

Keker Takes On Russian Programmer

By Shannon Lafferty
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SAN JOSE Renown San Francisco defense attorney John Keker has agreed to represent indicted Russian computer programmer Dmitry Sklyarov on a pro bono basis.

Keker's decision to represent Sklyarov, believed to be one of the first to be criminally charged under the Digital Millennium Copyright Act, could put an end to speculation that a plea deal is in the works.

Keker of Keker & Van Nest won't say whether any plea offers are on the table but said he wasn't brought aboard to cut a deal.

They are always welcome to dismiss the case, but we didn't come in to make a plea deal, Keker said Thursday. We are here to deal with the defense of the case and to win it.

Sklyarov, 26, is accused of writing a program for his Russian employer ElcomSoft that allows people using Adobe Systems Inc. eBook software to copy and print digital books, transfer them to other computers and have the text read aloud by the computer.

Keker, whose past cases include the prosecution of Lt. Col. Oliver North in the Iran-Contra scandal, said he was approached to take Sklyarov's case but did not elaborate further. Keker said he took the case pro bono because he felt Sklyarov was unfairly targeted.

I think he is being unjustly accused and that's the kind of case I like to do, Keker said Thursday.

Defense attorney Joseph Burton was initially retained to represent Sklyarov but is withdrawing to represent co-defendant ElcomSoft.

Since Sklyarov was arrested in July at a convention in Las Vegas, programmers and technology companies have publicly criticized the prosecution. The alleged victim, San Jose-based Adobe Systems, which initially reported Sklyarov and his Russian employer to the U.S. attorney's office, has said it

no longer supports prosecution.

Both sides are currently conducting discovery. Keker said he and his team will be working to understand Adobe's role and determine whether or not it's proper.

Colleen Pouliot, Adobe senior vice president and general counsel, did not return calls.

Former prosecutors have said that Adobe's decision to distance itself from the case makes it tougher for the U.S. attorney's office.

Unlike traditional crimes, where you have an individual or an institution as the victim, tech crimes enter into a new area because all the government has to rely on is the expertise of the company, said Stephen Freccero, a former prosecutor now with Morrison & Foerster's San Francisco office. Generally, they are the kinds of cases the government wouldn't even know about if they hadn't been contacted by the victim, Freccero added in a recent interview.

Groups like the Electronic Frontier Foundation, which promotes cyber rights, has been critical of the prosecution from the start, saying the DMCA wasn't intended to criminalize software like Sklyarov's.

Meanwhile, observers have said Adobe's about-face has put the U.S. attorney's office in a tough situation. If it drops the charges, the office may seem ill-equipped to handle the high-tech, white-collar crimes it has vowed to go after. If it goes ahead with an unpopular prosecution, it could alienate high-tech companies whose assistance it needs to develop other cases.

Sklyarov, who is out on bail, will appear in San Jose federal court Nov. 26 for a pretrial hearing. If convicted, he could face five years in prison and a \$500,000 fine.

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