

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FILED
APR 07 2004
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

THE UNITED STATES OF AMERICA

vs.

MAKSYM VYSOCHANSKY

INDICTMENT

COUNTS ONE THROUGH THREE: - Title 17, United States Code, Section 506(a)(1), Title 18, United States Code, Section 2319(b)(1) & 2 - Criminal Copyright Infringement and Aiding and Abetting

COUNTS FOUR THROUGH EIGHT: - Title 18, United States Code, Section 2320(a) & 2 - Trafficking in Counterfeit Goods & Aiding and Abetting

COUNTS NINE THROUGH NINETEEN: - Title 18, United States Code, Section 1956(a)(2)(B)(i) & 2 - Money Laundering (Exportation for Concealment) & Aiding and Abetting

COUNT TWENTY: - Title 18, United States Code, Section 1029(a)(2) & 2 - Trafficking in and Use of Unauthorized Access Devices with Intent to Defraud & Aiding and Abetting

A true bill.

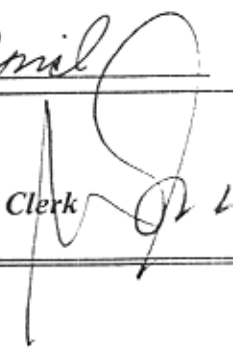


Foreperson

Filed in open court this 7th day of April

A.D. 2004

Clerk



Bail. \$ No process needed

| | |
|--|----------------|
| DOCUMENT NO. | CSA's INITIALS |
| | |
| DISTRICT COURT CRIMINAL CASE PROCESSING | |

1 KEVIN V. RYAN (CASBN 118321)
2 United States Attorney

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SAN JOSE

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 **CR 04 20056 JW**
12 No. **PVT**

12 UNITED STATES OF AMERICA,
13 Plaintiff,

14 v.

15 MAKSYM VYSOCHANSKY,)
16 a/k/a Maksym Kovalchuk, a/k/a)
17 Kovalchuk Maysym, a/k/a)
18 Vysochansky Maksym, a/k/a Taras)
19 Kovalchuk, a/k/a Andry Balotin, a/k/a)
20 Kevin McGuigan and a/k/a James)
21 Watkins,)

22 Defendant.

No.

VIOLETIONS: 17 U.S.C. § 506(a)(1), 18 U.S.C. §§ 2319(b)(1) – Criminal Copyright Infringement; 18 U.S.C. §§ 2320(a) – Trafficking in Counterfeit Goods; 18 U.S.C. § 1956(a)(2)(B)(i) – Money Laundering (Exportation For Concealment); 18 U.S.C. § 1029(a)(2) – Trafficking and Use of Unauthorized Access Devices; 18 U.S.C. § 2 – Aiding and Abetting; 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), 28 U.S.C. § 2461(c) – Criminal Forfeiture

SAN JOSE VENUE

23 INDICTMENT

24 The Grand Jury charges:

25 Background

26 At all times relevant to this Indictment:

27 1. Defendant was a Ukranian citizen who was involved in the operation of numerous Web
28 sites that offered and sold counterfeit computer software programs. These Web sites included
www.cdservice.org, www.cdcompserv.net, www.orginal-soft.com, www.bigcds.net, www.your-
cds.org, www.gold-cds.com, and www.neocds.com. Defendant also offered and sold counterfeit

INDICTMENT
[Maksym Vysochansky]

1 computer software programs on eBay, Inc.

2 2. The counterfeit software programs offered on these Web sites and through these online
3 auctions included valuable software titles owned by Adobe Systems, Inc., Autodesk, Inc.,
4 Borland Software Corp., Cakewalk, Corel Corporation, Macromedia, Inc., Microsoft
5 Corporation, Newtek, and Oracle Corporation.

6 3. To field and respond to purchase orders for software programs, defendant created online
7 aliases, including Patricia Brekles, Ann Robinson, Kevin McGuigan, Andry Balotin, James
8 Watkins, and Bryan Miholic, and communicated with buyers using Web-based email accounts.
9 Defendant also further disguised his true identity through the unauthorized use of an email
10 account connected to the Web site of a California company.

11 4. Defendant caused purchasers of counterfeit software programs to make payments to
12 intermediaries in the United States and elsewhere, including individuals and the online payment
13 processing entities CCNow, Inc. and Paysystems, Inc.

14 COUNT ONE: (17 U.S.C. § 506(a)(1), 18 U.S.C. §§ 2319(b)(1) & 2 – Criminal Copyright
15 Infringement and Aiding and Abetting)

16 5. The allegations in paragraphs 1-4 are realleged and incorporated herein as if set forth in
17 full.

