

CASE REPORT 2



STUDENT VS

US GOVERNMENT

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Case Study: Case 3.1 Piracy on the Internet

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Part 1: Ethical Dilemma

David LaMacchia was accused of disseminating copyrighted software over the Internet by providing a bulletin board for users to share software in accordance with his belief that software should be a public, evolutionary process that all may contribute to. The ethical questions raised here are, was LaMacchia ethically wrong to create a bulletin board providing an anonymous platform used to "share" copyrighted software and entertainment files, and should the United States (via the Attorney General) prosecute LaMacchia? In the indictment, it states that he was "[...] not accused of uploading or downloading any of the software programs" and gained no profit. [2] What is he guilty of?

Part 2: Role of IT

In *United States v. LaMacchia*, 871 F. Supp. 535. D. Mass. 1994, David LaMacchia used MIT server space to store the software and a pair of Athena Computer Environment workstations to create the online bulletin board, CYNOSURE, with the IP addresses of users of the site being disguised by routing them through a server in Finland. LaMacchia created a "file service protocol" (FSP) site on the MIT servers for any and all to upload and download available software valued at approximately \$1 million U.S. dollars. By opening the MIT server space to store the software, he allowed an otherwise secure network open to intentional malicious hackers.

Part 3: Stakeholders

1. David LaMacchia: He has a right to free speech. He also has the right to explore the evolution of software as he believes and the right to an education at MIT.
2. All Software and Entertainment Companies with Copyrights: Software companies have the right to have their work and products protected from piracy and to be compensated for use of their product, in addition, to run their companies as they see fit.
3. The United States: For all who use or enjoy the creative fruits of intellectual property developers, have the right to their intellectual property (IP) being protected.

4. MIT Students: They have the right to the university's technological resources to be fairly allocated to them, a secure network environment available, and not misused for personal purposes.

Part 4: Analysis of Possible Actions and Outcomes

1. Do nothing: We dismiss the case, possibly on the grounds that insufficient precedents exist as a basis from which to prosecute. This would affect the stakeholders in the following way: David LaMacchia will be exonerated. The Software and Entertainment Industry suffers from a lack of incentive to develop intellectual property because it will clearly not be protected. The United States will still have established no legal framework for protecting electronic Intellectual Property. The MIT students will possibly be affected by this again in the future, should another student decide to attempt the same as LaMacchia.
2. Make an Example: By using whatever legal means necessary, prosecute LaMacchia to deliver the message that intellectual property is protected and enforced. David LaMacchia will be punished and charged to the full extent of the law including, a maximum sentence of five years in prison and a \$250,000 fine. The software and entertainment industries will benefit from this outcome because it will deter others from pirating or sharing software, e.g., intellectual property. In doing so this will insure the intellectual property is secure and the profits would continue. The United States will benefit from the fostering of the secure environment in which creative people will have their property protected. The MIT students, and students in general, will be deterred from attempting similar situations.
3. Make it a Civil Matter: Put the burden of pursuing legal action against copyright infringers on the copyright holders in the civil courts. A civil suit can be pursued when criminal prosecution is unsuccessful by using the criminal counterpart, conversion. With strict liability conversion under tort law could allow persecution without double jeopardy and seek justice for the copyright holders. David LaMacchia would be the example and would only benefit from not making the same mistake twice. The software companies and entertainment

industry would benefit greatly by having another avenue to mitigate their initial loss from the act. The United States would benefit by relieving the court system since most civil cases are rarely heard and remedied prior to the court day. In addition, it would be another way to protect the creative thinkers and inventors by allowing them a defense without the burden of proving a criminal act. The MIT Students presumably would be potential law makers, inventors and creative thinkers therefore would benefit from the civil resolution.

4. Make New Laws: Begin establishing precedents for a legal framework that gives a clear delineation between what is legal and illegal when it comes to electronic intellectual property rights. This would be an ongoing process. Clarifying this is something that, to this day, is still elusive. It is difficult to know how David LaMacchia would be affected--would he be guilty or not guilty? We can't know. MIT students would presumably have advanced knowledge that their actions are legal or illegal, without any gray areas. Intellectual property holders would know if it makes economic sense to continue in this business; if it's not sustainable, perhaps they would elect to discontinue, but perhaps it would be. If it is, we would continue to enjoy new technologies because their incentive to do so would be protected by law.

Part 5: Deontological Perspective

The deontological approach would be to take the action which preserves the individual rights and duties, regardless of the societal outcome. By creating new laws, we would ensure the individual rights to intellectual property owned by the creators of software and creative entertainment by setting a precedent in addition to creating a safe environment for creativity to flourish. Everyone has an intrinsic right to have their hard work and creative vision protected in order to ensure future creativity and make a living in the chosen creative field. Each person has a duty to adhere to these rules. On the other hand what about LaMacchia's individual right to the First Amendment? Does he have a right to create a forum for exploration to further the benefits of software similar to how open source is in today's world touting Free Speech? While we believe his actions were immoral and deceptive in this case, he has a right to believe that

programs should be available to the public for “modification and development”.[2] Does creating more laws to protect the individual disregard the public access to the information? Free speech does not have to be at risk by enforcing copyright laws. In today’s world, we have Freeware and open source to develop and modify for a continued evolution and inspiration.

Part 6: Teleological Perspective

The best teleological scenario is one where the good of all is improved by the course of action taken. By making an example of LaMacchia, we preserve the intellectual property rights through legal precedents. In creating new laws to protect and foster an environment in which those whose livelihood is derived from the creation of software would be protected in the same way artists, musicians and authors are. Theft of someone’s work instead of its sale creates economic loss. Piracy today with all of the laws available is an epidemic. The worldwide numbers hover at 42% worldwide software theft with a market value loss of \$63.4 billion dollars.[8] If this work is protected, we would have an environment in which the producers of such work can do so and not fear the diminishment of income.

Part 7: My Recommendation

According to Lessig’s Paradigm, our only choice to regulate Internet intellectual property is to create rules by the government or self-enforcing regulations by simply doing what is right.[2] By promoting ethical educational curriculum for students who are learning technology in all universities, we can accomplish the enforcing of intellectual property twofold through education and legal channels. According to The Tech, MIT Newspaper, the majority of MIT’s students are unaware of the laws that concern copyright and intellectual property.[6]

We must also eliminate the incentives that technology providers have to allow use of their resources to for questionable transactions on the Web, particularly when they concern file-sharing--one of the most important factors that allow copyright infringers to be successful. The providers of infrastructure to these abusers usually experience financial gains from any number of transactions, including subscriptions to services and advertising.[7] While it may not be clear how to dissuade this, it is clear that it needs to be done.

Intellectual property laws must also be clarified and enforced. If we want to live in a country that has a thriving technological sector, the individuals who are responsible for these innovations must be rewarded for doing so--if they cannot support themselves as creators of these technologies, they would have no choice but to bring their expertise to another area. If in the final evaluation we consider the United States to be technological leaders first and foremost, there needs to be equal legal protection for a product that was created in a lab, on an easel, or on a computer.

And ultimately, we must consider that, just because we have the technology to do something, should we be doing it? File sharing sites make the ethical considerations of whether or not it is right to unlawfully duplicate electronic property an afterthought. It's too easy. Everybody does it. We need to change what we consider acceptable, or there will eventually be nothing left to steal.

Work Cited

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