright on the released print, which was required at that time. As a result, the movie has been released on two dozen different DVD labels, has been colorized and parodied, and is Internet Archives' second most downloaded film. The law has since been changed, and notice isn't required in order to secure copyright (although it is a Department policy to include it on our materials).



The copyright notice is not required for individual items of intellectual property that are included in a larger product (publication, exhibit, video, for example) that contains the notice that the copyright to the larger product is owned by the Department. So, for example, if a photograph owned by the Department is used in a publication owned by the Department, that photograph does not need to carry a copyright notice because the publication itself should contain such notice.

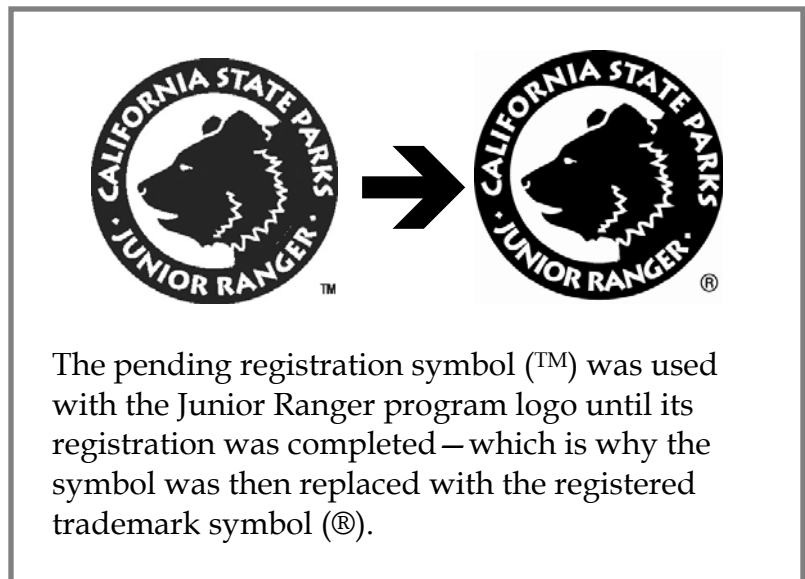
Notice of Trademark

When trademarks registered with the U.S. Patent and Trademark Office are used in a publication, video, exhibit, etc., they should be accompanied by the registration symbol (®). The purpose of the symbol is to give notice of the mark's federal registration and to inform unlicensed users that they may be infringing on the

Department's trademark rights. Alternatively, if the registration symbol is not used at all (for design reasons, for example), a statement that the name or design is a registered trademark of the California Department of Parks and Recreation, registered with the U.S. Patent and Trademark Office, may be used somewhere on the material (for example, on copyright page, on credits screen, at bottom of panel) to provide notice of registration.

Because the Department logo is a trademark registered with the U.S. Patent and Trademark Office, the registration symbol must be used in connection with each use of the logo unless it is infeasible from a design or fabrication standpoint (such as for patches or decals). For trademarked names, however, it is not necessary to use the symbol with every subsequent use of the trademarked name in/on the same material once the name has initially appeared with the symbol (or, as stated above, a statement is made somewhere in the material that the name is a registered trademark).

The TM symbol can and should be used to designate trademarks that are not yet federally registered but are in the process of being registered. In general, trademarks arise by use. Inclusion of the TM designation in connection with the use of the mark indicates an intent to claim trademark rights.



License Agreements for Department-Owned Intellectual Property

License agreements grant permission to use materials protected under intellectual property laws and also specify the limitations and conditions that are placed on the permitted use. It is important to record and track licensed rights issued by and/or to the Department in order to be able to lawfully use materials, to control unacceptable uses of Department-owned materials, to minimize potential liability, to avoid granting conflicting rights, and to avoid violating restrictions in gift and donor agreements.

Trademarks and copyrights can be licensed for use by non-Departmental persons or entities. Use of Departmental intellectual property displayed on a website or any other electronic medium is subject to the same licensing requirements as all other intellectual property.

The creation of license agreements for use of materials by outside entities is the responsibility of the division, district, sector, unit or office that maintains the specific item of intellectual property being requested.

Copyright Licenses

A sample copyright license agreement is available in forms DPR 990 and 990A (see sample forms in Appendix H). The DPR 990 form is for material that will be used in a film or video production. The DPR 990A form is for material that will be used in any other medium. These forms were written to give the Department maximum control over our intellectual property and to give the licensee minimal rights. For this reason, a licensee may request that the standard language on the forms be changed.

If the standard language in any of these forms is changed in order to allow for a different use than the standard language allows, the customized form must be reviewed and approved by the Department's Legal Office prior to signing. Alternate forms provided by an outside entity may not be used nor signed by the Department unless they have been reviewed and approved by the Legal Office.

Copyright license agreements must be signed by the District Superintendent or his or her designee and kept in a file pertaining to the material being licensed. A copy of each agreement must also be sent to the Interpretation and Education Division for filing.

On copyright license agreement forms, the Department needs to identify, as specifically as possible:

- **The “material” being licensed:** If licensing a photograph or piece of artwork, it is ideal to attach an image of the material. Attach a list if there are a number of items and they won’t all fit in the space provided on the form. (Always refer to attachments on the form itself, however.)
- **The product in which the material will be used:** For the DPR 990 form (which is specifically for licensing material to be used in film or video productions), this section may indicate if the product will be online, on DVD, in a motion picture production, or for broadcast television. For the 990A form, this section may indicate if the material will be used in a publication, on a website, or in some other medium (and it should name the publication, list the website address, or include other information to further identify and describe where the material will be used). For both forms, this section can be written to limit use of the material to a specific time period, a certain number of copies, or, for a publication, to an edition or print run. This section may also indicate if the material is going to be used in a product that will be sold to the public.
- **The credit line that should be used with the material:** Generally, the credit line will be as follows: © [year of production] California State Parks (e.g., © 1998 California State Parks). However, if the material being provided is in the public domain, the credit line would instead be: Courtesy California State Parks.
- **If any review and approval is required by the Department:** If you decide to require review and approval of use, be sure to specify who will be the contact for this and provide that person or division's contact information.
- **If any copies of the product in which the material is used will be provided to the Department:** If copies are being provided, specify how many copies and where they should be sent.
- **Any license or reproduction fees that will be charged for the material:** See Reproduction and License Fees section below.

Trademark Licenses

Districts and other Department offices should not grant trademark licenses without first consulting with the Legal Office. For use of the Department logo, all external entities must obtain written permission from the Chief of the Interpretation and Education Division, documented by an appropriate license agreement, unless the license is being granted as part of a contract that includes the Department’s standard boilerplate language for logo/trademark use, such as the standard Cooperating

Association contract or Concessions contract. Copies of all trademark licenses and contracts/agreements with language that licenses use of Department trademarks must be sent to the Interpretation and Education Division for filing.

Reproduction and License Fees

The Department may charge reproduction fees and license fees for use of its intellectual property by outside entities. When the licensee has made some contribution towards the creation of the intellectual property, the Department does not normally charge license fees. Be aware the Department must be able to document how it arrived at a specified reproduction or license fee based on staff time and equipment resources required. An office interested in charging reproduction or license fees should first consult with the Legal Office, and it is best to do this early on so there is a standard in place when requests are made.

A Word about Media Use

The media is entitled to use “brief quotations” of copyrighted works, without obtaining a license, in connection with news reports. Also, “incidental and fortuitous” use of a copyrighted work or trademark that just happens to be located in the scene of an event being reported for broadcast does not require a license. Media requesting more extensive rights should comply with the guidelines above.



Use of Intellectual Property Not Owned by the Department

The Department often uses intellectual property owned by external entities (e.g., photographs, illustrations, maps, music, video and film footage). In order to do so, the Department must secure written permission to use the material from the individual or organization/agency that owns the intellectual property rights to the material. (See pages 25 and 53 for information on how to request such permission.)

In some cases, it may not be possible to secure permission for use due to an inability to locate or determine the owner of the material. If this is the case, a thorough search must be conducted using all available sources of information (Internet, libraries and repositories, word of mouth, etc.). Written documentation of the research conducted in trying to locate or determine the owner must be retained with the files for the project where the material is to be used. See further discussion below regarding Researching Intellectual Property Ownership.

Employees and volunteers who have created intellectual property on their own time, using their own equipment, and requiring no special access to locations, resources, or facilities, may license material for use by the Department. In such instances, a written license agreement must be executed, and credit given as specified in the policies below.

Copyright License/Assignment Forms

DPR 992A is a Copyright License Agreement, which is used for material the Department would like to use but for which the copyright would be retained by the copyright holder. DPR 992B is a Copyright Assignment, which is used when the copyright holder is agreeing to transfer ownership rights to the Department. (See Appendix H for samples of these forms.) Forms supplied by the intellectual property owner are also acceptable, but should be reviewed by the Legal Office if they contain any requirements that cause concern, such as indemnification language.

Copyright License Agreements

Use the DPR 992A form when the Department wants to use material copyrighted to another entity. This form is intentionally written so as to allow for the broadest use possible by the Department. For this reason, copyright owners will often want to change the standard language on the form to more specifically define how or when the material may be used. In these instances, there is no requirement to consult with the Legal Office, unless the copyright owner wishes to add language that is unclear to

you or causes you concern. If you are unsure, err on the side of caution and prepare a Legal Services Request before signing the form. Changes made to this form may be made by the Department to the Excel document itself or may be handwritten by either the Department or the copyright owner. Forms supplied by the copyright owner are acceptable in lieu of using the DPR 992A form, but consult with the Legal Office if there is language that is unclear to you or causes you concern.

This form is fairly self-explanatory in terms of how it should be completed, but be aware that “N/A” should be used in the area for Copyright Registration Number if the material has not been formally registered with the federal government, which will usually be the case. Additionally, you may delete or strike through the statement “a copy of which is attached hereto as Exhibit A” if the license is for a material that does not lend itself to attachment, such as for music or video footage.

