



Online Ethics Center  
FOR ENGINEERING AND SCIENCE

## **Indictment of David LaMacchia**

### **Year**

1994

### **Description**

Detailed description of the charges being brought up against LaMacchia as a result of his file-sharing computer network at MIT, in the United States of America v. David Lamacchia case.

### **Body**

**United States District Court, District of  
Massachusetts**

**United States of America v. David  
Lamacchia**

**Criminal No. 94-10092RGS**

# **Violation: 18 U.S.C. Sect. 371 - Conspiracy Indictment**

## **Count One: 18 U.S.C. S 371 - Conspiracy**

### **The Grand Jury charges that:**

- From on or about November 21, 1993, to on or about January 5, 1994, at Cambridge, in the District of Massachusetts, and elsewhere, David Lamacchia defendant herein, did knowingly and intentionally combine, conspire, confederate, and agree with other persons unknown to the Grand Jury, to commit offenses against the United States, that is, to devise and execute a scheme and artifice to defraud, and, for the purpose of. executing and attempting to execute such scheme, to transmit and cause to be transmitted in interstate commerce, by wire communication, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, section 1343.

### **Persons and Entities**

- At all times material to this Indictment, the Massachusetts Institute of Technology (MIT) was an educational institution located on Memorial Drive, in Cambridge, Massachusetts.
- At all times material to this Indictment, defendant David Lamacchia was a student enrolled in and resident at MIT.
- At all times material to this Indictment, MIT had a connection to the Internet, an international collection of electronic networks linking educational, military, and commercial computers around the world.

### **Conspracy and Scheme to Defraud**

- It was part of the scheme and conspiracy that defendant David Lamacchia,

using the computer aliases "John Gaunt" and "Grimjack," set up, participated in setting up, and, from on or about November 21, 1993, to on or about December 21, 1993, and from on or about January 3, 1994 to on or about January 5, 1994, operated and participated in the operation of a computer bulletin board system named "Cynosure" to permit and facilitate, on an international scale, the illegal copying and distribution of copyrighted software, without payment of software licensing fees or the software purchase price to the manufacturers and vendors of the copyrighted software

- It was further part of the conspiracy and scheme to defraud that defendant David Lamacchia operated, and participated in the operation of, "Cynosure" on two computer work stations owned and operated by MIT, located at Cambridge in the District of Massachusetts. The two work stations were designated "Cynosure I" and "Cynosure II." In addition, a third MIT computer was utilized for back-up files and other purposes associated with running Cynosure.
- A computer bulletin board system ("BBS") consists essentially of a personal computer on which is installed a computer program which permits persons all over the world, using their own computers and telephone lines, to obtain access to the BBS computer. Persons thereby obtaining access to the computer BBS may post files and messages to the board ("upload"), and may read and copy files and messages ("download") to their own computer. The messages that may be uploaded or downloaded can consist of virtually any type of data or information, including other software programs. The Cynosure BBS was accessible worldwide via the Internet.
- In using the MIT work stations for the purpose of running a computer BBS to pirate and distribute copyrighted software, Lamacchia exceeded his authority, as an MIT student, to access and use the MIT computer system and its connection to the Internet.
- It was further part of the conspiracy and scheme to defraud that the defendant, using the computer aliases "John Gaunt" and "Grimjack," communicated to other persons the Internet address (or "site") for the Cynosure BBS to permit them to send, by means of interstate and foreign wire communication, files and messages to the BBS and to avail themselves of the opportunity to copy and cause to be transmitted by means of interstate and foreign wire communication, computer files stored on the BBS. The users of the Cynosure BBS often hid their identities by using an Internet address located in Finland which afforded an anonymous forwarding service.
- It was further part of the conspiracy and scheme for users to "upload"

computer files into the Cynosure BBS in order to create a library of software that could be accessible to other users who, without paying a purchase price or licensing fee, could unlawfully download copyrighted software to their own computer systems. Files downloaded to an anonymous Finnish Internet address service would then be surreptitiously forwarded to the user's own computer system.

- It was further part of the conspiracy and scheme to defraud to circulate the Cynosure BBS address to a trusted network of computer users in order to protect the BBS from detection, and to communicate with BBS users by posting "Readme" files on the BBS. In these communications, which users would access through interstate telephone communication between their computers and the MIT server upon which the Cynosure BBS was resident, the defendant: advised users to check the Cynosure I index before uploading files so as not to duplicate existing files; requested particular copyrighted software; and cautioned against over-publication of the Internet site address for the bulletin board in order to reduce the risk of detection by the "net.cops," i.e., systems administrators and network security personnel.
- In fact, however, as defendant knew, the site address for the Cynosure BBS was disseminated widely and indiscriminately over public electronic networks, and as defendant knew or reasonably could have foreseen, traffic into and out of the Cynosure BBS for the purpose of unlawfully copying copyrighted software quickly became enormous. For example, approximately 180 computers contacted the BBS over a single 16-hour period of time it was in operation, downloading hundreds of computer software files containing copyrighted commercial programs during that same period.
- As a result of the conspiracy and scheme to defraud, losses from the illegal distribution of the pirated software are estimated to exceed one million dollars during the period the Cynosure BBS was in operation.
- On or about November 24, 1993, at Cambridge, in the District of Massachusetts, defendant David Lamacchia created a "Readme" file on the Cynosure BBS which stated,

Welcome to the Cynosure FSP site. The site currently has about 150 megs of space, so go ahead and upload. Let's get this site going! New files should be uploaded in a new directory under /dos/files. -- GrimJack, your sysop.

