

# United States District Court

NORTHERN DISTRICT OF CALIFORNIA

MINDEN PICTURES, INC., a California Corporation

## SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER:

C-99 21267 JF

NATIONAL GEOGRAPHIC SOCIETY, a District of Columbia Corp., NATIONAL GEOGRAPHIC VENTURES, INC., a Delaware Corp., NATIONAL GEOGRAPHIC INTERACTIVE, INC., a corp.

TO: (Name and address of defendant)

NATIONAL GEOGRAPHIC SOCIETY, a District of Columbia Corporation, NATIONAL GEOGRAPHIC VENTURES, INC., a Delaware Corporation, NATIONAL GEOGRAPHIC INTERACTIVE, INC., a corporation, and DOES 1 - 10, inclusive

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Samuel S. Shepherd, Esq.  
Diane C. Hutnyan, Esq.  
QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP  
2479 East Bayshore Road, Suite 820  
Palo Alto, California 94303  
Tel: (650) 494-3900  
Fax: (650) 494-3928

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

RICHARD W. WIEKING

DEC 28 1998

CLERK

DATE

*Christine A. Mendez*

(BY) DEPUTY CLERK

**RETURN OF SERVICE**

Service of the Summons and Complaint was made by me <sup>1</sup>	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- Served personally upon the defendant. Place where served: \_\_\_\_\_
  
- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left: \_\_\_\_\_
  
- Returned unexecuted: \_\_\_\_\_
  
- Other (specify): \_\_\_\_\_

**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
Date Signature of Server

\_\_\_\_\_  
 Address of Server

<sup>1</sup>) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

1 QUINN EMANUEL URQUHART  
2 OLIVER & HEDGES, LLP  
3 Samuel B. Shepherd (Bar No. 163564)  
4 Diane C. Hutnyan (Bar No. 190081)  
5 2479 East Bayshore Road, Suite 820  
6 Palo Alto, California 94303  
7 (650) 494-3900

8 Attorneys for Plaintiff  
9 Minden Pictures, Inc.

ORIGINAL FILED

DEC 29 1999

Richard W. Wood, Jr.  
Clerk, U.S. District Court  
Northern District of California  
San Jose

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 C - 99 21267

14 MINDEN PICTURES, INC., a California  
15 corporation,

16 Plaintiff,

17 v.

18 NATIONAL GEOGRAPHIC SOCIETY, a  
19 District of Columbia corporation, NATIONAL  
20 GEOGRAPHIC VENTURES, INC., a Delaware  
21 corporation, and NATIONAL GEOGRAPHIC  
22 INTERACTIVE, INC., a corporation, and DOES  
23 1-10, inclusive,

24 Defendants.

CASE NO.

COMPLAINT

DEMAND FOR JURY TRIAL

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PVT

25 THE PARTIES

26 1. Plaintiff Minden Pictures, Inc. is a California corporation with its principal place  
27 of business at 783 Rio Del Mar Blvd., Ste. 9-11, Aptos, California 95003, in Santa Cruz County.  
28 Minden Pictures, Inc. ("Minden Pictures") is an agency which represents and manages the stock  
photography business of professional photographers. Minden Pictures has developed a  
reputation as one of the most selective stock photo agencies which represents many of the world's  
leading nature photographers.



1 license of stock photographs from Minden Pictures for publication in NGM and/or other NGS  
2 products and publications.

3 9. Although each of the agreements between the parties place clear restrictions upon  
4 NGS' future use, reproduction, distribution, and assignment or transfer of the photographic works  
5 - in many cases banning any such uses in the future altogether - Plaintiff is informed and  
6 believes that NGS has on several occasions re-used, reproduced, distributed or assigned the  
7 photographs anyway, without obtaining Minden Pictures' or the individual photographers'  
8 permission or abiding by other of its contractual obligations, such as paying for the use. In at  
9 least three cases, Plaintiff is informed and believes that these infringing uses have involved the  
10 unauthorized reproduction of Minden Pictures' photographs onto commercially distributed CD-  
11 Rom products: "108 Years of National Geographic," "109 Years of National Geographic," and  
12 "110 Years of National Geographic."

13 10. Plaintiff is informed and believed that in many instances, NGS has used,  
14 distributed or assigned the use of Minden Pictures' photographs which were never licensed to it  
15 in the first place.

16 11. These unauthorized uses of photographs by NGS and the other Defendants  
17 deprive Minden Pictures of substantial revenue.

18  
19 COUNT 1

20 BREACH OF WRITTEN CONTRACT

21 (Against NGS)

22 12. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 11,  
23 inclusive, and incorporates them herein by this reference.

24 13. Over the past twenty years, NGS has commissioned photographic works from  
25 Minden Pictures' photographers for particular uses in NGM and/or other NGS publications  
26 ("assignment contracts"). Although there is some variation in the exact terms of the assignment  
27 contracts, they all contain restrictions on NGS' future use, reproduction and distribution, of the  
28

1 photographic works. Each of the operative agreements contain a term providing for additional  
2 fee payment for certain uses.

3 14. Over the last several years, NGS and Minden Pictures have entered into several  
4 agreements by which NGS has licensed the use of stock photographs from Minden Pictures and  
5 Minden Pictures' photographers ("stock licenses").

6 15. Although there is some variation in the exact terms of these agreements, they all  
7 contain restrictions on NGS' future use, reproduction and distribution, of the photographic works.  
8 One representative term is "No secondary rights whatsoever are granted or implied, unless  
9 licensed by Minden Pictures. . . . All other uses will be separately negotiated with Minden  
10 Pictures." Each of the stock licenses include a liquidated damages provision, specifying that the  
11 recipient will pay, for each unauthorized use, two or three times the normal fee for use.

12 16. Plaintiff is informed and believes that the unauthorized use provisions and the  
13 payment for unauthorized uses were both agreed to by NGS and were reasonable under the  
14 circumstances as they existed at the time of the contract.

15 17. Several of the stock licenses required NGS to "provide copyright protection on all  
16 use and assign same to [Minden Pictures photographers] immediately upon request, without  
17 charge."

18 18. Plaintiff has performed all conditions, covenants and promises required on its part  
19 to be performed in accordance with the stock licenses, except those which it was prevented or  
20 legally excused from performing because of the acts or omissions of NGS.

21 19. Plaintiff is informed and believes that NGS has repeatedly breached, and  
22 continues to breach the written assignment contracts and stock licenses by using Minden Pictures'  
23 photographic works in interactive products (including but not limited to CD-Rom collections),  
24 promotional materials, and editorial publications, without authorization from Minden Pictures or  
25 Minden Pictures' photographers. In addition, Plaintiff is informed and believes that NGS has  
26 repeatedly breached and continues to breach the written assignment contracts and stock licenses  
27 by allowing NGV and NGI to reproduce and distribute certain of the Subject Works.  
28

1           20.    Although Plaintiff has made demand that NGS comply with the contractual terms,  
2 NGS has failed, and refuses, to pay to Plaintiff, the liquidated damages required under the  
3 express terms of the contracts between the parties or otherwise to comply with the contracts.

4           21.    Plaintiff is informed and believes that NGS has further breached the stock licenses  
5 by not obtaining copyright protection for images as required.

6           22.    Plaintiff has been damaged by such breaches of the contracts between the parties.

7  
8   **COUNT 2**

9   **COPYRIGHT INFRINGEMENT**

10    **(Against All Defendants)**

11           23.    Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 22,  
12 inclusive, and incorporates them herein by this reference.

13           24.    The photographs at issue in this suit ("Subject Works") contain material wholly  
14 original with the Plaintiff that is copyrightable subject matter under the laws of the United States.

