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Big Gains for Copyright Protection...

Copyright protection remains a high priority for photographers. And in the last 12 months, they have won two monumental victories.

Last June, the Supreme Court ruled in *The New York Times v. Tasini* that newspapers infringed the copyrights of freelance authors by placing their works on electronic databases without permission. The 7-2 decision upheld a Second Circuit ruling that Lexis/Nexis, New York Times OnDisc and other searchable databases of articles are not merely revisions of the original newspaper, but new works that exploit individually copyrighted articles.

Far left: Wendy Doremus, widow of Bill Biggart, holds the damaged cameras found on his body at the site of the World Trade Center. Near left, top: The funeral of Afghan photojournalist Aziz Haldari. Bottom: Chip East before his arrest at the WTO protests in Quebec City.

The ruling, which also applies to photography, left publishers with two choices: either remove the freelancers' copyrighted works from the databases or compensate freelancers for the use of those works. One side effect of the case, however, is that many publishers now demand broad digital rights as a matter of course when assigning work to freelancers. And for now, at least, publishers are getting away with it.

In a separate but related case, the 11th Circuit Court of Appeals foreshadowed the *Tasini* decision last March when it ruled in *Greenberg v. National Geographic Society* (NGS) that the publisher had violated photographer Jerry Greenberg's copyright by including several of his images in a CD-ROM product without permission.

The CD-ROM set, first created in 1997 and updated several times since, reproduces each back issue of *National Geographic* magazine page by

page. The appeals court ruled that the NGS CD "is in no sense a revision. The Society...has created a new product, in a new medium, for a new market." In October, the Supreme Court effectively affirmed that ruling when it declined without comment to review it. Some similar claims against *Geographic* by other photographers are now in the pipeline.

Meanwhile, photographer Leslie A. Kelly won a partial victory in his copyright infringement claim against an Internet search engine. Kelly had accused Arribasoft, now Ditto.com, of exploiting for profit a number of images taken from his Web site. The Ninth Circuit Court of Appeals ruled that Web search engines cannot legally display the copyrighted images of other Web sites without permission. But thumbnail versions of copyrighted images may be reproduced without permission for the purpose of directing search engine users to the source of the images, the court said. Kelly expressed satisfaction, but other observers worry that the court created a loophole for infringing copyrighted images on the Web.

And finally, after years of haggling, photo trade groups convinced the U.S. Copyright Office to permit group registration of published photographs. The new rules took effect last August. Copyright registration has always been the best line of defense against infringement, but the old rules required one-at-a-time registration of published images. By making registration easier and cheaper, the new rules could encourage photographers to register many more of their images, thereby helping to reduce losses due to infringement.

...And a Mixed Bag for Day Rates

No less critical to editorial photographers than copyright protection is the issue of day rates. Assignment fees have been stagnant for years. Despite the soft economy, though, *Forbes* magazine boosted its day rates from \$425 to \$700. Page rates

The Editorial Market

NOTABLE LAUNCHES:

LAMENTABLE CLOSINGS: