

Los Angeles Times

THURSDAY, NOVEMBER 30, 1995

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Pentagon Paid \$20 Million for Psychics' Aid

By R. JEFFREY SMITH
and CURT SUPLEE
THE WASHINGTON POST

WASHINGTON—U.S. military and intelligence officers spent as much as \$20 million over two decades consulting psychics and others with suspected paranormal powers in an attempt to obtain—on the cheap and in a hurry—information pertinent to national security that was unavailable elsewhere.

As recently as 1993, a military agency asked the psychics to help locate tunnels suspected of being dug by North Korea under a demilitarized zone separating it from South Korea. Another federal agency sought to learn the precise jobs of individuals in various criminal organizations, while a third agency sought to learn the whereabouts of enemy spies.

These and other details about the military's extensive use of the psychics emerged Wednesday in a lengthy study of the government's secret "Stargate" program released by the CIA, one day after its conclusions were reported by several intelligence officials.

One of the salaried, full-time psychics employed by the Pentagon tried to channel the thoughts of others through his fingers in trance-like writings. Another used a combination of relaxation and meditation, while a third used meditation combined with map reading.

The CIA study concludes that the line drawings and other descriptive material produced by the psychics never substantially aided U.S. national security agencies and that the research should no longer be funded by the federal government.

Until now, however, the program's poor showing has not dampened the enthusiasm of various Pentagon officials for the psychics' so-called "remote viewing." It involves concentrating on a "target" picked by an agency or military unit and trying to "visualize" it well enough to describe its features or location.

One intelligence official said a total of around \$20 million has been spent on the program over the last two decades, with all but \$750,000 coming from the Defense Department. The CIA sponsored the research for a brief period in the 1970s after hearing of similar work in the Soviet Union, but quit because of poor results.

Los Angeles Times

FRIDAY, DECEMBER 1, 1995

EDITORIALS



of THE TIMES

A Psychic Power Outage

Pentagon's parapsychology program is no threat to old-fashioned spying

Not content with spending billions on reconnaissance satellites, communications intercepts and secret agents, the U.S. government for nearly two decades has also funded a program to try to divine information using people who claim to have psychic powers. The negligible results should have been, well, foreseen.

An independent review panel has now recommended scrapping the program, code-named Stargate, which was run by the Defense Intelligence Agency. The program has cost about \$20 million. For that kind of bucks the Pentagon could have hired Johnny Carson to put on his turban and do his Carnac the Magnificent act. The benefits to national security would have been about the same.

The psychics were asked



Carnac: The answer is a waste of \$20 million in tax money.

over the years to provide specific answers to specific questions—for example, where North Korea was hiding its plutonium, or what routes drug boats in the Caribbean would follow. A key question was posed in 1986, just before U.S. planes bombed Libya in retaliation for its suspected sponsorship of terrorism. U.S. officials wanted to know where Lib-

yan dictator Moammar Kadafi was. According to Michael D. Mumford, who co-authored a report for the American Institutes for Research that evaluated Stargate, a psychic answered with something less than pinpoint precision. "I see sand. I see water. I see a mosque. . . ." That at least narrowed the possibilities down to about 15 countries and 50 or 60 million square miles.

Parapsychology is of course an area for legitimate study, and you almost have to admire the person who got this one past the stiff Pentagon bureaucracy. On the other hand the military's psychics are said to have been right only 15% of the time, meaning they were wrong 85% of the time. Sometimes crystal balls are less than crystal-clear.

The New York Times

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SATURDAY, DECEMBER 9, 1995

THE NEW YORK TIMES **OP-ED** SATURDAY, DECEMBER 9, 1995

Congress vs. the Internet

By Shari Steele

WASHINGTON

SAN FRANCISCO
While the courts continue to uphold the freedom of speech on the Internet, the First Amendment is under attack on Capitol Hill. On Wednesday, House members of a House-Senate conference committee said they would support a stringent new measure that would not only bar words and ideas on the worldwide computer network that one might hear on TV or read in this newspaper, but would make criminals out of anyone transmitting these materials electronically, including unsuspecting on-line services.

