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February 26, 1998

Jerry Greenberg and
Idaz Greenberg
6840 S.W. 92nd Street
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Re: Greenberg v. National Geographic Society, et al.

Dear Jerry and Idaz:

Enclosed is a copy of the plaintiffs' memorandum in response to defendants' motion to dismiss count II and to dismiss or for summary judgment on counts III - V of plaintiffs' amended complaint.

Very truly yours,

Jo Hanley Silvagni

Jo Hanley Silvagni
Legal Assistant to Norman Davis

Enc.

cc: Norman Davis

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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.
_____/

CASE NO. 97-3924
CIV-LENARD
Magistrate Judge Turnoff

PLAINTIFFS' MEMORANDUM IN RESPONSE TO DEFENDANTS' MOTION TO DISMISS COUNT II AND TO DISMISS OR FOR SUMMARY JUDGMENT ON COUNTS III - V OF PLAINTIFFS' AMENDED COMPLAINT

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Plaintiffs, JERRY GREENBERG and IDAZ GREENBERG ("the Greenbergs"), submit this memorandum in response to Defendants' Motion to Dismiss Count II and to Dismiss Or For Summary Judgment on Counts III-V of Plaintiffs' Amended Complaint.

STATEMENT OF UNDISPUTED MATERIAL FACTS

The National Geographic Society ("the Society") is a not-for-profit corporation formed in the District of Columbia, and its principal place of business is there. Defs. Answer ¶ 5. National Geographic Enterprises, Inc. is a wholly-owned for-profit subsidiary of the Society. Thomas Stanton Declar. ¶ 1. The Society or a subsidiary relies on a marketing and distribution agreement with Mindscape, Inc. to distribute and sell The Complete National Geographic on CD-ROM ("the Complete Geographic"), among other projects. Stanton Declar., Ex. B.

The Complete Geographic[1] was first distributed in 1997, and incorporates 108 years of the National Geographic monthly magazine, through the year 1996, amounting to more than 1,200 issues of the magazine. Thomas Stanton Declar. ¶ 3. The Complete Geographic product consists of approximately 30 discs for display through a computer. Stanton Declar., Ex. A. The materials in the Complete Geographic are clustered by decade, and within the box containing the 30 discs the monthly magazines for each decade are segregated in separate packages. Id. Each disc will display the covers of all issues for any given year within that decade. Id. A purchaser of the Complete Geographic must buy the entire 30-disc set, although the defendants have had a decade-a-month purchase plan, whereby, for example, discs encompassing magazine issues for the 1990s are available. See Ex. B, Jerry Greenberg Affid. ¶ 14.

As to the specific magazines included in the Complete Geographic, a computer can display an image of each page of the magazine as it appeared in hard copy, including all articles, photographs, graphics, advertising, notice of copyright, and attributions. Defs. Mem. at 6. At two places on the labeling that adorns the box containing the 30 discs appears the following: "Relive 100 years of classic advertisements as they appeared in over a century of National

[1] This memorandum utilizes the term "Complete Geographic," which corresponds to the label on the product itself. The defendants' memorandum refers to the product as CD-ROM 108.

Geographic magazine." Stanton Declar., Ex. A. Additionally, promotional literature distributed by the Society for the Complete Geographic product included the following invitation: "Relive 100 years of classic advertisements as they appeared in over a century of National Geographic magazine." See Ex. A, Idaz Greenberg Affid., Attach. 1.

The Society's literature states that the magazine is available for advertising purposes in "worldwide, international, U.S., regional, statewide, metro, and 'test'" editions, as well as an edition published in the Japanese language. See Ex. C, John David Affid., Attachment A. Therefore, many variations of the monthly magazine, bearing different advertising or a different language, are not included in the Complete Geographic product. The box in which the Complete Geographic is packaged says on the printed cover that "The Complete National Geographic on CD-ROM was produced from an archive of magazines collected in a central repository, and is not representative of any single regional edition of the magazine." Stanton Decl., Ex. A. The same statement appears on the label attached to each of the 30 discs. Id. The same statement appears on screen at the end of the display on each disc. Id.

No product like the Complete Geographic existed prior to 1997. Stanton Declar. ¶ 3. Each disc, when activated, displays a moving logo of a globe with music, and a 30-second advertisement for Kodak with sound. Stanton Declar., Ex. A. As an introductory logo, each disc also contains a multi-media sequence of moving magazine covers ("the Moving Covers Sequence") that serves as thematic material for the Complete Geographic. That sequence consists of the front covers of ten selected issues of the Society's monthly magazine. Id. The ten covers are electronically and visually manipulated so that they metamorphose from one to another. Id. One of the ten covers utilized in the Moving Covers Sequence is taken from the January 1962 issue of the Society's monthly magazine that features a photograph of a female diver, using scuba gear, shown swimming among corals and fishes. Jerry Greenberg Affid. The photograph was taken by Mr. Greenberg. Id.

The Society stores and sells single back-issues of the monthly magazine if issues for particular months are available. Idaz Greenberg Affid. A month-by-month and year-by-year search would have to be made to determine availability of particular magazines. Id. Where issues do not exist in a warehouse, paper reprints of those issues are not available. Id.

The Society has in its possession or control hundreds of photographs taken by Mr. Greenberg, or duplicates or electronically-scanned images of those photographs. Jerry Greenberg Affid.

The Complete Geographic product contains more than a dozen photographs taken by Mr. Greenberg for which he owns exclusive copyright. Id. Those copyrights have been timely registered and/or renewed with the U. S. Copyright Office. Id.

The Society placed the following notice on the Complete Geographic: "© 1997 National Geographic Society. All rights reserved." The notice appears on the outside of the box containing the Complete Geographic, on the label attached to each disc in the box, and in the visual display contained on each disc. Stanton Declar., Ex. A. When a single "page" display on the computer is downloaded and printed, the 1997 copyright notice appears at the bottom of the hard copy. Id. The printed matter on the outside of the box containing the discs encourages the user to "print spectacular photographs and articles in color or black and white." Id.

Jerry Greenberg never received a copy of the May 21, 1997 letter described by Thomas Stanton in paragraph 9 of his affidavit, attached to the defendants' memorandum, nor did he receive any other communication from any of the defendants regarding his photographs. J. Greenberg Affid.

ARGUMENT[2]

I. ALL OF THE RELEVANT GREENBERG COPYRIGHTS ARE REGISTERED

The defendants seek dismissal of Counts II-V because the Amended Complaint does not allege in those counts that all pertinent copyrights were registered. The memorandum argues a lack of jurisdiction. The motion, however, invokes Rule 12 (b) (6), which has nothing to do with jurisdiction. In all counts of the Amended Complaint the allegations are that the Greenbergs own

[2] This memorandum attempts to correspond as much as possible to the arguments and the format utilized in the defendants' motion.

valid and exclusive copyrights; they would not be valid for litigation purposes had they not been registered. An affidavit by Jerry Greenberg, attached hereto as Exhibit A, identifies with particularity each and every registration and renewal, and the plaintiffs urge the Court to accept the affidavit as buttressing the allegations in the Amended Complaint.

The Greenbergs urge the Court to minimize disruption to the case on this issue, and to consider the somewhat similar circumstances involving copyright registration in M.G.B. Homes, Inc. v. Ameron Homes, Inc., 903 F.2d 1486, 1489 (11th Cir. 1990), where the Eleventh Circuit quoted Rule 61, Federal Rules of Civil Procedure, to the effect that "[t]he court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." The defendants are not prejudiced by the technical omission. Nonetheless, the Greenbergs are prepared to amend the complaint if necessary, or to take any other remedial action directed by the Court.

II. THE COMPLETE GEOGRAPHIC IS NOT MERELY A BOX FILLED WITH REPRINTS, BUT IS A NEW COLLECTIVE WORK

Count III of the Amended Complaint alleges infringement of copyright by the defendants because the Complete Geographic, as a new collective work, incorporates the protected photographs of Jerry Greenberg without his consent. In their memorandum, the defendants contend in Part II starting on page 4 that the incorporation of the photographs is protected by Section 201 (c) of the Copyright Act. The defendants have not answered Counts II, III, IV and V of the Amended Complaint.

A. The Complete Geographic is Not a "Reissuance" or a "Reprint."

The parties agree that each separate monthly issue of the Society's magazine is a collective work, pursuant to 17 U.S.C. § 101. The defendants maintain that the Complete Geographic is merely a "reissuance" or a "reprint" of more than 1,200 collective works in a different medium. Defs. Mem., Ex. B. Plaintiff Jerry Greenberg's position is that he holds valid

copyrights to many photographs that originally appeared in various monthly issues, and that have been reproduced without his consent in the Complete Geographic.

The defendants contend that ownership of copyright in each of the monthly issues (each a collective work) that are germane to this case entitles them pursuant to Section 201(c) of the Copyright Act to reprint those monthly issues and the Greenberg photographs they contain. But Section 201 (c) expressly limits the reproduction by the defendants of separate contributions to a collective work, such as the Greenberg photographs, and says that any reproduction of an underlying copyrighted contribution must be

> part of that collective work [the particular monthly magazine], any revision of that collective work [the particular magazine], and any later collective work in the same series.

17 U.S.C. § 201(c) (emphasis and bracketed material added). The Complete Geographic falls within none of those permitted reproductions. Under 201 (c), a reproduction or reissue of a particular monthly magazine containing Greenberg photographs would be permissible. Indeed, the four magazines (from 1962, 1968, 1971 and 1990) containing Greenberg photographs may be purchased in single-copy form from the Society. Idaz Greenberg Affid. Such use of the Greenberg photographs does not constitute infringement.

The reference in Section 201 (c) to "any later collective work in the same series" can only implicate a subsequent issue of the monthly magazine, where reproduction would be permissible.

The defendants cite to Tasini v. New York Times Co., 972 F.Supp. 804 (S.D.N.Y. 1997), aff'd on rehearing, 1997 WL 681314 (Oct. 29, 1997), for the conclusion that the Copyright Act is medium-neutral. The Greenbergs' claims do not suggest otherwise. The principal holding in Tasini was that the reproductions at issue there were permissible revisions of individual collective works, such as a daily issue of the New York Times. As to Section 201 (c), neither the plaintiffs nor the defendants in this case contend that the Complete Geographic is a revision of a prior collective work. See Defs. Mem. at 6.

The legislative history cited in the defendants' memorandum at page 7 actually undermines the defendants' position. The House Report reflects the lawmakers' intention, in writing Section 201 (c), to restrict any republication of a separately copyrighted contribution

(such as the Greenberg photographs) contained within a collective work (such as an issue of the Society's monthly magazine) to "certain limited circumstances," as described in the report:

> [A] publisher could reprint a contribution from one issue in a later issue of his magazine, or could reprint an article from a 1970 edition of an encyclopedia in a 1980 revision of it; he could not revise the contribution itself or include it in a new anthology or an entirely different magazine or other collective work.

H.R.Rep. No. 2237, 89th Cong., 2d Sess. 117 (1966), referenced in the final committee report on the 1976 Copyright Act, H.R. Rep. No. 1476, 94th Cong., 2d Sess. 122-23 (1976) (emphasis added). As discussed below, the Complete Geographic violates that restriction.

B. The Complete Geographic is a New Collective Work.

Other portions of the Copyright Act are implicated in this dispute. A "collective work" is defined in the Copyright Act as

> a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

17 U.S.C. § 101. "A collective work ... consists of numerous original contributions which are not altered, but which are assembled into an original collective whole." Tasini, 972 F.Supp. at 812. Moreover, a "collective" work is a subset of "compilation" which is defined in the Act as

> a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

17 U.S.C. § 101. "The originality requirement [for a compilation] is not particularly stringent. A compiler may settle upon a selection or arrangement that others have used; novelty is not required. Originality requires only that the author make the selection or arrangement[3]

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[3] "The requisite originality [in a collective work] may inhere in selection or arrangement alone, even if the other ingredient is lacking." 1 NIMMER ON COPYRIGHT § 2.04[B] (footnotes

independently ... and that it display some minimal level of creativity." Feist Publishers v. Rural Tel. Serv., 499 U.S. 340, 346, 111 S.Ct. 1282, 1287 (1991). In the context of selection and arrangement, the Second Circuit has said that "[i]n the law of copyright, only an unmistakable dash of originality need be demonstrated; high standards of uniqueness in creativity are dispensed with." Weissman v. Freeman, 868 F.2d 1313, 1321 (2d Cir. 1989). "[C]ompilations, and collective works, are characterized by the fact that they possess relatively little originality. . . ." Tasini, 972 F.Supp. at 814. See also Baltimore Orioles v. Major League Baseball Players, 805 F.2d 663, 668 n.6 (7th Cir. 1986) (a work is original if it is the creation of its author). "[T]he originality called for in a collective work consists of the collection and assembling of pre-existing materials. . . ." 1 NIMMER ON COPYRIGHT § 3.02 at 3-7. Originality in a collective work does not require the addition of new materials. Id. § 3.03 at 3-9, 10.

By these legal standards, the Complete Geographic is a new collective work. It is new because nothing like it existed before, and it is therefore original. It is original, moreover, because of the selection and arrangement of things included (and excluded) from the work. The defendants concede that nothing like it ever existed before. Apart from the new product, no collection of the monthly magazines covering 108 years has ever existed previously in any medium. Hard-copy issues of some of the monthly magazines -- but not all -- are stored in warehouses and can only be purchased individually for varying prices. Idaz Greenberg Affid. The final issue of the monthly magazine incorporated in the Complete Geographic product was published in December 1996. The Complete Geographic was produced in 1997 and sales began in that year. Defs. Mem., Ex. B. This is further confirmed by the use of the year 1997 in the copyright notice affixed to the product. The Copyright Act requires such notice to state "the year of first publication of the work." 17 U.S.C. § 401(b)(2). Each notice on the Complete Geographic product includes the assertion "all rights reserved," which has legal implications for protecting copyright under various international copyright treaties. The large box containing 30

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omitted). Thus, the Complete Geographic, in selection or arrangement of its contents, qualifies as a collective work.

discs, as well as each box within containing a decade's discs, each contain unique and original ISBN numbers, which are used for cataloging by some repositories.

Furthermore, the label on the box containing the 30 discs proclaims an "unprecedented CD-ROM collection." (Emphasis added). It is an unprecedented collection in any medium.[4] In the new product, the magazines are sold only as a collection. A purchaser of the Complete Geographic must purchase the entire 30-disc collection covering 108 years, or a smaller collection covering an entire decade. The Complete Geographic product is certainly new and unique.

