

DOCKET NO. 00-10510-C

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

JERRY GREENBERG and IDAZ GREENBERG,  
Plaintiffs/Appellants

vs.

NATIONAL GEOGRAPHIC SOCIETY, a District of Columbia corporation,  
NATIONAL GEOGRAPHIC ENTERPRISES, INC., a corporation, and  
MINDSCAPE, INC., a California corporation,  
Defendants/Appellees.

**SUPPLEMENTAL SUBMISSION OF NATIONAL GEOGRAPHIC SOCIETY,  
NATIONAL GEOGRAPHIC ENTERPRISES, INC. AND MINDSCAPE, INC. IN  
RESPONSE TO COURT'S MEMORANDUM DATED OCTOBER 26, 2000**

ROBERT G. SUGARMAN, ESQ.  
NAOMI JANE GRAY, ESQ.  
JOANNE MCLAREN (not admitted in  
the Eleventh Circuit)  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
(212) 310-8000

Terrence B. Adamson, Esq.  
Executive Vice President  
National Geographic Society  
1145 17th Street, N.W.  
Washington, D.C. 20036-4688

- and -

Of Counsel

Edward Soto, Esq. (265144)  
Valerie Itkoff, Esq. (26514)  
WEIL, GOTSHAL & MANGES LLP  
701 Brickell Avenue  
Suite 2100  
Miami, FL 33131  
(305) 577-3100

Attorneys for the Appellees

This Supplemental Brief is submitted on behalf of National Geographic Society, National Geographic Enterprises, Inc. (collectively, the "Society") and Mindscape, Inc. ("Mindscape") (collectively, "Appellees") in response to the Court's Memorandum dated October 26, 2000.<sup>1</sup>

## ARGUMENT

### I. CD-ROM 108 IS NOT A "NEW ANTHOLOGY" OR "OTHER COLLECTIVE WORK" WITHIN THE PURVIEW OF THE LEGISLATIVE HISTORY OF SECTION 201(C).

CD-ROM 108 is not a "new anthology" or "other collective work" as those terms are used in the legislative history of § 201(c) because it differs only trivially from the paper copies of National Geographic Magazine (the "Magazine") in which Appellant Greenberg's photographs were published. As is expressly permitted by § 201(c), CD-ROM 108 merely reproduces the photographs in the same collective work exactly as they originally appeared on paper, or, at most, a revision of it.

Section 201(c) provides that:

Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of the copyright in the collective work is ***presumed to have acquired only the privilege of reproducing and distributing the***

---

<sup>1</sup> On November 6, 2000, subsequent to the Court's Memorandum, the Supreme Court of the United States granted *certiorari* in New York Times Co. v. Tasini, No. 00-201. Appellees have respectfully submitted that affirmance of summary judgment in the case *sub judice* is appropriate even under the nonbinding Second Circuit opinion in Tasini due to differences in the particular uses and products at issue in that case and the one image-based product at issue in the case before this Court. It is revealing that in their brief opposing *certiorari* before the Supreme Court, the plaintiff-respondents in Tasini devoted substantial attention to this point – that the products at issue in Tasini were not image-based products of complete collective works, but "electronic shears" that exploit individual parts of collective works. (Resp. Br. at 7). As the only Supreme Court interpretation of § 201(c), however, the ultimate opinion in Tasini may have relevance to the issue before this Court.

***contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.***

17 U.S.C.A. §201(c) (emphasis added).

The paragraph of H.R. Rep. No. 94-1476 (1976) to which the Court refers in the Memorandum To All Addressees dated October 26, 2000 reads in full:

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. (emphases added)

