PDNEWS

BY DARYL LANG AND DAVID WALKER

Appeals Court Reverses Greenberg Decision

AFTER YEARS OF LITIGATION, JERRY GREENBERG'S $400,000 judgment for willful copyright infringement against National Geographic Society has been vacated.

The U.S. Court of Appeals for the Eleventh Circuit reversed its own infringement verdict and vacated the jury award on June 13, explaining that the Supreme Court's 2001 ruling in *Tasini v. New York Times* put the case in a new light that required the reversal.

Greenberg sued NGS in 1997 for infringement because the publisher used his images without permission in a CD-ROM compilation of all back issues of *National Geographic* magazine. NGS argued all along that the compilation, called *The Complete National Geographic*, was a revision of its magazines. Under copyright law, publishers aren't required to get permission from contributors for revisions of existing works.

Greenberg argued that the CD-ROM is not a revision, but a new product because it was in an electronic format, with a search engine and opening montage that made it different from the original magazines.

The 11th Circuit court, which is in Atlanta, agreed with Greenberg in a March 2001 ruling. It called the CD "a new product, in a new medium, for a new market" and therefore not a revision. The appeals court then remanded the case to a trial court for a hearing on damages. A jury concluded the infringement was willful and awarded Greenberg $400,000.

NGS CONTINUALLY ARGUED THAT THE *TASINI* RULING SUPPORTS ITS DEFENSE THAT THE COMPLETE NATIONAL GEOGRAPHIC IS A REVISION OF ITS ORIGINAL WORK, RATHER THAN A SEPARATE WORK.

PDNewswire Digest

The following are excerpted from breaking news stories posted recently on PDNO. To read the complete stories and to find more news, posted daily, check out www.pdnonline.com/pdn/newswire/index.jsp



© ROGER LEMOYNE/REDUX PICTURES

Above: An image from award-winner Roger Lemoyne, of a group of women known as the "Mothers of Srebrenica."

Lange-Taylor Prize Goes To Lemoyne And Pitzer
Canadian photographer Roger Lemoyne and U.S. writer Kurt Pitzer have won the 2007 Dorothea Lange-Paul Taylor Prize, by the Center for Documentary Studies at Duke University. The annual $20,000 prize supports a collaborative documentary project. Lemoyne and Pitzer are working on "After War," a project about civilian life in the former Yugoslavia.

Influential Photo Curator John Szarkowski Dies
John Szarkowski, director of the Museum of Modern Art's photography department from 1962 to 1991, died July 7 at age 81. Szarkowski helped elevate the status of photography both at the MoMA and in the art world in general. He greatly expanded the MoMA's photo collections and oversaw more than 100 exhibitions, championing photographers like Diane Arbus, Lee Friedlander and Garry Winogrand.



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John Szarkowski in 1992.

Corbis Finally Enters Microstock Business
Corbis pulled the wraps off its new micropayment stock imagery site at the end of June. Called SnapVillage, the site will compete with at least ten other sites that appeal to budget-minded customers by licensing royalty-free photos submitted by amateur and professional photographers.

Photographer Byli Strike At Baltimo Bears Little Fruit
Management at *Th Sun* succeeded inid clause from its emp contract that prohi reporters and phot from doing each ot Photographers had four-day byline stri protesting the mov ment said it neede to assign reporters ally take basic phot meet reader demar images and video o

Getty Diversifies
Dissatisfied with la image sales and an growing demand fo multimedia conten acquired music lice service Pump Audic $42 million. CEO Jo Klein told investors company also plan launch an unspecifi consumer business summer or early fal

Photographer Ber Becher Dies
Bernd Becher who, wife Hilla, shot me large-format studie trial buildings that exhibited around t died June 22 at age teachers at the Du Academy, the Bech enced such photog as Andreas Gursky, Struth and Thomas

Three months after the 11th Circuit decided in Greenberg's favor, however, the U.S. Supreme Court ruled on *Tasini v. New York Times*. That case involved the use of freelance contributors' work in electronic databases that removed articles from the original context of the collective work.

In *Tasini*, the Supreme Court ruled in favor of the freelancers, but implied (without explicitly stating) that publishers could reissue collections of freelance works without permission as long as those works appeared in their original context.

NGS has argued ever since then that the *Tasini* ruling supports its defense that *The Complete National Geographic* is a revision of its original works, rather than a separate work. In 2005, the U.S. Court of Appeals for the Second Circuit, which is in New York, agreed with NGS in the case of *Faulkner v. National Geographic*. That case was nearly identical to Greenberg's.

After Greenberg won the $400,000 jury award, NGS appealed to the 11th Circuit to reconsider its pre-*Tasini* ruling, which the court finally did.

"We conclude that the Supreme Court's decision in *Tasini* established a new framework for applying [the law pertaining to revisions] that effectively overrules [our] earlier decision in this case," the appeals court wrote in its June 13 decision.

"*National Geographic* is delighted with the decision," said *National Geographic* spokesperson MJ Jacobsen.

The court left open the question of whether the opening montage, which includes one of Greenberg's images, is by itself infringing. Greenberg can still pursue an infringement claim for that, but says he hasn't decided whether or not he will.

"I would be lying if I said I wasn't disappointed," Greenberg said. "I believe in the [legal] system. There's winners and losers in everything, and I have no animosity toward *National Geographic* at all."

—David Walker

> "I WOULD BE LYING IF I SAID I WASN'T DISAPPOINTED," SAYS GREENBERG. "I BELIEVE IN THE [LEGAL] SYSTEM. I HAVE NO ANIMOSITY TOWARD *NATIONAL GEOGRAPHIC* AT ALL."

TEN YEARS OF WRANGLING OVER A *NATIONAL GEOGRAPHIC* CD

In September 1997, the National Geographic Society released a CD called *The Complete National Geographic*, which reproduced every back issue of *National Geographic* magazine page by page. Several photographers sued alleging copyright infringement because NGS reproduced their images on the CD without permission. NGS countered that no permission was required because the CD was a revision of existing collected works, rather than a new work. After nearly a decade of legal battles, NGS finally prevailed over all the claimants in June. The timeline below highlights the major developments of the various court cases.

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Photographer Jerry Greenberg sues NGS for infringement in U.S. District Court in Miami. Photographer Douglas Faulkner files a separate infringement claim against NGS in U.S. District Court in New York City.

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MAY 1998
The U.S. District Court in Miami rejects Greenberg's claim on the grounds that the NGS CD is a revision. Greenberg appeals.

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11th Circuit U.S. Court of Appeals rules for Greenberg, calling the NGS CD "a new product, in a new medium, for a new market," and sends the case back to U.S. District Court in Miami for a trial to determine damages.

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U.S. Supreme Court refuses *National Geographic*'s request to review the March 2001 ruling in Greenberg's favor by the 11th Circuit U.S. Court of Appeals.

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MARCH 2003
A federal jury in Miami finds NGS infringement of Greenberg's copyrights "willful" and awards him $400,000 in damages. NGS seeks to have the award vacated or reduced on the grounds that it is "excessive."

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U.S. District Court in New York City rejects state law claims of Faulkner, Ward and others against NGS for breach of contract.



Q&A: ATTORNEY NANCY E. WOLFF

Nancy Wolff specializes in intellectual property and new media law at the entertainment law firm Cowan, DeBaets, Abrahams & Sheppard in New York. Her book, *The Professional Photographer's Legal Handbook*, was co-published by Allworth Press and the Picture Archive Council of America and released in June.

PDN: What court ruling in the last decade has had the most impact on photographers?

Nancy Wolff: The ones that relate to payment for electronic rights. What comes to mind is *Tasini*, a Supreme Court decision, and the line of cases that deal with the reproduction of a print work in electronic form and whether that is a new work for which a photographer is entitled to be paid.



COURTESY NANCY E. WOLFF

PDN: You're talking about the *National Geographic* cases?

NW: Yes, those cases as well as *Tasini*, which went to the Supreme court and applied in those cases. Previously, there were no cases addressing limits of what publishers could do under section 201(c) of the Copyright Act. [Editor's note: section 201(c) allows publishers to issue revisions of collected works. See the article and timeline on page 16 in this month's PDNews section for more information about the *National Geographic* cases]. Certain publishers took a risk, and in pursuing it to the Supreme Court, have really shaped the law in that area. Of course, after the *Tasini* ruling, publishers modified their contracts to cover those rights.

