00-10510

IN THE

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

JERRY GREENBERG AND IDAZ GREENBERG

Plaintiffs-Appellants,

v.

NATIONAL GEOGRAPHIC SOCIETY,
NATIONAL GEOGRAPHIC ENTERPRISES, INC., AND
MINDSCAPE, INC.

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

DEFENDANTS-APPELLEES' PETITION FOR REHEARING AND PETITION FOR REHEARING *EN BANC*

Kenneth W. Starr
Christopher Landau
Kirkland & Ellis
655 Fifteenth St., N.W.
Washington, D.C. 20005
(202) 879-5000

Robert G. Sugarman
Naomi Jane Gray
Joanne M. McLaren
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

Terrence B. Adamson
Angelo M. Grima
Karen K. Schwartz
National Geographic Society
1145 Seventeenth St., N.W.
Washington, D.C. 20036
(202) 857-7000

April 12, 2001

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Appellees National Geographic Society, National Geographic Enterprises, Inc. (now named National Geographic Holdings) and Mindscape, Inc., submit this Certificate of Interested Persons and Corporate Disclosure Statement.

Adamson, Terrence B.

Davis, Pierre M.

Educational Insights

Gray, Naomi Jane

Grima, Angelo M.

Itkoff, Valerie

Kirkland & Ellis

Landau, Christopher

Lenard, The Hon. Joan

Mattel, Inc.

McLaren, Joanne M.

Mindscape, Inc.

National Geographic Society

National Geographic Holdings

Schwartz, Karen K.

Greenberg v. National Geographic Soc'y, No. 00-10510

Shanmugam, Kannon

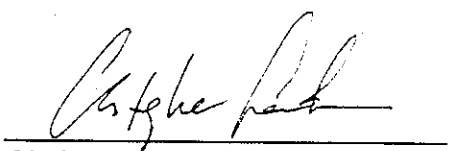
Soto, Edward

Starr, Kenneth W.

Sugarman, Robert G.

Weil, Gotshal & Manges LLP

Wild, Matthew



Christopher Landau

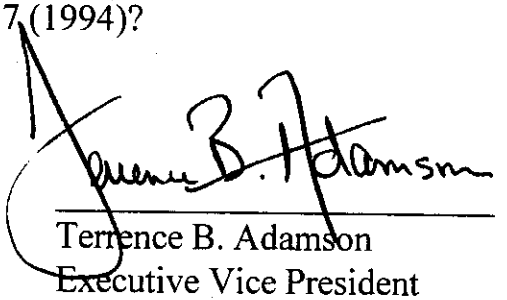
STATEMENT OF COUNSEL

I express a belief, based on reasoned and studied professional judgment, that this appeal involves the following questions of exceptional importance:

1. Does Section 201(c) of the Copyright Act of 1976 permit the publisher of a collective work to reproduce exact image-based copies of that collective work in CD-ROM format without infringing the copyrights of freelance contributors to the collective work?

2. Does an applicant for a copyright registration perpetrate a "fraud" on the Copyright Office when the applicant discloses "all the new copyrightable authorship that is the basis of the present registration," as the Copyright Office requires?

3. Is a prevailing party in a copyright appeal automatically entitled to an award of attorneys' fees, even though the Supreme Court expressly held to the contrary in *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994)?



Terrence B. Adamson
Executive Vice President
National Geographic Society

Attorney of Record for
Defendants-Appellees

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INTRODUCTION

This copyright case presents issues of exceptional legal and practical importance. At stake here is nothing less than the preservation of collective works (including magazines, newspapers, encyclopedias, and books) for the education and entertainment of future generations.

This case involves "The Complete National Geographic" (CNG), a thirty-disc CD-ROM set reproducing each monthly issue of *National Geographic* magazine from 1888 to 1996. The issues appear chronologically, from the earliest at the beginning of the first disc to the latest at the end of the thirtieth disc. Every page of every issue remains as it was in the original paperbound version, including all page arrangements, stories, photographs, graphics, advertising, and attributions. A subject, title, and author-based search engine allows the user to search the index electronically, in the same way that users have long been able to search the magazine's paperbound index.

Plaintiff-appellant Greenberg, a freelance photographer who has published photographs in four articles in the magazine, brought this lawsuit against defendants-appellees National Geographic Society, National Geographic Enterprises, and Mindscape, Inc. (collectively "National Geographic"), alleging that the reproduction of his photographs in the CNG infringed his copyrights. (Greenberg does not dispute that National Geographic was entitled to publish his photographs in *National Geographic* magazine in the first instance.) National Geographic defended the lawsuit

on the ground that 17 U.S.C. § 201(c), the statutory provision at issue here, authorizes the publishers of collective works to reproduce and distribute an individual freelance contribution to a collective work "as part of [1] that particular collective work, [2] any revision of that collective work, and [3] any later collective work in the same series."

That provision strikes a fundamental balance between the interests of freelance authors, on the one hand, and publishers of collective works, on the other: the author owns the copyright in his individual contribution, while the publisher owns the copyright in the overall collective work. The publisher is thus free to reproduce the collective work, but cannot exploit the individual freelance contribution outside the context of the collective work.

A panel of this Court, however, has now effectively written this privilege out of the United States Code. *See Greenberg v. National Geographic Soc'y*, No. 00-10510 (March 22, 2001). Specifically, the panel held that the privilege does not allow National Geographic to reproduce back issues of its magazine in the CNG, because the CNG itself is a "new" collective work. Slip Op. 12-15. That conclusion is incorrect as a matter of law and logic: because the CNG provides an exact image-based reproduction of every issue of the magazine, each individual contribution remains part of the "particular collective work" in which it originally appeared (and thus within the scope of the privilege), regardless of whether a "new" collective work is thereby created. By reproducing entire back issues of the magazine in the new

medium of CD-ROM, National Geographic has not exploited any individual freelance contribution apart from the collective work in which it originally appeared. To the contrary, the integrity of the original collective works has been preserved intact.

