

# USAGM SMITH-MUNDT GUIDELINES

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## GUIDING PRINCIPLE

SMITH-MUNDT RESTRICTIONS RELATING TO DOMESTIC DISSEMINATION ARE TO BE APPLIED TO ALL ENTITIES / NETWORKS OF THE USAGM, INCLUDING GRANTEES.

USAGM NETWORKS MAY ONLY SEEK TO REACH FOREIGN AUDIENCES ABROAD; AND MAY NOT SEEK TO INFLUENCE US PUBLIC OPINION OR PERSONS WITH THEIR CONTENT.

### Summary of Smith-Mundt Restrictions:

**The United States Information and Educational Exchange Act of 1948 (the “Smith-Mundt Act” or “Smith-Mundt”), 22 USC 1461 et seq., only authorizes Agency-funded broadcasts and activities to target “foreign audiences abroad.” 22 USC §1461 Note (emphasis added).**

Congress has made clear “[n]o funds authorized to be appropriated to ... the Broadcasting Board of Governors [USAGM] shall be used to influence public opinion in the United States.” 22 USC §1461–1a(a). The Agency may not take or fund actions which would appear to seek “to develop audiences within the United States”, including by means of “syndicat[ing] such material through domestic media outlets.” H.R. CONF. REP. 112-705 (2012). Statutory references appear in Appendix B.

It does not prevent us from using the Internet and social media to distribute our products to non-U.S. audiences, overseas just because people in the U.S. might also see the material. (For example, we can disseminate program material to foreign audiences abroad via websites even though persons within the U.S. can also access such websites.) The law does not prevent incidental exposure of U.S. audiences to program material, as long as those audiences are not being targeted. As described herein, USAGM broadcasters have an affirmative obligation to take all steps to ensure that US audiences are not being targeted; for example, broadcasters must opt out of boosting content to audiences located in the U.S. As described in this guidance, if a platform does not allow for the agency to exclude pushing content to U.S. audiences, then the technology must be reviewed on a case by case basis by USAGM. Until such a review, such technology should not be used.

The statute does not prevent the provision of “program material” to people in the U.S. *upon request*, so long as such provision is consistent with the purposes of Smith-Mundt. It does not prevent us from entering into certain partnerships or providing opportunities for exposure for network journalists to enhance retention and recruitment.

But USAGM entities / networks may not attempt to target audiences in the United States. Ultimately, **if** it looks like the intent is to subvert the rules – i.e., **if the goal is to influence public opinion in the United States or otherwise develop audiences within the United States** -- then the activity is prohibited.

## KEY POINTS RE U.S. DISTRIBUTION OF USAGM CONTENT

- THE SMITH-MUNDT RESTRICTIONS APPLY TO DISTRIBUTION OF USAGM [ENTITY] CONTENT & PROGRAMMING WITHIN THE UNITED STATES.
- THEY DO NOT IN ANY WAY RESTRICT USAGM [ENTITY] COVERAGE OF NEWS STORIES. [ENTITY] IS FULLY AUTHORIZED AND EXPECTED TO COVER STORIES IN THE U.S. FOR DISTRIBUTION TO FOREIGN AUDIENCES OVERSEAS.
- USAGM [ENTITY] / NETWORK STAFF SHOULD NOT INITIATE A DIRECT OFFER OF CONTENT<sup>1</sup> TO ANY NEWS OUTLET, REGARDLESS OF GEOLOCATION, THAT BROADCASTS TO, TARGETS, OR REACHES AUDIENCES IN THE U.S., WITHOUT PRIOR WRITTEN PERMISSION PURSUANT TO A PROCESS ESTABLISHED UNDER THESE INTERNAL GUIDELINES.
- USAGM ENTITIES CANNOT SPEND ANY ADVERTISING OR OTHER FUNDS TO SPECIFICALLY TARGET OR DEVELOP AUDIENCES IN THE U.S.
- WHEN VIOLATIONS OF SMITH-MUNDT PROHIBITIONS (I.E., TARGETING OF U.S. AUDIENCES) ARE IDENTIFIED, WHETHER BY AN AUDIT OR IN THE NORMAL COURSE OF BUSINESS, THEY MUST BE REPORTED IMMEDIATELY TO THE USAGM CTO.
- USAGM WILL PERIODICALLY AUDIT OR REQUEST TO SEE AUDITS CONDUCTED AT EACH NETWORK.
- NEW TECHNOLOGIES WHICH COULD PUSH CONTENT TO USERS SHOULD FIRST BE EVALUATED FOR SMITH-MUNDT COMPLIANCE (SEE CONTENT DISTRIBUTION PLATFORMS, BELOW)