15           25.    For each of the Subject Works, Plaintiff applied to the Register of Copyrights for  
16 a Certificate of Registration. Such certificates were issue by the Register of Copyrights, or are  
17 pending, as to all Subject Works.

18           26.    Plaintiff is the contractual representative of Minden Pictures' photographers who  
19 currently are, and at all relevant times have been, the sole proprietors of all right, title and interest  
20 in and to the copyright in the Subject Works, with the exception of rights expressly granted to  
21 NGS by contract. Plaintiff has produced and distributed the photographs at issue in strict  
22 conformity with the provisions of the Copyright Act of 1976 and all other laws governing  
23 copyright.

24           27.    Use of the subject works by NGS, NGV and NGI (collectively, "Defendants"), by  
25 any and all uses which are beyond the scope of the assignment contracts and stock licenses  
26 entered into by NGS and Minden Pictures' photographers and Minden Pictures generally,  
27 constitute acts of copyright infringement by Defendants under 17 U.S.C. § 101 et seq.  
28 Specifically, Defendants have infringed and will continue to infringe Plaintiff's copyrights in and

1 relating to the Subject Works by producing, distributing, and placing upon the market products  
2 which are direct copies, as well as allowing NGV and NGI to produce, distribute and place on the  
3 market products which are direct copies, of Plaintiff's copyrighted Subject Works.

4 28. Plaintiff is entitled to an injunction restraining Defendants, their officers, agents  
5 and employees, and all persons acting in concert with them, from engaging in any further such  
6 acts in violation of the copyright laws.

7 29. Plaintiff is further entitled to recover from Defendants the damages, including  
8 attorneys' fees, it has sustained and will sustain, and any profits and revenues obtained by  
9 Defendants as a result of Defendants' acts of infringement alleged above. At present, the amount  
10 of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiff.

11  
12 **COUNT 3**

13 **COMMON LAW MISAPPROPRIATION**

14 **(Against All Defendants)**

15 30. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 29,  
16 inclusive, and incorporates them herein by this reference.

17 31. Plaintiff has made a substantial investment of time, effort and money over many  
18 years in creating the goodwill associated with, and public recognition of, its photographs.

19 32. By utilizing the Subject Works without authorization, payment and/or proper  
20 credit, Defendants have appropriated Plaintiff's goodwill and reputation without any payment,  
21 consideration, or consent and are unjustly reaping the benefit of Plaintiff's copyrighted works.

22 33. Defendants' conduct has caused great and irreparable damage to Minden Pictures  
23 and Defendants' continued misappropriation will cause Plaintiff further damage unless  
24 Defendants are restrained and enjoined from any further unauthorized use of the Subject Works.

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**COUNT 4**  
**STATUTORY AND COMMON LAW UNFAIR COMPETITION**  
**(Against All Defendants)**

34. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 33, inclusive, and incorporates them herein by this reference.

35. By reason of the foregoing, Defendants have been, and are, engaged in "unlawful, unfair or fraudulent business practices" in violation of §§ 17200 et seq. of the California Business and Professions Code and acts of unfair competition in violation of common law.

36. Defendants' acts complained of herein have damaged and will continue to damage Plaintiff irreparably. Plaintiff has no adequate remedy at law for these wrongs and injuries. The damage to Plaintiff includes harm to its goodwill and reputation in the marketplace that money cannot compensate.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, by and through its attorneys, respectfully pray that this honorable court render a judgment in its favor against the Defendants herein, granting the following relief:

**AS TO COUNT 1**

1. A determination that the assignment contracts and stock licenses are valid and enforceable;
2. A determination that NGS has breached the written contracts of the parties;
3. An award of damages for Defendants' multiple breaches of the contract;

**AS TO COUNT 2**

4. A determination that Defendants have improperly and unlawfully infringed upon Plaintiff's copyrights in the Subject Works;

1 5. The entry of a judgment in favor of Plaintiff against Defendants for actual  
2 damages and for any profits attributable to the infringement of Plaintiff's copyrights and  
3 proprietary rights and interests;

4 6. An order requiring Defendants to account for all gains, profits, advantages and  
5 revenues derived from the infringements of the Subject Works, and to be derived therefrom in  
6 the future;

7 7. An order requiring that all gains, profits, advantages and revenues derived from  
8 the infringements of the Subject Works be deemed to be held in a constructive trust for the  
9 benefit of Plaintiff;

10 8. An order requiring Defendants to disgorge all gains, profits, advantages and  
11 revenues derived from the infringements of the Subject Works;

12  
13 AS TO COUNT 3

14 9. A preliminary and permanent injunction restraining and enjoining Defendants and  
15 their agents, servants, and employees and all persons acting thereunder, in concert with, or on  
16 their behalf, from wrongfully using the Subject Works in connection with the promotion,  
17 advertisement, production, distribution or sale of NGM or other NGS products.

18 10. An accounting of the profits gained by Defendants through their wrongful uses of  
19 the Subject Works;

20 11. The imposition of a constructive trust in favor of Plaintiff on all profits obtained  
21 from Defendants' misappropriation of the Subject Works;

22 12. An award of punitive damages in an amount sufficient to punish Defendants and  
23 deter such conduct in the future.

24  
25 AS TO COUNT 4

26 13. A preliminary and permanent injunction restraining and enjoining Defendants and  
27 their agents, servants, employees, and all persons acting thereunder, in concert with, or on their  
28 behalf, from wrongful use of the Subject Works;

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14. An accounting of the profits gained by Defendants through their wrongful uses of the Subject Works;

15. An award of Defendants' unjust profits and Plaintiff's lost profits.

AS TO ALL COUNTS

16. An order requiring the award of damages in favor of Plaintiff to include costs, interest and attorneys fees to the extent permissible under applicable law;

17. Such other and further relief as this court deems appropriate and lawful under the circumstances.

DATED: December 29, 1999

QUINN EMANUEL URQUHART OLIVER  
& HEDGES, LLP

By: *Diane C. Hutnyan*  
Diane C. Hutnyan  
Attorneys for Plaintiff  
Minden Pictures, Inc.

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DEMAND FOR JURY TRIAL

Plaintiff Minden Pictures, Inc. demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

DATED: December 29, 1999

QUINN EMANUEL URQUHART OLIVER  
& HEDGES, LLP

By: *Diane Hutnyan / JAK*  
Diane C. Hutnyan  
Attorneys for Plaintiff  
Minden Pictures, Inc.

I. (a) PLAINTIFFS

MINDEN PICTURES, INC., a California Corporation

DEFENDANTS

NATIONAL GEOGRAPHIC SOCIETY, a District of Columbia Corp., NATIONAL GEOGRAPHIC VENTURES, INC., a Delaware Corp., NATIONAL GEOGRAPHIC INTERACTIVE, INC., a corp.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF SANTA CRUZ (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Quinn Emanuel Urquhart Oliver & Hedges, LLP 2479 East Bayshore Road, Suite 820 Palo Alto, California 94303 (650) 494-3900

ATTORNEYS (IF KNOWN)

99 21267

JF

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business in This State, Incorporated and Principal Place of Business in Another State, Foreign Nation.

IV. ORIGIN

(PLACE AN 'X' IN ONE BOX ONLY)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN 'X' IN ONE BOX ONLY)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

17 U.S.C. Section 501; Defendants engaged in acts of copyright infringement as to plaintiff's photographs.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND: Presently unascertainable, punitive damages & injunctive relief CHECK YES only if demanded in complaint: DEMAND: [X] YES [ ] NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN 'X' IN ONE BOX ONLY)

[ ] SAN FRANCISCO/OAKLAND [X] SAN JOSE

DATE December 29, 1999

SIGNATURE OF ATTORNEY OF RECORD

Signature of Diane Hutnyan, DIANE HUTNYAN

# MINDEN PICTURES

May 4, 1998

Jerry Greenberg  
Fax 1-305-667-3572

Dear Jerry:

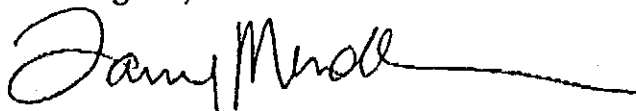
Thanks for the brief intro to your position with NGS.

