

A SMP Bulletin

MARCH 2001



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Volume 20, Number 2

ASMP Bulletin

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THE PURPOSE OF ASMP

To protect and promote the interest of photographers whose work is for publication
To promote high professional standards and ethics
To cultivate friendship and mutual understanding between photographers

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OUR COVER
Pete Turner made
Wired in South
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HANGING TOGETHER:

OUR LIVES AND FORTUNES

In the summer of 1776, a remarkable decision was made in Philadelphia, just a few blocks from where ASMP's office is today. Representatives from thirteen colonies met to decide what to do about the abusive conditions they found themselves tolerating. These conditions had gone from bad to worse, and there was no end in sight. They compiled a list of these abuses, and in looking them over, assessed their options. Several things became clear. They realized that they represented diverse interests that were fiercely independent. It was clear that whatever decision they came to, it would have to accommodate these independent interests. At the same time, it was obvious that correcting the abuse would require more strength than any individual colony could muster. If the abuses were indeed intolerable, there was only one way to be rid of them — they would need to join forces, surrender part of their independence for the protection of their common good, and fight for all they were worth. Although the consequences of accepting the abuse were high, the consequences of failure were even higher. As Benjamin Franklin noted, "We must all hang together or assuredly we shall all hang separately."

Their decision was recorded in a document they named *The Declaration of Independence*. It's an odd name for an agreement in which they pledged to work with each other, to cooperate for the good of the newly formed federation. Although it declared their independence from Great Britain, it also declared their interdependence to each other: "...we mutually pledge to each other our Lives, our Fortunes, and our sacred Honour." Simultaneously, the declaration acknowledged the need for both independence and collaboration for their mutual benefit and protection. The colonies became independent states. The states became a nation. We are still benefiting from that

decision.

Two hundred years later, independent publications photographers had been using that same approach to deal with the abuses of the large publishers who were their clients. Since 1944 they had been organized as the *American Society of Magazine Photographers*, a professional trade guild that acted on behalf of their interests. Through ASMP they were able to use the strength of their numbers to establish minimum fees and standardized conditions for the use of their work. Their method — institutionalizing the fee paid for a specific use — was so successful that even though photographers did not yet legally own the copyright to their assignment work, they were paid for the additional use of it.

That year, 1976, photographers were stripped of their right to hang together.

ASMP was refused National Trade Guild status by the National Labor Relations Board, and twice over the next ten years it was investigated by the Federal Trade Commission for alleged antitrust law vio-

lations. The caution that followed put an end to thirty years of progress in the creation of minimum standards and conditions for publications photographers. Although there are still buyers who refer to *ASMP day rates*, they are usually oblivious of the fact that the day rate was a base fee, to be supplemented with an additional charge for usage. They ignore the fact that those rates are now twenty-five years old.

For a whole generation, ASMP has avoided any appearance of encouraging photographers to hang together. We've hoped that by providing adequate information and business skills, photographers would survive the process of working independently, of negotiating with large corporations, of making the decisions that are best for the profession. Although it was not

apparent immediately, here's what we're having to admit now: photographers make decisions that are in their own best interest; we are exactly as strong as our weakest qualified competitor; there are many ways to rationalize bad decisions, and need is one of the best. *cont. on p. 11*

"A cooperative is owned by members who use its services. They control its operations by electing its board of directors. Its sole purpose is to benefit its members."

SEC PROBE IS URGED

ASMP files complaint on non-disclosure of suit BY PETER SKINNER

Why did Getty Images, Inc., a public company, not mention the Penny Gentieu suit when filing SEC-required reports? That is the context of a complaint from ASMP to the US Securities and Exchange Commission, SEC, against stock photography giant Getty Images. ASMP has urged the SEC to find out why Getty failed to report to the SEC a suit involving copyright infringement, false designation of origin, breach of fiduciary duties and breach of contract with a photographer represented by Tony Stone Images, TSI, (Stone) an agency owned by Getty.

Until this point, ASMP's role in the matter has been in providing assistance to leading baby photographer, Penny Gentieu of New York, in her suit against Stone and Getty. But now, according to ASMP executive director Richard Weisgrau who filed the complaint with the SEC, ASMP is going to the SEC because of the potentially industry-wide ramifications of the outcome of that suit and Getty's failing to mention the suit in filing reports required by the SEC.

While ASMP does not as a rule get involved in everyday business disputes, special interest is being taken in the Gentieu suit because of its potential effect on the industry.

Photographer Penny Gentieu, who is well known for her distinctive style of baby photography, has based her suit on "copyright infringement resulting directly from many breaches of duties of Getty as an agent, its financial accountability to its principals, its breach of contract by misrepresentations and bad faith actions."

Weisgrau, who filed the complaint to

the SEC with the commission's director Ms. Susan Wyderko, said that ASMP is supporting the Gentieu suit in the belief that the suit addresses issues of the rights of photographers under past and present contracts with Getty. The Gentieu litigation has been filed in the U.S. District Court for the Northern District of Illinois as *Gentieu, et al v. Tony Stone Images/Chicago, Inc. and Getty Images, Inc.* No. 00 C 0269 (N.D. Illinois).

The catalyst in the SEC complaint was ASMP's concern that recent SEC-required reports filed by Getty failed to mention the Gentieu suit. "It is our understanding that a publicly traded company must disclose all lawsuits that are likely to have a material impact on the company. In its filings Getty listed a number of lawsuits that are covered by prior indemnification or current indemnification agreements and

other suits, one of which - against another Getty company, art.com - did not even name Getty as a defendant. In our opinion, it seems to be listing suits of little

financial consequence to Getty by virtue of the indemnifications in place or being sought," said Weisgrau. He went on to point out that the Gentieu suit, in which there is no possibility of indemnification, is not listed.

ASMP believes that if Gentieu prevails, the consequences for Getty are likely to be far reaching. "Not only will Getty and its subsidiary Tony Stone be liable for substantial monetary damages, but they will also be vulnerable to similar suits, perhaps even a class action suit, by other photographers whom they represent or have represented in the past," said Weisgrau.

Gentieu has been represented by Stone since 1993 and came under the Getty Images umbrella when Getty acquired Stone in 1995. In 1998, just after she refused to sign Getty's new contract with Stone photographers, Gentieu began to notice both a slump in her sales and copying of the look and feel of her famous, distinctive baby pictures. Whereas other photographers were featured prominently in Getty's webpages and catalogs, Gentieu's photographs were being marginalized, even though her 1993 contract with Stone was an agency

"ASMP believes that if Gentieu prevails, the consequences for Getty are likely to be far reaching."

contract and included a “best efforts to sell” clause. Then, she found out that one company had licensed and paid Stone/Getty handsomely for rights to use one of Gentieu’s photographs. When she complained directly to the Stone/Getty accounting department that she had not been paid, Stone/Getty suddenly sent her a check for her share of the license proceeds.

Gentieu then started carefully reviewing all documentation sent to her by Stone/Getty and saw cancellations followed by re-issuance of licenses for less than original license sales, double subtractions from the Los Angeles and Chicago offices of Getty and many other discrepancies. Because her 1993 contract permitted it, she demanded an audit of her Stone/Getty account, but was prevented from seeing the very documents that would enable her to untangle the account-

ing snags she had already identified.

Subsequently, Gentieu sought assistance from ASMP and hired Chicago copyright attorney Patricia A. Felch of Banner & Witcoff, Ltd., to represent her. Felch also represents writer Jonathan Tasini in the highly publicized case against the New York Times over electronic re-use rights of freelancers’ articles.

From the outset, ASMP has been in Gentieu’s corner, even if it might appear a David v. Goliath battle. But the outcome from the case could reverberate throughout the stock photography industry. “We believe that a legal decision that is unfavorable to Getty could easily result in a host of similar suits from the photographers that in the past held or currently hold contracts to supply it with photography. If that were the case, it could result in Getty’s contracted sources of supply withdrawing licensing authority from Getty

and terminating the relationships. This could have devastating consequences on Getty’s financial position, in that, the case could result in an award in excess of \$2 million, plus attorneys’ fees and costs,” said Weisgrau. He urged the SEC to investigate why Getty Images did not disclose this lawsuit, which does have the potential for substantial consequences.

