Dear US Copyright Office,

I am writing in response to your request for comments regarding how visual works, and especially in my case photographs, are monetized, enforced, and registered under the Copyright Act.

Briefly, I would like to outline my experience.

In 2008, I coauthored a book on an archaeological site in Peru. I was the photographer; the head archaeologist wrote the text. I registered all photographs in the book with the Copyright Office. In addition and at the request of the archaeologist, I agreed that all photographs of the site be used only for educational purposes. Commercial gain was explicitly forbidden.

I self-funded every expense I incurred in this project, which now includes dozens of trips with it's lodging, equipment, and support.

This site is now becoming a tourist destination and is attracting commercial attention from those interested in anything from tourist infrastructure to companies branding themselves after the site to high-rise office buildings to breweries.

Over the past seven years, I have sold a number of photographic prints of this work. I have licensed the use of photos to websites and my photographs have been licensed and used in textbooks and books of archaeological interest in the United States, Europe, South America and Asia. I have approved the use of photographs by United Nations, United States and Peruvian government agencies. The Central Reserve Bank of Peru uses an image of mine on a banknote and on a coin.

In this time, I have carefully restricted on-line use of my photographs. My website with photographs clearly states that the photographs are protected under US Copyright law. I have posted no photographs of the project on Facebook. In order to avoid any misunderstanding regarding usage, I do not use Instagram, Pinterest, Flickr, or any other online image sharing mechanism. No one will have any question as to whether I granted him or her permission for use.

To date, my experience is as follows. Established publishers of textbooks and archaeology books, authors of books, governments and agencies, NGO's, the media and museums all appear to have the tools and the interest to track me down to obtain usage of my work. Most contact me through my website. Those wishing to monetize my work without permissions and cut me out of any recompense do not appear to have the interest to use the same tools to contact me.

Those using my work without my permission range from the smallest of tour operators to the largest of travel portals and online companies. There are dozens of violations even from large companies.

In the past year, I have formally sought legal counsel from 2 copyright attorneys and informally discussed my situation with several others. Their advice is consistent and is best compared to the game Whac-A-Mole. These companies have legal resources that I do not. All I can do is find my work being used inappropriately, send a cease-and-desist letter and expect them to remove

my images from their website. Then I will have to monitor their site and when they do it again, send another letter. I have no other practical recourse but to keep repeating this process. I have no practical means of capturing compensation for these unauthorized uses of my work. My liability to any other legal action has been made very apparent. As legal guidelines are currently interpreted, someone my size simply has to allow a Groupon or TripAdvisor to take my work without notification or compensation to try to profit from it. In the practical world, I think we understand that one artist cannot consistently compete against a legal department. Especially one with outside lawyers on retainer.

Quite frankly, it doesn't matter if an Expedia or the like makes money or not with my work. I have no intention of being concerned with whether they are competent at their occupation. I care only that they stole my work with the intention to use it to make money. In addition, it rankles and embarrasses me that they have violated the promise I have made with my partner, that these photographs will be used only for educational purposes, not for commercial gain.

Throughout history, we see new technologies upend old business practices. The Robber Barons will always be with us. However, after a while society steps in and establishes ground rules to this new world to assure that those powerful do not crush those with less power. This allows those below to thrive and enriches a whole society. If a company builds their business model on stealing one person's work to enrich only themselves, they violate fundamental norms of society. Copyright law should codify no distinction between visual works accessible by scanning or capturing off the web and other tangible goods belonging to an individual. Probably no one would defend a car rental company that stocked its fleet by stealing my car off the street only to rent it to the public.

To close, I am not employed by a Groupon or a TripAdvisor or an Expedia or even a Peru-tours. They have no agreement, no contract, and no right to take my work to profit from it as if it were their own. And faced with this, if they suggest that they cannot possibly monitor what is posted through their websites, then I suggest they are not capable of running their business in an ethical manner. And I hold no responsibility for ensuring they run their businesses honestly. That responsibility falls solely to them.

Besides, it boggles the mind that no one at these companies has learned to use "Google Image Search" or the like. Perhaps these online presences find technology overwhelming.

I appreciate the opportunity to relate my experiences and offer my comments. I hope the end result allows a practical level playing field for both an artist and an end user. I am certain this process will lead to much outrage and upset on the part of the web community; probably no one likes to surrender advantage. However we, creator, user and society at large, will be better for your efforts.

I look forward to your every response.

Sincerely,

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