Mine is that we represent Frans Lanting, Jim Brandenburg, Mark Moffett, Flip Nicklin, Mitsuaki Iwago, Fred Bavendam, Michio Hoshino and others and between them we probably have 1500 pictures in the CD Rom. Hence, I'm interested in seeing how that goes.

However, what is perhaps even of greater interest are any non-CD unauthorized uses you may be pursuing or may have pursued in the past. Despite repeated warnings to NGS over unauthorized uses they continue to do so. Just since the beginning of the year, we have come across ~~at least~~ infringements which include: 2 images in a NGS TV kid's video brochure, 2 images in an NGS Book Division brochure, 1 image on a peel and stick label which is part of a book promo package, 1 image on a World Magazine bookmark and more as well..... We have had similar situations for years but in the past have always "legitimized" such infringements by granting a license retroactively. I'm now ready to consider litigation and have heard your name mentioned on several occasions in the context of successful litigation against NGS.

I look forward to speaking with you more.

Best regards,

  
Larry Minden

831

**Subject: Fwd: Geographic Guilty of Copyright Infringement**

**Date: Mon, 21 Jun 1999 10:23:43 -0600**

**From: "Howard M. Paul" <hmpaul@ecentral.com>**

**To: STOCKPHOTO@PEACHLEASE.LSOFT.COM**

**Newsgroups: bit.listserv.stockphoto**

Forwarded with permission of Jim Pickerell. My thanks to Jim -- on behalf of all subscribers -- for allowing me to forward this, which originally appeared in his Selling Stock newsletter.

Howard

>The following is a story I posted last week on my Selling Stock site.  
>Jerry Greenberg want to be sure that you saw it. The case number is  
>97-3924-CIV-Lenard/Turnoff if you would like more information and the  
>decision was filed on June 8th.

>

>Jim Pickerell

>

>GEOGRAPHIC GUILTY OF COPYRIGHT INFRINGEMENT

>

>Judge Joan A. Lenard has found that National Geographic Society infringed  
>the copyright of underwater publishers Jerry and Idaz Greenberg when they  
>used the Greenberg's copyrighted images as reference materials for two  
>projects without permission or compensation. The case was heard in Federal  
>Court in the Southern District of Florida in Miami.

>

>The case has been referred to Magistrate Judge William C. Turnoff for the  
>purposes of holding a settlement conference to determine the amount  
>National Geographic will be required to pay to the Greenbergs.

>

>This is the first time National Geographic has been found guilty of  
>copyright infringement of a photographer's work. The case may open the  
>door for legal action by other photographers against the Society.

>

>In a review of the facts of the case it was shown that Walter Cutler, the  
>work-for-hire illustrator hired by the Society to produce illustrations for  
>an educational GeoPack project, improperly used books produced by the  
>Greenbergs as reference for his illustrations.

>

>On his working drawings Cutler noted the page references referring to the  
>photographs he had copied so the Society editors could verify that the  
>illustrations were accurate. This clearly laid the responsibility on the  
>Society editors because they were fully aware of what had been done and  
>were responsible to obtain proper permissions and deal with compensation  
>issues.

>

>

>Cutler's illustrations also met the test of "substantial similarity"  
>according to Judge Lenard. The Greenbergs had produced overlays from their  
>books that clearly showed the illustrations were almost exact matches of  
>the Greenberg's photos.

>

>In challenging the Greenbergs' motion for Summary Judgement on Liability,  
>lawyers for National Geographic Society argued that the newly created  
>illustration did not violate the Greenbergs' copyright, and "that even if  
>these images reflect copyrighted material, this use constitutes "fair use".

>

>Judge Lenard found that the illustrations "improperly infringed the

Saturday, June 26, 1999

Fwd: Geographic Guilty of Copyright  
Infringement

>photographs at issue, and that the doctrine of fair use is not applicable  
>to these facts."  
>  
>The court took into consideration the four nonexclusive factors to be  
>considered when determining whether the fair use doctrine applies and  
>concluded, "that neither the GeoPack product nor the Jason Project poster  
>qualify as fair use."  
>  
>The four factors are:  
>1 - the purpose and character of the use, including whether such use is of  
>a commercial nature or is for nonprofit educational purposes;  
>2 - the nature of the copyrighted work;  
>3 - the amount and substantiality of the portion used in relation to the  
>copyrighted work as a whole; and  
>4 - the effect of the use upon the potential market for or value of the  
>copyrighted work.  
>  
>The courts detailed presentation of the facts related to each of these  
>points should be useful to others faced with a "fair use" claim by any  
>organization, and particularly National Geographic.  
>  
>Counts three and four in the Greenberg's case are not a part of this  
>decision and dealt with the use of the Greenbergs copyrighted images in the  
>"108 Years of National Geographic on CD-ROM". Earlier in the proceedings  
>lawyers for National Geographic argued that the "Tasini" decision in the  
>Southern District of New York confirmed their right to make uses in the  
>"108 Years" project without compensating photographers in any way. The  
>Greenberg's argued that "Tasini" should have no bearing on their case  
>because that decision was being appealed.  
>  
>On this point the judge agreed with National Geographic and issued a  
>partial summary judgment on the two counts. Thus, the arguments relating  
>to the use of the Greenberg's images in the "108 Years" project were never  
>heard. The Greenbergs have the option to appeal that decision of the judge.  
>  
>Oral arguments for the appeal of the "Tasini" decision have been heard in  
>the New York Appeals court and all parties are presently waiting for the  
>judge's ruling in that case. The results of that case could affect the  
>Greenberg's ultimate decision.  
>  
>Jim Pickerell  
>Selling Stock  
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>[www.pickphoto.com/ss0](http://www.pickphoto.com/ss0)  
>[jim@chd.com](mailto:jim@chd.com)

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For Information on Market Lead E-mail & Fax Services  
Visit The STOCKPHOTO Network Web Site => <http://www.stockphoto.net>  
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305-667-3572

MINDEN PICTURES

Gerry + DAR

Enclosed is our filing. Included  
are concerns over images by:

Jim Brandenburg

Frans Lanting

Mark Moppett

Flip Nicklin

Michio Hoshino

Mitsunaki Inago.

Best regards,

Larry Minden

1 QUINN EMANUEL URQUHART  
 2 OLIVER & HEDGES, LLP  
 3 Samuel B. Shepherd (Bar No. 163564)  
 4 Diane C. Hutnyan (Bar No. 190081)  
 5 2479 East Bayshore Road, Suite 820  
 6 Palo Alto, California 94303  
 7 (650) 494-3900

8 Attorneys for Plaintiff  
 9 Minden Pictures, Inc.

**ORIGINAL FILED**

DEC 29 1999

Richard W. Weisinger  
 Clerk, U.S. District Court  
 Northern District of California  
 San Jose

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

C 99 21267

JP

13 MINDEN PICTURES, INC., a California  
 14 corporation,  
 15 Plaintiff,  
 16 v.  
 17 NATIONAL GEOGRAPHIC SOCIETY, a  
 18 District of Columbia corporation, NATIONAL  
 19 GEOGRAPHIC VENTURES, INC., a Delaware  
 20 corporation, and NATIONAL GEOGRAPHIC  
 21 INTERACTIVE, INC., a corporation, and DOES  
 22 1-10, inclusive,  
 23 Defendants.