### USAGM [ENTITY] Guidelines

1. Each [ENTITY] shall develop and maintain an auditable workflow to process questions or requests regarding Smith-Mundt.
2. Each [ENTITY] shall assign a designated single point of contact and an escalation point of contact to connect with other entities and the USAGM regarding Smith-Mundt issues.
3. Each [ENTITY] shall develop, implement and maintain appropriate policies to address violations, up to and including termination of staff or

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<sup>1</sup> The law does permit USAGM to enter into contractual content sharing agreements with private entities, including American media agencies.

contractors.<sup>2</sup>

4. Each [ENTITY] shall develop, implement and maintain mandatory training and materials to ensure current and new consultants or staff who are authorized to make decisions regarding Smith-Mundt requests or ad placement are aware of Smith-Mundt, its scope and application, and these guidelines. Training shall reoccur at regular intervals with a signed and auditable acknowledgment of completion.

## Content Distribution Platforms

In any new undertaking with any new or existing platform, it may be incumbent upon [ENTITY] to request that the platform restrict the content from U.S. users.<sup>3</sup> A standing USAGM working group will evaluate the proposed agreement prior to its execution according to multiple factors designed to ensure compliance with the law.

## FAQS

[Town Halls, Forums, and Other Such Events; Partnerships; and activities to support the recruitment and retention of high-quality journalists;](#)

USAGM entities may host or play a role in Town Halls or related events in the United States if the purpose of the event is to engage overseas audiences; to inform U.S. stakeholders about [ENTITY] programs; or to educate U.S. taxpayers about [ENTITY] operations. For example, if a town hall is being filmed and/or broadcast live to an overseas audience, that would be okay if intended to connect overseas audiences with persons in the U.S. to show overseas audience how people in the U.S. do a particular thing; or something newsworthy to an overseas audience.

In line with efforts to adhere to the highest standards of broadcast journalism, there may be times, subject to any required approvals, that [ENTITY] journalists appear as subject-matter experts in other news outlets. This may be allowed if the purpose is to benefit [ENTITY] by facilitating development of new sources of information, enhancing [ENTITY]'s credibility, and/or contributing to the recruitment or retention of high-caliber journalists.<sup>4</sup> The purpose may not be influence domestic audiences in violation of Smith Mundt. In other cases, the purpose may be to disseminate [ENTITY] content overseas as part of an arrangement with another news organization.

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<sup>2</sup> Any policies with employment-related consequences would be developed in consultation with the entity's HR office and legal counsel.

<sup>3</sup> For example, Facebook ad "boosting" allows for a user to opt out of targeting audiences in the U.S., so Facebook ad "boosting" is only allowed if the [ENTITY] first ensures that the U.S. is not among the geographic locations targeted by the boost.

<sup>4</sup> Any engagement with such news outlets must adhere to and be consistent with [ENTITY]'s best practices guides and policies for journalists.

Please clear such events, partnerships, and activities in advance with [ENTITY] leadership, who should consult with their Office of General Counsel. They should also consult with the USAGM Office of General Counsel if any questions arise re the application of Smith-Mundt or these guidelines to this or any other circumstance.

USAGM leadership may be able to engage in certain partnership arrangements if the purpose is to enhance the quality or distribution of USAGM content to foreign audiences overseas. Such partnerships must be reviewed and approved on a case-by-case basis by USAGM.

### Talking about [ENTITY] Content & Programming; Op-Eds by [ENTITY] heads

As indicated herein, the funds that the USAGM provides are only authorized to create and distribute news and information to “foreign audiences abroad” However, the law also makes clear that nothing prevents USAGM from “providing information about its operations, policies, programs, or program material, or making such available, to the media, public, or Congress, in accordance with other applicable law.”