“Getty might use the excuse for not mentioning the suit because, in their view, it would have no material effect on the company. ASMP would disagree strongly with such a position,” said Weisgrau. ∞

Note: Articles with background on the Penny Gentieu case have been published in the Bulletin. They can also be found on the ASMP Web site www.asmp.org. Click on the Bulletin cover image. See ASMP Bulletin, March 2000 Pages 8, 9 and 28; ASMP Bulletin, April 2000, Pages 8, 23.

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THE GLOBE LITIGATION

Round two goes to freelancers BY VICTOR S. PERLMAN

Freelancers have won round two in *The Boston Globe* contract litigation. Indira Talwani, the lead attorney for the freelancers, reports that the *Globe's* motion to dismiss the lawsuit has been denied. In a 15-page decision, Judge Gants found that “depending on the circumstances, the modification of a contract may be in bad faith when it is procured through an ultimatum in which a company threatens an independent contractor, even an independent contractor who is terminable at-will, with termination unless that independent contractor agrees to waive any claim to a benefit the independent contractor has earned or is otherwise entitled to receive through its past service on behalf of that company.”

The court noted that it is not clear what the appropriate remedy may be, but relief may include “refusing to enforce this part of the License Agreement for those who executed it as a result of this threat.” In sum, this is a very nice victory!

The *Globe* had asked the case be dismissed, basically on the theory that no matter what facts we could show in court, we could not win under Massachusetts law. The judge has now denied the *Globe's* request, and the case will continue with discovery, moving towards a trial on the merits. That trial will, we hope, take place in the second quarter of this year.

Like all trial court cases against deep pocket defendants, this litigation is very expensive. This emphasizes the need to maintain a flow of contributions into the Legal Action Fund.

PERSPECTIVE

by Richard Weisgrau

The importance of *The Boston Globe* matter is easily underestimated. On its surface it appears that we are simply trying to stop a bad contract being offered to newspaper stringers. Well, we are, but we are trying to achieve two other very important things through this case. The strategic inter-relationship of legal cases selected for ASMP support is well demonstrated in this situation.

First, if we can get a ruling against the

retroactive feature of the contract, we will protect the previously negotiated rights of editorial photographers from being 'grabbed' after the fact by unilateral action. Second, we will be positioning photographers for future revenues whenever their past works are re-purposed for electronic use.

The *Globe* retroactivity issue ties into the Tasini case that we have supported through the trial and appeal process. Currently scheduled for the U.S. Supreme Court, the Tasini case will result in a final decision on the question of whether the electronic publication of works previously published in print are a revision of the print work or a new publication.

If the publishers win the Tasini case, copyrighted works that have been previously published in print will be usable for electronic publication without additional license from the copyright owner, unless there was a binding agreement that prohibited such additional use or change of media. If we win the case, the publishers will have to get out their checkbooks to re-purpose works shot since January 1, 1978 and previously published in print under a license that did not expressly grant a change in medium. Obviously, there are many images of that description in ASMP members' files. The *Globe* wants a retroactive right to shield itself from liability in case the Tasini case goes our way.

If we win the retroactivity issue in the *Globe* case, it means that the *Globe* will have to pay for using previously licensed works. Just as importantly it will also mean that other publishers will see that the retroactive grabbing of rights with no negotiation or payment, especially when done under a threat of being denied future work, is not going to be upheld by the courts. This should help editorial photographers be better positioned in their future negotiations, whether over past or future rights.

If we lose the Tasini case, the *Globe* will not have a great need for the retroactivity. When the *Globe* demanded retroactivity, it did so in the face of the fact that the publishers had lost the Tasini case in the appeals court. Now they have taken it to the Supreme Court. This is one of those cases about putting a dollar in a photographer's pocket or stopping someone from taking a dollar out of that pocket.

At the end of the road, over the six years of the Tasini fight, ASMP will have invested more than \$100,000 in the case (this does not include the *Globe* case). We did it because there are millions of dollars worth of photographers' rights at stake. Please, keep the Legal Action Fund in mind the next time you are writing checks. ∞

“The *Globe* retroactivity issue ties into the Tasini case that we have supported through the trial and appeal process.”

KNOW YOUR CLIENTS

Understanding when to play Cat's Cradle BY ELYSE WEISSBERG

There are times when you have to be adaptable to ensure the success of a job, and even the simplest thing can sometimes help your creative team work more efficiently. For example, recently I played Cat's Cradle (a string game for two people who take turns making design shapes with a cord) for an hour with the 10-year-old son of a client to keep him occupied while my photographer and the client could concentrate on the shoot. During a three-week shoot, the client had brought her son to the studio for one day and she was visibly relaxed as she watched us play.

Every now and then she flashed me a "thank you" look. I was really having fun and the boy was a pleasure. Since I am a mother of a 10-year-old too, I understood the mom's reaction. I put myself in her place and decided that the best way I could assist my photographer was to play with client's child, keeping him entertained so the shoot could proceed.

This was a small thing, but it does highlight how important it is to consider situations such as this and empathize with your clients in such circumstances. Simple though this concept is, it will help you to make the right decisions throughout your career.

Taking this a step further: when it comes to promotion, consider the people who comprise your target market. If you are going after advertising clients, the most streamlined database to use is a national art buyer list. But remember that buying the names and addresses is the easy part. Understanding who these people are is a bit more difficult. It is your job to get this extra information and a good way to start is to carefully examine the list. Read the names and you will quickly see that the majority of art buyers in the U.S. are

female. That's good to know.

Also, keep a list of other observations you make, such as where these buyers are located. Recently, I took my photographers' portfolios to Chicago, a city that has many good agencies and a lot of art buyers. Chicago is also a very photographer/rep friendly town and showing my photographers' portfolios in that city was a good business move.

If you are seeking editorial assignments, find out more about photo editors. A few weeks ago I interviewed the associate photo editor of *Real Simple*, a well-designed new magazine that I wanted to know more about. I asked questions and learned a lot about the way they choose their photographers.

Before I approach a targeted client I try to find out as much about them as possible. While their personal life is not my business, when I know their professional achievements they respect me more. Last year, I met an art director from a New York agency and I want him as a client. This art director works on good accounts and is

extremely creative. I had read that he had won an award for a campaign so last month I left a "congratulations" message on his voicemail. Even though he was on a

shoot in Los Angeles, he returned my call to discuss his winning campaign. During our conversation he asked how my photographers were doing and what they were working on. After the call, I made a few notes and I have a plan mapped out on how I will be targeting him in the future.

You can also use the same information-gathering methods when looking for an agent to represent your assignment work. As a rep, I respect a photographer who has done some preliminary investigating before asking if I can represent them. Invariably, they start off by acknowledging who I represent, so I can tell that they have done their homework and I am inclined to listen more carefully.

Understanding the people you want to get work from will make it easier for you to relate to them. These are real people. They have individual desires and feelings. Acknowledge their requirements, and deliver what they need. ∞

"You can also use the same information gathering methods when looking for an agent to represent your assignment work."

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LEGAL ACTION FUND

The money continues to pour in BY PETER SKINNER

Members and non-members really opened their pocket books in January in support of the Society's Legal Action Fund and more than \$11,000 was contributed during the first month of 2001. Among the contributions was a check for \$600 from the Michigan chapter which held a matching funds drive in conjunction with a chapter event. Susan Carr, chapter president explains: "The Michigan Chapter held a digital seminar on January 25 in Detroit. Two of our members gave presentations on their usage of PhotoShop and scanning technology. The digital meetings always draw a big crowd so our board decided have a one-time matching funds drive for the ASMP Legal Action Fund.

"We started by giving a brief description of the three major cases Tasini, Condé Nast and *Boston Globe*. This introduction provided specific information that showed everyone in the room that the outcome of these cases will have an immediate impact on their lives. We immediately passed the hat and collected \$305. Our chapter matched the funds, and we sent a \$600 check to the Legal Action Fund the next day.

