



EDITORIAL GUIDELINES

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TABLE OF CONTENTS

	Executive Summary	3
	Strategic Groups	5
I.	Introduction	6
II.	Guiding Principles	7
III.	Context, Roles & Responsibilities	9
IV.	Editorial Standards & Practices	11
V.	Funding Standards & Practices	27
VI.	Conclusion	29
	Appendix A	30
	Appendix B	33

EXECUTIVE SUMMARY

Maryland Public Television (MPT) produces, acquires and distributes high-quality national, regional and local programming and educational content designed to inform, enlighten, educate and entertain. Along with traditional broadcast distribution, MPT is a multi-platform public media service provider with delivery of content via the Internet, on mobile devices, and through video-on-demand, streaming and other digital systems. What follows is a set of guidelines and principles that govern MPT's practices in the creation, production and distribution of content. In light of today's changing media consumption patterns and interactivity, MPT recognizes that new media demand a more complex system of content distribution. Thus, editorial principles that govern television programming decisions must also apply to today's new multiplatform environment. MPT must exercise diligence and discipline to maintain its reputation as a trusted and credible source of content across all media platforms in order to provide value to its community.

MPT is a Public Broadcasting Service (PBS) member station with five strategic business units to support its mission: Content Division, Technology Division, Education Division, Administrative Division and Development Division. Internal decision-making groups, composed of corporate officers, are responsible for the oversight and management of editorial issues for content, education, events and outreach activities.

GUIDING PRINCIPLES

While MPT supports and airs a schedule of national programs offered by PBS, it retains broad autonomy and independent editorial responsibility. MPT's corporate guiding principles ensure that:

- Public interest is of the highest importance; it defines and directs all editorial decision-making.
- High-quality content is designed to be delivered across a variety of media platforms, reflecting the diversity and unique needs of Maryland and its local communities; MPT works to provide citizens access to a full range of ideas, information and perspectives.
- Editorial processes are driven by fairness, objectivity and balance and are free of undue influence from either internal or external sources.

CONTEXT, ROLES & RESPONSIBILITIES

MPT, its production partners, and PBS all play essential and distinct roles in the public television programming process. Their respective roles and responsibilities may differ depending on the context.

- PBS encourages and fosters editorial works, but it does not itself produce any program content.

- The final responsibility for the quality and integrity of its broadcast services rests with MPT which has broad autonomy in deciding whether, how and when to distribute PBS program offerings.
- The majority of content distributed by PBS and acquired by MPT is created by a diverse group of producers who are primarily responsible for content. Full editorial control is asserted by MPT for all locally originated content.

EDITORIAL STANDARDS & PRACTICES

MPT takes seriously its commitment to adhere to the highest standards of quality and integrity by supporting an independent decision-making process which is responsive to the needs and interests of Maryland citizens. MPT strives for transparency at all times regarding its programming and funding decisions.

- Producers must exercise professional judgment to ensure the standards of fairness, accuracy and objectivity are met. Every effort is made to present all relevant information and points of view as well as to present content in the proper context.
- MPT news and public affairs personnel adhere to the guidelines set forth by the Society of Professional Journalists which is considered the standard for credible news-gathering organizations.
- To preserve the editorial integrity of a program, no funder is part of the editorial process.

FUNDING STANDARDS & PRACTICES

MPT recognizes that sound financial management of a public broadcasting station is crucial to its credibility.

- Editorial control of programming remains in the hands of the producer and is not delegated to a funder.
- Funding arrangements do not create the perception that editorial control has been exercised by someone other than the producer or that the program has been inappropriately influenced by its funding source.
- All funding activities are subject to guidelines provided by the Maryland State Ethics Commission.

STRATEGIC GROUPS

MPT has five strategic business units in support of its mission. These interrelated entities deal with oversight and management of editorial issues for content, events, funding and outreach activities.

MPT CONTENT DIVISION

Content Development,
Production, Distribution,
Licensing, Marketing,
Promotion, Online Media,
Corporate Support

MPT TECHNOLOGY DIVISION

Broadcast, Production
Services, Digital Platforms,
Special Projects,
Information, Technology,
Engineering, Facilities

MPT EDUCATION DIVISION

Early Childhood, Outreach,
Technology, K-12 Services

MPT ADMINISTRATIVE DIVISION

Finance, Human
Resources, Legal

MPT DEVELOPMENT DIVISION

Membership, Community
Engagement, Major &
Planned Giving,
Publications

I. Introduction

These guidelines are intended as both an official and living document subject to revision by Maryland Public Television (MPT) on a periodic basis. This document is the result of a review of the Code of Editorial Integrity for Local Public Media Organizations (2012); PBS Program Standards and Journalism Guidelines (1971, 1987, 2005); CPB viewership research studies (2004-05); and best practices of other leading public media entities. This document clarifies and codifies the thought process that guides MPT's editorial values and standards.

MPT corporate officers oversee five separate groups that collectively provide oversight and management of editorial and production-related issues and decisions across all MPT operations. These groups are:

1) Content and Education divisions. As a matter of course, editorial discussions and decisions among professional staff occur daily within both the Content and Education divisions. Topics include program acquisitions, production scripts, rough cuts, interview texts, website design and text and structuring and negotiating deals and contracts. (Similar discussions occur within the Development Division as it addresses pledge programming, community outreach and station communications.) Daily operations of the Content and Education divisions include decision-making in concert with other units including Development, communications, production operations, legal, business affairs, and finance units.

2) Management Team. This group meets weekly to address issues of broad concern across departments. Editorial matters are regularly discussed, particularly those that shape content, have significant financial impact or have communications implications for the station. Local public affairs and news, including *Public Square* programming, are also discussed weekly.

3) MPT Project Review Committee (PRC). This is a cross-departmental body whose members cast votes in order to “greenlight” or begin production of new projects. Voting is based upon both the editorial and financial case made by the project's champion. Typically projects are brought to PRC from the Content, Education or Development divisions.

4) MPT New Initiatives Fund (NIF) Committee. This is a cross-departmental body whose members cast votes to “greenlight” new projects or initiatives that will receive funding from the New Initiatives Fund established in 2007. Voting is based upon both the editorial and financial case made by the project's champion; typically projects are brought to NIF from Content Enterprises, Education or Development.

5) Red flag advisory group. This group is convened on a quick-turn-around and/or on an as-needed basis. The group includes staff from the senior management, legal and communications areas. The group determines how highly controversial or “red flagged” programming should be handled on air and online. Meetings are recorded in note form, and notes are kept on file.

II. Guiding Principles

Maryland Public Broadcasting is both a nonprofit corporation and an agency of the State of Maryland. As a non-commercial entity, MPT is authorized under license by the Federal Communications Commission to operate six full-power television transmitters across Maryland. MPT is owned and governed by the State and its purpose is to serve needs and improve the quality of life of the citizenry of Maryland and beyond. MPT has identified five principles to guide its content services including:

- 1) *Editorial integrity*
- 2) *Content quality*
- 3) *Content diversity*
- 4) *Content localism*
- 5) *Editorial approvals*

The majority of MPT content is acquired from national distributors, including PBS, APT, NETA, BBC and others. MPT produces the remainder for local and national distribution on a variety of distribution platforms including broadcast television, cable TV, on-demand, satellite, web and mobile devices.

A. Editorial integrity

MPT's reputation for quality reflects public trust in the integrity of MPT's editorial processes. To maintain that trust, MPT is responsible for shielding its editorial process from political pressure or improper influence from content funders or other sources. Through its professional staff and various internal committees, MPT provides daily checks and balances to ensure that the content it produces and distributes satisfy these guidelines. As stated in the Annotated Code of Maryland (24-206), MPT facilities and programs may not be used to: present biased or one-sided aspects of partisan politics; advocate or oppose any present or prospective political candidacy; or advocate or oppose any legislation currently being considered or prepared. Similarly, MPT may not be influenced by corporate sponsors. MPT does not accept corporate support from any source that would influence or give the appearance of influencing its content.

B. Content quality

In selecting and creating editorial works, MPT seeks to offer the highest quality content available. Editorial decisions require professional judgment calls on subjective aspects of content quality, including but not limited to: excellence, creativity, artistry, accuracy, balance, fairness, timeliness, innovation, boldness, thoroughness, credibility, and technical virtuosity. Similar judgments are made about the content's impact, that is, its ability to stimulate, enlighten, educate, inform, challenge, entertain and amuse end-users.

