



The Catalyst is published periodically by California State Parks, © 2014. Opinions expressed are those of the author and not necessarily those of California State Parks. By submitting a manuscript to *The Catalyst* the author assumes full responsibility for any copyright infringement. Please contact the editor for permission to reprint any item appearing in *The Catalyst*.

ISSN 1089-9286

For address changes or additional subscriptions, call or email the Interpretation and Education Division at

(916) 654-2249
or
interp@parks.ca.gov

Guest Editors: Heather Holm
PORTS
Heather.holm@parks.ca.gov
&
Wil Jorae
Photographic Archives
Wil.jorae@parks.ca.gov

Publisher: Donna Pozzi
Interpretation & Education
(916) 653-4643
Donna.pozzi@parks.ca.gov

Copy Editor: Carol Cullens
Interpretation & Education
Carol.cullens@parks.ca.gov

Contributor's Guidelines

The Catalyst welcomes your original articles up to two pages in length. We prefer unpublished material, but will occasionally reprint items published elsewhere. Be sure to include information about the publication so we can get permission to use the material. If you have an article relating to one of the topics listed below, please submit it to the publisher or guest editor. Please include a photograph whenever possible.

We really appreciate items submitted on CD or by email in a PDF format. Please send photographs as separate files, not inserted into your document. You may also submit original photographs or other illustrations to *The Catalyst*. All photos and artwork submitted will be returned promptly. We reserve the right to edit all material. Items are selected for publication solely at the discretion of the editor and publisher. We appreciate your suggestions.

Guest Editors Wanted!

Are you looking for an opportunity to work with other writers on engaging interpretive topics? Would you like to develop and challenge your creative and technical skills? Then consider becoming a Guest Editor for an upcoming issue of *The Catalyst*. Among the topics we're planning for future issues are:

**150th Anniversary
Interpretive Planning**

Please contact Donna Pozzi with your ideas, donna.pozzi@parks.ca.gov.

Help *The Catalyst* Reduce Waste

We at *The Catalyst* know that you care about both the information we present and the environment. To reduce our carbon footprint, we'd like to deliver future issues of this publication directly to your email inbox. To cancel your paper subscription and have your next issue sent to the email address of your choice, please contact Corinne Nelson at Corinne.nelson@parks.ca.gov. To find you in our database, we will need to know your full name and address (or if you receive *The Catalyst* via interoffice mail, your unit number). Please provide this information along with the desired email address to ensure that we update your status properly.

From the Editors

A common question we hear is "what does intellectual property have to do with me? I don't deal with intellectual property in my job." There is, in fact, a very strong chance that you do handle intellectual property in the course of your job regardless of your classification. Every day we are surrounded by, use, and create intellectual property.

Intellectual property is any product of the human intellect that is unique, novel and unobvious, and fixed in a tangible form. Intellectual property can be an expression or creation, such as writing, artwork, logos, maps, music and photographs. A name such as a specific park name or the Department's official name can be intellectual property as well. The intellectual property you will encounter in your job will fall into two types: copyright and trademark.

Copyright is a form of protection provided by national and international laws to authors or owners of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. The types of copyrighted materials owned or used by the Department include but are not limited to:

- Text for brochures, exhibit panels, reports, plans, websites
- Photographs, drawings, paintings
- Maps and publications
- Publication and exhibit designs/layout
- Video footage and videos
- Music

A trademark can be any word, name, symbol or device, or a combination of these, that is used in commerce to identify and distinguish the goods of one source from those of another. A trademark must be distinctive and used as such by its owner. Trademarks can be registered but they are created by use and are recognized by state and federal law. Department trademarks include the Department name, park names, program names, and the Department logo, logos



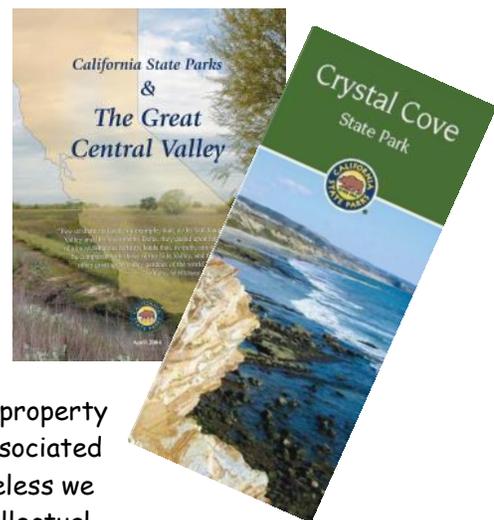
created for specific Department programs, and more.

Each job classification in state parks may deal with different intellectual property rights and types of associated materials, but nonetheless we all use and create intellectual property. If a maintenance worker or trail engineer drafts a plan for realigning a trail or designing improvements to make a trail more ADA compliant, then that individual is creating Department-owned intellectual property. If you create a PowerPoint, or write a document or publication, you are creating intellectual property. If you shoot a photograph or create video, you have produced intellectual property. If an interpreter or exhibit designer is designing an interpretive panel or exhibit and would like to use an image from an outside source, then that individual will need to request copyright permission from the image creator or the entity that holds the intellectual property rights. If you provide a photograph to a newspaper that requested its use in an article about your park, then you are granting copyright permission for Department-owned intellectual property. We think you get the idea.

It is important to know about intellectual property, what it is, and how the Department handles its use. By following the Department's policies for intellectual property we protect the Department's ability to use materials we produce, whether it is for display, distribution, or reproduction. We also protect the Department's property from unauthorized use by others. Finally, we protect the Department from liability stemming from potential infringement of intellectual property rights and/or privacy rights.

There are many resources available to guide you in learning more about intellectual property. Department intellectual property policies are outlined in the Department Operations Manual, Chapter 0900, Interpretation and Education, Section 0907. The

(Continued on page 4)



Creations of the Mind: California State Parks Intellectual Property Handbook is the Department's most comprehensive source on intellectual property, how to handle the Department's intellectual property, and how to respect the intellectual property rights of others to avoid infringement. The Intellectual Property Online Training class is a five-week course that challenges you to consider intellectual property as it relates to your job. Check out the Resources section of this Catalyst edition for non-Department resources that provide good overviews and tools related to different intellectual property topics.

This edition of the Catalyst is designed to provide an overview of intellectual property. The articles delve into some common questions or situations you may encounter in the field. Unfortunately there are no

black and white answers that fit every intellectual property question or situation. Each answer is dependent on the particular situation and the associated factors, but we have tried to provide you with some basic steps to approach intellectual property.