"It was a fun evening full of camaraderie. I encourage other chapters to try a matching funds collection night."

As has been reported in previous Bulletins, ASMP is involved in a series of on-going legal battles whose outcome will have an impact on many segments of the creative profession - authors, photographers, illustrators and others. Legal action requires funding and ASMP simply cannot be involved at a high level without resources beyond traditional revenues. Hence, the importance of the Legal Action Fund.

The following members' names came out of the hat in the most recent drawing of contributors' coupons.

THE WINNERS AND THEIR PRIZES WERE:

David Lamb, Art Wolfe's book *Migrations*; J.W. Burkey, Fuji film pro pack; Casey Cronin, Fuji film pro pack; Jon Golden, Fuji film pro pack; Lisa Helfert, Fuji film pro pack; Laurence Parent, Pete Turner's book *Pete Turner African Journey*; Bruce Forster, a Jay Maisel fine art print; George Caswell, Jay Maisel posters; Robert Burroughs, Jay Maisel posters; Carol Wien, Harvey Lloyd's book *Voyages of the Royal Viking*; Tom Gennara, Jay Maisel posters; Tom Hussey, Al Satterwhite's book *Camera, Lights, Advertising!* and a set of fine art prints; Don Wheeler, Al Satterwhite's book *Color and*

Design and a set of fine art prints; Heidi Thorne, Lynn Goldsmith's book, *Photo Diary*; Joe Rychetnik, Lynn Goldsmith's book, *Circus Dreams*.

HERE IS A LIST OF RECENT CONTRIBUTORS. THANK YOU, ONE AND ALL

- \$600 Michigan chapter
- \$500 Brian Dressler, Jan Faul
- \$300 Sue Bennett
- \$250 Andrew Berger, Leslie Kelly, David Langford, Chris Shinn, Jeff Zaruba
- \$225 Jon Golden
- \$200 Roger Farrington, Henry Leutwyler, Steve Niedorf, Morton Tadder
- \$150 Bill Truslow
- \$100 Christopher Arend, Paul Barton, Elie Berkman, Jim Blecha, Teri Bloom, Art Brewer, Mark Buckner, Sanford Burstein, Walter Chandoha, Joseph Chumley, Kindra Clineff, Bill Cramer, Dan Forer, Edward Gajdel, Thomas Gennara, Steven Gross, Steve Hansen, Kevin Horan, Tom Hussey, Tom Kates, Jason Kinch, Susan Lapidés, Rick McClain, Paul Morris, Gabe Palmer, Greg Probst, Gordon Smith, William Struhs, Tom Vogel, Burton Wilson, Ron Wu, Jake Wyman, Michael Yamashita
- \$80 Kathy Tarantola
- \$75 Todd Atkinson, Bob Carey, Michael Passanante
- \$50 Arnold Adler, Jeff Amberg, Carol Barrington, Nancie Battaglia, Louis Bencze, Peter Billard, Steven Borns, Luigi Cazzaniga, Victor Englebert, Frederick Hall, Larry Hamill, Alan Harris, Alec Hemer, Saxon Holt, Scott Indermaur, Chuck Keeler, Beth Kluttz, Andrew Kramer, Pamela Kruzic, George Lee, Dan Little, Greg Pease, Richard Petrillo, Joe Polillio, Ted Ramsaur, Laura Riley, Manny Rodriguez, Richard Seagraves, Dan Sellers, Andy Shearer, Richard Spahr, Peter Treiber, Michael Vaughn, C. J. Walker, Bob Woodward
- \$45 Marshall La Plante
- \$40 Martin Brading, William Miles, Louis Ouzer, Joseph Rychetnik, Susan Wides
- \$30 Richard Strode, Gordon Wiltsie
- \$25 Shari Alexander, Keith Ball, Hilda Bijur, Mary Bloom, Jane Booth Vollers, Robert Burroughs, George Caswell, Cosimo, Suki Coughlin, Chuck Davis, Sue Dippold, Dana Edmunds, Charles

- Gupton, Michael Haug, Harold Head, Lou Jacobs, William Johnson, Lewis Kennedy, Tom Lamb, Michael Lauter, George Long, Thaine Manske, Loren Alexander McIntyre, Bruce Nall, Eric Perle, Chuck Place, Michael Price, Ben Ross, Susan Russell, Irene Owsley Spector, Shonna Valeska, Tony Walsh, Stuart Watson, Thomas Werner, Don Wheeler, Timothy Wright, Ida Wyman
- \$20 Steve Cooper, David Doody, William Hooper, William O'Byrne, Colleen Woolpert
 - \$10 Andrey Efimov, Fred Husserl, Gea Koenig, Lori McCargish.

Throughout the year, ASMP will draw other names from the proverbial hat for goodies but as members will appreciate, the chance to win a prize is not the reason most members contribute to the Society's legal war chest.

Also, at year's end we will have a grand prize drawing for a Nikon F100 and 28-80mm lens donated to the cause by Nikon Inc.



HANGING TOGETHER *cont. from p. 5*

We understand that there are enormous pressures to surrender rights, and to do so without adequate compensation. We also acknowledge the effort that has gone into protecting the value of those rights, for it has often been heroic. But what we're seeing across the country, within our own chapters, and in our own businesses has convinced us that many photographers are at the end of their ropes. They are hanging, and they are doing so separately. Although we continue to try to arm photographers individually, we believe that it's time once again to join together and use the strength of our numbers.

Those of us who value our independence as creators understand that the ownership of copyrights is our greatest strength. We have also seen that its value is the first thing to be traded in difficult negotiations. For many years ASMP has been looking for a way to institutionalize the licensing of photographers' work, standardizing the answers to questions of image ownership and the value of use, and backing those answers up with the strength of a large organization. We've looked to the music industry as a model, the success story of licensing agencies that protect copyrights, enforce infringements, and pay creators automatically. We've searched for a structure that would preserve independence yet allow collective strength. What we've found is an organizational form called a *cooperative*.

A cooperative is owned by members who use its services. They control its operations by electing its board of directors. It is designed to provide economic protection and empowerment to independent producers, and it is particularly well suited as the structure for a licensing institution. Being owned by its members, its sole purpose is to benefit those members. It is not subject to the control of outside stockholders or corporations. And it legally permits the standardizing of prices and conditions for the sale of its members' goods, something ASMP has been prohibited from doing for twenty five years.

ASMP has prepared a white paper on this approach to establishing institutionalized licensing of photographers' work. It explains the reasons for the approach, the advantages and historic background of the cooperative, and the principles that would guide the creation of a licensing organization that benefits all photographers.

A *Proposal for Independent Creators* is available as a free pdf download from [<http://www.asmp.org/information/whitepapers/whitepapers.html>]. (24 pages, 700k) We invite you to read it, to take notes, and to let us hear your comments and suggestions. ∞

HOW TO SUPPORT THE LEGAL ACTION FUND

YES, I would like to contribute to the ASMP Legal Action Fund and help my Society's legal advocacy efforts. Please find enclosed my contribution of \$ _____

Name: _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____

To phone in a credit card contribution, please call: 1-215-451-ASMP ext 1200. Please mail your check or money order to:

ASMP, Legal Action Fund,
150 N. Second Street
Philadelphia, PA 19106.

Thank you for your support.

IT COULD HAPPEN TO YOU

The strange saga of Picture Perfect BY DAVID MACTAVISH

Every photographer should read this article, because this could happen to you. Suddenly your stock agent stops paying you, licensing reports become sporadic or stop, and your work continues to be licensed worldwide. This is the story that has been reported to us of flagrant offenses inflicted upon photographers and domestic and foreign subagents (collectively “photographers” or, specifically, “subagents”) by stock photography agent Robert Tod, owner of Picture Perfect USA (“PP”) in New York City. The photographers had submitted photographs to Mr. Tod for inclusion in either PP catalogs or files for general representation, or books published by Tod.