C. Content diversity

To enhance our ability to serve our community's needs, MPT strives to offer a wide choice of content. Such diversity furthers the goals of civil society by enhancing people's access to the full range of ideas, information, and viewpoints required to allow them to make informed judgments

about current-day issues. Diverse content also furthers MPT's serving many different and discrete audiences.

The very diversity of MPT content providers and funders helps ensure a wide variety of program subjects and approaches, providing a bulwark against domination by any single point of view. Its standards and practices of diversity ensure that MPT offers content that reflects the pluralism of its local communities, including, for example, appropriate representation of minorities.

D. Content localism

MPT's editorial philosophy rests on the belief that the greatest potential of its public media platforms is realized when it serves the needs of its local community and on the recognition that there are wide variations in local content needs and tastes. MPT exercises its autonomy and independent editorial responsibility by: a) giving its audience a broad range of content offerings; b) providing end-users with timely, engaging information; c) providing perspectives that enable citizens to make informed judgments; and d) making MPT's editorial processes actively responsive to community needs. For example, MPT conducts community listening events throughout the state to gather input on subjects and topics that are of concern to citizens and that may be addressed via MPT content. MPT broadcasts roughly 200 hours of locally originated television and webcasts roughly 5,000 pages of new online content annually.

E. Editorial approvals

For its original productions, MPT regularly exercises full and editorial approval and control over content. For some government agency, nonprofit co-productions and program acquisitions, MPT will seek editorial input and materials; however, MPT maintains final editorial control. One example of seeking editorial input is in educational content production wherein Maryland State Department of Education (MSDE) and others provide expertise and review content. PBS has determined that co-production partners must either be in the regular business of content creation, production or distribution. In cases of work-for-hire productions, MPT's Content Enterprises, Education and Special Projects units still maintain final editorial control.

III. Context, Roles & Responsibilities

MPT, its production partners, and PBS all play essential and distinct roles in the public television programming process. PBS is charged by MPT and other PTV stations with responsibility for reviewing, selecting, scheduling, promoting, distributing, and, on occasion, developing and funding editorial works. Although PBS is expected to encourage and otherwise foster the production of quality content, PBS does not itself produce any programs.

A. MPT Technology Role and Responsibilities

As a public television licensee, MPT ensures that its broadcast, webcast and mobile services fulfill its statutory obligations as a broadcaster and content producer/distributor. While other entities, including PBS, may assist MPT, final responsibility for the quality and integrity of its broadcast services rests with MPT. Thus, even though PBS or other distributors have accepted a program and made it available, MPT has sole discretion to decide whether, how and when to distribute the program locally.

Although PBS strives to provide a balanced content offering, MPT may choose not to carry that service or programs in their entirety. MPT regularly makes different decisions about how best to schedule or supplement PBS's programs. MPT ultimately is responsible for ensuring an appropriate balance of subject and viewpoint across all its content platforms and for complying with all applicable federal statutes and broadcasting regulations.

B. PBS Role and Responsibilities

While the national producer bears responsibility for editorial production decisions, PBS bears responsibility and discretion for deciding whether to accept and distribute the program with the imprimatur of the PBS logo as well as for deciding when to schedule and where to promote the program for national distribution. Before accepting a program, PBS evaluates the program to determine whether it meets its standards. Both PBS and MPT construct their overall programming schedules with a view toward ensuring, over time, a diversity of subjects, viewpoints, formats, techniques, and content sources.

C. Producer Roles and Responsibilities

The majority of content distributed by PBS and acquired by MPT is produced by a diverse group that includes public television stations, independent institutions such as the Sesame Workshop, independent producers (ranging from individual filmmakers to major studios), foreign producers and broadcast organizations, and individuals or organizations not normally in the program production business.

Primary responsibility for the content that MPT acquires rests with the producer who creates the content and is in a position to control and approve all of its elements in consultation with MPT. MPT solely determines whether or not to distribute the material.

For locally originated MPT content, similarly high standards apply. Again, MPT retains full editorial approval and bears responsibility for editorial control. To ensure locally originated content meets the standards embodied in these guidelines, MPT and its content and production partners have a mutual obligation to communicate frequently during the production process. The goal of this liaison is to provide opportunities for early notice and to resolve problems. Thus, MPT has a responsibility to make these guidelines known to producers and partners and to institutionally adhere to these guidelines.

IV. Editorial Standards & Practices

- These guidelines represent a distillation of the most important standards and practices that have helped nonfiction producers in the past. They are not meant to be comprehensive, and so producers are encouraged to seek the advice or guidance of the executive producer or management supervisor when in doubt. The guidelines apply to all Maryland Public Television productions.
- Where the term "producer" is used we mean also to include reporters or other staff persons with day-to-day editorial responsibility for a program or program segment. The guidelines apply equally to those on staff and to those with whom MPT contracts to make a program. Where the term "executive producer" is used we mean to include any senior producer or project supervisor. These guidelines may be modified from time to time, and comments are always welcome.

A. FAIRNESS

All of Maryland Public Television's nonfiction programs rest on the expectation that the producers MPT hires and contracts with are interested in honest inquiry into the matter at hand and will approach the making of programs with an open mind. Since publication of truthful, accurate information is the prime mission of our programs, it should be clear that willful misrepresentation or falsification of program content will be considered unprofessional conduct and will carry consequences.

- In the pursuit of truthful information, the producer must be sensitive to issues of fairness if the program is to have credibility. Truth is an elusive combination of fact and opinion, of reason and experience. MPT asks for the viewer's trust. In turn, it promises that the subject matter and the people in the program will be treated fairly.
- The intent to be fair is a strength, not a weakness. If the intent is seen as fair, whatever message the program carries becomes more salient. When program content appears to be unfair, it defeats itself. On a controversial subject, the ideal program is one whose tone is persuasive, not argumentative.

Specifically, fairness means that producers will:

- Approach stories with an open and skeptical mind and a determination, through extensive research, to acquaint themselves with a wide range of viewpoints
- Try to keep personal bias and opinion from influencing their pursuit of a story
- Carefully examine contrary information
- Exercise care in checking the accuracy and credibility of all information they receive, especially as it may relate to accusations of wrongdoing
- Give individuals or entities who are the subject of attack the opportunity to respond to the attack
- Represent fairly the words and actions of the people portrayed
- Inform individuals who are the subject of an investigative interview of the general areas of questioning in advance and, if important for accuracy, give those individuals an opportunity to check their records

- Try to present the significant facts a viewer would need to understand what he or she is seeing, including appropriate information to frame the program
 - Always be prepared to assist in correcting errors
- When there are conflicting viewpoints or opinions on subjects treated within a journalistic program, fairness does not require that equal time be accorded to conflicting opinions. However, it does require the acknowledgment and responsible depiction of conflicting opinions.
- In matters of fairness there is one specific requirement: all producers must have a fact-checking procedure at the completion of the program in which every line of narration and synch and every picture is checked for the accuracy of any factual assertion. Producers must pay attention to the proper spelling of names and titles, correct dates, accurate translation of foreign language material, etc. They must be prepared to cite a source or sources for a fact asserted. Please note that assertion of facts by experts may be accepted without checking, but producers should review those assertions if any credible question arises about their accuracy. If an expert's assertion calls into question the character or competency of another person or entity or is otherwise possibly defamatory, then the assertion may not be accepted without verification. All factual assertions by non-expert interviewees must be checked.
- Nothing in the fairness rules should be interpreted to prevent a producer from making a point-of-view or authored program. However, such a program must be identified and labeled as such. Such programs can be given great latitude as personal and artistic expressions so long as they are not inaccurate or defamatory.

B. FUNDING A PROGRAM

- Best practice dictates that producers should be distanced from potential funders to the greatest extent possible (does not apply to co-producers; see below). The presentation of proposals should be the job of the executive producer and/or a Development representative and/or senior management. However, input from producers for proposal purposes may be desirable, or a producer may be asked to do research and write a funding-related document. Once a project is funded, producers should try to avoid contact with funders except for promotional purposes. Sometimes, however, projects come to Maryland Public Television after independent producers have already had discussions with funders. In such cases, the producer is obligated to disclose to the executive producer the nature of those conversations and to keep the executive producer informed of any future ones.
- The editorial integrity of a program demands that the funder not become a part of the editorial process. If it becomes necessary for a producer to interact with a funder at any time, it is appropriate to discuss the importance of the issue, the amount of research done, possible approaches to stories, and the producer's qualifications to make the documentary.
- It is inappropriate for a producer to promise to a funder to include or exclude particular information or characters; it is inappropriate to promise to give more or less weight to any particular aspect of a program; and it is inappropriate to commit to a particular film or program architecture.
- This guideline applies to funders and not to co-producers. Co-producers are other entities that may bring money, access to money, editorial input, personnel or other resources to a

project. Whatever resources the co-producer brings, the entity should be compatible with Maryland Public Television and have its own independent perspective towards the subject matter of the program. All co-production agreements must be approved by Maryland Public Television.

