

## NEW CRIMINAL PENALTIES FOR COPYRIGHT INFRINGEMENT ON THE NET

On December 16, 1997, President Clinton signed into law a new statute directly aimed at curbing copyright infringement on the Internet. This new law, the No Electronic Theft Act, is nicknamed the Net Act.

The Net Act was passed to close a loophole in the former criminal copyright law, which required proof of financial gain. This loophole was exposed during the criminal trial against a Massachusetts Institute of Technology student named LaMacchia. Apparently for a lark (and not for payment), LaMacchia transferred computer games that he and others uploaded from one BBS to another, where users of the second BBS could download them. LaMacchia was found innocent of criminal copyright law violations simply because he was not paid for the games.

The Net Act now authorizes criminal prosecutions against anyone who willfully reproduces or distributes copyrighted material by electronic means, regardless of one's purpose or motive. In other words, uploading a copy of someone else's software onto the Net so your friends can download it for free may now be a crime.

The Net Act does set some minimum levels for prosecution, so presumably "minor" violations should remain unpunished. The first level provides that the copyrighted material must have a retail value of more than \$1,000, and is punishable by imprisonment for up to one year and a fine of up to \$100,000. The second level requires distribution of at least 10 copies, during a 180 day period, worth at least \$2,500. The punishment is a fine of up to \$250,000 (\$500,000 for a business) and imprisonment up to five years. The prosecutor has five years by which to bring the case, starting on the first day of the violation (after five years expire one can not be prosecuted for that offense).

The Net Act allows the victims to testify to help the judge decide on the punishment. Victims would include producers and sellers of the misappropriated work along with the owners of the intellectual property rights in the work, such as the source code.

The Net Act shows that the federal government is serious about copyright violations on the Net. From now on, you should not upload shareware that you did not develop.