Mr. Tod’s story appears to be that a few years ago PP needed money so Tod shifted \$1.5 million from Todtri Productions Ltd., Inc. (“Todtri”), Mr. Tod’s book publishing firm (now called Todtri Book Publishers on their Web site), to PP. We are told that Todtri’s own financial problems began to mount, and Tod entered a security agreement with a major creditor, printer Tien Wah Press. Reliable sources say the debt to Tien Wah was in the range of \$6 to \$8 million dollars. To satisfy his obligation to Tien Wah, Tod shifted the \$1.5 million back to Todtri and we believe that he began to retain and convert the portion of licensing fees that PP owed to photographers (“royalties”). As photographers remained unpaid, some told Tod to terminate licensing of their work and return their photographs. In most instances Tod ignores such requests, and PP continues to license images, and Tod continues to promote and support licensing by his subagents.

Mr. Tod has been said to have admitted that, when issued, licensing reports (“reports”) are always late by one quarter or more and that they have been inaccurate since the beginning of 2000. Examples of this have been voiced by photographers claiming that when they have seen reports, additional use of images has been reported, but not the first time use, which typically commands greater fees. And, when one photographer, said by Tod to be one of PP’s best fee earners, began to strongly demand his royalties, the next report suddenly failed to show any licensing of his work.

Some subagents have tried to retain fees earned from licensing PP supplied images because Tod hasn’t been paying subagents what he owes them, and some subagents have claimed they withhold fees to protect them for photographers from Tod. Tod is not known to have reported that subagents are withholding fees.

After one or two failed attempts, Tod employed a financing and

factoring company, Platinum Funding Corp., to collect withheld fees (and possibly other accounts receivable). According to subagents, Platinum’s threats of lawsuit have forced release of withheld fees, while Tod fails to reciprocate by refusing to pay subagents what they are owed by PP. Platinum likely makes its money in one of two ways: It is paid a commission on the fees collected, or Platinum purchases Tod’s accounts receivable at a discount and tries to collect them.

In communications to photographers, Tod claims a number of things trying to justify his actions: That his problems with photographers are a mere commercial disagreement (and not a breaching of contracts), and that if his firms are to survive he cannot return and must continue licensing photographs, and he cannot pay photographers royalties. Curiously, no interviewee reports that Tod has ever publicly acknowledged the existence of numerous other creditors. Inexplicably, Tod maintains that photographers’ contracts with PP remain valid and require his continued performance as an agent. By also declaring that “the secured creditor calls the shots,” Tod tries to establish the impression that photographers are mere creditors and that he is required by law to withhold photographers’ royalties in order to pay the secured creditor. In this way, Tod attempts to place the burden of PP’s and Todtri’s survival on photographers’ good will, and he attempts to create a sense of guilt in photographers who want their money and photographs.

Outside parties who are acquainted with Tod’s businesses, as well as former employees, say Tod’s financial problems are a result of poor decision-making, combined with a lack of understanding and inability to spot future trends. Interviewees express great doubt that either of Tod’s businesses can survive in the long run because the necessary steps to compete in rapidly changing markets haven’t been taken or have been taken too late. Tod continues to depend upon expensive, printed catalogs, and a network of subagents to purchase and distribute the catalogs and license the images in them. Not paying subagents is a strange way of treating firms you heavily depend upon.

Sources say that Tod’s remaining secured debt remains sizable and will take a long time to pay off at the rate he is going. Despite this fact, Tod continues to publicly assert that the secured debt is nearly paid off and that he expects to begin making royalty payments soon. Tod continues to talk of a pending merger: The inference, of course, is that a merger will provide an infusion of cash for his firms. But then, Tod has been making this promise since at least September 1999.

Regrettably, it is now 2001 and things remain much the same or are worse. Those who have recently visited Tod's offices report empty desks full of unused, brand new computers and only one or two employees. Former employees and others report that PP has lost all or most of its trained employees, that many photographs are stacked, unfiled, on file cabinets and countertops, and that business is not well.

DRAWING CONCLUSIONS AND A COURSE OF ACTION

Business conclusions become readily obvious from reading the above facts. The legal conclusions are that Tod is materially breaching contracts by keeping and converting photographers' royalties and failing to completely and accurately report licensing activity. If you are a contracting party, and you have been properly performing under the contract, you can consider that contract to have been put to an end by the breaching. Tod thus loses the authorization to act as your agent. When he began to breach he lost the entitlement to license your work or earn commissions. Once notified by you, Tod violates state and federal laws and international treaties by licensing, distributing, or refusing to return images, by authorizing and supporting licensing by subagents, and if your images are used in Todtri books.

ASMP'S ROLE

After interviewing photographers, former employees of PP, representatives of businesses associated with Tod, and his creditors, options were developed that might remedy the situation and were submitted to ASMP for review. The first thought to assist photographers was to initiate and support a lawsuit brought in several photographers' names. (ASMP cannot bring a suit in its own name here because ASMP isn't an injured party.) However, New York law firms estimated a suit could cost from \$50,000 to \$100,000 with, of course, no guarantee of success. And even if the action proved successful, it is debatable whether any royalties could ever be recovered from firms that are so deeply in debt. Believing litigation to be the best tool available to correct the wrongs here, ASMP sent a letter to complaining photographers explaining ASMP's inability to fully finance a lawsuit and requesting nominal financial support from each photographer, to support ASMP's pledge of underwriting the major cost of a suit. Amazingly, and sadly, only a couple photographers responded affirmatively.

Still, a few photographers express frustration that ASMP doesn't have a ready answer for their problems. But it must be understood that in situations like this there are financial limitations, support is needed (and wasn't received) from injured parties, and there are legal restrictions, policy dimensions, and strategic considerations that cannot be ignored. No society can afford to fund

litigation of every complaint. It is important to note that ASMP almost never provides financial support to routine litigation. It does do so only where the legal issues involved are very important to all photographers, and the issues are unsettled in the courts. Although many photographers have been injured by Tod, the issues are not especially unique. ASMP has become involved in this case because of the dimension of Tod's violative behavior.

A number of photographers have suggested that ASMP force PP into the legal procedure called discovery that would permit questioning Tod under oath or force surrender of physical evidence. Other photographers have suggested that ASMP obtain an injunction from the court to stop Tod's licensing and force payment of royalties. While satisfying thoughts, the reality is that neither legal device — discovery or injunction — can be engaged in without being prepared to pursue a full lawsuit, something that ASMP does not have the resources to fund at this time, and something injured photographers apparently don't want to contribute to.

Despite all of this, the courts do remain a viable avenue for ASMP — and, it must be remembered, for any photographer or subagent who has been injured.

What is important is that ASMP has begun to take action on a number of fronts. Hopefully, you agree it would be imprudent to reveal plans or actions underway that would give Tod a heads up. Rest assured, ASMP is supporting and directing various activities that may bring some measure of relief to injured photographers. ASMP is involved and is in the lead, as usual.

HELPING YOURSELF

First decide what do you want to do.

If you are a photographer who is involved with Tod, PP, or Todtri, there are a few things you can do. These steps are only suggestions and may not prove successful. But if you don't bother to take them, or develop your own course of action, you may never regain your property.

First, you need to firmly make up your mind that you want to retrieve your photographs and money and stop Tod from infringing your work. Interviewed photographers expressed a disturbing lack of concern about their photographs. Many said they had dupes or similars they could license, not thinking that if they and Tod license similar images there could be unhappy licensees and possibly lawsuits. Three or four photographers even paid lawyers to write letters to Tod, but then no follow-up action was taken.