The new product is a collective work "formed by the collection and assembling of preexisting materials ... that are selected, coordinated, or arranged." 17 U.S.C. § 101. The defendants assert that the Complete Geographic "displays an image of each page of the Magazine *exactly* as it appeared in hard copy, including all articles, photographs, graphics, advertising, notices of copyright, and attributions." Defs. Mem. at 6. (Emphasis in original). That may be true of those magazines that the defendants chose to place in the Complete Geographic, but the defendants left out of the collection other editions of the monthly magazine that were different in some way, as in advertising or language. The defendants thus engaged in selection that included some magazines or editions, and omitted others.

The box in which the Complete Geographic is packaged says on the printed cover that "The Complete National Geographic on CD-ROM was produced from an archive of magazines collected in a central repository and is not representative of any single regional edition of the magazine." The same language appears on the label attached to each of the 30 discs, and it also appears at the end of the display on each disc. The Society's own advertising literature states that the magazine is available for advertising purposes in "worldwide, international, U.S.,

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[4] The May 21, 1997 letter attached to the Thomas Stanton Declaration states that the republishing of "this magazine" on CD-ROM is "comparable to magazines being made available on microfiche." The issue, however, is not the medium used (as the defendants' memorandum stresses) but whether the microfiche product would be a new collective work. A single issue of the monthly magazine produced in its entirety on microfiche would not qualify as a new collective work, but 1200-plus issues duplicated on microfiche and packaged and sold only as a collection would.

regional, statewide, metro, and 'test'" editions, as well as an edition published in the Japanese language. John David Affid. attachments. The defendants thus exercised considerable discretion in selecting editions to be included and excluded.[5]

The materials in the Complete Geographic are clustered by decade, and within the box containing the 30 discs the monthly magazines for each decade are segregated on discs placed in separate packages. Each disc will display the covers of all issues for any given year within that decade. The Society's magazines have never been packaged or marketed in such a fashion. Each disc, when activated, displays an elegant moving logo of a globe, a multi-media Moving Cover Sequence that also serves as a logo, and a multi-cover display page for each year of the 108 years of publication. Each disc contains a 30-second advertisement for Kodak. When each disc is exited, a series of moving graphics displays lengthy credits for those who participated in the project. Any single page displayed on screen has the capacity to be downloaded and printed, in color or black-and-white. Every such page, when printed, contains 1997 copyright notice across the bottom.

The Complete Geographic, therefore, is not merely a box containing reprints of magazines, but is a new and original collective work.

C. The Inclusion of the Greenberg Photographs Infringes His Copyright in Those Photographs

The Complete Geographic contains many photographs created by Jerry Greenberg, for which he is the sole owner of copyright. The photographs were included in the new collective work that is the Complete Geographic against his express instructions. Such inclusion amounts to infringement of his copyrights.

"The copyright [in a collective work] is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting

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[5] The defendants considered advertisements in the magazine over the decades to be an important ingredient of the Complete Geographic product. At two places on the labeling that adorns the box containing the 30 discs appears the following: "Relive 100 years of classic advertisements as they appeared in over a century of National Geographic magazine."

material." 17 U.S.C. § 103 (b). Copyright protection for the Complete Geographic product does not diminish Jerry Greenberg's copyright protection in his photographs that are contained in that product. "Under Section 103 (b), any unauthorized use of preexisting protected material by the creator of a derivative or a collective work infringes the copyright existing in that preexisting material." Tasini, 972 F.Supp. at 814.

If the Complete Geographic is deemed not to be a new collective work and is merely a reprinting of the earlier issues, with no copyright liability for the defendants for using the protected works of others contained in earlier issues, the defendants will have unlimited opportunity to exploit protected works of others that have been gathered over decades, for purposes never conceived by either side, in still other "reprints" that can take many forms. The economic reality is that offering a back issue or a reprint of the May 1956 issue of the magazine, or the November 1974 issue, or any other single issues, on its face has extremely limited appeal. The earlier issues have profit-making marketability only when collected with others and packaged in new and original works in such a way that consumers will be enticed to buy.[6] This in no way demeans the significance or quality of the Society's products or the noble purposes for which the Society says it exists. But as with any other publisher, the Society and its affiliates may not with such business strategies transgress the protections afforded by the Copyright Act to creative artists such as Jerry Greenberg.

The defendants' memorandum in Part II does not defeat the allegations in Count III of the Amended Complaint with respect to a new collective work, and summary judgment on that claim cannot be granted to the defendants.[7]

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[6] The Court can note that single issues that may be available are sold by the Society itself, a nonprofit corporation. Idaz Greenberg Affid. The Complete Geographic, on the other hand, is prepared and marketed by one or more for-profit subsidiaries created by the Society, with licensing extended to defendant Mindscape, another for-profit entity. Defs. Memor. at 2, n.2.

[7] In a motion, the plaintiffs are voluntarily seeking dismissal of the claim in Count IV of the Amended Complaint that the Complete Geographic constitutes a derivative work. However, in pursuing Count V, the plaintiffs will contend, inter alia, when their response to the defendants' "fair use" argument is presented to the Court, that the impermissible use of the Greenberg

III. BECAUSE THE DEFENDANTS HAVE MADE PROMINENT USE OF A GREENBERG PHOTOGRAPH IN THE MOVING COVERS SEQUENCE, SUCH INFRINGEMENT CANNOT BE DE MINIMIS

The defendants' argument in Part III of their memorandum is directed at Count V of the Amended Complaint. The defendants have not answered the allegations in Count V, and have not asserted defenses to that claim. Nonetheless, in Part III they have invoked a de minimis defense[8] with respect to Count V. The defendants' motion for summary judgment as to Count V should be denied because the defendants' infringement in the Moving Covers Sequence is not de minimis.[9]

A. The Use of the Greenberg Photograph Cannot Be De Minimis Because the Defendants Have Thrust the Photograph to the Forefront of Every One of its Discs in the Complete Geographic

Part III of the defendants' memorandum argues that since the Greenberg cover photograph appears in the Moving Covers Sequence for less than one second,[10] it is a de minimis use and thus not actionable. The defendants, however, cite no authority to support the proposition in Part III that de minimis is defined solely on the basis of quantity of use rather than quality of use. Indeed, "even a small usage may be unfair if it is of critical importance to the

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photograph in the Moving Cover Sequence involves the creation by the defendants of a derivative work.

[8] Establishing a de minimis contention is the defendants' burden. See generally 2 NIMMER ON COPYRIGHT § 8.01 [G].

[9] As set forth later in this memorandum, the plaintiffs are unable to respond adequately to Part IV of the defendants' memorandum, which asserts the statutory defense of fair use, without appropriate discovery of facts. Part IV includes, in sub-part C, a discussion of the "amount and substantiality" of use as an aspect of fair use, which overlaps with the de minimis argument in Part III. The plaintiffs' response to Part III of the memorandum, therefore, is not a waiver of their right to challenge all of the components of Part IV when adequate information is in hand.

[10] An issue of fact exists as to the duration of the appearance of the Greenberg photograph in the Sequence. See Idaz Greenberg Affidavit, ¶ 7.

work as a whole and taken by the infringer in order to save the time and expense incurred by the copyright owner." Meredith Corp. v. Harper & Row Publishers, Inc., 378 F. Supp. 686, 693 n.12 (S.D.N.Y. 1974), aff'd, 500 F.2d 1221 (2d Cir. 1974); see also Horgan v. MacMillan, Inc., 789 F.2d 157, 162 (2d Cir. 1986) ("Even a small amount of the original, if it is qualitatively significant, may be sufficient to be an infringement . . . ."); Metro-Goldwyn-Mayer, Inc. v. American Honda Motor Co., 900 F. Supp. 1287, 1300 (C.D. Cal. 1995) ("[T]he Court must look to the quantitative and qualitative extent of the copying involved. . . . Plaintiffs should prevail on this issue . . . [because] the brevity of the infringing work when compared to the original does not excuse copying."); Chicago Record-Herald Co. v. Tribune Ass'n, 275 F. 797, 799 (7th Cir. 1927) (rejecting defendant's de minimis argument because "[w]hether the appropriated publication constitutes a substantial portion of [the defendant's infringing article] cannot be determined alone by lines or inches which measure the respective articles."). The defendants cannot now attempt to trivialize a photograph they made the conscious decision to highlight in the Moving Covers Sequence.

The Complete Geographic consists of 108 years of versions of the monthly magazine. Altogether, the Complete Geographic features more than 1200 issues of the magazine published between 1888 and 1996. These 1200-plus issues are spread out over 30 compact discs. Amid the more than 1200 issues of the magazine on the 30 discs, a photograph by Jerry Greenberg appears prominently on the cover of the January 1962 issue.

The defendants admit that they created the Moving Covers Sequence to run at the beginning of every one of the 30 discs. (Memorandum, at 2). As the defendants admit, the purpose of this Moving Covers Sequence is to provide "a series of images which transition from one into another vividly illustrating the broad range of topics and issues that [the Complete Geographic] and the Magazine address." Id. (emphasis added). With these expressed goals of (1) transition, and (2) vivid illustration in mind, the defendants had to select carefully the right images to effectuate their purpose. This means that the images could not have been chosen at random, and the defendants do not argue that this was the case. Indeed, the defendants had to choose the right images from hundreds of magazine covers to create their dramatic Moving Covers Sequence. Out of those many magazine covers, the defendants settled upon ten. Ten

magazine covers with images that could meet the goals of the Moving Covers Sequence by (1) transitioning smoothly into another image, and (2) providing a vivid illustration of the topics addressed by the magazine. From more than 1200 magazine covers, the defendants chose the Greenberg cover photograph as one of the ten. Those ten images, in the context of their placement, use and prominence in the Complete Geographic product, are nothing less than iconic in terms of their significance to the product.[11]

The defendants cannot now downplay the significance of this choice by dismissing it as "de minimis." See Educational Testing Servs. v. Katzman, 793 F.2d 533, 542 (3d Cir. 1986) (rejecting defendants' de minimis argument that they copied only a "handful" of test questions out of thousands produced by plaintiff; court looked instead to the "qualitative value of the copied material, both to the originator and to the plagiarist."); Elsmere Music, Inc. v. National Broad. Co., 482 F. Supp. 741, 744 (S.D.N.Y. 1980) (rejecting defendant's de minimis argument because, even though defendant copied only four notes and two words from a song of 100 measures and 45 words, "[u]se of such a significant (albeit less than extensive) portion of the composition is far more than merely a de minimis taking."), aff'd, 623 F.2d 252 (2d Cir. 1980). The defendants have thrust the Greenberg cover photograph to the forefront of every one of its discs in the Complete Geographic. No law is required to conclude that the decision to place his photograph on a magazine cover in 1962 represented a high tribute to the quality of his work. It was an even higher tribute to Greenberg's work that the defendants chose to use his photograph to epitomize all the cover photographs that have come before. In essence, along with nine other photographs in the Moving Covers Sequence, the Greenberg photograph has become emblematic of all of the magazines in the Complete Geographic collection.

In addition, unlike the other photographs in the Complete Geographic, the plaintiff's photograph does not sit silently on a page within one of the 1200-plus issues on one of the 30 discs until someone finds it. Rather, the photograph finds you. Every time someone views any

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[11] An instruction sheet that accompanies the discs inside the product box refers to the sequence as "The Complete National Geographic icon." Thomas Stanton Affid., Ex. A. An icon can be said to be a symbol of the magazine. H. Mifflin Co., THE AMERICAN HERITAGE DICTIONARY at 638 (2d Coll. Ed.).

one of the 30 discs, he or she views the Moving Covers Sequence. The only way to avoid viewing the Moving Covers Sequence each time a disc is opened is for the viewer to make a conscious decision to mouse-click it away.[12] Except for the nine other photographs within the Moving Covers Sequence, no other image is granted such exalted status within the Complete Geographic as the Greenberg photograph.

Furthermore, the defendants' de minimis argument should be rejected because the case law cited in Part III of their memorandum does not support their position. The defendants rely largely on two cases, Ringgold v. Black Entertainment Television, Inc., 126 F.3d 70 (2d Cir. 1997) and Amsinck v. Columbia Pictures Indus., Inc., 862 F. Supp. 1044 (S.D.N.Y. 1994).

Ringgold, in reality, provides support for the Greenbergs. In Ringgold, the defendant used a poster of a copyrighted image in the background scenery in one of its television shows. 126 F.3d at 73. As in the instant case, the defendants invoked the de minimis defense in a motion for summary judgment prior to discovery. Id. at 73. The defendants argued that the use was de minimis because "the television viewer sees no more than 'some vague stylized [sic] painting . . .' and can discern none of [the plaintiff's] particular expression of her subjects." Id. at 77 (quoting from the defendants' brief). The Second Circuit, however, rejected this argument and held that the de minimis threshold for actionable copying of protected expression had been crossed. Id. Using language particularly appropriate for the instant case, the court found it "disingenuous" for defendant Home Box Office, "whose production staff evidently thought that the poster was well suited as a set decoration for the [scene] . . . , now to contend that no visually significant aspect of the poster is discernible." Id.

Similarly, the defendants here are attempting now to diminish the importance of a photograph they deemed well-suited for inclusion in a highly-select group of photographs chosen

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[12]It is axiomatic that the number of times an individual views the Moving Covers Sequence depends on the individual's own taste. But the fact that the Complete Geographic enables a viewer to mouse-click the Moving Covers Sequence away does not alter the fact that the Moving Covers Sequence begins playing automatically, without any prompting from the viewer. Moreover, the defendants cannot know whether, or how often, the Moving Covers Sequence will be stopped by clicking.

to represent the history of the magazine. In Ringgold, the artist's work was part of background scenery. Here, the photograph serves as an emblem for the entire 108-year magazine collection.

The defendants also cannot find support in Amsinck, which is clearly distinguishable from the instant case. In Amsinck, without the artist's permission, the defendants used a crib mobile that featured the plaintiff's artwork as part of the set decoration in a film. Id. at 1046. In contrast, the Greenberg photograph at issue is not some incidental decoration for the Complete Geographic, but as discussed above it is given stage-center prominence, in a highly symbolic manner, on every disc in the 30-disc collection. See Harper & Row Publishers, Inc. v. Nation Enters, 471 U.S. 539, 566, 105 S. Ct. 2218, 2233 (1985) ("In view of the expressive value of the excerpts and their key role in the infringing work, we cannot agree with the Second Circuit that the 'magazine took a meager, indeed an infinitesimal amount of [the] original language.'") (citation omitted).

This Court should reject the defendants' argument in Part III of their memorandum that quantity of use alone determines what crosses beyond the de minimis threshold.

