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Microsoft's Legal Nihilism

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Few things can ignite Russian society as much as a noisy case of criminal prosecution for computer piracy. When the case involves huge, powerful Microsoft versus human rights activists, the inevitable result is a barrage of news stories that produce more heat than light. It also creates a widespread sense that the software leviathan has once again done something reprehensible, albeit legal.

In 2006, Alexander Ponosov, principal of a high school in a remote village in the Perm region, was prosecuted on criminal charges for using illegal copies of Microsoft Windows and Microsoft Office on 12 of the school's computers. He faced five years in prison.

Several public figures, however, spoke in his defense. For example, then-President Vladimir Putin said, "To take a man who simply bought some computers and then threaten him with prison is utter nonsense." Former Soviet leader Mikhail Gorbachev wrote to Microsoft founder Bill Gates asking him to intervene. Gates refused to step in, saying it was a public prosecution and not a private dispute. In the end, Ponosov not only was found not guilty, but a Perm court ordered the government to pay him 250,000 rubles in damages for being falsely

accused.

Three years later, Anastasia Denisova, head of the nongovernment organization ETHnICS, was charged with copyright infringement. Investigators said pirated software had been installed on three computers that belonged to ETHnICS. Denisova denied the allegations. There were reports of activist groups being searched and their computers seized under the pretense of fighting copyright fraud, despite the evidence that the software was legal. What's more, the activists claimed that Microsoft was slow, if not reluctant, to help them prove that their software was legal.

Human rights heavyweights like the Moscow Helsinki Group and Memorial sent a letter to Microsoft demanding to know whether the company is "supportive of all actions of its representatives" and whether it endorses the criminal prosecution of activists if they use nonlicensed software. In short, they accused Microsoft of being used to suppress the dissident movement in Russia.

There is a comic element in this statement. Why should activists be immune to copyright laws? And why should a private company "endorse" a prosecution, which by definition is founded on criminal law and is instigated by the state? But at the same time, there is an element of truth. In the real world, prosecution is unlikely to succeed unless assisted by the copyright holder.

Copyright is essentially a private matter. The bulk of the cases is supposed to be civil rather than criminal. In a civil case, mere possession of an illegal copy of intellectual property is usually enough for monetary compensation. Sending a copyright infringer to prison is another thing. Criminal proceeding requires a high standard of proof. Neither the Ponosov or the Denisova cases were well founded in criminal law, and they shouldn't have even been instigated.

The real scandal is that Russia has a system, backed by a technology giant, of intimidating, menacing and extorting alleged copyright infringers.

Two out of every three computer programs in Russia are stolen. Statistically, nearly every Russian computer has some illegal content. This opens unlimited opportunities for abuse by law enforcement officials.

Microsoft does not usually act directly. It operates through a myriad of independent lawyers and distributors, all of whom represent Microsoft, as well as an army of government prosecutors and police officers. They are often motivated by greed, the desire to further their careers or just outright stupidity.

This combination sometimes means a bizarre result, like when a school principal, human rights activist, businessperson or a housewife is charged with a criminal offense that carries a prison term because he or she bought a computer with pirated software already installed.

Unless Microsoft learns to control everyone who represents the company and unless it is more scrupulous about cooperating with Russia's law enforcement agencies, we will see more of these bizarre stories unfold.

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