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“It’s Not Just A Good Idea—It’s The Law!”

December 31, 2020

Tim Sullivan, Executive Director
University of California Press
155 Grand Avenue, Suite 400
Oakland, CA 94612-3758

Dear Mr. Sullivan –

I had previously approached you and Ms. Robinson, the UC Press Editorial Director, concerning questions I had about your publication of a number of works authored by the California Coastal Commission, an agency of the Government of California. I realize with the holidays, coupled with the pandemic, you may not have had time to respond and I thought it would be helpful for me to briefly summarize my concerns.

Public.Resource.Org (“Public Resource”) is a 501(c)(3) nonprofit based in California with a focus on making government information more widely available. We were approached by a number of parties that wanted to know why a series of guidebooks authored by the Commission were not available on their web site and could only be obtained on a commercial basis from the Press.

I have purchased and examined the following works:

- California Coastal Commission, California Coastal Access Guide, Seventh Edition, UC Press (2014)
- California Coastal Commission, Experience the California Coast: Beaches and Parks from San Francisco to Monterey, UC Press (2012)
- California Coastal Commission, Experience the California Coast: Beaches and Parks in Southern California, UC Press (2009)
- California Coastal Commission, Experience the California Coast: A Guide to Beaches and Parks in Northern California, UC Press (2005)
- California Coastal Commission, Experience the California Coast: Beaches and Parks from Monterey to Ventura, UC Press (2007)

In each instance, the author is the California Coastal Commission, and copyright is held in the name of “State of California, California Coastal Commission.” The names of all the Commissioners, the Governor of the State, and an extensive list of Commission staff are prominently featured on the initial title pages. An extensive list of acknowledgements can be found at the end of each book, listing the names of photographers and other contributors. A few have a copyright symbol next to the name, the vast majority do not, clearly a deliberate choice.

In addition to examining the books, I spent some time on the Commission web site and spoke with staff for the Commission. The web site includes an “app” that can be viewed on the web or downloaded to IOS platforms at no charge. The app contains much of the same information in the book series, with the notable lack of any photographs. I also spoke with Ms. Noaki Schwartz, Public Information Officer for the Commission and Ms. Linda Locklin, Public Access Program Manager for the Commission. I learned the following:

- The Commission, due to a recent relocation of headquarters, did not have ready access to the contract with UC Press, but staff was familiar with the arrangement.
- Neither the Commission nor any of the staff who are listed as authors receive royalties for the books. This is rather unusual in a commercial publishing arrangement, but I understand sometimes it is difficult to set up a conduit for funds to a government agency.
- The Commission says they have used donated funds to purchase rights to a few of the photographs that are listed with a copyright symbol in the acknowledgements. Without seeing the specific arrangement with each photograph, I am presuming the Commission acquired appropriate rights for each photograph, including the ability to use them in on-line editions.
- The Commission stated that they had tried to include the photographs in their on-line guides, but had been denied such permission by the Press. The Commission also indicated that they would be delighted to make this material more broadly available to the public, a goal clearly in line with their public purpose.

Let me state very clearly that I am a huge fan of the UC Press. I own many of your books and a trip to Berkeley is never complete without a visit to your amazing bookstore. The standards of scholarship, editing, production, and writing in your books is impeccable. However, it appears to me that the Press, no doubt under the direction of previous editors, has perhaps taken advantage of the State of California in the present arrangement.

It seems clear that, despite the various copyright assertions, the photographs taken by public employees in the course of their official duties would fall under the California Public Records Act (Government Code § 6250 et seq.) and Article I, § 3(b) of the California Constitution, which states “people have the right of access to information concerning the conduct of the people’s business,” This provision in the Constitution was enacted in response to Proposition 42, which overwhelmingly expressed the will of the people for such a right.

I believe it would be well within my rights under California law and under the fair use provisions of the U.S. Copyright Act to scan the photographs taken by government employees and post them for noncommercial use. I also believe a California Public Records Act request to the Commission, and perhaps even to the UC Press, would be another way to obtain the photographs and make this information more broadly available.

However, before taking such action, I wanted to write to you and see if there are any facts or circumstances I may have missed. I also would like to propose a much simpler strategy, which is that the UC Press not object if we simply scan the books and post them on the non-profit Internet Archive with a Creative Commons “non-commercial use only, attribution required” copyright notice. I don’t believe this would have much impact on your sales, and this would be an easy way for the Commission to be able to use these government-produced materials on their own web site and for the people of California to have broader access to the materials they paid to have developed.

Thank you for taking the time to listen to my concerns. I will hold off on any actions until January 31, 2021 in order to give you time to respond.

With best regards,

DocuSigned by:

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Carl Malamud, President
Public.Resource.Org, Inc.

cc: Ms. Noaki Schwartz, California Coastal Commission
Ms. Linda Locklin California Coastal Commission