The panel decision thus violates the bedrock principle that the Copyright Act is medium neutral: it applies *regardless* of the medium (or combination of media) in which a work is expressed. The publisher of a paperbound journal like *National Geographic* magazine is entitled to reproduce and distribute that collective work in any medium (or combination of media) it chooses: microfilm, microfiche, CD-ROM, or even other media not yet invented. Technological developments may allow collective works to be stored, retrieved, and searched in new ways, but such developments do not strip publishers of their statutory reproduction privilege.

The panel decision, however, essentially precludes publishers of collective works from reproducing their historical works in new media, including (but not limited to) CD-ROM. It is hard to overstate the practical implications of that decision. The enormous technological advances of recent years have created new opportunities for the dissemination of collective works in new media that are more widely, easily, and inexpensively available to the public. By holding that the reproduction of collective works in new media violates the copyrights of freelance contributors, the panel essentially slams the door shut on the very innovation the privilege was meant to protect. The Copyright Act neither requires nor tolerates that radical result.

QUESTIONS WARRANTING *EN BANC* REVIEW

1. Does Section 201(c) of the Copyright Act of 1976 permit the publisher of a collective work to reproduce exact image-based copies of that collective work in CD-ROM format without infringing the copyrights of freelance contributors to the collective work?

2. Does an applicant for a copyright registration perpetrate a "fraud" on the Copyright Office when the applicant discloses "all the new copyrightable authorship that is the basis of the present registration," as the Copyright Office requires?

3. Is the prevailing party in a copyright case automatically entitled to an award of attorneys' fees, even though the Supreme Court expressly held to the contrary in *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994)?

STATEMENT OF PRIOR PROCEEDINGS

The district court (Lenard, J.) granted summary judgment in favor of defendants-appellants, on the ground that the reproduction of Greenberg's photographs in the CNG was privileged under Section 201(c). *See* S.D. Fla. No. 97-3924-CIV (May 14, 1998), *reprinted at* 1998 U.S. Dist. LEXIS 18060. A panel of this Court reversed, and directed the entry of judgment in Greenberg's favor, along with an award of damages, attorneys' fees, and injunctive relief. 11th Cir. No. 00-10510 (March 22, 2001), *published at* ___ F.3d ___, 2001 WL 280075.

ARGUMENT

THE PANEL INCORRECTLY DECIDED ISSUES OF EXCEPTIONAL IMPORTANCE.

This is a straightforward case of statutory interpretation. The Copyright Act grants publishers of collective works a privilege to reproduce freelance contributions "as part of that particular collective work," 17 U.S.C. § 201(c), and that is just what National Geographic has done here. The CNG provides an exact image-based reproduction of each issue of the magazine in CD-ROM format, along with (1) a 25-second introductory audiovisual sequence at the beginning of each disc, and (2) a computer program that compresses and decompresses the images and allows the user to search an electronic version of the traditional paperbound index. Nothing about the addition of the introductory sequence or the computer program negates the fact that each freelance contribution is reproduced as part of the "particular collective work" in which it originally appeared. That is the beginning and the end of this case.[1]

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[1] Even if the CNG did not involve the reproduction of each freelance contribution in the "particular collective work" in which it originally appeared, the CNG at most involves the reproduction of each freelance contribution in "any revision of that collective work." 17 U.S.C. § 201(c). A "revision" is "a new, amended, improved, or up-to-date version of" a publication. *Webster's Third New Int'l Dictionary* 1944 (1976). And the statute extends the broad word "revision" to its broadest limits by modifying it with the word "any." *See, e.g., Citizens' Bank of La. v. Parker*, 192 U.S. 73, 81 (1904) ("The word any excludes selection or distinction. It declares the exemption without limitation.").

The panel, however, concluded that the addition of these two features transformed the CNG into a "new" collective work, and that the creation of a new collective work stripped National Geographic of the statutory reproduction privilege. *See* Slip Op. 12-15. The panel did not attempt to square that conclusion with the plain language of the statute. Rather, the panel simply turned to the legislative history, and declared that a particular passage decreed that result. Even putting aside the anomaly of this approach to statutory interpretation, *see, e.g., United States v. Steele*, 147 F.3d 1316, 1318 (11th Cir. 1998) (*en banc*) ("Where the language Congress chose to express its intent is clear and unambiguous, that is as far as we go to ascertain its intent because we must presume that Congress said what it meant and meant what it said."), the cited passage contradicts, rather than supports, the panel's conclusion.

The panel relied on the following passage from the legislative history:

> The basic presumption of section 201(c) is fully consistent with present law and practice, and represents a fair balancing of equities. At the same time, the last clause of the subsection, under which the privilege of republishing the contribution under certain limited circumstances would be presumed, is an essential counterpart of the basic presumption. Under the language of this clause a publishing company could reprint a contribution from one issue in a later issue of its magazine, and could reprint an article from a 1980 edition of an encyclopedia in a 1990 revision of it, *the publisher could not* revise the contribution itself or *include it in* a new anthology or *an* entirely different magazine or *other collective work.*

Slip Op. 12-13 (quoting H.R. Rep. No. 94-1476, at 122-23 (1976)) (emphasis added by the panel).

