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# Judge Considering LaMacchia Motion

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## Description

An article discussing the District Court Judge's consideration of LaMacchia's motion to dismiss the case against him.

## Body

U.S. District Court Judge Richard Stearns is considering the oral arguments made in the David M. LaMacchia '95 case last Friday, and will make a decision on whether or not to dismiss the case, according to Harvey A. Silverglate, one of LaMacchia's attorneys.

Stearns heard the defense's pre-trial motion to dismiss the case, and "took the motion [to dismiss] under advisement, meaning that he will continue to study and ponder the matter" before issuing his legal opinion, Silverglate said.

LaMacchia was indicted last spring for conspiring to commit wire fraud. He allegedly used two Athena workstations to run a server where Internet users could exchange copyrighted software.

In early October, LaMacchia's counsel filed a motion to dismiss the case and a motion to suppress evidence. The wire fraud law was incorrectly applied in this case,

Silverglate said in an interview last month.

The defense has been hopeful that the case would be dismissed on this basis.

"It is a positive sign that the judge refused to set even a tentative trial date or a date to argue the motion to suppress evidence," Silverglate said. "I think [Stearns] did this because he is inclined to grant the motion to dismiss the indictment."

"I continue to feel very strongly that the government cannot proceed under the broad and vague 'wire fraud' laws to prosecute what is at heart a copyright matter," Silverglate said.

The wire fraud charge is a criminal violation, while copyright infringement is a civil violation.

"The government claims that [LaMacchia] committed a civil, but not a criminal, violation," Silverglate said. "If this is so, then how can the government turn it into a crime simply by proceeding under a different statute?"

A spokesperson from the U.S. Attorney's office said that the prosecution would not respond to the hearing until Judge Stearns has made a decision.

In the response, the government presented other cases where the high court "refused to vacate wire fraud convictions premised on copyright violations," such as the 1986 case of *Carpenter v. United States*.

However, according to the recent defense reply, the reason for the different court rulings was because "the property interest in *Dowling* was copyrighted material, while the property in *Carpenter* was non-copyrighted business proprietary information."

"It was the unique nature of copyrighted intellectual property that dictated the different results," the defense added.

## Notes

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details. the Copyright Act "does not preclude enforcement of the conspiracy and wire fraud statutes," according to the response.

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