

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Miami Division  
CASE NO. 97-3924-CIV-LENARD-TURNOFF

JERRY GREENBERG, individually,  
and IDAZ GREENBERG, individually,

Plaintiffs,

vs.

NATIONAL GEOGRAPHIC  
SOCIETY, a District of Columbia  
corporation, NATIONAL GEOGRAPHIC  
ENTERPRISES, INC., a corporation,  
and MINDSCAPE, INC., a  
California corporation,

Defendants.

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**PLAINTIFFS' SECOND REQUEST TO  
NATIONAL GEOGRAPHIC SOCIETY  
FOR PRODUCTION OF DOCUMENTS**

Plaintiffs, JERRY GREENBERG and IDAZ GREENBERG ("the Greenbergs"), pursuant to Rule 34, Federal Rules of Civil Procedure, serve this second request for the production of documents on Defendant, NATIONAL GEOGRAPHIC SOCIETY.

**I. DEFINITION OF TERMS**

For purposes of this set of requests for production, the following words shall be considered as defined terms and shall have the meaning given to the terms in this section.

1. "Greenberg" refers to Plaintiff Jerry Greenberg.

2. "Greenberg photographs" refers to photographs taken by Jerry Greenberg and published in monthly issues of the magazine of the National Geographic Society in 1962, 1968, 1971, and 1990.

3. "Society" refers to Defendant National Geographic Society.

4. "Document" or "Documents" include, but are not limited to, any information stored in any retrievable fashion whether written, typed, printed, recorded, graphic or photographic matter or sound reproductions however produced or reproduced including, but not limited to, correspondence, telegrams, cables, wires, other written communications, contracts, agreements, notes, accounts, ledgers, books, memoranda, analyses, audio or video recordings, projections, working papers, statements, drafts, journals, logs, manuals, diaries, calendars, tax returns, governmental forms, computer or data processing or other electronic methodology with inputs or outputs whether ever reduced to hard copy or not; including copies of any of the foregoing now or formerly in the possession, custody or control of the party addressed, agents, counsel, and all persons acting on her behalf. It shall include every copy of every such writing or record where such copy is not an identical copy of an original or where such copy contains any commentary or notation whatsoever that does not appear on the original.

5. "Relating to" or "refers to" means, without limitation, consisting of, reflecting, embodying, mentioning, discussing, or concerning, directly or indirectly, or having any logical or factual connection with the subject matter identified in a specific request.

6. "Moving Cover Sequence" refers to the "Sequence" addressed by the court in Greenberg v. National Geographic Society, et al., 244 F.3d 1267 (11th Cir. 2001).

7. "CNG Digital Products" refers to all compilations of complete issues of the Society's monthly magazine in any digitalized product, including but not limited to CD-ROM or DVD formats. This request does not encompass "The Complete National Geographic - 108 Years of National Geographic Magazine on CD-ROM," that was addressed in the Greenbergs' first request for the production of documents. This request does encompass all compilations of issues of the monthly magazine, whether for one year or for multiple years.

## II. INSTRUCTIONS

1. All information requested is to be produced for inspection and copying, within thirty (30) days from the date of service, if it is in the custody, possession or control of, or is available or accessible to the Society. Further, if the Society knows that the information responsive to any of these requests for production is in the custody, possession or control of a third person, please identify the information and its custodian.

2. If any information called for by these requests for production is not available or accessible in the full detail requested, the requests for production shall be deemed to call for the best information available and shall require setting forth the information called for in as detailed a manner as possible based on whatever information is available or accessible, including estimates and a description of the method by which any estimates are made. Whenever the information requested by any of these requests for production exists, but is not available or accessible for any reason, the facts, and circumstances of the unavailability or inaccessibility shall be specifically set forth.

3. If any requested information is claimed to be privileged or immune from discovery, please list the following: (a) a description of the nature and contents of the matter

claimed to be privileged or immune; (b) the name, occupation and capacity of the individual from whom the privileged or immune matter emanated; (c) the name, occupation and capacity of the individual to whom the allegedly privileged or immune matter was directed; (d) the date the item bears; and (e) the privilege or immunity claimed.

4. Where the context herein makes it appropriate, each singular word shall include its plural and each plural word shall include its singular. "Any" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these requests for production all responses which might otherwise be construed to be outside its scope. Each of the following words includes the meaning of every other word listed: "each," "every" "all," and "any." The present tense shall be construed to include the past tense and the past tense to include the present.

5. Whenever a request calls for information which is not available to you in the form requested, but is available in another form, or can be obtained at least in part from other data in your possession, or in the possession of others, so state and either supply the information requested in the form in which it is available, or identify (if in the possession of others) and/or supply (if in your possession) the data from which the information requested can be obtained.

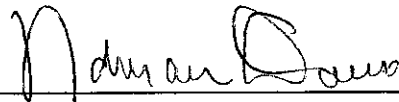
## REQUESTS FOR PRODUCTION

1. All documents referring or related to the Society's plan(s) for, and decision(s) to, create CNG Digital Products.
2. All contracts and agreements entered into between the Society and any other entity with respect to the creation, distribution and marketing of CNG Digital Products.
3. All contracts and agreements entered into between the Society and any other entity with respect to the promotional use of CNG Digital Products, in whole or in part.
4. All documents showing the number of product units of CNG Digital Products distributed by the Society, or by any subsidiary or licensee, from the date of the first distribution to November 1, 2001.
5. All documents showing the number of product units of CNG Digital Products sold by the Society, or by any subsidiary or licensee, from the date of the first distribution to November 1, 2001.
6. All documents showing gross revenues to the Society, or to any subsidiary or licensee, produced by the sale of CNG Digital Products to November 1, 2001.
7. All documents showing chargeable costs, claimed by the Society or any subsidiary or licensee, attributable to the creation and marketing of CNG Digital Products to November 1, 2001.
8. All documents referring or relating to a decision to discontinue use of, or a decision not to include, the Moving Covers Sequence in publications or products, including CNG Digital Products.

9. All documents referring or relating to any license or transfer of rights to National Geographic Enterprises regarding CNG Digital Products.
10. All documents referring or relating to any license or transfer of rights to Mindscape, Inc. regarding CNG Digital Products.
11. All documents referring or relating to any license or transfer of rights, regarding CNG Digital Products, to any entity other than those identified in requests 9 and 10 above.
12. All documents referring or relating to any compensation paid to, or to be paid to, the Society in connection with any license or transfer of rights regarding CNG Digital Products.
13. All documents referring or relating to the decision to place, at the bottom of each page printed from CNG Digital Products, the Society's copyright notice and year of notice.
14. All documents indicating any obligation by the Society to indemnify any other entity with respect to republication rights in CNG Digital Products.
15. All documents sufficient to show when each of the CNG Digital Products was first placed on the market in the United States and in each foreign country where each has been marketed.
16. All documents referring or relating to the removal of any photograph or textual material from, or a decision not to include such material in, any of the CNG Digital Products.
17. All documents referring or related to compensation for stock photo houses for the republication of any photographs in CNG Digital Products.
18. Any and all business plans created with respect to CNG Digital Products.

19. All documents referring or related to compensation for photographers with respect to CNG Digital Products sent to or from any and all officers and directors of the Society, and any and all editors and publishers of the Society.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing request for production of documents was served by mail on Edward Soto, Weil, Gotshal & Manges, LLP, 701 Brickell Avenue Boulevard, Suite 2100, Miami, Florida 33131; and via Federal Express on Robert G. Sugarman, Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, New York 10153, this 14<sup>th</sup> day of December, 2001.



Norman Davis

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