June 15, 2007

By David Walker

After years of litigation, Jerry Greenberg's $400,000 judgment for willful copyright infringement against National Geographic Society has been vacated.

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Greenberg sued NGS in 1997 for infringement because the publisher used his images 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.

Three months after the 11th Circuit decided in Greenberg's favor, however, the US 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 re-issue 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 US 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," says 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.

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From: Billgarret@aol.com Add to Address Book
Date: 2007/06/18 Mon PM 12:12:31 EST
To: lulukiku@bellsouth.net
Subject: NGM

Idaz,

I know Jerry doesn't read email so you might pass this along to him! I got it from a friend at the Geo.

By the way, new developments on the Jerry Greenberg/CD ROM case. You may already have picked this up, but in case you haven't, the following is from our in-house electronic newsletter:

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The appeals court also said that the trial judge erred when she entered judgment for the plaintiff on liability and denied National Geographic a right to answer the complaint and assert other defenses such as the contract with the contributor. This week's decision squared the Eleventh Circuit Court of Appeals with the prior decision favorable to National Geographic of the U.S. Court of Appeals for the Second Circuit arising from a number of other cases heard in New York by some prior National Geographic contributors.

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Bill

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B E-MAIL

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From: Billgarret@aol.com Add to Address Book
Date: 2007/06/18 Mon PM 12:12:31 EST
To: lulukiku@bellsouth.net
Subject: NGM

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"If there is demand for a freelance article standing alone or in a new collection, the Copyright Act allows the freelancer to benefit from that demand; after authorizing initial publication, the freelancer may also sell the article to others," she noted.

"It would scarcely preserve the author's copyright in a contribution as contemplated by Congress," Ginsburg concluded, "if a print publisher, without the author's permission, could reproduce or distribute discrete copies of the contribution in isolation or within new collective works. The publishers' view that inclusion of the articles in the databases lies within the 'privilege of reproducing and distributing the [articles] as part of ... [a] revision of that collective work,' is unacceptable."

The majority in *Tasini* also dismissed an analogy offered by publishers that digital databases were akin to microfilm and microfiche reprints, which have not prompted copyright infringement claims.

Ginsburg noted that databases "do not perceptibly reproduce articles as part of the collective work to which the author contributed or as part of any 'revision' thereof. ... We would reach the same conclusion if the Times sent intact newspapers to the electronic publishers."

The Greenberg cases stem from The National Geographic Society's creation of "The Complete National Geographic"—a 30-disc CD-ROM set containing complete reproductions of every issue of National Geographic published in the magazine's history. Four of those issues included photos by Greenberg, who had reclaimed his copyrights from the National Geographic Society after publication.

"The Complete National Geographic" was powered by copyrighted software programs and included—in addition to the magazine reproductions—an animated montage of photos set to music and a Kodak commercial. The National Geographic registered a separate, and new, copyright for the CD-ROM set in 1998.

In Greenberg I, Birch—writing for the panel—stated that "common-sense copyright analysis compels the conclusion" that the National Geographic, in collaboration with a software company, has created "a new product ... in a new medium, for a new market that far transcends any privilege of revision or other mere reproduction" envisioned by federal copyright law.

Birch specifically dismissed arguments offered by National Geographic lawyers that the CD-ROM sets were merely a republication of a pre-existing work no different from converting the magazines to microfilm.

"[T]he critical difference, from a copyright perspective, is that the computer, as opposed to the machines used for viewing microfilm and microfiche, requires the interaction of a computer program in order to accomplish the useful reproduction involved with the new medium," Birch wrote. "These computer programs are themselves the subject matter of copyright, and may constitute original works of authorship, and thus present an additional dimension in the copyright analysis. "

On remand, a district judge in Florida, using Greenberg I as a guide, awarded Greenberg $400,000 in 2004, three years after *Tasini*.

After the *Tasini* ruling, National Geographic again appealed, resulting in last week's ruling.

In *Greenberg II*, Trager, joined by Kravitch and Barkett, sided with his home circuit, which since *Tasini* has rejected claims against National Geographic by other freelance writers and photographers.

Like the 2nd Circuit, Trager acknowledged that *Tasini* had not addressed the issue directly. But he suggested that the high court had given "tacit approval" to microfilm and microfiche as non-infringing.

"Under the *Tasini* framework, the relevant question is whether the original context of the collective work has been preserved in the revision," Trager wrote. "Clearly, the replica portion of the ["Complete National Geographic"] preserves the original context of the magazines, because it comprises the exact images of each page of the original magazines."

But in direct contrast to *Greenberg I*, the Trager opinion asserted that software programs embedded in the CD-ROM did not alter "the original context of the magazine contents."

L. Donald Prutzman, a partner at Tannenbaum Helpern Syracuse & Hirschtritt in New York who submitted an amicus brief in *Tasini* for the American Society of Media Photographers, called Greenberg II "a reaction to the 2nd Circuit's decision—on behalf of another photographer with respect to the same product—which declined to follow Greenberg [I]."

Prutzman said the 2nd Circuit, in Faulkner v. National Geographic Enterprises, 409F.3d26, determined that *Tasini* would allow publishers to reproduce previously published articles in digital format as long as they were presented as part of an

entire issue. On the other hand, "The National Geographic product added a number of bells and whistles," he said. "There was a basis for a holding that it was a new product, not just an alternative form of the magazine.

Post *Tasini* appellate court opinions suggest that, "As long as you reproduce the publication in the same form it was published you haven't infringed," Prutzman continued. "But if you disaggregate it into separate articles and make them separately available, then you have infringed."

Leon Friedman, a professor of copyright law at Hofstra Law School, who filed an amicus brief on behalf of The Authors Guild in *Tasini* , suggested that, contrary to the Greenberg II opinion, "I don't think *Tasini* dealt directly with this issue. ... I think people are reading a little too much into *Tasini* .

To reach the conclusion opined in Greenberg II, "You have to read a lot between the lines ... I don't think *Tasini* compels the result in this case." Because of that, Friedman said he suspects that the U.S. Supreme Court "would take that case" on writ of certiorari. After issuing *Tasini* , the high court denied cert in *Greenberg I* , which the Birch panel had published six days before *Tasini* was argued.

But New York attorney Charles S. Sims—who filed an amicus brief in *Tasini* for The Association of American Publishers in support of The New York Times, said, "The 11th Circuit was wrong in 2001 and corrected itself in 2007. The analysis that the *Tasini* court used was one of the reasons why it was so clear the 11th Circuit was wrong. It's certainly useful that they have corrected their error and brought themselves in line with the 2nd Circuit Court of Appeals."

In this story, the Daily Report incorrectly reported the year that the National Geographic Society registered a copyright for a CD-ROM. It was 1998.

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Thursday, June 21, 2007

National Geographic finds a trail through the copyright jungle

By R. Robin McDonald, Staff Reporter

IN A DECISION called "curious" by an intellectual property expert, a federal appellate panel in Atlanta has reversed its circuit's six-year-old opinion in a major copyright case, declaring the ruling's mandate on behalf of freelance photographers to be "moot."

In doing so, the three-judge panel of the 11th U.S. Circuit Court of Appeals interpreted a landmark U.S. Supreme Court decision that expanded freelance writers' copyrights in a way that limited the copyright claims of freelance photographers.

The panel's June 13 ruling in *Greenberg v. National Geographic Society II,* 97-03924-CV, reversed a separate panel's 2001 opinion, *Greenberg v. National Geographic Society I,* 244F.3d1267. That decision had been authored by 11th U.S. Circuit Judge Stanley F. Birch Jr., a noted copyright expert whose formal 11th Circuit portrait depicts him holding a copy of "Nimmer on Copyright," the definitive work on copyright law. Judges Gerald B. Tjoflat and R. Lanier Anderson III joined Birch in the 2001 ruling.

In reversing *Greenberg I,* the second appellate panel sidestepped a precedent which binds panels to an earlier circuit decision addressing the same issue of law unless it has been overturned either by the entire 11th Circuit or by the U.S. Supreme Court.

By declaring *Greenberg I* moot, the new panel—Judge Rosemary Barkett, Senior Judge Phyllis A. Kravitch and David G. Trager, a visiting U.S. district judge from the 2nd Circuit in New York—also resolved a long-standing conflict with the 2nd Circuit created by the Birch opinion. Trager wrote the *Greenberg II* opinion for the new panel.

Both cases deal with The National Geographic Society's placement of its entire magazine library on CD-ROM and selling it as "The Complete National Geographic."

In the 2001 case, Birch found that National Geographic infringed the copyright of Florida freelance photographer Jerry Greenberg. Sixty-four of Greenberg's photos had appeared in issues of the National Geographic. One of those published photos also was included in an animated photo montage designed exclusively for the CD-ROM.

But in nearly identical cases in New York that were brought against National Geographic by other freelance writers and photographers, 2nd Circuit judges have taken the opposite tack.

In *Greenberg II,* Trager asserted that the new 11th Circuit panel on which he sat had authority to overturn *Greenberg I* if an intervening Supreme Court case overruled a prior panel decision, or if "the rationale the Supreme Court uses in an intervening case directly contradicts the analysis this court has used in a related area, and establishes that this Court's current rule is wrong."

The intervening ruling on which Trager rested *Greenberg II* was the Supreme Court's 2001 opinion in *New York Times v. Tasini,* 533 U.S. 233.

In *Tasini,* the high court found that the *Times'* sales of its published news articles to online databases such as Lexis and Westlaw infringed the copyrights of its freelance writers whose contracts had never contemplated the advent of digital databases.

This week, Lawrence Nodine, a partner at intellectual property boutique Needle & Rosenberg, called the Greenberg II ruling "curious" for several reasons.

"Leave out for a second, the sitting 2nd Circuit judge," he said. "The rule is that you are bound by previous panel decisions

of the circuit that should only be reversed *en banc*."

While an appellate panel would have authority to reverse a previous panel if there were a Supreme Court decision "on point," Nodine suggested that Tasini was based on a different set of facts.

And dicta—any explanatory commentary included in the high court opinion that does not directly address the facts of the case under review—"ought not entitle the panel [in Greenberg II] to disregard the previous decision," Nodine said.

"Whether or not the [Greenberg II] panel could reverse without an en banc [hearing] is a very interesting question."

For a decade, the Greenberg and *Tasini* cases have pitted publishers against freelance photographers and writers—all of them seeking to define copyright law in the digital age. At stake are royalties and fees that publishers could be forced to share with freelancers whenever they reproduce and sell those freelancers' previously published works in merchandise designed for computer access.

As Birch noted in 2001 during oral argument in *Greenberg I*, "All this is about who gets the money, whether you [publishers] can get the money or have to share it with some author."

Florida lawyer Norman Davis of the Miami firm Squire, Sanders & Dempsey, who represents Greenberg, insisted that *Tasini* "has no relevance whatsoever to *Greenberg I*" and was not a proper basis for reconsidering and then mooting the Birch opinion.

Davis added that his client has not decided whether to ask the 11th Circuit to reconsider Greenberg II en banc.

In an appellate brief in Greenberg II, Davis suggested that the 2nd Circuit's rulings in other National Geographic cases "set up a conflict" with Birch's 2001 opinion "through the misapplication of *Tasini*" and argued that "any resolution of the conflict between the two circuits should be left to the Supreme Court."

National Geographic Society executive vice president Terrence B. Adamson—a former Atlanta attorney who was a key assistant to then-Attorney General Griffin B. Bell and remains President Carter's longtime personal lawyer—said he was "pleased and quite delighted" by *Greenberg II*.

"This is a very important case," he said. "It wasn't that we were selling a lot of product, but it is our archive. There are now almost 120 years of National Geographic. It's our whole history and archive of what this organization has been about."

The CD set, Adamson asserted, is not a new use of formerly published issues. "It's the same use. ... because the practice had been for 40 to 50 years to do microfilm and microfiche, which everyone understood" and which required no additional royalty payments to freelancers. "It's the same result if you put it on CD-ROM, or DVD."

The *Tasini* case was one of the most widely watched copyright cases to reach the Supreme Court in years. Freelance authors of articles previously published in newspapers and magazines, led by Jonathan Tasini, brought claims of copyright infringement against publishers and owners of electronic databases that had made the articles widely available via the Internet.

A federal district court found for the defendant publishers but was reversed by the 2nd Circuit, which ruled in favor of the writers. In a 7-2 opinion issued June 25, 2001, the high court affirmed the 2nd Circuit's appellate ruling.

Writing for the majority, Justice Ruth Bader Ginsburg determined that electronic and CD-ROM databases containing individual articles from multiple editions of magazines, newspapers and other periodicals could not be considered "revisions" or revised editions of the previously published issues.

"[T]he Databases reproduce and distribute articles standing alone and not in context, not 'as part of that particular collective work' to which the author contributed, 'as part of ... any revision' thereof or 'as part of ... any later collective work in the same series,'" she wrote, citing federal copyright law.

Under the terms of Section 201(c) of the 1976 revisions to the Copyright Act of 1909, Ginsburg wrote, "A publisher could reprint a contribution from one issue in a later issue of its magazine, and could reprint an article from one edition of an encyclopedia in a later revision of it, but could not revise the contribution itself or include it in a new anthology or an entirely different collective work. ...

ADVERTI

ALEX BEAM

The Boston Globe

It's a case of who owns the words

By Alex Beam, Globe Columnist | October 4, 2005

Just a few days ago, The New Yorker magazine released "The Complete New Yorker," a $100, eight-DVD set that allows you to read, and print a copy of, every article that has ever appeared in the magazine. To get an idea of how the TCNY might work on your computer, a free demo is available at thenewyorkerstore.com.

So I was wondering: What gives them the right to do this? It's not possible that famous New Yorker contributors like Rachel Carson, Robert Benchley, Charles Addams, or even the young John Updike signed over electronic rights to the Tilley gang. The answer, as our friend John Roberts might say, is not a matter of settled law.

Edward Klaris, TCNY project director and also the magazine's general counsel, explains that The New Yorker can publish the DVDs because of a Second Circuit Court of Appeals decision in March involving National Geographic, which put out a digital version of the "Complete National Geographic" in 1997. "They were sued," Klaris says, "and the Second Circuit held that an image-based compilation in context, like theirs, was protected" by the Copyright Act. "As long as you maintain the integrity of your collected work, you can publish it in any medium. We have a copyright on that package."

But this situation looks very different over at the National Geographic Society, which had to take CNG off the shelves two years ago and has not put it back on sale since. An exasperated executive vice president Terry Adamson explains that the Society has spent "millions of dollars" defending its right to publish its best-selling digital tome in several courts, with no firm decision yet rendered. "We've lost the opportunity of having this product in homes all over the world," Adamson says. "I think that's a huge loss."

Here's what happened to the Geographic: In 1997 a photographer named Jerry Greenberg challenged the Geographic's right to resell his work in the digital compilation. He won in the 11th Circuit Court of Appeals, and the Supreme Court declined to review the case. Portions of the case are still being litigated. Then several other plaintiffs (including "Into Thin Air" author Jon Krakauer) filed similar suits, albeit in a different district. They lost.

What happened? *Tasini* happened, the landmark Tasini v. New York Times Co. Supreme Court decision that pitted my old racquetball partner, freelance writer Jonathan Tasini, against the company that owns The Boston Globe. In that decision, the Supreme Court ruled that the Times Co. would have to pay freelancers if it sold individual articles from its database. But -- and this is a big but -- the Times and everybody else retained the right to publish and sell archival databases, like microfilms, that preserved the package, or the context of the original newspaper, without paying outside contributors.

Earlier this year, in what I am calling the Krakauer cases, the Second Circuit applied the "Tasini standard" to National Geographic. "Because the original context of the magazines is omnipresent in the CNG," the court ruled, "the CNG is a privileged revision" under the Copyright Act. Meaning Krakauer & Co. lose, and National Geographic is free to sell its product. But the company doesn't see it that way. Given that the 11th Circuit ruled in favor of photographer Greenberg, Adamson says, "you have totally divergent views of the same statutory provision" in different courts. "We want the Supreme Court to hear it." Until the law gets settled, he adds, CNG will not go back on sale.

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The Boston Globe

It's a case of who owns the words

By Alex Beam, Globe Columnist | October 4, 2005

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To: "Norm Davis (E-mail)" <nd@steelhector.com>
Date: 10/10/2005 3:43 PM
Subject: Adamson and your case; see below

Andrew Berger
Tannenbaum Helpern Syracuse & Hirschtritt LLP
900 Third Avenue
New York, NY 10022
Email: Berger@tanhelp.com
Tel: (212) 702-3167
Fax: (212) 371-1084

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To: Berger, Andrew
Subject: Emailing: Its_a_case_of_who_owns_the_words

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Date: 10/10/2005 3:43 PM
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Andrew Berger
Tannenbaum Helpern Syracuse & Hirschtritt LLP
900 Third Avenue
New York, NY 10022
Email: Berger@tanhelp.com
Tel: (212) 702-3167
Fax: (212) 371-1084

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Tannenbaum Helpern Syracuse & Hirschtritt LLP
900 Third Avenue
New York, NY 10022
Email: Berger@tanhelp.com
Tel: (212) 702-3167
Fax: (212) 371-1084

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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.

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.

"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."

"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*

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Thursday, September 06, 2007

New Development in NGS Infringement Case

The story continues for *Greenberg v. NGS*. The U.S. Court of Appeals for the 11th Circuit will reconsider its decision to vacate a $400,000 award for Greenberg for copyright infringement by National Geographic Society. Greenberg requested that the court hear the matter "*en banc*," where all of the judges of the 11th Circuit (instead of the original panel of 3 judges) weigh in on the ultimate decision, and the court agreed. This happens usually because the case concerns a matter of exceptional public importance or the panel's decision appears to conflict with a prior decision of the court. Review my June 16, 2007, and June 25, 2005, blogs for background of the case.

posted by PhotoAttorney at 6:48 AM

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LEGAL DEVELOPMENTS

WILEY PAYS $5,000 FOR ILLEGAL CD USE; REMOVES CD FROM MARKET

NEW YORK—Publisher John Wiley & Sons Inc. has paid photographer Bianca Lavies $5,000 for the unauthorized use of one of her signature images on a CD. When the company was made aware of the unauthorized use, it also withdrew the CD from the market in order to remove the photo and reissue a revised version without it. "We take copyright very seriously," says John Wiley spokesperson Susan Spilka.

Lavies' photo shows a jumping armadillo, which she shot on assignment for *National Geographic* in the early Eighties. She subsequently licensed print rights to John Wiley & Sons for a physics textbook—once in 1992, and again in 1995. On both occasions her delivery memo and invoice specified print rights only, she says.

In 1993 and 1997, Lavies refused the publisher's request for rights to use the photo in electronic media—once on a CD-ROM called *CD Physics*, and again in an electronic database.

Then, last summer, John Wiley notified her that the photo would appear on a new edition of *CD Physics*, and asked her to bill them for $75.

"I flipped out," says Lavies. When she complained about the disallowed usage, a John

continued on page 13

Wiley editor assured her that the picture would not appear on the CD after all, she says. "I wrote a letter confirming the conversation. Next, I was notified that it had already gone on CD and 1,500 copies had been sold."

Says Spilka, "We discovered our error and asked for her permission for the use. When she said no, we withdrew the CD and reprinted it without her image."

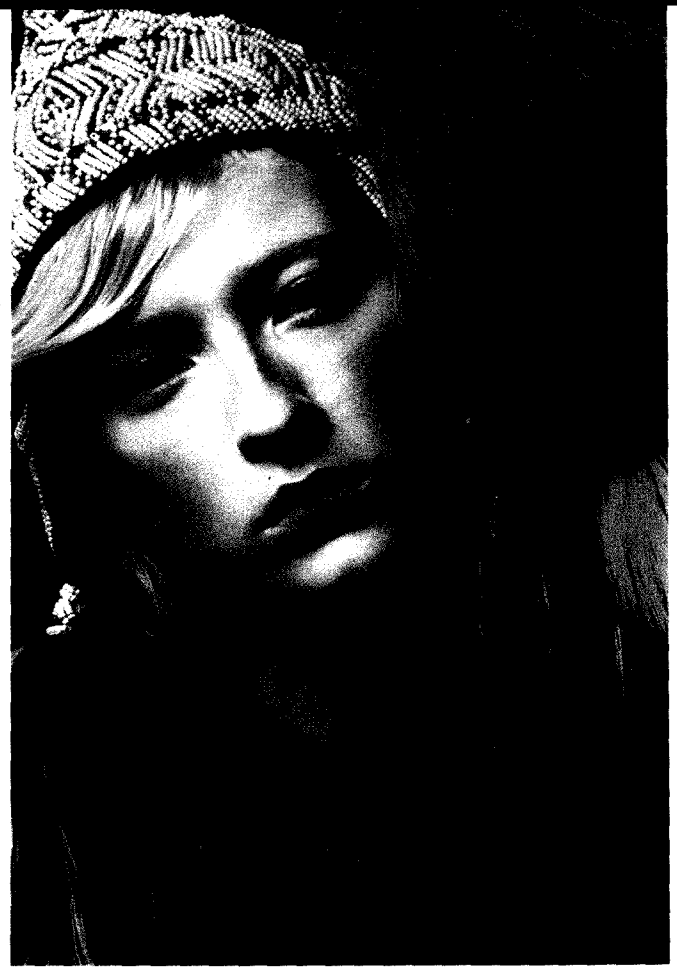
Lavies said she was initially offered $500 to settle the matter. Since that was unacceptable to her, she hired attorney Nancy Wolff to press for more.

She had registered the copyright of the photo prior to the unauthorized use, making her eligible for statutory damages in court.

She wanted to take the case to court, she says, but decided against it. One factor in that decision was the precedent of *Tasini v. The New York Times*, a federal court ruling which gave publishers some rights to reuse printed articles on electronic media.

In addition, says Wolff, "I didn't think we could justify the risks and costs of asking for more at a trial, and $5,000 for an editorial use on a CD is a fair settlement."

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THE ART OF THE ESTIMATE: PART 3
THE DEVIL IS IN THE DETAILS

PRO BONO
INSIGHTS ABOUT WORKING WITH NONPROFITS

BURT GLINN PORTFOLIO
FROM THE CRIMSON TO CUBA TO THE FOUR CORNERS OF THE GLOBE



© Phil Borges

PLUS:
Stephen Johnson on What to do with Your Images
Penis Gourds and Model Releases
The Assault on Copyright

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PARTINGSHOT

JERRY DANTZIC'S UNSEEN LADY DAY

New York photojournalist Jerry Dantzic recorded on film many notable jazz musicians of the Fifties and Sixties, in clubs, during TV appearances and recording sessions for major record companies of the time.

Among his most telling subjects was jazz legend Billie Holiday, whom he photographed extensively during a two-week appearance in 1957 at the Newark, New Jersey club Sugar Hill.

Much of this work—like this behind-the-scenes portrait of the singer with her Chihuahua, Pepe—offers a different side to the tragic public persona that haunted Holiday throughout her life. Although Dantzic shot these images as a freelancer for Decca Records, they were never used and they remain largely unseen to this day.

Dantzic, a life member of the ASMP, passed away in December 2006 after a long illness, yet his photographic archive remains active under the watchful management of his son, Grayson. Future exhibitions will include a show in late 2007 at the Foley Gallery in New York.

—JW



© Jerry Dantzic

were full of cautionary tales about seeing their work in venues they'd neither approved nor received any payment for. "Because they're working for the greater good, nonprofits sometimes feel they can use your work wherever and whenever," says Fitzhugh. Fobes recalls an instance where she let one environmental group use some of her shots for a slide show, only to find that the group was sending the images out throughout the whole environmentalist community. "Photographers need to protect themselves, because a nonprofit's job is to go out and do good things, not look after photographers' rights," she says. "Assume that the paperwork is going to be lost, that the metadata on usage will disappear." Borges agrees, and adds, "When someone gets something for nothing, it's human nature to take it for granted. Sometimes you have to remind people of what it takes to produce this work."

CREATIVE SOLUTIONS

On the plus side, the above-mentioned pitfalls have pushed many photographers to come up with creative solutions. To work with nonprofits in his region, Bill Miller devised an approach he calls the Community Service Program, in which he contracts to do up to 50 hours of photography a year for selected nonprofits at a fixed fee, giving a discount on his usual rates. (For more information on how this works, visit the ASMP Web site at <www.asmp.org/go/bono>) Another resourceful method comes from Mel Lindstrom, whose inventive way of working with nonprofits gains him tax deductions and networking opportunities. (See sidebar.)

For her work with Women in Progress in Ghana, Blaukopf went the extra mile to raise funds. When her own grant-writing efforts failed, she teamed up with the Philadelphia organization First Person Arts, which gave her an office to work from in the United States and ran her blog from Ghana on its Web site. First Person Arts president Vicki Solot helped Blaukopf raise small donations, and Blaukopf will be featured in the organization's festival this fall. Being a 501(c)3, First Person Arts can receive tax-deductible donations for its artists from corporate sponsors. "The partnership is exciting," says Blaukopf. "It gives the project a structure, and provides me with a sense of support and community."

Photographers have also started up their own 501(c)3 organizations. In 1996, when they were both trying to get exhibitions of their work underwritten, Borges and Fobes found that most corporations weren't able to donate to individuals. That year, they cofounded the Blue Earth Alliance <www.blueearth.org>, an organization that helps photographers doing work with a social or environmental focus. *With its 501(c)3 status, Blue Earth Alliance can receive corporate* donations, but, says Fobes, "It's not just a pass-through situation where we get money and give it to photographers." Rather, once a photographer partners with Blue Earth Alliance, he or she works with a BEA coordinator to manage the project and raise funds that qualify for 501(c)3 status. Blue Earth Alliance has grown into a flourishing nonprofit that has sponsored more than 50 projects and considers new proposals twice a year. For more details, see the overview page at <www.blueearth.org/about/overview.html>.

Ultimately, working with nonprofits can be highly satisfying and beneficial for both parties, and as long as you're careful, there's no need to expect you'll get burned. At the end of the day, our photographers agreed that doing this work was among their most rewarding career experiences—a big part of the reason they became photographers in the first place.

Borges, who began his foray into nonprofit work by approaching a small Tibetan rights organization in Seattle, says, "I've found that if I do something that fits into my value system, the financial aspects often get taken care of." His latest project, "Women Empowered," done in partnership with CARE, will be exhibited at the United Nations this March; a traveling exhibition and book are forthcoming. "What really matters is that this is the stuff that's important to me," he says. "I feel lucky to be doing work I totally believe in."

MEL LINDSTROM'S CREATIVE SOLUTION FOR WORKING WITH NONPROFITS

San Francisco–based advertising photographer Mel Lindstrom donates his photography services to a number of worthy nonprofits. Even when he's lending his time and creative vision, Lindstrom doesn't compromise on smart business decisions. His approach to working on probono projects yields a number of important perks.

"Since you don't really get a fair fee when you shoot pro bono work, you need to maintain a good amount of creative control so you'll at least get a portfolio piece for your time and efforts," Lindstrom explains. Maintaining control over the billing process is just as important.

You can't claim donated work as a business expense at tax time. Instead, Lindstrom donates a tax-deductible check. Here's how he does it:

- Give the client an estimate for the entire shoot amount, including your normal fee.
- Arrange with the client for a total cost that they will cover financially and get a written agreement for this up front.
- At the appointed billing time, have your client pay you the pre-arranged amount, then write them a check for your creative fee (minus expenses).

In addition to reinforcing the true value of your work to the client, you'll benefit in other ways too.

"Besides making it easier for my accountant to write off a large sum, your check goes to the nonprofit's donation department, not the art department," he notes. "You get invited to events and your name is listed in the donor brochure. You then have the opportunity to network with a whole different kind of people."



[WINTER 2007]

2 PRESIDENT'S LETTER
Clem Spalding explains who is minding the store

6 DIRECTOR'S COMMENTARY
Eugene Mopsik's non-confrontational approach

7 NEWSLINE
An Apple Never Tasted so Sweet, Paychex "Partners in Payroll" Program, Lightroom Hits the Streets, Passing of a Partner in Art and Life

9 ASMP POINT OF VIEW
Constitutional Referendum Commentary—pro and con

10 LEGAL REVIEW
The Assault on Copyright

11 BOOK LOOK
Steven Trimble's *Lasting Light*

12 BEHIND THE SHOT
Bill Foster's Gubernatorial Gig

13 OUTSTANDING VOLUNTEERS
South Florida's Jorge Parra dives right in

14 TOOLBOX
Stephen Johnson on Digital Photography: What to Do with Your Images

16 BETTER BUSINESS
Penis Gourds and Model Releases: Tales from the front

18 THE ART OF THE ESTIMATE
Part 3: The Devil Is in the Details.

20 PORTFOLIO
ASMP Life Member Burt Glinn—From the Crimson to Cuba to the four corners of the globe

24 MARKETING MATTERS
Pro Bono: Valuable Insights About Working with Nonprofits

25 PARTING SHOT
Jerry Dantzic's Unseen Lady Day

ON OUR COVER: © Phil Borges, 2005. Humaira, Kabul, Afghanistan. <www.philborges.com>. Borges created the portraits for Women Empowered in collaboration with the nonprofit CARE. This work will be featured at the United Nations from February 10 – April 1, 2007 and is also being shown in galleries nationwide. A companion book debuts in stores on February 28. For insights about working with nonprofits from Borges and other ASMP members, turn to page 22.

THIS PAGE: © Esteban Aladro, 2005. Happy New Year, the Soho Lounge, North Miami, Florida. A student affiliate from the Art Institute of Boston, Aladro used the Web site lulu.com to self-publish *Where Neon Goes*, a documentary about youth culture in his hometown of Miami, Florida. Further details at <www.estephotography.com>.



© Mark Greenberg <www.markgreenbergphoto.com>

Mark Greenberg, a board member and membership chair for the Austin–San Antonio chapter made this issue's portrait. A longtime editorial shooter, Mark has developed a style and business model that is helping him explore the commercial marketplace. Now working out of a funky-cool studio in San Antonio's warehouse district, he serves clients throughout the region. Mark's work can be seen at <www.markgreenbergphoto.com>.

PRESIDENT'S LETTER

WHO IS MINDING THE STORE?

THE ASMP CONTINUES to grow in size, influence, stature and value. With the vital assistance and cooperation of staff and volunteers, we are building a better, stronger ASMP that provides for us collectively what we cannot do for ourselves individually. Every day brings new reasons why we need this strong voice for our interests: Orphan Works and the cultural degradation of copyright, the powerful need for digital and licensing standards, the unprecedented speed of change in the marketplace, the evolving profile of our membership.

The source of our strength is the trust that members give the organization. Trust that we will do the right thing, we will always speak out when needed, and we will not squander the resources placed under our responsibility as elected leaders. It is a trust that no one should take lightly. It is a trust that, if lost, is the devil to regain and rebuild.

So how do we know that our leaders will be good stewards? How do we "trust but verify"? How can we be sure that they are doing the right thing? We do it by conducting all the ASMP's affairs with complete transparency and within prudent controls.

We have long published our audited annual financial statement in the bulletin and published our board meeting minutes on the Web site, as required. And, as required, the president and the treasurer approve every check written.

Over the past five years, though, we've gone beyond these requirements to ensure that the ASMP gets the most for its money, that members have good reason to trust their leaders, and that those leaders are accountable for their actions. Among the measures and innovations we have instituted:

Guidelines for director spending. Our board members must travel at least twice a year to Philadelphia for meetings. Officers make the journey twice as often. Some of our directors also travel as part of their committee responsibilities. In 2002, we established guidelines for director spending that ensure such expenses are kept to a minimum.

In recent years, we've provided ongoing training for all directors, new and old, with an eye to maximizing their ability to contribute to the continuing improvement and strengthening of the ASMP. They also get a class in fiduciary responsibilities from our counsel, Victor Perlman, so that we all stay within the rules and laws that govern our organization. We are now writing a training manual for officers, where none existed before.

Payments to members, including directors, for outside services have always been reported in the minutes, but now we also publish a running scorecard, with extensive detail, on the Web site. You can see this information at <www.asmp/payments>.

In 2003, we instituted an annual performance review with our executive director. This includes a written, comprehensive and candid review of the past year's performance as well as the establishment of objectives for the coming year. It always leads to a very healthy employee/employer discussion. It provides a mechanism for both parties to address concerns honestly and constructively. I cannot imagine doing things any other way.

Society officers are now much more involved in the budgetary process. Instead of reviewing a budget prepared by staff, we now roll up our sleeves and get down to line-by-line analysis and planning. Staff has worked hard to provide the most concise financial information possible.

For several years now we have conducted Chapter Leadership Training programs. A trained director spends the day with a chapter's volunteer leadership and helps them to better understand their roles, as well as the best practices of chapter operations.

This past year, we established a Governance Committee charged with identifying and recruiting potential leaders to serve on a national committee immediately so they can become exposed to national issues, begin a relationship with the national board and staff, and demonstrate their leadership skills. The committee is also charged with finding and recommending the strongest candidates for national board service.

Proper internal governance and delivering value on a day-to-day basis go hand in hand. We will continue to create and adapt our best practices in order to maintain your trust and lead the ASMP forward to a stronger future for us all. After all, we are members too.

Clem Spalding
President, ASMP

BY SARAH COLEMAN



© Jon Orlando <www.jonorlandophoto.com>

Documentary photographer Jon Orlando, pictured with the Costa Rica Conservation Trust staff he traveled to Central America in January 2003 to photograph. The client's initial budget for the project was $1,500, but Orlando was able to negotiate a higher fee and additional usage rights.

Fobes recommends looking on Guidestar.org, a Web site that maintains information on nonprofits' operating budgets, for a real-world gauge of the organization's finances. Common sense is also helpful in determining the extent of a financial give and take. Some years ago, Fobes says, she was approached by a government agency that wanted to use two of her images in an exhibition, but offered nothing more than a photo credit. Her incredulous reaction: "This is a photography exhibit and they have no budget for photography?" After she quoted them $1,500 for the use of her work, the agency called back and said it had found the money. "Because I said no to them, I was able to pay the mortgage that month," Fobes recalls.

VOLUNTEER EFFORTS

In some cases, however, it may feel right to waive fees. Jon Orlando, a Colorado-based photographer who has worked with nonprofits ranging from Greenpeace to a tiny nonprofit in Costa Rica, says he'd never donate work to Greenpeace because it's obvious that the nonprofit behemoth depends on high-quality photography and has funds to finance this. But when he partnered with the Costa Rica Conservation Trust, he knew the organization had only one paid staff member and a limited budget. "You have to be realistic," he says. "Not charging large nonprofits that are paying other creatives is bad business for yourself and the industry at large. For shoestring operations, though, if you feel passionate about what they do, go for it."

