



Online Ethics Center
FOR ENGINEERING AND SCIENCE

A Response to "Stealing In Cyberspace"

Author(s)

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Description

A letter written by Harvey Silvergate, attorney for David LaMacchia, in response to an editorial in the Boston Globe entitled 'Stealing in Cyberspace'.

Body

Dear Editor:

Your editorial ("Stealing in cyberspace") on the David LaMacchia prosecution demonstrates a surprising (for a newspaper) lack of understanding of the First Amendment issue in the case.

The issue is not, as posed in your editorial, whether the First Amendment "sanctions the free dissemination of someone else's copyrighted material." (The Globe ignores the fact that LaMacchia is *not even charged* with a criminal copyright violation -- because there is no such violation here.) Rather, the issue is whether the systems operator (Sysop) of a computer bulletin board system (BBS) devoted to a wide variety of communicative uses by people of varying intentions and purposes, some good and some questionable, may be held criminally liable under the wire fraud statute for the actions of those who use the system for arguably improper purposes.

Consider the newspaper editor who accepts classified ads for dating services, knowing that some are covers for prostitution rings. Should the editor be held criminally responsible every time one of the prostitution rings is uncovered, on the theory that the newspaper "knowingly allowed" itself to be used to "facilitate" prostitution? The First Amendment says "no."

You say that "cyberspace is not amoral" and that "the laws of the earth" should apply. That's exactly the point -- the First Amendment, which applies to *print* media here on earth, should apply equally to *electronic* media. And the copyright laws should govern the case, not some tortured interpretation of the vague wire fraud statute. All David LaMacchia wants is to be protected to the same extent as the editor of the Globe.

Sincerely,

[signed] Harvey A. Silverglate, Attorney for David LaMacchia

Notes

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