You may need to redirect your emotions and actions. No one could have foreseen Tod's violations of law and contract. Some photographers have needlessly wasted energy by directing their frustrations at their own agents who merely contracted to submit images for catalogs that were to be published by a then respected agent.

cont. on p. 14

IT COULD HAPPEN TO YOU *cont. from p. 13***GET PROFESSIONAL ADVICE**

Despite voluminous amounts of educational materials available to photographers, far too many enter relationships without a complete understanding of all contractual terms and conditions. Although it may appear to be a simple thing to read a document, contract law is far more than words on paper. It is the rare photographer who will be familiar with all that is needed to properly analyze contracts. A knowledge of statutes, case law, commercial codes, and industry practice is required. Many interviewed photographers, for example, expressed the misunderstanding that by not signing a document they would not be contractually bound, not understanding that contracts can also be executed orally or by performance. And many photographers signed PP catalog contracts without knowing that they were transferring copyright ownership to Tod! It may cost a few dollars, but you will get it back. Before you sign, always consult a lawyer who understands copyright law and the business of photography.

LEARN THE LANGUAGE OF PHOTOGRAPHY

A small but important note, somewhat related to the issue of professional legal advice: Put an end to use of “sale” or “sell” when referring to a grant of rights permitting reproduction or other use of your images. The proper word for a grant of rights where you retain ownership of the photograph is “license.” By using “sale” you imply a transfer of ownership, which copyright holders seldom do. When your agent or client uses “sale” or “sell” gently correct them, and explain the difference. Tod’s contracts use “sale” and “sell.” In the event of a lawsuit, an opposing lawyer might argue that you did intend to sell and not license your images. Is that what you want?

Don’t confuse “royalties” with “commissions.” An agency relationship, as with PP and Tod, is legally created when you supply goods (photographs) to be licensed by the agent under consignment. Agency law recognizes that you, as the principal, pay commissions to the agent for handling your licensing transaction. The photographer (principal) is paid royalties, not commissions, for the licensing of his or her images. The agent is paid commissions for those licenses.

COMMUNICATE

That is, yell like hell. Your photographs and the income earned from licensing them belong to you — they are your property. Agents like Tod and PP only represent you, they must hold your property in trust and may not use it without your permission. Because you run a small business, and because Tod wrongly views photographers as mere creditors, you need to make yourself more visible. This can’t be done in a hit or miss fashion; it requires a

program of regular, frequent contact with Tod. If traveling, have someone else handle things for you. Be creative, be consistent. The courts may want to see that you have been sufficiently interested in your property (photographs or royalties) for it to be returned to you in the event of a lawsuit or bankruptcy.

A word of advice: Don’t threaten physical or financial harm, try to intimidate, or make statements you can’t or won’t support. Keep written communications brief, have someone else edit them, and keep records of every communication sent or any contact with anyone associated with PP.

Send a Letter: Even if you have previously complained to Tod, you should consider sending a letter demanding — at a minimum — immediate: (1) Termination of all licensing or use of your work by any person of firm; (2) Return of all of your images, whether originals, or duplicates, or derivatives; (3) Submission of full and complete reports regarding all use or licensing of your images dating from when Tod began failing to pay royalties (e.g., January 1, 1998 to the present); (4) Payment of all fees owed to you for licensing or use of your images, without any deduction by Tod for commissions. *See below, under “What to Say,” for ideas when communicating with Tod.*

Deliver your letter via FedEx or other service that records delivery and requires signatures. FedEx deliveries can be verified on-line with the packing list number (www.FedEx.com). Don’t send this letter by e-mail or fax because you can’t prove delivery, or depend upon those little green U.S. Postal Service cards that are seldom returned to senders.

Please send a copy of your letter to David MacTavish, Attorney at Law. Contact information is included at the end of this article.

Telephone/e-Mail/Faxes: After sending a letter, making at least the points above, continue to make regular contact with Tod (or anyone who owes you money or images, for that matter). A weekly telephone call is not out of line as a reminder that you expect immediate performance. Be persistent, call until you get Tod personally. Set your telephone, fax, or computer to automatically dial or send messages. Do whatever it takes to get Tod’s attention, but remember, many interviewees report that Tod has a history of making promises that are never honored.

Contact Mr. Robert Tod at:

Picture Perfect USA, Inc. [also Todtri Productions, Inc.]
254 West 31st. St., 13th floor., New York, NY 10001-2813
800.241.4477 (free—no reason not to call, right?);
212.279.1234 fax 212.279.1241

E-Mail: info@pictureperfectusa.com

Web site: www.PicturePerfectUSA.com

Todtri Productions, Ltd.

(perhaps now known as: Todtri Book Publishers)

(see 800 number above) 212.695.6622

E-Mail: info@todtri.com Web site: www.Todtri.com

HINTS

• One photographer placed calls every ten minutes until Tod relented and spoke with him. Of course, if you give your real name you may only be told Tod “isn’t in.”

• After your initial letter, telephone calls and e-mails are probably more persuasive.

• Get the catalog number of your images and periodically attempt to license one. Keep a record of your attempts, especially whether licensing is possible.

• Going to New York? Make a visit to demand your photographs and fees. Ask permission to search the files. If asked to leave, do so; you don’t need a trespassing arrest.

WHAT TO SAY

The ideas below are suggestions for any communications you may have with Tod, other firms he has dealings with, or government officials. You’ll note that some of the suggested points to tell to Tod are repeated. This occurs because many of the larger issues overlap.

Contractual Breaches Terminate Agency Relationship

When one party begins to materially breach a contract, the nonbreaching party may consider the agreement to have been put to an end. Tell Mr. Tod:

• He has materially breached and therefore ended your contract(s) with him. Initial breaches here generally include withholding of royalties and failure to report licensing activity.

• With no valid contract, Tod and PP lack your authorization to represent you and your work.

Retaining Photographs or Fees Breaches: an Agent’s Fiduciary Trust

Retaining or using consignment goods or proceeds without your authorization violates New York law controlling the relationship between artists and “art merchants” (i.e., agents). The law unequivocally states that an agent, and an agent’s creditors, lack any interest or right in consignment property. Tell Mr. Tod that:

• A secured creditor can not make any claim to your consignment property.

• Upon breaching your contract Tod violated his fiduciary responsibility to you, thus ending your contract with him.

• Because there is no valid contract, all fees earned from licensing your images, from the moment breaching began, must be immediately surrendered to you in full.

• Commissions may not be deducted by Tod for any licensing or use of your work subsequent to the onset of breaching (or about 1/1/98).

• All licensing or use of any of your images must be terminated immediately.

• Any person or entity Tod has authorized to license or distribute your work must be notified, without delay, to immediately terminate licensing or distribution of your work, and you must be sent a copy of that notification.

• All of your photographs, originals and duplicates, must be immediately returned to you. If Tod has paid duplication costs, and refuses to return them, explain that he owes you for far more than the duplicates, or that dupes be destroyed. Demand also that all digitized versions of your work be erased whether stored or possessed by PP, subagents, printers, or any other person or firm without regard to the medium the work is stored on.. Finally, demand notification in writing when all digitized images have been erased or dupes destroyed.

Licensing Without Authorization is a Copyright Infringement

You have given Tod the right to license and distribute your work, and to authorize others (subagents) to do the same, but that authorization was lost when Tod’s breaching began. In any event, the U.S. Supreme Court has said that authors may arbitrarily withhold authorization to exercise the exclusive rights that are provided authors in the Copyright Act of 1976. Once your authorization has been withdrawn any use or distribution of your images is an infringement of copyright under the U.S. Copyright Act of 1976, and possibly foreign copyright laws and international copyright treaties. Tell Tod that because of his breaching:

• In accord with the U.S. Supreme Court you withdraw your authorization for Tod, his firms, subagents, or anyone else to license or use your images.

• He must immediately terminate licensing or distribution of your images and immediately notify all subagents telling them to terminate licensing or distribution of your work.

KEEP ASMP INFORMED

Finally, send ASMP copies of communications with Tod, especially promises made by him, or other related parties.

Contact:

David MacTavish, Attorney at Law

P.O. Box 13, Virgil, IL 60182,

or e-mail [MacTavishLawyer@aol.com].

David MacTavish worked over 22 years as a photographer and also served on the ASMP board of directors during that time. He was ASMP national president and president of the Chicago/Midwest Chapter. MacTavish is now an attorney in Illinois concentrating in issues involving copyright and new technologies.

Note: This paper is available at [www.asmp.org/information/whitepapers/whitepapers.html].