It is best, but not required, to have the copyright owner sign the form first, then a representative of the Department. The form should be signed by a supervisor, at a level appropriate to the project or publication in which the material being licensed will be used. After signing, send a copy of the form to the licensor along with a letter explaining any important requirements or clauses of the agreement and giving your contact information. Copyright License Agreement forms shall be kept in a permanent file for the project or publication in which the material being licensed was used.

Copyright Assignment

Use the DPR 992B form when the copyright owner is going to turn over ownership of the material to the Department entirely. Do not, however, use this form for gifts or donations of material that would fall under the definition of museum collections. Instead, refer to the Museum Collections Management policies in the Department Operations Manual. Because this form is intended to entirely transfer ownership rights to the Department, if the copyright owner wishes to change the language in the form, it should be reviewed by the Legal Office prior to signing to ensure there are no unnecessary limitations put in place by the changes. For this same reason, if the copyright owner wishes to use a form of his or her own creation, it should be reviewed by the Legal Office to ensure the Department’s ownership and use is not limited by it.

Like the 992A form, this form is fairly self-explanatory in terms of how it should be completed. If the material has not been formally registered with the federal government, use N/A in the area for Copyright Registration Number. If the material has been registered, however, you should work with the Legal Office to have the registration transferred over to the Department.

Have the copyright owner sign the form first, and then it should be signed by an appropriate level supervisor with the Department. After signing, send a copy of the form to the assignor along with a letter giving your contact information. Copyright Assignments shall be filed with the material being transferred to the Department.

Credit for Use of Intellectual Property

Credit must be given, if requested, for use of intellectual property owned by external entities. Usually the owner of the property will specify the language to be used—generally, either “Courtesy of [name of owner]” or “© [date of creation, if provided and applicable] [name of owner]” or “[Name of material] is a formally registered trademark of [name of owner.]” Ordinarily such language is used next to or below the material being used (such as for a photograph) or is listed on a copyright page, credit screen of a video, or bottom of an interpretive panel.

In relation to listing the name of the property owner, be aware this may be either an individual’s personal name, or the name of a business, organization, or agency. However, additional information such as logos and website addresses (unless the website address is itself the name of the business) shall not be included.

For information on providing credit for creators of Department-owned intellectual property, see page 9.

Copy Equipment Posting

In accordance with the American Library Association’s recommendation, the following language is required to be posted at all copy equipment throughout the Department: “the copyright law of the United States (Title 17 U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this material is liable for any infringement.” A sample suitable for posting is available in Appendix J of this handbook.

A Word about “Public Performance”

Videos (in any format) and music (both the composition of a song as well as its performance and/or recording) are copyrightable works and therefore the playing of videos and music in state parks falls within applicable intellectual property laws. Generally a license or permission for performance should be obtained from the copyright owner, unless the intended use clearly falls within fair use (Title 17 U.S. Code, § 110). This means that you should consider obtaining permission or license to perform or display a copyrighted work prior to authorizing a “public performance” of it.

There are some exceptions or limitations on copyright protection that allow for public performance of copyrighted works without a license under limited circumstances. These include, for example, use in conjunction with an educational setting—however, be wary of solely relying on this limitation in relation to programs being presented in state parks. It is always better to at least attempt to contact the copyright owner and

obtain permission rather than making the assumption that your program constitutes an “educational setting” under the law. (See chapter on Fair Use later in this handbook.)

Recorded music played in parks generally would require a license from the owner unless at least one of the following criteria is met:

- The music is being played on a single receiving apparatus commonly found in private homes (i.e., a device that was not designed for commercial use); OR
- The music is being played in a space less than 2,000 square feet; OR
- The music is being played in a room (of more than 2,000 square feet) that has no more than four speakers.

Live music performances are exempted under copyright law when all of the following three conditions are met:

- There is no fee paid to the promoters, performers or organizers of the event; AND
- There is no direct or indirect admission fee charged, or all proceeds from admission fees, after expenses are paid, must be used for charitable or educational purposes; AND
- The copyright owner has not served the performing entity with a notice of objection.



Even if the Department does not directly sponsor an event where public performance of music occurs (or of any other copyrightable work, such as a play or a dance composition), the Department may still be liable for copyright infringement. Because of this liability, special event permits should be specific in relation to licensing requirements and include hold harmless and indemnity provisions. The following language may be therefore applicable to include in a special event permit:

"Permittee represents and warrants that it will comply with all applicable laws and will secure all necessary performance and other licenses required by law in connection with the permitted event. Permittee further agrees to indemnify, hold harmless, protect and defend the Department, including attorney's fees, in the event of any failure to do so."

For specific advice about public performance issues, contact the Department's Legal Office.

Public Domain

The public domain is comprised of works to which no person or other legal entity can establish or maintain proprietary interests. Works can enter the public domain under the following circumstances:

- Copyright term has expired.
- Copyright protection was not renewed under older statutes.
- Type of work is not eligible for copyright protection.

Works that are in the public domain are not protected by copyright law and generally can be used by the public and the Department. However, they may still be controlled by access agreements. Such agreements may be used by outside entities, such as libraries and archives, when the Department requests copies of materials from their collections.

Additionally, the Department may use the DPR 990 and 990A forms to control access to items in the public domain that we have in our collections, such as historic photographs. In these instances, the form should specify that credit for the material be listed as “Courtesy of California State Parks” rather than a copyright line, and references to copyright in the form language should be deleted or stricken out.



Bet you didn't know . . .

The now well-known movie *It's a Wonderful Life* (1946) fell into the public domain because its owners neglected to renew their copyright registration. As a result, a movie that didn't do very well at the box office became a staple of the winter holiday season—because it could be shown on television and released on video without having to obtain or purchase a license. Wonder why you don't see it so much on TV now? Because in 1993 Republic Pictures was able to assert its rights based on their ownership of the movie's story and music, thus enabling them to again charge royalties for showings of the film.



See the table on the next page to figure out if a work may be in the public domain based on when it was published or created. The designation of public domain works is a complex issue. If you have questions regarding this issue contact the Legal Office.

When Works Pass Into the Public Domain⁵

DATE OF WORK	PROTECTED FROM	TERM
Published more than 95 years ago	In public domain	None
Published between 95 years ago and 1963	When published with notice	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain.
Published from 1964-1977	When published with notice	28 years for first term; automatic extension of 67 years for second term
Created before 01-01-1978 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or to 12-31-2002, whichever is greater
Created before 01-01-1978 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or to 12-31-2047, whichever is greater
Created 01-01-1978 or after	When work is fixed in tangible medium of expression	Life + 70 years (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation)

Note: Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between January 1, 1978, and March 1, 1989, the effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice were made within five years, such as by placing notice on unsold copies (17 U.S.C. § 405). Works for hire, anonymous and pseudonymous works also have this term (17 U.S.C. § 302(c)).

⁵ Adapted from Lolly Gasaway, "When U.S. Works Pass Into the Public Domain," University of North Carolina, [November 2003] www.unc.edu/~unclng/public-d.htm.

Fair Use

The purpose of the fair use doctrine is to allow limited use of copyrighted material without requiring prior permission from the copyright holder. The Copyright Act of 1976 does not provide a clear definition of fair use but it does provide examples of general categories within which the use of copyright protected work may be considered fair, such as criticism, comment, news reporting, teaching (including one-time multiple copies for classroom use), scholarship or research without an infringement. These examples are not intended to be exclusive or absolute. Any use will be examined on a case-by-case basis to determine its fairness.

The following factors are used to determine whether a particular use is considered “fair use”:

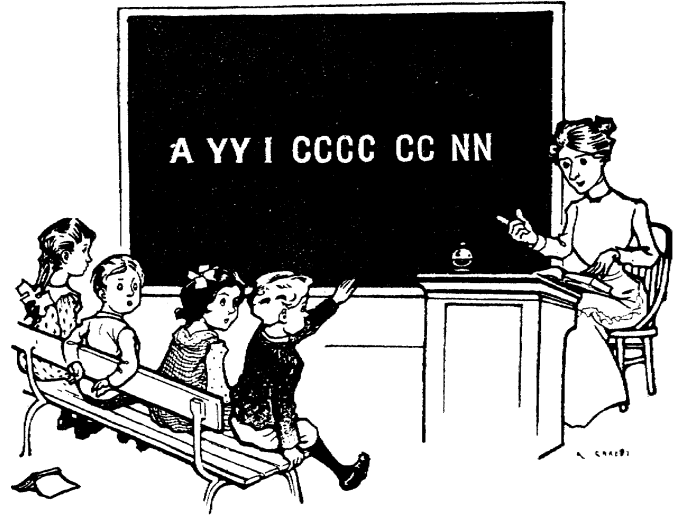
- The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes. The courts will look at whether the original and the copy serve the same intrinsic purpose.
- The nature of the copyrighted work. A higher degree of protection is afforded for more creative works.
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole. Consideration is given to both the quantity and quality of the portion of the work used.
- The effect of the use upon the potential fair market value of the copyrighted work. Courts will look at whether the use could impair the market for the work, whether licenses are available and whether the use is repeated and long-term.

No guidance is given in the statute as to the weight that must be given to each factor. Thus, the courts have wide discretion, making each case unpredictable. Also, there is no specific number of words, lines, or notes that may safely be used without permission. When in doubt, it is always best to seek permission from the copyright owner for your use where possible.

Educational Use

Regarding teaching or educational use as fair use (which could include use of material in presented interpretive programs), informational guidelines have been developed to govern “classroom use” of copyrighted works. These guidelines are not binding on the courts but are persuasive. In general, the guidelines:

- Limit the use of copyrighted publications to one copy per student;
- Require use on a short term basis with a showing that there was no time to obtain permission;
- Limit use to small, reasonable portions of the copyrighted work; AND
- Require use of copyright notice.



Because state parks are not “classrooms” in a legal sense, it is not known whether the courts would allow the Department to argue fair use under the criteria above if a property owner were to file suit. However, following the guidelines above is imperative to protecting the Department’s ability to make such an argument should a lawsuit occur.

These guidelines should only be relied upon when there is no opportunity to secure permission before the program is presented—permission should always be sought in advance whenever possible, and either obtained or documentation filed showing that a good faith effort was made to locate the property owner (see Researching Intellectual Property Ownership that follows for more information on making and documenting a good faith effort). Acknowledging the source of the copyrighted material is not an adequate substitute for obtaining permission, or for attempting to locate and contact the copyright owner.

