

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
CASE NO. 97-3924-CIV-SIMONTON

JERRY GREENBERG, individually,

Plaintiff,

vs.

NATIONAL GEOGRAPHIC
SOCIETY, a District of Columbia
corporation, NATIONAL GEOGRAPHIC
ENTERPRISES, INC., a corporation,
and MINDSCAPE, INC., a
California corporation,

Defendants.

**PLAINTIFF'S RENEWED RULE 59(A) MOTION
FOR JUDGMENT AS A MATTER OF LAW IN
PLAINTIFF'S FAVOR ON ISSUE OF WILLFULNESS**

Plaintiff, JERRY GREENBERG ("Greenberg"), respectfully renews the ore tenus motion for judgment as a matter of law under Rule 50(a). Greenberg further states:

1. At the close of the evidence, Greenberg moved for judgment as a matter of law on the issue of willfulness, arguing that as a matter of law the Defendants' infringement of Greenberg's copyrights must be deemed willful after the Defendants continued to infringe those copyrights following the Eleventh Circuit's earlier decision in this case.

2. The Court reserved judgment on the motion and permitted the jury to consider the question in their deliberations.

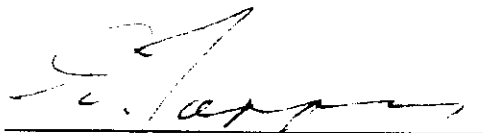
3. The Jury found in favor of Greenberg on this issue and awarded Greenberg statutory damages in the amount of \$100,000 per work infringed.

4. Although Greenberg's motion could now be moot in light of the Jury's verdict, the issue remains pending for the Court's consideration. Based upon the fact the Defendants have moved for judgment as a matter of law or new trial on the willfulness issue, Greenberg requests that the Court consider and dispose of Greenberg's motion in the event that the Court grants any relief to the Defendants in accordance with their pending Rule 50(a) motions. In the event that the Court fully denies the Defendants' motions, Greenberg would then agree that his pending motion for Rule 50(a) on the same issue would become moot and could be denied as such.

5. For the sake of brevity, Greenberg will not separately prepare a memorandum in support of this alternative motion, and instead refers the Court to pages 29-36 of his Memorandum in Opposition to the Defendants' Motions for Judgment as a Matter of Law, Motion for New Trial and Motion for Remittitur, which is being filed simultaneously with this renewed motion. In that section of this Memorandum, Greenberg explains why the Court could find that the Defendants engaged in willful copyright infringement as a matter of law following the point in time when the Eleventh Circuit's decision in this case became final.

Respectfully submitted.

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Certificate of Service

I hereby certify that a copy of the foregoing notice was served by mail on Edward Soto, Esq., Weil, Gotshal & Manges LLP, 701 Brickell Avenue, Suite 2100, Miami, FL 33131; by electronic means on Stephen N. Zack, Boies, Schiller & Flexner LLP, 2800 Bank of America Tower, 100 Southeast Second Street, Miami, FL 33131; and ^{by mail} on Robert G. Sugarman, Esq., Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York NY 10153 this 19th day of May 2003.

