**Statement of**
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**Society of Environmental Journalists**

**Before the**
**Committee on Natural Resources**
**U.S. House of Representatives**
**on**

**New Fees for Filming and Photography on Public Lands**
**Full Committee Oversight Hearing**
**December 12, 2007**

Chairman Rahall, Ranking Member Young, and members of the Committee, I am Tim Wheeler, President of the Society of Environmental Journalists. I am grateful for the chance to appear before you today to discuss our views on the Interior Department's proposed commercial filming rules and how they affect journalists.

It's an issue that affects journalists -- and ordinary citizens -- in all parts of the country, not just the majestic parks of the West. Bound as I am too often to my reporter's desk in Baltimore, the National Park System units of Maryland, West Virginia and the mid-Atlantic region beckon just as invitingly.

SEJ is the world's largest and oldest organization of individual working journalists covering environmental issues. Founded in 1990, SEJ consists of some 1,300 journalists, educators and students dedicated to improving the quality, accuracy and visibility of environmental reporting. Working through its First Amendment Task Force and WatchDog Program, SEJ addresses freedom of information, right-to-know, and other news gathering issues of concern to journalists reporting on environmental topics.

This October, an SEJ member named Kinna Ohman called Yellowstone National Park to set up an interview with a wolf biologist. She was told by a public affairs officer that she would need to get a permit and pay a $200 fee to do so. Of course, that was an error. But therein hangs a tale.

Ms. Ohman is a freelance radio reporter-producer who lives in Keene Valley, New York, in the northern part of the state near Lake Champlain. She had been selling stories to "The Environment Report," a nonprofit news service that feeds stories to public radio stations across the United States and in central Canada. As a freelancer, she was doing journalism more serious than that done by many paid employees of large broadcast networks.

Ohman had a great story to do, about the after-effects of the reintroduction of gray wolves to Yellowstone. To help tell it, she needed to visit the park, and interview the National Park Service biologist most familiar with the wolves' impact.

When she called the Park's public affairs office, though, she was surprised to be told that she would have to apply for a permit and pay a non-refundable $200 application fee. She was also told that the application would take at least two weeks to process, and that she might have to pay for the time of anybody she wanted to interview.

Lastly, she was informed she would have to present proof that she had a minimum $1 million liability insurance coverage. Public affairs officials at Yellowstone told her that they treated everybody this way -- not just commercial film-makers, but non-profits and students as well -- "as mandated to us by law."

Ohman informed her colleagues at SEJ of her experience. A call from SEJ to Park Service headquarters in Washington quickly straightened things out. Headquarters public affairs staff explained to the Yellowstone staff -- who may have been improvising in the absence of their supervisor -- that the commercial filming permits were not meant to apply to members of the news media.

I am glad to tell you that the interview took place October 29, that Ohman generally got great cooperation from Yellowstone staff, and that the story is scheduled to air soon.

While this story had a happy ending, it exposed for us at SEJ – and for other journalism groups as well – how far the Department of Interior and its agencies have drifted from the letter and intent of the original law.

Park Service regulations -- and perhaps the law itself on which they are based, PL 106-206 -- are so imprecise and unclear that they could allow the disturbing interpretation Ohman received. A Park Service employee could look at the regs and read them to say that a permit and two-week delay was legally required for a news interview, that the Park Service had to be compensated for the time of officials interviewed by a reporter, and that the use of a tape recorder, harming no natural resources, constituted "commercial filming." Moreover, they seemed to be saying that the Park Service had *no discretion* in applying the regs, but was required to apply them this way.

Currently, commercial filming and still photography are governed by a crazy-quilt of guidelines, policies and regulations that vary among Interior's agencies. An existing regulation, for instance, stipulates that no fees are to be charged for filming or recording sound tracks on lands administered by the U.S. Fish and Wildlife Service. The Bureau of Land Management and U.S. Forest Service -- part of the Department of Agriculture, but also covered by this law – have until now been the only agencies to charge location fees for commercial filming. On lands managed by the National Park Service, permit and fee requirements apparently may vary from unit to unit.