We respectfully submit that the complete paragraph is critical to interpretation of the legislative history. First, the privilege given to the publisher of the collective work “is an essential counterpart of the basic presumption” and thus an essential component of the “balancing of the equities.” Second, the excerpt to which the Court refers, which sets forth what publishers cannot do, is the second part of a sentence that first sets forth specific examples of what publishers can do - - “reprint a contribution from one issue in a later issue of the magazine, and... reprint an article from a 1980 edition of an encyclopedia in a 1990 revision of it; . . .” Thus, the “later issue of [the] magazine” or “1990 revision of [a 1980 edition of an encyclopedia]” is not “a new anthology . . . or other collective work,” as those terms are used in § 201(c), even though such “later issue[s]” or “revisions[s]” can certainly be “other collective

works,” “new collective works”<sup>2</sup> and “derivative works” as well. Indeed, the difference between the later edition of any encyclopedia, which is permitted under Section 201(c), and the earlier edition is much more significant in scope and materiality than any difference between the Magazine on CD-ROM 108 and the original paper issues of the Magazine. The later encyclopedia not only adds and deletes entire entries, but also makes numerous revisions to the contributions themselves.<sup>3</sup> For example, updating the contribution written in the year 2000 about Germany would result in a dramatically different contribution from the one written in 1980 as a result of the intervening fall of the Berlin Wall and German reunification. In contrast, there is no difference in the way in which Mr. Greenberg’s photographs appear in National Geographic Magazine as reproduced in CD-ROM 108 and the way in which they appear in the paper copy of the Magazine. Tellingly, while the Copyright Act provides that “editorial revisions” to pre-existing works will create a derivative work, and nonetheless will be permitted because of the “revision” privilege of § 201(c), the record is crystal clear that the Society made absolutely no changes, editorial or otherwise, to the pre-existing issues of the Magazine. See 17 U.S.C. § 103(a).

---

<sup>2</sup> Respectfully, for the reasons set forth above, we submit that the questions framed by the Court apparently misread this provision of the legislative history specifically in that the word “new” modifies only “anthology” and not “collective work.” No other construction would make any sense given the examples in the legislative history and language of the statute itself.

<sup>3</sup> The argument that CD-ROM 108 cannot be a revision because the issues of the Magazine contained therein were not themselves revised is spurious. While the Society made no internal changes to the Magazines themselves, it bundled the Magazines together in a single product and added the Moving Cover Sequence, the Kodak promotional message and an electronic index (the search engine). There is no support in § 201(c), the Copyright Act as a whole or, indeed, the English language for the notion that a “revision” must, by definition, remove elements from the prior work or add elements to it. Thus, while CD-ROM 108 is a republication of “that collective work,” precisely because nothing in the Magazines was changed, to the extent that the Court finds that CD-ROM 108 is something more, it is, at most, a revision.

If §201(c) permits the later edition of an encyclopedia, as is expressly provided in the legislative history, then reproducing the Magazine in CD-ROM 108 is certainly permissible as well. The introductory elements added to CD-ROM 108 are far more trivial than the new material added to a 1990 revision of an encyclopedia. It should not, therefore, constitute a “new” collective work, much less a “new anthology” or “other collective work,” as those terms are used in §201(c). Indeed, it is virtually inevitable that a revision will be a derivative work, and if, as a result, it loses its protection under Section 201(c), the “revision” privilege explicitly granted in §201(c) to the owners of collective works would be excised from the statute.

The additional elements present in CD-ROM 108 – less than one minute total of prefatory material consisting of the Moving Cover Sequence and a Kodak promotional message, along with a search engine that is the functional equivalent of the paper index -- viewed in the context of the entire work of over 1,200 complete issues of the Magazine spanning 108 years -- do not provide sufficient originality to “recast, transform or adapt” the pre-existing issues of the Magazine into a derivative work, see 17 U.S.C. § 103(a), or to create an “other collective work,” even if the individual additions are original enough to qualify for copyright on a stand-alone basis. See Paramount Pictures v. Video Broadcasting Sys., 724 F. Supp. 808 (D. Kan. 1989). In that case, a videocassette retailer added commercials to the beginning of videocassettes containing the plaintiff’s copyrighted motion pictures. Paramount, 724 F. Supp. at 812. Although the commercials themselves were original works, “the court does not recognize the addition of it to a videocassette in any way recasting, transforming or adapting the motion picture” into an original work of authorship. Paramount, 724 F. Supp. at 821. The Moving Cover Sequence and Kodak advertisement are no different: while they are original works when

viewed on a stand-alone basis, they do nothing to transform this collection of individual issues of the Magazine into a new or different work.<sup>4</sup>

Like the Moving Cover Sequence, the search engine does not transform the pre-existing issues of the Magazine into a derivative work and is insufficiently creative, in the context of the work as a whole, to make CD-ROM 108 a new collective work. The search engine is the technological equivalent of the paper index to all of the issues of the Magazine, which the Society has prepared for decades to accompany bound volumes containing multiple issues of the Magazine. Like the search engine, these paper indices permit the user to search for articles by title, author and subject matter. Indeed, the substantive information regarding the articles that forms the basis of the search engine essentially replicates the paper indices of the Magazine; the difference is that CD-ROM 108 displays the information via a different medium.