Consider how much time you have available to do the work, and the long-term benefits it will bring you. Even if there's no immediate payoff, benefits can accrue in the form of an enhanced portfolio, exposure and the potential for stock sales. "Every time I'm asked to donate something, I evaluate it on a case-by-case basis," says Fobes. "I ask myself: Will I get more than my investment? Is this going to help me achieve my goals in my business?"

WHAT'S IN IT FOR YOU?

Whether you're working for a fee or donating work, it's vital to draw up an agreement that's absolutely clear about the expectations for the project on both sides. "If you're donating work, you're entitled to ask for a few things in return," says Susie Fitzhugh, a Seattle-based photographer who has worked with the Annie E. Casey Foundation and the Robert Wood Johnson Foundation, among others. For instance, says Fitzhugh, you should insist that the organization help you get model releases for your subjects. If releases are not obtainable, you should at least require the organization to indemnify you against any future action taken by the subjects you photograph on their behalf.

In many cases, partnering with a nonprofit can help photographers get access to material that would otherwise remain out of bounds. "This was a project I wouldn't get a chance to do in my everyday life, and I found it inspiring," says Neil Colton, a Washington, D.C.–based photographer who recently traveled to Haiti on a probono basis to photograph children in a village sponsored by the Lazarus Project, a Lutheran organization. Colton donated his time and was paid expenses, though he anticipates relicensing some of his images for stock, or partnering with the organization to create a shared income stream by selling images through its Web site.

COPYRIGHT MATTERS

Even more important than the overall project description is the agreement you reach on usage of your images. "Never give up your copyright," cautions Fitzhugh, who now works almost exclusively with nonprofit groups. "If your photographs turn out to be great, that copyright is gold." Most photographers license their images to a nonprofit for a limited period and specify whether the usage applies to print, Web or both. For his Costa Rica shoot, Orlando gave the organization unlimited internal use of 75 to 100 images for a year, then relicensed them afterward. Borges says he tends to give organizations permanent unlimited use of his images "as long as they're used in the promotion of the message"—however, he generates income from print sales and speaking engagements.

Clearly, relicensing images can offset the costs of waiving or reducing your fee, but getting the language for relicensing into your contract might require some finessing. "A lot of nonprofits are afraid you're going to exploit the images," says Fitzhugh, who sells her own stock from nonprofit shoots directly to educational magazines and textbooks. In her contracts, Fitzhugh states that she'll relicense her work for educational or editorial purposes only. "I'm very careful to monitor the way the images are used, to make sure that nobody is presented in a negative way," she says.

What's equally important is to have a clause in your contract that prevents your nonprofit from doing any third-party licensing. The client must understand that third-party licensing is something only the copyright holder can do. The photographers we spoke with

PRO BONO:

VALUABLE INSIGHTS ABOUT WORKING WITH NONPROFITS

For many photographers, the idea of working with a nonprofit organization is enormously appealing. If you're doing work with a social or environmental focus—documenting autistic children, perhaps, or chronicling the endangered snow leopard—why not partner with a like-minded organization that's working in the same area? There are obvious benefits: the organization might help you with access to subjects, pay expenses or fees, and enhance your exposure by exhibiting and publishing your work. But there can also be some potential pitfalls. We spoke to eight photographers who've worked with nonprofits on various levels to find out how they've managed these relationships, and to what extent their normal business practices were appropriate.

FIRST THINGS FIRST

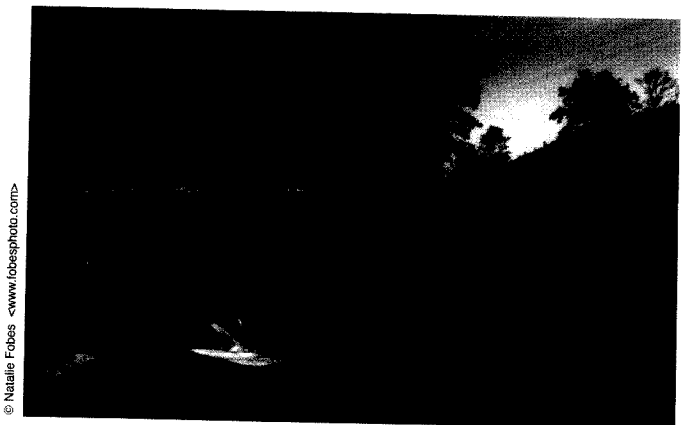
How do you find a nonprofit whose mission gels with your own, and approach the organization about working together? "If you have something you're passionate about saying, that's 80 percent of the battle," says veteran photographer Phil Borges, who has worked with Amnesty International and CARE to shoot indigenous peoples around the world. "With that gift, go out and find partners who share that passion." Emerging photographer Julia Blaukopf, who was interested in working in Africa, found the Ghana-based nonprofit organization Women in Progress (WIP) on Idealist.org, a Web site that publicizes jobs and opportunities in the nonprofit world. "I maintained a dialogue with the founders through e-mail and sent them photographs from my work in Kenya," she recalls. WIP stood out to her, she says, because "it involved helping women and focusing on sustainable business over government handouts."

Once you've found an organization to partner with, how generous should you be with your work? To answer this question, you should ask two more: what is the organization's size and budget, and how much time will you spend doing the work relative to other (possibly more lucrative) assignments?

SEPARATING WHEAT FROM CHAFF

Some photographers are so enthusiastic to work with a nonprofit that they'll instantly agree to waive their fees. While this might be appropriate in some cases, it can lead to a general expectation among nonprofits that photography can be obtained for free. The result is a "trickle up" effect where even organizations with deep pockets start asking photographers to donate work.

"There are nonprofits out there that have money, but that are still looking for handouts," says Natalie Fobes, who has published books on Pacific salmon and Alaska. In order to maintain objectivity in her work, Fobes prefers to self-fund her projects or to work on assignment for magazines like *Audubon*, *Smithsonian* and *National Geographic*. Yet, she's constantly approached by environmentalist groups seeking to use her existing images. "What I tell them is that right now, I'm working on a very complex story on logging and I don't have funds to foot my own bill, so that's why I charge a licensing fee for my other images," she says. "Some groups are very sympathetic; others are very rude."



© Natalie Fobes <www.fobesphoto.com>

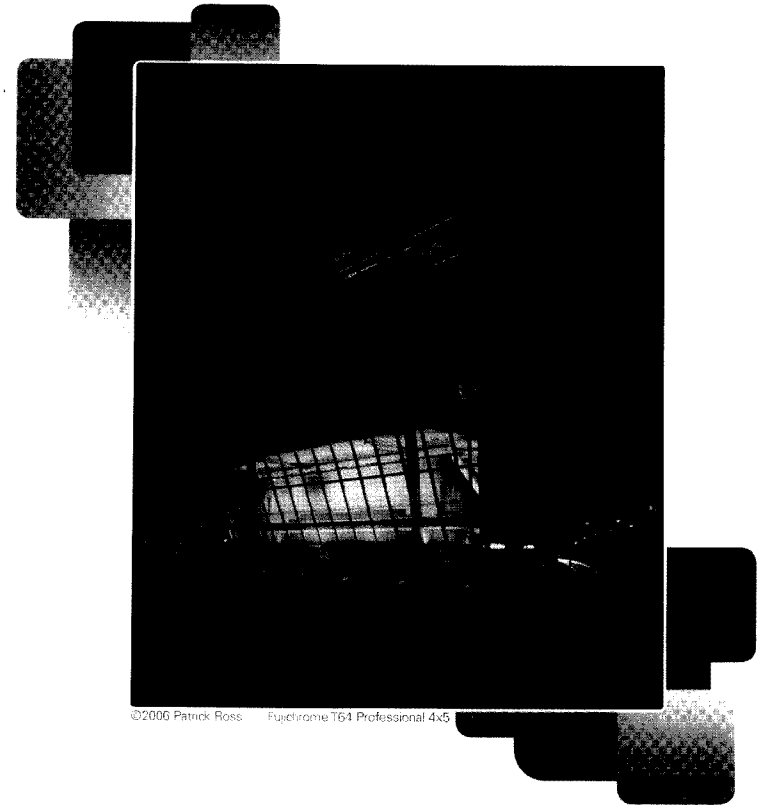
In order to maintain objectivity in her work, Natalie Fobes prefers to self-fund her projects or to work for magazines like *National Geographic*. This image of a sockeye salmon, on assignment for *Geographic*, was also part of her book project, *Reading Home: Pacific Salmon, Alaska Fishing*.

FUJIFILM Professional Imaging



Colors may be brilliant, subtle, saturated or delicate. With this film, they'll always be faithful.

Patrick Ross



©2006 Patrick Ross Fujichrome T64 Professional 4x5



In a digital age, is it possible to have a renaissance in film? Patrick Ross says, yes. "There are millions of colors in the spectrum" says Ross, "but in my experience only one film that reproduces them with complete fidelity: Fujichrome T64 Professional." In the photograph of the Brown Center, Fujichrome T64 achieved faithful color reproduction and balance of the interior tungsten light source while simultaneously preserving the accuracy of the surrounding light. What's more, with a scan of his image, Patrick gets the attributes he loves from film plus the benefits of a digital file.

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Contributors Glen Allison, Amy Blankstein, Sarah Coleman, Jessica Gordon, Stephen Johnson, Eugene Mopsik, Victor S. Perlman, Clem Spalding
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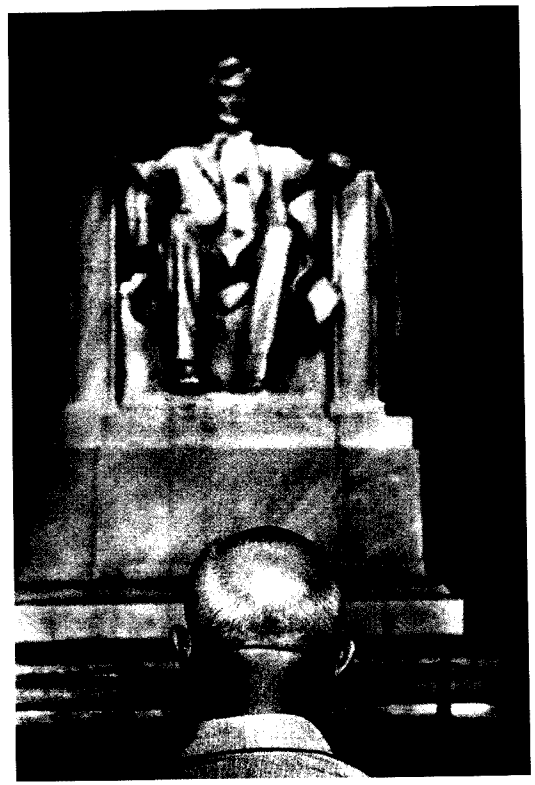
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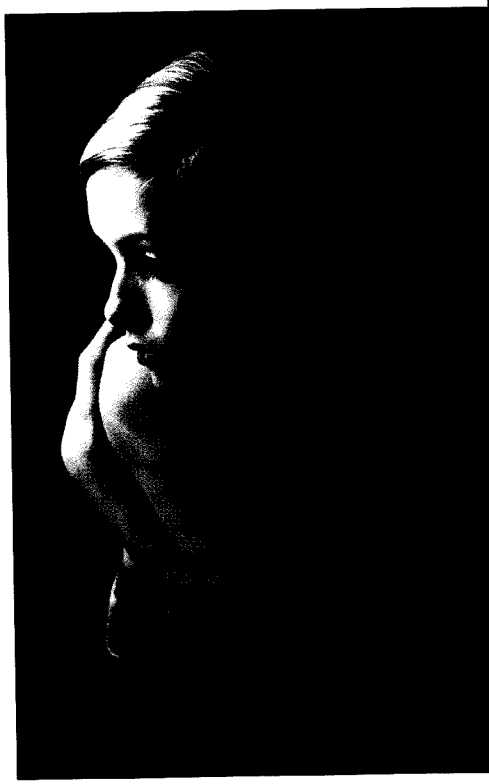
MEMBER **BURT GLINN**

TO CUBA TO THE FOUR CORNERS OF THE GLOBE





All photos © Burt Glinn <www.magnumphotos.com>



Above: Nikita Khrushchev in front of the Lincoln Memorial, Washington, D.C., 1959.

Top right: Burt Glinn, the lover, with a friend on the beach. Tahiti, French Polynesia, 1960.

Right: 1960s fashion icon Twiggy during a photo shoot. London, Great Britain, 1966.

but I still think that the *Crimson* was the best," Glinn told us in a recent interview.

For the full details of our conversation, visit the ASMP Web site at: <www.asmp.org/go/glinn>.

To see more of his pictures visit: <www.magnumphotos.com>.

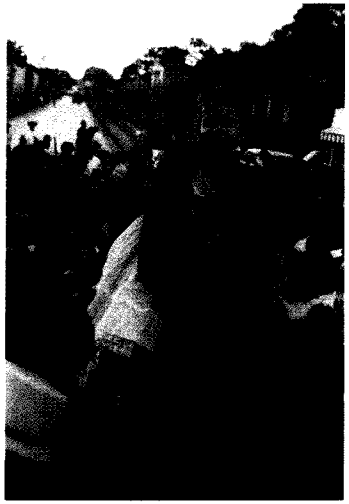
—JW

ASMP LIFE

FROM THE CRIMSON









Photos taken during the first days of January 1959, when Cuban dictator Fulgencio Batista was ousted and Cuban rebel leader Fidel Castro marched from the mountains toward Havana with his revolutionary army of 8,500 partisan men and women.

Above: Castro rides into Havana aboard a military vehicle, escorted by Cuban naval officers. Havana, Cuba, 1959.

Right: On a stop along his route to Havana, Castro lifts a young admirer. Santa Clara, Cuba, 1959.

Above: Fidel Castro enters town and delivers a speech that lasts for hours. Santa Clara, Cuba, 1959.

Left: Photographer Burt Glinn poses as a fighter, with cameras around his neck and gun held high. Havana, Cuba, 1959.

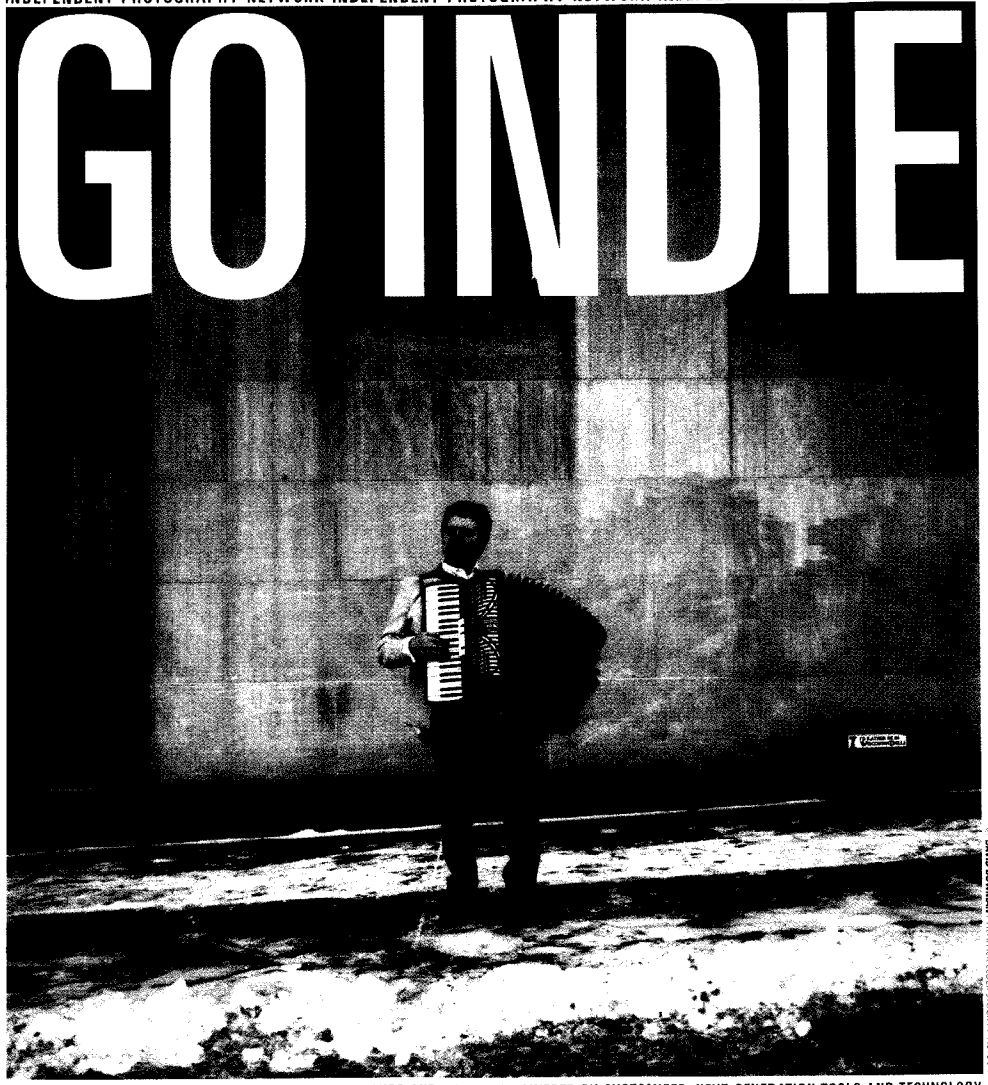
The allure of the globetrotting photographer is nowhere better exemplified than in the work of Burt Glinn, a past president of the ASMP and a longtime member of Magnum Photos, for which he also served multiple terms as president.

Glinn's nose for news (he fled a tony Manhattan New Year's Eve party for a late-night flight to Havana and a chance to follow the Cuban revolution) and his eye for unfolding events (he broke ranks with the press and stationed himself in front of the Lincoln Memorial for a candid picture of Khrushchev during his historic US visit) were formed by his early years as an editor for the *Harvard Crimson* and a photographers' assistant for *LIFE* magazine.

"I've worked with most of the major publications in the world,

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GO INDIE



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NEGOTIATION VERSUS CONFRONTATION

WHAT'S IN YOUR NATURE? When a client offers lousy terms and conditions, low fees and a diminished rights position, do you get confrontational or do you try to negotiate a better deal? The instantaneous and impersonal aspect of e-mail and listservs make it easy for us to respond to these challenges in an aggressive manner. While there is certainly a time to be aggressive, my experience has shown that more is accomplished through negotiation and efforts to reach consensus than with confrontation.

Consider the following: a heated trade issue in which the anonymity and speed of internet communications fan the flames of public and private outrage in an online thread of accusation and comment. Situations like this are often brought to our attention at the ASMP, and we use our experience and best efforts to diffuse hostilities and arrive at a positive resolution.

Be sure to determine the range of usage, the term of usage and the particulars of the assignment. As a tactic, be sure to price your jobs so that there is room for negotiation and remember that if you are not willing to walk away from the job, you really haven't negotiated at all!

When the communication is less than personal, the temptation to be confrontational is multiplied. Yet, in these situations it is in my nature to first pick up the phone and make a call to the principals regarding the issue at hand, express my concerns on behalf of my members, and test the waters to see how likely it is that positive changes will be made. The private response of the other parties would determine my subsequent communication to the public. The bottom line is that no one likes to be put into a corner—photographer or client.

Indeed, across a wide range of issues, more can be accomplished through consensus than through confrontation. This philosophy—and the relationships it inspires—has been particularly productive for the ASMP in recent months, and (as some announcements in our news section will attest) has led to increased cooperation with industry partners and benefit for all members.

With this circumstance in mind, I would encourage you to negotiate and seek compromise and consensus in your business agreements rather than taking a confrontational stance. Ask for fair compensation and try not to leave money on the table. Request all of the information necessary to produce an estimate and take some time away from the phone to analyze all facts before calling your client back. Be sure to determine the range of usage, the term of usage and the particulars of the assignment. As a tactic, be sure to price your jobs so that there is room for negotiation and remember that if you are not willing to walk away from the job, you really haven't negotiated at all!

Meanwhile, I would encourage you to price your job saying, "This is what we customarily charge for this type of assignment with this license term and specific rights and usages." If the client balks or complains, ask what they had in mind and wait for a response. I repeat, wait for a response; don't waffle and lower your price. Be prepared to negotiate a compromise somewhere in between your estimate and their offer. Ultimately, you create a win/win situation for both you and your client.

As an association with thousands of members, the ASMP is better prepared to deal with egregious company policies than you are as an individual. We do the best we can to address these issues on behalf of our members. But don't always look for smoke and fire. The best and longest-lasting deals are negotiated with mutual respect and good sense and are not necessarily the result of public pressure or confrontation. So, the next time your blood pressure begins to rise and you're about to say something you might regret, take a deep breath. Think about what you really want and keep your eye on the prize—fair compensation for the value delivered.

Eugene Mopsik
Executive Director, ASMP

I wish you continued success in your business affairs for the new year. Look to the ASMP's "It's Your Business" seminar series for valuable programming and, coming in the fall of 2007, watch for the return of the highly acclaimed "Strictly Business" seminar event.

As the project evolved, the scope of Kahn's involvement grew, yet his change-order confirmation faxes to Spivak often went unacknowledged. Kahn followed his customary approach to any job, producing an agreement form that covered how and with whom approvals would be granted. He also took detailed notes on meetings and e-mail exchanges and documented his production costs and expenses extensively. A good thing, as it turns out: the artistic director was notorious for requesting far more work and materials than his budget actually covered. Thanks to Kahn's careful documentation habits, as well as some creative suggestions from seasoned members of the production team on how to redirect costs to minimize red flags, he was able to recoup expenses that were initially refused on his invoice.

"What's most helpful in a situation like this is to get to know the people who can cover your back and expedite the billing/payment process," says Kahn. "There are creative ways to structure your bill that insure getting paid for your work," he adds. "Bottom line: it has to be reasonable."

Avoid Ambiguity with Detailed Documents

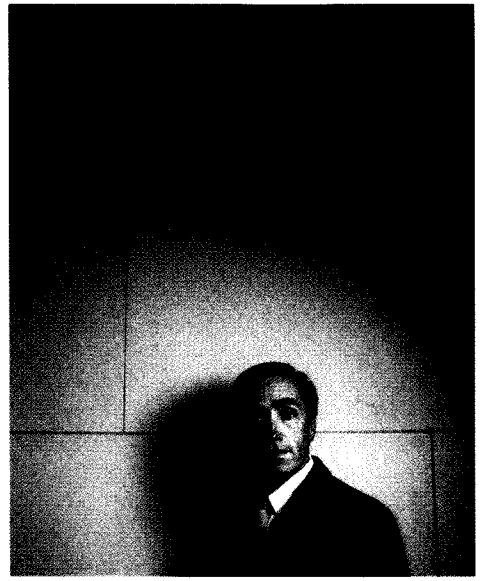
Cramer is also a stickler for communication and detail. He views the estimate and contract as the bedrock of a good documentation system and keeps boilerplate forms for contracts and estimates close at hand. "A proper paper trail for photographers really comes down to having a comprehensive agreement signed by both the photographer and the client," says Cramer. "Coming to a clear understanding prior to shooting an assignment will avoid a lot of confusion later." He adds, "Any ambiguity in the agreement will generally benefit the client, who has the advantage of having both your pictures and your money. And if your agreement is oral and not written, you will always have ambiguity."

Cramer works with the production company Wonderful Machine, whose support staff maintains an invoice log to track important items for each assignment. Key points include: job delivery, backup, invoicing, payment, copyright application date and verification of the completed certificate, receipt of tear sheets, follow-ups with clients and subjects, among other things. "We have a full-time studio manager, marketing director and bookkeeper on staff. If we didn't have a systematic way of keeping track of those details, we wouldn't be able to work together."

Cramer keeps a stack of assignment cheat sheets handy that prompt him for important information about each project: name and contact details for the assigning party, contact information for subjects and/or their PR companies, a brief description of the article, technical and creative notes, special information on model releases, details about reporters or other parties on-site during the shoot, and the project timeline. Cramer's job folder sometimes ends up stuffed with e-mails, directions, schedules and discussion notes, but his assignment sheet is the key to keeping it all organized.

"For me, it's just intuitive to want to keep track of everything. I always have a bunch of projects going on at any given moment. I could never hope to remember all the details. So having a system really helps me keep it all together."

Not sure where to get started? ASMP members can access business forms for estimates, invoicing, terms and conditions, releases and more—to use "as is" or format to your own specifications at <http://asmp.org/membersarea/forms.php>.



© Bill Cramer <www.wonderfulmachine.com>

Bill Cramer's magazine licensing agreement excludes article reprint use. Spelling this out in a contract earns him more money and saves relationships too.

TIME FOR A **LAWYER?**

Bill Cramer can't often in the market for a lawyer, but occasionally a situation comes up where a bit of legal muscle comes in handy. As at dealer he photographed for the cover of *Art N Auto* magazine, perfect example of the cover on the Web site without paying a license fee. When Cramer contacted the dealer to discuss the oversight, he was agreed. One letter from an attorney outlining Cramer and the dealer agreed to pay a license fee of $500 — far less than Cramer's attorney's fees were. Although pursuing the matter did not yield a big financial payoff, the principle of parties living by its rights made the process worthwhile.

While some photographers keep an attorney on retainer, not all photographers need or can afford legal advice on tap. Yet there are plenty of resources available for those who need assistance or advice.

- The ASMP Web site features a wide range of articles, legal links and sample contracts.
- The ASMP provides listserv to open question for vetted online advice from fellow photographers.
- ASMP members can also contact the ASMP's staff and other for consultation and referrals on business problems and concerns.

ADDITIONAL LINKS:

- Volunteer Lawyers for the Arts — www.vlany.org
- SCORE: Counselors to America's Small Business — www.score.org
- Graphic Artists Alliance (GAA) — www.graphicartistsalliance.org

SPECIAL SERIES: **THE ART OF THE ESTIMATE**

THE DEVIL IS IN THE DETAILS

A THICK PAPER TRAIL AND A REVIEW OF FINE PRINT ARE A PHOTOGRAPHER'S BEST DEFENSE

In the first and second installments of our series "The Art of the Estimate," we covered the basics of handling calls from potential clients and best practices in preparing an estimate.

A considerable investment of time and effort is required to land jobs and work with clients to meet their interests while protecting your own business needs. In a perfect world, a photographer's next move would be to focus only on producing a creative end product and receive due compensation for the effort. But in the complicated realm of reality, photographers need to remain vigilant and track all aspects of their work process—from the first client discussion to the contents of legal documents.

Watch Your Language

In any business transaction it's vital that all parties are clear about their roles, expectations and obligations. Given the potential for complexities in a photography assignment, oversight is particularly important. If you are generating a document such as an estimate, job agreement or a work change order for your client to review, you want to be precise and comprehensive in the wording contained therein.

After photographing a CEO for a magazine client, Philadelphia-based shooter Bill Cramer learned that the subject's company had purchased 10,000 reprints from his client to the tune of $19,000. When Cramer called the magazine to negotiate the licensing rights, he was initially rebuffed. Yet, since his contract with the magazine excluded article reprints from the initial licensing agreement, he eventually got paid an additional $3,800 for the reprint use. "If I hadn't spelled it out in the contract, I would have had no leverage," says Cramer, "and if I had pressed the issue with the client, I would have either not gotten the money or I would have ruined that relationship. But they could see in black and white that they had already agreed to my terms. Having a contract not only makes you more money, it saves relationships too."

Both Cramer and Brooklyn-based photographer Steve Kahn have honed the language in their estimates and job agreements over the course of their careers. Cramer has kept his contract wording as simple as possible. "It's easier to negotiate because the client understands what I'm after," says Cramer. "My contracts are made up of an estimate detailing what pictures I'm going to create, what licensing I'm going to convey and how much it's going to cost, and a terms and conditions page that covers definitions of usage terms like 'publicity', 'collateral', 'advertising' and also provides detail about the payment schedule, copyright, exclusivity, indemnification, turnaround time, confidentiality, tear sheets, retouching rates and cancellation policy."

Although you should have your own legal document templates at the ready, whether they're estimates, job agreements or job change orders, many clients (especially large corporations or publishing concerns) prefer—or insist—that you sign their in-house forms. Be vigilant about reviewing the language and terms of all documents you are asked to sign: contracts, indemnifications, purchase orders, job changes—you name it. Boilerplate wording on a purchase order could supersede your initial agreement. Don't assume that months of negotiations on a job agreement will be honored—always read the latest version of a document, and check it against previous versions, before you sign on the dotted line.

It's important to understand when a client expects you to revise their contract and when they don't. It's a rule of business that if you don't ask, you don't get. So many contracts are written to only serve the interests of your client. In most cases, they fully expect you to cross out and add your own language. It's also crucial to compare secondary documents to your primary contract or job agreement. Cross out any words that undermine your contract—watch out for the terms "work for hire," "hold harmless" and "prevailing terms." Make sure to initial or sign your changes and return the document to your client.

Establish The Paper Trail

Kahn's 1999 Rizzoli publication *SoHo New York* drew the interest of Neil Spivak, the artistic director of the Columbia Pictures blockbuster *Spider-man*, released in 2002. Spivak hired Kahn to create Peter Parker's "photography portfolio," by digitally inserting photos he made of *Spider-man's* stuntman into New York City-scapes he shot to match storyboard illustrations. The resulting composites appeared prominently throughout the films.

Check out the new and extensive online guide to copyright on the ASMP Web site. Visit <www.asmp.org/copyright> for full details.

NEWSLINE

AN APPLE NEVER TASTED SO SWEET



© Jim Flynn <http://jimflynnphoto.com>

For ASMP members who use Apple computers and software, life just got a little bit better. In partnership with ASMP, Apple is offering substantial discounts on some of its most popular products. Discounts range from 8 percent on hardware like the Mac Pro tower to 17 percent on Aperture software, and there's even a small break on iPods and other consumer items. The deal includes free shipping on orders over $50, and digital imaging professionals are on hand to offer free technical advice on product configuration options.

"I'm very happy and excited about this deal," says Richard Anderson, ASMP board member and chair of the Universal Photographic Digital Imaging Guidelines (UPDIG). An early adopter of Apple technology, Anderson notes that many professional photography studios replace hardware annually or bi-annually to keep up with evolving technology. "Digital processing is so intensive that the speed and efficiency of a new machine makes it a really worthwhile investment," he says.

Making the deal even sweeter, Apple is offering a 12 percent discount on AppleCare extended warranties, which Anderson says are a must-have for photographers on the move. "Our laptop comes on all our shoots, traveling in planes and trains and cars, so it could easily get damaged," he says. "To have AppleCare included in this deal is great."

To get the preferred pricing, visit <www.asmp.org/go/buyapple>, or call Apple at (800) 854-3680 and identify yourself as an eligible participant in the Apple Association Member Purchase Program.

—Sarah Coleman

New Client Discount for Paychex "Partners in Payroll" Offers ASMP Members Fiscal Peace of Mind

ASMP is happy to announce a new cooperative program with Paychex, a company that offers payroll and workers compensation services to small business owners. Using the Paychex "Partners in Payroll" program, ASMP members who are new Paychex clients can get a 25 percent annual discount on all Paychex services, from preparing and filing payroll tax returns to obtaining employer identification numbers and budgeting quarterly taxes.

"Whether a company has 1 employee or 500, the IRS requires that payroll taxes be withheld from employees and paid to the government accurately," says Paychex Senior Account Manager Scott Glassman. According to Glassman, common mistakes made by small business owners include miscalculating employee checks, making inaccurate tax deposits and misclassifying employees as independent contractors. Errors can result in fines and back taxes from the IRS, and having to pay a CPA extra fees for fixing the problem. The stress of making this kind of mistake can be considerable.

Glassman says that on average, a small business with five employees will pay approximately $75/month for Paychex to handle its check writing and all tax filings. "Our fees are based on number of employees, making it cost effective for businesses with only an employee or two," he says. Paychex can also manage health insurance and retirement plans. But its biggest benefit? "Peace of mind," Glassman says.

For a free ten minute payroll analysis/consultation and more on this valuable new program, contact Glassman at <scglassman@paychex.com> or (610) 650 8100 ext. #28643.

—SC

Lightroom Hits the Streets. Get it While it's Hot—at a Preferred Price

Software vendors, make some room on the store shelves. On February 19, Adobe will release Lightroom, a program that offers photographers a complete system for managing and adjusting digital images. Not only is Lightroom fully compatible with Photoshop, but until April 30, there will be a $100 discount off the program's list price of $299.

"For RAW conversion, it's really a damn nifty piece of software," says Mike Starke, who teaches the ASMP-sponsored workshop "Working Digitally" with his partner Judy Herrmann. Starke says he was particularly impressed by the way Lightroom allows users to recover highlight and shadow detail in RAW data, and also by the level of control it allows over color adjustments. "The control you have over color and tone is unsurpassed," he says. "For nerdy people who are into accurate color, it's really amazing."

For details on the special offer, see <www.adobe.com/products/photoshoplightroom>.

—SC

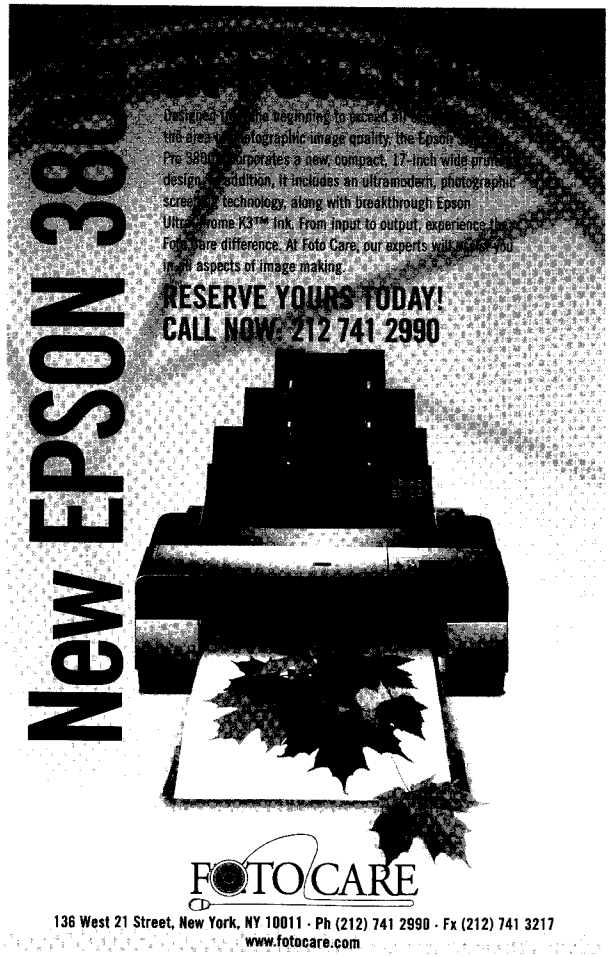
Passing of a Partner in Art and Life



© Irene Halsman

Her name is usually appended to that of her famous husband Philippe, but Yvonne Halsman, who passed away in September 2006, was a photographer and writer in her own right. Born in Paris, she met Philippe when she worked as an assistant in his Paris photography studio. In 1940, just before the Nazi occupation, the two fled Paris for New York, where they hosted Dadaist art salons in their Upper West Side apartment. Among his other honors, Philippe was the first president of ASMP. Always the dedicated helpmate, Yvonne supervised printing of her husband's photographs after his death in 1979, and in 1989, wrote the definitive book *Halsman at Work*, sealing Philippe's reputation as a great artist. Philippe and Yvonne are survived by their daughter, Irene, three grandchildren and three great-grandchildren.