18 6. Between on or about December 1, 2000, and May 29, 2001, in the Northern District of
19 California and elsewhere, the defendant

20 MAKSYM VYSOCHANSKY, Y,
21 a/k/a Maksym Kovalchuk, a/k/a Kovalchuk Maksym, a/k/a Maksym Vysochansky,
22 a/k/a Vysochansky Maksym, a/k/a Taras Kovalchuk, a/k/a Andry Balotin,
a/k/a Kevin McGuigan and a/k/a James Watkins,

23 did willfully and for the purpose of commercial advantage and private financial gain infringe the
24 copyrights of copyrighted works, including: Adobe Photoshop 6.0; Adobe Font Folio 9.0; Adobe
25 Premiere 5.0; Adobe Illustrator 9.0; Adobe Acrobat 5.0; Autodesk Land Development Desktop 2;
26 Autodesk Civil Design Release 2i; Autodesk AutoCAD 2002; Microsoft Office Professional XP;
27 Microsoft Office 98; Microsoft SQL Server 2000; and Newtek Lightwave 6.5; by reproducing
28 and distributing during a 180-day period at least ten (10) unauthorized copies of copyrighted

1 works which have a total retail value of more than \$2,500, in violation of Title 17, United States
2 Code, Section 506(a)(1) and Title 18, United States Code, Sections 2319(b)(1) and 2.

3 COUNT TWO: (17 U.S.C. § 506(a)(1), 18 U.S.C. §§ 2319(b)(1) & 2 – Criminal Copyright
4 Infringement and Aiding and Abetting)

5 7. The allegations in paragraphs 1-4 are realleged and incorporated herein as if set forth in
6 full.

7 8. Between on or about May 30, 2001, and November 25, 2001, in the Northern District of
8 California and elsewhere, the defendant

9
10 MAKSYM VYSOCHANSKY, Y,
11 a/k/a Maksym Kovalchuk, a/k/a Kovalchuk Maksym, a/k/a Maksym Vysochansky,
12 a/k/a Vysochansky Maksym, a/k/a Taras Kovalchuk, a/k/a Andry Balotin,
13 a/k/a Kevin McGuigan and a/k/a James Watkins,

14 did willfully and for the purpose of commercial advantage and private financial gain infringe the
15 copyrights of copyrighted works, including: Adobe Photoshop 6.0; Adobe Font Folio 9.0; Adobe
16 Premiere 6.0; Adobe Illustrator 9.0; Adobe Acrobat 5.0; Adobe Framemaker 6.0; Autodesk
17 Architectural Desktop 3.3; Autodesk Inventor 5.0; Autodesk AutoCAD 2002; Borland C++
18 Builder 5 Professional; Borland Delphi 6.0 Enterprise; Borland JBuilder 5.0; Cakewalk Sonar
19 XL; Corel Ventura 8.1; Corel KPT Effects 7.0; Macromedia Authorware 5.2; Macromedia
20 Director Shockwave Studio 8.5; Macromedia Dreamweaver Ultra Dev. 4.0; Macromedia Flash
21 5.0; PTC Pro Engineer 2001; Microsoft Office Professional XP; Microsoft Windows 2000;
22 Microsoft Office 98; Microsoft SQL Server 2000; Microsoft Visual Studio 6.0 Enterprise
23 Edition; and Newtek Lightwave 6.5; by distributing during a 180-day period at least ten (10)
24 unauthorized copies of copyrighted works which have a total retail value of more than \$2,500, in
25 violation of Title 17, United States Code, Section 506(a)(1) and Title 18, United States Code,
26 Sections 2319(b)(1) and 2.

27 COUNT THREE: (17 U.S.C. § 506(a)(1), 18 U.S.C. §§ 2319(b)(1) & 2 – Criminal Copyright
28 Infringement and Aiding and Abetting)

9. The allegations in paragraphs 1-4 are realleged and incorporated herein as if set forth in

1 full.

2 10. Between on or about January 1, 2003, and May 21, 2003, in the Northern District of
3 California and elsewhere, the defendant

4 MAKSYM VYSOCHANSKY,YY,
5 a/k/a Maksym Kovalchuk, a/k/a Kovalchuk Maksym, a/k/a Maksym Vysochansky,YY,
6 a/k/a Vysochansky Maksym, a/k/a Tara Kovalchuk, a/k/a Andre Balotin,
a/k/a Kevin McGuigan and a/k/a James Watkins,

7 did willfully and for the purpose of commercial advantage and private financial gain infringe the
8 copyrights of copyrighted works, including: Adobe Photoshop 6.0; Adobe Photoshop 7.0; Adobe
9 Illustrator 9.0; Adobe Acrobat 5.0; Autodesk Inventor 5.0; Autodesk 3D Studio Mac 5.0;
10 Autodesk Discreet Edit 6.5; Macromedia Flash MX; Macromedia Dreamweaver; Macromedia
11 Coldfusion MX; Microsoft Windows XP; Norton Antivirus 2003; and Oracle 8; by distributing
12 during a 180-day period at least ten (10) unauthorized copies of copyrighted works which have a
13 total retail value of more than \$2,500, in violation of Title 17, United States Code, Section
14 506(a)(1) and Title 18, United States Code, Sections 2319(b)(1) and 2.