If someone from a domestic U.S. news organization asks you about [ENTITY]’s work, you can freely talk about the content [ENTITY] produces. Nothing in Smith-Mundt prevents that. Furthermore, Smith-Mundt does not prevent an [ENTITY] President or other officer from submitting an op-eds to a domestic news publications on behalf of his/her respective network, on an issue of interest to the public **relating to [ENTITY’S] operations**. For, example if an issues about ENTITY operations became a story in domestic media, Smith-Mundt does not prevent an [ENTITY] Officer from publishing an op-ed providing the [ENTITY’S] view of the [ENTITY’S] operational issue. Such publication is still subject to any other relevant USAGM or [ENTITY] policy on such matters. This is distinguishable from the conduct prevented by Smith-Mundt.

### [ENTITY] AppS

An [ENTITY] App is determined to be like an [ENTITY] Website, whereby (1) users must visit it to get content, and (2) it is designed to target users overseas.

[ENTITY] may post mobile applications for download in a n y app stores, so long as the purpose is for overseas audiences to use the app. If using the U.S. App store for this purpose, the [ENTITY] should (1) disable push functionality (e.g., pop-up news alerts) or render it opt-in; and (2) notify or inform users, in the Terms of Service, of how the application is being provided in the U.S. App store in a manner consistent with the Smith-Mundt restrictions.

### Usage Requests

Smith-Mundt authorizes the provision of content, developed with funds appropriated to USAGM, to individuals and organizations in the United States if they request it, so long as the provision would not be inconsistent with the purposes of the Smith-Mundt restrictions relating to

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domestic dissemination.<sup>5</sup> From time to time, USAGM [ENTITY] staff may receive requests for **one-time** use of content or for **ongoing use** of programming. These usage requests could come from anyone, including U.S.-based media organizations, diaspora media outlets, overseas media outlets, or from educational institutions.

Each USAGM entity that has not yet developed a Smith-Mundt-compliant process for usage requests, shall do so. A sample workflow is attached in Appendix A.

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<sup>5</sup> Regulations pertaining to domestic requests for program material created by the Agency's Federal Entities/Networks are set forth in 22 CFR Part 502.

## APPENDIX A

### Sample workflow or process

(Note: Each Grantee’s process may differ slightly, so long as they do not result in an impermissible affiliate relationship or other arrangement with an entity seeking to reach audiences within the U.S.)

#### **[ENTITY] Staff Should Not Respond Directly To REQUESTS**

- Instead, they should develop a workflow that will identify and separate out the following:
  - Requests for **one-time use** of [ENTITY] original content
  - Requests for **ongoing use of [ENTITY] programming** from entities that qualify as overseas affiliates
  - Requests for **ongoing use of [ENTITY] programming** from entities that do not qualify as overseas affiliates, e.g. entities seeking to reach audiences in the U.S.
- Requests for **one-time use** of [ENTITY] original content should be routed to a dedicated office for that purpose.
- Requests for **ongoing use of [ENTITY] programming** from entities that qualify as overseas affiliates should be routed to USAGM Office of Business Development
- Requests for **ongoing use of [ENTITY] programming** from entities that do not qualify as overseas affiliates (so called “non-affiliate” requests) should receive the following reply:

Thank you for your inquiry regarding a subscription to / affiliate agreement for [ENTITY] content. Under the United States Information and Educational Exchange Act of 1948 (the “Smith-Mundt Act”), 22 U.S.C. § 1461 et seq., [ENTITY] may make its content, which is intended for dissemination to foreign audiences abroad, available to qualified requestors. This law, however, prohibits [ENTITY] from syndicating its content through domestic media outlets with the intent to develop audiences within the United States or expending funds to influence public opinion within the United States. Because you seek to disseminate [ENTITY] content on an ongoing basis to a U.S. audience, we cannot fulfill your request.

Alternatively, you may:

- 1) submit a request for a **one-time** use of content by visiting [ENTITY WEBSITE REQUEST FORM]; or
- 2) download and broadcast content on an ongoing basis from [ENTITY WEBSITE], subject to your acceptance of and compliance with the website’s terms of

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use. In particular, please note that certain [ENTITY] content may use text, video, audio, photos or graphics that are the intellectual property of third parties, including ABC News, Agence France Presse (AFP), the Associated Press (AP), and Reuters, that is licensed for use in [ENTITY] programming only. This third-party material is not in the public domain and may not be copied, redistributed, sold, or published without the express permission of the copyright owner.<sup>6</sup>

- **Unaired or unpublished original USAGM [ENTITY] material should not be shared.** Please forward those requests to [ENTITY] senior management, the [responsible Editors] and the [ENTITY] Office of General Counsel.