The other area where everything has affected photography is the Internet. The Digital Millennium Copyright Act has shielded service providers from any liability for infringing material which may be posted to Web sites [they host]—as long as they remove the material immediately when they get notice of infringement. That has allowed companies such as YouTube, MySpace and Google to grow.

And it places the burden on copyright owners [rather than service providers] to police copyright online.

PDN: Photographers spent a lot of time and money pursuing *National Geographic* for infringement, but ultimately lost. Do you think the courts got it right with the *National Geographic* cases?
NW: The question was whether the CD was a new product, or something akin to microfiche [a permitted revision]. Microfiche is a research and preservation tool for libraries. Consumers don't purchase microfiche, [and] publishers and contributors didn't see any threat from microfiche. When you put 100 years' worth of magazines together, package it, and sell it to the public, to me it really is a different product from a consumer perspective than a magazine that comes out every month or every quarter. What the courts were looking at was the question of whether the change of medium triggers a requirement that you re-license everything. Maybe it was a practical issue: these products might not exist [if they were considered new works rather than revisions] because of the burden of going back and re-licensing material.

PDN: Many photographers object to the fair use exemptions of copyright law. Have the courts gone too far with fair use in recent years?
NW: Some courts get it right, and some don't. Fair use is where First Amendment rights are taken into consideration, along with uses that are educational, encourage commentary and criticism and contribute to the public good. There are a lot of nuances and complexities to fair use. The problem for photographers is that you have to educate people [about fair use] and it's not that easy for a layperson to understand. People often think it is much broader than it actually is. For instance, universities often assume it's fair use if they take a stock photograph without permission for their Web site, even if the image is there just to make the Web site look better, and isn't for educational use. Then there are bloggers who have a disdain for paying for anything, and think that anything they use is fair use. They don't understand that just because a photo is of the news or illustrates something newsworthy, that doesn't mean it's fair use. Otherwise *Time* would never pay for pictures.

PDN: How do you enforce your copyright on the Internet?
NW: If you want to pursue a claim, you can't even go to court until your work is registered. But there are a lot of benefits to registration. If your work is registered [before the infringement occurs or within three months of first publication of the infringed image] you don't have to rely on actual damages, which most courts have interpreted as a license fee. You can seek statutory damages, and the court can award at its discretion any amount between $750 and $30,000 per infringement. If you can establish that the infringement was willful, damages can go up to $150,000, but that's really rare. Another benefit to registration is that you can recover attorneys' fees.

PDN: Why is copyright registration so important?
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PDN: If you haven't registered your work before the infringement, are you at a disadvantage?
NW: Yes. The cost of going to court can exceed what your potential recovery is. If you can't resolve a claim by telephone calls and letters, it's not cost effective [to take it to court].

Read an excerpt from Wolff's new book, The Professional Photographer's Legal Handbook, *in the Features section of PDNOnline.com*





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PICTURE STORY

On Assignm

A newspaper photographer returns f
California Democratic convention wi
multimedia show covering the cov

DAI SUGANO'S MULTIMEDIA JOURNAL OF THE CALIFOR
convention, called On Assignment, is an unconventiona
journalism. The project appeared on the San Jose *Mercu*
right after the convention in late April. With masterfu
editing, Sugano wove hundreds of still images and a fe
a fast-paced cinematic narrative.

Sugano occasionally presents his state politics covera
dia slideshow, superimposing a reporter's narrative ove
the Democratic Convention was shaping up to be a mec

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PDNEWS

Photographers Lose NGS Appeal

The 2nd Circuit Court of Appeals has affirmed a lower court ruling that the *Complete National Geographic* on CD does not violate photographers' copyrights because it is a revision of an existing National Geographic Society work rather than a new product. Under U.S. copyright law, publishers can create revisions of existing works without permission from freelance contributors.

The ruling conflicts with an 11th Circuit ruling from 2001 holding that the CD is a new product and therefore violated photographer Jerry Greenberg's copyrights. "They [the 2nd Circuit] made a mistake," says Fred Ward, one of the photographers who brought the suit. "We have two courts with opposite rulings, so it has to be resolved." He and other plaintiffs say they will appeal.

The conflicting rulings stem from different interpretations of how copyright law defines a "revision." The 11th Circuit in Atlanta concluded that because the CD had a search engine and other features the printed magazines did not have, it was "a new product ... in a new medium, for a new market," not a revision. But the 2nd Circuit in New York said the central issue was how the CD's content looked to users. Since the CD displays exact replicas of *National Geographic* pages like microform, it amounted to a revision. The 2nd Circuit based that conclusion on its own *Tasini v. New York Times* ruling that databases are infringing (i.e., not revisions) if they strip printed articles out of their original context.

In affirming the *Tasini* ruling in 2001, the Supreme Court contrasted infringing databases with microform, which "represent[s] a mere conversion of intact periodicals...from one medium to another." The 11th Circuit ruled on *Greenberg* before the Supreme Court weighed in on *Tasini*.

Exempt from the decision were seven of about 250 photographs by Louis Psihoyos because he had explicitly denied NGS any electronic rights to those images in writing. "I think it was a big victory. I think we're looking at a million dollars in damages" for unauthorized use of the seven images, he estimates. He says he intends to appeal the ruling with regard to the rest of his images, however.

al Magazine Award for General Excellence
ne-making at the highest level." —Judges' Citation




In a legal battle over electronic publishing, the court upholds the "constitutionally secured" copyright of a photographer. By David Walker

NATIONAL GEOGRAPHIC SOCIETY RULING A MAJOR VICTORY FOR PHOTOGRAPHERS

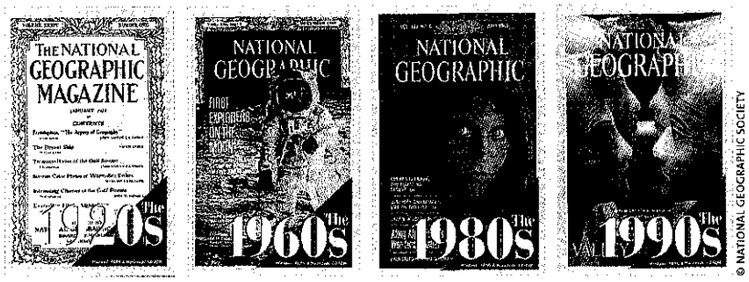
ATLANTA—The 11th Circuit Court of Appeals ruled March 22 that the National Geographic Society (NGS) violated photographer Jerry Greenberg's copyright by including several of his images in a CD product without his permission. The ruling was a decisive victory for creators in their ongoing tug-of-war with publishers over electronic rights—but by no means the last word.

Greenberg sued because the NGS used his images without permission on a 1997 CD compilation of the entire *National Geographic* magazine archive. The CD reproduces each back issue of the magazine page by page, but also includes search-and-retrieval software and an introductory montage. The Society said it didn't need permission to use Greenberg's images because the CD is simply a revision of its magazines in a different medium.

But the court rejected the publisher's claim. "In layman's terms, the [CD] is in no sense a revision," the court said. "The Society. . .has created a new product, in a new medium, for a new market." The NGS has sold hundreds of thousands of copies of the CD and generated millions of dollars in revenue from it.

The court's ruling was based upon its reading of Section 201 (c) of the U.S. Copyright statute, which grants publishers the privilege to produce and distribute revision of collective works without permission from contributors. Collective works, such as magazines and newspapers, contain separately copyrighted contributions such as photographs and articles. Examples of revisions include later editions of a magazine or newspaper.

In reaching its decision, the court weighed the right of contributors—namely, their copyright—against the "privilege" of publishers under



© NATIONAL GEOGRAPHIC SOCIETY

The court ruled that the Geographic's CD-ROM set (above) is a "new work, in a new medium" and infringed photographer Jerry Greenberg's copyright.

Supreme Court Hears Arguments in *Tasini*

WASHINGTON, D.C.–One week after the decision in *Greenberg v. National Geographic Society*, the Supreme Court heard oral arguments in another case that will determine whether publishers will have to share the economic benefits of electronic publishing with freelance creators. During arguments in *The New York Times v. Tasini* held March 28, nearly half of the Supreme Court justices asked tough questions and made leading statements that revealed some sympathy for authors' and creators' rights.