CASE NO.

COMPLAINT

PVT

DEMAND FOR JURY TRIAL

THE PARTIES

1. Plaintiff Minden Pictures, Inc. is a California corporation with its principal place of business at 783 Rio Del Mar Blvd., Ste. 9-11, Aptos, California 95003, in Santa Cruz County. Minden Pictures, Inc. ("Minden Pictures") is an agency which represents and manages the stock photography business of professional photographers. Minden Pictures has developed a reputation as one of the most selective stock photo agencies which represents many of the world's leading nature photographers.

1           2.     Defendant National Geographic Society (hereinafter "NGS") is a District of  
2 Columbia corporation with its principal place of business at 1145 17th Street, NW, Washington,  
3 DC 20036. NGS is engaged in the business of publishing magazines, books, calendars, posters  
4 and other publications. NGS also subsidizes research and exploration. The most well known  
5 publication of NGS is its magazine, "National Geographic" (hereinafter, "NGM").

6           3.     Upon information and belief, Defendant National Geographic Ventures  
7 (hereinafter "NGV") is a Delaware corporation whose principal place of business is at 1145 17th  
8 Street, NW, Washington, DC 20036. Upon information and belief, NGV is engaged in the  
9 business of producing and selling maps, television programs, videos, and interactive products  
10 and programming, such as CD-Roms.

11          4.     Upon information and belief, Defendant National Geographic Interactive,  
12 (hereinafter, "NGI") is the electronic publishing division, and a wholly owned subsidiary, of  
13 NGS. Plaintiff is informed and believes that NGI produces NGS' website and a collection of  
14 "edu-tational" CD-Roms which are marketed and sold internationally.

#### 15 16                                    JURISDICTION AND VENUE

17          5.     This court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
18 § 1338 (a) as this case arises under the United States Copyright Act, 17 U.S.C. § § 101, et seq.

19          6.     Venue is proper in this district pursuant to 28 U.S.C. § 1400 (a)

#### 20 21                                    GENERAL ALLEGATIONS

22          7.     Minden Pictures is a well-known stock photography agency specializing in high-  
23 quality nature photography. Minden Pictures represents several photographers in the production,  
24 marketing and sale of high-quality nature images.

25          8.     Since 1987, Minden Pictures has been doing business, and has entered into several  
26 agreements, with NGS. During that time, NGS has also entered into several agreements with  
27 Minden Pictures' photographers involving the commission of photographic works for particular  
28 assignments to be published in NGM and/or other NGS products. Other agreements involve the

1 license of stock photographs from Minden Pictures for publication in NGM and/or other NGS  
2 products and publications.

3 9. Although each of the agreements between the parties place clear restrictions upon  
4 NGS' future use, reproduction, distribution, and assignment or transfer of the photographic works  
5 - in many cases banning any such uses in the future altogether - Plaintiff is informed and  
6 believes that NGS has on several occasions re-used, reproduced, distributed or assigned the  
7 photographs anyway, without obtaining Minden Pictures' or the individual photographers'  
8 permission or abiding by other of its contractual obligations, such as paying for the use. In at  
9 least three cases, Plaintiff is informed and believes that these infringing uses have involved the  
10 unauthorized reproduction of Minden Pictures' photographs onto commercially distributed CD-  
11 Rom products: "108 Years of National Geographic," "109 Years of National Geographic," and  
12 "110 Years of National Geographic."

13 10. Plaintiff is informed and believed that in many instances, NGS has used,  
14 distributed or assigned the use of Minden Pictures' photographs which were never licensed to it  
15 in the first place.

16 11. These unauthorized uses of photographs by NGS and the other Defendants  
17 deprive Minden Pictures of substantial revenue.

18  
19 COUNT 1

20 BREACH OF WRITTEN CONTRACT

21 (Against NGS)

22 12. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 11,  
23 inclusive, and incorporates them herein by this reference.

24 13. Over the past twenty years, NGS has commissioned photographic works from  
25 Minden Pictures' photographers for particular uses in NGM and/or other NGS publications  
26 ("assignment contracts"). Although there is some variation in the exact terms of the assignment  
27 contracts, they all contain restrictions on NGS' future use, reproduction and distribution, of the  
28

1 photographic works. Each of the operative agreements contain a term providing for additional  
2 fee payment for certain uses.

3 14. Over the last several years, NGS and Minden Pictures have entered into several  
4 agreements by which NGS has licensed the use of stock photographs from Minden Pictures and  
5 Minden Pictures' photographers ("stock licenses").

6 15. Although there is some variation in the exact terms of these agreements, they all  
7 contain restrictions on NGS' future use, reproduction and distribution, of the photographic works.  
8 One representative term is "No secondary rights whatsoever are granted or implied, unless  
9 licensed by Minden Pictures. . . . All other uses will be separately negotiated with Minden  
10 Pictures." Each of the stock licenses include a liquidated damages provision specifying that the  
11 recipient will pay, for each unauthorized use, two or three times the normal fee for use.

12 16. Plaintiff is informed and believes that the unauthorized use provisions and the  
13 payment for unauthorized uses were both agreed to by NGS and were reasonable under the  
14 circumstances as they existed at the time of the contract.

15 17. Several of the stock licenses required NGS to "provide copyright protection on all  
16 use and assign same to [Minden Pictures photographers] immediately upon request, without  
17 charge."

18 18. Plaintiff has performed all conditions, covenants and promises required on its part  
19 to be performed in accordance with the stock licenses, except those which it was prevented or  
20 legally excused from performing because of the acts or omissions of NGS.

21 19. Plaintiff is informed and believes that NGS has repeatedly breached, and  
22 continues to breach the written assignment contracts and stock licenses by using Minden Pictures'  
23 photographic works in interactive products (including but not limited to CD-Rom collections),  
24 promotional materials, and editorial publications, without authorization from Minden Pictures or  
25 Minden Pictures' photographers. In addition, Plaintiff is informed and believes that NGS has  
26 repeatedly breached and continues to breach the written assignment contracts and stock licenses  
27 by allowing NGV and NGI to reproduce and distribute certain of the Subject Works.

28

1 20. Although Plaintiff has made demand that NGS comply with the contractual terms,  
2 NGS has failed, and refuses, to pay to Plaintiff, the liquidated damages required under the  
3 express terms of the contracts between the parties or otherwise to comply with the contracts.

4 21. Plaintiff is informed and believes that NGS has further breached the stock licenses  
5 by not obtaining copyright protection for images as required.

6 22. Plaintiff has been damaged by such breaches of the contracts between the parties.

7  
8 **COUNT 1**

9 **COPYRIGHT INFRINGEMENT**

10 **(Against All Defendants)**

11 23. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 22,  
12 inclusive, and incorporates them herein by this reference.

13 24. The photographs at issue in this suit ("Subject Works") contain material wholly  
14 original with the Plaintiff that is copyrightable subject matter under the laws of the United States.

15 25. For each of the Subject Works, Plaintiff applied to the Register of Copyrights for  
16 a Certificate of Registration. Such certificates were issued by the Register of Copyrights, or are  
17 pending, as to all Subject Works.

18 26. Plaintiff is the contractual representative of Minden Pictures' photographers who  
19 currently are, and at all relevant times have been, the sole proprietors of all right, title and interest  
20 in and to the copyright in the Subject Works, with the exception of rights expressly granted to  
21 NGS by contract. Plaintiff has produced and distributed the photographs at issue in strict  
22 conformity with the provisions of the Copyright Act of 1976 and all other laws governing  
23 copyright.

