



Smithsonian
Institution

SMITHSONIAN DIRECTIVE 609,
Appendix B

July 15, 2011

COMMON VOCABULARY RIGHTS USAGE GLOSSARY

The Smithsonian unit that holds a digital asset (or holds a physical asset that may be digitized) must grant requests to access and use the digital asset unless doing so would violate one of the allowable restriction categories set forth in Section VII of SD 609, Digital Asset Access and Use. If the holding unit declines requests for external non-commercial use, the reason must be based on the nature of the requested use, not the user, and the reason must correspond to one of these allowable restriction categories. The holding unit must document the reason for the denial and retain a record of such denials.

The Rights, Restrictions, and Security team developed this glossary in order to establish a common vocabulary for the Smithsonian to use when documenting (i), in metadata or the digital asset management system, the allowable restrictions that apply to a digital asset and (ii) denials.

No Copyright or Other Restrictions. The Smithsonian has researched the image and object depicted in the image and identified no copyright restrictions¹. In addition, the image and object depicted are otherwise free and clear of any other legal or policy constraints on its use.

Not Researched. No research has been done into provenance, export, copyright, or other possible restrictions.

Unknown — Restrictions Possible. Some research has been conducted, but it is incomplete due to uncertain copyright, export, or provenance records.

¹ This may mean that: (1) a copyright existed at one time but was not renewed, or the copyright may have expired, or the owner may have intentionally placed the Content into the public domain; or (2) the Content was never eligible for copyright protection because it was created by an employee of the United States as part of his or her official duties; or (3) there are no copyright markings or other indications on the Content to indicate that it was copyrighted or otherwise restricted; or (4) Smithsonian records do not indicate any evidence of copyright restrictions.

Restricted by Copyright. Copyright is a proprietary right established in the U.S. Constitution that protects “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. Many of the works of art and other content generated and held by the Smithsonian are protected by copyright. Depending on the circumstances under which the object was created or acquired by the Smithsonian, the copyright may or may not be owned by the Smithsonian, which will determine whether, and to what extent, the digital asset may be used and reproduced. For a detailed discussion of copyright, see the Copyright Office website, www.copyright.gov. Ideas and titles are not protected by copyright, but may be protected by other intellectual property laws.

Restricted by Moral Rights. Moral rights are set forth as part of the copyright law in the Visual Artists Rights Act (“VARA”), and they consist of an artist’s right to protect his or her name and reputation from damage caused by intentional distortion or mutilation of his or her artistic works, and other similar protections.

Restricted by Trademark. A trademark is any work, name or symbol, or device, or any combination that is adopted and used by a person or entity to identify goods and services and to distinguish them from those manufactured or sold by others. The purpose of a trademark is to indicate the source of goods or services. Titles, slogans, service marks, logos, and other symbols that identify or are capable of distinguishing goods and services are protected under trademark law. Names of museums, exhibition titles, and other names or designs may be eligible for trademark protection, either under common law principles or by federal registration with the United States Patent and Trademark Office. A trademark owner may prevent others from using the same or substantially similar word, design, symbol or title in a manner that is likely to create confusion in the mind of the public. See www.uspto.gov for more information about trademarks.

Restricted by Patent. A patent is a grant conferring the right to exclude others from making, using or selling an invention. Novel and useful processes and inventions or new designs for useful objects are governed by patent laws.

Restricted by Privacy or Publicity Rights. Privacy and publicity rights cover a wide range of interests. An individual has certain personal and pecuniary interests in his or her name, voice, picture, likeness, and other identifying characteristics that restrict certain commercial uses of these attributes without the individual’s consent. In addition, personally identifiable information such as name, address, and contact information is also protected by privacy laws. Privacy rights also protect individuals from being depicted in a false light or in an embarrassing situation. Images of identifiable children fall in this category.

Restricted by Contract. Any restrictions that may be found in deeds of gift, wills, purchase orders, contracts, licenses, loan agreements, publishing

agreements, etc. The terms of use may include specific acknowledgements and credits, geographic or distribution channel restrictions, or other constraints.

Restricted by Native American Repatriation. Native American and Native Hawaiian objects subject to repatriation may include human remains, funerary objects, sacred objects, and items of cultural patrimony. If a collection object has been repatriated, any associated digital assets may be restricted.

Restricted by Cultural Repatriation. Cultural items returned to their country of origin because of the circumstances of acquisition (e.g., illegally or unethically acquired).

Restricted to Protect Species. This category covers images, other media, or data that reveal locality or collector information on rare, threatened, or endangered species.

Restricted Physical Access. This category covers images, other media, or data that reveal the location of archeological, paleontological, geological, sacred and historic sites.

Restricted as Sensitive Content. This term is defined in different ways by members of individual communities, nations, tribes, ethnic groups, and religious denominations, but usually includes materials that relate to traditional knowledge and practices. Such materials may: a) be considered the private domain of specific individuals, clans, cults, or societies; b) require an appropriate level of knowledge to view and understand; c) threaten the privacy and well being of a community when exposed or disclosed to outsiders; and/or d) give offense if inappropriately used or displayed, or when appropriated or exploited for commercial purposes.

Restricted as Unpublished Research. This category covers raw data, primarily research and manuscripts generated during the course of research, which may be temporarily delayed or restricted against access and use to provide the author of the data with time to compile and publish the data prior to general access. The duration of these limitations varies by professional discipline.