—SC



ALAN KORN
ATTORNEY AT LAW
COPYRIGHT, TRADEMARK, INTELLECTUAL PROPERTY
1840 WOOLSEY STREET
BERKELEY, CALIFORNIA 94703
Tel: 510-548-7300 Email: AAKORN@IGC.ORG
Fax: 510-540-4821 Web: WWW.ALANKORN.COM

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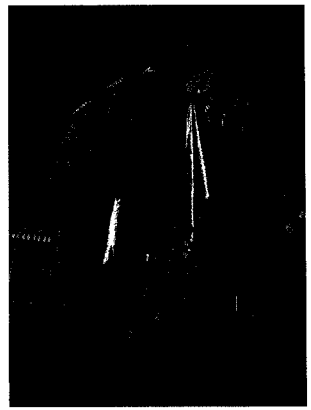
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really fun for her. I felt awkward having to go through the exercise. Later I asked my driver to sign as a witness. In deep appreciation I gave the lady my pen as a heartfelt gift, not just compensation. I'm sure this made her day. The warm interchange certainly made mine.

If we want to license our images effectively, we must have those releases. The larger stock photo libraries won't accept ANY photos with recognizable people that don't have model releases. There are other marketing avenues where one can list the images as "Not Released," but then licensing opportunities are greatly reduced, and images are only available for editorial uses and not the often more lucrative commercial licenses.

So what about those guys in the gourds? Well, they like to have their photos taken, too, and it wasn't all that difficult to get releases signed once my guide explained their legal significance. Fortunately for me, these gentlemen are not intimidated by a camera. Ever since they were discovered by Western civilization just 60 years ago, they have been inundated by foreigners intrigued by those humongous gourds. When you think about it, it's even more important to get a model release from a naked man wearing nothing but a gourd. So I exchanged a few coins for the signed releases. But the men of Irian Jaya don't have any pockets for their coins—just gourds.

I learned pretty quickly not to ever ask for small change.



© Glen Allison <www.glenallison.com>

Parades and street festivals may present a challenge in getting releases, but that didn't stop Allison from getting his shot at the Painted Elephant festival in Jaipur, India.

Glen Allison travels extensively shooting travel images for stock and has authored several books inspired by his travels including Penis Gourds & Moscow Muggings. *He describes himself as a dweller of third world cyber cafes and owner of the world's largest mobile collection of cables, adapters and pocket hard drives. See more of Glen's images at <www.glenallison.com>.*

STOCK RELEASE Q+A

WHAT'S A RELEASE?
A release is a brief contract that clearly indicates that a person or property owner has granted the photographer permission to use his or her likeness or property in an image, usually to be used for commercial purposes. Once signed by both parties, this document is usually legally binding and serves to prove that the proper authorizations have been granted. Privacy and publicity laws are state laws and vary among different jurisdictions.

WHAT KINDS OF RELEASES ARE THERE?
There are two basic kinds of releases. Talent Releases (or Model Releases) are needed for any recognizable people in your images, including friends and family. A variation for minors needs to be signed by a parent or guardian if the subject is under 18 years of age. The second type is a Property Release. These are needed to publish images of certain property and works protected by trademark.

WHAT'S IN A RELEASE?
Release forms should be designed with clear, everyday language that the model or property owner can understand. If you're traveling, you need to bring releases in the local language. There needs to be some sort of "valuable consideration" given as compensation for the right to photograph the subject, usually in the form of a fee and/or services, which is clearly noted on the release. It's important that releases clearly relinquish further claims by the model or property owner, including all claims to further payments and rights as to how the images will be used.

DO ALL IMAGES NEED TO BE RELEASED?
While images can generally be licensed for editorial purposes without a release, you limit your ability to market them if you do not obtain a release, since they are required for people and places that appear in photographs for commercial uses (like ads, brochures and point-of-sale). Also, keep in mind that most major stock distribution outlets do not accept unreleased images. Bottom line, without obtaining a release, you will severely limit the marketing options for your images, as well as unnecessarily expose yourself to potential liability with the subjects of your image if they ever object to the way it is used.

HOW DO I GET A RELEASE?
Getty Images has generously posted its standard release forms in nine languages to the public page of its contributor Web site:
<www.gettyimages.com/contributors>

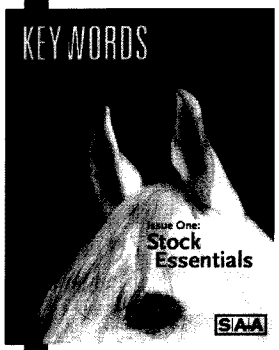
For additional information about the importance of releases, visit the extensive model and property release module on the ASMP Web site at:
<www.asmp.org/commerce/legal/releases>

PENIS GOURDS + MODEL RELEASES

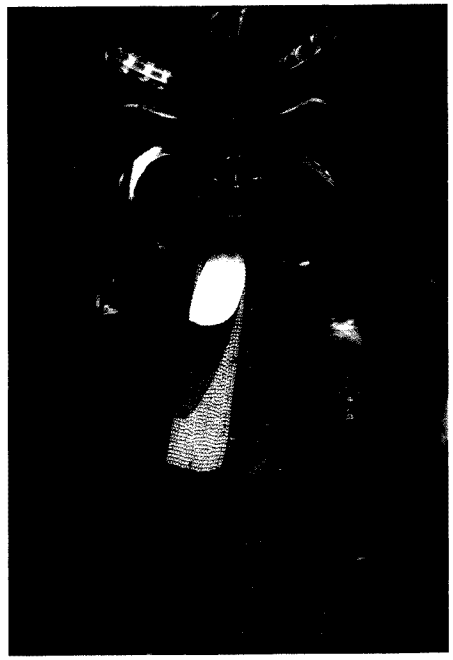
Now that I have your attention—so how do you ask a tribal warrior in Irian Jaya, naked except for his gourd, to sign a model release?

Getting releases is most definitely the bane of a stock photographer's existence—at least mine. I've found, however, that getting releases in thirdworld countries is usually much less painful than in the more litigious societies like the United States and other Western countries where people are afraid to sign any legal document that looks intimidating. The biggest problem in the more "exotic" cultures of the world is not getting the release, but explaining what it is and why it's necessary, especially if you don't speak the language.

Recently I photographed a painted elephant festival in Jaipur, India. Parades and street festivals always present a big challenge when it comes to getting releases. It's almost impossible to pull a colorfully painted elephant out of a procession and get the mahout (elephant driver) to climb down and sign a release. Yet I find that India is one of the easiest countries to get model releases in. First of all, the people are inquisitive by nature and extremely friendly. They are intrigued by the camera and the attention. Smiles come easily. But what about the language barrier? No problem. It's relatively inexpensive to travel in India so I always hire a car with a driver (about $25 per day) and make sure the driver speaks fluent English. He's my link to communicate with the locals and he can easily explain to them that I might be able to get the photos published, but only if I have their permission granted by the model release in my hot little hand. Naturally the gratuity they receive makes the proposition even more attractive. In advance, I decide the "proper" amount to pay relative to the culture, so I don't make it even more difficult for the next photographer who stumbles down the same path.



This article is excerpted from *Keywords™, SAA's Guide to the Business of Stock Photography, Issue One: Stock Essentials*, published by the Stock Artists Alliance. <www.saa.org> To download the full issue as a pdf file on the SAA Web site, please visit: <www.stockartistsalliance.org/keywords>.



© Glen Allison <www.glenallison.com>

Tribal warriors in Irian Jaya like to have their pictures taken, and it wasn't all that difficult to get releases signed once Allison's guide explained their legal significance.

It's said that there are about ten million nomadic tribal people in India who have no education and don't even know the name of the country they live in. These are some of the most uniquely dressed people in the land. You wouldn't believe the colorful saris with embedded bits of mirror, bangles and beads that the women wear and the silver jewelry that's tied in their hair and dangles about their faces. My driver explained to one of these ladies the significance of my model release. Then she looked up with a big grin. This was

CONSTITUTIONAL REFERENDUM COMMENTARY

In accordance with Article XIII sec. 3 of the ASMP Constitution (Opposing points of view) and By-Law #11, the following statements in support of and in opposition to the proposed constitutional referendum are offered for your consideration. For the complete Pro/Con statements, rebuttals, proposed changes and what's different go to <www.asmp.org/referendum>. Be sure to vote!

PRO

Dear Fellow Members,

I write to urge you to vote "YES" for the current ASMP referendum that has probably already reached your mailbox. As your most recent past president, I believe this proposed constitution will allow our Society to continue the progress of the past few years, as well as provide us with a better future. Without it, ASMP will suffer the inevitable slowdown our current system mandates.

Many of you probably have little interest in the Society's governance, but you do care deeply about having a trade association that provides you real value. These two issues are tied at the hip—in order for ASMP to work proactively and successfully for your interests, you need to help ASMP to approve this new constitution.

Our current constitution requires a 2/3-majority member vote to raise dues even a dime. Have you ever tried to get a super majority of photographers to agree on anything? Try something easy like a chapter program topic or what to put on the pizza and you will see our problem. Historically, by the time the required majority is reached, we have lost services and staff. The system holds us back.

The proposed document changes the dues setting system and it also increases the power of membership oversight. It allows our elected board of directors to set the dues and, simultaneously, eases the procedure for reversing a board action. The board needs the ability to run the organization efficiently, and the members need the power to stop a renegade board. This proposal strikes that critical balance perfectly. The referendum process should be used to correct problems, NOT for the normal duties of properly running a trade association.

The ASMP board has term limits, and by 2008, half of the seats will be filled by new directors, perhaps by you. This proposal is not about giving more power to those currently in office. It is about what will work best for all of us.

Change will happen. Strength comes from looking down the road and proactively making changes to improve one's position. Reactions based on fear and holding on to the status quo rarely lead to progress. I want to see ASMP develop and grow from a position of strength.

This referendum proposes a progressive change for ASMP—vote "YES" by March 15 and help me make this forward-thinking move a reality. Without this new constitution, ASMP will face diminished strength at a time when we need our advocacy voice more than ever. I vote "YES" for ASMP—join me.

Sincerely,

Susan Carr
ASMP President 2004–2006
Director 2001–2007

CON

We believe in what ASMP has done through the years as evidenced by our membership and leadership at the chapter level.

We are concerned that the national board continues to come back to the membership with the same proposal after we have voted it down.

We believe the board's need of the membership vote for dues increases provides limited member oversight of our board's fiscal authority. A good check and balance in the system, which would disappear if this referendum is approved.

General members have had the right to approve dues increases beginning with the founding fathers more than 60 years ago.

The ability to raise dues every two years is too often. The board has not taken the suggestions of a cost of living percentage every so many years, but rather wants full control. There are other similar professional organizations our members can join. We're going to lose members if the dues get much higher.

The board has been asked the past two years to take this out of this referendum and make this a separate referendum on the same ballot.

We believe the membership will support dues increases, which are justified and the membership can afford to support. Let's keep it this way—we prefer the checks and balances in place to keep the board fiscally responsible.

Stanley Leary
Harold Naideau
Beth Schneider

BY VICTOR S. PERLMAN

THE ASSAULT ON COPYRIGHT

In my last column, I described a momentary calm in the eye of the Orphan Works storm. We are now back in the turbulence and trying to negotiate a piece of legislation acceptable to photographers and other freelance creators of copyrighted works. The new Congress has convened, and by the time you read this, new legislation will have been drafted and possibly introduced. Since matters involving any legislation can change with lightning speed, we will do our best to update you on significant developments via e-mail and the ASMP Web site.

No matter what the final Orphan Works legislation looks like when it gets enacted (and there is no doubt that some version of this bill will become law), this is just one early battle in what I believe is a major and long-lasting assault on copyright. Discussions within our industry are generally limited to a small group of copyright owners. This gives us a skewed vision of the world. For a more accurate view, we need to look beyond our ranks. Check out the Web sites of groups representing the interests of people who use copyrighted works, like the Electronic Freedom Foundation <www.eff.org> or Public Knowledge <www.publicknowledge.org>, and see what they have to say about copyrights.

Try reading *Wired* magazine. Talk to anyone in the educational community. Try talking to your kids. Ask them whether file-sharing has gone away and whether it's good or bad. Check out YouTube <www.youtube.com> or MySpace <www.myspace.com> and see what's going on there. It's really very simple. Digital technology and the internet have made it fast, easy and convenient to distribute copyrighted material—often without permission or payment of licensing fees. For decades now, the trend in society has favored things that are fast, easy, convenient and cheap—and there's nothing cheaper than stolen copyrighted content.

Copyright is under assault, from just about every direction and on every front, including the courts and the legislature. Copyright law finds its very basis in the U.S. Constitution. Despite that, recent years have given rise to lawsuits challenging various aspects of the Copyright Act as—unconstitutional!

The bottom line: Society does not want copyright and does not want to pay for copyrighted works. That's probably not new, but there weren't many practical alternatives before the proliferation of computers and the internet. Today, society has all it needs to use copyrighted materials without permission, except legal authority. And there lies our biggest problem for the future. Laws are created to meet the needs of society. Given the overwhelming desire of millions of registered voters to carve copyright protections down, I see a period in which copyright protections will be eroded on an ongoing basis. Further exceptions will be written into the law, and Copyright Act provisions will be interpreted by courts to benefit users at the expense of copyright owners. We have all watched, and are painfully aware of, marketplace pressures on traditional rights-managed licensing, so I need not belabor that aspect of the attack on copyright.



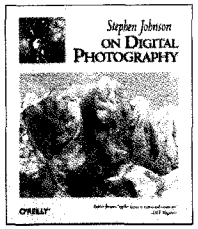
© Arthur Meyerson <www.arthurmeyerson.com>

It is now time—even past time—to start thinking of new business approaches for your work.
Image: *Curtain, Texas* from Arthur Meyerson's series, "The Color of Light," which will be exhibited from February 9 – August 9, 2007 at Roche Bobois, 7611 Girard Avenue, La Jolla, California, (858) 459-0297.

What does this mean for you? In my view, our members' traditional business model is under pressure from so many quarters that it will not last in the long term. It is now time—even past time—to start thinking of new business approaches for your work. Consider yourselves as visual communicators, not as professional photographers doing business in the same way as in the past. Start thinking out of the box. Candidly evaluate your unique skills and talents, then envision ways to convert them to money. The ASMP's board has charged itself with examining these same questions on behalf of our members. Yet, no matter what the board comes up with, you need to plan for your own professional future.

Before cars became commonplace, thousands of companies manufactured horse-drawn carriages. When automobile sales started to outstrip this market, the carriage companies started to disappear. All except one: the Fisher Carriage Company. This company realized it wasn't in the horse-drawn carriage business—it was in the business of making bodywork for personal transportation, whether powered by horse or motor. The company innovated and remained successful—so successful that it was eventually bought out by GM. The threat to copyright today is every bit as real as last century's threat to the horse-drawn carriage, so start now to think of yourself and what you do in different ways.

BY STEPHEN JOHNSON



Stephen Johnson on Digital Photography by Stephen Johnson
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Enter discount code D7ASMP for 35 percent off this title until April 15, 2007.

lish your work or use it for commercial purposes. Under most state laws, you also have the right to know who purchased your work and be supplied that information on request from anyone selling your photographs.

It doesn't hurt to explicitly spell out those basic rights on the print label itself. It makes for an informed process from the very beginning.

GALLERY, CLIENTS AND MAGAZINE SUBMISSIONS

Custom-built Web sites can be amazingly quick ways to communicate photographic options to potential clients. Increasingly, people are willing to view a Web site as a starting point for conversation. This usually works best if the other party contacts you first.

When you are making the overture, your best bet for drawing attention to your work is to ask about and follow their preferred submission procedures. That doesn't mean that you don't adopt other methods if the normal procedures don't result in a reaction.

Rejection is another issue entirely. It must be handled with a thick skin, attention to any comments made, and a re-evaluation if the rejecting entity was a good fit for your work. The book *Art & Fear* tackles many of these issues with humor and perspective.

It is critical that your presentation is superb. Track and number every portfolio you send out. Make sure it is understood that it has value, that it is being given on loan, and that its return is expected. Include return shipping forms to make this clear and convenient for the recipient, who will appreciate that their job has been made easier.

EXHIBITIONS THAT LIVE ON

Don't let temporary installations of your work disappear. Upload panoramic VR files of exhibits to your Web site as an ongoing record of your exhibition history. It keeps a visual record, allows visitors to explore the space, and substantiates the validity of your exhibition record.

The PhotoMerge command within Photoshop's Automate menu is a built-in panoramic VR stitcher to make a panoramic file from individual frames (see Chapter 7).

WEB GALLERIES

Photoshop's Web Photo Gallery function allows easy creation of custom Web pages with a variety of styles and layouts. Simple HTML editing on the supplied styles (kept in Photoshop's Presets folder under Web Photo Gallery) can further customize their appearance with your logos and navigation features. Many other packages are available, including WebPics, which add a layer of copyright information to photos. These packages allow a nearly instant photo-posting capability. Don't underestimate the power of a quick response to photo requests with custom galleries. It's a way to show your work with minimum effort.

PORTFOLIOS AS BOOKS AND ON DVD

Providing galleries and potential buyers with custom portfolios of your work is now a must. Work can be printed in sheets with multiple images, then custom-bound at a book bindery, usually found in any urban area. Allow space on the left side of the sheets for the binding and consult the bindery regarding their specifications before printing your sheets.

DVD portfolios are also popular and prove extremely useful. Try the software that comes with your computer (like Apple's iDVD); it can do most of what is minimally required for video slide shows and more.

Take advantage of any technology that gets your work seen and communicates the emotional content. Pay particular attention to technologies that don't put your work at great risk for theft.

SELLING YOUR WORK

Price your photographs so that it is worth your time in making prints. Look beyond the mere satisfaction of exchanging income for your art and figure out if your time seems financially well spent. Most of us make photographs for the pleasure of the experience, but selling the work is different. The emotional satisfaction also needs fiscal encouragement, and making the same print over and over is a drag.

Most photographers have a matrix of income, including print sales, commercial work, stock photography and teaching. Ultimately, you need to calculate the physical cost of materials, your time, your generalized costs of doing business and a profit margin. This is the formula for continuing to be able to make the work.

IMAGE PERMANENCE AND STORAGE

If you plan to sell your work, the prints need to last. Pigment inks in inkjet printers and Fuji's Crystal Archive Type C chromogenic color photo paper have provided unprecedented longevity in color photographic print work. Be up-front with your galleries and potential collectors as to the type of printing technology you use in making prints, as well as the accelerated aging tests of how long the prints should last without visible change (see Wilhelm Imaging in the section "Software and Internet Resources" in the Appendix).

Label your prints with all of the provenance information you can. Such information will be of great value to future archivists as they seek to preserve the work from this interesting but improvisational period in photographic history. Avoid marketing terms like "glicee," which have no precise meaning.

Many protective sprays are now available to inhibit UV damage and provide some surface protection against scuffing. Bag the prints in polyethylene storage for long-term protection.

STEPHEN JOHNSON ON DIGITAL PHOTOGRAPHY

WHAT TO DO WITH YOUR IMAGES

Much as art schools rarely teach how to make a living as an artist, the practicalities of what to do with your photographs are often left out of the equation. Discussion of nuts and bolts such as print labels, Web galleries, archival matting and framing are needed now more than ever. Perhaps this is even more important in the age of digital empowerment for the arts, as so many people without formal art training enter the field to pursue their heart and vision. This chapter was written to help address that need.

GALLERIES: REAL AND VIRTUAL

Displaying work for others to see is the name of the game. Getting people to come and look is another challenge. The impulse to have your work appreciated has not changed with the digital age. Getting the attention has become harder and easier at the same time. We certainly have more tools to distribute our work, but everybody seems to have a gallery online, and standing out remains hard.

VISION AND STYLE

Work from the heart almost has to be unique, but it may require a lot of thinking to give visual vent to those unique feelings. It is one thing to feel things deeply, and another to express feelings with eloquence. Years of work, hard self-questioning and showing the work to others all help.

SOMETHING SPECIAL

Uniqueness is both intangible and highly sought after. It cannot easily be described, but we think we know it when we see it. The work itself is what really counts. Try to understand artists whose work has inspired you, as you move toward an understanding of what you want to do. We all engage in art-making because of inspiration; one of the real tasks is to take that inspiration and work it into a new vision.

Oftentimes, people get caught up in the mechanics of putting the work together. While this is important, and can sometimes make a critical difference, it should come after accomplishing strong work. In today's digital world, rough hand-coated emulsion-look edges, photo-frames, drop shadows and similar decoration rarely strengthen the work, and mostly look like the window dressing that they are. The presentation matters, and good work that is poorly presented often gets overlooked.

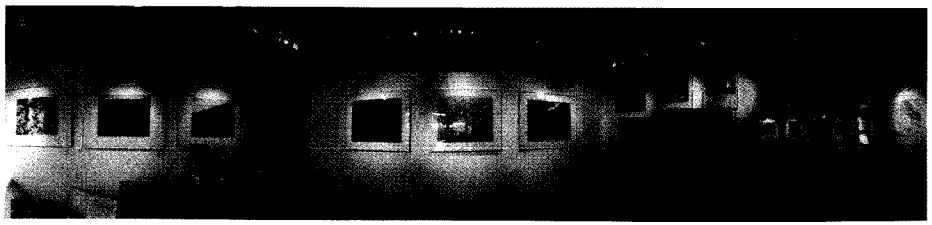
LIGHTING

It is now possible to carefully match your prints to the display lighting where prints will be viewed. Galleries are often lit terribly, with low intensity (to protect fragile materials) yellow light (from ordinary flood lamps run at low voltage). Your prints can be balanced for these dismal conditions and look better in those particular circumstances, but then they might look awful in the mixed daylight/indoor lighting of a collector's wall.

I still am inclined to choose daylight (5000K–6500K) as my viewing light condition and print to that white point. In many situations, my prints have suffered from this decision, going very warm and losing most of the subtlety I try so hard to achieve. I do encourage artificial light that is closer to daylight, and the Solux 4700K quartz halogen bulbs I use in the track lights of my gallery do help.

OUTREACH, OWNERSHIP AND SHARING

You own your photographs from the moment light strikes the recording media. A buyer has the right to display, enjoy, resell, but not to pub-



© Stephen Johnson <www.sjphoto.com>

This article is excerpted from Chapter 15, "What to Do with Your Images" of Stephen Johnson's book *Stephen Johnson on Digital Photography*, published by O'Reilly Media <www.oreilly.com>. To view additional diagrams, download the full chapter as a pdf file, and to purchase a copy of the book via the ASMP Web site please visit <www.asmp.org/go/johnson>.

LASTING LIGHT

The Grand Canyon's overwhelming natural beauty has visually hypnotized photographers since cameras were first invented—yet early photos of this natural wonder are often forgotten.

In *Lasting Light: 125 Years of Grand Canyon Photography*, author and ASMP member Stephen Trimble gives readers a glimpse into that hypnotizing beauty, with vibrant images made by many of the world's finest Canyon photographers. From historical images of the late 1800s, to twenty-first century digital captures, the Grand Canyon's luster is palpable in this oversize book.

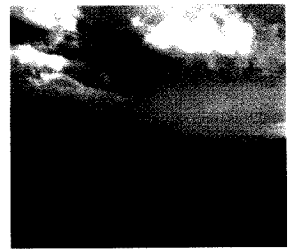
The project was conceived by three Arizona-based professionals—a custom printer, a photography publisher and a member of the Grand Canyon Association—who often worked with Canyon photographers. They invited Trimble to collaborate on this project, and to bring to life the relationship between the artists and their subject, the Canyon—an American icon.

"As every photographer who comes to the Grand Canyon, I've been humbled by the place and its checklist of challenges: vastness, remoteness, ruggedness—and on the river, the constant danger of water damage to equipment and the sickening sound of sandy dirt in lenses and camera bodies," Trimble writes in the book's introduction.

Trimble's writing and the book's accompanying images depict how he and fellow photographers—including such legendary ASMP members as Ansel Adams, Ernst Haas and Joseph Muench, plus contemporaries Tom Bean, John Blaustein, Tom Brownold, James Cowlin, Jack Dykinga, George H. H. Huey, David Muench, Larry Ulrich and others—carefully overcame those challenges to create art, in the name of crimson rocks at sunrise, warm copper sunsets and white-capped waterfalls.

For a great lesson in landscape photography from the towering heights of the Grand Canyon, *Lasting Light* is worth the climb.

—Jessica Gordon



Lasting Light
125 Years of Grand Canyon Photography
By Stephen Trimble
Northland Publishing, in cooperation with Grand Canyon Association, June 2004
216 pages, 115 illustrations
Hardcover, $40, ISBN 0-87358-894-0
www.nonmanip.com/ll



BILL FOSTER'S GUBERNATORIAL GIG

Sacramento, California–based photographer Bill Foster has been burning the midnight oil since signing on as the official photographer for Governor Arnold Schwarzenegger on January 2, 2007.

"This is the job I've been working toward since tagging along on assignments with my mentor [ASMP member John Harrington] twelve years ago," says Foster. "I just didn't know it until the opportunity presented itself."



© William Foster <www.wfosterphoto.com>

While Bill Foster sometimes enjoys priviledged access as the governor's official photographer, he enjoys the challenge of candid situations like this.

Over the past several years, Foster has honed his skills in both photojournalism and corporate work. This diverse experience, coupled with his knowledge of image management and archiving, made him uniquely qualified to manage both day-to-day activities and long-term projects.

While his new position provides Foster with a closer relationship to the governor than other photographers enjoy, preferred access isn't always guaranteed at public events.

"I can still get [word] from the Communications Director to 'stay out of the way of the press,'" Foster explains. "It's kind of a delicate balance," he adds. "Our goal is to make the governor look as good as we can, but it's important for the news to come out through the regular channels and for the [press] to have their unbiased views."

Foster recently found himself vying for a spot at an impromptu photo op after the public signing of a groundbreaking executive order for a Low Carbon Fuel Standard. While leaving the event, Governor Schwarzenegger ducked under the hood of a parked municiple vehicle, a Chevy Tahoe, to take a closer look.

"I was shooting over the shoulder of two other people," says Foster. "I don't always get pushed to the front." —Jill Waterman

BEST OF ASMP: A SHOOT TO REMEMBER

In September 2006, the second annual ASMP Best Of issue featured memorable work from 20 photographers selected from our call to members. For the 2007 issue, we will accept member entries between March 1 and May 15, 2007. Any memorable project completed within the past year—from client assignments to personal work—is eligible for consideration. In preparing your submission please follow the following guidelines:

- WRITE a brief (250 words or less) description of the project and what made it memorable for you.
- PREPARE one low-res jpg (500 kb or less) and make sure to insert your name and caption info in the IPTC settings (file info field of Photoshop).
- E-MAIL both items to <submit@asmp.org> between March 1 through May 15, 2007.

Please note that due to the amount of submissions received, only the finalists, as selected by our editors, will be contacted during the month of June for more details about the submitted projects.

Flip back through your calendar, review your portfolio and prepare your submission today!

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OUTSTANDINGVOLUNTEERS

JORGE PARRA SOUTH FLORIDA CHAPTER

Jorge Parra has only been an ASMP member since 2001, but he has already made a big impression as a talented photographer and a dedicated volunteer. Starting as an international member from Venezuela, he made his presence known from afar through an active involvement in numerous photography listservs. Before relocating to Miami in early 2006, Parra e-mailed chapter president Matthew Pace to introduce himself, then followed up in person soon after he arrived.

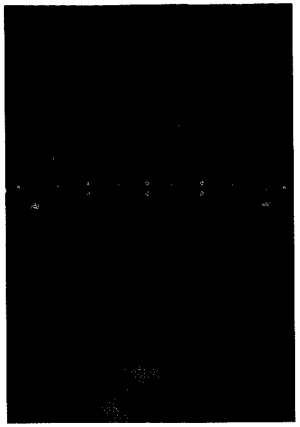
"Jorge wasn't like most other new arrivals, who are only interested in what the organization can do for them," explains Pace. "He asked right away how he could be involved, what he could do to help."

Pace immediately got him involved. When the chapter decided to redesign the Web site to mirror the look of the national site and make it easier to update, Parra referred a Web designer and offered his own technical experience to get the job done. Within the wider community, Parra serves as liaison to the Miami Beach Chamber of Commerce and is working on the integration of ASMP with the chamber's directory Web site.

"We have a lot of great people in this chapter and I'm kind of glad for that," Pace says of the local membership. But, as Pace describes it, working with any group is like making soup.

"It takes a lot of ingredients, but if left alone they mean nothing," he explains. "Jorge's good at stirring up the soup, and it's important to stir the soup in order to make it taste good."

So congratulations and thank you, Jorge Parra, for stepping up to the plate and diving right in. —JW



© Jorge Parra <www.JorgeParra.com>

From actively participating in many photography listservs to spearheading projects for his local ASMP chapter, Jorge Parra dives right in.

asmp NEW YORK AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS

IMAGE07

CALL FOR ENTRIES

SUBMISSION INFORMATION

Open to professional and student photographers residing within the United States. Submit one or more of your favorite images that were created after January 1st, 2006. Entry deadline is May 5th, 2007.

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For application and information please visit us on the web at
WWW.ASMPNY.ORG/IMAGE07.HTML

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Struggling to become a modern media enterprise, the National Geographic Society is focusing on TV and the Web. In the process, it is alienating the magazine's best assets: its photographers.

A CLOSER LOOK AT NATIONAL GEOGRAPHIC

Stephen Wilkes Gets Personal Behind The Scenes At ***The New York Times Magazine***

INSIDE THE NEW ISSUE OF PIX: MOVING IMAGES ON THE WEB

NATIONAL GEOGRAPHIC:

LURCHING INTO THE 21ST CENTURY

Change isn't coming easily to the Society's patriarchal and bureaucratic culture as it struggles for a new generation of readers.

By David Walker

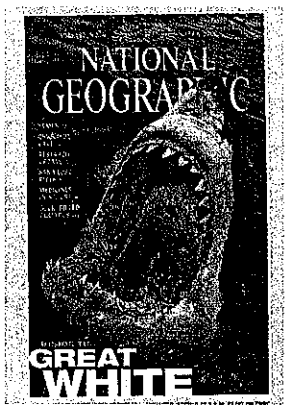
These are the waning days of *National Geographic* magazine, at least as we know it.

For the past decade, the National Geographic Society's U.S. memberships—its word for magazine subscriptions—have fallen steadily from a high of 10.8 million to around 7 million. And the Society's growth is slow, with revenues hovering around $500 million.

The explosion of cable TV, the Web and niche magazines have been hard on all general-interest magazines in recent years. But things are particularly bad for *National Geographic*, which remains stuck in a time warp with a base of older readers.



© N.G.S. /PHOTO BY JERRY GREENBERG



© N.G.S. /PHOTO BY DAVID DOUBILET

Left: *National Geographic* circa February 1968. Right: The magazine tries for more newsstand impact with its April 2000 cover on the same subject.

"It's our responsibility to make sure this organization is as highly regarded, as influential and as relevant as possible in the next 100 years as it was in the last 100 years," says Society CEO John Fahey. "For us to do that, we have to tap into a worldwide audience. We have to tap into new audiences—meaning younger people in this country, quite frankly. And we have to use all the media available to get our message out."

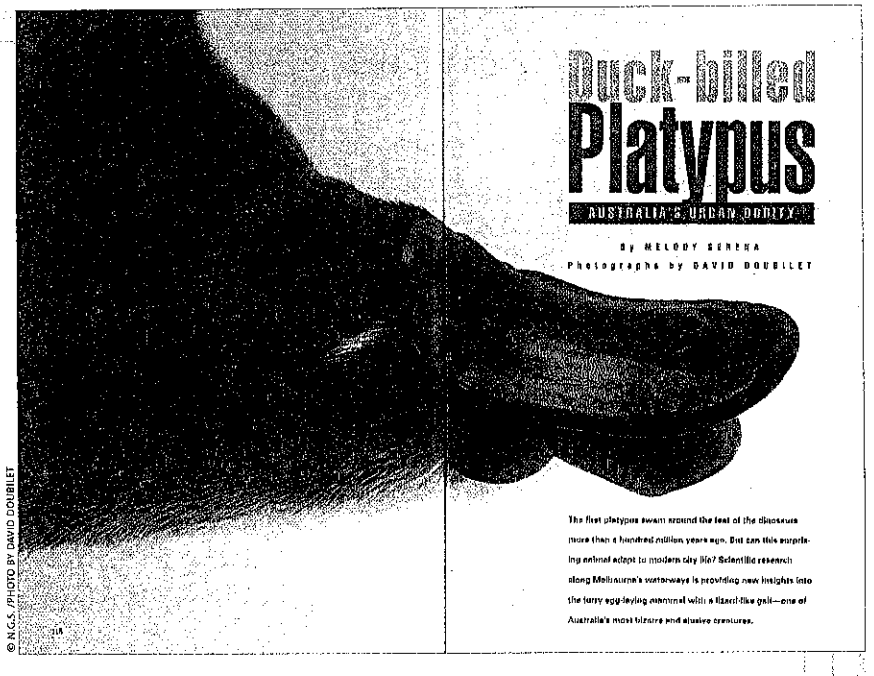
To that end, the Society has been morphing into a corporate media giant with the kind of brand extension strategy now in place at every magazine publisher. Soon it expects to launch the National Geographic Channel, a 24-hour cable-TV station that could cost the Society $250 million or more and is expected to replace the magazine as the engine that drives the Society. Meanwhile, the Society has been licensing content for new products, overhauling its book division, downsizing staff, outsourcing fulfillment and, yes, putting the squeeze on suppliers.

But change isn't coming easily to the Society's patriarchal and bureaucratic culture. For 100 years, the Society has been run by a family dynasty named Grosvenor, descendants of one of the Society's first patrons and presidents, Alexander Graham Bell. The current scion, Gilbert M. Grosvenor, passed the reins reluctantly to professional managers during the Nineties, and the struggle between dear old traditions and new corporate ideals is far from over.

That struggle is certainly manifest at the magazine. Some attempts to shore up the magazine's circulation have tarnished the dignity and exclusivity of the nonprofit educational Society. Subscriptions have been offered through Publisher's Clearinghouse and frequent-flier programs in recent years. In late 1998, the Society began selling the magazine on newsstands for the first time in its history.

