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United States Government Accountability Office  
Washington, DC 20548

B-303495.2

February 15, 2005

The Honorable Tom Davis  
Chairman, Committee on Government Reform  
House of Representatives

The Honorable Mark Souder  
Chairman, Subcommittee on Criminal Justice, Drug Policy,  
and Human Resources  
Committee on Government Reform  
House of Representatives

Subject: *Reconsideration of B-303495—Office of National Drug Control Policy  
Prepackaged News Stories*

This responds to your January 19, 2005, letter in which you expressed your concerns and disagreement with our recent opinion, B-303495, Jan. 4, 2005. In B-303495, we concluded that the Office of National Drug Control Policy's (ONDCP) use of appropriated funds to produce and distribute prepackaged news stories that were part of video news releases (VNRs) violated the prohibition on the use of appropriated funds for publicity or propaganda purposes.<sup>1</sup> You asked that we withdraw our opinion and reconsider its analysis because it (1) is inconsistent with ONDCP's express authorization to conduct a media campaign, (2) ignores the independent intervening decisions of news organizations to disseminate that information as their own, and (3) does not distinguish between deliberate concealment of source by the government from the news media and the subsequent concealment of the source from the public by the news media. We carefully considered the points you raise in your letter but, for the reasons stated below, we do not believe it is appropriate to withdraw B-303495 and stand by that legal opinion.

At the same time, it is important to clarify the focus of the analysis in B-303495. First, since the publicity or propaganda prohibition applies to ONDCP, our opinion addresses ONDCP's use of appropriations, not activities of the news organizations. In determining the propriety of any use of appropriated funds, we focus on the entity that is obligating and expending the funds subject to the prohibition, not on any

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<sup>1</sup> Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, div. F, title VI, § 624, 118 Stat. 3, 356 (Jan. 23, 2004).

subsequent actions of private entities. Any ethical or regulatory obligations that television broadcasters may have committed by airing the prepackaged news stories without attribution, therefore, are not relevant to our determination of ONDCP's responsibilities in obligating appropriations within the parameters that Congress enacted. Furthermore, based on our work, it was evident that ONDCP did not encourage nor did it intend for the broadcasters to note the source of the news stories.

Importantly, only the prepackaged news story segments of the VNRs violated the publicity or propaganda prohibition. Other segments of the VNRs, including B-roll film, public service announcements, and television advertisements, did not violate the prohibition. ONDCP targeted the B-roll to the news organization and identified itself as the source. The ONDCP television advertisement segments and public service announcements, which were targeted to the television viewing audience, were clearly labeled as messages from ONDCP to that target audience. If ONDCP had included a similar source disclosure within the prepackaged news story segments, either through the "reporter's" own statements or on the face of the segments, they would not have violated the prohibition.

In your January 19 letter, you contend that our opinion fails to consider the express authority Congress granted to ONDCP to conduct news media outreach under 21 U.S.C. §§ 1801–1804. *See* January 19 letter at 2–3. In this regard, you point out that section 1802(a)(1) authorizes ONDCP to use appropriated funds for a media campaign for, among other things:

“entertainment industry collaborations to fashion anti-drug messages in motion pictures, television programming, popular music, interactive (Internet and new) media projects and activities, public information, *news media outreach*, and corporate sponsorship and participation.”

21 U.S.C. § 1802(a)(1)(H) (emphasis added).

ONDCP raised this argument to us, and we addressed it in our opinion. ONDCP asserted that the authority to conduct news media outreach included the authority to create news stories without revealing the government as the source of the story. Applying commonly accepted canons of statutory construction, we concluded that while this authority permits more than the traditional authority granted to agencies to conduct information dissemination, the language of the statute did not grant the authority to create news stories without attribution. There was no indication that Congress intended this authority to allow the distribution of information that would otherwise violate the publicity or propaganda prohibition. *See* B-303495, Jan. 4, 2005, at 12. In light of the publicity or propaganda prohibition and in keeping with statutory construction principles, we understand the term “news media outreach” to

“allow ONDCP to work closely with news media organizations to help them understand the issues of drug abuse and assist them in the production of appropriate anti-drug news coverage.” *Id.*

Second, you contend that our opinion ignores the independent intervening decisions of news organizations to disseminate the prepackaged news stories as their own. As we explained above, it is ONDCP’s action, not the news organization’s action, that is subject to the prohibition. ONDCP targeted its news stories to the television viewing audience but did not identify itself to its target audience as the source of the news story. As noted in our opinion, ONDCP designed the prepackaged news stories to broadcast as is, without revealing the source of the news story. B-303495 at 8–9. ONDCP provided the anchor lead-in scripts and voiceover specialists who identify themselves as “reporting” from Washington. At ONDCP’s own admission, these materials were designed by ONDCP’s contractor to reach the television viewing audience without identifying the true source. Importantly, had ONDCP properly disclosed in the prepackaged news stories itself as the source but a television station removed the disclosure, there would have been no violation of the prohibition.

Finally, your letter asserts that our opinion failed to distinguish between deliberate concealment of the source by the government from the news media and the subsequent concealment of the source from the public by the news media. As stated above, the target audience of the prepackaged news stories was the television viewing audience. ONDCP is responsible for its own actions in concealing its role as the source from that target audience. Again, the materials in question were designed so that broadcasters would not make changes to the prepackaged news story before broadcast. ONDCP’s actions and intent resulted in the deliberate distribution of news stories to the public without disclosing government authorship to that audience. The fact that ONDCP used the television broadcasters as a medium to reach this target audience does not relieve it of its responsibility.

The publicity or propaganda prohibition helps mark the boundary between an agency making information available to the public and agencies creating unattributed news reports. For the reasons stated above, we decline to withdraw B-303495, Jan. 4, 2005, and stand by that opinion. While ONDCP is authorized by 21 U.S.C. § 1802(a)(1)(H) to engage in “news media outreach,” ONDCP also is required to comply with applicable appropriations act publicity or propaganda prohibitions. Those prohibitions require ONDCP to disclose in some manner to the television viewing audience ONDCP’s role in the production and distribution of its news stories.

Importantly, prepackaged news stories can be utilized without violating the law, so long as there is clear disclosure to the television viewing audience that the material was prepared by or in cooperation with the applicable government department or agency. We intend to notify all agencies of the constraints imposed by the publicity

or propaganda prohibition on the use of prepackaged news stories and to advise vigilance to assure that agencies' activities comply with the prohibition. We also plan to provide them with guidance as to what they can do without violating the law.

Please contact me if you would like to discuss this matter further.

Sincerely yours,

/signed/

David M. Walker  
Comptroller General  
of the United States