NEW FX:

AFTER 11 AM

CONTRACTS WATCH (ASJA)

AFTER 11 AM

LOOKING FOR ALLIES

American Society of Journalists & Authors Inc (ASJA)
[redacted]
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Pres: Florence Isaacs
Exec VP: Mark Fuerst
VPs: Kate Kelly; Dodi Schultz
Exec Dir: Alexandra S L Cantor
Treas: Chris Welles
Sec: Alice J Kelvin
Service organization providing exchange of ideas, market information. Regular meetings with speakers from the industry, annual writers conference; medical plans available. Professional referral service, annual membership directory; first amendment advocacy group.
1992 Meeting: Grand Hyatt Hotel, New York, NY, First Saturday in May
Members: 800
Pubn(s): Annual Membership Directory; *ASJA* Newsletter (11 times/yr, members only); *Code of Ethics & Fair Practices with Letter of Agreement; ASJA Handbook: A Writer's Guide to Ethical and Economic Issues* ($5.95)

[redacted]

.esday, May 20, 1997 9:49 AM

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Natl Geographic Society has undertaken some of the most daunting journalistic missions imaginable, sending writers and photographers to retrieve captivating images and stories from the most remote corners of the

NORMAN DAVIS

1 SHEET FOR

Date: Friday, April 10, 1998 10:17:30 AM
From: [redacted]
Subj: ASJA Contracts Watch 57
To: [redacted]

Note last item.

<> <> <> <> <> <> <>

ASJA CONTRACTS WATCH 57 (vol 5, #3) CW980409 April 9, 1998

News of the AUTHORS REGISTRY, COOKING LIGHT, THIS OLD HOUSE, ATLANTA JOURNAL-CONSTITUTION, CMP MEDIA, PENTHOUSE, a CD-ROM project on hold, and more...

* * * * * * * *

The AUTHORS REGISTRY, the not-for-profit licensing and payment clearinghouse, reports that since it began distributing money to authors for photocopy and electronic reproduction of their work, in the summer of 1996, it has paid out a total of $626,000. In 1997, its first full year of operation, the Registry funneled $441,000 to authors, and the pace of payouts is increasing, say Registry officials.

*****

The Registry also reports that FOOD & WINE (AMERICAN EXPRESS PUBLISHING), WEIGHT WATCHERS and COOKING LIGHT (the last two from SOUTHERN PROGRESS/TIME INC.) have begun to make payments for article and recipe reuses under their 1997 contributors' contracts. But Cooking Light freelancers are confused by on-again, off-again news about the magazine. Earlier this year came a reversal of CL's fairly writer-friendly policies: a new contract that eliminates most of the extra pay for broad reuse privileges. Then, a few weeks ago, word was that the magazine was coming around, at least in part (Contracts Watch, Feb. 17, 1998). But the editor tells Contracts Watch that as of now, the new contract stands. As a freelance market, then, Cooking Light has lost quite a bit.

*****

At THIS OLD HOUSE (TIME PUBLISHING VENTURES), the party line is that all freelance articles are works made for hire. The magazine promises extra fees for some later reuses, but writers give up copyright and the right to any reuses of their own. The party line, writers are

told, is firm.

Not so: In one recent deal, TOH agreed to a license in which the fee covers just first publication; the writer retains copyright. Reuses by the publisher continue to call for extra fees, and immediately upon publication the author is free to recycle the work; the only restriction is on reprints to home products manufacturers.

Big marks on the downside?

1. Free use of the article for promoting and advertising the magazine "without limitation as to time, form and number of uses." (The writer gives away what Madison Avenue copywriters charge for.)

2. Those reuse fees are "based on applicable space rates as we have established for those products at the time of use." (In other words, the customer names the price.)

Freelancers who think agreeing to such terms is not the way to business success will continue to stay away from TOH. But it's revealing that at This Old House, where contracts are presented as carved in stone, alterations are possible.

*****

Another in the not-always-so-rigid category is the ATLANTA JOURNAL-CONSTITUTION. The usual demand is for the right to use an article "in other Cox Newspaper compilations," plus Internet and electronic database rights, plus reprint rights in all media.

That contract, despite editors' denials, is sometimes replaced by a form that covers only first publication in print, "for one-time use only," and the right to "keep copies of your work for archival purposes only," which means the newspaper's electronic morgue.

According to a source in the paper's library, the AJC's internal archive contains everything published; the archive that is fed to Lexis-Nexis and other database compilers is stripped of wire service and syndicate material and articles by freelancers who haven't signed a contract specifically licensing online use. "We're very careful about what we put online," says the source. "Unlike some newspapers, we use only what we have rights to."

*****

CMP MEDIA, which covers the computer world with HOME PC, INFORMATION

WEEK and other publications, has a new, long-term, one-size-fits-all "Freelance Supplier Agreement" for writers, photographers and illustrators. A corporate-crafted cover letter crows, "Under this agreement, you will retain copyright to all the material that you submit; this is NOT a work-for-hire agreement." But the new contract demands a gaggle of rights, covering perpetual reuses, for a single fee. CMP misses the key rights issue for freelancers in a time of increasing recycling of published "content": If it's used more than once, the author should be paid more than once; a lump fee doesn't do it.

The new CMP contract also contains an offensive kill fee provision: the editor may call for an unlimited number of rewrites and may kill a piece for any reason; the amount of the kill fee, if any, is at the editor's sole discretion. Even one highly placed CMP editor calls that clause "absurd."

(A detailed memo on CMP's standard contract is available from ASJA.)

While some editors are enforcing the company order with a heavy hand, writers for at least one CMP unit have the option of an alternative, superseding contract. Its terms are a little better in one respect

(the kill fee), yet far worse in another (the rights clause). Word is that in that corner of the company, at least, editors may change key parts of the second contract to keep freelancers happy. Still, Contracts Watch hasn't heard of a deal struck that shows CMP as a good place for a freelancer to do business.

*****

A longtime PENTHOUSE regular has called it quits because the publisher apparently can't control its appetite.

Penthouse's mistitled "First Periodical Rights" agreement actually covers a long list of rights, offering pay for some of them but not for others. One of the chief sticking points was the magazine's insistence that its initial fee cover unlimited uses in any editions of Penthouse that may ever exist in the world, as well as TV and movie rights and all types of electronic rights forever. The writer offered to allocate parts of the fee to different rights. Penthouse said no.

Expressing regret over leaving a section editor who "is a joy to work with, a sensitive and careful editor," the writer nonetheless told Penthouse in a letter that "My proposal to you would have confirmed

my ownership of these rights without costing you a penny, but you also are interested in establishing a precedent of ownership. And that I cannot accept."

The editor replied that Penthouse wouldn't agree because it too wished to establish a precedent on ownership of electronic rights.

Points to Penthouse for frankness about the head butting: The magazine doesn't like the idea of freelancers keeping their property rights, and isn't afraid to say so. Penthouse has long tried to bully freelancers by sending with each assignment a cover note that warns against changing a word of the agreement. The threat is somewhat hollow; editors have been known to accept minor changes in terms, although, as the now ex-regular's case indicates, changes that give the contributor something worth writing home about are hard to come by.

*****

In a situation similar to the continuing NATIONAL GEOGRAPHIC dispute (Contracts Watch, May 6, May 27 and Dec. 23, 1997; Feb. 17, 1998), HEAVY METAL ("The Illustrated Fantasy Magazine") has dropped its plan

to peddle a 20-year back-issue collection on CD-ROM. The retreat came after weeks of sometimes heated dialog with contributors who objected.

Jean-Marc Lofficier, whose Starwatcher Graphics represents the artist Moebius, a key contributor to Heavy Metal, told Contracts Watch that regardless of the outcome of pending litigation in the U.S. (in which an appeals court may rule whether such CD-ROMs require permission of the authors), much of the material was originally published in a French magazine that had only print rights. "Under French law," he said, "print rights do not include electronic rights, so they couldn't have licensed more than that to the U.S. magazine."

Heavy Metal's vice president, Howard Jurofsky, told Contracts Watch some 50 sets had been sold at $200 each, but distribution now was halted, adding: "I still think we were in the right, but if there's too much backlash from creative people, it's not worth it. We ceased and desisted."

* * * * * * * *

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Complete Text: JOIN ASJACW-LIST

BEFORE YOU SIGN, check out your magazine or newspaper and its parent company in ASJA Contracts Watch. A complete, searchable archive is available on the World Wide Web. Find it--with other valuable information and tips on freelance contracts, rights and copyright--at the Web address below.

TO ASJA MEMBER AND OTHERS who send contracts, information and scuttlebutt: Thanks. Inquiries from all are welcome.

Contracts Committee, ASJA

1501 Broadway, New York, NY 10036

tel 212-997-0947

NORMAN DAVIS

ASJA CONTRACTS WATCH 46 (vol 4, #7) CW970527 May 27, 1997

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* * * * * * * *

News of LOS ANGELES TIMES, NATIONAL GEOGRAPHIC, CHICAGO TRIBUNE, COOKING LIGHT, SESAME STREET PARENTS, FAMILYFUN, more...

*****

No one can say NATIONAL GEOGRAPHIC doesn't move fast. Just days after a National Geographic Society officer told Contracts Watch that his staff was trying to figure out how to clear rights for its upcoming giant 108-year CD-ROM, the Society has announced its decision. A letter sent last week to some 2,500 photographers and writers tells how much they'll be paid for National Geographic's reuse of their work: $0.

According to Larry Lux, managing director of National Geographic Interactive, the Society has offered payments to "a handful" of photographers who worked under "contractual anomalies that somebody along the line approved." The sum offered is a less-than-princely $20 for a 20-year license for each photo, to cover the CD-ROM and a variety of other electronic reuses; no other photographers--and no writers at all--are being offered even $1 a year.