According to the panel, the italicized words of this passage mean that the publisher of a "new" collective work necessarily loses the privilege. That is simply not true. To the contrary, the passage underscores the importance of the publisher's privilege (the "essential counterpart" to the author's copyright), and provides two examples of what publishers can and cannot do. According to the passage, Section 201(c) allows a publisher to (1) "reprint a contribution from one issue in a later issue of its magazine," and (2) "reprint an article from a 1980 edition of an encyclopedia in a 1990 revision of it," but does not allow the publisher to (1) "revise the contribution itself," or (2) "include it in a new anthology or an entirely different magazine or other collective work."

The panel seized on the last three words of this passage ("other collective work") to conclude that the statute does not allow a publisher to reproduce a freelance contribution in a new (and independently copyrightable) collective work, even where (as here) that collective work includes an exact image-based reproduction of the collective work in which the contribution originally appeared. But that is not what the passage says. To the contrary, both of the examples of what a publisher *can* do entail the creation of a new (and independently copyrightable) collective work: the

publication of "a later issue of its magazine," and the publication of a new edition of an encyclopedia. The passage simply underscores that the privilege does not allow the publisher either to revise the contribution itself, or to include it in a "new anthology" or "an entirely different magazine or other collective work." In this context, it is clear that the words "entirely different" modify not only the word "magazine," but also the words "other collective work," because a magazine is not the only form of a collective work.

That a publisher cannot reproduce an individual freelance contribution in a "new anthology" or "an entirely different magazine or other collective work" simply means (in the words of the statute) that the publisher cannot *remove* the contribution from the "particular collective work" in which it originally appeared. Contrary to the panel's conclusion, the passage does not remotely suggest that a publisher cannot include that "particular collective work" in its *entirety* in a new (and independently copyrightable) collective work. An individual contribution is no less a part of a "particular collective work" if that collective work in turn becomes part of an even larger collective work. One collective work can form part of another, just as a Sunday magazine forms part of a Sunday newspaper.

Thus, a publisher is free to reproduce a "particular collective work" in new media (such as microfilm, microfiche, or CD-ROM), regardless of whether the

resulting product is itself characterized as a "new" collective work through the addition of new elements of originality. It is axiomatic, after all, that copyright protection is medium-neutral. *See, e.g.,* 17 U.S.C. § 102(a) ("Copyright protection subsists . . . in original works of authorship fixed in *any* tangible medium of expression, *now known or later developed*, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.") (emphasis added); *Matthew Bender & Co. v. West Publ'g Co.*, 158 F.3d 693, 702-03 (2d Cir. 1998) (noting that copyright protection does not "'depend upon the form or medium in which the work is fixed'") (quoting H.R. Rep. No. 94-1476, at 52 (1976)); *M. Kramer Mfg. Co. v. Andrews,* 783 F.2d 421, 432-33 (4th Cir. 1986) ("[C]opyright protection is granted 'in original works of authorship fixed in any tangible medium.'") (quoting 17 U.S.C. § 102(a)).

The panel, however, violated the axiom of medium neutrality by condemning the CNG based in part on the copyrightability of the computer program. In particular, the panel emphasized this feature in an attempt to distinguish the CNG from microfilm and microfiche, other media in which the magazine has long been reproduced without challenge. *See* Slip Op. 13 n.12. A particular collective work, however, does not cease to be a "particular collective work" just because it is reproduced in a new medium with independently copyrightable features. As long as an individual

freelance contribution remains (again, in the words of the statute) in the "particular collective work" in which it was originally published, the existence of *additional* intellectual property in the new medium is immaterial. The privilege does not turn on the technology of the medium of reproduction, but rather on the preservation of the integrity of the collective work. Accordingly, the panel's attempt to distinguish CD-ROM from microfiche and microfilm rests on a distinction without a difference.

Indeed, not even Greenberg argued that the existence of an independently copyrightable computer program in a new medium strips a publisher of the statutory privilege. Nor was that far-reaching argument advanced by any of the parties in a case involving Section 201(c) now pending before the Supreme Court, *New York Times Co. v. Tasini*, No. 00-201 (argued March 28, 2001), although the argument would be dispositive in that case. Nor was that argument raised by any of the Justices at the *Tasini* oral argument just four business days after the panel here released its opinion. That is no oversight: as noted above, even the examples of the privilege set forth in the legislative history (reproduction in "a later issue of its magazine" or in a new edition of an encyclopedia) involve reproduction of a freelance contribution along with independently copyrightable material.

Indeed, if the existence of independently copyrightable features in a new medium were enough to defeat the privilege, then the privilege would be rendered a

dead letter. The very advantages of new media (including, but not limited to, CD-ROM) often consist of independently copyrightable features. Even bound volumes, microfilm, and microfiche can include copyrightable elements, such as an introductory page and a subject, title, and author-based index, *see* Tabs A (bound volume), and B (microfilm) attached hereto, but no one has ever suggested that Section 201(c) does not allow publishers to reproduce their collective works in these formats. One of the reasons that CD-ROM is such a powerful medium is that its copyrightable computer program compresses images (allowing the reproduction of vast quantities of information in a limited space), and performs an electronic search function. If the presence of such a program were sufficient to defeat the privilege, then Section 201(c) would *never* permit the reproduction of collective works in media accessible by computers. The Copyright Act is not a Luddite law, and does not prevent publishers from using technological advances to reproduce their collective works in new media.

Nor does the existence of the 25-second introductory sequence at the beginning of each CD-ROM alter any of the foregoing analysis. Again, as long as each individual freelance contribution is reproduced in the "particular collective work" in which it originally appeared, it is immaterial what *else* appears on a particular disc. As noted above, the analysis is the same regardless of whether the CNG (or any particular disc thereof) is itself characterized as a "new" collective work, because

there is no inconsistency between the reproduction of a pre-existing collective work and the creation of a new collective work comprised in part of that earlier work.[2]

Two additional subsidiary errors by the panel also merit review and correction.

