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Address <http://www.nationalgeographic.com/cgi-bin/webvoyag.cgi>

Search NGS Resources

Database Name: ORBIS -- NGS Library Catalog
Search Request: Keyword = Wondrous AND World AND Fishes
Search Results: Displaying 1 through 2 of 2 entries.



#	Title	Author	Pub Date
<input checked="" type="checkbox"/> 1	<u>Wondrous world of fishes.</u>	<u>National Geographic Society (U.S.)</u>	<u>1969</u>
<input checked="" type="checkbox"/> 2	<u>Wondrous world of fishes.</u>	<u>National Geographic Society (U.S.)</u>	<u>1965</u>

e



WebVoyage Titles

Address

Search Results: Displaying 1 through 6 of 6 entries.

#	Title	Author	Pub Date
<input type="checkbox"/> 1	<u>Underwater archaeology : exploring the world beneath the sea / Jean-Yves Blot ; [translated from</u>	<u>Blot, Jean-Yves.</u>	<u>1996</u>
<input type="checkbox"/> 2	<u>Men beneath the sea : man's conquest of the underwater world / by Hans Hass.</u>	<u>Hass, Hans.</u>	<u>1975</u>
<input checked="" type="checkbox"/> 3	<u>World beneath the sea. Prepared by the Special Publications Division, National Geographic Society.</u>	<u>Barada, Bill.</u>	<u>1973</u>
<input type="checkbox"/> 4	<u>World beneath the sea, ; with a foreword by Maurice Burton.</u>	<u>Torchio, Menico.</u>	<u>1972</u>
<input type="checkbox"/> 5	<u>Pirate port, the story of the sunken city of Port Royal Robert F. Marx.</u>	<u>Marx, Robert F., 1933-</u>	<u>1967</u>
<input checked="" type="checkbox"/> 6	<u>World beneath the sea, by James Dugan. Foreword by Gilbert M. Grosvenor.</u>	<u>Dugan, James, 1912-1967.</u>	<u>1967</u>



WebVoyage Titles



Address http://www.nationalgeographic.com/cgi-bin/webvoyag.cgi

New Search

Help

Home

Database Name: ORBIS -- NGS Library Catalog
Search Request: Keyword = Undersea AND Treasures
Search Results: Displaying 1 through 4 of 4 entries.



Table with 4 columns: #, Title, Author, Pub Date. It lists four search results for 'Undersea treasures', with the fourth result selected and dated 1974.



WebDoyage Titles

Address

#	Title	Author	Pub Date
<input type="checkbox"/> 1	<u>Atlas of shipwrecks & treasure : the history, location, and treasures of ships lost at sea / by N</u>	<u>Pickford, Nigel.</u>	<u>1994</u>
<input type="checkbox"/> 2	<u>Hidden treasures of the sea / .</u>	<u>National Geographic Society (U. S.). Special Publications Division.</u>	<u>1988</u>
<input type="checkbox"/> 3	<u>Treasures of the sea : marine life of the Pacific Northwest / by James Cribb.</u>	<u>Cribb, James, 1956-</u>	<u>1983</u>
<input checked="" type="checkbox"/> 4	<u>Schatten in de zee / Robert M. McClung ; .</u>	<u>McClung, Robert M.</u>	<u>1977</u>
<input checked="" type="checkbox"/> 5	<u>Schätze auf dem Meeresgrund / Robert M. McClung ; .</u>	<u>McClung, Robert M.</u>	<u>1977</u>
<input checked="" type="checkbox"/> 6	<u>Tesoros en el mar / Robert M. McClung ; .</u>	<u>McClung, Robert M.</u>	<u>1977</u>
<input checked="" type="checkbox"/> 7	<u>Treasures in the sea, by Robert M. McClung.</u>	<u>McClung, Robert M.</u>	<u>1972</u>
<input type="checkbox"/> 8	<u>Exploring and understanding oceanography.</u>	<u>Dean, Anabel.</u>	<u>1970</u>
<input type="checkbox"/> 9	<u>Underwater archaeology, treasures beneath the sea.</u>	<u>Pinney, Roy.</u>	<u>1970</u>

Browser Atlas



WebVoyage Titles

Address

Database Name: ORBIS -- NGS Library Catalog

Search Request: Keyword = Vacationland

Search Results: Displaying 1 through 3 of 3 entries.

