

**TESTIMONY OF BARBARA COCHRAN, PRESIDENT,
RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION,
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES**

“New Fees for Filming and Photography on Public Lands”

December 12, 2007

Mr. Chairman, Ranking Member Young, and Members of the Committee, I am Barbara Cochran, President of the Radio-Television News Directors Association. Thank you for inviting me to appear today on behalf of the 3,000 electronic journalists, educators, students and executives who comprise RTNDA, the world’s largest professional organization devoted exclusively to electronic journalism.

At the Committee’s request, I will address current policies and proposed regulations that could impose fees and permit requirements on electronic journalists engaged in news gathering in our nation’s parks and on federal lands. While RTNDA supports your well-intentioned efforts to appropriately manage private uses of our public resources, RTNDA is concerned that the rules as currently drafted may have the unintended consequence of limiting our members’ ability to report on issues of interest and importance to the American public. RTNDA urges you, therefore, to revise the permit and fee regulations so as to make clear that they do not apply to journalists or to the collection or reporting of newsworthy information.

Americans are fortunate to suffer from an embarrassment of riches – both in terms of our abundant and diverse natural resources and in the seemingly endless sources of information available at the click of a button. By their profession, journalists are uniquely situated to cut through the dizzying chatter of the information age to provide

audiences with relevant information about their communities, their leaders, and their environment. Presumably recognizing the fundamental role journalists play in our society as surrogates for the public, the Department of the Interior's rules traditionally have imposed neither restrictions on news photography on public land nor fee and permit requirements. Consistent with this history, the new rules exempt "news coverage" from the permitting requirements. Fees are applicable, however, to "commercial filming activities or similar projects."

Therein lies the rub. Simply put, newsgathering is not always characterized by bright lines, and could be said to involve "commercial filming." Certainly, the rule as written appears to contemplate circumstances where, for example, a crew is sent out to cover a wildfire on public land as "breaking news." But, a camera crew capturing background footage for an upcoming, in-depth series on federal land use policies might be cowed into abandoning their efforts if their presence is challenged by a Bureau of Land Management official who insists that they cannot film without a permit. Likewise, under the proposed regulations, if a radio journalist and her producer have not received a permit, they might be unable to make audio recordings of ambient sound for a piece on the effects of climate change on migratory birds. It is entirely unclear whether a journalist wishing to conduct an interview with a government official on public land would have to apply in advance and jump through the hoops of the permitting process. Given the inherent vagueness of the proposed rules, RTNDA cautions that news coverage of important stories may become subject to differing interpretations by park administrators.

The Department of the Interior has professed its desire to standardize the permit application and fee collection processes across its constituent agencies. If done thoughtfully, that may well prove a beneficial undertaking. In crafting new rules, the Department should take care not to perpetuate misinterpretation, arbitrary decision-making and extend the restrictions beyond the letter and intent of the statute upon which they are based. The current photography permit guidelines of four national parks provide specific illustrations of the disparities and uncertainties that arise in the absence of regulatory clarity.

I will start with a park that is just outside this building, the National Mall and Memorial Parks, the site of iconic and sometimes spontaneous events. In a compendium of public use restrictions and limitations, the administrator of the National Mall seeks to regulate news coverage as follows: a permit is not required to cover “breaking news,” so long as journalists comply with the same access and use restrictions as permit holders. On the National Mall, “breaking news” coverage is defined as that which “does not require any set-up,” whereas any news coverage requiring “set-up” would require the journalist to obtain a permit in advance.

Unfortunately, this policy seems to require electronic journalists to engage in a legal analysis as they decide what equipment to use. Does a television journalist tell her camera operator to leave the tripod at the studio so that they will avoid triggering the permit requirement? Would radio journalists, whose equipment is inherently portable, *ever* be required to obtain a permit under the “set-up” standard? What about bloggers with camcorders?

Journalists chasing stories through Florida’s Everglades may fare somewhat better. The current Everglades policy exempts “news photographers and television crews” from the permitting process, provided that they do not use sets or props in their coverage. While this policy is not perfect, it does pair the permitting process with journalists’ credentials rather than the content of their coverage and therefore raises fewer constitutional concerns.