B. The Defendants' Inclusion of the Photograph Cannot Be De Minimis Because the Defendants Used the Entire Photograph, and Not Just a Fragment, in the Sequence

The defendants' de minimis argument also should be rejected because the defendants used Jerry Greenberg's entire photograph, and not just a fragment, in the Moving Covers Sequence. "As a rule, a taking is considered de minimis only if it is so meager and fragmentary that the average audience would not recognize the appropriation." Fisher v. Dees, 794 F.2d 432, 434 n.2 (9th Cir. 1986); accord Epic Metals Corp. v. Condec, Inc., 867 F. Supp. 1009 (M.D. Fla. 1994) (quoting the above rule of law from Fisher); Acuff-Rose Music, Inc. v. Campbell, 972 F.2d 1429, 1438 (6th Cir. 1992) ("A de minimis use, one that is meager and fragmentary, by definition fails to conjure up the original and does not constitute an infringement."), rev'd on other grounds, 510 U.S. 569 (1994).

Because the defendants do not deny that they used anything but the entire Jerry Greenberg photograph in the Moving Covers Sequence, their de minimis argument in Part III of their memorandum should be rejected.

IV. THE PLAINTIFFS CANNOT ADEQUATELY RESPOND TO THE DEFENDANTS' FAIR USE ARGUMENTS WITHOUT REASONABLE DISCOVERY AS TO RELEVANT FACTS

Part IV of the defendants' memorandum is devoted to the application of the fair use doctrine to Count V of the Amended Complaint, which asserts a claim relative to the Moving Covers Sequence that appears on each disc in the Complete Geographic product.

Rule 56 (f), Federal Rules of Civil Procedure, provides as follows:

> Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

The plaintiffs request a continuance of the defendants' pending motion -- but only as to Count V -- so that appropriate discovery may be had.[13] According to Rule 56 (f), such a request must take the form of an affidavit stating the reasons for the party's inability to present facts essential to justify its opposition. An affidavit by a party's counsel can satisfy the requirement of the rule where the attorney has the requisite first-hand knowledge and is competent to address the specifics of the facts needed. Fernandez v. Bankers Nat'l. Life Ins. Co., 906 F.2d 559, 570 (11th Cir. 1990). See also Resolution Trust Corp. v. North Bridge Assocs., 22 F.3d 1198 (1st Cir. 1994) (party need not execute affidavit). An affidavit for that purpose by Norman Davis is attached to and incorporated in this memorandum as Exhibit D.

"The party opposing a motion for summary judgment has a right to challenge the affidavits and other factual materials submitted in support of the motion by conducting sufficient discovery so as to enable him to determine whether he can furnish opposing affidavits." Snook v. Trust Co. of Georgia Bank of Savannah, N.A., 859 F.2d 865, 870 (11th Cir. 1988). If the documents or other discovery sought would be relevant to the issues presented by the motion for

[13] In making the request under Rule 56 (f), the plaintiffs expressly do not waive any other discovery to which they are entitled under Rule 26.

summary judgment, the opposing party should be allowed the opportunity to utilize the discovery process to gain access to the requested materials. Id. Generally summary judgment is inappropriate when the party opposing the motion has been unable to obtain responses to his discovery requests. Id.

The plaintiffs presently believe that the discovery required as to issues raised in the motion with respect to Count V should require no more than two months after the Court's authorization. That period may be significantly reduced, depending on the ability and willingness of the defendants to respond promptly to requests. The plaintiffs cannot know whether follow-up requests or depositions may become necessary on the basis of information provided by the defendants. The plaintiffs have no desire to prolong resolution of the motion unnecessarily, but where a dispositive motion affecting an important claim in their case is involved, they should have the full ability to oppose arguments advanced by the defendants in the motion.

Notwithstanding this request with respect to Count V, the Court's ability to resolve issues addressed in the defendants' motion with respect to other counts would not be impaired.

CONCLUSION

As to the defendants' motion to dismiss with reference to Counts II-V, the plaintiffs urge the Court to accept that the copyright registrations are implied in the allegations, or accept the sworn representations in the Jerry Greenberg Affidavit as to the registration of copyrights in the interest of minimizing disruption that would be caused by a newly-amended complaint. Alternatively, the plaintiffs are prepared to amend the Amended Complaint to incorporate the registrations.

As to the defendants' motion for summary judgment on Counts III through V, the plaintiffs urge as follows:

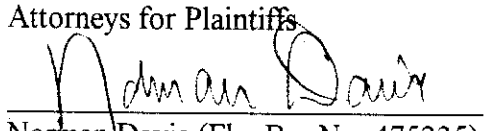
Count III -- defendants' motion should be denied.

Count IV -- plaintiffs are moving separately to voluntarily dismiss the claim.

Count V -- plaintiffs request a continuance of the defendants' motion only as to Count V until the plaintiffs can conduct appropriate discovery.

Respectfully submitted,

STEEL HECTOR & DAVIS LLP
Attorneys for Plaintiffs



Norman Davis (Fla. Bar No. 475335)
David Aronberg (Fla. Bar No. 090565)
Suite 4000
First Union Financial Center
200 S. Biscayne Boulevard
Miami, FL 33131-2398
(305) 577-2988 (phone)
(305) 577-7001 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing plaintiffs' memorandum in response to defendants' motion to dismiss or for summary judgment was served by hand 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 13th of February, 1998.

Norman Davis

Norman Davis

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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.
_____/

CASE NO. 97-3924
CIV-LENARD
Magistrate Judge Turnoff

AFFIDAVIT OF IDAZ GREENBERG

1. My name is Idaz Greenberg. The statements in this affidavit are based on my personal knowledge.

2. I have been a professional illustrator and author for more than 40 years. During most of that time, with Jerry Greenberg, I also have engaged in a small publishing business, based in Miami, Florida, under the name Seahawk Press.

3. On February 5, 1998 and February 6, 1998, I placed telephone calls to the National Geographic Society in Washington, D.C. I was referred to a department where someone answered the telephone by saying "Single Copy." I provided my name and stated that I would like to purchase certain back issues or copies of previous publications of the Society's monthly magazines.

4. I asked whether, for example, the following issues of the magazine could be purchased:

January 1927
February 1931
January 1946
April 1956
March 1958
February 1960
January 1962
February 1968
May 1971
July 1990

5. I was informed that I could purchase individual copies of each of the magazines listed for prices varying from $5.00 to $30.00.

6. I asked whether the Society could sell me a complete collection or set of paper issues of the magazine from the year it started. I was told that warehoused issues of some magazines are available, but that a month-by-month and year-by-year search would have to be made to determine which ones. I asked if paper reprints would be available for any missing issues, and I was told that no reprints of missing issues are available.

7. With reference to the Moving Covers Sequence (as that term is used in the Amended Complaint), an exhibit incorporated in the Amended Complaint shows the use of a Jerry Greenberg photograph from the place where the photograph first appears in the Sequence to the place where the photograph disappears into the succeeding image. I attempted repeatedly with a stopwatch to capture the time when the photograph was visible in the Sequence, and that span averaged between one and two seconds.

8. As long-time readers of the National Geographic Society's monthly magazine, Jerry Greenberg and I have received numerous promotional pieces referring to The

Complete National Geographic product on CD-ROM. One of those promotional pieces is attached to and incorporated into this affidavit as Attachment 1.

AFFIANT SAID NOTHING FURTHER.

Idaz Greenberg

STATE OF FLORIDA)
) ss
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 11th day of February, 1998, by Idaz Greenberg, who was sworn and who said that the information set forth above is true and correct. Ms. Greenberg is personally known to me, or produced Known as personal identification.

Notary Public

NOTARY PUBLIC STATE OF FLORIDA
OFFICIAL NOTARY SEAL
DIONE A CHUNG
COMMISSION NUMBER
CC343459
MY COMMISSION EXP.
FEB. 19,1998

My Commission Expires:

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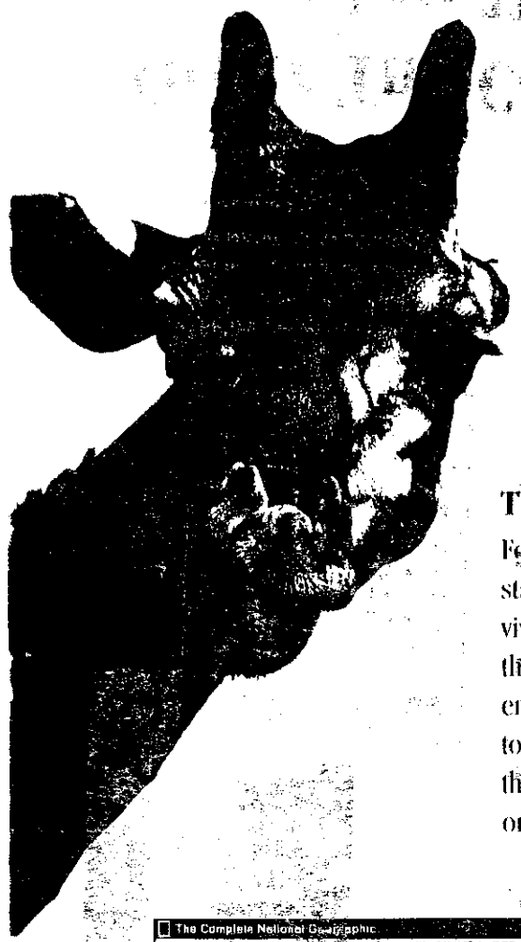

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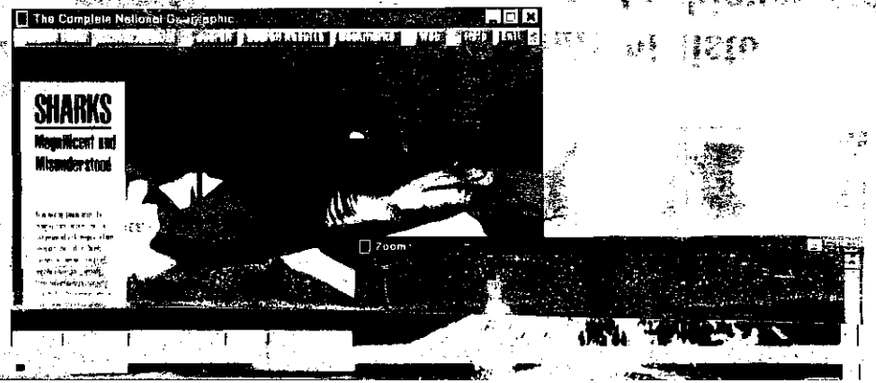
The ultimate chronicle of human discovery...

For the past 108 years, NATIONAL GEOGRAPHIC has set the standard for excellence in reporting and photography, with vivid images that express the wonder of life on Earth. As one of the world's most respected magazines, NATIONAL GEOGRAPHIC enables you to transcend time, to explore exotic locations, and to share the exhilaration of historic scientific discovery. And now, this unsurpassed archive of adventure and discovery is available on CD-ROM for you to enjoy on your own home computer.



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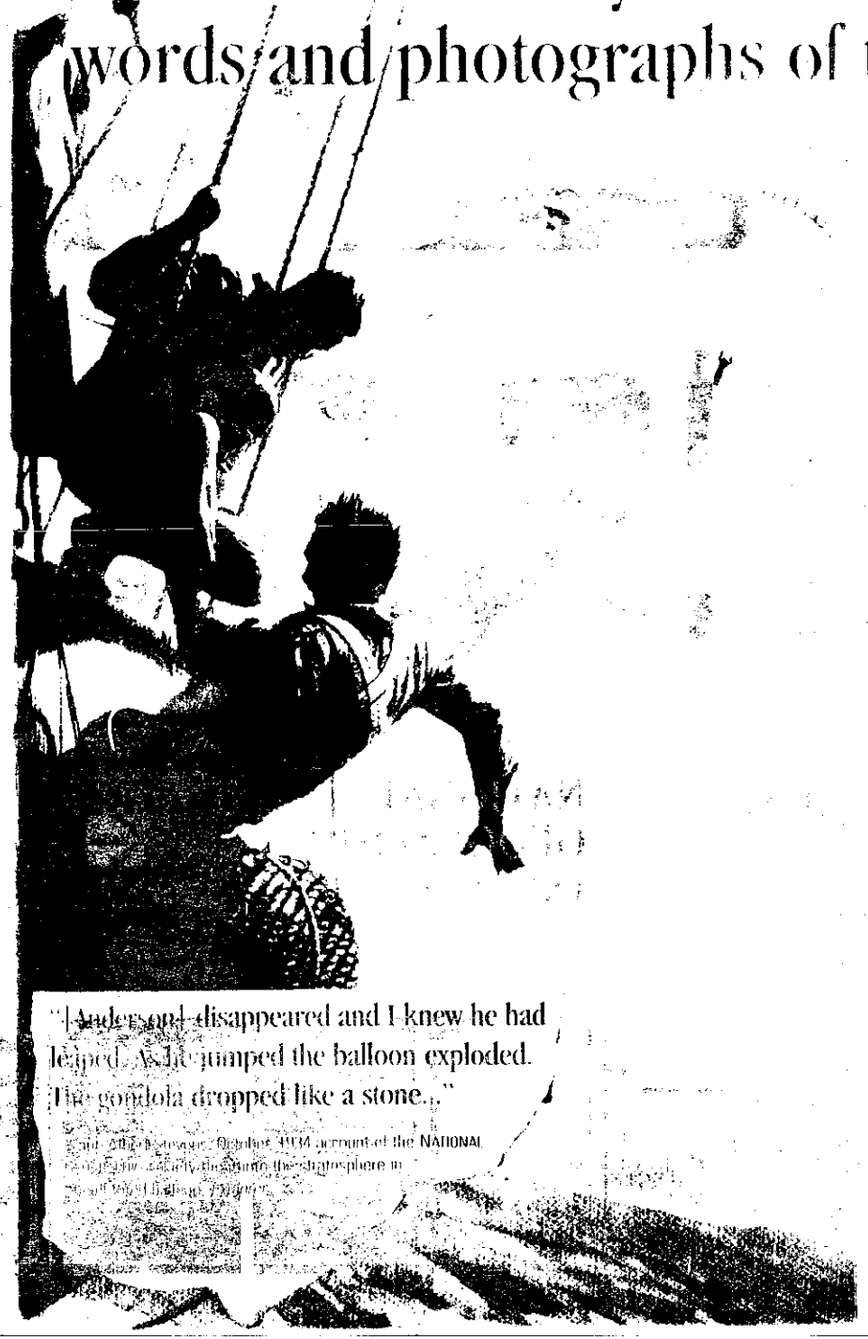
Now share in 108 years of humanity's greatest adventures through the rem words and photographs of the people who lived them!