#	Title	Author	Pub Dat
<input type="checkbox"/> 1	<u>Focus on Switzerland.</u>	<u>Schweizerische Zentrale für Handelsförderung.</u>	<u>1982</u>
<input checked="" type="checkbox"/> 2	<u>Vacationland U. S. A.</u>	<u>National Geographic Book Service.</u>	<u>1970</u>
<input type="checkbox"/> 3	<u>Here's New England! A guide to vacationland, written and compiled by members of the Federal Write</u>	<u>Federal Writers' Project.</u>	<u>1939</u>

NEW ENLARGED EDITION (1969) ^{Yes + '68} 1/29 ^{elice}

WONDROUS WORLD OF FISHES ^{Yes}

LIB. CONGRESS CARD 71-91441

QL#

REVISED EDITION (1973) ¹⁹⁶⁷

WORLD BENEATH THE SEA ^{Yes}

~~Italian~~
~~French~~
~~Spanish~~

LIB. CONGRESS CARD NO. 71-173305

ISBN ~~0-870-44~~ - 046-2

UNDERSEA TREASURES (1974) ^{Yes}

ISBN 0-87044-147-7

HOW ANIMALS HIDE : YOUNG EXPLORERS
(1973) ^{fr. Sp. Germ Eng}

78 sp eng

TREASURES IN THE SEA (1989) ^{Yes Eng}
^{Dutch Ger Sp}

FISH FILMSTRIP (1971)

VACATIONSLANDS USA (1970) ^{Yes}

SEALIFE FILM STRIP (1973)

Confidential to Norman Davis and David Aronberg
Reply to Defendants' Motion to Dismiss

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Motion
to
Dismiss

The facts of this case are even more compelling than those in Tasini. In Tasini, some of the reproductions eliminated advertisements and photographs and changed layout and like elements. For example, the NEXIS service immersed all of the articles in a database including articles from other publications, thus eliminating the sequence and organization of the original articles. Tasini, 974 F. Supp at 823-4. In addition, NEXIS did not reproduce the photographs, captions and layouts of the original publications. Id. at 824. By contrast, CD-ROM 108 displays an image of each page of the Magazine *exactly* as it appeared in hard copy, including all articles, photographs, graphics, advertising, notices of copyright, and attributions. Stanton Decl. at ¶ 5. CD-ROM 108 thus retains all of the elements of the original Magazine.

P. 7
Motion
to
Dismiss

The House Report summarized the compromise as follows:

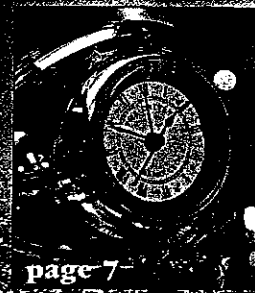
The magazine contributors, while strongly supporting the basic presumption in their favor, suggested that the last clause be deleted as unduly restrictive. However, the committee considers this clause, under which the privilege of republishing the contribution under certain limited circumstances would be presumed, as an essential counterpart of the basic presumption. Under the language which has been retained a publisher could reprint a contribution from one issue in a later issue of his magazine, or could reprint an article from a 1970 edition of an encyclopedia in a 1980 revision of it; he could not revise the contribution itself or include it in a new anthology or an entirely different magazine or other collective work.

H.R. Rep. No. 2237, 89th Cong., 2d Sess 117 (1966) (later summarized in the final report on the 1976 Act, H.R. Rep. No. 1476, 94th Cong., 2d Sess. 122-23 (1976)).