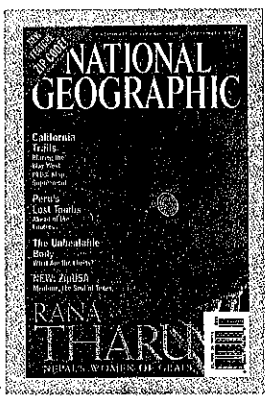
More significantly, the Society is looking overseas for new subscribers. To date, it has launched ten foreign editions with overseas publishing partners; four more were scheduled for launch at the end of September. So far, foreign editions account for 1.8 million subscribers, boosting total subscriptions back to nearly 10 million. Some overseas editors have dared to say out loud that the writing is boring, and some foreign publishing partners are doing something just as unthinkable: selling ad space in the edit well.

Meanwhile, the magazine is cutting costs. Story budgets, which didn't exist a decade ago, are now tight. The average photo assignment lasts from four to eight weeks instead of months on



© N.G.S. /PHOTO BY DAVID DOUBILET

The Photo layouts are more lavish than ever, but some people inside and outside the magazine criticize its reliance on the same "stones and bones" formula. Near right: The redesign, launched in September, created minimal changes.



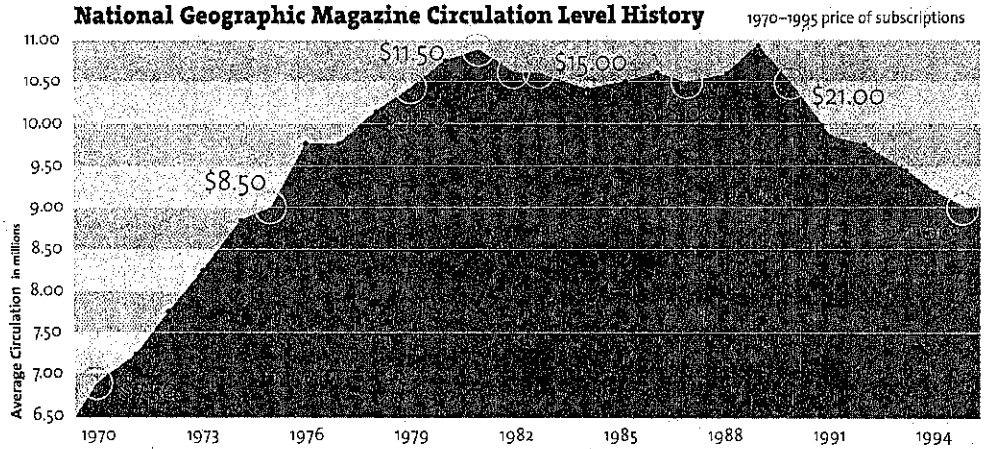
© N.G.S. /PHOTO BY ERIC VALLI AND DEBRA KELLNER

end. And the Society's push into new media and cross-divisional synergies requires extensive re-use rights, bringing the magazine into conflict with its stable of veteran photographers.

Such changes, traditionalists argue, threaten to undermine the Society's best asset: its editorial quality and authority. But even they acknowledge that the magazine looks as good as ever. Last spring, *National Geographic* won the National Magazine Award for general excellence for the third time. (It won previously in 1992 and 1984).

Still, the magazine has serious editorial handicaps. Its founder's mission, "to increase and diffuse geographic knowledge," sounds quaint and pedestrian in the information age. Its attention to science and exploration, unique in 1888, now faces sharp competition from the Discovery Channel, *Audubon*, *Outside* and other media geared to hipper audiences. It is often slow and wooden in its response to newsworthy events. And it is notorious for its rosy, Pollyanna view of the world and the bloodless, didactic style of its writing.

National Geographic Magazine Circulation Level History



"They're publishing a monthly encyclopedia," says one contributor.

The challenge for editor Bill Allen and staff is figuring out how to drag the magazine into the 21st century without alienating its loyal audience. But so far, the magazine has stayed close to old formulas and sensibilities.

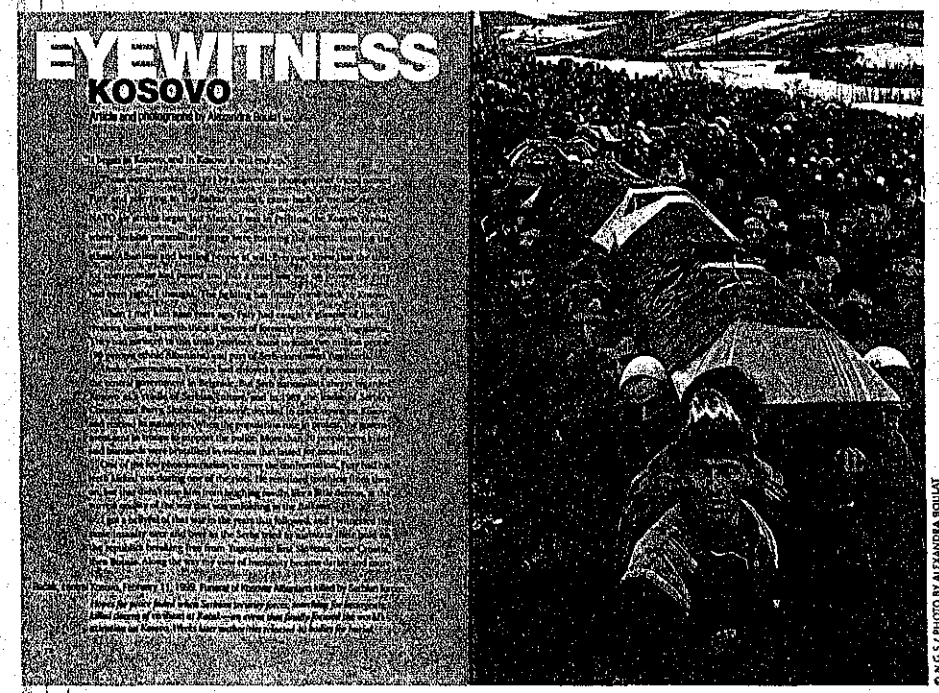
Back to the Future

Conservatism runs deep at the National Geographic Society. The Grosvenor family and the Society's board are staunchly conservative. And the Society, located in Washington, D.C., has always prided itself on its status as a quasi-official institution and its access to power.

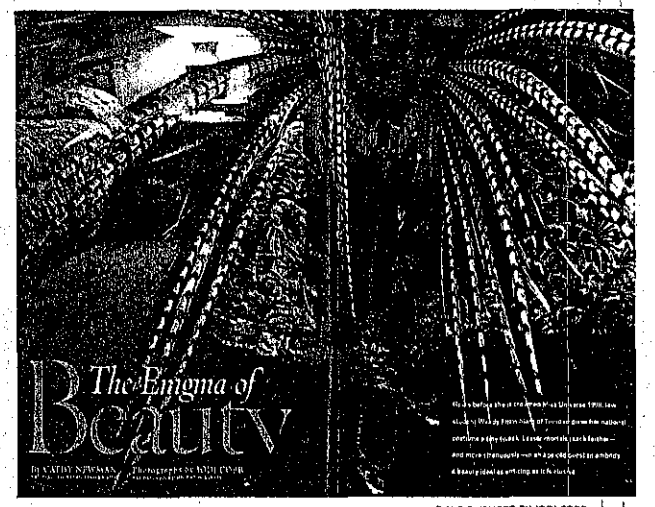
Those conditions have fostered an abiding conservatism in the magazine. It ran flattering portraits of Nazi Germany and fascist Italy in the Thirties, whitewashed South African apartheid in the Sixties, avoided the topic of evolution until the late Fifties, so as not to offend Christian fundamentalists, and didn't mention the injustices toward blacks in the American South until 1970.

The magazine is substantially less conservative than it once was. But the Society's directors or editors have killed or watered down what could have been hard-hitting stories in recent years about famine and AIDS in Africa, social and economic upheaval in South Korea, and the rise of evangelicalism in the U.S. Last year, in an issue dedicated to biodiversity and rapid species extinction, the role of global economics and corporate polluters went almost unmentioned.

The magazine has eschewed other controversies, too. Several years ago,



© N.G.S./PHOTO BY ALEXANDRA BOULAT



© N.G.S./PHOTO BY JODI COBB

Above: Alexandra Boulat's hard-hitting story on the struggles of Kosovar Albanians. Right: Jodi Cobb's story on ideas of beauty around the world.

editors killed a story on advances in medical technology to avoid mentioning abortion. Recently, the Society killed a new book called *Body Beautiful, Body Bizarre* about body art around the world. It reportedly contained pictures of pierced genitalia. It was brought to Grosvenor's attention, who ordered all 10,000 copies of the book to the shredder. (Spokesperson M. J. Jacobsen insists that Fahey, not Grosvenor, killed the book).

The magazine also roots out the point of view and even the style of its photographers and writers—in the name of editorial neutrality. Tom Kennedy, director of photography from 1987 to 1997, says the magazine "homogenized a whole generation of talented photographers" in the Seventies and Eighties. He says he had some success changing that, but he was fired, in part for challenging the status quo.

Kennedy's replacement, Kent Kobersteen, is by all accounts "a company man." "We're trying to convey the feel of a place, or the personality of a person, or the behavior of an animal," says Kobersteen. "Our photographers have to make pictures that are about the subject, not about themselves. Oftentimes, you look at photographs by a person with a strong style, and you come away having learned more about the photographer than about the subject. That's fine. That's great. But that's not for us, because we're a general circulation magazine that's using photography to communicate."

As a result, the magazine has turned away some brilliant work, including Sebastião Salgado's work on manual labor (Kobersteen says it was turned down because it was in black and white). They also passed on Lauren Greenfield's story on youth culture in L.A. in the mid-Nineties. "I'd like to think we'd publish that today," says Kobersteen.

That isn't to say that there aren't brilliant and beautiful images in *National Geographic*, and, to its credit, the photo department is making some effort to break out of its editorial straitjacket. For instance, it recently published Alexandra Boulat's hard-hitting story on Kosovar Albanians. Boulat is now working on her second piece for the magazine. Black-and-white essays are also in the works.

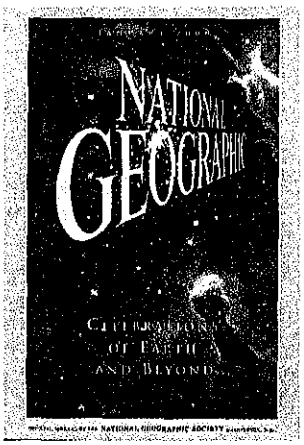
"We're more open than we were 10 or 15 years ago to individual styles," says assistant director of photography Susan Smith. Kobersteen admits that he should be doing more to cultivate a new generation of photographers—most of the contributors are veterans over 40—but says he doesn't have the budget to take chances on new talent.

Meanwhile, Bill Allen, the 59-year-old editor who joined the magazine in 1982, is steeped in its traditions. His editorial adjustments have been minor. One of the biggest changes he's made during his five-year tenure has been to shorten the length of stories so the magazine can publish on average seven a month, rather than five. That increases the chances that more readers will find something of interest in each issue, he says.

He and his staff also point to efforts to put bolder photos on the magazine's cover to make it stand out on newsstands. A recent example is last April's issue, featuring a shark gnashing its teeth. Allen is also launching a new regular feature called Zip USA. Each installment will feature text and photos capturing a week in the life of an American zip code. But it's more nostalgic than documentary, according to one insider. "It's a day in the life of what America used to be."

Once a quirky and quarrelsome family operation, the Society has given way to MBA management with a very different set of priorities and expectations.

In September, the Society launched a redesign of the magazine to help boost newsstand sales and to expand the front and back sections of the magazine to appeal to advertisers and readers alike. But, in keeping with the magazine's ambivalence toward change, Allen says he hopes that "a lot of people are not going to notice [the redesign] at all." And while there will probably be more about the adventures and personal impressions of *National Geographic* photographers sprinkled throughout the magazine as sidebars, there will be "no dramatic change," he says. "We're about at the point where I would like to see the magazine stay."



© N.G.S./PHOTO BY WOLFGANG BRANDER, EVA GREBEL, YOU-HUA CHU AND NASA

Allen's critics say he lacks editorial vision and that he relies too much on committees and reader surveys to set the editorial direction of the magazine. "They're preaching to their own dying choir," says one veteran photographer. Allen responds to gripes that he puts too much emphasis on the traditional mix of "bones and stones" stories by arguing that readers like them. And no matter what the mix, he points out, somebody would complain.

His defenders say the decline in circulation is due primarily to factors beyond his control, and that it's unlikely anyone could reverse the magazine's fortunes any faster. But there's mounting pressure for bolder changes. Not only is the magazine market changing, the Society has changed dramatically in the last decade. Once a quirky and quarrelsome family operation, the Society has given way to MBA management with a very different set of priorities and expectations.

Above: The millennium cover. Below: Longtime contributor Steve McCurry's photos from Angkor Wat.



© N.G.S./PHOTO BY STEVE MCCURRY

The Heir

Grosvenor, the Society's current chairman, had good reason to start worrying about the Society's fortunes over a decade ago. The third generation scion of the Grosvenor dynasty was, by most accounts, out of his element from the start. He didn't excel as either a writer or a photographer, and as editor of the magazine—a birthright he claimed in 1970—he lacked the enthusiasm, vision and love for the magazine that his father and grandfather had. "I felt sorry for him," says one longtime photographer. "I always had the sense that he was [assuming the mantle] out of a sense of duty and would have rather been doing something else."

Things went well enough for Grosvenor at first. He stuck to tried-and-true formulas. But he kept membership prices artificially low to boost circulation. The magazine went into the red as a result. In 1980, when he was poised to assume the additional title of president of the Society, the board of directors gave him a choice: he could either be president or editor of the magazine, but not both, as his father and grandfather had been.

Grosvenor chose the presidency, and the board named his father's talented protégé, Wilbur Garrett, to replace him as editor of the magazine. (That despite concerns of then board chairman Melvin Payne that Garrett was too liberal). Garrett had a nose for good stories and a willingness to take risks. The magazine was in the red when he took over, so Garrett initiated a series of increases in the price of subscriptions that eventually doubled the cost of membership. Yet he sustained membership levels well above ten million throughout the Eighties. Meanwhile, the book division remained a cash cow, preselling hundreds of thousands of books to members each year.

But by the mid-Eighties, there were signs of trouble. Book sales began dropping off dramatically, because the books all began to look the same and competition from the likes of Reader's Digest and Time Life was growing. Stuck with accumulating print overruns and diminishing storage space, Grosvenor started holding weekend remainder sales. Still, the formulas for producing and marketing books went unchanged.

Grosvenor also missed some lucrative opportunities. After the Society got exclusive pictures of the Titanic discovery, for instance, he ignored advice to publish a Titanic book quickly. The *Geographic*'s research showed that nobody would be interested. So the Society released the pictures to Titanic expedition leader Robert Ballard, who published a book that sold well over a million copies. "It

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Alexander Graham Bell	1898-1903
W. J. McGee	1904
Willis L. Moore	1905-1909
Henry Gannett	1910-1914
John Elliott Pillsbury	1919
Gilbert H. Grosvenor	1920-1954
John Oliver La Gorce	1954-1957
Melville Bell Grosvenor	1957-1967
Melvin M. Payne	1967-1980
Robert E. Doyle	1976-1980
Gilbert M. Grosvenor	1980-1996
Reg Murphy	1996-1998
John Fahey	1998-present
EDITORS	
Henry Gannett	1988-90
Marcus Baker	1891
W. J. McGee	1892-95
John Hyde	1896-1902
Gilbert H. Grosvenor	1970-80
Wilbur E. Garrett	1980-90
William P. E. Graves	1990-94
William L. Allen	1995-present
CHAIRMEN OF THE BOARD	
Gilbert H. Grosvenor	1954-66
Thomas W. McKnew	1966-67
Melville B. Grosvenor	1967-1976
Melvin M. Payne	1976-1987
Gilbert M. Grosvenor	1987-present



From left to right: Kent Kobersteen, John M. Fahey Jr., William L. Allen, Gilbert M. Grosvenor ALL PHOTOS © N.G.S.

would have been the biggest seller in the history of the *Geographic*," says another inside source.

Even more costly to the Society was its decision to pass up an entrée into the fledgling cable TV business in the Eighties. Management calculated that production costs for a full-time TV operation would be prohibitive, says CEO Fahey. Grosveno recognizes his error: He told *The Washington Post* in 1997 that cable channel competitor Discovery Communications "ate our lunch."

Bickering with the Help

Compounding Grosvenor's troubles was his difficulty getting along with his people. He frequently complained that photographers were out "spending my money," even before money was an issue for the Society. (See sidebar, "The *Geographic*'s Stormy Relations with Photographers.") Photographers are convinced Grosvenor had it in for them in large part because of a widely circulated rumor that his wife accompanied one of the magazine's photographers on assignment, and they had a fling on the road. "I don't believe it," says one veteran, "But I think Gil believed it."

Grosvenor's rift with Garrett, meanwhile, is the stuff of legend. Garrett is said to have been the son that Grosvenor's father never had. And Garrett's success earned him nearly as much power as Grosvenor. There were clear signs that Grosvenor was jealous. Grosvenor once introduced Garrett as the man who took his job. The two men, who had been close friends before 1980, became increasingly estranged.

That fueled plenty of gossip about their efforts to undermine each other. Grosvenor complained increasingly to board members about the magazine's direction under Garrett. And Garrett has been credited—despite his denials—with posting copies of an article about recovering heart bypass patients all over *Geographic* bulletin boards after Grosvenor had heart bypass surgery. The article described how heart bypass patients exhibit erratic behavior and forgetfulness.

Garrett's Achilles' heel was his damn-the-expenses attitude. He spent big bucks on a hologram cover in 1988, for instance, justifying the cost on the grounds that the Society had to be on the cutting edge of new photographic technology. It required months of research and experimentation just to pull it off technically (it involved a bunch of $3,000 Steuben glass globes, an electronically fired bullet and one of the most sophisticated laser beams in the world to light things up). The printing turned out to be a costly nightmare, and the final tab for the cover exceeded $3 million.

Before it was finished, though, Grosvenor ordered Garrett to kill it, and Garrett refused. Finally, in April 1990, when Grosvenor had enough loyal board members behind him, he summoned Garrett to his office and fired him. Named in his place was William Graves, an editor of unremarkable accomplishment who happened to be the husband of Grosvenor's longtime assistant. (Graves was also the brother of longtime *LIFE* editor Ralph Graves). He was willing to take marching orders from Grosvenor. But under Graves, circulation started into its long tailspin.

Down to Business

With membership falling, tried-and-true formulas failing him, and no heir apparent, Grosvenor went looking for help. He found it in Reg Murphy, whom he hired out of semiretirement in 1993. It was the beginning of the Society's big break with its patriarchal traditions.

Murphy made national headlines in 1974

when, while an editor at the *Atlanta Journal-Constitution*, he was kidnapped by a self-styled revolutionary. He spent part of the ordeal being driven around in the trunk of a car, and was released after the newspaper paid a $700,000 ransom. But he made his professional mark as a publisher, first at the *San Francisco Examiner* and then the *Baltimore Sun*, where he modernized operations and proved himself a tough-as-nails manager. He took on the unions over wages and benefits, and cut costs ruthlessly. He wasted little time applying those skills at the National Geographic Society, where he earned the nickname Mack the Knife. Hundreds of employees, including many department heads who had spent their entire careers at the Society, were offered early retirement packages they couldn't refuse. "It was overstaffed," he says. He ushered in a crop of MBA managers. He outsourced fulfillment and other operations to cut expenses. "He brought in corporate America and implanted it deeply at *National Geographic*," notes one insider.

In the biggest blow of all to the Society's high-minded nonprofit traditions, Murphy conceived and launched National Geographic Ventures, a wholly owned for-profit subsidiary. That, he says, "was a move toward an organization that fits the communications world that exists in 2000." It was a way of modernizing products and operations, he says.

For years, *Geographic* attorneys had protected the Society's nonprofit status by steering it away from any nontraditional ventures. "Gil's worst nightmare was for the *Geographic* to turn into a market-driven, for-profit operation," says the same inside source. "The attorneys repeated the nonprofit mantra, but Murphy started saying to them, 'Don't tell me we can't. Tell me how we can.' It was a conscious strategy to make it a for-profit operation."

In 1996, Murphy was named the *Geographic*'s first CEO, another sign of the Society's increasingly corporate culture. Murphy left in 1998; Grosvenor had grown uncomfortable with the institutional havoc Murphy had wrought, and Murphy was frustrated by the Society's hidebound traditions. Besides, other interests—golf among them—beckoned (Murphy was president of the USGA in 1994 and 1995). He remains on the *Geographic*'s board as vice chairman.

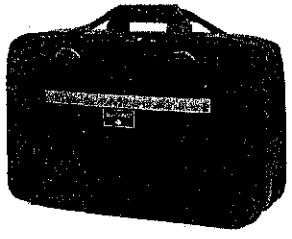
Murphy was succeeded by Fahey, whom he'd hired in 1996 from Time Life Books to head National Geographic Ventures. Fahey has continued to press the changes that Murphy set into motion and to actively pursue new sources of revenue and other media. "Having a for-profit subsidiary," says Fahey, "is simply a way of achieving our mission in an expanded way, doing things that if you were to stay purely not for profit, you wouldn't be able to do."

"As the place gets more corporate," says a photographer who still shoots for the magazine, "it's less willing to negotiate."

His biggest project has been the National Geographic Channel, which the Society is launching in partnership with Fox Entertainment. The Channel is already making inroads in overseas markets. And part of the Explorer's Hall, a big draw for school groups at Society's headquarters, has been torn out to make way for a new TV studio.

Meanwhile, the Society has overhauled its book division with more cutting-edge titles. The Society is also trying to take advantage of cross-divisional synergies. Magazine, TV and book editors now meet regularly to update each other on pending projects and support each other's initiatives. For instance, National Geographic Television is leading a forthcoming project on Africa that will include books, maps, an article photographed by Nick Nichols and an art exhibition. A few photographers are also now working on

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television projects.

Rich Clarkson, director of photography from 1985 to 1987, asserts, "Reg Murphy saved that place." But the transition hasn't been entirely smooth, and it is far from complete. Like so many publishers, the Society has yet to see a return on the millions it has sunk into its Web site. And success of its cable channel depends upon its ability to get distribution to a critical mass of homes, something the Society and Fox are spending heavily and working hard to do.

Meanwhile, a number of veterans are convinced that the infidels have stormed the gates and are now sacking the place. "You now have businesspeople running a scientific and educational foundation," says former *Geographic* photographer Louis Psihoyos.

Another photographer who is still active thinks the Society is doing too little, too late. "Cable is yesterday's media," he says, "And *National Geographic*

THE *GEOGRAPHIC'S* STORMY RELATIONS WITH PHOTOGRAPHERS

By the end of last year, no fewer than four lawsuits had been filed by photographers and their agents in federal courts against the *National Geographic*. Their beef? That the Society has re-used their pictures without authorization in various products, most notably the CD containing the complete archives of the magazine since 1888. A year after the CD's release in 1997, the Society claimed it had sold 300,000 copies at a suggested retail price of $150. Photographers aren't getting a dime of it.

Tensions between the Society and its photographers over the rights to their images have been high for more than a decade. Grosvenor always wanted the rights because after all, he reasoned, the *Geographic* was paying a fortune for photo production.

Indeed, through the mid-Eighties, there was no limit on what photographers were allowed to spend. "Once a project was on track, the only limitations were your own creativity and patience," says a photographer who was active in those days. "You were given a sense that the society would give you whatever support [was needed], in terms of financial, time, connections, to make you successful."

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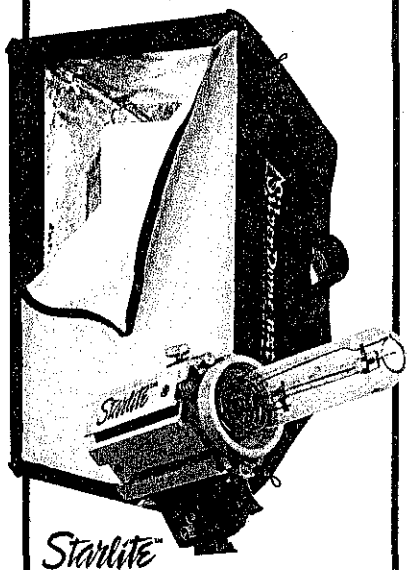
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Photographers who don't like the new arrangement haven't been able to do much about it besides get angry. If they refuse to accept the terms, they don't get any work. Louis Psihoyos's last story ran in 1996 because he challenged the Society on foreign edition and CD rights. "Kobersteen is a bully," Psihoyos says. "He told me two times, 'If you don't play ball, word from upstairs is you'll never work here again.'" Others say they've been told the same thing.

Collective opposition has failed, too. Delegations

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is not big enough to compete with the Time Warners and AOLs of the world. It's inevitable that they'll have to be acquired to survive."

Maybe, maybe not. But one thing is certain: The National Geographic Society is no retiring magazine publisher anymore. And time will tell whether the magazine that drove the Society for so long can figure out a way to harness the best of the Society's old and new ideals, and attract a new generation of readers. □

of photographers that have stepped forward to try to negotiate have been singled out as troublemakers, which has discouraged dissent. And photographers have been unable to stick together as a large group. They hired a lawyer several years ago to negotiate for them, but that failed because their individual interests were too disparate.

John Fahey briefly renewed photographers' hopes. After his promotion to CEO in 1998, he pledged to repair relations. And he accompanied a couple of photographers on assignment, which all took as an encouraging sign of empathy.

But their hopes were dashed by the next photographers' seminar. "We were handed a package of [contract] ultimatums," says one contributor. That was in late 1998. Photographers were so furious, they aired the dirty laundry to *The New York Times* in an early 1999 article. Fahey was infuriated and abruptly canceled a previously scheduled conference call with photographers. "The message was, 'That's it, talks are done,'" says the contributor. More than 50 photographers subsequently signed a letter to Allen and Fahey protesting the contract terms.

After they received the letter, "Kent [Kobersteen] had a meeting with picture editors with a list of photographers, saying 'These are the good guys we'll work with and these are the bad guys," alleges a contributor who was not at the meeting.

By most accounts, Kobersteen and the *Geographic* don't bear grudges. Eighteen months later, most of the blacklisted photographers are getting assignments again. (In the *Geographic*'s defense, some say assignments dwindled because of a huge backlog of stories).

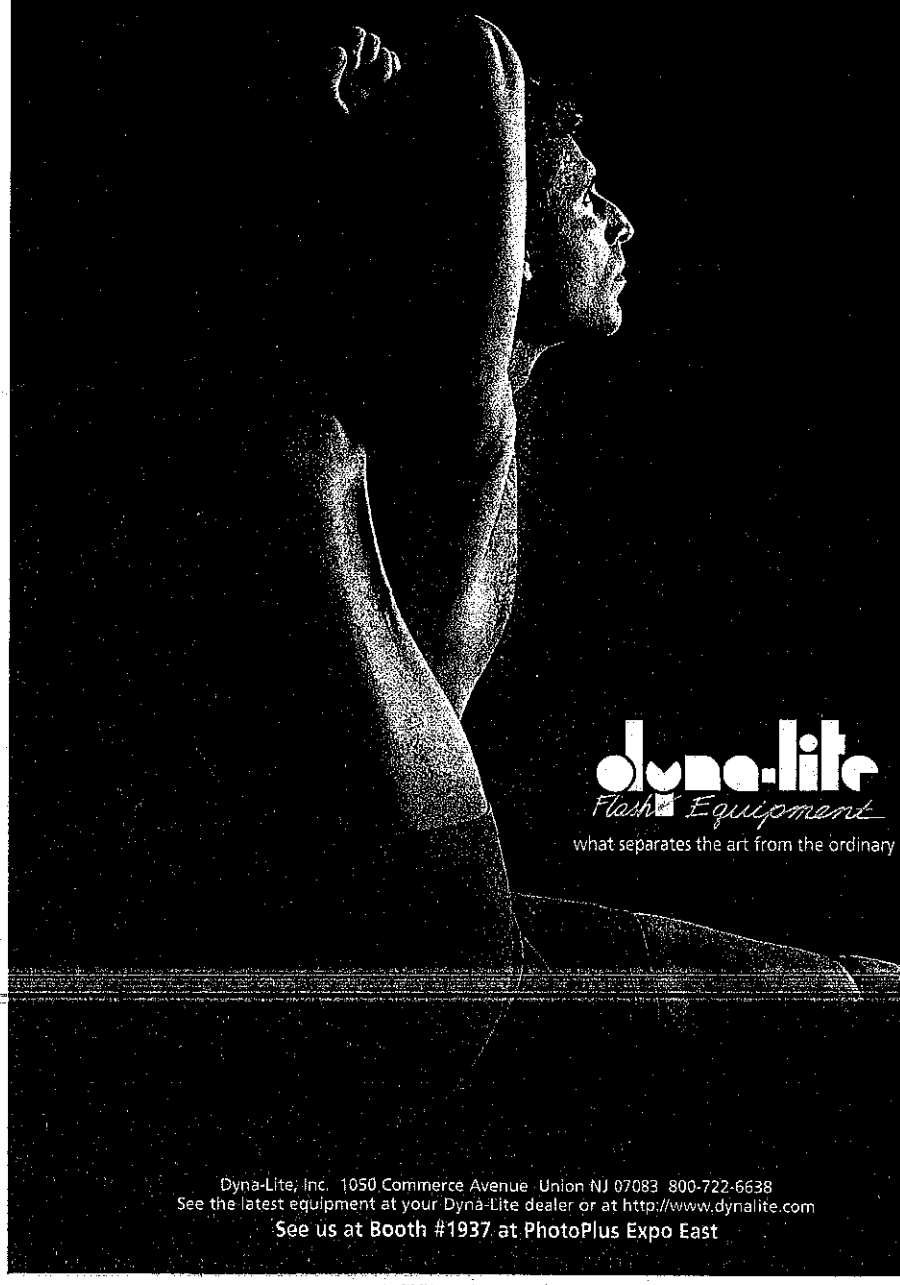
Photographers who are shooting for the magazine are working on the *Geographic*'s terms. "Every time there's a confrontation, it's their football,'" says one. "As the place gets more corporate, it's less willing to negotiate."

Kobersteen says the *Geographic* has made concessions to photographers, and he hasn't heard any more complaints. "Photographers seem to be happy with the contract," he asserts. But photographers convey the sense that they're simply exhausted by the fight.

It may take a new generation of *Geographic* shooters to renew the struggle, but it seems less and less likely that will happen. Up-and-coming photographers—who will never know the endless assignments, open expense accounts and lucrative resales of bygone days—won't have the same sense of loss to spur them on. ■

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The Society counters that many photographers are making more money since they never resold their work and that others will eventually recover their income losses because the Society is re-using content so broadly. Besides, the Society still offers longer assignments, by far, than any other publication.

Photographers who don't like the new arrangement haven't been able to do much about it besides get angry. If they refuse to accept the terms, they don't get any work. Louis Psihoyos's last story ran in 1996 because he challenged the Society on foreign edition and CD rights. "Kobersteen is a bully," Psihoyos says. "He told me two times, 'If you don't play ball, word from upstairs is you'll never work here again.'" Others say they've been told the same thing.

Collective opposition has failed, too. Delegations of photographers that have stepped forward to try to negotiate have been singled out as troublemakers, which has discouraged dissent. And photographers have been unable to stick together as a large group. They hired a lawyer several years ago to negotiate for them, but that failed because their individual interests were too disparate.

John Fahey briefly renewed photographers' hopes. After his promotion to CEO in 1998, he pledged to repair relations. And he accompanied a couple of photographers on assignment, which all took as an encouraging sign of empathy.

But their hopes were dashed by the next photographers' seminar. "We were handed a package of [contract] ultimatums," says one contributor. That was in late 1998. Photographers were so furious, they aired the dirty laundry to *The New York Times* in an early 1999 article. Fahey was infuriated and abruptly canceled a previously scheduled conference call with photographers. "The message was, 'That's it, talks are done,'" says the contributor. More than 50 photographers subsequently signed a letter to Allen and Fahey protesting the contract terms.

After they received the letter, "Kent [Kobersteen] had a meeting with picture editors with a list of photographers, saying 'These are the good guys we'll work with and these are the bad guys,'" alleges a contributor who was not at the meeting.

By most accounts, Kobersteen and the *Geographic* don't bear grudges. Eighteen months later, most of the blacklisted photographers are getting assignments again. (In the *Geographic*'s defense, some say assignments dwindled because of a huge backlog of stories).

Photographers who are shooting for the magazine are working on the *Geographic*'s terms. "Every time there's a confrontation, it's their football,'" says one. "As the place gets more corporate, it's less willing to negotiate."

Kobersteen says the *Geographic* has made concessions to photographers, and he hasn't heard any more complaints. "Photographers seem to be happy with the contract," he asserts. But photographers convey the sense that they're simply exhausted by the fight.

It may take a new generation of *Geographic* shooters to renew the struggle, but it seems less and less likely that will happen. Up-and-coming photographers—who will never know the endless assignments, open expense accounts and lucrative resales of bygone days—won't have the same sense of loss to spur them on. ■

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Struggling to become a modern media enterprise, the National Geographic Society is focusing on TV and the Web. In the process, it is alienating the magazine's best assets: its photographers.

A CLOSER LOOK AT NATIONAL GEOGRAPHIC

Stephen Wilkes Gets Personal Behind The Scenes At ***The New York Times Magazine***

INSIDE THE NEW ISSUE OF PIX: MOVING IMAGES ON THE WEB

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NATIONAL GEOGRAPHIC:

LURCHING INTO THE 21ST CENTURY

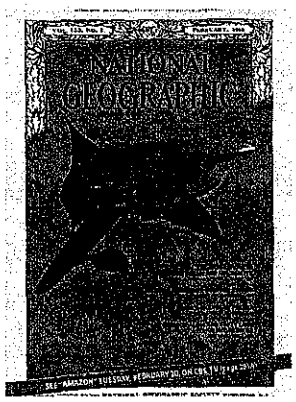
Change isn't coming easily to the Society's patriarchal and bureaucratic culture as it struggles for a new generation of readers.

By David Walker

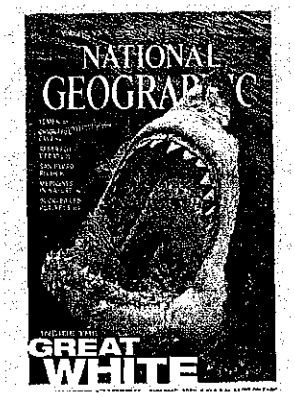
These are the waning days of *National Geographic* magazine, at least as we know it.