"Anderson disappeared and I knew he had leaped. As he jumped the balloon exploded. The gondola dropped like a stone..."

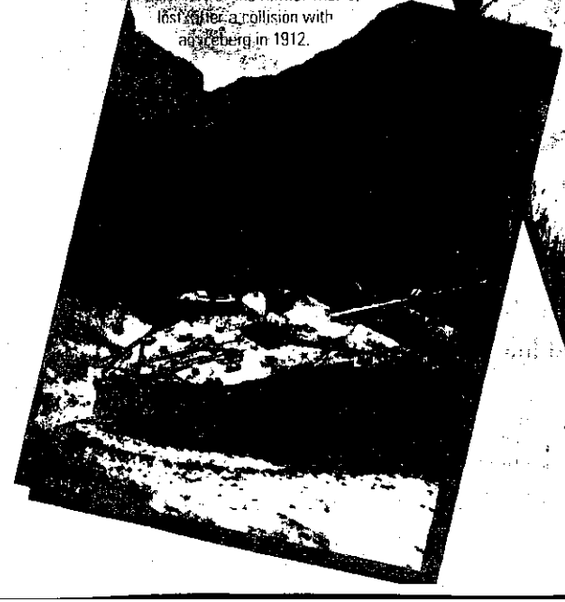
[illegible] October 1984 account of the NATIONAL [illegible] the stratosphere in [illegible]

"I was falling—falling into the deep. It felt like an eternity in slow motion as I bounced back and forth off the crevasse walls."

—Reinhold Messner in his October 1981 NATIONAL GEOGRAPHIC article describing his solo ascent of Mt. Everest without ropes, bottled oxygen, or a radio

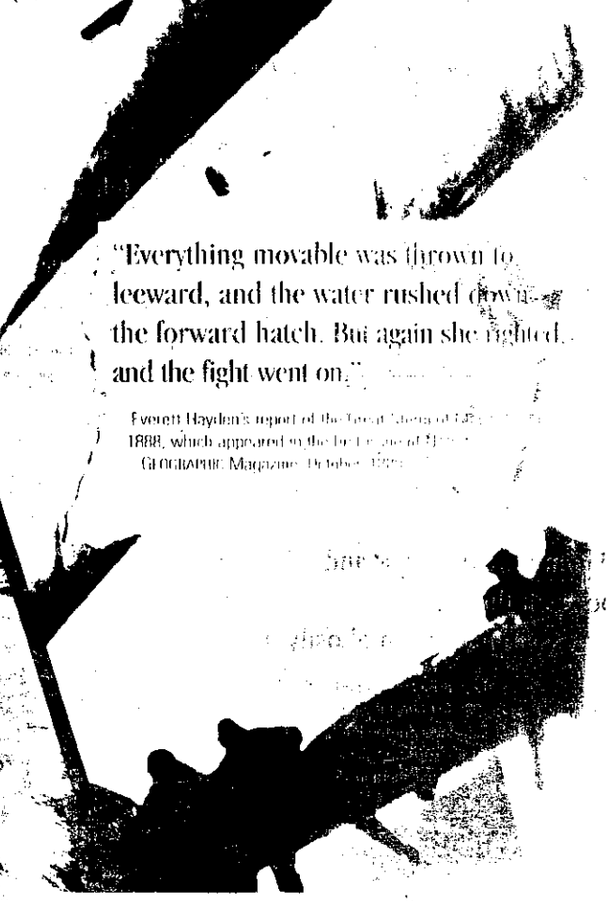
"From the abyss two and a half miles beneath the sea the bow of a great vessel emerges in ghostly detail."

Robert Ballard's report in the December 1985 GEOGRAPHIC of his famous discovery of the R.M.S. Titanic, lost after a collision with an iceberg in 1912.



"Everything movable was thrown to leeward, and the water rushed down the forward hatch. But again she righted, and the fight went on."

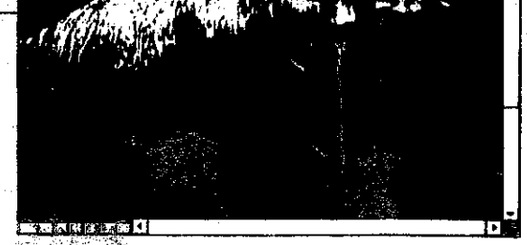
Everett Hayden's report of the [illegible] 1888, which appeared in the [illegible] GEOGRAPHIC Magazine, October [illegible]



"The ice suffered the torments of the damned, surging together, opening out, groaning and grinding while the open water belched its dark mist like a prairie fire."

Commander Robert [illegible] expedition to the North [illegible] in the December [illegible] GEOGRAPHIC Magazine [illegible]

Every Page…Every Issue!



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- Browse more than 9,000 fascinating articles covering 108 years of award-winning NATIONAL GEOGRAPHIC reporting.
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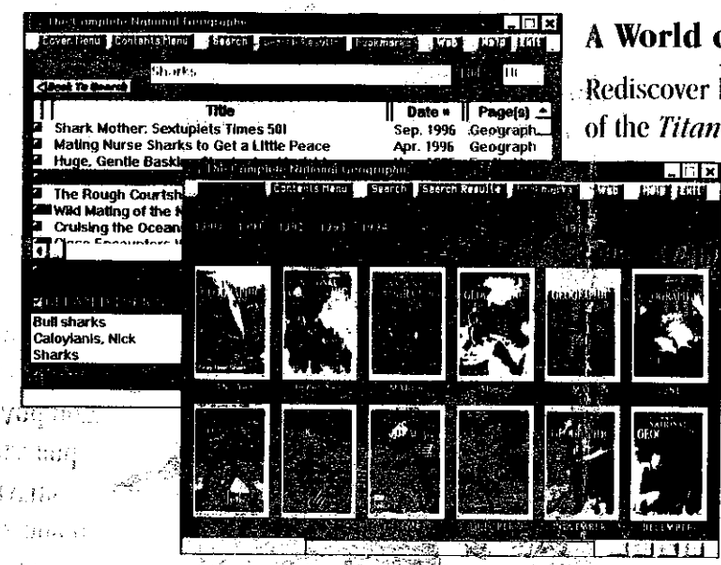
*Supplement maps not included



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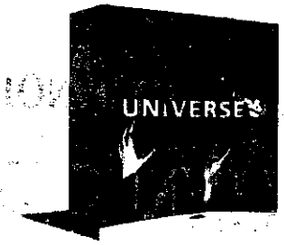

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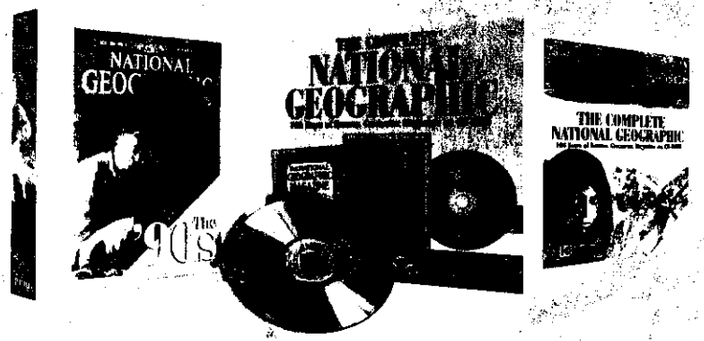
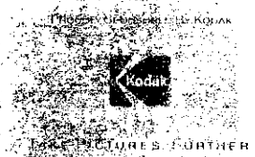


NATIONAL GEOGRAPHIC INTERACTIVE



System Requirements

Windows 95 or Windows 3.1 CD-ROM

- IBM PC or compatible, 80486DX 33 MHz processor
- Microsoft Windows 3.1 running under DOS 6.0 or higher or Windows 95 Version 1
- 8 MB RAM
- 10 MB hard disk space
- Standard AT-101 keyboard
- SVGA color monitor, 256 colors at 640 x 480 resolution or higher
- Windows-compatible mouse or pointing device
- PC-compatible dual speed CD-ROM drive
- MPC-compatible sound card
- Optional: Internet connection and printer

Macintosh CD-ROM

- 68030 33 MHz processor
- System 7.5 or higher
- 8 MB RAM
- 10 MB free disk space
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- Macintosh-compatible mouse or pointing device
- Dual speed CD-ROM drive
- Optional: Internet connection and printer

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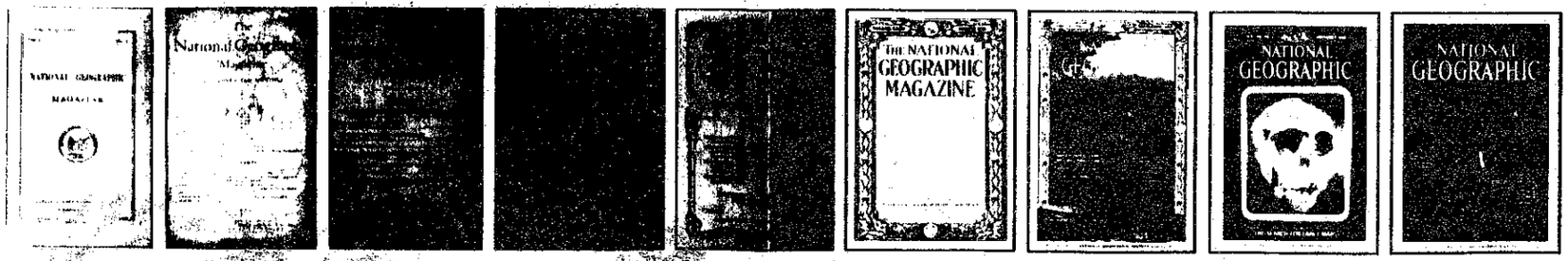

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NATIONAL GEOGRAPHIC INTERACTIVE

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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.
_____/

CASE NO. 97-3924
CIV-LENARD
Magistrate Judge Turnoff

AFFIDAVIT OF JERRY GREENBERG

Jerry Greenberg appeared before the undersigned authority and stated as follows:

1. My name is Jerry Greenberg. The statements in this affidavit are based on my personal knowledge.

2. I have been a professional photographer for more than 40 years. During most of that time, with Idaz Greenberg, I also have engaged in a small publishing business, based in Miami, Florida, under the name Seahawk Press.

3. Starting in the early 1960s, I provided to the National Geographic Society ("the Society") over a period of time many hundreds of photographs, some of which were utilized in various articles appearing in issues of the monthly Society magazine.

4. I have been advised by various managers and employees of the Society that the Society continues to have possession or control over hundreds of photographs taken by me, or duplicates, or electronically scanned images of the photographs. I have copyright in some of those photographs, and the Society has proprietary rights to others.

5. In 1997, I purchased in Miami, Florida a product called The Complete National Geographic, consisting of approximately 30 CD-ROM discs on which are produced more than 1,200 issues of the Society's monthly magazine ("the Complete Geographic").

6. More than a dozen photographs on which I hold exclusive copyright interest are included in the Complete Geographic. I was never asked for my consent to include those photographs, and I never provided consent in any form.

7. On December 18, 1985, the Society assigned to me copyright interest in my photographs that had appeared in issues of the monthly magazine in 1962, 1968 and 1971. That assignment was recorded in the U. S. Copyright Office on September 16, 1988. Copies of the assignment and Certificate of Recordation are attached to this affidavit and incorporated as Attachment 1.

8. As expiration neared for the copyright in the 1962 photographs, I renewed the copyright in December 1989. A copy of the renewal form is attached to this affidavit and incorporated as Attachment 2.

9. As expiration neared for the copyright in the 1968 photographs, I renewed the copyright in March 1996. A copy of the renewal form is attached to this affidavit and incorporated as Attachment 3.

10. On June 14, 1989, I entered into an agreement with the Society to produce original photographs to be incorporated in a 1990 magazine article on the Pennekamp Reef Park. In paragraph 5, the agreement provided that copyright in the new photographs to be taken for the 1990 article would inure to the Society, but that after publication all photographs would be returned to me along with all rights to said photographs. In addition, I provided to the Society several stock photos from my personal archive for use in the article. A copy of the agreement is attached to this affidavit and incorporated as Attachment 4.

11. The photographs utilized in the article described in paragraph 10 above were returned to me by the Society in the spring of 1990. In July 1990, I registered my copyright with the U. S. Copyright Office. A copy of the registration form is attached to this affidavit and incorporated as Attachment 5.

12. Early in 1997 I became aware that the Society was intending to begin the distribution and sale of the Complete Geographic at some time in 1997. In 1997, through my legal counsel, I expressly informed the Society that I would not agree to the inclusion in that product of my copyrighted photographs, and I warned against their inclusion. The Society never responded on the matter.

13. I have read the Declaration of Thomas Stanton, an exhibit to the Memorandum of Law in Support of Defendants' Motion to Dismiss Count II and to Dismiss or for Summary Judgment on Counts III-IV of Plaintiffs' Amended Complaint. Mr. Stanton states, in paragraph 9, that he wrote a letter, dated May 11, 1997, notifying all contributors to the magazine of the pending release of the Complete Geographic. I never received that letter, or any communication from the Society, with reference to the Complete Geographic product.

14. In July 1997, I ordered from Mindscape Direct a CD-ROM excerpt from the Complete Geographic product that covered only the decade of the 1990s. The CD-ROM for that decade was delivered to me some weeks later. The invoice from Mindscape Direct covering the transaction is attached to and incorporated in this affidavit as Attachment 6.

AFFIANT SAID NOTHING FURTHER.

Jerry Greenberg

Jerry Greenberg

STATE OF FLORIDA)
) ss
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 11th day of February, 1998, by Jerry Greenberg, who was sworn and who said that the information set forth above is true and correct to the best of his knowledge and belief. Mr. Greenberg is personally known to me, or produced Known as personal identification.

