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# Judge Dismisses Case against LaMacchia

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## Description

An article about the dismissal of the governments case against LaMacchia and the international implications of this decision.

## Body

On Dec. 28, a federal court judge dismissed the case against David M. LaMacchia '95, who had been indicted last April on the criminal charge of conspiracy to commit wire fraud.

According to the indictment and a statement from the U.S. Attorney's office, LaMacchia was alleged to have facilitated the illegal copying and worldwide distribution of over \$1 million of copyrighted software through a server he ran on Athena workstations.

In a decision expected to have important legal ramifications, District Judge Richard G. Stearns ruled that although his conduct was questionable, LaMacchia broke no law.

In his written statement, Stearns said that in this case, existing wire fraud statute did not apply, and the case was more properly a matter for copyright law. However, even that law does not make LaMacchia's conduct criminal, he said.

"[LaMacchia] did not do what he was alleged to have done for profit or commercial gain, and the copyright law makes criminal only infringements for profit or commercial gain," said LaMacchia's attorney Harvey A. Silverglate.

In his decision to dismiss the case, Stearns expressed concern 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."

While he found LaMacchia's actions legal, Stearns reserved harsh words for the Electrical Engineering and Computer Science major. "If the indictment is to be believed," he wrote, "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.

"Criminal as well as civil penalties should probably attach to willful, multiple infringements of copyrighted software even absent a commercial motive on the part of the infringer," Stearns said.

For their part, the prosecution "may well appeal," according to U.S. Attorney Donald K. Stern, who was quoted in *The Boston Globe* on Dec. 29. According to legal procedure, the government has 30 days from the date of the judgment to appeal, Silverglate said.

## **For LaMacchia, guarded relief**

"I'm of course very relieved. The past year has been extremely stressful for me, my family, and the people I live with," LaMacchia said. "The dismissal removes some of the weight from my shoulders that I've unwillingly been carrying around for the past year."

"The whole family's sort of relieved, but we're still anxious because [the government] can still appeal," said Brian A. LaMacchia G, David's brother. For the

time being, David is "just going to concentrate and work towards graduation," he said.

"I want to make it clear that I don't want to be a celebrity," LaMacchia said. "I'm not happy about it, and I would like to return to anonymity like other MIT students."

LaMacchia comes away from his experience with advice for caution. "What's the message people should get from my experience?" he said. "I'd say if someone is considering doing something that a reasonable person might be unsure if it's a violation of the law, either civil or criminal (or of MIT's rules), then don't do it without checking first."

## **Case raises larger questions**

Speculation over what kind of a precedent the case may set has won it international attention.

"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 said. "It is not up to prosecutors to decide what they want to make criminal, and then indict people by resorting to the very broad and general federal interstate fraud laws, including, here the wire fraud laws."

Moreover, the case opens up discussion over how the federal government should regulate Internet traffic.

"I think that Congress should and will deal with the question of the transfer of copyrighted material over the Internet," Silverglate said. "Mind you, it is already a copyright crime to infringe copyrighted material for profit or commercial gain. The question to be resolved by Congress is whether copying such material without profit involved, should be a crime.

"My own personal view is that someone who does what David LaMacchia is alleged to have done - that is, be a [system operator] of a [bulletin board system], and

operate the system, but who does not himself or herself upload, download, or copy software - should not be turned into a criminal by whatever law Congress writes, because a SYSOP should not be held criminally responsible for what the users of the system do with the system," Silverglate said.

Silverglate also said that from what he has seen, MIT did not treat LaMacchia fairly. "Rather than let LaMacchia know that his conduct apparently violated MIT's rules and, as MIT then believed, federal criminal law, MIT worked with the [Federal Bureau of Investigation] in order to make a prosecution against one of its own students," he said.

"Students who run afoul of laws, rules, or interpretations of them, are entitled to be educated as to what is lawful and what is right," Silverglate continued. "Instead, MIT collaborated with the FBI to wreck LaMacchia's life. I hope that this case causes a lot of introspection on the part of MIT's administration. Unfortunately, I doubt it will."

## **Notes**

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