First, the panel went out of its way to accuse National Geographic of "perpetrat[ing] a fraud" on the Copyright Office by failing to disclose the existence of the copyrightable computer program when pursuing copyright registration for the CNG. *See* Slip Op. 14 n.13; *see also id.* at 7. That accusation (which not even

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[2] Greenberg also makes the distinct claim that National Geographic infringed his copyright by including a cover of *National Geographic* magazine containing one of his photographs for a split second in the introductory montage. That claim, however, founders under the fair use and *de minimis* doctrines, and the panel erred in rejecting those defenses. *See* Slip. Op. 17-18.

The panel asserted that the "transformative" use of the image weighed against a finding of fair use, *id.* at 17, but just the opposite is true: a transformative use weighs in *favor* of a finding of fair use. *See, e.g., Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994). And the panel declared that the split-second use in the CNG "effectively diminished, if not extinguished, any opportunity Greenberg might have had to license the photograph to other potential users," Slip Op. 17, without any supporting evidence on this factual issue. Finally, the panel asserted that the CNG was marketed and distributed "for profit," *id.*, thus weighing against a finding of fair use, but it is undisputed that any and all revenues received by the Society or its wholly owned taxable subsidiaries go to the mission of the not-for-profit Society, which has no economic shareholders or stakeholders.

In addition, the panel concluded that the use was not *de minimis* because the Greenberg photograph was on one of ten covers selected for the sequence from over 1,200 covers in 108 years of publication of the magazine. *See* Slip Op. 18. The facts remain, however, that (1) each cover appears for only a split second as part of a rapid-fire montage, and (2) the 25-second sequence itself constitutes only a tiny fraction of the CNG product as a whole. Accordingly, the use is *de minimis*. *See, e.g., Ringgold v. Black Entm't Television, Inc.*, 126 F.3d 70, 74 (2d Cir. 1997); *Amsinck v. Columbia Pictures Indus., Inc.*, 862 F. Supp. 1044, 1047-48 (S.D.N.Y. 1994).

Greenberg advanced, and was never briefed) is not only gratuitous but baseless. Under settled law and practice in the Copyright Office, the CNG is considered a "multimedia work." An applicant for a copyright in such a work must disclose to the Copyright Office "all the new copyrightable authorship *that is the basis of the present registration.*" Copyright Registration for Multimedia Works 4 (1999) (attached hereto at Tab C) (emphasis added). A particular registration, however, covers *only* those elements of the multimedia work to which the author claims copyright, and "[a] separate registration is required . . . for any element of a multimedia kit that is . . . claimed by someone other than the copyright claimant for the other elements." *Id.* at 2. Because National Geographic did not claim a copyright in CNG's computer program, that element was not a basis of its registration. In any event, there was nothing improper about the registration process: to the contrary, National Geographic deposited the CNG product itself (including information about the program) with the Copyright Office as part of that routine process, and thus provided that Office with the very information the panel claimed had been withheld.

Second, the panel erred in summarily awarding attorneys' fees to Greenberg as the prevailing party. *See* Slip Op. 20 ("We find the appellant to be the prevailing party on this appeal and, *therefore*, is [*sic*] entitled to an award of costs and attorneys fees.") (emphasis added). Under settled law, a prevailing party in a copyright case is

not entitled to attorneys' fees as a matter of course. *See, e.g., Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 533-34 (1994). Rather, such awards may be made in the discretion of the trial court, considering a variety of factors including "frivolousness, motivation, objective unreasonableness (both in the factual and in the legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence." *Id.* at 534 & n.19 (internal quotation omitted). The panel here considered none of these factors, nor remanded to the district court to do so in the first instance, but simply awarded Greenberg fees as a matter of course.[3]

In the final analysis, the panel opinion is nothing short of revolutionary. As a practical matter, the opinion requires publishers to destroy existing CD-ROMs, and prevents them from ever again seeking to reproduce their works in new media, including (but not limited to) CD-ROMs, which have allowed countless persons easy, quick, and inexpensive access to collective works.[4] The passing suggestion in the

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[3] Indeed, it was procedurally irregular for the panel to direct the entry of judgment in Greenberg's favor, and declare him the prevailing party, at all. The only issue on appeal was whether the district court erred by granting summary judgment in National Geographic's favor based on Section 201(c). Accordingly, even assuming the panel correctly decided that issue in Greenberg's favor, the proper disposition would be to reverse the judgment and remand the case for the adjudication of any other factual, legal, or equitable defenses to infringement. National Geographic should not be penalized for its success on the Section 201(c) issue below.

[4] Indeed, the CNG is presently sold at retail for less than $100, and grants a user access to all back issues of *National Geographic* magazine (which, in paperbound form, take up an entire room) on thirty discs. The same collection on microfilm, in

panel's conclusion that "[i]n assessing the appropriateness of injunctive relief, we urge the [district] court to consider alternatives, such as mandatory license fees, in lieu of foreclosing the public's computer-aided access to this educational and entertaining work," Slip Op. 20, is utterly impractical. Even if the district court in *this* case could force Greenberg to accept a mandatory license fee, that does not address the claims of the thousands of freelance contributors to *National Geographic* magazine around the globe over the past century. As a practical matter, National Geographic could not possibly continue to distribute the CNG (or similar products in the future) if exact image-based reproductions of past issues of the magazine violate the freelancers' copyrights. Stripped of the statutory privilege of Section 201(c), publishers, including National Geographic, will lose their ability to create and preserve vast historical archives for the benefit of history and unknown generations of individuals, students, and scholars.