- On or about December 4, 1993, at Cambridge, in the District of Massachusetts,

defendant David Lamacchia created, and participated in creating, a "Readme" file on the Cynosure BBS which stated,

Welcome to the Cynosure I FSP site. This site has a total of 193 megs of space. This is a download-only site. If you want to upload (please do!) on Cynosure II at 18.187.0.75 port 2433. -- gj (a.k.a. Gaunt, Mongoose Maintainers)  
"FSP" refers to "file service protocol." It is used to facilitate a large volume of file activity without causing the system to "crash."

- On or about December 9, 1993, at Cambridge, in the District of Massachusetts, defendant David Lamacchia created a "Readme" file on the Cynosure BBS which stated: "Use this directory for sending private pgp-encoded messages to other users. -- John Gaunt"
- On or about December 14, 1993, at Cambridge, in the District of Massachusetts, defendant David Lamacchia created a file on the Cynosure BBS called "reqs.from.gaunt" which stated:

If anyone has this stuff, I'd appreciate it. Sim City 2000, Excel 5.0 (Windoze), WordPerfect 6.0 (Windoze). And if you run a site, drop me a line in the to\_sysop directory. I'm also interested in cool sites people use, trading other info, etc. Thanks . . . -- John Gaunt, sysop.

- On or about December 21, 1993, at Cambridge, in the District of Massachusetts, defendant David Lamacchia created a "Readme" file on the Cynosure BBS which stated,

Cynosure II is currently acting as the upload site, and we're periodically moving stuff to Cynosure I and deleting old stuff there. Before you upload, make sure you're not putting something up that's already on Cynosure I. Check there at 18.187.0.76 port 2433 to make sure, or look at the Cynosure I index for a possibly-out-of-date version. \*\*\*URGENT\*\*\* This is the second time I've caught some luser publicizing the site address on #fsp over IRC. And since I don't use it that much, I don't even want to think about how much of this goes on. Think you guys: this is what leads to a site getting purged, especially when you go around spitting out site address to whomever (especially since I was warned that two of those online at the time might have been net.cops). If you're tempted to give out the site: DON'T DO IT. If this keeps happening that two things will happen (1) this site will close and (2) its new incarnation will be

private. So think about it, ok? \*\*\*Flame off

Writing is back on for the meantime. It will probably go off sometime tonight, since I'll be out of town. I "may" put it back on while I'm gone . . . I'll see how things work out. -- John Gaunt Mongoose Maintainers.

"IRC" refers to the Internet Relay Chat, which functions like an electronic CB radio over the Internet, permitting numerous users to "listen in" to a "channel" simultaneously.

- On or about January 4, 1994, at Cambridge, in the District of Massachusetts, defendant David Lamacchia and others whom he aided and abetted rebooted the Cynosure BBS, i.e., reloaded the bulletin board software, to permit access over the Internet.
- On or about January 4, 1994, at Cambridge, in the District of Massachusetts, defendant David Lamacchia created and participated in creating a file on the Cynosure BBS, stating:

Welcome to Cynosure I. Cynosure II is currently down. Cynosure I is temporarily up. Cynosure IS MOVING!!! Read on. . . . Well, if you've waited this long we thank you for being a dedicated user throughout our hiatus. While we were gone the site was wiped clean. Everything on this machine and all our off-line backups was lost. This is disappointing. While it may not be the result of being found by the net.cops, I still believe the site was too public. Lusers were distributing the address freely over IRC and to people they didn't trust. Usually, the result of this for a site is for that site to move and go private, so it doesn't happen again. I'm going to try something else. Cynosure is one of the last public sites, so I'm going to keep it that way: if we're forced to go down again because of lamers, I will probably have to go private. So, hopefully, with controlled distribution of the new address, this won't happen. The move will happen soon. Distribution of the new address will be limited at first, unlike last time. Mongoose and I are currently hacking a new loction that will (1) be more secure and (2) handle a lot of the problems the site currently has (if you don't know about it, don't worry). Anyway,

thanks again for sticking with us. Again, I'm only leaving Cynosure I up while we move. It's better than nothing. See you all on the net. --  
John Gaunt Mongoose Maintainers

All in violation of Title 18, United States Code, Section 371.

A True Bill signed, Foreman of the Grand Jury and Jeanne Kempthorne [signed], Assistant United States Attorney, District of Massachusetts; April 7, 1994, at 4:01 p.m.

Returned into the District Court by the Grand Jurors and filed. [signed] Deputy Clerk

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