Revising the cover photograph is covered by this phrase - they cannot do it. They made a derivative work of JG's © photo. (© assigned to him in 1985 by NGS)

They also joined JG's © photo permanently to the ship photo before it and the dancer photo after it. JG gave them no permission to do it. They are irretrievably entwined. You cannot separate them from the CD

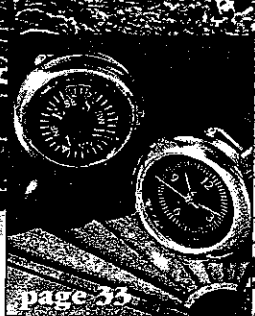
NATIONAL GEOGRAPHIC SOCIETY



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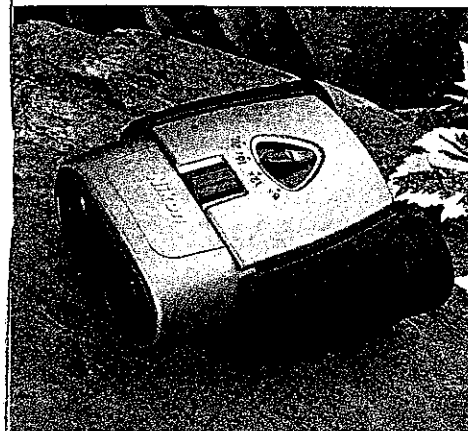
page 33

1997 HOLIDAY GIFTS

Order as late as Dec. 19 for Christmas delivery!
(with express shipping)

See p. VI

THE SEASON'S BEST



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The problem with most powerful binoculars is that you can't use the strongest magnification for long—the image is just too “jumpy.” The zoom feature on this powerful (8-through-20-power) viewing instrument remedies that: You can fine-tune the image for the perfect balance of maximum magnification and stability. Compact and lightweight, it's ideal for travel and features a rubber-coated nonslip grip, and unsurpassed Nikon quality. Objective lens measures 25 mm. Includes detachable strap and carrying case. 4 1/4" W x 4 1/2" L x 1 1/2" D. 1/2 lb.

#83009 \$187.50 (Members \$168.95)

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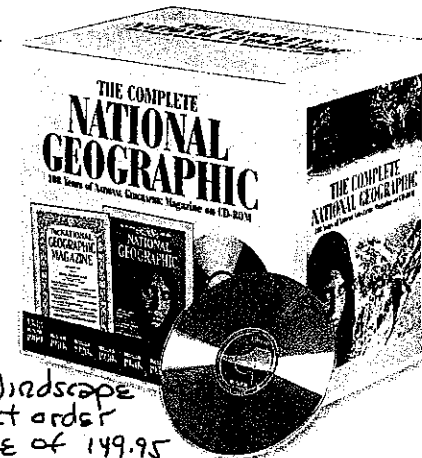
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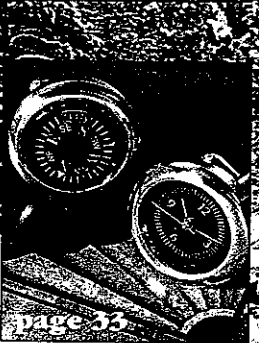
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PAGE II a.

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See p. VI
THE SEASON'S BEST

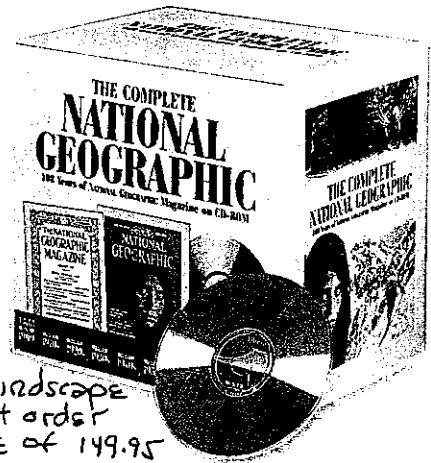


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#83010 \$37.00 (Members \$33.50)

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Reply to Defendants' Motion to Dismiss

De Minimus

These ten covers were chosen, from "1,200 plus issues" with covers spanning 108 years, for their iconic value, "Vividly illustrating the broad range" etc. (Sugarman quotes)

They appear each time a CD is opened, on each of the 30 disks.

They are preceded by the NGS yellow-border logo and signal the beginning of the program.

It is possible to bypass each of the advertisement segments before this sequence by individually clicking on each section at a time. Viewers are less likely to bypass anything appearing after the NGS logo.

The first time each disk is used, you cannot bypass any of the ads or the sequence, so each viewer must see the sequence each time a new disk is viewed. This constitutes 30 times per set.

No photographs other than these ten derivative works in the Moving Pictures sequence have been taken out of context of the year or decade in which they originally appeared.

