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CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

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10  
11 **IN THE UNITED STATES DISTRICT COURT FOR THE**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **C. 97-3873** FILED

14 **JOAN RYAN, JIM TUNNEY, ARLIE**  
15 **RUSSELL HOCHSCHILD, LYN HEJINIAN,**  
and **RONALD SELLEMAN**, an individuals, and  
on behalf of all those similarly situated,

16 Plaintiffs,

17 vs.

18 **CARL CORPORATION**, a Colorado  
corporation, individually and doing business as  
19 **THE UNCOVER COMPANY**, and **THE**  
**UNCOVER COMPANY**, a Colorado  
20 corporation, **THE UNCOVER COMPANY**, a  
partnership; **KNIGHT-RIDDER**  
21 **INFORMATION, INC.**, a California  
corporation,

22 Defendants.

) Case No.

) **CLASS ACTION COMPLAINT FOR**  
**COPYRIGHT INFRINGEMENT**

) **DEMAND FOR JURY TRIAL**

23  
24 The representative Plaintiffs bring this action on behalf of themselves and all others  
25 similarly situated, and for their complaint, allege as follows:

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1  
CLASS ACTION COMPLAINT  
FOR COPYRIGHT INFRINGEMENT

1 NATURE OF THIS CLASS ACTION COMPLAINT

2 1. This Class Action complaint arises from years of systematic and intentional  
3 wrongful conduct by Defendants. At all relevant times, Defendants knew that the copyright laws of the  
4 United States required Defendants to obtain permission from the holders of copyrights in articles and  
5 literary works (hereinafter "works") protected by copyright prior to copying and selling copies of said  
6 works. Notwithstanding this knowledge, for years Defendants have wilfully disregarded the copyright  
7 laws by continuously and systematically copying and selling copyrighted works without the copyright  
8 holders' prior permission or authorization.

9 2. In furtherance of this unlawful conduct, Defendants have gone to great length  
10 to cover up and conceal such infringing and unlawful activities by making knowingly false written and  
11 verbal representations to the public that its business practices are in full compliance with copyright laws

12 3. By engaging in extensive, systematic, and continuous acts of copyright  
13 infringement, the Defendants have created the world's largest magazine and journal article delivery  
14 service, earning Defendants millions of dollars in revenue and profits.

15 4. Plaintiffs in this action are owners of copyrights in and to works that have been  
16 offered for sale, copied, and sold by Defendants without the Plaintiffs' authorization, prior permission,  
17 and compensation to them.

18 5. Plaintiffs, on their own behalf, and on behalf of the classes of persons similarly  
19 situated and defined below, seek damages, injunctive relief and restitution. Specifically, Plaintiffs seek  
20 compensatory and statutory damages caused by Defendants' infringement of the Plaintiffs' copyrights,  
21 an injunction from this Court that bars the Defendants from continuing to offer for sale, to copy, and to  
22 sell Plaintiffs' copyrighted works without permission or authorization, restitution and other equitable  
23 remedies.

24 PARTIES

25 6. Plaintiff Joan Ryan is a resident of Ross, California. Plaintiff Ryan is freelance  
26 author and owner of a copyright in at least one published work which was subsequently offered for sale,  
27 copied, and sold by Defendants without Plaintiff Ryan's prior permission or authorization and without  
28 compensation to Plaintiff Ryan. An application for registration in at least one of Plaintiff Ryan's works

1 copied and sold by Defendants without Plaintiff Ryan's permission is pending before the United States  
2 Copyright Office.

3 7. Plaintiff Jim Tunney is a resident of Carmel-by-the-Sea, California. Plaintiff  
4 Tunney is a freelance author and owner of a United States copyright registration in at least one published  
5 work which was subsequently offered for sale, copied, and sold by Defendants without the prior  
6 permission or authorization of Plaintiff Tunney and without compensation to Plaintiff Tunney.

7 8. Plaintiff Lyn Hejinian is a resident of Berkeley, California. Plaintiff Ronald  
8 Silliman is a resident of Paoli, Pennsylvania. These plaintiffs are freelance authors and the joint  
9 copyright holders of a United States copyright registration in at least one published work which was  
10 subsequently offered for sale, copied, and sold by Defendants without Plaintiffs Hejinian or Silliman's  
11 prior permission or authorization and without compensation to Plaintiffs Hejinian or Silliman.