24 27. Use of the subject works by NGS, NGV and NGI (collectively, "Defendants"), by  
25 any and all uses which are beyond the scope of the assignment contracts and stock licenses  
26 entered into by NGS and Minden Pictures' photographers and Minden Pictures generally,  
27 constitute acts of copyright infringement by Defendants under 17 U.S.C. § 101 *et seq.*

28 ~~Plaintiff's copyrights have been infringed and will continue to infringe Plaintiff's copyrights in and~~

1 relating to the Subject Works by producing, distributing, and placing upon the market products  
2 which are direct copies, as well as allowing NGV and NGI to produce, distribute and place on the  
3 market products which are direct copies, of Plaintiff's copyrighted Subject Works.

4 28. Plaintiff is entitled to an injunction restraining Defendants, their officers, agents  
5 and employees, and all persons acting in concert with them, from engaging in any further such  
6 acts in violation of the copyright laws.

7 29. Plaintiff is further entitled to recover from Defendants the damages, including  
8 attorneys' fees, it has sustained and will sustain, and any profits and revenues obtained by  
9 Defendants as a result of Defendants' acts of infringement alleged above. At present, the amount  
10 of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiff.

11  
12 **COUNT 3**

13 **COMMON LAW MISAPPROPRIATION**

14 **(Against All Defendants)**

15 30. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 29,  
16 inclusive, and incorporates them herein by this reference.

17 31. Plaintiff has made a substantial investment of time, effort and money over many  
18 years in creating the goodwill associated with, and public recognition of, its photographs.

19 32. By utilizing the Subject Works without authorization, payment and/or proper  
20 credit, Defendants have appropriated Plaintiff's goodwill and reputation without any payment,  
21 consideration, or consent and are unjustly reaping the benefit of Plaintiff's copyrighted works.

22 33. Defendants' conduct has caused great and irreparable damage to Minden Pictures  
23 and Defendants' continued misappropriation will cause Plaintiff further damage unless  
24 Defendants are restrained and enjoined from any further unauthorized use of the Subject Works.

25 ////

26 ////

1 relating to the Subject Works by producing, distributing, and placing upon the market products  
2 which are direct copies, as well as allowing NGV and NGI to produce, distribute and place on the  
3 market products which are direct copies, of Plaintiff's copyrighted Subject Works.

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7 29. Plaintiff is further entitled to recover from Defendants the damages, including  
8 attorneys' fees, it has sustained and will sustain, and any profits and revenues obtained by  
9 Defendants as a result of Defendants' acts of infringement alleged above. At present, the amount  
10 of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiff.

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21 consideration, or consent and are unjustly reaping the benefit of Plaintiff's copyrighted works.

22 33. Defendants' conduct has caused great and irreparable damage to Minden Pictures  
23 and Defendants' continued misappropriation will cause Plaintiff further damage unless  
24 Defendants are restrained and enjoined from any further unauthorized use of the Subject Works.

25 ///

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COUNT 4

STATUTORY AND COMMON LAW UNFAIR COMPETITION

(Against All Defendants)

34. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 33, inclusive, and incorporates them herein by this reference.

35. By reason of the foregoing, Defendants have been, and are, engaged in "unlawful, unfair or fraudulent business practices" in violation of §§ 17200 et seq. of the California Business and Professions Code and acts of unfair competition in violation of common law.

36. Defendants' acts complained of herein have damaged and will continue to damage Plaintiff irreparably. Plaintiff has no adequate remedy at law for these wrongs and injuries. The damage to Plaintiff includes harm to its goodwill and reputation in the marketplace that money cannot compensate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, by and through its attorneys, respectfully pray that this honorable court render a judgment in its favor against the Defendants herein, granting the following relief:

AS TO COUNT 1

- 1. A determination that the assignment contracts and stock licenses are valid and enforceable;
- 2. A determination that NGS has breached the written contracts of the parties;
- 3. An award of damages for Defendants' multiple breaches of the contract;

AS TO COUNT 2

- 4. A determination that Defendants have improperly and unlawfully infringed upon Plaintiff's copyrights in the Subject Works.

1           5.        The entry of a judgment in favor of Plaintiff against Defendants for actual  
2 damages and for any profits attributable to the infringement of Plaintiff's copyrights and  
3 proprietary rights and interests;

4           6.        An order requiring Defendants to account for all gains, profits, advantages and  
5 revenues derived from the infringements of the Subject Works, and to be derived therefrom in  
6 the future;

7           7.        An order requiring that all gains, profits, advantages and revenues derived from  
8 the infringements of the Subject Works be deemed to be held in a constructive trust for the  
9 benefit of Plaintiff;

10          8.        An order requiring Defendants to disgorge all gains, profits, advantages and  
11 revenues derived from the infringements of the Subject Works;

12  
13   AS TO COUNT 3

14          9.        A preliminary and permanent injunction restraining and enjoining Defendants and  
15 their agents, servants, and employees and all persons acting thereunder, in concert with, or on  
16 their behalf, from wrongfully using the Subject Works in connection with the promotion,  
17 advertisement, production, distribution or sale of NGM or other NGS products.

18          10.       An accounting of the profits gained by Defendants through their wrongful uses of  
19 the Subject Works;

20          11.       The imposition of a constructive trust in favor of Plaintiff on all profits obtained  
21 from Defendants' misappropriation of the Subject Works;

22          12.       An award of punitive damages in an amount sufficient to punish Defendants and  
23 deter such conduct in the future.

24  
25   AS TO COUNT 4

26          13        A preliminary and permanent injunction restraining and enjoining Defendants and

25

AS TO COUNT 4

26

13 ~~A preliminary and permanent injunction restraining and enjoining Defendants and~~

1 14. An accounting of the profits gained by Defendants through their wrongful uses of  
2 the Subject Works;

3 15. An award of Defendants' unjust profits and Plaintiff's lost profits.  
4

5 AS TO ALL COUNTS

6 16. An order requiring the award of damages in favor of Plaintiff to include costs,  
7 interest and attorneys fees to the extent permissible under applicable law;

8 17. Such other and further relief as this court deems appropriate and lawful under the  
9 circumstances.  
10

11 DATED: December 29, 1999

QUINN EMANUEL URQUHART OLIVER  
& HEDGES, LLP

12  
13  
14 By: *Diane C. Hutnyan*  
15 Diane C. Hutnyan  
16 Attorneys for Plaintiff  
Minden Pictures, Inc.  
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27

J (Rev. 10/93) Summons in a Civil Action

### RETURN OF SERVICE

Service of the Summons and Complaint was made by me <sup>1</sup>	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- Served personally upon the defendant. Place where served: \_\_\_\_\_
- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left: \_\_\_\_\_
- Returned unexecuted: \_\_\_\_\_
- Other (specify): \_\_\_\_\_

### STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

### DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Server*

\_\_\_\_\_  
*Address of Server*

<sup>1</sup>) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

# United States District Court

NORTHERN DISTRICT OF CALIFORNIA

MINDEN PICTURES, INC., a California Corporation

## SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER:

C - 99 21267 JF

NATIONAL GEOGRAPHIC SOCIETY, a District of Columbia Corp., NATIONAL GEOGRAPHIC VENTURES, INC., a Delaware Corp., NATIONAL GEOGRAPHIC INTERACTIVE, INC., a corp.

TO: (Name and address of defendant)

NATIONAL GEOGRAPHIC SOCIETY, a District of Columbia Corporation, NATIONAL GEOGRAPHIC VENTURES, INC., a Delaware Corporation, NATIONAL GEOGRAPHIC INTERACTIVE, INC., a corporation, and DOES 1 - 10, inclusive

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Samuel S. Shepherd, Esq.  
Diane C. Hutnyan, Esq.  
QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP  
2479 East Bayshore Road, Suite 820  
Palo Alto, California 94303  
Tel: (650) 494-3900  
Fax: (650) 494-3928

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

RICHARD W. WIEKING

DEC 29 1999

*Christine A. Merda, 9*

(BY) DEPUTY CLERK

# MINDEN PICTURES

May 4, 1998

Jerry Greenberg  
Fax 1-305-667-3572

Dear Jerry:

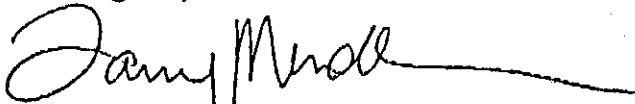
Thanks for the brief intro to your position with NGS.

