

# DENNIS DIMICK DEPO.

Jerry,

Here is the amazing deposition of Dennis Dimick, illustrations editor who wrote the damning memo before CD108 was made saying it was an infringing product and should not be made without paying photographers.

I have copied portions I think you will find interesting and useful.

Fred

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6 Q. Please don't take umbrage at this.

7 This is not a personal attack, but I just need

8 to ask this, Mr. Dimick, and I've asked this

9 question to other people before:

10 Are you taking any drugs that might

11 impair your memory?

12 A. Oh, no, sir.

13 Q. Are you under the care of a doctor

14 at this point that has prescribed for you any

15 drugs that might at all affect your ability to

16 recall events of four years ago?

17 A. No, sir. I am on an allergy

18 medicine in season, but it's not in season.

19 Q. Again, fine. I don't mean to make

20 that as a personal attack.

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2 Q. Well, did you tell Mr. Royce that

3 you believed that National Geographic had the

4 right to publish the CD-ROM 108?

5 A. Not that I'm aware.

6 Q. Did you tell him that you believe  
7 that National Geographic did not have the  
8 right --

9 A. Not that I'm aware.

10 Q. So you don't remember anything at  
11 all that you told Mr. Royce during those  
12 discussions?

13 MS. GRAY: Objection. Asked and  
14 answered.

15 A. Not four years ago, sir.

16 Q. O.K. What did Mr. Royce tell you in  
17 those discussions?

18 A. My response would be the same. I  
19 don't remember the details of the conversation.

=====  
25 Tell me what happened at the meeting

24

1 D. Dimick  
2 that you and he attended with Ms. Dupre to  
3 discuss copyright issues regarding the CD 108?

4 A. The central issue that was raised  
5 was if the publication of the magazine in the

6 CD-ROM format was a residual use or if it was an  
7 archival use.

8 Q. Who raised that issue?

9 A. Mr. Royce and I did.

10 Q. So you raised it as a question?

11 A. Yes, sir.

12 Q. What was the response?

13 A. We were told by legal counsel that  
14 they had been advised that publication of CD-ROM  
15 108 was an archival use.

16 Q. Did you agree with that conclusion?

17 A. Well, that was the considered legal  
18 opinion of those who had the responsibility for  
19 doing so.

20 Q. That wasn't the question I asked.

21 Did you agree with that opinion?

22 A. Personally, no.

23 Q. Why not?

24 A. Well, mostly because I had not been  
25 informed of the rationale for their coming to

25

1 D. Dimick

2 the conclusion that it was deemed, deemed an

3 archival use.

4 Q. What rationale are you referring to?

5 A. That the view was that the CD-ROM  
6 108 product for purposes of copyright was viewed  
7 as, as not a residual use.

8 Q. Is that the rationale that you just  
9 referred to?

10 A. Correct.

11 Q. When were you advised of this  
12 rationale?

13 A. I'm sorry?

14 Q. Who advised you of this rationale?

15 A. They did.

16 Q. Who's they?

17 MS. GRAY: He said Suzanne Dupre.

18 A. Suzanne Dupre of Mr. Royce and me of  
19 that rationale in a meeting in 1997.

20 Q. O.K. So, to try to fairly  
21 summarize, you and Mr. Royce were wondering  
22 whether the CD 108 was a residual or an archival  
23 use, and you raised that issue with Ms. Dupre  
24 and she said it was an archival use.

25 Am I fairly summarizing what took

1 D. Dimick

2 place in that meeting?

3 MS. GRAY: Objection to form.

4 You can answer.

5 A. That's correct.

6 Q. Did she give you any reason why she  
7 believed that the CD 108 was an archival use?

8 A. No that I'm aware.

9 Q. Did you ask her what her reason  
10 might be?

11 A. Yes.

12 Q. What was the response?

13 A. That because the magazine was being  
14 duplicated in its entirety, in context, all  
15 pages, all issues, that it was an archival use  
16 and it was an archive of the existing magazine,  
17 and it was not a residual or secondary use.

=====

11 Q. Now, take a look, if you will, at  
12 the paragraph that follows paragraph 5 which  
13 starts: I said in one swoop.

14 See that, sir?

15 A. I do.

16 Q. Is what you wrote in that paragraph

17 what you said at the meeting?

18 A. I do not remember if I said that at  
19 that meeting.

20 MR. WEINGRAD: Could you read it  
21 into the record what paragraph 5 says,  
22 because I don't have it in front of me?

23 MR. BERGER: Sure.

24 Q. This paragraph says:  
25 I said in one swoop we could destroy

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1 D. Dimick  
2 all the goodwill and trust those of us who deal  
3 with photographers have tried to build up, and  
4 that to take this work without compensation  
5 would jeopardize our future ability to acquire  
6 the necessary rate of work to publish a  
7 magazine.

8 Do you recall saying that, sir?

9 A. I recall writing it.

10 Q. You wrote this memo shortly after  
11 the meeting?

12 A. That's correct.

13 Q. And you never changed it, did you,

14 after you wrote it?

15 A. What you're reading is what I wrote

16 on that date.

17 Q. Now, it says:

18 Further, I said if we proceeded

19 without trying to compensate end-license use, we

20 should expect copyright infringement suits from

21 ASMP and National Writers' Union.

22 When you said that, what was the

23 response?

24 MS. GRAY: Objection. You have no

25 foundation.

30

1 D. Dimick

2 You can answer.

3 A. If there was a response, I do not

4 remember what it was.

5 Q. Why were you concerned that groups

6 like ASMP and National Writers' Union might sue?

7 A. It might have an adverse effect on

8 the business of the Society.

9 Q. Now, did you show this memo to Mr.

10 Fahey?

11 A. I did not.

12 Q. Did Mr. Royce?

13 A. Not that I'm aware.

14 Q. What about Mr. Allen, did he respond

15 to this memo at all?

16 A. I did not receive a specific

17 response from Mr. Allen.

18 Q. What about a general response? When

19 you say specific, it suggests that --

20 A. I sent by e-mail. I did not get any

21 e-mail in return.

22 I do not remember having a

23 conversation with him after I wrote this memo

24 about this memo.

=====

s 7 Q. So when you wrote this memo -- by

8 the way, how long after the meeting did you

9 write it?

10 A. Immediately.

11 Q. Let's go through it a little bit

12 more.

13 Now, take a look at point 1 about

14 Mr. Stanton.

15 Had you and he discussed the CD-ROM

16 108 before this meeting?



17 A. Not that I remember.

18 Q. Now, the first point says that Mr.

19 Stanton was interested in trying to find out

20 which pictures we had purchased from agencies

21 that in the contracts excluded electronic

22 rights.

23 Why was he interested in trying to

24 find that out?

25 MS. GRAY: Objection.

33

1 D. Dimick

2 You can answer.

3 A. Because the contracts that we had

4 negotiated with the sources specifically

5 excluded electronic writing.