For the past decade, the National Geographic Society's U.S. memberships—its word for magazine subscriptions—have fallen steadily from a high of 10.8 million to around 7 million. And the Society's growth is slow, with revenues hovering around $500 million.

The explosion of cable TV, the Web and niche magazines have been hard on all general-interest magazines in recent years. But things are particularly bad for *National Geographic*, which remains stuck in a time warp with a base of older readers.



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Left: *National Geographic* circa February 1968. Right: The magazine tries for more newsstand impact with its April 2000 cover on the same subject.

"It's our responsibility to make sure this organization is as highly regarded, as influential and as relevant as possible in the next 100 years as it was in the last 100 years," says Society CEO John Fahey. "For us to do that, we have to tap into a worldwide audience. We have to tap into new audiences—meaning younger people in this country, quite frankly. And we have to use all the media available to get our message out."

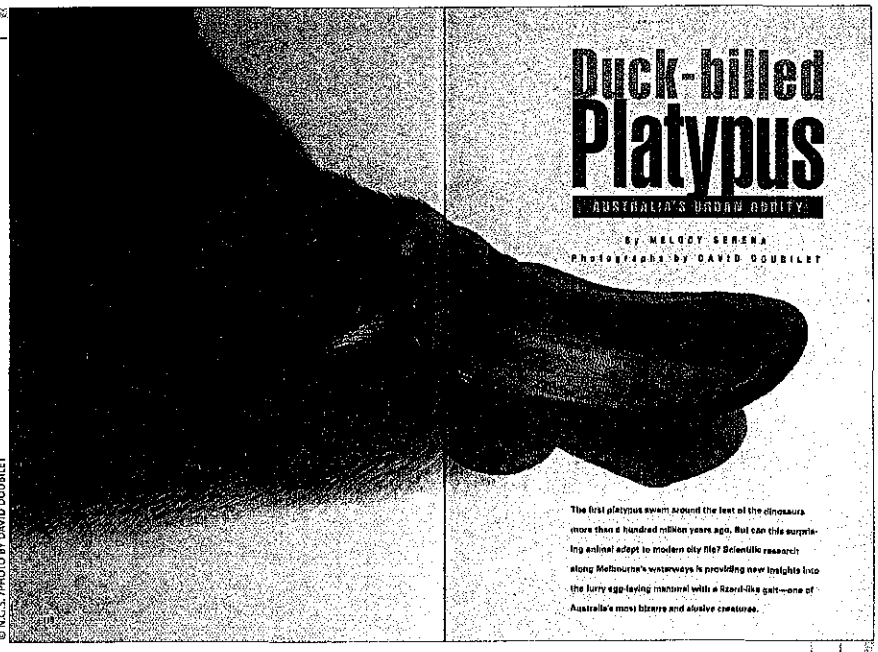
To that end, the Society has been morphing into a corporate media giant with the kind of brand extension strategy now in place at every magazine publisher. Soon it expects to launch the National Geographic Channel, a 24-hour cable-TV station that could cost the Society $250 million or more and is expected to replace the magazine as the engine that drives the Society. Meanwhile, the Society has been licensing content for new products, overhauling its book division, downsizing staff, outsourcing fulfillment and, yes, putting the squeeze on suppliers.

But change isn't coming easily to the Society's patriarchal and bureaucratic culture. For 100 years, the Society has been run by a family dynasty named Grosvenor, descendants of one of the Society's first patrons and presidents, Alexander Graham Bell. The current scion, Gilbert M. Grosvenor, passed the reins reluctantly to professional managers during the Nineties, and the struggle between dear old traditions and new corporate ideals is far from over.

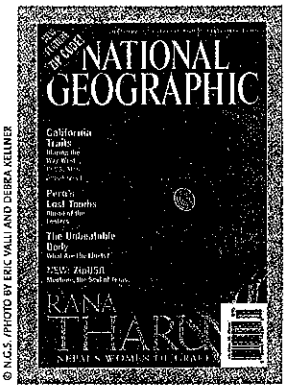
That struggle is certainly manifest at the magazine. Some attempts to shore up the magazine's circulation have tarnished the dignity and exclusivity of the nonprofit educational Society. Subscriptions have been offered through Publisher's Clearinghouse and frequent-flier programs in recent years. In late 1998, the Society began selling the magazine on newsstands for the first time in its history.

More significantly, the Society is looking overseas for new subscribers. To date, it has launched ten foreign editions with overseas publishing partners; four more were scheduled for launch at the end of September. So far, foreign editions account for 1.8 million subscribers, boosting total subscriptions back to nearly 10 million. Some overseas editors have dared to say out loud that the writing is boring, and some foreign publishing partners are doing something just as unthinkable: selling ad space in the edit well.

Meanwhile, the magazine is cutting costs. Story budgets, which didn't exist a decade ago, are now tight. The average photo assignment lasts from four to eight weeks instead of months on



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© N.G.S. /PHOTO BY ERIC VALLI AND DEBRA KELLNER

The Photo layouts are more lavish than ever, but some people inside and outside the magazine criticize its reliance on the same "stones and bones" formula. Near right: The redesign, launched in September, created minimal changes.

end. And the Society's push into new media and cross-divisional synergies requires extensive re-use rights, bringing the magazine into conflict with its stable of veteran photographers.

Such changes, traditionalists argue, threaten to undermine the Society's best asset: its editorial quality and authority. But even they acknowledge that the magazine looks as good as ever. Last spring, *National Geographic* won the National Magazine Award for general excellence for the third time. (It won previously in 1992 and 1984).

Still, the magazine has serious editorial handicaps. Its founder's mission, "to increase and diffuse geographic knowledge," sounds quaint and pedestrian in the information age. Its attention to science and exploration, unique in 1888, now faces sharp competition from the Discovery Channel, *Audubon*, *Outside* and other media geared to hipper audiences. It is often slow and wooden in its response to newsworthy events. And it is notorious for its rosy, Pollyanna view of the world and the bloodless, didactic style of its writing.

"They're publishing a monthly encyclopedia," says one contributor.

The challenge for editor Bill Allen and staff is figuring out how to drag the magazine into the 21st century without alienating its loyal audience. But so far, the magazine has stayed close to old formulas and sensibilities.

Back to the Future

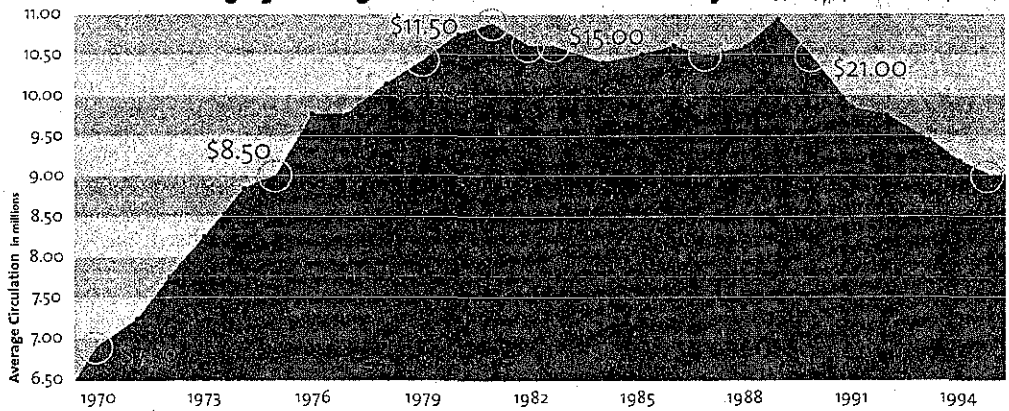
Conservatism runs deep at the National Geographic Society. The Grosvenor family and the Society's board are staunchly conservative. And the Society, located in Washington, D.C., has always prided itself on its status as a quasi-official institution and its access to power.

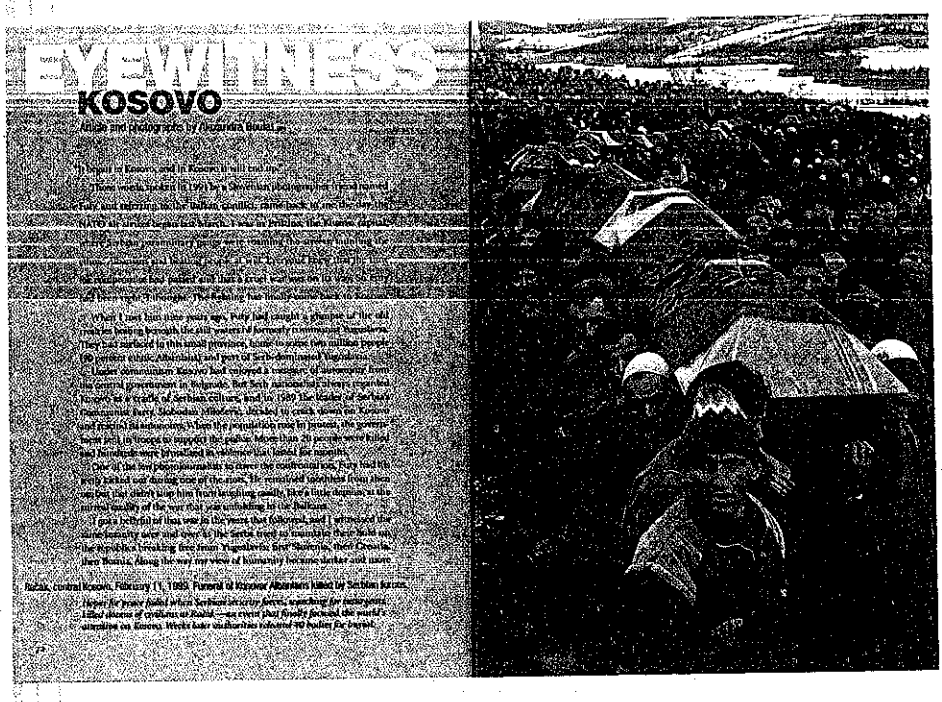
Those conditions have fostered an abiding conservatism in the magazine. It ran flattering portraits of Nazi Germany and fascist Italy in the Thirties, whitewashed South African apartheid in the Sixties, avoided the topic of evolution until the late Fifties, so as not to offend Christian fundamentalists, and didn't mention the injustices toward blacks in the American South until 1970.

The magazine is substantially less conservative than it once was. But the Society's directors or editors have killed or watered down what could have been hard-hitting stories in recent years about famine and AIDS in Africa, social and economic upheaval in South Korea, and the rise of evangelicalism in the U.S. Last year, in an issue dedicated to biodiversity and rapid species extinction, the role of global economics and corporate polluters went almost unmentioned.

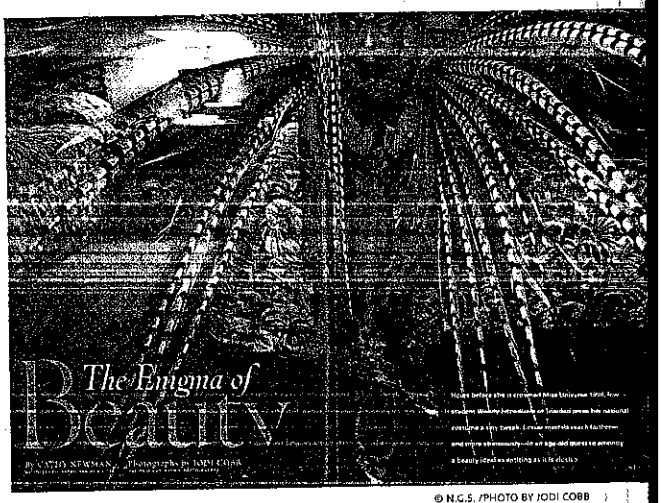
The magazine has eschewed other controversies, too. Several years ago,

National Geographic Magazine Circulation Level History





© N.G.S. / PHOTO BY ALEXANDRA BOULAT



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Above: Alexandra Boulat's hard-hitting story on the struggles of Kosovar Albanians. Right: Jodi Cobb's story on ideas of beauty around the world.

editors killed a story on advances in medical technology to avoid mentioning abortion. Recently, the Society killed a new book called *Body Beautiful, Body Bizarre* about body art around the world. It reportedly contained pictures of pierced genitalia. It was brought to Grosvenor's attention, who ordered all 10,000 copies of the book to the shredder. (Spokesperson M. J. Jacobsen insists that Fahey, not Grosvenor, killed the book).

The magazine also roots out the point of view and even the style of its photographers and writers—in the name of editorial neutrality. Tom Kennedy, director of photography from 1987 to 1997, says the magazine "homogenized a whole generation of talented photographers" in the Seventies and Eighties. He says he had some success changing that, but he was fired, in part for challenging the status quo.

Kennedy's replacement, Kent Kobersteen, is by all accounts "a company man." "We're trying to convey the feel of a place, or the personality of a person, or the behavior of an animal," says Kobersteen. "Our photographers have to make pictures that are about the subject, not about themselves. Oftentimes, you look at photographs by a person with a strong style, and you come away having learned more about the photographer than about the subject. That's fine. That's great. But that's not for us, because we're a general circulation magazine that's using photography to communicate."

As a result, the magazine has turned away some brilliant work, including Sebastião Salgado's work on manual labor (Kobersteen says it was turned down because it was in black and white). They also passed on Lauren Greenfield's story on youth culture in L.A. in the mid-Nineties. "I'd like to think we'd publish that today," says Kobersteen.

That isn't to say that there aren't brilliant and beautiful images in *National Geographic*, and, to its credit, the photo department is making some effort to break out of its editorial straitjacket. For instance, it recently published Alexandra Boulat's hard-hitting story on Kosovar Albanians. Boulat is now working on her second piece for the magazine. Black-and-white essays are also in the works.

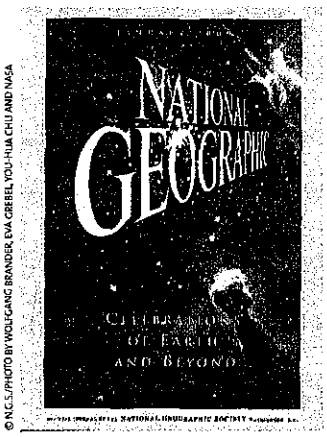
"We're more open than we were 10 or 15 years ago to individual styles," says assistant director of photography Susan Smith. Kobersteen admits that he should be doing more to cultivate a new generation of photographers—most of the contributors are veterans over 40—but says he doesn't have the budget to take chances on new talent.

Meanwhile, Bill Allen, the 59-year-old editor who joined the magazine in 1982, is steeped in its traditions. His editorial adjustments have been minor. One of the biggest changes he's made during his five-year tenure has been to shorten the length of stories so the magazine can publish on average seven a month, rather than five. That increases the chances that more readers will find something of interest in each issue, he says.

He and his staff also point to efforts to put bolder photos on the magazine's cover to make it stand out on newsstands. A recent example is last April's issue, featuring a shark gnashing its teeth. Allen is also launching a new regular feature called Zip USA. Each installment will feature text and photos capturing a week in the life of an American zip code. But it's more nostalgic than documentary, according to one insider. "It's a day in the life of what America used to be."

Once a quirky and quarrelsome family operation, the Society has given way to MBA management with a very different set of priorities and expectations.

In September, the Society launched a redesign of the magazine to help boost newsstand sales and to expand the front and back sections of the magazine to appeal to advertisers and readers alike. But, in keeping with the magazine's ambivalence toward change, Allen says he hopes that "a lot of people are not going to notice [the redesign] at all." And while there will probably be more about the adventures and personal impressions of *National Geographic* photographers sprinkled throughout the magazine as sidebars, there will be "no dramatic change," he says. "We're about at the point where I would like to see the magazine stay."



© N.G.S./PHOTO BY WOLFGANG BRANDER, EVA GREBEL, YOU-HUA CHU AND NASA

Allen's critics say he lacks editorial vision and that he relies too much on committees and reader surveys to set the editorial direction of the magazine. "They're preaching to their own dying choir," says one veteran photographer. Allen responds to gripes that he puts too much emphasis on the traditional mix of "bones and stones" stories by arguing that readers like them. And no matter what the mix, he points out, somebody would complain.

His defenders say the decline in circulation is due primarily to factors beyond his control, and that it's unlikely anyone could reverse the magazine's fortunes any faster. But there's mounting pressure for bolder changes. Not only is the magazine market changing, the Society has changed dramatically in the last decade. Once a quirky and quarrelsome family operation, the Society has given way to MBA management with a very different set of priorities and expectations.

Above: The millennium cover. Below: Longtime contributor Steve McCurry's photos from Angkor Wat.



© N.G.S./PHOTO BY STEVE MCCURRY

The Heir

Grosvenor, the Society's current chairman, had good reason to start worrying about the Society's fortunes over a decade ago. The third generation scion of the Grosvenor dynasty was, by most accounts, out of his element from the start. He didn't excel as either a writer or a photographer, and as editor of the magazine—a birthright he claimed in 1970—he lacked the enthusiasm, vision and love for the magazine that his father and grandfather had. "I felt sorry for him," says one longtime photographer. "I always had the sense that he was [assuming the mantle] out of a sense of duty and would have rather been doing something else."

Things went well enough for Grosvenor at first. He stuck to tried-and-true formulas. But he kept membership prices artificially low to boost circulation. The magazine went into the red as a result. In 1980, when he was poised to assume the additional title of president of the Society, the board of directors gave him a choice: he could either be president or editor of the magazine, but not both, as his father and grandfather had been.

Grosvenor chose the presidency, and the board named his father's talented protégé, Wilbur Garrett, to replace him as editor of the magazine. (That despite concerns of then board chairman Melvin Payne that Garrett was too liberal). Garrett had a nose for good stories and a willingness to take risks. The magazine was in the red when he took over, so Garrett initiated a series of increases in the price of subscriptions that eventually doubled the cost of membership. Yet he sustained membership levels well above ten million throughout the Eighties. Meanwhile, the book division remained a cash cow, preselling hundreds of thousands of books to members each year.

But by the mid-Eighties, there were signs of trouble. Book sales began dropping off dramatically, because the books all began to look the same and competition from the likes of Reader's Digest and Time Life was growing. Stuck with accumulating print overruns and diminishing storage space, Grosvenor started holding weekend remainder sales. Still, the formulas for producing and marketing books went unchanged.

Grosvenor also missed some lucrative opportunities. After the Society got exclusive pictures of the Titanic discovery, for instance, he ignored advice to publish a Titanic book quickly. The *Geographic*'s research showed that nobody would be interested. So the Society released the pictures to Titanic expedition leader Robert Ballard, who published a book that sold well over a million copies. "It

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Alexander Graham Bell	1898-1903
W. J. McGee	1904
Willis L. Moore	1905-1909
Henry Gannett	1910-1914
John Elliott Pillsbury	1919
Gilbert H. Grosvenor	1920-1954
John Oliver La Gorce	1954-1957
Melville Bell Grosvenor	1957-1967
Melvin M. Payne	1967-1980
Robert E. Doyle	1976-1980
Gilbert M. Grosvenor	1980-1996
Reg Murphy	1996-1998
John Fahey	1998-present
EDITORS	
Henry Gannett	1988-90
Marcus Baker	1891
W. J. McGee	1892-95
John Hyde	1896-1902
Gilbert H. Grosvenor	1970-80
Wilbur E. Garrett	1980-90
William P. E. Graves	1990-94
William L. Allen	1995-present
CHAIRMEN OF THE BOARD	
Gilbert H. Grosvenor	1954-66
Thomas W. McKnew	1966-67
Melville B. Grosvenor	1967-1976
Melvin M. Payne	1976-1987
Gilbert M. Grosvenor	1987-present



From left to right: Kent Kobersteen, John M. Fahey Jr., William L. Allen, Gilbert M. Grosvenor ALL PHOTOS © N.G.S.

would have been the biggest seller in the history of the *Geographic*," says another inside source.

Even more costly to the Society was its decision to pass up an entrée into the fledgling cable TV business in the Eighties. Management calculated that production costs for a full-time TV operation would be prohibitive, says CEO Fahey. Grosveno recognizes his error: He told *The Washington Post* in 1997 that cable channel competitor Discovery Communications "ate our lunch."

Bickering with the Help

Compounding Grosvenor's troubles was his difficulty getting along with his people. He frequently complained that photographers were out "spending my money," even before money was an issue for the Society. (See sidebar, "The *Geographic*'s Stormy Relations with Photographers.") Photographers are convinced Grosvenor had it in for them in large part because of a widely circulated rumor that his wife accompanied one of the magazine's photographers on assignment, and they had a fling on the road. "I don't believe it," says one veteran, "But I think Gil believed it."

Grosvenor's rift with Garrett, meanwhile, is the stuff of legend. Garrett is said to have been the son that Grosvenor's father never had. And Garrett's success earned him nearly as much power as Grosvenor. There were clear signs that Grosvenor was jealous. Grosvenor once introduced Garrett as the man who took his job. The two men, who had been close friends before 1980, became increasingly estranged.

That fueled plenty of gossip about their efforts to undermine each other. Grosvenor complained increasingly to board members about the magazine's direction under Garrett. And Garrett has been credited—despite his denials—with posting copies of an article about recovering heart bypass patients all over *Geographic* bulletin boards after Grosvenor had heart bypass surgery. The article described how heart bypass patients exhibit erratic behavior and forgetfulness.

Garrett's Achilles' heel was his damn-the-expenses attitude. He spent big bucks on a hologram cover in 1988, for instance, justifying the cost on the grounds that the Society had to be on the cutting edge of new photographic technology. It required months of research and experimentation just to pull it off technically (it involved a bunch of $3,000 Steuben glass globes, an electronically fired bullet and one of the most sophisticated laser beams in the world to light things up). The printing turned out to be a costly nightmare, and the final tab for the cover exceeded $3 million.

Before it was finished, though, Grosvenor ordered Garrett to kill it, and Garrett refused. Finally, in April 1990, when Grosvenor had enough loyal board members behind him, he summoned Garrett to his office and fired him. Named in his place was William Graves, an editor of unremarkable accomplishment who happened to be the husband of Grosvenor's longtime assistant. (Graves was also the brother of longtime *LIFE* editor Ralph Graves). He was willing to take marching orders from Grosvenor. But under Graves, circulation started into its long tailspin.

Down to Business

With membership falling, tried-and-true formulas failing him, and no heir apparent, Grosvenor went looking for help. He found it in Reg Murphy, whom he hired out of semiretirement in 1993. It was the beginning of the Society's big break with its patriarchal traditions.

Murphy made national headlines in 1974

when, while an editor at the *Atlanta Journal-Constitution*, he was kidnapped by a self-styled revolutionary. He spent part of the ordeal being driven around in the trunk of a car, and was released after the newspaper paid a $700,000 ransom. But he made his professional mark as a publisher, first at the *San Francisco Examiner* and then the *Baltimore Sun*, where he modernized operations and proved himself a tough-as-nails manager. He took on the unions over wages and benefits, and cut costs ruthlessly. He wasted little time applying those skills at the National Geographic Society, where he earned the nickname Mack the Knife. Hundreds of employees, including many department heads who had spent their entire careers at the Society, were offered early retirement packages they couldn't refuse. "It was overstaffed," he says. He ushered in a crop of MBA managers. He outsourced fulfillment and other operations to cut expenses. "He brought in corporate America and implanted it deeply at *National Geographic*," notes one insider.

In the biggest blow of all to the Society's high-minded nonprofit traditions, Murphy conceived and launched National Geographic Ventures, a wholly owned for-profit subsidiary. That, he says, "was a move toward an organization that fits the communications world that exists in 2000." It was a way of modernizing products and operations, he says.

For years, *Geographic* attorneys had protected the Society's nonprofit status by steering it away from any nontraditional ventures. "Gil's worst nightmare was for the *Geographic* to turn into a market-driven, for-profit operation," says the same inside source. "The attorneys repeated the nonprofit mantra, but Murphy started saying to them, 'Don't tell me we can't. Tell me how we can.' It was a conscious strategy to make it a for-profit operation."

In 1996, Murphy was named the *Geographic*'s first CEO, another sign of the Society's increasingly corporate culture. Murphy left in 1998; Grosvenor had grown uncomfortable with the institutional havoc Murphy had wrought, and Murphy was frustrated by the Society's hidebound traditions. Besides, other interests—golf among them—beckoned (Murphy was president of the USGA in 1994 and 1995). He remains on the *Geographic*'s board as vice chairman.

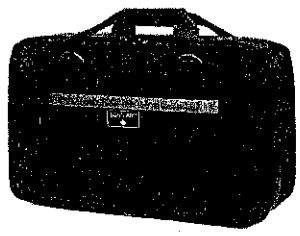
Murphy was succeeded by Fahey, whom he'd hired in 1996 from Time Life Books to head National Geographic Ventures. Fahey has continued to press the changes that Murphy set into motion and to actively pursue new sources of revenue and other media. "Having a for-profit subsidiary," says Fahey, "is simply a way of achieving our mission in an expanded way, doing things that if you were to stay purely not for profit, you wouldn't be able to do."

"As the place gets more corporate," says a photographer who still shoots for the magazine, "it's less willing to negotiate."

His biggest project has been the National Geographic Channel, which the Society is launching in partnership with Fox Entertainment. The Channel is already making inroads in overseas markets. And part of the Explorer's Hall, a big draw for school groups at Society's headquarters, has been torn out to make way for a new TV studio.

Meanwhile, the Society has overhauled its book division with more cutting-edge titles. The Society is also trying to take advantage of cross-divisional synergies. Magazine, TV and book editors now meet regularly to update each other on pending projects and support each other's initiatives. For instance, National Geographic Television is leading a forthcoming project on Africa that will include books, maps, an article photographed by Nick Nichols and an art exhibition. A few photographers are also now working on

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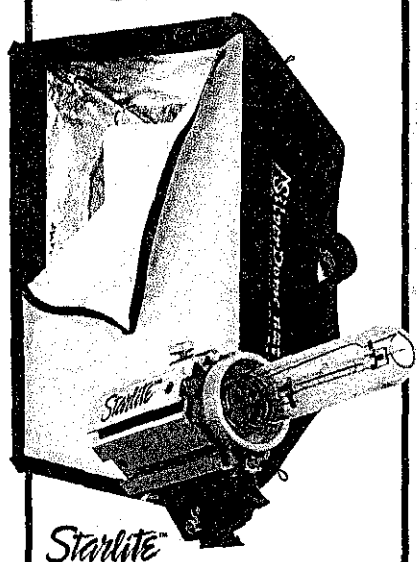
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television projects.

Rich Clarkson, director of photography from 1985 to 1987, asserts, "Reg Murphy saved that place." But the transition hasn't been entirely smooth, and it is far from complete. Like so many publishers, the Society has yet to see a return on the millions it has sunk into its Web site. And success of its cable channel depends upon its ability to get distribution to a critical mass of homes, something the Society and Fox are spending heavily and working hard to do.

Meanwhile, a number of veterans are convinced that the infidels have stormed the gates and are now sacking the place. "You now have businesspeople running a scientific and educational foundation," says former *Geographic* photographer Louis Psihoyos.

Another photographer who is still active thinks the Society is doing too little, too late. "Cable is yesterday's media," he says, "And *National Geographic*

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Collective opposition has failed, too. Delegations

is not big enough to compete with the Time Warners and AOLs of the world. It's inevitable that they'll have to be acquired to survive."

Maybe, maybe not. But one thing is certain: The National Geographic Society is no retiring magazine publisher anymore. And time will tell whether the magazine that drove the Society for so long can figure out a way to harness the best of the Society's old and new ideals, and attract a new generation of readers. □

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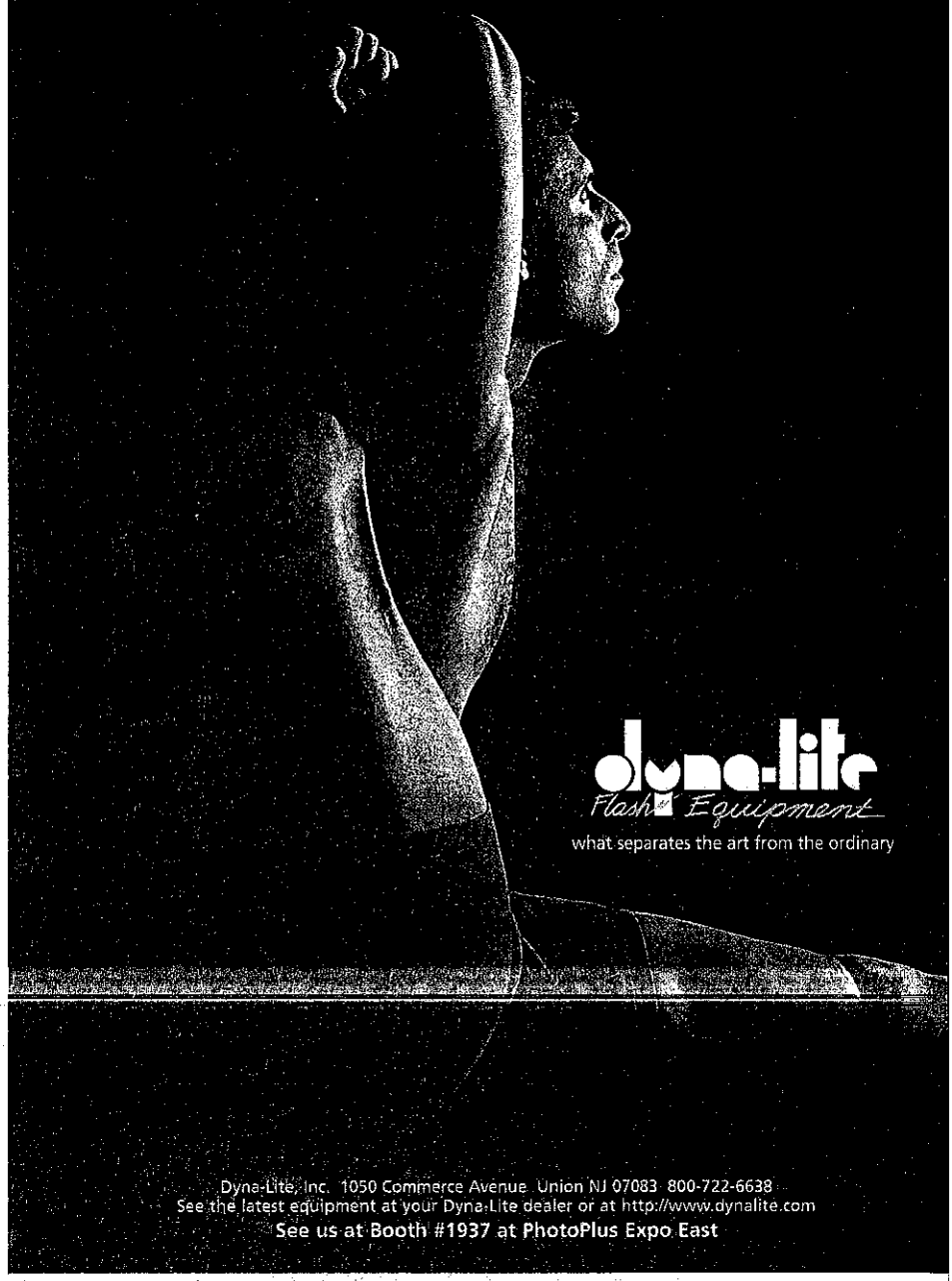
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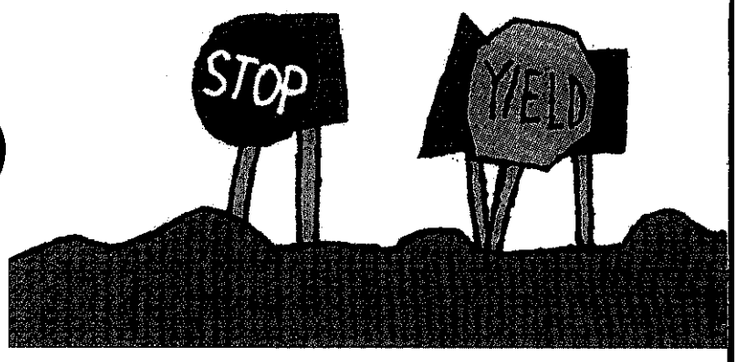
The National Geographic Society (NGS) was warned repeatedly in advance by outside attorneys and its own editorial staff that its archival CD product would infringe the copyrights of photographers and expose the publisher to legal liability, according to court documents filed in May by two photographers.

NGS now faces a barrage of lawsuits over *The Complete National Geographic* CD, which reproduces its complete magazine archive page by page. And despite contradiction by its own internal documents, the publisher has steadfastly maintained in its public statements and in court proceedings that its CD doesn't infringe copyright.

Photographers suing the publisher are now using the internal memos to bolster their claims that NGS not only infringed their copyrights, but did so willfully. If they succeed, NGS is likely to face much higher penalties than it would if found guilty of so-called innocent infringement.

ACCORDING TO FAULKNER'S COURT PAPERS, AN ATTORNEY WARNED NGS ITS LEGAL LIABILITY COULD REACH $16 MILLION FOR UNAUTHORIZED USE OF STOCK PHOTOS.

NGS'S INCRIMINATING MEMOS



In the latest battles over the National Geographic Society's CD, photographers are using the publisher's own internal memos and e-mails as evidence NGS willfully infringed copyrights.
By David Walker

So far, the memos appear in court papers filed by photographers Douglas Faulkner and Fred Ward in a New York federal court.

According to Faulkner's papers, NGS consulted several outside attorneys—prior to publishing the first edition of the CD in 1997—for advice on whether it had the rights it needed to re-use images on the CD. One of the attorneys responded that the publisher's legal liability could be as high as $16 million for unauthorized use of images provided by stock photo agencies. And that estimate was only for stock photos published in the magazine between 1992 and 1996, according to Faulkner's court papers.

A second outside counsel told NGS that he did not believe any of the photo licenses from stock houses would permit re-use of the photos in an archival CD, Faulkner asserts. The third attorney apparently didn't give NGS a direct warning against publishing the CD, but according to Faulkner, that attorney told NGS "there is equitable appeal to [the] argument that a publisher should not be able to profit from exploitation of an author's work in a different medium without additional compensation. . .especially if exploitation in the later medium was not contemplated at the time of the contract."

Author Jonathan Tasini was making just such an argument against *The New York Times* at that time, and he eventually prevailed in the Supreme Court's *New York Times* v. *Tasini* ruling last summer.

Faulkner's papers also cite a letter from NGS staff attorney Suzanne Dupre, who told one of the publisher's outside lawyers that reviewing contributor contracts for "print use only" restrictions on photo licenses would take too much time and effort. "We are not clearing rights to images in these situations," Dupre wrote, according to Faulkner's filing.

NGS went ahead and published the images on the CD anyway. Only in its third and latest version of the CD—released late last year—did NGS begin removing stock images provided for use in the magazine with licenses that specified "no electronic use." In all, about 60 images have been removed.