EXAMPLES OF REGISTERED TRADEMARKS

Department Name

California State Parks ®

Park Names

Anza-Borrego Desert State Park ®

Hearst Castle ®

Program Names

FamCamp ®

PORTS ™

Junior Ranger ™

Dear Master Interpreter

Dear Master Interpreter,

Do you know of any good online "public domain" databases? —Image Seeker

Dear Image Seeker,

Here are some references. You will always want to check the terms and conditions of use and/or copyright information provided for each site or photo to see whether it requires you to request permission. It is important to document and credit your sources for the benefit of other potential users.

[Flickr: The Commons](http://www.flickr.com/commons)

<http://www.flickr.com/commons>

A feature on Flickr where institutes such as The Library of Congress, Powerhouse Museum, Brooklyn Museum, Smithsonian Institution, and various users can post and share images that have no known copyright restrictions.

[U.S. Government Graphics and Photos](http://www.firstgov.gov/Topics/Graphics.shtml)

<http://www.firstgov.gov/Topics/Graphics.shtml>

A site linking to other U.S. government sites containing thousands of free Federal and public domain images with image categories such as forests, animals, birds, crops, fish, fire, geology, Indians, mammals, mountains, parks, plants, storms, wildlife, and much more.

[EdTech Teacher: Finding Public Domain Images for Multimedia Projects](http://edtechteacher.org/index.php/teaching-technology/research-writing/63-public-images)

<http://edtechteacher.org/index.php/teaching-technology/research-writing/63-public-images>

An extensive list of internet sources for public domain images, with an eye towards the humanities.

MI

Dear Master Interpreter,

Does the Department have standard rates for licensing images? —Desiring Consistency

Dear Desiring Consistency,

There are not standardized rates for Department licensing of intellectual property as it varies by staff time and equipment resources required to fulfill the request. We are mandated to recover our expenses for licensing. A few units currently have cost recovery structures in place, such as the Photographic Archives, Hearst Castle, and the California State Railroad Museum. If your district is interested in cost recovery for associated access to images then consult

(Continued on page 5)



Master Interpreter continued...

with the Legal Office first. They can help you to justify what the expenses are. It is better to do this early so there are standards in place. It is easier to waive fees once a cost recovery structure is in place than to implement a cost recovery structure after supplying free images.

The Department can best justify recovering costs at the current fair market value based upon what other government and academic entities would assess. There is no way to feasibly recover all costs associated with an image. Here are some of the cost-recovery considerations associated with gathering and providing access to images:

Born Digital (current photography)

- Staff wages
- Vehicle maintenance costs
- Gasoline (use to get to and from shoots)
- Camera prep before shoot (cleaning lenses, digital sensors)
- Scouting shoot locations
- Setting up for a shot (may involve placement of lights, camera on tripod, etc.)
- Digital processing of the RAW file
- Cataloging
- Server costs (climate-controlled room, server upgrades, server replacements, etc.)
- Preparing associated use documents (collecting DPR 993s, preparing DPR 990/990As depending on uses, preparing DPR 108s, etc.)

Traditional Photographic Materials (negatives, prints, slides, etc.)

- Staff wages
- Cataloging (staff costs associated with research, prep-time, etc.)
- Scanning (staff costs, equipment costs and replacement, low-res for database, high-res custom scans, metadata tagging, etc.)
- Server costs (climate-controlled room, server upgrades, server replacements, etc.)
- Long-term Physical Storage (facility rental costs, climate-controlled space, filing of materials in type-appropriate sleeves, etc.)
- Preparing associated use documents (preparing DPR 108s, preparing DPR 990/990As depending on uses, negotiating use, etc.)

Note: This is not an exhaustive list, but I hope it provides an idea of the costs that need to be considered.

MI

Dear Master Interpreter,

Where or how can we determine whether a photo (or other work) copyright has been extended and for what time period before it falls into public domain? — Mr. Eclectic



La Purísima Mission SHP-CCC reconstruction of ruins (090-27341)

Dear Mr. Eclectic,

Pursuant to US Copyright laws, federally created works, like the CCC-created collections, are in the public domain. Non-federally created works present a much bigger puzzle. Unless images are clearly federally-created or created by identified State Park staff on State time with a clear creation date, the images in question would have to be investigated on a case-by-case basis to determine whether they fall into the public domain or a valid copyright still exists. You can request a search from the US Copyright Office, but such searches are not cheap (\$165.00 per hour or fraction thereof with a two-hour minimum), and there is still no guarantee you will get a definitive answer. The Copyright Office only has a record of registered copyrights. That is why we recommend you work with the Legal Office. Here are some relevant links to explore related to the issue of public domain and copyright extension:

US Copyright Office

Search Request Estimate

http://www.copyright.gov/forms/search_estimate.html

US Copyright Office

Circular 22: How to Investigate the Copyright Status of a Work

(Continued on page 6)

Master Interpreter continued...

<http://www.copyright.gov/circs/circ22.pdf>

Cornell University

Copyright Term and the Public Domain in the United States (updated on 01/01/2012)

<http://copyright.cornell.edu/resources/publicdomain.cfm>

Also, you can make a "good faith effort" to determine copyright ownership and whether the image has fallen into the public domain. Be sure to retain with the project files all correspondences, notes, etc. that were produced during your search so that, if necessary, you can prove you made a "good faith effort". Pages 24-25 in the *Creations of the Mind Handbook* provide a good outline of the steps you need to take and information you need to document as you search.

MI

Dear Master Interpreter,

What is the difference in copyright ownership for on-duty versus off-duty staff —
Conscientious Employee

Dear Conscientious Employee,

First, to clarify, employee created materials (on state time with state equipment) are automatically the intellectual property of the Department unless there is a separate agreement in place (*Creations of the Mind*, "Department-Owned Intellectual Property," Page 7). Employees would only be considered a partial/full copyright owner if there was a separate agreement in place prior to the creation of the work.

Regarding off-duty photography, the consideration that would apply rests more with the Department's "Incompatible Activities Policy" (Sections 19990-19990.6 of the Government Code) which includes the following statements:

Page 1

"A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. ...Activities and enterprises deemed to fall in these categories shall include, but not be limited to, all of the following:

(b) Using state time, facilities, equipment, or supplies for private gain or advantage.

(d) Receiving or accepting money or any other consideration from anyone other than the state for the performance of his or her duties as a state officer or employee.

Page 3

The following activities are prohibited:

9. Using or attempting to use for private gain or advantage any Department symbol, badge,

identification card, records, information, time, facilities, equipment, supplies, services, or the prestige or influence of a State position.



John Palmer, Senior Photographer on a Department photo shoot.

