

EXHIBIT 15

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
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Only the Westlaw citation is currently available.

United States District Court,
N.D. California.

RELIGIOUS TECHNOLOGY CENTER, a California non-profit corporation; and Bridge Publications, Inc., a California non-profit corporation, Plaintiffs,

v.

NETCOM ON-LINE COMMUNICATION SERVICES, INC., a Delaware corporation; Dennis Erlich, an individual; and Tom Klemesrud, an individual, dba Clearwood Data Services, Defendants.

No. C-95-20091 RMW.

Jan. 6, 1997.

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[Daniel Leipold](#), Hagenbaugh & Murphy, Orange CA, for Defendant Tom Klemesrud.

H. Keith Henson, Palo Alto CA, Defendant, in propria persona in related case.

Grady Ward, Arcata CA, Defendant, in propria persona in related case.

ORDER GRANTING IN PART PLAINTIFFS' MO-

TION TO EXPAND PRELIMINARY INJUNCTION AGAINST DEFENDANT ERLICH BASED ON COPYRIGHT AND TRADE SECRET CLAIMS; DENYING PLAINTIFFS' MOTION TO EXPAND BASED ON BAD FAITH

[RONALD M. WHYTE, J.](#)

*1 Plaintiffs' motions for an expanded preliminary injunction against defendant Erlich based on copyright claims, trade secret claims and alleged bad faith by defendant were heard on June 10, 1996 and submitted thereafter following supplemental briefing. The court has considered the moving and responding papers and the argument of counsel. For the reasons set forth below, the court grants in part plaintiffs' motion to expand the preliminary injunction based on its copyright and trade secret claims and denies it based upon the alleged bad faith of defendant.

I. BACKGROUND

Plaintiffs, two Scientology-affiliated organizations, brought suit against defendant Dennis Erlich ("Erlich"), a former Scientology minister turned vocal critic of the Church, claiming he violated copyright and trade secret protection for the writings of the Church's founder, L. Ron Hubbard, by allegedly posting plaintiffs' protected works onto the Internet.

On September 22, 1995, this court issued a preliminary injunction ("Preliminary Injunction Order") against defendant Erlich which restrains and enjoins him from all unauthorized reproduction, transmission, and publication of any of the works of L. Ron Hubbard which were identified on Exhibits A and B of the First Amended Complaint ("FAC").^{FN1} *Religious Technology Center v. Netcom On-Line Com.*, 923 F.Supp. 1231 (N.D.Cal.1995). However, the injunction specifically does not prohibit defendant Erlich's "fair use" of the materials as set forth in 17 U.S.C. section 107 and interpreted by applicable case law. In that same order, the court denied plaintiffs' application to expand the injunctive relief to include the works of L. Ron Hubbard

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identified on Exhibits A-1 and B-1 of the FAC. After noting that “a broad injunction which goes beyond the scope of the allegedly infringing activities should be avoided for First Amendment reasons” and that “plaintiffs ha[d] not provided Erlich or the court with the registrations for these materials to allow a determination that they are the subject of valid copyright interests,” the court found that plaintiffs' requested expanded preliminary injunction was inappropriate.

FN1. The September 22, 1995 preliminary injunction order excluded item 4 of Exhibit A from its coverage. However, on March 4, 1996 upon finding that plaintiff Bridge Publications, Inc. is likely to prevail on its claim that item 4 was duly registered with the Copyright Office and timely renewed, the court expanded the preliminary injunction to include item 4.

Plaintiffs now renew their request for an expanded preliminary injunction to include the works listed on Exhibit A-1 of the Hawkins Declaration of October 27, 1995 (“Condensed Exhibit A-1”), which is a condensed version of the Exhibit A-1 attached to the FAC, and to include the works on Exhibit B-1 of the McShane Declaration of November 24, 1995 (“Exhibit B-1”), which is identical to Exhibit B-1 attached to the FAC. In support of their motion, plaintiffs now come forward with registration information for these materials. Plaintiffs are also making a renewed motion for a preliminary injunction on the basis of trade secret claims and defendant's alleged bad faith seeking to enjoin even “fair use” postings of plaintiffs' works.

II. PLAINTIFFS' MOTION TO EXPAND PRELIMINARY INJUNCTION ON BASIS OF COPYRIGHT INFRINGEMENT CLAIMS AND CLAIMS OF DEFENDANT'S BAD FAITH

A. Legal Standards

*2 A party seeking a preliminary injunction may establish its entitlement to equitable relief by showing either (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) serious ques-

tions as to these matters and that the balance of hardships tips sharply in its favor. *First Brands Corp. v. Fred Meyer, Inc.*, 809 F.2d 1378, 1381 (9th Cir.1987). These two tests are not separate, but represent a continuum of equitable discretion whereby the greater the relative hardship to the moving party, the less probability of success need be shown. *Regents of University of California v. American Broadcasting Cos.*, 747 F.2d 511, 515 (9th Cir.1984). The primary purpose of a preliminary injunction is to preserve the status quo pending a trial on the merits. *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1200 (9th Cir.1980).

B. Likelihood of Success on Copyright Infringement Claims

To establish copyright infringement, plaintiffs must demonstrate (1) they own a valid copyright and (2) Erlich violated one or more of their exclusive rights, including, *inter alia*, the rights to reproduce or prepare derivative works from the original, or to distribute or display copies publicly. 17 U.S.C. §§ 106(1)-(3) & (5), 501(a); *Feist Publications, Inc. v. Rural Telephone Service Co.*, 111 S.Ct. 1282, 1296 (1991).

1. Ownership of a Valid Copyright

Proof of ownership of an existing, valid, and registered copyright interest is a statutory prerequisite to filing an infringement action. 17 U.S.C. § 411. Plaintiffs provide evidence of registration for all the works listed on Condensed Exhibit A-1 and Exhibit B-1. *See* Hawkins Decl. Exs. C1-C39 (registration for works included in Condensed Exhibit A-1) and Exs. D1-D6 (registration for works included in Exhibit B-1). Plaintiffs previously provided copies of assignment and licensing agreements purportedly showing the necessary chain of title from Hubbard, the author of the works, to plaintiffs. Although defendant notes that plaintiffs' “registration certificates, most of which were filed long after the works were first published and are not entitled to presumptive validity, are also littered with defects of one kind or another,” he, reserving his objections, “assumes, for pur-

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poses of this motion only, that plaintiffs have standing to bring copyright claims regarding the works at issue here and that the copyright registrations provided are valid.” Def. Mem. Opp’n Mot. Expand Prelim. Inj. at p. 7, fn. 4. On this basis, the court finds that, for purposes of this motion, plaintiffs’ registrations constitute sufficient evidence of the validity of their claimed copyrights.