6 Q. Yes, but why was he interested in

7 trying to find those contracts?

8 A. I don't know.

9 Q. You say further in point 1 that Mr.

10 Stanton said, quote, and that we would

11 compensate them, end quote.

12 Why did Mr. Stanton indicate that he

13 would compensate those agencies whose contracts

14 had specifically excluded electronic rights?  
15 MS. GRAY: Objection.  
16 You can answer.  
17 A. I don't know.  
18 Q. Did you ask him?  
19 A. No.  
20 Q. Did he give any reason?  
21 A. Not that I remember.  
22 Q. Did you agree with his determination  
23 that agencies whose contracts had specifically  
24 excluded electronic rights should be compensated  
25 for the reuse of their works in the CD 108?

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1 D. Dimick  
2 MS. GRAY: Objection. No  
3 foundation, and misstating documents.  
4 But you can answer.  
5 MR. BERGER: I don't think it  
6 misstates the document. That's exactly  
7 what Mr. Stanton is saying here as Mr.  
8 Dimick recites it.  
9 MS. GRAY: My objection stands.  
10 You can answer.

11 MR. BERGER: If you want to tell me  
12 how I'm misstating it, I'll be glad to  
13 rephrase it. If you don't want to do  
14 that, he can go ahead and answer.

15 MS. GRAY: For one thing, you are  
16 calling for speculation. And for another  
17 thing, you refer to Stanton concluding  
18 that contracts to electronic rights  
19 should be paid for.

20 That's not what the document says.  
21 It just says we would compensate them.  
22 Those are the bases of my objections.  
23 You can either rephrase or he can answer  
24 the question as of that.  
25 Q. Let me see if I can rephrase so I

35

1 D. Dimick  
2 can satisfy your counsel, Mr. Dimick.  
3 Mr. Dimick, who is Mr. Stanton  
4 referring to when he said we would compensate  
5 them?  
6 A. National Geographic Society.  
7 Q. But who would be compensated?

8 A. Who would be compensated?

9 Q. Right.

10 A. Well, if the sentence, as it's  
11 written, it would be those who had purchased  
12 contracts which specifically excluded electronic  
13 rights.

14 Q. Did you agree with that position?

15 A. I have no opinion on that position.  
16 I was just reporting the position.

17 Q. Now, next, in paragraph 2, the  
18 second sentence says, quote: I said my cursory  
19 reading of copyright law said we could not  
20 assume this.

21 What sort of reading of copyright  
22 law had you done as of this point?

23 A. I had done some reading of, of the  
24 copyright law in, in an Internet archive.

=====  
6 A. Whether I was satisfied or not was  
7 irrelevant to what occurred.

8 Q. Well, Mr. Dimick, these questions  
9 are not directed at the third parties. They're  
10 not directed at Ms. Dupre or at your superiors.  
11 They're directed to you. And I'm seeking to  
12 find out whether you, Dennis Dimick, were

13 satisfied with the decisions made by legal  
14 counsel with respect to the treatment of  
15 photographers regarding the CD 108. So those  
16 questions seek to find out your satisfaction  
17 level, if any.

18           Were you satisfied --

19       A. They made a legal decision. I'm not  
20 an attorney.

21       Q. Yes, but were you satisfied with  
22 their decisions?

23       A. I don't really know.

24       Q. Did you ever think about resigning?

25       A. Nope.

=====  
10           The next sentence of that paragraph  
11 says that Susan -- which I assume you mean  
12 Suzanne Dupre. Correct?

13       A. Yes, sir.

14       Q. O.K. You say: Susan pointed out --  
15 I'm quoting -- that she was the attorney here,  
16 and that it had been decided more than a year  
17 ago that we would not pay assignment  
18 photographers for this use.

19           Did she tell you who had made that  
20 decision?

21 A. No.

22 Q. Did she tell you why that decision

23 had been made a year ago?

24 A. No.

25 Q. Was this the first time that you had

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1 D. Dimick

2 become aware that a decision had been made a

3 year ago not to pay assignment photographers?

4 A. Was this the first time I found out?

5 Q. Right.

6 A. As you will see in the second

7 sentence of paragraph 2, that is, yes, the case.

8 Q. Were you surprised?

9 A. Was I surprised?

10 Q. Yes.

11 A. I don't know. Surprise was not an

12 emotion that I registered at that time.

13 Q. What emotion did you register?

14 A. I do not know.

15 Q. Were you disappointed?

16 MS. GRAY: Objection.

17 He just said he didn't know.

18 A. I don't know. I mean, four years  
19 ago, what were you doing four years ago?

20 Q. Now, paragraph 5 refers to the moral  
21 issues of not making good-faith efforts to find  
22 and compensate.

23 Did you believe at the time that you  
24 wrote this memo that Geographic was not making a  
25 good-faith effort to find and compensate

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1 D. Dimick

2 copyright holders?

3 A. I was not aware if they were or not.

4 Q. But weren't you pointing out the  
5 moral issue that arose from not making such a  
6 good-faith effort?

7 MS. GRAY: Objection.

8 He just testified that he wasn't  
9 aware if they were or not making the  
10 effort.

11 Q. So if you weren't aware, then, why  
12 did you write what appears in paragraph 5, Mr.  
13 Dimick?

14 A. To try and lay out what I believed

15 as a layperson what were possible hazards going  
16 forward.

17 Q. What was the response to your laying  
18 out those hazards from those --

19 A. I do not remember.

20 Q. Did anyone say anything in response  
21 to, you know, this kind of, you know, if you  
22 were pointing out hazards to your colleagues,  
23 they had no response?

24 A. As I said, I don't remember.

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21 Q. What about Ms. Clewell? I think I'm  
22 pronouncing her name correctly.

23 A. No.

24 Q. You had no discussions with her  
25 about the ethical issues after the conversation

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1 D. Dimick  
2 that you refer to here. Correct?

3 A. No, sir.

4 Q. Now, you say as well that, and I  
5 quote: Carolyn said Maura can talk herself blue  
6 in the face on these issues but no one listens.



7 Did you agree with that?

8 A. Agree with what, the statement that  
9 I wrote?

10 Q. Correct, that no one listens.

11 MS. GRAY: That no one listens to  
12 what?

13 MR. BERGER: To what Mr. Dimick's  
14 referring to here.

15 A. I'm not -- I have no opinion. That  
16 is just a statement of reporting what was told  
17 to me.

18 Q. So even though you've been working  
19 with National Geographic in various capacities  
20 for the last 21 years, you have no opinion as to  
21 whether anyone listens about moral and/or  
22 ethical issues. Correct?

23 MS. GRAY: Objection.

24 You can answer.

25 Q. Mr. Dimick?

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1 D. Dimick

2 A. Yeah, I hear you.

3 Q. Do you want to answer the question,

4 please?

5 A. I have no opinion.

6 MS. GRAY: Are you talking about

7 moral and ethical issues in general?