Mine is that we represent Frans Lanting, Jim Brandenburg, Mark Moffett, Flip Nicklin, Mitsuaki Iwago, Fred Bavendam, Michio Hoshino and others and between them we probably have 1500 pictures in the CD Rom. Hence, I'm interested in seeing how that goes.

However, what is perhaps even of greater interest are any non-CD unauthorized uses you may be pursuing or may have pursued in the past. Despite repeated warnings to NGS over unauthorized uses they continue to do so. Just since the beginning of the year, we have come across ~~at least~~ infringements which include: 2 images in a NGS TV kid's video brochure, 2 images in an NGS Book Division brochure, 1 image on a peel and stick label which is part of a book promo package, 1 image on a World Magazine bookmark and more as well..... We have had similar situations for years but in the past have always "legitimized" such infringements by granting a license retroactively. I'm now ready to consider litigation and have heard your name mentioned on several occasions in the context of successful litigation against NGS.

I look forward to speaking with you more.

Best regards,



Larry Minden

When Chris here in the office sent it to me, I thought for sure it was a spoof. But no - it's for real. NGS' educational products now include a swimsuit issue. Where is the world going....

For those I haven't yet notified, please note the new address and contact numbers below.

Best,

--

Larry Minden  
Minden Pictures  
558 Main Street  
Watsonville, CA 95076 USA

[larry@mindenpictures.com](mailto:larry@mindenpictures.com)  
[www.mindenpictures.com](http://www.mindenpictures.com)

tel. 831.761-3600

fax 831.761-3233

NORMAN DAVIS

Subj: NGS  
Date: Tuesday, June 4, 2002 7:14:06 PM  
From: larry@mindenpictures.com  
To: lulukiku@aol.com

Hi Jerry & Idaz:

I've been tracking your progress from afar and have my fingers crossed in the hopes that all turns out well. You've certainly prepared yourselves properly and fought a hard, well thought out battle. Recent news even sounds like the judge is tired of NGS' antics.

Hoping for and wishing you the best.

Sincerely,

--

Larry Minden  
Minden Pictures  
783 Rio del Mar Blvd. #9-11  
Aptos, CA 95003 USA

[larry@mindenpictures.com](mailto:larry@mindenpictures.com)  
[www.mindenpictures.com](http://www.mindenpictures.com)

tel. 831.685.1911  
fax 831.685.1913

----- Headers -----

Return-Path: <larry@mindenpictures.com>  
Received: from rly-xj04.mx.aol.com (rly-xj04.mail.aol.com [172.20.116.41]) by air-xj03.mail.aol.com (v86.11) with ESMTP id MAILINXJ32-0604191406; Tue, 04 Jun 2002 19:14:06 -0400  
Received: from philotas.hosting.pacbell.net (philotas.hosting.pacbell.net [216.100.99.24]) by rly-xj04.mx.aol.com (v86\_r1.12) with ESMTP id MAILRELAYINXJ44-0604191401; Tue, 04 Jun 2002 19:14:01 -0400  
Received: from mindenpictures.com (adsl-66-121-139-234.dsl.snfc21.pacbell.net [66.121.139.234])  
by philotas.hosting.pacbell.net  
id TAA03835; Tue, 4 Jun 2002 19:14:00 -0400 (EDT)  
[ConcentricHost SMTP Relay 1.14]  
Errors-To: <larry@mindenpictures.com>  
Message-ID: <3CFD49D5.E74D5124@mindenpictures.com>  
Date: Tue, 04 Jun 2002 16:14:29 -0700  
From: Larry Minden <larry@mindenpictures.com>



Saturday, June 26, 1999

Fwd: Geographic Gully of Copyright  
Infringement

Pa

>photographs at issue, and that the doctrine of fair use is not applicable  
>to these facts."

>  
>The court took into consideration the four nonexclusive factors to be  
>considered when determining whether the fair use doctrine applies and  
>concluded, "that neither the GeoPack product nor the Jason Project poster  
>qualify as fair use."

>  
>The four factors are:

>1 - the purpose and character of the use, including whether such use is of  
>a commercial nature or is for nonprofit educational purposes;  
>2 - the nature of the copyrighted work;  
>3 - the amount and substantiality of the portion used in relation to the  
>copyrighted work as a whole; and  
>4 - the effect of the use upon the potential market for or value of the  
>copyrighted work.

>  
>The courts detailed presentation of the facts related to each of these  
>points should be useful to others faced with a "fair use" claim by any  
>organization, and particularly National Geographic.

>  
>Counts three and four in the Greenberg's case are not a part of this  
>decision and dealt with the use of the Greenbergs copyrighted images in the  
>"108 Years of National Geographic on CD-ROM". Earlier in the proceedings  
>lawyers for National Geographic argued that the "Tasini" decision in the  
>Southern District of New York confirmed their right to make uses in the  
>"108 Years" project without compensating photographers in any way. The  
>Greenberg's argued that "Tasini" should have no bearing on their case  
>because that decision was being appealed.

>  
>On this point the judge agreed with National Geographic and issued a  
>partial summary judgment on the two counts. Thus, the arguments relating  
>to the use of the Greenberg's images in the "108 Years" project were never  
>heard. The Greenbergs have the option to appeal that decision of the judge.

>  
>Oral arguments for the appeal of the "Tasini" decision have been heard in  
>the New York Appeals court and all parties are presently waiting for the  
>judge's ruling in that case. The results of that case could affect the  
>Greenberg's ultimate decision.

>  
>Jim Pickerell  
>Selling Stock

>  
>www.pickphoto.com/sso  
>jim@chd.com

.....  
For Information on Market Lead E-mail & Fax Services  
Visit The STOCKPHOTO Network Web Site => <http://www.stockphoto.net>  
.....

# CIVIL COVER SHEET

# COPY

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

### I. (a) PLAINTIFFS

MINDEN PICTURES, INC., a California Corporation

### DEFENDANTS

NATIONAL GEOGRAPHIC SOCIETY, a District of Columbia Corp., NATIONAL GEOGRAPHIC VENTURES, INC., a Delaware Corp., NATIONAL GEOGRAPHIC INTERACTIVE, INC., a corp.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF SANTA CRUZ  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

### (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Quinn Emanuel Urquhart Oliver & Hedges, LLP  
2479 East Bayshore Road, Suite 820

Palo Alto, California 94303  
(650) 494-3900

### ATTORNEYS (IF KNOWN)

99 21267 JF

### II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff  
 2 U.S. Government Defendant  
 3 Federal Question (U.S. Government Not a Party)  
 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

### IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from Another district (specify)  
 6 Multidistrict Litigation  
 7 Appeal to District Judge from Magistrate Judgment

### V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input checked="" type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

### VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

17 U.S.C. Section 501; Defendants engaged in acts of copyright infringement as to plaintiff's photographs.

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ Presently unascertainable, punitive damages & injunctive relief CHECK YES only if demanded in complaint: JURY DEMAND:  YES  NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND  SAN JOSE

DATE December 29, 1999

SIGNATURE OF ATTORNEY OF RECORD

*Diane Hutnyan*  
DIANE HUTNYAN NDC-JS44

305-667-3572

MINDEN PICTURES

Gerry + DAR

Enclosed is our filing. Included  
are concerns over images by:

Jim Brandenburg  
Frans Lanting  
Mark Moppett  
Flip Nicklin  
Michio Hoshino  
Mitsuoaki Inago.

