

DOCKET NO. 00-10510-C

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH 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.

**SUPPLEMENTAL SUBMISSION OF NATIONAL GEOGRAPHIC SOCIETY,  
NATIONAL GEOGRAPHIC ENTERPRISES, INC. AND MINDSCAPE, INC.  
CONCERNING THE PROGRAM**

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This Supplemental Submission is filed on behalf of National Geographic Society, National Geographic Enterprises, Inc. (collectively, the "Society") and Mindscape, Inc. ("Mindscape") (collectively, "Appellees") in response to the Court's direction, in its Memorandum dated October 26, 2000, that Mindscape "supplement the record by providing this court with a copy of the copyright registration certificate and the deposit materials pertaining to the Mindscape Program. . . ."

The License Agreement and Limited Warranty ("License Agreement") included with CD-ROM 108 states that "all rights not expressly granted are reserved by Mindscape or its suppliers." (Exh. I). One of Mindscape's suppliers, Dataware Technologies, Inc. ("Dataware"),<sup>1</sup> created the CD Author Development System ("CDA"), a proprietary search engine that was incorporated in CD-ROM 108 to function as an electronic index (see Appellees' Supplemental Brief at pp. 4-6). Dataware registered CDA version 3.x for copyright protection, which included the versions used in CD-ROM 108 (version 3.41 for Windows, version 3.4 for Macintosh).

In addition to the CDA, CD-ROM 108 contains the PicTools Development Kit ("PicTools"), an image compression and decompression tool created by Pegasus Imaging Corporation. Graphical images, like the digital scans of the pages of the Magazine in CD-ROM 108, are often compressed (shrunk to smaller sizes) when placed on CD-ROM in order to take up less space, thus

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<sup>1</sup> Dataware now operates under the name LeadingSide, Inc. Dataware is not a party to this action.

enabling more images to be contained on each disk. To display the image, it must be decompressed (expanded back to its original size). PicTools is used to expand the digital images of Magazine pages contained in CD-ROM 108. Defendants understand that Pegasus registered PicTools for copyright protection, but do not have access to the registration certificate or deposit materials. While PicTools is apparently copyrighted, it is merely a storage mechanism necessitated by CD-ROM technology, and does not add any creative elements to the Magazines themselves.

Mindscape has not registered for copyright any element of CD-

ROM 108.

Dated: November 14, 2000

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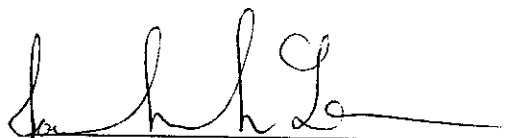
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By:

  
Robert G. Sugarman

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type-volume limitation set forth by the Court in its Memorandum Dated October 26, 2000. The brief utilizes proportional spacing and consists of under 15 pages.

  
Joanne M. McLaren