12 9. Plaintiff Arlie Russell Hochschild is a resident of San Francisco, California.  
13 Plaintiff Hochschild is a freelance author and owner of a copyright in at least one published work which  
14 was subsequently offered for sale, copied, and sold by Defendants without Plaintiff Hochschild's prior  
15 permission or authorization and without compensation to Plaintiff Hochschild. An application for  
16 registration in at least one of Plaintiff Hochschild's works copied and sold by Defendants without  
17 Plaintiff Hochschild's permission is pending before the United States Copyright Office.

18 10. CARL CORPORATION (hereinafter "CARL") is a Colorado corporation with  
19 a principal office at 3801 East Florida Avenue, Denver, Colorado 80210.

20 11. THE UNCOVER COMPANY (hereinafter "UNCOVER") is a business entity  
21 whose form is unknown. Plaintiffs are informed and believe and thereupon allege that CARL maintains  
22 and operates the business under the fictitious name THE UNCOVER COMPANY; that UNCOVER is  
23 a subsidiary or affiliated corporation; and that UNCOVER is a partnership in which CARL is a partner.

24 12. KNIGHT-RIDDER INFORMATION, INC., (hereinafter "KRI") is a California  
25 corporation with a principal address at 2440 W. El Camino Real, Mountain View, California 94040  
26 (hereinafter "KRI"). CARL and UNCOVER are wholly owned by KRI.

27 13. UNCOVER, CARL and KRI maintain and operate a large magazine and journal  
28 article database and document delivery service. The database contains over eight million separate

1 magazine and journal article listings which can be identified by consumers through the Internet. For  
2 fee paid to Defendants, usually charged on a per article basis, consumers can obtain full text copies of  
3 any articles of interest.

4 14. At all times material herein, Defendants CARL and KRI had the power to and did  
5 control the conduct of UNCOVER, to direct the conduct of UNCOVER, and to police the conduct of  
6 UNCOVER. Defendants CARL and KRI knew of and participated in the infringing activity of  
7 UNCOVER and derived a substantial financial benefit therefrom.

8 15. At all times mentioned herein, each of the Defendants was an agent, servant  
9 employee, and/or joint venturer of each of the remaining defendants, and was at all times acting within  
10 the course and scope of such agency, service, employment and/or joint venture, and each Defendant has  
11 ratified, approved, and authorized the acts of each of the remaining Defendants with full knowledge of  
12 said acts.

13 **JURISDICTION AND VENUE**

14 16. This is an action for injunctive relief and damages arising under the copyright  
15 laws of the United States.

16 17. This Court has original jurisdiction of the subject matter of the copyright  
17 infringement claim under 17 U.S.C. § 101 *et seq.*, with jurisdiction vested in this Court pursuant to  
18 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (acts of Congress relating to  
19 copyrights).

20 18. This court has personal jurisdiction over the Defendants. Defendants  
21 continuously and systematically market and sell their database and article delivery services to consumers  
22 located within this Judicial District. Defendant KRI also maintains a principal office in this Judicial  
23 District. Defendants' relationship with the State is therefore sufficient to make it reasonable for  
24 Defendants to defend the action in this Judicial District.

25 19. Plaintiffs allege that venue properly lies in this Judicial District pursuant to  
26 28 U.S.C. § 1391(b)(2) and (c) because the Defendants have engaged in substantial acts of infringement  
27 within this Judicial District, and that such acts have resulted in the infringement alleged in this  
28 Complaint.

1 **CLASS ALLEGATIONS**

2 20. Plaintiffs bring this action on behalf of themselves and all others similarly  
3 situated, as members of the proposed class. The general class (hereinafter "the Class") that the  
4 representative Plaintiffs in this action seek to represent is composed of the following:

5 All persons and/or entities who at the time of the filing of this Complaint, own a  
6 registered copyright, or own the copyright and have filed an application for registration,  
7 in at least one work that was created and first published after January 1, 1978, which,  
8 without their permission or authorization, was copied and sold by Defendants through  
9 UNCOVER, UNCOVER EXPRESS, or any other similar database and document  
10 delivery service operated by Defendants. Excluded from the class are (1) the Defendants  
11 in this Action, any entity in which Defendants have a controlling interest, any employees,  
12 officers, or directors of Defendants, and the legal representatives, heirs, successors, and  
13 assigns of Defendants or Defendant's employees, officers, or directors.

14 21. The Class is further divided into two subclasses as follows:

15 a. Subclass 1: All persons or entities who are members of the general  
16 Class and who own at least one registered copyright with an effective registration date  
17 that is earlier than the commencement of an act of infringement committed by  
18 Defendants, or, that was registered within three months after the first publication of the  
19 work.