The "Dear Magazine Contributor" kiss-off letter does promise unspecified payments for some other Society new media projects, but not for this one. The given reason? "Because the CD-ROM archive consists of an exact image of every page as it was originally published, this reissuance (or reprint) is not a 'further editorial use' of material such as requires additional payment to the photographers whose contracts commit the Society to payment under those circumstances."

Maybe. But while the photographers and writers spurned consider that question, and the magazine, in essence, tells them "Our lawyers can lick your lawyers," here's one for the Society's board: Is National Geographic the kind of organization that ought to reuse the work of those it calls "colleagues," in a way never anticipated when the work was commissioned, without further payment?

*****

Subject: ASJA Contracts Watch #56 & Copyright
Date: Wed, 18 Feb 1998 09:15:26 -0700
From: "Howard M. Paul" [redacted]
To: STOCKPHOTO@PEACH.EASE.LSOFT.COM
Newsgroups: [redacted]stockphoto

I would like to request that the NPPA officially add its name to the friend-of-the-court brief in the Tasini v. the New York Times case (if still possible).

Given the importance of potential precedent in the National Geographic suit, I'd also like to request the NPPA and ASPP (of which I am a member) to research and possibly file a friend-of-the-court brief on behalf of the plaintiffs.

I know that the leadership of both groups read NPPA-L, PhotoPro and/or Stockphoto-L (or lurk hereabout). I believe this message will reach them in this manner. Others in the 'biz should be aware of these two cases as well.

>ASJA CONTRACTS WATCH 56 (vol 5, #2) CW980217 February 17, 1998
>
>In New York City, a friend-of-the-court brief has been filed in the >U.S. Court of Appeals for the 2nd Circuit by 20 creators' >organizations in support of the six writers who are appealing the >dismissal of their complaint in "Tasini v. the New York Times," the >first major copyright infringement lawsuit on electronic database >reuse of newspaper and magazine articles. (See ASJA Contracts Watch >49, August 15, 1997.) Rather than blame a law that hasn't kept pace >with technological advances, as the "Tasini" judge did, the authors' >brief blames the judge's "faulty analysis," in which copyright law >"was twisted beyond recognition."
> The brief was prepared by the American Society of Media >Photographers and endorsed by the Advertising Photographers of >America, American Institute of Graphic Arts, ASJA, American Society >of Picture Professionals, Authors Guild, Garden Writers Association >of America, Graphic Artists Guild, Independent Writers of Southern >California, North American Nature Photography Association, Outdoor >Writers Association of America, PEN Center USA West, Picture Agency >Council of America, Science Fiction and Fantasy Writers of America, >Society of American Travel Writers Freelance Council, Volunteer >Lawyers for the Arts, Washington Independent Writers, Writers Guild >of America East and Writers Guild of America West.
> According to Patricia Felch of the Chicago law firm of Peterson & >Ross, who is directing the appeal, final paperwork from both sides is >due April 7, to be followed by oral arguments.
>
>
>Two lawsuits brought by photographers against National Geographic are >proceeding--one in Miami, one in New York. The actions, both brought >in December, contest unauthorized, uncompensated use of freelancers' >work in Geographic's 30-disc CD-ROM set, covering 108 years of the >magazine. Motions and memorandums of law are flying.

Howard M. Paul
Photography for Communication and Commerce
and
E m e r g e n c y ! S t o c k
Denver, Colorado USA
Phone: (303) 829-5678 Fax: (303) 871-8356

November 18, 1997 1:22 PM

Ralph Talmont

ASJA/Alexandra Owens wrote:

> ASJA CONTRACTS WATCH 53 (vol 4, #14) CW971113 November 13, 1997
>
> [The American Society of Journalists and Authors encourages
> reproduction and distribution of this document for the benefit of
> freelance writers. Reprint or post as many items as you wish, but
> please credit ASJA for the information and don't change the content.]
>
> Report of a lawsuit against UNCOVER plus news of LOS ANGELES, CHICAGO TRIBUNE, SKIING
>
> * * * * * * * *
>
> Five writers have filed suit against UnCover, a service that delivers reprints of pub
> retained copyright and did not authorize reprints of their articles
> and book excerpts. They seek actual and punitive damages and an
> injunction against continued copying of their works.
>
> Computer users search the eight million listings in UnCover's article
> index on the Internet by topic, author or publication, at no cost.
> Individual reprints of articles said to be cleared for delivery can
> be ordered online for $10 or more each. (Unlike totally online
> databases, which provide copies of articles digitally, the hybrid
> UnCover delivers the old-fashioned way: by fax.) UnCover, which
> advertises "complete compliance with copyright requirements,"
> typically pays a royalty on each reprint to the publisher, directly
> or through the Copyright Clearance Center, a publisher-controlled
> licensing organization.
>
> The complaint doesn't say which periodicals published the works
> involved. The writers' lawyer, Daniel Reidy, told ASJA Contracts
> Watch it's not relevant whether the sale of reprints of a plaintiff's
> article was made with or without a license from the publisher. If the
> writer never granted permission to the publisher or to the reprint
> service, he said, "it's still infringement."
>
> UnCover has until November 24 to respond. Although the complaint was
> filed as a class action on behalf of all freelance writers who
> retained reprint rights and registered copyright in their works, the
> plaintiffs must also file a formal motion asking the court to grant
> class action status to the suit.
>
> A spokesperson for Knight-Ridder, which owns UnCover, declined
> comment. The company is in the process of selling its Knight-Ridder
> Information division, which includes UnCover and such online archives
> as Dialog and Data-Star, to the London-based business information
> giant Market Analysis and Information Database (M.A.I.D.). The
> announced sales price: $420 million.
>
> *****
>
> Negotiating an article contract with LOS ANGELES (FAIRCHILD, a DISNEY
> company), a writer added "on terms to be negotiated" to the
> electronic rights clause. Several months after publication, she found
> her text offered for sale in an online database. Following discussion

DAN CARLINSKY: CONTRACTS WATCH (ASJA) AFTER 11 AM

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[redacted]

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Chpn: Frances Halpern
Exec Sec: Ruth Pittman
Professional freelance authors of nonfiction; public workshops, annual conference.
Members: 70
Pubn(s): *Complete Guide to Writing Nonfiction* (Writer's Digest Books, $24.95)

.esday, May 20, 1997 9:49 AM

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To:

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Sun, 22 Mar 1998 21:46:52 -0500 (EST)
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From: Dan Carlinsky <Carlinsky@compuserve.com>
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Sender: Dan Carlinsky <Carlinsky@compuserve.com>
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-------- Forwarded Message --------

TO: Dan Carlinsky, 102026,3143
DATE: 03/16/98 at 14:56
SUBJECT: Nat Geo info

Dan: A photographer I know (slightly) had some information about the National Geographic rights grab that you may find useful. Here's the text of a recent e-mail.

<<I'm a bit familiar with the NGS thing--I'm working on a free-lance picture editing assignment for them right now, and know we can't use a couple of stock agencies because of the decision--one of the agencies sent NGS a bill for a half million dollars and NGS isn't paying--at least that's what Annie Belts told me Friday. I have a good friend who's a staff photographer, I'm going to have to ask him for details. =

This stuff makes my stomach turn--so hard to negotiate w/o losing good working relationships--one of those 'how to win without losing' games. Anytime you want to look at ASMP materials, let me know and we will figure it out.>>

Jerry - this was sent by Pickerell to ASMP - Dan Carlinsky - Perhaps there is something in this for Norman - Background info - or whatever -

Fred

DAN CARLINSKY: CONTRACTS WATCH (ASJA) [redacted] AFTER 11 AM

LOOKING FOR ALLIES

[redacted] AFTER 11 A/M

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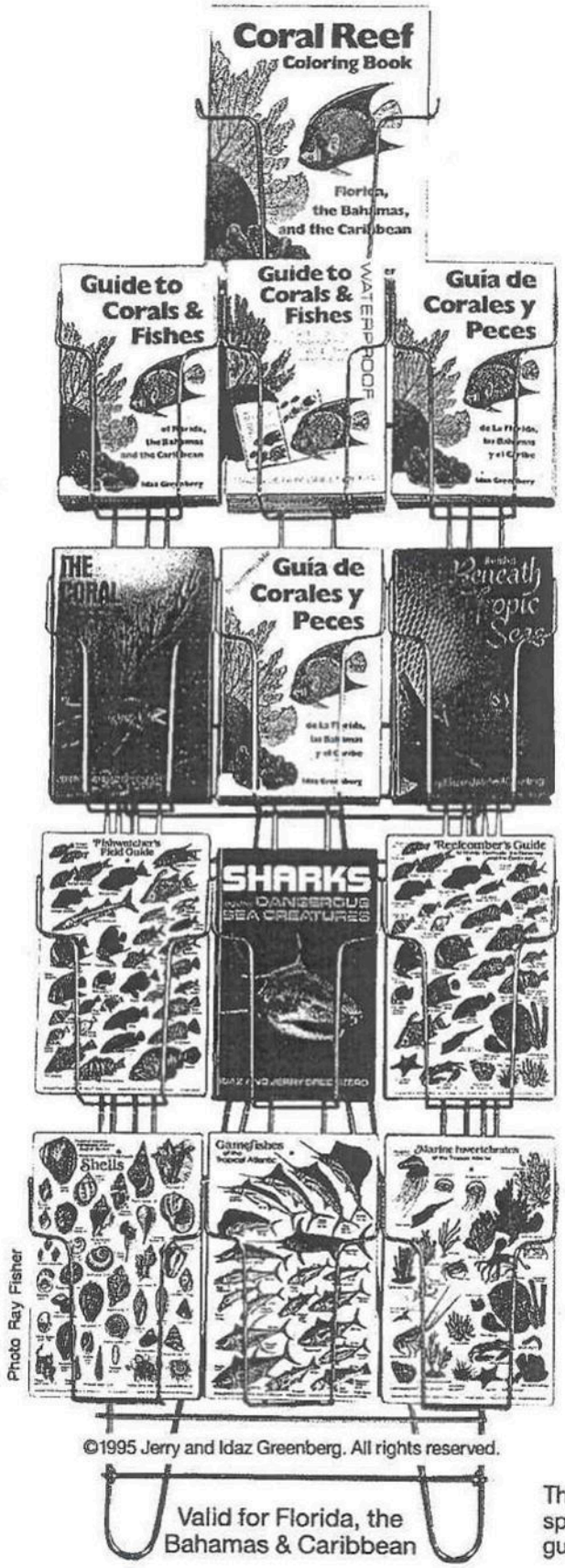