8 A. In general, or specific to this

9 particular issue?

10 Q. Well, you say you have no opinion.

11 You've been working for your present

12 employer for more than two decades, and I

13 wondered if you have any opinion about whether

14 your employer is sensitive to moral and/or

15 ethical issues?

16 MS. GRAY: I'm going to object to

17 the form of that question.

18 But you can answer it.

19 MR. BERGER: Well, I'm asking based

20 on his personal knowledge. I'm not

21 asking for an expert opinion.

22 MS. GRAY: The objection stands.

23 But you can answer.

24 A. Do I have an opinion?

25 Q. Right.

1 D. Dimick

2 A. I am not -- I don't have opinions on  
3 this.

4 Q. So you have no -- O.K., fine. Very  
5 well.

6 Well, when Carolyn said to you what  
7 you wrote here, did you disagree with her?

8 A. Did I disagree with her?

9 Q. Right.

10 A. Well, I don't know, because she just  
11 told me there was no -- what was the point in  
12 disagreeing? She just told this to me.

13 Q. I didn't ask about whether there was  
14 a point or not. I just asked whether or not  
15 when she said this to you, as you report here in  
16 your memo, did you disagree with her?

17 A. Did I disagree with Maura or Carolyn  
18 about what, these issues?

19 Q. Mr. Dimick, I'm not trying to make  
20 it tough for you.

21 You reported a statement here.

22 A. That's right.

23 Q. And the statement is pretty clear on  
24 its face.

25 When the statement was made to you,

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1 D. Dimick

2 as you reported here, did you say to Carolyn, I

3 disagree?

4 A. I do not remember what I said to

5 her.

=====

3 Q. Good. Mr. Dimick, is this exhibit

4 109 a true copy of a memo that you wrote on or

5 about March 18, 1997?

6 A. Yes, sir.

7 Q. Did you write this memo before or

8 after the memo we just talked about?

9 A. Before.

10 Q. To whom did you address this memo?

11 A. No one.

12 Q. Did you give this memo to anyone?

13 A. No.

14 Q. Did you give it at some point to

15 counsel for production in this case?

16 A. Yes.

17 Q. Did you give any other documents to

18 counsel for production in this case?

19 A. No.

20 Q. Where did you keep this memo after  
21 you prepared it?

22 A. I found it in a stack of papers in  
23 my office.

24 Q. What else was in that stack that  
25 concerned the CD 108, if anything?

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1 D. Dimick

2 A. Nothing.

3 Q. Now the first sentence of this memo  
4 states that you have these concerns.

5 To whom were you addressing these  
6 concerns?

7 A. To myself.

8 Q. What's the reason that you prepared  
9 this memo before you went to the meeting?

10 A. So I could understand myself what  
11 were potentially some of the issues at play.

12 Q. O.K. Let's go down the memo as we  
13 did with the other one and see if we can talk  
14 about some of the aspects of it.

15 Now, the first concern that you

16 refer to here is copyright infringement  
17 vis-a-vis photographs purchased for one-time  
18 use.

19 Now, why did you have this concern?

20 A. Because there was concern that  
21 CD-ROM 108 itself may prove to not be an  
22 archival use.

23 Q. And is that, in fact, what's  
24 actually happened?

25 A. Not that I'm aware.

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1 D. Dimick

2 Q. Are you aware of a litigation  
3 involving Jerry Greenberg and the National  
4 Geographic Society?

5 A. Only what I've read in the  
6 newspaper.

7 Q. What have you read, sir?

8 A. I'm sorry, sir. I read hundreds of  
9 articles a day. I cannot recount for you the  
10 detail.

11 Q. I'm not asking about details of all  
12 of those hundred articles. I'm just asking you

13 about some details about some litigation against  
14 your employer involving this very product.

15 Do you know whether Mr. Greenberg  
16 has prevailed at all against your employer?

17 A. I am aware that there is some recent  
18 court decision that was in his favor.

19 Q. Do you know whether the court in  
20 that case decided the issue of whether this  
21 product is an archive or not?

22 A. I do not know that particular issue,  
23 sir.

24 Q. But the issue of whether the CD-ROM  
25 was an archive or not was one that you were

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1 D. Dimick

2 concerned about on March 18, 1997. Correct?

3 A. Yes.

4 Q. O.K. Let's go to the next concern  
5 that you express here. The fact of copying  
6 copyrighted expressions into a digital form.

7 Why did you have that concern?

8 A. That was actually -- these were not  
9 necessarily my concerns. These were -- this

10 paper resulted from the online research that I  
11 did with copyright law, and there were aspects  
12 to the statute that I was essentially putting  
13 down on this paper as items relevant --  
14 potentially relevant items.

15 Q. Right. Right.

16 Now, you say we are already in  
17 violation. Why?

18 A. Well, from a layperson's point of  
19 view, the process of the digitization of the  
20 magazine was underway.

21 Q. Why was that a violation?

22 MS. GRAY: Objection. Calls for a  
23 legal conclusion. But I will allow Mr.  
24 Dimick to answer it.

25 A. I mean, I don't have a legal

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1 D. Dimick  
2 conclusion. All that statement, we are already  
3 in violation, was a subsequent statement that  
4 resulted from the citations that I had made  
5 from, apparently, from the law that said the act  
6 of copying copyrighted expressions into digital



7 form in and of itself is copying.

8 Q. And as of March 18, had copyrighted  
9 expression into digital form already taken  
10 place?

11 MS. GRAY: Objection. Calls for a  
12 legal conclusion.

13 But you can answer the question.

14 A. I do not have any specific evidence  
15 to show if it had.

16 MR. BERGER: So, just to go back,  
17 Ms. Gray, to your objection, I wasn't  
18 asking him for a legal conclusion. I was  
19 asking him whether the act of copying an  
20 expression into digital form had already  
21 taken place.

22 MS. GRAY: You asked him whether the  
23 act of copying a copyrighted expression  
24 had occurred and --

25 MR. BERGER: I'm just referring to

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1 D. Dimick  
2 what he says here.

3 MS. GRAY: -- and that copying calls

4 for some sort of legal judgment as to  
5 whether it's a copyrighted expression.

6 So you're getting into an area here  
7 where you're asking the witness about  
8 legal issues and he's not a lawyer. He's  
9 already testified and I just -- I object  
10 to asking a layperson an opinion about a  
11 legal question. I haven't instructed him  
12 to not answer, and you can keep going.

