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Government Opposes Motion to Dismiss LaMacchia Case

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Description

An article about the governments opposition to LaMacchia's motion to dismiss the case and their explanation as to why the Dowling case doesn't apply in this situation.

Body

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The federal government responded late last month to pre-trial motions made by lawyers for David M. LaMacchia '95 in early October, opposing the motion to dismiss the case.

In response, LaMacchia's counsel filed a reply brief on Nov. 4, according to Joy Fallon, a spokesperson for the U.S. Attorney's Office, which is prosecuting the case against LaMacchia.

LaMacchia was indicted on April 7 on a charge of conspiracy to commit wire fraud for using two workstations in the Student Center Athena cluster to "permit and facilitate, on an international scale, the illegal copying and distribution of copyrighted software," the indictment said.

Using a server running on the two workstations, Internet users could exchange copyrighted software, such as Microsoft Excel and Wordperfect. Losses of the pirated software are expected to exceed $1 million, according to a statement from the U.S. Attorney's Office last spring.

The defense motion to dismiss the case based its arguments on an incorrect use of the wire fraud law and on constitutional infringements of LaMacchia's rights, said Harvey A. Silverglate, one of LaMacchia's attorneys.

The defense also filed a motion to suppress evidence.

Oral arguments on the two motions will be made this Friday at 2 p.m. before Judge Richard Stearns in U.S. District Court at the federal courthouse in Boston, Silverglate said.

Dowling doesn't apply

The government charged LaMacchia with violating the federal wire fraud law, which prohibits the use of the telephone system to perpetrate frauds, because his allegedly fraudulent conduct was committed on telephone lines via modems, Silverglate said.

The pre-trial motion contends that LaMacchia should be charged under the Copyright Act instead of the wire fraud law.

In the response late last month, the government opposed the defense's use of the 1985 Supreme Court decision, *Dowling v. United States* in the motion to dismiss. The government disagreed with the defense's interpretation of the *Dowling* decision, according to the response.

The *Dowling* case involved the unauthorized production and distribution of record albums containing copyrighted material.

In the original dismissal motion, the defense wrote that the *Dowling* decision "held that criminal prosecutions for alleged copyright infringement must be brought, if at all, under the Copyright Act, and cannot be brought under statutes enacted by Congress to prohibit interstate theft and fraud pursuant to its interstate commerce power."

The government disagreed with this interpretation of *Dowling*, and held that the Copyright Act "does not preclude enforcement of the conspiracy and wire fraud statutes," according to the response.

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.

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