

LAW OFFICES OF JOHN P. LUNEAU

New York, NY



April 8, 2014

VIA E-MAIL

Sue Gardner, *Designated Agent*
Wikimedia Foundation, Inc.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017
Tel.: (415) 839-6885 / Fax: (415) 882-0495
Email: legal@wikimedia.org

**Re: DMCA Take-Down Notice: Notice of Infringement of Copyrights in Paintings of
Herman Herzog, and Demand for Immediate Removal or Disabling of Access**

Dear Ms. Gardner:

I, the undersigned, certify under penalty of perjury that the information in this notification is accurate, and that I am authorized to act on behalf of Mr. Scott Herzog and Ms. Robin Burke (collectively, the "IP Owner"). I have a good faith belief that the materials identified in the attached Schedule "A" (the "Infringing Materials") are not authorized by the IP Owner, its agent, or the law, and therefore infringe the IP Owner's copyrights in the Works according to state and federal law. Please act expeditiously to remove or disable access to the Infringing Materials.

I may be contacted at the mailing address, phone and e-mail address listed in this letterhead. Thank you in advance for your immediate attention to this matter.

Finally, although the DMCA does not require me to state any of the grounds on which my good faith belief is based, for your information, please be advised that the Infringing Materials listed on Schedule "A" are all reproductions of artwork created before 1978 by the American fine artist, Herman Herzog (the "Artist"), and that the IP Owners are direct descendants and legal heirs of the Artist and therefore the owners of all copyrights in all the Artist's artwork (the "Works"), to the extent that such Works still remain protected by copyright. Based on the IP Owners' extensive research to date, they have determined and documented the fact that all of the Works listed on

Please respond to:



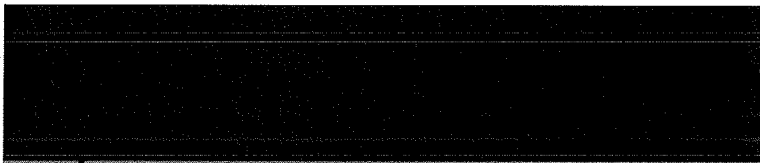
Admitted in NY & PA

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Schedule "A" were first published in the United States, with valid copyright notices, on dates that fall between January 1, 1964 and December 31, 2002. Accordingly, under the U.S. Copyright Act of 1976, 17 U.S.C. §§ 101, *et seq.*, all such Works listed on Schedule "A" are still protected by U.S. Copyright, and will remain so *through January 1, 2046 and beyond*.¹

Please be further advised that the IP Owners are continuing to research the publication histories of the Artist's Works that are not listed on Schedule "A" (the "Other Works"), and reserve the right to send you additional DMCA take-down notices with respect to those Other Works, if and when their research determines that those Other Works were also first published in the United States with valid copyright notices on dates falling between January 1, 1964 and December 31, 2002. Accordingly, I reserve all their rights.

Sincerely yours,



cc: Sue Gardner (*Executive Director*, Wikimedia Foundation, Inc., New Montgomery Street, Floor 6, San Francisco, CA 94105, Tel.: (415) 839-6885 / Fax: (415) 882-0495, e-mail: sue@wikimedia.org)
Andrei Voinigescu (*Legal Counsel*, Wikimedia Foundation, e-mail: avoinigescu@wikimedia.org)



¹ The reason for this result is that, under the U.S. Copyright Act of 1976, the term of copyright for all works created prior to January 1, 1978 are determined *not* by the date of the author's death, but by their respective dates of first publication. In particular:

(a) Any pre-1978 work that was first published (e.g., in a book, booklet, poster, or other form of reproduction) at any time between 1/1/1950 – 12/31/1977, the copyright in which was timely renewed during its 28th year (falling between 1978 and 2005), is entitled to a copyright term of 95 years from its date of first publication, *regardless of when the artist died*. Moreover, any such works that were first published on or after 1/1/1964 were entitled to *automatic copyright renewal* at the end of their 28th year, regardless of whether a timely renewal application was actually filed. Therefore, depending on its first publication date, any such work will not fall into public domain *until 1/1/2046 at the earliest, and 1/1/2073 at the latest*. See U.S. Copyright Act of 1976, 17 U.S.C. §§304 & 305.

