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ROBERT S. MUELLER, III (CSBN 59775)
United States Attorney

FILED

AUG 28 2001

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CR 01 20138

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELCOM LTD.
a/k/a ELCOMSOFT CO. LTD. and
DMITRY SKLYAROV,

Defendants.

VIOLATIONS: 18 U.S.C. § 371 –
Conspiracy; 17 U.S.C. § 1201(b)(1)(A) –
Trafficking for Gain in Technology
Primarily Designed to Circumvent
Technology that Protects a Right of a
Copyright Owner; 17 U.S.C. §
1201(b)(1)(C) – Trafficking for Gain in
Technology Marketed for Use in
Circumventing Technology that Protects a
Right of a Copyright Owner; 18 U.S.C. § 2
– Aiding and Abetting

SAN JOSE VENUE

INDICTMENT

The Grand Jury charges:

BACKGROUND

1. At all times relevant to the indictment:

a. Defendant Elcom Ltd., a/k/a Elcomsoft Co. Ltd. ("Elcomsoft"), was a software company headquartered in Moscow, Russia.

b. Adobe Systems, Inc., ("Adobe") was a software company headquartered in San Jose, California, that produced publishing software for various media including the world wide

INDICTMENT

1 web, print, and video.

2 c. Defendant Dmitry Sklyarov was employed by Elcomsoft as a computer
3 programmer and cryptanalyst.

4 d. RegNow was an online software delivery and payment service based in
5 Issaquah, Washington.

6 e. Adobe distributed a product titled "Adobe Acrobat eBook Reader" that
7 provided technology for the reading of books in digital form ("ebooks") on personal computers.

8 f. Consumers who wished to purchase ebooks formatted for the Adobe Acrobat
9 eBook Reader ("eBook Reader") could download a free copy of the eBook Reader to their personal
10 computer and then purchase the ebook from an online retailer. Upon purchasing the ebook from the
11 online retailer, a series of electronic communications between and among the computers of the
12 online retailer - including, typically, an Adobe-supplied server - and the consumer's computer
13 authorized the ebook to be read on the computer from which the purchase was made.

14 g. When an ebook purchased for viewing in the Adobe eBook Reader format was
15 sold by the publisher or distributor, the publisher or distributor of the ebook could authorize or limit
16 the purchaser's ability to copy, distribute, print, or have the text read audibly by the computer.
17 Adobe designed the eBook Reader to permit the management of such digital rights so that in the
18 ordinary course of its operation, the eBook Reader effectively permitted the publisher or distributor
19 of the ebook to restrict or limit the exercise of certain copyright rights of an owner of the copyright
20 for an ebook distributed in the eBook Reader format.

21 2. On a date prior to June 20, 2001, defendant Dmitry Sklyarov and others wrote a
22 program called the Advanced eBook Processor ("AEBPR") the primary purpose of which was to
23 remove any and all limitations on an ebook purchaser's ability to copy, distribute, print, have the text
24 read audibly by the computer, or any other limitation imposed by the publisher or distributor of an
25 ebook in the eBook Reader format, as well as certain other ebook formats.

26 3. On or about June 20, 2001, defendant Elcomsoft and others made the AEBPR
27 program available for purchase on the elcomsoft.com website. Individuals wishing to purchase the
28 AEBPR program were permitted to download a partially-functional copy of the program from

1 elcomsoft.com and then were directed to pay approximately \$99 to an online payment service
 2 RegNow, based in Issaquah, Washington. Upon making a payment via the RegNow website,
 3 Elcomsoft and other persons provided purchasers a registration number permitting full-use of the
 4 AEBPR program.

5 THE CONSPIRACY

6 COUNT ONE: (18 U.S.C. § 371 – Conspiracy to Traffic in Technology Primarily Designed to
 7 Circumvent, and Marketed for Use in Circumventing, Technology that Protects
 a Right of a Copyright Owner)

8 4. Paragraphs One through Three are realleged and incorporated in Count One

9 5. On or about dates unknown, but beginning no later than June 20, 2001 and continuing
 10 until July 15, 2001, both dates being approximate and inclusive, in Santa Clara County, in the
 11 Northern District of California, and elsewhere, the defendants

12 ELCOM LTD.
 13 a/k/a ELCOMSOFT CO. LTD. and
 DMITRY SKLYAROV,

14 and other persons, did knowingly and intentionally conspire, for purposes of commercial advantage
 15 and private financial gain, to willfully offer to the public, provide, and traffic in a technology,
 16 product, device, component, and part thereof, that was primarily designed and produced for the
 17 purpose of circumventing, and was marketed by the defendants, and others acting in concert with
 18 the defendants with the defendants' knowledge, for use in circumventing protection afforded by a
 19 technological measure that effectively protected a right of a copyright owner under Title 17 of the
 20 United States Code, in a work and portion thereof, in violation of Title 17, United States Code,
 21 Sections 1201(b)(1)(A) and 1201(b)(1)(C).

22 METHODS AND MEANS OF THE CONSPIRACY

23 6. It was part of the conspiracy that the defendants and others did create the AEBPR
 24 program primarily to permit users of the program to circumvent copyright protections from ebook
 25 files.

