## WEIL, GOTSHAL & MANGES LLP

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September 30, 1999

## YIA FACSIMILE

Alan C. Trachtman, Esq Desly & Trachtman, LLP 725 Broadway, Suits 1405 New York, New York 10007

Re: The Complete National Geographic

Dear Mr. Trachtman:

I am in receipt of your letter dated September 28, 1999 and I have reviewed the Second Circuit's decision in <u>Issinitetal</u>, v. The New York Times Co., Inc., et al., For the reasons set forth below, the <u>Taxinitetal</u>, bolding does not address The Complete National Geographic ("CD-ROM 108"), which the National Geographic Society (the "Society") published lawfully pursuant to § 201(c) of the Copyright Act. In fact, CD-ROM 108 is precisely the type of collective work reproduction permitted under the <u>Taxinite</u> opinion.

The puly issue decided by the Second Circuit in Taxini was "whether, in the absence of a transfer of copyright or any rights thereunder, collective-work authors may re-license individual works in which they own no rights" for use its databases like NEKIS. Not surprisingly, the court held that they could not. And, for reasons applicable to Taxini but not to CD-ROM 108, the court found that the CD-ROMs and the electronic thanbases at issue in Tusini did not preserve though of the copyrightable aspects (i.e. selection, coordination and arrangement of preexisting materials) of the original collective works to constitute "revisions" of those works within the meaning of § 201(c). The databases and CD-ROMs contained innumerable contributions to imminerable periodicals—not just those published by the defendant—and allowed retrieval "according to criteria unrelated to the particular edition in which the articles first appeared." In addition, the court found it "significant" that the defendant publishers in Taxini evinced no "intent to compet, or even to permit, an end user to retrieve an individual work only in connection with other works from the edition in which it ran."

FROM : AMS SEM-38-1999 15:23 PHONE NO. : 212+385+2778

WELL, GOTEHAL & MANGES LLP

Alan C. Trachiman, Esq. September 30, 1999 Page 2

In producing CD-ROM 108, the Society did not "re-license individual works in which [it] owns no rights." Nor did it alter the selection, coordination and arrangement that made the original collective works – editions of the National Geographic Magazine – original and copyrightable. Quite the opposite – the Society simply republished, in electronic format, exact copies of the original collective works – including all articles, photographs, graphics, advertising, notices of copyright and attributions – in which it owns copyright. Moseover, CD-ROM 108 provides no tools to permit an end user to retrieve articles and photographs except "in connection with other works from the editions in which [they] ran."

Thus, CD-ROM 108 is nothing more than a collection, in one place, of prior issues of the magazine. For years, publishers have sold collections of their publications in bound volumes and on microfilm and microfiche. Libraries around the country, including institutions such as the Library of Congress and the libraries of Circuit Courts, have regularly made available periodiculs originally published in print form in these media. Under the Copyright Act – which, as I am sure you are aware, is medium-neutral – what the Society did in producing CD-ROM 108 was no different.

The position of the Society, therefore, remains that its production of CD-ROM 108 was wholly within its rights under § 201(c) of the Copyright Act.

I would be pleased to talk further about this if you believe it would be helpful.

Sincerely,

Robert C. Sugarman