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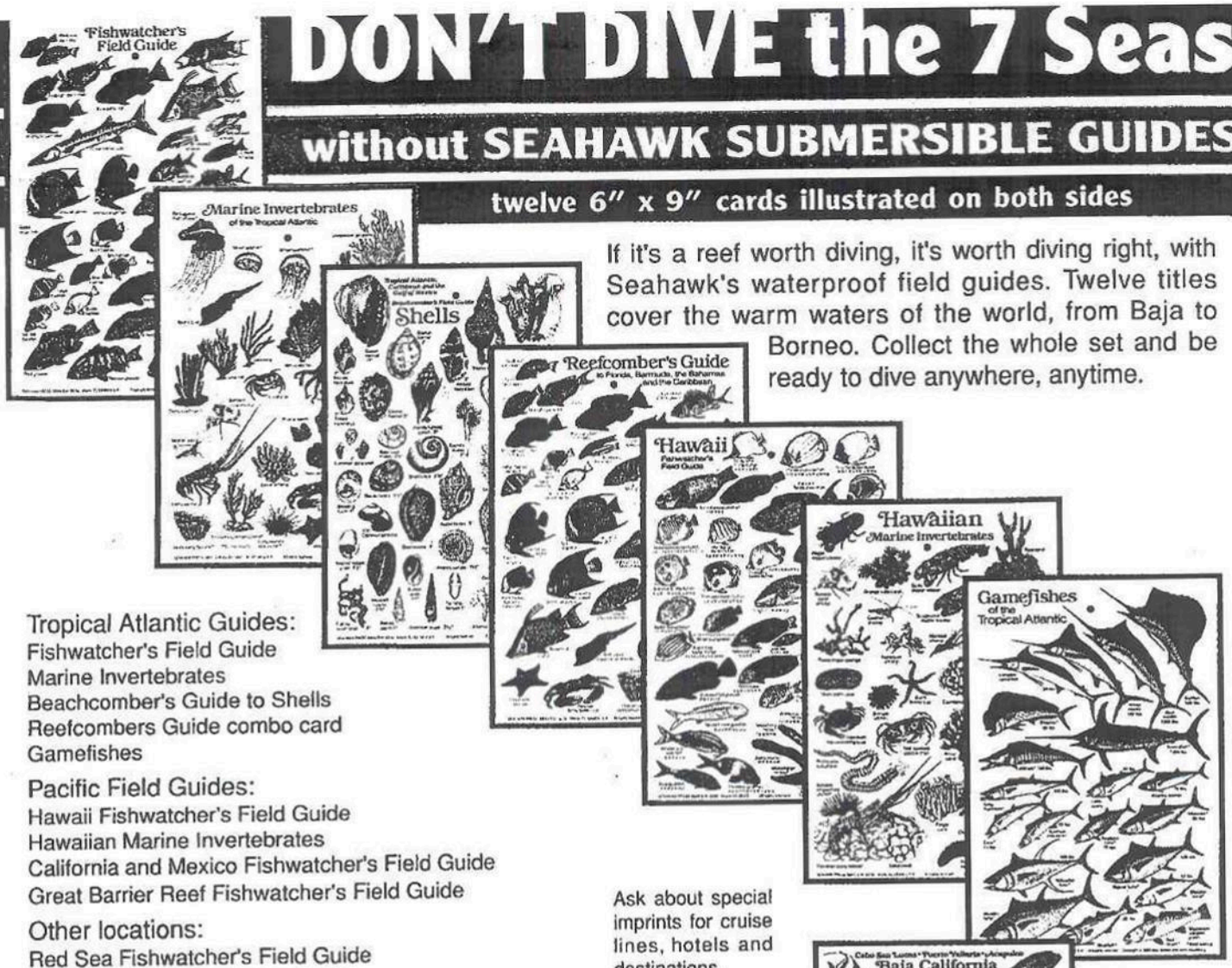
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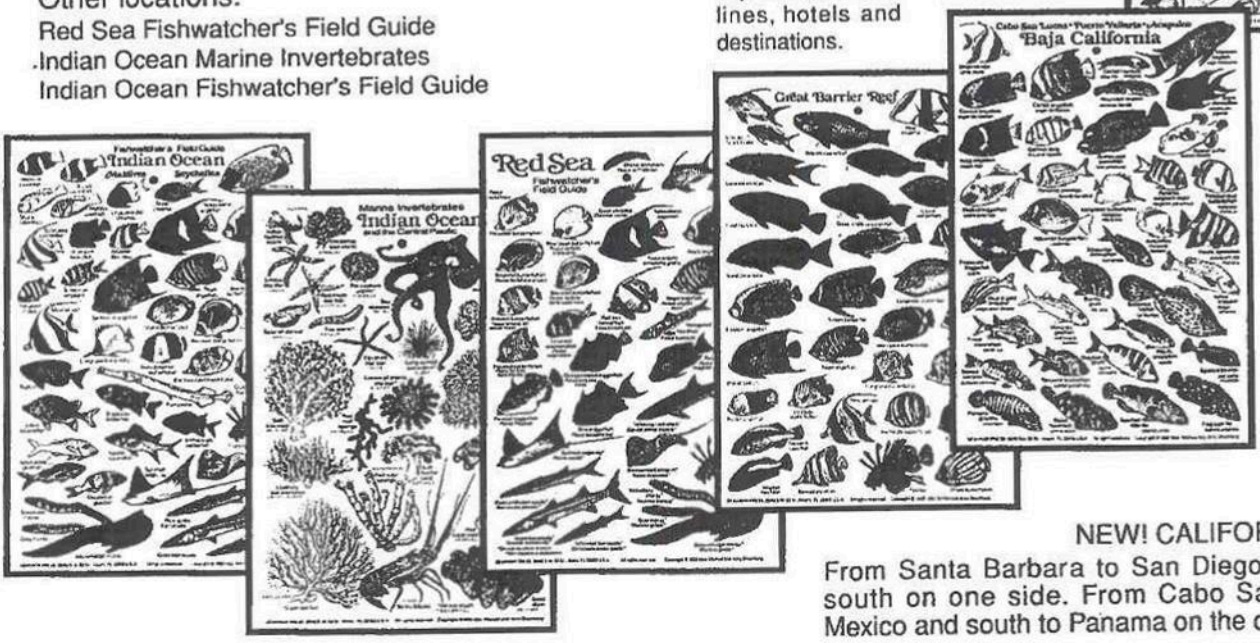


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ASMP Bulletin

October 1997

Volume 16, Number 8

**********3-DIGIT 331
RAY FIGUER

How the Tasini decision could affect you!

by Richard Weisgrau
ASMP executive director

As reported in the *Hotline* section of the September BULLETIN, the Federal court has delivered a ruling in the case *of Tasini et al v. The New York Times et al*, granting a summary judgment in favor of the defendant publishers and dismissing the suit.

That ruling has some aspects which are adverse to photographers' interests, but all is not lost. The matter will be appealed by the writers who filed the original suit and, as ASMP did in the supporting the original suit, the Society will be active in the appeal process. This is a case which will likely require ASMP to spend a substantial sum of money, but it is very important that no stone go unturned in the effort to reverse the decision of the court. ***(See Support the Legal Action Fund, page 7.)***

In a nutshell, the court ruled that a publisher of a collective work, such as a magazine, can republish the original contribution (such as photographs) of a creator, under the original license unless the original grant of rights prevents them from doing so. The court also ruled that the right of republication applies to revisions of the original work, and that electronic publication of previously printed works can qualify as revisions.

continued on Page 7



© 1973 STEVE SMITH

Bradley Smith • 1910 - 1997

by Peter Skinner
ASMP communications director

Bradley Smith, the last founding member of ASMP, died in La Jolla, Calif., on August 28 after a long and typically courageous battle with cancer. He was 87.

Smith, an outspoken and prolific photojournalist, author and inveterate world traveler, left a multi-faceted legacy. It is a legacy of memorable photography, wonderful books encompassing many subjects, and a never-ending crusade of championing photographers' rights.

continued on Page 10

The Tasini decision: its effect and ramifications

continued from Page 1

ASMP constructed the language on its sample forms to prevent publishers from exercising the republication right of the Copyright Act which was re-affirmed by the court decision.

However, we did not anticipate that a judge could or would see a change in media as a revision. The intricacies of the decision are pointed out in a related article ***What the Tasini decision means*** published on page 8 of this BULLETIN.

Not every one is at risk, and you can avoid potential problems by using appropriate terms in future transactions. But many photographers are at risk for their past work, highlighting the importance of taking steps to circumvent the impact of this decision on their future dealings. To that extent, ASMP recommends that you add one of the following terms to your paperwork on all future licensing agreements for use of your work in collective works, which includes such media as magazines, brochures, annual reports and similar.

Conditions of Transaction

(To eliminate all re-publication rights use the following language)

1. *All rights granted under this document for publication in a collective work exclude all usage rights for any revision of that collective work or in any later collective work in the same series, unless such rights are directly granted elsewhere in this document by language referring specifically to this provision. Among those usage rights excluded by this provision are rights of publication, display and transmission in any media, including traditional print, electronic and digital media, as well as in media not yet known.*

OR

(To eliminate only electronic re-publication rights use the following language)

1. *All rights granted under this document for publication in a collective work exclude all usage rights for any electronic or digital republication or revision of that collective work or in any later electronic or digital collective work in the same series, unless such rights are directly granted elsewhere in this document by language referring specifically to this provision. Among those usage rights excluded by this provision are rights of publication, display and transmission in electronic and digital media, as well as in media not yet known.*

Additionally, we strongly recommend that you specify the media in which you are allowing your images to appear. You should refer to *Formalizing Agreements*, chapter 8 of the *ASMP Business Bible* for a better understanding of how to do that. Remember, the more specific your usage terms, the more protected you are. Finally, if you have questions about how to proceed on this, call the ASMP National Office.