- If a producer has obtained partial funding for a program, he/she must disclose his/her sources as soon as possible so that the executive producer can determine if any of the sources pose conflicts under Maryland Public Television and PBS funding guidelines.

More detailed information on funding a program and regarding funder spot content may be found at www.pbs.org/producers.

C. RESEARCH AND FILMING

As a producer considers various techniques in researching a story, persuading sources to participate, and gathering information, MPT expects him/her to act in an honorable fashion. Although specific examples could not cover all the concerns here, the primary issue is one of personal integrity. A general question a producer might ask him/herself might be: If you had to tell a reporter how you got the story, how would it sound?

Consult on conflict of interest problems

- Any producer who has a material interest or a financial, family, political or other personal stake in a subject to be covered in his/her program must make that interest known to the executive producer. It is also the producer's responsibility to monitor any interest of those he/she may hire to carry out the project. Also note that if the subject of the program involves Maryland Public Television, the producer must disclose any institutional conflict of interest to the audience.
- Where the matter under examination places the producer or other members of his/her team in possession of information that could lead to personal gain, especially in the case of insider knowledge of a publicly traded company, acting on that knowledge might be considered illegal and must be avoided.

Do not lobby or endorse candidates

- Maryland Public Television staff producers engaged in creating content are bound by a rigorous prohibition against certain political activities. The specifics are outlined in the Maryland Public Television station ethics policy that is available from the Human Resources Department. Although the station policy cannot apply in all its details to independent producers, the principles underlying that policy will be applied during the period of time during which the independent is working by contract for Maryland Public Television. Those principles are:
 - 1) Maryland Public Television programs cannot present biased or one-sided aspects of partisan politics, nor may they endorse or oppose particular political candidates, parties or legislation. Coverage of legislation and elections is perfectly appropriate. Equal time requirements during election cycles may be applicable.
 - 2) When working on any politically controversial program, the producer should engage in no personal political activities, including donations or signing petitions, which would

undermine his/her claim to be a trusted reporter, producer, or editor. Any prior donations must be disclosed to the executive producer. The general test here is whether a producer or the executive producer would feel uncomfortable if private beliefs or actions were made public in the context of one's work for Maryland Public Television.

- 3) When working on any program for Maryland Public Television, producers should not lobby for or against any specific piece of legislation and must never use their relationship with Maryland Public Television to promote or oppose specific pieces of legislation.

Do not accept gifts

- As a general rule, the producer should pay his/her own way and be beholden to no one. Producers should avoid honoraria or gifts from groups that have an interest in how the subject of the program is treated. For Maryland Public Television staff members, more detailed rules regarding conflicts of interest, gifts and outside work can be found in the Maryland Public Television employee policies available from the Human Resources Department. However, to reduce production budgets, producers may negotiate deals for free or reduced airline, hotel, car rental and other services in exchange for a "special thanks" credit. If it would appear that the entity providing the service has an interest in the subject matter of the film, the practice should be avoided.

Do not plagiarize

- In the writing of program proposals, outlines and treatments, it is appropriate to rely on what has been published by others as long as proper citation is given. But if, before making the program, a producer anticipates substantial reliance on the work of others, it is customary to offer credit to them or their work. It is also equitable to pay the original author as a consultant to the project or even to buy the rights to the material. Since these matters turn on many variables, a general guideline is not possible except that it is important that producers disclose, as soon as possible, any circumstances they are aware of in which third parties could raise claims of plagiarism. All arrangements with parties who have previously published material relied on or used in a program must be approved or reviewed by the executive producer.

Obey the law

- The obligations of producers are generally not different from those of a citizen when it comes to obeying the law. It is particularly important that the producer not violate the rights of others in the pursuit of a story. Producers themselves should never take action that would facilitate or encourage the commission of a crime.
- Knowledge that a crime may occur which might endanger the person or property of others should be discussed with the executive producer, but if there is imminent danger of serious harm, it should be reported promptly to the appropriate law enforcement officials.
- Certain investigative techniques permit knowledge of a crime to be withheld from authorities (for example, when the producer is investigating the misconduct of a public official who would have knowledge of it if such a report were made). Also there are a few, very rare special cases (for instance, the practice of demonstrating lax law enforcement by violating the law) in which such violation of law might be journalistically permissible. The

executive producer must approve any such case in advance. Any case in which the producer feels he/she may be in violation of law should be brought to the attention of the executive producer and the Maryland Public Television Legal Department.

Consult before employing hidden cameras or listening devices

- Depending on the circumstances, electronic listening and the use of hidden cameras and recording devices are illegal in a number of jurisdictions including Maryland and, therefore, should not be undertaken without the executive producer's approval and consultation with the Maryland Public Television Assistant Attorney General. This guideline does not apply to situations where a telephone conversation is recorded with the consent of both parties for purposes of accuracy.

Avoid misrepresentation

- In general, a person whose participation or cooperation in a documentary production is sought should know the identity of the producer and why the producer is seeking the person's involvement.
- Material gathered under false pretenses may not carry the same implication of consent that otherwise applies to information freely given to a journalist. If a case arises that calls for a producer to hide who he/she is, it must be approved by the executive producer in advance of shooting unless producing under dangerous conditions does not permit such consultation.
- In some cases it may be necessary for a producer to withhold his/her identity. Such cases are still exceptional and should be discussed in advance with the executive producer unless producing under dangerous conditions does not permit such consultation.
- It is preferable in public affairs documentary reportage for access to a place or to a subject to be granted without any restriction or condition. In such circumstances, any question may be asked; none are rehearsed or identified beforehand; and no limit or condition is placed upon the uses made of the answers or materials given. It is reasonable in exchange for such unrestricted use to explain the purpose of the inquiry and even (to the extent known) the general context in which the particular interviewee will appear. In special circumstances, it may be desirable to provide questions ahead of time. For example, fairness may require that the subject of an investigative interview have the opportunity to check his/her records. Also it may be desirable and appropriate to prepare the interviewee ahead of time in nonpublic affairs documentaries where the aim is to elicit specific information. In no case, however, should a producer suggest to a participant that he/she would have the right to edit any material obtained by the producer.
- With historical films, it is an accepted practice to give people an opportunity ahead of time to organize their notes and thoughts. It is the producer's responsibility to discern between an interviewee's refreshing memory and recreating the past. Simply put, the basic responsibility is not only to avoid manipulating an interview subject but also to avoid subjects' manipulating the filmmaking.
- In some circumstances it may be necessary to agree to further conditions or restrictions to gain access, although agreement to such conditions should be the rare exception. Before conditions or restrictions on use are made a part of the contract for access, a producer must consult with the executive producer. In the rare case of a government agency's conditioning access by a demand for review for national security purposes (for example,

surrounding the release of classified material or protecting the security of troops), the producer must discuss this situation with the executive producer to determine Maryland Public Television's willingness to comply. In almost all cases, conditions and restrictions should be disclosed in the program.

Do not pay for testimony

- It is Maryland Public Television's policy not to pay for interviews on its programs. Not only would payment establish a bad precedent, but it would jeopardize the credibility of any interviewee who was paid.
- Reimbursement of expenses incurred by interviewees as a result of filming (reasonable hotel bills, travel, etc.) is permissible. Producers need not obtain approval for such payments. Payment for materials critical to the broadcast (for example, photos, diaries, letters) may also be made without violating MPT's no-payment guideline. However, no payment may be made to induce a person to obtain such materials illegally.
- Payment to interviewees for work income lost during filming may be allowed in cases of genuine hardship and, in certain exceptional cases, if approved in advance by the executive producer.
- A consultant/expert may be paid to appear in a program but should normally be identified as a consultant at the time he/she appears in most public affairs programs. In non-public affairs programs, whatever other credits a consultant/expert receives, he/she must be identified as a consultant/expert somewhere in the program or in the credits. A consultant/expert must be treated as any other subject in a film. A consultant/expert must perform other work for the project in addition to his/her appearance.

