



National Press Photographers Association

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Via Email

October 1, 2014

Thomas L. Tidwell
Chief, U.S. Forest Service
USDA, Forest Service
201 14th Street SW
Washington, DC 20250-1124

RE: Proposed Directive, FSH 2709.11, Chapter 40

Chief Tidwell:

The undersigned seventeen news organizations, photographers' organizations and First Amendment advocacy groups oppose the Forest Service's proposal to make permanent its interim directive on filming in the nation's wilderness areas. We are also troubled by the proposal to apply new criteria in deciding whether to issue a permit for filming in Congressionally-designated wilderness areas.

We are concerned by the proposed permanent directive's vague language and failure to make a clear distinction between still photography, film and videography for newsgathering purposes and "commercial" film and still photography. But even more disconcerting is the imposition of a permitting scheme for news-related photography or videography in the first place, especially when some of the criteria applicable to permits for Congressionally-designated wilderness areas in particular seem to have no relationship to maintenance of the actual wilderness areas and instead are more focused on ensuring films and photos convey a particular image or message.

While we appreciate your most recent statement that the "US Forest Service remains committed to the First Amendment," the language of the "provisions in the draft directive" does not make it clear that it does "not apply to news gathering or activities."

Additionally if the proposed directive "does not apply to news coverage, gathering information for a news program or documentary," as you state in your press release, will the Service still require such individuals or organizations to make application for a permit anyway? And if not, how will the Service determine whether "a project falls outside of that scope," thus triggering the permitting process?

You have stated that you take "First Amendment rights very seriously." But despite your assertion that "the directive pertains to commercial photography and filming only – if you're there to gather news or take recreational photographs, no permit would be required," representatives of the Service have previously deemed editorial/newsgathering photography and filming as being

commercial in nature under the current directive and in fact required a permit for such activity.

Of even greater concern is the fact that a permit could be arbitrarily denied because a member of the Service with such authority might believe that a news story did not comport with the vague notion of protecting “wilderness values.” Again, this seems particularly likely where Congressionally-designated wilderness areas are concerned.

We contend the proposed permanent policy limits far more speech than is necessary to achieve the government’s stated purpose. Not only does requiring a permit for ordinary newsgathering create a chilling effect on freedom of speech and of the press, but also granting the Service the ability to deny such a permit in the case of a journalist or news organization would, we believe, create an unconstitutional licensing obligation or – worse – a prior restraint on those newsgathering activities.

Further, we are concerned not just for individuals traditionally identified as newsgatherers, but also for freelance visual journalists and members of the public who may use cameras on a speculative basis to photograph or film activities on public lands without having an assured media outlet for their work.

The proposed policy’s language regarding payment somehow transforms a visual journalist’s work for editorial photography (even on speculation) into a commercial venture. Therefore, we strongly urge the Forest Service to include us in any public meetings and then continue to work closely with us to craft an unambiguously worded policy that protects not only our natural resources but our First Amendment guarantees.

Thank you very much for your time and attention in this matter. We look forward to your response.

Sincerely,

Mickey H. Osterreicher

Mickey H. Osterreicher
NPPA General Counsel

On behalf of:

American Photographic Artists
American Society of Media Photographers
American Society of News Editors
Associated Press
Associated Press Media Editors
Associated Press Photo Managers
Association of Alternative Newsmedia
Digital Media Licensing Association
National Federation of Press Women

National Newspaper Association
National Press Club
Newspaper Association of America
North American Nature Photography Association
Radio Television Digital News Association
Reporters Committee for Freedom of the Press
Society of Environmental Journalists
Society of Professional Journalists