Similarly, the software that enables the user to retrieve and view the issues of the Magazine in CD-ROM 108 – referred to as the “Program” in the Mindscape shrink-wrap license – does not remove CD-ROM 108 from the ambit of § 201(c). The Program is a function of, and is necessitated by, the electronic medium. Without it, users would have no way to navigate the copies of the Magazine in CD-ROM 108. Indeed, the Program is the technological equivalent of the equipment required to view microfilm and microfiche copies of the Magazine. Like CD-ROM 108, microfilm and microfiche must be viewed using specialized machinery. While the software coding that activates features on CD-ROM 108 that permit viewing of each Magazine

---

<sup>4</sup> Moreover, in certain of the bound volumes that the Society has published for years, there is included in the front of the work a mosaic depicting the covers of the Magazines contained in that bound volume. (Exh. H). Just as that mosaic does not transform the bound volume into a derivative work or “other collective work,” the Moving Cover Sequence does not transform CD-ROM 108 into a derivative work or “other collective work.”

page and using the electronic index may be independently copyrightable, it does not transform the issues of the Magazine into a “new anthology” or “other collective work” any more than a microfilm reader, with its unique and patentable technology, transforms microfilm copies of the Magazine into “new anthologies” or “other collective works.” The presence of the software is medium-driven and has no impact on the § 201(c) analysis. As discussed further below, a mere change in medium does not provide sufficient originality to create a new work under the Copyright Act. (See also Supplemental Submission Concerning the Program at 2).

The balance struck by Congress in enacting § 201(c) insured that (1) authors would own the copyrights in their contributions and be able to exploit those copyrights as they saw fit, and (2) publishers could reproduce the authors’ contributions to collective works in certain enumerated ways. Thus, photographers, like Greenberg, who own copyright in their individual images, can license those images on an exclusive basis for calendars, coffee mugs, T-shirts, advertisements and other commercial uses, or even further editorial uses. The only right that the Society has pursuant to § 201(c) is the right to use the photograph in the collective work and the privilege to reproduce the photograph in the collective work. There is no question, and Greenberg has conceded (Appellants’ Reply Br. at 4), that the Society could reproduce each issue of the magazine on a separate CD-ROM disk. It should not be deprived of that privilege by reproducing multiple issues on a disk, just as multiple issues have long been reproduced in microfilm, microfiche and bound volumes. Similarly, the presence of the Moving Cover Sequence and Kodak promotional message – minuscule additions in relation to the content of the entire work – or the search engine and the Program, both elements that are necessitated by the electronic medium, do not disturb the statutory balance.

The Society could not, under § 201(c), publish Greenberg's photographs in a new publication such as an anthology like "The Best Fish Photographs From The National Geographic Magazine," or in other magazines ("other collective works") it publishes, such as Traveler Magazine or World Magazine, or in magazines such as the New Yorker. Those would be "new anthologies" or "other collective works." Simply bundling together multiple issues of the Magazine, together with "trivial" additional elements, however, does not create a sufficiently different work to qualify as an "other collective work."

**II. THE CHANGE IN MEDIUM, INTEGRATED TOGETHER WITH THE MOVING COVER SEQUENCE AND THE "PROGRAM," DOES NOT TRANSCEND THE PUBLISHER'S PRIVILEGE UNDER SECTION 201(C).**

As discussed more fully above, the Moving Cover Sequence and search engine do not in themselves transcend the publisher's privilege under Section 201(c). Likewise, the change in medium from paper to electronic format and any differences in marketing, distribution and sale of CD-ROM 108 are irrelevant to the §201(c) analysis.

**A. A Change in Medium Does Not Affect The Publisher's Privilege Under Section 201(C)**

Congress wrote the 1976 Act to be medium neutral.<sup>5</sup> Indeed, as the following colloquy between Representative Robert Kastenmeier and George D. Cary of the Copyright Office establishes, future technology, like CD-ROM, was intended to be encompassed by Section 201(c).

