

Feds Drop Case Against Russian

In exchange, Dmitry Sklyarov will testify at employer's DMCA trial

By Jason Hoppin

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Dmitry Sklyarov, the Russian programmer indicted for violating the Digital Millennium Copyright Act, saw the charges against him dropped Thursday in exchange for testimony in his former employer's trial. Under a deal with the U.S. attorney's office, Sklyarov agreed to be deposed and must testify in the trial of ElcomSoft Co. Ltd., which remains under indictment. Until then, he is free to return to Russia. "With this agreement, Dmitry gets everything he could get from an acquittal and more," defense attorney John Kecker said.

Kecker, working the case pro bono, once said he wasn't brought in to cut a deal, and he disputed that characterization Thursday. "They're basically dropping the charges, and he gets to go home," the Kecker & Van Nest partner said.

In a statement the government said it retained the right to prosecute Sklyarov if he does not live up to his agreement. U.S. District Judge Ronald Whyte signed the order at a hearing Thursday morning. Sklyarov, a computer encryption expert, was arrested after giving a paper at a Las Vegas convention about breaking the encryption protecting Adobe Systems Inc.'s eBook software. Sklyarov's employer, ElcomSoft Co. Ltd., marketed software called the Advanced eBook Processor, which enables users to duplicate encrypted e-books.

Under the agreement, Sklyarov admits that he created the program and that its sole purpose is the decryption of e-books. It also includes language that Sklyarov created the software, in part, for academic reasons.

Sklyarov was arrested in July after Adobe notified the U.S. attorney's office of his presentation at DEFCON 9, a conference at-



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tended largely by computer hackers and encryption experts. The federal charges against ElcomSoft mirror those against Sklyarov. Kecker said the programmer's testimony would be neutral and predicted ElcomSoft's acquittal.

Sklyarov was the first person to be indicted under the Digital Millennium Copyright Act. Electronics rights groups loudly protested his arrest. And amid the outcry, Adobe withdrew its support for the prosecution. The 27-year-old has been staying in San Mateo since he was released on

\$50,000 bail.

"Until I'm in Russia, it is too early to say that I'm happy. But this agreement looks like [the] first real significant change in my situation for the last five months. [My] first real chance to get home," Sklyarov said through a representative.

Sklyarov's deposition will conclude today, after which he'll be free to go. He will be required to check in with the court by telephone.

Duane, Morris & Heckscher partner Joseph Burton represents ElcomSoft. "It looks like we'll be carrying the water on this," he said.

Burton confirmed that no conditions have been attached to Sklyarov's testimony. In fact, he said, "I think his testimony is helpful to [our] case."

ElcomSoft CEO Alexander Katalov released a statement in support of the agreement.