2. Direct Infringement

As a threshold matter, Erlich argues that the works contained on Condensed Exhibit A-1 and Exhibit B-1 were discovered on his computer’s hard drive only as the result of an unlawful *ex parte* search and seizure and therefore, as the fruit of an allegedly unconstitutional seizure, they cannot be used to support an expanded preliminary injunction against him. Plaintiffs argue that the court’s prescribed remedy for the overly broad search was to return the documents to defendant, not to exclude the works from the litigation. The court agrees with plaintiffs, particularly since the documents defendant possesses would have inevitably been revealed through the normal discovery process.

*3 Even if the works are not excluded as a result of the manner in which they were obtained, defendant argues that all but three of the Exhibit B-1 works at issue are already covered by the preliminary injunction and therefore, no expansion for these works is needed. This argument appears to have merit. Therefore, the court will consider plaintiffs’ motion only with respect to the remaining works, i.e. “HOB 16 Nov 1981 Sunshine Run-down,” OT Section III “Data” and “OT III materials.”

Plaintiffs essentially argue that the court already found in its Preliminary Injunction Order that plaintiffs had demonstrated a likelihood of success on its copyright claims for the Condensed Exhibit A-1 and Exhibit B-1 works except for providing proof of their registration. Plaintiffs’ argument, however, is flawed because the court’s finding in its Preliminary Injunction Order was with respect to works listed on Exhibit A and Exhibit B to the FAC and was based on, among other things, the fact that Erlich did not dispute, except with respect to

item 9 of both exhibits, that he engaged in “copying” of portions of those works. With respect to the works at issue here, on the other hand, there is a dispute regarding Erlich’s activities.

3. Fair Use Defense

An author’s exclusive rights to reproduce, distribute, and display a copyrighted work under [section 106](#) are limited by the defense ^{FN2} of “fair use”:

FN2. Even though fair use is an affirmative defense, *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 561 (1985), the court notes that plaintiffs, as the parties moving for a preliminary injunction, have the burden of proving a likelihood of success on their infringement claim, including the fair use defense. See 2 William Schwarzer et al., *California Practice Guide: Federal Civil Procedure Before Trial* ¶ 13:47 (1994) (citing *Original Appalachian Artworks v. Topps Chewing Gum*, 642 F.Supp. 1031, 1034 (N.D.Ga.1986)). However, in determining whether plaintiffs have met their burden, the court recognizes that fair use is an affirmative defense on which defendants will have the burden of proof at trial.

Notwithstanding the provisions of [section 106](#) and [106A](#), the *fair use of a copyrighted work*, including such use by reproduction in copies ... or by any other means specified in that section, *for purposes such as criticism*, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, *is not an infringement* of copyright.

[17 U.S.C. § 107](#) (emphasis added). The defense “permits and requires courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster.” *Campbell v. Acuff-Rose Music, Inc.*, 114 S.Ct. 1164, 1170 (1994) (citation omitted). Congress has set out four nonexclusive factors to be considered in determining the availability of the fair use defense:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

17 U.S.C. § 107. The fair use doctrine calls for a case-by-case analysis. *Campbell*, 114 S.Ct. at 1170. All of the factors “are to be explored, and the results weighed together, in light of the purposes of copyright.” *Id.* at 1170-71.

a. First Factor: Purpose and Character of the Use

Erlich breaks the Condensed Exhibit A-1 works and the remaining three Exhibit B-1 works at issue here into two categories: first, the works found on his hard drive or as a photocopy for which he argues there is no evidence he posted or disseminated in any way ^{FN3} (“not posted works”) and second, the remaining works the use of which he argues constituted “fair use” (“posted works”).

^{FN3}. These include items 4, 11, 14, 16-21, 23-39 of Condensed Exhibit A-1 and the “Sunshine Rundown” of Exhibit B-1.

1. Not Posted Works

*4 With respect to this first category of works, Erlich argues that his mere possession of works that he never posted on the Internet or disseminated in any way does not support a preliminary injunction. Erlich contends that his downloading of these documents from the Internet for his own personal, noncommercial research is akin to the “time shifting” held in *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984) (“*Sony*”) to constitute “fair use.” *Sony*, however, is distinguishable, since the initial broadcast of the television show was not

infringing whereas here the initial posting on the Internet which was downloaded for off-line and time-shifted viewing was at least in plaintiffs' view infringing. Nevertheless, the court is persuaded for the purposes of this preliminary motion that downloading from the Internet should be considered “fair use” particularly where the downloading is done “blind,” i.e. downloading an entire file without prescreening its contents, which is what Erlich alleges he did, and where, as this court found in its September 1995 order, there is no evidence that at-home, non-public activity impacts the market for the works at issue.

Notwithstanding defendant's analogy to *Sony*, the court also notes in several cases what Erlich allegedly downloaded appears to constitute “fair use” of the works in question. For example, Erlich is accused of copyright infringement of item 19 because he allegedly had a photocopy of one page of a 262 page book and had allegedly downloaded a posting by someone else of 5 sentences from that book with a half page commentary; of item 20, he allegedly downloaded a posting by another of two pages of a 225 page book with 3 sentences of commentary; of item 21, he allegedly downloaded the posting of another of half a paragraph of a 984 page book and 2 pages of a 962 page book, of item 24, Erlich allegedly downloaded the posting by another of one half page of a 225 page book with three paragraphs of commentary, and of item 28, Erlich allegedly downloaded the posting of another of one paragraph from the Technical Dictionary and four pages from a 485 page book. ^{FN4} Erlich's possession of other items in this category may also qualify as constituting “fair use” but are not as clearly so, without the *Sony* argument, as the examples noted.

^{FN4}. See McShane's October 27, 1995 declaration at 22:16-28:4 in conjunction with the Kobrin Decl. (Oct. 27, 1995) Ex. C (McShane Decl. filed Feb. 27, 1995) at the locations specified in McShane's October 27, 1995 declaration.

2. Posted Works

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
 (Cite as: 1997 WL 34605244 (N.D.Cal.))