In its response to charges that it infringed Faulkner's images willfully, NGS blasts the photographer for "outright distortion of the record" regarding the legal advice obtained by the publisher. "Two of the NGS's three outside attorneys as well as its in-house counsel, opined that the Society had the right to publish *The Complete National Geographic*," NGS says.

One attorney, alleged by Faulkner to have advised against the CD, is quoted by NGS as having written, "[NGS] has a persuasive argument that [publication of the CD] does not create any obligation to make additional payments to writers and photographers. . . ."

NGS also says opinions about the legality of re-using stock photos "is irrelevant" in Faulkner's case because his images were shot on assignment.

Besides quoting NGS lawyers, Faulkner's motion also quotes various NGS staff members who allegedly warned NGS executives during the production phase of the CD that they were making an ethical and legal mistake.

In March 1997, for instance, assistant director of photography Kent Kobersteen sent an e-mail to director of photography Tom Kennedy and NGS editor Bill Allen warning against publishing the CD without permission from photographers.

". . .It seems to be these two situations [that CD product is marketed to the general public and is more interactive than microfiche] invite any judge—and most certainly any jury—to conclude that the CD-ROM and microfiche are considerably different

products," Kobersteen wrote. (Kobersteen is now the magazine's director of photography.)

Around the same time, *National Geographic* illustrations editor Dennis Dimick sent an e-mail to Allen. "I attempted to point out the moral issues of not making good faith efforts to find [and] compensate all copyright holders," he said in his e-mail. "I was essentially told by counsel this was a business decision, and thank you for your emotional arguments."

In April, then executive editor Robert Poole also appealed to Allen on both legal and moral grounds in another written memo. "Since we expressly returned copyright to many authors," he wrote, "I do not see how we can take the position that it's ours not theirs. We are republishing it in another form, for profit. Even if our legal position is sound (and I don't think it is), our ethical position is not. Does anyone care about that?"

NGS says those messages are also taken out of context. For instance, Kobersteen and Poole weren't making legal judgments. Instead, their concerns related to whether "as a matter of sound business judgment, it would be prudent to embark upon a course that was likely to upset contributors to the magazine."

NGS says it is confident that if the evidence is "fairly presented and considered, the jury will find that [NGS] did not willfully infringe [the photographers'] copyrights."

But if NGS has its way, the case won't get to trial. The publisher has asked for summary dismissal on the grounds that the CD and its magazines are different versions of the same product, and, so, as a matter of law, no copyright infringement occurred.

An Atlanta appeals court already rejected that argument last year, however. That court ruled that the

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—ROBERT POOLE, APRIL '97

permits buyers to re-use the images in any digital or print product, commercial or personal. In other words, the images were released as clip art.

NGS says it was a mistake that nobody noticed until a photographer's agent brought it to the publisher's attention on May 6—about six months after the release.

"Since that date, we have aggressively pursued a recall and remedies to fix the mistake," says NGS spokesperson Mary Jeanne Jacobsen. She declined to say how many of the CDs were sold, but

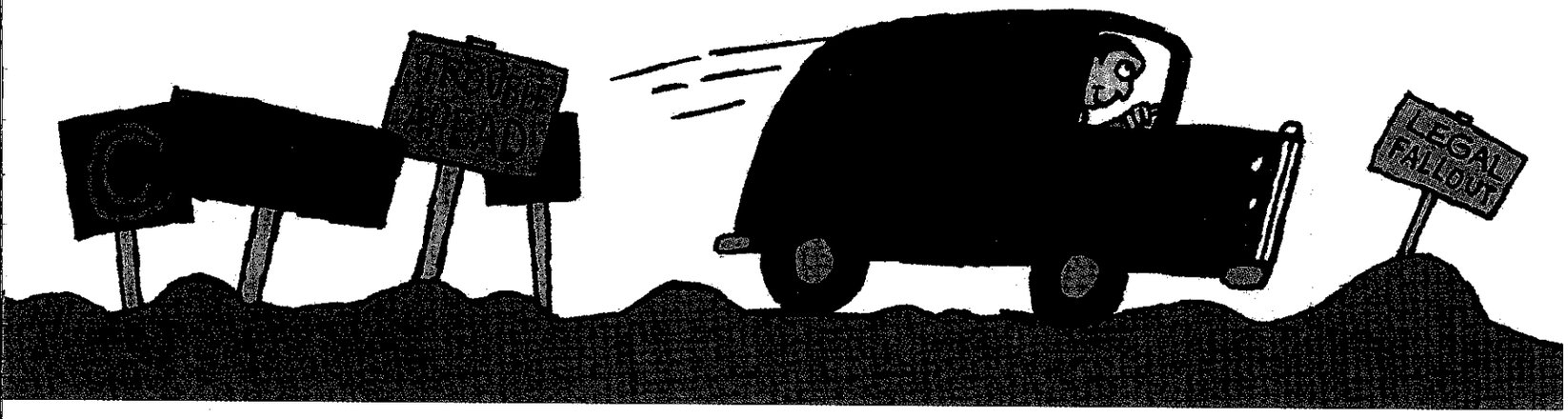


ILLUSTRATION © SCOTT MENCHIN

Allen was certainly concerned, according to Faulkner's court papers. In March 1997, Allen wrote to his boss, NGS CEO and president John Fahey, "We are so far down the road at this point that we probably just have to keep smoothing as many bumps as possible and drive like hell with our fingers crossed."

"WE ARE SO FAR DOWN THE ROAD AT THIS POINT, WE PROBABLY JUST HAVE TO... DRIVE LIKE HELL WITH OUR FINGERS CROSSED."
—BILL ALLEN, MARCH '97

NGS CD infringed photographer Jerry Greenberg's copyright by reproducing several of his photos without permission. NGS had argued that the CD was a reproduction of its magazines in a different medium, like microfiche, so no permission was required. The court disagreed with NGS, concluding that the CD was a completely different product from the magazine. The Supreme Court later affirmed the ruling by refusing to review it. Greenberg's case is now in the penalty phase, and the photographer is also using the internal memos to prove willful infringement—and boost the publisher's penalty.

Meanwhile, the saga of the CD has taken another bizarre twist. Late last year, NGS released the latest version of the CD (*The Complete National Geographic: 112 Years on CD-ROM*) with a license that adds, "We know of no misuse by anyone who has purchased the CD-ROM with the erroneous end-user agreement."

Ward says he's skeptical about the ability of NGS to recall the CDs. "I don't see how it's possible for NGS to contact buyers of the product because there's no mandatory registration," he says.

Jacobsen says, "We have the names and addresses of nearly all the people who bought the product from the vendor because of the sales channels used; for example, many were sold online. We are in the process of contacting all purchasers by letter."

Fred Ward and Douglas Faulkner's court papers quoting the NGS's memos are now online at <www.pdnonline.com/features/lawsuit/>.

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CONTEST MANAGERS PROPOSE SIMPLIFIED STANDARDS

JERSEY CITY, N.J.—Driven crazy for too long by the process of entering multiple photo contests with different submission requirements, a group of photographers and photo editors think they've come up with a way to simplify the process.

Under the direction of Pim Van Hemmen of *The Star-Ledger* (New Jersey), the group met on March 14 at the Northern Short Course (NSC) in Jersey City. In two hours, the group hammered out a set of submission standards they say should save photo contest entrants roughly 20 hours of work each year.

"We have 27 shooters and they spend most of the month of January entering contests," Van Hemmen says. "Hopefully, we'll get everybody on the same page and the next contest season will be significantly simpler."

Representatives from the NSC, Atlanta Photojournalism Seminar (APS), New Jersey Press Photographers Association (NJPPA), Boston Press Photographers Association (BPPA) and Best of Photojournalism (BOP) participated.

The proposed standards include maximum number of images per picture story (12), maximum image file size, and a coding system for identifying images by photographer and category.

If the proposed standards are adopted, photographers will be able to enter the same images in multiple contests without having to resize, rename or re-edit their entries. That could result in more entries for each contest, Van Hemmen predicts.

But widespread adoption of the standards is still a big if. The White House News Photographers Association says it may adopt some—but not all—of the standards. POYi, BOP and World Press Photo have yet to announce their intentions, though BOP board member Joe Elbert is supportive.

"Photographers spend 2 months out of 12 getting their entries ready," he says. "If contest entries are interfering with personal time and time they should be devoting to photography, then we need to help out. It's really a good solution."

For more detailed information, contact Pim Van Hemmen at pvanhemmen@starledger.com.

—Jay DeFoore

GREENBERG WINS $400,000 JURY VERDICT

MIAMI—A federal jury has ruled against the National Geographic Society (NGS) on four counts of willful copyright infringement for unauthorized use of Jerry Greenberg's images, and awarded the photographer $400,000 in damages. It was the maximum allowable award under the law.

NGS reacted to the decision with a vow to appeal the verdict, but the publisher also said it would discontinue selling its infringing CD product, at least for now.

Certain that the fight isn't over, Greenberg is subdued about his victory. "I'm physically and mentally exhausted," he says. "This has taken five years of my life and [cost] a huge amount of money."

In December 1997, Greenberg sued NGS in Miami federal court for unauthorized use of his images on a product called *The Complete National Geographic* on CD-ROM. The CD is a compilation of back issues of *National Geographic* magazine in digital form. NGS said it didn't need permission to reproduce the printed photographs on the CD because the CD is merely a revision of its magazines.

But a federal appeals court in Atlanta ruled in 2001 that the CD is a new and separate product, not a revision, so NGS had in fact infringed Greenberg's copyrights. After the U.S. Supreme Court refused to review that ruling, the case went back to the Miami court for a trial to determine damages.

On the eve of that trial, the judge ruled that NGS faced four counts of infringement—one for each multi-image story of Greenberg's published by the magazine. (Greenberg had argued unsuccessfully for 64 counts of infringement, which represented the total number of images involved.)

During the trial, lawyers for NGS argued that the infringement wasn't willful. In fact, NGS maintains steadfastly that it didn't infringe Greenberg's copyright at all, despite the appeals court ruling.

Greenberg's lawyers presented evidence that included memos and e-mail messages from NGS editors warning their superiors that publishing the CD without permission would be ethically wrong and illegal.

NGS remained defiant after the jury delivered its verdict.

NGS spokesperson Mary Jeanne Jacobsen said that the CD-ROM "will no longer be offered for sale until specific authority is obtained from an appropriate judicial authority."

She added, "We believe that the public will be the loser, as this valuable educational archive will no longer be available to individuals, libraries and schools. We look forward to arguing the motion to set aside the verdict, which is still pending with the trial judge in Miami, and will further pursue every legal remedy available to us."

Meanwhile, other photographers suing NGS for infringement over the CD-ROM are celebrating the verdict in Greenberg's case.

"I feel good today. This is a big win," says Fred Ward, a Maryland photographer whose case is pending in New York.

EX-DITLO PARTNERS REUNITE FOR *AMERICA 24/7*

SAN FRANCISCO—Having patched up old grudges, the creators of the best-selling photo book of all time are back together to do a sequel.

Rick Smolan and David Elliot Cohen, who produced *A Day in the Life of America* in 1986 and spawned the DITLO franchise, have hired 1,000 photographers to shoot pictures during the week of May 12 to 18 for a book called *America 24/7*.

Scheduled for release in November by Dorling Kindersley (DK) Publishing, the coffee-table book

THE YEAR IN REVIEW

FEBRUARY

Eric Grigorian of Polaris Images won World Press Photo of the Year 2002 for his black-and-white picture of victims of a deadly earthquake in Iran. Antonin Kratochvil of VII took first place in both the General News Singles and Nature and the Environment Singles categories.

Andrea Bruce Woodall of *The Washington Post* was named photographer of the year by the White House News Photographer's Association (WHNPA). Woodall's photograph of former Vice President Al Gore campaigning for Democratic candidates for Congress won the Political Photo of the Year award.

Fashion photographer Juergen Teller's celebrity snapshots and humorously unflattering nude self-portraits propelled him to the winner's circle of the 2003 Citibank Photography Prize. The German photographer beat out Simon Norfolk's Afghan landscapes, Bertien van Manen's photographs of Chinese youth and Jitka Hanzlová's portraits of strangers encountered on the street for the £20,000 (about $30,000) prize.

MARCH

The top two prizes in the 19th annual International Center of Photography's Infinity Awards went to Bernd and Hilla Becher, for their lifetime contributions to the field, and France's Marc Riboud, who won the Cornell Capa Infinity Award. Other winners included Alex Majoli for photojournalism, Jonas Bendiksen for young photographer, Zarina Bhimji for art, Scottish curator Sara Stevenson for writing, Thái-Công for applied photography and Deirdre O'Callaghan for publication. All of the winners were either born in or based in Europe.

Rob Finch of *The Oregonian* and Randy Olson of *National Geographic* have won the top individual awards in the 60th annual Pictures of the Year International (POYi) contest. Finch's varied and intimate coverage of the Portland community earned him Newspaper Photographer of the Year, while Olson won Magazine Photographer of the Year for his documentation of the civil war in Sudan and cultures on the Black Sea.

Morning News for substituting a bad contract for a really bad one. They ended up giving the paper broad rights for a single bare-bones fee, instead of giving the paper all rights.

In Boston, freelancers still fighting a 2000 rights grab by *The Boston Globe* lost in court last fall when a judge ruled that the contract was "heavy-handed" but not illegal. Though it's been nearly three years since the freelancers were shut out of the *Globe* for refusing to roll over, they plan to appeal the court ruling, and continue to picket *Globe* events to publicize the paper's economic bullying.



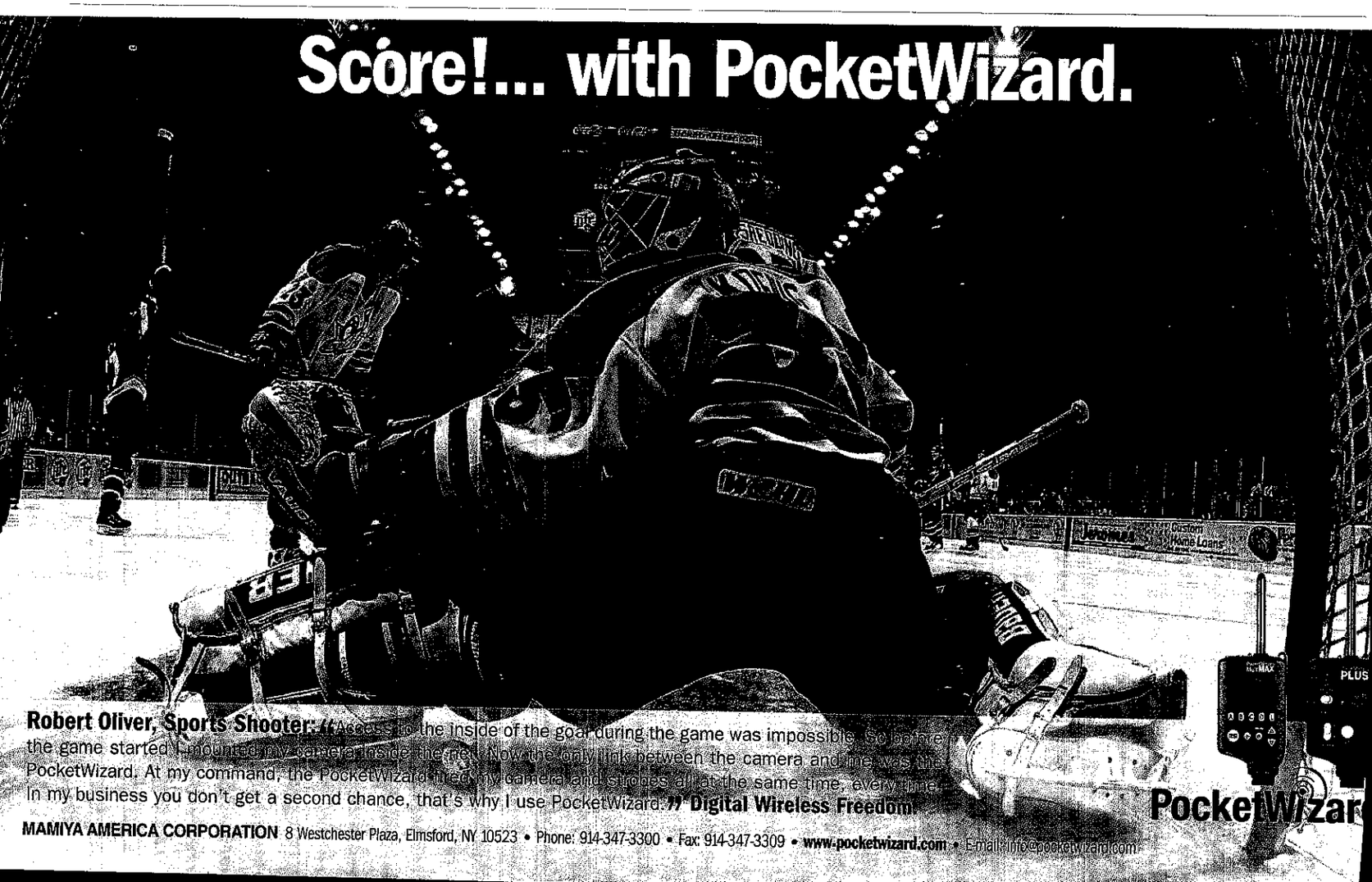
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Jerry Greenberg: Defender of copyright.

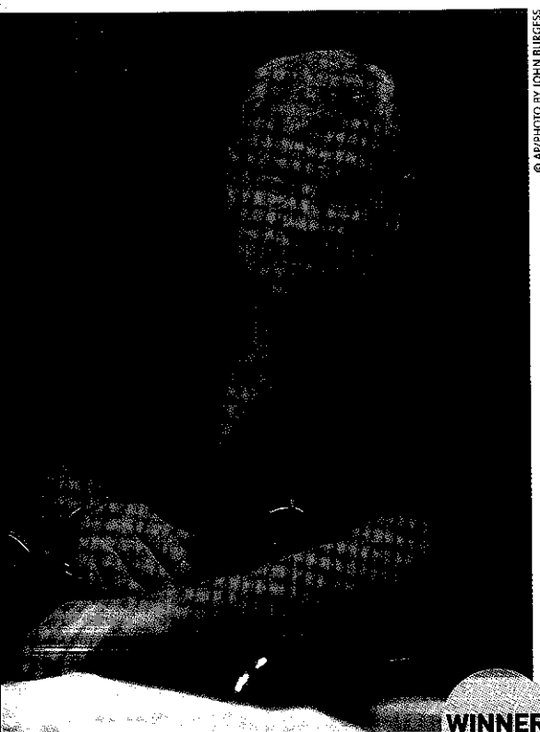
Not all of the news from newspaper contract land is bad, though. Photographers were mostly pleased by *USA Today's* new contract last summer, which offered day rates ranging from $225 to $275, plus a $100 transmission fee. The contract also stipulated additional payments for each re-use. Paul Whyte, director of photography, explained that photographers "are our lifeblood." Imagine that, in this day and age.

On other fronts, some photo trade associations have been working on strategies to shore up photographers' rights. The APA, National Writers Union and other artists groups are pressing Congress for a law that would make it legal for freelance artists to discuss prices and join forces to negotiate contracts with publishers. One such bill died last fall, and future bills are likely to face stiff challenges in an anti-labor atmosphere. But supporters are convinced that someday, over the rainbow....

The Professional Photographers of America is also appealing to the U.S. Copyright Office to allow for depositless registration of photographs, to make it easier to register work so photographers have more access to remedies against infringers. Depositless registration is another initiative that's been tried before. Last time, it ran into stiff opposition from publishers and photo finishers. □



Bless me Father, for I have sinned. Former Roman Catholic priest Don Kimball looking less than priestly in court the day he was being sentenced on two counts of lewd conduct with a 13-year-old girl. Photog Penni Gladstone felt his fury.



© AP/PHOTO BY JOHN BURGESS

WINNER

National Geographic Society: Lifetime Achievement Award for Abject Knavery

WINNER

So egregious are the National Geographic Society's (NGS) offenses against photographers that no mere Award of Dubious Distinction would do. So we bestow upon NGS our Lifetime Achievement Award for Abject Knavery. They've certainly earned it, having waged warfare on photographers' rights for the better part of a decade.

It all started as run-of-the-mill rights grabbing, but quickly turned nasty with economic arm twisting and vengeful retribution against photographers and agents who dared to defend their rights. Then the Thugs of M Street turned to blatant thievery. We're talking, of course, about *The Complete National Geographic on CD*, an NGS product that is now the object of numerous copyright infringement claims.

Before the CD was first published in 1997, NGS executives were warned by some of their own editors that they were doing a dastardly thing. Sure enough, in 2001, a federal appeals court ruled that NGS was infringing the work of at least one photographer, Jerry Greenberg of Miami. The U.S. Supreme Court declined an NGS plea to review that decision. But NGS kept infringing anyway, certain that its own lawyers were right and the federal courts were wrong. This past March, a Miami jury slapped NGS with a $400,000 verdict—the maximum allowable under the law—for four counts of willful copyright infringement in the Greenberg case.

In a snit, NGS finally pulled the CD off the market and announced that the real loser was the public. That was an attempt on the part of NGS to blame its victim, Jerry Greenberg. NGS could easily keep the CD on the market by paying him (and others) for use of their copyrighted works. And such payments would surely amount to far less than NGS has spent so far defending its thievery in court.

But NGS can't stomach the thought of giving photographers their due. After all, this isn't business. It's personal. NGS has vowed to appeal the Greenberg verdict and get its CD back on the market under the protection of "an appropriate judicial authority." The publisher apparently can't accept what is so obvious to everyone else: Stealing the work of others for your own profit is just plain wrong.

Father Don: Winner of the What Jesus Would Not Do Award

Don Kimball, a defrocked San Francisco priest, just can't seem to keep his hands to himself. In April 2002 he was on trial for molesting young girls when he slugged *San Francisco Chronicle* photographer Penni Gladstone in a courtroom hallway.

"He hit me once, then came and got [my] camera and tried to hit me again," says the photographer. Father Don ended up throwing Gladstone's camera and hitting another journalist with it. The incident was an outburst not only of violence, but of stupidity: the hallway was bustling with witnesses who happened to be state prosecutors.

A couple days later, Father Don was convicted for molesting kids and sentenced to seven years in jail. This year, he finally stood trial on felony assault charges for attacking Gladstone, who suffered bruises and a detached retina that she believes resulted from the attack. Father Don's lawyer tried to paint Gladstone as an annoying paparazzo who got what she had coming, but the jury recognized a violent crime for what it was and convicted the priest.

"I'm a liberal," Gladstone said, "but this guy is a pedophile; he's violent and he needs to be put away."

At press time, he was awaiting sentencing on the assault conviction. If he gets the maximum three years, the streets of San Francisco will be safe from Father Don, at least for a good decade.

PDN'S FIRST ANNUAL KNAVERY AWARDS

WE TIP OUR HATS TO THE ROGUES WHO LEFT THEIR MARKS—AND SCARS—ON THE PHOTOGRAPHY COMMUNITY THIS YEAR. BY DAVID WALKER

including the copyright, in each photograph" submitted. Another provision grants *Newsday* rights to any past published works, which means whole archives, including lucrative 9/11 photos, can now be re-used or sold by the newspaper.

A cover letter issued with the contract indicates that no assignments will be given to photographers who don't sign and return the contract by June 1.

Newsday's rights grab is just the most recent in a long line of such contracts. The Associated Press, *New York Times*, *New York Daily News* and *Boston Globe* have all forced unfavorable contracts on freelancers in recent years, despite increasing profits.

According to its own press release, the Tribune Company, *Newsday*'s parent company, had record earnings in 2002.

"Last year was an outstanding year for Tribune Company," boasted Dennis FitzSimons, Tribune president and CEO. According to the company's figures, operating cash flow grew 20 percent to $1.5 billion last year. "These results reflect the strength and resiliency of our media business," FitzSimons added.

But *Newsday* continues to put the squeeze on photographers. A year ago the company cut its digital transmission fee to $40 from $50. The paper recently rescinded the payment all together. With assignment fees sometimes as low as $75, some photographers say there's no point in working for the paper anymore.

"My immediate reaction was, 'Well, my *Newsday* days are done,'" says freelancer Leo Sorel.

Until now, the paper has passed re-use requests on to

NGS FIGHTS ON

MIAMI—The National Geographic Society is seeking to overturn or at least reduce a $400,000 jury award in favor of Jerry Greenberg, who sued NGS for unauthorized use of his images on CDs containing the entire contents of back issues of *National Geographic* magazine.

The jury reached its verdict in March, two years after a federal appeals court ruled that NGS had violated Greenberg's copyright. The appeals court sent the case back to the Miami trial court to determine what damages, if any, NGS would be required to pay.

NGS has filed a motion to throw out the $400,000 jury verdict, a motion for a new trial, and a motion for remittitur, according to Geographic spokesperson Mary Jeanne Jacobsen.

Motions of remittitur are requests by defendants to reduce damage awards they consider to be excessive.

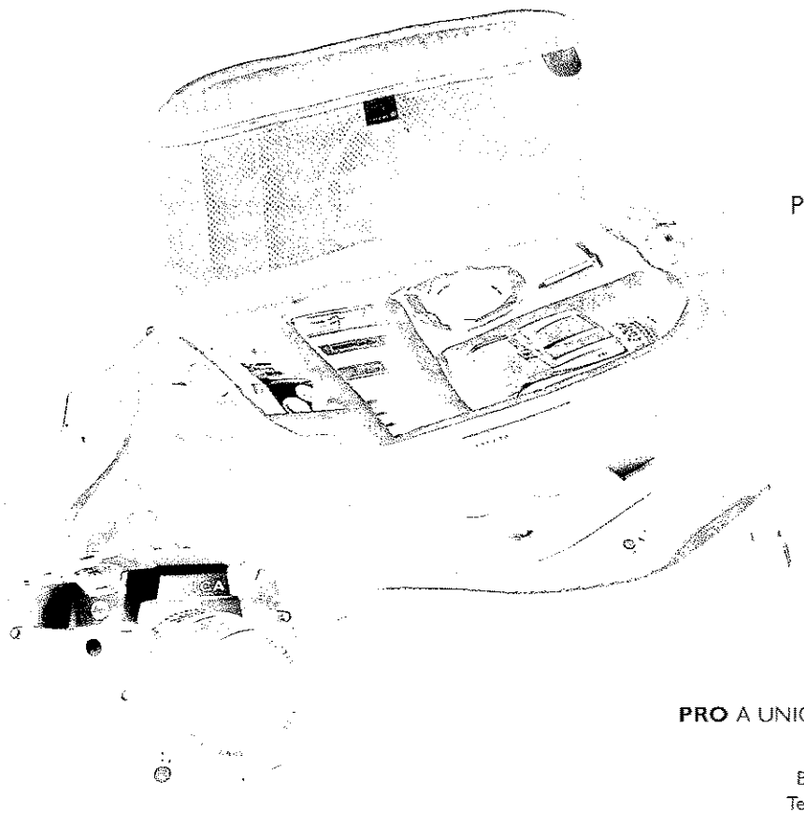
Meanwhile, former *National Geographic* photographer Nathan Benn has filed a breach-of-contract claim against NGS for reusing more than 300 of his images on the CD without paying him.

The images appeared in 20 different stories in *National Geographic* between 1973 and 1991. NGS owns copyright to many of Benn's images, so unlike Greenberg and others with cases pending against NGS, Benn is not claiming copyright infringement. Instead, Benn alleges that NGS violated oral and written agreements to pay him additional fees for reusing his images in other editorial, promotional, or advertising products.

Benn argues that since the NGS CDs are new products—as the appeals court ruled in the Greenberg case—NGS is obligated to make good on its promises to pay him additional usage fees.

He asserts that NGS has sold more than 2 million copies of the CDs and generated more than $25 million in revenue from those sales without sharing any of that money.

"This suit joins several others that are virtually identical on the same contractual issue before the same judge and the Geographic's position is exactly the same," says Jacobsen. Contrary to the appeals court ruling, NGS insists their CD-Rom "is like microfilm or microfische.... and National Geographic owns the collective-work copyright to the magazine."



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NATIONAL GEOGRAPHIC BEATS INFRINGEMENT RAP IN NEW YORK

In a stunning rejection of the *Greenberg v. National Geographic Society* decision, a federal District Court judge in New York has ruled that *The Complete National Geographic* CD does not violate the copyrights of several freelance photographers.

The photographers—Douglas Faulkner, Fred Ward, David Hiser, Louis Psihoyos and others—filed infringement claims alleging that the National Geographic Society (NGS) used their work on the CD without permission. The CD reproduces back issues of *National Geographic* page by page.

The infringement claims filed in New York were similar to those filed several years ago in a Miami federal court by photographer Jerry Greenberg. Greenberg recently won a $400,000 jury award for unauthorized use of his images on the NGS CD.

Greenberg won that award after the 11th Circuit Court of Appeals in Atlanta ruled in March 2001 that the CD was not a revision, but a "new product, in a new medium, for a new market" since it contained a search engine and other features the magazines do not have.

Copyright law allows publishers to issue revisions of published works without permission from contributors, but not new works. The distinction is at the heart of all the NGS lawsuits.

The photographers who sued NGS in New York argued that the CD is a new work, not a revision, and noted that the 11th Circuit ruling on Greenberg already determined that.

But the New York District Court, which is under the jurisdiction of the 2nd Circuit Court of Appeals, isn't bound by 11th Circuit decisions. And the New York judge, Lewis Kaplan, said that a Supreme Court ruling that came after the *Greenberg* decision—*Tasini v. New York Times*—cast doubt on the validity of the *Greenberg* decision. (The *Tasini* ruling was handed down in June 2001, several months after the *Greenberg* decision.)

Kaplan refused to rule automatically in favor of the photographers, and considered the merits of arguments on both sides instead.

NGS has argued all along that its CD is a revision of its magazines since it reproduces articles and photos in their original context. Therefore, says NGS, it doesn't need the permission of freelancers to put their works on the CD. NGS has also maintained that the *Tasini* ruling supports its arguments. Kaplan agreed.

Specifically, the *Tasini* ruling barred publishers from reproducing (without permission) freelancers' works in electronic databases or CDs that strip those works out of their original context. Such uses are not revisions, the court said.

Tasini allows reproductions in electronic media as long as the original context of those works is preserved, Kaplan reasoned. And, he said, "[the NGS CD] is precisely comparable to the microforms to which the Supreme Court referred approvingly in Tasini."

He went on to reject the photographers' arguments (and the 11th Circuit's finding) that a search engine on the NGS CD carried it over the legal line from a revision to a new product. Kaplan said the search engine is just a technological improvement, not unlike compiling back issues of NGS in a stiff-bound volume with a searchable index.

"No one here suggests that the NGS's bound volumes and its addition of indices infringe the copyrights of individual contributors," he wrote. "The material fact is that the content of the product, whether the [CD] or the indexed bound volumes, that users wish to see is identical to the original print versions."

Kaplan added, "The fact that more purchasers may be interested because the package is more attractive than a library full of more than 112 years of monthly copies of the magazine is immaterial."

Through a spokesperson, NGS praised Kaplan's decision as an exoneration of its position.

The photographers were stunned. Photographer Fred Ward called the decision "chilling," and vowed to appeal.

Accusing Kaplan of bias and having conflicts of interest, Faulkner and his attorney—Stephen Weingrad—filed a motion for reconsideration. But Kaplan was unpersuaded. "[Faulkner and Weingrad] simply disagree with the decision," he wrote. "That is a basis for appeal but not for reconsideration."

Joel Hecker, an intellectual property attorney who is not involved in the case, said Kaplan "is on tenuous ground" with the ruling. "He went through machinations to give himself the right to disagree with the 11th Circuit," Hecker says.

He continues: "It is some comfort to photographers that the Supreme Court refused to hear an appeal on the 11th Circuit *Greenberg* decision. If the Supreme Court thought the *Greenberg* ruling was wrong in light of Tasini, they might have taken the *Greenberg* case." (The Supreme Court decided not to hear the *Greenberg case* on October 8, 2001.)

Hecker notes that if the 2nd Circuit upholds Kaplan's decision, then two circuit courts will be in conflict about whether the NGS CD is a revision or a new product under copyright law—and the Supreme Court may be forced into the fray after all.

Stay tuned.

—David Walker

THE FIGHTS OVER THE NGS CD-ROM: A TIMELINE

DECEMBER 1997 In *Greenberg v. NGS,* photographer Jerry Greenberg sues National Geographic Society for unauthorized use of his photos on a boxed set of CD-ROMs that re-create every issue of *National Geographic*. The federal court for the Southern District of Florida rules in favor of NGS on two counts of copyright infringement pertaining to the CD-Roms and grants summary judgement. Greenberg appeals.

MARCH 2001 The 11th Circuit Court of Appeals rules that the NGS CD-ROM is not a revision as defined by copyright law but "a new work," and therefore infringes the copyright of photographer Jerry Greenberg.

JUNE 2001 In *Tasini v. The New York Times*, the U.S. Supreme Court rules that New York Times Online, LexisNexis and other online databases of newspaper articles are new works, not revisions, and their unauthorized use of articles infringes the copyrights of freelance authors.

OCTOBER 2001 NGS appeals *Greenberg* case to the U.S. Supreme Court, but the Court refuses to hear case. *Greenberg* victory stands.

FEBRUARY 2003 After a ruling by the 11th Circuit Court of Appeals in 2002 sends Greenberg's case back to the lower court, a jury awards the photographer $400,000 for copyright infringement. NGS files a motion for retrial which is still pending.

DECEMBER 2003 Judge Kaplan rejects photographers' claim, rules that the NGS CD-ROM is a revision, and cites Supreme Court ruling in *Tasini*.

BY VICTOR S. PERLMAN

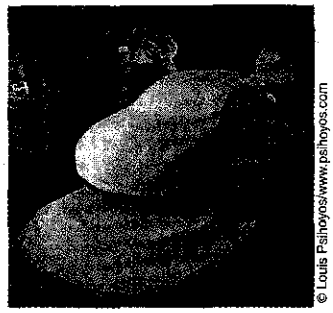
ASMP TO FILE BRIEF IN FAULKNER ET AL. V. NATIONAL GEOGRAPHIC

In our last issue, we reported that photographers and their lawyers were stunned by a federal trial court decision handed down in New York in December, involving the National Geographic Society's CD-ROM collection. A number of photographers who had licensed their images to print editions of *National Geographic* magazine filed copyright infringement suits when the Society produced the CD-ROM collection containing their images without their permission and without paying licensing fees.

