

Storify Terms of Service Addendum

5/4/12 jrj

About Storify

- Storify is a free tool for telling stories by curating social media content <http://storify.com>
- NARA plans to use the platform to pull together tweets and other public comments on social media platforms in response to selected events, announcements, discussion topics, or activities. These can be embedded on webpages or in blog posts.
- Federal Government examples on Storify:
 - <http://storify.com/usedgov>
 - <http://storify.com/smithsonian>
 - <http://storify.com/whitehouse>

About the TOS Addendum

- The terms in this addendum are identical to the terms negotiated by the General Services Administration and shared in their template
- NGC's Hannah Bergman has reviewed these terms
- Burt Herman, Storify co-founder, has signed the NARA-specific version

**ADDENDUM TO TERMS OF SERVICE
APPLICABLE TO U.S. GOVERNMENT USERS**

This Addendum applies to U.S. Government users of the Storify Website and its services.

The U.S. Government is required when entering into agreements with other parties to follow applicable federal laws and regulations. Such laws and regulations include limitations on matters related to indemnification, fiscal law, advertising and endorsements, governing law and dispute resolution forum; and affirmative duties related to ethics, privacy, security, accessibility, federal records, and freedom of information. Storify and the user Agency of the U.S. Government (together, the "Parties") agree that modifications to the Storify Terms of Service (ToS) are appropriate to accommodate the Agency's legal status and public mission. The free services provided pursuant to this Addendum are commercial.

- A. **Precedence; Further Amendment; Termination:** This Addendum constitutes an Addendum to the Storify ToS and the Storify Privacy Policy, available at <http://storify.com/privacy> ("Storify Privacy Policy"); language in the Storify ToS and Storify Privacy Policy indicating it alone is the entire agreement between the Parties is waived. If there is any conflict between this Addendum and the Storify ToS or Storify Privacy Policy, or between this Addendum and other rules or policies on the Storify site or services, this Addendum shall prevail. This Addendum may be further amended only upon written agreement executed by both Parties. Agency may close Agency's account and terminate this agreement at any time. Storify may close Agency's account and terminate this agreement on 15 days written notice.
- B. **Government entity:** "You" within the ToS shall mean the Agency itself and shall not apply to, or bind (i) the individual(s) who utilize the Storify site or services on Agency's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Agency.
- C. **Public purpose:** Any requirement(s) set forth within the Storify ToS that use of the Storify site and services be for private, personal and/or non-commercial purposes is hereby waived to the extent Agency wishes to use the Storify site and services for a general public purpose that is not designated to general revenue.
- D. **Agency content serving the public:** Storify hereby approves Agency's distribution or other publication via the Website of materials which may contain or constitute Agency programs, outreach or initiatives.
- E. **Advertisements:** Storify hereby agrees not to serve or display any third party commercial advertisements or solicitations on the Agency profile page. This exclusion shall not extend to house ads, or ads on pages displaying content uploaded by the Agency profile outside of the profile page, which Storify may serve on such pages in accordance with its standard business practices.
- F. **Indemnification:** All indemnification and damages provisions of the Storify ToS are hereby waived. Liability of Agency for any breach of the Storify ToS or this Addendum, or any claim arising from the Storify ToS or this Addendum, shall be determined under the Federal Tort

Claims Act, or other governing authority. Agency agrees that Storify shall bear no responsibility for a violation in the terms of use of other sites whose content is used within the application, unless there is contributory negligence on the part of Storify. Liability of Storify for any breach of the Storify ToS or this Addendum, or any claim arising from the Storify ToS or this Addendum, shall be determined by applicable federal law.

- G. **Governing law:** Any dispute resolution provision in the Storify ToS is hereby deleted. The Storify ToS and this Addendum shall be governed, interpreted and enforced in accordance with the federal laws of the United States of America. To the extent permitted by federal law, the laws of the State of California will apply in the absence of federal law. The parties may mutually agree to mediation or arbitration under a subsequent agreement.
- H. **Additional changes to Storify ToS:** Language in the Storify ToS reserving to Storify the right to change the Storify ToS or Storify Privacy Policy without notice at any time is hereby amended to provide Agency with notice of any material change to the Storify ToS or Storify Privacy Policy, and if Agency requests, Storify shall, if commercially reasonable, enter into good faith discussions regarding whether the material change shall be applicable to Agency in the future. Storify shall send this notice to the email address Agency designates at the time Agency signs up for service, and Agency shall notify Storify of any change in the notification email address during the life of the Addendum.
- I. **Access and use:** Storify acknowledges that the Agency's use of Storify's site and services may energize significant citizen engagement. Language in the Storify ToS allowing Storify to terminate service, or close Agency's account, at any time, for any reason, is modified to reflect the Parties' agreement that Storify may unilaterally terminate service and/or terminate Agency's account only for breach of Agency's obligations under the Storify ToS or its material failure to comply with the instructions and guidelines posted on the site, or if Storify ceases to operate its site or services generally. Storify will provide Agency with a reasonable opportunity to cure any breach or failure on Agency's part. Agency acknowledges that the content it includes may be subject to terms of use of the sources of that content. Agency agrees to comply with the terms of use of other sites whose content is used within that application.
- J. **Ownership of names:** Any provision(s) in the Storify ToS related to Storify's ownership of and right to change Agency's selected profile name(s) or user ID(s) are modified to reasonably accommodate Agency's proprietary, practical, and/or operational interest in its own publicly-recognized name and the names of other Agency units.
- K. **Modifications of user content:** Storify agrees that the right reserved in the Storify ToS to modify, adapt or remove Agency content is limited to technical actions necessary to index, format and display that content. Agency understands that the presentation layer of the Storify services modify the appearance of Agency content. The right to modify or adapt does not include the right to substantively edit or otherwise alter the meaning of the content. Storify shall notify Agency prior to the occurrence of any modifications, adaptations, changes or removals of Agency content outside of the presentation layer. Notwithstanding the foregoing, nothing in this Addendum shall result in an expansion of Agency's rights as a United States

Government entity under the Copyright Act of 1976 (17 U.S.C. §§101 et seq.), specifically including Section 105 of the Act.

