

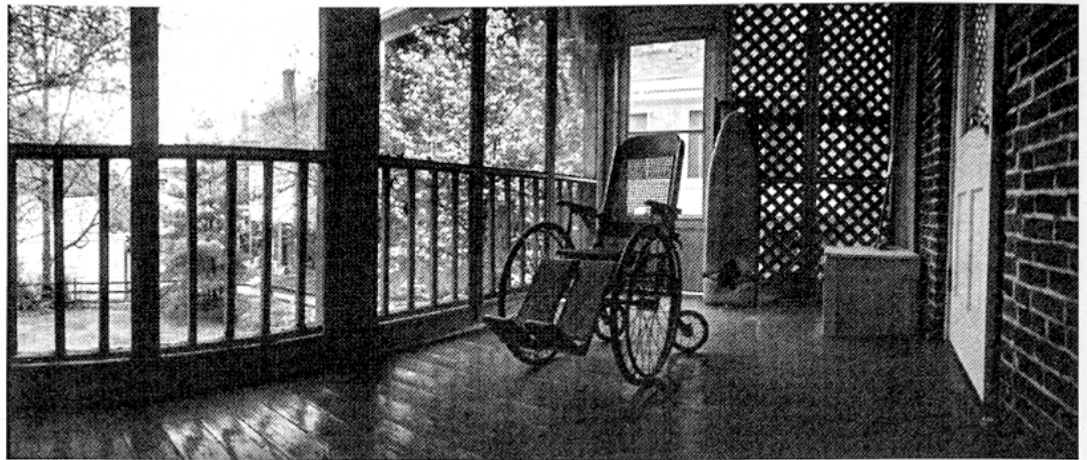
## Mel Curtis Wins Copyright Infringement Suit

Mel Curtis won a major copyright infringement case on September 29 which sets an important precedent for future copyright court judgements. A U.S. District Court in Seattle ordered General Dynamics Corporation and Wyse Advertising to pay Curtis \$60,108 in damages and about \$80,000 for legal fees.

"I'm more excited about the ruling, than the award," said Curtis. "I hope this victory will help other artists and photographers in similar situations."

According to Curtis, Wyse illegally copied one of his photographs which appeared in a 1985 issue of *Communicaton Arts*. Wyse used the photograph in a comp for a national ad for their client, General Dynamics. In June of 1987, Wyse sent Curtis the comp requesting an estimate for shooting the ad. The agency then hired another photographer to shoot a strikingly similar photograph. The ad appeared in more than \$600,000 worth of national print ads.

Despite repeated inquiries to Wyse regarding the job, Curtis never got a straight



"Wheel Chair" by Mel Curtis © 1985

answer. Meanwhile, the job was being shot by Cleveland photographer Martin Rueben. That summer, Curtis happened to be in Washington D.C., and saw what he thought at first was his photograph in the ad which appeared in the *Washington Post*.

At that point, Curtis began pushing for compensation. "I wanted three things," said Curtis. "I wanted them to admit what they did was wrong, apologize for it and give me some kind of payment for the use of my image." Curtis got the impression that they gave no validity to his claim. "I think the problem could have been avoided with simple communication and courtesy," he said.

At first the agency would not even respond, which continued to anger Curtis. "The first serious

conversation I had with them was through an attorney." Curtis filed suit and won a default judgment in the spring of 1989, when the defendants failed to show up for a court date.

Curtis rejected an initial settlement offer of about \$7500, which would have barely covered his attorneys fees. Later, the offer was raised to \$20,000, which again would have only come close to attorney's fees. Curtis countered with a settlement offer of \$35,000, but Wyse and General Dynamics elected to go to court. The March 1990 trial lasted two days.

In making the award, the magistrate noted three separate copyright violations, copying the Curtis photograph from a copyrighted magazine, using the photograph in a comp,

and using another photographer to copy Curtis' creative expression.

The case is important because it went all the way to a court ruling. Wyse and General Dynamics have asked the magistrate for reconsideration of the award. Depending on that outcome, an appeal may be made.

"I would have been disappointed if I would have lost, said Curtis. I would have to give some serious thought to this industry. I might have changed the way I do business. I've always operated my business on fairness and trust. Wyse didn't deal with me in good faith. They didn't take me seriously. I don't view myself as a crusader. I didn't go at this with the idea of setting a precedent. But I'm happy with the way it turned out."

Gary Hayes