

Looking to liberate your mind from the spin, myths, and hysteria of the main stream media?

Look no further than **reason**, the magazine of "free minds and free markets."



Get Reason **reason**
Free Minds and Free Markets

[Login](#) or [Sign-up](#)

Code Is Speech

Hackers attempt to write themselves into the Constitution.

[Gabriella Coleman](#) from the [April 2013](#) issue - view article in the [Digital Edition](#)



(Page 4 of 4)

From these lines alone a proficient enough programmer could deduce the encryption key. Thus the poem makes a point similar to the one made in an amicus brief by Carnegie Mellon computer science professor David Touretzky in *Universal City Studios Inc. v. Corley*. Touretzky argued that "at root, computer code is nothing more than text, which, like any other text, is a form of speech. The Court may not know the meaning of the Visual BASIC or Perl texts but the Court can recognize that the code is text."

Free Dmitry!

Another arrest strengthened the opposition. Around the time Johansen was making headlines, programmer Dmitry Sklyarov was nabbed in Las Vegas for a completely unrelated DMCA infraction: writing a piece of software for his Russian employer, Elcomsoft, that unlocked Adobe's book access controls and subsequently converted files into the PDF format. For this Sklyarov faced up to 25 years in jail.

Sklyarov was arrested in July 2001 while leaving Defcon, one of the largest hacker conferences in the world. For the FBI to arrest a programmer at the end of Defcon was a potent statement, showing that the authorities would go on developers' home turf to enforce the DMCA at the behest of deep-pocketed copyright holders. This first-ever hacker arrest at Defcon (which law enforcement officials had been attending without incident since 1993) signaled a one-sided renegotiation of the relationship between legal authority and the hacker world.

Developers responded by organizing Free Dmitry protests in Boston, New York, Chicago, and San Francisco, as well as in Europe and Russia. Even though Sklyarov was not part of the world of F/OSS development, local F/OSS developers were behind a slew of protest activities, including a demonstration at Adobe's San Jose headquarters, a candlelight vigil at the San Jose public library, and a march held after the Linux World convention in August 2001 that ended at the U.S. attorney's office.

At a fundraiser following the march to the prosecutor's office, Lawrence Lessig, who had recently published *Code and Other Laws of Cyberspace*, a book that was changing the way F/OSS developers understood the politics of technology, fired up the already animated crowd: "This is America, right? It makes me sick to think this is where we are. It makes me sick. Let them fight their battles in Congress. These million-dollar lobbyists, let them persuade congressmen about the sanctity of intellectual property and all that bullshit. Let them have their battles, but why lock this guy up for 25 years?"

The protests had an immediate effect. Adobe withdrew its support for the case, and eventually the U.S. attorney dropped all charges against Sklyarov on the condition that he testify in the subsequent prosecution of his employers, which he did. In December 2002, the jury in that case acquitted Elcomsoft.

Johansen was acquitted a bit more than a year later. A judge concluded that the charges against him were inappropriate, since the law under which he was arrested had nothing to do with digital rights management. Johansen still writes free software, including programs that subvert digital rights management technologies.

Although these prosecutions fizzled, that does not mean the equation of software with free speech is widely accepted in the legal system. Most of the other DeCSS lawsuits were decided between 2001 and 2004, and even though the courts were persuaded that DeCSS was a form of speech, they consistently ruled that it nonetheless violated the copyright protections of artistic material. In one of the 2600 cases, *Universal City Studios Inc. v. Corley*, U.S. District Judge Lewis A. Kaplan went so far as to declare that he aimed to "contribute to a climate of appropriate respect for intellectual property rights in an age in which the excitement of ready access to untold quantities of information has blurred in some minds the fact that taking what is not yours and not freely offered to you is stealing."

Developers and hackers were deeply disappointed by these decisions, which essentially equated DeCSS with theft. But by continuing to create a separate cultural reality, even a rival liberal morality, in which expression and autonomy are elevated above the potential for piracy, these outsiders are constructing a broader legal regime that will eventually challenge the way we interpret the Constitution.

Today new copyright legislation threatens online freedoms and free expression. But while the Digital Millennium Copyright Act passed in 1998 with almost no public outcry, critics prevented the Stop Online Piracy Act from passing in 2012. Legislative support waned amid fierce opposition from the technology community, which included open source developers, corporate giants such as Google, protest groups such as Anonymous, and digital rights organizations. Threats may loom larger today than they did a decade ago, but advocates and institutions are better prepared to respond more effectively and swiftly than before.

[<< First](#)[< Prev Page](#)[2](#)[3](#)[4](#)

Gabriella Coleman is the Wolfe Chair in Scientific and Technological Literacy at McGill University.

[Media Contact](#) [Reprint Requests](#)

EMAIL | SHARE ▾

Promoted Stories

Ads by Revcontent

20 Celebs You Never Knew Are Muslim

Diabetes Breakthrough That Was Silenced by Drug Companies

Final Photo: What Happens Next Is Tragic and Heartbreaking

25 Celebs and How They Went From Beautiful To Old Age Fast