

FLICKR SERVICE AGREEMENT FOR THE COMMONS

THIS FLICKR SERVICE AGREEMENT FOR THE COMMONS (this "Agreement") is entered into and is effective as of this 12th day of January, 2010 (the "Effective Date") between Yahoo! Inc., a Delaware corporation with offices at 701 1st Avenue, Sunnyvale, CA 94089 ("Yahoo"), and the U. S. National Archives and Records Administration a federal agency with offices at 8601 Adelphi Road, College Park, MD 20740 ("You").

WHEREAS Yahoo provides a service for hosting user photographs, which photographs may be further distributed to third parties via "APIs" for both commercial and non-commercial use and which service allows other users of the service to add tags and otherwise augment the metadata associated with any photograph or video, which service is currently located at <http://www.flickr.com> (the "Service"); and

WHEREAS You have in Your possession various catalogues of photographs which You have the right to submit, and which You would like to submit, to the Service for purposes of applying each aspect of the Service's functionality to such content.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. Service Access. Yahoo hereby provides You with access to the Service for Your use. Your use of the Service is subject to this Agreement and to the Yahoo! Terms of Service, a current copy of which can be found at <http://docs.yahoo.com/info/terms/> (Yahoo Terms), which Yahoo Terms are hereby incorporated into this Agreement by reference. In addition, as a condition of Your use of the Service, You agree to comply with the Flickr Community Guidelines, a current copy of which can be found at <http://www.flickr.com/guidelines.gne> ("Community Guidelines"). In the event of any conflict between this Agreement, the Community Guidelines and/or the Yahoo Terms, this Agreement shall first control, followed by the Community Guidelines and then the Yahoo Terms.

2. Additional Representation and Warranty. Yahoo understands and agrees that notwithstanding anything to the contrary in the Community Guidelines or the Yahoo Terms, You did not create all of the content which You are submitting to the Service. Further, Yahoo understands that Your employees and/or agents will be submitting the content on Your behalf through a Flickr account. Accordingly, You agree that any actions taken on Your behalf by Your employees or agents with regard to Your Flickr account(s) and/or Your Yahoo account(s) are deemed to be actions taken by You for which You and the individual acting on Your behalf are jointly and severally liable. Further, in addition to the representations and warranties provided by You pursuant to the Yahoo Terms of Service, You represent and warrant that (a) You have the right to submit the content which You are submitting to the Service, (b) You have the right to allow such content to be displayed on the Service and to be subject to all of the functionality of the Service in each of the jurisdictions in which the Service operates, including, without limitation, the functionality described in the recitals above, (c) the concept of "No Known Copyright Restrictions" which You have requested Yahoo to attribute to the content You submit to the Service is legally valid in each of the jurisdictions in which the Service operates, (d) You have reviewed and approved

the pages created by Yahoo on Your behalf utilizing content provided by You, including, but not limited to, those pages within the Service that are identified as "The Commons" and You have requested that Yahoo present such pages on Your behalf, and (e) none of the foregoing activities violate any laws or otherwise violate the rights of any third party. You agree to indemnify and hold Yahoo and its subsidiaries, affiliates, officers, agents, employees, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of or otherwise related to Your breach of any of the above representations and warranties.

3. ADDITIONAL DISCLAIMER. IN ADDITION TO THE DISCLAIMERS SET FORTH IN THE YAHOO TERMS AND/OR THE COMMUNITY GUIDELINES, YAHOO AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND THIRD PARTY LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AS TO THE SERVICE, THE COMMONS AND/OR THE CONCEPT OF "NO KNOWN COPYRIGHT RESTRICTIONS," INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

4. Choice of Law; Forum. This Agreement shall, for all purposes, be governed by and interpreted and enforced in accordance with the laws of the State of California, without regard to its conflict of laws provisions. The parties agree that they hereby do and will submit to the personal and exclusive jurisdiction of the State and federal courts located within the county of Santa Clara, California.

IN WITNESS WHEREOF, the parties have, each through a duly-authorized representative, executed this Flickr Service Agreement on the Effective Date.

YAHOO: Yahoo! Inc.

By: _____

Name: Douglas Alexander

Title: GM, Flickr

YOU: National Archives & Records Administration

By: Martha Morphy

Name: Martha Morphy

Title: Assistant Archivist for Information
Services & Chief Information Officer

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