The case began seven years ago when Jonathan Tasini, the president of the National Writers Union, and five other freelancers, sued newspaper publishers for copyright infringement over the use of their articles in LEXIS/NEXIS, a *New York Times* CD and other electronic databases without the writers' permission. The 2nd Circuit Court found in 1998 that in the absence of written permission from freelancers, electronic uses infringe the authors' copyrights. The publishers appealed, and last year the Supreme Court agreed to hear the case.

The *Tasini* case rests on the interpretation of Section 201 (c) of the 1976 Copyright Act, which allows publishers to distribute revisions of newspapers, periodicals and other so-called collective works without permission from individual contributors, such as freelance writers and photographers. Arguing for the publishers, Harvard Law School professor Laurence Tribe began by saying that no interpretation of the section implies that copies of periodicals on microfilm aren't allowable revisions. Microfilm was the storage medium of choice for decades before the advent of electronic media.

But Justices Sandra Day O'Connor, David Souter and Antonin Scalia quickly disputed his analogy. While microfilm presents replicas of an entire newspaper, the articles in LEXIS/NEXIS are "disaggregated," said O'Connor. If you type in the name Smith, Souter said, you find only articles by Smith.

Scalia repeatedly hammered home the fact that each article in LEXIS/NEXIS is tagged separately to ease retrieval. The result is not a revision but a new work, comparable to what would be created if "an old fogey editor" who ignored "this new fangled technology" simply cut and pasted together a few articles to make a new publication, Scalia reasoned.

Tribe argued that "the technology should not obscure what's happening here." The electronic database version of the day's newspaper, he said, "is as close to" the original edition as it can be "given this [electronic] medium." The Copyright Act is "media neutral," he added, and at the time of the 1976 revision of the act, Congress was anticipating that emerging computer technology might change the way we use copyrighted works.

Justice Ruth Bader Ginsberg noted that in a letter filed with the court, the Register of Copyrights had argued that the 1976 Copyright Act gave authors "more muscle vis a vis the publishers." Tribe countered there is no "monstrous inequity" between freelancers and publishers. He

The Disputed Statute

Lawyers in both the *Greenberg* and *Tasini* cases have argued over the language of Section 201 (c) of the 1976 Copyright Act. This section establishes the ownership of the copyright of "collective works," such as newspapers and magazines:

(c) Contributions to Collective Works. —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 copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

Section 201 (c). "This is an important distinction that militates in favor of narrowly construing the publisher's privilege when balancing it against the constitutionally secured rights of the author/contributor," the court said.

The court concluded the CD is a new collective work, and not merely a revision of existing works, because it contains an animated opening montage and search-and-retrieval software that enables users to quickly locate articles using keywords.

"In this case we do not need to consult dictionaries or colloquial meanings to understand what is permitted under Section 201 (c). Congress in its legislative commentary spelled it out," the court said. That commentary says explicitly that while publishers can reprint contributions for one issue or edition in later editions, "the publisher could not. . .include [a contribution] in a new anthology or an entirely different magazine or other collective work."

The court went on to say that its analysis "is totally consistent with the conduct of the Society when it registered its claim of copyright in the [CD]." A 1997 copyright notice on the CD packaging indicated a new work of authorship, the court noted. And the Society indicated on its copyright application for the CD that it had not noted that *The Times* issued new freelancer contracts demanding electronic usage rights in 1995, but royalty payments have not increased at all. That, Tribe claimed, shows that authors are not losing money from electronic publishing.

"These people seem to think so," Scalia retorted, referring to Tasini and the other plaintiffs.

Tribe claimed that the plaintiffs expect to earn statutory damages if the court finds there is infringement. So if the hundreds of thousands of freelancers' articles on LEXIS/NEXIS are deemed to be infringements by the Supreme Court, Tribe said, then publishers will have no choice but to make "defensive deletions" in order to avoid liability. Scalia said that such a remedy would not ordered "by court decree." Ginsberg noted that erasure would not benefit authors, "who want exposure for their work."

What authors want, in fact, is compensation, not erasure. Said Scalia, "We're only talking about money."

When Tribe's 30 minutes were up, Laurence Gold, a lawyer who has represented the United Auto Workers, with which the National Writers Union is affiliated, took the podium. Observers in the court were dismayed by his halting arguments and tongue-tied answers.

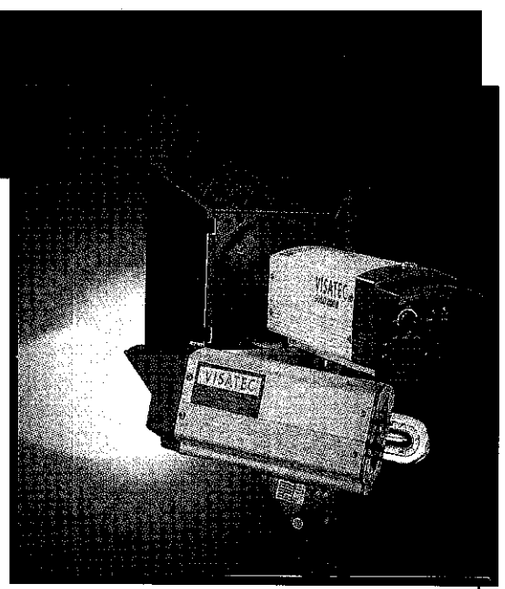
Gold began by stating that while Section 201 (c) allows publishers to copyright their collective works, it gives them no ownership in the individual works in the collection. By disaggregating the articles in a periodical, publishers transmitting stories to NEXIS are tampering with the underlying copyright to the individual articles, he said.

Justice John Paul Stevens asked Gold when the first act of infringement takes place: Is it when the files are digitally copied, when the ads are stripped out, when someone at *The Times* presses "send"? Gold said that a series of infringing acts takes place.

At first, Gold said that sending an e-mail of an article would not be an infringement, but later he said that transferring the files to a digital medium is an infringement—one that is "part and parcel" with the process of producing a set of disaggregated articles. In a half dozen different ways, Stevens asked, "At what point can I say, 'Aha! There's the infringement?" After one question, Gold's response was silence.

Justice Stephen Breyer said that if infringement takes place only when a reader calls up one article, then matters of fair use come into play. He said he is "discouraged" by the "Chinese Cultural Revolution" argument of *The Times* and its allies that the history of the 20th century would simply be wiped out because publishers could not take the trouble

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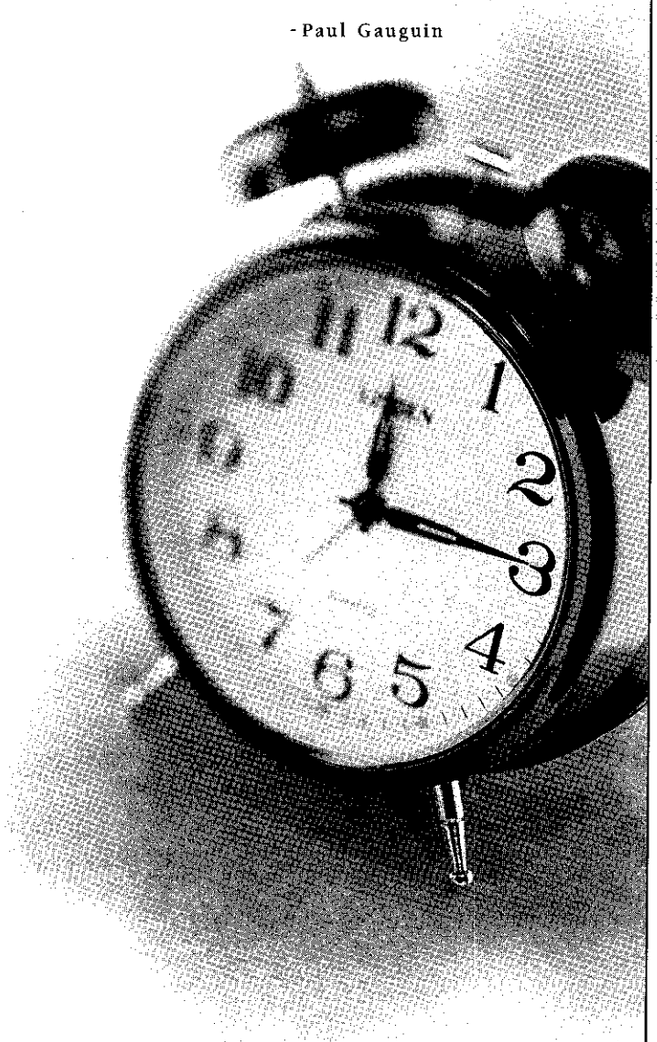
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"Has anyone ever had a boring dream?"