Mr. Kastenmeier . . . I would like to ask a general question or two of Mr. Cary before proceeding. You indicated that we may not

---

<sup>5</sup> See, e.g., H.R. Representatives. NO. 94-1476, 94th Cong. Sess. 52. 52(1976), reprinted in 1976 U.S.C.C.A.N. 5659, 5665, ("it makes no difference what the form, manner, or medium [in which a work is fixed]... whether embodied in a physical object in written, printed... magnetic, or any other stable form, and whether it is capable of perception directly or by means of any machine or device 'now known or later developed'"). The Copyright Act applies to "copies" stored in any medium "now known or later developed" and to "literary works" expressed in "words, numbers or other... symbols" on tapes, discs or punch cards. 17 U.S.C. § 101.



have another general revision of copyright law for many years, perhaps 50 or more years. Considering that it was extremely difficult to anticipate the technology of the last 50 years, do you think we should attempt to do this in the future: that is, to anticipate what technology may eventually bring in printing or in reproduction or in anything else, in broadcasting, in the years ahead? Isn't it virtually an impossible task to anticipate these changes?

Mr. Cary. It would seem to us that is a correct statement. As a matter of fact, that is the basis on which we drafted this bill. For example, you can read the bill from beginning to end and you won't find in it any reference to computers, for example. Yet these are one of the coming instruments of communication in the future. We have tried to phrase the broad rights granted in such a way that they can be adapted as time goes on to each of the now advancing media. This is our hope.

Hearing on H.R. 4347, H.R. 5680, H.R. 6831, H.R. 6835 Before the House Committee on the Judiciary, Copyright Law Revision, 89th Cong. at 57 (U.S. Gov't Prtg. Office 1966) (emphasis added).

In Bridgeman Art Library, Ltd. v. Corel Corp., 36 F. Supp.2d 191 (S.D.N.Y. 1999), the court rejected an argument that a change in medium constituted sufficient originality to qualify for copyright protection. In that case, the defendant "labored to create 'slavish copies' of public domain art" in preparing transparencies and CD-ROMs. Bridgeman, 36 F. Supp.2d at 191. The court found that

"[w]hile it may be assumed that [the creation of the transparencies and CD-ROM] required both skill and effort, there was no spark of originality – indeed, the point of the exercise was to reproduce the underlying works with absolute fidelity. Copyright is not available in these circumstances."

Id.; see also L. Batlin & Son, Inc. v. Snyder, 536 F.2d 486 (2d Cir. 1976) (differences between plastic "Uncle Sam" coin bank and cast iron original in public domain were trivial, thus plastic bank was insufficiently original to support copyright). As in Bridgeman, the Society created slavish copies of the original issues of the Magazines in CD-ROM 108. Each page of each issue

of the Magazine was scanned into electronic format exactly as it appeared in print, page by page, with absolutely no changes to the contents, layout, order, context or in any other particular.<sup>6</sup>

Because CD-ROM 108 is a slavishly faithful image of each and every page and each and every issue of the Magazine, it is no different for purposes of §201(c) than collections of the Magazine published in bound volumes and microfilm or microfiche format. Tellingly, when the Society faithfully copied the Magazine from paper format into microfilm and microfiche format – which it did at the time of Greenberg’s assignments and publication on paper, continued to do even after it assigned the copyright in Greenberg’s individual photographs to him in 1985, and continues to do to this day – no one, including Greenberg, claimed, or, indeed, now claims that it violated the rights of photographers.