Consult before staging or re-creating events

- The use of re-creation and dramatized elements in public affairs programs can be effective devices, but there should be recognition of the fact that viewers might be confused by the presentation of something as real that is unreal. Therefore, whenever a re-enactment or staging is used, it must be labeled clearly and unmistakably as such or otherwise signaled in a clear way if there is a significant chance that the viewer will be confused. Public affairs programs in particular need to use these devices with great care.
- Historical programs and other non-public affairs programs may find it necessary to use dramatic re-creations more often than is the case for public affairs programming. Often actors and sets will be employed. The responsibility here is to create an accurate vision of the past, whether for an entire program or for smaller scenes within a program. Producers must discuss with the executive producer the extent and style of recreations, how much information may be conveyed by the dramatization, whether dialogue may be used, and from what sources it may be drawn. In instances where dialogue is created, academic experts must be consulted.

D. EDITING AND POST-PRODUCTION

Edit to compress, not distort

- In no area of documentary production (or other edited programs) is there greater reliance on the honesty of the individual producer than in editing.

- It should be the objective of the editing process to collect and order all significant facts in a manner that fairly portrays reality. Whether or not this objective has been achieved cannot be known simply from looking at the result. Thus, a producer might ask himself/herself, “Would I be able to defend a particular cut if others had access to the original materials?”

Use music/effects with care

- The use of music and/or effects is an accepted practice. In public affairs programs, however, music that editorializes or over-dramatizes can detract from the film’s credibility. Effects and/or music in those programs should not be used if the impression created for the viewer would be distorted or inaccurate.
- In public affairs programs, music/effects should be appropriate to and in keeping with the narrative line, and while this area is extremely subjective, the producer should guard against the temptation to use music/effects to communicate something that is not supported in the script.
- In non-public affairs programs, music and effects may be used more loosely for dramatic effect or to entertain.

Consult on use of indecent or objectionable materials

- In general, language and materials offensive to general taste or manners (for example, extreme violence, racial and other group-targeted epithets, strong language, nudity and sexually explicit material) should be avoided where inclusion is not necessary to a viewer’s understanding of the matter at hand.
- When it is judged that the exclusion of such material would have the effect of significantly distorting an important reality, the executive producer must approve its inclusion, and the program must carry appropriate warnings to viewers. PBS must be notified in a timely fashion if warnings will appear before or during the program.

Identify sources

- One cardinal responsibility of the producer is to present the significant facts. This means the producer must clearly identify those who speak on camera or who are invoked as authorities for statements of fact.
- In such cases, identification must also include relevant information about the character of the source. By extension, any special interest the speaker or interviewer might have that could motivate his/her speaking should be made known in the program. For example, by narration or on-screen identification, one should note if the speaker has filed a lawsuit in the matter being discussed or works for an entity that has a political reputation or has written about science or history from a particular point of view.
- Best practice dictates that there be at least two independent sources on the record (one might be a document) before one publishes controversial factual assertions. If that is not possible, publication may still be appropriate if the limitation to a single source is clearly revealed to the viewer. The executive producer must approve any such exception.
- From time to time, particularly in public affairs programs, it may be necessary to conceal or keep confidential a source’s name or disguise a source’s voice. In such cases the name of and background information about the source must be disclosed to the executive producer and possibly to Maryland Public Television legal counsel.

Consider diversity in sources

- Producers are free to exercise their editorial judgment as to which characters are best suited to push forward a story line and which sources are best able to present the information the program seeks to deliver. However, MPT encourages producers to consider diversity in race, ethnicity and gender as a positive value in choosing whom to present.

Use labels, warnings, and disclosures

- Producers are encouraged to suggest the use of labels, warnings and disclosures to ensure that viewers understand what they are about to watch or are watching. These devices can put viewers on notice about strong material that they may wish to avoid; the devices can properly set up the context for a whole program (as in the case of a point-of-view film); and they can be useful in presenting critical information a viewer needs to allow him/her a judgment about what he/she is seeing. The devices should be explicit enough in the script or on screen or both so that the information can be absorbed easily.

Attribute all non-original materials when necessary

- Normally all materials used within a program, including stock footage, home movies, stills, etc., but not actually produced by the producer of the program do not have to be labeled as to source. However, if knowing the source of the material and/or its date would help a viewer better understand the communication, the producer should make the appropriate attribution at the time the material is seen.

Do not alter still photos

- Photos used in public affairs programs should not be altered. Altering involves adding, subtracting or rearranging the elements in a photo, and this may not be done without disclosure to the viewer. Public affairs programs must be especially careful to do nothing that would jeopardize the credibility of the program. Producers should be able to defend their techniques in public.
- However, some techniques commonly used with stills are not considered alterations. These include: camera moves, cropping, highlighting a portion of a photo, computer layering, etc. Producers should discuss these or others techniques with the executive producer if in doubt. In general, still photo techniques are considered directing techniques for editorial clarification and emphasis.
- In non-public affairs programs, there may be some exceptions to the "do not alter" rule, but photos must never be altered to present an image that is not supported by the facts, and any alterations should be done only with the approval of the executive producer.

Use computer-generated imaging (CGI) with care

- The power of the computer to alter and create images offers many opportunities to enhance all forms of communication. In the nonfiction world, however, there is danger that the computer can be used to create images and graphic effects that cross the boundary between creative license and misrepresentation. Misrepresentation can occur when images are presented as "real" when, in fact, they are artificial. If a viewer could

reasonably believe the images created by CGI are real, then the technique should be avoided.

- An exception to the above rule exists in certain historical programs in which CGI may be used to recreate scenes or locations that do not exist today. The executive producer must approve the use of such material. Disclosure to the viewer is recommended.

Do not pre-screen for interested parties

- The broadcast or, if approved by Maryland Public Television, the pre-broadcast release of a program at a film festival or theater must be its first publication. Pre-screenings for reviewers and the showing of samplers and occasionally the whole program for publicity purposes, if approved by the executive producer, are established practices, but those are the only recognized exceptions to a firm rule that prohibits others -- and most especially participants and funders -- from seeing a program before its first publication.
- Only members of the production team, the producing organization, PBS, and others who, at the invitation of the executive producer or the producer (after consulting with the executive producer) can act as independent consultants, should be permitted to view rushes, rough cuts, or any segments of the film before completion. This rule does not preclude checking the accuracy of relevant sections in a film by sharing it in print or orally with a participant. If the executive producer has agreed to the extremely rare case of a national security review, such review should be disclosed.
- There is also a well-recognized but limited exception to this rule against prescreening for certain filmmakers who obtain access to intimate personal portraits. The executive producer should approve such exceptions in advance. The fact that participants reviewed the footage may have to be disclosed.

Do not show outtakes or notes to outside parties

- It is vital that outtakes and notes not be shared with outside parties (for example, police, litigants, their lawyers, interested parties, critics) unless such sharing is compelled by legal action as determined by Maryland Public Television. However, the licensing of outtakes or sharing of research material with other broadcasters and journalists may be called for either by contract or mutual agreement. Whenever the question arises, it should be brought to the executive producer's attention.

Prepare for legal review

- Producers should anticipate a legal as well as editorial review of their work. For MPT's own purposes and not to relieve the independent producer of any contractual obligations, the Maryland Public Television Assistant Attorney General also will review the program at rough-cut. It is especially important that independent producers seek Maryland Public Television guidance before deciding not to include or to remove material on legal grounds.
- Legal review may deal with the issue of "fair use" of copyrighted material. It is worth noting that there can never be a "fair use" issue if the material is obtained directly from the copyright holder as part of an agreement. A producer must obtain material from a third party and use the material in the appropriate context before he/she begins the process of assessing whether the use is a "fair" one. Producers must advise the appropriate legal counsel as early as possible if "fair use" claims are anticipated.

- The legal review will also look closely at material with the potential for generating defamation and invasion of privacy claims. Any program intending to publish material accusing others of wrongdoing or improper activities will be held to rigorous scrutiny under these guidelines. Further legal matters may include: releases and rights clearances; FCC rules on indecency; and the special provision governing equal time in elections.
- Finally, all producers should make themselves aware of the statutory prohibitions against payola and plughole.

Help with corrections and updating

- After broadcast, producers are expected to bring to the attention of the executive producer immediately any errors that the producer becomes aware of and to help in making any necessary corrections. If the error involves a misstatement calling into question the character or reputation of an individual, company or product, then the producer must consult with the Maryland Public Television Assistant Attorney General before taking any steps to correct it and before responding to the complainant directly. Producers also may be called upon to provide information for purposes of updating a program that is going to be repeated. If substantial work becomes necessary to update a program, a producer would receive separate compensation for this task.