15 COUNTS FOUR THROUGH EIGHT: (18 U.S.C. §§ 2320(a) & 2 – Trafficking in
16 Counterfeit Goods & Aiding and Abetting)

17 11. The allegations in paragraphs 1-4 are realleged and incorporated herein as if set forth in
18 full.

19 12. On or about the dates set forth below, in the Northern District of California, and
20 elsewhere, the defendant

21 MAKSYM VYSOCHANSKY,YY,
22 a/k/a Maksym Kovalchuk, a/k/a Kovalchuk Maksym, a/k/a Maksym Vysochansky,YY,
23 a/k/a Vysochansky Maksym, a/k/a Tara Kovalchuk, a/k/a Andre Balotin,
a/k/a Kevin McGuigan and a/k/a James Watkins,

24 did intentionally traffic in goods and knowingly use counterfeit marks on and in connection with
25 those goods, by knowingly transporting, transferring, and disposing of for value, the following
26 counterfeit computer software products that contained counterfeit marks, with each sale or
27 delivery constituting a separate violation of Title 18, United States Code, Section 2320(a):

28 ///

| COUNT | DATE | VENUE OF SALE | LOCATION OF BUYER | COUNTERFEIT GOODS |
|-------|----------|---------------|-------------------|--|
| 4 | 12/10/00 | eBay | Walnut Creek, CA | Autodesk AutoCAD 2000i |
| 5 | 03/27/01 | eBay | Morgan Hill, CA | Adobe Photoshop 6 QuarkXPress 4.0 |
| 6 | 07/25/01 | your-cds.org | San Rafael, CA | Adobe Acrobat 5.0 |
| 7 | 11/07/01 | gold-cds.org | San Jose, CA | QuarkXPress 4.1 |
| 8 | 11/09/01 | gold-cds.org | Cupertino, CA | Symantec's Norton SystemWorks 2001 Professional Edition |

All in violation of Title 18, United States Code, Sections 2320(a) and 2.

COUNTS NINE THROUGH NINETEEN: (18 U.S.C. §§ 1956(a)(2)(B)(i) & 2 - Money Laundering (Exportation For Concealment) & Aiding and Abetting)

13. The allegations in paragraphs 1-4 are realleged and incorporated herein as if set forth in full.

14. On or about the dates and in the approximate amounts set forth below, in the Northern District of California and elsewhere, the defendant

MAKSYM VYSOCHANSKY,
a/k/a Maksym Kovalchuk, a/k/a Kovalchuk Maksym, a/k/a Maksym Vysochanskyy,
a/k/a Vysochanskyy Maksym, a/k/a Tara Kovalchuk, a/k/a Andre Balotin,
a/k/a Kevin McGuigan and a/k/a James Watkins,

did knowingly transport, transmit, and transfer, and cause to be transported, transmitted and transferred, monetary instruments and funds from a place in the United States to a place outside the United States, to wit: wire transfers from the "yourcds" account of "Patricia Brekles" at CCNow, an online payment processing company, to Vilniaus Bankas account number 07049338 in the name of Sergej Gerasimenko in Lithuania, which involved the proceeds of specified unlawful activity, to wit: criminal copyright infringement in violation of Title 17, United States Code, Section 506(a) and Title 18, United States Code, Section 2319(b)(1); and trafficking in counterfeit goods in violation of Title 18, United States Code, Section 2320(a); knowing that the wire transfers were designed at least in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of the specified unlawful activity, and

1 while conducting and attempting to conduct such wire transfers, the defendant knew that the
2 monetary instruments and funds involved in the wire transfers represented the proceeds of some
3 form of unlawful activity:

| COUNT | DATE | WIRE TRANSFER AMOUNT |
|-------|--------------------|----------------------|
| 9 | May 1, 2001 | \$960 |
| 10 | May 16, 2001 | \$960 |
| 11 | June 1, 2001 | \$835.03 |
| 12 | June 16, 2001 | \$3,149.62 |
| 13 | July 1, 2001 | \$3,420.43 |
| 14 | July 16, 2001 | \$2,062.44 |
| 15 | August 1, 2001 | \$3,096.91 |
| 16 | August 16, 2001 | \$2,809.65 |
| 17 | September 1, 2001 | \$1,230.60 |
| 18 | September 16, 2001 | \$1,722.73 |
| 19 | October 1, 2001 | \$911.99 |

