The Washington Post

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THE WASHINGTON POST

Church of Scientology Group Sues Post

■ An arm of the Church of Scientology has sued The Washington Post and two of its reporters in an attempt to prevent publication of copyrighted information that belongs to the church.

In an amendment to a suit filed against an Arlington man Aug. 11 in U.S. District Court in Alexandria, the Religious Technology Center asks that the newspaper return certain documents and refrain from publishing information that the church claims is confidential scriptures protected by federal laws.

The church originally sued Arlington resident Arnaldo Lerma, who allegedly disseminated anti-church information and church documents via the Internet. On Aug. 12, federal marshals seized computer equipment and files from Lerma's home, under an order from District Judge Leonie Brinkema. The revised suit seeks an injunction against The Post and reporters Richard Leiby and Marc Fisher, who allegedly obtained copyrighted information.

"The Post made a serious mistake in allowing themselves to be manipulated by a few maliciously motivated dissidents who want to use The Post to forward their religious hate campaign," said Earle C. Cooley, an attorney for the church.

Mary Ann Werner, an attorney for the newspaper, said the suit "is meritless. The documents at issue, which have been widely distributed over the Internet, were properly obtained by The Post from a public court file, a common and appropriate form of news-gathering. And the limited quotations included in The Post's story are well within the bounds of the 'fair use' doctrine under copyright law."

A hearing on the suit has been set for Friday.

The Washington Times

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Scientology unit sues Washington Post

The Religious Technology Center (RTC) yesterday sued The Washington Post and two of its reporters, charging they have engaged in "extensive intentional copyright infringement and trade secrets misappropriation, targeting confidential Scientology scriptures."

RTC, which holds the intellectual property rights of Scientology, filed suit in U.S. District Court for the Eastern District of Virginia. U.S. District Judge Leonie Brinkema will hold a hearing Friday on a temporary restraining order and RTC's impoundment application to retrieve its documents from the newspaper.

The new lawsuit is an amendment of an RTC suit against Arlington resident Arnaldo Lerma, who allegedly posted Scientology documents on the Internet. The new suit charges that The Post and its reporters — Richard Leiby and Marc Fisher — aided Mr. Lerma and illegally quoted Scientology materials in a report.

m consults businesses in fraud prevent

By Annette Chavez

Glendale News-Press

With white-collar crimes on the rise nationwide, more and more businesses are looking into ways of preventing internal theft and fraud before it costs them or their clients billions of dollars.

The Glendale-based financial firm of Wiseman and Burke, Inc. is an example of a business that takes the threat of white-collar crime very seriously.

"White-collar crime costs more than street crime does," said Robert LaRose, vice president of the Business Fraud Division.

Last year the company, at 206 S. Brand Blvd., created a Business Fraud Division, which provides expert fraud detection and auditing services for businesses.

"We started noticing that some

clients were getting ripped off with e internal fraud," LaRose said.

The National White Collar Crime of

The National White Collar Crime Center in Richmond, Va. recently accepted LaRose's division of Wiseman and Burke as an affiliate.

The center gives members access to databases, training and consultations with fraud specialists.

With the support of the crime center, LaRose said his company's fraud division is able to assist clients with recognizing internal fraud problems before they occur.

LaRose said he believes white collar crimes can be attributed to both employee greed and company cut-

Especially when employees begin to feel like they're not a valued part of the company.

"A lot of it has to do with the trend e of downsizing corporate America," he

explained. "With staff being reduced, there tends to be less loyalty to the company and more of an attitude of LaRose said the county is looking looking out for oneself."

Personal problems such as debt, gambling or drug addiction could also be underlying motivations behind internal fraud, LaRose said.

LaRose said white-collar crimes often can be avoided if companies take the time to do thorough background checks before hiring new employees.

Currently the division has been consulting with the County of Los Angeles.

Last month a Glendale man was arrested for allegedly embezzling more than \$2 million from the Los Angeles County Museum of Natural History.

Authorities believe Marcus Arthur Rodriguez, former deputy director of the museum, and two other employees

aly • Employees who year after year

fail or refuse to take vacations.
Employees or personnel who inexplicably manifest lavish lifestyles above their obvious financial means.

employee embezzlement, but also is evaluating how financial discrepan-

• Key applicants who refuse to submit to a reasonable background check.

• Shortages or overages in the cash

cators for businesses, according to

Wiseman and Burke, Inc. include:

Some theft and embezzlement indi-

cies can be detected early on.

r year driver.

