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CONTACT

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SIZE:

QUANTITY:

COMPOSE:

SHRINK:

SPREAD:

JANE KINNE

PH: 1-203-966-4900

FX: 1-203-966-7292

097602359



FORM VA For a Work of the Visual Arts UNITED STATES COPYRIGHT OFFICE

VA 931-760

EFFECTIVE DATE OF REGISTRATION

JUL 14 1998

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK NATURE OF THIS WORK See instructions

108 YEARS OF NATIONAL GEOGRAPHIC MAGAZINE ON CD-ROM CD-ROM

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date On Pages

2

a NAME OF AUTHOR DATES OF BIRTH AND DEATH Year Born Year Died

NATIONAL GEOGRAPHIC SOCIETY

Was this contribution to the work a "work made for hire?" Yes No AUTHOR'S NATIONALITY OR DOMICILE Name of Country Citizen of Domiciled in USA WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymously? Pseudonymously? Yes No Yes No

NOTE Under the law, the "author" of a "work made for hire" is generally the employer, not the employee. For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions. 3-Dimensional sculpture 2-Dimensional artwork Reproduction of work of art Design on sheetlike material Map Photograph Jewelry design Technical Drawing Text Architectural work introductory audiovisual montage

b NAME OF AUTHOR DATES OF BIRTH AND DEATH Year Born Year Died

Was this contribution to the work a "work made for hire?" Yes No AUTHOR'S NATIONALITY OR DOMICILE Name of Country Citizen of Domiciled in WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymously? Pseudonymously? Yes No Yes No

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions. 3-Dimensional sculpture 2-Dimensional artwork Reproduction of work of art Design on sheetlike material Map Photograph Jewelry design Technical Drawing Text Architectural work

3

a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases. 1997 Year

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Complete this information ONLY if this work has been published. Month JANUARY Day 1 Year 1997 USA Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same author given in space 2. NATIONAL GEOGRAPHIC SOCIETY WASHINGTON, DC 20036

APPLICATION RECEIVED JUL 14 1998 ONE DEPOSIT RECEIVED JUL 14 1998 TWO DEPOSITS RECEIVED REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

EXAMINED BY

JHA

FORM VA

\* Amended by CO per telephone conversation with Paul Kilmer, Esq., authorized agent of National Geographic Society, on February 1, 1999.

CHECKED BY

CORRESPONDENCE  
 Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

- a.  This is the first published edition of a work previously registered in unpublished form.
- b.  This is the first application submitted by this author as copyright claimant.
- c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number Year of Registration ▼

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates.

6

COMPILATION OF PRE-EXISTING MATERIAL PRIMARILY PICTORIAL.

See instructions before completing this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

\* audiovisual montage

BRIEF INTRODUCTORY GRAPHIC MATERIAL

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Account Number ▼

NATIONAL GEOGRAPHIC SOCIETY

DA 044229

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip

SEE SPACE 9

Area Code & Telephone Number ▶

(202) 857-7490

Be sure to give your daytime phone number

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one ▼

- author
- other copyright claimant
- owner of exclusive right(s)
- authorized agent of NATIONAL GEOGRAPHIC SOCIETY  
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date. If this application gives date of publication in space 3, do not sign and submit it before that date.

ANGELO M. GRIMA

*Angelo M. Grima*

date ▶ 7-10-98

Handwritten signature (X) ▼

8

MAIL CERTIFICATE TO

Certificate will be mailed in window envelope

Name ▼ SHEILA HOCKER

Number/Street/Apartment Number ▼ NATIONAL GEOGRAPHIC SOCIETY  
1145 17TH STREET, NW - RM. 590

City/State/ZIP ▼ WASHINGTON, DC 20036

YOU MUST  
• Complete all necessary spaces  
• Sign your application in space 6

- SEND ALL PAYMENTS IN THE SAME ENVELOPE
1. Application form
  2. Nonrefundable \$20 filing fee in check or money order payable to Register of Copyrights
  3. Deposit material

MAIL TO  
Register of Copyrights  
Library of Congress  
Washington, D.C. 20559

The Copyright Office has the authority to adjust fees at 2-year intervals, based on changes in the Consumer Price Index. The next adjustment is due in 1998. Please contact the Copyright Office after July 1998 to determine the actual fee schedule.

9

Thus, the use of the Sequence in the context of the entire CNG is not a *de minimis* use that fails to reach the threshold of actionable copyright infringement. The two cases principally relied upon by the Society, *Ringgold v. Black Entm't Television, Inc.*, 126 F.3d 70 (2d Cir. 1997), and *Amsinck v. Columbia Pictures Indus., Inc.*, 862 F. Supp. 1044 (S.D.N.Y. 1994), are not to the contrary. The "iconic" display at the beginning of each disc in the CNG product argues against the suggestion that the use of the Sequence in the CNG or the use of the Greenberg diver photograph in the Sequence is inconsequential. Accordingly, because we find the unauthorized use of the subject photograph to be both qualitatively and quantitatively significant, we reject the *de minimis* defense advanced by the Society and its putative co-infringers.

