

Who is this Sklyarov guy anyway?

Dmitry Sklyarov is a 26-year-old Russian citizen and Ph.D. student of cryptology. He is the father of two children (2-1/2-year old son, 3-month-old daughter).

He works as a computer programmer for his Russian employer, Elcomsoft. He helped Elcomsoft to create software that allows the legitimate owner of Adobe Systems Inc.'s brand of "electronic book" (e-book) files to convert them into generic files. These generic files can be used by electronic readers for the blind. They can be also used to read the files on another device such as a new or repaired computer. The software is perfectly legal to buy and use in Russia.

Sklyarov was arrested on July 16 in Las Vegas, Nevada, where he was speaking to a computer security conference on the techniques Adobe uses in their e-books. As is usual practice for the computer security profession, his lecture was delivered from the perspective of exposing flaws in Adobe's access-restriction technology. He was arrested in response to a prior complaint by Adobe, who wanted to have the software's distribution ended. He is currently awaiting trial in Northern California.

What did he do that was wrong?

There is a relatively new U.S. law, called the Digital Millennium Copyright Act of 1998 (DMCA), which among many other provisions makes it illegal to circumvent any access-restriction measure protecting a copyrighted work, to distribute any device which

does so, or even to publicly discuss any known method for doing so.

Because of his association with the software his company makes, the FBI took the opportunity of his presence in the U.S. to have him arrested for trafficking in a circumvention device under the statutes of the DMCA. This crime has a maximum penalty of 5 years and a \$500,000 fine for a first offence.

So he's a "hacker", right?

At no time in the U.S. (or as far as we know anywhere else) did he illegally steal information, break into a computer system, or do anything destructive as one might expect from a "hacker". He was conducting himself in what he believed was a legal and respectable manner for a visitor to the U.S. to behave. He was personally targeted for arrest by the FBI, rather than, as one might reasonably expect, a U.S. distributor of the software might have been. This arrest pushes the interpretation of the law into very controversial and threatening grounds, and is widely considered a travesty of justice by both experts and lay-people.

According to the complaint against him, he is considered a trafficker in an illegal technology by the FBI because 1) he is the owner of the copyright on the software using the technique he was discussing at the convention and 2) once obtained from the Russian site, it was then possible to register the software by paying a fee to a U.S.-based facilitator, <http://www.regnow.com>. As far as the FBI was concerned, these criteria constituted trafficking the product in the United States.

So why not ask Adobe to drop the charges?

The Electronic Frontier Foundation (EFF) did just that, and after public pressure was applied, Adobe released a written statement that they no longer wish the FBI to pursue the case.

If Adobe no longer wants to press the case, what's the problem?

Sklyarov was arrested on criminal charges. Only the U.S. Attorney's office can choose to drop this case. The EFF has met with the appropriate office and asked them to do so. So far, they have not indicated that they will do so.

It looks like this is might become a precedent-setting case, and as everyone knows, that would mean a very long trial with a high probability of appeals. Meanwhile, Dmitry will be detained in the U.S, awaiting trial. His wife, Oksana, is concerned for the well-being of their children and is understandably unwilling to come to the U.S. and wait out his detention.

This is a time when the FBI wishes to be seen as tough on "Cyber-Crime", and its leadership is in transition. Perhaps this is why they do not wish to release someone who can be used as an example of the FBI protecting the U.S. from an "evil hacker from Russia who threatens our Way of Life."

Why is this important?

Under the DMCA, a corporation may do many things not traditionally protected in the U.S., such as legally destroy materials a person has bought from them, deny a person's right to sell their used copy of a published

work, deny a critic or academic access to the material, or, as has happened in this case, silence and imprison people who point out exploitable flaws in their software.