26 7. It was further part of the conspiracy that the defendants did market, offer to the public,
 27 and traffic in the AEBPR program by making it available for purchase on the elcomsoft.com website
 28 and soliciting purchasers of the program by email.

1 COUNT TWO: (17 U.S.C. § 1201(b)(1)(A) and 18 U.S.C. § 2 - Trafficking in Technology Primarily
2 Designed to Circumvent Technology that Protects a Right of a Copyright Owner)

3 12. Paragraphs One through Three are realleged and incorporated in Count Two.

4 13. On or about and between June 20, 2001 and July 15, 2001, both dates being
5 approximate and inclusive, in Santa Clara County, in the Northern District of California, and
6 elsewhere, the defendants

7 ELCOM LTD.
8 a/k/a ELCOMSOFT CO. LTD. and
9 DMITRY SKLYAROV

10 did willfully, and for purposes of commercial advantage and private financial gain, offer to the public
11 and traffic in a technology, product, device, component, and part thereof, that was primarily designed
12 and produced for the purpose of circumventing protection afforded by a technological measure that
13 effectively protected a right of a copyright owner under Title 17 of the United States Code, in a work
14 and portion thereof, in that the defendants offered the AEBPR program to the public for sale in the
15 Northern District of California.

16 All in violation of Title 17, United States Code, Section 1201(b)(1)(A) and Title 18, United
17 States Code, Section 2.

18 COUNT THREE: (17 U.S.C. § 1201(b)(1)(A) and 18 U.S.C. § 2 - Trafficking in Technology
19 Primarily Designed to Circumvent Technology that Protects a Right of a
20 Copyright Owner)

21 14. Paragraphs One through Three are realleged and incorporated in Count Three.

22 15. On or about June 26, 2001, in Santa Clara County, in the Northern District of
23 California, and elsewhere, the defendants

24 ELCOM LTD.
25 a/k/a ELCOMSOFT CO. LTD. and
26 DMITRY SKLYAROV

27 did willfully, and for purposes of commercial advantage and private financial gain, provide and
28 traffic in a technology, product, device, component, and part thereof, that was primarily designed and
produced for the purpose of circumventing protection afforded by a technological measure that
effectively protected a right of a copyright owner under Title 17 of the United States Code, in a work
or portion thereof, in that the defendants sold a copy of the AEBPR program to an individual in the
Northern District of California.

1 All in violation of Title 17, United States Code, Section 1201(b)(1)(A) and Title 18, United
2 States Code, Section 2.

3 COUNT FOUR: (17 U.S.C. § 1201(b)(1)(C) and 18 U.S.C. § 2 - Trafficking in Technology
4 Marketed for Use in Circumventing Technology that Protects a Right of a
5 Copyright Owner)

6 16. Paragraphs One through Three are realleged and incorporated in Count Four.
7 17. On or about and between June 20, 2001 and July 15, 2001, both dates being
8 approximate and inclusive, in Santa Clara County, in the Northern District of California, and
9 elsewhere, the defendants

10 ELCOM LTD.
11 a/k/a ELCOMSOFT CO. LTD. and
12 DMITRY SKLYAROV

13 did willfully, and for purposes of commercial advantage and private financial gain, offer to the public
14 and traffic in a technology, product, device, component, and part thereof, that was marketed by the
15 defendants and others acting in concert with the defendants with the defendants' knowledge, for use
16 in circumventing protection afforded by a technological measure that effectively protected a right
17 of a copyright owner under Title 17 of the United States Code, in a work and portion thereof, in that
18 the defendants marketed the AEBPR program in the Northern District of California.

19 All in violation of Title 17, United States Code, Section 1201(b)(1)(C) and Title 18, United
20 States Code, Section 2.

21 COUNT FIVE: (17 U.S.C. § 1201(b)(1)(C) and 18 U.S.C. § 2 - Trafficking in Technology
22 Marketed for Use in Circumventing Technology that Protects a Right of a
23 Copyright Owner)

24 18. Paragraphs One through Three are realleged and incorporated in Count Five.
25 19. On or about June 26, 2001, in Santa Clara County, in the Northern District of
26 California, and elsewhere, the defendants

27 ELCOM LTD.
28 a/k/a ELCOMSOFT CO. LTD. and
DMITRY SKLYAROV

did willfully, and for purposes of commercial advantage and private financial gain, provide and
traffic in a technology, product, device, component, and part thereof, that was marketed by the
defendants and others acting in concert with the defendants with the defendants' knowledge, for use

1 in circumventing protection afforded by a technological measure that effectively protected a right
 2 of a copyright owner under Title 17 of the United States Code, in a work and portion thereof, in that
 3 the defendants sold a copy of the AEBPR program in the Northern District of California.

4 All in violation of Title 17, United States Code, Section 1201(b)(1)(C) and Title 18, United
 5 States Code, Section 2.

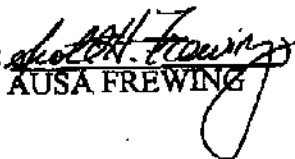
7 DATED: 8/28/2001

A TRUE BILL.


 FOREPERSON

10 ROBERT S. MUELLER, III
 United States Attorney

11 
 12 ELIZABETH DE LA VEGA
 13 Chief, San Jose Division

14 (Approved as to form: 
 15 AUSA FREWING

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