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It's great to belong to something this good.

cyberlaw: the brave new e-world



By Anne F. Downey

Something Fishy

In 1981, IBM launched the sale of its first personal computer. Nine years later, Beijing-based tech company Legend launched its first PC, thus beginning its conquest of the Asian PC market. Legend changed its name to Lenovo in 2003, and two years later it acquired IBM's PC Division. The acquisition vaulted Lenovo into third place among PC makers in the world. By 2014, Lenovo – now touting principal offices in Beijing and Morrisville, NC – had become the world's largest PC vendor.

The news broke in February 2015 that Lenovo was selling notebooks on which Superfish Visual Discovery software was preinstalled. The software is both annoying and dangerous. It is annoying because it tracks a user's viewing of images on the Internet. If the user's mouse hovers over a refrigerator ad, the user will soon encounter popup ads for refrigerators. But of much greater concern is the fact that the software potentially exposes sensitive data. Because the software uses a low-security root certificate, the user's encrypted and unencrypted Internet communications can be accessed by hackers.

Lenovo signed an agreement with Superfish, a Palo Alto advertising software company, to preinstall the Superfish software on certain Lenovo notebook products. The products began rolling out the door in September 2014. Security concerns started to surface in December, and by February 2015 the issue had gained a lot of publicity and the U.S. Department of Homeland Security had warned users to uninstall the software and the related root certificate.

The root certificate utilized by Superfish is generated by software created by Komodia, a small Israel-based company that sells network interception technology to other software makers. Komodia provided Superfish with an "SSL hijacker" allowing the Superfish software to carry out a man-in-the-middle attack that enables Visual Discovery to intercept encrypted webpages and insert ads in them. The root certificate – poorly secured, using the same key everywhere and a simple password – also makes it possible for hackers to intercept a user's encrypted Internet communications. The certificate makes it easy for a hacker to create a spoof certificate for a webpage (for example, a bank website's password portal) and then divert the user to that page, thereby allowing the hacker to collect the user's password and other data.

The story continues to unfold, and it has become

clear that the Lenovo/Superfish netbooks were not the only products to contain the poorly secured Komodia software. Komodia has a list of over 100 clients. The same root certificate has been found in parental control software, web filtering software and other third party software.

Lenovo has responded to the news by apologizing and providing instructions on how to uninstall the Superfish software and the root certificate. Lenovo stopped preloading Superfish in January 2015. Third party anti-virus software programs released by companies like Microsoft have been updated to uninstall Superfish, but users should note that they need to also take the step of removing the root certificate.

On February 19, 2015, a class action lawsuit was filed in the U.S. District Court for the Southern District of California against Lenovo and Superfish. The complaint in *Bennett v. Lenovo*, 3:15-cv-00368-CAB-RBB, alleges the violation of California Penal Code (wiretap statute), the federal Wiretap Act, trespass to chattel, and violation of California's unfair competition law. The complaint identifies the national class as U.S. purchasers of a Lenovo computer with the Superfish program preinstalled since January 1, 2012. Jessica Barrett, the named plaintiff, is a blogger in San Diego County who purchased a Lenovo Yoga 2 laptop and began noticing pop ups featuring scantily clad women. Her search of web forums for a solution led her to learn that the computer had Superfish preinstalled. Web forum postings quoted in the complaint

“ The root certificate makes it possible for hackers to intercept a user's encrypted Internet communications.”

noted that the Lenovo phone support staff initially denied that the Superfish software was preinstalled and offered to remove it for a \$120 fee. The postings also noted the difficulty of removing all traces of the software. In the complaint, plaintiffs requested statutory damages, attorneys' fees, and the disgorgement of all revenues unjustly earned.

Another class action was commenced against Lenovo and Superfish in the U.S. District Court for the Northern District of California on March 5, 2015. *Estrella v. Lenovo*, 5:15-cv-01044-LHK. The complaint alleges that Lenovo paid Superfish between \$200,000 and \$250,000 for the Visual Discovery software. The case has been assigned to Judge Lucy Koh.