If you take photos on State Park property while off-duty using your own equipment, using your status as a Department employee to either gain access to areas not accessible to the general public, or using your Department employee status to bypass the requirements

applicable to the general public (e.g. California Film Commission permitting for photography), it would be considered an "Incompatible Activity." If you wanted to take photographs on your own time using your own equipment for the purpose of retaining copyright and selling, then you would need a film permit.

If you took the photos while off-duty but using Department equipment, you claimed copyright, and provided the photos for some other personal benefit or sold them, it would definitely be considered an "Incompatible Activity."

MI

What's Up?



Resources for Interpreters

By Heather Holm & Wil Jorae
Interpretation and Education Division

Resources for Intellectual Property Rights

Copyright

Electronic Frontier Foundation

Teaching Copyright

*The curriculum on this website is geared towards teens but it does a great job of explaining copyright, plagiarism, etc. in easy-to-understand terms and in a fun format.

<http://www.teachingcopyright.org>

US Copyright Office

Frequently Asked Questions

<http://www.copyright.gov/help/faq/>

eHow

How to Obtain Permission to Publish Material on a Website

http://www.ehow.com/how_2052379_obtain-permission-publish-material-website.html

Fair Use

American Library Association Office for
Information Technology Policy

Section 108: Reproductions by Libraries or Archives for their Users, for Replacement, or for Preservation

<http://www.librarycopyright.net/108spinner/>

Checklist for Conducting a Fair Use Analysis Before Using Copyrighted Materials

http://copyright.cornell.edu/policies/docs/Fair_Use_Checklist.pdf

Education World

Is Fair Use a License to Steal?

http://www.educationworld.com/a_curr/curr280b.shtml

George Washington University Law School

Frequently Asked Questions (and Answers) about

Copyright and Fair Use

<http://chillingeffects.org/fairuse/faq.cgi>

Society of American Archivists

Orphan Works: Statement of Best Practices

<http://www.archivists.org/standards/OWBP-V4.pdf>

Public Domain

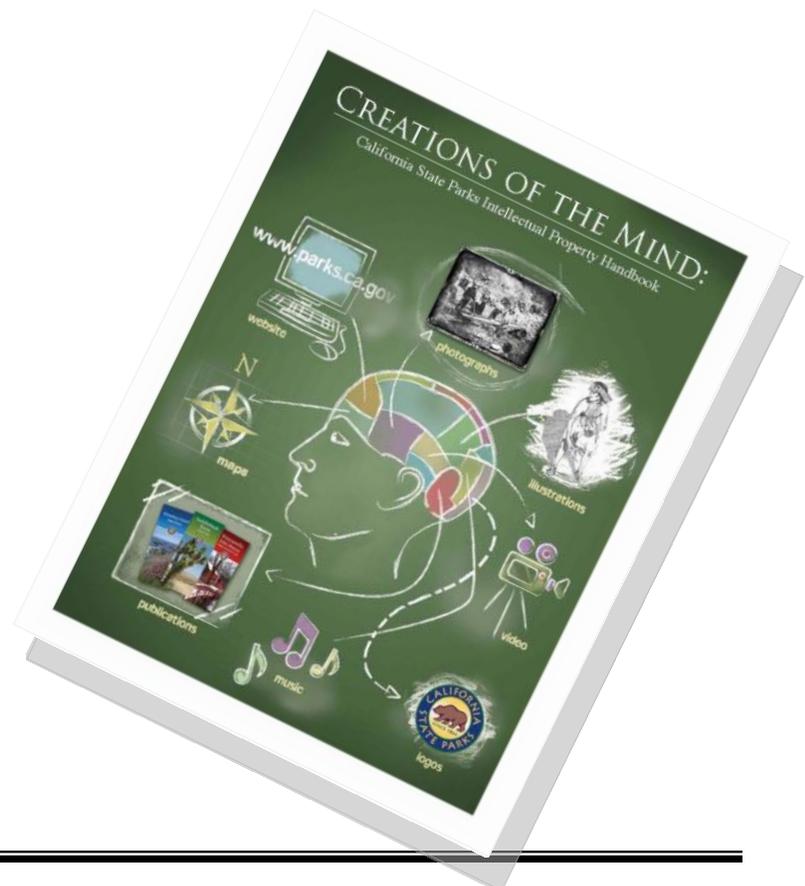
Cornell University

Copyright Term and the Public Domain in the United States

<http://copyright.cornell.edu/resources/publicdomain.cfm>

Digital Copyright Slider

<http://librarycopyright.net/digitalslider/>



The IPIT Report - Intellectual Property Online Training

By Sara M. Skinner

State Park Interpreter II, Training Specialist

Training Section/William Penn Mott Jr. Training Center

Intellectual Property Online Training (IPOT) was a response to a need identified by the Interpretation and Education Division and the Training Section. After Creations of the Mind: Intellectual Property Rights Handbook was introduced, we discussed how to encourage employees to understand and implement the information in the manual. Jenan Saunders and Wil Jorae frequently instructed a training session on intellectual property to different training groups including interpretation courses and Introduction to California State Parks.

Intellectual Property, especially when it pertains to the Department, can be very confusing. The I/E Division identified a need to transfer the information to an online learning format so that more people could master the information and recognize the uses. The Training Section and Interpretation and Education Division discussed what was the best learning portal/online learning format to use. In the meantime, Heather Holm enrolled in an online education training course. She discussed with Donna Pozzi and Sara M. Skinner the possibility of creating an online course template for Intellectual Property Training.

The result of Heather's dedication is the new Intellectual Property Online Training course. The course is a five-week-long online training course, which provides participants a practical overview to intellectual property rights. (And you better know what these are!) Emphasis is on California State Parks ownership, licensing, and use of intellectual property. This course is designed to cover one major intellectual property concept in each module through reading and practical activities. The course is job-required training for all employees involved with the development and maintenance of intellectual property and associated rights. This includes the following classifications:

Research Writer

Associate Editor of Publications

Graphic Designer I, II, III

Museum Curator I, II, III

Photographer and Senior Photographer

State Park Interpreter I, II, III, Regional

Interpretive Specialist

Archivist I, II

Exhibit Designer/Coordinator

Exhibit Technician

Librarian

State Historian I, II, III

State Park Peace Officer Ranger/Lifeguard,

Supervisor

The course debuted early in 2012 with the first testing group. Twenty participants completed the course. Since then, the course has been offered four more times and we've brought 180 of the required 700 employees in to compliance. The course is hosted on the Educadium learning portal while the Department decides on a portal that it wants to implement for Department-wide online learning. We are so thankful for Heather's dedication, and the benefit of new online learning ideas.