With respect to the other works on Condensed Exhibit A-1 and Exhibit B-1, Erlich argues that his use is purely for nonprofit criticism and plaintiffs have provided no evidence to the contrary. Since use for the purpose of criticism weighs in favor of fair use, the court finds this factor weighs in Erlich's favor. Plaintiffs, however, argue that Erlich posts the copyrighted works verbatim with little comment and that such posting constitutes infringement, not "fair use." In his declaration, Erlich acknowledges that he posts Hubbard's works verbatim to ensure that his audience knows that he knows what he is talking about, to verify the accuracy of writings attributed to Hubbard, to overcome the Scientologists conditioned rejection of anything that is not actually Hubbard's words, and to point out inconsistencies in Hubbard's writings. Erlich Decl. (11-16-95) paras. 22-27. Erlich also contends that his criticism and commentary should be viewed from a more global perspective, viewing all his comments in separate but related postings conducted during an on-going debate of the works, rather than looking solely at his comments on an individual posting which contains verbatim excerpts from the copyrighted works. Even if the court accepted defendant's argument, defendant has not provided persuasive evidence of this alleged additional commentary for the court to consider in evaluating the extent of his transformative use of the works. Since Erlich's use appears to be only minimally transformative, the actual character of his use does not weigh heavily in his favor. However, where the use is not highly transformative, as here, the court will focus on whether the use is of a commercial nature. There is no evidence that Erlich gains financially from his criticism of the Church. Therefore, based on the clearly noncommercial nature of Erlich's use for the protected purpose of criticism, the court finds that the first fair use factor weighs slightly in Erlich's favor despite the minimally transformative nature of Erlich's use.

b. Second Factor: Nature of the Copyrighted Work

*5 The second factor focuses on whether the copyrighted work is published or unpublished and whether it is informational or creative. In its Preliminary Injunction Order, this court found that this factor weighs in fa-

vor of Erlich as to the Exhibit A works, which are published and primarily informational. In this motion, the Condensed Exhibit A-1 works are also published and due to their similarity in nature to the Exhibit A works are also found to be primarily informational. Therefore, this factor weighs in Erlich's favor for the same reasons noted in this court's Preliminary Injunction Order.

The Exhibit B works, however, are unpublished. Although the unpublished nature of a work should not itself bar a finding of fair use [See H.R.Rep. No. 102-286, 102d Cong., 2d Sess. 8 (1992) (House Report)], "the scope of fair use is narrower with respect to unpublished works." *Harper & Row*, 471 U.S. at 564 (finding no fair use where *The Nation* magazine used unpublished manuscript to scoop *Time* magazine). The two "posted" Exhibit B-1 works which are not included on the Exhibit B works addressed in this court's Preliminary Injunction Order are unpublished and similar in nature to the Exhibit B works. Erlich argues, however, that the two OT III works included on Exhibit B-1, although claimed to be unpublished, were broadly disseminated over the Internet through no fault or action of him. Erlich further contends that these works were submitted as part of the public record of an unrelated lawsuit.^{FN5} Plaintiffs state that Erlich posted 26 pages of OT III but acknowledge that those pages were basically the same as the pages filed in *Fishman*, with some alterations and that it was only 26 pages out of a total of 200 pages of OT III materials. Kobrin Decl. Ex. D (McShane Decl.) at 10:11-14. Erlich argues, therefore, that the nature of the works factor for these two Exhibit B-1 works should not be weighed against him since the purpose of the copyright laws to reserve the right of first publication for the copyright owner would not be advanced.

FN5. *Church of Scientology Int'l v. Fishman*, Case No. 91-6426 HLH (C.D.Cal.) ("*Fishman*").

c. Third Factor: Amount and Substantiality of the Portion Used

The third factor concerns both the percentage of the ori-

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
 (Cite as: 1997 WL 34605244 (N.D.Cal.))

ginal work that was copied, and whether that portion constitutes the “heart” of the copyrighted work. *Harper & Row*, 471 U.S. at 564-65. The copying of an entire work will ordinarily militate against a finding of fair use, although this is not a per se rule. *Sony*, 464 U.S. at 449-450 (finding exception to this rule for time-shifting by home viewers to enable them to see works that they were invited to see in their *entirety* free of charge). The amount of copying that is acceptable will depend on the character of the use and degree to which the copy transforms the original. *Campbell*, 114 S.Ct. at 1175-76 (finding parody can copy enough of original to “conjure [it] up” so the audience will recognize what is being parodied). Less copying will be acceptable where the original is unpublished. See 3 Nimmer § 13.05[A][2], at 13-185 n.200.

*6 Plaintiffs argue that the amount of work copied and the lack of criticism and commentary which the court found critical in its fair use determination in its Preliminary Injunction Order with respect to the Exhibit A and Exhibit B works of the FAC is no different with respect to the Condensed Exhibit A-1 and Exhibit B-1 works at issue here which Erlich allegedly both downloaded and posted. Erlich argues, however, that in evaluating the percentage used in any given posting, the court should not consider the works individually but as integral components of a larger work. The court rejected this argument in its Preliminary Injunction Order citing the Ninth Circuit’s opinion in *Hustler Magazine, Inc. v. Moral Majority, Inc.*, 796 F.2d 1148, 1155 (9th Cir.1986) in which that court held that “[a] creative work does not deserve less protection just because it is part of composite work” and the Second Circuit’s opinion in *American Geophysical Union v. Texaco, Inc.*, 802 F.Supp. 1, 17 (S.D.N.Y.1992), *aff’d*, 37 F.3d 881 (2d Cir.1994) in which that court held that copying an entire article from a journal whose copyright has been registered as a whole still constitutes copying the entire work. Erlich argues that *Hustler* and *Texaco* are both distinguishable because although the works were collected in a magazine they were authored by different persons. Erlich also argues that the *Hustler* court focused on whether the work could stand on its own and the *Texaco* court focused on the fact that the works in-

cluded in the magazine were separately authored. Although Erlich’s argument has some appeal, the court is satisfied that the works, at least pending trial, should be viewed individually.

It appears that of the Condensed Exhibit A-1 works which Erlich both downloaded and posted, Erlich copied or posted a varying degree from the items ranging from in item 22, allegedly posting four and one half pages of a 132 page book with three sentences of commentary to posting three and one half pages of a five and one half page policy without commentary. Several documents included in this category are only a couple of pages long and Erlich is accused of alleging posting large portions of these with only brief commentary. See Kobrin Decl. Ex. C (McShane Decl. filed Feb. 27, 1995) at Exs. B, C-1, C-3, C-5. Moreover, plaintiffs argue that in some cases Erlich copied that portion of the work that constituted the “heart” of the work.^{FN6}

Overall, this factor weighs in plaintiffs’ favor with respect to all of the downloaded and posted Condensed Exhibit A-1 works except item 22, for which this factor favors defendant. The weight of this factor with respect to the downloaded and posted Exhibit B-1 works, i.e. the OT III materials, is also in plaintiffs’ favor. Although defendant may have only posted a small percentage which weighs in his favor, these works are unpublished which lowers the amount of copying which is needed to tip the balance in plaintiffs’ favor.^{FN7}

FN6. Plaintiffs make this allegation with respect to item 5 of which Erlich allegedly copied five of 17 pages, item 8, of which Erlich allegedly copied three and one-half of five and one-half pages, and item 9, of which Erlich allegedly posted two-thirds of one page with minor comments.