Best regards,

Larry Munde

### RETURN OF SERVICE

Service of the Summons and Complaint was made by me <sup>1</sup>	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- Served personally upon the defendant. Place where served: \_\_\_\_\_  
\_\_\_\_\_
  
- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left: \_\_\_\_\_
  
- Returned unexecuted: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- Other (specify): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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#### DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Server*

\_\_\_\_\_  
*Address of Server*

<sup>1</sup>) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

1 QUINN EMANUEL URQUHART  
OLIVER & HEDGES, LLP  
2 Samuel B. Shepherd (Bar No. 163564)  
Diane C. Hutnyan (Bar No. 190081)  
3 2479 East Bayshore Road, Suite 820  
Palo Alto, California 94303  
4 (650) 494-3900

5 Attorneys for Plaintiff  
Minden Pictures, Inc.  
6

ORIGINAL FILED

DEC 29 1999

Richard W. Winking  
Clerk, U.S. District Court  
Northern District of California  
San Jose

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 MINDEN PICTURES, INC., a California  
12 corporation,

13 Plaintiff,

14 v.

15 NATIONAL GEOGRAPHIC SOCIETY, a  
District of Columbia corporation, NATIONAL  
16 GEOGRAPHIC VENTURES, INC., a Delaware  
corporation, and NATIONAL GEOGRAPHIC  
17 INTERACTIVE, INC., a corporation, and DOES  
18 1-10, inclusive,

19 Defendants.

C 99 21267 JF  
CASE NO.

COMPLAINT PVT

DEMAND FOR JURY TRIAL

20 THE PARTIES

21  
22 1. Plaintiff Minden Pictures, Inc. is a California corporation with its principal place  
23 of business at 783 Rio Del Mar Blvd., Ste. 9-11, Aptos, California 95003, in Santa Cruz County.  
24 Minden Pictures, Inc. ("Minden Pictures") is an agency which represents and manages the stock  
25 photography business of professional photographers. Minden Pictures has developed a  
26 reputation as one of the most selective stock photo agencies which represents many of the world's  
27 leading nature photographers.  
28

1           2.       Defendant National Geographic Society (hereinafter "NGS") is a District of  
2 Columbia corporation with its principal place of business at 1145 17th Street, NW, Washington,  
3 DC 20036. NGS is engaged in the business of publishing magazines, books, calendars, posters  
4 and other publications. NGS also subsidizes research and exploration. The most well known  
5 publication of NGS is its magazine, "National Geographic" (hereinafter, "NGM").

6           3.       Upon information and belief, Defendant National Geographic Ventures  
7 (hereinafter "NGV") is a Delaware corporation whose principal place of business is at 1145 17th  
8 Street, NW, Washington, DC 20036. Upon information and belief, NGV is engaged in the  
9 business of producing and selling maps, television programs, videos, and interactive products  
10 and programming, such as CD-Roms.

11           4.       Upon information and belief, Defendant National Geographic Interactive,  
12 (hereinafter, "NGI") is the electronic publishing division, and a wholly owned subsidiary, of  
13 NGS. Plaintiff is informed and believes that NGI produces NGS' website and a collection of  
14 "edu-tational" CD-Roms which are marketed and sold internationally.

15  
16                                   **JURISDICTION AND VENUE**

17           5.       This court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
18 § 1338 (a) as this case arises under the United States Copyright Act, 17 U.S.C. § § 101, et seq.

19           6.       Venue is proper in this district pursuant to 28 U.S.C. § 1400 (a)

20  
21                                   **GENERAL ALLEGATIONS**

22           7.       Minden Pictures is a well-known stock photography agency specializing in high-  
23 quality nature photography. Minden Pictures represents several photographers in the production,  
24 marketing and sale of high-quality nature images.

25           8.       Since 1987, Minden Pictures has been doing business, and has entered into several  
26 agreements, with NGS. During that time, NGS has also entered into several agreements with  
27 Minden Pictures' photographers involving the commission of photographic works for particular  
28 assignments to be published in NGM and/or other NGS products. Other agreements involve the

1 license of stock photographs from Minden Pictures for publication in NGM and/or other NGS  
2 products and publications.

3 9. Although each of the agreements between the parties place clear restrictions upon  
4 NGS' future use, reproduction, distribution, and assignment or transfer of the photographic works  
5 – in many cases banning any such uses in the future altogether – Plaintiff is informed and  
6 believes that NGS has on several occasions re-used, reproduced, distributed or assigned the  
7 photographs anyway, without obtaining Minden Pictures' or the individual photographers'  
8 permission or abiding by other of its contractual obligations, such as paying for the use. In at  
9 least three cases, Plaintiff is informed and believes that these infringing uses have involved the  
10 unauthorized reproduction of Minden Pictures' photographs onto commercially distributed CD-  
11 Rom products: "108 Years of National Geographic," "109 Years of National Geographic," and  
12 "110 Years of National Geographic."

13 10. Plaintiff is informed and believed that in many instances, NGS has used,  
14 distributed or assigned the use of Minden Pictures' photographs which were never licensed to it  
15 in the first place.

16 11. These unauthorized uses of photographs by NGS and the other Defendants  
17 deprive Minden Pictures of substantial revenue.

18  
19 **COUNT 1**

20 **BREACH OF WRITTEN CONTRACT**

21 **(Against NGS)**

22 12. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 11,  
23 inclusive, and incorporates them herein by this reference.

24 13. Over the past twenty years, NGS has commissioned photographic works from  
25 Minden Pictures' photographers for particular uses in NGM and/or other NGS publications  
26 ("assignment contracts"). Although there is some variation in the exact terms of the assignment  
27 contracts, they all contain restrictions on NGS' future use, reproduction and distribution, of the  
28

1 photographic works. Each of the operative agreements contain a term providing for additional  
2 fee payment for certain uses.

3 14. Over the last several years, NGS and Minden Pictures have entered into several  
4 agreements by which NGS has licensed the use of stock photographs from Minden Pictures and  
5 Minden Pictures' photographers ("stock licenses").

6 15. Although there is some variation in the exact terms of these agreements, they all  
7 contain restrictions on NGS' future use, reproduction and distribution, of the photographic works.  
8 One representative term is "No secondary rights whatsoever are granted or implied, unless  
9 licensed by Minden Pictures. . . . All other uses will be separately negotiated with Minden  
10 Pictures." Each of the stock licenses include a liquidated damages provision specifying that the  
11 recipient will pay, for each unauthorized use, two or three times the normal fee for use.

12 16. Plaintiff is informed and believes that the unauthorized use provisions and the  
13 payment for unauthorized uses were both agreed to by NGS and were reasonable under the  
14 circumstances as they existed at the time of the contract.

15 17. Several of the stock licenses required NGS to "provide copyright protection on all  
16 use and assign same to [Minden Pictures photographers] immediately upon request, without  
17 charge."

18 18. Plaintiff has performed all conditions, covenants and promises required on its part  
19 to be performed in accordance with the stock licenses, except those which it was prevented or  
20 legally excused from performing because of the acts or omissions of NGS.

21 19. Plaintiff is informed and believes that NGS has repeatedly breached, and  
22 continues to breach the written assignment contracts and stock licenses by using Minden Pictures'  
23 photographic works in interactive products (including but not limited to CD-Rom collections),  
24 promotional materials, and editorial publications, without authorization from Minden Pictures or  
25 Minden Pictures' photographers. In addition, Plaintiff is informed and believes that NGS has  
26 repeatedly breached and continues to breach the written assignment contracts and stock licenses  
27 by allowing NGV and NGI to reproduce and distribute certain of the Subject Works.