13 MR. BERGER: Fine. I understand.

14 Q. Now, you say we are already in  
15 violation as of March 18, 1997.

16 Why was National Geographic already  
17 in violation?

18 MS. GRAY: Objection. Asked and  
19 answered, and calls for a legal  
20 conclusion.

21 But you can answer.

22 A. I had no specific evidence that we  
23 were at that time.

24 Q. So why did you say we are already in  
25 violation if you had no specific evidence?

1 D. Dimick

2 A. I'm sorry, sir, I do not know.

3 Q. So are you saying that you made a  
4 mistake when you wrote this statement?

5 MS. GRAY: Objection.

6 He said he didn't know.

7 MR. BERGER: He says he doesn't know  
8 why he wrote it.

9 Q. So are you now retracting what you  
10 said?

11 A. No.

12 Q. You're not retracting what you said?

13 A. No.

14 Q. O.K.

15 A. I just told you that I did not know  
16 why I wrote that, absent specific evidence.

17 Q. Now, did you ever amend this memo  
18 after the meeting of March 18 that you attended?

19 A. No.

20 Q. Did you ever write another memo  
21 about your copyright concerns following the  
22 meeting of March 18?

23 A. The only other memo I wrote was the  
24 one that you had been questioning me on for  
25 about an hour or so.

1 D. Dimick

2 Q. O.K. So the only two memos that you  
3 ever wrote about copyright issues are exhibits  
4 marked as Plaintiff's 105 that we talked about  
5 before and 109 now that is in front of you.  
6 Correct?

7 A. That's correct.

8 Q. Now, referring you down to paragraph  
9 1(c), the second sentence talks about courts  
10 having adjudged, et cetera.

11 What cases, court cases, are you  
12 referring to there, sir?

13 A. I do not -- I did not make a record  
14 of the specific court case citation. I do not  
15 know the answer to that.

16 Q. But I think you said before that you  
17 had gone on to the Cornell website to get some  
18 information about copyright?

19 A. Yes, sir, four years ago.

20 Q. That's where you had gotten this  
21 information. Correct?

22 A. Yes, I think the website is called

23 FindLaw. That's where I went to.  
24 Q. O.K. Fine. So when you went to  
25 FindLaw, did you look at some court cases?

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1 D. Dimick

2 A. I do not remember that, sir.

3 Q. O.K. Now, next it says under  
4 subparagraph (d) that aggrieved parties have  
5 been able to have all copies destroyed.

6 Did you learn that as well from  
7 going to FindLaw?

8 A. As far as I know.

9 Q. Now, did you bring this memo with  
10 you to the meeting of March 18?

11 A. I cannot, I cannot remember whether  
12 I did or not.

13 Q. So you don't know whether you  
14 distributed a copy of it to those who attended  
15 the meeting?

16 A. Oh, no, I did not distribute it.

17 Q. Now, moving on to paragraph 2, there  
18 is a reference to item 4 of a photographic  
19 contract. See that, sir? And there's a

20 statement following that paragraph that says,  
21 quote, this is an additional use.

22 What were you referring to when you  
23 said this?

24 A. That was based on, on the  
25 possibility extant that if CD-ROM 108 was not

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1 D. Dimick  
2 finally adjudged an archive, that potentially  
3 there would be liability for payment on  
4 additional use.

5 Q. O.K. So when you say this is an  
6 additional use, you were referring to the CD-ROM  
7 108. Right?

8 A. Yes.

9 Q. Now, had Geographic made payment in  
10 the past for additional or further use when  
11 contracts require such payment?

12 A. For what use?

13 Q. Well, you refer to here in paragraph  
14 2 to item 4 of subsection (b) certain  
15 photographic contracts, and then you state the  
16 contracts provided that if, quote: NGS makes

17 further use, paren, promotional, comma,  
18 advertising, comma, or other editorial use of a  
19 photograph selected for publication, it will  
20 make additional appropriate payment.

21 Had Georaphic done so, to your  
22 knowledge, in the past?

23 A. For publishing, say, a picture that  
24 had been in a magazine originally and was later  
25 used in promotional, advertising, or other

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1 D. Dimick  
2 editorial use, you mean?

3 Q. Correct.

4 A. As far as I know?

5 Q. Correct.

6 A. As far as I know --

7 Q. Was CD 108 another editorial use?

8 MS. GRAY: Calls for a legal  
9 conclusion.

10 You can answer it, if you can.

11 A. As I said to you previously, that if  
12 it were adjudged that CD-ROM 108 were not an  
13 archival use but another editorial use, then

14 it's possible that then this would mean this was  
15 an additional use.

16 Q. Now, if it was an additional use,  
17 what kind of payment would be required to be  
18 made to a photographer who had a contract  
19 requiring further payment where the further use  
20 was editorial?

21 MS. GRAY: Objection. Calls for a  
22 legal conclusion.

23 MR. BERGER: I'm not asking for a  
24 legal conclusion. I'm asking for facts.

25 Q. What kind of further payment was

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1 D. Dimick  
2 made to photographers when their photographs  
3 were further used editorially by Geographic?

4 MS. GRAY: Same objection.

5 You can answer.

6 A. Use payment was determined by rate  
7 charts typically within the division that was  
8 making the additional use.

9 Q. What rate chart did you follow?

10 MS. GRAY: Objection to the form.



11 Q. Well, there was a rate chart in your  
12 division. Correct?

13 A. I didn't -- well, most of our work  
14 was originally commissioned assignment work.

15 Q. O.K. My question was, there was a  
16 rate chart in your division. Correct?

17 A. There was a page rate chart.

18 Q. And what did that page rate chart  
19 provide?

20 A. It provided payments based on  
21 increments of size on the page such as  
22 quarter-page, half-page, full-page.

23 Q. So let's assume that a photograph  
24 occupied an entire page in the magazine and that  
25 photograph was further used editorially.

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1 D. Dimick

2 What did the rate chart provide with  
3 respect to further payment?

4 MS. GRAY: Objection to form.

5 You can answer.

6 A. If the magazine was republishing a  
7 picture that it had originally commissioned or

8 the magazine --

9 Q. Well, just referring to the contract  
10 that you referred to in your memo in front of us  
11 where NGS makes further use editorially of a  
12 photograph that had been published in the  
13 magazine.

14 A. O.K.

15 Q. And that filled the entire page of  
16 that magazine, what, if anything, did the rate  
17 chart provide with respect to further payment?

18 MS. GRAY: Objection to form.

19 You can answer the question.

20 A. The payment would depend upon the  
21 use, whether it was promotional, advertising, or  
22 other editorial use, such as a book, and those  
23 rate charts were not part of National Geographic  
24 magazine's purview.

25 Q. Well, I'm assuming in my question

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1 D. Dimick

2 that the further use was editorial, and I'm  
3 asking for what the rate chart provided in that  
4 instance?

5 MS. GRAY: Objection to form.

6 MR. BERGER: I don't know why that's  
7 objectionable.

8 A. No, what the page rate was during  
9 the period that particular contract was  
10 enforced.

11 Q. What's the rate chart now as of  
12 today in that instance?

13 MS. GRAY: Objection to form.

14 You can answer.

15 A. I am not involved in use payment.

16 Q. So you have no knowledge of what the  
17 rate chart provides, sitting here today, if  
18 someone was to ask you for payment for the reuse  
19 of a full-page photograph editorially?