THE PHOTOJOURNALIST'S GUIDE TO MAKING MONEY

Michael Sedge

Allworth Press www.allworth.com

224 pages; 40 b&w illustrations

Paper; \$18.95; ISBN:1-58115-076-8

Revealed are the professional secrets of a successful photojournalist who has walked out of the doors of The Associated Press, *Newsweek*, *Robb Report*, and Time Life with five-figure deals in his pocket. The author talks of the strategies and the networking techniques that photojournalists need to employ to be as successful as he has been. The book includes guidelines on how to: identify and meet the needs of current and new customers; break into editorial markets; become an attractive business partner for art directors and editors. In a nutshell, this is a powerful self-marketing tool written by a photojournalist who has made his one-man business look and feel like a huge international corporation. And as a side note, one book which he endorses is ASMP's *Professional Business Practices in Photography, 5th ed.*

MIAMI A CITY LIFE PICTORIAL GUIDE

Text by Joan Biondi

Photography by Tony Arruza

(www.arruza.com)

Voyageur Press

100 pages; color; soft; \$16.95

ISBN: 0-89658-498-4

Accomplished author Joan Biondi, who has published ten books and numerous magazine and newspaper stories, and prolific photographer Tony Arruza have combined their considerable talents to produce a colorful, informative look at one of the world's most famous cities. As Biondi writes, Miami is a "shoulder-to-shoulder mass of humanity" and includes "Cubans, Nicaraguans, Peruvians, Jamaicans, Venezuelans, Haitians, Puerto Ricans" and more. And the blending of so many cultures

against the backdrop of a place that definitely is never dull has created magnificent subject matter for this writer/photographer team. Both Biondi and Arruza, who was born in Cuba, are long time Miami residents and they know the city well. It shows. The chapters consist primarily of glorious photographs with extended captions detailing principal facts, along with notes of cultural and historical interest. If you're thinking about going there, buy this guide.

VINTAGE ALLIS-CHALMERS TRACTORS

by Chester Peterson Jr.

Voyageur Press

This is the latest title released by Voyageur Press, publisher of outdoor, automotive, and tractor books and is the tenth non-fiction book produced by ASMP member Chester Peterson Jr. His latest offering has been published in three separate editions: hard-cover for the United Kingdom and U.S., and soft-cover for Canada. Peterson, of Lindsborg, Kansas, estimates that sales of his books will reach the 100,000 mark in 2002; they now total more than 60,000. *Vintage Allis-Chalmers Tractors* is available in national chain book stores and at amazon.com.

AFTER THE FALL SREBRENICA SURVIVORS IN ST. LOUIS

Patrick McCarthy

Photographs by Tom Maday

Foreword by David Rohde

University of Missouri Press

160 pages; b&w; cloth; \$24.95

ISBN: 1-883982-36-7

After the Fall documents the tragedy of Srebrenica and its effects on the lives of one extended family in St. Louis. Through richly textured photographs and first-person interview narratives with members of the Oric family, the book presents the sequence of events that led to the siege of Srebrenica, the genocide that followed, the refugees' journey to St. Louis, and the ongoing efforts of thousands of survivors to

build new lives while awaiting word of loved ones still reported as "missing." Patrick McCarthy, a librarian at St. Louis University, has worked with Bosnian refugees since 1993; ASMP member Tom Maday, a Chicago-based photographer, has had his work published in *Vanity Fair*, *Newsweek* and other leading publications; David Rohde is a reporter for *The New York Times* and won the 1996 Pulitzer Prize for international reporting on the aftermath of the fall of Srebrenica.

RIDERS FOR GOD THE STORY OF A CHRISTIAN MOTORCYCLE GANG

Text and photography

by Rich Remsberg

Afterword by Colleen McDannell

University of Illinois Press

264 pages; b&w; cloth; \$34.95

ISBN: 0-252-06943-9

Combining powerful photography with gang members' first-person testimonies, documentary photographer Rich Remsberg explores the lives of men and women who have redirected the extreme nature of their former ways. Founded by a former biker and located in southern Indiana, the Unchained Gang is a group of former outlaw bikers, ex-convicts, and recovering addicts who are now born-again Christians. Members of the Unchained Gang have given up the bad side of their former lives but have kept their motorcycles and use them as tools in their outreach ministry work - in prisons, at biker rallies and other places where people are on the fringe. Remsberg, who said his interest in the story was entirely journalistic, first became fully aware of the Unchained Gang in 1995 and but had limited knowledge of bikers and their world. Over the years, he gained access to that world, one that is generally closed to outsiders.

PETE TURNER AFRICAN JOURNEY

More than 40 years ago Pete Turner embarked on his first adventure to Africa - and what an adventure it was. But, and as so many others before him have found, that first encounter with Africa only whetted Turner's appetite for the continent. Since then he has returned many times casting his discerning eye on amazing places and equally amazing people and incorporating his hallmark graphic design and bold colors into powerful images. The magnificent results of those photography forays into Africa are now contained in an inspiring book, *Pete Turner African Journey*, recently published by Graphis.

Turner took his first steps on African soil in 1959, in what was a dream assignment for the 25-year-old graduate of Rochester Institute of Technology who had just served two years with the Army Pictorial Center. The Airstream Trailer Company had approached him to photograph and document a seven-month caravan of 43 trailers which would travel from the southern to the northern end of Africa. In simple terms, the assignment was from Cape Town to Cairo, with National Geographic magazine as the major outlet for the photo-story. The incredible opportunity was one that Turner grasped eagerly and capitalized on to the maximum with *African Journey* a classic example of how to make the most of a great subject. And subjects don't come much greater than the entire continent of Africa.

While the caravan and its journey was a classic subject - and the principal one - Turner was also in the enviable position of being able to venture off on side trips. One such outing took him to a Ndebele village, near Pretoria, where his immediate obstacle was the shyness and self-consciousness of the villagers. Turner had a chat with the village head, Chief Spielman, who understood the problem. "You want to be invisible," he said through an interpreter. The chief then issued an edict: the villagers

should carry on their daily lives and ignore the young photographer: for all intents, he was simply not there. So, having been declared "invisible" Turner learned the importance of being unobtrusive as he captured on film the unique village and its people's lives.

Wherever the caravan of trailers went - with their fuel supply truck not far away - Turner found photographic opportunities beyond his imagination. Anyone who has been to Africa will appreciate how the young photographer must have felt in places such as Tanzania's Ngorongoro Crater more than 40 years ago when he had that Garden of Eden-like crater almost to himself.

All photographers who travel would agree with him that strange places and new subjects engender excitement and energy hard to conjure up at home. "Traveling is a big part of recharging the visual senses. I find it difficult to photograph in my own backyard even though it's a beautiful place. When you're traveling, the pressures of limited time motivate you to get out and shoot," he said.

During his career Turner has won many awards and accolades. Among them is one of which he especially proud. It's from his peers in ASMP, of which he has been a member since 1959. In 1981, Turner was presented the ASMP Outstanding Achievement Award, for which past winners include Richard Avedon (1957), Gordon Parks (1960), Jay Maisel (1978), and Carl Mydans (1980).

He once made the comment that photographers who have developed a style don't change that style as time goes by. "You use new technology to serve that style - and you use the style to express new ideas and portray new subjects," he said. The way in which he has embraced the Internet and set up a site on the World Wide Web vindicates that statement.

With the help of a former studio man-

ager, Randy Phillips of PhotoServe (www.photoserve.com), Turner created a comprehensive Web site of images and biographical information (the URL is www.peteturner.com) which is intended to be a promotional and not a sales vehicle.

PETE TURNER AFRICAN JOURNEY

Photographer: Pete Turner

Introduction: Gordon Parks

Designer: Massimo Vignelli

Graphis; 208 pages

148 full-color photographs.