Missing or altered documents.

 No inventory taken or long periods between counts. Constant inventory errors. To find out more about the Business Fraud Division of Wiseman and Burke, Inc., call 247-1007.

Los Angeles Times

Are Searches in Civil Cases Also Violating Rights?

By ADAM S. BAUMAN

July 26, a contingent of officials from software maker Novell Inc. rang the doorbell at Joseph and Miki Casalino's home outside Salt Lake City.

Thinking her husband had forgotten something when he left for work, Miki padded to the door in her robe and was shocked to find a marshal flashing his badge. They were there, they told her, to search and seize any and all computer bulletin board (bbs) equipment that her then-18-year-old son, Joseph III, was operating under the name "Planet Gallifrey BBS."

Had this been a criminal case, and had the search been conducted with a traditional criminal search warrant, there would have been nothing especially unusual about it. But the Casalino family was not the subject of a criminal-case search. Instead, it was the target of a little-known but increasingly common civil court procedure known as "ex parte search and seizure with expedited discovery."

Authorized by Congress in 1984, these types of searches were designed to help stanch the production and sale of counterfeit Mickey Mouse T-shirts, Rolex watches, Gucci handbags and the like. But they're now gaining favor as a weapon against alleged copyright and trademark infringement—and, critics contend, trampling people's constitutional rights in the process.

allow private searches essentially allow private parties to conduct searches of other private parties with only limited oversight by courts or law enforcement authorities, these critics say. Furthermore, they can be used to prevent publication of materials that infringe on a copyright before there has been any finding of infringement, thus violating the First Amendment to the Constitution, some lawyers say. Once an obscure and rarely used procedure, exparte searches are now carried out routinely by software firms and oth-

"These companies have figured out a way around the constitutional ban on prior restraint, and that's why it's so dangerous; speech is being shut off at the spigot," said Harvey Silverglate, a Boston attorney who successfully defended a Massachusetts Institute of Technology student in a highly publicized software piracy case earlier this year. "If this process is unchecked... it drives a giant truck through the First Amendment."

Especially alarming to some in the legal community has been the recent use of ex parte searches by the Church of Scientology. As part of a battle with anti-Scientology activists that has been raging for months on the Internet computer network, the church has conducted three ex parte searches in an effort to thwart the alleged distribution, via computer networks, of Scientology religious texts and other documents. The church contends these documents are protected by both copyright and trade-secret law.

o conduct logist and now an outspoken church critic, says about 25 Scientauthorinathorist by tologists accompanied by two off-tuty Inglewood police detectives arrived to conduct a search of his to prevent that infore there infringe finfringe the First hostitution, an obscure do out rou
did out rou
Dennis Erlich, a former Scientologist and now an outspoken church critic, says about 25 Scientologists accompanied by two off-tuty off-tuty search of his year.

Glendale home earlier this year.

Though only about half a dozen church members were ultimately afforded entry, they spent the better part of a day rifling though his house and ultimately departed with numerous computer disks and other material, Erlich alleges.

rant, issued with probable cause by rant, issued with probable cause by a judge and served by law enforcement officials, I would have been fine," he said. "But in this case, it was like having your mortal enemies getting permission from the courts, look in your house in every drawer and closet, look on your hard disk and take a copy of everything they want, and even delete off your hard disk what they deem is not allowed."

While an ex parte search requires a court order, the search is actually conducted by a private party, not law enforcement officers—though an "officer of the court," often an off-duty federal marshal, is normally required to be present. When the object of the search is electronic information—which can be easily hidden on the hard disk of a computer, or on

floppy disks that can be stashed anywhere—the searchers can virtually ransack a house and still be within the rights of the court order.

llos Angeles Times

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using a home computer. individual for a specific purpose al. A bulletin board is a small-scale which church officials allege was FACTNet, a computer bulletin said Tom Kelley, an attorney reponline service usually set up by an board devoted to exposing inforsheim and Robert Penney ran disseminating copyrighted materimation about the church—and logists and their attorneys. Woller rence Wollersheim, whose Boulresenting ex-Scientologist Law and, in effect, a fishing expedition, out a full and proper disclosure to 22 by a group of marshals, Scientoier, Colo., home was searched Aug the court in that it was over-broad for the search was obtained with "We contend that the authority

"What this permitted was an intelligence operation as opposed to a mere seizure of copyrighted materials," Kelley added. "In these cases with the ex-Scientologists, it's like having your sworn enemy going though your underwear drawer."