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<sup>6</sup> USAGM and each grantee need to work out separately whether this language would apply to them in light of the fact that they assert a copyright in their content, and can thus restrict download and use.

## APPENDIX B

### Legal and Statutory References (emphases added)

#### Legislative Language

##### **22 USC §1461. General authorization**

###### **(a) Dissemination of information abroad**

The Secretary and the Broadcasting Board of Governors are authorized to use funds appropriated or otherwise made available for public diplomacy information programs to provide for the preparation, dissemination, and use of information intended for foreign audiences abroad about the United States, its people, and its policies, through press, publications, radio, motion pictures, the Internet, and other information media, including social media, and through information centers, instructors, and other direct or indirect means of communication.

###### **(b) Dissemination of information within the United States**

(1) Except as provided in paragraph (2), the Secretary and the Broadcasting Board of Governors **may, upon request** and reimbursement of the reasonable costs incurred in fulfilling such a request, make available, in the United States, motion pictures, films, video, audio, and other materials disseminated abroad pursuant to this chapter, the United States International Broadcasting Act of 1994 (22 U.S.C. 6201 et seq.), the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 et seq.), or the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa et seq.). Any reimbursement pursuant to this paragraph shall be credited to the applicable appropriation account of the Department of State or the Broadcasting Board of Governors, as appropriate.

The Secretary and the Broadcasting Board of Governors shall issue necessary regulations—

- (A) to establish procedures to maintain such material;
- (B) for reimbursement of the reasonable costs incurred in fulfilling requests for such material; and
- (C) to ensure that the persons seeking release of such material have secured and paid for necessary United States rights and licenses.

(2) With respect to material disseminated abroad before the effective date of section 1078 of the National Defense Authorization Act for Fiscal Year 2013—

- (A) the Secretary and the Broadcasting Board of Governors shall make available to the Archivist of the United States, for domestic distribution, motion pictures, films, videotapes, and other material 12 years after the initial dissemination of the material abroad; and
- (B) the Archivist shall be the official custodian of the material and shall issue necessary regulations to ensure that persons seeking its release in the United States have secured and paid for necessary United States rights and licenses and that all costs associated with the provision of the material by the Archivist shall be paid by the persons seeking its release, in accordance with paragraph (4).

(3) The Archivist may undertake the functions described in paragraph (1) on behalf of and at the request of the Secretary or the Broadcasting Board of Governors.

(4) The Archivist may charge fees to recover the costs described in paragraphs (1) and (2), in accordance with section 2116(c) of title 44. Such fees shall be paid into, administered, and expended as part of the National Archives Trust Fund.

**(c) No requirement to provide material in different format**

Nothing in this section may be construed to require the Secretary or the Broadcasting Board of Governors to make material disseminated abroad available in any format other than in the format disseminated abroad.

(Jan. 27, 1948, ch. 36, title V, §501, 62 Stat. 9; Pub. L. 92–352, title II, §204, July 13, 1972, 86 Stat. 494; Pub. L. 96–60, title II, §208, Aug. 15, 1979, 93 Stat. 401; Pub. L. 101–246, title II, §202, Feb. 16, 1990, 104 Stat. 49; Pub. L. 112–239, div. A, title X, §1078(a), Jan. 2, 2013, 126 Stat. 1957.)

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**RULE OF CONSTRUCTION**

Pub. L. 112–239, div. A, title X, §1078(b), Jan. 2, 2013, 126 Stat. 1958, provided that: “**Nothing in this section** [amending this section and sections 1437, 1461–1a, and 1462 of this title and enacting provisions set out as a note under section 1437 of this title], or in the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1431 et seq.), **may be construed** to affect the allocation of funds appropriated or otherwise made specifically available for public diplomacy or **to authorize appropriations for Broadcasting Board of Governors programming other than for foreign audiences abroad.**”

**22 USC §1461–1a. Clarification on domestic distribution of program material**

**(a) In general**

**No funds authorized to be appropriated to the Department of State or the Broadcasting Board of Governors shall be used to influence public opinion in the United States.** This section shall apply only to programs carried out pursuant to the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1431 et seq.), the United States International Broadcasting Act of 1994 (22 U.S.C. 6201 et seq.), the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 et seq.), and the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa et seq.). **This section shall not prohibit or delay the Department of State or the Broadcasting Board of Governors from providing information about its operations, policies, programs, or program material, or making such available, to the media, public, or Congress, in accordance with other applicable law.**

