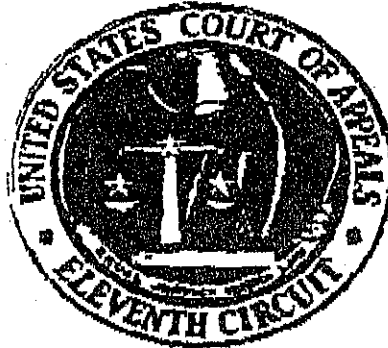


United States Court of Appeals for the Eleventh Circuit



56 Forsyth Street, N.W.
Atlanta, GA 30303

due
Nov., 15

FAX TRANSMITTAL COVER SHEET

TO: Norman Davis

FROM: Janifer Alexander

Clerk's Office

DATE: 10/26/00

DOCUMENT DESCRIPTION: 00-10510; Greenberg v.
National Geographic - letter from Court

TOTAL NUMBER OF PAGES (including this page): 3

CONTACT: Person: Janifer

PHONE NO: (404) 335-10172

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

In Replying Give Number
Of Case And Names of Parties

October 26, 2000

MEMORANDUM TO ALL ADDRESSEES:

NO. 00-10510 GREENBERG vs. NATIONAL GEOGRAPHIC SOCIETY

Pursuant to the Court's direction, defendant-appellee, Mindscape, is directed to supplement the record by providing this court with a copy of the copyright registration certificate and the deposit materials pertaining to the Mindscape Program ("Program") (i.e., the subject of the "shrink-wrap" license) portion of the National Geographic CD-ROM Product ("Product").

Further, the parties are directed, under separate cover, to provide this court with copies of any agreements between Greenberg and the National Geographic Society ("Society") in which Greenberg agreed to permit the Society to use his photographs in National Geographic Magazine ("Magazine"). The parties should also provide this court with a copy of the letter in which Greenberg requested the Society transfer all rights in his pictures back to him, as well as provide a copy of the document in which the Society transferred those rights back to him. If any of these documents are already in the record, the parties should provide the applicable citations to the record, as well.

Additionally, the parties and amici are directed to file supplemental briefs, not to exceed 15 pages, on the following two issues:

- (1) Assuming, *arguendo*, that the language of 17 U.S.C. Sect.201(c) is ambiguous and/or subject to interpretation, and it is helpful to look to the legislative history for clarification, please discuss the following excerpt from H.R. Rep. No. 94-1476 (1976): "Under the language of this clause...the publisher could not revise the contribution itself or include it [the contribution] in a new anthology or entirely different magazine or other collective work." (emphasis added). Specifically, address whether the Product in its entirety represents a "new collective work" within the purview of that legislative history.

- (2) Address the issue of whether a change in the medium (from print to digital) for the collective set of individual issues of the Magazine (each of which constitutes a collective work), integrated together with the Moving Sequence and the Program constitutes a new product, in a new medium, in a new market, that transcends the publisher's privilege in Sect. 201(c).

Each party and amicus shall have 20 days from the date of this notice in which to submit to the Court the requested documents and supplemental briefs. These items must physically be received in this office by the due date (November 15, 2000).

This notice is being sent to counsel by facsimile transmission. A hard copy of this notice will also be placed in the mail for counsel's files. If there are any questions regarding the above, please contact the Clerk's office immediately.

Sincerely,

THOMAS K. KAHN, Clerk

BY: Brenda H. McConnell, Manager *BMC*
Case Closing/(404) 335-6209

Reply to Brenda McConnell at the above number or Jenifer Alexander at (404) 335-6172.