-Paul Gauguin



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and expense to track down copyright holders and their heirs.

In his two-minute rebuttal, Tribe said, "If we read the law the way [freelancers] want us to read it, we'll have no remedy for kids. . . doing their homework."

Out on the courthouse steps, Tasini told reporters that payment of royalties could be accomplished through a rights clearinghouse or through a class-action suit, similar to those organized for product liability cases. Answering the question Gold was unable to answer, attorney Patricia Felch, who with Emily Bass was co-counsel for the freelancers, said that the first infringement takes place when a copyrighted work is first copied.

Among the observers in the courtroom were the six writer plaintiffs, members of the Authors Guild and the National Writers Union, ASMP executive director Dick Weisgrau and ASMP counsel Victor Perlman, who had filed a friend-of-the-court brief in support of the writers. Former special prosecutor Kenneth Starr, who had written a brief for the *National Geographic* in support of the publishers, was also present.

A decision is expected by the end of June.

—Holly Stuart Hughes

already registered the work, or any earlier versions of it. "Accordingly, this is a new work," the court reiterated.

The appeals court said Greenberg is entitled to damages, court costs and attorney's fees, all of which will be determined by the lower court that originally rejected his claims. But the appeals court also warned the lower court against taking the CD off the market as part of any remedy. "We urge the [lower] court to consider alternatives, such as mandatory license fees, in lieu of foreclosing the public's computer-aided access to this educational and entertaining work," the appeals court said.

Asked for his reaction to the decision, Greenberg's attorney, Norman Davis of Miami, said, "We're just plain delighted." National Geographic Society's general counsel Terry Adamson says, "We were surprised and disappointed by the ruling." The NGS is waiting to hear the arguments before

Attorney Patricia Felch, who wrote an amicus brief in support of Greenberg, made no effort to hide her glee with the decision: "Whooopeeee!"

the Supreme Court in the *Tasini* case—"which is obviously related to *Greenberg v. National Geographic*"—before deciding how to respond to the *Greenberg* ruling, Adamson says. Options include asking the 11th Circuit to reconsider, or appealing the *Greenberg* ruling to the Supreme Court. Chicago attorney Patricia Felch, who wrote an amicus brief on behalf of ASMP in support of Greenberg, made no effort to hide her glee with the decision. "Whooopeeee!" she said.

Felch is part of the legal team that argued the *New York Times v. Tasini* case before the Supreme Court the week after the *Greenberg* decision (see sidebar, "Supreme Court Hears Arguments in *Tasini*"). In the *Tasini* case, *The New York Times*, like the National Geographic Society, argued that an electronic database amounts to an allowable revision of its print publication.

The Supreme Court ruling on *Tasini* could affect any appeal of the *Greenberg* ruling significantly, especially if the high court interprets the definition of a revision more broadly than the 11th Circuit Court has in *Greenberg*. But Felch and other attorneys on the side of authors' rights say the facts of the *Greenberg* and *Tasini* cases are very different—which is their way of saying a Supreme Court decision unfavorable to creators in the *Tasini* case shouldn't affect the *Greenberg* decision. ☐

PUBLISHING

Imaging Takes Publishing to New Territories

Imaging is taking publishing where it's never gone before. What began with Gutenberg's introduction of moveable type has progressed to the introduction of computers and on to today's electronic, or paperless, publishing.

BY LIZ LEVY

With imaging and electronic publishing we have a variety of ways to save and present our ideas without using paper. Publishing isn't just in print houses anymore. The Internet and CD are the new media becoming more used by everyone.

The type of electronic publishing that may be more obvious to some is the work being done in publishing houses. The digital press has found its place as the offset press alternative that has become the ideal way to handle high-quality, small-volume printing jobs in a more cost-effective way.

The use of digital printers lets customers send documents to be printed electronically on Zip disks or over the Internet to printers. There is no film involved. A single printed copy can be produced to let customers approve the finished product. Another kind of paperless publishing is taking place with the use of imaging. Large and small businesses are publishing documents on the Web. Many libraries publish their archives on the Web for public consumption. Their information is made more accessible to the public than ever.

Internet publishing is different from the usual Web page creation. Publishing is about volume and can also involve more sophisticated indexing and search engines. Publishing on the Internet can be a large conversion of legacy printed documents.

Publishing also plays a part in CD-ROM, CD-R, CD-RW and CD-DVD creation. Thousands of document images can be held on a single CD. The quality can be very high. This makes it ideal for historical image archives. CDs have also become a new way to distribute large amounts of information on an affordable piece of media.

Take A Look

Take a look at two new desktop electronic publishing products being offered. These do-it-yourself systems make publishing an out-of-the-box reality for everyone.

Microboards Technology (Chanhassen, MN 612-470-1848) puts a CD-R publishing system on your desk for $5,700. Their Desktop CD-R Publisher system includes one 4X CD-Recorder, Cedar Technology's Autoloader, two CD holders, Cedar CD Face label editing software, Prassi CD-Rep premastering software for Windows 95 or NT and Prassi Robo Rep duplication software. For $300 more the system includes the Fargo Signature CD Color Printer. Print full-color, high resolution images on printable-surface CD-R media. For more demanding applications get the system configured with two CD-Recorders.

Enigma (Waltham, MA 617-290-0080) makes Insight into Information 4.0 ($7,500) desktop electronic publishing software. Publish professional-quality, full text retrieval applications for distribution on CD-ROM, the Internet, an intranet or network simultaneously. The software uses wizards to guide you through the step-by-step process.

Publish 250 to one million pages of documents, with full text and hypertext navigation. Use it to publish periodical documents and distribute your info on multiple forms of media. The software automatically creates a table of contents. Integrate multiple-source formats including SGML, XML, HTML, RTF and Microsoft Word.

The application has a familiar Windows 95/98 look for ease of use to the end-user. You need a Windows 3.1, 95 or NT compatible with at least 8 MB of RAM. End users can run applications created with Insight on various platforms including Windows and Mac. Web and intranet applications are installed on Windows NT Web servers. These can be accessed using any standard Web browser.

out the shipping cost of heavy paper packages.

The publishing can be done easily in house with a robust scanner, a CD-Recorder, or the right size Web server for Internet publishing. The conversion work can also be sent to service bureaus and electronic publishing houses. Many service bureaus offer Adobe PDF file conversion and electronic publishing services. PDF plays a big part in the electronic publishing arena. The PDF format makes documents viewable on any platform while keeping all of the original document elements including layout, fonts, imbedded video and audio.

Another purpose to electronic publishing, besides distribution, is being able to preserve old and fragile paper documents safely. This gives access to the public without worrying about the wear and tear to irreplaceable documents.

National Geographic Publishes 108 Years On CD-ROM

National Geographic completed a project last fall to publish the magazine's first 108 years on CD-ROM entitled, *The National Geographic Society's First 108 Years*. The 30-CD collection spans over 10 decades. It includes the magazine's first issue in October of 1888 and continues up to the December issue of 1996. National Geographic published their issues to CD-ROM with the goal of preserving the information and making it available to the public.

Every page from some 1,235 issues was scanned — more than 190,000 printed pages in total. This included text, graphics, photography and advertisements. National Geographic started the testing for the project and coming up with requirements in February 1996. The work began in September and the CDs began shipping in August 1997.

"The approach was to scan the page and treat it as electronic microfiche. We looked to preserve the actual page image and all the photos," says Tom Stanton, director of CD-ROMs for National Geographic Interactive.

National Geographic created the CD collection for consumers. The CDs had to be able to run on a 486 66 PC with 8 MB, running Windows 3.1. "We created the product without high requirements realizing that not all users can afford to upgrade to Windows 95 or the latest thing," says Stanton.

"We went out locally to find a scanning service bureau in DC. Most companies were doing work for government applications, primarily a black and white science. We wanted to scan 24-bit color at a minimum with high photo quality. Creating a consumer product, we saw no need to use a very high resolution because of the limits of display." National Geographic came across Ledge Multimedia, a division of **Dataware Technologies** (Cambridge, MA 617-621-0820).