Researching Intellectual Property Ownership

Why It Is Necessary to Determine Ownership

Using an image or work for exhibition or publication is a form of reproduction that may constitute a violation of copyright law if the work being copied is copyright protected. Therefore, if a researcher, curator, exhibit designer, promoter or publisher decides to use an image or work, they must determine if they have the right to do so. Is the image or work in the public domain or is it subject to copyright protection?

If it is determined that an image or work is in the public domain, no permission is needed. If not, the user must obtain permission from the copyright holder.

How to Determine the Status and Ownership of a Work

There are several ways to investigate whether a work is under copyright protection. The following steps may be helpful in starting a copyright search:

- Examine the work to determine if a copyright notice or disclaimer is affixed to the work.
- If the work is from a published book, look for photo credits in the appendix or the caption under the image for source, collection, artist, photographer and date.
- If no indication is given with the image, contact the publisher and/or the author. The author or author's estate can usually be contacted through the publisher.
- Examine the subject and content of the work and contact museums, libraries or archival institutions that hold works of similar subject matter. Usually these types of institutions are very helpful and will provide referral to additional sources.
- Make a search of the Copyright Office catalogs and other records.
- Have the Copyright Office perform a search for you.

Copyright investigation usually involves more than one of the above methods. The investigative process can be very time consuming as you may need to contact many different sources.

Most copyright searches involve writing to several institutions or individual authors/artists, describing the work that you are attempting to clear and how you intend to use it. It is most helpful if you include a photocopy of the work, any and all information about the work, and an inquiry of additional collections or institutions to contact.

A written permission request should include the following information:

- Title and/or description of the material;
- How and/or where the material was obtained (if applicable) or desired format needed (if you're making contact regarding both obtaining permission and getting the material in the needed format);
- Intention of use, including the title of the publication, video or exhibit;
- Duration of intended use;
- Expected date of publication;
- Justification of why a license fee should not be charged (or provide a budget of what you can afford to pay in fees);
- An offer to provide credit and a request for how credit should be indicated.

Retain copies of your requests, and any responses you receive, to document your search. (See Appendix I for sample text you can adapt for your use.)

Good Faith Effort

If after using all or some of the above methods, you are unable to locate the copyright holder of the work and have exhausted all “reasonable” possibilities, then you have attempted to make a “good faith effort” to determine the holder of copyrights. It is very important to retain all correspondence and notes that were produced during your investigation of copyrights so that you can, if necessary, prove you made a “good faith effort.” This should be kept on file with other information related to the project in which the material was used.

Appendix A: Definitions

Author is defined as either the person who creates a copyrightable work or the employer of a person who creates a copyrightable work within the scope of employment. “Author” in copyright law includes not only writers of novels, plays, and treatises, but also those who create computer programs, arrange data in telephone books, choreograph dances, take photographs, sculpt stone, paint murals, write songs, record sounds, and translate books from one language to another.

Copyright is an exclusive right conferred by the government on the creator of a work to exclude others from reproducing it, adapting it, distributing it to the public, performing it in public, or displaying it in public.

Educational Institutions are defined as nonprofit organizations whose primary purpose is supporting the nonprofit instructional, research and scholarly activities of educators, scholars and students. Examples of educational institutions include K-12 schools, colleges and universities. Libraries, museums, hospitals and other nonprofit institutions also are considered educational institutions under this definition when they engage in nonprofit instructional, research or scholarly activities for educational purposes.

Educational Purposes is defined as noncommercial instruction or curriculum-based teaching by educators to students at nonprofit educational institutions.

Fair Use is a law that authorizes the use of copyrighted materials for certain purposes without the copyright owner's permission.

Intellectual Property is defined as creative ideas and expressions of the human mind that have commercial value and receive the legal protection of a property right. The major legal mechanisms for protecting intellectual property rights are copyrights, patents, and trademarks. Intellectual property rights enable owners to select who may access and use their property and to protect it from unauthorized use.

Patent is a grant by the federal government to an inventor of the right to exclude others from making, using, or selling his or her invention.

Public Domain is the status of an invention, creative work, commercial symbol, or any other creation that is not protected by some form of intellectual property. Items that have been determined to be in the public domain are available for copying and use by anyone.

Research and scholarly activities is defined as planned, noncommercial study or investigation directed toward making a contribution to a field of knowledge, and noncommercial presentation of research findings at peer conferences, workshops or seminars.

Trademark is a word, phrase, design, sound or symbol which is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others.

Work Made for Hire or Work for Hire is a work made by an employee within the scope of his or her employment, unless there is a signed agreement to contrary.

Appendix B: Contact Information

Commercial Photography and Filming in State Parks	Partnerships and Consumer Strategies Division 916 653-5682 partnerships@parks.ca.gov
Contracts	Contracts and Asset Management Section 916 653-8674
Cooperating Associations Program	Interpretation and Education Division 916 654-2249 interp@parks.ca.gov
Legal Opinions	Legal Office 916 653-9905 (Use DPR 988 form to make a formal request for legal services)
Logo Files	Interpretive Publications Section 916 654-2249 publications@parks.ca.gov
Logo Licenses	Interpretation and Education Division 916 654-2249 interp@parks.ca.gov
Museum Collections	Archaeology, History and Museums Division - Museum Services Section 916 651-8686
Photographs	Photographic Archives 916 375-5933 photoarc@parks.ca.gov
State Parks Brand	Partnerships and Consumer Strategies Division 916 653-5682 partnerships@parks.ca.gov
Trademark/Copyright Registration	Legal Office 916 653-9905 (Use DPR 988 form to make a formal request for legal services)
Volunteers in Parks Program	Interpretation and Education Division 916 654-2249 vipp@parks.ca.gov
Website/Internet	Information Technology Services 916 653-7019 webmaster@parks.ca.gov

Appendix C: Process Flowcharts

The flowcharts on the following two pages were created to help readers quickly understand the steps that should be followed to either:

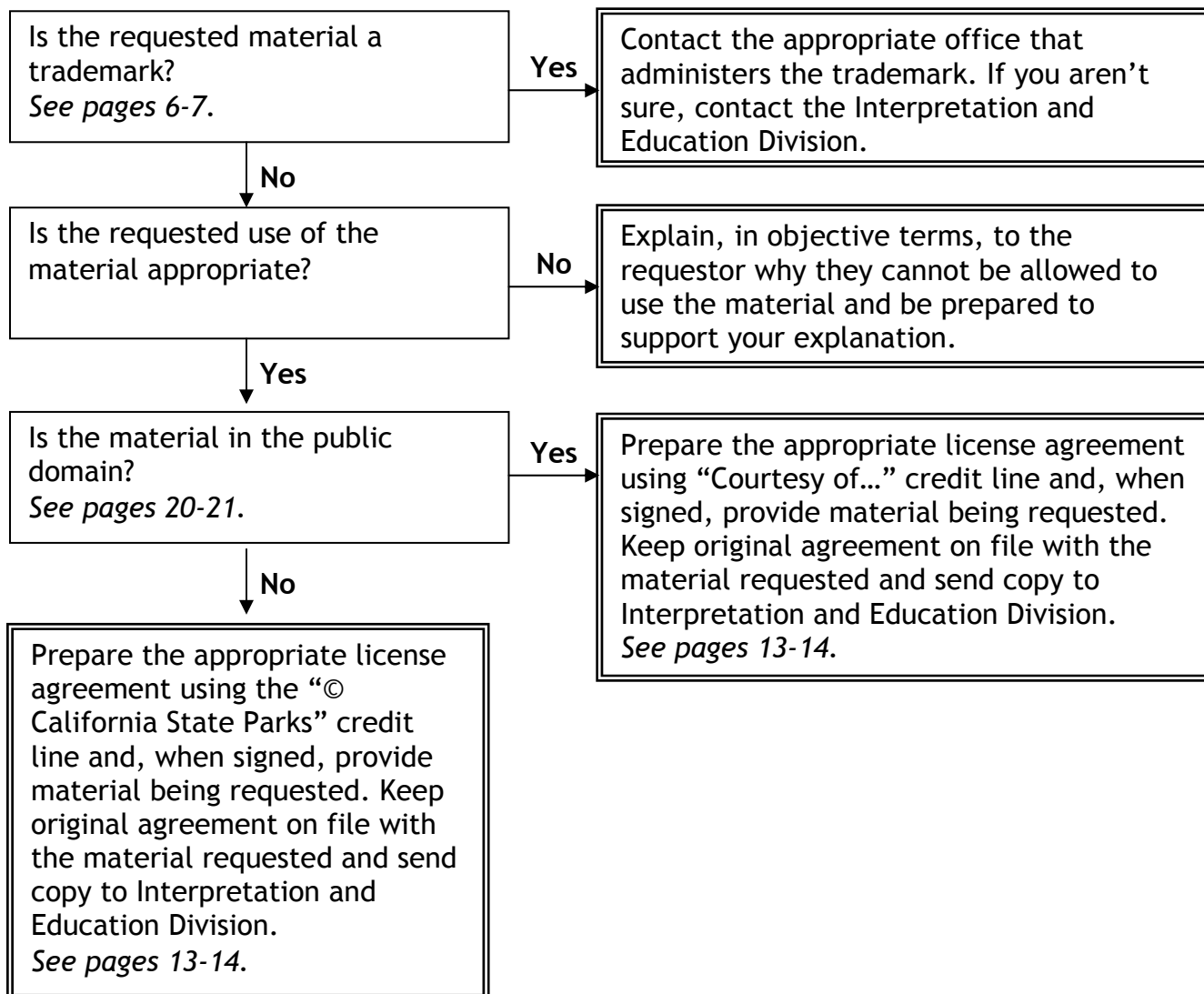
1. Allow outside entities to use Department-owned intellectual property; or
2. Allow the Department to use intellectual property we do not own.

The page numbers in the two charts reflect the pages in this handbook where additional information about that particular step in the process can be found.

