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U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

July 19, 2016

MR. JOHN GREENEWALD JR.
THE BLACK VAULT
[REDACTED]
[REDACTED]

FOIPA Request No.: 1353676-000
Subject: Electronic Frontier Foundation

Dear Mr. Greenewald:

Records responsive to your request were previously processed under the provisions of the Freedom of Information Act. Enclosed is one CD containing 3 pages of previously processed documents and a copy of the Explanation of Exemptions. This release is being provided to you at no charge.

Additional records potentially responsive to your subject may exist. Please submit a new FOIA request if you would like the FBI to conduct a search of the indices to our Central Records System.

Submit requests by mail or fax to – Work Process Unit, 170 Marcel Drive, Winchester, VA 22602, fax number (540) 868-4997.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S. C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D Hardy", is written over a horizontal line.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

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(Indicate page, name of newspaper, city and state.)

The Boston Phoenix P. 18

Date: 4-15-94
Edition:

Title: Gray matter

CYBERWATCH

Gray matter

MIT software-piracy case won't settle any arguments

by Dan Kennedy

Although the merits of the government's case against an MIT student accused of distributing illegally copied software on his electronic bulletin-board system are being hotly disputed, this much is clear: it makes for a lousy test case.

A federal grand jury indicted David LaMacchia, a 20-year-old student from Rockville, Maryland, and charged him with using MIT's computers to commit wire fraud by distributing more than \$1 million worth of pirated software over the Internet.

Experts say the specifics of the April 7 indictment — that LaMacchia actively assisted in distributing illegally copied software (a charge his lawyers vigorously deny) — make it unlikely the case will resolve complicated issues involving the responsibilities of those who operate bulletin-board systems, known as BBSs. Instead, it

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is more likely to make a small contribution in clarifying how copyright violations ought to be punished in the digital age — especially when, as in LaMacchia's case, there is no profit motive alleged.

"After some time and the accumulation of enough of these cases," says Mitch Kapor, chairman of the Electronic Frontier Foundation (EFF), "if the legal system is working well, the law will evolve incrementally — either through interpretation of existing statutes or the passage of new statutes — and we'll arrive at some new consensus."

So what would make a good test case? One in which the so-called common-carrier concept is clearly at issue. Groups such as the EFF and Computer Professionals for Social Responsibility are pushing the government to adopt laws similar to those regulating telephone companies, which must act as common carriers: they must take all customers and cannot monitor or censor the content of that traffic.

Thus, these activists argue that the system operator, or sysop, of a BBS should be no more liable for arrest for the contents of that board than the chief executive officer of Nynex would be if it were discovered that, say, child pornographers were using

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its lines to peddle their wares.

"A BBS operator should not be held responsible for the content of that BBS. A BBS operator should not be required to know everything that's on their BBS," Howard Rheingold, editor of the *Whole Earth Review*, said at last weekend's Boston Computer Society conference on Computers and Social Responsibility, at UMass/Boston. Rheingold, who spoke from San Francisco by two-way video, is the author of *The Virtual Community*, a book on the emerging on-line culture.

But according to the government's indictment, LaMacchia did far more than act as a common carrier: although he's not accused of stealing the software himself, investigators say he created a way for Internet users worldwide to upload and download pirated goods without revealing their identities, and he publicized the availability of the software — which included such goodies as new versions of WordPerfect.

"Both the scale of the crime and his intent to illegally distribute the software take this far beyond the bounds of the First Amendment," US Attorney Donald Stern said in announcing the indictment. If convicted, LaMacchia could face a prison sentence and be fined up to \$250,000.

In a written statement, though, LaMacchia's lawyers, Harvey Silverglate and David Duncan, deny their client took action to make it easier for people to obtain the cloned programs. Indeed, they intend to rely on a common-carrier defense. "It is not at all clear that a sysop who neither controls what is placed on the system nor profits one cent from any copyrighted software that others upload to and download from the system . . . has committed any crime," they wrote. "In short, this case raises the hotly disputed question of whether the operator of a 'common carrier' may be held criminally responsible for the manner in which others use his communications system."

Mitch Kapor, in an interview with the *Phoenix*, cautioned that he's not familiar with the particulars of the LaMacchia case, but said the issues appear to fall into a gray

area that will only be resolved over time.

"The nature of the medium itself is sufficiently different from, say, print media that you get, in effect, new problems for which there is no direct analogue," he says. For instance, he notes, though it may be illegal for someone to make photocopies of a best-selling novel and give it to his or her friends, in practice very few people do that anyway. "But it's so easy to propagate information around networks," Kapor adds, "that you get kinds of problems that simply didn't exist before."

(By the way: Silverglate, one of LaMacchia's lawyers, is also counsel to the EFF, and a *Phoenix* contributor as well. Kapor says the EFF had nothing to do with Silverglate's taking the case.)

Although Kapor doesn't condone the behavior of which LaMacchia is accused — after all, Kapor became wealthy selling Lotus 1-2-3 to paying customers — neither does he believe anything would be served by shipping him off to the federal pen.

"I would hope in this case," Kapor says, "that the consensus we arrive at is that what LaMacchia is *alleged* to have done is improper, but I hope that it won't be the kind of thing that gets a jail sentence. Because that seems to me to be overly punitive." □

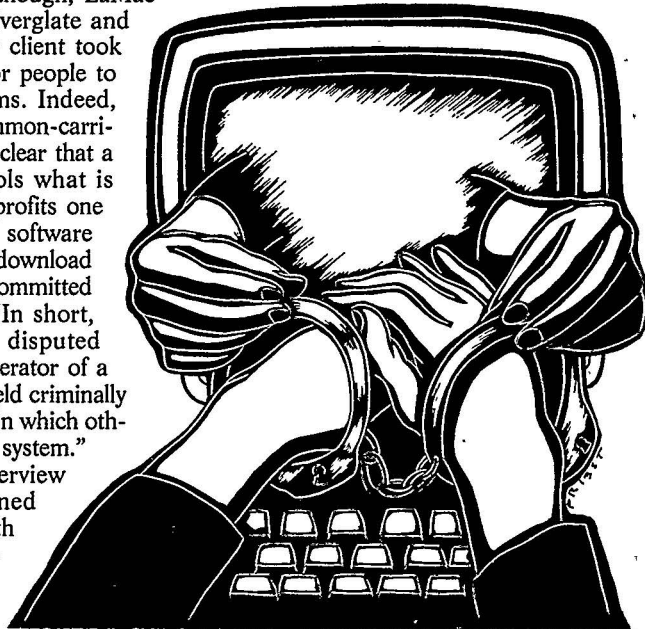


ILLUSTRATION BY ROBERT PRIEST

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Sent: Monday, December 17, 2007 3:50 PM
To: [redacted] (SF) (FBI); [redacted] (SF) (FBI)
Subject: FW: Eff response [redacted]

Attachments: [redacted]

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Sent: Monday, December 17, 2007 3:32 PM
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Subject: Eff response [redacted]

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