28



1 20. Although Plaintiff has made demand that NGS comply with the contractual terms,  
2 NGS has failed, and refuses, to pay to Plaintiff, the liquidated damages required under the  
3 express terms of the contracts between the parties or otherwise to comply with the contracts.

4 21. Plaintiff is informed and believes that NGS has further breached the stock licenses  
5 by not obtaining copyright protection for images as required.

6 22. Plaintiff has been damaged by such breaches of the contracts between the parties.  
7

8 **COUNT 1**

9 **COPYRIGHT INFRINGEMENT**

10 **(Against All Defendants)**

11 23. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 22,  
12 inclusive, and incorporates them herein by this reference.

13 24. The photographs at issue in this suit ("Subject Works") contain material wholly  
14 original with the Plaintiff that is copyrightable subject matter under the laws of the United States.

15 25. For each of the Subject Works, Plaintiff applied to the Register of Copyrights for  
16 a Certificate of Registration. Such certificates were issued by the Register of Copyrights, or are  
17 pending, as to all Subject Works,

18 26. Plaintiff is the contractual representative of Minden Pictures' photographers who  
19 currently are, and at all relevant times have been, the sole proprietors of all right, title and interest  
20 in and to the copyright in the Subject Works, with the exception of rights expressly granted to  
21 NGS by contract. Plaintiff has produced and distributed the photographs at issue in strict  
22 conformity with the provisions of the Copyright Act of 1976 and all other laws governing  
23 copyright.

24 27. Use of the subject works by NGS, NGV and NGI (collectively, "Defendants"), by  
25 any and all uses which are beyond the scope of the assignment contracts and stock licenses  
26 entered into by NGS and Minden Pictures' photographers and Minden Pictures generally,  
27 constitute acts of copyright infringement by Defendants under 17 U.S.C. § 101 et seq.

28 Specifically, Defendants have infringed and will continue to infringe Plaintiff's copyrights in and

1 relating to the Subject Works by producing, distributing, and placing upon the market products  
2 which are direct copies, as well as allowing NGV and NGI to produce, distribute and place on the  
3 market products which are direct copies, of Plaintiff's copyrighted Subject Works.

4 28. Plaintiff is entitled to an injunction restraining Defendants, their officers, agents  
5 and employees, and all persons acting in concert with them, from engaging in any further such  
6 acts in violation of the copyright laws.

7 29. Plaintiff is further entitled to recover from Defendants the damages, including  
8 attorneys' fees, it has sustained and will sustain, and any profits and revenues obtained by  
9 Defendants as a result of Defendants' acts of infringement alleged above. At present, the amount  
10 of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiff.

11  
12 **COUNT 3**

13 **COMMON LAW MISAPPROPRIATION**

14 **(Against All Defendants)**

15 30. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 29,  
16 inclusive, and incorporates them herein by this reference.

17 31. Plaintiff has made a substantial investment of time, effort and money over many  
18 years in creating the goodwill associated with, and public recognition of, its photographs.

19 32. By utilizing the Subject Works without authorization, payment and/or proper  
20 credit, Defendants have appropriated Plaintiff's goodwill and reputation without any payment,  
21 consideration, or consent and are unjustly reaping the benefit of Plaintiff's copyrighted works.

22 33. Defendants' conduct has caused great and irreparable damage to Minden Pictures  
23 and Defendants' continued misappropriation will cause Plaintiff further damage unless  
24 Defendants are restrained and enjoined from any further unauthorized use of the Subject Works.

25 ////

26 ////

27 ////

28 ////

1 COUNT 4

2 STATUTORY AND COMMON LAW UNFAIR COMPETITION

3 (Against All Defendants)

4 34. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 33,  
5 inclusive, and incorporates them herein by this reference.

6 35. By reason of the foregoing, Defendants have been, and are, engaged in "unlawful,  
7 unfair or fraudulent business practices" in violation of §§ 17200 et seq. of the California  
8 Business and Professions Code and acts of unfair competition in violation of common law.

9 36. Defendants' acts complained of herein have damaged and will continue to damage  
10 Plaintiff irreparably. Plaintiff has no adequate remedy at law for these wrongs and injuries. The  
11 damage to Plaintiff includes harm to its goodwill and reputation in the marketplace that money  
12 cannot compensate.

13  
14 PRAYER FOR RELIEF

15 WHEREFORE, Plaintiff, by and through its attorneys, respectfully pray that this  
16 honorable court render a judgment in its favor against the Defendants herein, granting the  
17 following relief:

18  
19 AS TO COUNT 1

- 20 1. A determination that the assignment contracts and stock licenses are valid and  
21 enforceable;
- 22 2. A determination that NGS has breached the written contracts of the parties;
- 23 3. An award of damages for Defendants' multiple breaches of the contract;

24  
25 AS TO COUNT 2

- 26 4. A determination that Defendants have improperly and unlawfully infringed upon  
27 Plaintiff's copyrights in the Subject Works;

1 14. An accounting of the profits gained by Defendants through their wrongful uses of  
2 the Subject Works;

3 15. An award of Defendants' unjust profits and Plaintiff's lost profits.  
4

5 AS TO ALL COUNTS

6 16. An order requiring the award of damages in favor of Plaintiff to include costs,  
7 interest and attorneys fees to the extent permissible under applicable law;

8 17. Such other and further relief as this court deems appropriate and lawful under the  
9 circumstances.  
10

11 DATED: December 29, 1999

QUINN EMANUEL URQUHART OLIVER  
& HEDGES, LLP

12  
13  
14 By:  \_\_\_\_\_

Diane C. Hutnyan  
Attorneys for Plaintiff  
Minden Pictures, Inc.  
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1 5. The entry of a judgment in favor of Plaintiff against Defendants for actual  
2 damages and for any profits attributable to the infringement of Plaintiff's copyrights and  
3 proprietary rights and interests;

4 6. An order requiring Defendants to account for all gains, profits, advantages and  
5 revenues derived from the infringements of the Subject Works, and to be derived therefrom in  
6 the future;

7 7. An order requiring that all gains, profits, advantages and revenues derived from  
8 the infringements of the Subject Works be deemed to be held in a constructive trust for the  
9 benefit of Plaintiff;

10 8. An order requiring Defendants to disgorge all gains, profits, advantages and  
11 revenues derived from the infringements of the Subject Works;

12  
13 AS TO COUNT 3

14 9. A preliminary and permanent injunction restraining and enjoining Defendants and  
15 their agents, servants, and employees and all persons acting thereunder, in concert with, or on  
16 their behalf, from wrongfully using the Subject Works in connection with the promotion,  
17 advertisement, production, distribution or sale of NGM or other NGS products.

18 10. An accounting of the profits gained by Defendants through their wrongful uses of  
19 the Subject Works;

20 11. The imposition of a constructive trust in favor of Plaintiff on all profits obtained  
21 from Defendants' misappropriation of the Subject Works;

22 12. An award of punitive damages in an amount sufficient to punish Defendants and  
23 deter such conduct in the future.

24  
25 AS TO COUNT 4

26 13. A preliminary and permanent injunction restraining and enjoining Defendants and  
27 their agents, servants, employees, and all persons acting thereunder, in concert with, or on their  
28 behalf, from wrongful use of the Subject Works;

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DEMAND FOR JURY TRIAL

Plaintiff Minden Pictures, Inc. demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

DATED: December 29, 1999

QUINN EMANUEL URQUHART OLIVER  
& HEDGES, LLP

By: *Diane Hutnyan / JAK*  
Diane C. Hutnyan  
Attorneys for Plaintiff  
Minden Pictures, Inc.