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# David LaMacchia cleared; Case Raises Civil Liberties Issues

## Description

An article about the dismissal of the government's case against LaMacchia, along with the future implications of the decision and the governments attempt to change legislation in order to broaden the laws dealing with copyright infringement.

## Body

**Author(s): Jeremy Hylton**

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[Not a case of software piracy](#)

[Attempt to broaden interpretation](#)

[Prosecutor will turn to legislation](#)

[MIT may take disciplinary action](#)

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For the typical MIT student, an average semester brings an un-average stress level. From problem sets to final exams to job interviews, the pressure can be intense.

But for David M. LaMacchia '95 the pressure was unusually high - even by MIT standards.

On April 7, LaMacchia was indicted on one count of conspiracy to commit wire fraud, a crime that carries a maximum sentence of five years in prison and a \$250,000 fine. The pressure continued for LaMacchia until Jan. 27, when he learned that prosecutors would not appeal a judge's Dec. 28 decision to dismiss the case.

"I'm of course relieved. The past year has been extremely stressful for me, my family, and the people I live with," explained LaMacchia, a senior in the Department of Electrical Engineering and Computer Science. "The dismissal removes some of the weight from my shoulders that I've unwillingly been carrying around for the past year."

"I wouldn't wish this on my worst enemy; the stress is tremendous," said David's older brother, Brian, a graduate student in EECS.

Federal prosecutors charged that LaMacchia ran a service on a pair of Athena Computing Environment workstations that allowed users across the Internet to exchange copies of commercial software. The site facilitated the distribution of over \$1 million in copyrighted software, according to the U.S. Attorney's office.

[Back to Top](#)

## **Not a case of software piracy**

The case drew wide publicity, including a segment on the ABC television news program *Nightline*. Despite the publicity, there was often confusion about what exactly was at stake in the case.

Although LaMacchia was alleged to have helped other users make illegal copies of software, there was no claim that he profited from the activity - and current laws only attach criminal penalties to copyright infringement done for profit.

"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 [about] whether he violated a statute," explained Mike Godwin, staff counsel to the Electronic Frontier Foundation, a cyberspace civil liberties group.

Instead of charging LaMacchia under criminal copyright laws, the U.S. Attorney chose to prosecute under the more widely applicable wire fraud laws, written in

1952 to apply to communication over telephone lines.

The case was ultimately dismissed by U.S. District Judge Richard G. Stearns because of the bad fit between existing copyright laws and the activity LaMacchia was alleged to have perpetrated.

In his decision to dismiss the case, Stearns wrote that the government's "interpretation of the wire fraud statute would serve to criminalize the conduct of not only persons like LaMacchia, but also the myriad of home computer users who succumb to the temptation to copy even a single software program for private use."

[Back to Top](#)

## **Attempt to broaden interpretation**

U.S. Attorney Stern clearly intended to broaden the interpretation of the wire fraud statute to apply to many software piracy cases. "We need to respond to the culture that no one is hurt by these thefts and that there is nothing wrong with pirating software," 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," Stern continued.

The case addressed a gap the government saw 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," Godwin said in an April interview.

Many civil libertarians - and LaMacchia's lawyer Harvey A. Silverglate - saw broader implications for the case and whether operators of computer services could be held responsible for the actions of the users of their service.

Godwin said it was clear that the prosecution was trying "to create a conspiracy to make him liable for everyone who used that site."

Because the case was dismissed, it will set a precedent that makes such an extension of the law less likely. "This case sets a precedent largely because it is the first reported case dealing with an indictment for Internet copying and distribution of

copyrighted software under the federal wire fraud statute," Silverglate said.

"It is important because it makes clear that the only conduct that is a federal crime is conduct that the Congress says in the copyright statute is criminal," Silverglate continued.

[Back to Top](#)

## **Prosecutor will turn to legislation**

In deciding not to appeal the case, Stern said that he would pursue legislative approaches to extending copyright laws to apply to cases where there is no commercial motive. "An appeal of this case, whether or not ultimately successful, might serve to delay the legislative process," Stern said.

Brian LaMacchia remained skeptical of the U.S. Attorney's hope that "multiple, willful infringements of copyright" be criminalized. "I think that would lead to criminalizing much of the Internet," he said.

Silverglate also expressed concern about future legislation as it related to the liability of system operators. "Someone who does what David LaMacchia is alleged to have done should not be turned into a criminal by whatever law Congress writes, because a [system operator] should not be held criminally responsible for what the users of the system do," Silverglate said.

Although he dismissed the case, Judge Stearns also criticized the behavior described in the indictment. "If the indictment is to be believed, one might at best describe his actions as heedlessly irresponsible and at worst as nihilistic, self-indulgent, and lacking in any fundamental sense of values," Stearns wrote.

[Back to Top](#)

## **MIT may take disciplinary action**

LaMacchia no longer faces criminal charges, but he must still face the consequences of an internal MIT disciplinary process that were put on hold while legal proceedings were underway.

According to the indictment, LaMacchia ran a file server on a pair of Athena workstations from Nov. 21, 1993 until Jan. 5, 1994. The Athena rules of use make clear that such use of Athena resources is improper.

"MITnet and Athena public workstations are shared resources intended to advance MIT's basic educational and research goals," said Gregory A. Jackson '70, director of academic computing services for Information Systems. "Anyone who redirects those shared resources to private or external purposes is depriving others in the community of resources."

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

Although Institute policy prohibits administrators from commenting on whether disciplinary action is being considered against a student, officials have made it clear that they believe LaMacchia was responsible for running the file servers.

The servers were first detected over the winter break at the end of 1993, and IS began to monitor the use of the machines, according to Professor James D. Bruce ScD '60, vice president for Information Systems.

From the monitoring that was conducted, IS was able to determine that LaMacchia was responsible for the servers, Bruce said.

[Back to Top](#)

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