Help with web and DVD production

- Producers are expected to work with a web producer or others in providing materials and ideas for production of a website or DVD, if one is being made, to accompany broadcast of the program. Web publication is subject to the guidelines set forth in this document and to a separate set of special guidelines written with the web in mind. Legally speaking, web publication is no different than broadcast close up publication. Therefore, if extended interviews are published or there is new reporting, it must be subjected to the same rigorous editorial process that applies to broadcast. The same standard applies to the production of a DVD.

E. BUSINESS AND COMMERCIAL GUIDELINES

- Maryland Public Television has a complex set of business practices that are usually covered in the specifics of contracts with independent producers and by longstanding patterns and practices within the station. Producers should involve the executive producer in any issues that cannot be resolved in the normal course of the contracting process or whenever business relationships need to be defined. There are some matters, however, where business practices intersect with editorial concerns, and guidelines (which do not apply to “lifestyle” programs) on certain of those issues are enumerated below.

CO-PRODUCERS AND PARTNERS

- Producers may bring or be asked to work with a co-producer. Whether a co-producer brings money, access to money, editorial input, personnel, or other resources to a project, final decision-making on content must rest with the producer and the executive producer for the MPT public television version of the program. The co-production credit carries with

it the implication of an editorial role for the co-producer. This means that the co-producer must share a journalistic sensibility similar to that of MPT and that any funding received by the co-producer is subject to review by Maryland Public Television. Special note: It is never appropriate to co-produce with an entity whose ideas and activities are the subject matter of the program unless it is a work-for-hire.

- Sometimes the term “editorial partner” is used. The term connotes a significant editorial relationship. All editorial partners should have an independent stance toward the content. Thus, other publishers (including broadcasters, print, independent producers, and specialized data providers) are all viable editorial partners. No editorial partner can have editorial control over what Maryland Public Television finally publishes.
- Producers may be asked to work on acquired programs. In these cases, the entity or producer bringing the project to MPT may have already exercised editorial judgment. Nonetheless, it is MPT’s responsibility to review the project’s funding, to assess the editorial soundness of the program, to engage in a fact-checking process, and to require changes to or reversioning of the program to the extent necessary to meet MPT editorial standards.
- Producers may be asked to work on programs that will be distributed other than by PBS. If this occurs, the executive producer will determine the extent to which these guidelines apply. It is assumed that the highest ethical standards and best journalistic practices will be maintained if the Maryland Public Television production brand name is used.

F. SAFE HARBORS AND ADVISORY NOTICE

- These guidelines require and provide for designated areas of MPT-owned and -controlled distribution platforms to be set aside as “safe harbors” from controversial, sensitive content and/or strong language. While individual cases are taken as they arise, generally MPT Kids and Family-branded content platforms are restricted areas. Family primetime viewing hours between 8 p.m. and 10 p.m., seven days a week, also have restrictions and are subject to occasional “red flag” content reviews, prior to distribution.

Generally some combination of three “red flag” options is considered:

- 1) placement of viewer advisory notice adjacent to the content
 - 2) distribution of alternate pre-edited versions of the material if such versions are available by PBS (or other provider)
 - 3) re-scheduling of the content outside of the restricted area.
- MPT primetime (after 10 p.m.) and overnight dayparts, seven days a week, may carry unrestricted material, but as a matter of policy, if content is judged to be too sensitive by MPT, these programs must also carry an adjacent viewer advisory notice or simply not be run.
 - To remain in touch with community sensibilities, these guidelines recommend that on a periodic basis a generic “viewer comments” solicitation message (with a toll-free response mechanism) be scheduled adjacent to controversial “red flag” content. End-user comments will be reviewed and archived on an on-going basis to inform future action. Similarly, MPT

will monitor published findings from both PBS and CPB ombudsmen offices as their work is made available online. MPT web-based platforms maintain editorial safe harbors for children and family content. Web bulletin boards and chat rooms are regularly monitored for objectionable content.

G. EDITORIAL BALANCE

Maryland Public Television seeks to present content that, over time, explores a broad range of subjects from a variety of viewpoints, including:

- 1) diversity and minority issues
- 2) health and wellness issues
- 3) environment and ecology issues
- 4) education and learning issues
- 5) government and public policy issues.

H. LOCAL NEWS, PUBLIC AFFAIRS AND POLITICAL COVERAGE

As a State of Maryland agency, MPT is in a unique position with regard to editorial and political influence. MPT's governing board is politically appointed, and MPT receives significant funding from state taxpayers.

Members of MPT's news and public affairs team believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility. To that end MPT journalists should be honest, fair and courageous in gathering, reporting and interpreting information.

Members of the MPT news team should adhere to the guidelines set forth by the Society of Professional Journalists and recognized around the nation as standards for all credible news gathering organizations:

- Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.
- Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.
- Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- Always question sources' motives before promising anonymity. Clarify conditions attached to any promise made in exchange for information. Keep promises.
- Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not oversimplify or highlight incidents out of context.

- Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.
- Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story.
- Never plagiarize.
- Tell the story of the diversity and magnitude of the human experience boldly, even when it is unpopular to do so.
- Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.
- Support the open exchange of views, even views one finds repugnant.
- Give voice to the voiceless; official and unofficial sources of information can be equally valid.
- Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.
- Distinguish news from advertising and shun hybrids that blur the lines between the two.
- Recognize a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.
- Remain free of associations and activities that may compromise integrity or damage credibility.
- Refuse gifts, favors, fees, free travel and special treatment, and shun secondary employment, political involvement, public office and service in community organizations if they compromise journalistic integrity.
- Disclose unavoidable conflicts.
- Be vigilant and courageous about holding those with power accountable.
- Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.
- Be wary of sources offering information for favors or money; avoid bidding for news.

Political Debates

MPT has a history of serving the people of Maryland by organizing and producing political debates in high-profile races. As the only television broadcaster with a truly statewide reach, MPT is uniquely positioned to perform this service, and it is part of MPT's commitment to help viewers make informed decisions as they participate in the political process.

In accordance with public television standards, MPT has earned public trust by shielding its editorial process from improper political pressure or influence from program funders or other sources. Editorial integrity is based on journalistic principles of fairness, objectivity, nonpartisanship, and community needs. These principles are particularly important with respect to MPT's public affairs programming and debate coverage.

Applying these fundamental principles to debate coverage, MPT adheres to the following guidelines: 1) The debate should serve the public interest. In attempting to provide a valuable, newsworthy program, MPT must balance the desire to present the broadest possible range of ideas, issues, and exposure to candidates while at the same time providing the most useful and meaningful information given limited time and resources. 2) MPT will maintain editorial control of debates held in its studios and when held at a location under MPT's control. In the instances when MPT does not have editorial control, MPT will work with trusted partners with a proven track record of serving the public interest. 3) Whenever possible, MPT seeks to co-sponsor debates with the League of Women Voters and/or other civic or media organizations that can help secure candidates' participation and provide additional credibility to the event. 4) MPT is open to a variety of debate formats and often includes leading journalists on debate panels. 5) Viewpoint-neutral criteria (that is, objective criteria not based on the candidate's viewpoint or political beliefs) will be used for determining the inclusion of candidates in the debate. These criteria will be applied by MPT's editorial staff in its good faith judgment in consultation with any co-sponsors of the debate and will be made in accordance with all applicable federal and state laws. Criteria include:

- Eligibility – The candidate must have met all legal qualifications required by federal and state laws to appear on the ballot and be eligible for office.
- Active campaign -- A candidate must be actively campaigning for election in the jurisdiction that is at issue. For example, if the office is a statewide position, the candidate must be campaigning statewide. To meet the definition of an active campaigner, a candidate would need to establish a campaign headquarters with a paid and/or volunteer staff; generate public interest, such as being invited to speak at public gatherings and obtaining monetary contributions; and have a campaign that would be sufficiently newsworthy to warrant coverage by the media.
- Significant candidacy – The candidate must demonstrate significant voter interest and support. Polls are one measure of voter interest. A candidate who receives at least 5% in a primary election and 10% in a general election in an established, reliable, nonpartisan poll will be considered a significant candidate. Voter interest may also be measured by votes cast for a candidate in a previous statewide or countywide elected office. Substantial media coverage, financial resources beyond the candidate's own personal resources, sizable volunteer efforts, or large turnouts at campaign stops may be evidence of significant voter interest.

I. OBJECTIONABLE MATERIAL

Important issues may sometimes require inclusion of controversial or sensitive material. In general, depictions of extreme violence, the use of strong language including racial epithets, or scenes involving nudity and/or sexually explicit material should be avoided unless it is necessary to a viewer's understanding of the matter at hand.

