



Online Ethics Center  
FOR ENGINEERING AND SCIENCE

# Government Will Not Appeal Case

## Author(s)

Sam Hartman

## Year

1995

## Description

An article about the government's decision not to appeal a federal judge's ruling on the LaMacchia case and about the need for legislative revision to create more severe laws against software piracy.

## Body

U.S. Attorney Donald K. Stern decided Friday not to appeal a federal court judge's dismissal of the wire fraud case against David M. LaMacchia '95.

According to a statement, Stern decided not to appeal the case in part to avoid a delay in the legislative process that might lead to new laws more applicable to cases similar to LaMacchia's.

Stern's decision comes after the Dec. 28 dismissal of the wire fraud charges against LaMacchia. The indictment alleged that LaMacchia ran a service on Athena Computing Environment workstations that allowed Internet users to obtain copyrighted software.

"Judge [Richard G.] Stearns' opinion underscores the desirability of prompt congressional action which would remove any uncertainty that willful, multiple

infringements of copyrighted software, even where there is no commercial motive, is illegal," Stern said in the statement.

"An appeal of this case, whether or not ultimately successful, might serve to delay the legislative process," Stern said.

LaMacchia and his family were pleased with the U.S. Attorney's decision, according to a statement released Friday.

"I wouldn't wish this on my worst enemy; the stress is tremendous," said Brian A. LaMacchia G, David's older brother.

The case's court proceedings are over, but it is not clear if LaMacchia will now have to go before the Institute's Committee on Discipline.

In an official statement, Director of the MIT News Office Kenneth D. Campbell said the Institute's policy is "to await the conclusion of a legal case before it considers any internal disciplinary action." Campbell said that under MIT policy, the Institute does not comment on whether a disciplinary policy has been brought against a student.

However, Vice President for Information Systems James D. Bruce ScD '60 said in an interview last spring that such a proceeding had been instigated against LaMacchia, but it was suspended when charges were filed.

## **Congress should face liability**

"We hope and trust that when Congress takes up the question that the U.S. Attorney is posing that Congress be sensitive to the important civil liberties question posed by the LaMacchia prosecution," lawyers for LaMacchia said in a press release.

Congress should consider "whether a systems operator of a computerized bulletin board system, such as David LaMacchia, who does not himself upload, download, copy, nor distribute software, but who merely operates the system, should be designated as a criminal," the lawyers said.

The need to protect the operators of file servers from liability for the actions of those who use their servers "is at least as important as the need to protect copyright holders from unfair losses of revenue," the lawyers said.

Brian LaMacchia said he would be concerned if Congress adopted the U.S. Attorney's suggestion of criminalizing "multiple willful infringements" of copyright. "I think that would lead to criminalizing much of the Internet," he said.

However, "I'm certainly not against Congress drafting good legislation in this area," Brian LaMacchia said. The elder LaMacchia said that currently, the issue of systems operator liability "is still very murky."

"Is the maintainer of an unmoderated mailing list responsible when a user sends a copyrighted newspaper article to it?" Brian LaMacchia asked. "Again, you wouldn't think so, but depending on what Congress does that could end up being the case.

Brian LaMacchia believes that Congress should adopt a liability system where system operators' liability is proportional to their control. Internet service providers should have very little liability, while publishers have significantly more, he said.

"The recent events did not lead us to any new policies, definitions, or procedures," said Director of Academic Computing Services Gregory A. Jackson '70. "In general we're very comfortable that our policies draw the right lines between proper and improper use of Athena workstations and MITnet, and that our procedures for finding and dealing with misuse are appropriate."

However, Jackson said that the policies are not fixed and there is room for improvement.

If an IS staff member finds a public file server while browsing the network, "we often glance at its public contents to see whether they present a problem," Jackson said. If there is some concern, a note is often sent to the owner of the machine, he said.

"If the impropriety appears non-accidental - for example, if it continues after warning, or if there have been steps to disguise and conceal the service - then we may involve campus or outside authorities," Jackson said. A file server running on a public Athena workstation, like the server LaMacchia was alleged to have run, is always improper use of Athena, he said.

"MITnet and Athena public workstations are shared resources intended to advance MIT's basic educational and research goals," Jackson said. "Anyone who redirects those shared resources to private or external purposes is depriving others in the community of resources that are rightfully the community's," he said.

"This is especially true when staff, our scarcest resource, must devote extensive time to undoing and otherwise dealing with improper use."

## **Notes**

Author: Sam Hartman.

This article may be freely distributed electronically, provided it is distributed in its entirety and includes this notice, but may not be reprinted without the express written permission of The Tech. Write to [archive@the-tech.mit.edu](mailto:archive@the-tech.mit.edu) for additional details.

## **Rights**

Use of Materials on the OEC

## **Resource Type**

Case Study / Scenario

## **Topics**

Privacy and Surveillance  
Security

## **Discipline(s)**

Computer Sciences  
Computer, Math, and Physical Sciences

## **Publisher**

Online Ethics Center