**(b) Rule of construction**

**Nothing in this section shall be construed to prohibit the Department of State or the Broadcasting Board of Governors from engaging in any medium or form of communication, either directly or indirectly, because a United States domestic audience is or may be thereby exposed to program material, or based on a presumption of such exposure.** Such material may be made available within the United States and disseminated, when appropriate, pursuant to sections 502 and 1005 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1462 and 1437)<sup>i</sup>, except that nothing in this section may be construed to authorize the Department of State or the Broadcasting Board of Governors to disseminate within the United States any program material prepared for dissemination abroad on or before the effective date of section 1078 of the National Defense Authorization Act for Fiscal Year 2013.

**(c) Application**

The provisions of this section shall apply only to the Department of State and the Broadcasting Board of Governors and to no other department or agency of the Federal Government. (Pub. L. 99–93, title II, §208, Aug. 16, 1985, 99 Stat. 431; Pub. L. 103–236, title II, §232, Apr. 30, 1994, 108 Stat. 424; Pub. L. 112–239, div. A, title X, §1078(c), Jan. 2, 2013, 126 Stat. 1958.)

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**Relevant Legislative History**

**H.R. CONF. REP. 112-705 (2012)**

**Dissemination abroad of information about the United States (sec. 1078)**

The House bill contained a provision (sec. 1097) that would amend section 501 of the United States Information and Educational Exchange Act of 1948 (also known as the Smith-Mundt Act; 22 U.S.C. 1461) [...]

The conferees maintain that the Secretary of State and BBG are authorized to utilize funds for public diplomacy programs to provide for the preparation, dissemination, and use of information intended for foreign audiences. **Further, the conferees maintain that no funds authorized for the Department of State or BBG shall be used to influence public opinion in the United States.** The conferees recognize that the ban on domestic dissemination of BBG or Department of State public diplomacy products contained in the Smith-Mundt Act did not envision the development of new technologies, including the Internet or satellite broadcasting, which do not honor national boundaries. The conferees note the modification on the prohibition on domestic dissemination does not apply to other agencies of the U.S. Government, as the initial ban was also not applicable to them. In addition, this amendment in no way broadens or otherwise changes the current missions of the Department of State and BBG.

**In addition, the conferees believe the provision would allow BBG to respond to domestic requests for BBG material, but not to seek to syndicate such material through domestic media**

**outlets with the intent to develop audiences within the United States.** Further, the conferees expect that reimbursements and fees should not exceed the actual costs incurred to make materials available pursuant to the statute. The conferees also believe that the fees charged pursuant to this provision should be assessed according to a standardized, publicly-available fee schedule; and that the Secretary of State, BBG, and the National Archivist should maintain and provide to Congress a regular accounting of the funds collected pursuant to the reimbursement authority of section 501(b)(1) and the fee-collection authority of section 501(b)(4).

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**22 USC §1437. Utilization of private agencies**

In carrying out the provisions of this chapter it shall be the duty of the Secretary and the Broadcasting Board of Governors **to utilize, to the maximum extent practicable, the services and facilities of private agencies, including existing American press, publishing, radio, motion picture, and other agencies, through contractual arrangements or otherwise.** It is the intent of Congress that the Secretary and the Broadcasting Board of Governors shall encourage participation in carrying out the purposes of this chapter by the maximum number of different private agencies in each field consistent with the present or potential market for their services in each country.

(Jan. 27, 1948, ch. 36, title X, §1005, 62 Stat. 14; Pub. L. 112–239, div. A, title X, §1078(d)(2), Jan. 2, 2013, 126 Stat. 1959.)

**22 USC §1462. Policies governing information activities**

In authorizing international information activities under this chapter, it is the sense of the Congress (1) that the Secretary and the Broadcasting Board of Governors shall reduce such Government information activities whenever corresponding private information dissemination is found to be adequate; (2) that nothing in this chapter shall be construed to give the Department or the Broadcasting Board of Governors a monopoly in the production or sponsorship on the air of short-wave broadcasting programs, or a monopoly in any other medium of information.

(Jan. 27, 1948, ch. 36, title V, §502, 62 Stat. 10; Pub. L. 112–239, div. A, title X, §1078(d)(1), Jan. 2, 2013, 126 Stat. 1958.)