CONCLUSION

For the foregoing reasons, the panel should reconsider its decision, or this Court should vacate that decision and set the case for *en banc* review.

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contrast, takes up 170 rolls of film, and currently sells for $37,000. And a set of 717 microfiche cards reproducing all issues of the magazine since 1978 currently sells for approximately $3,000. Not surprisingly, very few (if any) individuals buy microfilm or microfiche (or the expensive machines necessary to read them) for home use—in sharp contrast to CD-ROM, which is ideal for home use on a personal computer.

Respectfully submitted,

Kenneth W. Starr
Christopher Landau
Kirkland & Ellis
655 15th St., N.W.
Washington, DC 20005
(202) 879-5000

Robert G. Sugarman
Naomi Jane Gray
Joanne M. McLaren
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

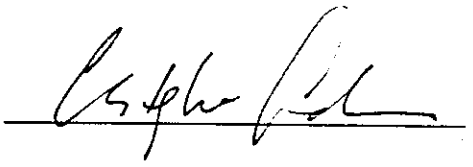
Terrence B. Adamson
Angelo M. Grima
Karen K. Schwartz
National Geographic Society
1145 17th St., N.W.
Washington, DC 20036
(202) 857-7000

April 12, 2001

CERTIFICATE OF SERVICE

I, Christopher Landau, hereby certify that a copy of the foregoing petition for rehearing and petition for rehearing *en banc* was served by Federal Express on the following counsel on April 11, 2001:

Norman Davis, Esq.
Steel, Hector & Davis LLP
200 South Biscayne Boulevard
Suite 4000
Miami, FL 33131-2398



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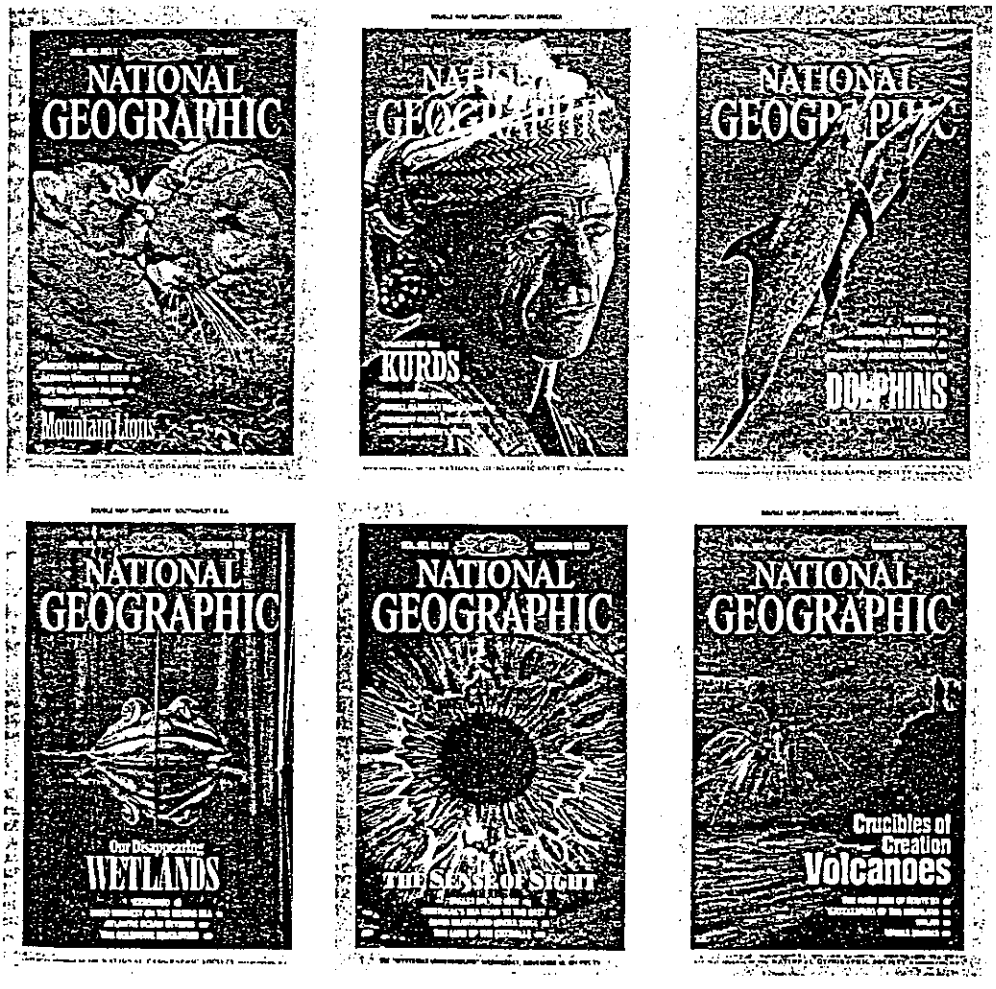

