



Online Ethics Center
FOR ENGINEERING AND SCIENCE

Piracy Case May Set Precedent

Year

1994

Description

First part of a two part article discussing the details of the file-sharing network as well as the strong possibility that this case will set a precedence for these types of crimes.

Body

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David M. LaMacchia '95 will be arraigned in federal court today on one count of conspiracy to commit wire fraud. LaMacchia is accused of using a pair Athena workstations to let Internet users distribute copyrighted software.

The case has prompted discussions, many taking place on the campus network or across the Internet, about the specific charges brought against LaMacchia and a range of wider legal issues which the case may influence.

Among the issues raised by the case are the rights and responsibilities of people who run electronic "bulletin boards" and gaps in the current copyright laws.

U.S. Attorney Donald K. Stern said, "In this new electronic environment it has become increasingly difficult to protect intellectual property rights. Therefore, the government views large scale cases of software piracy, whether for profit or not, as serious crimes and will devote such resources as are necessary to protect those rights."

While the case centers around the charge that the site run by LaMacchia was used to distribute more than \$1 million in copyrighted software, the crime LaMacchia is charged with has little to do with software piracy, according to Mike Godwin, staff counsel to the Electronic Frontier Foundation.

The EFF was established in 1990 to protect basic constitutional rights as new communications technologies emerge. It sponsors legal cases where online civil liberties have been violated, but has not indicated that it will sponsor LaMacchia.

The criminal copyright laws cover cases where someone has made a profit from making illegal copies of software, but the government does not contend that LaMacchia made a profit. Instead the government charged LaMacchia under the more widely applicable wire fraud statute, Godwin said.

Case could set precedent

The case has implications for how the principles of freedom of speech and the press will be applied to speech on computer networks, according to LaMacchia's lawyer, Harvey A. Silverglate.

The decision in the case could affect how existing laws are interpreted in criminal cases involving computer networks. The quickly changing technologies involved in the use of computer networks have outpaced the legal system's ability to develop case law, according to Professor Randall Davis, associate director of the Artificial Intelligence Laboratory.

The legal system's slow response is caused partly by the reliance on accumulating a body of case law about particular laws, Davis explained. The process of building up

a series of judicial interpretations of how a statute applies to particular cases takes time.

Because there have been relatively few cases involving the rights of bulletin board users, the courts have had little opportunity to study how the law applies to cases like LaMacchia's.

"Fast-moving technology drives the legal system a bit batty," Davis said. "If you ask what are the formal legal rights and responsibilities of a computer bulletin board operator ... no one knows."

Specifically, the case could address "a gap [the government] perceives in the law," Godwin said. "If we can make the wire fraud act address it, then we would have this seamless web of federal statutes addressing copyright violation. Otherwise you have this gap of people who are not doing it for profit."

Despite the government's perceived need for a precedent, Godwin does not think that LaMacchia would make a good case for testing how the wire fraud law will apply to electronic networks.

"I think criminal cases are generally lousy cases," Godwin said. "Let's face it. The average person on the street thinks that a person in a criminal case is guilty. It's much better to have a civil suit where your guy is presumed innocent."

Philip Greenspun G, a student at the AI Lab, helped establish a defense fund to raise money for LaMacchia. The fund was established because "an individual involved in a constitutional test case is faced with the certainty of staggering legal bills as well as the possibility of imprisonment and fines," according to an electronic document provided by Greenspun.

According to a list of contributors maintained by Greenspun, the fund had raised nearly \$6,000 by last night. A majority of the 31 named contributors are students at MIT.

Public misconception

Much of the public attention to LaMacchia's case has focused on whether or not LaMacchia is guilty of the charge made in the indictment. Dozens of Usenet

messages and letters to *The Boston Globe* have tried to judge LaMacchia's alleged actions, based on the charges made by the government.

Speculation about the trial's results illustrates a common difference between the legal community and the lay community, particularly the kind of people you find at MIT, Davis explained.

"The legal system at large has an enormous faith in this case law process. If you ask about a novel situation, a legal person will say, "We don't know yet. Let's wait and see [what the courts say]." ... Engineers and scientists will tend to argue about what is right. They say, 'Let's figure this thing out,' " Davis said.

Godwin agreed, noting that scientists and engineers often lack a good understanding of the specific laws and precedents involved in a case. "Almost everything that a scientist or engineer at MIT says about the law is wrong," Godwin said.

"People look at the alleged statement of the facts and say, 'That's wrong.' We know it's wrong to trade in unlicensed software, but the proceeding is whether he violated a statute," Godwin said.

Particularly misleading in this case is the public misconception that the case is at heart a software piracy case, Silverglate explained.

The normal protection for copyright software does not apply in this case, Godwin explained. "One of the elements of the criminal copyright section of the code is that you have to be doing it for profit," Godwin said.

Silverglate explained, "Both sides in the case are proceeding, and will proceed, on the assumption that it is not lawful to make and distribute copies of copyrighted software without paying a licensing or royalty fee."

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