

Ms. Margrethe Vestager
Commissioner for Competition
European Commission
Rue de la Loi 200
1049 Brussels

Dear Commissioner Vestager,

We are writing on behalf of hundreds of thousands of fellow independent photographers and content businesses that make their living through the creation and distribution of imagery. Google's anti-competitive practices in image search are diminishing both our business prospects and creativity, in addition to leaving consumers with fewer choices over where to view images. This has all been triggered by a policy change Google made in January 2013, that has siphoned traffic and solidified Google's position as the world's dominant search engine.

Getty Images — a leading media company with a trove of more than 200 million assets and innovators in digital media licensing and distribution — filed a competition complaint in April with your office against Google. The complaint focuses on Google's abuse of dominance - highlighting the unlawful way by which Google scrapes and displays content in instantly consumed, large, high-resolution format, that take away the need for Internet users to visit source websites. This filing was widely reported,¹ not least because the public has an avid interest in how images are used and made available online. Getty Images' complaint reinforces the concerns already under examination by the Commission following the 2013 complaint submitted by CEPIC, which complaint is endorsed by a coalition of 20 organisations from the visual industry in Europe and the US.² Our letter today addresses these same concerns.

Please help European Internet users to find their way to source content websites of image owners and their customers, with one click via Google Images, rather than being held captive within the Google ecosystem. This will also provide us with a fighting chance of sharing in the value that our images bring to society.

Google states: "*We may be the only people in the world who can say our goal is to have people leave our website as quickly as possible.*"³ In reality, the current format of Google Images with its

¹ BBC News: <http://www.bbc.co.uk/news/business-36147142> ;

TIME: <http://time.com/4307769/google-getty-images/> ;

Wall Street Journal: <http://www.wsj.com/articles/getty-images-lodges-complaint-against-google-with-eu-antitrust-watchdog-1461747443> ;

Financial Times: http://www.ft.com/cms/s/eda3ea0a-0bc2-11e6-9456-444ab5211a2f.Authorised=false.html?i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2Feda3ea0a-0bc2-11e6-9456-444ab5211a2f.html&i_referer=&classification=conditional_standard&iab=barrier-app#axzz4AoiCBiY4 ;

Photo Archive News: <https://photoarchivenews.com/2016/04/27/getty-images-files-anti-competition-complaint-against-google-right-click-hires-image-piracy/> ;

Puget Sound Business Journal: <http://www.bizjournals.com/seattle/blog/techflash/2016/04/getty-images-files-antitrustcomplaint-against.html> ;

The Guardian: <https://www.theguardian.com/technology/2016/apr/27/getty-images-files-antitrust-google> ;

The Verge: <http://www.theverge.com/2016/4/27/11516366/google-getty-images-photo-piracy-eu-antitrust> ;

Reuters: <http://uk.reuters.com/article/us-eu-alphabet-antitrust-gettyimages-idUKKCNOXO1WJ> ;

The Register: http://www.theregister.co.uk/2016/04/28/getty_on_google/ ;

² <http://ceplic.org/issues/coalition-supporting-the-ceplic-complaint-against-google-images>

³ <https://www.google.com/about/company/philosophy/>

display of large format, high resolution imagery, does the opposite: namely, keeping image viewers and potential licensees *captive* within Google. This not only deprives us and our customers of those views, data and associated revenue, but it also makes it easy for users to unwittingly infringe our copyright (by using the right-click copy function). **The only way to address this issue is to make search work as search, by ensuring that a click on a low-res thumbnail in Google Images takes the user directly to the source website.** Users of Google Images should be given the opportunity to feed their love of imagery by visiting or licensing images through lawful content websites, helping to ensure a fair marketplace for all.

Under your leadership, the Commission has already recognized the harm to competition caused by Google's conduct, launching successive investigations into how the company has abused its dominant role in general search to shut out rivals in related markets and reinforce its dominance in general search. This critical work provides the intellectual foundation for what we hope will be the next phase of your examination into Google's anti-competitive scraping practices.

Effective online search is a necessary tool for the discovery of images. Google Images dominates the image search market. When Google Images first launched, thumbnail-sized images were shown in response to user search queries, along with contextual information about the source of the images. Users who clicked on the thumbnail would be directed to the source website, where the user could license the image, or view it on a site that had paid for the right to display the image. This was a time when search worked like search – Google Images served as an online locator, directing users to source websites where images could be viewed and/or licensed.