The mission of the Interpretive Performance Improvement Team is to facilitate the improvement of interpretive performance through high-quality learning experiences by identifying needs, developing training and resources, and evaluating outcomes for employees and volunteers of California State Parks (revised January 14, 2008)

Please contact the Interpretive Performance Improvement Team at IPIT@parks.ca.gov if you have any questions or would like additional information.

Requesting Permission for non-Departmental Photographs

By Heather Holm

Regional Interpretive Specialist, PORTS Program Coordinator
Interpretation and Education Division

There are often instances when a park photograph collection, the Photographic Archives, or other park resources lack the right image you need for that brochure or exhibit or [fill in your project]. You have done some research using outside sources and identified some images, but you are unsure how to proceed with requesting permission to use the images. The steps outlined in this article are designed to guide you through the permission process.

The first step is to identify the copyright owner. Look to see if there is a copyright notice or disclaimer attached to the work. For online images, review the Credits or Terms of Use webpages, or any captions, metadata, etc. for information about the copyright owner. If the image is in a published work, check to see if there is a credit page with copyright information or captions under the image citing the source, collection, artist/photographer, and date. Identifying the copyright owner may require some digging and time, but it is a crucial step. It is worthy to note that someone may own the image, but not hold the copyright so it is important to identify the correct copyright owner.

Once the copyright owner is identified, contact the individual or institution either by phone and/or through a written request. You may use a phone call as the initial contact to determine the owner's interest in providing the images, but it is important to follow up with a written request. If in

the phone call the copyright owner declines usage, then the written request would not be sent.

The written request is important as it provides documentation for both the Department and the copyright owner of the desired usage and the request, hopefully eliminating any questions, confusion, and lengthy correspondence back and forth about what is required. The written request clearly identifies what image(s) you are requesting, the necessary quality and

format, the intended use, expected date of publication, etc., so the copyright owner has written documentation of the request. In the written request, offer to provide a credit line and request how credit should be indicated. The written request needs to be retained in the project file.

If the copyright owner agrees to grant permission for use of the image, you may request the individual sign the DPR 992A, Copyright License Agreement form, allowing extended usage beyond the specific project. Your supervisor and the owner will need to sign the DPR 992A, with a signed copy of the form provided to the owner.

However, the copyright owner may only be willing to allow you one-time use or may be opposed to signing a Department form. In such cases, their written response granting

permission for your use, or their own license agreement form, will establish the usage terms. If there are any questions/concerns about the terms offered in their own license agreement then the Legal

(Continued on page 10)

Step One:
Identify copyright owner.

Step Two:
Contact owner.

Step Three:
Provide a written request for use.

Step Four:
Request the owner complete the DPR 992A.

Step Five:
Provide appropriate copyright credit line in project.

Step Six:
Retain all documentation in project file.

Requesting Permission continued...

Office should be consulted. Be sure to clarify that permissions granted match those requested. For example, if you request use in the physical exhibit panel, you may only use it there. Use on the Department's website or in flyers to promote the exhibit would not be allowed unless you specifically asked for and received those permissions.

All written documentation should be retained in the project file(s). Include in the documentation materials

the source location for the image (e.g. website URL, publication title, etc.), contact information for the copyright owner, and all correspondence associated with the copyright owner search and permission request. If, in the future, you or another park individual want to use the same image to update that project or in a new one, then you can refer to the documentation as a reference, thus eliminating the loss of time doing the initial research into the copyright ownership again.

Showing Licensed Films and Television Shows in State Parks

By Kim Baker
State Park Superintendent I
Railtown 1897 State Historic Park

Showing a film in your park may be an appropriate interpretive or recreational activity you might consider. Many movies were filmed in our parks and are part of park history and lore, or perhaps you want to show a movie for a fundraiser or other recreational reasons. In fact, in many of our classic parks, prior to the 1970s, movie screenings were a regular evening activity. However, even documentaries and television shows filmed in our parks fall under copyright rules and appropriate permissions must be obtained for showings, unless arrangements were made as part of the conditions of filming.

It is important to consider licensing requirements when showing licensed movies or films in a state park. There are several companies that license major motion pictures and TV shows for public performance,



At Railtown 1897 State Historic Park over 200 films and television shows have been filmed since 1919. The movie industry is an important part of the park's history, and is credited by some with saving the historic site from destruction. Despite this, Kim has yet to find a fiscally sustainable way to present public performances of films made at her park, but is working on it.

but the main three are Swank Motion Pictures, Criterion Pictures, and Motion Picture Licensing Corporation. Your planning should start with a phone call to one of these two companies. You will speak with an account executive who will be able to check and see if they hold the rights to the film(s) you want to show, and quote you a price. They will want to know the expected audience size, type of venue, whether it is a free or paid event, and who is the sponsoring agency. I have found that most rates, for an audience of 300, free event on the lawn at our state park are around \$300 per use. If you want to charge gate fees, they will also ask for 50% of your gross.

Once you make arrangements with the licensing entity, they will mail you a special version of the film,

(Continued on page 11)

Showing Licensed Films continued...

devoid of the ominous FBI warning, and in a format compatible with your equipment. You should expect to receive it two days before your showing, and plan to watch it all the way through, to ensure compatibility. If you have technical difficulties, this will still allow for time to troubleshoot.

Why do you have to go through all of this trouble? Because, it is the law. Even if you are not charging fees, the intellectual property laws still apply. The only exemption that may be considered is a teaching exemption—in cases that have no recreational benefit, this may apply. For example, if you show a portion of a movie that was filmed in your park, as part of your volunteer training, you probably do not need to obtain a license. Showing a movie at a campfire program, however, would not qualify as an exemption, because it would be considered a recreational activity. It is also important to note that California State Parks is liable for a public performance in our park, even if another entity is showing the film. Be sure to include licensing

find additional conditions. For example, as part of their licensing agreement, some film companies prohibit you from advertising via television, newspapers and the radio, specifically limiting your advertising to postings on bulletin boards. This may work for a campfire program, but if you are depending on drawing a larger audience from the community, it may hinder the sustainability of your program.

If you are looking for a low-cost way to show a film in your park, you may consider searching for a film in the public domain. Openflix.com, and the Library of Congress are both good sources of open-source films. The challenges you face in going this route are finding a quality copy of the film to screen—in some cases you can download off of the internet, but in others you may need to find a copy to purchase. Another option is to ensure that the next time a film permit is approved in your park, licensing to show the film in your park is included as a condition of the permit.

Film Resources

Licensed Films

Swank Motion Pictures

Swank.com

1-800-876-5577

Criterion Pictures

Criterionpicusa.com

1-800-890-9494

Motion Picture Licensing Corporation

www.mplc.org

1-800-462-8855

Public Domain Films

Openflix

<http://www.openflix.com/>

Library of Congress

<http://www.loc.gov/rr/mopic/pubdomain.html>

as a condition of any applicable special event permits.