(b) In addition, any pre-1978 work that is neither published nor registered as of 1/1/1978, but which is first published at any time between 1/1/1978 – 12/31/2002, *remains protected by U.S. copyright at least through 12/31/2047, regardless of when the artist died. Such works will not fall into public domain until 1/1/2048, at the very earliest*. See U.S. Copyright Act of 1976, 17 U.S.C. §§303 & 305.

SCHEDULE "A"

Identification of the Infringing Materials
(infringement of copyright, including publication, duplication and distribution rights)

Title of Herzog Painting Being Displayed on the Wikimedia Site Without Permission:	Link to Web Page Where Such Painting is Being Displayed and Offered for Download on the Wikimedia Site:
1. "Sunflowers"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _Sunflowers.jpg
2. "A Shepard with his Flock"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _A shepherd with his flock.jpg
3. "Approaching Storm"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _Approaching storm.jpg
4. "Boat On A Lake"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _Boat on a lake.jpg
5. "Escaping The Storm"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _Escaping the storm.jpg
6. "Extensive Majestic Landscape"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _Extensive majestic landscape.jpg
7. "Figures By A Mill"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _Figures by a mill.jpg
8. "Fisherfold By The Beach"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _Fisherfolk on the Beach.jpg
9. "Fishing"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _Fishing.jpg
10. "Florida Landscape"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _Florida Landscape.jpg
11. "Niagara"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _Niagara.jpg
12. "Scene Near Camden, Penobscot Bay, Maine"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog - _Scene Near Camden, Penobscot Bay, Maine .jpg
13. "Sentinel Rock, Yosemite"	http://commons.wikimedia.org/wiki/File:Hermann_Herzog -

	<u>Sentinel Rock, Yosemite.jpg</u>
14. "Sunset, Florida"	<u>http://commons.wikimedia.org/wiki/File:Hermann_Herzog - Sunset, Florida.jpg</u>
15. "The Lure Of Norway"	<u>http://commons.wikimedia.org/wiki/File:Hermann_Herzog - The Lure of Norway.jpg</u>
16. "The Matterhorn, Switzerland"	<u>http://commons.wikimedia.org/wiki/File:Hermann_Herzog - The Lure of Norway.jpg</u>
17. "In The Alps"	<u>http://commons.wikimedia.org/wiki/File:Hermann Ottomar H erzog In the Alps.jpg</u>
18. "Landscape With Watermill"	<u>http://commons.wikimedia.org/wiki/File:Hermann Ottomar H erzog Landscape with Watermill.jpg</u>
19. "Norwegian Landscape"	<u>http://upload.wikimedia.org/wikipedia/commons/5/5e/Herman n Ottomar Herzog Norwegian Landscape.jpg</u>
20. "Campfire In Moonlight"	<u>http://commons.wikimedia.org/wiki/File:Herzog Herman Cam pfire in Moonlight.jpg</u>
21. "Evening On The Susquehanna"	<u>http://commons.wikimedia.org/wiki/File:Herzog Herman Even ing on the Susquehanna.jpg</u>
22. "Girl with Geese"	<u>http://commons.wikimedia.org/wiki/File:Herzog Herman Girl _With Geese.jpg</u>
23. "Moonlit Fishing Scene"	<u>http://commons.wikimedia.org/wiki/File:Herzog Herman Moo nlit Fishing Scene.jpg</u>
24. "Mountain Landscape and Waterfall"	<u>http://commons.wikimedia.org/wiki/File:Herzog Herman Mou ntain Landscape and Waterfall.jpg</u>
25. "Sagne Fjord"	<u>http://commons.wikimedia.org/wiki/File:Herzog Herman Sagn e Fjord.jpg</u>
26. "View of Niagara Falls In Moonlight"	<u>http://commons.wikimedia.org/wiki/File:View of Niagara Falls in Moonlight, Herman Herzog, 1872 - Museum of Fine Arts, Springfield, MA - DSC03997.JPG</u>