Jerry Greenberg was the first photographer to file suit. The case was litigated in U.S. District Court in Florida. In the Greenberg case, both the trial court and, later, the U.S. Court of Appeals for the 11th Circuit ruled that National Geographic had violated Greenberg's copyrights by creating and selling its digital collection without securing permission to use the Greenberg photographs. In light of that decision, the December 11 opinion of the U.S. District Court for the Southern District of New York, dismissing similar claims against National Geographic by photographers Douglas Faulkner, Fred Ward, David Hiser, Louis Psihoyos (the last two are ASMP members) and others came as a shock. If the New York decision becomes law, it means that publishers will be able to make, publish, and sell digital versions of printed editions of collective works without paying additional licensing fees to the photographers, writers and illustrators who created the content. Those creators would be cut out of the loop for any revenues the publishers will collect for digital versions.

Faulkner, et al. are planning to appeal. ASMP has committed funds to write an *amicus curiae* brief in support of the photographers. ASMP is approaching other photographers' organizations to join in the brief. As is its usual practice, ASMP will pay the entire cost of the brief, and will ask the other groups only to contribute their names and verbal support. Henri Dauman, one of ASMP's leading photographers and one of the people instrumental in shaping ASMP as an industry leader, has served as an expert trial witness in several of the New York cases. He told ASMP, "If the Faulkner decision is not overturned, it creates a serious loophole that would allow publishers to use photographs without compensating the photographers."

If National Geographic wins on appeal in the Second Circuit, the issue could end up before the U.S. Supreme Court. If you are interested in reading the full text of the District Court's decision in the Faulkner case, you can find it on the ASMP website at www.asmp.org/pdfs/ntlgeographic.pdf.



Louis Psihoyos licensed this image to National Geographic for print on paper rights only, no electronic rights granted. Because of the specific terms of the license for this photograph, the court found that National Geographic had infringed his copyright.

NFL REPORT

There have been some recent developments in the ongoing battle between sports photographers and the National Football League over the disposition of the NFL's photo archive. The group of more than 50 photographers, represented by photographer and Miami attorney Richard Lewis, continues to refuse to allow their work to be handled by Getty Images, which had been the NFL's apparent first and only choice to take over its extensive photo library. Until recently, the NFL had not appeared willing to disclose any hard information about the status of its negotiations with Getty, or about its real intentions. However, pressure from the photographers now appears to be having some effect. They have convinced the NFL to re-open discussions with one of the other stock houses that had originally been interested in taking over the NFL's photo archive.

The photographers are waiting to see what happens with those discussions. If, after all, it turns out that Getty will be the sole holder of the archive, it is likely that the photographers will demand the return of their images. The NFL will then be faced with the daunting task of identifying, locating, retrieving and delivering many thousands of pictures. Many questions remain unanswered, such as what will happen if the NFL is unable to deliver any of this multitude of images, or if, in the meantime, they make or license unauthorized use of them. Keep watching. This one looks likely to go into overtime.

LEGAL UPDATE

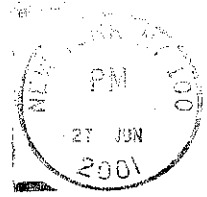
TROUBLING NEW YORK TIMES FREELANCE CONTRACT

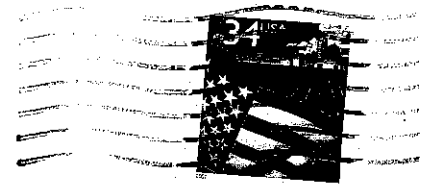
The New York Times has issued a new contract for freelancers, one that is clearly unfair to photographers. While the new arrangement falls just short of seizing all rights, it does put photographers in competition with the *Times* in the marketing of the same images. Inevitably, Work for Hire contracts like this one will drive the best and most experienced photographers out of business.

In a telephone conversation with Toby Usnik of the *Times'* Media Relations Department, ASMP was told, "The contracts are out and they are coming back signed. We do not anticipate alterations." ASMP prepared a detailed analysis of the contract, which we forwarded to the *Times* with our request for a meeting to discuss the terms and conditions. As we go to press, we have just received their reply, and our opinion of the contract and situation remain unchanged.

For a detailed analysis, the *NY Times'* response, and a copy of the contract, go to:
www.asmp.org/news/apr2004/nytcontract.php

RAY FISHER
225 Central Park West
Suite 822
NEW YORK, NY 10024





Jerry Greenberg
6840 W 92nd Street
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THE SUPREME COURT: Freelance Work

COPYRIGHTS

Supreme Court Says Writers Have Rights to Online Work

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.



Susan B. Markisz for The New York Times

Jonathan Tasini, president of the National Writers Union, with a lithograph of a workers protest.

Little change in current practice but liability for past infringement.

"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.

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 publishers to settle the suits by nego-

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 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, and containing articles from vast numbers of editions. In response to patron requests, an inhumanly speedy librarian would search the room and provide copies of the articles matching patron-specified criteria.

> *'Such a storage and retrieval system effectively overrides the authors' exclusive right.'*
>
> JUSTICE GINSBURG

Viewing this strange library, one could not, consistent with ordinary English usage, characterize the articles "as part of" a "revision" of the editions in which the articles first appeared. In substance, however, the databases differ from the file room only to the extent they aggregate articles in electronic packages (the LEXIS/NEXIS central discs or U.M.I. [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 (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 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. 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 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. . . .

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> JUSTICE STEVENS

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.

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

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 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.

FREELANCERS WIN 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

NEW YORK TIMES - 6/26/2001

RAY FISHER
225 Central Park West
Apt 822
NEW YORK, NY 10024-6034

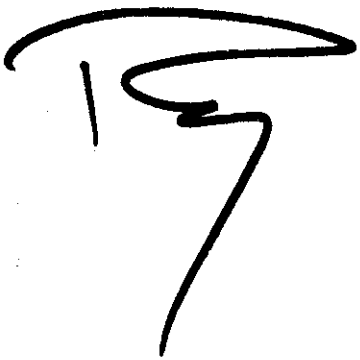
June 26, 2001

Jerry:

Just in case you weren't able to find a New York Times, here is the complete story that ran today.

The judges seem to be in your favor, no matter what NG tries to say or do.

Best to all,



Represented by TimePix

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Continued on Page A14

NYT - 6/26/2001

THE SUPREME COURT: Freelance Work

COPYRIGHTS

Supreme Court Says Writers Have Rights to Online Work

Continued From Page A1

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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.



Susan B. Markisz for The New York Times

Jonathan Tasini, president of the National Writers Union, with a lithograph of a workers protest.

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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

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

JUSTICE GINSBURG

teria, and containing articles from vast numbers of editions. In response to patron requests, an inhumanly speedy librarian would search the room and provide copies of the articles matching patron-specified criteria.

Viewing this strange library, one could not, consistent with ordinary English usage, characterize the articles "as part of" a "revision" of the editions in which the articles first appeared. In substance, however, the databases differ from the file room only to the extent they aggregate articles in electronic packages (the LEXIS/NEXIS central discs or U.M.I. [University Microfilms International] CD-ROMs), while the file room stores articles in

(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.

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

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"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, and containing articles from vast numbers of editions. In response to patron requests, an inhumanly speedy librarian would search the room and provide copies of the articles matching patron-specified criteria.

Viewing this strange library, one could not, consistent with ordinary English usage, characterize the articles "as part of" a "revision" of the editions in which the articles first appeared. In substance, however, the databases differ from the file room only to the extent they aggregate articles in electronic packages (the LEXIS/NEXIS central discs or U.M.I. [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

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

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tion. 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.

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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. 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

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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.

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 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.

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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, and containing articles from vast numbers of editions. In response to patron requests, an inhumanly speedy librarian would search the room and provide copies of the articles matching patron-specified criteria.

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www.nytimes.com

THE SUPREME COURT: Freelance Work

FREELANCERS WIN 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 models 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.

COPYRIGHTS

Supreme Court Says Writers Have Rights to Online Work

Continued From Page A1



Susan B. Markisz for The New York Times

Jonathan Tasini, president of the National Writers Union, with a lithograph of a workers protest.

Little change in current practice but liability for past infringement.

"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.

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 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 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.

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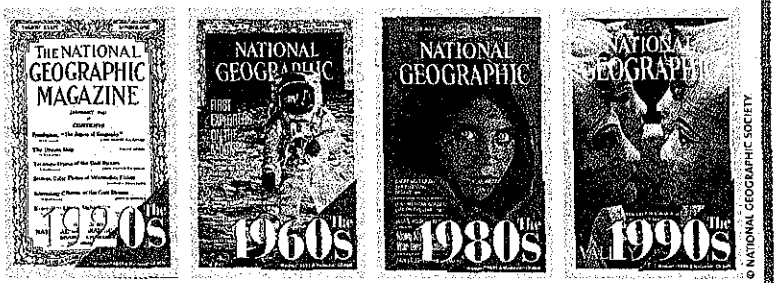
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Greenberg sued because the NGS used his images without permission on a 1997 CD compilation of the entire *National Geographic* magazine archive. The CD reproduces each back issue of the magazine page by page, but also includes search-and-retrieval 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



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

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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:

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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.

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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."

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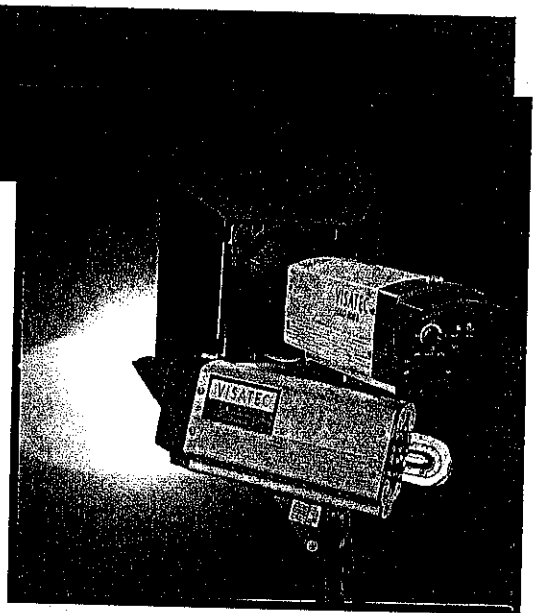
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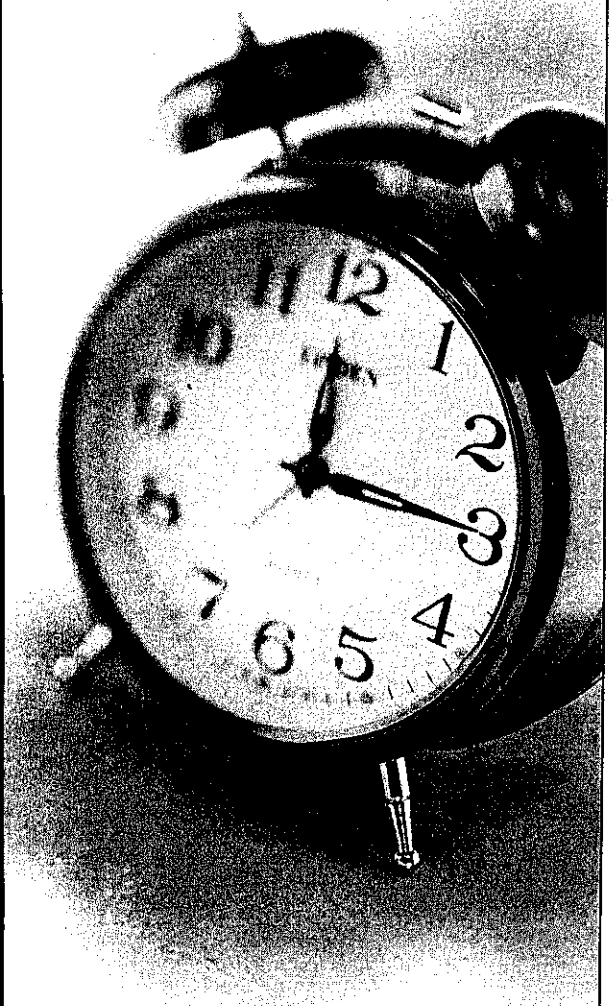
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Among the observers in the courtroom were the six writer plaintiffs, members of the Authors Guild and the National Writers Union, ASMP executive director Dick Weisgrau and ASMP counsel Victor Perlman, who had filed a friend-of-the-court brief in support 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.

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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.

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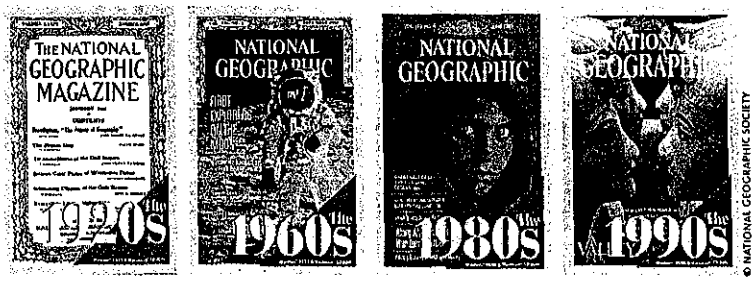
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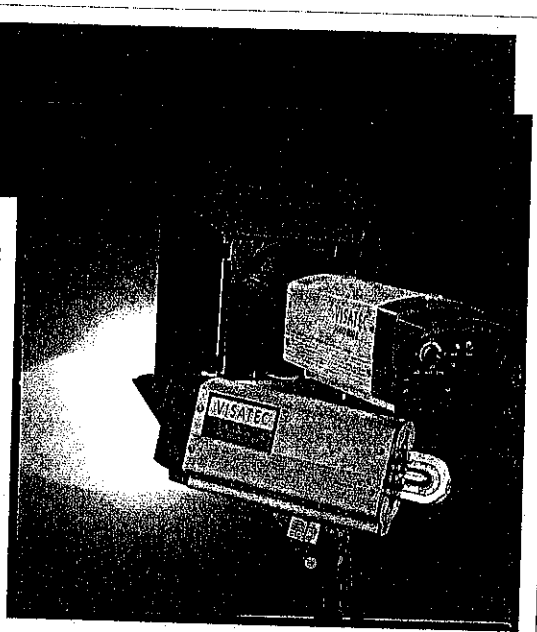
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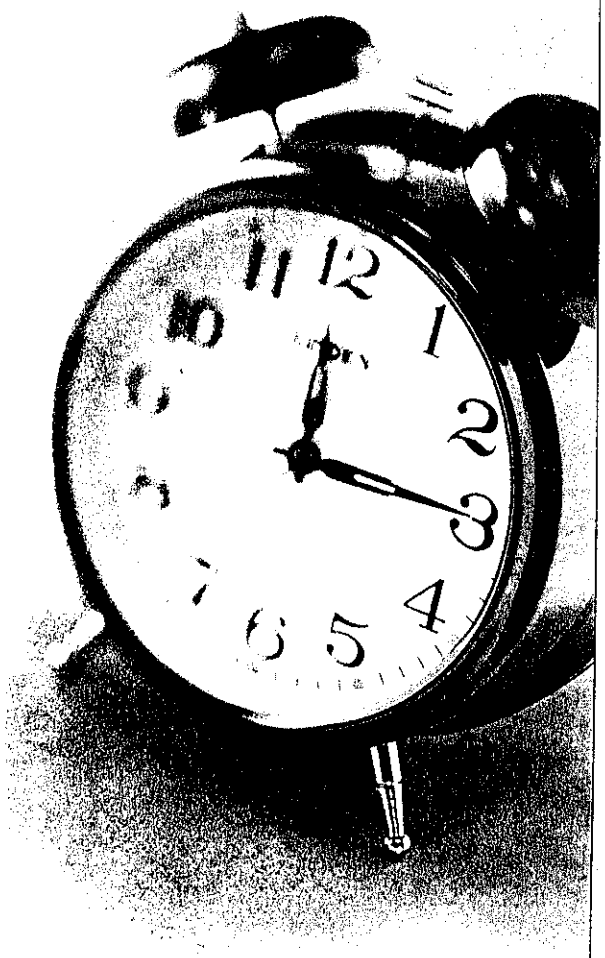
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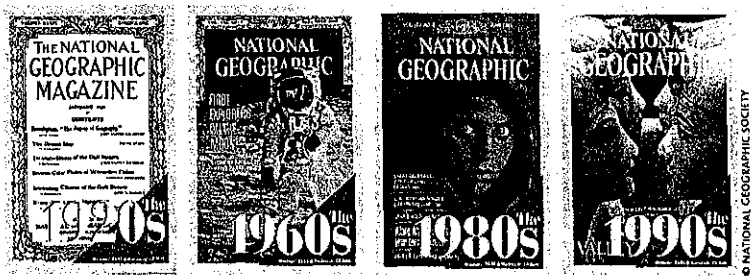
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Greenberg sued because the NGS used his images without permission on a 1997 CD compilation of the entire *National Geographic* magazine archive. The CD reproduces each back issue of the magazine page by page, but also includes search-and-retrieval 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.



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.

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

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

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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:

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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."

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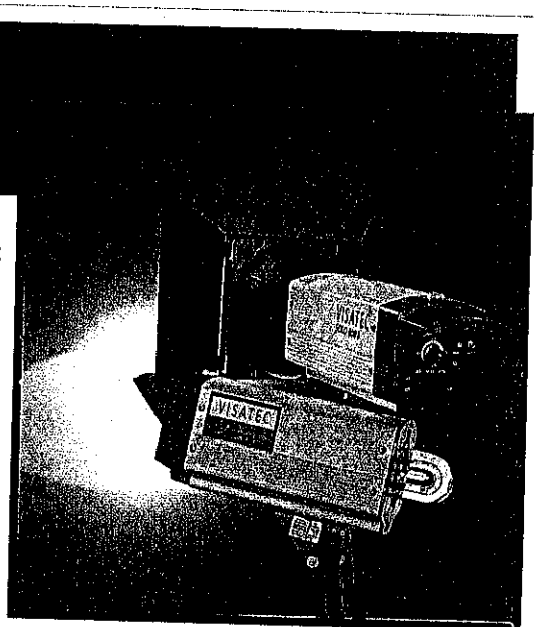
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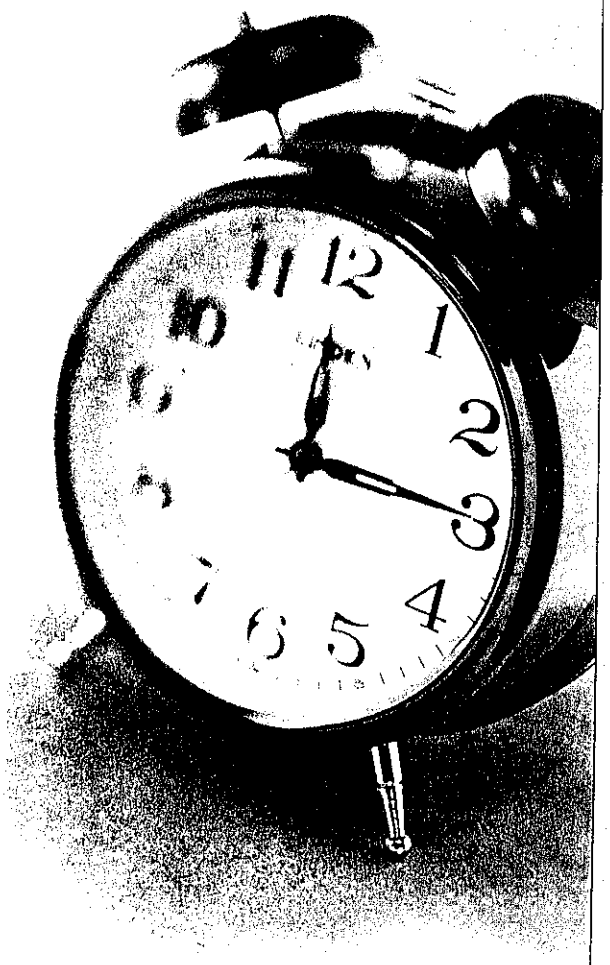
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Out on the courthouse steps, Tasini told reporters that payment of royalties could be accomplished through a rights clearinghouse or through a class-action suit, similar to those organized for product liability cases. Answering the question Gold was 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.

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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.

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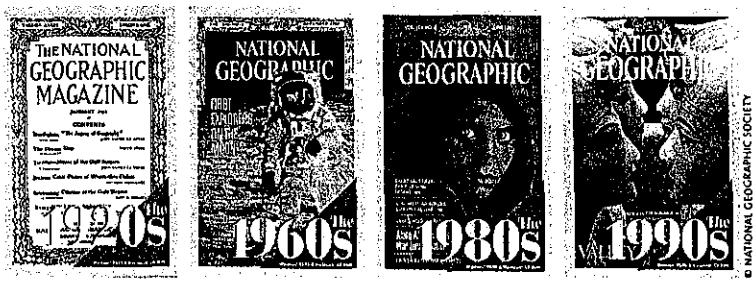
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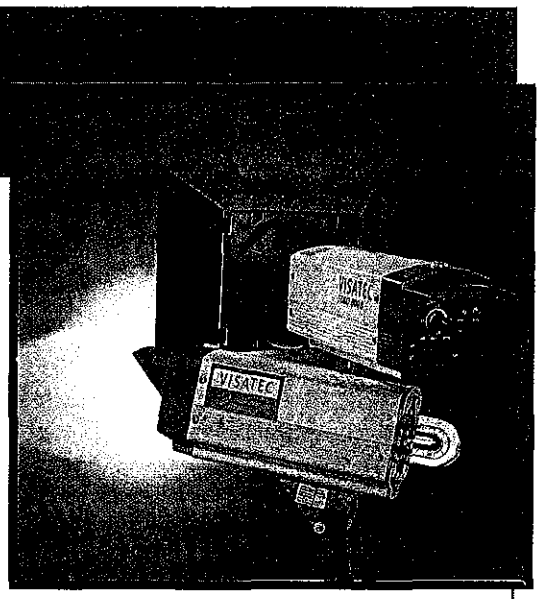
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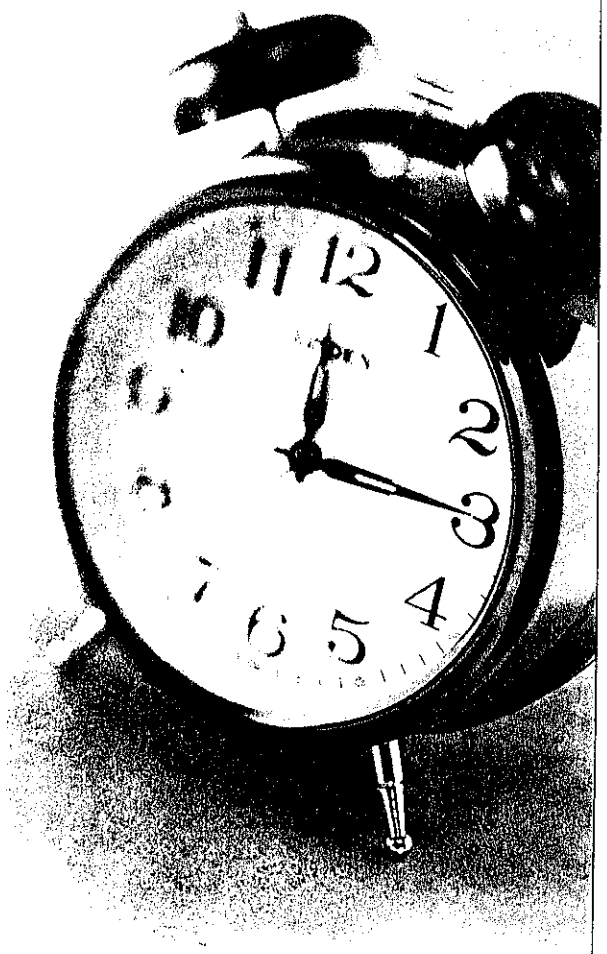
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Minden Settles with *National Geographic*

SAN JOSE—*National Geographic* has settled a copyright infringement claim brought against it by Minden Pictures, both sides have confirmed. The terms were not disclosed. "We reached a satisfactory settlement and we're moving on," says agency owner Larry Minden.

Minden declined further comment, but sources familiar with the case say he was under pressure to accept a settlement because of his mounting legal costs and because his photographers wanted to get back to work for the *Geographic*.

Minden filed his claim last December, alleging that the National Geographic Society had re-used the work of Minden's photographers without permission "on several occasions." At least three of the unauthorized uses involved reproduction of Minden Pictures photos on a product titled "The Complete *National Geographic*: 108 years of *National Geographic* Magazine on CD-ROM." As of two years ago, the Geographic had sold more than 300,000 copies of the CD.

Three similar claims against *National Geographic* are still pending in other federal courts. Most of the photographers involved in those claims haven't shot for the Society for some years. But Minden Pictures represents Flip Nicklin and Frans Lanting, among others still shooting for *National Geographic*.

The Society has told photographers it won't work with anyone who sues, and it had stopped giving assignments to Minden's photographers in accordance with that policy. The Society put intense pressure on Flip Nicklin in particular to get him to coax Minden to withdraw the lawsuit, according to inside sources.

Nicklin declined to comment, other than to say, "everything is resolved."

The *Geographic* was also under pressure to settle rather than face a court battle because Minden's paperwork was unassailable, according to the same sources. "It wasn't a question of whether they had infringed, but how much they were going to have to pay," says one.

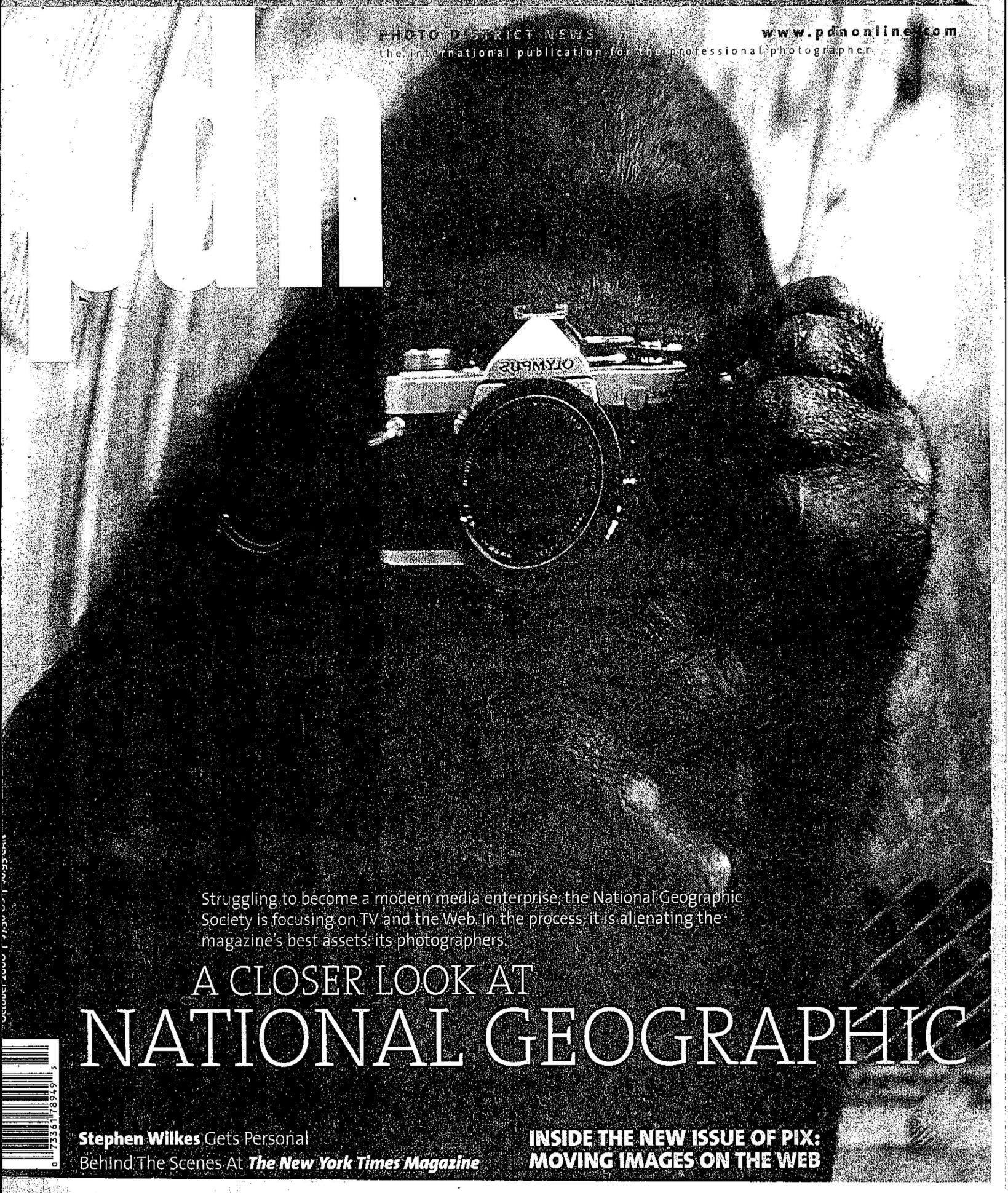
In announcing the settlement internally, the *Geographic*'s top counsel Terry Adamson told the staff, "There must be strict adherence by all...to the Society rights clearance policy.... [T]he rights clearance process should not be an afterthought." He also noted the Society is examining ways to reduce rights clearance errors.

Still, the *Geographic* agreed to settle only those claims by Minden that were not connected to the "108 Years" CD product. The Society has maintained that it didn't need permission to reproduce text and photos on the CD exactly as those text and pictures appeared in various issues of the magazine.

But Minden has reserved the right under the settlement to renew his claims over the CD product, pending the outcome of another claim filed previously by Miami photographer Jerry Greenberg. A federal trial court in Miami rejected Greenberg's original claim over the CD, but he is now appealing to the 11th Circuit Court of Appeals in Atlanta. A hearing on that case is scheduled for October 3.

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Struggling to become a modern media enterprise, the National Geographic Society is focusing on TV and the Web. In the process, it is alienating the magazine's best assets: its photographers.

A CLOSER LOOK AT NATIONAL GEOGRAPHIC

Stephen Wilkes Gets Personal Behind The Scenes At ***The New York Times Magazine***

INSIDE THE NEW ISSUE OF PIX: MOVING IMAGES ON THE WEB

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NATIONAL GEOGRAPHIC:

LURCHING INTO THE 21ST CENTURY

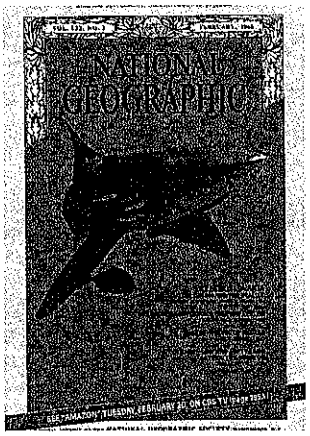
Change isn't coming easily to the Society's patriarchal and bureaucratic culture as it struggles for a new generation of readers.

By David Walker

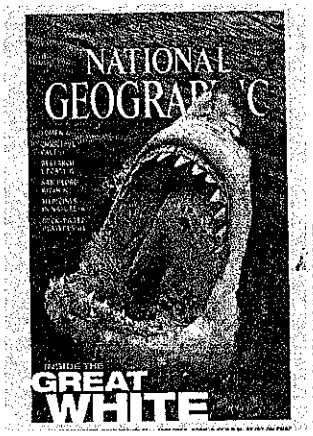
These are the waning days of *National Geographic* magazine, at least as we know it.

For the past decade, the National Geographic Society's U.S. memberships—its word for magazine subscriptions—have fallen steadily from a high of 10.8 million to around 7 million. And the Society's growth is slow, with revenues hovering around $500 million.

The explosion of cable TV, the Web and niche magazines have been hard on all general-interest magazines in recent years. But things are particularly bad for *National Geographic*, which remains stuck in a time warp with a base of older readers.



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Left: *National Geographic* circa February 1968. Right: The magazine tries for more newsstand impact with its April 2000 cover on the same subject.

"It's our responsibility to make sure this organization is as highly regarded, as influential and as relevant as possible in the next 100 years as it was in the last 100 years," says Society CEO John Fahey. "For us to do that, we have to tap into a worldwide audience. We have to tap into new audiences—meaning younger people in this country, quite frankly. And we have to use all the media available to get our message out."

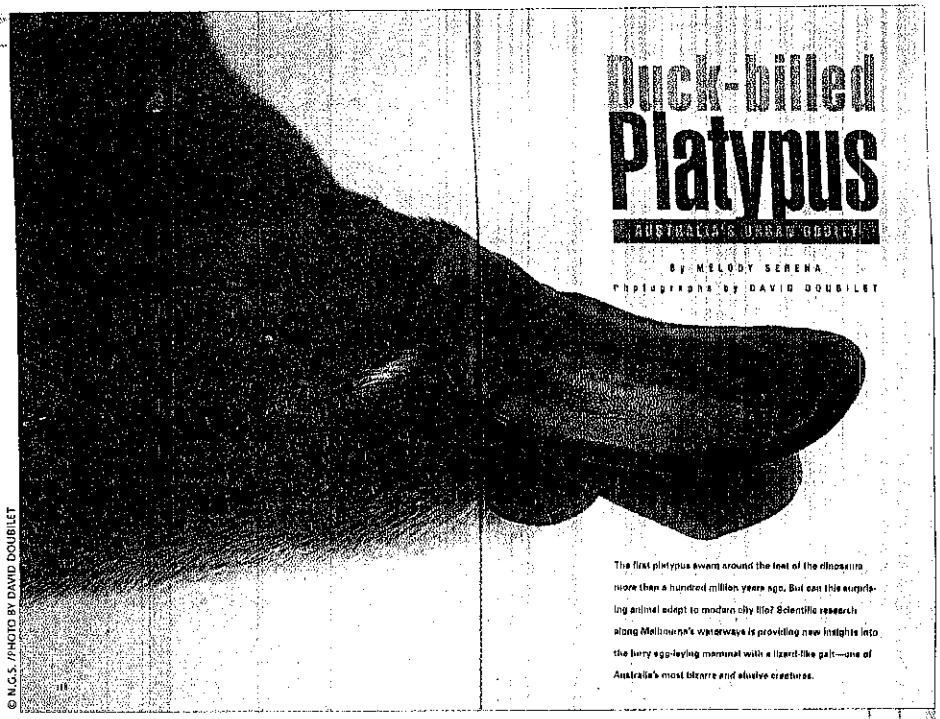
To that end, the Society has been morphing into a corporate media giant with the kind of brand extension strategy now in place at every magazine publisher. Soon it expects to launch the National Geographic Channel, a 24-hour cable-TV station that could cost the Society $250 million or more and is expected to replace the magazine as the engine that drives the Society. Meanwhile, the Society has been licensing content for new products, overhauling its book division, downsizing staff, outsourcing fulfillment and, yes, putting the squeeze on suppliers.