Notary Public

OFFICIAL NOTARY SEAL
DIONE A CHUNG
COMMISSION NUMBER
CC343459
MY COMMISSION EXP.
FEB. 19,1998
NOTARY PUBLIC STATE OF FLORIDA

My Commission Expires:

National Geographic Society

WASHINGTON, D.C. 20036

SUZANNE DUPRÉ
CORPORATE COUNSEL

December 18, 1985

Mr. Jerry Greenberg
SEAHAWK PRESS
6840 SW 92nd Street
Miami, Florida 33156

Dear Mr. Greenberg:

In reply to your letter of November 15th to Mr. Garrett, the National Geographic Society hereby assigns to you all right, title and interest, including copyright, in your photographs appearing in National Geographic Magazine, as follows:

-- January, 1962
Vol. 121, No. 1

Photos on cover and pages 58 through 89

Registration No. B-960824
Date: March 22, 1962

-- February, 1968
Vol. 133, No. 2

Photos on cover and pages 222-223, 225, 226-227, 238, 240-241 and 251

Registration No. B-402772
Date: January 31, 1968

-- May, 1971
Vol. 139, No. 5

Photos on pages 674 through 683

Registration No. B-701984
Date: July 15, 1971

Sincerely yours,

Suzanne Dupré

District of Columbia
:ss:
Subscribed and sworn to before me this 18TH day of DECEMBER 1985

Jeanette R. Bonner
Notary Public
WASHINGTON, D. C.

My Commission Expires January 31, 1988

cc: W. E. Garrett, Editor

Copyright Office of the United States

THE LIBRARY OF CONGRESS

Certificate of Recordation

THIS IS TO CERTIFY THAT THE ATTACHED DOCUMENT WAS RECORDED IN THE COPYRIGHT OFFICE ON THE DATE AND IN THE PLACE SHOWN BELOW.

THIS CERTIFICATE IS ISSUED UNDER THE SEAL OF THE COPYRIGHT OFFICE.

DATE OF RECORDATION

16Sep88

VOLUME	PAGE
2391	422

VOLUME	PAGE

UNITED STATES COPYRIGHT OFFICE ★ THE LIBRARY OF CONGRESS ★

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Register of Copyrights and Assistant Librarian for Copyright Services

Certificate of Recordation
C-762 September 1987—40,000

RECYCLED PAPER

CERTIFICATE OF RENEWAL EGISTRATION

OFFICIAL SEAL

This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 304 of title 17, United States Code, attests that renewal registration has been made for the work identified below. The information has been made a part of the Copyright Office records.

REGISTER OF COPYRIGHTS
United States of America

FORM RE
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER
RE 478-546

EFFECTIVE DATE OF REGISTRATION
DEC 29 1989
(Month) (Day) (Year)

DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

1 Renewal Claimant(s)

RENEWAL CLAIMANT(S), ADDRESS(ES), AND STATEMENT OF CLAIM: (See Instructions)

1
Name: Jerry Greenberg
Address: 6840 SW 92nd Street Miami, FL 33156
Claiming as: ~~author~~ Proprietor of copyright in a work made for hire *
(Use appropriate statement from instructions)

2
Name:
Address:
Claiming as:
(Use appropriate statement from instructions)

3
Name:
Address:
Claiming as:
(Use appropriate statement from instructions)

LE OF WORK IN WHICH RENEWAL IS CLAIMED:

National Geographic

NEWABLE MATTER:

photographs appearing on cover and pages 58 thru 89

ONTRIBUTION TO PERIODICAL OR COMPOSITE WORK: Florida's Coral City Beneath the Sea.
Title of periodical or composite work: Key Largo Reef:America's First Undersea Park
If a periodical or other serial, give: Vol. 121 No. 1 Issue Date January, 1962

032462447

3 Author(s)

AUTHOR(S) OF RENEWABLE MATTER:

National Geographic Society *

4 Facts of Original Registration

ORIGINAL REGISTRATION NUMBER:
* VA 402-545

ORIGINAL COPYRIGHT CLAIMANT:
National Geographic Society : original claimant assignment of copyright to Jerry Greenberg 12/18/85 Cert. of Recordation 16/Sept88, Vol 2391, pg.422

ORIGINAL DATE OF COPYRIGHT:
* If the original registration for this work was made in published form, give:
DATE OF PUBLICATION: March 22, 1962
(Month) (Day) (Year)

OR

* If the original registration for this work was made in unpublished form, give:
DATE OF REGISTRATION:
(Month) (Day) (Year)

*Amended by Copyright Office RE 478-546	EXAMINED BY: BC CHECKED BY:	RENEWAL APPLICATION RECEIVED: JAN 23 1990 ~~DEC 2 0 1989~~	FOR COPYRIGHT OFFICE USE ONLY
	DEPOSIT ACCOUNT FUNDS USED: ☐	REMITTANCE NUMBER AND DATE:	

DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

RENEWAL FOR GROUP OF WORKS BY SAME AUTHOR: To make a single registration for a group of works by the same individual author published as contributions to periodicals (see instructions), give full information about each contribution. If more space is needed, request continuation sheet (Form RE/CON).

5 Renewal for Group of Works

1	Title of Contribution: ..... Title of Periodical: ..... Vol. ..... No. ..... Issue Date ..... Date of Publication: ..... (Month) (Day) (Year) Registration Number: .....
2	Title of Contribution: ..... Title of Periodical: ..... Vol. ..... No. ..... Issue Date ..... Date of Publication: ..... (Month) (Day) (Year) Registration Number: .....
3	Title of Contribution: ..... Title of Periodical: ..... Vol. ..... No. ..... Issue Date ..... Date of Publication: ..... (Month) (Day) (Year) Registration Number: .....
4	Title of Contribution: ..... Title of Periodical: ..... Vol. ..... No. ..... Issue Date ..... Date of Publication: ..... (Month) (Day) (Year) Registration Number: .....
5	Title of Contribution: ..... Title of Periodical: ..... Vol. ..... No. ..... Issue Date ..... Date of Publication: ..... (Month) (Day) (Year) Registration Number: .....
6	Title of Contribution: ..... Title of Periodical: ..... Vol. ..... No. ..... Issue Date ..... Date of Publication: ..... (Month) (Day) (Year) Registration Number: .....
7	Title of Contribution: ..... Title of Periodical: ..... Vol. ..... No. ..... Issue Date ..... Date of Publication: ..... (Month) (Day) (Year) Registration Number: .....

6 Fee and Correspondence

DEPOSIT ACCOUNT: (If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.)

Name: .....

Account Number: .....

CORRESPONDENCE: (Give name and address to which correspondence about this application should be sent.) 305/667-4051

Name: Jerry Greenberg

Address: 6840 SW 92nd Street (Apt.)

Miami, (City) Florida (State) 33156 (ZIP)

7 Certification (Application must be signed)

CERTIFICATION: I, the undersigned, hereby certify that I am the: (Check one)

☒ renewal claimant ☐ duly authorized agent of: ..... (Name of renewal claimant)

of the work identified in this application, and that the statements made by me in this application are correct to the best of my knowledge.

Handwritten signature: (X) Jerry Greenberg

Typed or printed name: Jerry Greenberg

Date: January 16, 1990

8 Address for Return of Certificate

MAIL CERTIFICATE TO

(Certificate will be mailed in window envelope)

Jerry Greenberg (Name)

6840 SW 92nd Street (Number, Street and Apartment Number)

Miami, (City) Florida (State) 33156 (ZIP code)

RECYCLED PAPER

CERTIFICATE OF REGISTRATION

FORM RE

UNITED STATES COPYRIGHT OFFICE

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

RE 723-710

EFFECTIVE DATE OF RENEWAL REGISTRATION
March 12 1996
(Month) (Day) (Year)

Marybeth Peters
REGISTER OF COPYRIGHTS
United States of America

OFFICIAL SEAL

DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

1 Renewal Claimant(s)

RENEWAL CLAIMANT(S), ADDRESS(ES), AND STATEMENT OF CLAIM: (See Instructions)

1
Name: Jerry Greenberg
Address: 6840 SW 92nd Street, Miami, Florida 33156
Claiming as: Proprietor of copyright in a work made for hire
(Use appropriate statement from instructions)

2
Name:
Address:
Claiming as:
(Use appropriate statement from instructions)

3
Name:
Address:
Claiming as:
(Use appropriate statement from instructions)

TITLE OF WORK IN WHICH RENEWAL IS CLAIMED:

NATIONAL GEOGRAPHIC Sharks: Wolves of the Sea

RENEWABLE MATTER:

photographs appearing on cover and on pages 222, 223, 225, 226, 227, 238, 240, 241, 251, 256 & 257

CONTRIBUTION TO PERIODICAL OR COMPOSITE WORK: SHARKS: Wolves of the Sea.

Title of periodical or composite work: SHARKS: Wolves of the Sea

If a periodical or other serial, give: Vol. 133 No. 2 Issue Date February, 1968

3 Author(s)

AUTHOR(S) OF RENEWABLE MATTER:

National Geographic Society

4 Facts of Original Registration

ORIGINAL REGISTRATION NUMBER:

B-402-772

ORIGINAL COPYRIGHT CLAIMANT:

National Geographic Society: original claimant
Assignment of copyright to Jerry Greenberg 12/18/85
Certicate of Recordation 16/Sept 88, Vol.2391
page 422

ORIGINAL DATE OF COPYRIGHT:

• If the original registration for this work was made in published form, give:
DATE OF PUBLICATION: January 12, 31, 1968
(Month) (Day) (Year)

OR

• If the original registration for this work was made in unpublished form, give:
DATE OF REGISTRATION:
(Month) (Day) (Year)

• Amended by Copyright Office

EXAMINED BY:	RENEWAL APPLICATION RECEIVED:	FOR COPYRIGHT OFFICE USE ONLY
CHECKED BY:	JAN 11 1996	
DEPOSIT ACCOUNT FUNDS USED: ☐	REMITTANCE NUMBER AND DATE: FUND RECEIVED MAR 12 1996	

DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

RENEWAL FOR GROUP OF WORKS BY SAME AUTHOR: To make a single registration for a group of works by the same individual author published as contributions to periodicals (see instructions), give full information about each contribution. If more space is needed, request continuation sheet (Form RE/CON).

5 Renewal for Group of Works

1	Title of Contribution: ... Title of Periodical: ... Vol. ... No. ... Issue Date ... Date of Publication: (Month) (Day) (Year) Registration Number: ...
2	Title of Contribution: ... Title of Periodical: ... Vol. ... No. ... Issue Date ... Date of Publication: (Month) (Day) (Year) Registration Number: ...
3	Title of Contribution: ... Title of Periodical: ... Vol. ... No. ... Issue Date ... Date of Publication: (Month) (Day) (Year) Registration Number: ...
4	Title of Contribution: ... Title of Periodical: ... Vol. ... No. ... Issue Date ... Date of Publication: (Month) (Day) (Year) Registration Number: ...
5	Title of Contribution: ... Title of Periodical: ... Vol. ... No. ... Issue Date ... Date of Publication: (Month) (Day) (Year) Registration Number: ...
6	Title of Contribution: ... Title of Periodical: ... Vol. ... No. ... Issue Date ... Date of Publication: (Month) (Day) (Year) Registration Number: ...
7	Title of Contribution: ... Title of Periodical: ... Vol. ... No. ... Issue Date ... Date of Publication: (Month) (Day) (Year) Registration Number: ...

6 Fee and Correspondence

DEPOSIT ACCOUNT: (If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.)

Name: ...

Account Number: ...

CORRESPONDENCE: (Give name and address to which correspondence about this application should be sent.)

Name: Jerry Greenberg

Address: 6840 SW 92nd Street

Miami, Florida 33156 (Apt.)

(City) (State) (ZIP)

7 Certification (Application must be signed)

CERTIFICATION: I, the undersigned, hereby certify that I am the: (Check one)

■ renewal claimant ☐ duly authorized agent of: ... (Name of renewal claimant)

of the work identified in this application, and that the statements made by me in this application are correct to the best of my knowledge.

Handwritten signature: (X) Jerry Greenberg

Typed or printed name: Jerry Greenberg

Date: January 10, 1996

8 Address for Return of Certificate

MAIL CERTIFICATE TO

(Certificate will be mailed in window envelope)

Jerry Greenberg
(Name)

6840 SW 92nd Street
(Number, Street and Apartment Number)

Miami, Florida 33156
(City) (State) (ZIP code)

National Geographic Magazine

WASHINGTON, D. C. 20036

KENT J. KOBERSTEEN
ASSISTANT DIRECTOR OF PHOTOGRAPHY

June 14, 1989

Mr. Jerry Greenberg
6840 S.W. 92nd Street
Miami, FL 33156

Dear Jerry:

This letter, when signed by both parties, will constitute your agreement as a freelance photographer with the National Geographic Society ("NGS") to photograph **Pennekamp Reef Park(#05738)** for National Geographic Magazine.

1) This assignment will extend for 20 days. Your compensation will be at the rate of:

(a) $350 per day for days spent shooting or in field research (i.e., research directly germane to producing the coverage); and

(b) one half of the above rate per day for days spent in travel (including arranging or waiting for travel); on standby, in the field or elsewhere; or in consulting with NGS editors ("editorial days").

2) Your compensation is subject to the following provisions:

(a) Work beyond the anticipated assignment days mentioned above will be compensated at the same daily rates as above. Should it become necessary to extend this assignment for additional days, you must get authorization to do so from the Director of Photography, the Assistant Director of Photography or the Illustrations Editor assigned to the project.

(b) The total compensation paid to you for this assignment will be applied against the page rate of $300 a page for the National Geographic Magazine, or a minimum of $100 a transparency, whichever is greater.

3) When working for NGS, you will carefully avoid doing similar work for publications which NGS would consider to be editorially competitive with it. You will advise NGS promptly of any possible conflict of interest that may develop. You also will take care not to grant any prepublication interviews or assist in any way in the preparation of any prepublication articles or other press coverage in any medium which would reveal the subject matter, editorial content or the scheduling of an assignment, article or story for the National Geographic Society.

4) By this Agreement you warrant to NGS that publication of any photographs taken by you on this assignment will not infringe upon any right of privacy, copyright or any other proprietary right of a third party.

5) All photographs taken by you under this Agreement will be considered as specially commissioned for use by NGS and upon creation all rights, including the copyright and world publication rights, to these photographs will automatically, by virtue of this Agreement, be deemed transferred exclusively and indefinitely to NGS, subject to the following provisions:

(a) all photographs will be returned to you along with all rights to said photographs under the following conditions: (i) none may be made available to anyone for publication until sixty days after NGS has published its selections; (ii) it is understood that any necessary rights clearance or release for non-NGS publication is your independent responsibility; and (iii) NGS may make and retain copies of some of the photographs ("reference selects") for reference purposes only in its Illustrations Library;

(b) you grant to NGS without additional charge the right to use your name, likeness and biographical material in connection with the publication of any photographs retained by NGS under this Agreement;

(c) NGS may crop your photographs.