20 MS. GRAY: Pay for what?

21 Objection to form.

22 MR. BERGER: It doesn't matter what.

23 I'm asking if the contract provided

24 further editorial use. I'm assuming

25 further editorial use, and I'm asking Mr.

2 Dimick what the rate chart provides in  
3 that instance.

4 MS. GRAY: The question is asked and  
5 answered.

6 But you can answer it again.

7 A. I do not have it in front of me and

8 I cannot quote you accurately of what it says.

=====

6 Q. Now, again going back to Plaintiff's  
7 109, you refer here in paragraph 3 to  
8 misrepresentation to Mindscape.

9 How did you know that Mindscape was  
10 involved in this project as of March 18, 1997?

11 A. Mindscape had been mentioned in the  
12 prior meeting I had with Al Royce and Suzanne  
13 Dupre.

14 Q. What was said about Mindscape?

15 A. That they were producing the CD-ROM  
16 108 collection.

17 Q. Now, you refer to in paragraph 3 to  
18 a misrepresentation made to Mindscape.

19 What was the misrepresentation you  
20 were referring to here?

21 A. That was personal conjecture on my

22 part.

23 Q. That's not the question I asked.

24 I'm not asking about your

25 conjecture. I'm asking you to tell me what

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1 D. Dimick

2 misrepresentation did you or were you referring

3 to in this memo?

4 MS. GRAY: Objection. Asked and

5 answered.

6 He can answer it again.

7 MR. BERGER: With all respect, it

8 wasn't answered.

9 Q. But please answer, Mr. Dimick.

10 A. I don't know.

11 Q. Now, you do refer to in paragraph 3

12 to a misrepresentation that: We, in fact, had

13 the rights to copy and distribute, et cetera.

14 Who had made that misrepresentation

15 that you referred to in paragraph 3 in

16 Mindscape?

17 MS. GRAY: Objection to the

18 characterization.

19           You can answer.

20       A.   I do not know.

21       Q.   When you referred to in the first  
22 line of paragraph 3 to the word we, who's we?

23       A.   We must be the Society.

24       Q.   Now, I don't see any reference to  
25 misrepresentation to Mindscape in the summary of

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1           D. Dimick

2   your meeting that is set forth in Plaintiff's  
3 105.

4           Did you raise the misrepresentation  
5 to Mindscape issue at the meeting on March 18,  
6 1997?

7       A.   I cannot remember.

8       Q.   Referring to the last paragraph of  
9 the first page of Plaintiff's 109, the second  
10 line refers to the multimedia developer.

11           Who is that?

12       A.   That must be Mindscape.

13       Q.   And you say in the first line of  
14 that paragraph, quote: We are already liable  
15 for copyright infringement.

16 I'm asking for your lay opinion.

17 I'm asking why you said this.

18 Why did you believe that: We are  
19 already liable?

20 A. As I said previously, that if, in  
21 fact, the CD-ROM 108 was adjudged not to be an  
22 archive, but to be an additional editorial use,  
23 then this could be a potential liability.

24 Q. Since, I think you said, you were  
25 aware that it has been adjudged to be not an

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1 D. Dimick  
2 archive in the Greenberg case, do you know  
3 whether National Geographic made a decision  
4 about whether it wishes to continue to sell the  
5 product?

6 MS. GRAY: I'm going to object on  
7 two grounds.

8 Number one: It misstates the  
9 witness's testimony.

10 Number two: I've cautioned the  
11 witness not to reveal any substance of  
12 any attorney-client communication. And I

13           don't know if there were any, but if  
14           there were, don't.  
15           Q.   Mr. Dimick, as your counsel properly  
16           indicates, I'm not interested in finding out  
17           what discussions you may have had with Ms. Gray  
18           or anybody else who represents National  
19           Geographic with respect to this matter.

20           Let me ask the question a little  
21           more simply.

22           Is National Geographic still selling  
23           the CD 108 and its progeny? When I say its  
24           progeny, I mean the products that followed it.

25           A.   I don't know.

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1           D. Dimick

2           Q.   I understand there's a new product  
3           called the CD 112, or the complete national  
4           Geographic, the last 112 years of issues.

5           Do you know whether your employer is  
6           still selling that product to the public?

7           A.   I do not know, sir.

8           Q.   Do you know whether any decision has  
9           been made not to sell any of the CD-ROM products



10 to the public?

11 A. No, sir.

12 Q. That's not a matter of concern to  
13 you?

14 A. It's not a matter or a decision that  
15 I'm party to.

16 Q. O.K. Now, referring to paragraph 4  
17 of your memo on the second page, you say that  
18 the argument, quote, that: This CD-ROM is one  
19 and the same as the magazine is disingenuous.

20 Why did you believe it was  
21 disingenuous at the time that you wrote this  
22 memo?

23 A. As I've said before to you, I was  
24 trying to ascertain some of the issues that may  
25 be in play if CD-ROM 108 was adjudged to not be

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1 D. Dimick  
2 an archive this would be one.

3 Q. Did anyone at National Geographic  
4 agree with you that the argument that the  
5 CD-ROM -- agree with your conclusion that it was  
6 disingenuous to argue that the CD-ROM is one and

7 the same as the magazine?

8 A. I actually don't know.

9 Q. Did you ever discuss the  
10 disingenuousness of this argument with anyone  
11 else?

12 A. No, sir.

13 Remember, this was a private memo I  
14 wrote to myself.

15 Q. Did you ever feel it important to  
16 disclose this memo to anyone else after you  
17 wrote it?

18 A. No, because it was -- all it was was  
19 used to background myself on some of the  
20 potential issues in advance of the meeting that  
21 is then described in your -- that is described  
22 in my e-mail of March 19.

23 Q. Right. Now referring both to that  
24 e-mail, which is Plaintiff's 105, and  
25 Plaintiff's 109, did anyone ever ask you to

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1 D. Dimick  
2 destroy either or both of those documents?

3 A. No.

=====

14 Q. My question was, I assume you never  
15 saw this document before other than in  
16 discussions with counsel.

17 Right, Mr. Dimick?

18 A. I've seen this document.

19 Q. Yes, but have you seen it in other  
20 than discussions with counsel?

21 A. Yes.

22 Q. When did you do so? When did you  
23 see it before?

24 A. This document was handed to me by  
25 Alan Royce in March of 1997, the day after I

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1 D. Dimick

2 wrote the memo, your item 105.

3 Q. How did Mr. Royce come and hand this  
4 document to you, sir?

5 MS. GRAY: Objection to form.

6 You can answer.

7 Q. Let me ask a clearer question in  
8 response to your counsel's objection.

9 Did you have a meeting with Mr.  
10 Royce when he presented this document to you?

11 A. No. He just brought it in and gave  
12 it to me.

13 Q. What did he say when he did so?

14 A. Nothing that I can remember, sir.

15 Q. Did he have any comments at all  
16 about your e-mail to him and to Mr. Allen which  
17 is Plaintiff's 105?

18 A. No, sir.

19 Q. When he handed this document to you,  
20 what did you say to him?

21 A. Thank you.

22 Q. Besides that, anything else?

23 A. No, because I had not read it.

24 Q. After you read it, did you and Mr.  
25 Royce have any discussions about it?

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1 D. Dimick

2 A. Based on reading what Mr. Allen  
3 wrote and based on Mr. Fahey's response to Mr.  
4 Allen and Allen's final response that we were  
5 not to concern ourselves with these issues  
6 anymore.