15 All in violation of Title 18, United States Code, Sections 1956(a)(2)(B)(i) and 2.

16 COUNT TWENTY: (18 U.S.C. §§ 1029(a)(2) & 2 – Trafficking in Unauthorized Access
17 Devices with Intent to Defraud & Aiding and Abetting)

18 15. Between on or about February 15, 2002, and March 24, 2002, in the Northern District of
19 California and elsewhere, defendant

20 MAKSYM VYSOCHANSKY,
21 a/k/a Maksym Kovalchuk, a/k/a Kovalchuk Maksym, a/k/a Maksym Vysochanskyy,
22 a/k/a Vysochanskyy Maksym, a/k/a Tara Kovalchuk, a/k/a Andre Balotin,
a/k/a Kevin McGuigan and a/k/a James Watkins,

23 did knowingly and with intent to defraud traffic in, and aid and abet the use of, unauthorized
24 access devices, to wit, the American Express, Discovery, MasterCard, and Visa credit card
25 account numbers identified below, to obtain something of value aggregating at least \$1,000
26 within a one-year period:

27 ///

28 ///

INDICTMENT
[Maksym Vysochanskyy]

| DATE OF EMAIL | CREDIT CARD ACCOUNT NOS. (LAST 4 DIGITS) |
|-------------------|--|
| February 15, 2002 | MasterCard: 1163, 0513, 6978, 6407, 1750, 9030, Visa: 0846, 9742, 6372, 4611, 0660, 2748, 3491, 3814, 2914, 1773, 7027 |
| February 17, 2002 | American Express: 1000, 1007 Discover: 9956, 0969 MasterCard: 2822, 6836, 5283, 7243 Visa: 6689, 5039 |
| February 18, 2002 | Visa: 1459, 7898, 6497, 0693, 7869 |
| February 20, 2002 | MasterCard: 4327, 1713, 4467, 6550 Visa: 2908 |
| February 20, 2002 | MasterCard: 4327, 1713, 4467, 6550 Visa: 2908 |
| March 4, 2002 | Visa: 8147, 0133, 0145, 9807, 3623, 0231, 0010, 2863, 2275, 6836, 2765, 5771, 9041, 2457, 1328, 7185, 3616, 0020, 0821, 4719, 0954 |
| March 6, 2002 | Discover: 4845 MasterCard: 3349, 3468, 6786, 5577, 2595, 1550, 0996, 1204 Visa: 2710, 2762, 4019, 2762 |
| March 24, 2002 | Visa: 3743, 8712, 7765, 0614, 6562, 2543, 2005, 5814, 7289, 5682, 5223 |

All of the above transactions affected interstate or foreign commerce in violation of Title 18, United States Code, Sections 1029(a)(2) and 2.

FORFEITURE ALLEGATION: (18 U.S.C. §§ 981(a)(1)(C), 982(a)(1) & 28 U.S.C. § 2461(c) - Criminal Forfeiture)

16. The allegations contained in Counts One through Twenty of this Indictment are hereby realleged and by this reference fully incorporated herein for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1) and 28 U.S.C. 2461(c).

17. As a result of the offenses alleged in Counts One through Twenty, the defendant

MAKSYM VYSOCHANSKY,
a/k/a Maksym Kovalchuk, a/k/a Kovalchuk Maksym, a/k/a Maksym Vysochanskyy,
a/k/a Vysochanskyy Maksym, a/k/a Tara Kovalchuk, a/k/a Andre Balotin,
a/k/a Kevin McGuigan and a/k/a James Watkins,

///

INDICTMENT
[Maksym Vysochanskyy]

1 shall forfeit to the United States all property, real or personal, involved in the offenses and any
2 property traceable thereto, or which constitutes or is derived from proceeds traceable to the
3 offenses.

4 18. If any of the property described herein as being subject to forfeiture, as a result of any act
5 or omission of the defendant-

- 6 (1) cannot be located upon the exercise of due diligence;
- 7 (2) has been transferred or sold to or deposited with, a third person;
- 8 (3) has been placed beyond the jurisdiction of the Court;
- 9 (4) has been substantially diminished in value; or
- 10 (5) has been commingled with other property which cannot be subdivided without
11 difficulty;

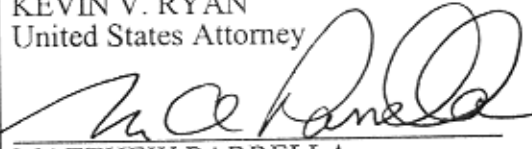
12 any and all interest defendant have in other property shall be vested in the United States and
13 forfeited to the United States pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1) & 28 U.S.C. §
14 2461(c).


15 DATED:

A TRUE BILL.

16 
17 FOREPERSON

18
19 KEVIN V. RYAN
United States Attorney

20 
21 MATTHEW PARRELLA
22 Chief, San Jose Branch

23
24 (Approved as to form: )

AUSA SONDERBY