FN7. There appears to be a conflict in plaintiffs’ declarations with respect to these works. The balance may be more favorable to plaintiffs. McShane states that defendant only posted 26 of 200 pages of the OT III materials and admitted that all of that material was basically the same as referenced in the *Fishman* declaration. But at Kobrin Decl. Ex. C (McShane

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
 (Cite as: 1997 WL 34605244 (N.D.Cal.))

Decl. filed Feb. 27, 1995 at Ex. A bates 9 and 14), plaintiffs state that 93% (8 pages out of 3[sic]) of the one work and 100% (32 pages out of 32 pages) of the other work was posted. The 200 page total may be of the total OT III series, but even if that is so, defendant has allegedly posted more than 26 pages.

d. Fourth Factor: Effect of the Use upon the Potential Market for the Work

*7 The fourth and final statutory factor concerns “the extent of market harm caused by the particular actions of the alleged infringer” and “ ‘whether unrestricted and widespread conduct of the sort engaged in by the defendant ... would result in a substantially adverse impact on the potential market’ for the original.” *Campbell*, 114 S.Ct. at 1177 (quoting 3 Nimmer § 13.05[A][4]) (remanding for consideration of this factor). Although the results of all four factors must be weighed together, *id.* at 1171, the fourth factor is central to the fair use analysis, 3 Nimmer § 13.05[A][4], at 13-188 to -189 (citing *Harper & Row*, 471 U.S. at 566), 13-207 (observing that fourth factor explains results in recent Supreme Court cases).

Plaintiffs reiterate their contentions from previous filings that Erlich's posting of plaintiffs' copyrighted works over the Internet is likely to cause them irreparable harm particularly with respect to the unpublished works. It seems questionable that Erlich's noncommercial use, or even widespread conduct like Erlich's, would diminish or prejudice the potential sale of plaintiffs' works, interfere with their marketability, or fulfill the demand for the works. *See Netcom*, 923 F.Supp. at 1248-49.

e. Equitable Balancing

In balancing the various factors with respect to the downloaded and posted works contained on Condensed Exhibit A-1 and Exhibit B-1, the court finds, for the same reasons stated in its Preliminary Injunction Order, that the percentage of plaintiffs' works copied combined with the minimal added criticism or commentary neg-

ates a finding of fair use except for item 22. Erlich has not adequately justified his verbatim copying of large portions of plaintiffs' works.

With respect to the works contained on Condensed Exhibit A-1 and Exhibit B-1 which were only downloaded but not posted the court finds “fair use” for the purpose of this equitable proceeding. Moreover, with respect to at least items 19, 20, 21, 24 and 28 noted above, the equitable balance is in defendant's favor for fair use.

4. Bad Faith

Plaintiffs' renewed arguments that Erlich should not be entitled to “fair use” of their copyrighted documents because of his alleged “bad faith” is again rejected by the court. Nothing in plaintiffs's renewed motion persuades this court to change its prior ruling on this issue.

5. Conclusion

Accordingly, plaintiffs have demonstrated a likelihood of success on their claims that Erlich infringed their copyrights on the “posted works” included in Condensed Exhibit A-1, except item 22, and on Exhibit B-1. However, plaintiffs have not so demonstrated a likelihood of success with respect to the “not posted works” included in Condensed Exhibit A-1 and Exhibit B-1.

III. Defendant's Motion to Strike

Defendant has filed a motion to strike many of the declarations which plaintiffs have filed as exhibits in their three-volume Kobrin declaration filed in support of their motion to expand the preliminary injunction against defendant on the basis of trade secret claims. Defendant argues that the three-volume Kobrin declaration includes nineteen “expert” declarations ^{FN8} opining on trade secret law (“trade secret declarations”), ten “expert” declarations ^{FN9} opining on copyright law (“copyright declarations”), five [sic] declarations ^{FN10} relating to RTC-sponsored consumer surveys (“consumer surveys”), an inflammatory and irrelevant declaration of Kim Baker, ^{FN11} a former board mem-

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ber of F.A.C.T.Net, a nonprofit research organization that RTC is suing in Denver in a similar, though unrelated, lawsuit, the declaration of a security “expert,”^{FN12} and the declaration of Kendrick Moxon,^{FN13} one of RTC's counsel of record.

FN8. Kobrin 10/27/95 Decl. Exs. F through and including X.

FN9. Kobrin 10/27/95 Decl. Exs. FF through and including MM, RR and SS.

FN10. Kobrin 10/27/95 Decl. Exs. Y1, Y2, Z1, Z2, Z3 and Z4.

FN11. Kobrin 10/27/95 Decl. Ex. AA

FN12. Kobrin 10/27/95 Decl. Ex. PP

FN13. Kobrin 10/27/95 Decl. Ex. EE

*8 Defendant argues that the trade secret and copyright declarations are nothing more than legal briefs from lawyers, reciting case law and legal conclusions and are inadmissible. Plaintiffs' argument that the declarations are admissible because the determination of whether material is protected as a trade secret is one of fact and the determination of the fair use defense is a mixed question of law and fact is without merit. It is well-established that interpretations and explanations of the law are not proper subjects of expert testimony. *Aguilar v. Int'l Longshoreman's Union Local # 10*, 966 F.2d 443, 447 (9th Cir.1992); *United States v. Weitzenhoff*, 35 F.3d 1275, 1287 (9th Cir.1993). The court, therefore, grants defendant's motion to strike the trade secret declarations and the copyright declarations.

Defendant argues further that the consumer surveys are irrelevant. The court agrees. Plaintiffs' surveys purportedly show that members of the general public are not aware of the unpublished Advanced Technology materials and, therefore, they deserve trade secret protection. However, the general public's familiarity or lack thereof is irrelevant. As this court noted in its September 22, 1995 order, the relevant inquiry is whether the documents for which trade secret protection is sought are “ ‘generally known’ to the relevant people-the po-

tential ‘competitors’ of the Church.” Sept.1995 order at 30:20-22. Therefore, the court agrees with defendant that the consumer declarations are irrelevant and grants defendant's motion to strike them.