20 b. Subclass 2: All persons or entities who are members of the  
21 general Class and who own at least one registered copyright with an effective registration  
22 date that is later than the commencement of an act of infringement committed by  
23 Defendants, and, that was not registered within three months after the first publication  
24 of the work.

25 c. Subclass 3 All persons or entities who are members of the  
26 general Class and who have a pending application for registration with the United States  
27 Copyright Office at the time of the filing of this Complaint.  
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1                   22     This Action has been brought and may properly be maintained as a Class Action  
2 pursuant to Federal Rules of Civil Procedure, Rule 23, et seq.

3                   23.     Numerosity of the Class - Fed. R. Civ. P. 23(a)(1): The persons and/or entities  
4 in the Class are so numerous that the joinder of all such persons is impractical and the disposition of  
5 their claims in a Class Action rather than in individual actions will benefit the parties and the Court.

6                   24.     Existence and Predominance of Common Question of Law and Fact - Fed. R. Civ.  
7 P. 23(a)(2) & 23(b)(3). There is a well-defined community of interest in the questions of law and fact  
8 involved affecting the plaintiff Class. Questions of law and fact common to the Class include, but are  
9 not limited to, the following:

10                   a.     Whether Defendants' continuous and systematic offering for sale,  
11 copying, sale and delivery of the Plaintiffs' and the Class's works constitute violations  
12 of Federal Copyright laws;

13                   b.     Whether Defendants acted willfully, recklessly or negligently with  
14 respect to the acts complained of herein and the rights of the Plaintiffs and the Class;

15                   c.     Whether Plaintiffs and the Class are entitled to damages,  
16 restitution and/or injunctive relief, as requested herein.

17                   These questions of law and fact predominate over questions that affect only individual  
18 Class members.

19                   25.     Typicality - Fed. R. Civ. P. 23(a)(3). The claims of Plaintiffs are typical of those  
20 of the Class, and Plaintiffs will fairly and adequately represent the claims and interests of the Class.

21                   26.     Adequacy of Representation - Fed. R. Civ. P. 23(a)(4): Plaintiffs are adequate  
22 representatives of the Class and will fairly and adequately protect the interests of the Class. Plaintiffs'  
23 interests do not in any way conflict with the interests of the members of the Class which they seek to  
24 represent. Plaintiffs are committed to the vigorous prosecution of this action and have retained  
25 competent counsel experienced in complex class action litigation and experienced in Federal Copyright  
26 laws and actions to represent them. Plaintiffs anticipate no difficulty in the management of this litigation  
27 as a Class Action.  
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1           27.    Superiority - Fed. R. Civ. P. 23(b)(3): A Class Action is the best available  
2 method for fair and efficient adjudication of this controversy. The members of the Class are so  
3 numerous that the joinder of all members is impracticable, if not impossible. Since the damages suffered  
4 by individual Class members, while not inconsequential, may be relatively small, the expense and  
5 burden of individual litigation make it impractical for members of the Class to seek redress individually  
6 for the wrongful conduct alleged herein. Should separate actions be required to be brought by each  
7 individual member of the Class, the resulting multiplicity of lawsuits would cause undue hardship and  
8 expense on the Court and the litigants. The prosecution of separate actions would also create a risk of  
9 inconsistent rulings which might be dispositive of the interests of other Class members who are not  
10 parties to the adjudications and/or may substantially impede their ability to protect their interests.

11           28.    Because of the nature of the wrongful conduct alleged herein, and the wilful acts  
12 of Defendants to cover up and conceal their infringing activity by claiming full copyright compliance  
13 in their marketing and advertising materials, most acts of infringement by Defendants will go unnoticed  
14 or undiscovered by the individual Class members. A Class Action is therefore the best method to assure  
15 that the wrongful conduct alleged herein is remedied, and that there is a fair, efficient, and full  
16 adjudication of this controversy.

17           29.    In addition, and/or alternatively, the Class may be certified under the provisions  
18 of Fed. R. Civ. P. 23(b)(1) and (b)(2) because:

19           a.    The prosecution of separate actions by the individual members of  
20 the Class would create a risk of inconsistent or varying adjudication of novel and  
21 important legal issues, with respect to individual Class members which would establish  
22 incompatible standards of conduct for Defendants.

23           b.    The prosecution of separate actions by individual Class members  
24 would create a risk of adjudications with respect to them which would, as a practical  
25 matter, be dispositive of the interests of other Class members not parties to the  
26 adjudications, or substantially impair or impede their ability to protect their interests; and

27    ///

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1 c. Defendants have acted or refused to act on grounds generally  
2 applicable to the Class, thereby making appropriate final and injunctive relief with  
3 respect to the members of the Class as a whole.