When it is judged that the exclusion of such material would have the effect of significantly distorting an important reality, the executive producer of the program must approve its inclusion, and the program must carry appropriate warnings for the viewer. PBS or associated distributors will be notified of such warnings and where they will appear in the program.

FCC regulations, as well as public television editorial standards and policies, must also be taken into account. For more information regarding FCC regulations, please visit www.fcc.gov/eb/oip/. More information regarding PBS editorial policies may be found in Appendix A or at www.pbs.org/aboutpbs/aboutpbs_standards.html.

J. MPT ONLINE

The content of MPT's website located at **mpt.org** (or **mpt.tv**) will be held to the same editorial standards of the guidelines governing the noncommercial public media model set forth in this document as well as to a separate set of special guidelines written with the web in mind.

Original content on mpt.org

Original content may include summarizations of broadcasted subject matter, schedules, community service initiatives and additional in-depth information such as interview transcripts, online videos and links to credible, high-quality related resources. The website also contains ways to support MPT in the form of membership and contributions, as well as links to an online store where public television-related materials may be purchased.

MPT also produces online content such as that appearing on **Thinkport.org** and television program-specific websites such as **Motorweek.org**, among others. Every effort will be made to ensure that content is presented accurately, in context and with high educational standards.

Other outreach and promotional tools located online, including MPT-related blogs, Facebook, Twitter, e-newsletters and others, will be used for publicity and community building but also follow the noncommercial public media model.

MPT is not responsible for comments posted to these sites by viewers; such comments do not reflect the opinions of MPT. MPT reserves the right to remove comments if it deems them offensive or inappropriate.

Acquired and linked content on mpt.org

MPT online also contains content created by and linked to outside sources. Every effort will be made to ensure that content is presented accurately, in context and with high educational standards. Websites containing instructive content, editorials, analysis, commentary, and points of view will be held to the principles of factual accuracy. MPT has the right to remove links deemed offensive or inappropriate.

Advertising links and content from sponsors on mpt.org

MPT online contains banners and links to sponsors of the website and of MPT television productions. All advertising banners and links to underwriters are approved for taste and appropriateness for public media.

K. PUBLIC SERVICE ANNOUNCEMENTS (PSAS)

As a state-licensed, public television station, MPT provides a significant public service to viewers throughout Maryland and surrounding states through its public affairs and other local programming. Due to limited airtime, MPT does not accept unpaid public service announcements (PSAs). MPT does accept, however, underwriting announcements that support programming on MPT. These underwriting announcements must meet MPT and FCC editorial and legal standards. To the extent certain underwriting announcements appear to be in the form of a PSA, MPT will consider accepting those spots if they meet MPT and FCC editorial and legal standards. Specifically, a proposed announcement must not “express the views of any person with respect to any matter of public importance or interest,” as set forth in section 399B of the Communications Act. MPT will make its own determination as to what is considered a “matter of public importance or interest,” but in no event will MPT accept any messages that involve partisan politics, advocacy issues, or controversial topics. Announcements from governmental entities fall outside of the definition in section 399B and as such are acceptable. Announcements from other sources, including nonprofit organizations or for-profit entities, will be considered on a case-by-case basis and only on the condition that they meet MPT and FCC editorial and legal standards.

V. Funding Standards & Practices*

As a PBS member, MPT subscribes to the PBS funding standards and practices as applied to local, regional and national programs and to content destined to be broadcast over MPT platforms and/or created by MPT.

A. Policy base

The PBS and MPT program funding standards and practices rest on three fundamental principles:

- Public television is a major participant in the great tradition of a free and independent American press. Therefore, public television must protect its journalistic integrity, and it must reinforce the accurate perception that it is a free and independent institution.
- Public television's nonprofit, noncommercial status contributes to its independence. Public television also enjoys certain financial and other benefits by virtue of its noncommercial, nonprofit status. Therefore, its noncommercial character must be preserved.
- The diversity of program funding sources is a key element in the preservation of a free and independent public television system. Therefore, these guidelines should encourage national program underwriting from all corners of the public and private sector.

B. Policy objectives

Based on these fundamental principles, PBS and MPT have developed guidelines for the acceptance of program funding from third parties. These guidelines are intended to ensure:

- That editorial control of programming remains in the hands of the producer;
- That funding arrangements will not create the perception that editorial control had been exercised by someone other than the producer or that the program has been inappropriately influenced by its funding sources; and
- That the noncommercial character of public broadcasting is protected and preserved.

C. Policy application

1. **By PBS:** These program funding policies are applied to the funding arrangements and on-air credits for programs intended for distribution by the Public Broadcasting Service (as distinguished from programs produced or acquired by individual public television stations for local or regional use).

For the purposes of these guidelines, a program "funder" or "underwriter" or "grantor" is a third party that has voluntarily contributed cash (or substantial in-kind services) to finance, in whole or in part, the production or acquisition of a PBS program. The third party may not exercise and has not exercised any inappropriate influence over the content of the program it has funded.

Entities that are normally engaged in the production of television programs (such as public television stations, commercial production companies and foreign broadcasters such as the BBC), and that finance their own productions in whole or in part are not regarded as underwriters and are not subject to these guidelines. These parties are regarded as "producers" or "co-producers" who are solely responsible for the content of the programs they produce and who are subject to separate PBS policies.

2. **By MPT as a PBS Member Station:** The PBS Board of Directors strongly encourages all PBS member stations to adopt and implement local underwriting guidelines that are consistent with its national guidelines. Nevertheless, producers and funders should be aware that individual judgments may differ in a given situation, even when the same policies are being administered, and that individual public television licensees may administer local program underwriting policies that vary from these policies.

*Although this document refers generally to programs in the singular, these policies apply equally to series of programs.

D. General principles for determining the acceptability of national, regional and local program funding

There is a three test process for determining the acceptability of proposed program funding arrangements. If the funding arrangement is determined to be acceptable, a separate evaluation of the proposed on-air funding credit will then take place. Three tests are applied to every proposed funding arrangement in order to determine its acceptability:

- 1) **Editorial Control Test:** Has the underwriter exercised editorial control? Could it?
- 2) **Perception Test:** Might the public perceive that the underwriter has exercised editorial control?
- 3) **Commercialism Test:** Might the public conclude the program is on public television principally because it promotes the underwriter's products, services or other business interests?

Detailed elaborations of the three tests are available on PBS.org under the heading "Producing for PBS, Funding Standards and Practices."

VI. Conclusion

In conclusion, the MPT guidelines set forth above embody some of the basic principles that inform MPT's judgments about program quality and integrity. For any given program, however, considerations other than those identified above may be relevant. Judgments about program quality, integrity, and diversity might turn upon a host of non-editorial considerations. Ultimately, the decision to accept or reject the distribution and broadcast of content must reflect a professional judgment whether the content satisfies overall MPT standards of quality, integrity, and diversity. MPT may reject and withhold its participation in, endorsement of, or logo placement on any content that fails to do so.

Appendix A

To: General Managers, Program Directors, Production Executives, Executive Producers, Communications Directors, Generals Counsel, All PBS Member Stations & PBS Producers

Fr: Jacoba Atlas and John F. Wilson, Co-Chief Program Executives, PBS
Katherine Lauderdale, General Counsel, PBS

Date: April 13, 2006

Re: Programs Containing Problematic Language and Images

PBS has closely reviewed and analyzed the March 15th decisions of the Federal Communications Commission regarding "indecent" broadcast programming. At the same time, PBS (as it has from time to time in past years) has reviewed its own practices concerning programs with potentially problematic language and images in light of those decisions.

As you may know, indecent programming is defined under law as material that depicts or describes sexual or excretory organs or activities in a patently offensive manner as measured by contemporary community standards for the broadcast medium. Indecent programming is not completely prohibited, but has to be channeled to time periods when unsupervised children are not likely to be in the audience. The safe harbor for indecent programming is 10 pm through 6 am (local time). Obscene programming, by contrast, is banned completely and is usually a criminal offense. Obscenity is defined as material that appeals to the prurient interest (that is, arouses lewd and lascivious thoughts and desires), is patently offensive as measured by contemporary community standards, and lacks serious literary, artistic, political or scientific value.

In its recent decision, the FCC fined a PBS member station \$15,000 for broadcasting THE BLUES, "Godfathers and Sons" on March 11, 2004 between the hours of 8:00-10:00 p.m. local time. The FCC held that instances of the words 'fuck' and 'shit' were inherently sexual and excretory, respectively, and even taken in context were patently offensive. The FCC stated that use of such language was "not necessary to express any particular viewpoint" and not "essential to the nature of an artistic or educational work or essential to informing viewers on a matter of public importance." After careful review, PBS' General Counsel believes that the FCC's decision concerning use of language in THE BLUES, a serious documentary work, raises grave constitutional issues. We are cooperating with and supporting the affected station in its decision to seek reversal of the FCC notice of apparent liability. As always, our aim in any legal undertaking will be to protect our member stations from unwarranted action by the FCC and to affirm our commitment to our producers and their important work.