7 Q. I see. Is that what Mr. Royce told

8 you?

9 A. No, that's what I concluded from  
10 reading this memo.

11 Q. And did you express that conclusion  
12 to Mr. Royce?

13 A. I cannot remember what I said to  
14 him.

15 Q. O.K. Let's take a look, if we  
16 can -- by the way, did you ever have any  
17 discussions directly with Mr. Allen or not  
18 directly with Mr. Allen regarding any copyright  
19 issues?

20 A. Not specifically that I can  
21 remember.

22 Q. What about generally?

23 A. I would say that if generally, they  
24 are comprehensively covered in this memo as  
25 written by Mr. Allen.

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1 D. Dimick

2 Q. So you're saying that Mr. Allen, if  
3 you had discussions with him, would have --

4 O.K., let me ask a fresh question.

5 Referring you to the next to the  
6 last paragraph of this document which begins:  
7 As we discussed briefly.

8 See that, sir?

9 A. Yes, sir.

10 Q. Now, he goes on and says, quote:

11 We are so far down the road at this  
12 point that we probably just have to keep  
13 smoothing as many bumps as possible and drive  
14 like hell with our fingers crossed.

15 What was Mr. Allen referring to  
16 there?

17 MS. GRAY: Objection.

18 You can answer, if you know.

19 A. You'd have to talk to him.

20 Q. When he said with our fingers  
21 crossed, any idea what he meant?

22 A. I have no opinion.

23 Q. The first paragraph on this second  
24 page states, in part: What I'm still concerned  
25 about is the opinion that indicates we don't

2 have a problem, et cetera.

3 Did Mr. Allen ever express that  
4 concern to you?

5 A. Not that I remember.

6 Q. Did you have a similar concern  
7 before the meeting on March 18.

8 A. Did I have a similar concern?

9 Q. Correct. Before the meeting on  
10 March 18.

11 A. Yes.

=====  
22 MR. BERGER: The date on that is

23 March 20, 1997. Actually a day after Mr.

24 Allen and Mr. Fahey's exchange.

25 Q. Mr. Dimick, when is the first time,

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1 D. Dimick

2 other than in discussions with counsel, that you

3 saw Plaintiff's 21?

4 A. I've never seen this before.

5 Q. O.K. Do you ever have any  
6 discussions with Mr. Kobersteen about anything  
7 that he writes about in his memo to Mr. Allen?

8 A. No.

9 Q. The first sentence of this document  
10 states, and I quote, in part: I'm hearing more  
11 and more concern voiced by the Society's  
12 nonphotographic staff.

13 Now, that wouldn't be referring to  
14 you, would it, Mr. Dimick?

15 A. Well, I am one of many who would be  
16 included in that group.

17 Q. O.K. So would you be part of the  
18 Society's nonphotographic staff?

19 A. That's correct.

20 Q. O.K. Did you ever voice any  
21 concerns to Mr. Kobersteen?

22 A. I'm sorry. Four years ago, I cannot  
23 remember.

24 Q. O.K. I just wanted to finish the  
25 question, but I guess you anticipated what I was

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1 D. Dimick  
2 going to ask you, which is fine.

3 Now, Mr. Kobersteen states, about  
4 four lines down: I know we've discussed this,



5 and I had been at several meetings where this  
6 has been discussed with corporate counsel.

7 Did you ever attend any meetings  
8 with Mr. Kobersteen at which the rights or  
9 copyright issues regarding the CD 108 were  
10 discussed?

11 A. No.

12 Q. Now, about three lines down, he  
13 refers to NGS as taking the approach that this  
14 CD-ROM product is similar to microfiche.

15 Did anyone say that to you?

16 A. No.

17 Q. Are you hearing it for the first  
18 time today?

19 A. Yes.

20 Q. Take a look at the second page of  
21 this document, the second line down.

22 Mr. Kobersteen states, quote:

23 Therefore, it seems to me, should  
24 there ultimately be a finding that the 108 years  
25 of NGM CD-ROM is a different product.

2 Did you have any concerns about  
3 whether the CD 108 was a new or different  
4 product?

5 MS. GRAY: Objection.

6 What time frame are you talking  
7 about?

8 MR. BERGER: This time frame, in  
9 March of 1997.

10 A. Well, as I have indicated to you  
11 previously if, if CD-ROM 108 were to be adjudged  
12 not an archive, but an additional editorial use,  
13 those are many of the points that you have been  
14 questioning me on in the last two hours.

15 Q. O.K. Now, Mr. Kobersteen says in  
16 the next paragraph, beginning with, in fact, and  
17 then goes on to say what he says there. Take a  
18 look at that. Just read that paragraph to  
19 yourself, please.

20 A. O.K.

21 Q. Do you agree with Mr. Kobersteen?

22 A. I have no opinion now.

23 Q. The next sentence begins with: In  
24 one of the meetings. And it's followed by this  
25 sentence, and I quote:

1 D. Dimick

2 I was told that there was not, as

3 NGS is the first into this product area.

4 Were you ever told anything similar?

5 A. No.

6 Q. Going down about three quarters,

7 almost to the end of the page, Mr. Kobersteen

8 states, this is beginning with the sentence, I

9 understand the position. It's about, maybe, ten

10 lines from the bottom.

11 Do you see where that is, sir?

12 A. Yes, sir.

13 Q. O.K. And he goes on to state that

14 and, I quote: It seems to me that the CD-ROM

15 product is different in several areas.

16 And it goes on to indicate why.

17 Do you agree with Mr. Kobersteen's

18 assessment set forth here?

19 A. I have no opinion on this.

20 Q. Other than your discussions with Ms.

21 Dupre at the meeting that you testified you had

22 with her and Mr. Royce, did you have any

23 discussions with any other counsel representing

24 National Geographic regarding copyright  
25 concerns?

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1 D. Dimick

2 A. No, sir.

3 Q. Did you ever appear at any board  
4 meeting of either National Geographic or any of  
5 its subsidiaries to discuss any copyright  
6 concerns that you may have had?

7 A. No, sir.

=====

10 Q. Mr. Dimick now wants to clarify an  
11 answer.

12 Please do, Mr. Dimick. You can  
13 clarify any answer that you've given me so far.

14 A. Sir, a few minutes ago, you had made  
15 a statement regarding my knowledge of the  
16 decision on the Greenberg case, and if my memory  
17 serves, you said that it was my view that the  
18 Greenberg case had adjudged CD-ROM 108 as not  
19 being an archive, and if that's the assumption  
20 that you have made, I did not make that  
21 statement.