The administrators of two well-known western parks, Yosemite and Yellowstone, have opted to take a more intrusive approach in regulating electronic journalists’ coverage of newsworthy events. Indeed, in these two parks, the current policies go far beyond the permitted time, manner, and place restrictions permitted by the statute and the proposed regulations.

In Yellowstone National Park, as on the National Mall, a journalists’ obligation to obtain a photography permit depends on the nature of the event covered. “Breaking” news coverage does not require a permit, but journalists covering non-breaking stories, human interest stories, and “[d]ocumentaries filmed specifically for sale to a news station or educational channel” must obtain a permit and pay a fee before they can start filming. To add insult to injury, Yellowstone’s policy guide provides a definition of “breaking” news events (“something that cannot be covered at any other time or location”) but then vitiates it by stating that the park’s administrators will make the final determination of what does – and does not – constitute a “breaking” story. Thus, under the guise of Congress’ legislation, park officials have positioned themselves to exert an unconstitutional measure of editorial control over news coverage.

The policies of Yosemite National Park, however, may take the prize as some of the most blatant intrusions on electronic journalists' rights under the First Amendment. Yosemite follows Yellowstone's "breaking news" definition – an event that cannot be covered at a different time or location – but goes on to impose additional content-based restrictions on non-"breaking" coverage. Specifically, the park's policies permit its administrators – executive branch employees– to condition the grant of a photography permit on their own determination "that the park would benefit from the increased public awareness" that would result from the journalist's final product. Under this standard, how could a journalist ever gather footage for an investigative piece that exposes a scandal or criticizes the park's administration?

In drafting the authorizing legislation, Congress considered many of these issues and provided specific instructions to the Department of the Interior. For example, this Committee noted that it was not providing the executive branch a green light to make content-based assessments of permit applications. The Senate Committee on Energy and Natural Resources concurred and, in its Report, added that permits would not be necessary "for media and news events."

By extending exemptions only to a limited set of "breaking" news events and by requiring a permit as a prerequisite for covering non-breaking stories, some of the nation's parks have established policies that go far beyond what Congress appears to have envisioned. While RTNDA commends the Department for attempting to rectify these inconsistencies, the proposed regulations in reality undermine any attempt to address these parks' overly-restrictive policies by purporting to shield journalistic activities under the limited umbrella of "news coverage."

Journalists do more than cover immediate situations, such as brush fires, that are traditionally considered to constitute “news.” They undertake ongoing and detailed analyses of societal and environmental trends that are newsworthy and important to the public. Journalists inform and educate their audiences about cultural events and other human interest stories. But, by limiting the permit exemption to “news coverage,” the Department of the Interior effectively preserves park administrators’ discretion to restrict disfavored speech, either through overt policy pronouncements or inaction on permit applications.

The current policies and proposed regulations implicate two sources of national pride: the natural beauty of our public lands and our free press. RTNDA does not believe that either Congress or the President must choose to violate the sanctity of one in order to protect the other. RTNDA agrees that the public should be able to recapture costs and to accrue certain benefits associated with appropriate commercial uses of its land. In the same vein, RTNDA believes that the public has a right to learn, through journalists, whether their government is acting as a faithful trustee of the public’s land and natural resources. Because these goals are compatible rather than mutually exclusive, RTNDA believes that the public’s interests are best served by permitting journalists the maximum flexibility to cover any story, at any time, so long as the simple act of making an audio or visual recording or taking a photograph does not itself endanger precious natural resources or the public’s safety.

RTNDA, therefore, urges this Committee to recommend that the rules be revised so as to avoid interfering with journalists’ ability to gather and report the news. Simply put, the rules should exempt all forms of journalistic activity, whether for breaking news

or documentaries, and whether conducted by a network news crew or a freelancer. They should not impose restrictions on the types of equipment that can be used. And, consistent with the First Amendment, they should not put government employees in the position of determining what is or is not “news.”

Thank you, Mr. Chairman, for the opportunity to testify on behalf of RTNDA before your committee today.