6) You undertake all work under this Agreement as an independent contractor. NGS assumes no responsibility for your health, safety or property or that of any person accompanying or assisting you. While on assignment in the field you will be covered by NGS's accident insurance policy, which provides a payment of $200,000 to you in the event of total disability or to your beneficiary, specified below, in the event of death, and lesser coverage for other injuries. The policy also provides up to $10,000 for excess medical coverage, i.e. for costs beyond those covered by your own personal accident and health coverages. The above coverage is restricted to you alone.

7) While you are on NGS assignment, NGS will pay or reimburse you for all reasonable expenses and will supply you with film and processing. At the close of this assignment you will provide NGS with a diary of your activities while on assignment, including an accurate and complete record of the people and places represented in your photographs. A final accounting of expenses, supplies, etc. for an assignment will be due to NGS no later than two weeks after the work on that assignment is finished. Failure to reconcile expense/supply accounts with NGS in a timely manner may impede payment of fees.

8) Your work on this assignment will not be considered complete until so indicated by the Illustrations Editor. At the end of the assignment you will deliver to NGS all photographs you have taken on this assignment as well as complete captions for your photographs. You will be available for a projection session with the editor to explain your work. If you are

called back for editorial consultation, you will be paid a fee of $175 per day plus expenses.

9) This agreement cannot be modified except by written instrument signed by both of us.

If the foregoing is acceptable, please sign and return the enclosed copy of the Agreement to me.

Sincerely yours,
NATIONAL GEOGRAPHIC SOCIETY

By Kent J. Kobersteen
Kent J. Kobersteen

Agreed to and Accepted:

Jerry Greenberg
Name

JUNE 14, 1989
Date

#431-523-822
Social Security/
Federal ID#

JERRY GREENBERG
Check to be Written
to the Order of

© JERRY GREENBERG
Credit Line to read

ALL RIGHTS RESERVED

IDAZ GREENBERG
Insurance Beneficiary

WIFE
Relationship to you

6840 SW 92ND ST
MIAMI, FL. 33156
Address

(For NGS records):
Executed copy received:

Date

KJK/mac

RECYCLED PAPER

CERTIFICATE OF COPYRIGHT REGISTRATION

FORM VA
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER
VA 417 426

VA VAU

EFFECTIVE DATE OF REGISTRATION
JUL 27 1990
Month Day Year

This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

REGISTER OF COPYRIGHTS
United States of America

OFFICIAL SEAL

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼
FLORIDA'S CORAL REEFS ARE IMPERILED

NATURE OF THIS WORK ▼ See instructions
photographs

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼
National Geographic Magazine

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼
Vol. 178, No.1 July, 1990 pgs. 114-132 + assgnt on

2 a NAME OF AUTHOR ▼
Jerry Greenberg

DATES OF BIRTH AND DEATH
Year Born ▼ 1927 Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ USA
Domiciled in ▶ USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions).

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼
photographs on pages 114, 115, 118, 119, 120, 121, 122, 123, 126, 127,130, 132 +

b NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼ On Assignm

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of country
OR { Citizen of ▶
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

c NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

037711684

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.
1990 ◀ Year

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month ▶ July Day ▶ 1 Year ▶ 1990 ◀ Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.▼
Jerry Greenberg
6840 SW 92nd Street
Miami, Florida 33156

See instructions before completing this space.

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.▼

DO NOT WRITE HERE OFFICE USE ONLY
APPLICATION RECEIVED
JUL 27 1990
ONE DEPOSIT RECEIVED
JUL 27 1990
TWO DEPOSITS RECEIVED
REMITTANCE NUMBER AND DATE

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page. • See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE
Page 1 of 2 pages

* Amended by C.O. per authority of telephone call on October 17, 1990 with Jerry Greenberg.

VA 417 426

EXAMINED BY

CHECKED BY

☐ CORRESPONDENCE Yes

FORM VA

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? 5

☐ Yes ☐ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

☐ This is the first published edition of a work previously registered in unpublished form.

☐ This is the first application submitted by this author as copyright claimant.

☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

B-960824 March 22, 1962

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation. 6

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

U/W panorama on pages 118, 119 & 120 originally appeared on pages 58-59 in January, 1962 edition Vol. 121, No.1 issue of National Geographic Magazine

See instructions before completing this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

Reconstruction of coral reef panorama in color and details on pages 118, 119, & 120 and additional new photographs listed at space 2.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. 7

Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼

Jerry Greenberg
6840 SW 92nd Street
Miami, Florida 33156

Area Code & Telephone Number ▶ 305/ 667-4051

Be sure to give your daytime phone number

CERTIFICATION* I, the undersigned, hereby certify that I am the 8

Check only one ▼

☐ author

☒ other copyright claimant

☐ owner of exclusive right(s)

☐ authorized agent of _____
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Jerry Greenberg date ▶ July 25, 1990

Handwritten signature (X) ▼ Jerry Greenberg

MAIL CERTIFICATE TO 9

Name ▼
Jerry Greenberg

Number/Street/Apartment Number ▼
6840 SW 92nd Street

City/State/ZIP ▼
Miami, Florida 33156

Certificate will be mailed in window envelope

YOU MUST:
- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:
1. Application form
2. Non-refundable $10 filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO: Register of Copyrights, Library of Congress, Washington, D.C. 20559

* 17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

RECYCLED PAPER

Mindscape Direct

1351 Ocean Avenue · Emeryville · CA · 94608-1128
(510) 652-5464 - offices · (510) 652-5040 - fax

STATEMENT ENCLOSED

INVOICE

Invoice 792299
Customer 6740106

SHIP TO:

JEROME GREENBERG
SEAHAWK PRODUCTS
6840 SW 92ND ST
MIAMI FL 33156

BILL TO:

JEROME GREENBERG
SEAHAWK PRODUCTS
6840 SW 92ND ST
MIAMI FL 33156

PLEASE OPEN IMMEDIATELY

ORDER DATE	INVOICE DATE	SHIP VIA	SALES REP	DISK SIZE	AUTHORIZED
07/28/97	09/15/97	UPS Ground	F800	CD	MARIA
PAYMENT	**TERMS**	**CHK/CC NUMBER**		**CHK/CC DATE**	**AUTHORIZATION**
Visa	10 Days	partial: 4340		11/30/1998	PREVIEW

#	CODE	ITEM DESCRIPTION	REGISTRATION CODE	QTY	UNIT	EXTENDED
1	NG4-ABODE	Universe Beyond	1351	1	0.00	0.00
2	NG4-ABODE	N. Geographic: Continuity for Win	1762	1	9.95	9.95

RED DOT

SEND CHECK

PAID #1581

Thank You

SUBTOTAL	TAX AMOUNT	SHIPPING	TOTAL	BALANCE DUE
9.95	0.00	3.95	13.90	13.90

Detach here and keep this top portion for your records.
Return this bottom portion with your payment.

JEROME GREENBERG
SEAHAWK PRODUCTS
6840 SW 92ND ST
MIAMI FL 33156

Invoice 792299
Customer 6740106

Payment Method

☐ VISA ☐ MasterCard ☐ American Express

☐ Discover ☐ Check/Money Order
PAYABLE TO MINDSCAPE DIRECT

Account Number

Expiration Date

Signature (required for credit card purchases)

For faster service **simply call 1-800-888-9078 or FAX this form to 1-800-933-0571.**

Thank you for ordering your FREE, 10-day preview of National Geographic: The '90s! If you are not completely satisfied, simply call 1-800-888-9078 to arrange for the product to be returned at our expense. If we've not heard from you by 10/15/97, your acceptance of this product will be assumed, your credit card will be charged the amount indicated below and you'll be sent the next decade in the series for another FREE, 10-day preview.

PS. Enjoy the Complete National Geographic 30 CD-ROM set and save $69.10 right now, by returning this form with one payment of only $149.95 plus S&H charges. And as with all National Geographic products, your satisfaction is 100% guaranteed!

Check the box to indicate your purchase choice and payment amount — Thank you!

☐ Here's my payment. Please send me the next decade in the National Geographic series.

NOTE: If we don't hear from you, your previously provided credit card will be charged the amount indicated below.

Subtotal	Sales Tax	Shipping	Total	Balance Due
9.95	0.00	3.95	13.90	13.90

OR

☐ YES, rush me all remaining decades of the Complete National Geographic 30 CD-ROM set!

Subtotal	Sales Tax	Shipping	Total	Balance Due
149.95	0.00	9.95	159.90	159.90

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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.
_____/

CASE NO. 97-3924
CIV-LENARD
Magistrate Judge Turnoff

AFFIDAVIT OF JOHN DAVID

John David appeared before the undersigned authority and stated as follows:

1. My name is John David. The statements in this affidavit are based on my personal knowledge.

2. I am an account supervisor with Weber/RBB in Miami, a public relations consulting firm. I have occupied that position for approximately three-and-one-half years.

3. On or about December 22, 1997, I contacted by telephone the Washington, D.C. office of the National Geographic Society, and asked to speak with someone in the display advertising department. I was given a telephone number in New York City and was urged to contact that office.

4. I called the New York City telephone number and was informed that I had reached an office of the sales department for the National Geographic Society. I requested

information as to various editions of the Society's monthly magazine in which advertising could be purchased.

5. The individual to whom I spoke indicated that each United States edition of the magazine could be segmented regionally for advertising, and that advertising also could be placed in various international editions of the magazine. The individual offered to send written material as to such advertising, and I provided my business address for that purpose.

6. A few days after that telephone contact, various materials pertaining to the National Geographic Society magazine arrived in a National Geographic Society envelope. Three documents that were contained in that envelope are attached to and incorporated in this affidavit as Attachment A.

AFFIANT SAID NOTHING FURTHER.

John David

STATE OF FLORIDA)
) ss
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 5 day of February, 1998, by John David, who was sworn and who said that the information set forth above is true and correct to the best of his knowledge and belief. Mr. David is personally known to me, or produced _____ as personal identification.

OFFICIAL NOTARY SEAL
VIVIAN JIMENEZ

Notary Public

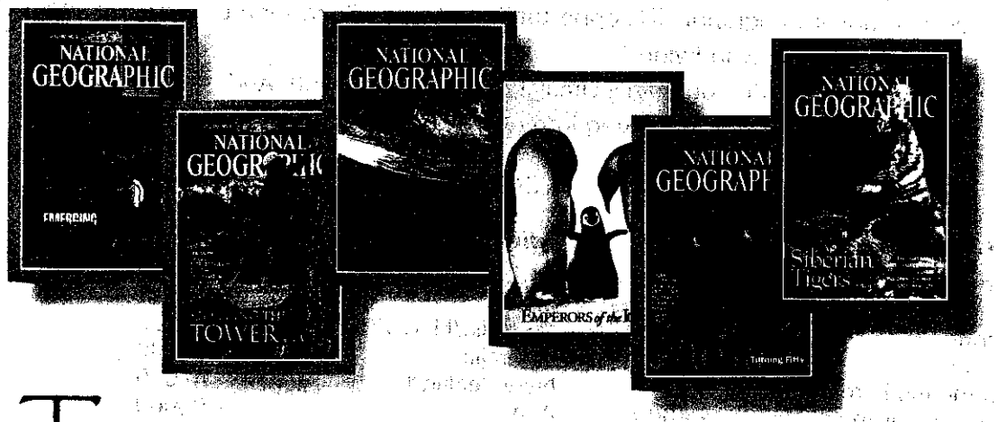
My Commission Expires: 2/17/2001

RECYCLED PAPER

Exhibit A

The Following Pages Are Poor Quality

A Magazine Beyond Borders



The aim – "to capture the world and all that is in it."

Our topical editorial informs and inspires. Our legendary photography captures those powerful moments translating a story in any language. The unique position takes the writers and photographers of National Geographic to every corner of the globe capturing the people, places and events that shape our world.

Audience Vitality

With an audience of nearly 7,000,000 outside the United States, National Geographic delivers the largest international circulation of any English language magazine. For more than 30 years, National Geographic's renewal rate is consistently over 80%, with an average subscription length of 15 years.

In fact, ***one in five of our readers are in top management positions.*** Our Atlantic and Pacific edition rate bases have tripled since 1967. And in the past few years, National Geographic has added several international editions, including Mexico, Germany and Asia Two.

Foreign-Language Editions

National Geographic recently launched its first foreign-language edition in Japanese. This gives National Geographic the opportunity to further its mission to "increase and diffuse geographic knowledge worldwide."

We have already exceeded our initial circulation goal of 100,000. And this is just a first step. National Geographic is currently looking into other foreign-language editions as well.

Precisely Targeted

Edition	Rate Base	Edition	Rate Base
Worldwide	8,500,000	Middle East & Africa	75,000
North America	7,155,000	Pacific	390,000
Atlantic	845,000	Australia/New Zealand	215,000
Europe	770,000	Australia	169,000
Continental Europe	450,000	New Zealand	46,000
Northern Europe	245,000	Asia	175,000
British Isles	320,000	Asia Two	155,000
Germany	60,000	Latin America	110,000
		Mexico	30,000

1997 Rate Bases

We Reach Every Corner Of The Globe

y George Steinmetz

NATIONAL GEOGRAPHIC

A 30-SECOND INTRODUCTION TO *NATIONAL GEOGRAPHIC*

- The official journal of the *National Geographic Society* since 1888
- The world's largest scientific & education institution
- Education and the environment -- two *Society* goals for 109 years
- Over 9 million loyal members (subscribers) worldwide
- All of whom pay full price -- the ONLY incentive to subscribe is the magazine itself
- Over 80% renewal rate since 1962; the highest in magazine publishing
- The average subscription length is 15 years
- 50% read *National Geographic* within the first two weeks
- They invest an average of 2.3 days with each issue; 90% save every issue
- 42% count it as one of their favorite magazines (highest of any MRI publication)
- Available editions: Worldwide, International, U.S., Regional, Statewide, Metro, and "Test"

National Geographic
"Reporting on the world and all that is in it."

Alexander Graham Bell
Second President of the
National Geographic Society

U.S. EDITION

Rate Base: 6,600,000

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$167,310	$163,965	$160,620	$157,270	$153,925	$150,580	$147,235	$143,885	$142,215
	B & 1 Color	149,290	146,305	143,320	140,335	137,345	134,360	131,375	128,390	126,895
	B & W	128,695	126,120	123,545	120,975	118,400	115,825	113,250	110,680	109,390
1/2 PAGE	4 Color	100,385	98,375	96,370	94,360	92,355	90,345	88,340	86,330	85,325
	B & 1 Color	82,115	80,475	78,830	77,190	75,545	73,905	72,260	70,620	69,800
	B & W	69,185	67,800	66,420	65,035	63,650	62,265	60,885	59,500	58,805
1/4 PAGE	4 Color	51,865								
	B & 1 Color	41,960								
	B & W	35,385								
1/8 PAGE	B & W	18,085								

Flexibility of issue dates required on all 1/4 and 1/8 page units.