The Interior-wide regulation proposed on August 20, 2007, standardizes the various filming-fee-and-permit rules, policies and guidelines that were on the books previously. But the new rule is just as subject to misinterpretation as the old ones. The time to clarify the language, the rule, and the policy is *before* it is made final. That is how the rulemaking process is supposed to work.

In the past several years, SEJ has heard from other journalists about the strictures placed on them by the fee-and-permit rules, usually in major National Parks, but also on other federal lands. Most often, the complaints come from producers of documentary films focusing on wildlife or conservation issues in the parks. What they film is essential to public understanding of the decisions the Interior Department makes in managing natural resources. Those policies and practices are just as much news as a wildfire or presidential press conference with a mountain backdrop.

While the proposed rule would specifically exempt those engaged in "news coverage" from needing to get a permit, it does not define the term. Would that be left to the various agencies to decide, as it apparently is now? In the permit guidelines for Yellowstone National Park, the news exemption applies only to crews filming "breaking news," while those shooting "human interest, staged events or other topics" must get a permit. And it leaves the determination of what is "breaking news" to the discretion of the park's public affairs officers.

The proposed rule would require permits for all "commercial filming," which it defines as the "digital or film recording of a visual image or sound recording by a person, business or other entity for a market audience." Lumping sound recording with digital or film recording of visual images seems to go beyond the letter and intent of the law**.** It mentions "documentary" as an example of a commercial filming project – seemingly without regard to its role as long-form news coverage.

And to classify any recording of visual images "for a market audience" – another undefined term – might be read to encompass commercial broadcasting, Internet webcasts or podcasts that are financed via advertising or subscriptions, or even multimedia productions by mainstream news media, such as newspapers. These days, a video camera and digital recorder are just electronic forms of a reporter's notepad – will their use be regulated?

Another disturbing aspect of the new rule is the proposed requirement that permit applicants obtain insurance sufficient to protect the U.S. government from any liability for the applicant's activities. The proposed rule does not define what coverage is sufficient, but if the Yellowstone guidelines are any indicator, applicants would have to show they have coverage of $1 million or more. That is a substantial burden for self-employed free-lance or independent journalists, whose ranks are legion and growing. Without the salary and benefits enjoyed by employees of mainstream media, many independent journalists would be hard-pressed to afford fees of $200 and up, plus insurance premiums, to report non-breaking news features for sale to media outlets.

The original law signed back in 2000 was meant to apply primarily to big, Hollywood-style movie productions and to commercial still photography that used models or unnatural props. The fees required by the law were to be based on the size and duration of the filming enterprise, and the law specifically exempts fees for still photographs taken

on Interior-managed lands generally available to the public. We think Interior should limit its rule to what Congress wanted regulated, and no more.

In order to comply with the letter and intent of the law, the Department of Interior needs to adopt the broadest possible definition of what constitutes "news coverage" in deciding what filming, photography or recording activities are exempt from regulation via permits and fees. The rule should exempt all types of news coverage, not just breaking news, and it should not automatically classify all documentaries as commercial filming ventures. Ambiguity, or discretion, is a recipe for confusion and potential trouble, as Kinna Ohman's experience demonstrates.

The rule also should explicitly state the law's presumption that still photography is allowed without permit or fee, except in certain very narrow circumstances. Finally, the department needs to clearly exempt audio recording from permit and fee requirements, as that was not even mentioned in the law.

Above all, we hope the department would be more mindful in drafting regulations such as this of the need to steer well clear of anything that would infringe on the ability of journalists or everyday citizens – who can be journalists, too – to share with the public how our nation's lands and resources are being cared for and managed.

Mr. Chairman, with your permission I'd like the record of this hearing to include the comments which SEJ filed Oct. 19, 2007, in the Interior Department rulemaking. Eighteen other journalism groups joined SEJ in submitting those comments, reflecting the broad concern within the journalistic community about the potential impact of this rule on how we practice our craft. These comments amplify our concerns.

In closing, I want to thank the Chairman and the Committee for holding this hearing. PL 106-206 was hammered out in this very room some eight years ago. If anyone would know the intent of the original law, it would be this Committee. You are to be commended for this kind of constructive oversight. I would be happy to answer any questions you or members of the committee may have.