4 **GENERAL ALLEGATIONS**

5 30. In or about 1991, the Defendants commenced a magazine and journal article  
6 delivery service under the names CARL CORPORATION and THE UNCOVER COMPANY. Since  
7 that time, the Defendants have compiled a group of databases containing over Eight Million (8,000,000)  
8 article listings. These databases can be accessed through the Internet by consumers at no charge, and  
9 searched by subject matter, author name, and article or periodical title. After viewing the database,  
10 consumers can purchase full text copies of articles of interest for a designated fee. Copies of the full text  
11 articles are delivered to customers of the Defendants by facsimile within twenty-four hours, or through  
12 Defendants' UNCOVER EXPRESS service within one hour. Defendants' own description of its  
13 business is contained in a brochure entitled *The Article Access Solution That Delivers*, as follows:

14 "Uncover offers the most convenient and effective way to access this  
15 material with a periodical database that indexes 17,000 multi disciplinary titles  
16 and over eight million article citations. Five thousand new citations are added  
17 daily with articles appearing in UnCover at the same time the periodical is  
delivered to your library or newsstand. You can search the database at no cost  
and place online orders for articles of interest and have them in your hands in no  
time at all.

18 A powerful search engine allows you to search the UnCover database by topic,  
19 author name, or periodical title. Once an article of interest is located, you can  
20 order and pay for it online. Payment options include credit card (American  
Express, MasterCard, Visa) or deposit or monthly billing account. If you order  
a high volume of articles, you can purchase optional passwords to receive a  
discount on every order.

21 The full-text of an article is delivered within 24 hours-often much sooner-to a fax  
22 number you specify.

23 Need Articles Even Sooner?

24 Use Uncover Express, a companion database to the full Uncover  
25 database, that indexes over 500,000 articles deliverable via fax within one hour."

26 31. The current fee charged by Defendants to deliver a single copy of a full text article  
27 is \$10.00. Defendants also offer a multitude of multi-user and high volume user fees, with annual fees  
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1 ranging from \$900.00 to \$10,000.00 coupled with a reduced per article delivery fee of \$6.50 (hereinafter  
2 collectively referred to as the "Delivery Fees").

3           32. In addition to Delivery Fees, Defendants charge customers a "Copyright Fee."  
4 The amount of the Copyright Fee typically charged ranges from as low as \$1.50 per article copy to a  
5 high as \$17.50 per article copy. Defendants represent that the amount of the Copyright Fee is dependent  
6 upon the arrangement they have with the copyright holder.

7           33. Defendants continuously represent to the public that its article delivery services  
8 are in full compliance with copyright laws. For example, Defendants have placed the following  
9 language in newsletters, brochures, and consumer materials:

10                   "Copyright is collected for every article supplied, so you may rest assured that  
11                   you are in complete compliance with copyright requirements."

12                   "...you [can] rest assured that every article you order from UnCover is in strict  
13                   adherence to copyright law."

14                   "UnCover has a reputation for staunch copyright compliance."

15 As more fully alleged below, defendants' representations are false.

16           34. In some situations, Defendants have entered into contracts and licenses with  
17 magazine and journal publishers that purportedly grant Defendants the right to copy and sell articles  
18 written by contributing freelance authors, when in fact, the Defendants knew, or reasonably should have  
19 known, that the magazine and journal publishers did not have the right or authorization to grant  
20 Defendants the right to copy and sell the contributing authors' works through its delivery services.

21           35. In those situations where the Defendants have no permission or authorization  
22 from the copyright holder to copy and sell an article, they nonetheless sell a copy of the full text article  
23 and charge the consumer an arbitrary "Copyright Default Fee" in the amount of \$3.00 per article copy.

24           36. Defendants have copied and sold, and continue to copy and sell, copies of works  
25 protected by copyright without the copyright holders' prior permission or authorization.

26           37. Defendants have copied and sold, and continue to copy and sell, copies of works  
27 which Defendants knew were protected by copyright, without the copyright holders' prior permission  
28 or authorization.

28 ///

1           38. Defendants have copied and sold, and continue to copy and sell, copies of work  
2 which Defendants should reasonably have known were protected by copyright, without the copyrigh  
3 holders' prior permission or authorization.

4           39. Defendants continue to knowingly engage in acts of copyright infringement by  
5 copying and selling copyrighted works without the copyright holders' prior permission or authorizatio  
6 or compensation to the copyright holders.

