

FILED

2004 JAN 29 A 11:20

RICHARD W. WICKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CALIF.

1 KEVIN V. RYAN (CASBN 118321)
United States Attorney
2 ROSS W. NADEL (CASBN 87940)
Chief, Criminal Division
3 MARK L. KROTOSKI (CASBN 138549)
4 Assistant United States Attorney

5 280 South First Street, Room 371
San Jose, California 95113
6 Telephone: (408) 535-5035

7 Attorneys for Plaintiff

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

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13
14 v.
15 JEROME T. HECKENKAMP, a/k/a
16 MagicFX, a/k/a Magic,
17 Defendant.

No. CR-00-20355 JW
CR-03-20041 JW
PLEA AGREEMENT

18 I, Jerome T. Heckenkamp, and the United States Attorney's Offices for the Northern
19 District of California and the Southern District of California (hereafter "the government") enter
20 into this written plea agreement (the "Agreement") pursuant to Rules 11(a)(2), 11(c)(1)(A) and
21 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to count three of the superseding indictment in the Northern
24 District of California (filed March 13, 2002), and count two of the superseding indictment in the
25 Southern District of California (filed September 5, 2002),¹ each charging me with Unauthorized

26 _____
27 ¹ On May 5, 2003, the Court granted the defense motion to consolidate the Southern
28 District of California Case No. CR-00-3833J with Northern District of California Case No. CR-

Access into a Computer Recklessly Causing Damage, in violation of 18 U.S.C. § 1030(a)(5)(B).

I agree that the elements of these offenses are that: (1) I intentionally accessed a computer without authorization; (2) as a result of that access, I recklessly caused the impairment of the integrity, or availability of data, a program, a system, or information; (3) the impairment resulted in losses to one or more individuals totaling at least \$5,000 in value at any time during a one-year period; and (4) the computer damaged was used in interstate or foreign commerce or communication. I am further aware that the maximum penalties for each of these offenses are as follows:

- a. Maximum prison sentence 5 years
- b. Maximum fine \$250,000 or twice the gross gain or loss whichever is greater
- c. Maximum supervised release term 3 years
- d. Mandatory special assessment \$100
- e. Restitution Determined by court

2. I agree that I am guilty of the offenses to which I will plead guilty, and I agree that the following facts are true:

a. The eBay Computer Intrusion

Between February 1999 and March 26, 1999, I intentionally accessed a computer of eBay, Incorporated in San Jose, California without authorization. Using the name "MagicFX," I defaced an eBay Web page, installed trojan secure shell (SSH) programs that were designed to and did capture usernames and passwords, and used some of the captured usernames and passwords to obtain further unauthorized access to additional eBay computers. As a result of that conduct, I recklessly caused damage and that damage caused a loss aggregating at least \$5,000 in value during a one year period to eBay. The eBay computer system which I accessed without

_____ 00-20355.

1 authorization was used in interstate and foreign commerce and communication.

2 b. The Qualcomm Computer Intrusion

3 Between October 12, 1999 and December 9, 1999, I intentionally accessed a computer system
4 used by Qualcomm, Incorporated, in San Diego, California, without authorization. Using a
5 computer from my dorm room at the University of Wisconsin-Madison, I installed multiple
6 trojan secure shell (SSH) programs that were designed to and did capture usernames and
7 passwords, and used some of the captured usernames and passwords to obtain further
8 unauthorized access to additional Qualcomm computers. As a result of that conduct, I recklessly
9 caused damage and that damage caused a loss aggregating at least \$5,000 in value during a one
10 year period to Qualcomm. The Qualcomm computer system which I accessed without
11 authorization was used in interstate and foreign commerce and communication.
12
13

14 c. Other Relevant Conduct

15 I agree the Court shall include as relevant conduct under the Sentencing Guidelines all of the
16 losses resulting from the offenses in the two superseding indictments, including those relating to
17 unauthorized access to computer systems owned and operated by eBay, Qualcomm, Exodus
18 Communications, Incorporated, Juniper Networks, Incorporated, Lycos, Incorporated, and
19 Cygnus Solutions.
20

21 3. I agree to give up all rights that I would have if I chose to proceed to trial,
22 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
23 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
24 any other Fourth or Fifth Amendment claims; to any further discovery from the government; to
25 pursue a Jencks hearing, or any other hearing referenced in the Court's Order Denying Pretrial
26
27
28

1 Motions (filed January 22, 2004); to file any additional pretrial motions; and to pursue any
2 affirmative defenses and present evidence.

3 4. I agree to give up my right to appeal my convictions, the judgment, and orders of
4 the Court, except that I reserve a limited right to appeal one issue: the Court's denial of defense
5 motion to suppress evidence obtained as a result of the search of my computer and Room 107,
6 Noyes House, Adams Hall, 1520 Tripp Circle, University of Wisconsin-Madison, Wisconsin. I
7 also agree to waive any right I may have to appeal my sentence, except in the event the Court
8 imposes a sentence of imprisonment greater than eighteen months. In return for the
9 government's promises set out below, I agree that the government may reinstate all of the
10 dismissed counts and include any other charges by superseding indictment should this case be
11 remanded to district court following an appeal for any reason. I further agree that any applicable
12 statute of limitations that has not run as of January 29, 2004 for any charge arising out of the
13 Northern and Southern Districts of California shall be tolled and extended from January 29, 2004
14 until the date that the mandate is spread in the district court from any appeal.
15
16

17 5. I agree not to file any collateral attack on my convictions or sentence, including a
18 petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced.
19

