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It is well known among planetarians that NASA images are generally available for use free and clear of any copyright-related issues. But like so many things in law, that general premise carries with it a number of exceptions and caveats. This quarter's column clarifies some of the basic copyright rules relating to United States government works, paying particular attention to the agencies of interest to planetarium producers.

Legal Foundations

Section 105 of the Copyright Act (the Act) provides that copyright protection "is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise." Section 101 of the Act describes a "work of the United States Government" as one that is "prepared by an officer or employee of the United States Government as part of that person's official duties." Although the details are beyond the

scope of this column, Section 105 does not exclude state government works from copyright, nor does it affect works of international governments or intergovernmental agencies.

The law, then, seems quite simple: anything prepared by a government employee, while acting within the scope of employment, is not entitled to copyright protection and therefore falls into the public domain. But often, government materials, although prepared at the behest of a government agency, are actually prepared by third-party contractors. And because the third-party contractors are not officers or employees of the government, the outsourced work does not fall within the Section 105 exclusion. Accordingly, the copyright in work prepared for the government by a third-party contractor vests with the contractor, and not the government.

In recognition of this enigmatic result, it is not uncommon for government contracts to include assignment provisions that provide for an immediate transfer of the copyright from the contractor to the government. But just because a work is protected by a government-owned copyright does not mean that the work falls into the public domain. To lawfully exploit such a work, you must seek permission from the government agency that owns the copyright, just as you would with a private copyright holder. Alternatively, some government contracts simply require third-party contractors to abandon any copyrights that may arise as a result of the contract, thereby committing the work to the public domain.

Ownership Scenarios

There are, thus, four possible ownership scenarios for apparent government works:

- True government works, that is, those that are prepared by a government employee within the scope of his or her employment. Such works are in the public domain and may be used freely without permission.

- Works prepared for the government by a

third-party, and the copyright is transferred to the government. Such works require permission from the government to use.

- Works prepared for the government by a third-party, and the copyright is held by the third-party. Such works require permission from the third-party to use.

- Works prepared for the government by a third party, and the copyright is abandoned, thereby committing the work to the public domain. Such works may be used freely and without permission.

Thus, as you can see, the general rule that government material is always free from the chains of copyright is, unfortunately, an overstatement of the legal reality. Needless to say, determining the copyright status of government material can be vexing. Many agencies



Logos and other insignia are generally not included in copyright usage policies because, notwithstanding their status as copyrighted works, they primarily function as trademarks. NASA is especially heedful of having its highly-identifiable "meatball" logo appearing in advertisements or for commercial purposes. A clear statement appears on the NASA web site at www.nasa.gov/multimedia/guidelines. The logo appears here by permission of NASA.

are getting better at ensuring that their materials are unencumbered by copyright restrictions, or, at least, have started to note the copyright status of their materials. But unfortunately, there still remain a substantial number of government publications and resources that, because of contractual arrangements, are protected by copyright. Fortunately, for most resources that are used in the planetarium, as we will see below, the copyright status and use guidelines are clear, which can save considerable time and effort.

Applications and Best Practices

With the basic (and admittedly dry) legal foundation out of the way, let's look at a specific application in the context of planetarium show production.

Take, for example, images from the Jet Pro-

General Counsel is intended to serve as a source of general information on legal issues of interest to the planetarium community. Planetarians seeking information on how the principles discussed in a General Counsel column apply to their own circumstances should seek the advice of their own attorneys.

pulsion Laboratory. Although JPL is considered a division of NASA, it is operated under contract, and in association with, the California Institute of Technology. In view of the law that we articulated earlier, a red flag should go up at this point. While we know that anything prepared by NASA employees acting within the scope of their employment would fall into the public domain, Caltech is a private entity, and, accordingly, to the extent that Caltech employees were involved in the preparation of JPL materials, there may be copyright issues to consider. A similar dynamic exists with the Space Telescope Science Institute, which operates in association with NASA, but is, itself, a private entity.

Fortunately, both JPL and STScI provide detailed copyright information on their web sites (www.jpl.nasa.gov/copyrights.cfm and www.stsci.edu/institute/Copyright, respectively), and both appear to grant liberal permission to use their images and other materials in a planetarium context. But it remains important to remember that these liberal use policies arise out of contractual relationships between NASA, JPL, and STScI, and not the often overstated general principle that government works are excluded from copyright protection.

In short, it is essential to fully investigate your rights and responsibilities with respect to

third-party materials, regardless of whether they were prepared by a government agency, or a private party. Specifically, consider the following best practices:

Carefully investigate the copyright status of government materials before using them in your own productions. Many times government agencies post general copyright statements on their web sites, but in some instances you may need to dig deeper. Never assume you can use something just because it was published by a government agency. If in doubt, seek permission.

Print and keep copies of the relevant web sites, terms of use, and copyright policies that support your decision to use certain materials. Maintain these records just as you would a copyright license issued directly by the copyright holder.

Never assume that just because a particular image or resource appears on a government-sponsored web site, the image or resource is in the public domain. Look deeper to determine who the true author and/or copyright owner is and to determine whether you need to secure permission.

Comply with use restrictions that the government agency may have placed on the materials that you plan to use. Pay particular attention to restrictions on commercial use (and the definition of "commercial," which

can vary), and remain mindful of prohibitions on creating the impression that your production is sponsored or endorsed by a government agency.

Logos and other insignia are generally not included in copyright usage policies. Although logos are copyrightable works, their primary function is as a trademark. Accordingly, using an agency's logo or other identifying characteristics generally requires a heightened review process. Be extremely cautious when using government logos, logotypes, insignia, and other trademarks, and always seek permission.

Provide credit where credit is due, even if it's not specifically required by the agency's copyright policy or terms of use.

If you affix a copyright notice to your production, be sure to disclaim rights in the government work that you have used ("No claim is made to original U.S. government works" is fairly common language used for such purposes). Failure to do so can have adverse consequences for your own copyright protection.

As always, these suggestions should be considered only as general tips, and should not be taken as (nor are they intended to be) legal advice. For advice specific to your circumstances, consult with a licensed attorney in your jurisdiction. ☆

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