22 Q. O.K. I apologize if I misstated  
23 what you had said.  
24 What is your knowledge of the  
25 Greenberg decision?

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1 D. Dimick  
2 MS. GRAY: You can answer that  
3 except for conversations you may have had  
4 with counsel about it.

5 A. I know very little about it.

6 Q. Well, what do you know about it, of  
7 the little that you do know?

8 A. I do know that there was a judgment  
9 in, I believe, the Second Federal Court of  
10 Appeals -- Second District Court of Appeals. I  
11 could be wrong, or if it was in Florida. I'm  
12 sorry, I just can't keep track of it all.

13 Q. Do you know what, what the judgment,  
14 to use your words, what the judgment provides?

15 A. I do not remember what the specific  
16 terms of the judgment referred to.

17 Q. Let me ask the question this way.  
18 Did Mr. Greenberg win or lose?

19 MS. GRAY: Well, you know, I kind of  
20 object to that because it calls for a  
21 legal conclusion.

22 But you can answer the question to  
23 the best of your ability.

24 A. As far as I know, in that particular  
25 circumstance, the court looked favorably upon

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1 D. Dimick  
2 his case. I don't know anything.

3 Q. So that's what you're aware of.

4 O.K., fine.

5 As a result of the court's looking  
6 favorably on Mr. Greenberg's case, did you have  
7 any discussions with anyone at National  
8 Geographic?

9 A. No, I did not.

10 Q. Has National Geographic's conduct  
11 with respect to the CD 108 changed at all as a  
12 result of the Greenberg decision?

13 A. I have no knowledge whatsoever of  
14 any changes at all.

15 Q. So, as far as you're aware, National

16 Geographic continues to sell the CD 108 family

17 of products?

18 A. No --

19 MS. GRAY: That's asked and

20 answered.

21 You can answer it again.

22 A. Sir, that is a situation that I have

23 not paid attention to, so I do not know if we

24 continue to sell the CDs or not sell the CDs, as

25 I said previously.

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1 D. Dimick

2 Q. O.K. Fine, I just wanted to make

3 sure that that's what you said and that's fine.

=====

21 Any idea who that corporate counsel

22 is?

23 A. Well, at that time it would have

24 been Suzanne Dupre.

25 Q. Now, I think your memo of March 18

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1 D. Dimick

2 refers to a statement that was made at the  
3 meeting. Let me get it back in front of us  
4 here.

5 This is the second paragraph of page  
6 4, the second sentence which states, in part:

7 Susan pointed out that she was the  
8 attorney and that it had been decided more than  
9 a year ago that we would not pay assignment  
10 photographers, et cetera.

11 Do you see that in your memo on --

12 MS. GRAY: Hold on. We're just  
13 getting out the document right now.

14 Q. Not a problem.

15 A. Yes, sir.

16 Q. See the statement I just read in  
17 part that's on the second paragraph of point 4  
18 of your memo that's Plaintiff's 105?

19 A. Yes, sir.

20 Q. Now, you're referring there to a  
21 decision made more than a year ago.

22 Now, take Plaintiff's 5-A back.

23 Looking at Plaintiff's 5-A, it  
24 refers you to, in the third paragraph, as we've  
25 just discussed, to a recent decision.



1 D. Dimick

2 Do you know whether the decision  
3 that you referred to in Plaintiff's 105, Where  
4 Suzanne pointed out, et cetera, is the decision  
5 that is also reflected in paragraph 3 of  
6 Plaintiff's 5-A?

7 A. I do not have evidence to show  
8 there's linking there.

9 Q. So you don't know if -- in both  
10 cases they use the word decision, but you don't  
11 know whether Suzanne was referring to the same  
12 decision that's referred to in the third  
13 paragraph of Plaintiff's 5-A?

14 A. I do not have specific knowledge to  
15 know they are one and the same.

16 Q. Let's take a look, if we can, at  
17 another document, which is Plaintiff's 38, which  
18 is a one-paragraph letter from Ms. Dupre to Mr.  
19 Ward dated May 8, 1989.

20 You have that in front of you?

21 A. Yes, sir.

22 Q. Before I ask you about this  
23 document, let me just take a half step back and

24 ask you about the practice that Geographic may  
25 or may not have followed in assigning back

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1 D. Dimick

2 copyrights to photographers.

3 Are you aware of any policy or  
4 practice that Geographic followed in or about  
5 1989 in assigning or not assigning copyrights  
6 back to photographers?

7 A. No, sir, I'm sorry, I don't.

8 Q. Did a photographer ever ask you for  
9 an assignment back, whatever copyright he or she  
10 may have, given back to National Geographic?

11 A. No, sir, those, those issues were  
12 outside of my purview. I did not deal with  
13 those issues.

14 Q. But I'm not asking if you ever dealt  
15 with them.

16 Did a photographer ever ask you for  
17 a reassignment of a copyright?

18 A. If a request for reassignment of  
19 copyright were to occur, as they would have, as  
20 far as I know, that request that would have been

21 made to director of photography, not to an

22 illustrations editor.

23 Q. O.K. Are you aware of whether the

24 director of photography ever authorized a

25 reassignment of copyright back to a photograph?

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1 D. Dimick

2 A. No, sir, I'm not, I'm sorry.

3 Q. Have you ever seen, other than in

4 discussions with counsel, a letter like the

5 letter in front of you whereby Ms. Dupre assigns

6 to a photographer a copyright?

7 A. No, sir, I have not.

8 Q. Now, referring you to the document

9 in front of you, which is Plaintiff's 38, it

10 refers to a copyright in your article entitled:

11 Jade.

12 Do you know what Ms. Dupre is

13 referring to when she refers to your article?

14 MS. GRAY: Objection. Can you

15 answer?

16 A. No; you'd have to ask her.

17 Q. You don't know whether she's

18 referring to the photographs or the text or to

19 both when she refers to the article, do you?

20 A. No, sir.

21 Q. Do articles normally contain -- do

22 the articles that Geographic publishes normally

23 contain text?

24 A. Yes, sir.

25 Q. And do they normally contain

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1 D. Dimick

2 photographs?

3 A. Yes, sir.

=====

21 Q. Well, I understand, but I also would

22 like to get your current state of knowledge.

23 You've had a considerable concern

24 with processes that were going on at the time

25 that you executed 105 and 109.

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1 D. Dimick

2 Generally, have those problems that

3 you saw been taken care of in current contracts?

4 MS. GRAY: Objection to form.

5 You can answer, if you can.

6 A. The contracts that are being  
7 promulgated are not a concern that I deal with  
8 on a day-to-day basis; so I do not know the  
9 details.

10 Q. I'm understand. I'm talking  
11 generally regarding the concern that you had  
12 back in '97 when you participated in these  
13 meetings and you generated these memos.