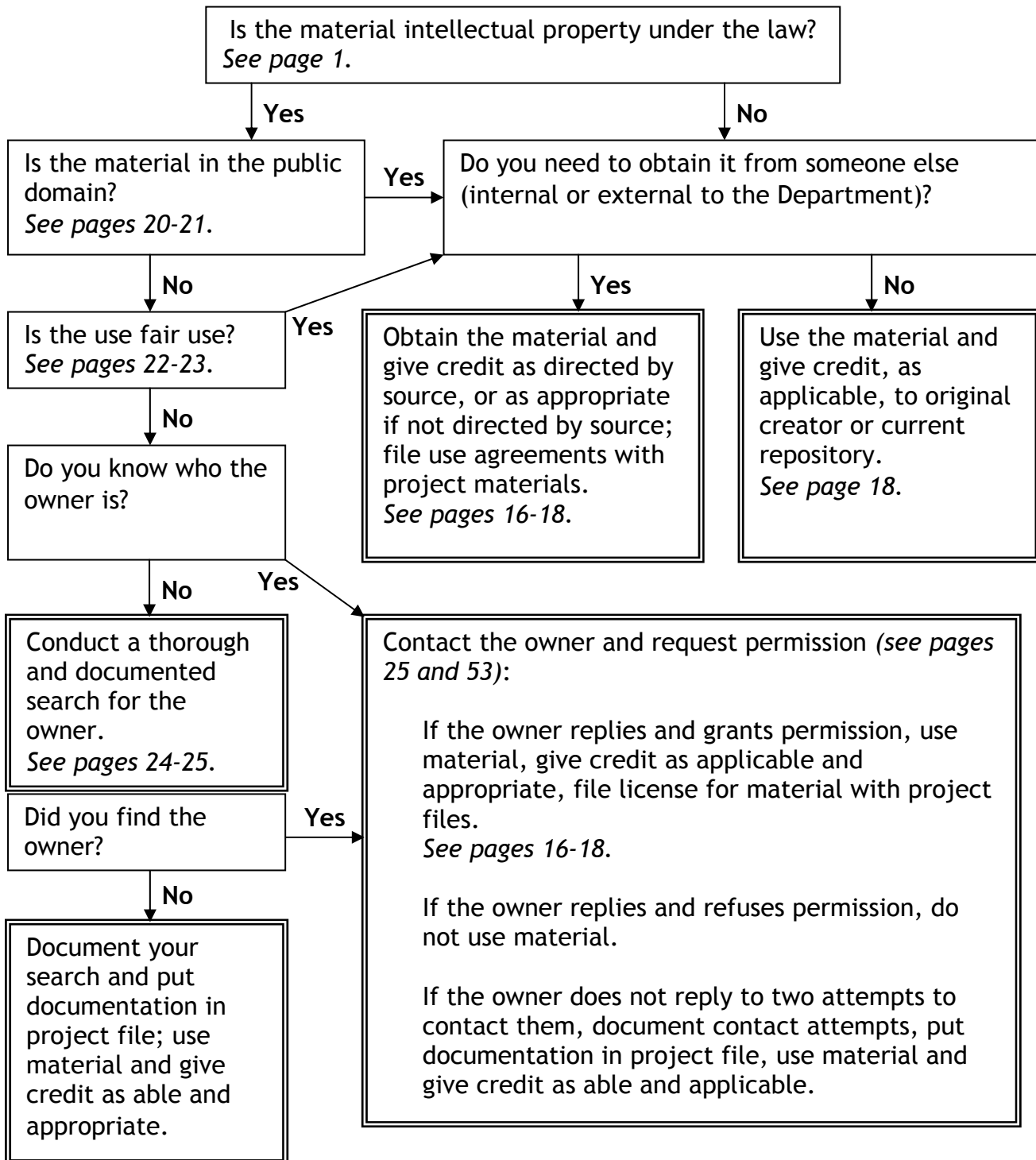
External Use of Intellectual Property Owned by the Department

Note: Department divisions and offices are responsible for licensing copyrighted material under their control or jurisdiction. There is no “central” office for issuing licenses for copyrighted materials.

If the material being requested is not owned by the Department (for example, when someone wants to use an image from an outside source that was used in one of our publications), do not provide it to any one, external or internal. Instead, inform the requestor where the material came from so he or she can obtain it from the original source.



Department Use of Intellectual Property Owned by an External Source



Appendix D: Department Intellectual Property Policies

The following information is excerpted from the Department Operations Manual Chapter 0900, Interpretation and Education.

0907 INTELLECTUAL PROPERTY

“Intellectual property” is a generic term referring to patents, trademarks, copyrights, trade secrets, and any other tangible personal property that is created through the intellectual efforts of its creator or creators. The Department creates and owns intellectual property and uses intellectual property created and owned by others. The rights related to intellectual property exist in and of themselves, apart from the actual creation. That is, while a person may physically own a painting, musical recording, photographic print, etc., the actual owner of the intellectual property rights connected to said material is the creator of the property, unless those rights were explicitly assigned, given, or sold by the creator to another party. For more information about intellectual property rights, see the Department’s *Intellectual Property Handbook*.

0907.1 Intellectual Property Policy

It is the policy of the Department to:

- Protect its intellectual property rights by properly documenting and, when appropriate, formally registering intellectual property created or acquired by the Department. (Section 0906.1 provides policies and guidelines for the proper documentation of photographic materials owned by the Department.)
- Protect its intellectual property against unauthorized use, whether intentional or unintentional, by individuals or organizations, to the extent practicable.
- Obtain ownership or appropriate license rights to intellectual property created pursuant to contracts between the Department and third parties.
- Grant licenses for use of material copyrighted by the Department when it furthers the mission and goals of the Department and benefits the public. Copyright licensing should be consistent with providing maximum protection of the integrity of the copyrighted

material while allowing public access and use under the appropriate conditions. (For more information on copyright licensing, including forms, see Section 0907.2.3)

- Grant licenses for use of the Department’s trademarks only when appropriate to promote the public’s recognition of products and services associated with the Department, and increase the Department’s visibility while also protecting the integrity of the Department, its goals and mission. (For more information on trademark licensing, see Section 0907.2.3)
- Avoid infringing on intellectual property rights owned by others. The Department should use its best efforts to document ownership of copyrights in connection with materials in the Department’s possession and seek permission for use of material in which the Department does not own the copyright when required by the applicable laws. (For more information on the use of intellectual property owned by outside entities, including forms, see Section 0907.4)
- Require that any person or entity using copyrighted material obtained from the Department take full responsibility for avoiding any infringement resulting from that use. Where the Department does not own the copyright for the material it provides, the Department should notify the prospective user, and it will be the user’s responsibility to obtain a license from the appropriate source.

0907.2 Department-owned Intellectual Property

Generally, the Department owns the rights to all intellectual property created by employees in the scope of their employment; by volunteers who create property on volunteer time and have a current, signed Volunteer Service Agreement; by contractors; and by cooperating associations. In these instances, the product is considered a work made for hire and the copyright is owned by the Department unless there is a separate written agreement that specifies otherwise. Thus, the Department generally owns the intellectual property rights to works created by its employees, volunteers, and contractors within the scope of their employment, agreement or contract.

0907.2.1 Department-owned Intellectual Property Policy

All volunteers shall have a written agreement in place that clearly delineates the Department’s ownership of the copyright in works created by the volunteer within the scope of his assigned volunteer duties. (The standard DPR volunteer services agreement has a boilerplate provision covering intellectual property; if the language in this agreement is

amended, it must be approved by the Chief of the Interpretation and Education Division.)

Department contracts for services with a third party that involve production of creative works shall include an explicit agreement that the products of the contract are intended to be works for hire and that the Department will be the owner of the copyrights to the created materials. This language appears in the Department's standard services agreement.

0907.2.2 Notice of Copyright and Trademark Policy

To protect a copyright, notice of copyright shall be placed on publicly distributed copies of the copyrighted material. This notice must include the copyright symbol (©), followed by year of first publication and the name of the copyright owner (and the month and year of last revision if applicable). For example, © 2000 California State Parks (rev. 12/04). In lieu of using the copyright symbol (©) the word "Copyright" or the abbreviation "Copr." may also be used. It is important to maintain the year of first publication in the copyright line (rather than replacing it with a new year each time an item is reproduced) in order to protect the Department's ability to enforce its ownership of a copyright.

The registration symbol (®) shall be used in connection with each use of registered trademark logos unless it is infeasible from a design or fabrication standpoint (such as for patches or decals). Alternatively, if the registration symbol is not used at all (for design reasons, for example), a statement that the name or design is a registered trademark of the California Department of Parks and Recreation, registered with the U.S. Patent and Trademark Office, may be used somewhere on the material (e.g., on copyright page, on credits screen, at bottom of panel) to provide notice of registration. For registered trademarked names, however, it is not necessary to use the symbol with every subsequent use of the trademarked name in/on the same material once the name has initially appeared with the symbol (or, as stated above, a statement is made somewhere in the material that the name is a registered trademark). The "™" symbol shall be used to designate trademarks that are in the process of being federally registered.

0907.2.3 License Agreements for Department-owned Intellectual Property

Both trademarks and copyrights can be licensed for use by non-Departmental persons or entities. Use of Departmental intellectual property displayed on a website or in any other electronic medium is subject to the same licensing requirements as any other use of intellectual property.

0907.2.3.1 License Agreements for Department-owned Intellectual Property Policy

The Department shall require that any person or entity using copyrighted material obtained from the Department take full responsibility for avoiding any infringement resulting from that use. Where the Department does not own the copyright for the material it provides, the Department will notify the prospective user, and it will be the user's responsibility to obtain a license from the appropriate source. (The DPR 990 and 990A forms both contain language that addresses this requirement.)

Forms DPR 990 and 990A shall be used to license use of copyrighted materials by external entities. If the standard language in either of these forms is customized in order to allow for different use than the standard language allows, the customized form must be reviewed and approved by the Department's Legal Office prior to signing. Copyright license agreements must be signed by the District Superintendent (or Division Chief for Headquarters units) or his or her designee, and a copy of each agreement must be sent to the Interpretation and Education Division for filing. Alternate forms provided by an outside entity may not be used nor signed by the Department unless they have been reviewed and approved by the Legal Office.

