



MACHINE AGE

where a research paper on the cryptography behind the MPAA's copyright protection is laid out in detail.

Of course, for Joe click-pack, it's free DVDs that matter. Although it's currently *See HOWE page 37*

Are the Hackers Unfairly Prosecuted?

DVD Desperadoes

BY HARVEY A. SILVERGLATE

In a fit of megalomania, Canute, the 11th-century king of Norway, held his hand over the ocean and ordered the tide to recede. When it comes to the information age, Canute's modern-day successors are the film studios and their trade group the Motion Picture Association of America (MPAA). They've unleashed a furious legal barrage against the cypherpunks who found a way to decrypt and copy DVDs. So far, the case has gone industry's way, but in the long run, their attack seems as doomed to fail as Canute's attempt to master the sea.

The industry says it spent hundreds of millions of dollars implementing the technology to safeguard the studios' copyrights of movies distributed on digital videodiscs, and they were not about to let that money go down some hacker's drain.

The industry claims that unless the code to copy a DVD is deemed "a device" designed to circumvent copyrights, firms will have to abandon DVD technology altogether.

The industry relies on a recently enacted amendment to the copyright law, the so-called Digital Millennium Copyright Act, a hotly contested law that, in effect, adds new restrictions on disseminating knowledge of how to break digital codes.

The defense effort, led by the Electronic Frontier Foundation (EFF), a cyberliberties group, counters that the industry should embrace, not seek to punish, the technological wizards who figured out how to break the anticopying programs, since they did so in the spirit of free discussion. *See SILVERGLATE page 37*

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After spending the last three decades as a lawyer and working on many cases involving civil liberties, including work with the EFF, I think that this case, as a legal matter, can go either way, depending on how the power of Congress to legislate copyright protection is weighed against the right to free speech. The balance has always been delicate, but in the information age especially, the outcomes are highly contested and deeply personal. Fritz Attaway, the Washington general counsel of the MPAA, complains that the hacker community has been "displaying an in-your-face attitude" and says they have "taunted" him and his colleagues.

Striking out in court at a few hackers and their online allies, the industry apparently hopes to instill terror in the ranks of cypherpunks, but that's the same strategy that got them in trouble in the first place. It's a tactic reminiscent of the *Spy vs. Spy* comic strip, only here one side clearly wins in the long run. As the EFF experts argue, the industry's true nemesis is the secrecy it believes protects it. Had the encryption code that protects against illicit copies been developed in cooperation with the Linux and open source community, the best minds online would have worked to keep DVDs secure. Instead, the industry wrote the code behind closed doors, shut out the community which knows the most about code writing, and effectively insured that mistakes would be made in the code known as CSS. They were. As one EFF brief puts it, "one cryp-



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ROMAN KAZAN, DEFENDER OF A FREE WORLD

tographer, David Wagner, regards CSS [as] so flawed that it would make a fine homework exercise for a university-level class in cryptography and codebreaking."

In order to know whether an encryption code offers true rather than illusory protection, it has to be introduced to the technological community so that attempts may be made to detect weaknesses, just as other scientific discoveries benefit from peer review. Ironically, this open process is precisely what the industry still stubbornly seeks to prevent by litigating rather than seeking the community's assistance.

The titans apparently have not yet recognized that it is one thing to convince Congress

to enact protective legislation, prosecutors to jail kids, and courts to erode the First Amendment. It's quite another thing to let freedom work. The process of testing beliefs openly is at the core of the First Amendment. If the courts stick to this constitutional tradition, they will thwart the industry's effort to delay the inevitable collapse of a bad encryption scheme. The industry would lose this round in court but would be better off in the long run. Good encryption developed through open means, not legalized terror, is the answer, but it requires that the movie industry learn from, not marginalize, a community considerably wiser than the industry's decision makers. ▣

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unfeasible to copy a DVD movie—which takes up four gigs of memory—as bandwidths broaden there may be a time in the near future when it's possible to download your favorite movie, gratis.

"The writing's on the wall," says Tom McGuire, an EFF staffer. "The world's changing, and whether we win this case or not, the old revenue model's moving in a different direction."

This is little comfort to Roman Kazan, who is very much stuck in the here and now. He's come a long way since 1987, when at the age of 11 he started his first BBS on his Commodore 64, gathering a loyal following among some of the first users on the Internet. And now he's come all the way to court, his dream shattered into a nightmare.

eToy Story Ends

Left with a reservoir of negative publicity and a battered stock, toy cartel eToys withdrew its suit against the culture-jamming group etoy last week. The company even offered to reimburse the defendant \$40,000 in legal fees. The controversy began when eToys, a major online retailer since 1997, sued etoy, a small European art group online since 1995, for trademark infringement. At first, the company was winning—on November 29, a Los Angeles Superior Court ordered etoy to take down its URL. But netzines struck back with an e-mail campaign, which has finally brought the toy Goliath to its knees. —Claire Barliant

As both sides in the trial jockey for position, Kazan finds himself enmeshed in the gears of a process he can't control. When he first walked into the hearing a few weeks ago, he was "full of optimism. I figured, 'This is crazy. They're gonna laugh and kick me out,'" he said later. No one laughed, and Kazan, still a defendant, listened with horror as six lawyers discussed his future.

After the hearing ended, Leon Gold, the counsel for the film industry, made his way to the door. Kazan grabbed him by the lapels.

"Listen, Mr. Gold, you've got the wrong guy. I don't have anything to do with this."

Gold, twice Kazan's age and weight, replied, "I can't talk to you. I'll get in trouble just for standing next to you," and then walked away. ▣

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