20 6. I agree not to ask the Court to withdraw my guilty pleas at any time after they are
21 entered.
22

23 7. I agree to the following stipulations concerning the application of the Sentencing
24 Guidelines incorporating amendments effective November 1, 1998:

25 a. Base Offense Level, U.S.S.G. § 2B1.3(a): 4
26
27
28

b. Specific Offense Characteristics:

i. More than Minimal Planning
(§ 2B1.3(b)(3)) +2

c. Acceptance of responsibility:
(If I meet the requirements of
U.S.S.G. § 3E1.1) -3

8. I further agree to the following concerning the calculation of my Sentencing Guidelines range:

a. Amount of Loss: I understand and agree that the government may argue that the loss caused by the offense conduct described above is as high as \$350,000, resulting in a ten level increase to the adjusted offense level, pursuant to U.S.S.G. § 2B1.1(b)(1)(K). I also understand and agree that the loss caused by the offense conduct described above is as low as, but not less than, \$70,000, resulting in an eight level increase to the adjusted offense level, pursuant to U.S.S.G. § 2B1.1(b)(1)(I).

b. Role in the Offense: I understand and agree that the government will seek to increase my offense level by two levels for use of a special skill under U.S.S.G. § 3B1.3, and that I will oppose the application of this enhancement.

c. Obstruction of Justice: I understand and agree that the government will seek to increase my offense level by two levels for obstructing or impeding the administration of justice under U.S.S.G. § 3C1.1, and that I will oppose the application of this enhancement.

d. Downward Departure Motion: I reserve the right to file one motion for a downward departure from the Guidelines imprisonment range determined by the Court, and I understand that the government may take whatever position on any such motion that it deems appropriate. I agree that, regardless of any other provision in this agreement, the government

1 may and will provide to the Court and the Probation Office all information relevant to the
2 charged offenses or the sentencing decision. I also agree that the Court is not bound by the
3 Sentencing Guidelines calculations above, the Court may conclude that a higher guideline range
4 applies to me, and, if it does, I will not be entitled, nor will I ask, to withdraw my guilty pleas.
5

6 9. In return for the government's promises set out below, I agree to pay restitution
7 for all the losses caused by all the schemes or offenses with which I was charged in this case, and
8 I agree that the amount of restitution will not be limited to the loss attributable to the counts to
9 which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I agree that I will make a good
10 faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after
11 sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office,
12 provide accurate and complete financial information, submit sworn statements and give
13 depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as
14 a result of my crimes, and release funds and property under my control in order to pay any fine,
15 forfeiture, or restitution. I agree to pay the special assessments at the time of sentencing.
16
17

18 10. I agree not to commit or attempt to commit any crimes before sentence is imposed
19 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial
20 release; intentionally provide false information to the Court, the Probation Office, Pretrial
21 Services, or the government; or fail to comply with any of the other promises I have made in this
22 Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement,
23 then the government will be released from all of its promises in this agreement, including those
24 set forth in paragraphs 13 through 15 below, but I will not be released from my guilty pleas.
25
26

27 11. I agree that this Agreement contains all of the promises and agreements between
28

1 the government and me, and I will not claim otherwise in the future.

2 12. I agree that this Agreement binds the U.S. Attorney's Offices for the Northern
3 District of California and the Southern District of California only, and does not bind any other
4 federal, state, or local agency.
5

6 The Government's Promises

7 13. The government agrees to move to dismiss any open charges pending against the
8 defendant in the captioned superseding indictments at the time of sentencing. As set forth in
9 paragraph 4 above, however, the government may reinstate all of the dismissed counts and
10 include any other charges by superseding indictment should this case be remanded to district
11 court following an appeal for any reason.
12

13 14. Subject to paragraph 13 above, the government agrees not to file or seek any
14 additional charges against the defendant that could be filed as a result of the investigation that led
15 to the captioned indictment.
16

17 15. The government agrees to recommend the Guidelines calculations set out above.
18 The government agrees to recommend a prison term of no more than twenty four months.

19 16. The government will not oppose the defendant's use of a computer and the
20 Internet for employment purposes during the period of the defendant's supervised release.
21 Should the defendant use the Internet and computer in an illegal manner or manner unauthorized
22 by the probation office during his supervised release, the government will seek to revoke his
23 supervised release and will seek modification of his conditions of supervised release and may
24 seek additional charges.
25
26
27
28

1 The Defendant's Affirmations

2 17. I confirm that I have had adequate time to discuss this case, the evidence, and this
3 Agreement with my attorney, and that he has provided me with all the legal advice that I
4 requested.
5

6 18. I confirm that while I considered signing this Agreement, and at the time I signed
7 it, I was not under the influence of any alcohol, drug, or medicine.

8 19. I confirm that my decision to enter a guilty plea is made knowing the charges that
9 have been brought against me, any possible defenses, and the benefits and possible detriments of
10 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
11 one coerced or threatened me to enter into this agreement.
12


13 Dated: January 27, 2004



JEROME T. HECKENKAMP
Defendant

16 KEVIN V. RYAN
17 United States Attorney


18 Dated: January 24, 2004



MARK L. KROTOSKI
Assistant United States Attorney

20 I have fully explained to my client all the rights that a criminal defendant has and all the
21 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
22 and all the rights he is giving up by pleading guilty, and, based on the information now known to
23 me, his decision to plead guilty is knowing and voluntary.
24

25 Dated: January 29, 2004



BLAIR BERK
BENJAMIN L. COLEMAN
Attorneys for Defendant