Districts and other Department offices shall not grant trademark licenses without first consulting with the Legal Office. For use of the Department logo, all external entities must obtain written permission from the Chief of the Interpretation and Education Division, documented by an appropriate license agreement, unless the license is being granted as part of a contract that includes the Department's standard language for logo/trademark use, such as the standard cooperating association contract or concessions contract. Copies of all trademark licenses and contracts/agreements with language that licenses use of Department trademarks must be sent to the Interpretation and Education Division for filing.

The Department may charge licensing fees for use of its intellectual property by outside entities. General questions about license fees may be directed to the Interpretation and Education Division. For specific questions, or to put in place a policy of charging license fees, consult with the Legal Office. When the licensee has made some contribution towards the creation of the intellectual property, the Department does not normally charge license fees.

0907.2.4 Department-Owned Visual Media

To allow greatest use of visual resources, employees may copy Department-owned materials for distribution. Whenever copies of photographs, digital images, etc. are made or provided, documentation on the materials must be transferred to the copies. See policies above on requirements for licensing use of intellectual property (which includes visual media) by entities outside the Department and information below on the use of the DPR 993 form when distributing copies of visual media within the Department.

0907.2.4.1 Department-Owned Visual Media Policy

When copying images for which the Department holds copyright, staff members shall transfer the following minimum information from the original to the copy:

- Original photographer's last name and first initial
- Park name or location
- Date photograph was taken (as specific as possible)
- Primary subject matter (determined by original photographer)

Duplication of visual materials from the Department's Photographic Archives requires the completion of the DPR 108 Photographic Work Request form, with appropriate approval by the District Interpretive Coordinator or designated staff member.

0907.3 Intellectual Property Developed by a Cooperating Association

The copyright for original works of authorship created with the joint resources of a cooperating association and the Department may be owned by the Department, the cooperating association, or both. Sole ownership by the Department is preferable. Standard default language protecting the Department's intellectual property rights is included in all cooperating association contracts.

0907.3.1 Intellectual Property Developed by a Cooperating Association Policy

Any changes to the cooperating association standard contract language in relation to intellectual property rights must be approved by the Department's Legal Office. In special situations where a copyright is to be owned by a cooperating association and the Department needs to have the ability to use the work, the Department shall strive to obtain a license from the association for the Department's convenient use of the material.

0907.4 **Intellectual Property Not Owned by the Department**

The Department often uses intellectual property owned by external entities. In order to do so, the Department must secure written permission to use the material from the individual or organization/agency that owns the intellectual property rights to the material; this includes videos the Department would like to show in specific parks. In some cases, it may not be possible to secure permission for use due to an inability to locate or determine the owner of the material. If this is the case, a thorough search shall be conducted using all available sources of information (Internet, libraries and repositories, word of mouth, etc.), and written documentation of the research conducted in trying to locate or determine the owner must be retained with the files for the project where the material is to be used.

It is important to note that “use” of intellectual property in relation to the policies below includes public performance. These policies therefore apply to any playing of music in state parks or showing of videos or other media.

0907.4.1 **Intellectual Property Not Owned by the Department Policy**

The Department shall make a good faith effort to identify the copyright owner of material it is seeking to use. If, after making this effort, the Department is unable to identify or locate the copyright owner, the material may be used. In these instances, all documentation regarding research conducted to identify and locate the copyright owner shall be retained with the master file for the project in which the material was used.

Employees and volunteers who have created intellectual property on their own time, using their own equipment, and requiring no special access to locations, resources, or facilities, may license material for use by the Department. In such instances, a written license agreement must be executed, and credit given as specified in the policies below. Employees and volunteers seeking to retain ownership of intellectual property created on their own time, using their own equipment, and through no special access must follow all rules and regulations required of any member of the general public (e.g., obtain the necessary permit from the California Film Commission for filming and commercial photography on State property). Additionally, employees must ensure they meet the criteria contained in the Department’s Conflict of Interest and Incompatible Activities policies (see DAM 0200, Incompatible Activities, and DAM 1500, Labor Relations).

DPR 992A, Copyright License Agreement, shall be used for material the Department would like to use but for which the copyright would be retained by the copyright holder. DPR 992B, Copyright Assignment Agreement, shall be used when the copyright holder is agreeing to transfer ownership rights to the Department. Forms or letters supplied by the intellectual property owner are also acceptable if they express the owner's permission to use said intellectual property and outline permitted Department uses, but should be reviewed by the Legal Office if they contain any requirements that cause concern, such as indemnification language. Copyright License Agreement forms shall be kept on file with the project or publication in which the material being licensed was used. Copyright Assignment Agreement forms shall be filed with the material being transferred to the Department. If the material is sent to another location in the Department, a copy of any such forms shall accompany it.

The Department shall obtain from the copyright owner completed release/consent documentation whenever the material it seeks to use features identifiable images or likenesses of members of the public. The documentation provided by the copyright owner shall be retained with the file for the project in which the material is being used.

0907.5 Credits for Intellectual Property Policy

Listing credits for Department-owned intellectual property created by employees, volunteers or contractors shall be determined by the District Superintendent (or Headquarters Division Chief) or his or her designee. Issues that should be taken into consideration include whether there is a clear author or creator of the intellectual property (as opposed to a team of people), whether space allows for credits given the nature of the product in question, and whether the location of credits will affect the overall design and appeal of the product.

Credit must be given for use of intellectual property owned by external entities. Usually, such credit is requested by the owner, who specifies the language to be used—generally either “Courtesy of [name of owner]” or “© [date of creation, if provided and applicable] [name of owner].” Ordinarily such language is used next to or below the material being used (such as for a photograph), or is listed on a copyright page, credit screen of a video, or bottom of an interpretive panel. In relation to listing the name of the intellectual property owner, be aware this may be either an individual's personal name, or the name of a business, organization, or agency. However, additional information such as logos and website addresses (unless the website address is itself the name of a business), shall not be included.

0907.6 Copy Equipment Posting Policy

In order to assist in the implementation of the Department’s intellectual property policies, and in accordance with the American Library Association’s recommendation, the following language is required to be posted at all copy equipment throughout the Department: “The Copyright Law of the United States (Title 17 U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this material is liable for any infringement.”

0907.7 Department Name Policy

California State Parks is the approved name to use for the Department. When used to refer to the Department, this name is used in the singular and is grammatically correct with singular verbs (for example, “California State Parks manages a wide array of natural and cultural resources”). This name should not be prefaced with the article “the” (for example, “California State Parks provides educational opportunities for young and old alike” is correct, while “The California State Parks manages a number of grant programs for local park districts” is incorrect). Previously created signs, publications, videos, etc., that feature other Department names are acceptable only until such time as they are replaced. All new material should use the current “California State Parks” name as detailed in this notice.

Depending on individual circumstances, the use of the term “the department” or “the Department” may be appropriate (such as in operational documents, plans and reports) and is allowed after the name California State Parks has been introduced in a document. The decision as to whether to use the lowercase “department” versus the capitalized “Department” is at the discretion of the office preparing the document in question, but whichever option is chosen, it must be used consistently throughout the document.

Alternative names should not be used except under the following specific circumstances:

- *California Department of Parks and Recreation* - This is the legal name of the Department, and should be used in situations where the legal name is called for (for example, references in state codes and regulations, legal documents such as contracts, court filings, administrative filings, official documents, etc.).
- *California State Park System* - This name collectively refers to all of the classified and unclassified park properties managed by the Department. It should only be used in circumstances when all parks are being referred to as a collective unit and the use of the name California State Parks is not appropriate (for example, “The

California State Park System serves visitors from throughout the world.”). The term “California’s state parks” can be used as an alternative to refer to the units that make up the California State Park System, and in such an instance, the words “state” and “parks” would not be capitalized.

0907.8 Department Logo Policy

It is the policy of the Department that the Department logo should be displayed on all products produced by or copyrighted to California State Parks, wherever practical, to build the strongest possible visibility and recognition for the Department and its resources, services, products and personnel. Where appropriate, this will be done in conjunction with approved individual unit marks/logos. The Department logo shall be used in/on publications, web pages, audio-visual programs, letterhead, envelopes, business cards, mailing labels, fax coversheets, press releases, vehicle and equipment decals, signs and panels, State Park passes, and other such products and property as might be appropriate. Previously created signs, publications, videos, etc., that feature old Department logos are acceptable only until such time as they can be replaced.

When Department offices, or individual employees, are having the logo embroidered or screened onto fabric, a sample must be sent to the Chief of the Interpretation and Education Division for review and approval before production unless the work is being done by a pre-approved vendor (vendor list available from the Interpretation and Education Division). It is strongly advised that a mock-up of the intended use of the logo be sent to the Interpretation and Education Division before a sample is made in order to avoid incurring costs for a use that may not be approved.

Use of the logo is restricted to Department publications and activities, unless the Department allows otherwise. Use of the logo by external entities, including cooperating associations and concessionaires, must not be allowed unless the association created through use of the logo is consistent with promoting the goodwill of the Department and the Department’s goals. When the logo is used by an external entity, the following policies apply:

- A written license agreement must be executed by the Department and the third party entity, confirming the terms and conditions of use. This may be incorporated into an existing agreement (e.g., concession and cooperating association contracts, donor agreements, memoranda of agreement or understanding) or may be crafted as a separate license agreement. Agreements that incorporate logo

license language must be reviewed and approved by the Legal Office prior to approval. Copies of all such agreements must be sent to the Interpretation and Education Division for permanent retention.

- Once an entity has been licensed, advance approval must be obtained before each specific use of the logo. For entities using the logo under a stand-alone license agreement, that approval must come from the Chief of the Interpretation and Education Division, or his or her designee. For entities using the logo under language contained in a valid contract or other written agreement (such as a Memorandum of Understanding or Memorandum of Agreement), approval must come from the California State Parks employee responsible for administering that contract or agreement, or his or her designee.
- The logo shall not be the most prominent design element (unless the license agreement states otherwise, such as when the logo is used on uniforms and merchandise).
- The logo shall not be used in a manner that implies editorial content has been authored by or represents the views or opinions of the Department.
- The logo shall not be used in any venue that displays adult content, promotes gambling, involves the sale of tobacco or alcohol, or violates applicable law.
- The logo shall not be used in a manner that is determined by the Department in its sole discretion to be misleading, defamatory, infringing, libelous, disparaging, obscene, or otherwise objectionable.