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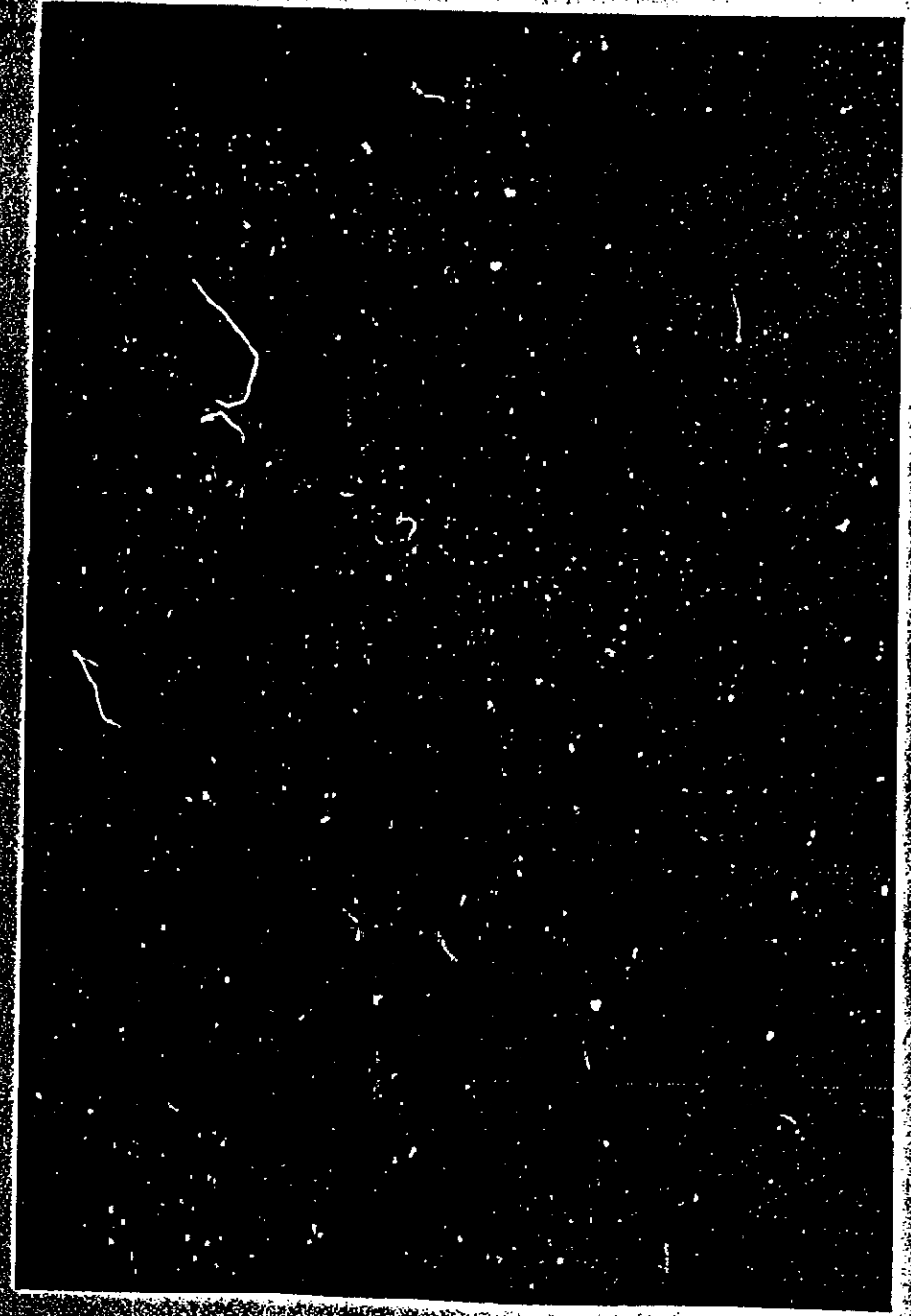

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NATIONAL GEOGRAPHIC SOCIETY

WASHINGTON, D.C.

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United States Copyright Office

Copyright Registration for Multimedia Works

GENERAL INFORMATION

A multimedia work is a work, often instructional, which, excluding its container, combines authorship in two or more media. The authorship may include:

- text
- artwork
- sculpture
- cinematography
- photography
- sounds
- music or
- choreography

The media may include two or more of the following:

- printed matter, such as a book, charts or posters, or sheet music;
- audiovisual material, such as a filmstrip, slides, videotape, or videodisk;
- a phonorecord, such as an audiodisk or audiotape; or
- a machine-readable copy, such as a computer-read disk, tape, or chip.

For the purpose of copyright registration, it is important to identify the copyrightable elements contained in the multimedia work. Identifying the elements will help you to determine which application form to use and what type of material to deposit.

In any multimedia work, there may be several elements, usually including a motion-picture element or other audiovisual element, or a sound recording element.

An **audiovisual element** consists of a series of related pictorial images intended to be shown by the use of projectors, viewers, or electronic equipment. This element may be a filmstrip, slides, a film, a videotape, a videodisk, or a CD-I (interactive compact disk).

A **motion-picture element** is an audiovisual element which consists of a series of related images which, when shown in succession, **impart an impression of motion.** This element may be in the form of film, videotape, videodisk, or a CD-I.

A **sound-recording element** is a series of recorded sounds. Sounds accompanying an audiovisual or motion picture element are not defined in the copyright law as a "sound recording."

HOW COPYRIGHT IS SECURED

Statutory copyright protection begins automatically when a work is created in a fixed form such as a writing or recording. The Copyright Office, an office of public record, registers claims to copyright and issues certificates of registration; it does not "grant" or "issue" copyrights. (See Circular 1, "Copyright Basics," for the benefits of registration.)

REGISTRATION PROCEDURES

To register a claim to copyright in a work, send the following three elements **in the same envelope or package** to:

Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

1. A nonrefundable filing fee of $30* for each application;
2. A nonreturnable deposit (copy) of the work for which registration is being made; and
3. A properly completed application form.

Single Unit Registration

All copyrightable elements of a multimedia kit may generally be registered with a **single** application, deposit and fee, provided: 1) they are not published, or if published, are published together as a single unit; and 2) the copyright claimant is the same for each element.

Separate registrations for individual elements may be made by submitting a separate application and filing fee for each. A separate registration is required, however, for any element of a multimedia kit that is published separately or claimed by someone other than the copyright claimant for the other elements.

