

learning from the headlines

IN THE NEWS

GIZMODO
GIZMODO



Before Apple's iPhone 4G went on sale, an engineer from Apple accidentally left an experimental model of the phone sitting in a restaurant in Redwood City, Calif. A 21-year-old restaurant customer found the phone, realized it was valuable, and offered it for sale online to the media.

A technology news website, Gizmodo.com, paid \$5,000 for the phone. One of Gizmodo's bloggers took apart the phone and wrote a review of it, then returned the phone to the man who found it. Apple was not ready to release the iPhone 4G to the public, and went to the police trying to get the phone back. (Apple's lawyers sent a demand to the website asking for the phone back, but did not try to block the website from publishing its reporter's findings.)

The police got a search warrant and raided the home of the Gizmodo blogger, Jason Chen, and took his computers and cameras. They said they were looking for evidence of a theft.

Gizmodo's lawyers argued that the search was illegal. A 1980 federal law, the Privacy Protection Act, prevents the police or prosecutors from seizing a journalist's news-gathering materials, unless they make a written demand and give the journalist a chance to challenge the demand in court (or unless there is a life-threatening emergency). After several months of negotiations, the police agreed to give back Chen's materials, and Gizmodo agreed to voluntarily answer certain questions about how it obtained the phone.

think about

- Why does the law give journalists protection against being searched that other members of the public would not have? Is there a danger in letting people claim to be "journalists" to avoid being forced to turn over evidence?
- The iPhone was left in a restaurant, but it obviously was left by accident – the owner was not intending to give it away. If you take someone's property when you know they'll be coming back to look for it, that can be theft. Should it make a difference whether Gizmodo's source committed a theft? Would it be unethical for Gizmodo to publish information that resulted from a theft?
- Some ethics experts would say that Gizmodo is encouraging people to steal technology by "rewarding" a theft. Does it matter that Gizmodo paid money to the person who provided the phone? Is there ever a time that it's OK for journalists to pay sources for information?

terms to know

Reporter's Privilege – Also known as the "reporter's shield," the reporter's privilege allows a journalist to refuse to cooperate with demands from police or lawyers to turn over information that has not already been published or broadcast. A judge usually can override the reporter's privilege if it is proven that the information is urgently needed and cannot be obtained in any other way.

Subpoena – A person who has information important to a court case may receive a subpoena – from one of the lawyers, or sometimes from the judge – that requires the person to provide evidence. If the person thinks that the information is exempt from being turned over because of a privilege – including the reporter's privilege – the person can go to court and ask a judge to dismiss the subpoena.

Warrant – The police investigating a crime, or the prosecuting attorney working with the police, can get a warrant from a judge that allows them to seize evidence from a home, business or other non-public place. To get a warrant, the officer must be able to show adequate cause to believe that the place being searched contains evidence of a crime.

There are two issues presented by the Gizmodo case. The first is whether police can legally seize evidence that journalists obtained while working on a story. The second is whether it was legitimate for Gizmodo to publish information from a source who did not have the legal right to sell the iPhone.

As to the first issue, Congress passed the Privacy Protection Act in 1980, after a police raid on the newsroom of the Stanford University student newspaper, to make it illegal for the police to seize unpublished material from journalists without giving the journalists a chance to have a court hearing first. The Privacy Protection Act is sometimes informally called an “anti newsroom search” law, but in fact it protects journalists’ “work product” no matter where that work product is kept. This might include a reporter’s car or briefcase – or, in this case, Jason Chen’s house.

The Privacy Protection Act does not apply if the police believe that the journalist is personally involved

in the crime, or that the information is urgently needed to prevent a person from being seriously injured or killed.

As to the second issue, it is generally legal for journalists to publish material that their sources have obtained illegally, as long as the journalists themselves did not break the law. This issue came up in a 2001 U.S. Supreme Court ruling in a case called *Bartnicki v. Vopper*.

In the *Bartnicki* case, a Pennsylvania radio talk-show host broadcast a recording of a phone conversation in which the head of a teacher’s union made harsh comments critical of local school board members. The conversation had been recorded illegally in violation of federal privacy laws. But the Court ruled 6-to-3 that the illegality did not matter; the information was truthful and newsworthy, and the station had a constitutionally protected right to broadcast it – even though the source who provided the tape may have violated federal law.

why it matters

Journalists often get material “leaked” by sources who may have stolen the material. The most recent example is the 92,000 military reports from Afghanistan that news agencies including *The New York Times* received through the website Wikileaks.com. The documents were almost certainly taken by a person connected with the military who did not have permission to distribute them to the public, and who may be prosecuted for revealing classified information.

Many important “insider” stories about the workings of businesses and government depend on confidential documents that whistle-blowers take to the media to expose wrongdoing. These stories would not come to light if journalists were limited to publishing only legally obtained documents.

In the Gizmodo case, it is important that the news outlet did not hire someone to actually steal the iPhone 4G – the phone was already “stolen” when Gizmodo learned about it. A news organization has no more right than any other citizen to actually violate the law in pursuit of a story, such as hacking into a secure computer network or breaking into an office.

The law does give journalists special protection against being searched for the information they’ve gathered. The Privacy Protection Act was passed because Congress believed that it was important for journalists to be able to gather information confidentially. If sources believe that the police can seize journalists’ computers and notes, then they may stop providing information.

for further reference

Gizmodo’s coverage of the lost iPhone story:

[http://gizmodo.com/5525388/the-investigation-into-that-missing-iphone-\[updated\]](http://gizmodo.com/5525388/the-investigation-into-that-missing-iphone-[updated])

Search warrant for Jason Chen’s home and related court documents:

http://www.wired.com/images_blogs/threatlevel/2010/05/iphone_affidavit.pdf

SPLC’s Guide to Publishing Leaked Material:

<http://www.splc.org/knowyourrights/legalresearch.asp?id=82>

The Student Press Law Center is a non-profit legal assistance organization dedicated to educating high school and college journalists about their legal rights and responsibilities.

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