

Wired News: Magazine Appeals for CD Archive

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Magazine Appeals for CD Archive
By Gabe Friedman | Also by this reporter

02:00 AM Apr. 17, 2003 PT

The National Geographic Society plans to appeal a jury verdict in a landmark case pitting the magazine publisher against a freelance photographer who claimed his work was improperly included in a CD-ROM.

In late March, a jury in Miami ruled that National Geographic failed to properly compensate the photographer, Jerry Greenberg, for photos of his included on a CD-ROM that contained every issue of the magazine published in its 108-year history.

The dispute centered on the question of whether archiving work on microfilm and microfiche is different from releasing it on CD-ROM. In appealing the case, the magazine wants courts to recognize new technology.

In 1997, Greenberg filed suit against the National Geographic Society for releasing *The Complete National Geographic* on CD-ROM without giving him additional compensation.

National Geographic Society attorneys argue Supreme Court justices have ruled that converting articles from print to microfilm or microfiche

without a freelancer's permission is OK.

But Greenberg's lawyers successfully argued to a jury that the CD-ROM created a new product -- an anthology of the magazine. He was awarded \$400,000 for his 64 photos, plus National Geographic pulled the product off the shelves.

In the meantime, National Geographic promised to challenge the logic behind a decision that draws distinctions between archives on microfiche or microfilm and archives on CD-ROM.

"We see this as being exactly like microfiche, on a CD-ROM. It's simply a picture of a page ... if you wanted to reproduce a picture, you would do better to take a paper copy to Kinkos and do it yourself," said National Geographic Society spokesperson Mary Jeanne Jacobsen.

Jacobsen also noted that the real loser would be the public -- mostly libraries and schools who buy the product because it saves storage space and for its educational value.

The CD-ROM product, no longer available new to consumers, organized issues by decade for the user. Click on any decade and the user could view some of the best photos taken in that period.

Where microfiche users root out a specific subject by sorting through archaic volumes and lists, the CD-ROM featured a search engine. It also contained digitally shrunk-down images of the magazine.

Now, what began at \$160 and gradually slid down to around \$100 is off the market and nobody is certain when it, or something like it, will be back.

"They tried to equate the CD-ROM to microfilm and microfiche, and I think the comparison fails from the beginning," said Norman Davis, counsel for Mr. Greenberg.

The "Complete National Geographic" on CD-ROM booted up with the National Geographic Society anthem that also begins their television specials, an advertisement from Kodak, bookmark features and other sounds and narration, according to Davis.

"Our position was they created a new product in the CD-ROM that had a lot of bells and whistles," Davis said.

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Prior to the CD-ROM dispute, the work relationship between Greenberg and the magazine appears to have once been quite cordial. For instance, after publishing Greenberg's spectacular photographs of the underwater world over a period of 30 years, the magazine later signed over copyright ownership of the photos to him in 1985.

National Geographic said they did so under the condition that the photos could later be reused. Greenberg's attorney said reuse would have been an option, but there was no attempt made to negotiate with him over the price of reuse.

According to Davis, several other National Geographic Society freelancers have also sought compensation for their work appearing on the CD-ROM. One similar lawsuit is happening concurrently in New York.

Meanwhile, in the Greenberg case, both parties are slated to meet again in court on June 11 to receive a judgment in the aftermath of the jury's verdict.

Jacobsen said National Geographic will continue to fight for its right to use Greenberg's photographs on CD-ROM, based on the claim of ownership of collective copyrights, or put more simply -- they "own everything inside the yellow border."

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