*NOTE: Registration filing fees are effective through June 30, 2002. For information on the fee changes, please write the Copyright Office, check the Copyright Office Website at www.loc.gov/copyright, or call (202) 707-3000.

FEE

The filing fee is $30* for each claim. Send a check or money order, payable to the Register of Copyrights. Do not send cash.

DEPOSIT REQUIREMENTS

The application must be accompanied by a deposit of the work to be registered. The deposit requirement varies according to the type of work being registered, and whether the work has been published (see page 4 for the definition of publication). Copies or phonorecords deposited will not be returned.

Unpublished Works

Deposit one complete multimedia kit, containing all elements covered by the registration. (All elements should bear the title of the work. If the work contains color, the copy sent as a deposit should be in color.)

Published Works (See page 4 for the definition of publication.)

For a multimedia kit first published in the United States, deposit one "complete copy" of the best published edition. A "complete copy" includes all elements in the unit of publication. (See Circular 7b, "Best Edition," for information on the best edition criteria.)

Effective Nov. 27, 1991, either one complete copy of the work as first published or one complete copy of the best edition of the work is the required deposit for works first published only in a country outside the United States.

Works Containing a Motion-Picture Element

If the multimedia kit contains a motion-picture element, deposit a description of the motion picture in addition to the normal deposit requirements. The Library of Congress prefers the most detailed description possible, such as a shooting script, but will accept a synopsis or other general description. (See Circular 45, "Copyright Registration for Motion Pictures.")

Works Containing an Element Fixed or Published in Machine-Readable Copies

When the multimedia kit contains authorship that is fixed or published only in machine-readable form, such as a com-

puter tape or disk, or a semiconductor chip, deposit the appropriate identifying material for the machine-readable copy.

- **Pictorial Images.** If the machine-readable copy produces a series of pictorial images (such as a videogame or instructional work), deposit the following material for this kind of audiovisual work:

  1. A written synopsis or outline of the content of the audiovisual work; and
  2. A reproduction of the audiovisual elements, in the form of:
     a. A videotape, depicting representative portions of the copyrightable content, or
     b. A series of photographs or drawings depicting representative portions of the work; and
  3. The container and any instructional guide, if either contains authorship in which copyright is being claimed.

Note: If the pictorial images exist in color, they should be reproduced in color. If the work is published with a copyright notice, the notice and its position on the work must be clearly shown on the identifying material.

- **Textual Images.** If the machine-readable copy produces only a series of textual images, deposit one copy in visually perceptible form of the first and last 25 pages or the equivalent and 5 or more pages of the remainder, including the copyright notice, if any.
- **Musical Compositions.** If the machine-readable copy produces a musical composition, deposit a notated transcription or recording (audiotape or audiodisk) of the entire work.
- **Sound Recordings.** If the machine-readable copy produces a sound recording, deposit a recording of the entire work on an audiotape or audiodisk.
- **Computer Programs.** If the machine-readable copy contains a computer program, deposit the first and last 25 pages of the source code printout. (See Circular 61, "Copyright Registration for Computer Programs," for further information.)

APPLICATION FORMS

The appropriate form for registration depends on what elements make up the multimedia kit. (The chart on page 6 describes typical multimedia kits and shows the appropriate form and description of authorship in each case.)

Generally, select the application form on the following bases:

1. **Use Form PA** if the work contains an audiovisual element, such as a filmstrip, slides, film, or videotape, **regardless of whether there are any sounds.**
2. **Use Form SR** if the work does not contain an audiovisual element, but contains an audiotape or disk in which sound-recording authorship is claimed.
3. **Use Form TX** if the work contains only text, such as a manual and a computer program that produces a textual screen display. (See Circular 61 for further information.)

Note: Regardless of the form used, the application may include a claim in all accompanying authorship. See chart on page 6.

How to Complete the Application

Instructions for completing each space of the application accompany the form. The following points should be noted in particular.

Space 1:

Title. State the title of the work exactly as it appears on the multimedia kit. If there are variances, give the one title that identifies the work as a whole.

Nature of Work (Form PA). State "audiovisual work."

Nature of Material Recorded (Form SR). Indicate the nature of material on the phonorecord.

Space 2:

Name of Author. Name the author(s) of the copyrightable material being claimed. Where the work is a new version, name the author(s) of the new material claimed in space 6b. Ordinarily, the author is the person who actually created the work. However, where the work or any contribution to it is a work made for hire, the employer is considered the author.

Work Made for Hire. Give the appropriate answer to this question. A work made for hire is either 1) a work prepared by an employee within the scope of his or her employment, or 2) a work specially ordered for a certain use, with an express written agreement that the work shall be considered a work made for hire. Such uses include contributions to a collective work, parts of a motion picture or other audiovisual work, and a supplementary work, such as pictorial illustrations and instructional text. (See Circular 9, "Works Made for Hire," for further information.)

Nature of Authorship. Describe the author's copyrightable contribution to the work, for example:

1. If the author's contribution is contained in photographic slides, audiotapes and booklets, use Form PA and state "photography, recorded and printed text, and sounds."
2. If the author's contribution is contained in audiocassettes and books, use Form SR and state "recorded and printed text and sound recording."
3. If the author's contribution is contained in a computer program and manuals, use Form TX and give "text of computer program and text of manuals."

Note: Do not include elements that are not present in the deposit, or elements that are not protected by copyright, such as concepts, ideas, or methods.

Space 3:

Creation. Give the year in which authorship of the last element of the multimedia kit was completed. If the work is a new version, give the date of completion for the new version.

Publication. If the multimedia kit has been published (see this page for the definition of publication), give the complete date (month, day, and year) and nation of first publication. If this is a revised version, give the date and nation of first publication of the revised version.