0907.8.1 Specific Logo Use Policies

It is the policy of the Department that:

- Because the logo is a trademark registered with the U.S. Patent and Trademark Office, the registration symbol ® must be used in connection with each use of the logo unless it is infeasible from a design or fabrication standpoint (such as for patches or decals). The ® registration symbol must now be used instead of the trademark symbol ™ that had previously accompanied the logo before it was registered. Versions of the logo with the ™ symbol may no longer be used.
- Logo components may not be altered, and the components of the logo may not be used separately. For instance, the bear cannot be used alone or replaced with another element and/or the lettering cannot be used without the bear or replaced with different words.
- The logo may not be used to create other, new logos.

- The logo must always appear clear and crisp.
- The logo may not be tilted, skewed, or distorted.
- To maintain clarity, the logo must be a minimum of 5/8” in diameter.
- The logo may be reproduced only from camera-ready proofs or electronic printing files. It may not be redrawn or traced.
- Due to its low resolution, the logo may not be downloaded and printed from the Department’s website.
- The logo may not be cropped, overprinted, screened, superimposed, or printed behind art or copy.
- To make sure the logo stands out clearly, it must be placed within an area of unobstructed space. This also applies to the placement of the logo relative to the edge of a page or screen. There are two ways to determine the clear zone around the logo:
 - The space must be the “I” height of the type in the word “CALIFORNIA” in the logo.
 - The space must be approximately 1/8 of the diameter of the logo. For example, if the logo is 2 inches in diameter, then the clear zone would measure 1/4 of an inch.
- The full-color logo may not be converted to grayscale. Instead, the black-and-white version of the logo must be used.
- The full-color logo may not be copied on a black ink photocopier (except in the case of providing printouts of presentations that use the color logo). Instead, the black-and-white version of the logo should be used.
- The logo, in both full-color and black-and-white, may be used on colored paper, backgrounds, and fabrics.
- When printing in less than four colors, only the black-and-white version of the logo may be used. When printing in more than one color, the logo must be printed in the darkest color available.
- When embroidering the logo or screening it onto fabric, the full-color version may be used, or the black-and-white version of the logo can be reproduced in any single color.
- Except in the case of printing, screening, or embroidering the logo in one color as specified in the policies above, the logo colors may not be added to, changed or altered.
- Exceptions to the policies above must be approved by the Chief of the Interpretation and Education Division.

Appendix E: Visual Media and Photograph Documentation

Visual Media Consent Form (DPR 993)

The California Civil Code protects the rights of individuals to control the use of their likenesses (§ 3344), and regulates the collection of personal information (§1798.17) and the disclosure of personal information collected (§1798.24). To protect the Department and avoid the violation of any publicity or privacy rights regarding display or use of visual media featuring members of the public (e.g., still photography, digital photography, video footage, etc.), the Department has developed the DPR 993, Visual Media Consent Form.

The completed DPR 993 form allows the Department to use images of identifiable members of the public as broadly as possible, in brochures, exhibit panels, public reports, videos, webpages, etc. A signed DPR 993 also allows the Department to freely distribute such images to external entities. Distribution of an image to an outside entity also requires the completion of an appropriate licensing agreement to protect the Department's intellectual property rights (see pages 13-14). There are some instances, such as at public events, when a DPR 993 form may not be required (however, be aware this may also limit the types of ways the image can be used). If you are interested in learning more about whether the DPR 993 form requirement may be waived for your particular situation, contact the Department's Legal Office.

Whenever an image features a member of the public in a recognizable manner, there should be a corresponding signed and completed DPR 993 on file in order to freely use the image. Because these forms should be completed and signed at or before the time the media is created, multiple blank copies of the DPR 993 should be carried in the field whenever the creation of visual media may capture members of the public and display them in a recognizable manner.

Completed forms must be retained with the original version of the media itself (unless the media is a digital photograph or the signatory is a registered volunteer; see below), must be filed in an organized and secure manner, and should reference the unique image number given to the image itself, if applicable (see below for instructions on documenting and numbering images taken by Department employees). Copies of completed consent forms must be sent along with the corresponding images when they are distributed to other units within the Department. Because the form contains confidential information, copies SHALL NOT accompany images when said images are provided to external agencies or entities.

Digital images must be printed, labeled, and filed in a secure manner, and any corresponding 993 forms must be stored with the printed images.

Completion of the DPR 993 form is not required for images of Department employees. Registered volunteers, however, must complete and sign a DPR 993 form in order for their likenesses to be used. For this reason, the DPR 993 form should be signed by each volunteer, ideally at the time they complete other volunteer paperwork, and kept on file with the Volunteer Services Agreement.

Photograph Documentation

Photographic materials (defined as images and collections of images) and the rights to use those materials represent an asset to the Department and public and must be protected. Documenting ownership rights is the primary step in protecting these assets.

The forms of photographic materials that should follow these policies include:

- Original and duplicate slides
- Prints
- Negatives
- Digital (still and video) images
- Video tapes and film
- Forms of photographic materials whose media format may be based on the development of future technologies

Policy

It is the policy of the Department to include the following five types of information, when possible, in order to document photographic materials:

- Photographer's last name and first initial;
- Park name or location;
- Date photograph was taken (as specific as possible);
- Primary subject matter (determined by photographer); and
- Names of individuals, if any, depicted in the image (should be noted and kept with photo releases on file)

It is the policy of the Department to document photographic material created by the Department in order to preserve use rights, to protect against unauthorized use, to allow for copyright registration where appropriate, and to facilitate licensing for third party use.

Photo Documentation Numbering

Each division/district maintaining photographic materials collections is encouraged to establish a photo numbering system as a means to link documented photos and their

related information. We suggest using the originating unit's number followed by a photograph number (for example, for Red Rock Canyon State Park, 577-0001).

For more information regarding photograph documentation, contact the Department's Photographic Archives at 916 375-5933 or photoarc@parks.ca.gov.

Appendix F: Commercial Photography and Filming in Parks

The California Film Commission is responsible for issuing permits to allow external entities to film or take still photographs in state parks for commercial purposes. Those entities should, where appropriate, include recognition in their credits of the Department and of the specific park units where the filming or photography occurred. For more information on photography and filming in parks, visit www.parks.ca.gov/filmproduction (from which the information below was excerpted) or see the Department handbook, “Guidelines for Filming in California State Parks.”

Definition of Commercial Filming

Photography within State Parks falls generally into seven categories, five of which are defined as commercial and generally subject to permitting requirements. Permits for these five categories are issued by the California Film Commission following submission of DPR 245A and approval by the park district where filming is to take place. These are:

Documentary Photography

Whether still, motion picture or video, documentary filming may be permitted through the use of the same forms and procedures used for commercial photography. Permit requirements for documentary photography may be waived at the discretion of the District Superintendent or his/her designated representative. An example of a situation justifying waiver is a film project done in conjunction with the Department or in which the Department realizes a direct marketing or other benefit. Insurance requirements must be met even when permit requirements are waived.

Public Service Announcements

Permit requirements for the filming of television public service announcements on behalf of nonprofit organizations or other governmental agencies may be waived by the District Superintendent or his/her designated representative. Insurance requirements must be met even when permit requirements are waived.

Student Photography

Individual or group student photography is conducted for the purpose of educating or providing supervised experience to persons learning photography methods. Student photography may be permitted through the same forms and procedures used for commercial still motion picture or video photography. As with documentary

photography, permit requirements for student photography may be waived by the District Superintendent or his/her designated representative. Insurance requirements must be met even when permit requirements are waived. Since individual students may find it difficult to obtain required insurance, it is recommended that the permit be issued to the school and the student. A letter is required certifying that the individual is a student of the school providing the insurance, and that the film is being done as part of the curriculum.

Commercial Still Photography

This category covers photography for sale or profit aside from filming for motion pictures or television. Such photography may be permitted after appropriate application and required insurance. Commercial still photography permits are handled in the same manner as commercial motion picture, video and television photography.

Commercial Motion Picture, Video and Television Photography

This category covers all photography for sale or profit utilizing motion pictures, videotape, or other imaging media, including theatrical motion pictures, shorts, television programs, commercials, etc. It may be permitted after appropriate application and securing required insurance.

Photography That Does Not Require a Permit

Personal Photography

Photography for personal purposes is to be encouraged as a means of enhancing visitor enjoyment and extending the benefits and influences of recreational experiences. Personal photography by park visitors, whether still, motion picture or video, is allowed without specific clearance or authorization under the following conditions:

- Department of Parks and Recreation rules and regulations must be complied with at all times and normal use fees paid.
- There must be no interference with other park visitors' use and enjoyment of the park.
- Professional props and/or sets, actors or professional models, or specialized or large motorized equipment will not be used.
- Photography will take place during the normal hours that the park is open to the public.
- No disturbance or rearrangement of any park facility or feature will be allowed.

News Media Photography

No permit is required for news agencies in the process of gathering breaking news for television broadcast or print media. Such coverage will be with the concurrence of and under the supervision of the District Superintendent or his/her designated

representative. The Deputy Director for Communications shall be advised of all significant news media photographic activity. Filming or photography for other news media (such as "magazine" formats and delayed broadcast feature programs) may require permits. Permits may also be required for still photography done in conjunction with feature or editorial print articles. A Department staff person or docent will be made available to assist with, and provide interpretive information for, such editorial and feature photographic shoots or filming projects. Where possible, that staff person will serve as a District's Field Media Liaison.

Appendix G: Museum Collections

The following information has been excerpted from DOM Chapter 2000, Museum Collections Management. For more information regarding museum collections, refer to that chapter or contact the Archaeology, History, and Museums Division.