Cohen v. Paramount Pictures Corp., 845 F.2d 851 (9th Cir. 1988), discussed during oral argument, does not deal with the medium-neutrality of the 1976 Act. Indeed, the Cohen court did not address the Copyright Act in general or §201(c) in particular. Cohen was a contract interpretation case that addressed the limited circumstances, not present here, where a licensor grants rights to exploit a work in certain specified media and expressly retains all rights not set forth in the license. The Cohen court also noted that, at the time the parties entered into their medium-specific contract, the medium at issue in the litigation – videocassette – did not exist. In contrast to Cohen, the Society’s right to reproduce Greenberg’s photographs was never expressly restricted to certain media. (Exhs. A, B, C and G). Indeed, with respect to three out of the four articles in which Greenberg’s images appeared, the Society obtained all rights in those

---

<sup>6</sup> By contrast, the filming of a live theatrical production, an example cited at oral argument, necessarily involves the addition of creative elements such as lighting, camera angle and focus, lens width, and the like. Moreover, the filming of a play often presents the situation, as in the Cohen case discussed below, where the playwright may have granted a license for a live theatrical production, which would neither expressly nor implicitly include a video or a film.

images. (Exhs. A, B and G).<sup>7</sup> Moreover, not only did microfilm and microfiche images of the entire collection of Magazines exist at the time Greenberg sought the Society's assignment and at the time the Society assigned Greenberg copyright in his photographs, but the Society was actually publishing, and has continued to publish, National Geographic Magazine in those media.<sup>8</sup>

Thus, the fact that the Magazine is reproduced in electronic format does not transcend the publisher's privilege in Section 201(c).

B. Section 201(c) and its medium neutrality does not condition the publisher's privilege on market factors.

Section 201(c) is silent as to economics: it does not condition the publisher's privileges on economic factors. Congress, which was acutely aware of changing technology when it enacted the 1976 Copyright Act,<sup>9</sup> thus clearly envisioned that products developed in new media would be marketed, distributed and sold through different channels and in different markets than products in traditional media. Yet it imposed no economic limitations on publishers in exercising their privileges pursuant to § 201(c). Therefore, the potential of publishers to sell products in new markets and thereby realize economic gain is irrelevant to an

---

<sup>7</sup> As the Court has requested, copies of documents evidencing the terms of Greenberg's agreements with the Society have been provided in a separate exhibit volume.

<sup>8</sup> Greenberg's request for assignment of copyright and the assignment itself have also been provided in the separate volume, as requested by the Court's October 26, 2000 Memorandum. As the Court will note, Greenberg's request for assignment of copyright expressly differentiates between the copyright in his individual images and the Society's continuing copyright in the Magazine ("This re-assignment would have no effect on the Society's reuse of this material as this provision was covered in the original contracts for each assignment"). The Society thus assigned Greenberg all rights in the individual photographs and did not mention and did not assign its rights in the collective works. Greenberg thus acknowledged that, while he would be assigned the copyright in the individual images, the Society would continue to have the right to "reuse" those images. That is all the Society has done in reproducing the Magazine in its entirety in CD-ROM 108.

<sup>9</sup> See fn. 5 supra.

analysis of § 201(c). Such arguments are appropriately directed at Congress, not the Courts. See Tasini v. New York Times, 981 F. Supp. 841, 848, (S.D.N.Y. 1997) rev'd on other grounds, 192 F.3d 356 (2d Cir. 1999), petition for cert. granted, (U.S. Nov. 06, 2000) (No. 00-201).

There is nothing in § 201(c) which justifies any distinction on the basis that CD-ROM 108 is sold through a taxable subsidiary of the Society and distribution agreements with other for-profit corporations. Indeed, microfilm and microfiche have for years been manufactured, marketed, distributed and sold by a for-profit entity, University Microfilms International (“UMI”). Moreover, like CD-ROM 108, microfilm and microfiche collections of the Magazine are marketed, distributed and sold through different channels than the paper copies of the Magazine and, as established below, for substantial amounts of money. Those microfilm and microfiche collections are marketed to and purchased by not only libraries, but by schools – both public and private – and business institutions.<sup>10, 11</sup> Greenberg does not challenge this historical practice. That the publisher’s exercise of the privilege may result in monetary profits is simply irrelevant to the analysis of § 201(c). Indeed, while CD-ROM 108 is sold for less than \$200, an equivalent collection of Magazines in microfilm format from UMI would cost approximately \$37,000. Moreover, but for the technological mechanics of reproduction necessitated by the medium, the compilation of all the issues of the Magazine on 30 CD-ROMs is identical to the compilations contained in the approximately 195 bound volumes or over 170 microfilm rolls or the microfiche collections of the Magazine that have long been published. In addition to the cost of the microfilm collection itself, microfilm and microfiche users must also

---

<sup>10</sup> Greenberg’s argument that microfilm and microfiche are specifically permitted by the “library exception” in Section 108 is plainly wrong. Section 108 permits libraries, under certain extremely limited circumstances, to make three copies of works already in their collections. Section 108 has no applicability here.

purchase expensive equipment in order to view the microfilm and microfiche. Despite these very considerable economic and marketing differences between the paper issues of the Magazine and microfilm and microfiche, neither Greenberg nor any other photographer has ever claimed that the long-time reproduction in microfilm or microfiche is prohibited under § 201(c).