No photographs other than these ten derivative works in the Moving Pictures sequence have been used on each disk of the set.

No photographs other than these ten derivative works in the Moving Pictures sequence have had derivative works made from them or been joined integrally to other photos.

The importance of the © JG diver photo was recognized in its original use in the Magazine by being memorialized on the cover- indicating a major project.

Many of the legal examples cited by Sugarman deal with objects in the background or among many articles in a room. This derivative work fills the entire space allotted to it.

When NGS published a photo of the Great Pyramid and moved one of the other pyramids over, there was a great hue and cry. They fessed up and apologized. The Moving Pictures sequence is certainly in the same category, violating the artist's rights to accept or reject changes to their work. We are working on finding this business now.

check N.Y. law on Artist's Rights (or Author's Rights)

6 • THE ART LAW PRIMER

THE EXCLUSIVE RIGHTS

The property rights of a copyright owner under the United States copyright law actually consist of a group of five separate rights known as the "exclusive rights." They are: 1) the right to reproduce copyrighted work; 2) the right to create derivative works based on the copyrighted work;

The right to make derivative works, also known as the adaptation right, generally overlaps with the reproduction right. The copyright law defines a derivative work as one "based upon one or more pre-existing works, such as translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be

recast, transformed or adapted." The possible forms which adaptations of an artist's work may take are limited only by the imagination. Returning to the contemporary sculpture mentioned above, a second sculptor who attempts to produce his own original copy of the first sculptor's work infringes both the reproduction and the adaptation rights. The reproduction right is infringed because the copyright owner (the artist) did not give his permission for the work to be copied in any manner. The adaptation right is infringed because the copy is not an exact duplicate.

Infringements of the adaptation right might also occur when a work of art, or a portion of that work, is incorporated in any form into another work. For example, a collage which incorporates original painting by an artist along with a copyrighted photograph by another artist very well may constitute an infringement of copyright where permission to utilize the photograph has not been obtained. Even the incorporation of a well-known detail from one work of art into a second work of art without permission may constitute an infringement.

Electronic Publishing—A Troublesome Area

As more and more print publications, such as magazines and books, are reproduced and transmitted digitally in new electronic media outlets such as on-line services, CD-ROM's, and data bases, freelance illustrators, photographers, and graphic designers are demanding a share of the proceeds from the digital use of their work. Work produced by employees of publishers is exempt from these considerations because all rights to such work are owned by the publisher under the work for hire provisions of the copyright law.

Not surprisingly, publishers have resisted these requests vigorously. Some maintain that they already acquired the electronic rights when they secured the standard "first North American serial rights" (the exclusive domestic rights to publish). Others rely on agreements signed before the age of electronic publishing (when "electronic media" were television and radio) and claim that "electronic media" should be interpreted to include the new digital/computer formats.

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Confidential to Norman Davis and David Aronberg
Reply to Defendants' Motion to Dismiss

Motion to Dismiss

P. 13 The defendants do not contest that CD-ROM 108 is sold for a profit. However, that fact does not affect the core educational purpose of the Society's mission to further the diffusion of geographic knowledge. The Society's primary motivation in republishing the Magazine in CD-ROM 108 was to bring the convenience of digital archiving to educators, librarians, students and families. Stanton Decl. at ¶ 3 and Exh. B thereto. In light of the significant educational value of the Magazine, the fact that CD-ROM 108 is offered for sale carries little or no weight in the first factor analysis.

These purposes could have been better served if the Society had put out the CD-ROM 108 from their non-profit base. The 9.5 million membership is a core market composed of educators, librarians, students & families. The product would then sidestep Mindscape's added-on profits and sell for a lot less than \$199.

Mindscape does not have the same not-for-profit altruistic aims as the Society. In fact, NG is selling the set for \$199 and Mindscape will ship it for only \$149.95. Geographic is making \$50 more than Mindscape when selling direct - a substantial profit.

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P. 11 3. The defendants do not exploit the Cover for commercial gain
 Motion to dismiss in the Moving Cover Sequence.

of the ten iconic covers, one, not
 ours, is used on the box and other
 visible literature not only in the CD Rom 108

The photo is of a blue-eyed Kurdish
 girl wearing a reddish shawl on her head.