Do not lose your future rights by a lack of thoroughness in licensing! ∞

Support the ASMP Legal Action Fund

(Established by photographers to help photographers)

Appealing the Federal court decision on Tasini et al v. New York Times et al is going to take commitment, courage, and funding.

The commitment and courage to fight battles like this are the very essence of ASMP's existence.

And the framework for gathering and allocating funding is in place. It is the ASMP Legal Action Fund.

The cause is critical, the need is urgent, the message is clear.

SUPPORT THE LEGAL ACTION FUND!

Please send any amount you can afford - it will all help - to:

The ASMP Legal Action Fund
ASMP
14 Washington Rd, Suite 502
Princeton Junction, NJ 08550

VISA and MASTERCARD contributions can be made.
Please call ASMP at 609-799-8300.

Thank you for your support.

ASMP

FAX MEMORANDUM

American Society of Media Photographers, Inc.
14 Washington Road, Suite 502
Princeton Junction, NJ 08550-1033

Phone: 609-799-8300
Fax: 609-799-2233

DATE: 6/4/97

TO: NORMAN DAVIS, ESQ.305-577-7001

FROM: RICHARD A. WEISGRAU, EXECUTIVE DIRECTOR
VICTOR S. PERLMAN, GENERAL COUNSEL

RE: NATIONAL GEOGRAPHIC CD-ROM

Mr. Davis, in response to your question about the National Geographic CD-ROM project, the following is our official position. Please give me a call if you want to discuss it.
Vic Perlman

Several of ASMP's members have brought to our attention National Geographic's current project of producing a CD-ROM containing every issue of National Geographic magazine published from 1888 through 1996, as well as its recent letter on that subject to contributors to those issues. ASMP has been asked what its position is regarding this project and the fact that the magazine's position is that "... this ... is not a 'further editorial use' of material such as requires additional payment to the photographers whose contracts commit the Society to payment under those circumstances."

Although some of ASMP's members have contacted us concerning this issue, no member has yet asked us to intervene or otherwise become involved on his or her behalf. As with most questions of potential impact on our members, we have given this situation substantial thought, attention and research. This issue is based on extremely challenging areas of copyright law in a rapidly developing technological context in which no court has yet provided significant guidance. It is further complicated by the fact that there are countless copyright holders involved, and the rights granted by them to National Geographic are governed by a variety of agreements.

ASMP believes that this issue will most likely be resolved, to a great extent if not entirely, by a final decision in the pending case of Jonathan Tasini et al. v. The New York Times et al., in which ASMP filed an amicus curiae brief on behalf of the plaintiffs. It is also quite possible that some copyright owner may seek a legal determination of his or her rights in connection with the National Geographic CD-ROM project. While ASMP has done extensive research in this area and continues to do so and to monitor legal, legislative, and industrial developments in it, our position on the National Geographic CD-ROM project is not to make any public comment on the merits of the issues at this time. The Tasini case is pending, any result in it appears likely to be appealed, and the National Geographic project could end up in the same situation. ASMP is already involved in the Tasini litigation and could become involved in future litigation with the National Geographic Society. Because of these actual and potential lawsuits, as well as any appeals from them, ASMP does not wish to risk prejudicing itself or the case of any current or future party to such litigation by taking a public position which might then be used in the future by any opposing party. Lawsuits arise in the context of detailed factual situations which usually determine their outcome, and it would be inappropriate and ill-advised to take a position based on generalizations and in the absence of full details. ASMP is already on the record in Tasini as supporting the rights of the writers to additional compensation for the electronic usages involved in that case. It would require a similarly fully-developed set of facts before ASMP could take, or not take, a similar public position.

>
> * * * * * * * *
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ASJA CONTRACTS WATCH 54 (vol 4, #15) CW971223 December 23, 1997

Report of two lawsuits against NATIONAL GEOGRAPHIC plus news of DIVERSION (HEARST), ARTHUR FROMMER'S BUDGET TRAVEL MAGAZINE, CHICKEN SOUP FOR THE SOUL, NEW WOMAN (RODALE), TARGET FAMILY HEALTH (GRUNER + JAHR), TELEMEDIA and more...

* * * * * * * *

Photographers have filed two lawsuits over NATIONAL GEOGRAPHIC's new searchable CD-ROM archive, which includes each issue in the magazine's 108-year history.

Early in December, a contributor whose Geographic work goes back to the 1960s and 1970s filed a copyright infringement complaint in federal district court in Miami. In a separate action on December 19, five photographers--three of them acting through their stock agency--brought a federal suit in New York City. All the plaintiffs maintain that their written agreements with the magazine don't allow their photos to be used in "The Complete National Geographic" without permission.

The cases somewhat resemble "Tasini v. The New York Times," recently decided in New York district court in the publishers' favor and now under appeal. One major difference, says Stephen Weingrad, lawyer for the group of five photographers, is that in the Geographic case, what was originally published by a nonprofit organization is now being republished by a for-profit enterprise. The 30-disc CD-ROM set, which retails for $199.95 and includes major advertising from Kodak, is a project of National Geographic Interactive, a new for-profit arm of the Society.

Last summer, a different group--16 photographers claiming ownership of more than 3,000 photos on the CD-ROMs--hired a lawyer to discuss the matter with Geographic. This week, the organizer told Contracts Watch those photographers and their lawyer were "awaiting a response."

No writers affected have yet taken action.

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PHOTO DISTRICT NEWS #2

DAVID WALKER
PH: [redacted]
FX: [redacted]

PDN

PHOTO DISTRICT NEWS

VOLUME XVIII ISSUE 2 FEBRUARY 1998

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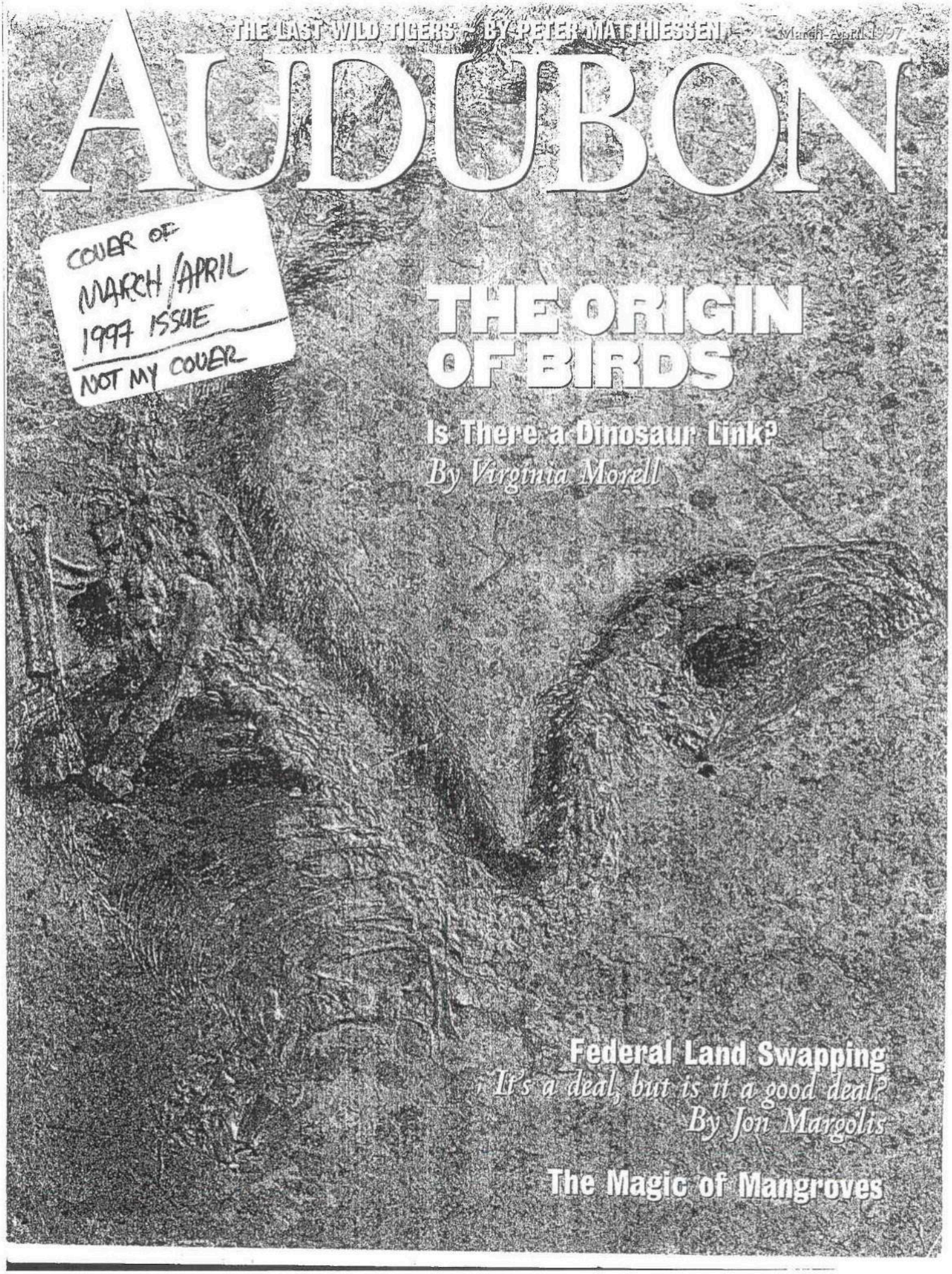
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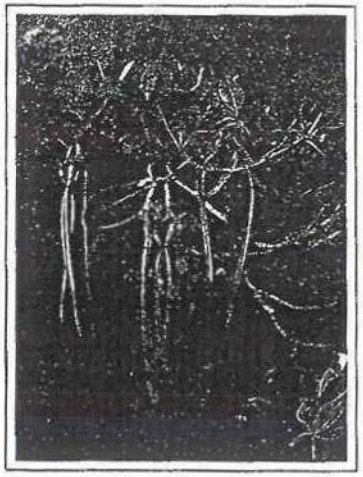
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THE LAST WILD TIGERS ~ BY PETER MATTHIESSEN
March-April 1997
AUDUBON
COVER OF MARCH/APRIL 1997 ISSUE
NOT MY COVER
THE ORIGIN OF BIRDS
Is There a Dinosaur Link?
By Virginia Morell
Federal Land Swapping
It's a deal, but is it a good deal?
By Jon Margolis
The Magic of Mangroves