Cloth; \$60. ISBN: 1-88801-99-2

Ph: 1-800-451-1741

www.peteturner.com

Our Cover

The people of the Transkei, South Africa, are enamored with color and love making wire bracelets and anklets. So multi-colored telephone wires are very popular with the locals in the Transkei. And during one of his numerous trips to Africa — this one in 1970 — Pete Turner, was quick to see the photographic opportunity created by the colorful composition of wires — a veritable rainbow of colors — around this woman's ankle.

He made the image with a Nikon camera — one of the Fs — a 105mm lens and Kodachrome 64, and ambient light. Aptly, it's title is *Wired*.

A hallmark of Turner's photographs has been the intensity and saturation of color and he has made a practice of bracketing exposures with this in mind. He points out that while bracketing is often used by photographers as a way of ensuring correct exposure, it's also an excellent method to capture mood and color saturation. ∞

A MODEST HERO

Ted Polumbaum crusaded for rights BY THE POLUMBAUM FAMILY



Above: Armando, a subject of Ted Polumbaum's pictures a generation earlier, was found and photographed when Polumbaum returned to Southern Chile.

© TED POLUMBAUM

Right: Ted Polumbaum © IAN POLUMBAUM

conduct which was incompatible with the best interests of journalism." The American Newspaper Guild championed Ted's case during a time when most journalists were running for cover. The Guild won the arbitration but lost the court appeal on a technicality. When the ensuing blacklist shut the doors to print journalism Ted turned to his childhood passion for photography.

During the first year his net income was \$27.21. However, the policies of another Yale alumnus, conservative Henry Luce, who hired the best talent without opinion testing, made it possible for his first *LIFE* assignment. But the atmosphere of the time was so corrosive and fear-producing that Ted used a pseudonym. Of course he was an early ASMP member.



Over the years his love affair with the camera brought him to many places. Covering the early days of our involvement in

Vietnam reinforced his strong and premature opposition to that war. Living in India gave him greater understanding of why people were poor. Civil rights workers in Mississippi gave him faith. He documented historic events and ordinary moments: baseball, politics, dissident priests, Coney Island, disasters at sea and in the mine, home birth, autistic children. When the glory days of photojournalism waned he shot ads and glossy annual reports.

His last book, *Today is Not Like Yesterday: A Chilean Journey*, spanned a generation of history. It featured the same people during their years of hope and again after Pinochet lost power and they had returned from prison, torture and exile. Throughout, Ted retained his modesty, gentleness, trenchant humor and the commitment to social justice that permeated his life and work. He never succumbed to the temptation to ridicule his subjects, even if he held them in contempt. He let their own words do that. A physician friend who has Ted's photo of a Kashmiri healer on his office wall related that when a famous dying actress arrived for her final consultation she said she had only come to see that photograph once more.

His only regret during a completely fulfilled life was that his clarinet couldn't match Benny Goodman's. He worked and played fierce tennis until illness overtook him. His last exhibition, of large digital prints, was *Rank & File*.

He leaves behind his wife, Nyna Brael Polumbaum (they met at Yale and worked in adjoining studios for over 50 years), two daughters, a son and three grandsons. ∞

Ted Polumbaum, 76, died on January 21, 2001 after a long struggle with a mysterious meningitis that never revealed its origin. Ted never planned to be a photographer. It was thrust upon him. He was once a skinny, accomplished suburban Republican kid who headed to Yale, from which he was immediately drafted into World War II. In the jungles of New Guinea and the Philippines he broke rules against fraternizing by sneaking out to a segregated area to hear jazz and learn about politics from a black veteran of the Spanish Civil War. When he returned to the same class as George Bush at Yale four years later his ideas had changed. Bush joined Skull & Bones. Ted joined the John Reed Club. After graduation Ted became a reporter at the York, Penn., *Gazette and Daily*, a newspaper that was the training ground for many respected journalists.

Later he wrote the 11 p.m. television news for United Press in Boston. In 1953, at the height of the McCarthy period, he received a subpoena to appear before the House Un-American Activities committee, which was investigating "subversion in education." Ted defied the committee by challenging their right to inquire into his personal beliefs or demand the names of fellow students. He refused to answer any questions. "I will not help [you] in [your] attempt to destroy the Bill of Rights." Ted was threatened with contempt charges and promptly fired.

United Press said they didn't have to prove his guilt; in the opinion of management his refusal to prove his innocence "constituted

NEW BENEFITS FOR ASMP MEMBERS

Several new benefits for ASMP members have been incorporated recently and members are invited to ascertain the value of these benefits. Following is a brief description of the services offered.

MEMBERS CAN PROMOTE AT ONVIA.COM SITE

ASMP's new affiliation with Onvia.com provides members with a single source for on-line business buying, selling, tools and resources. Onvia is one of the most comprehensive Internet sites specifically for small businesses and entrepreneurs, and focuses on how to help you save time and money, and succeed in the Internet world.

ASMP members can benefit immediately from this partnership by going to www.onvia.com/asmp. Here's how:

- Get free shipping on all office products (by UPS ground)
- Free leads on Request for Quote
- And many more

Members can sell their services at www.Onvia.com/asmp "Request for Quote" service. Request for Quote is a way for you to find customers by listing your service under Photography. You simply fill out a questionnaire in order to begin receiving names of companies interested in purchasing your service or product. You respond directly to the buyers and negotiate deals offline.

Members can also find current small business news (updated often), business management tools, community forums, and industry information at www.Onvia.com/asmp "News & Tools." This area is a helpful resource for start-ups as well as established businesses.

Onvia is eager to make our partnership work for ASMP members so check out the site at www.onvia.com/asmp to take advantage of current deals and watch for additional specials and discounts.

PHOTOTRUST GALLERIES

PhotoTrust.com is an on-line community program for photographers and provides a variety of services and opportunities for its members. PhotoTrust is offering ASMP members discounts ranging from 22 percent to 25 percent on its membership fees. Some of its member benefits include complimentary online galleries with sales outlets, information on topics such as workshops and competitions, and discounts on products. To check out PhotoTrust, go to www.phototrust.com. If you wish to take advantage of the ASMP member discount, a code is required. To obtain that code, either call Elena Goertz at ASMP National (215-451-2767 ext 1203) or send an e-mail: goertz@asmp.org.

ADBASE OFFERS DISCOUNT TO ASMP MEMBERS

ADBASE, a leading on-line provider of mailing list services for commercial artists in North America is offering ASMP members a 10 percent discount on subscriptions to its database. For information: www.adbase.com or phone toll-free 1-877-500-0057. ∞

Classifieds

NOVASTOCK PHOTO AGENCY

For your copy of our most recent photographer's newsletter, contact us at email: novastock@aol.com

ANDREW BERGER

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900 THIRD AVENUE
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rrhobbs@bigfoot.com
www.rrhobbs.com

NewMembers'Zone

The following have applied for membership in ASMP. Any comments, either positive or negative, relating to these applicants should be sent to the Membership Coordinator at ASMP Headquarters. After 20 days, applicants with no unfavorable comments shall be accepted.

ALASKA

John B. Hyde, GM
J. Gnass, J. Schultz

ARIZONA

John A. Ely III, AS
A. Heisey, M. Findysz

BALTIMORE

Mariko Nagaba, ST
Towson University

Amy Pekala, GMTrf
R. Solomon, D. Harp

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J. Brough Shcamp, J. Herrmann

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NewsLines

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GROUP REGISTRATION; AND WEB SITE REGISTRATION

The Register of Copyrights, Marybeth Peters, and senior staff of the Copyright Office have told a meeting of copyright lawyers that top priority is being given to finalizing regulations for the group registration of photographs.

The meeting, which was attended by ASMP managing director and general counsel Victor Perlman, is an annual event at which the Copyright Office makes a presentation of major developments of the past year and predictions for the coming year to members of the ABA's Intellectual Property Law Section.

"This is the regulation that we (ASMP and the Copyright Office) have been working on for years. With an announcement like this before a group like that, it really looks as if it is going to happen, and soon," said Perlman.

While registration of Web sites was also discussed, Perlman said that at present there are no published, written regulations in force for their registration. "That means that any time you want to register a Web site, you should call the Copyright Office (202-707-3000) before filing anything, to make sure that you are doing things the way they want. Presently, Web site registrations are being accepted as either group serial registrations or group database registrations," he said.