✂ Detach here and keep this top portion for your records.
 Return this bottom portion with your payment.

JEROME GREENBERG
 SEAHAWK PRODUCTS
 6840 SW 92ND ST
 MIAMI FL 33156

Invoice 792299
 Customer 6740106

Payment Method

VISA MasterCard American Express

Discover Check/Money Order
 PAYABLE TO MINDSCOPE DIRECT

Account Number _____

Expiration Date _____

Signature (required for credit card purchases) _____

For faster service simply call 1-800-888-9078
 or FAX this form to 1-800-933-0571.

Thank you for ordering your FREE, 10-day preview of National Geographic: The '90s! If you are not completely satisfied, simply call 1-800-888-9078 to arrange for the product to be returned at our expense. If we've not heard from you by 10/15/97, your acceptance of this product will be assumed, your credit card will be charged the amount indicated below and you'll be sent the next decade in the series for another FREE, 10-day preview.

PS. Enjoy the Complete National Geographic 30 CD-ROM set and save \$69.10 right now, by returning this form with one payment of only \$149.95 plus S&H charges. And as with all National Geographic products, your satisfaction is 100% guaranteed!

Check the box to indicate your purchase choice and payment amount — Thank you!

Here's my payment. Please send me the next decade in the National Geographic series.

NOTE: If we don't hear from you, your previously provided credit card will be charged the amount indicated below.

OR

Subtotal	Sales Tax	Shipping	Total	Balance Due
9.95	0.00	3.95	13.90	13.90

YES, rush me all remaining decades of the Complete National Geographic 30 CD-ROM set!

Subtotal	Sales Tax	Shipping	Total	Balance Due
149.95	0.00	9.95	159.90	159.90

This is an offer by Mindscape to promote CD-ROM 108
 for 9.95 you get the '90s for free preview. The '90s has
 the moving picture sequence in the 3 disks. Whets
 the appetite for more of the CD-ROM 108. Note
 special offer of \$149.95 for entire set—a bargain.

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motion to
dismiss

2. CD-ROM 108 makes "transformative" use of the Cover, which weighs in favor of finding fair use.

The Supreme Court's most recent pronouncement on the fair use defense emphasizes that the "central purpose" of the first fair use factor is to determine whether the new work merely replaces the original, or whether it makes "transformative" use of the original by adding further creative expression or meaning to it.

6 • THE ART LAW PRIMER

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The right to make derivative works, also known as the adaptation right, generally overlaps with the reproduction right. The copyright law defines a derivative work as one "based upon one or more pre-existing works, such as translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be

recast, transformed or adapted." The possible forms which adaptations of an artist's work may take are limited only by the imagination. Returning to the contemporary sculpture mentioned above, a second sculptor who attempts to produce his own original copy of the first sculptor's work infringes both the reproduction and the adaptation rights. The reproduction right is infringed because the copyright owner (the artist) did not give his permission for the work to be copied in any manner. The adaptation right is infringed because the copy is not an exact duplicate.

Infringements of the adaptation right might also occur when a work of art, or a portion of that work, is incorporated in any form into another work. For example, a collage which incorporates original painting by an artist along with a copyrighted photograph by another artist very well may constitute an infringement of copyright where permission to utilize the photograph has not been obtained. Even the incorporation of a well-known detail from one work of art into a second work of art without permission may constitute an infringement.

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Reply to Defendants' Motion to Dismiss

P. 3
motion
to
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~~complaint~~ Prior to the release of CD-ROM 108, the Society sent a letter to each individual who had made a contribution to the Magazine. Stanton Decl. at ¶ 10 and Exh. B thereto. The letter notified the contributors of the pending release of CD-ROM 108 and explained the Society's belief that its continuing copyrights in the Magazine entitled it to publish CD-ROM 108 without making further payments for the use of individual contributions. Stanton Decl. at ¶ 10 and Exh. B thereto. "All contributors thus had the opportunity to come forward and claim any contractual rights to repayment which they may have had."