As we have in the past, PBS will consult with producers and determine on a case-by-case basis whether it is appropriate to distribute both an *unedited* and *edited version* of a program. In those rare instances when two versions of a program will be made available, PBS will maintain its current practice of including the *unedited versions* in all NPS "hard feed" transmissions whenever possible. However, owing to the FCC's seemingly contradictory rulings and the resulting uncertainty they have caused, producers may elect to limit the use of the *unedited* version to safe harbor (10:00pm – 6:00am local time). If a producer imposes such limitations on the *unedited* version, and the program is in the NPS schedule before 10:00pm, we will use the *edited* version in the hard feed.

In most cases, any *edited version* will be made available via a soft feed in advance for scheduling by Member stations, *as will the *unedited version* for those stations airing the program only within safe harbor.* Packaged program services (Schedule X, XP & XD, and where appropriate, the PBS HD Channel) will use *edited versions* owing to their use across many time zones and dayparts.

In addition, PBS is considering new, more pro-active procedures for alerting stations to content issues in upcoming programs. Nonetheless, stations are encouraged and expected to exercise their own judgment and discretion about whether, in light of their communities' values and standards, particular program content is suitable for airing in particular dayparts.

In light of producers' broad legal obligations to indemnify PBS and member stations for claims or damages arising from any exercise of program rights, we have been in communication with them to urge them to redouble their focus on FCC indecency issues and to take all necessary steps to ensure meticulous compliance with the law and regulations in this area.

Any changes to the already announced feeds and specific information concerning programs impacted by this change will be conveyed in messages from PBS Program Operations. As this process plays out, we anticipate and welcome an ongoing dialogue with producers and member stations on these issues and will continue to confer with all effected parties, including, where appropriate, committees of the PBS Board.

Thank you for your cooperation and understanding.

From: To distribute PBS communications directly to GMs [mailto:GENERALMANAGERS-L@PBS.ORG] **On Behalf Of** Steven Gray
Sent: Wednesday, May 31, 2006 9:13 AM
To: GENERALMANAGERS-L@PBS.ORG
Subject: Editing of Coarse Language/New Practices

To: Production Executives, Executive Producers, General Counsels, Station Managers, Program Directors

From: Jacoba Atlas and John F. Wilson, Co-Chief Program Executive, PBS
cc: Katherine Lauderdale, General Counsel, PBS and Paul Greco, Deputy
General Counsel, PBS
Date: May 31, 2006
Re: Editing of Coarse Language/New Practices

This message to production executives and executive producers of PBS programming is a follow-up to Katherine Lauderdale's message dated April 28, 2006.

Effective immediately, as a part of the process of working to assure that all PBS programming complies with recent Federal Communications Commission rulings, PBS is advising all producers of two new editing requirements concerning scenes including coarse language.

- In instances when coarse language in a program is to be edited (wiped or bleeped) the entire word needs to be edited. One example might be a "compound word," such as "motherf**ker." Where we previously required editing of only the "f**ker" part of the word, now the entire word needs to be edited.

- In any scene where an individual utters the word "f**k" or "sh*t" (or any variant of either word) while facing the camera such that any ordinary viewer could ascertain from the speaker's lips what was said, the lips of the speaker need to be pixilated.

We are implementing these changes to our practices in light of recent Federal Communications Commission decisions resolving numerous viewer complaints about television broadcast programming allegedly in violation of the FCC's standards for indecency and profanity.

In the event that you have concerns about specific content in light of the recent FCC orders, please feel free to contact Steven Gray, Vice President, Program Scheduling & Editorial Management, at 703-739-5012 (sgray@pbs.org) or Paul Greco, Vice President & Deputy General Counsel, at 703-739-5277 (pgreco@pbs.org).

Thank you.

Appendix B

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FACSIMILE NO.



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

May 25, 2010

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General

(410) 576-6327

WRITER'S DIRECT DIAL NO.

Restrictions on the Expenditure of State Funds for Certain Materials containing the Name, Likeness, or Voice of Statewide Candidates

The State budget bill for Fiscal Year 2011 restricts the expenditure of State funds for certain materials containing the name, likeness, or voice of individuals who have filed certificates of candidacy for statewide offices. Chapter 482, §45, Laws of Maryland 2010. This memorandum sets forth the text of that provision, includes an excerpt from the relevant legislative materials, and provides guidance, in question and answer format, on the interpretation of the provision.

Statutory Provision

Section 45

That before January 10, 2011:

(1) No State funds, including any State funds appropriated to any local jurisdiction or municipality, may be expended for development, production, or distribution to the public of promotional or informational materials on behalf of State programs through billboard, magazine, newspaper, electronic, radio, or television media which bear the likeness or voice, or includes the name, of a person who has filed a certificate of candidacy for statewide office with the State Board of Elections for an election to occur in calendar year 2010.

(2) Any contracts or agreements authorizing distribution of materials or content subject to subsection (1) of this section or materials or content scheduled to run after a candidate has filed a certificate of candidacy shall be terminated for convenience or otherwise as authorized under the provisions of the State Finance and Procurement Article or otherwise and the materials or content shall be returned to the contracting agency.

May 25, 2010
Page 2

(3) This section does not apply to the use of locally derived revenues or to communications of any candidate for statewide office to the media that are directly connected to the performance of the duties of office essential to the protection of public welfare, health, or safety.

Excerpt from Joint Chairmen's Report:

**Section 45 Prohibiting Statewide Office Candidates from
Appearing in State Funded Advertising**

Explanation: This language prohibits the expenditure of State funds on promotional or information materials on behalf of State programs that include the voice, likeness, or name of a person who has filed a certificate of candidacy for statewide office with the State Board of Elections for the 2010 gubernatorial elections. The language also requires that contracts or agreements for the distribution of that material be terminated for convenience or otherwise. The language provides exceptions for this prohibition.

(The Report of the House Appropriations Committee concerning budget bill contained identical language describing Section 45).

Questions and Answers

Basic Definitions

1 - Whose picture, voice, or name is covered by this restriction?

It applies to candidates for Governor, Lieutenant Governor, Comptroller, Attorney General, and United States Senator in 2010. Those are statewide offices for which a candidate must file a certificate of candidacy with the State Board of Elections. The deadline for filing a certificate with the State Board is July 6, 2010. A list of candidates who have filed certificates of candidacy can be found at the website of the State Board of Elections. See <<http://www.elections.state.md.us/>>.

May 25, 2010

Page 3

2 - What kinds of materials are covered by this restriction?

The restriction applies to “promotional or informational materials” distributed to the public “through billboard, magazine, newspaper, electronic, radio, or television media.” The Joint Chairmen’s Report refers to the provision as covering “State Funded Advertising.” Thus, the restrictions are targeted at informational materials that advertise or promote a State program. In addition, the materials covered are those that are typically distributed through mass media to the general public. For example, the restrictions would not apply to stationery used for routine correspondence to individuals.

The restrictions also do not appear to be directed to the letterhead that may appear at the top or bottom of agency stationery or similar materials used in the normal course of business that simply identify an individual as holding a particular office. Notably, in establishing these restrictions, the Legislature did not amend the current law that specifies some of the contents of the letterhead stationery of each department. *See* Annotated Code of Maryland, State Government Article, §8-503.

3 - Would the restrictions apply to a State-published magazine – in addition to State ads in a privately published magazine?

Yes. The provision does not make a distinction based on the identity of the publisher. A popular dictionary defines “magazine” as “a publication, usually with a paper back and sometimes illustrated, that appears at regular intervals and contains, stories, articles, etc., by various writers and, usually, advertisements.” Webster’s New World Dictionary (2d College ed.). As noted above, the restrictions were apparently intended to apply to magazines that are intended for distribution to the general public.

4 - Would the restrictions apply to a State-funded radio or television network – e.g., Maryland Public Television?

Yes. Again, Section 45 does not make a distinction based on the identity of the publisher. However, as noted above, the restrictions were apparently intended to apply to advertising or promotional materials. Thus, while they would apply to an infomercial or public service announcement (“PSA”) broadcast over a State-funded network, in our view they would not apply to a news program.