But change isn't coming easily to the Society's patriarchal and bureaucratic culture. For 100 years, the Society has been run by a family dynasty named Grosvenor, descendants of one of the Society's first patrons and presidents, Alexander Graham Bell. The current scion, Gilbert M. Grosvenor, passed the reins reluctantly to professional managers during the Nineties, and the struggle between dear old traditions and new corporate ideals is far from over.

That struggle is certainly manifest at the magazine. Some attempts to shore up the magazine's circulation have tarnished the dignity and exclusivity of the nonprofit educational Society. Subscriptions have been offered through Publisher's Clearinghouse and frequent-flier programs in recent years. In late 1998, the Society began selling the magazine on newsstands for the first time in its history.

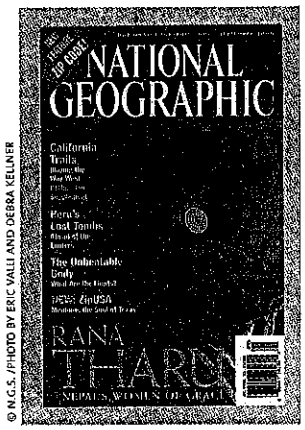
More significantly, the Society is looking overseas for new subscribers. To date, it has launched ten foreign editions with overseas publishing partners; four more were scheduled for launch at the end of September. So far, foreign editions account for 1.8 million subscribers, boosting total subscriptions back to nearly 10 million. Some overseas editors have dared to say out loud that the writing is boring, and some foreign publishing partners are doing something just as unthinkable: selling ad space in the edit well.

Meanwhile, the magazine is cutting costs. Story budgets, which didn't exist a decade ago, are now tight. The average photo assignment lasts from four to eight weeks instead of months on



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The Photo layouts are more lavish than ever, but some people inside and outside the magazine criticize its reliance on the same "stones and bones" formula. Near right: The redesign, launched in September, created minimal changes.



© N.G.S. /PHOTO BY ERIC VALLI AND DEBRA KELLNER

end. And the Society's push into new media and cross-divisional synergies requires extensive re-use rights, bringing the magazine into conflict with its stable of veteran photographers.

Such changes, traditionalists argue, threaten to undermine the Society's best asset: its editorial quality and authority. But even they acknowledge that the magazine looks as good as ever. Last spring, *National Geographic* won the National Magazine Award for general excellence for the third time. (It won previously in 1992 and 1984).

Still, the magazine has serious editorial handicaps. Its founder's mission, "to increase and diffuse geographic knowledge," sounds quaint and pedestrian in the information age. Its attention to science and exploration, unique in 1888, now faces sharp competition from the Discovery Channel, *Audubon*, *Outside* and other media geared to hipper audiences. It is often slow and wooden in its response to newsworthy events. And it is notorious for its rosy, Pollyanna view of the world and the bloodless, didactic style of its writing.

"They're publishing a monthly encyclopedia," says one contributor.

The challenge for editor Bill Allen and staff is figuring out how to drag the magazine into the 21st century without alienating its loyal audience. But so far, the magazine has stayed close to old formulas and sensibilities.

Back to the Future

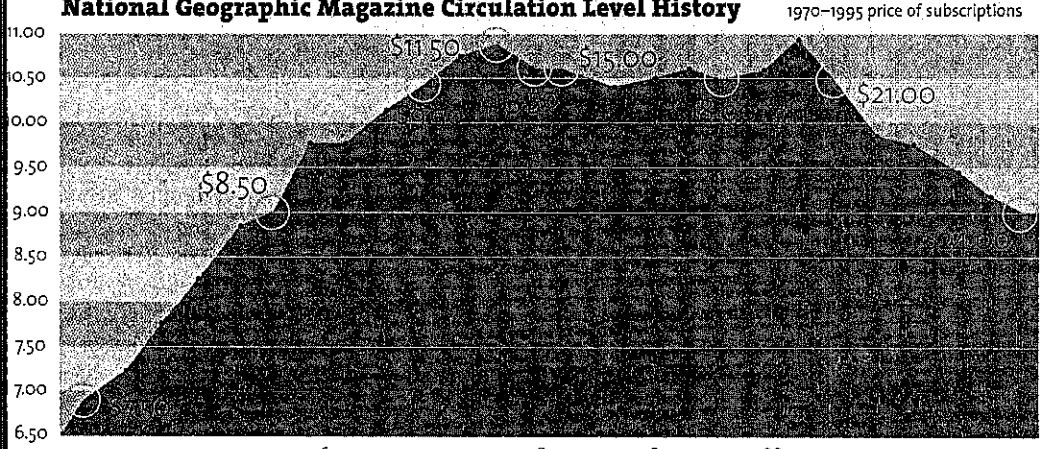
Conservatism runs deep at the National Geographic Society. The Grosvenor family and the Society's board are staunchly conservative. And the Society, located in Washington, D.C., has always prided itself on its status as a quasi-official institution and its access to power.

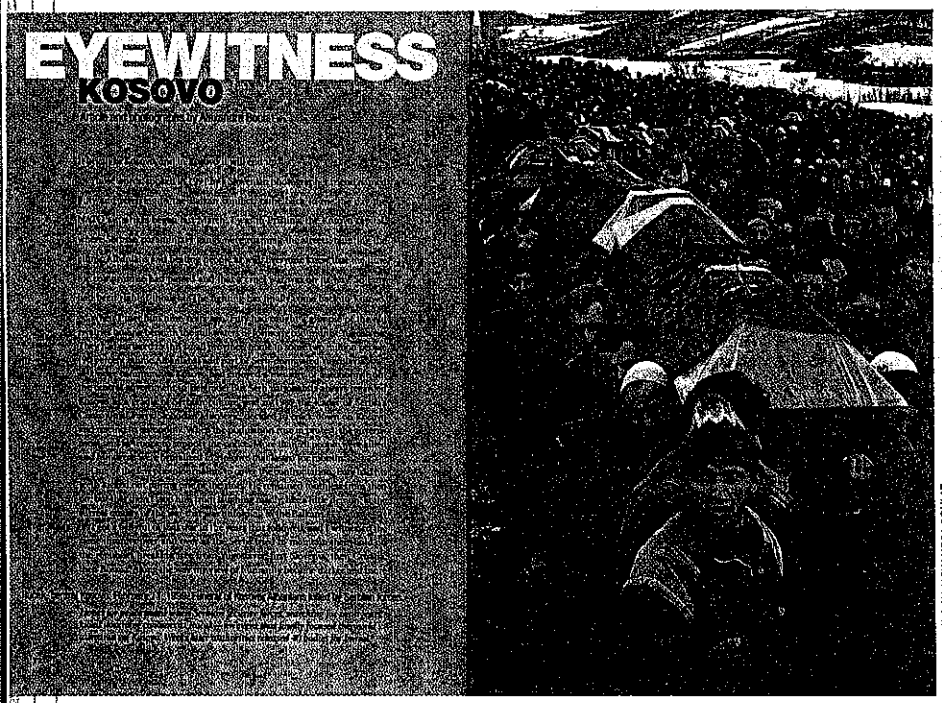
Those conditions have fostered an abiding conservatism in the magazine. It ran flattering portraits of Nazi Germany and fascist Italy in the Thirties, whitewashed South African apartheid in the Sixties, avoided the topic of evolution until the late Fifties, so as not to offend Christian fundamentalists, and didn't mention the injustices toward blacks in the American South until 1970.

The magazine is substantially less conservative than it once was. But the Society's directors or editors have killed or watered down what could have been hard-hitting stories in recent years about famine and AIDS in Africa, social and economic upheaval in South Korea, and the rise of evangelicalism in the U.S. Last year, in an issue dedicated to biodiversity and rapid species extinction, the role of global economics and corporate polluters went almost unmentioned.

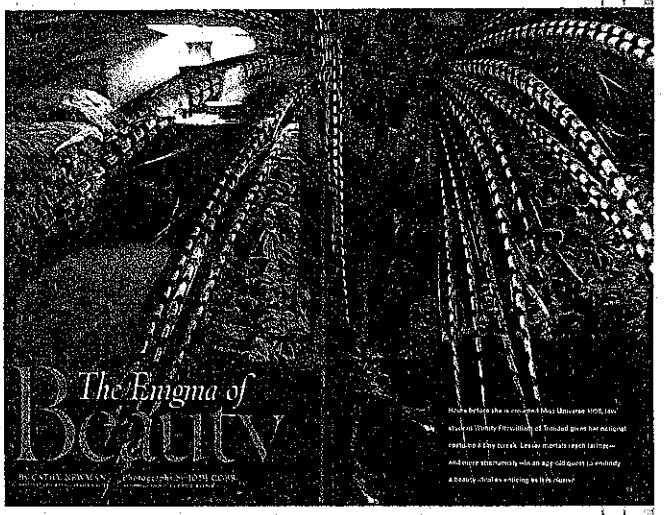
The magazine has eschewed other controversies, too. Several years ago,

National Geographic Magazine Circulation Level History





© N.G.S./PHOTO BY ALEXANDRA BOULAT



© N.G.S. /PHOTO BY JODI COBB

Above: Alexandra Boulat's hard-hitting story on the struggles of Kosovar Albanians. Right: Jodi Cobb's story on ideas of beauty around the world.

editors killed a story on advances in medical technology to avoid mentioning abortion. Recently, the Society killed a new book called *Body Beautiful, Body Bizarre* about body art around the world. It reportedly contained pictures of pierced genitalia. It was brought to Grosvenor's attention, who ordered all 10,000 copies of the book to the shredder. (Spokesperson M. J. Jacobsen insists that Fahey, not Grosvenor, killed the book).

The magazine also roots out the point of view and even the style of its photographers and writers—in the name of editorial neutrality. Tom Kennedy, director of photography from 1987 to 1997, says the magazine "homogenized a whole generation of talented photographers" in the Seventies and Eighties. He says he had some success changing that, but he was fired, in part for challenging the status quo.

Kennedy's replacement, Kent Kobersteen, is by all accounts "a company man." "We're trying to convey the feel of a place, or the personality of a person, or the behavior of an animal," says Kobersteen. "Our photographers have to make pictures that are about the subject, not about themselves. Oftentimes, you look at photographs by a person with a strong style, and you come away having learned more about the photographer than about the subject. That's fine. That's great. But that's not for us, because we're a general circulation magazine that's using photography to communicate."

As a result, the magazine has turned away some brilliant work, including Sebastião Salgado's work on manual labor (Kobersteen says it was turned down because it was in black and white). They also passed on Lauren Greenfield's story on youth culture in L.A. in the mid-Nineties. "I'd like to think we'd publish that today," says Kobersteen.

That isn't to say that there aren't brilliant and beautiful images in *National Geographic*, and, to its credit, the photo department is making some effort to break out of its editorial straitjacket. For instance, it recently published Alexandra Boulat's hard-hitting story on Kosovar Albanians. Boulat is now working on her second piece for the magazine. Black-and-white essays are also in the works.

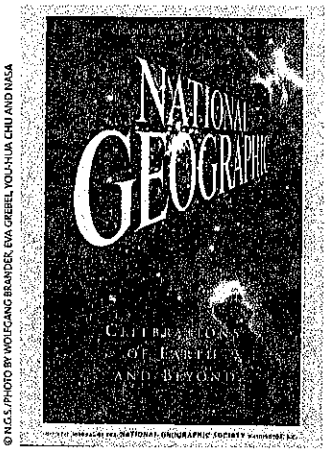
"We're more open than we were 10 or 15 years ago to individual styles," says assistant director of photography Susan Smith. Kobersteen admits that he should be doing more to cultivate a new generation of photographers—most of the contributors are veterans over 40—but says he doesn't have the budget to take chances on new talent.

Meanwhile, Bill Allen, the 59-year-old editor who joined the magazine in 1982, is steeped in its traditions. His editorial adjustments have been minor. One of the biggest changes he's made during his five-year tenure has been to shorten the length of stories so the magazine can publish on average seven a month, rather than five. That increases the chances that more readers will find something of interest in each issue, he says.

He and his staff also point to efforts to put bolder photos on the magazine's cover to make it stand out on newsstands. A recent example is last April's issue, featuring a shark gnashing its teeth. Allen is also launching a new regular feature called Zip USA. Each installment will feature text and photos capturing a week in the life of an American zip code. But it's more nostalgic than documentary, according to one insider. "It's a day in the life of what America used to be."

Once a quirky and quarrelsome family operation, the Society has given way to MBA management with a very different set of priorities and expectations.

In September, the Society launched a redesign of the magazine to help boost newsstand sales and to expand the front and back sections of the magazine to appeal to advertisers and readers alike. But, in keeping with the magazine's ambivalence toward change, Allen says he hopes that "a lot of people are not going to notice [the redesign] at all." And while there will probably be more about the adventures and personal impressions of *National Geographic* photographers sprinkled throughout the magazine as sidebars, there will be "no dramatic change," he says. "We're about at the point where I would like to see the magazine stay."



© N.G.S./PHOTO BY WOLFGANG BRANDER, EVA GREBEL, YOU-HUA CHU AND NASA

Allen's critics say he lacks editorial vision and that he relies too much on committees and reader surveys to set the editorial direction of the magazine. "They're preaching to their own dying choir," says one veteran photographer. Allen responds to gripes that he puts too much emphasis on the traditional mix of "bones and stones" stories by arguing that readers like them. And no matter what the mix, he points out, somebody would complain.

His defenders say the decline in circulation is due primarily to factors beyond his control, and that it's unlikely anyone could reverse the magazine's fortunes any faster. But there's mounting pressure for bolder changes. Not only is the magazine market changing, the Society has changed dramatically in the last decade. Once a quirky and quarrelsome family operation, the Society has given way to MBA management with a very different set of priorities and expectations.

Above: The millennium cover. Below: Longtime contributor Steve McCurry's photos from Angkor Wat.



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The Heir

Grosvenor, the Society's current chairman, had good reason to start worrying about the Society's fortunes over a decade ago. The third generation scion of the Grosvenor dynasty was, by most accounts, out of his element from the start. He didn't excel as either a writer or a photographer, and as editor of the magazine—a birthright he claimed in 1970—he lacked the enthusiasm, vision and love for the magazine that his father and grandfather had. "I felt sorry for him," says one longtime photographer. "I always had the sense that he was [assuming the mantle] out of a sense of duty and would have rather been doing something else."

Things went well enough for Grosvenor at first. He stuck to tried-and-true formulas. But he kept membership prices artificially low to boost circulation. The magazine went into the red as a result. In 1980, when he was poised to assume the additional title of president of the Society, the board of directors gave him a choice: he could either be president or editor of the magazine, but not both, as his father and grandfather had been.

Grosvenor chose the presidency, and the board named his father's talented protégé, Wilbur Garrett, to replace him as editor of the magazine. (That despite concerns of then board chairman Melvin Payne that Garrett was too liberal). Garrett had a nose for good stories and a willingness to take risks. The magazine was in the red when he took over, so Garrett initiated a series of increases in the price of subscriptions that eventually doubled the cost of membership. Yet he sustained membership levels well above ten million throughout the Eighties. Meanwhile, the book division remained a cash cow, preselling hundreds of thousands of books to members each year.

But by the mid-Eighties, there were signs of trouble. Book sales began dropping off dramatically, because the books all began to look the same and competition from the likes of Reader's Digest and Time Life was growing. Stuck with accumulating print overruns and diminishing storage space, Grosvenor started holding weekend remainder sales. Still, the formulas for producing and marketing books went unchanged.

Grosvenor also missed some lucrative opportunities. After the Society got exclusive pictures of the Titanic discovery, for instance, he ignored advice to publish a Titanic book quickly. The *Geographic*'s research showed that nobody would be interested. So the Society released the pictures to Titanic expedition leader Robert Ballard, who published a book that sold well over a million copies. "It

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CAST OF CHARACTERS

PRESIDENTS	
Gardiner Greene Hubbard	1888-1897
Alexander Graham Bell	1898-1903
W. J. McGee	1904
Willis L. Moore	1905-1909
Henry Gannett	1910-1914
John Elliott Pillsbury	1919
Gilbert H. Grosvenor	1920-1954
John Oliver La Gorce	1954-1957
Melville Bell Grosvenor	1957-1967
Melvin M. Payne	1967-1980
Robert E. Doyle	1976-1980
Gilbert M. Grosvenor	1980-1996
Reg Murphy	1996-1998
John Fahey	1998-present
EDITORS	
Henry Gannett	1988-90
Marcus Baker	1891
W. J. McGee	1892-95
John Hyde	1896-1902
Gilbert H. Grosvenor	1970-80
Wilbur E. Garrett	1980-90
William P. E. Graves	1990-94
William L. Allen	1995-present
CHAIRMEN OF THE BOARD	
Gilbert H. Grosvenor	1954-66
Thomas W. McKnew	1966-67
Melville B. Grosvenor	1967-1976
Melvin M. Payne	1976-1987
Gilbert M. Grosvenor	1987-present



From left to right: Kent Kobersteen, John M. Fahey Jr., William L. Allen, Gilbert M. Grosvenor ALL PHOTOS © N.G.S.

would have been the biggest seller in the history of the *Geographic*," says another inside source.

Even more costly to the Society was its decision to pass up an entrée into the fledgling cable TV business in the Eighties. Management calculated that production costs for a full-time TV operation would be prohibitive, says CEO Fahey. Grosveno recognizes his error: He told *The Washington Post* in 1997 that cable channel competitor Discovery Communications "ate our lunch."

Bickering with the Help

Compounding Grosvenor's troubles was his difficulty getting along with his people. He frequently complained that photographers were out "spending my money," even before money was an issue for the Society. (See sidebar, "The *Geographic*'s Stormy Relations with Photographers.") Photographers are convinced Grosvenor had it in for them in large part because of a widely circulated rumor that his wife accompanied one of the magazine's photographers on assignment, and they had a fling on the road. "I don't believe it," says one veteran, "But I think Gil believed it."

Grosvenor's rift with Garrett, meanwhile, is the stuff of legend. Garrett is said to have been the son that Grosvenor's father never had. And Garrett's success earned him nearly as much power as Grosvenor. There were clear signs that Grosvenor was jealous. Grosvenor once introduced Garrett as the man who took his job. The two men, who had been close friends before 1980, became increasingly estranged.

That fueled plenty of gossip about their efforts to undermine each other. Grosvenor complained increasingly to board members about the magazine's direction under Garrett. And Garrett has been credited—despite his denials—with posting copies of an article about recovering heart bypass patients all over *Geographic* bulletin boards after Grosvenor had heart bypass surgery. The article described how heart bypass patients exhibit erratic behavior and forgetfulness.

Garrett's Achilles' heel was his damn-the-expenses attitude. He spent big bucks on a hologram cover in 1988, for instance, justifying the cost on the grounds that the Society had to be on the cutting edge of new photographic technology. It required months of research and experimentation just to pull it off technically (it involved a bunch of $3,000 Steuben glass globes, an electronically fired bullet and one of the most sophisticated laser beams in the world to light things up). The printing turned out to be a costly nightmare, and the final tab for the cover exceeded $3 million.

Before it was finished, though, Grosvenor ordered Garrett to kill it, and Garrett refused. Finally, in April 1990, when Grosvenor had enough loyal board members behind him, he summoned Garrett to his office and fired him. Named in his place was William Graves, an editor of unremarkable accomplishment who happened to be the husband of Grosvenor's longtime assistant. (Graves was also the brother of longtime *LIFE* editor Ralph Graves). He was willing to take marching orders from Grosvenor. But under Graves, circulation started into its long tailspin.

Down to Business

With membership falling, tried-and-true formulas failing him, and no heir apparent, Grosvenor went looking for help. He found it in Reg Murphy, whom he hired out of semiretirement in 1993. It was the beginning of the Society's big break with its patriarchal traditions.

Murphy made national headlines in 1974

when, while an editor at the *Atlanta Journal-Constitution*, he was kidnapped by a self-styled revolutionary. He spent part of the ordeal being driven around in the trunk of a car, and was released after the newspaper paid a $700,000 ransom. But he made his professional mark as a publisher, first at the *San Francisco Examiner* and then the *Baltimore Sun*, where he modernized operations and proved himself a tough-as-nails manager. He took on the unions over wages and benefits, and cut costs ruthlessly. He wasted little time applying those skills at the National Geographic Society, where he earned the nickname Mack the Knife. Hundreds of employees, including many department heads who had spent their entire careers at the Society, were offered early retirement packages they couldn't refuse. "It was overstaffed," he says. He ushered in a crop of MBA managers. He outsourced fulfillment and other operations to cut expenses. "He brought in corporate America and implanted it deeply at *National Geographic*," notes one insider.

In the biggest blow of all to the Society's high-minded nonprofit traditions, Murphy conceived and launched National Geographic Ventures, a wholly owned for-profit subsidiary. That, he says, "was a move toward an organization that fits the communications world that exists in 2000." It was a way of modernizing products and operations, he says.

For years, *Geographic* attorneys had protected the Society's nonprofit status by steering it away from any nontraditional ventures. "Gil's worst nightmare was for the *Geographic* to turn into a market-driven, for-profit operation," says the same inside source. "The attorneys repeated the nonprofit mantra, but Murphy started saying to them, 'Don't tell me we can't. Tell me how we can.' It was a conscious strategy to make it a for-profit operation."

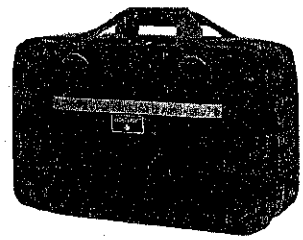
In 1996, Murphy was named the *Geographic*'s first CEO, another sign of the Society's increasingly corporate culture. Murphy left in 1998; Grosvenor had grown uncomfortable with the institutional havoc Murphy had wrought, and Murphy was frustrated by the Society's hidebound traditions. Besides, other interests—golf among them—beckoned (Murphy was president of the USGA in 1994 and 1995). He remains on the *Geographic*'s board as vice chairman.

Murphy was succeeded by Fahey, whom he'd hired in 1996 from Time Life Books to head National Geographic Ventures. Fahey has continued to press the changes that Murphy set into motion and to actively pursue new sources of revenue and other media. "Having a for-profit subsidiary," says Fahey, "is simply a way of achieving our mission in an expanded way, doing things that if you were to stay purely not for profit, you wouldn't be able to do."

"As the place gets more corporate," says a photographer who still shoots for the magazine, "it's less willing to negotiate."

His biggest project has been the National Geographic Channel, which the Society is launching in partnership with Fox Entertainment. The Channel is already making inroads in overseas markets. And part of the Explorer's Hall, a big draw for school groups at Society's headquarters, has been torn out to make way for a new TV studio.

Meanwhile, the Society has overhauled its book division with more cutting-edge titles. The Society is also trying to take advantage of cross-divisional synergies. Magazine, TV and book editors now meet regularly to update each other on pending projects and support each other's initiatives. For instance, National Geographic Television is leading a forthcoming project on Africa that will include books, maps, an article photographed by Nick Nichols and an art exhibition. A few photographers are also now working on



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Rich Clarkson, director of photography from 1985 to 1987, asserts, "Reg Murphy saved that place." But the transition hasn't been entirely smooth, and it is far from complete. Like so many publishers, the Society has yet to see a return on the millions it has sunk into its Web site. And success of its cable channel depends upon its ability to get distribution to a critical mass of homes, something the Society and Fox are spending heavily and working hard to do.

Meanwhile, a number of veterans are convinced that the infidels have stormed the gates and are now sacking the place. "You now have businesspeople running a scientific and educational foundation," says former *Geographic* photographer Louis Psihoyos.

Another photographer who is still active thinks the Society is doing too little, too late. "Cable is yesterday's media," he says, "And *National Geographic*

THE *GEOGRAPHIC'S* STORMY RELATIONS WITH PHOTOGRAPHERS

By the end of last year, no fewer than four lawsuits had been filed by photographers and their agents in federal courts against the *National Geographic*. Their beef? That the Society has re-used their pictures without authorization in various products, most notably the CD containing the complete archives of the magazine since 1888. A year after the CD's release in 1997, the Society claimed it had sold 300,000 copies at a suggested retail price of $150. Photographers aren't getting a dime of it.

Tensions between the Society and its photographers over the rights to their images have been high for more than a decade. Grosvenor always wanted the rights because after all, he reasoned, the *Geographic* was paying a fortune for photo production.

Indeed, through the mid-Eighties, there was no limit on what photographers were allowed to spend. "Once a project was on track, the only limitations were your own creativity and patience," says a photographer who was active in those days. "You were given a sense that the society would give you whatever support [was needed], in terms of financial, time, connections, to make you successful."

Garrett and longtime director of photography (DOP) Robert Gilka shielded photographers from any harangues about their expenses and also protected photographers' rights by arguing that their archives were their pension plans. But those defenses began to break down after Gilka retired in 1985. His replacement, Rich Clarkson, thought photographers were abusing expense account privileges and using their low wages to rationalize it. "I thought it was wrong," says Clarkson.

Clarkson explains that photographers were allowed to buy anything they needed for a story on the *Geographic*'s tab, no questions asked. Then they got to keep the merchandise by paying the *Geographic* half price. "One photographer got a new Jeep Cherokee at half price," he says. In fact, one of Clarkson's first acts as DOP was to locate all the cars that *Geographic* owned, which photographers had bought for assignments then left in parking lots or friends' garages around the globe. He also began pushing for story budgets and accountability. And he prevailed upon Garrett to close down assignments that weren't going anywhere and cut off photographers who weren't producing.

Clarkson was also breaking the news to photographers that they were going to have to give up some rights to help prop up the book division and National Geographic Traveler, which were in trouble at the time. Needless to say, he was making enemies fast. One day he arrived two hours late for a meeting with photographers and informed them that he'd just had a seven-martini lunch. "We can have a wonderfully candid discussion," he said, and before it was over, he had dissed the Society, its book division, and its president and chairman, Gil Grosvenor. The meeting was taped, and someone delivered a transcript to Grosvenor. Clarkson was finished.

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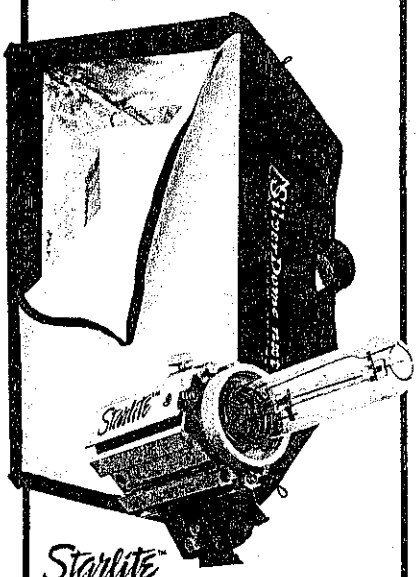
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Photographers who don't like the new arrangement haven't been able to do much about it besides get angry. If they refuse to accept the terms, they don't get any work. Louis Psihoyos's last story ran in 1996 because he challenged the Society on foreign edition and CD rights. "Kobersteen is a bully," Psihoyos says. "He told me two times, 'If you don't play ball, word from upstairs is you'll never work here again.'" Others say they've been told the same thing.

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CIRCLE #14 ON THE READER SERVICE CARD

is not big enough to compete with the Time Warners and AOLs of the world. It's inevitable that they'll have to be acquired to survive."

Maybe, maybe not. But one thing is certain: The National Geographic Society is no retiring magazine publisher anymore. And time will tell whether the magazine that drove the Society for so long can figure out a way to harness the best of the Society's old and new ideals, and attract a new generation of readers. □

of photographers that have stepped forward to try to negotiate have been singled out as troublemakers, which has discouraged dissent. And photographers have been unable to stick together as a large group. They hired a lawyer several years ago to negotiate for them, but that failed because their individual interests were too disparate.

John Fahey briefly renewed photographers' hopes. After his promotion to CEO in 1998, he pledged to repair relations. And he accompanied a couple of photographers on assignment, which all took as an encouraging sign of empathy.

But their hopes were dashed by the next photographers' seminar. "We were handed a package of [contract] ultimatums," says one contributor. That was in late 1998. Photographers were so furious, they aired the dirty laundry to *The New York Times* in an early 1999 article. Fahey was infuriated and abruptly canceled a previously scheduled conference call with photographers. "The message was, 'That's it, talks are done,' " says the contributor. More than 50 photographers subsequently signed a letter to Allen and Fahey protesting the contract terms.

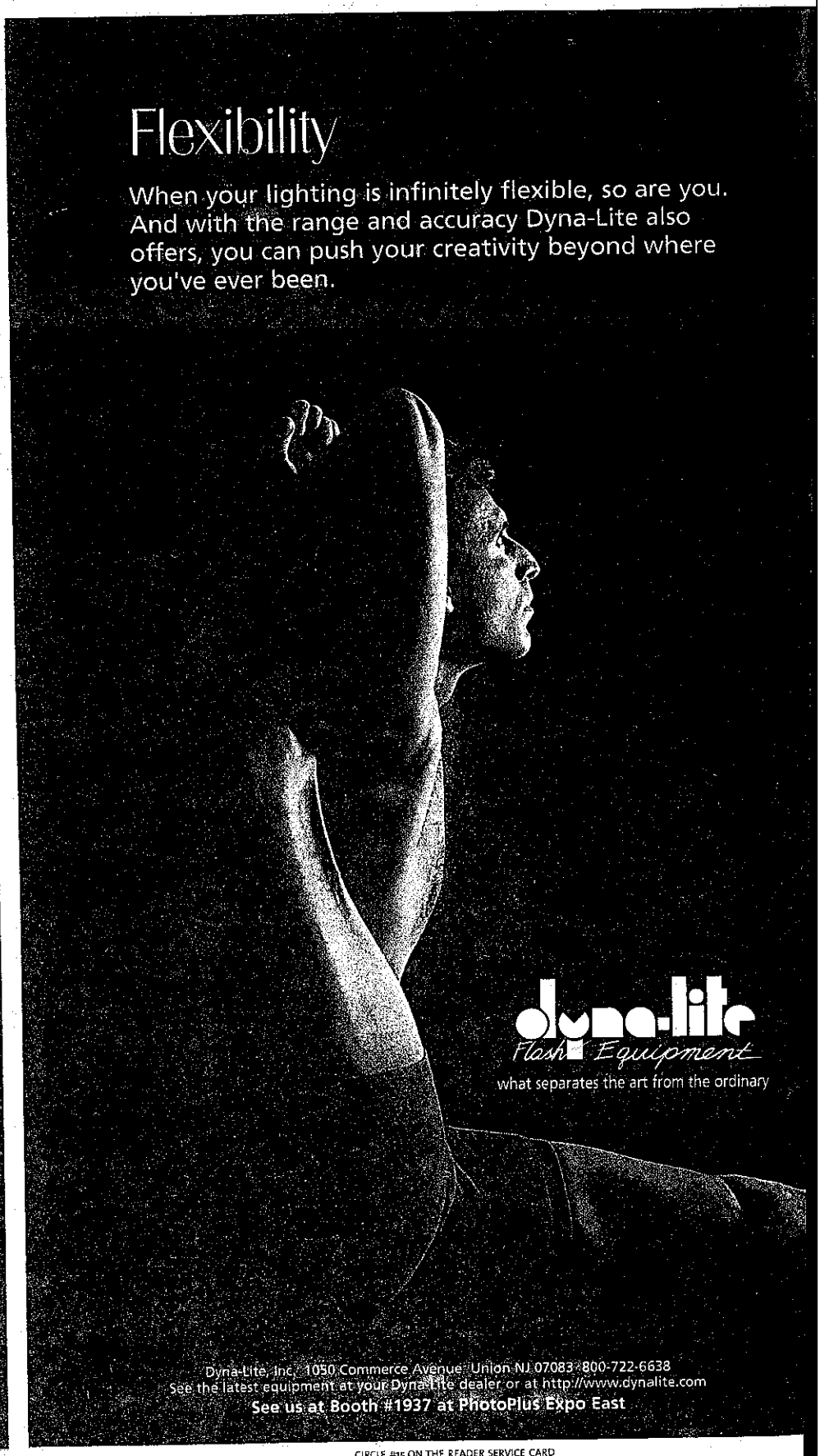
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By most accounts, Kobersteen and the *Geographic* don't bear grudges. Eighteen months later, most of the blacklisted photographers are getting assignments again. (In the *Geographic*'s defense, some say assignments dwindled because of a huge backlog of stories).

Photographers who are shooting for the magazine are working on the *Geographic*'s terms. "Every time there's a confrontation, it's their football," says one. "As the place gets more corporate, it's less willing to negotiate."

Kobersteen says the *Geographic* has made concessions to photographers, and he hasn't heard any more complaints. "Photographers seem to be happy with the contract," he asserts. But photographers convey the sense that they're simply exhausted by the fight.

It may take a new generation of *Geographic* shooters to renew the struggle, but it seems less and less likely that will happen. Up-and-coming photographers—who will never know the endless assignments, open expense accounts and lucrative resales of bygone days—won't have the same sense of loss to spur them on. ■



CIRCLE #15 ON THE READER SERVICE CARD

THE *GEOGRAPHIC'S* STORMY RELATIONS WITH PHOTOGRAPHERS

By the end of last year, no fewer than four lawsuits had been filed by photographers and their agents in federal courts against the *National Geographic*. Their beef? That the Society has re-used their pictures without authorization in various products, most notably the CD containing the complete archives of the magazine since 1888. A year after the CD's release in 1997, the Society claimed it had sold 300,000 copies at a suggested retail price of $150. Photographers aren't getting a dime of it.

Tensions between the Society and its photographers over the rights to their images have been high for more than a decade. Grosvenor always wanted the rights because after all, he reasoned, the *Geographic* was paying a fortune for photo production.

Indeed, through the mid-Eighties, there was no limit on what photographers were allowed to spend. "Once a project was on track, the only limitations were your own creativity and patience," says a photographer who was active in those days. "You were given a sense that the society would give you whatever support [was needed], in terms of financial, time, connections, to make you successful."

Garrett and longtime director of photography (DOP) Robert Gilka shielded photographers from any harangues about their expenses and also protected photographers' rights by arguing that their archives were their pension plans. But those defenses began to break down after Gilka retired in 1985. His replacement, Rich Clarkson, thought photographers were abusing expense account privileges and using their low wages to rationalize it. "I thought it was wrong," says Clarkson.

Clarkson explains that photographers were allowed to buy anything they needed for a story on the *Geographic*'s tab, no questions asked. Then they got to keep the merchandise by paying the *Geographic* half price. "One photographer got a new Jeep Cherokee at half price," he says. In fact, one of Clarkson's first acts as DOP was to locate all the cars that *Geographic* owned, which photographers had bought for assignments then left in parking lots or friends' garages around the globe. He also began pushing for story budgets and accountability. And he prevailed upon Garrett to close down assignments that weren't going anywhere and cut off photographers who weren't producing.

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