Defendant also seeks to strike Baker's declaration arguing that it has no bearing on the facts of this case. The court agrees that Baker's declaration is irrelevant and grants defendant's motion.

Defendant further seeks to strike Moxon's declaration which purports to establish that the Washington Post's representative is the only person to obtain a copy of the *Fishman* declaration. Defendant argues that the *Fishman* declaration is not at issue here. While technically true, the *Fishman* declaration does have a bearing at least on plaintiffs' allegations of trade secret protection for the works included therein. However, the court agrees with defendant that the declaration is inadmissible hearsay as it purports to recite what a district court clerk told Moxon and offers it for the truth of the matter asserted. Therefore, the court grants defendant's motion to strike Moxon's declaration.

Defendant finally argues that the security expert's declaration should be stricken because the court already preliminarily found that RTC's security measures “ ‘were reasonable under the circumstances to protect its purported trade secrets.’ ” Sept.1995 order at 27:12-14. Moreover, defendant argues that it is impossible to separate statements based on personal knowledge from those based on RTC's arguments. Defendant's motion has substantial merit. However, to the extent that the security expert's statements are based on his personal knowledge of RTC's security of the Advanced Technology materials or appropriate foundational material for an opinion, they are relevant to a finding that the materials are “subject of efforts that are reasonable under the circumstances to maintain [their] secrecy,” one of the elements in the Uniform Trade Secret Act's definition of a trade secret. Therefore, the court considers those portions of the declaration that are clearly based upon the expert's personal knowledge or upon information reasonably relied upon by him as a security expert. However, those portions of the declaration that go beyond the reasonable scope of a security expert's opinion

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
 (Cite as: 1997 WL 34605244 (N.D.Cal.))

(e.g. para. 11 on pp. 5-6) are stricken.

III. Plaintiffs' Motion for Expanded Preliminary Injunction against Defendant Erlich based on Trade Secret Claim

A. Propriety of Motion

*9 In its September 22, 1995 Preliminary Injunction Order, this court ruled that plaintiff had “failed to show a likelihood of success on its trade secret misappropriation claim.” *Netcom*, 923 F.Supp. at 1257. Moreover, the court found that “since the trade secrets have not been adequately defined, the court cannot find that serious questions going to merits have been sufficiently raised to justify a preliminary injunction on the trade secret claim.” *Id.* The court declined to grant plaintiff’s motion for a preliminary injunction on the basis of trade secrets since plaintiffs had failed to clearly identify their trade secrets and also failed to show that such secrets were not generally known. The court also noted that it was “not entirely persuaded by RTC’s argument that its trade secrets have competitive value to future breakaway groups.” *Id.*

Plaintiff filed the present motion to expand the preliminary injunction against Erlich on the basis that serious questions as to its trade secret claims are presented and the balance of harm tips in RTC’s favor. Plaintiff raises essentially the same arguments here which the court previously rejected. This motion, however, is now supplemented with the declarations containing the legal opinions of multiple “trade secret experts” that this court’s decision on the trade secret issue in *Netcom I* was basically wrong. For the reasons discussed above, the court strikes these declarations. The court notes that the declarations appear to be no more than an attempt to circumvent the page limits set for the moving parties’ briefs in Civil Local Rule 7-4(b).

Defendant also argues that plaintiffs’ motion is really a motion to reconsider and as such is procedurally defective because plaintiffs did not seek leave to file such a motion and, moreover, it was filed after the ten day period within which such a motion can be brought. De-

fendant also argues that plaintiffs’ motion is substantively flawed in that plaintiffs have failed to present “new” evidence or a change in controlling law to justify this court’s reconsideration of its order. RTC, on the other hand, contends that this present motion is not a motion for reconsideration but rather is an invited motion by this court’s September 22, 1995 order to seek a preliminary injunction based on a showing of a combination of serious questions going to the merits of its trade secret claim and the balance of hardships tipping in its favor. Defendant, however, contends that this court did not invite RTC to file this motion; rather, the court’s order analyzed both the “likelihood of success” and the “serious questions” formulations of the preliminary injunction test and concluded that RTC did not satisfy either one. Although the court did not intend to invite a new motion and, therefore, agrees with the defendant’s reading of its order, the court acknowledges that its order could be interpreted in the way plaintiff apparently did. Further, the court believes the trade secret issues raised by this action are difficult and merit further consideration to avoid injustice to any party.

B. Serious Questions as to Trade Secret Claims

1. Definition of Trade Secret

*10 To succeed on its trade secret claims, RTC has the burden of proving that its Advanced Technology works are trade secrets and that they were misappropriated. California has adopted a version of the Uniform Trade Secrets Act (“UTSA”) which is codified at [California Civil Code sections 3426 et seq.](#) The UTSA defines a trade secret as

information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Cal. Civ.Code § 3426.1(d).^{FN14} The UTSA further defines “misappropriation” of a trade secret as

FN14. The new Restatement provides a similar definition of a trade secret:

A trade secret is any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others.

Restatement (Third) of Unfair Competition (“Restatement”) § 39, at 425 (1995). Although California has adopted the UTSA, courts also look to the Restatement to help interpret the UTSA. *See* Restatement § 39, cmt. b, at 427; *cf.* 1 Milgrim § 1.01[1], at 1-3 (noting that UTSA jurisdictions frequently rely on the Restatement’s definition of a trade secret).

(1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(2) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(A) Used improper means to acquire knowledge of the trade secret; or

(B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:

(i) Derived from or through a person who had utilized improper means to acquire it;

(ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) Before a material change of his or her position,

knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Id. § 3426.1(b).

2. Identification of Trade Secrets

Defendant argues that RTC has still not identified its alleged trade secrets with particularity and that the documents at issue, assuming they have commercial value and were previously secret, lost their secret status when they were published on the Internet and became available to “potential competitors.”