Helena Kobrin, an attorney for the Church of Scientology, denied there was anything inappropriate in the searches: "The materials which were the subject of the seizure order existed in hard copy, and in fact unauthorized hard copies were found in different locations during the searches, which is why different areas of the homes had to be searched."

But a federal judge in Denver later vacated the search order and forced the church to return all the seized material—which it did only after deleting some of the allegedly confidential information from the computer disks.

Miki Casalino, in whose house Added Kobrin Added Kobrin Scientology: "WI

rchers can viruse and still be use and still be the court order. to know there are obtained withor disclosure to was over-broad was over-broad Microsoft could get a

your bedroom."
JOHN SHEPHARD WILEY

UCLA law professor

U.S. marshals to invade

federal judge to order

BBS,"—which she admitted was being run by her son, though she only learned of the alleged illegal software after it was too late—said she felt "so damn violated" that Novell employees were searching the inside of her home.

"I used to trust the police and the legal system," she said. "Now every time the doorbell rings, I start trembling in fear. I wonder: 'Who is coming after us now?'"

Defenders of the searches say the complaints amount to little more than bad feelings on the part of people who they say are violating copyright laws. In cases like these, they say, adhering toonventional civil court procedures—in which a process server gives notice to the defendant, who is then given time to respond in court before any search can take place—would simply enable the perpetrators to punch a few computer keys and destroy the evidence.

"The people running a pirate BBS put themselves in a position of having us enter their private residence to halt their activities," said Ed Morin, a former FBI agent who manages Novell's anti-piracy program.

Added Kobrin of the Church of Scientology: "Where the Internet

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is involved, there is also a danger of further distribution of the infringing materials with the potential of it getting into other hands on a more rapid basis. So prompt action is crucial in these cases."

To obtain an ex parte search order, the complaining party must appear before a federal judge and show that it is likely infringing material will be found, that there will be more harm to the plaintiff than to the defendant if the order is not issued, and that the alleged infringing material can be easily deleted if advance notice is given. Plaintiffs must also post a bond with the court to compensate the defendant for any damages if nothing is found.

Novell pioneered usage of the ex parte procedure against computer bulletin boards in 1991, when the company used it against two in California, "Red October" and "Custom Software BBS." And during the last year, the company has teamed up with software giant Microsoft Corp. to search and seize three alleged pirate bulletin boards: "Deadbeat BBS" in Woodbury, N.J., "Cloud 9 BBS" in Minneapolis and "Assassins Guild BBS" in Lexington, Ky.

John R. Heritage Jr., who admits running "Deadbeat BBS" when he was in college, recalls being terrified when he returned home one day last year to find a group of eight people in his driveway.

But when he discovered the group consisted of four lawyers, two marshals and two technicians from Novell and Microsoft, Heritage was dumbfounded. "Looking back, I just can't believe that private companies like Microsoft and Novell have the power to just invade my home upon command like that."

Heritage, like several other operators of bulletin board systems that were allegedly used to distribute illegal copies of computer software, ultimately agreed to pay a settlement to end the civil case. The Casalinos say they offered to forfeit the computer system and pay a settlement of \$2,500 to Novell, but the company balked.

ell, but the company balked.
"We'd like to fight the suit,"
Miki Casalino said, "but we simply
don't have the resources."

Morin says the civil-suit approach is actually a relatively gentle way to go compared with criminal prosecution. "Pirates are breaking the law. They could go to jail and lose their freedom. The civil procedure is a softer approach than pushing for criminal prosecution and throwing the pirates in jail where many of them belong."

But a lot of legal experts disagree.

Said one lawyer who refused to be identified: "Talk about overkill—U.S. marshals coming into your house to search not even for a criminal violation but a civil violation." The lawyer also pointed out that a statute passed by Congress, known as the Privacy Protection Act, may have been violated by these ex parte searches.

these ex parte searches.

Indeed, there are almost no situations in which federal or state courts will stop publication of information in advance. Aggrieved parties must go to court after the fact and try to prove libel, slander, or other violations. But ex parte search orders, when used in copy-

right cases, can in effect allow prior restraint.

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Said John Shephard Wiley, a law professor at UCLA who specializes in intellectual property law, "This is wild stuff. Most people would be shocked to know there are conditions under which Microsoft could get a federal judge to order U.S. marshals to invade your bedroom."