This measure goes against the spirit of three sensible court decisions on copyright law handed down in recent weeks, all involving the

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Church of Scientology.

The first decision, handed down by a Federal judge in California last month, held that Internet service providers, the gatekeepers to the information highway, cannot be held liable for copyright infringement when they have no knowledge of the content of their users' messages.

This decision is important, because, like the telephone company, the system's providers merely offer a conduit for communications. If they can be held liable for the content of messages, they are more likely to monitor those messages and censor any that include language that might get them in trouble.

Just as we don't want the phone company censoring our telephone calls, we should be very troubled by any copyright law interpretation that would assign liability to those who provide Internet service.

The second and third decisions were issued last week by a Federal judge in northern Virginia. In those cases, the judge, Leonie M. Brinkema, admonished the Church of Scientology for using lawsuits to silence its on-line critics. After two of

The courts have upheld free speech. Why won't legislators?

its former members posted electronic criticism of Church of Scientology writings, the church brought charges against them, their Internet service providers and the Washington Post, for including two sentences from church documents in an article on the case.

Judge Brinkema dismissed the Washington Post and two of its reporters from the suit and held the Church of Scientology and its affiliates responsible for the Post's legal fees. "Although the Religious Technology Center brought the complaint under traditional secular concepts of copyright and trade secret law, it has become clear that a much broader motivation prevailed — the stifling of

criticism and dissent of the religious practices of Scientology and the destruction of its opponents," the judge wrote. The judge called this motivation "reprehensible."

While the results of these preliminary decisions are encouraging, they provide little solace to the larger threat of on-line censorship.

Court decisions in the copyright realm, as these are, do not address the damage Congress is doing to the First Amendment in the name of protecting children from obscenity, which remains ill-defined.

These early court victories are important, and the on-line world breathed a collective sigh of relief over the wise judgments.

But not all battles can be won in court. If Congress presses forward with its attempt to criminalize constitutionally protected speech, I fear that the First Amendment will be left behind as more and more of what we say is in the form of on-line communications. □

LOS ANGELES

Daily Journal

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Wednesday, December 13, 1995

Official Newspaper of the
City of Los Angeles and
the County of Los Angeles

Netcom Ruling Now Viewed as Defense Victory

Infringement Issues

By James Evans

Daily Journal Staff Writer

SAN FRANCISCO — It's called the Netcom decision, and it horrified Internet users and providers when issued Nov. 21 by Judge Ronald M. Whyte from the U.S. District Court for the Northern District of California in San Jose.

In the ruling, Religious Technology Center v. Netcom On-Line Communications Services Inc., 95-20091, Whyte denied a summary judgment motion by Netcom to be dismissed from the copyright infringement suit filed against it and two other defendants by the Church of Scientology.

While some lawyers initially expressed fear the ruling could disastrously increase the liability of Internet access providers, many now say they see the decision as largely a victory for the defense, and a setback for the Church of Scientology.

Named in Suit

San Jose-based Netcom, the nation's largest Internet provider, was named a defendant in the suit with Dennis Erlich, a former Scientology minister and active critic of the church, and Tom Klemesrud, operator of Clearwood Data Services, an electronic bulletin board (BBS).

Erlich was a subscriber to Klemesrud's BBS, which in turn subscribed to Netcom for access to the Internet. Erlich posted on the bulletin board internal church documents that the church claims are copyrighted and are trade secrets. Whyte, while excusing the defendants from direct copyright infringement and vicarious liability, ruled that allegations of contributory infringement were triable because both Netcom and Klemesrud had been notified by the church that infringement was occurring.

The church quickly issued a press release labeling the opinion "a precedent-setting ruling certain to increase access providers' responsibility for what their subscribers place on the Internet ..."

The release quoted Los Angeles sole practitioner Helena Kobrin, who represents the church, as very happy because Whyte had strengthened intellectual property protection in the digital era.