- L. **Limitation of liability:** The Parties agree that nothing in the Limitation of Liability clause or elsewhere in the Storify ToS in any way grants Storify a waiver from, release of, or limitation of liability pertaining to, any past, current or future violation of federal law.
- M. **Uploading, deleting:** The Parties understand and agree that Agency is not obligated to place any content on the Storify site, and Agency reserves the right to remove at its sole discretion any and all content placed within the Agency Profile by Storify. For clarity, Agency shall not have the ability to remove any content created or published on the Storify site by third parties.
- N. **No endorsement:** Storify agrees that Agency seals, trademarks, logos, service marks, trade names, and the fact that Agency has a presence on the Storify site and use its services, shall not be used by Storify in such a manner as to state or imply that Storify's products or services are endorsed, sponsored or recommended by Agency or by any other element of the Federal Government, or are considered by these entities to be superior to any other products or services. Except for pages whose design and content are under the control of the Agency, or for links to or promotion of such pages (e.g., within a suggested follow list, or highlighted profile list), Storify agrees not to display any Agency or government seals or logos on Storify's homepage or elsewhere on the Storify site, unless permission to do has been granted by Agency or by other relevant federal government authority. Storify may list Agency's name in a publicly available customer list so long as the name is not displayed in a more prominent fashion than that of any other third party name.
- O. **No business relationship created:** The Parties are independent entities and nothing in this Addendum or Storify ToS creates an agency, partnership, joint venture, or employer/employee relationship.
- P. **No cost agreement:** Nothing in this Addendum or Storify ToS obligates Agency to expend appropriations or incur financial obligations. The Parties acknowledge and agree that none of the obligations arising from this Addendum or Storify ToS are contingent upon the payment of fees by one party to the other.
- Q. **Separate future action for fee based services:** Storify provides services at a basic level free of charge to the public, but this may change in the future. Agency acknowledge that while Storify will provide Agency with some services and features for free, Storify reserves the right to begin charging for those services and features at some point in the future. Storify will provide Agency with at least 30 days advance notice of a change involving the charging of fees for the basic level of service. Agency also understands that Storify may currently offer other premium and enterprise services for a fee. The Parties understand that fee-based services are categorically different than free products, and are subject to federal procurement rules and processes. Before Agency decides to enter into a premium or enterprise subscription, or any other fee-based service that Storify or alternative providers may offer now or in the future, Agency agrees to determine that Agency has a need for those additional services for a fee, to consider the subscription's value in comparison with comparable services available elsewhere, to determine

that Agency funds are available for payment, to properly use the Government Purchase Card if that Card is used as the payment method, to review any then-applicable Storify ToS for conformance to federal procurement law, and in all other respects to follow applicable federal acquisition laws, regulations, and agency guidelines when initiating that separate action.

- R. **Assignment:** Neither party may assign its obligations under this Addendum or Storify ToS to any third party without prior written consent of the other, provided however that no such consent shall be required in the event of a transfer or assignment of all of a party's rights or obligations to a successor to substantially all of the assets or business of such party. Upon any such assignment, the assignee shall provide prompt written notice to the other party.
- S. **Posting and availability of this Addendum:** Any provision of the Storify ToS requiring modifications to the Storify ToS to be posted on Storify's website is inapplicable since this Addendum is of limited, not general, application, and is otherwise waived for this special circumstance. The Parties agree this Addendum contains no confidential or proprietary information, and Agency may release it to the public upon request and to other agencies interested in using Storify's site and services.
- T. **Security:** Storify will, in good faith, exercise due diligence using generally accepted commercial business practices for IT security, to ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls will be employed to ensure security of systems and data. Recognizing the changing nature of the Web, Storify will continuously work with users to ensure that its products and services meet users' requirements for the security of systems and data. Storify agrees to discuss implementing additional security controls as deemed necessary by Agency, in conformance with the Federal Information Security Management Act (FISMA).
- U. **Federal Records:** Agency acknowledges that use of Storify's site and services may require management of Federal records. Agency content may meet the definition of Federal records as determined by the agency. If Storify agrees to hold Federal records, the Agency and Storify must manage Federal records in accordance with all applicable records management laws and regulations, including but not limited to the Federal Records Act (44 U.S.C. chs. 21, 29, 31, 33), and regulations of the National Archives and Records Administration (NARA) at 36 CFR Chapter XII Subchapter B). Managing the records includes, but is not limited to, secure storage, retrievability, and proper disposition of all Federal records including transfer of permanently valuable records to NARA in a format and manner acceptable to NARA at the time of transfer. Agency is responsible for ensuring that the Storify is compliant with applicable records management laws and regulations through the life and termination of Agency's use of the Storify site and services.
- V. **Additional items for discussion and possible inclusion in this Addendum:** Storify understands current federal law, regulation and policy may affect Agency's use of Storify's products and services in ways not addressed in the list of clauses above. Much depends on the nature of the products and services offered by Storify (which may change from time to time), and how Agency intends to use those services (which also may change). Among the topics Agency may

need to discuss with Storify, and which may lead to the insertion of additional clauses in this Addendum: privacy, accessibility, and security.

Storify Inc.

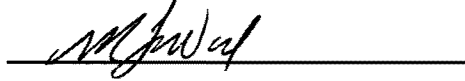


Name: Burt Herman

Title: Co-founder

Date: 5/1/12

US National Archives and Records Administration



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