PHOTOGRAPHY BY JERRY GREENBERG

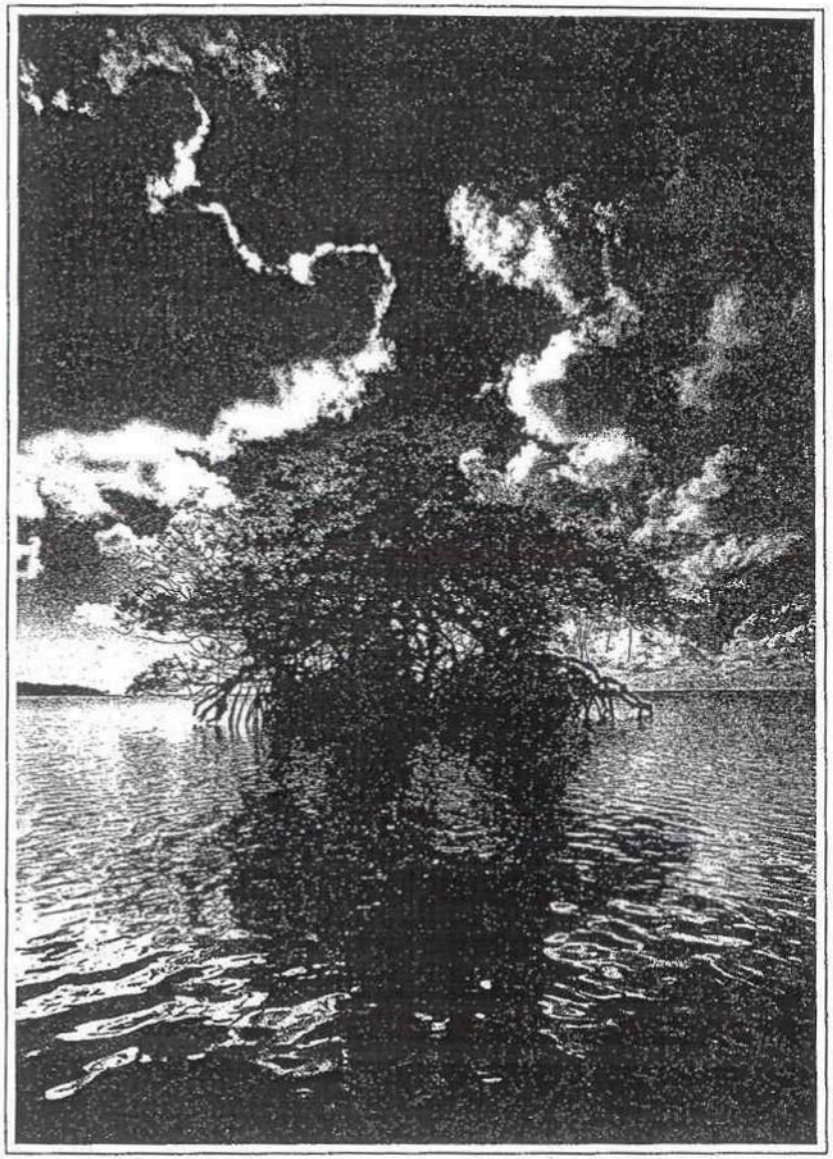
The Magic of MANGROVES



NEAR KEY WEST, MY FRIEND POINTED HIS INFLATABLE BOAT DIRECTLY TOWARD A DARK-GREEN LINE OF MANGROVES. "WATCH YOUR HEAD," HE WARNED AS WE MADE FOR WHAT SEEMED AN IMPENETRABLE WALL OF SINEWY MANGROVE ROOTS. IT WAS A THICKET THAT ALLOWED NO ENTRY—EXCEPT WHERE A THIN FINGER OF WATER POINTED TOWARD THE CENTER. MY FRIEND TURNED THE MOTOR OFF AND PADDLED; THEN WE PULLED OURSELVES ALONG, BENT ALMOST DOUBLE BY INSISTENT LIMBS REACHING FROM BOTH SIDES.

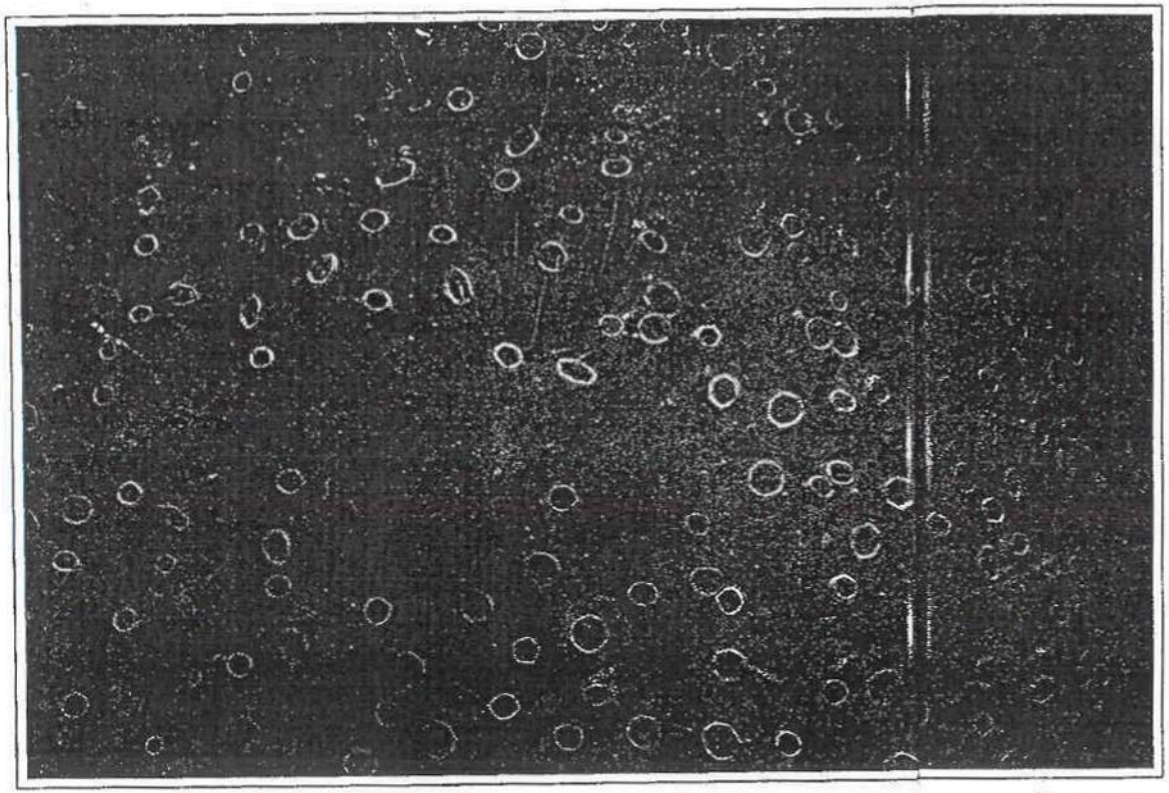
THE MANGROVES PARTED, AND WE GLIDED INTO AN EMERALD POOL, A CIRCLE OF DEEPER WATER PERHAPS 30 FEET ACROSS, A SECRET CHAMBER DEEP WITHIN THE SWAMP'S SHADOWED MANSION. A HIGH SUN FILTERED THROUGH THE CLOSE-KNIT LACEWORK OF BRANCHES AND FLESHY JADE LEAVES.

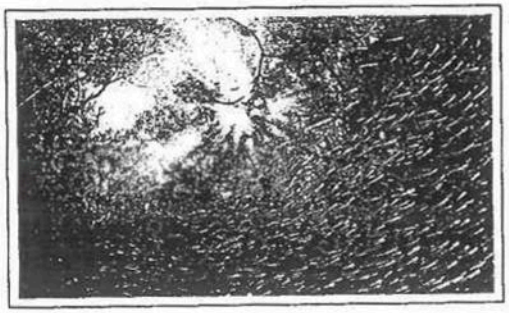
AS WE SAT SILENT, FISH APPEARED, GLIDING FROM UNDER THE LATTICED WALLS OF MANGROVE ROOTS AND GLEAMING LIKE JEWELS IN MOLTEN GLASS: GRAY-AND-SILVER MANGROVE SNAPPER, JUVENILE BARRACUDA, DASHING STRIPED GRUNTS, AND GREAT WHIRLING SCHOOLS OF FLASHING MINNOWS WHEELING LIKE SOME VAST GATHERING OF BIRDS AGAINST AN UNDERWATER SKY.



Seedlings sprout on a red mangrove (left); when they mature, they may drift with the tide, taking root far from the parent tree and forming new colonies. A full-grown tree (opposite), in Florida's Key Largo.