An additional class action was filed March 10, 2015 in the U.S. District Court for the Northern District of California. *JGX, Inc. d/b/a Lefty O'Doul's v. Lenovo Group Limited*, 5:15-cv-01113-NC. The claims in this case are similar to those in the *Barrett v. Lenovo* complaint.

The New York City-based firm of Weitz & Luxenberg, P.C. – recently in the news because of its payments to Sheldon Silver – announced on March 4, 2015 that it had filed a class action lawsuit against Lenovo. The case was filed in the U.S. District Court for the Northern District of California on March 10, 2015. *Wood et al v. Lenovo*, 5:15-cv-01166-PSC. The claims include a breach of implied warranty of merchantability, negligence, fraud, unjust enrichment, intrusion upon seclusion, and other causes of action.

Meanwhile, on March 2, 2015, Connecticut Attorney General George Jepson announced an investigation into the Lenovo/Superfish matter. Jepson sent letters to both companies requesting information in order to determine if Connecticut unfair or deceptive trade practice laws have been violated. The letter to Lenovo requested the submission within 20 days of extensive

citations



By Jeff Spencer

A POOL PLUNGE PLAINTIFF

The party was fun
On that hot summer night
The pool looked inviting
An aquatic delight.

Up the steps of the slide
She went with a dash
To enter that pool
With a mighty splash.

Head first was her slide
As the cool water beckoned
But her crash at the bottom
Was not what she had reckoned.

To court she went
With a desperate plea
For cash to help with
Her serious injury.

Assumption of the risk
Was the defense's great refrain
She was solely at fault
And has no damages claim.

Not so fast, said plaintiff's counsel
With your legal elaboration
A fair look at the evidence
Reveals multiple causation.

The Court looked down
In robes most black
Denying the dismissal motion
After finding questions of fact.

Redmond v. Redmond, __AD3rd__, 4th Dept.,
3/27/15, #263 (Affirming Justice Frank Caruso)



Speaking Out About the Law

The Bar Association wishes to thank the following member of the Speakers Bureau who volunteered his time to help bring the law to life for students and other members of our community.



John T. Loss
*Law as a Career and the 50th
Anniversary of the Selma March*
Niagara Catholic Junior/Senior
High School

If you haven't already done so, why not consider becoming a member of the Speakers Bureau? Take the opportunity to share your valuable insight on the legal topics of your choice. Not only is speaking out about the law a great community service, but it is also an effective practice-building technique. Call Bar Association Headquarters at 852-8687 to sign up today!

Cyberlaw: a Brave New World

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information and documentation, including the number of Lenovo PCs containing the Superfish software sold in the U.S., the dates on which they were sold, all agreements and communications between Lenovo and Superfish related to the software, and all internal communications related to the software. The letter to Superfish requested similar information and the date on which Superfish became aware of issues related to the root certificate, and information on Superfish's dealings with Komodia.

While the legal battles wage on, Lenovo may take a hit in terms of sales. Consumers might think twice about purchasing a Lenovo PC. It may be that Apple will see an uptick in the sale of Macs, which do not come preinstalled with adware. [B]

In the Public Service

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In March of this year, Neighborhood Legal Services and the Western New York Law Center were successful in obtaining a damage award of over \$16,000 and attorneys' fees of almost \$32,000 on behalf of Housing Opportunities Made Equal and Naima Stewart, a client who had been denied housing based on her lawful source of income. According to Stewart, "The defendants' refusal to rent to me made me feel that I was not good enough to live in the safe productive neighborhood.... (I)t made me feel that I belong in a "second class" neighborhood, and has reinforced my belief that discrimination still exists in the city of Buffalo."

On this anniversary of Dr. Martin Luther King's assassination, and also of the passage of the Fair Housing Act, we should rededicate ourselves to the work that furthers Dr. King's vision of a more inclusive and more just society. [B]