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April 11, 2006

Thomas M. Susman  
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Office of the General Counsel  
Smithsonian Institution  
P.O. Box 23286  
Washington, DC 20026

Re: Request for Showtime Networks Contract

Dear Sir or Madam:

I am writing on behalf of the Association of Research Libraries and the American Library Association to request a copy of the agreement between the Smithsonian and Showtime Networks, Inc. regarding the creation of Smithsonian Networks. While we know that the federal Freedom of Information Act does not apply to the Smithsonian Institution, under Smithsonian Directive 600 the Institution has determined as a matter of policy to follow that statute. The intent and spirit of the FOIA, as well as the mission of the Smithsonian, militates toward full disclosure of this document.

This agreement is not likely to fall within the FOIA's exemption for confidential commercial information. That exemption (5 U.S.C. § 552(b)(4)) requires a showing of the likelihood of substantial competitive harm to the commercial entity – a showing that is nearly impossible where, as here, there was no competition for the contract in the first place. Moreover, even if some small portion of the agreement would contain trade-secret-type data exempt from mandatory disclosure under the FOIA, the entire agreement would not qualify for nondisclosure.

The public interest in disclosure here is clearly high in light of the unique nature of the agreement and its potential impact on public accessibility of Smithsonian resources. Moreover, that the Smithsonian receives over 75% of its budget from taxpayer dollars – as the Director observed last year, “the Smithsonian receives nearly 80% of its financial resources from the American people through the federal government” – also strongly supports disclosure.

In light of the high level of current interest in this document and its potential significance to many segments of the public (not to mention likely congressional interest as well), we ask that you provide expedited treatment for this request. Since the requesting organizations are all nonprofit associations, we ask that any fees be waived. However, to expedite matters we are prepared to pay the costs of search and copying should a fee waiver not be granted. Please provide an estimate of costs if you expect fees to run over \$100.

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Thank you for your prompt consideration of this request. Feel free to call me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "T. M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman