

Department of Commerce
**STORIFY - ~~EXECUTIVE OFFICE OF THE PRESIDENT~~ ADDENDUM TO
TERMS OF USE FOR STORIFY**

This Addendum ("Addendum") to the Terms of Service ("Storify ToS") found at <http://storify.com/terms> ("Storify ToS URL") for the Storify services ("Services") is entered into on September 9, 2011 ("Addendum Effective Date") by the U.S. Department of Commerce ("DOC") AND Storify, Inc. ("Storify").

BACKGROUND

The parties recognize that DOC, a United States Government entity, is required, when entering into agreements with other parties, to follow applicable federal laws and regulations governing its agreements with other parties. 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, security, accessibility, and freedom of information. DOC and Storify agree that modifications to the Storify ToS are appropriate to accommodate DOC's legal status and public mission. The free Services provided pursuant to this Addendum are commercial.

NOW, THEREFORE, in consideration of mutual covenants set forth herein, the parties hereby agree as follows:


TERMS

A. *Precedence; Further Amendment; Termination:* This Addendum constitutes an amendment 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. DOC may close DOC's account and terminate this agreement at any time. Storify may close DOC's account and terminate this agreement only upon 30 days written notice.

B. *Government entity:* "You" within the Storify ToS shall mean the DOC itself and shall not apply to, or bind (i) the individual(s) who utilize the Storify Services on DOC's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the DOC.

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 the DOC wishes to use the Storify site and services for a general public purpose that is not designed to generate revenue.

D. *Agency content serving the public:* Storify hereby approves DOC's distribution or other publication via the Storify Website of materials which may contain or constitute U.S. Department of Commerce programs, outreach or initiatives.



E. *Advertisements*: Storify hereby agrees not to serve or display any third party commercial advertisements or solicitations on The U.S. Department of Commerce profile page. This exclusion shall not extend to house ads, or ads on pages displaying content uploaded by The U.S. Department of Commerce 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 DOC 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. 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*: The dispute resolution and arbitration provisions in the Storify ToS are 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 the DOC with notice of any material change to the Storify ToS or Storify Privacy Policy, and if the DOC requests, Storify shall, if commercially reasonable, enter into good faith discussions regarding whether the material change shall be applicable to the DOC in the future. Storify shall send this notice to the email address DOC designate at the time DOC signs up for service, and DOC 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 DOC'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 the DOC's account, at any time, for any reason, is modified to reflect the Parties' agreement that Storify may unilaterally terminate service and/or terminate DOC's account only for breach of DOC'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 DOC with a reasonable opportunity to cure any breach or failure on DOC's part.

J. *Ownership of names*: Any provision(s) in the Storify ToS related to Storify's ownership of and right to change DOC selected profile name(s), or user ID(s) are modified to reasonably accommodate DOC's proprietary, practical, and/or operational interest in its own publicly recognized name "The U.S. Department of Commerce" and the names of other DOC units.

K. *Modifications of user content*: Storify agrees that the right reserved in the Storify ToS to modify, adapt or remove DOC content is limited to technical actions necessary to index, format and display that content. DOC understands that the presentation layer of the Storify services

modify the appearance of DOC 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 DOC prior to the occurrence of any modifications, adaptations, changes or removals of DOC content outside of the presentation layer. Notwithstanding the foregoing, nothing in this Addendum shall result in an expansion of DOC rights as a United States Government entity under the Copyright Act of 1976 (17 U.S.c. §§101 et sec.), 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 DOC is not obligated to place any content on the Storify site, and DOC reserves the right to remove any and all content placed within The U.S. Department of Commerce Profile by the Storify at DOC's sole discretion. For clarity, the DOC 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 DOC seals, trademarks, logos, service marks, trade names, and the fact that DOC 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 DOC 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 is under the control of the DOC, 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 DOC or government seals or logos on Storify's homepage or elsewhere on the Storify site, unless permission to do has been granted by the DOC or by other relevant federal government authority. Storify may list the DOC'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 in an independent contracting relationship 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 DOC 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. DOC acknowledge that while Storify will provide DOC 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 DOC with at least 30 days advance notice of a change involving the charging of fees for the basic level of service. DOC also understand 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 DOC 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, DOC agrees to determine that DOC 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 DOC 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 DOC 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 Amendment*: 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 DOC 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 in good faith implementing additional security controls as deemed necessary by DOC, in conformance with the Federal Information Security Management Act (FISMA).

U. *Restriction Against Disclosure*: Storify agrees, in the performance of this agreement, to keep non-public information furnished by the DOC in the strictest confidence, said information being the sole property of the DOC. Storify also agrees not to publish, reproduce or otherwise divulge such information, in whole or in part, in any manner or form, nor authorize or permit others to do so, taking reasonable measures as are necessary to restrict access to the information, while in his or her possession, to those employees who must have the information to perform the work provided herein on a "need to know" basis, and agrees to immediately notify the U.S. Department of Commerce New Media Office in writing, in the event Storify determines, or has reason to suspect, a breach of this requirement. Storify also agrees to notify The U.S. Department of Commerce New Media Office if it receives a request for DOC information and to not respond to such a request without DOC's consent, unless otherwise required by law.

A handwritten signature in black ink, appearing to be "S. J. We", is located in the bottom right corner of the page.

V. *Additional Items for Discussion and Possible Inclusion in this Agreement:* Storify understands changes in federal law, regulation and policy may affect DOC'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 the Storify (which may change from time to time), and how DOC intends to use those services (which also may change). The following are among the dynamic topics DOC may discuss with Storify and which may lead to the insertion of additional clauses in this Addendum: privacy, accessibility, and security.

STORIFY, Inc



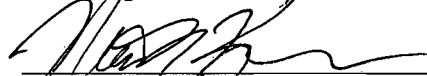
Name: Burt Herman

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U.S. Department of Commerce



Name: Michael Kruger

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