Not only is this not traditional copyright law, but it is unconstitutional and harmful to the nation, allowing a programmer or company to effectively decide what is illegal or not, allowing industry associations to circumvent the First Amendment rights of individuals, and making security experts afraid to report on their findings. (See: "Jail Time in the Digital Age", *New York Times* op-ed by Lawrence Lessig, June 30, 2001, <http://www.nytimes.com/2001/07/30/opinion/30LESS.html>)

The DMCA is a law written by a corporation-friendly Congress (H.R. 2281 - 105th Congress) for the benefit of massive corporations with the approval of their lobbying groups like the Recording Industry Association of America (RIAA), the Motion Picture Association of America (MPAA), and the Association of American Publishers (AAP), all of whom support the arrest of Dmitry Sklyarov. The stated intention of the law is to protect the artists' copyright under international treaty. The result has proved something very different.

Some examples:

- Used booksellers and libraries are under direct threat by these measures, and, as reported in the Washington Post (February 7, 2001; Page C1), the AAP is actively trying to close them out of the electronic book business entirely.

- Professor Felten of Princeton University cannot discuss his paper on a proposed CD standard for fear of retaliation by the RIAA.
- Links on the web to code written by a Norwegian minor by the name of Jon Johanssen to allow DVDs to be played on unsupported computers were declared illegal.

(Please see <http://www.eff.org> for more background)

But how about protecting the rights of the artist?

It may very well be that a law is needed to protect artists' rights in the digital age. However, the most flawed parts (in particular the anti-circumvention provisions and the reverse-engineering provisions) of the DMCA have proven to be not about enforcing copyright, but rather designed to enforce corporate protection from consumers in a fashion which ignores the traditional rights of the consumer.

As an attempt to quickly solve the spiralling problem of digital piracy in the era of Napster, it was approved by Congress despite having serious flaws of constitutionality and enforceability. Now, recent events have shown that it has been used selectively, usually by industry representatives as a chilling threat against students, professors, visiting programmers, and webmasters, not against the pirates themselves.

Ironically for this case, Attorney General John Ashcroft, while a member of the Senate, warned Congress that it was giving away too many freedoms with the DMCA, and worked hard to change much of the wording surrounding the provisions of the law Sklyarov is charged under. Sadly, many of the provisions Ashcroft and others put into the law to protect the consumer have been deemed "inapplicable" in actual court cases.

Part of this is likely due to the text of the law itself. The language it was codified under does not use accurate descriptions of computer code, but rather uses analogies of physical tools which do not represent software or how computers operate. For example, much debate is made of this law as "outlawing lockpicks for digital locks", but to a programmer, the analogy of the "lockpick" can be applied equally to nearly any problem of data format compatibility, and is therefore meaningless. Likewise, an excerpt of code can be used in a variety of programs, often without the original author's knowledge or intent. If no clear distinction between illegal and legal conversions and who is the real creator of a software "circumvention device" can be made from the

perspective of evolving computer code, the law can never be properly applied.

Therefore, it is very unlikely that this law will ever be enforced in any other way than as a convenient gag order protecting a corporation from any piece of software they choose to consider a threat to their interests.

So what can I do?

Educate yourself and join the effort to free Sklyarov and repeal the DMCA. For the latest information and action, visit:

- <http://www.lupercalia.net/adobe>
- <http://www.freesklyarov.org/>
- <http://www.boycottadobe.com/>
- <http://www.anti-dmca.org/>
- <http://www.planetebook.com/>

In the greater perspective, however, time is running out to prevent similar injustices.

The DMCA is only one version of similar initiatives on the agenda of the World Intellectual Property Organization (<http://www.wipo.org>) which is quickly moving to establish industry rights over consumer rights as a worldwide legal standard. Once normalized and codified under international law, it will likely be very hard to reform. Currently, the EFF (<http://www.eff.org>) is leading the effort to repeal and/or reform the DMCA here in the U.S. They need your support.

It is important for the future that we build an environment unfettered by fear, thought-police, and corporate tyranny. Freeing Sklyarov and replacing the DMCA with a copyright, not a gag law, is a step in the right direction.



Dmitry Sklyarov with family before his arrest.

drop the charges!

**Dmitry Sklyarov,
a Russian student
and programmer,
is awaiting trial
in California on
spurious charges.
Help send him
back to his family.**

This space for use
by organizers for
event/fundraising
information