Since 1891, when Sutter's Fort Pioneer Museum was given to the people of California, the State of California has been responsible for the management of museum objects. Over the years, museum collections have grown through the acquisition of other historic sites and structures; through gifts from individuals, families, and institutions; through purchases for special projects; and through archaeological and scientific investigations conducted on park properties. Today, several million museum objects are displayed or stored in more than 115 units of the State Park System, including headquarters facilities. Each museum object or collection has associated intellectual property rights.

Legal Title

Title to all objects acquired for museum collections shall be obtained free and clear without restrictions as to use or future disposition.

A legal instrument of conveyance describing the objects involved and identifying their source shall accompany all acquisitions. Gifts will be documented in duplicate with original signatures on approved DPR forms that are retained permanently in two locations: the park and State wide Museum Collections Records (see DOM 2010.8.1). The DPR 925, *Deed of Gift*, is the legal document that conveys title from the donor to the Department of Parks and Recreation. It documents two actions: the gift by the donor and its acceptance by the Department. The *Deed of Gift* documents the transfer of ownership of specific objects, not the physical transfer of those objects into DPR's possession. The *Deed of Gift* is a simple document but, if executed incorrectly or incompletely, can result in the Department's ownership of the objects being called into question.

Objects acquired through circumstances other than gift or purchase (e.g., found on site) shall be documented with a description of the objects involved and the circumstances identifying them as Department property.

Intellectual Property Rights

Museum objects, archival materials, photographs, and other cultural properties held by the Department have intellectual property rights associated with them. Typically, these include the following copyrights:

- The right of reproduction (i.e., to make copies of the work in any form).
- The right of distribution (i.e., to distribute copies for sale, loan, or rental).
- The right of adaptation (i.e., to create a new work based on or use a portion of the original).
- The right of performance (i.e., to perform the work publicly).
- The right of display (i.e. to exhibit the work publicly).

Some, none, or all of these rights may be owned by the Department or by others. In addition, there may be trademarks or other intellectual property rights that may be considered on a case-by-case basis.

It is the responsibility of the Superintendent, in consultation with a Museum Curator or other persons knowledgeable about the legal status of such properties, to ensure that Department-owned intellectual property rights associated with the museum objects under his or her jurisdiction are protected, and are used in concert with the mission of the Department, the purpose of the park holding the objects, and any applicable laws.

Study Copies

Superintendents may make available photographic copies of museum objects (including artifacts as well as library and archival materials) under his or her jurisdiction for research and may charge a fee equivalent to the cost of providing the copies. All study copies will be stamped or affixed on the reverse side with a disclaimer indicating that the copies are for study purposes only, and that permission from copyright holders may be required for other uses.

Department staff shall not provide photocopies to others if such action would violate a copyright law.

Licensing Department-Owned Intellectual Property Associated With Museum Objects

The Superintendent may license (i.e., grant permission to) individuals or groups for the non-exclusive use of a Department-owned intellectual property right associated with a museum object under his or her jurisdiction on a case-by-case basis. He/she

may charge a fee for such use, provided that all of the following factors are taken into consideration:

- The potential for furthering the educational goals of the Department or the park through products and services offered by non-Department sources.
- The security of the objects to be photographed, imaged, replicated, or otherwise used.
- The redirection of staff time away from the care of the collections and/or other public services to accommodate the use request.
- The quality and accuracy of the product or service for which the use is requested.
- The financial value of the specific intellectual property right licensed.
- The public image of the Department.

Licensing for exclusive use requires the approval of the Deputy Director of Park Stewardship.

Site-Specific Policies and Procedures

Superintendents may adopt site-specific policies concerning intellectual property rights associated with museum objects that are in addition to and agreement with the statewide policies described in this section.

Superintendents may delegate authority for granting non-exclusive use of intellectual property rights to a designated staff member, provided written site-specific procedures are in place and include notification to the Superintendent of all licenses granted.

Appendix H: Sample Forms

The following seven pages represent mock samples of the following department forms:

- 990 - License/Permission for Use of Materials (Film Production)
Copyrighted images and video for use in documentary film, reproduction fees only
- 990A - License/Permission for Use of Materials
Copyrighted images, reproduction and use fees
- 990A - License/Permission for Use of Materials
Public domain image, no fees
- 992A - Copyright License Agreement
Use of photographic image, no copyright registration number
- 992B - Copyright Assignment
Copyright transfer for painting, with copyright registration number
- 993 - Visual Media Consent Form
Adult
- 993 - Visual Media Consent Form
Minor

LICENSE/PERMISSION FOR USE OF MATERIALS (Film Productions)

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

PRODUCER'S NAME
John D. Doe Productions, Inc. hereafter called the "Requester."

NAME OF PRODUCTION
State Parks in America hereafter called the "Production."

Subject to the terms and conditions of this Agreement, the California Department of Parks and Recreation (the "Department") grants permission to use certain materials (the "Material") identified as follows:

**Film clips from Hydraulic Gold Mining video (© California State Parks, 1973) (time codes 10:51-11:08 and 12:15-12:20); and
Photograph 090-S17747 (Anza-Borrego Desert SP, © California State Parks, 1978); and
Photograph 090-S25847 (Tomales Bay SP, © California State Parks, 1998)**

The Department hereby grants to the Requester for use in the Production the non-exclusive, non-transferable, non-sublicenseable right and license to incorporate the Material into the Production; and to use, reproduce, duplicate and distribute the Production, pursuant to the terms and conditions of this license. Requester shall own all right, title and interest in and to the Production; provided, however, that the Department shall retain all right, title and interest in and to the Material provided hereunder.

This license granted hereunder shall not extend beyond the Production, in the following mediums:

To be aired on broadcast and cable television, and produced for home video (limited to 25,000 copies VHS and 25,000 copies DVD)

Any additional use shall require written permission and/or the payment of fees. This permission is non-transferable and non-sublicenseable. This is not an exclusive privilege to the user, and the Department reserves the right to make the Material available to others.

One copy of any published work using the Material provided by the Department must be provided to the Department at no cost to the Department unless agreed otherwise in writing. Requester shall not modify or alter the Material in any way without prior written approval from the Department.

All Material reproduced in a publication, film, media presentation, exhibit or otherwise must be credited as "**© [see dates above], California State Parks**" or "~~Courtesy of California State Parks, [date].~~"

IN NO EVENT SHALL THE DEPARTMENT BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT. THE DEPARTMENT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PERMISSION TO USE THE MATERIAL IS GRANTED "AS IS."

Requester assumes all responsibility for investigating and avoiding any possible infringement of copyright laws or reproduction rights, and any and all other third party intellectual property rights, that may arise from the reproduction or publishing of the Material and/or derivative works. Further, Requester agrees to indemnify, protect, hold harmless, and defend the Department from and against any liability that might arise from any and all use of the Material by Requester, its licensees, successors or assigns.

Requester agrees to pay the Department, upon acceptance of this agreement, and prior to delivery of the Material, all expenses as follows:

\$40.00 Reproduction fee for two (2) high-resolution images @ \$20.00 / image

\$40.00 Reproduction fee for one (1) DVD copy of video @ \$40.00 / DVD

Usage fees waived

AGREED AND ACCEPTED

State of California Department of Parks and Recreation		REQUESTER John D. Doe Productions, Inc.	
BY ▷	DATE	BY ▷	DATE
PRINTED NAME OF PERSON SIGNING C. S. Parks		PRINTED NAME OF PERSON SIGNING John D. Doe	
TITLE State Park Interp III	DISTRICT/SECTION Interp and Education Div	TITLE Producer	
PHONE NO. 916 653-0768	EMAIL jsaunders@parks.ca.gov	PHONE NO. 415 555-1234	EMAIL jddoe@anywhere.com

LICENSE/PERMISSION FOR USE OF MATERIALS(General)

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

REQUESTER NAME
Friends of History Publishers, Inc. hereafter called the "Licensee."

Subject to the terms and conditions of this Agreement, the California Department of Parks and Recreation (the "Department") grants permission to use certain materials (the "Material") identified as follows:
090-S496 (file name, "S496_AnzaBorrego_wildflowers.tif") and 090-S17747 (file name, "S17747_AnzaBorrego_sunset.tif").

The Department hereby grants to the Licensee the non-exclusive, non-transferable, non-sublicenseable right and license to use, reproduce, duplicate and distribute the Material pursuant to the terms and conditions of this license. Licensee shall own all right, title and interest in and to the new works created; provided, however, that the Department shall retain all right, title and interest in and to the Material provided hereunder.

This license granted hereunder shall not extend beyond the following use, in the following mediums:
Use of Material in interior of book titled, California: An Environmental History (the "Publication"), English and Spanish language versions, total print run not to exceed 100,000 copies. Upon completion of the Publication, the Licensee shall ensure that all electronic copies of the Material are deleted from the Licensee's company/organization hard drives and/or temporary electronic storage formats as well as those of any sub-contracted company. Upon completion of the Publication, the provided CD-R may be retained by Licensee for internal reference use in connection with the Publication only.

Any additional use shall require written permission and/or the payment of fees. This permission is non-transferable and non-sublicenseable. This is not an exclusive privilege to the user, and the Department reserves the right to make the Material available to others.

One copy of any published work using the Material provided by the Department must be provided to the Department at no cost to the Department unless agreed otherwise in writing. Licensee shall not modify or alter the Material in any way without prior written approval from the Department.

All Material reproduced in a publication, film, media presentation, exhibit or otherwise must be credited as **"© 1978, California State Parks"** or **"Courtesy of California State Parks, [YEAR]"**

IN NO EVENT SHALL THE DEPARTMENT BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT. THE DEPARTMENT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PERMISSION TO USE THE MATERIAL IS GRANTED "AS IS."

Licensee assumes all responsibility for investigating and avoiding any possible infringement of copyright laws or reproduction rights, and any and all other third party intellectual property rights, that may arise from the reproduction or publishing of the Material and/or derivative works. Further, Licensee agrees to indemnify, protect, hold harmless, and defend the Department from and against any liability that might arise from any and all use of the Material by Licensee, its licensees, successors or assigns.