“[A] plaintiff who seeks relief for misappropriation of trade secrets must identify the trade secrets and carry the burden of showing that they exist.” *MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 522 (9th Cir.1993). The court previously found that “without a clearer definition of what constitutes the ‘secrets,’ the court is unable to determine whether some have been made generally known to the public.” *Netcom*, 923 F.Supp at 1255. RTC continues to assert that it regards “the entirety of the Advanced Technology as confidential, trade secret materials.” However, as the court has previously observed, this definition is problematic. Moreover, the court notes that RTC apparently contended in its action against F.A.C.T.Net that only portions of the Advanced Technology works, rather than the whole, are secret. *Religious Technology Center v. F.A.C.T.Net, Inc.*, 901 F.Supp. 1519 (D.Colo.1995).^{FN15}

Like the court in *F.A.C.T.Net*, this court has concerns about the trade secret status of the works as a whole. Nevertheless, upon reconsideration, the court finds that plaintiff RTC has raised serious questions as to the validity of a narrower definition of the alleged trade secrets. Although the court has doubts as to whether plaintiff will ultimately be able to establish that it owns any trade secrets, serious questions have been raised as to whether the specific processes (i.e., the sets of questions asked by a Scientology minister or auditor or the specific steps taken by a parishioner during self-counseling) and the instructions related thereto contained in the exhibits listed on Exhibit B-1 constitute

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
 (Cite as: 1997 WL 34605244 (N.D.Cal.))

trade secrets. *See* Kobrin Decl. Exs. B and E filed Oct. 27, 1995 (McShane Decl. dated Feb. 7, 1995 at paras. 9-12 and Oct. 26, 1995 at paras. 5-6) and McShane Decl. Dated November 24, 1995 at paras. 5-7; *see also SmokEnders, Inc. v. Smoke No More, Inc.*, 184 U.S.P.Q. 309 (S.D.Fla.1974) (course materials upheld as trade secrets).^{FN16} Since the consequences of not enjoining the publication of alleged trade secrets may be harsh, less probability of success needs to be shown than in cases where the hardship to the applicant is not as severe. *See Regents of University of California*, 747 F.2d at 515.

FN15. In *F.A.C.T.Net*, RTC apparently initially took the position that the entirety of the Advanced Technology works were trade secrets, however, “[a]fter evidence was heard indicating that the [Advanced Technology] Works were in the public domain, RTC claimed that only portions of the Works, rather than the whole were secret.” *F.A.C.T.Net* at 1527. The court then found that “RTC’s ambivalence and admission as to the non-secret nature of certain portions of the Works casts some doubt on the secret status of Works as a whole.” *Id.*

FN16. The Ninth Circuit expressly left open the question of the trade secret status of the Advanced Technology in *Religious Technology Center v. Scott*, 869 F.2d 1306 (9th Cir.1989). That decision explains the court’s prior decision in *Religious Technology Center v. Wollersheim*, 796 F.2d 1076 (9th Cir.1986), *cert. denied*, 479 U.S. 1103 (1987) (“*Wollersheim*”):

The only question before the court was whether a religious scripture could qualify as a trade secret under California law if it conferred a spiritual, as opposed to an economic, advantage on its owner. We determined that California law did not recognize information as a trade secret unless it conferred on its owner an actual economic advantage over competitors. 796 F.2d at 1091. Because the Church made no claim that the scriptures

gave it a commercial advantage over its competitors, we held that the scriptures did not qualify as trade secrets under California law. *Wollersheim* turned, therefore, on the absence of any claim of economic advantage at the preliminary injunction stage. *While we expressed doubts about whether the Church could allege the competitive market advantage required without “rais[ing] grave doubts about its claim as a religion and a not-for-profit corporation,” id.*, we did not decide one way or another whether the scriptures could qualify as trade secrets should the Church allege and prove economic advantage.

Scott at 1309-10 (emphasis added).

3. Secret Status

***11** Since the court has found that plaintiff RTC has sufficiently identified some trade secrets for the purposes of preliminary relief, the court now reconsiders whether their “secret” nature has been maintained. RTC has sued several entities for alleged disclosures of its Advanced Technology materials. *See Church of Scientology Int’l v. Fishman*, No. CV 91-6426 (C.D.Cal.) (“*Fishman*”) (affidavit containing 69 pages of RTC’s Advanced Technology works, specifically levels OT-I through OT-VII documents, which was filed in an open court file and left unsealed from April 14, 1993 to August 15, 1995 (“*Fishman Declaration*”)); *Religious Technology Center v. Lerma, et al.*, 908 F.Supp. 1362 (E.D.Va.1995) (“*Lerma*”) (posting to Internet and publication in Washington Post during August 1995 of Advanced Technology materials contained in the “*Fishman Declaration*”); *Religious Technology Center v. F.A.C.T.Net, Inc., et al.*, 901 F.Supp. (D.Colo.1995) (“*F.A.C.T.Net*”) (“posting of OT materials, often referred to as “Advanced Technology” to the Internet); and *Bridge Publications, Inc. v. Vien*, 827 F.Supp 629 (S.D.Cal.1993) (use by an instructor of Advanced Technology materials); *see also* Cann Decl. Ex. 3 (copy of *Fishman Declaration*, in which OT series I through VIII are disclosed, which was in open court file for 28 months and available on the Internet through various

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
 (Cite as: 1997 WL 34605244 (N.D.Cal.))

sources); Cann Decl. Ex. 8 (copy of some Scamizdat postings of NOTs, specifically numbers 1, 34, 35, 36, and 43).

Some of the district courts which have considered the trade secret status of the Advanced Technology materials have found that they have entered the public domain.

Despite RTC and the Church's elaborate and ardent measures to maintain the secrecy of the [Advanced Technology] Works, they have come into the public domain by numerous means. RTC's assertion that the only way in which the materials have escaped its control was through two thefts in Denmark and England was not supported by the evidence. A former senior Scientology official testified to ongoing difficulties the Church incurred in keeping the Works secret, including members losing materials in their possession. The evidence also showed portions of the Works have been made available on the Internet through persons other than Lerma, with the potential for downloading by countless users.

F.A.C.T.Net at 1526.

The *Lerma* court held that the Advanced Technology works included in the Fishman Declaration were not "trade secrets" since they were in the public domain for an extensive period of time in the open court file. *Lerma* at 1368. In further support of its holding, the *Lerma* court stated:

Of even more significance is the undisputed fact that these documents were posted on the Internet on July 31 and August 1, 1995. (Lerma Affidavit). On August 11, 1995, this Court entered a Temporary Restraining Order among other orders which directed Lerma to stop disseminating the AT documents. However, that was more than ten days after the documents were posted on the Internet, where they remained potentially available to the millions of Internet users around the world.

*12 *Id.* Furthermore, the *Lerma* court specifically recognized the significance of posting to the Internet, which gives free access of the materials to millions of

users.

Once a trade secret is posted on the Internet, it is effectively part of the public domain, impossible to retrieve. Although the person who originally posted a trade secret may be liable for trade secret misappropriation, the party who merely down loads Internet information cannot be liable for misappropriation because there is no misconduct involved in interacting with the Internet.

