Nov. 2, 1995

TO: Henry Muller

From: Jim Kinsella

RE: Electronic Rights

cc: Walter Isaacson, Paul Sagan, Sheldon Czapnik, Robin Johnson

I have gone through the proposed electronic rights policy, as Walter and Paul requested. If we assume that hits should produce royalties for photographers, then this proposal makes good sense. I feel, however, that I should comment on some of the potentially troubling issues this approach raises.

I. ROYALTIES

- **The financial issue**

My concern on the financial score isn't the immediate consequence of a hits-based system on a conventional 14.4 or 28.8 modem-delivered Pathfinder. I provided the hit figures on page 4 months ago, but they still stand — and would do so, in most cases, at 10 times our usage, which is probably what we need to make Pathfinder viable. For example, a moderately popular series of images, the "Joe Montana Photo Gallery," generated about 1300 hits in a recent week. If that level of use were to continue for 51 more weeks — extremely unlikely — we'd still register only 67,600 hits. Even with the very well trafficked SI Swimsuit Edition, the most popular photos were hit less than 400,000 times in a 2-week period. As the newness of the photos fade, so, too, do their usage. I'd anticipate those sought-after SI photos, which were eventually taken off the site, might rack up hits in the 4-million range over a year's time. That'd be an additional $600, but probably worth it for the traffic they'd generate.

These calculations, however, do not take into account much faster modes of delivery. On a cable-modem delivered system, where content is served between 52- and 132-times faster than at 28.8 speeds, photos can be called up far more easily. In some applications, still photos could be transformed into a kind of "moving image" presentation. (For a taste of this, see the Pathfinder Tour, off the home page of Pathfinder, then imagine the demo hooked to a T37 jet.) It's easy to imagine technical wizardry allowing the user to rack up 1,000 hits or more in a day for a single photo.

Pathfinder's prospective growth provides another issue to consider. I mentioned that these figures would work in year 2; but what of year 3 and 4?

- **How are we tracking usage? . . .**

On page 5, the policy states that "Time Inc. will aggregate the hits for any photograph across all of its multimedia products." This raises an interesting question: how will we know, exactly, who is using the material in every place that Pathfinder is distributed, and where they're coming from? We could certainly track the "addresses" that each computer must "give" Pathfinder when the user enters our Web Site as it exists on Time Inc. servers.

But what about the user on Linerunner (aka Excalibur)? Or Pathfinder distributed on IBM's GlobalNetwork? Or distributed abroad by, say, Britain's Emap, or an Asian publisher? With those deals, do we insist that all our elements — including photos — be tracked and paid for?

- **. . . And what does this do to our deals?**

If so, what does this do to our ability to make deals with these publishers or distributors? Must every deal include a royalty arrangement? And how much do we charge under such royalty arrangements, given that we can't be sure how popular our photos will be in any given distribution system? (I suspect the SI Swimsuit photos would be universally appealing, but accurately predicting usage beyond those images could be extremely difficult.)

Consider a system delivered via cable-modem, an increasingly important means of distribution for Pathfinder. Set aside the difficulty of getting the often technologically impaired cable franchise to provide accurate usage data at the minutest level. (This is not a slight on the cable companies of TWC; they are the most advanced in the industry, and yet most of them are pitifully technologically

capitalized.) The cable company — even our TWC partner — is likely to see Pathfinder as a channel licensed for use on the system, not as a "pay-per-view" option.

This approach is predicated on the assumption that tabulation of usage can be accurately and relatively easily accomplished. But even when the technology works, it can mislead us about real usage.

- **Who's the user?**

What if, for example, our photos are "linked" from outside of Pathfinder? Let's say a college student decides to create his own home page and to dress it up with a link to a news feed on Pathfinder that's embedded with photos. Registration might take care of this problem; then again, it might not. Let's say he also provides his users with his own user name and password. (This scenario, by the way, happened on Pathfinder.) Or say he writes a simple script that automatically accesses the system every time a user presses on the link to the photo-rich material. (This would be one of the simpler scripts for a hacker to write, by the way.)

Pathfinder's long awaited user-identification system could lead us to the culprit, eventually, but only if we were tracking usage by photograph. This system calls on Pathfinder to monitor such usage very closely.

Such access problems, of course, might call for us to use a "visit" system instead. That is, we'd track the trail of a user. If she seems to be stuck on one image, the system would register a potential problem and the systems operator would investigate. But these issues would seem to call for Pathfinder to discourage the most individualistic — or, for that matter, the broadest — use of our materials. Maybe, just maybe, this user gets her kicks from endlessly accessing the image of her favorite Hollywood cheesecake. If that's how she's using the system, should we discourage her because it may negatively impact us financially?

What is it to "hit" on a photo, anyway? The term suggests volition on the user's part; she *chose* to see the photo. But that's probably no more true, in the great majority of cases on the Web, than it is in a magazine. The reader bought the magazine for its *collection* of photos and words, not for a single photo. That's exactly how most of the photos are presented on Pathfinder — in a well edited and carefully selected presentation of text and image. Why, then, should the individual photographer be rewarded differently on the Web than in print?

• **Mixed digital signals**

My biggest concern, frankly, is the precedent we'd be setting for all content producers, as Sheldon writes in his preface to the policy. What we could be creating here is a template for every writer, photographer and artist to insist that their material be paid for EVERY TIME IT IS USED.

This approach has long been anticipated. Ted Nelson, the digital iconoclast and "Computer Lib" author, wrote as early as 1965 that "creators" would someday independently distribute and collect fees for their material, thus liberating them from publishers.

In the hits-based system, every photographer becomes the equivalent of a highly valued redistributor of databases — so in demand that she gets not just payment for her work, but a piece of our business. On page 2, the policy argues, "Time should share its success with photographers." If so, why not do the same for freelance writers, artists and designers?

Well, my view is that Pathfinder — not unlike Time or SI — provides real value in giving images a digital context. Those words and images are able to be seen and consumed because we present them effectively.

My aim here isn't to set off endless philosophical debate. Rather, I'd like to see us come to some agreement about the similarities and differences between the print and digital products of this company. I would argue that, in terms of the relationship the two have with photographers, they are quite the same animal.

II. PROTECTION OF IMAGES

The policy describes the effort to which Time Inc. will go to protect copyright. I see two potential problems with the wording here:

• On page 6, the policy says ". . . wherever possible the credit, or some other digital water-marking, will be embedded in the image." This language might suggest to the uninformed photographer that such information isn't extractable, which is far from the case. Digital images are, of course, very easily modified. I do not know of any conventional digital-water mark system that cannot be

compromised. Digimark may be an exception. But writing ourselves into a contract that could require us to rely on one company may not be wise.

May I suggest that the language be modified to read, "Proper credit and copyright information will be included with every photo."

• Below the copyright-inclusion statement, the policy reads: "There will be restrictions on resolution quality to a point well below that of print products." Such restrictions are fine as long as we're all looking at content on relatively low-resolution screens. But high-density computer screens are already on the market. Once they become common — and I believe that will happen soon, as the computer is increasingly used as an entertainment vehicle — resolutions will be able to rise above 1200 dpi, a completely respectable print product resolution. Might we want to take out that sentence?