### III. CONCLUSION

We conclude that the unauthorized use of the Greenberg photographs in the CNG compiled and authored by the Society constitutes copyright infringement that is not excused by the privilege afforded the Society under § 201(c). We also find that the unauthorized use of Greenberg's diver photograph in the derivative and collective work, the Sequence, compiled by the Society, constitutes copyright infringement, and that the proffered *de minimis* use defense is without merit. ~~Upon remand, the court below is directed to enter judgment on those copyright claims in favor of Greenberg. Costs for the appellant should be paid by defendant. Attorneys fees relating to this appeal to the district court should be reviewed and approved. We find the appellant to be the prevailing party on this appeal and, therefore, is entitled to an award of costs and attorneys fees.~~ Upon remand, the district court should ascertain the amount of damages and attorneys fees that are due, if any, as well as any injunctive relief that may be appropriate. In assessing the appropriateness of injunctive relief, we urge the court to consider alternatives, such as mandatory license fees,

in lieu  
educa  
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in lieu of foreclosing the public's computer-aided access to this educational and entertaining work.

**REVERSED and REMANDED.**

clerk for letter

PRINCE

REG-16MAY

# National Geographic Society

1145 17th Street N.W., Washington, D.C. 20036-4688

TERRENCE B. ADAMSON  
Executive Vice President

January 29, 2003

Telephone: (202) 857-7449  
Fax: (202) 429-5744  
E-mail: [tadamson@ngs.org](mailto:tadamson@ngs.org)

## Via Overnight Courier

Mr. Jerry Greenberg  
c/o Norman Davis, Esq.  
Steel Hector & Davis LLP  
200 South Biscayne Blvd.  
Miami, FL 33131-2398

Dear Mr. Greenberg:

As you know, the National Geographic continues to believe that it is entitled to publish the Complete National Geographic under 201(c) of the Copyright Act and its agreements with you. This notwithstanding, we sent you a check in the amount of \$2,834 on December 11, 2002, which you returned uncashed. That amount was calculated based upon our expert's calculation of value of the works at issue.

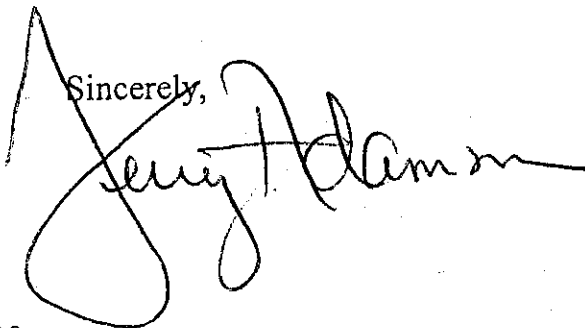
Given that there is currently a judgment on liability, which the Society believes should be reversed on appeal, we are sending you a check for \$13,000 which represents \$200 per "work infringed," calculated using 65 works. As I stated in my letter of December 11, 2002, we do not concede that the number of "works" is 65, but are basing our calculation on that number since that is what you allege. The Society does not believe it lawfully owes any monies for the publication at issue, much less for 65 works, and intends to appeal the decision to the appropriate forum.

We do recognize, however, that because of the judgment on liability, the parties are forced to try the damages phase of the case, which will be a significant expense to you. In an effort to save you the expense of trying the case, the Society is willing to pay you \$13,000, which represents what we believe will be your maximum recovery based upon the evidence at a trial. The payment of this amount does not waive, in any way, the National Geographic's defenses to the claim or its right to take an appeal. Rather, if you accept such amount, the parties would enter into a Final Judgment in that amount, from which the Society would, in its sole discretion, take an appeal. This would save you the expenses associated with trying the damages case and provide you with the maximum

Mr. Jerry Greenberg  
c/o Norman Davis, Esq.  
Page Two  
January 29, 2003

amount the Society believes you would receive were the case tried. Even if the Society were to prevail on an appeal of the Final Judgment, it will not seek the reimbursement of the \$13,000 from you. Thus, you have no risk associated with any appeal of the Final Judgment.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Adamson". The signature is written in a cursive style with a large, sweeping initial "J" and "A".

Enclosure – Check for \$13,000.00

cc: Stephen N. Zack, Esq.  
Robert Sugarman, Esq.

**NATIONAL GEOGRAPHIC SOCIETY**

1145 17th Street N.W.  
Washington, D.C. 20036-4688

Riggs Bank N.A.  
Washington, D.C.

129639

15-3  
540

Date Jan. 29, 2003

Pay Amount 13,000.00\*\*\*

Pay \*\*\*\*THIRTEEN THOUSAND AND XX / 100 DOLLAR\*\*\*\*

Void after 90 days

To The  
Order Of

JERRY GREENBERG  
C/O NORMAN DAVIS ESQ  
STEEL, HECTOR & DAVIS LLP  
200 SOUTH BISCAIYNE BLVD  
MIAMI, FL 33131

*H. Gregory Platts*

Authorized Signature

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