Applicable Funds and Timing

5 - Does this provision have any impact on Fiscal Year 2010 appropriations?

No. The restriction appears in the Fiscal Year 2011 budget bill and applies to appropriations made in that bill. It is possible that, in accordance with accounting principles governing State finance and the ordinary course of business, some funds appropriated in the Fiscal Year 2010 budget may be encumbered during that year, but not actually spent until after July 1, 2010. However, an agency should ensure that any such spending is consistent with the appropriations for Fiscal Year 2010 and with proper accounting procedures.

6 - During what period of time do these restrictions apply?

The period begins on July 1, 2010 with the beginning of Fiscal Year 2011 and ends, on January 10, 2011. (January 10 is the Monday of the week in which the next regular session of the General Assembly begins).

7 - Do the restrictions apply to off-budget agencies – i.e., those that do not receive appropriations in the annual State budget?

As a general rule, the restrictions apply to expenditures made from funds appropriated in the Fiscal Year 2011 budget and would not pertain to an agency funded from other sources. However, the specific laws governing the agency's relation to the State budget should be considered, in addition to the funding source. *See, e.g.,* Opinion No. 85-005 (February 13, 1985) (toll revenues of Maryland Transportation Authority are not "moneys of the State" subject to the appropriation process).

8 - Do the restrictions apply to expenditures by entities that receive State grants?

The restrictions do not apply generally to expenditures by State grantees, but only to expenditures of FY 2011 State funds that the grantee receives.

May 25, 2010

Page 5

Exceptions to Restrictions

9 - There is an exception for "locally derived revenues." What are "locally derived revenues" and how does this exception work?

The phrase "locally derived revenues" is not defined in the section and does not otherwise appear in the Annotated Code of Maryland. Under Section 45(1), the restrictions extend to *State funds* appropriated to municipalities and other local governments. The exception for "locally derived revenues" apparently clarifies that this section does not purport to restrict funds that are not derived from an appropriation in the State budget.

10 - There is an exception for "communications ... that are directly connected to the performance of the duties of office essential to the protection of public welfare, health, or safety." How are we to determine whether a communication falls within this category?

This exception relates to "duties of office" that the individual holds. Thus, the communication must relate to a specific *duty* that the individual has by virtue of the office he or she holds. In addition, the communication must be in furtherance of a duty that is "essential to the protection of public welfare, health, or safety." The office holder must assess, in the first instance, whether a particular duty assigned to an office is "essential." To the extent that a court might ever be called upon to review such a decision, the court would likely accord deference to the official's decision. Of course, to the extent that the matter involves a decision or program specifically assigned by law to subordinate officials, a court would be less likely to find that the expenditure fell within this exception.

Agency Brochures

11 - May an agency brochure include an official's photo if that individual is a candidate for statewide office?

The restriction is targeted to materials distributed through "billboard, magazine, newspaper, electronic, radio, or television media." It does not appear to relate to agency brochures that are not distributed through those media.

May 25, 2010
Page 6

12 - May an agency brochure include an official's name, if that individual is a candidate for statewide office?

See answer to Question 11 above.

13 - Does an agency have to retrieve brochures containing photos of one of these individuals that have been previously distributed?

No. The restrictions apply to expenditures from the Fiscal Year 2011 budget. Also, as noted above, the restrictions do not apply to brochures.

Press Releases

14 - Are agency press releases covered by the restrictions?

In our view, routine press releases that are designed to alert the mass media to the activities of an agency are not covered by the restrictions. Newspapers, magazines, and other media may develop a story based on the information provided by a press release; however, unlike PSAs or advertisements, the press release itself is not typically distributed "to the public" through those media.

15 - What about press releases that are distributed electronically – e.g., by e-mail?

If the press release is distributed by e-mail only to news media contacts and not to the general public, then, in our view, the restrictions would not apply. If the press release were intended or designed for redistribution to the public, it would be covered by the restrictions. In some instances, a press release may also fall within the exception for communications connected to the "performance of the duties of office essential to the protection of public welfare, health, or safety."

May 25, 2010
Page 7

Newsletters

16 - Are agency newsletters covered by the restrictions?

If the agency newsletter is produced in hard copy, does not itself reasonably fit the definition of a "magazine," and is not distributed as an insert to a newspaper or magazine, it is not subject to the restrictions.

17 - Is the answer different if the newsletter is distributed electronically – e.g., by e-mail?

In our view, the answer depends on whether the newsletter is intended for distribution "to the public." For example, if the newsletter is directed to an internal agency audience, the restrictions would not apply. Even if the electronic newsletter is distributed to the general public, a photo or name could be retained to the extent that a photo or name is simply part of the newsletter's "letterhead." See answer to Question 2 above.

Agency Websites

18 - May the home page of an agency's website include an official's photo, if that individual is a candidate for statewide office?

In our view, a photo that functions as part of the "letterhead" of a website would likely not be considered "advertising" or promotional materials for a State program.

19 - May the home page of an agency's website include an official's name, if the individual is a candidate for statewide office?

In our view, a reference to the name of a State official on the "letterhead" of an agency under the supervision of that official would not violate the restrictions.

20 - How do the restrictions apply to materials posted on an agency website?

The restrictions apply to the use of Fiscal Year 2011 funds for the development, production, and distribution to the public through "electronic media" of informational or promotional materials that include the name and likeness of a statewide candidate. Given

May 25, 2010
Page 8

that the Internet is undoubtedly an electronic medium, the restrictions could apply to materials posted on an agency website.

In our view, a distinction should be made between the use of the website as a passive repository of official documents or photographs and the use of the website as a vehicle to affirmatively distribute advertising or promotional materials to the public. Many agencies post documents on their websites in order to make official documents readily available in response to requests for those items and to fulfill their obligations under the Public Information Act more efficiently. It seems unlikely that the Legislature meant for the restrictions to apply to the archival function of an agency website – otherwise, agencies would have to incur what might be considerable expense to review items posted in prior years and purge them temporarily from a website.

On the other hand, a website may also be used as a method of distribution of advertising or promotional materials if the general public is specially directed to those items. For example, a mass e-mail that promoted and contained a link to a specific page on the website could be construed as “distribution” of that specific page; however, a general reference to the agency’s website in agency materials would not amount to “distribution.” Similarly, e-mail or other messages distributed to the general public by electronic media that advertise State programs in conjunction with the name or likeness of an individual who is a statewide candidate would be subject to the restrictions.

Thus, the fact that a member of the public may access materials on an agency website and even print a copy remotely with the individual’s own printer does not amount to “distribution” for purposes of Section 45, so long as the agency does not take active steps with Fiscal Year 2011 funds to direct the attention of the general public to those particular materials.

Social Media

21 - Do the restrictions apply to an agency’s use of social media, such as Facebook, Twitter, and YouTube?

Section 45 applies to the distribution of “promotional or informational materials on behalf of State programs through ... electronic media.” Each of the social media listed in the question are a form of electronic media. The possible application of the Section 45 restrictions to the State’s use of these media depends on:

May 25, 2010
Page 9

- whether the particular content consists of “promotional or informational materials” that are aptly characterized as advertising,
- whether the content is directed to individuals who have specifically requested the material or is directed to the general public,
- the manner in which a Statewide candidate’s name, voice, or likeness appears in the media,
- whether State funds are expended, and
- whether the particular use of the media is “directly connected to the performance of the duties of office essential to the protection of public welfare, health, or safety.”

PSAs and Media Campaigns

22 - Do the restrictions apply to public service announcements broadcast over television or radio that promote general compliance with State law or participation in a State program?

Yes, to the extent that State funds derived from the Fiscal Year 2011 budget are used to develop, produce, or distribute the public service announcement.

23 - What is the agency required to do with respect to a State advertising campaign otherwise covered by the restriction if the media materials were created prior to July 1, 2010?

A contract for distribution of those materials, if it involved the expenditure of funds appropriated for Fiscal Year 2011, would be terminated for convenience.

24 - What if complete payment has been made for distribution of a public service announcement prior to July 1, 2010? May the agency still run the PSA, despite Section 45(2)?

Yes. See also answer to Question 5 above.

May 25, 2010
Page 10

Miscellaneous

25 - Do we need to retrieve and destroy items such as highway maps with the current Governor's photo?

No. While highway maps probably qualify as "promotional or informational materials", they are not typically distributed through the media listed in Section 45.

26 - Do the restrictions apply to an agency construction sign?

Unless the sign is more aptly characterized as a "billboard", no.

27 - Do the restrictions apply to fold-out signs that are used at agency events?

No, unless the sign is more aptly characterized as a "billboard."