Fred: Let me know what you think.

GEOGRAPHIC MAKES AN OFFER

There is good news and bad news.
Geographic has made an offer. It is not nearly good enough.

Some have received the following letter from Total Clearance:

"As you may know, my client, National Geographic Society is developing a digital archive of National Geographic Magazine from 1888 through 1996, entitled The Complete National Geographic on CD-ROM. It is intended to contain a digital image of every page of the magazine, including advertisements, without any changes or modifications. The CD-ROM will contain a search engine based on National Geographic Society proprietary indexing scheme; the product does not allow users to cut and paste photographs or text, and while photographs or text; can be printed, the quality is inferior to a photocopy of the magazine itself.

"This product has been designed as a low-cost reference tool for educators, libraries, students and families. Producing a CD-ROM of this size is an expensive proposition; however, the 30 volume set has been priced at $199 to make it more affordable for educational institutions and families. The Society does not expect to do more than break even on this project.

"Certain images for which restricted publication rights were obtained from have appeared in National Geographic Magazine, and I have been commissioned to offer you a fee of $20.00 per photo, regardless of the size, for the licensing rights to include these images in this CD-ROM archive, as well as on versions in CD-I, DVD, and other versions, editions, adaptations, or sequels to the original title. The term and territories sought for this product is twenty years worldwide, in all languages. All photos will be used as they originally appear in the magazine, without alterations. Promotional rights for these images are not included.

"I will contact you shortly to discuss this further."

This is signed by Jill Alofs, President of Total Clearance. Their address is: P.O. Box 836, Mill Valley, CA 94942, Phone: 415-389-1531, Fax: 415-380-9542.

Reviewing The Offer

One of the major positives is that Geographic has acknowledged that they have an obligation to pay for this usage. It may be fairly safe to assume that any freelancer who has produced work after 1976 will eventually receive one of these offers. It is not clear what Geographic will claim for work done prior to that time.

The question facing each of us is whether or not to accept the offer.

I personally think the offer is very inadequate. Lets begin by looking at some numbers.

At $200 per set they only have to sell 5,000 sets to produce $1,000,000 in gross revenue. What's the likelihood of that happening? Here are some approximate figures of the potential buyers:

Public Secondary Schools	20,059	
Private Secondary Schools	6,500	(approximately)
Public Libraries	8,929	
College & University Libraries		
	35,488	

These are just the institutions in the United States. It would seem to me that every one of them will need at least one copy of this disc set. That would mean over $7,000,000 in gross sales without counting a single copy being sold to a private individual. Maybe they won't all buy within the first year, but can you imagine any of them not owning a set within five years.

If Geographic were to set aside 10% of gross sales of this product to pay royalties to the copyright holders they would have a fund of $700,000.

Of course we are talking about a lot of images. I have no idea how many, but it may be helpful to make some guesses. I have counted the number of pictures in a few issues of Geographic and have a low of 105 and a high of 140 per issue. Thus, I am going to assume a rough average of 125 per issue. If we look at 50 years of issues that would be 600 times 125 or 75,000 images.

My guess is that much of the earlier work was done by staffers, not freelancers. And, of the work in the last 50 years, I suspect that at least 2/3rds of that was done by staffers who don't qualify to share royalties.

Consequently, my guess is that their might be as many as 25,000 images that are entitled to royalties. It may be a lot smaller number, but I doubt that it is much higher. 25,000 times $20 each is $500,000.

Thus, Geographic hasn't even allocated 10% of the gross sales to compensate the photographers.

Other Issues

1 - We are not just talking about sales in the U.S., we are talking about sales worldwide.

2 - The contract is for 20 years. In 20 years they can sell a huge number of disc sets. To agree to any single fee for a 20 year right is a major hazard. There is no predicting what will be possible in 20 years. More and more publishers are pushing for long term agreements and this has to be stopped.