In addition to the requirements listed above, you may also

Licensing to show a film in your park may seem a bit onerous, but it is not impossible. If showing a film is an important part of your interpretive programming, it can be made affordable through park partnerships—sponsorships and sales of food or beverages as part of the experience may make it sustainable for your park.



A Sticky Situation: Contracting a Videographer and Department IPR

By Heather Holm & Wil Jorae
Interpretation and Education Division

Intellectual Property Rights can be a complicated topic. The Department has resources available for you to use, which now include *Creations of the Mind: Intellectual Property Handbook* and the Intellectual Property Online Training (or "IPOT") class. The resources can help guide the correct course of action to take. There are times, however, when the situation we find ourselves in may not be one of our making, but one we must resolve as responsible stewards.

An IPOT participant posted the following scenario about a potentially complicated intellectual property issue encountered at a park on the discussion forum. The forum is a place where participants can post questions for the group and facilitators to discuss and puzzle through. The transcript below, edited for anonymity, demonstrates a real-world issue that you might encounter.

There are times, however, when the situation we find ourselves in may not be one of our making, but one we must resolve as responsible stewards.

IPOT Class Participant:

I have inherited a situation in which a cooperative association contracted for a video. I have not seen the video but it was supposed to be created for the [Cooperating Association Name Deleted] at the [Park Unit Name Deleted]. This all happened before my time there. The co-op paid several thousand dollars to have the video produced and the company that produced that video I think copyrighted the video and wanted to charge the co-op to use it (I think). I suspect this video does contain IP owned by the department and I want to see if there is anything we (DPR) can do to control or gain control of this video or at least stop the company from selling it with our IP that might be included in it. Since that debacle, a new video has been produced for much less money and is in use. Does anyone have any ideas or thoughts

about the first video and how to get it? I don't know if the co-op even has a copy anymore.

Course Leader Reply:

The first step is to gather as much information and documents as you can related to the project:

- 1) Get a copy of the cooperating associations' original contract with the videographer and determine what the agreement terms were.
- 2) Acquire a copy of the video and review the video to determine what, if any, Department IP materials were used. You might also have a copy for sharing with HQ's Legal Office.
- 3) Determine who provided Department IP to the videographer and get a copy of any/all related correspondence related to the IP materials.
- 4) Submit a Legal Request with the documentation you have gathered.

As you are aware, this is a complicated situation and the Legal Office is best equipped to handle your questions and help determine what course of action, if any, is appropriate.

IPOT Class Participant (Follow-Up):

FYI, here is an update on the above situation and a how not to do things for others to learn from. First, the good news, there are no copyright infringements with this video that I can see as I did have a chance to look at it this past week. An agreement was made between our association and the video production company that was weak and gave up all copyright and rights of reproduction. *There were, I found in researching the situation, suggestions made by our department staff at the district level and all the right suggestions were made for the IP*

(Continued on page 13)

A Sticky Situation continued...

and reproduction rights. They were not followed up on by the association and we basically only have rights to purchase more copies of the DVD at a cost of \$7.50 in a minimum purchase of 25 or more. (Italics added by editors for emphasis) All rights, photos and video footage were retained by the production company and are copyrighted so even if we wanted to use some besides what we have permission for, we will need to ask nicely with a formal letter of request. While this is an option, the video is not that good so we are not going to bother because we have better photos and video available.

Lessons learned. Go through the handbook on IP before making or approving any deals and consult with the associations we work with carefully to make sure we do get a good contract following the guidelines in the forms that we already have. And just like the IP handbook suggests, if there are any language changes, run them through Legal for approval and to make sure our IP rights are protected. We got off pretty easy on this one because the company did respect our copyrights and did not use them without our permission. This was a good lesson for me as I got to delve into the issue a little in the real world and I do feel confident about moving forward on issues concerning the departments IP in the future.

The above example illustrates a common situation. Historically, many park cooperating associations have funded and/or contracted on behalf of the Department for the production of films, exhibits,

publications, etc. As you work with a Cooperating Association or a non-DPR Park Operator on such projects it is very important to take the extra five minutes of time up-front to make sure we are following correct protocol related to intellectual property, and giving the Cooperating Association the tools for success. If you wait to "clean things up" at a later date, the time it will take you (or a future colleague) to gather the information necessary to sort out the problem could range from hours, to days, to weeks. The thorough follow-up by the IPOT Participant shows real dedication, professionalism, and an attention to detail that makes us very proud to be part of the Parks family. The insights the IPOT Participant gained will follow them throughout their career, and their future proactive work will actually save the Department time, as well as help head off potential legal entanglements.

The above example, a real-world scenario, is one that you may encounter at your local park level. We hope through this scenario we have provided you with a better idea of how intellectual property rights may impact your job, how you might address a similar situation, or provide clues where you may seek guidance. We are part of a team of dedicated professionals; we work in amazing places, and we work for a Department with a meaningful mission. By taking the time to help protect our Department's intellectual property we are upholding the inherent values of our parks.

The IPOT participant granted permission for the use of the forum post in this article.



Fair Use or Educational Fair Use? I'm Confused

By Heather Holm

Regional Interpretive Specialist, PORTS Program Coordinator
Interpretation and Education Division

Have you ever wanted to use a video clip or an image you found on the internet in a presentation but were not sure whether you could legally use it without requesting permission from the copyright owner? Can it be used without permission under the premise of fair use or educational use? A variety of factors can determine the answer to these questions; factors outlined under the fair use doctrine of intellectual property.

First though, some background on the fair use doctrine. Copyright law provides copyright holders with the exclusive rights to reproduce, adapt, publish, perform or display their copyrighted works. Fair use is a legal principle that defines the limitations on the exclusive rights of copyright owners. Fair use allows limited use of copyrighted material without requiring prior permission from the copyright holder. According to the Copyright Law of 1976, certain uses of copyrighted material may be deemed fair and not infringe on the copyright owner's rights, such as criticism, comment, news reporting, teaching (including one-time copies for classroom use), scholarship or research.

There is no simple test to determine what qualifies as fair use. Fair use must be determined on a case-by-case basis by analyzing the particular facts of a desired use. The following factors are used to determine whether a particular use is considered "fair use": 1) the purpose and character of use, including whether the use is of a commercial nature or is for nonprofit educational purposes, 2) the nature of the copyrighted work, 3) the amount and substantiality of the portion used in relation to the entire

copyrighted work, and 4) the effect of the use upon the potential market for or value of the copyrighted work.