Id.

On the other hand, the district court in *Vien* held that the Advanced Technology qualifies as trade secret as a matter of law and that the materials have been reasonably maintained as secret. 827 F.Supp. at 633.

RTC seeks to minimize the impact of postings to the Internet which occurred after *Vien* by essentially characterizing them as transitory and by distinguishing them from publication in magazines and newspapers. However, because Internet postings can easily be saved in digital or print form, they are not necessarily transitory and should, in most cases, be treated the same as journals or published materials. In fact, posting on the Internet may reach a larger audience than traditional newspapers, magazines and other published materials and can be easily stored for later redistribution.

Nevertheless, the court believes that its statement in its September 22, 1995 order that "posting works to the Internet makes them 'generally known' to the relevant people" is an overly broad generalization and needs to be revised. The question of when a posting causes the loss of trade secret status requires a review of the circumstances surrounding the posting and consideration of the interests of the trade secret owner, the policies favoring competition and the interests, including first amendment rights, of *innocent* third parties who acquire information off the Internet.

RTC offers studies it conducted of the general public's knowledge of its allegedly secret works. On the basis of these studies, RTC argues that there is no evidence that the Internet postings have rendered the Advanced Technology works generally known. However, as discussed

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
 (Cite as: 1997 WL 34605244 (N.D.Cal.))

above, the court agrees with defendant that RTC's studies are not persuasive since the general public is not the relevant population for determining if a claimed trade secret is generally known. The relevant inquiry is whether the documents for which trade secret protection is sought are “ ‘generally known’ to the relevant people—the potential ‘competitors’ of the Church.” *Netcom* at 1256. Nevertheless, defendant has not established the extent to which the specific processes and instructions contained in the works are known generally or to potential competitors.^{FN17}

^{FN17}. How to identify “potential competitors” is a difficult question. However, members of the newsgroup “alt.religion.scientology” might be considered as such.

4. Balance of Hardships

The court finds that sufficiently serious questions exist as to the “secret” status of the specific processes and instructions in question to justify preliminary relief. Although the court questions whether RTC will ultimately be able to prove its claim of trade secret status, the balance of hardships tips in RTC's favor. If publication is not prohibited pending trial, RTC may lose any secrets it has. On the other hand, the injunction will not preclude defendant from engaging in criticism of the Church pending trial and a trial on the merits will occur in the relatively near future. At the trial on the merits, serious questions can be fully addressed including, but not limited to, whether any of RTC's materials can qualify as *trade* secrets, whether RTC has reasonably maintained the alleged secret nature of the documents, whether postings of some of the works in question caused them to lose their allegedly secret status, and whether defendant acquired the works he posted knowing that improper means had been used to acquire them.

*13 Although the court is modifying its original Preliminary Injunction Order to enjoin the disclosure of alleged trade secrets, it does find that defendant should be allowed to download and store Advanced Technology works posted on the Internet by others. Since a critical issue in this case is whether the works in question are

available to potential economic competitors of the Church, defendant has a legitimate interest in downloading and storing those works posted by others on the Internet, as such postings, if in apparent good faith, may defeat plaintiff's claim that the works are trade secrets. Further, defendant's mere downloading and storage offer no significant risk to plaintiff, as such activity will not result in such documents being distributed or made available to others by defendant.

IV. ORDER

For the reasons set forth above, the court amends its Preliminary Injunction Order of September 22, 1995 to read as follows:^{FN18}

^{FN18}. At the case management conference on November 8, 1996, plaintiffs agreed to provide a specific list of the documents at issue in this case. If that list does not include a work that is the subject of the court's preliminary injunction, that work will be deleted from the preliminary injunction upon application to the court.

A. Defendant Dennis Erlich and his agents, servants, and employees, all persons acting or purporting to act under his authority, direction or control, and all persons acting in concert or in participation with any of them who receive notice of this Order, shall be and are restrained and enjoined pending further court order:

1. From all unauthorized reproduction, transmission, and publication of any of the works of L. Ron Hubbard that are protected under the Copyright Act of 1976, as codified in its amended form at 17 U.S.C. § 101 et seq. Such works are found, for the purposes of this order only, to be those works identified in Exhibits A and B to the complaint, items 1-3, 5-10, 12, 13 and 15 of Exhibit A-1 to Hawkins' October 27, 1995 Declaration and the OT Section III “Data” and the OT III materials included on Exhibit B-1 to McShane's November 25, 1995 Declaration. Lists of these exhibits are attached.

a. Unauthorized reproduction, transmission, or public-

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
 (Cite as: 1997 WL 34605244 (N.D.Cal.))

ation includes “uploading” a digital file containing a copyrighted work from the computer to a bulletin board system or other server; and “quoting” a copyrighted work that is cited in an on-line message in sending, responding to or forwarding that message.

b. Nothing in this section 1 of the order shall be construed to prohibit fair use of such works, as set forth in [17 U.S.C. § 107](#) and interpreted by applicable case law. Fair use of the copyrighted material for the purposes of this order includes use of the copyrighted work for the purpose of criticism, news reporting, teaching, scholarship, and research but does not include: (1) use of the material for a commercial purpose where the user stands to profit from exploitation of the copyrighted material without paying the customary price or giving the usual consideration or use that would have a significant effect on the potential market value of the copyrighted work; (2) use which fulfills the demand for the original work; or (3) use of the heart of the work-no more of a work may be taken than is necessary to make any accompanying comment understandable. With respect to unpublished materials, the amount of copied material must comprise only a very small percentage of the copyrighted works both from a quantitative and a qualitative standpoint.

*14 c. The prior postings by defendant Erlich that form the basis of this order do not qualify as fair use primarily because of the quantity of the material posted and the very limited transformative use made of those materials. Identical or similar postings are therefore enjoined.

2. From all unauthorized reproduction, transmission, and publication of any of the specific processes (the sets of questions asked by a Scientology minister or

auditor or specific steps taken by a parishioner during self-counseling) and instructions related thereto contained in the works of L. Ron Hubbard that are alleged to be protected as trade secrets. Such specific processes and instructions are found, for the purposes of this order only, to be those contained in the works identified in Exhibit B to the complaint, the OT Section III “Data” and the OT III materials included on Exhibit B-1 to McShane's November 25, 1995 Declaration. Fair use is not available as a defense to the posting of trade secrets.

3. From destroying, altering, concealing or removing from the district in which defendant Erlich resides, any reproduction, copy, facsimile, excerpt or derivative of any work of L. Ron Hubbard that is on the attached lists including all such works returned pursuant to prior order. Defendant Erlich or his counsel shall safely retain possession of any such items.