Licensee agrees to pay the Department, upon acceptance of this agreement, and prior to delivery of the Material, all expenses as follows:
\$40.00 Reproduction fees for two (2) high-resolution images @ \$20.00 / image.
\$80.00 Usage fees for two (2) images in the Publication, print run 100,000 copies @ \$40.00 / image.

AGREED AND ACCEPTED

State of California Department of Parks and Recreation		LICENSEE Friends of History Publishers, Inc.	
BY ▷	DATE	BY ▷	DATE
PRINTED NAME OF PERSON SIGNING Horace E. A'dache		PRINTED NAME OF PERSON SIGNING Kathleen Auff	
TITLE Musem Curator I	DISTRICT/SECTION Interp & Ed Div / Photo Archives	TITLE Senior Research Editor	
PHONE NO. (916) 457-3208	EMAIL headache@parks.ca.gov	PHONE NO. (123) 456-7890	EMAIL kauff@fhp.com

LICENSE/PERMISSION FOR USE OF MATERIALS(General)

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

REQUESTER NAME
Friends of History Publishers, Inc. hereafter called the "Licensee."

Subject to the terms and conditions of this Agreement, the California Department of Parks and Recreation (the "Department") grants permission to use certain materials (the "Material") identified as follows:
090-14458 (file name, "P14458_Bodie.tif").

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ITEM DESCRIPTION

Photograph of Angel Island with San Francisco in background (Image No. 10657)

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I am at least 18 years of age and have the right, ability and authority to enter this binding license agreement.

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▷		▷	
PRINTED NAME OF PERSON SIGNING John D. Doe II		PRINTED NAME OF PERSON SIGNING C. S. Parks	
ADDRESS 1234 6th St		TITLE SP Interpreter III	DISTRICT/SECTION Interp and Education Div
CITY/STATE/ZIP CODE Beautiful Beach CA 94710		State of California Department of Parks and Recreation	
PHONE NO. 415 555-1235	EMAIL jddoe2@anywhere.com	PHONE NO. 916 654-2249	EMAIL interp@parks.ca.gov

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BY ▷	DATE	BY ▷	DATE
PRINTED NAME OF PERSON SIGNING Joseph P. Painter		PRINTED NAME OF PERSON SIGNING C. S. Parks	
ADDRESS 1234 5th St		TITLE State Park Interp III	DISTRICT/SECTION Interp and Education Div
CITY/STATE/ZIP CODE Bountiful Bay, CA 93945		State of California Department of Parks and Recreation	
PHONE NO. 619 555-1234	EMAIL jpainter@somewhere.com	PHONE NO. 916 653-0768	EMAIL interp@parks.ca.gov

5/21/1997

VISUAL MEDIA CONSENT

NAME OF PERSON CAPTURED IN VISUAL MEDIA (print)

Renee Espinoza

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SIGNATURE

PHONE NUMBER

▶ [signature of person appearing in image goes here]

(707) 555-6666

ADDRESS

CITY/STATE/ZIP CODE

1234 Make Believe Drive

Somewhere, CA 98765

IF THE ABOVE PERSON IS UNDER 18 YEARS OF AGE, A PARENT OR LEGAL GUARDIAN MUST COMPLETE THE FOLLOWING:

I am the parent or legal guardian of the person named above and I hereby sign this consent form on behalf such person in accordance with the statements above.

PARENT OR LEGAL GUARDIAN SIGNATURE

PRINTED NAME

PHONE NUMBER

▶

()

ADDRESS

CITY/STATE/ZIP CODE

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IMAGE NUMBERS

VISUAL MEDIA CONSENT

NAME OF PERSON CAPTURED IN VISUAL MEDIA (print)

Teresa Espinoza

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I understand and agree that I will not be paid for any use described above.

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SIGNATURE

PHONE NUMBER

► [minor does not sign this form]

(707) 555-6666

ADDRESS

CITY/STATE/ZIP CODE

1234 Make Believe Drive

Somewhere, CA 98765

IF THE ABOVE PERSON IS UNDER 18 YEARS OF AGE, A PARENT OR LEGAL GUARDIAN MUST COMPLETE THE FOLLOWING:

I am the parent or legal guardian of the person named above and I hereby sign this consent form on behalf such person in accordance with the statements above.

PARENT OR LEGAL GUARDIAN SIGNATURE

PRINTED NAME

PHONE NUMBER

► [signature of parent/legal guardian here]

Renee Espinoza

(707) 555-6666

ADDRESS

CITY/STATE/ZIP CODE

1234 Make Believe Drive

Somewhere, CA 98765

FOR DEPARTMENT USE ONLY

IMAGE NUMBERS

Appendix I: Sample Text

The following sample text may be adapted to request permission to use copyrighted material. Such a request may be sent as a formal letter or may be emailed or faxed to the copyright holder (if emailed, be sure to change the language about the “enclosed” form to instead reference an attachment that needs to be printed and signed).

I am writing to request your permission, as the owner of the copyright to [insert name or title of material], to use this material in [insert title or publication, video, exhibit, etc. and indicate type of item].

[Note: Use one of the two following paragraphs:]

We obtained the material from [insert location material was obtained from] and have it in a format suitable for our needs.

OR

Although we found the material at [insert location where material was found], it is not in a format suitable for our needs. Therefore, we are looking to obtain it as [insert format and any specifications related to format, such as size and resolution, here].

This [insert type of item in which material will be used] will be featured at/in [insert name of park here or indicate if it will be used statewide or on the web] and will be [indicate if item will be distributed/shown at no charge or if it will be sold, also indicate any other media the item will be reproduced in—for example, posted on internet]. We expect to publish the material in [insert date, such as month and year] and plan to use the material until [insert date here, or state material will be used in perpetuity].

As a State agency, our funds are obviously very limited and while we would expect to pay any reproduction fees needed to cover your costs, we hope you will be willing to waive (or lower) any license fees you may normally charge for such requests.

If you are willing to grant this request, please sign the enclosed form and return it to me at [insert your address here]. I will then have it signed and return a copy to you for your files (if you would like a copy with original signatures, please make a copy of the form, then print and sign both copies and send them to me).

Please also let me know how you would like the material to be credited.

Thank you for your attention to this request. If you have any questions about this request or the language on the enclosed form, please feel free to contact me at [insert phone number and/or email address].

The following sample text may be adapted to request information about locating a copyright holder. Such a request may be sent as a formal letter or may be emailed or faxed.

I am writing to request any information you may have about the owner of the copyright to [insert name or title of material here]. California State Parks would like to use this material in [insert title of publication, video, exhibit, etc. here and indicate type of item]. We would greatly appreciate any information you may have that can point us in the direction of the owner of the copyright to this material. Thank you for any assistance you can give us in this matter. If you have any questions, please feel free to contact me at [insert phone number and/or email address].

Appendix J: Sample Copy Equipment Posting

The following page may be used to meet the policy requiring posting of specific language near all department copy equipment.

The copyright law of the United States (Title 17 U.S. Code) governs the making of photocopies or other reproductions of copyrighted material.

The person using this material is liable for any infringement.



Appendix K: Resources

Books

Cheryl Besenjak. *Copyright Plain and Simple*. Franklin Lakes, New Jersey: The Career Press, 1997.

Stephen Elias. *Patent, Copyright and Trademark: A Desk Reference to Intellectual Property Law*. Berkeley, CA: Nolo Press, 1999.

Stephen Fishman. *The Copyright Handbook: How to Protect & Use Written Works*. 8th ed. Berkeley, CA: Nolo Press, 2004.

Lewis C. Lee and J. Scott Davidson. *Managing Intellectual Property Rights*. New York: John Wiley & Sons/Wiley Law Publications, 1993.

Lyman Patterson. *Copyright in Historical Perspective*. Nashville: Vanderbilt University Press, 1968.

Alexander Poltorak and Paul Lerner. *Essentials of Intellectual Property*. First edition. Wiley, 2002.

Edward Samuels. *The Illustrated Story of Copyright*. New York: St. Martins, 2001.

William Strong. *The Copyright Book: a Practical Guide*. Cambridge: MIT Press, 1999.

Timothy Lee Wherry. *The Librarian's Guide to Intellectual Property in the Digital Age: Patents, Copyrights, and Trademarks*. Chicago: American Library Association, 2002.

Peter Wienand, Anna Booy, and Robin Fry. *A Guide to Copyright for Museums and Galleries*. London: Routledge, 2000.

World Intellectual Property Organization. *Introduction to Intellectual Property: Theory and Practice*. Cambridge, MA: Kluwer Law International, 1996.

World Intellectual Property Organization. *WIPO Intellectual Property Handbook: Policy, Law and Use*. Publication No. 489 (E). Geneva: World Intellectual Property Organization, 2004.

Websites

Cal Poly San Luis Obispo. “Copyright Issues.”
lib.calpoly.edu/research/copyright/index.html

Caslon Analytics. “Intellectual Property Guide.” www.caslon.com.au/ipguide2.htm

Center for Intellectual Property and Copyright in the Digital Environment.
www.umuc.edu/distance/cip/

The Conference on Fair Use. “A Proposal for Educational Fair Use Guidelines for Digital Images.” 1996 Draft.
www.utsystem.edu/OGC/IntellectualProperty/imagguid.htm

Copyright Website. www.benedict.com

Crash Course in Copyright.
www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm

Laurence R. Hefter and Robert D. Litowitz. “What is Intellectual Property?” November 1999. www.copyright.gov/docs/mgm/Americans-reform.pdf

Peter B. Hirtle. “Copyright Term and the Public Domain in the United States.” Cornell University, 2005. www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

International Trademark Association. “Certification Marks.”
www.inta.org/index.php?option=com_content&task=view&id=179&Itemid=59&getcontent=1

Library of Congress, United States Copyright Office. www.copyright.gov

North Carolina State University, Scholarly Communication Center. “Tutorial Series.”
www.lib.ncsu.edu/dspc/tutorial/index.html#

Stanford University. “Copyright and Fair Use.” fairuse.stanford.edu/

United States Patent and Trademark Office. www.uspto.gov

World Intellectual Property Organization (WIPO). www.wipo.int