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VIA FEDERAL EXPRESS

May 7, 2001

Thomas K. Kahn
Clerk
United States Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

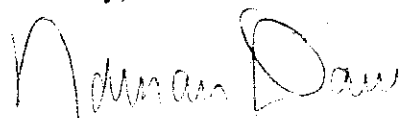
Re: Greenberg v. National Geographic Society, et al.
No 00-10510

Dear Mr. Kahn:

I am enclosing for filing in the above-referenced matter an original and sixteen copies of Appellant Greenberg's Motion to Strike Letter and Enclosure Filed by Appellees.

Please provide to us one file-stamped copy. An addressed, stamped envelope is enclosed.

Sincerely,



Norman Davis

Enclosures

cc: Kenneth W. Starr, Esq.
Robert G. Sugarman, Esq.

DOCKET NO. 00-10510-C

IN THE
UNITED STATES COURT OF APPEALS
ELEVENTH JUDICIAL CIRCUIT

JERRY GREENBERG and IDAZ GREENBERG
Plaintiffs/Appellants

vs.

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

**APPELLANT'S MOTION TO STRIKE LETTER
AND ENCLOSURE FILED BY APPELLEES**

Appellant, JERRY GREENBERG ("Greenberg"), moves to strike a letter from counsel for the Appellees to the Court, dated May 2, 2001, and the enclosure accompanying that letter.

1. In a letter dated May 2, 2001, counsel for the Appellees wrote to the clerk of the Court asking that the letter and an enclosure be provided "to all of the active judges considering the [Appellees'] petition [for rehearing]." The enclosure

consists of a letter from the General Counsel of the U. S. Copyright Office to The National Geographic Society, also dated May 2, 2001.

2. The Appellees' letter is characterized in the caption therein as "Amendment to Petition for Rehearing en Banc." The "amendment" should be rejected for various reasons as discussed below.

3. Nothing in the Federal Rules of Appellate Procedure, or the Eleventh Circuit Rules, authorizes the filing of such an "amendment" absent permission from the Court.

4. Appellees' letter expresses concern over the contents of footnote 13 in the Court's opinion. The discussion in the footnote is dicta and has nothing to do with the merits of the Court's opinion. Thus, Appellees' letter has nothing to do with whether or not the Court should rehear its opinion, and is inappropriately characterized as an "amendment" to the rehearing petition.¹

¹ Appellees' letter also withdraws Question Number 3 and other argument raised in Appellees' petition. That could be done without injecting the analysis prepared by the Copyright Office.

5. Most seriously, the enclosure to the Appellees' letter includes a highly detailed discussion by staff counsel for the Copyright Office² of substantive issues in the Court's opinion that go far beyond the "accusation of 'fraud'" footnote in the opinion about which Appellees' letter expresses concern. The Appellees thus are attempting to inflate the substantive argument in their petition, without the Court's permission, and beyond the time limit (and the page limit) applicable to the petition. Such conduct is greatly prejudicial to Greenberg.

6. Federal regulations expressly preclude the Copyright Office from providing legal advice in cases involving copyright infringement. See, e.g., 37 C.F.R. § 201.2 (a) (3). The correspondence from the Copyright Office is, in very substantial part, contrary to that limitation.

7. If the Court should decide to accept the correspondence from counsel for Appellees, Appellant requests an adequate opportunity, in

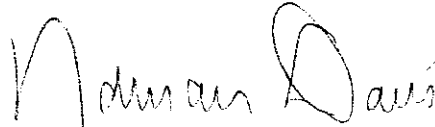
² That discussion was elicited by the Executive Vice-President of the National Geographic Society in a letter to the Copyright Office, referenced in the letter from staff counsel in that office. A copy of the Society's letter has not been provided to counsel for Appellants.

terms of time and page limitations, to respond to the petition for rehearing and to the newly-submitted "amendment" to that petition.

WHEREFORE, Appellant, JERRY GREENBERG, moves to strike from the record the May 2, 2001 letter from counsel for Appellees, and the enclosure to that letter.

Respectfully submitted,

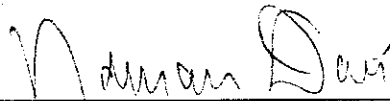
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Attorneys for Appellant Greenberg



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Certificate of Service

I hereby certify that a copy of the foregoing motion was served by Federal Express on Kenneth W. Starr, Esq., Kirkland & Ellis, 655 Fifteenth Street, N.W., Washington, D.C. 20005; and on Robert G. Sugarman, Esq., Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 this 7th day of May, 2001.



Norman Davis