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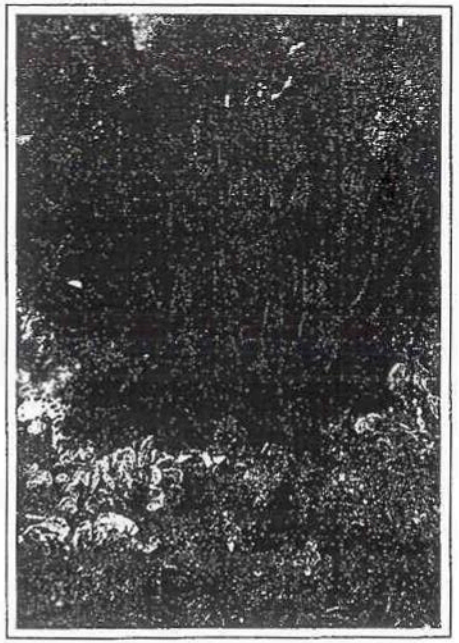




The mangrove tunicate (above), a complex marine animal, grows in clusters around the mangrove's roots. The yellow-crowned night heron (top right) makes its home in the mangrove's foliage. Giant anemones (right) are usually found on coral reefs; this one was photographed in a Key Largo creek. A school of silversides (left) swirls among the Florida mangroves.

IN SUCH A SANCTUARY, YOU WILL BE BLESSED WITH A SYMPHONY OF MEMORABLE MOMENTS. MAJESTIC SILVER TARPON SWIM INTO THE CLEAR WATER, AS DO THE SHARKS THAT FOLLOW THEM. EVEN RARE GIANT JEWFISH FIND PLACES TO HIDE THEIR 300 POUNDS. FROM THE LARGEST TO THE SMALLEST, THE CREATURES OF OUR WARM SALT SEAS LOOK TO THE MANGROVES FOR SHELTER. FROM GOSSAMER JELLYFISH AND WAVERING ANEMONE TO SOFT SPONGE AND SPINY LOBSTER, SOME OF THE MOST EXOTIC FLORA AND FAUNA DEPEND ON THESE FORTRESSES FOR BIRTHING, FEEDING, AND RESTING.

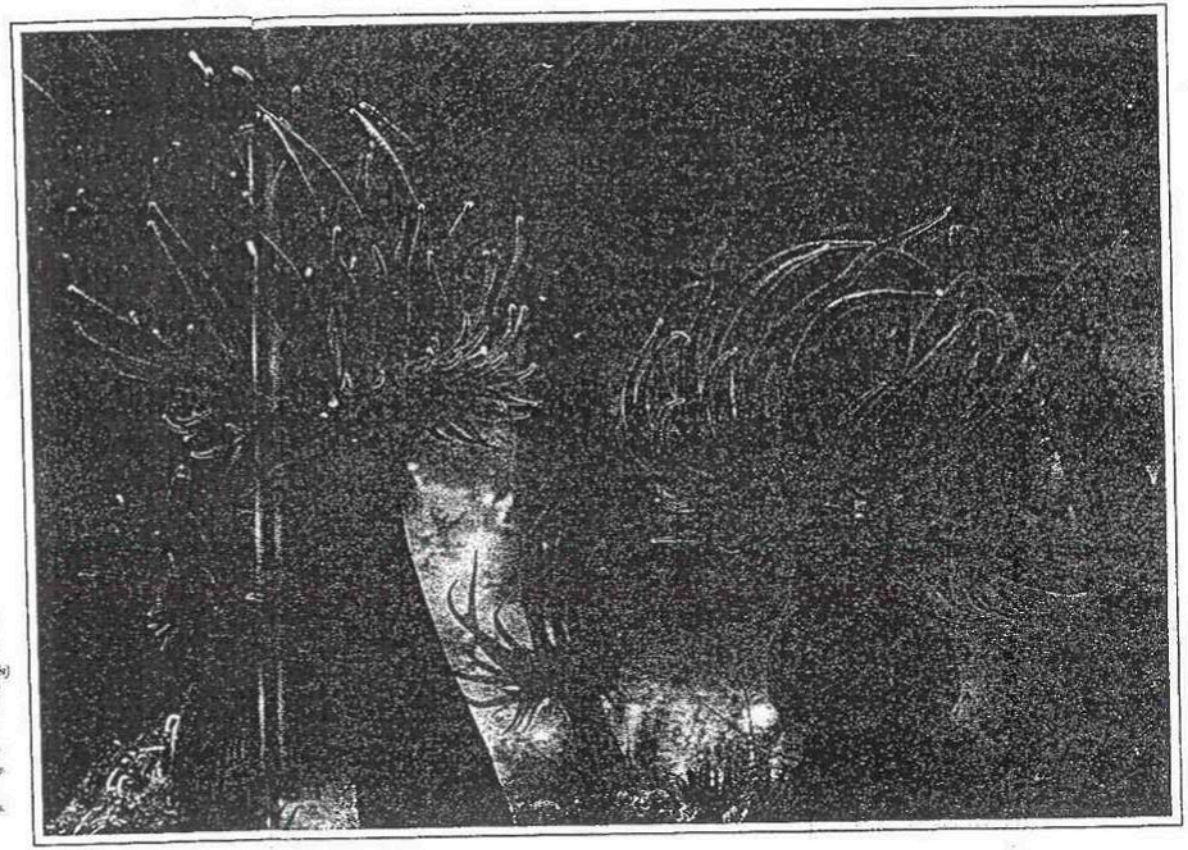




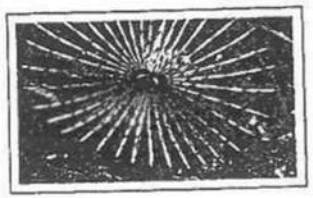
The Magic of Mangroves

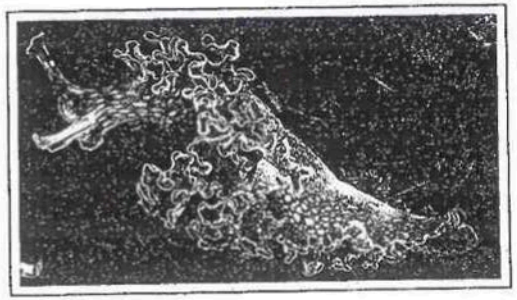
WHEREVER TROPIC SEAS MEET FERTILE SHORE, THERE ARE MANGROVES. THEY SET THEIR SLENDER SEEDLINGS ADRIFT ON WARM OCEANIC CURRENTS, AND WHEN THE SEEDLING MATURES IT TIPS UP, READY TO PUT DOWN ROOTS AT THE FIRST BRUSH OF SHIFTING SANDS OR MUCK. THE TREES' ROOTS TAKE TO THE AIR, ARCHING IN THEIR SINEWED REACH, ONE STRETCHING BEYOND THE OTHER IN SEARCH OF A FIRMER GRIP ON THE TIDAL SHALLOWS. THUS DOES THE MANGROVE TAKE NEW TERRITORY, NATURALLY PROTECTING COASTLINES FROM EROSION. DESPITE THAT VALUABLE FUNCTION, MANGROVES—WHICH EMBROIDER COASTS ON MOST CONTINENTS—ARE THREATENED IN ASIA AND IN CENTRAL AND SOUTH AMERICA BY SHRIMP FARMING AND OTHER TYPES OF AQUACULTURE.





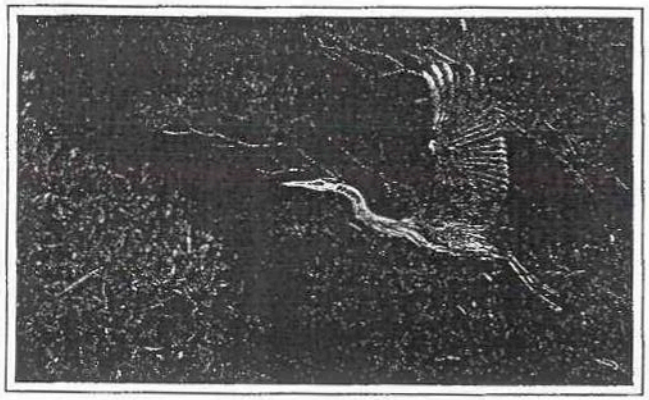
Mangrove jewels. The waving tentacles of the sea anemone (right) can sting fish and sting divers. The lettuce sea slug (bottom right) is found on silty algae and seagrass beds. The banded feather duster (below) is actually a worm that retreats into its tubular body. Striped sheepshead (left) drifts among the mangroves.