'Cyber Terrorism'

"This decision has shown that the courts will not tolerate cyber terrorism and sends a clear message to BBS operators that when notified of illegal copyright infringement, they have a responsibility to act or be found as a contributor to the infringement," she continued.

The media tended to embrace that perspective, partly because Netcom, for various reasons, did not respond immediately to requests for comment.

But intellectual property lawyers, who view the case as important in the evolution of a legal issue about which little case law exists, say Whyte has so narrowed the liability question that the defendants have an excellent chance of proving they did not have sufficient knowledge to prevent the posting of the

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Experts Say Netcom Is Defense Victory

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material.

"Judge Whyte correctly concluded that Internet service providers and BBS providers can't be directly liable where there is no volitional act," said Carla Oakley, a partner at San Francisco's Morrison & Foerster who represents Dennis Erlich. "It's a very important and key decision."

Daniel A. Leipold, a partner at the Orange office of Glendale's Hagenbaugh & Murphy and counsel to Klemesrud, also sees Whyte's opinion as favorable.

"A finding of direct infringement would have been devastating to access providers," he said. "It would have been nice for the [Internet] industry to get 100 percent of everything it wanted, and instead it got 95 percent. It didn't get anything shut off, and it got the case significantly narrowed."

Leipold added that Whyte also denied the church's request for an injunction against Netcom and Klemesrud because the church failed to prove any infringement, which weakens the plaintiff's case.

"This is not gloom and doom for Internet providers," he said.

"The ideal scenario would have been for the court to find that the Internet is a gigantic newspaper with no editor and every user is a contributor.

"But the court didn't find that, so providers got less than ideal. But there are measures being debated in Congress that are more restrictive than this decision [a House-Senate committee on Wednesday agreed on a ban on "inde-

cent" material on the Internet].

"The court said if you know something infringes and you had notice of it, then you can be held liable," said Leipold.

"That seems reasonable, but that's not strict liability or direct infringement."

He said Whyte also appeared to create a more expansive fair use defense for providers than that afforded Erlich.

"One of the important elements in the fair use defense is what portion of the work was copied.

"Whyte offered an extremely broad analysis of the fair use defense, and he will apply that interpretation to the providers' defense," Leipold said.

Mark Radcliffe, a partner at Palo Alto's Gray Cary Ware & Freidenrich and the co-author of a book on multimedia copyright law, said Whyte's elimination of direct infringement was important, and seemed to deviate from a traditional application of copyright law.

"I like the result," he said. "I like that [Whyte] introduced intention into direct infringement.

"That analysis is attractive from a policy point of view, but it's not really the way direct infringement has been interpreted in the past. The position of most case law is that infringement is absolute."

Radcliffe said the case will be watched closely by the on-line industry because third-party responsibility strikes at the core of the Internet. The outcome, if it favors the church, could be an enormous blow to interaction among Internet users and specifically on the rapidly growing

World Wide Web.

"The interactivity of the Web opens a Pandora's Box for Web site owners," Radcliffe said. "[Copyright infringement] is a very difficult issue because what you want to do commercially could have huge legal risks."

Copyright infringement suits could boil down to a definition of knowledge, he said.

"What is knowledge, when do you have knowledge and what do you do when you have knowledge?" he said.

Martin Periberger, a Los Angeles entertainment lawyer, said the significance of Whyte's ruling is more psychological than legal at the moment because of the attention it will draw to the liability boundaries of Internet "common carriers," like Netcom.

"Obviously, one should not be able to stifle an adversary on the Internet by falsely claiming there is copyright infringement, while, on the other hand, one should not be left without recourse for contributory copyright infringement by virtue of the bookstore analogy, when the analogy to a publisher would be more appropriate in the circumstances," he said.

Netcom also finally weighed in with a reaction, saying the decision was a "major victory," and that the company's position will be upheld at trial.

Leipold agreed. "I'm optimistic, but it may be a tough and bitter fight," he said. "Scientology is the T-Rex of litigation, so it will be vicious, mean and nasty. But I don't see the facts lining up on their side."