"It takes about eight months from the time that you send in a registration to the time that you receive a certificate of registration. This is because of budget cuts in congressional appropriations to the Library of Congress (of which

the Copyright Office is part), and the people at the Copyright Office are working on systems to improve the situation and reduce the time lag," said Perlman.

LEGAL FUND BENEFITS FROM SETTLEMENT OF COPYRIGHT INFRINGEMENT SUIT

CoStar Group, Inc., a leading provider of information services to the U.S. commercial real estate industry based in Bethesda, Maryland, has settled a copyright infringement and breach of contract lawsuit filed against MIE Properties, Inc., a Maryland-based real estate investment company, and Commercial Search, LLC, a Colorado-based on-line provider of commercial real estate information.

MIE Properties, Inc. and Commercial Search, LLC agreed to certain restrictions on their business operations as part of the final settlement, and CoStar will receive a financial settlement of \$50,000. CoStar reached settlement with MIE Properties on January 24, 2001 and resolved the suit against Commercial Search in November 2000. The lawsuit was filed after CoStar learned that MIE Properties, a licensee of CoStar's proprietary, copyrighted Maryland database, had been working with Commercial Search to build a web site offering information about commercial real estate properties located in Maryland. CoStar conducted an extensive investigation when allegations of misuse were first raised.

To highlight the importance of protecting intellectual property rights, CoStar has donated a portion of the settlement proceeds to ASMP's Legal Action Fund.

"CoStar is fortunate to have the capital to aggressively protect its intellectual property, including our digital images and comprehensive databases," commented Andrew C. Florance, president and CEO of CoStar. "CoStar decided to donate a significant portion of the proceeds to ASMP since there are thousands of artists that do not have the financial resources to obtain the same level of protection as CoStar."

THE CONDÉ NAST LETTER CAMPAIGN CONTINUES

ASMP is continuing to gather letters protesting Condé Nast's photographer contract and members are urged to add their voices to the protest. A sample letter can be found on the ASMP Web site (News/Events - Special Announcements).

Many photographers and illustrators are writing to the president of Condé Nast objecting to the company's practice and at the same time terminating any blanket agreements they may have signed. Many in our industry feel that the collective future of freelance illustrators and photographers is at stake.

Irrespective of whether you have ever shot an assignment for, or signed a contract with, Condé Nast or any of its publications, or not, please consider the following action. If you have agents or reps who may have signed a contract with Condé Nast, please check with them to see if they have signed a Condé Nast contract on your behalf. In any event, please consider joining in this action.

Members can simply use their computers to copy the text and paste it on their own letterhead

(or if you wish, personalize it with your own thoughts). As a service to members who choose to participate, ASMP will collect all responses and forward them en masse via certified mail to Condé Nast. Please leave the date blank, and we will insert it prior to mailing. Please mail letters to: Condé Nast Contract ASMP, Inc., 150 North Second Street, Philadelphia, Pa 19106.

MARKET SHIFT FOR CLEVER CONTENT

Alchemedia, the company which developed the Internet image-protection technology Clever Content, has shifted its market focus from consumers to industry customers. As part of its initial launch and to build a consumer customer base, Alchemedia offered free gallery and portfolio Web sites to photographers. Now, according to an Alchemedia spokesperson, the company has decided to market to companies and has discontinued its own gallery and portfolio service to individual photographers from February 19. However, photographers can still use the Clever Content image protection by working with companies which have licensed the technology. All gallery or portfolio owners previously hosted on the Clever Content site have been informed of a service providers plan but must initiate contact with the companies in that plan. "Alchemedia is not forwarding photographers' information in accordance with our privacy statement," said a company spokesperson. The service providers plan can be seen at [www.clevercontent.com/referral].

GETTY IMAGES PHOTOGRAPHERS RESPOND TO CONTRACT PROPOSAL

The StockArtistsAlliance (SAA), a newly formed group of photographers contracted to Stone, The Image Bank, FPG and other VCG brands, has responded to the contract outline recently presented to photographers by Getty Images.

The SAA leaders commended Getty Images for their positive stance on the following issues:

- No tight turnaround deadline to sign new contracts.
- One uniform contract for all brands.
- Addenda that will allow cross-brand marketing.
- Larger home territory for TIB artists
- Image Exclusive vs. Artist Exclusive with no "right of first refusal."
- No restrictions on alternate agencies for our marketing.
- Faster payment (However, 120 days is still too slow).
- Protection from bad debts.
- No charge for catalog images that don't pay for themselves.

The SAA also expressed a desire for improved working relationships, but pointed out that, "Over the past eighteen months the relationship between Getty Images and many of its contributing artists has been severely strained. As a result, a large number of photographers have stopped submitting images to Getty Images companies and are now channeling their new work through other outlets."

Among the areas of concern outlined in the letter were:

1. That the proposed royalty percentages are inadequate. The SAA wants 50 percent of the gross license fee on all digital and analog sales made through wholly owned Getty offices. They are basically in agreement with Getty's proposal of 30 percent of the gross license fee for analog sales made by sub-agents not owned by Getty and not in the photographer's home territory.
2. That Getty should place the highest priority on returning inactive images it has "withdrawn from the market place" and has no plans to place on-line. The photographers feel the return of these images should be substantially completed before the new contract is presented and negotiation begins.
3. That the procedures for accepting new images be substantially improved and that images be "either selected for upload or returned to the photographer within 45 days after submission."
4. That there should be no charges for inclusion of images in any of Getty Images' catalogs whether paper-based or in electronic form.
5. That Getty improve its accounting and reporting systems to provide clear, accurate and prompt royalty reports. In addition, Getty should honor existing contract terms related to providing necessary documents to auditors working on behalf of photographers.

Any photographer under contract to Getty Images with Stone, The Image Bank, FPG or other VCG brands, who wishes to join the StockArtistsAlliance should contact: [SAAjoin@hotmail.com].

What's Hot

Program to calculate editorial fees gets ASMP support

After careful examination, extensive discussion, and some subsequent alterations of the editorial Fee Estimator developed by Ken Richardson of Philadelphia (in conjunction with EP) ASMP has decided to lend its support to this tool for arriving at fair compensation for editorial assignments. The Fee Estimator produces a range of fees that ASMP finds realistic for the current editorial marketplace. Since the revised Fee Estimator produces a realistic minimum fee for an assignment, the ASMP has decided not to release its planned minimum day rate statement. Instead, it recommends that the minimum fee, as calculated by the Fee Estimator, be the minimum fee that photographers accept for editorial assignments. ASMP urges all publishers to take notice of the woefully inadequate fees paid to editorial photographers and, in light of the fact that these fees have been stagnant for years, to move expeditiously to increase the fees paid to photographers. Information on the stagnation of editorial photography fees can be found in an ASMP White Paper at: <http://www.asmp.org/information/whitepapers/whitepapers.html>.

A copy of the Fee Estimator will be available at the ASMP web site in the near future. Currently it is available at the EP web site (<http://www.editorialphoto.com>). ASMP will use its good offices to acquaint magazines with its recommendation.

Register of Copyrights supports authors in Tasini case

The Register of Copyrights, Marybeth Peters, a long time advocate for creators' rights, has gone on record with a compelling document supporting authors in the Tasini case.

And because her views are contained in a letter to a congressman and thus have been published in the *Congressional Record* they also may be (and have been) incorporated into legal briefs being prepared by authors' attorneys in the Tasini case.

Ms. Peters emphasized that the issue is how the authors should be compensated for the publishers' unauthorized use of their works. Peters' treatise and opinion were given in response to Congressman James McGovern (D), Mass., who had requested her views on *New York Times v. Tasini*. McGovern has also been a supporter of freelancers in the ongoing battle with The Boston Globe. (**Editor's note:** Ms. Peters' letter to Congressman McGovern can be seen in its entirety in *News/Events, Special Announcements* at [www.asmp.org].)

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