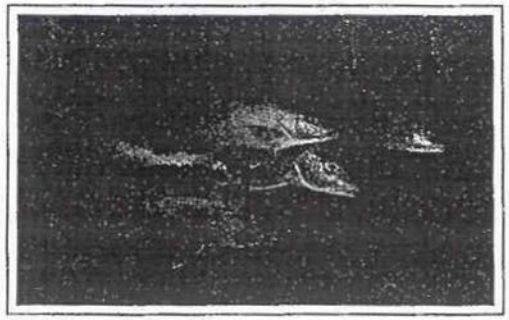




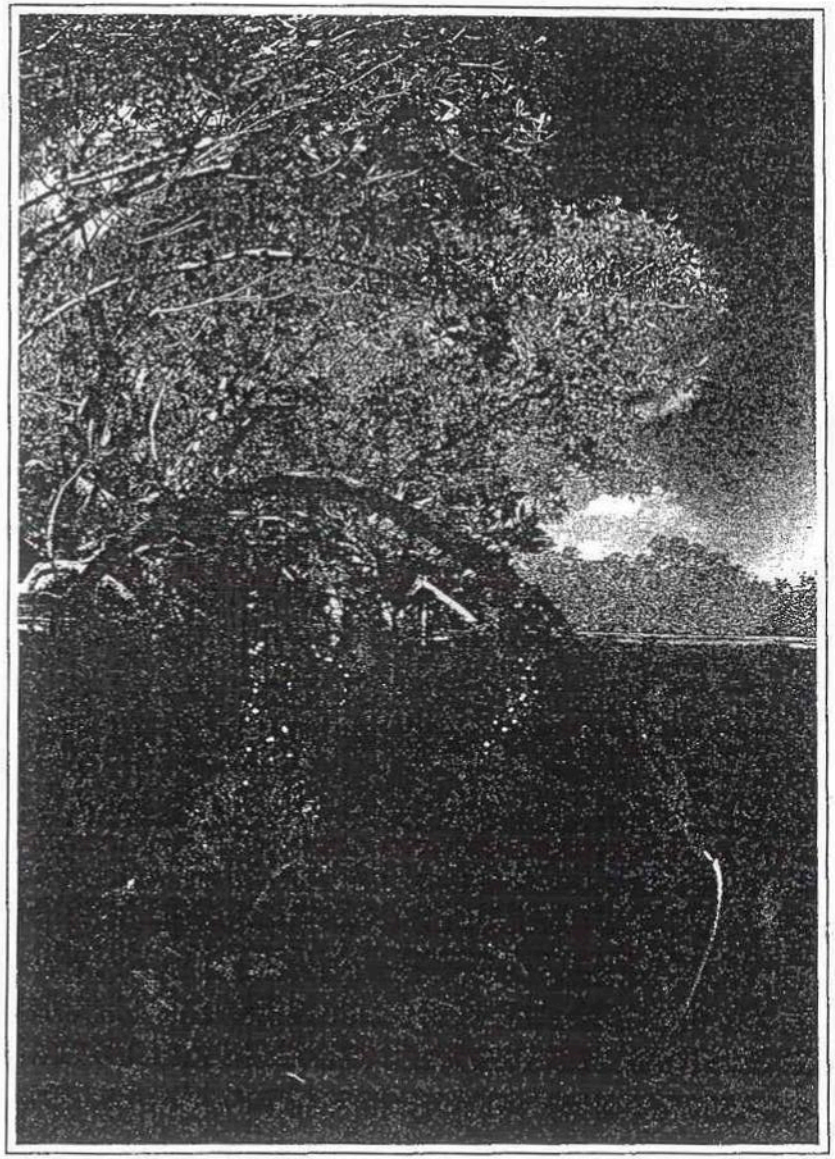
IN SOUTH FLORIDA AND THE KEYS—THE PRIMARY U.S. MANGROVE COAST—FOUR SPECIES ARE COMMON, WITH THE RED MANGROVE THE MOST PROMINENT. ITS LARGE EMERALD LEAVES AND TANGLED ROOTS ARE FAMILIAR TO ANYONE WHO HAS TAKEN A SMALL BOAT THROUGH THESE WATERS. HOME TO COLONIES OF DOUBLE-CRESTED CORMORANTS, MAGNIFICENT FRIGATE BIRDS, BROWN PELICANS, AND GREAT WHITE HERONS, MANY OF SOUTH FLORIDA'S MANGROVES ARE THREATENED, THOUGH SOME ARE ZEALOUSLY PROTECTED.

—JOHN N. COLE





The complicated root system of the mangrove tree (opposite) provides shelter for gray snappers (below). A great blue heron (left) launches itself from a roost on Barnes Sound, in Key Largo.





PDN
PHOTO DISTRICT NEWS

VOLUME XVII
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JULY 1997

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Date: 2/20/98
Time: 11:34PM
Pages Including Cover: 1

MEMO

Notes: Hello, Jerry. I am an editorial and stock shooter in Denver. I have asked the president of the ASPP to file a friend-of-the-court brief on your behalf in your case. The ASPP has done this in a recent copyright case, "Tasini v. the New York Times."

Please contact ASPP President Richard Pasley <rpasley@javanet.com> at his office address, 90 Hamilton St, Cambridge, MA 02139 (Phone: 617-864-8386, Fax: [redacted] if you are interested in such support at this time.

Best of luck.
Howard

AMERICAN SOCIETY OF [redacted] PHOTO PROFESSIONALS

MARCH 16, 1998
9:00 AM
800 MEMBERS
1/2 PHOTOGRAPHERS



NATIONAL ASSOCIATION
OF FREE LANCE PHOTOGRAPHERS

03/13/1998 18:31 [redacted] GEM BOOK PUBLISHERS PAGE 02

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917

Attorney-At-Law
Russo & Burke
[redacted]

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MARCH 16, 1998
9:40 AM

NORMAN DAVIS

ASMP

MEMORANDUM

American Society of Media Photographers, Inc.
Phone [redacted] Ext. 1207
[redacted]
Princeton Junction, NJ 08550-1033
[redacted]

DATE: June 16, 1998

TO: NORMAN DAVIS, ESQ.
JERRY GREENBERG
[redacted]

FROM: VICTOR S. PERLMAN
MANAGING DIRECTOR & GENERAL COUNSEL

RE: ASMP LEGAL ACTION FUND

CC: ELENA CONCEPCION

Dear Norman and Jerry:

I am pleased to inform you that the Executive Board has approved the use of ASMP Legal Action Funds to file an amicus curiae brief in connection with your appeal in your litigation against National Geographic. I trust that Norman will contact me in due course to discuss the timing of the appeal filings and the coordination of the arguments made in the amicus brief with those made in your brief. In the meantime, please let me know if you have any questions or comments, or if there are any new developments to bring to my attention.

I look forward to working with you and to success in this appeal. Best regards.

ASMP

MEMORANDUM

American Society of Media Photographers, Inc.
14 Washington Road, Suite 502
Princeton Junction, NJ 08550-1033

Phone: [redacted] Ext. 1207
Fax: [redacted]

DATE: June 16, 1998

TO: NORMAN DAVIS, ESQ.
JERRY GREENBERG
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newsbreaks and briefs

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vernment agencies; such uni-
mity would correct the Utah
uation where the Bureau of
nd Management charged
ıre for still photography daily
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eep on the same land.
ven if no fees were charged,
need for daily permits for
ıtine photography (such as
ıck) would mean many pho-
graphers would not bother,
ich could result in a short-
e of photographs being avail-
e for educational purposes.
ASMP offered two simple
es. 1) Exclude still photogra-
from the bill's provisions.
s would be in keeping with
MP's support for similar leg-
ıtion introduced before the
use of Representatives (H.R.
93) by Rep. Hefley of Colo.,
ch leaves still photography
side its coverage. 2) Follow
guidelines negotiated by
MP and the National Park
vice over more than eight
rs.
The ASMP/National Park
vice guidelines require that
mits for still photographs
required only in a few situa-
ıs: 1) Where the photograph-
s using models or props. 2)
ere the photography could

ASMP amicus brief support is sought

As this issue of the BULLETIN was going to press, the Society had been approached to file amicus briefs in two important cases. Costs for these briefs would be met from the Legal Action Fund.

The first case, Chavez v. Arte Publico Press et al started in the Southern District of Texas and is before the 5th Circuit. It deals with the issue of whether states are immune from copyright infringement suits and will be the first case dealing with that issue since the 1990 amendment to the Copyright Act. The general understanding of that amendment was that states could be sued under the Copyright Act. However, the 5th Circuit has held that provision to be unconstitutional. If that decision stands, ASMP believes that every state and local government, including school boards, will be free to use copyrighted material, without restrictions and without licensing fees. ASMP has been asked to participate in the amicus brief being filed by the Association of American Publishers, the Association of American University Presses, the Authors Guild, the National Music Publishers Association, and the Software Publishers Association. ASMP is also expected to participate in a companion case, Rodriguez v. Texas Commission on the Arts dealing with the same issue.

The second case involves the *National Geographic* CD-ROM project in which more than 100 years' issues of *National Geographic* were scanned and placed on a set of CDs. While the magazine owns the rights to much of the material, some individuals, including ASMP member Jerry Greenberg, own some rights to some of it. A number of Greenberg's pictures appear in the CD collection. Greenberg sued for copyright infringement in the U.S. District Court for the Southern District of Florida where the judge dismissed most of the counts in the complaint, taking the position that Tasini v. NY Times is controlling. The judge ruled that copying is permitted under Tasini's interpretation of Section 201 (c) of the Copyright Act as a revision of each issue of the magazine. Greenberg is appealing and has sought an ASMP amicus brief. ASMP feels this is an important issue with far reaching consequences.

or in some cases from the Internal Revenue Service, CP:IN:C:TPS, 950 L'Enfant Plaza, S.W., Washington, DC 20024. Members wanting more information on this subject should request a Department of the Treasury IRS publication titled *Certification for Reduced Tax Rates in Tax Treaty Countries* (Publication 686 - Rev. Mar.94 - Cat.No. 46684K). Also, check out the IRS Web site - [**www.irs.ustreas.gov**].

Security staff spoils film of CP group photograph

Last year the photography session for the group photo of the chapter presidents, was nearly interrupted by a freak Rocky Mountain snow squall. This year the group photograph (on page 23) was nearly wiped out by a zealous baggage security staff at Denver International Airport. How it happened should be a cautionary tale to anyone attempting to transport film on airlines that are in a heightened state of alert and using ever-more sophisticated technology.

Once this year's group photo was completed, Tom Guidera, the photographer for the CP group photograph three years running, placed the Graphmatic film holders containing the Tri-X film he'd just exposed back into the lead bag in which they'd been transport-

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...e. He checked
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...ad bag with
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...was missing
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...nad been
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...the meticu-
...night have
...pull the
slides on the film holders was confirmed; every single sheet was heavily fogged. The photo-

American Society of Media Photographers, Inc. Suite 502 14 Washington Rd. Princeton Junction, NJ 08550-1033

Telephone (609) 799-8300 Facsimile (609) 799-2233

ASMP

April 13, 1998

Norman Davis, Esq.
Steel, Hector & Davis
Suite 4000
First Union Financial Center
Miami, FL 33131-2398

Via Federal Express

Re: Tasini

Dear Norman:

As promised, I am enclosing the briefs that you requested in Tasini, and then some. Happy reading! In response to Jerry Greenberg's telephone message to me via Dick, of course you can send me your pleadings and other documents for review and comment. I am happy to do that, and I only hope I can make a valuable contribution.

