

## Greenberg vs. National Geographic

The U.S. District Court in Miami, Florida in the matter of Greenberg vs. National Geographic has awarded the maximum statutory damages of \$100,000.00 for each of 4 works infringed. The trial took seven days ending on March 5th. The possibility of appeal by both parties still exists. ASMP has been a major supporter of the photographer in this case, providing financial assistance to Greenberg, consultations with him and his attorney, and an amicus curiae ("friend of the court") brief on his behalf.

This is a big win for photographers, and both Jerry Greenberg and his attorney, Norman Davis, of Steel Hector & Davis in Miami, Florida, are to be congratulated. Greenberg also deserves thanks from all photographers for having the determination to keep going with this case in spite of all that it has cost him in terms of money, time and energy. Thanks are also due to Victor Perlman of ASMP, and to Patricia Felch, attorney in Chicago, for writing ASMP's amicus curiae brief and to all those who have supported Jerry Greenberg and ASMP's other legal efforts through their contributions to the Legal Action Fund.

Some months ago, the US Court of Appeals for the 11th Circuit had reversed the District Court in Florida and ruled in favor of ASMP member Jerry Greenberg. Greenberg contended that the CD-Rom was a new work that contained substantial elements in addition to the republication of Geographic's monthly magazine. Geographic contended that they were merely reproducing their monthly magazine and not creating a new work. The trial court originally said that Geographic could reproduce the work, based on the same theory as in the trial court decision in *The New York Times vs. Tasini* case.

The 11th Circuit Court of Appeal in Greenberg's case did the same thing that the Circuit Court did in *Tasini*: reversed and ruled in favor of the photographers and authors. The appeals court also ruled that Greenberg was entitled to damages, court costs and attorney's fees, which were to be determined by the same lower court that had first rejected his claims. National Geographic petitioned the Supreme Court, asking it to accept the Greenberg Case for full review. The Supreme Court declined, so the Eleventh Circuit Court of Appeals sent the case back to Miami for a determination of damages. That was accomplished in the trial that just ended awarding Greenberg statutory damages of \$100,000.00 for each of 4 works infringed.

Below, the media statement released by National Geographic in response.  
March 6, 2003 Media Statement

National Geographic Society v. Greenberg (sic)

National Geographic regrets and respectfully disagrees with the jury verdict in the Miami court regarding the National Geographic Society v. Jerry Greenberg. We published the electronic version of the archive of National Geographic Magazine as "The Complete National Geographic on CD-ROM" in good faith and based on independent legal opinions that we had the legal rights to do so under the Copyright Law, and as interpreted by the United States Supreme Court in *Tasini v. The New York Times*. Based on this verdict and out of respect for the court, as of today we are directing that the Complete National Geographic on CD-ROM will no longer be offered for sale until specific authority is obtained from an appropriate judicial authority. We believe that the public will be the loser, as this valuable educational archive will no longer be available to individuals, libraries and schools. We look forward to arguing the motion to set aside the verdict, which is still pending with the trial judge in Miami, and will further pursue every legal remedy available to us.

Dear Idaz and Jerry, I was on a cloud all night, I woke up this morning and started crying. I guess all the pent up emotion and looking at Jerry and you at the trial after the verdict was all it takes to put me into tears. Great meeting you as well. I must admit I thought the jury was buying the slick presentation and argument N.G. was dishing out. Norm and Torres were operating with limiting evidence and they still kicked their ass. I was so overwhelmingly happily and satisfyingly stunned it shocked me to my core and renewed my faith in people and in the jury system. Dangerous thoughts probably as we are not done yet. Congratulations my dear and all the very best in sewing this up. Onwards and upwards. Louie (psihoyos)