An emphasis on economics is particularly misplaced in this case, moreover, because the Society is a nonprofit scientific and educational organization. (R1-20-Exh. A). Its mission is "to increase and diffuse geographic knowledge in its broadest sense." (R1-20-1). All revenues generated by the Society, including its wholly-owned taxable subsidiaries and including those from CD-ROM 108, are used to further this mission. If individual payments must be made for freelance contributions to the Magazine, with over 184,000 images and 9,500 articles over 108 years, as Greenberg contends it must, the resulting economic unfeasibility would mean that there would be no Complete National Geographic on CD-ROM, and the opportunity to provide this beneficial archival collection of the Magazine and its educational content to the public would be lost. Unlike corporations that sell microfiche and microfilm, the Society has no shareholders or stakeholders to benefit economically. The beneficiary of any economic gain attributable to CD-ROM 108 is the public at large, which benefits from the Society's educational programs, scientific research and exploration initiatives, and commissioning and underwriting of the articles and photographs that appear in the monthly Magazine, the official journal of the Society. It is also disingenuous to suggest that distribution of this archive of the Magazine is not in furtherance of this not-for-profit mission "to increase and diffuse geographic knowledge" simply because more people may have access to it because of the medium and its low cost.

---

<sup>11</sup> The commercial nature of this enterprise can be confirmed by a cursory glance at UMI's website, [www.bellhowell.com](http://www.bellhowell.com).

Mindful of the admonition of the Supreme Court of the United States in Feist -- quoted by this Court on a number of occasions -- that the primary objective of copyright "is not to reward the labor of authors but 'to promote the progress of science and the useful arts,'" Feist Publ'g, Inc. v. Rural Tel. Serv. Co. Inc., 499 U.S. 340, 349 (1991), we respectfully submit that the constitutional underpinnings of the copyright law are strengthened by the reproduction of this rich, historical archive of the Magazines in an accessible and easily-used form for the benefit of individuals, families, schools, libraries and researchers. And thus, Congress balanced the equities in the text of § 201(c) expressly to authorize this privilege to reproduce the exact images of a collective work such as National Geographic Magazine.

CONCLUSION

For all the reasons stated, Appellees respectfully request that the order of the District Court be affirmed.

Dated: November 14, 2000

ROBERT G. SUGARMAN, ESQ.  
NAOMI JANE GRAY, ESQ.  
JOANNE MCLAREN (not admitted in  
the Eleventh Circuit)  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
(212)310-8000

- and -

Edward Soto, Esq. (265144)  
Valerie Itkoff, Esq. (26514)  
WEIL, GOTSHAL & MANGES LLP  
701 Brickell Avenue  
Suite 2100  
Miami, FL 33131  
(305)577-3100

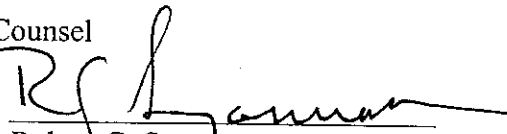
Attorneys for Defendants

- and -

Terrence B. Adamson, Esq.  
Executive Vice President  
National Geographic Society  
1145 17th Street, N.W.  
Washington, D.C. 20036-4688

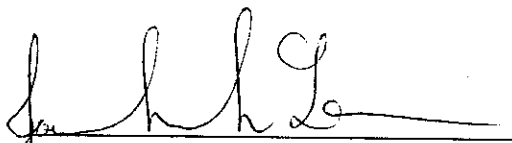
Of Counsel

By:

  
Robert G. Sugarman

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type-volume limitation set forth by the Court in its Memorandum Dated October 26, 2000. The brief utilizes proportional spacing and consists of under 15 pages.



Joanne M. McLaren