7           40. Defendants' acts have caused, and unless restrained, will continue to cause  
8 Plaintiffs and the Class to suffer substantial damages and irreparable injury through, *inter alia*,

- 9                   a. continued infringements of their copyrighted works;
- 10                   b. depreciation of value and ability to license and sell their  
11                   copyrighted works; and
- 12                   c. damage to their goodwill and reputation.

13           41. Plaintiffs and the Class have suffered damages from these unlawful practices of  
14 Defendants, and believe that they will continue to suffer such damages unless Defendants are enjoined  
15 and restrained by this Court from infringing their copyrights.

16  
17                                   **COUNT ONE**

18                           **Copyright Infringement in Violation of Title 17 of the United States Code**  
19   **(17 U.S.C. § 101 et seq.)**

20           42. Plaintiffs and the Class members similarly situated, reallege and incorporate by  
21 reference as if fully set forth herein the allegations contained in paragraphs 1 through 41, inclusive, as  
22 if set forth in full as part of Count One.

23           43. Each Plaintiff is the owner of a valid copyright in and to at least one literary work  
24 that has been offered for sale, copied, sold and delivered by the Defendants, for a fee received by the  
25 Defendants, without authorization or prior permission from or compensation to the Plaintiff. Each such  
26 work is an original work of authorship and copyrightable subject matter under 17 U.S.C. § 101 et seq.

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1 Registrations in the name of each Plaintiff have been issued by the United States Copyright Office as  
2 follows:

3	<u>Plaintiff</u>	<u>Work</u>	<u>Registration No.</u>
4	Jim Tunney	<i>Impartial Judgment</i>	TX-2-764-911
	Lyn Hejinian	<i>Leningrad</i>	TX-4-030-063
5	Ronald Silliman	<i>Leningrad</i>	TX-4-030-063

6 An application for a copyright registration has been filed with the United States  
7 Copyright Office on behalf of Plaintiff Hochschild for the work entitled *The Time Bind* and on behalf  
8 of Plaintiff Ryan for the work entitled *Making Headlines*. Registrations in the names of Plaintiff  
9 Hochschild and Plaintiff Ryan for their respective works are expected to issue shortly, and if necessary,  
10 with leave of this Court, Plaintiffs will amend this Complaint to include the registration numbers of  
11 those works. Plaintiffs are the exclusive owners in and to the copyrights associated with the works  
12 alleged herein.

13 44. Each work was created and first published after January 1, 1978.

14 45. Defendants had access to each work.

15 46. The Defendants copied and sold each work without prior permission or  
16 authorization from the Plaintiffs or an authorized agent or licensee of Plaintiffs.

17 47. Defendants copied and sold identical or substantially similar copies of each work.

18 48. As a result of Defendants' acts of copyright infringement and the foregoing  
19 allegations, the Plaintiffs have suffered damages as more fully set forth in the Prayer of this Complaint.

20 **PRAYER**

21 WHEREFORE, Plaintiffs pray for relief and that judgment be entered against all  
22 Defendants as follows:

23 1. Defendants, their officers, agents, employees, servants, representatives and all  
24 persons acting in concert or privity with them, be preliminarily and permanently enjoined from offering  
25 for sale, copying, or selling any copyrighted works in connection with Defendants data base and article  
26 delivery services known as UNCOVER, UNCOVER EXPRESS, or any other similar services owned  
27 or operated by Defendants, without the express written permission or authorization of the copyright  
28 owners in and to each and every copyrighted work;

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2. Defendants, their officers, agents, employees, servants, representatives and persons acting in concert or privity with them, be preliminarily and permanently enjoined from continuing to perform in any manner further acts of copyright infringement;

3. Defendants be required to account and pay to Plaintiffs and the Class all profits derived by Defendants as a result of the activities complained of herein;

4. Defendants be required to pay statutory damages by virtue of 17 U.S.C. § 504 Plaintiffs Hochschild, Tunney, Hejirian, Silliman, and Subclass 1 members so similarly situated;


5. Defendants be required to pay to Plaintiffs and the Class their actual damages sustained as a result of the activities complained of herein in an amount to be proven at trial;

6. Defendants be required to pay Plaintiffs' and the Class's costs and reasonable attorneys' fees; and

7. For such other and further relief as this Court deems reasonable and proper.

Dated: October ~~22~~ 1997

Respectfully submitted,  
**ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**

By   
John D. Shuff  
Janette L. Skeels  
A. J. De Bartolomeo  
Attorneys for Plaintiffs

Dated: October ~~22~~ 1997

Respectfully submitted,  
**LAW OFFICES OF DANIEL A. REIDY**

By   
Daniel A. Reidy  
Attorney for Plaintiffs