In January 2013, Google drastically changed the presentation of results in image search. Instead of thumbnails, Google began displaying high resolution, large-format images. The new format also contained reduced information about the source, credit and copyright of the image. In addition, clicking on an image no longer takes you to the source website – instead, Google created an image viewer where users can scroll through endless galleries of images without ever leaving the Google platform. The immediate effect of this change was a significant drop in traffic to the source sites. Image consumption is immediate – once a user has seen an image in high-resolution, large format, there's very little reason to view it elsewhere.

The changes that Google made to image search means that Google keeps all of the traffic that would otherwise go to the source sites, as well as all of the user data that it can then use to target advertising and profile users. Data related to image viewing is clearly valuable, as evidenced by Google's launch of shopping ads directly within its image search service.⁴ Meanwhile Google pays nothing for the high-quality content that it appropriates for its own benefit.

In addition, Google does not itself host the large-format images, it instead uses the bandwidth of the source sites to host and serve those images. Google presents the image in a "frame" so that the user remains unaware it has viewed content on the content-owner's website. The source

⁴ [http://adwords.blogspot.co.uk/2016/05/ways-to-be-useful-for-mobile-shoppers.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed:+blogspot/ATHs+\(Inside+AdWords+-+EN\)](http://adwords.blogspot.co.uk/2016/05/ways-to-be-useful-for-mobile-shoppers.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed:+blogspot/ATHs+(Inside+AdWords+-+EN))

website pays for the bandwidth used but does not get any of the attendant benefits of user traffic. Google also allows users to right-click, copy and save images, and does not include prominent copyright notices or photographer attribution, thus facilitating copyright infringement and turning users into “accidental pirates.” Google has become the de-facto primary source of unlicensed images on the Internet, and is where the majority of non-professional buyers of imagery go to obtain images.

Unfortunately, Google does not share our view. During the U.S. Federal Trade Commission’s (“FTC”) investigation into Google’s search practices, the FTC concluded that “the natural and probable effect” of Google’s scraping conduct was “to diminish the incentives of companies like Yelp, TripAdvisor, CitySearch, and Amazon to invest in, and to develop, new and innovative content, as the companies cannot fully capture the benefits of their innovations.”⁵ Accordingly, the FTC recommended condemning Google’s scraping practices⁶ of localized search content and consumer review from sites like Yelp, and the FTC agreed, with a majority of the FTC acknowledging Google’s wrongdoing.⁷ Nevertheless, less than three weeks after committing to end scraping of localized search content and consumer reviews,⁸ Google began substantially similar conduct in a new vertical: image search.

In response to complaints, Google has suggested that photographers can simply opt-out of image search by using the robots.txt protocol.⁹ Given Google’s dominant market share and the fact that Google is the main gateway to the Internet, its proposed solution is no solution at all: photographers can either abide by Google’s wishes and accept Google’s presentation of images, or become invisible online. This is why competition law enforcement, not only copyright remedies, are necessary - Google is able to dictate the terms of the Internet, without regards to protections under intellectual property law.

The anti-competitive effects of Google’s conduct are real. As professional photographers, we spend years acquiring the necessary skills to become commercially successful. We invest in our local economies by funding photography shoots that involve location and equipment rental, hiring of local talent and all of the attendant services such as styling and post-production work. Some of us risk our lives to cover breaking news that brings critical coverage to media worldwide and serves the important function of educating and informing us all of what’s going on around the world. Continuing these investments is difficult when Google continues to use the fruits of our labour for its own benefit, and to deprive us of the opportunity to generate licensing income. Who will pay for what Google gives away for free?

As the Commissioner for Competition within the European Union, you have the power to help

⁵ U.S. Federal Trade Commission, Staff Recommendation Memo at 40 (Aug. 8, 2012).

⁶ *Id.* at 94.

⁷ U.S. Federal Trade Commission, Statement of the Federal Trade Commission Regarding Google’s Search Practices In the Matter of Google Inc. at n.2 (Jan. 3, 2013).

⁸ Letter from David Drummond, Google Inc., to Jon Leibowitz, U.S. Federal Trade Commission (Dec. 27, 2012).

⁹ Robots.txt is a file website owners can place in a webpage’s directory that instructs search engine crawlers on whether to include or exclude the webpage in the search’s engine’s index.

us, our fellow photographers and the long-term interests of the image viewing public at large by calling Google to task. Please ensure businesses like ours can continue to survive in the face of a search engine with unrivalled market power that seems intent on reinforcing its dominance in general search at the expense of foreclosing competition in related markets like image search.

Getty Images and the Photographer Community