Let's look at a practical example. You are preparing an interpretive presentation on bats for tomorrow's campfire program. You finally find the perfect illustration of a bat's sonar capabilities on a scientific organization's website that you want to use in your PowerPoint. There is not enough time to secure permission from the copyright holder before the campfire program. Would this qualify under fair use? Maybe. The first step is to determine if there are specified "terms of use" posted for either the image itself or for content on the website. A good place to look for a link to terms of use is at the bottom of a webpage. The second step is to evaluate the use of the illustration against the four fair use factors. Columbia University has put together a Fair Use Checklist, <http://copyright.columbia.edu/copyright/fair-use/fair-use-checklist/>, to help guide users of copyrighted works, including teachers, librarians and lawyers, to determine if a use may qualify as fair use.



Returning to our practical example, the illustration is part of a lengthy scholarly article on bat hunting abilities so the new use of the illustration in a PowerPoint focused on bat adaptations could be argued as being transformative and new under the first fair use factor, and it is not for commercial use. Under the second and third fair use factors, the illustration is more factual than creative in nature and comprises only a small portion of the scholarly article, but not the heart of the work. Finally the one-time use is for a non-commercial purpose and

(Continued on page 15)

Fair Use continued...

would not deprive the copyright owner of potential licensing revenue. Based on this evaluation we could potentially, under the fair use guidelines, use the illustration one time in our campfire powerpoint. If this campfire program is going to become part of your regular repertoire then you would need to seek copyright permission from the copyright owner to continue to use the illustration.

Some people may present the argument that the illustration could qualify under "educational fair use." Educational fair use provides limitations and exemptions to teachers and educators at educational institutions. Educational institutions are defined as nonprofit organizations whose primary purpose is supporting the instructional, research and scholarly activities of educators, scholars and students. However, state parks are not "classrooms" in a legal sense, although some of our interpretive programs, i.e. school group interpretive programs or Environmental Living Programs, could qualify as "systematic mediated instructional activities" (Title 17 United States Copyright Act §110). In the case of a campfire

program, it could be argued that the campfire program is more entertainment than educational.

Informational guidelines govern "classroom use" of copyrighted works, but are not binding on the courts. The educational use guidelines limit the use of copyrighted materials to one copy per student. There is also the requirement of spontaneity where a user must show there was no time to obtain permission, and brevity in the amount used. The fourth requirement is the use of a copyright notice. The United States Copyright Office published an online Circular #21 that provides a great deal of discussion and guidance regarding the Fair Use doctrine in connection with the educational uses of copyrighted materials.

The Fair Use guidelines are purposefully vague, requiring that each possible fair use be considered on a case-by-case basis. The best course of action is to obtain in advance copyright permission for materials whenever possible or document that a good faith effort was made to locate the copyright owner.

Possession is Not Always 9/10ths of the Law...

By Wil Jorae
Museum Curator II, Photographic Archives
Interpretation and Education Division

So you were searching in The Museum System (or "TMS") and found the perfect image for your project. You contact the Photographic Archives to get a copy. You are surprised when the image comes with a legalese warning phrase stating that the copyright status is uncertain, that someone else owns the copyright, or that there are no signed releases and your use could expose the Department to potential liability. We have a copy, doesn't that make it "ours?" Why would we even have a copy in the Photographic Archives if we cannot use it? I have heard that question many times in my tenure at the Photographic Archives. It all comes down to a convergence of the role of collection repositories to protect and preserve history: the protections guaranteed to creators under

US Code, Title 17: Copyright Law, and the role of the California Civil Code in protecting privacy and control over one's likeness.

The issue of physical ownership as separate from ownership of the intellectual property (copyright) is one of the most confusing aspects of intellectual property rights. How can someone physically own a painting, a photo, a sculpture, etc. but lack the rights to copy and share it? After all, you may have paid the original creator for the work. Since you paid for it, don't you own it? The answer of course is, "not necessarily." The issue of full ownership of both physical and intellectual property is complex. A

(Continued on page 16)

Possession continued...

contractual "work for hire" project in which an artist/photographer/creator is specifically hired to create a specific work for a specific fee is an example of a scenario where the person who paid the creator would own full intellectual property rights if documented in the contract. That said, simply buying a photo, painting, sculpture, etc. at an art show or gallery is completely different; to secure intellectual property rights in this instance you would need that specified in the purchasing agreement. Owning intellectual property rights includes a number of protections and rights, including the right to use, license for use by others, reproduce, create derivative works, etc. and each of these collected rights can be granted in whole or in part. Purchasing full intellectual property rights usually commands a much higher price, as it effectively prevents the original creator from using and/or profiting from that specific work ever again. Only the intellectual property rights owner can transfer the ownership or license use rights to another party.

Archival collections contain images acquired in many different ways. The Photographic Archives collections include everything from original donated materials, materials gathered from non-Department sources for exhibit or brochure use, materials gathered for reference use in building reconstructions or rehabilitations, materials collected by past employees during the course of their work, copy photography of private family collections, etc. While we do have clear copyright to some of the materials, there are a number of items with no clear transfer of intellectual property rights or any document stating what rights were granted to the Department by the actual intellectual property rights owner. US Code, Title 17, §108 allows libraries and archives to duplicate copyrighted materials without permission from the intellectual property rights owner purely for long-term preservation and reference purposes. These images are valuable for the information they contain, such as structures that

no longer exist, key events from the past, natural features that may no longer exist at the park, etc. At times, someone will request these images of questionable copyright status. Unless authorized in writing by the copyright owner, we do not have the authority to legally grant permission to use non-Department owned copyrighted materials. How we respond to such requests depends on whether the use is internal or by a non-Department entity, and the purpose for which the use is requested.



If a Department employee uses something of questionable copyright status in a publication, they are opening up the Department to potential liability. Even the simple act of importing an image into PhotoShop® and turning it into line art for a report or web page is *only legal* with the written permission of the copyright owner as that is considered the creation of a derivative work. Requirements on transparency in government, the proliferation of electronically available Department reports on the web, etc. make the possibility of questionable item use being discovered much higher. If the copyright is in fact held by a non-

Department entity and we have not secured the appropriate permissions, the Department would be liable for copyright infringement. Moreover, the reputation and integrity of the Department is called into question. Such a situation could result in legal action, from a cease and desist letter (e.g. destroy/pull the brochure or exhibit panel), demand for back-payment of licensing fees, or even the copyright owner suing for damages. Lawsuits incur costs even if the Department wins. If the Department were to lose such a suit, the potential ramifications could be catastrophic, given our ever shrinking budgets.