GEOSPLIT EDITION

Rate Base: 3,300,000

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$100,385	$98,375	$96,370	$94,360	$92,355	$90,345	$88,340	$86,330	$85,325
	B & 1 Color	82,115	80,475	78,830	77,190	75,545	73,905	72,260	70,620	69,800
	B & W	69,185	67,800	66,420	65,035	63,650	62,265	60,885	59,500	58,805

NORTH AMERICA EDITION

Rate Base: 7,090,000

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$185,430	$181,720	$178,015	$174,305	$170,595	$166,885	$163,180	$159,470	$157,615
	B & 1 Color	165,460	162,150	158,840	155,530	152,225	148,915	145,605	142,295	140,640
	B & W	142,635	139,780	136,930	134,075	131,225	128,370	125,520	122,665	121,240
1/2 PAGE	4 Color	111,260	109,035	106,810	104,585	102,360	100,135	97,910	95,685	94,570
	B & 1 Color	91,010	89,190	87,370	85,550	83,730	81,910	80,090	78,270	77,360
	B & W	76,675	75,140	73,610	72,075	70,540	69,010	67,475	65,940	65,175
4TH COVER	4 Color	202,545	198,495	194,445	190,390	186,340	182,290	178,240	174,190	172,165

WORLDWIDE EDITION

Rate Base: 8,500,000

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$222,200	$217,755	$213,310	$208,870	$204,425	$199,980	$195,535	$191,090	$188,870
	B & 1 Color	196,960	193,020	189,080	185,140	181,205	177,265	173,325	169,385	167,415
	B & W	168,340	164,975	161,605	158,240	154,875	151,505	148,140	144,770	143,090
1/2 PAGE	4 Color	133,740	131,065	128,390	125,715	123,040	120,365	117,690	115,015	113,680
	B & 1 Color	108,390	106,220	104,055	101,885	99,720	97,550	95,385	93,215	92,130
	B & W	90,480	88,670	86,860	85,050	83,240	81,430	79,620	77,815	76,910
4TH COVER	4 Color	252,510	247,460	242,410	237,360	232,310	227,260	222,210	217,160	214,635

BIG "G" 15 EDITION			1x	3x	6x	9x	12x	18x	24x	30x	36x
Rate Base: 2,710,000	ONE PAGE	4 Color	$80,405	$78,795	$77,190	$75,580	$73,975	$72,365	$70,755	$69,150	$68,345
		B & 1 Color	71,745	70,310	68,875	67,440	66,005	64,570	63,135	61,700	60,985
Atlanta, Boston, Chicago,		B & W	61,850	60,615	59,375	58,140	56,900	55,665	54,430	53,190	52,575
Cleveland, Dallas/Ft. Worth,											
Detroit, Houston, Los Angeles,	1/2 PAGE	4 Color	48,245	47,280	46,315	45,350	44,385	43,420	42,455	41,490	41,010
Miami, Minneapolis/St. Paul,		B & 1 Color	39,465	38,675	37,885	37,095	36,310	35,520	34,730	33,940	33,545
New York, Philadelphia,		B & W	33,245	32,580	31,915	31,250	30,585	29,920	29,255	28,590	28,260
San Francisco, Seattle/Tacoma,											
Washington, D.C.	1/2 pages subject to availability.										

BIG "G" 25 EDITION			1x	3x	6x	9x	12x	18x	24x	30x	36x
Rate Base: 3,510,000	ONE PAGE	4 Color	$99,165	$97,180	$95,200	$93,215	$91,230	$89,250	$87,265	$85,280	$84,290
		B & 1 Color	88,485	86,715	84,945	83,175	81,405	79,635	77,865	76,095	75,210
Big "G" 15 plus Baltimore,		B & W	76,280	74,755	73,230	71,705	70,180	68,650	67,125	65,600	64,840
Denver, Hartford/New Haven,											
Indianapolis, Phoenix, Pittsburgh,	1/2 PAGE	4 Color	59,500	58,310	57,120	55,930	54,740	53,550	52,360	51,170	50,575
Sacramento/Stockton, St. Louis,		B & 1 Color	48,670	47,695	46,725	45,750	44,775	43,805	42,830	41,855	41,370
San Diego, Tampa/St. Petersburg		B & W	41,005	40,185	39,365	38,545	37,725	36,905	36,085	35,265	34,855
	1/2 pages subject to availability.										

BIG "G" 36 EDITION			1x	3x	6x	9x	12x	18x	24x	30x	36x
Rate Base: 4,040,000	ONE PAGE	4 Color	$111,850	$109,615	$107,375	$105,140	$102,900	$100,665	$98,430	$96,190	$95,075
		B & 1 Color	99,805	97,810	95,815	93,815	91,820	89,825	87,830	85,830	84,835
Big "G" 25 plus Buffalo,		B & W	86,035	84,315	82,595	80,875	79,150	77,430	75,710	73,990	73,130
Charlotte, Cincinnati, Columbus,											
Grand Rapids, Kansas City,	1/2 PAGE	4 Color	67,110	65,770	64,425	63,085	61,740	60,400	59,055	57,715	57,045
Milwaukee, Nashville,		B & 1 Color	54,895	53,795	52,700	51,600	50,505	49,405	48,310	47,210	46,660
New Orleans, Orlando,		B & W	46,250	45,325	44,400	43,475	42,550	41,625	40,700	39,775	39,315
Portland											
	1/2 pages subject to availability.										

NORTHEAST EDITION

Rate Base: 1,710,000

Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, D.C., West Virginia

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$63,600	$62,330	$61,055	$59,785	$58,510	$57,240	$55,970	$54,695	$54,060
	B & 1 Color	56,750	55,615	54,480	53,345	52,210	51,075	49,940	48,805	48,240
	B & W	48,920	47,940	46,965	45,985	45,005	44,030	43,050	42,070	41,580
1/2 PAGE	4 Color	38,160	37,395	36,635	35,870	35,105	34,345	33,580	32,820	32,435
	B & 1 Color	31,215	30,590	29,965	29,340	28,720	28,095	27,470	26,845	26,535
	B & W	26,300	25,775	25,250	24,720	24,195	23,670	23,145	22,620	22,355

1/2 pages subject to availability.

NEW ENGLAND EDITION

Rate Base: 390,000

Connecticut (excluding New York Metro), Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$18,655	$18,280	$17,910	$17,535	$17,165	$16,790	$16,415	$16,045	$15,855
	B & 1 Color	16,645	16,310	15,980	15,645	15,315	14,980	14,650	14,315	14,150
	B & W	14,350	14,065	13,775	13,490	13,200	12,915	12,630	12,340	12,200
1/2 PAGE	4 Color	11,195	10,970	10,745	10,525	10,300	10,075	9,850	9,630	9,515
	B & 1 Color	9,155	8,970	8,790	8,605	8,425	8,240	8,055	7,875	7,780
	B & W	7,715	7,560	7,405	7,250	7,100	6,945	6,790	6,635	6,560

1/2 pages subject to availability.

SOUTHEAST EDITION

Rate Base: 930,000

Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$35,915	$35,195	$34,480	$33,760	$33,040	$32,325	$31,605	$30,885	$30,530
	B & 1 Color	32,045	31,405	30,765	30,120	29,480	28,840	28,200	27,560	27,240
	B & W	27,625	27,075	26,520	25,970	25,415	24,865	24,310	23,760	23,480
1/2 PAGE	4 Color	21,550	21,120	20,690	20,255	19,825	19,395	18,965	18,535	18,320
	B & 1 Color	17,625	17,275	16,920	16,570	16,215	15,865	15,510	15,160	14,980
	B & W	14,850	14,555	14,255	13,960	13,660	13,365	13,070	12,770	12,625

1/2 pages subject to availability.

EAST CENTRAL EDITION

Rate Base: 1,235,000

Illinois, Indiana, Kentucky, Michigan, Minneapolis/St. Paul, Ohio, St. Louis, Wisconsin

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$47,035	$46,095	$45,155	$44,215	$43,270	$42,330	$41,390	$40,450	$39,980
	B & 1 Color	41,970	41,130	40,290	39,450	38,610	37,775	36,935	36,095	35,675
	B & W	36,180	35,455	34,735	34,010	33,285	32,560	31,840	31,115	30,755
1/2 PAGE	4 Color	28,220	27,655	27,090	26,525	25,960	25,400	24,835	24,270	23,985
	B & 1 Color	23,085	22,625	22,160	21,700	21,240	20,775	20,315	19,855	19,620
	B & W	19,450	19,060	18,670	18,285	17,895	17,505	17,115	16,725	16,535

1/2 pages subject to availability.

WEST CENTRAL EDITION

Rate Base: 535,000

Colorado, Iowa, Kansas, Minnesota (excluding Minneapolis/St. Paul), Missouri (excluding St. Louis), Montana, Nebraska, North Dakota, South Dakota, Wyoming

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$21,805	$21,370	$20,935	$20,495	$20,060	$19,625	$19,190	$18,750	$18,535
	B & 1 Color	19,455	19,065	18,675	18,290	17,900	17,510	17,120	16,730	16,535
	B & W	16,770	16,435	16,100	15,765	15,430	15,095	14,760	14,420	14,255
1/2 PAGE	4 Color	13,085	12,825	12,560	12,300	12,040	11,775	11,515	11,255	11,120
	B & 1 Color	10,700	10,485	10,270	10,060	9,845	9,630	9,415	9,200	9,095
	B & W	9,015	8,835	8,655	8,475	8,295	8,115	7,935	7,755	7,665

1/2 pages subject to availability.

SOUTH CENTRAL EDITION

Rate Base: 575,000

Arkansas, Louisiana, Oklahoma, Texas

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$22,895	$22,435	$21,980	$21,520	$21,065	$20,605	$20,150	$19,690	$19,460
	B & 1 Color	20,430	20,020	19,615	19,205	18,795	18,385	17,980	17,570	17,365
	B & W	17,610	17,260	16,905	16,555	16,200	15,850	15,495	15,145	14,970
1/2 PAGE	4 Color	13,735	13,460	13,185	12,910	12,635	12,360	12,085	11,810	11,675
	B & 1 Color	11,235	11,010	10,785	10,560	10,335	10,110	9,885	9,660	9,550
	B & W	9,465	9,275	9,085	8,895	8,710	8,520	8,330	8,140	8,045

1/2 pages subject to availability.

WESTERN EDITION

Rate Base: 1,615,000

Alaska, Arizona, California, Hawaii, Idaho, Nevada, New Mexico, Oregon, Utah, Washington

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$60,100	$58,900	$57,695	$56,495	$55,290	$54,090	$52,890	$51,685	$51,085
	B & 1 Color	53,625	52,555	51,480	50,410	49,335	48,265	47,190	46,120	45,580
	B & W	46,230	45,305	44,380	43,455	42,530	41,605	40,680	39,760	39,295
1/2 PAGE	4 Color	36,060	35,340	34,620	33,895	33,175	32,455	31,735	31,010	30,650
	B & 1 Color	29,495	28,905	28,315	27,725	27,135	26,545	25,955	25,365	25,070
	B & W	24,850	24,355	23,855	23,360	22,860	22,365	21,870	21,370	21,125

1/2 pages subject to availability.

PACIFIC SOUTHWEST EDITION

Rate Base: 1,115,000

Arizona, California, Hawaii, Nevada, New Mexico

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$42,980	$42,120	$41,260	$40,400	$39,540	$38,680	$37,820	$36,965	$36,535
	B & 1 Color	38,350	37,585	36,815	36,050	35,280	34,515	33,750	32,980	32,600
	B & W	33,060	32,400	31,740	31,075	30,415	29,755	29,095	28,430	28,100
1/2 PAGE	4 Color	25,790	25,275	24,760	24,245	23,725	23,210	22,695	22,180	21,920
	B & 1 Color	21,095	20,675	20,250	19,830	19,405	18,985	18,565	18,140	17,930
	B & W	17,770	17,415	17,060	16,705	16,350	15,995	15,640	15,280	15,105

1/2 pages subject to availability.

PACIFIC NORTHWEST EDITION

Rate Base: 500,000

Alaska, Idaho, Oregon, Utah, Washington

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$21,745	$21,310	$20,875	$20,440	$20,005	$19,570	$19,135	$18,700	$18,485
	B & 1 Color	19,405	19,015	18,630	18,240	17,855	17,465	17,075	16,690	16,495
	B & W	16,725	16,390	16,055	15,720	15,385	15,055	14,720	14,385	14,215
1/2 PAGE	4 Color	13,045	12,785	12,525	12,260	12,000	11,740	11,480	11,220	11,090
	B & 1 Color	10,670	10,455	10,245	10,030	9,815	9,605	9,390	9,175	9,070
	B & W	8,990	8,810	8,630	8,450	8,270	8,090	7,910	7,730	7,640

1/2 pages subject to availability.

ATLANTIC EDITION			1x	3x	6x	9x	12x	18x	24x	30x	36x
Rate Base: 890,000	ONE PAGE	4 Color	$54,250	$53,165	$52,080	$50,995	$49,910	$48,825	$47,740	$46,655	$46,115
		B & 1 Color	48,405	47,435	46,470	45,500	44,535	43,565	42,595	41,630	41,145
British Isles, Continental Europe, Middle East & Africa		B & W	40,665	39,850	39,040	38,225	37,410	36,600	35,785	34,970	34,565
	1/2 PAGE	4 Color	32,550	31,900	31,250	30,595	29,945	29,295	28,645	27,995	27,670
		B & 1 Color	27,145	26,600	26,060	25,515	24,975	24,430	23,890	23,345	23,075
		B & W	22,645	22,190	21,740	21,285	20,835	20,380	19,930	19,475	19,250
	4TH COVER	4 Color	62,170	60,925	59,685	58,440	57,195	55,955	54,710	53,465	52,845

EUROPE EDITION			1x	3x	6x	9x	12x	18x	24x	30x	36x
Rate Base: 800,000	ONE PAGE	4 Color	$49,315	$48,330	$47,340	$46,355	$45,370	$44,385	$43,395	$42,410	$41,920
		B & 1 Color	44,005	43,125	42,245	41,365	40,485	39,605	38,725	37,845	37,405
British Isles, Continental Europe		B & W	36,965	36,225	35,485	34,745	34,010	33,270	32,530	31,790	31,420
	1/2 PAGE	4 Color	29,590	29,000	28,405	27,815	27,225	26,630	26,040	25,445	25,150
		B & 1 Color	24,675	24,180	23,690	23,195	22,700	22,210	21,715	21,220	20,975
		B & W	20,585	20,175	19,760	19,350	18,940	18,525	18,115	17,705	17,495

1/2 pages subject to availability.