Space 4:

Claimant. Give the name and address of the copyright claimant. The copyright claimant is the author or the person or organization that has obtained all of the rights in the United States copyright.

Transfer. If the claimant is not the author, include a statement in the transfer block in space 4, showing how the claimant acquired the copyright. Examples of generally acceptable statements include: "by written agreement," "written assignment," "written contract," and "by will." When the names in spaces 2 and 4 are different, but they identify the same legal entity, the relationship between the names should be explained in space 4. Examples are: "Doe Publishing Company, solely owned by John Doe" or "John Doe doing business as Doe Publishing Company."

Note: Do not attach copies of documents of transfer of copyright to the application. (See Circular 12, "Recordation of Transfers and Other Documents," for information on how to record documents pertaining to copyright ownership.)

Space 5:

Previous Registration. Answer "yes" to the first question only if a certificate of copyright registration has been issued for this work, or any part of it, or for a previous version of the work. If previous registration has been made, check the appropriate box to show why another registration is sought and give the requested information about the previous registration. Answer "no" to the first question if no previous registration was completed, and leave the rest of space 5 blank.

Space 6:

Complete this space only if the work being registered contains material that:

1. was previously published; or
2. was previously registered in the U.S. Copyright Office; or
3. is in the public domain.

If this space is applicable to the work submitted, please complete both parts.

Preexisting Material (6a). Briefly describe the authorship that was previously published or registered, or that is in the public domain. Examples are: "previously published edition," and "previously published text and photography."

New Material Added (6b). Briefly describe all the new copyrightable authorship that is the basis of the present registration. An example is: "some new text, new photography." (The statement used in 6b may be used in space 2 to describe the author's contribution.)

Space 8 (Forms PA and SR) **or Space 10** (Form TX):

The application must bear the original signature of a person who is authorized to file the claim and should be dated. For a published work, the application must be certified on or after the date of first publication.

PUBLICATION

Under the 1976 Copyright Act, publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication.

The following acts do not constitute publication: performing or displaying the work, preparing copies or phonorecords for publication, or sending the work to the Copyright Office for registration.

The definition of publication as stated in the previous two paragraphs applies only to works published under the copyright law that took effect January 1, 1978. For information about works published prior to that date, call or write the Copyright Office.

NOTICE OF COPYRIGHT

Before March 1, 1989, the use of copyright notice was mandatory on all published works, and any work first published before that date should have carried a notice. For works first published on and after March 1, 1989, use of the copyright notice is optional. For more information about copyright notice, see Circular 3, "Copyright Notice."

EFFECTIVE DATE OF REGISTRATION

A copyright registration is effective on the date the Copyright Office receives all the required elements in acceptable form, regardless of how long it then takes to process the application and mail the certificate of registration. The time the Copyright Office requires to process an application varies, depending on the amount of material the Office is receiving.

If you apply for copyright registration, you will not receive an acknowledgment that your application has been received (the Office receives more than 600,000 applications annually), but you can expect:

- A letter or a telephone call from a Copyright Office staff member if further information is needed or
- A certificate of registration indicating that the work has been registered, or if the application cannot be accepted, a letter explaining why it has been rejected.

If you want to know the date that the Copyright Office receives your material, send it by registered or certified mail and request a return receipt.

FOR MORE INFORMATION

To speak to an information specialist, call (202) 707-3000 (TTY: 707-6737), Monday to Friday, 8:30 a.m. to 5:00 p.m., eastern time, excluding federal holidays. Recorded information is available 24 hours a day. Order forms and other publications from:

Library of Congress
Copyright Office
Publications Section, LM-455
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

or call the Forms and Publications Hotline 24 hours a day at (202) 707-9100. Most circulars (but not forms) are available via fax. Call (202) 707-2600 from a touchtone phone and follow the prompts. Access and download circulars, forms, and other information from the Copyright Office Website at **www.loc.gov/copyright.**

A GUIDE TO WHICH APPLICATION FORM TO USE

The following are examples of typical multimedia deposits showing the appropriate form and authorship statements for registration. The fact situations pertaining to a particular claim will determine the correct way to complete the form.

Form to Use	Nature of Deposit	Suggested Nature of Authorship Statement
PA	Slides and booklet	(1) Entire work *or* (2) Text and photography
PA	Slides (or filmstrips), booklet, and audiocassettes	(1) Entire work *or* (2) Text as printed and recorded; photography, and sounds
PA	Videocassette, manual with text and pictorial illustrations	(1) Entire work *or* (2) Cinematography, text, and illustrations
PA	Filmstrip, pamphlets, poster, and music soundsheet	(1) Entire work *or* (2) Photography, text, artwork, lyrics, music, and sounds
PA	Manuals, container with artwork, and identifying materials (computer program listing, videotape) for machine-readable diskette which produces pictorial screen display	Printed text and artwork, text of computer program, and audiovisual work
PA	Manual, interactive compact disk, and identifying material for computer program on machine-readable diskette (or cassette)	Printed text, photographs, and text of computer program
SR	Audiocassettes and manual	**Do Not Use "Entire Work" on Form SR.** Text as printed and recorded, and sound recording
SR	Music soundsheets, booklets, and posters	Text, artwork, lyrics, music, and sound recording
SR	Audiocassettes, manual and identifying material for computer program on machine-readable diskette (or cassette)	Text of manual and computer program, recorded text, and sound recording
TX	Manuals and identifying material for computer program on machine-readable diskette (or cassette) which produces textual screen display	Text of manuals and computer program

Library of Congress • Copyright Office • 101 Independence Avenue, S.E. • Washington, D.C. 20559
www.loc.gov/copyright

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