Software company officials say they take great pains not to invade people's privacy unnecessarily, limiting their searches strictly to the area a computer is located.

"We don't relish going into peoples' private homes, and we try to be minimally intrusive in the seizure process," said Microsoft attorney Jim Lowe.

"Thus far we have been very lucky because the [bulletin boards] have always been segregated in separate rooms with nothing else in them," said Harrison Colter, senior corporate counsel at Novell.

"Although we have the legal right to search anywhere, and perhaps we missed evidence we would have found if we had exercised that right, we have not felt we had to go though people's bedrooms, look in their closets or dresser drawers."

But many are very uncomfortable relying on the good intentions of the searchers.

"To me, ex parte seizure of goods on a copyright theory can be suspect on constitutional grounds," said David Nimmer, an intellectual property attorney at the Los Angeles law firm of Irell & Manella. "In any event, they should be limited to two situations: people who pose an objective risk of flight and people with a history of disregarding court orders."

Ios Angeles Times

U.S. Judge Rules
Internet Services
May Be Liable
for Postings

■ Courts: Decision would apply to messages that bulletin board operator and access provider know are copyright violations.

By AMY HARMON TIMES STAFF WRITER

In a decision that may help answer one of the biggest legal questions on the electronic frontier, a federal judge has ruled that a Los Angeles bulletin board operator and a major Internet access provider can be held liable for copyright violations committed by one of their users—but only if they know that illegal copyright infringement is taking place.

The case involves claims by the Church of Scientology that Dennis Erlich, a former church official turned critic, used the bulletin board—operated by Tom Klemesrud of North Hollywood—and Netcom Online Services to post material on the Internet that infringed its copyrights. Klemesrud and Netcom had contended they could not by definition be liable for material posted by their subscribers.

In a 32-page ruling dated Nov. 21, U.S. District Judge Ronald Whyte in San Jose rejected Netcom's motion for summary judgment and a related motion by Klemes-

rud.
"If plaintiffs can prove the knowledge element," Whyte wrote, "Netcom will be liable for contributory infringement since its failure to simply cancel [Erlich's] infringing message and thereby stop an

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infringing copy from being distributed worldwide constitutes substantial participation in Erlich's public distribution of the message."

The case will likely to go to trial early next year. Another similar case brought by the Church of Scientology against an individual and his Internet access provider in Virginia may be decided first. The church, which has aggressively fought alleged copyright infringement through lawsuits and a controversial civil search-and-seizure procedure—sent out a press release claiming the ruling as a victory.

"The court found there is a duty to act when they have knowledge that there is an infringement going on," said Helena Kobrin, an attorney for the church. "You can't just put equipment out there and let people use it for illegal purposes."

But Klemesrud and Netcom both of whom declined to close down Erlich's account after the church informed them of the alleged violations—note that the judge left open the question of whether the defendants had enough knowledge to determine whether Erlich's posts did in fact infringe on the Scientology copyright.

gy copyright.

"Given the context of a dispute between a former minister and a church he is criticizing, Netcom may be able to show that its lack of knowledge that Erlich was infringing was recompile." Whate wrote

ing was reasonable," Whyte wrote.
The slippery issue of whether the gatekeepers of cyberspace—access providers such as Netcom, Prodigy or America Online—can be held responsible for what gets posted in public forums by the thousands of users on their networks has been broached in several court cases in recent years but never definitively answered.

A widely watched libel suit that sought to hold Prodigy accountable for what a subscriber said about a company on-line was recently settled without going to trial. But the Netcom case is even broader, because it involves posting to one of the thousands of Internet forums

known as the Usenet.

The Usenet—and the newsgroup Erlich posted to: alt.religion.scientology—reaches a far wider audience than the proprietary forums on Prodigy or America Online. It is also far more difficult to monitor.

"[The church's] theory would conceivably subject every Usenet server to liability for an infringing posting," Netcom attorney Barbara Shufro said. "It would very possibly prevent the Usenet from working at all."

ing at all."

Civil libertarians argue that putting system operators into the position of having to monitor all the data that travels across their networks would essentially disable the fast-growing network.

But proponents for stricter controls argue that if intellectual property is not protected, the network will crumble anyway.

work will crumble anyway.

"This is one of the key issues that's going to determine how the future of the networks develop," said Shari Steele of the Electronic Frontier Foundation.