Ledge Multimedia also worked with **Document Automation Development** (Overland Park, KS 913-663-4323), a provider of document automation services including electronic publishing and scanning. Document Automation Development (DAD) had the monumental task of scanning all 1,235 original issues. From there the scanned images would go to Ledge Multimedia for merging the scanned material and multiple indexes. Each image is a two page spread from the magazine.

The two companies developed a unified standard for use throughout the project. Test pages were scanned at various settings until they found the right settings to optimize the magazine's pages including photographs and images.

DAD used a collection of five software applications created in-house, collectively called DocuTrak. DocuTrak has a proprietary process for workflow management that allowed DAD to accurately index and track some 300 total GB of images and information. Three complete sets of the magazine were delivered on three forklifts direct from National Geographic. The first set was the master set. The second was a safety set, in case any pages in the master set were unusable with folds or stains. The third set was a back-up in case of a total catastrophe in the process.

"We used DocuTrak to index every page of every issue from front cover to back cover, including foldouts," says Vince Pingel, president of DAD. "An operator turned the pages of each issue and entered the information into the index format by hand. Once every page was indexed, the information went into a database."

The binding was cut off the master set and DAD began scanning the issues. DocuTrak gives on-screen prompts to the scanner operator that tell the person exactly what pages they should be scanning. DAD reviewed every scanned image as part of their control on the scanning process.

DAD's use of DocuTrak in their work with National Geographic let them eliminate a lot of the manual work and minimize the risk of human error. One of DocuTrak's five components is an indexing module that drives the scanner and assigns the images file names. Another is the workflow component that drives the entire process. A third is a quality control piece that does a page by page check of every image burned to CD-R against

the original index. A report generator itemizes the entire product and database in a spreadsheet fashion. This gets passed on to Dataware for them to build on.

To automate the process of giving the images file names, DAD had to create a structural index, assigning page numbers to all the pages that were numbered and unnumbered, including foldouts and ads. "We took a page-by-page account from all the issues to figure out how to fit this into a file naming scheme," says Pingel. "This is where DocuTrak came in. We created our structural index of the magazine and put that into DocuTrak. DocuTrak drove the scanning process and guided the operator."

DocuTrak gave prompts to the scanner operator, automatically named the file according to the structural index and placed the file in the proper directory. DAD automated the entire scanning process down to one person. They used one operator running two scanners at a time. The operator was freed up to do this because Docutrak automatically set all the scan settings.

File compression, image rotation, moving the files across to the network to the burner and staging of the CD-R was all done automatically by DocuTrak.

> Another purpose to electronic publishing, besides distribution, is being able to preserve old and fragile paper documents safely.

DAD created about three GB of scanned images a day. These were compressed using Pegasus Software and staged for CD mastering. Two complete sets were created, one for Ledge Multimedia and one for DAD's backup. There were 644 CDs per set — 1,288 CDs in total were authored in house. One CD holds two issues in uncompressed BMP format and JPEG compressed format. To record the issues onto CDs, DAD used a Panasonic CD-recorder, an HP CD-recorder, Sony CD-R media and Adaptec CD creation software.

After mastering, each CD was checked again for errors by physically comparing each scanned image with the original page from the safety set of magazines. "We did everything we could to make sure every page was accounted for and the scanned pages were error free," says Pingel.

The complete set of images on CD was sent to Ledge Multimedia to be merged with the vast index created by the Library Science Group at National Geographic and Ledge's index search database and image navigation database format.

"We worked closely with National Geographic on the design of the project," says Lisa Kryger, executive producer from Ledge Multimedia. "We helped them come to terms with what they could and could not do. They wanted all the documents kept in the same format they originally appeared in with the same index used in the magazine."

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02/19/1998 01:45 301-983-3980 GEM BOOK PUBLISHERS PAGE 04

The Benefits of Electronic (Paperless) Publishing

1. Transmit documents to your next door neighbor or around the world in minutes. Your audience is anyone with access to a computer.
2. Update documents as often as you like, there's no need to republish all your information, making many versions of the same document.
3. Save some trees. A vast amount of information can be stored on a single disk rather than stacks of paper. Recycle the disks by reusing them. Print what you need from your own printer and reduce waste.
4. Publish yourself. Everyone can become a published writer! You don't need anyone else to produce your work. Get your ideas across the globe while sitting at your desk.

Ledge used Dataware's proprietary ADL database. The database is invisible on CD format. Their index search database was used to create a data retrieval library which sits on every CD.

Each CD also contains its own navigation database of all the images, giving related pages and articles. They are all in directory structures based on month and year. Each image is identified by type and by page number. The database tells the user what CD to insert in a search.

The images that were sent on CD from DAD were scanned for millions-of-colors display. Because this is a consumer product National Geographic wanted the images to also be made viewable for a 256 color display. To do this a second version of the images had to be made with a specific color palette for each set of images (each two page spread). This second palette is invisible to the user. If their monitor has a 256 color display the user doesn't know the difference. This display feature was written specifically by Ledge for National Geographic.

Ledge wrote multiple versions of the project for approval by National Geographic. They recorded the CDs using Adaptec Toast Software and a variety of internal CD-R drives.

"The biggest challenge was dealing with the magnitude of data, says Kryger. "Once everything was indexed we had to look through every page to verify the indexing and navigation was correct."

Their second major task was to index the advertisements that appeared in the magazines. This was done chronologically. After 1970 National Geographic included regional advertisements. This made it difficult to index. Ledge wrote a Visual Basic application for the indexing. They had to go through the scans on the CDs to locate the odd regional adds and replace them.



National Geographic published the magazine's first 108 years on a CD-ROM entitled, *The National Geographic Society's First 108 Years.* Every page from some 1,235 issues was scanned. They used Ledge Multimedia, a division of Dataware Technologies (Cambridge, MA 617-621-0820).

Users can search across the CD-ROMs through every issue by criteria such as title, subject, keyword, place, name, contributor and date. Ads can also be searched for separately by subject and date.

"We were very fortunate to find Ledge," says Stanton. "They were able to integrate the scanning with the index table from the magazines. They also integrated our own index material consisting of tens-of-millions of individual words or phrases derived from our Library Sciences Group who carefully indexed all of these pages for years. It was a major boost to the project that this in-depth index for the text already existed. We were also able to have a hyper index for related subject or contributor."

"The project was reasonably cost effective," says Stanton. "Our biggest trade off was the compression which had to be tight. We used JPEG which worked the best on images and not the text. The text is not very sharp in black and white with some halo around it. This is especially true in the older documents, scanned from yellowed paper. We did as much as we could to correct this. The purpose was to create a consumer product which forced us to make compromises in quality."

National Geographic decided against full-text search. "We thought it was overkill for the average user," says Stanton. "We had an index in the library where they looked at every page and assigned five key terms to every page. They did this by hand. Blessed with this in-house index, we thought it would more than suffice.

"We considered OCRing all the text but we needed 100% accuracy. Having 99% wouldn't be up to National Geographic standards. National Geographic wanted to preserve the look, feel and style of the magazine. Having the page image did the best job."

National Geographic also considered publishing on the Web. They looked at what it would take to download an entire article which would typically be about 20 pages long. That would be half to three-quarters of a megabyte to look at one article. "We thought CD would be a perfect medium," says Stanton. "The only downside is the 30 CDs. We're looking into DVD to reduce this.

"We are very pleased with Ledge. They will do other projects for us in the future. We were relieved to find a team of solid engineers with a great approach. They are a sophisticated group which had experience with commercial CD-ROM publication. They really cared about the work they were doing and they fell they in love with the project without any seduction from us." ■

Says some news is no longer fit to print—if it means paying writers.

The U.S. Supreme Court has ruled that publishers cannot sell a writer's work – electronically or by other means — without his or her permission.

Unfortunately, in the manner of old-style segregationist Governors, many publishers are standing in the schoolhouse door, trying to deny writers the cyber rights to which we are clearly entitled.

We disagree.

Rather than pay writers, publishers are removing free-lance contributions from electronic databases. Or, in the case of the New York Times, they are threatening to delete our work unless we surrender the rights we won in the Supreme Court.

The databases in question are ***not*** public libraries. They are profit-making ventures: The New York Times gets paid when it sells articles to Lexis-Nexis. Lexis-Nexis gets paid when it sells articles to subscribers. It is only fair that writers be compensated as well.

