

5/11/98 telephone conversation with Kevin Jessar re: comments on CBS version on the deed of gift:

¶1:  
fine

¶2:  
Second sentence negates the first, so that the first sentence warrants that the donor possesses title and the second sentence says donor makes no warranties re: title. Jessar suggests that we ask CBS whether they are not willing to warrant to possessing title. If not, we will try to deal with it, but, as written, it makes no sense.

¶3:  
We should change this ¶ to say that title to the videotapes shall pass upon signing of the deed. All of the common carrier stuff is not really relevant or useful.

¶4:  
fine

¶5:  
fine

¶6:  
fine

¶7:  
first sentence:  
what does “non-exclusive” mean in this sentence?  
second sentence:  
May run afoul of the Anti-Deficiency Act. Govt. agencies cannot indemnify the govt. Can’t commit to an unidentified amount. If CBS just means that NARA will be responsible for collecting payment associated with reproduction, etc..., then they need to be very specific in saying that. As it is, the sentence is overly vague.  
third sentence:  
fine  
fourth sentence:  
fine  
fifth sentence:  
ask CBS if it will remove this sentence, as it makes no sense. e.g. distortion, misrepresentation, use out of context. . .  
sixth sentence:  
public performance: if NARA has title and if NARA is already prohibited from reproduction, etc. . . , this section about not authorizing the public performance may be a problem for NARA.

¶8:

need to include at end of ¶8, “as indicated in this document.” Otherwise, it sounds as if CBS could, at some subsequent date, place restrictions on the use of the materials that are not already mentioned in the deed and NARA would have to abide by them.

¶9:

REMOVE. NARA is not legally allowed to sign the deed with this paragraph included, as it is in violation of the Anti-Deficiency Act.

¶10:

fine

¶11:

first sentence:

two problems: First, NARA may need to remove the videotapes from the premises in order to preserve them. They need to be able to use their archival judgment to care for the videotapes. Second, NARA may need to mount an exhibition and would want to remove the videotapes for that reason. Again, they need to have the freedom to exercise their archival judgment.