Non-Department entities are required to sign a DPR 990A Licensing Agreement specifying and limiting their use prior to receiving materials. The DPR 990A

(Continued on page 17)

Possession continued...

includes an indemnity clause that protects the Department in the event that the copyright for materials selected is in fact owned by a non-Department entity. The licensee uses such material at their own risk. We have had instances where requestors pare back the materials they request to ones where the Department has clear ownership of the image(s).

In addition to US Code, Title 17, there are laws in the California Civil Code that affect our ability to use images showing visitors in parks. California Civil Code §3344 relates to an individual's right to control use of their likeness. Commercial use of a person's image without their consent, apart from specific instances, is a violation of the law. The Department developed the DPR 993 Visual Media Consent Form to secure these permissions in the broadest manner possible. The Photographic Archives has begun tagging catalog records in The Museum System ("TMS") so that staff can identify which images have the necessary permissions for use. When the Photographic Archives has a signed DPR 993 on file, we note that information in the Label Text field on the TMS catalog record. If the field is blank then there are no signed DPR 993s on file. Additionally, there have been recent modifications to other laws concerning the capturing of images. California Civil Code §1708.8 relates to harassment and is commonly called the "Anti-Paparazzi Law" in the news media. Senate Bill 606, signed by the Governor in September of 2013, expands California Civil Code §1708.8 for harassment of a child or ward (including under some provisions for photographers

capturing photos of minors) as, "...punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$10,000, or by both that fine and imprisonment for a first conviction." We do not yet know how this will affect our attempts to capture high-quality digital images of our visitors enjoying the parks.

The Photographic Archives continues to develop its collections, to gather more visual information on the history of our parks as well as contemporary scenes. Our images can help you tell the story of your park, illustrate information in a report, or attract visitors to our website. Past collection practices and interpretations of copyright law have resulted in challenges to meeting this need. Our goal is to move forward in a positive and proactive way, to do our best to secure appropriate permissions as we acquire and capture new materials so that future parks staff will have a greater number of "clean and clear" images to select from. Hopefully, this article has provided a better understanding of the issues faced by archives in general as well as the Photographic Archives in particular. We hope that a better understanding of the potential issues will help guide users in their search for images, that they will be able to select images that are clear of issues yet still fit their themes.



Getting a Handle on Local Image Collections: One small step for my park, one giant leap for the Department

By Wil Jorae
Museum Curator II, Photographic Archives
Interpretation and Education Division

Many park units have local image collections. These are typically "working files" stored in an image folder on a specific computer, an external hard drive, a server, etc. They represent many types of images: images shot by State Park staff while on the job, images shot by formal State Park volunteers with signed DPR 208 Volunteer Service Agreements, images shot by the local cooperating association, images sent in by park visitors, etc. These image collections represent great potential resources; however, documentation is the key for these collections to realize their full potential.

Like many home collections, those who contributed "know" who shot what image, why the image was important, the names of the people in the image, etc. but that knowledge is a finite commodity carried around by the contributor. With older analog images, one might grab a pencil or pen and write down information on the back of a print or the outside of the envelope containing the photos. The transition to digital adds a new wrinkle; it is very hard to write on the back of a digital file. Thus we have received requests from people in the Field for some tool to help track their local images.

In response to the requests, we developed an Excel document at the Photographic Archives that we share upon request. The Excel document is simple to use, helping to capture core details of the photos so that information is available to those who will one day pick up the baton. While not an official Department document, this Excel document is designed to be a "stop gap" method to help people get some level of control and documentation of the images they create

until the Department determines a better method to track photos. So why should we bother doing this?

Recently, I was granting formal written permission for a magazine publisher to use Department intellectual property (images). The publisher wanted to use materials from the Photographic Archives collections. While finalizing the DPR 990A Licensing Agreement to grant use, the publisher asked if I would also be handling the "other photos" that came in for another article about a local state park. In the course of our discussion, I learned that park staff had submitted images from their local "image folder" for the project.

I contacted the staff persons who had submitted the additional six images to find out if the Department had clear ownership or at least the authority to legally grant permission for use to the publisher. Working with the staff persons involved, they were able to provide clear Department ownership for two images and identify that we did have documentation that would allow us to grant permission to use two more by the original, non-Department photographer. The final two images could not be concretely identified, but staff was "pretty sure" they were shot by either Department staff or a volunteer. Based on the file date, the two photos were either shot or added to the folder in 2003. As so much time had passed, no one could be completely certain of their copyright status. I advised the publisher of the situation, and offered to include the two images with unknown copyright status. The Department's DPR 990A includes an indemnity clause that would protect the Department in the unlikely (but possible) event that the copyright was held by a

*...documentation is
key for these
collections to realize
their full potential.*

(Continued on page 19)

One Small Step continued...

3rd party and litigation ensued. The publisher opted to drop those photos from the magazine as they were not willing to accept the risk.

When I let the staff know of the publishers' choice, they were initially disappointed that the publisher did not "trust them" enough to accept the risk. I thought about it briefly, and the best off-the-cuff analogy I could provide was, *"...would you rather borrow a car from someone with the pink slip in their name or from someone who said they were 'pretty sure' their friend owned the car?"* It all comes down to the level of risk people (and publishers) are comfortable with bearing. With a copyright lawsuit, even if you are vindicated, you can still incur significant legal fees in the process. Many small publishers cannot afford that level of liability and only want to deal with "sure things." Having proper documentation on photos removes doubt and risk.

Our Department has a number of staff who are also great amateur, pro-amateur, and professional photographers. You are at your park. You know the

best times of day to shoot a feature. You are onsite to document when something new or exciting is discovered. You are onsite at all the special events, at the opening of new exhibits, and to catch the amazing and unexpected things that happen. With 280 State Parks, our official photographers cannot be everywhere at once. Spending just a little extra time and effort to quickly document the images you and your volunteers create means the materials could actually be used in everything from brochures to Department web pages, exhibits to multimedia materials. Your unit's images can meet local needs, as well as the Department's mission at large. If you are interested in beginning to document your local image collections, contact the Photographic Archives. If the Excel Document sounds daunting, there may be other quick solutions open to you. We can help with basic advice, tips, and/or ideas to help wrangle and tame your local photo documentation. Just give us a call and we can help find the best solution for your situation.

When Private Collectors Want to Share Copies of Pictures with State Parks.

By Wil Jorae
Museum Curator II, Photographic Archives
Interpretation and Education Division

In the field, you may run into scenarios where a local family has photographic materials that may be of interest to your park, but the family may not be willing to part with them. They may offer to allow you to copy or scan materials. This can be a great opportunity, but must be approached carefully so that California State Parks will be able to fully and legally utilize the material for our many and varied projects. Recently, we had such an offer at the Photographic Archives. I hope this narrative of the events can help guide park staff who may have a chance to pursue such an opportunity in the future.