There's no reason for any writer to give in to the one-sided demands made by publishers.

Instead, writers and publishers should work together to negotiate compensation for past copyright violations, and for the future sale of our work.

Another alternative is for writers to register articles through the Publication Rights Clearinghouse (PRC) at **www.nwu.org**. The PRC, established in 1994 by the National Writers Union, is endorsed by organizations representing tens of thousands of writers. Open to all writers, the PRC offers writers and publishers a method to license copyrighted material so that appropriate payments can be made.

Copyright matters. Not just to writers, but to everyone. We all benefit when creators of new works of art, science and literature enjoy the protection of a stable copyright system.

That's why we brought publishers to court in the first place. That's why the Supreme Court ruled in our favor. And that's why publishers should stop trying to bully us, and start bargaining.

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National Writers Union,
UAW Local 1981
www.nwu.org

UAW

Contributions to defend writers' rights and defray the cost of this advertisement can be made through our website or sent to:
The National Writers Union, 113 University Place, New York, NY 10003

7/9/01

The Rights of Writers

To the Editor:

Some publishers have threatened to destroy their own archives in reaction to the Supreme Court ruling that they had infringed the copyrights of freelance writers ("Freelancers Win in Copyright Case," front page, June 26). Arthur Sulzberger Jr., the publisher of The New York Times, said it "will now undertake the difficult and sad process of removing significant portions from its electronic historical archive."

Yet no one — least of all, authors, whose primary professional objective is to be read — has ever asked publishers to remove material from their historical archives, and The Times needn't do so now. All we ask is that those who sell our articles and profit from our work undertake "the difficult and sad process" of sharing the revenue with those who have created it.

LETTY COTTIN POGREBIN
New York, June 27, 2001

The writer is president of the Authors Guild and the Authors Registry.

NOTICE
to freelance contributors to THE NEW YORK TIMES from 1980-1995

The United States Supreme Court recently ruled that The Times may not keep freelance articles in electronic libraries, such as NEXIS, without the writer's permission.

The Times has already taken steps to comply with this ruling by removing articles written by freelancers from 1980 (when the articles began appearing on NEXIS) through 1995 (when The Times entered into written contracts with its freelancers). This applies to all sections of the paper, including, for example, the Book Review, Magazine, Arts & Leisure and the Op-Ed page.

The Times very much regrets having to remove any articles from electronic archives, thereby diminishing their value as a comprehensive historical resource to the public.

Therefore, we would like to offer those freelancers, including Op-Ed contributors, who wrote for the paper from 1980 through 1995 the option of having their articles restored to electronic archives, such as NEXIS. If you wrote for the paper during that period, and were not on staff, you may give your permission to restore your article(s) by visiting our Web site at **nytimes.com/freelance** or by calling **212-556-8008**, or **212-556-8009.** For contributors calling outside of the New York metropolitan area please call 888-814-2698.

The New York Times

7/1/01

FREELANCERS WIN 6/26/01 IN COPYRIGHT CASE

Court Says Writers Keep Right to Their Work in Databases

By LINDA GREENHOUSE

WASHINGTON, June 25 — The Supreme Court ruled today that a group of newspaper and magazine publishers infringed the copyrights of freelance contributors by making their articles accessible without permission in electronic databases after publication.

As a result, the publishers, including The New York Times, face the prospect of paying substantial damages to the six freelancers who brought the lawsuit in 1993 and perhaps to thousands of others who have joined in three class-action lawsuits against providers of electronic databases, which the court also found liable for copyright infringement today. [Excerpts, Page A14.]

The court did not rule today on a remedy for the violation that it found in a 7-to-2 majority opinion by Justice Ruth Bader Ginsburg. The case now returns to Federal District Court in Manhattan. In a 1999 ruling against the publishers, the United States Court of Appeals for the Second Circuit did not address the remedy issue. There are a number of unresolved questions that were not part of the Supreme Court case and that may take months or years to resolve, lawyers involved in the case said today.

The Times and the other publishers, Time Inc. and Newsday, had warned the Supreme Court that a finding of liability would lead them to remove freelance contributions from the databases, a threat that the court appeared to have found something of an irritant.

"Speculation about future harms is no basis for this court to shrink authorial rights," Justice Ginsburg said. Referring to the licensing arrangements that are commonly used to apportion royalties in the music industry, she said the parties to the case "may draw on numerous mod-

Continued on Page A14

THE SUPREME COURT: Freelance Work

COPYRIGHTS

Freelancers Win in Case Of Work Kept in Databases

Continued From Page A1

els for distributing copyrighted words and remunerating authors for their distribution."

Arthur Sulzberger Jr., chairman of The New York Times Company and publisher of The Times, said today that the company "will now undertake the difficult and sad process of removing significant portions from its electronic historical archive." He added, "Unfortunately, today's decision means that everyone loses."

The Times Company said in a statement that freelance writers who wanted their articles to remain in the electronic archives should notify the company.

Since the mid-1990's, The Times and most other publishers that use freelance work have required authors to waive their electronic republication rights.

For that reason, the decision today has little prospective importance in terms of changing current industry practice. But liability for past infringement could be considerable, depending in part on how the lower courts deal with complex statute of limitations issues. It is not clear, for example, whether there has been a new infringement each time a freelance article has been made available for viewing on a user's computer screen.

Jonathan Tasini, president of the National Writers Union and the lead plaintiff in the lawsuit, said in a statement, "Now it's time for the media industry to pay creators their fair share and let's sit down and negotiate over this today."

In 1993, the union, which has 7,000 members, set up a "publication rights clearinghouse" through which writers can register their work and publishers can track copyright ownership and payment obligations.

The case, New York Times Company v. Tasini, No. 00-201, dealt only with freelance work; publishers own the copyright on articles produced by staff members.

The three publishers in the case license their contents to Lexis/Nexis, an electronic database by which individual articles are retrieved in a text-only format. The Times has a separate arrangement with another defendant in the case, University Microfilms International, which reproduces Times material in other electronic formats that also result in the display of individual articles.

It was this feature — that what the electronic user retrieves, views or downloads is an individual article, divorced from its original context — that was most significant for the court's legal analysis.

The case called on the court to interpret a section of the Copyright Act of 1976 that gives newspapers and magazines, which hold a collective copyright in the entirety of each issue, the right also to publish "any revision of that collective work."

The question for the court was whether the electronic version was a revision or something else, in which case the copyright on individual articles would revert to any freelance contributors who had not agreed to give up that right.

The publishers argued that the electronic versions were simply a technologically more sophisticated version of the printed issues that should be seen as a mere "revision" under the "media-neutral" approach of the Copyright Act.

In a dissenting opinion, Justice John Paul Stevens, who was joined by Justice Stephen G. Breyer, said there was nothing more to the case than that.

"Neither the conversion of the print publishers' collective works from printed to electronic form, nor the transmission of those electronic versions of the collective works to the electronic databases, nor even the actions of the electronic databases once they receive those electronic versions does anything to deprive those electronic versions of their status as mere 'revisions' of the original collective works," Justice Stevens said.

But Justice Ginsburg's majority opinion said the publishers' "encompassing construction" of their republication privilege was "unacceptable." She said the massive database, encompassing many published issues, "no more constitutes a 'revision' of each constituent edition than a 400-page novel quoting a sonnet in passing would represent a 'revision' of that poem."

The electronic databases are not simply modern versions of old-fashioned microfilm, Justice Ginsburg said.

Even though a microfilm roll combines multiple editions, "the user first encounters the article in context," she said, in contrast to someone calling up an article on their computer, where individual articles appear "disconnected from their original context."

She said the principle of media neutrality "should protect the authors' rights in the individual articles to the extent those articles are now presented individually, outside the collective work context, within the databases' new media."

The court may soon have a chance to expand on the role of context that Justice Ginsburg emphasized.

National Geographic said today that it would soon file an appeal to the Supreme Court from a ruling by the federal appeals court in Atlanta, which said that a 30-disc CD-ROM set that reproduced every page of every issue of the magazine was a new work rather than a revision, even though each article appeared in its original context.



Susan B. Markisz for The New York Times

Jonathan Tasini, the lead plaintiff in the copyright lawsuit, with a lithograph of a workers protest, in March.

Little change in current practice but liability for past infringement.