14 You've had concerns. Correct?

15 A. I did have concerns, yes.

16 Q. Now, do you know if the contracts  
17 that are currently being utilized in obtaining  
18 contractual rights to photography, do they deal  
19 with those concerns in a different way?

20 MS. GRAY: Objection. Asked and  
21 answered.

22 You can answer again.

23 A. Once again, I cannot tell you the,  
24 cannot tell you regarding the contracts that are  
25 in effect for photographers who are on

1 D. Dimick  
2 assignment. Contracts that have been created  
3 for the purchase of stock photography do  
4 indicate additional use payment.

5 Q. Mr. Dimick, do you have an  
6 anticipated retirement date with National  
7 Geographic?

8 A. I have not anticipated that far  
9 ahead.

10 Q. Do you intend to stay with National  
11 Geographic for the foreseeable future?

12 A. As far as I know, sir.

13 Q. I mean, that would be your desire to  
14 stay there as an illustrations editor or to move  
15 up the chain of command?

16 A. Yes, sir. I have no alternative  
17 program.

18 Q. And you'd like to stay there.

19 Right?

20 A. It's a nice place to work.

=====

10 Q. O.K. Counsel, asked you if you had  
11 any immediate plans for retirement and the  
12 question is: At the time when you wrote those  
13 letters and those memos in 1997, what was your

14 salary?

15 A. Oh, I'm sorry, maybe -- I can't

16 remember. Maybe \$85,000.

17 Q. And subsequent to writing those,

18 have you since gotten any promotion as far as

19 your title or rank?

20 A. No, sir.

21 Q. Have you gotten any salary

22 increases?

23 A. Yes, sir.

24 Q. What is your current salary?

25 A. One hundred and four thousand

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1 D. Dimick

2 dollars.

3 Q. And is that based on some standard

4 salary increases that National Geographic has --

5 Did the increase that you received

6 to 104,000, was that a standard or normal

7 increase for the period of time or was there

8 some bonus increment during this period?

9 A. There was no bonus increment, but I

10 was told that amongst those who did receive

11 raises in my department, that my raises were  
12 amongst the largest percentage increase.

13 Q. At the time that you wrote those  
14 memos, referring to the ones, I think, 105 and  
15 107, if I'm not mistaken, did you believe your  
16 company did not have the legal right to produce  
17 the CD 108?

18 MS. GRAY: Can you read the question  
19 back, please.

20 (Record read)

21 A. I was told by legal counsel that we  
22 have the right to do this.

23 My interest in producing those  
24 documents was to parse the various issues that  
25 we might be liable for in case it was deemed not

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1 D. Dimick

2 an archive.

=====

22 Q. Have you since learned that it was  
23 adjudged not an archive?

24 A. Actually, no, I have not.

25 Q. There's been no discussion of it in



1 D. Dimick

2 your place of business?

3 A. I am not aware of any decision by  
4 the Supreme Court of the United States that says  
5 it is or is not an archive.

6 Q. How about the decision of the  
7 Circuit Court of Appeals that heard the  
8 Greenberg case?

9 MS. GRAY: Objection. He's already  
10 testified what he knows about that, but  
11 if you want to waste our time --

12 MR. WEINGRAD: I have a few minutes.  
13 If you don't object, I'll finish.

14 MS. GRAY: You can answer it again.

15 A. I'm sorry. I was aware there was a  
16 decision, but I cannot tell you what specific  
17 issues were manifest in that decision that made  
18 Mr. Greenberg favorably looked upon.

19 Q. Have you read the Greenberg  
20 decision?

21 A. I'm sorry, I may have, but I have to  
22 tell you, I have forgotten.

23 Q. Can you tell us in your own words

24 what your job function is today?

25 A. My job function today?

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1 D. Dimick

2 Q. Yes.

3 A. In addition to assisting in the

4 administration of the illustrations division, I

5 work as an illustrations editor commonly known

6 to the outside world as a picture editor.

7 I originate and research stories

8 focusing on the environment. I do original

9 research, write story proposals, oversee the

10 creation of magazine stories that come from

11 those proposals, and get them published in the

12 magazine while working with both photographers

13 and writers.

14 Q. And prior to this current job title

15 that you have as assistant director of

16 illustrations division, before you had that

17 title and that job function, did you deal with

18 the contracts that are utilized by National

19 Geographic for their special assignments?

20 A. I was not involved in the  
21 origination or the issuing of said contracts.

22 Q. Did you read them?

23 A. Yes, sir.

24 Q. So prior to 1995, you were familiar  
25 with the contracts that were being used?

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1 D. Dimick

2 A. Well, sir, I was aware that they  
3 existed. For me to tell you what the details  
4 were, I'm sorry, I cannot.

5 Q. Other than the details, did you have  
6 an opinion when you read them, prior to 1995, as  
7 to whether National Geographic did or did not  
8 have the rights to use the images or text  
9 articles that they publish in the magazine in a  
10 product such as a CD 108?

11 MS. GRAY: Objection.

12 You're asking for a legal  
13 conclusion.

14 MR. WEINGRAD: No, I'm asking him  
15 for his opinion.

16 MS. GRAY: I will allow him to

17 answer to the best his ability.

18 A. I have no opinion. There was no  
19 specific insistence to electronic media as far  
20 as I know in contract to that date.

21 Q. At the time that you wrote the memo  
22 in the 105, did you anticipate that there would  
23 be suits for copyright infringement against  
24 National Geographic?

25 A. I was concerned there would be

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1 D. Dimick

2 subsequent action against the Society.

3 Q. What did you base that on, that  
4 concern?

5 A. That there was difference of opinion  
6 as to whether or not CD-ROM 108 was a residual  
7 editorial use or it was an archive.

8 Q. And at the time you wrote those  
9 memos, if National Geographic made a residual  
10 editorial use, were they obligated to compensate  
11 the photographers and text writers?

12 MS. GRAY: Objection. This has been  
13 asked and answered previously in the

14 deposition, and it also calls for a legal  
15 conclusion.

16 But I'll allow the witness to answer  
17 again.

18 A. In those mediums that existed at  
19 that time, to wit, books, for example, yes.

20 Q. Do you recall any specific  
21 discussions with any photographers complaining  
22 about the CD 108 usage?

23 A. I have no specific memory of  
24 specific conversations with photographers about  
25 that issue.

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1 D. Dimick

2 Q. What is your opinion today with  
3 respect to the continued use of the complete  
4 National Geographic in the CD-ROM medium?

5 MS. GRAY: Objection to form.

6 What do you mean what is his  
7 opinion?

8 Q. Well, do you have an opinion as to  
9 whether or not the National Geographic Society  
10 should continue today to utilize the complete

11 National Geographic images and text in the

12 CD-ROM medium?

13 MS. GRAY: Objection. Calls for a

14 legal conclusion.

15 But you can answer.

16 Q. Go ahead. You can answer.

17 A. Sir, I have no opinion on the issue.

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