In 2012, a family approached State Parks. Their father had literally grown up in some of our state parks as the child of a ranger. The father became an avid photographer who, in the course of his time living in state parks, visually documented the places he lived. At one time, he had even sought employment with State Parks as a photographer, but budgetary constraints prevented that from becoming a reality.

This photographer and his children had tried contacting people in State Parks about potentially sharing the works, but had initially encountered

(Continued on page 20)

Private Collectors continued...

difficulty locating an interested party with the ability to carry out their proposal. Through a chain of contacts, the photographer and his children were put in touch with the Interpretation and Education Division, and subsequently, the Photographic Archives.

The process did involve a bit of planning and work. The collection was at a distant location, and the family was uncomfortable sending the materials out via the post office or other delivery service. The family had encountered shipping issues years before with a private, for profit enterprise. The Interpretation and Education Division arranged to have a Regional Interpretive Specialist and a Museum Curator II develop criteria for review of the collection. We were able to get one of the PORTS interpreters, stationed nearby, to meet with the family and perform an on-site review of the collection. The interpreter identified photos of potential interest based on the prepared criteria, and asked follow-up questions to determine the provenance, likely intellectual property rights status, etc.

Next came the discussion of the terms of access and potential use. The family was interested in retaining associated copyright as well as the original negatives, but was willing to let State Parks capture digital copies using our scanners. After discussing the issues, the family was willing to sign the DPR 992A Copyright License Agreement, in which the family granted us an unlimited, paid-in-full license to use, reuse, modify, sublicense, etc., on the condition that any and all use include a credit line showing the photographer's name. This helps streamline use, saving future staff the time that would be required to secure use-by-use permissions.

Next came the duplication phase. The family expressed a desire to bring the materials to the Photographic Archives themselves. We scheduled dates, and arranged for other interested parties from the district to come and help assess the images of greatest interest. We dedicated three full days of staff to scanning at very high resolutions to make our archival digital copies. The time constraints prevented us from scanning all the images; however, we were able to capture the primary images of

interest that helped fill gaps in our visual historic record. We supplied a series of proof sheets to the family, and are currently waiting on the original photographer to add additional identifications to expand upon the visual information contained in the images.

The process took some staff time and dedication up front as well as on the back end. We worked carefully with the family to set an operating protocol they were comfortable with that would work within our funding and staffing constraints. We determined the best permissions process to meet the family's desires while at the same time ensuring that the proper paperwork was completed to provide the Department with the widest use possible. We created very high resolution scans which will allow park staff to use the materials in a wide range of projects. The extra time we took up front will save future staff hours of time that would otherwise have been spent tracking down source information, tracking down the appropriate copyright owner for permissions, negotiating permissions, etc. Based on my experience working with collections, an extra 5 minutes up front can save hours of staff time down the road sorting out and correcting issues. I hope this experience can serve as a pathway to success when your park has a similar opportunity.



This particular image was one we were only allowed to scan; the family provided a signed DPR 992A but wanted to retain a number of the original materials. No digital conservation has been completed to clean up corner tear and tape marks.

Using the Department Logos

By Victoria Yturralde
Staff Park and Recreation Specialist
Interpretation and Education Division

A logo is a graphic symbol used to promote instant public recognition of an organization, commercial enterprise, or individual. Specific elements, including colors, images, and fonts, are designed and protected so that the symbol appears consistent; this protection is enforced through licensing. Logo licenses for statewide department logos are developed at HQ and are approved by the Chief of Interpretation and Education.

Department employees may use the logos anywhere they want to strengthen the connection between the Department and a specific project or effort. For example, informational flyers, trail maps, signage, interpretive panels, web pages, and other communication tools could benefit from using the logo. No licensing is required for these uses.

Cooperating associations have a logo license for the bear logo built into the coop contracts. They will need a separate license allowing use of the 150th Anniversary logo. All items developed for sale using either logo must be approved by the Cooperating Association Liaison (CAL).

Concessions now have a logo license for the bear logo built into the concession contract, but this is a fairly recent development; older contracts may not include

this so check with your concessions specialist. They will need a separate license allowing the use of the 150th Anniversary logo. All items using the logos and all items offered for sale need approval by the District Superintendent.

All other entities, including contractors, government agencies, nonprofits, educational institutions, companies, and individuals must be licensed to use the logo. Contact interp@parks.ca.gov for assistance.

The logo files may be found on the share drive at N:\Logo\DPR Logo. Several file formats are available, depending on your needs. Specific guidelines on logo use are available in a document in the same folder entitled "Logo Use Guidelines."

Questions? Call Victoria Yturralde at 916 653-9945.



California's Tapestry

A Diversity Feature Article

Spring 2014

Lost in Translation

By Victoria Yturralde
Staff Park and Recreation Specialist
Interpretation and Education Division

In the Interpretive Publications Section, we have frequently been asked if we have brochures and other interpretive materials in languages other than English. Alas, we have far too few—but we are trying to change this in order to reach a broader audience.

Sometimes individuals offer to translate materials for us, often for free! Why don't we take them up on their offer? There are two reasons. First, since we are not native speakers of whatever language we're translating into, we cannot provide editorial control. How would we know if a word is misspelled, or if a sentence structure is awkward or grammatically incorrect? Second, because translations can never be verbatim, there are elements of interpretation, creativity, and originality involved, which brings intellectual property rights into play. In essence, the translation is a "derivative work." Translations cannot be undertaken without permission of the copyright holder (California State Parks)—doing so is a clear infringement of copyright law.

If you want to provide translations of interpretive materials, you're better off utilizing the services of a professional translation service. Make sure they use native speakers, and write into the contract or agreement that the translation is a "work for hire," and that copyright will be vested in California State Parks. Translation services are surprisingly inexpensive—for example, translating one of our larger (17x22) brochures ranges between \$300 to \$500—a small price to pay for opening our doors to another culture.



The Catalyst

Spring 2014

Contents

From the Editors	page 3-4
Dear Master Interpreter	page 4-6
What's Up: Resources for Interpreters	page 7
IPIT Report: Intellectual Property Online Training	page 8
Requesting Permission for non-Departmental Photographs	page 9-10
Showing Licensed Films in State Parks	page 10-11
A Sticky Situation	page 12-13
Fair Use or Educational Fair Use?	page 14-15
Possession is Not Always 9/10ths of the Law	page 15-17
Getting a Handle on Local Image Collections	page 18-19
When Private Collectors Want to Share Copies of Pictures	page 19-20
Using the Department Logos	page 21
California's Tapestry	page 22



Interpretation and Education Division
PO Box 942896
Sacramento CA 94296-0001