THE REACTION

Publishers Set To Remove Older Articles From Files

By DAVID D. KIRKPATRICK

Newspaper and magazine publishers, reacting to the Supreme Court's ruling that freelance writers retain some rights to the electronic use of their previously published work, began preparing yesterday to cull thousands of articles from Lexis-Nexis and other online databases while positioning themselves for the next round in the battle with writers' groups.

The court passed the case back to a lower court to determine what damages the publishers may owe the writers. Writers, meanwhile, have filed similar lawsuits seeking class-action status for freelancers.

The publishers involved said some older articles would start disappearing from online databases in the next few months, but the full impact of yesterday's verdict, including potential damages, remained uncertain.

Since 1993, when a group of writers filed the case, most publications have modified their contracts specifically to include the right to digital reuse, so only work before the mid-1990's is affected. There are also issues about the statute of limitations for this form of copyright infringement that courts have not yet settled.

Leon Friedman, a law professor at Hofstra University who filed a brief on behalf of an authors' trade group, said the case would have few implications for the digital use of other media like books, music or film because of differences in the specific contracts used in other industries.

Both publishers and freelance writers immediately began looking ahead. Jonathan Tasini, president of the National Writers Union and a plaintiff in the original suit, called on

Excerpts From Opinions in the Copyright Infringement Case

By The New York Times

WASHINGTON, June 25 — Following are excerpts from the Supreme Court's ruling today that publishers, by making their contents accessible through electronic databases, infringed the copyrights of freelance contributors. The vote in New York Times Company v. Tasini was 7 to 2. The majority opinion was written by Justice Ruth Bader Ginsburg; Justice John Paul Stevens wrote the dissent.

FROM THE DECISION
By Justice Ginsburg

This copyright case concerns the rights of freelance authors and a presumptive privilege of their publishers. The litigation was initiated by six freelance authors and relates to articles they contributed to three print periodicals (two newspapers and one magazine). Under agreements with the periodicals' publishers, but without the freelancers' consent, two computer database companies placed copies of the freelancers' articles — along with all other articles from the periodicals in which the freelancers' work appeared — into three databases. Whether written by a freelancer or staff member, each article is presented to, and retrievable by, the user in isolation, clear of the context the original print publication presented. The freelance authors' complaint alleged that their copyrights had been infringed by the inclusion of their articles in the databases. The publishers, in response, relied on the privilege of reproduction and distribution accorded them by Section 201(c) of the Copyright Act, which provides:

"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 copyright in the collective work is pre-

'Such a storage and retrieval system effectively overrides the authors' exclusive right.'

JUSTICE GINSBURG

sumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series."

The publishers urge that the Databases reproduce and distribute articles as part of "any revision" of the collective works in which the articles appeared, in accord with Section 201(c). We disagree. The Databases do not reproduce articles in a manner analogous to a microform edition of a publication, which mirrors the publication in all relevant respects. Nor do they reproduce articles in a manner analogous to a revised edition, which preserves the author's contribution juxtaposed to other material included in the publication. Rather, the Databases reproduce articles in isolation from the periodical publications in which they first appeared, and from any other publication data. Articles appearing in The New York Times, for example, are reproduced in the Nexis database without the pages of the publication on which they were printed, standing alone without any information about the publication in which they appeared. Such a storage and retrieval system effectively overrides the authors' exclusive right to control the individual reproduction and distribution of each article.

The publishers claim the protection of Section 201(c) because users can manipulate the databases to generate search results consisting entirely of articles from a particular periodical edition. By this logic, Section 201(c) would cover the hypothetical library if, in response to a request, that library's expert staff assembled all of the articles from a particular periodical edition. However, the Databases do not themselves offer any publication in which articles appear as they were published in print form. Nor do they group articles by publication or publication info. Rather, the Databases simply make available to the public articles in search results generated solely by the key words entered by users. The fact that a search of the Nexis database for articles published in The New York Times on a specified date would yield a group of articles that appeared in that publication on that date is entirely fortuitous. Similarly fortuitous would be the search results yielding articles published in a particular publication in which a freelance author's articles appeared.

The publishers' reliance on the "any revision" phrase of Section 201(c) is misplaced. The Databases are not revisions of the publishers' collective works in any sense. Each Database is a new collective work, in which articles appear disconnected from their original publication info. Each Database is a product different in kind from the publishers' periodicals or microform editions thereof.

The publishers' contention that the Databases are "revisions" of their collective works is not only implausible, but would also extend the privilege of reproduction and distribution far beyond the limited bundle of rights Congress accorded to publishers in Section 201(c). Indeed, the publishers' construction would enable them to market compilations comparable to the Databases (much less all freelance articles in any databases) must issue. The parties (authors and publishers) may enter into an agreement allowing continued electronic reproduction of the authors' works; they, and if necessary the courts and Congress, may draw on numerous models for distributing copyrighted works and remunerating authors for their distribution. In any event, speculation about future harms is no basis for this court to shrink authorial rights Congress established in Section 201(c). Agreeing with the Court of Appeals that the publishers are liable for infringement, we leave remedial issues open for initial airing and decision in the District Court. ... We conclude that the electronic publishers infringed the authors' copyrights by reproducing and distributing the articles in a manner not authorized by the authors and not privileged by Section 201(c). We further conclude that the print publishers infringed the authors' copyrights by authorizing the electronic publishers to place the articles in the databases and by aiding the electronic publishers in that endeavor. We therefore affirm the judgment of the Court of Appeals.

It is so ordered.

FROM THE DISSENT
By Justice Stevens

This case raises an issue of first impression concerning the meaning of the word "revision" as used in Section 201(c) of the 1976 revision of the Copyright Act of 1909. Ironically, the court today seems unwilling to acknowledge that changes in a collective work far less extensive than those made to prior copyright law by the 1976 "revision" do not merit the same characterization. ...

No one doubts that The New York Times has the right to reprint its issues in Braille, in a foreign language or in microform, even though such revisions might look and feel quite different from the original. Such differ-

23, 1990, edition."

In contrast, I think that a proper respect for media neutrality suggests that The New York Times, reproduced as a collection of individual ASCII files, should be treated as a "revision" of the original edition, as long as each article explicitly refers to the original collective work and as long as substantially the rest of the collective work is, at the same time, readily accessible to the reader of the individual file. In this case, no one disputes that the first pieces of information a user sees when looking at an individual ASCII article file are the name of the publication in which the article appeared, the edition of that publication, and the location of the article within that edition. I agree with the majority that such labeling alone is insufficient to establish that the individual file exists as part of a revision of the original collective work. But such labeling is not all there is in the group of files sent to the electronic databases. ...

To see why an electronic version of The New York Times made up of a group of individual ASCII article-files, standing alone, may be considered a Section 201(c) revision, suppose that, instead of transmitting to NEXIS the articles making up a particular day's edition, The New York Times saves all of the individual files on a single floppy disk, labels that disk "New York Times, October 31, 2000," and sells copies of the disk to users as the electronic version of that day's New York Times. The disk reproduces the creative, editorial selection of that edition of The New York Times. The reader, after all, has at his fingertips substantially all of the relevant content of the Oct. 31 edition of the collective work. Moreover, each individual article makes explicit reference to that selection by

'The court therefore

publishers to settle the suits by negotiating with his organization. In 1993 it set up a clearinghouse for licensing the electronic use of freelance writers' work. He said the clearinghouse would resemble similar organizations in the music industry for distributing fees to musicians and songwriters.

Publishers, however, called Mr. Tasini's plan unworkable, noting that his organization's roughly 7,000 members were only a small portion of freelance writers. The National Writers Union's clearinghouse would require writers to come forward and sign up for its service to make their already-published work available for licensing.

Instead, publishers said the ruling was a blow to the public interest in easy access to information. "What's sad is that this wholesale destruction of historical records will not lead to any benefit to the writers seeking redress from the court," said John F. Sturm, president of the Newspaper Association of America.

Catherine Mathis, spokeswoman for The New York Times Company, said about 115,000 articles by 27,000 writers would be affected. All appeared in the paper from about 1980 to about 1995. The Times will begin removing any affected articles as soon as possible from Lexis-Nexis and other database services, to minimize its potential liability. The Times has created an online form and set up phone lines for freelance contributors who want their work to remain available — (212) 556-8008 or 8009 and (888) 814-2698.