J.G. never received any such letter. He had Norman write to Suzanne McDowell on April 23, 1997, before Stanton's "white paper" referred to above was sent to other contributors at May 21, 1997, after the letter to McDowell - See below (incorrect)

The plaintiffs then contacted the Society, claiming that the Society had no right to reproduce their photographs in CD-ROM 108 without their consent and that they did not consent to such use. They did not, however, assert that they had entered into any contract with the Society limiting its rights in this regard.

contacted them before that date.
No reply was made to our letter. So much for "All contributors thus had the opportunity to come forward and claim contractual rights to repayment which they may have had."

Statement of Material Facts

In 1997, the Society (through Enterprises) and Mindscape produced and began to sell "The Complete National Geographic," a CD-ROM product containing all issues of the Magazine published between 1888 and 1996 (hereinafter "CD-ROM 108") (attached as Exhibit A to the Stanton Decl.). Stanton Decl. at ¶ 3. CD-ROM 108 reproduces each issue of the Magazine exactly as it appeared in print. Id. at ¶ 5. There are no changes to the content, format or appearance of the Magazine in CD-ROM 108. Id. Each page of each issue remains perfectly intact, including all articles, photographs, graphics, advertising, notices of copyright, and attributions. Id.

Not intact. Map supplements referred to on Mag cover when included are not on the CD rom. Now available by purchase only.

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At the beginning of each of the 30 disks in CD-ROM 108, there is a short promotional message for Kodak, which participated in marketing the product, and a multimedia sequence (the "Moving Cover Sequence"). Id. at ¶ 6. This sequence displays a series of images representing the covers of ten issues of the Magazine which transition from one into another, vividly illustrating the broad range of topics and issues that CD-ROM 108 and the Magazine address. Id. at ¶ 6. One of the images is the cover of the January 1962 issue, containing a photograph taken by the plaintiff Jerry Greenberg (the "Cover"). The Cover appears in this sequence for less than one second. Id. at ¶ 7.

These ten covers were chosen, from about 1,296 covers spanning 108 years, for their iconic value, "Vividly illustrating the broad range" etc. They appear each time a CD is opened, on each of the 30 disks. They are preceded by the NGS yellow-border logo and denote the beginning of the program. It is possible to bypass each of the advertisements before this sequence by individually clicking on each section at a time. Less likely to be bypassed after the NGS logo.

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The Parties

¶ 1 The National Geographic Society is the world's largest nonprofit scientific and educational organization, with 9.5 million members, and is dedicated to the increase and

¶ 2 diffusion of geographic knowledge in its broadest sense.² See Declaration of Thomas Stanton at ¶ 2 (hereinafter "Stanton Decl."). The Society and its subsidiaries produce periodicals, television programs, maps and atlases, educational games, and like products. Id. The Society's flagship publication, National Geographic Magazine (the "Magazine"), is the monthly journal of the Society containing articles and photographs which explore the cultural, geographical and organic richness of the world around us.

N.Y. TIMES
The changes at National Geographic started slowly but are now in overdrive. First came the switch from not-for-profit status to a partly taxable institution in 1994, when the society created National Geographic Ventures, the for-profit arm that includes its television, on-line and map-making businesses. Society executives set up the dual structure to avoid jeopardizing National Geographic's tax-exempt status as it competed in other media. Except for the flagship magazine, which is sent monthly to anyone who pays the \$27 annual membership fee, just about anything that becomes a high-volume business or is sold in commercial venues where it vies with products from tax-paying competitors can fall under the for-profit division.

← Maps moved over to NG Ventures for-profit division of NGS!

From their masthead

NATIONAL GEOGRAPHIC VENTURES
National Geographic Enterprises: Interactive: Lawrence Development; **Online:** Mark R. Holmes, Editor; Chris Thomas J. Stanton, Director. **Maps:** Allen Carroll, Mar Lownds, Finance; Daniel J. Ortiz, Map Ventures; John F. Golden, Juan Valdés, Project Managers

N.Y. TIMES
"National Geographic isn't non-profit — it's simply nontaxpaying," says Dean Hammond, chairman and chief executive of Hammond Maps, which for decades has considered National Geographic a competitor. "As a small family-owned business, we have paid thousands of times the taxes they have ever paid, and yet they have this self-polished halo and the reputation of being good guys."

Hammond now competing in the commercial market against NGS maps produced as non-profit + transferred to NG Ventures.

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