B. Nothing in this order precludes defendant from downloading and storing any posting of the works listed for the purpose of gathering information for his defense in this case.

C. A condition of this preliminary injunction is that a \$25,000 bond shall be posted (or continued in place) pursuant to [Federal Rule of Civil Procedure 65\(c\)](#).

EXHIBIT A

LIST OF PUBLISHED LITERARY WORKS

	<i>WORK</i>	<i>REG DATE</i>	<i>REG NUMBER</i>
1.	HCO PL 25 Feb 1966, ATTACKS ON SCIENTOLOGY	Sep 16, 1989	TX 2-646-306
2.	HCO PL 23 Dec 1965, ETHICS,	Nov 11, 1974	599651

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
 (Cite as: 1997 WL 34605244 (N.D.Cal.))

	SUPPRESSIVE ACTS, SUP- PRESSIVE ACTS, SUPPRESSION OF SCI- ENTOLOGY AND SCIENTOLOGISTS, THE FAIR GAME LAW	Nov 5, 1987A	TX 2-238-613
3.	LRH ED 149 PROJECT SQUIRREL ¹	Oct 24, 1986	TX 2-035-053
4.	20 Nov 1961, ROUTINE 3D COMMANDS	Oct 4, 1976	785007
		Nov 5, 1987	TX 2-478-862
5.	HCO PL 1 July 1965 ETH- ICS CHITS	Nov 11, 1974	599654
6.	HCO B 22 March 1967, AL- TER-IS AND DEGRADED BEINGS	Nov 5, 1987	TX 2-238-614
7.	HCO PL 1 May 1965 STAFF MEMBER REPORTS	Nov 5, 1987	TX 2-238-614
8.	HCO PL 6 December 1976 ILLEGAL PCS, ACCEPTANCE OF	Jun 22, 1987	TX 748-935
9.	HCOB 10 September 1983 PTSNESS AND DISCONNECTION	Jun 18, 1991	TX 3-090-515
10.	HCOB 6 May 1982 I THE CAUSE OF CRIME	Apr 20, 1990	TX 2-808-858

FN1. This is a confidential work that is not part of the Advanced Technology. A copy will be made available under a suitable protective order.

LRH'S WORK		REGISTRATION DATA	REGISTRATION DATE
1.	HCOB 23 NOV 1961 AUX- ILIARY PRE-HAVE 3D SCALE	A 785007 CA TX 2-478-862 TX 1-276-292 RE 438-065	Oct 4, 1976 Nov 5, 1987 Jul 26, 1983 May 8, 1989
2.	HCOPL 1 MAY 1965	A 599650	Jan 27, 1975

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
 (Cite as: 1997 WL 34605244 (N.D.Cal.))

	STAFF MEMBER		
	REPORTS	CA TX 2-238-614	Nov 5, 1987
		TX 2-239-167	Jan 28, 1988
		RE 631-252	Sep 9, 1993
3.	HCOB 22 MAR 1967 AL- TER-IS AND	A 599651	Jan 27, 1975
	DEGRADED BEINGS	CA TX 2-238-613	Nov 5, 1987
		TX 1-191-251	Aug 11, 1983
5.	HCOPL 23 DEC 1965	A 599651	Jan 27, 1975
		CA TX 2-238-613	Nov 5, 1987
6.	HCOPL 23 OCT 1965	A 599656	Jan 27, 1975
	DISSEMINATION DRILL	CA TX 2-338-234	Nov 5, 1987
		TX 2-234-420	Jan 28, 1988
		RE 642-474	Nov 3, 1993
7.	HCOPL 12 JUL 1966 LEG- AL ASPECTS	A 599656	Jan 27, 1975
	OF SUCCESS MATERIAL PUBLICATIONS	CA TX 2-338-234	Nov 5, 1987
8.	HCOPL 29 APR 1965 IS- SUE III	A 599651	Jan 27, 1975
	ETHICS REVIEW	CA TX 2-238-613	Nov 5, 1987
9.	HCOPL 1 JULY 1965 ETH- ICS CHITS	A 599654	Jan 27, 1975
		CA TX 2-238-610	Nov 5, 1987
		TX 2-239-133	Jan 28, 1988
		RE 642-485	Nov 3, 1993
10.	TAPED LECTURE, SECOND LECTURE ON CLEARING METHOD, 13 MAY 1959	PA 366-362	Apr 19, 1988
12.	HCOB 6 MAY 1982 THE CAUSE OF	TX 2-808-858	Apr 20, 1990
	CRIME	TX 1-160-793	Jun 16, 1983
13.	HCOPL 5 FEB 1977	TX 748-935	Jun 22, 1981
	JOKERS AND DEGRADERS	CA TX 2-338-139	Nov 5, 1987

Not Reported in F.Supp., 1997 WL 34605244 (N.D.Cal.)
 (Cite as: 1997 WL 34605244 (N.D.Cal.))

		TX 1-153-867	May 25, 1983
15.	HCOPL 7 MAR 1965 OF- FENSES & PENALTIES	A 599650 CA TX 2-238-614 TX 2-234-443 RE 631-262	Jan 27, 1975 Nov 5, 1987 Jan 28, 1988 Sep 9, 1993

ARY WORKS

EXHIBIT B

LIST OF UNPUBLISHED CONFIDENTIAL LITER-

	<i>WORK</i>	<i>REG DATE</i>	<i>REG NUMBER</i>
1.	CLASS VIII "ASSISTS" TAPE	Sep 7, 1994	TXu 593-514
2.	NOTS Issue 24 "NOTS CORRECTION LIST"	Nov 10, 1986	TXu 257-326
3.	OT 1	Sep 1, 1987	TXu 303-382
4.	OT 2	Sep 17, 1987	TXu 303-388
5.	NOTS Issue 34	Nov 10, 1986	TXu 257-326
6.	NOTS Issue 35	Nov 10, 1986	TXu 257-326
7.	NOTS Issue 36	Nov 10, 1986	TXu 257-326
8.	NOTS Issue 1	Nov 10, 1986	TXu 257-326
9.	NOTS Issue 42	Nov 10, 1986	TXu 257-326

FROM EXHIBIT B-1

***15 OT SECTION III "DATA"**

OT III materials

N.D.Cal., 1997.

Religious Technology Center v. Netcom On-Line Com-
 munication Services, Inc.

Not Reported in F.Supp., 1997 WL 34605244
 (N.D.Cal.)

END OF DOCUMENT