

Story 134

DRK REFUSES TO LICENSE TO GEOGRAPHIC PUBLICATIONS

April 3, 1998

Editors Note: The following information relative to the situation of the re-use of images by National Geographic Society in their "108 Years of National Geographic on CD-ROM" was supplied by Daniel Krasemann of DRK PHOTO. My comments and recommendations to photographers and Stock Agencies are at the bottom of this article.

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In an effort to keep the lines of communication open as to what actions DRK PHOTO has taken in response to the current non-payment by the National Geographic Society for use of our imagery in the 1997 NGI "108 YEARS CD-ROM" product I would like to share the following copy of our letter to a Ms. Nina Hoffman (Senior V.P. Publications - NGS) dated February 24, 1998. Copies of the letter were mailed to some 50+ individuals at the National Geographic Society that DRK PHOTO has worked with over the years.

Letter to National Geographic

February 24, 1998

Ms. Nina Hoffman
Senior V.P. of Publications
National Geographic Society
1145 17th Street, NW
Washington, DC 20036-4688

Dear Nina Hoffman:

It is with great anxiety that I find myself writing to you to inform you of a situation that has developed with the National Geographic Society; non-payment of our invoice #005736, which has necessitated our placement of an immediate and hopefully temporary moratorium on the granting, licensing, or re-licensing of any reproduction rights to all divisions of the National Geographic Society until such time as our invoice has been settled to the mutual satisfaction of both parties.

The invoice in question relates to the "108 Year" CD-ROM product which uses many images represented by this office. After offering a contract to DRK PHOTO in May of 1997 for use of our images in this product, for a fee of \$20.00 per image, which DRK PHOTO refused, negotiations began. To date, the National Geographic Society has failed to negotiate in good faith to settle our invoicing which puts both of us in this uncomfortable position.

DRK PHOTO is greatly disappointed that the actions of the National Geographic Ventures/Interactive division have forced us to this end. After enjoying a successful business relationship of several decades we hope this will be a temporary situation and that the powers-that-be at the National Geographic Society will move quickly to free our hands by resolving the matter without us having to resort to legal action.

We are sincerely sorry for what ever problems the moratorium may cause; now, or in the future. I encourage you to contact a Mr. Terrance Adamson, Esq., or a Mr. Angelo Grima at N.G.S. 202-857-7405 to make them aware of the ramifications as they affect you and your division/s. Perhaps if they hear from all involved parties at the National Geographic Society this matter can be settled immediately with as little disruption as possible.

Thank you for your time. Please feel free to contact me if you have any questions.

Sincerely,
Daniel R. Krasemann, President

Background

Mr. Krasemann supplied the following background for his decision.

In May of 1997 - DRK PHOTO was offered a contract for the use of our images in the "108 Years" CD-ROM product for a fee of \$20.00 per image; this was to be full payment for permissions for twenty (20) years, world-wide, all languages -- including CD-ROM, CD-I, DVD, and other versions, editions, adaptations, or sequels to the original title. After going back and forth to clarify wording in the contract we refused the \$20.00 per picture offer and submitted what we felt to be a reasonable figure for such far reaching permissions. Upon receiving our fee suggestion, Mr. Tom Stanton (NGI) returned a letter referencing our "preposterously high" fee and went on to effectively say that after re-examining paperwork they felt they did not need our authorization to use our images in the CD-ROM.

On December 22, 1997, DRK PHOTO invoiced the National Geographic Society for use of images by our photographers in the "108 Years" CD-ROM. After roughly forty-five days had elapsed I called Mr. Stanton to inquire about the status of our invoice and was referred to legal counsel.

In speaking with both a Mr. Terrance Adamson, 202-857-7449, (the NGS V.P. of Business and Legal Affairs) and a Mr. Robert Sugarman, 212-310-8000, (the NGS legal counsel in New York) it became obvious that the NGS isn't about to settle our invoice until such time as current legal cases before "the courts" decide it must.

DRK PHOTO and many of the photographers it represents have licensed hundreds of images over the past several decades to the various divisions of the National Geographic Society; these include NG Magazine, NG Books, NG Traveler, NG Educational Media, NG World Magazine, NG Television, NG International Publications, etc. We feel the current position being taken of non-payment of our invoicing for the "108 Years" CD-ROM product is unacceptable if not illegal, is not in the spirit of the original licensing and agreements, and certainly is a breach of the immensely important trust we have established over the decades which we must now reconsider. To the best of my knowledge, the National Geographic Society is the only client of DRK PHOTO who has produced a CD-ROM product without first negotiating, obtaining, and paying for reproduction rights for use in such a product. In any case we cannot condone their position, nor allow the possibility of this happening again with other products of this nature by continuing to submit images to the National Geographic Society. Just recently we were contacted by an individual from NGI regarding yet another National Geographic project - "109 Years of National Geographic Maps". Where will it end? Do they intend to negotiate these uses? Or simply, "damn the torpedoes - full steam ahead".

DRK PHOTO has never been one to jump immediately to legal action, we have always been able to settle matters of dispute through mutual negotiations with our clients. We do, however, believe that in many cases there are alternative options to press a point, and that it was time for action to be taken.

Perhaps others who recognize the precedent setting implications of these NGS actions will support DRK PHOTO's position by sending a similar message to the National Geographic Society that they too may have to consider implementing a moratorium on [licensing] reproduction rights until such time as NGS deals with this situation.

It cannot be in the best interest of individual agencies, the best interest of the future of this industry, nor the best interest of our photographers to condone policies such as this one taken by the National Geographic Society.

I welcome comment and/or contact from anyone interested in discussing the position DRK PHOTO has taken.

Thank you for your time,

Daniel R. Krasemann/DRK PHOTO

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Pickerell's Comments

I think every photographer and stock agency should applaud Dan Krasemann for the courageous stand he has taken for the long range welfare of our industry. I encourage you to send him a note to that effect.

I would encourage individual photographers to send notes to their agencies asking the agency not to allow any of the photographer's photos to be used by any National Geographic publication, until NGS and all its various publications establish an acceptable policy with regard to payment for future uses. Also encourage your agency to take the same stand that DRK took.

I would encourage all agencies to take a hard look at their books and determine how much of their total income comes from National Geographic Society publications. Then look at how much income they receive from other publications when they re-license rights to that publications for a picture the publication used previously. I believe that in the vast majority of cases the re-licensing from all publications will be much higher than the earnings from NGS. This will make the economic stand the agency needs to take very simple. If Geographic gets away with all-future-use of an image for a low one-time-rights fee, and the right to ignore all contracts, every other publication in the U.S. will eventually do the same. Can you stay in business if this happens?

Agencies that don't want to mortgage their future need to take a stand NOW. The sad thing -- the almost incomprehensible thing -- is that agencies, and photographers, who make very few sales to NGS and therefore have almost nothing to lose, and everything to gain, by establishing industry precedents for the future have refused to take a stand on this issue.

I would encourage everyone to re-think their position and take a long range view of their careers, and how National Geographic can severely damage those careers if they are allowed to do so.

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