3 - The contract covers "other versions, editions, adaptations, or sequels to the original title." It doesn't say on-line, but anyone right out of law school could interpret "adaptations" and "sequels" as allowing on-line distribution of this material. If on-line is not specifically prohibited in the contract they are going to ask you to sign, you can be sure that this material will appear on-line in the very near future. If you sign this agreement there will be no additional compensation for this on-line use.

4 - They want the right to publish "in all languages," but they say they are just scanning the page as it originally appeared in the magazine. The magazine is in English. How are they going to supply this information in other languages? Of course they have 20 years to work that out. Where will technology be then?

If they are not going to supply the information in other languages why do they need that right?

5 - They want the right to produce "other versions." They are not prohibited from re-scanning to a better resolution for those other versions. Any segment (individual story or collection of stories) could be considered another version.

6 - What about the text that some of you have written? What are they going to offer for that?

7 - What are they going to do with CD-I? Are they going to have people reading the stories in other languages and show the pages as a multi-media show?

Your Options

1 - You can say no. At least one photographer has already done that. It they use his images it will be a copyright infringement unless they can negotiate a better deal with him. What they will probably do is publish the full set and blank out the few images this photographer has produced.

2 - At the very least you can delay signing any agreement until the many undefined issues are clarified.

3 - You can negotiate a higher one time fee. Some may be able to hold out for $40 or $100 per image. This may work for those of us who have no desire to work for Geographic in the future, but anyone who wants to continue to work with them probably needs to be prepared to accept their first offer or face retaliation.

4 - I would like to see us ban together and hold out for a "percentage of gross."

The percentage of gross can have important benefits for every freelance contributor to Geographic.

Everyone would get the same deal. Individuals who currently work for Geographic would not have to risk reprisal by taking a position because they would be automatically covered by any royalty arrangement negotiated.

Any royalty agreement that can be negotiated is likely to have long term benefits for every professional editorial photographer. It will set a precedent not only at Geographic, but that other major publishers will not be able to easily ignore.

It should be made clear that any percentage agreed to is for this one project only. The percentage itself will not necessarily be applicable to any future projects. The percentage for each new project will always be negotiable. The process of paying a percentage of gross as a royalty rather than a fixed fee would be the precedent setting aspect of the agreement.

A percentage of gross can solve all the "what if" problems of the future. If Geographic develops other versions, or adaptations or sequels at least we will get fair compensation relative to what they earn.

The ideal is to build into the agreement a provision for a re-negotiation of the percentage for each new version.

If you decide to hold out for a royalty it is entirely possible that you won't earn $20 per image. But, it is also very possible that over the life of the contract - 20 years - you will earn a lot more than $20 per image.

Maybe Geographic really needs most of the $199 per disc set to cover their overhead. If that is the case, I would suggest that in order to pay a 10% royalty they simply raise the price to $222 then they can pay the content creators 10% and still end up with more than they would have otherwise. They have no risk. If the discs don't sell well they haven't spent a lot of money in up front payments for rights to content. I can't imagine that the higher price is going to cause them to lose many sales. If someone is willing to pay $199 for this product, I can't imagine they are going to balk at paying $222.

Sincerely,

Jim Pickerell

Who Likes The Royalty Idea?

While it would be easier if all copyright holders were to agree to one system of pay outs, it might be possible for one group to accept the $20 as a one-time payment and another group to negotiate a royalty arrangement. For this reason, I would like to know how many would prefer a royalty instead of the $20. I also need to know the number of your images which were published and were produced on a freelance or contract basis, even if you don't want your name used. That way I can say that X number of photographers with a total of X images in the magazine would prefer to receive a royalty rather than a one time $20 fee. I assure everyone who signs this agreement that your name will not be made public. You will simply be counted as one of a number of photographers supporting this position.

I urge you to respond quickly. We need to be talking to someone at Geographic, not at Total Clearance. Arms length negotiations are not satisfactory and will not solve our problem.

I would prefer to receive a royalty for the use of my images in <u>The Complete National Geographic on CD-ROM</u>.

_____ print name

_____ total images in magazine to which you own the copyright

_____ signature