BRITISH ISLES EDITION			1x	3x	6x	9x	12x	18x	24x	30x	36x
Rate Base: 330,000	ONE PAGE	4 Color	$20,880	$20,460	$20,045	$19,625	$19,210	$18,790	$18,375	$17,955	$17,750
		B & 1 Color	18,630	18,255	17,885	17,510	17,140	16,765	16,395	16,020	15,835
Channel Islands, England, Northern Ireland, Republic of Ireland, Scotland, Wales		B & W	15,650	15,335	15,025	14,710	14,400	14,085	13,770	13,460	13,305
	1/2 PAGE	4 Color	12,530	12,280	12,030	11,780	11,530	11,275	11,025	10,775	10,650
		B & 1 Color	10,450	10,240	10,030	9,825	9,615	9,405	9,195	8,985	8,885
		B & W	8,715	8,540	8,365	8,190	8,020	7,845	7,670	7,495	7,410

1/2 pages subject to availability.

CONTINENTAL EUROPE EDITION			1x	3x	6x	9x	12x	18x	24x	30x	36x
Rate Base: 470,000	ONE PAGE	4 Color	$29,380	$28,790	$28,205	$27,615	$27,030	$26,440	$25,855	$25,265	$24,975
		B & 1 Color	26,215	25,690	25,165	24,640	24,120	23,595	23,070	22,545	22,285
Europe Edition excluding British Isles, includes Israel		B & W	22,025	21,585	21,145	20,705	20,265	19,825	19,380	18,940	18,720
	1/2 PAGE	4 Color	17,630	17,275	16,925	16,570	16,220	15,865	15,515	15,160	14,985
		B & 1 Color	14,700	14,405	14,110	13,820	13,525	13,230	12,935	12,640	12,495
		B & W	12,265	12,020	11,775	11,530	11,285	11,040	10,795	10,550	10,425

1/2 pages subject to availability.

PACIFIC EDITION

Rate Base: 410,000

Australia, India, Japan, New Zealand
People's Republic of China,
Philippines, South Pacific Islands,
Southeast Asia

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$26,400	$25,870	$25,345	$24,815	$24,290	$23,760	$23,230	$22,705	$22,440
	B & 1 Color	23,555	23,085	22,615	22,140	21,670	21,200	20,730	20,255	20,020
	B & W	19,790	19,395	19,000	18,605	18,205	17,810	17,415	17,020	16,820
1/2 PAGE	4 Color	15,840	15,525	15,205	14,890	14,575	14,255	13,940	13,620	13,465
	B & 1 Color	13,210	12,945	12,680	12,415	12,155	11,890	11,625	11,360	11,230
	B & W	11,020	10,800	10,580	10,360	10,140	9,920	9,700	9,475	9,365
4TH COVER	4 Color	30,255	29,650	29,045	28,440	27,835	27,230	26,625	26,020	25,715

ASIA EDITION

Rate Base: 190,000

Pacific Edition excluding
Australia/New Zealand

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$13,275	$13,010	$12,745	$12,480	$12,215	$11,950	$11,680	$11,415	$11,285
	B & 1 Color	11,845	11,610	11,370	11,135	10,895	10,660	10,425	10,185	10,070
	B & W	9,950	9,750	9,550	9,355	9,155	8,955	8,755	8,555	8,460
1/2 PAGE	4 Color	7,965	7,805	7,645	7,485	7,330	7,170	7,010	6,850	6,770
	B & 1 Color	6,645	6,510	6,380	6,245	6,115	5,980	5,850	5,715	5,650
	B & W	5,540	5,430	5,320	5,210	5,095	4,985	4,875	4,765	4,710

1/2 pages subject to availability.

AUSTRALIA EDITION

Rate Base: 180,000

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$12,800	$12,545	$12,290	$12,030	$11,775	$11,520	$11,265	$11,010	$10,880
	B & 1 Color	11,420	11,190	10,965	10,735	10,505	10,280	10,050	9,820	9,705
	B & W	9,595	9,405	9,210	9,020	8,825	8,635	8,445	8,250	8,155
1/2 PAGE	4 Color	7,680	7,525	7,375	7,220	7,065	6,910	6,760	6,605	6,530
	B & 1 Color	6,405	6,275	6,150	6,020	5,895	5,765	5,635	5,510	5,445
	B & W	5,345	5,240	5,130	5,025	4,915	4,810	4,705	4,595	4,545

1/2 pages subject to availability.

LATIN AMERICA EDITION

Rate Base: 110,000

Caribbean Islands, Central America, Mexico, South America

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$13,335	$13,070	$12,800	$12,535	$12,270	$12,000	$11,735	$11,470	$11,335
	B & 1 Color	11,900	11,660	11,425	11,185	10,950	10,710	10,470	10,235	10,115
	B & W	9,995	9,795	9,595	9,395	9,195	8,995	8,795	8,595	8,495
1/2 PAGE	4 Color	8,000	7,840	7,680	7,520	7,360	7,200	7,040	6,880	6,800
	B & 1 Color	6,675	6,540	6,410	6,275	6,140	6,010	5,875	5,740	5,675
	B & W	5,565	5,455	5,340	5,230	5,120	5,010	4,895	4,785	4,730
4TH COVER	4 Color	15,280	14,975	14,670	14,365	14,060	13,750	13,445	13,140	12,990

MEXICO EDITION

Rate Base: 30,000

		1x	3x	6x	9x	12x	18x	24x	30x	36x
ONE PAGE	4 Color	$6,370	$6,245	$6,115	$5,990	$5,860	$5,735	$5,605	$5,480	$5,415
	B & 1 Color	5,685	5,570	5,460	5,345	5,230	5,115	5,005	4,890	4,830
	B & W	4,775	4,680	4,585	4,490	4,395	4,300	4,200	4,105	4,060

FOREIGN CURRENCY - British Pounds Sterling

BRITISH ISLES EDITION			1x	3x	6x	9x	12x	18x	24x	30x	36x
Rate Base: 330,000	ONE PAGE	4 Color	£13,915	£13,635	£13,360	£13,080	£12,800	£12,525	£12,245	£11,965	£11,830
		B & 1 Color	12,415	12,165	11,920	11,670	11,420	11,175	10,925	10,675	10,555
Channel Islands, England, Northern Ireland, Republic of Ireland, Scotland, Wales		B & W	10,430	10,220	10,015	9,805	9,595	9,385	9,180	8,970	8,865
	1/2 PAGE	4 Color	8,350	8,185	8,015	7,850	7,680	7,515	7,350	7,180	7,100
		B & 1 Color	6,965	6,825	6,685	6,545	6,410	6,270	6,130	5,990	5,920
		B & W	5,810	5,695	5,580	5,460	5,345	5,230	5,115	4,995	4,940

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FOREIGN CURRENCY - Australian Dollars

AUSTRALIA EDITION			1x	3x	6x	9x	12x	18x	24x	30x	36x
Rate Base: 180,000	ONE PAGE	4 Color	$A18,380	$A18,010	$A17,645	$A17,275	$A16,910	$A16,540	$A16,175	$A15,805	$A15,625
		B & 1 Color	16,400	16,070	15,745	15,415	15,090	14,760	14,430	14,105	13,940
		B & W	13,780	13,505	13,230	12,955	12,680	12,400	12,125	11,850	11,715
	1/2 PAGE	4 Color	11,030	10,810	10,590	10,370	10,150	9,925	9,705	9,485	9,375
		B & 1 Color	9,195	9,010	8,825	8,645	8,460	8,275	8,090	7,910	7,815
		B & W	7,670	7,515	7,365	7,210	7,055	6,905	6,750	6,595	6,520

1/2 pages subject to availability.

Available only to those advertisers and agencies located within Australia buying the Australia Edition

RECYCLED PAPER

Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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.
_____/

CASE NO. 97-3924
CIV-LENARD
Magistrate Judge Turnoff

AFFIDAVIT OF NORMAN DAVIS

1. My name is Norman Davis. The statements in this affidavit are based on my personal knowledge.

2. I am a partner in the law firm of Steel Hector & Davis LLP, which has represented the plaintiffs in the above-styled matter since its inception. I have been the lead counsel in the litigation.

3. The plaintiffs filed their Complaint on December 5, 1997, and filed an Amended

Complaint on December 23, 1997. Count V of the Amended Complaint alleges a cause of action for copyright infringement with reference to a Moving Cover Sequence that is described more fully in paragraphs 22 through 39 of the Amended Complaint .

4. On January 30, 1998, the defendants filed a motion that, in part, seeks summary judgment as to Count V. In Part IV of the memorandum supporting the motion, the defendants seek summary judgment as to that count by invoking the "fair use" doctrine.

5. No discovery in this case has taken place by either party, and the defendants have not answered Count V.

6. The plaintiffs cannot adequately respond to Part IV of the defendants' motion until reasonable discovery has occurred. This is because the "fair use" issue argued in Part IV is intensively fact-based, and significant facts relevant to that issue are uniquely in the hands of the defendants.

7. Reasonable discovery could disclose genuine issues of material fact in this case, or could otherwise support the plaintiffs' opposition to Part IV of the defendants' memorandum.

8. For example, in Part IV, the defendants claim that the "Complete Geographic" CD-Rom product is educational and does not seek to exploit the Moving Covers Sequence for commercial gain. To respond to that argument, the plaintiffs are entitled to discover facts such as the following:

a. The nature of for-profit corporate affiliates created by the National Geographic Society to produce, market and distribute the "Complete Geographic" product, and the financial goals and expectations of the affiliates.

b. The financial goals and expectations of the nonprofit Society itself with respect to the Complete Geographic product, including but not limited to profits, royalties, rent, fees, interest or tax benefits.

c. The financial goals and expectations of the for-profit defendant Mindscape with respect to its role as a licensee for the Complete Geographic product, and an inquiry as to whether Mindscape's goals with respect to commercial gain on that product are the same as those the other defendants purport to have.

d. The roles of the respective defendants in manufacturing, distributing, marketing and selling the Complete Geographic product.

9. The defendants also have asserted a "good faith" basis for application of the fair use doctrine, in part because of a notification purportedly sent to "all contributors to the magazine." The plaintiffs are entitled to discovery facts related to the "good faith" assertion, including what contacts were made by any of the defendants with individual holders of proprietary interests in contributions to the Society's magazine, what compensation, if any, was offered to such holders, and the outcome of such contacts. Additionally, such inquiry would include whether any effort was made to contact plaintiff Jerry Greenberg, and if so, what compensation, if any, was proposed to him.

10. On April 24, 1997, I wrote on behalf of Mr. Greenberg to Suzanne Ross McDowell, Assistant Vice President, Legal Affairs & Publications, for the National Geographic Society. Among other things, the letter conveyed Mr. Greenberg's objection to the inclusion of photographs, in which he had copyright or other proprietary interest, in the forthcoming product called The Complete National Geographic. A copy of the letter is attached to and incorporated in this affidavit as Attachment 1. Neither Ms. McDowell nor anyone else ever responded in any

manner to that objection, which also makes discovery on the defendants' "good faith" argument important.

AFFIANT SAID NOTHING FURTHER.

Norman Davis

STATE OF FLORIDA)
) ss
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 12th day of February, 1998, by Norman Davis, who was sworn and who said that the information set forth above is true and correct to the best of his knowledge and belief. Mr. Davis is personally known to me.

Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
OFFICIAL NOTARY SEAL
SUE MCCONNELL
COMMISSION NUMBER
CC381267
MY COMMISSION EXP.
JUNE 8,1999

STEEL
HECTOR
&DAVIS

Steel Hector & Davis LLP
200 South Biscayne Boulevard
Miami, Florida 33131-2398
305.577.7000
305.577.7001 Fax

Norman Davis
305.577.2988

BY CERTIFIED MAIL

April 24, 1997

Suzanne Ross McDowell
Assistant Vice President
Legal Affairs, Publications
National Geographic Society
1145 17th Street, N.W.
Washington, D.C. 20036-4688

Dear Ms. McDowell:

This will acknowledge receipt of your letter dated April 18, 1997, which responded to our letter to you dated March 13, 1997. Your conclusion that no infringement has occurred with respect to the Educational Insights materials appears to foreclose any possibility of resolving that dispute without litigation. Your proposal to pay Mr. Greenberg $500 for the use of his sea fan photograph was unacceptable when first made and is unacceptable now. Mr. Greenberg has serious concerns in other areas, as indicated in our letter, but is interested only in a global resolution of all matters covered in the letter.

We will proceed as indicated in the March 13 letter, and in any action that is brought in the Southern District of Florida we expect to name Educational Insights, Inc. as an additional defendant. The nature of a purported licensing agreement between that company and the Society as to the disputed materials is unclear to us, but in any event such an agreement is external to our client's interests.

Mr. Greenberg has become aware that the Society is embarked on a project that apparently will reproduce, for distribution and sale, CD-ROMs past issues of the Society's magazine covering 100 years. This is notice that any photographs provided by Mr. Greenberg to the Society which appeared in past issues of the magazine -- for which Mr. Greenberg owns exclusive copyright or for which Mr. Greenberg authorized one-time use for a single issue -- may not be used for the CD-ROM project, or any other project, without his prior written permission. The Society has no right -- under copyright, contract, or any other theory -- to use Mr. Greenberg's creative works for purposes other than those that were authorized by him with respect to particular issues of the magazine. In view of this notice, Mr. Greenberg will regard any unauthorized use of his works in the CD-ROM project as willful infringement, and he will seek the fullest remedies available to him.

STEEL
HECTOR
DAVIS

In view of the impasse in the matter, please return to the undersigned the exhibit book that was specially prepared and provided to you for negotiation purposes. As stated in our March 13 letter, that exhibit was and is the property of Mr. Greenberg.

Your courteous response to our March 13 letter, while seriously deficient, in our view, in its discussion of applicable law, is appreciated. It is unfortunate that the Society -- zealously protective of its own rights -- has adopted a cavalier position here where the demonstrable rights of a distinguished photographer are at issue. Some of the arguments you pose in your letter, if legally valid, would render unprotectible many thousands of photographs in the Society's vast archive. In due course we will be comfortable in permitting a court to decide the proper standard for infringement of such photographs.

Very truly yours,

Norman Davis

P 059 947 537

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Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail *(See reverse)*

Sent to S. Ross McDowell	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$
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ND 8.984.5801

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