If you have any questions or would like to discuss any of this, please let me know. Probably the best way to do that is to fax or e-mail me to let me know the specifics that you would like to discuss and some suggested times. Then we can pick a time to make sure we are both available. That way, we won't lose time in telephone tag or talking before I'm adequately prepared.

In the meantime, you and Jerry should feel free to call me any time. For your scheduling information, I will be out of the office on Tuesday April 14, and will be away, attending ASMP's Board meeting from Friday April 24 through Tuesday April 28.

I will look forward to hearing from you.

Cordially,

VICTOR S. PERLMAN
Managing Director and
General Counsel

VSP:hs
Encls.
cc: Jerry Greenberg (via fax w/o encls.)
Dick Weisgrau (w/o encls.)

Subj: **FW: Greenberg v. National Geographic Society**
Date: Thursday, April 5, 2001 5:52:22 PM
From: [redacted]
To:

You may not have seen this entry in a discussion of your case on the CNI-Copyright listserv
>
>
++
++++++++++++
>
> Now that I've read the opinion, I see a significant difference between
> Tasini and Greenberg, one that could have (and should have, in my
> opinion) led to a different result.
>
> Tasini involved the republication of thousands of individual
> contributions (articles) in an electronic database (NEXIS) and on CD-ROM;
> the articles could be searched for and retrieved individually, divorced
> from their original context in the collective work. The electronic
> databases and CD-ROMs did not preserve the copyrightable contribution of
> the publishers, i.e., the original selection and arrangement of the
> articles (and photographs); and the Second Circuit relied on that fact in
> ruling for the freelancers.
>
> Greenberg, by contrast, involved a CD-ROM that contained a FACSIMILE
> reproduction of each individual issue of National Geographic. It
> preserves the original selection and arrangement of the individual
> magazines, just as a microfilm would. But the 11th Circuit held that
> even assuming the electronic images were protected by Section 201(c),
the
> inclusion on the CD-ROM of software that enabled the user to select, view
> and navigate through the digital pages created a new collective work. I
> think that is absurd; the court is saying that even if the publisher has
> a privilege to reproduce the magazine in electronic facsimile form, it
> cannot include software that allows viewers to view that facsimile. That
> would completely vitiate the point of the 201(c) privilege.
>

> I do agree with the 11th Circuit that the selection of Greenberg's photo
> to use in a photo-montage that morphs from one cover to another falls
> outside the 201(c) privilege; but I think that finding could easily have
> been distinguished from the remainder of the CD-ROM. However, National
> Geographic is partly to blame. It registered the CD-ROM as a new
> collective work, thereby allowing the court to conclude that even NG felt
> that the product was a new work, rather than a revision of a previous
> collective work.
>
> [Moreover, Greenberg's original contract with NG required that NG owned
> the copyrights to his photographs; but in 1985 they actually reassigned
> the copyrights back to him. How stupid can you get?]
>
> Tyler T. Ochoa
> Associate Professor
> Whittier Law School
> (tochoa@law.whittier.edu)

---------- Headers ----------
Return-Path: <[redacted]>
Received: from [redacted]04.mail.aol.com [172.18.150.4]) by air-yd01.mail.aol.com [redacted], Thu, 05 Apr 2001 17:52:22 -0500
Received: from albatross.prod.itd.earthlink.net (albatross.prod.itd.earthlink.net [207.217.120.120]) by rly-yd04.mx.aol.com (v77_r1.36) with ESMTP; Thu, 05 Apr 2001 17:50:54 -0400
Received: from [165.121.65.117] (user-2inigbl.dialup.mindspring.com [165.121.65.117])
by albatross.prod.itd.earthlink.net (EL-8_9_3_3/8.9.3) with ESMTP id OAA17996
for <[redacted]u, 5 Apr 2001 14:50:47 -0700 (PDT)
User-Agent: Microsoft-Outlook-Express-Macintosh-Edition/5.02.2022
Date: Thu, 05 Apr 2001 17:51:07 -0400
Subject: FW: Greenberg v. National Geographic Society
From: [redacted]
To: [redacted]
Message-ID: <[redacted].n>
In-Reply-To: [redacted]compuserve.com>
Mime-version: 1.0
Content-type: text/plain; charset="US-ASCII"
Content-transfer-encoding: 7bit

VICTOR PERLMAN; ASMP FAX:

When the Congressional framers of the copyright law put the 1909 and other laws together they were very specific when protected works would fall into the public domain. They never intended to keep the "copyright ball" in the air indefinitely. Somewhere along the line, the protected work has to fall to the ground and become public domain.

The Society has the right to publish "reprints" as well as new collective works or new products with old "public domain" material in them.

In the 108 Year CD-ROM a print-out for the January, 1910 issue of the magazine should have the legend on the bottom of the print-out read:

"Copyright © 1910: National Geographic Society....."

Or they could have no notice at all, then the actual date on the front cover of that specific issue would be a de facto notice of first date of publication. By their placing a new 1997 copyright notice on each and every page print out of the collection, they have served notice to the public that this is a new publication.

Irving Berlin lived long enough to see his early works go into public domain. His heirs can publish an exact re-print of "Yip Yap Yank" circa 1917. If it is an exact reprint then the copyright notice would have the original 1917 date on it. If they publish the exact work with a new cover on it the copyright for the new cover would be for the year 2000 but the base re-print of the work inside would be for 1917. If they included "Yip Yap Yank" in a special collection of his war-time tunes then the new collective work would carry the copyright date of 2000. The new copyright date for the collective does not breathe new copyright life into the original 1917 copyrighted version of this song. The new copyright date of 2000 is giving the public notice that this is a new work and worthy of a new copyright.

Sincerely yours, Jerry Greenberg

Jerry Greenberg
SEAHAWK PRESS

ASMP

MEMORANDUM

American Society of Media Photographers, Inc.
14 Washington Road, Suite 502
Princeton Junction, NJ 08550-1033

Phone [redacted]
Ext. 1207
Fax [redacted]

DATE: July 21, 1999

TO: JERRY GREENBERG [redacted]

FROM: VICTOR S. PERLMAN, MANAGING DIRECTOR

RE: ESTATE PLANNING INFO

CC:

Hi Jerry. I got your phone message, but I've been swamped. I don't recall writing or seeing anything recently about estate planning for photographers. What you may recall is Section 11 of Chapter 9 of the ASMP Business Bible. Take a look and let me know if that isn't it. Also, if you don't have it, let me know that, and I'll fax you a copy of that section.

Best regards,
Vic

3 - PAGES FOR NORMAN DAVIS

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.

This article is protected by Copyright, and intended solely for the use of subscribers to Selling Stock. Anyone wishing to distribute this material in any way, must get written permission from Selling Stock and/or Daniel Krasemann prior to such distribution. No excerpts of the material are allowed without prior written permission.

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

[redacted]

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 majorty 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.

Rules for supplying feedback

Input Feedback

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The American Society of Media Photographers, Inc.

Bulletin ASMP

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ASMP was founded in 1944 to promote high professional and artistic standards in photography and to further the professional interests of its membership by disseminating information on a range of subjects and concerns. ASMP has a membership of more than 5,000 of the world's finest photographers.

The ASMP Bulletin is published monthly by ASMP, The American Society of Media Photographers, Inc., 14 Washington Road, Suite 502, Princeton Junction, NJ, 08550-1033. Member subscription is $12 per year. Ph: 609-799-8300. Fax: 609-799-2233. e-mail: info@ASMP.org. Web site: http://www.asmp.org.

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Editorial contributions should be sent to The Editor, P.O. Box 652, Anacortes, WA, 98221. Unsolicited material will not be acknowledged or returned. All submissions are printed at the discretion of the Society and are subject to editing. Signed letters and editorial contributions must include a phone number.

Articles appearing in the ASMP Bulletin reflect the opinions of the writer. They do not necessarily reflect those of the editors, any officers of the Society, the Board of Directors, or the National Office. The Society does not assume responsibility for the individual writer's opinions as expressed in the article.

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THE PURPOSE OF ASMP

- To protect and promote the interest of photographers whose work is for publication
- To promote high professional standards and ethics
- To cultivate friendship and mutual understanding between photographers

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PH: [redacted]
FX: [redacted]

— Jerry - This from ASJA on the Internet - where did they get info?

ASJA CONTRACTS WATCH 54 (vol 4, #15) CW971223 December 23, 1997

Report of two lawsuits against NATIONAL GEOGRAPHIC plus news of DIVERSION (HEARST), ARTHUR FROMMER'S BUDGET TRAVEL MAGAZINE, CHICKEN SOUP FOR THE SOUL, NEW WOMAN (RODALE), TARGET FAMILY HEALTH (GRUNER + JAHR), TELEMEDIA and more...

* * * * * * * *

Photographers have filed two lawsuits over NATIONAL GEOGRAPHIC's new searchable CD-ROM archive, which includes each issue in the magazine's 108-year history.

Early in December, a contributor whose Geographic work goes back to the 1960s and 1970s filed a copyright infringement complaint in federal district court in Miami. In a separate action on December 19, five photographers--three of them acting through their stock agency--brought a federal suit in New York City. All the plaintiffs maintain that their written agreements with the magazine don't allow their photos to be used in "The Complete National Geographic" without permission.

The cases somewhat resemble "Tasini v. The New York Times," recently decided in New York district court in the publishers' favor and now under appeal. One major difference, says Stephen Weingrad, lawyer for the group of five photographers, is that in the Geographic case, what was originally published by a nonprofit organization is now being republished by a for-profit enterprise. The 30-disc CD-ROM set, which retails for $199.95 and includes major advertising from Kodak, is a project of National Geographic Interactive, a new for-profit arm of the Society.

Case does not resemble Tasini

Try to stop that comparison

Last summer, a different group--16 photographers claiming ownership of more than 3,000 photos on the CD-ROMs--hired a lawyer to discuss the matter with Geographic. This week, the organizer told Contracts Watch those photographers and their lawyer were "awaiting a response."

No writers affected have yet taken action.

*****