Robin Bierstedt, deputy general counsel for Time Inc., which also was sued by the group of freelance writers, said its magazines, including Time and Fortune, would also begin removing articles from its online databases. "We have no choice but to

freelancers' work appeared — into three databases. Whether written by a freelancer or staff member, each article is presented to, and retrievable by, the user in isolation, clear of the context the original print publication presented. The freelance authors' complaint alleged that their copyrights had been infringed by the inclusion of their articles in the databases. The publishers, in response, relied on the privilege of reproduction and distribution accorded them by Section 201(c) of the Copyright Act, which provides:

"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 copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work and any later collective work in the same series."

Specifically, the publishers maintained that, as copyright owners of collective works, i.e., the original print publications, they had merely exercised "the privilege" Section 201(c) accords them to "reproduce and distribute" the author's discretely copyrighted contribution. . . .

For the purpose at hand — determining whether the authors' copyrights have been infringed — an analogy to an imaginary library may be instructive. Rather than maintaining intact editions of periodicals, the library would contain separate copies of each article. Perhaps these copies would exactly reproduce the periodical pages from which the articles derive (if the model is GPO [General Periodicals OnDisc]); perhaps the copies would contain only typescript characters, but still indicate the original periodical's name and date, as well as the article's headline and page number (if the model is NEXIS or NYTO [New York Times OnDisc]). The library would store the folders containing the articles in a file room, indexed based on diverse criteria (the LEXIS/NEXIS central discs or UMI [University Microfilms International] CD-ROMs), while the file room stores articles in spatially separate files. The crucial fact is that the databases, like the hypothetical library, store and retrieve articles separately within a vast domain of diverse texts. Such a storage and retrieval system effectively overrides the authors' exclusive right to control the individual reproduction and distribution of each article.

The publishers claim the protection of Section 201(c) because users can manipulate the databases to generate search results consisting entirely of articles from a particular periodical edition. By this logic, Section 201(c) would cover the hypothetical library if, in response to a request, that library's expert staff assembled all of the articles from a particular periodical edition. However, the fact that a third party can manipulate a database to produce a noninfringing document does not mean the database is not infringing. Under Section 201(c), the question is not whether a user can generate a revision of a collective work from a database, but whether the database itself perceptibly presents the author's contribution as part of a revision of the collective work. That result is not accomplished by these databases.

The publishers finally invoke Sony Corp. of America v. Universal City Studios, Inc., (1984). That decision, however, does not genuinely aid their argument. Sony held that the "sale of copying equipment" does not constitute contributory infringement if the equipment is "capable of substantial noninfringing uses." The publishers suggest that their databases could be liable only under a theory of contributory infringement, based on end-user conduct, which the authors did not plead. The electronic publishers, however, are not merely selling "equipment"; they are selling copies of the articles. And, as we have explained, it is the copies themselves, without any manipulation by users, that fall outside the scope of the Section 201(c) privilege.

The publishers warn that a ruling for the authors will have "devastating" consequences. The databases, the publishers note, provide easy access to complete newspaper texts going back decades. A ruling for the authors, the publishers suggest, will punch gaping holes in the electronic record of history. The publishers' concerns are echoed by several historians, but discounted by several other historians.

Notwithstanding the dire predictions from some quarters, it hardly follows from today's decision that an injunction against the inclusion of these articles in the databases

It is so ordered.

FROM THE DISSENT
By Justice Stevens

This case raises an issue of first impression concerning the meaning of the word "revision" as used in Section 201(c) of the 1976 revision of the Copyright Act of 1909. Ironically, the court today seems unwilling to acknowledge that changes in a collective work far less extensive than those made to prior copyright law by the 1976 "revision" do not merit the same characterization. . . .

No one doubts that The New York Times has the right to reprint its issues in Braille, in a foreign language or in microform, even though such revisions might look and feel quite different from the original. Such differences, however, would largely result from the different medium being employed. Similarly, the decision to convert the single collective work newspaper into a collection of individual ASCII files can be explained as little more than a decision that reflects the different nature of the electronic medium. Just as the paper version of The New York Times is divided into "sections" and "pages" in order to facilitate the reader's navigation and manipulation of large batches of newsprint, so too the decision to subdivide the electronic version of that collective work into individual article files facilitates the reader's use of the electronic information. The bare-bones nature of ASCII text would make trying to wade through a single ASCII file containing the entire content of a single edition of The New York Times an exercise in frustration.

Although the court does not separately discuss the question whether the groups of files that The New York Times sends to the electronic databases constitute "revisions," its reasoning strongly suggests that it would not accept such a characterization. The majority, for example, places significant emphasis on the differences between the various electronic databases and microform, a medium that admittedly qualifies as a revision under Section 201(c). As with the conversion of individual editions into collections of separate article-files, however, many of the differences between the electronic versions and microform are necessitated by the electronic medium. The court therefore appears to back away from principles of media neutrality when it implicitly criticizes ASCII-text files for their inability to reproduce "Remembering Jane" "in the very same position, within a film reproduction of the entire Magazine, in turn within a reproduction of the entire Sept.

suppose that, instead of transmitting to NEXIS the articles making up a particular day's edition, The New York Times saves all of the individual files on a single floppy disk, labels that disk "New York Times, October 31, 2000," and sells copies of the disk to users as the electronic version of that day's New York Times. The disk reproduces the creative, editorial selection of that edition of The New York Times. The reader, after all, has at his fingertips substantially all of the relevant content of the Oct. 31 edition of the collective work. Moreover, each individual article makes explicit reference to that selection by

> *'The court therefore appears to back away from principles of media neutrality.'*
>
> JUSTICE STEVENS

including tags that remind the reader that it is a part of The New York Times for Oct. 31, 2000. Such a disk might well constitute "that particular collective work"; it would surely qualify as a "revision" of the original collective work. Yet all the features identified as essential by the majority and by the respondents would still be lacking. An individual looking at one of the articles contained on the disk would still see none of the original formatting context and would still be unable to flip the page. . . .

Users like Douglas Brinkley do not go to NEXIS because it contains a score of individual articles by Jonathan Tasini. Rather, they go to NEXIS because it contains a comprehensive and easily searchable collection of (intact) periodicals.

Because it is likely that Congress did not consider the question raised by this case when drafting Section 201(c), because I think the District Court's reading of that provision is reasonable and consistent with the statute's purposes, and because the principal goals of copyright policy are better served by that reading, I would reverse the judgment of the Court of Appeals. The majority is correct that we cannot know in advance the effects of today's decision on the comprehensiveness of electronic databases. We can be fairly certain, however, that it will provide little, if any, benefit to either authors or readers.

said about 115,000 articles by 27,000 writers would be affected. All appeared in the paper from about 1980 to about 1995. The Times will begin removing any affected articles as soon as possible from Lexis-Nexis and other database services, to minimize its potential liability. The Times has created an online form and set up phone lines for freelance contributors who want their work to remain available — (212) 556-8008 or 8009 and (888) 814-2698.

Robin Bierstedt, deputy general counsel for Time Inc., which also was sued by the group of freelance writers, said its magazines, including Time and Fortune, would also begin removing articles from its online databases. "We have no choice but to delete the articles," she said. She said she did not know how many articles were at issue.

A spokesman for the Tribune Company, which owns The Chicago Tribune, The Los Angeles Times and Newsday and also was a defendant, said the company was still assessing the decision's impact.

Michael Jacobs, vice president and general counsel for Lexis-Nexis, a defendant in the original suit and a unit of the British-Dutch media company Reed Elsevier, said it expected to begin deleting articles from its database within a few months.

"We are disappointed — it has the effect of compromising our database," he said, adding that Lexis-Nexis expected the loss to be minor among its three billion documents from 30,000 sources. Since 1979, Lexis-Nexis has paid publishers and others for their contents and sold access to the database to subscribers.

Mr. Jacobs and all the publishers involved said the cost of deleting articles would be minimal.

The American Library Association applauded the decision. It noted that the court referred to "numerous models for distributing copyrighted works and remunerating authors for their distribution" and suggested the lower court might develop a solution. Librarians' groups also noted that libraries continue to provide public access to the historical record of periodicals and newspapers, and, unlike Lexis-Nexis, libraries do not charge a fee.

ON THE WEB

The full texts of the Supreme Court decisions in the copyright, campaign contribution and immigration cases are available from The New York Times on the Web:

www.nytimes.com