

MAGAZINE

Guide to Online Information Services and Electronic Bulletin Boards

BUSTED *Rusty and Edie's BBS* Seized By

THE FBI

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FILES FROM THE FBI - BULLETIN BOARDS AND BADGES

RUSTY & EDIE'S BBS SEIZED BY THE FBI

Rusty & Edie's BBS touted the fact that they had only two rules: 1. Have fun and 2. No More Rules. It would appear they are going to soon add a third rule to their operation - No Commercial Software.

After several years operating as the biggest open secret in BBSland, the 124 line BBS operated from the home of Russell And Edwina Hardenburgh in Boardman Ohio was raided by the FBI. On Saturday afternoon, January 30, FBI agents presented Rusty with a search warrant. Approximately 130 personal computers, modems, LAN cabling, software packages, and subscriber records were seized as evidence and hauled away - essentially terminating all operations.

Claiming some 14,000 subscribers to a system sporting a registration fee of some \$89 per year and 124 access telephone lines, Rusty & Edie's was one of the nation's largest bulletin board systems. They claimed some 3.4 million calls since going online and were receiving some 4000 calls daily when the system went offline. The system featured over a 100,000 shareware files on 19 Gigabytes of file storage. They

were charged with distributing copyrighted commercial software on their BBS. And while the Software Publishers Association (SPA) was quick to step forward and take credit for the FBI action, it was actually quite late on the scene with this one. And therein lies a tale.

Five years ago, Bob Fairburn had a heart attack. A restaurant manager in Kansas with a wife and children, Fairburn could not obtain life insurance and was assured by doctors that he had a life expectancy of five years or less. He pondered for months on how he could somehow assure his family an income after his death. And he decided that there were two things a man could do in America to generate ongoing income - write a book or invent something.

So he set out to write the Great American Novel. After months of effort, he read through his manuscript and decided even he wouldn't buy it. So he cast about for something he could invent. But again, he found he just didn't have the inspiration to be an Edison. His son had a small personal computer and was already writing games in BASIC. Fairburn took a look at it and decided this was something he could do.

He bought every book he could find on computer programming, and he signed up on Bob Mahoney's Shorewood Wisconsin EXEC-PC BBS. He downloaded hundreds of files from the BBS containing code fragments, examples, programming tutorials, and anything he could find on programming. Starting in BASIC, he eventually moved on to PASCAL. And he came up with an idea for a program. He called it HOME DESIGNER and it was basically a simple CAD package to design home floor plans, place and arrange furniture, and try out various designs for your home or office.

Fairburn decided shareware wasn't the way to go to generate cash. So he solicited software distributors for months. Eventually, a company in Florida called Expert Software picked up the title and launched Expert Home Design - at the staggering price of \$14.95 retail.

According to Fairburn, he only gets fifty cents for each copy sold, but the pro-

gram caught on and he reached the point that he was making a living. He bought a farm outside of Leavenworth Kansas and to get needed physical exercise, began clearing it and converting it into a wildlife park. He hired an assistant, and continued software development.

About a year ago, he dialed his old haunt at Bob Mahoney's EXEC-PC BBS, and there was his commercial software program listed in the download directory with BBS callers downloading it madly. Stunned, he called Bob Mahoney voice and asked him about Mahoney immediately apologized and removed the file from the directory. In examining the file, they found a small file in it advertising that it came from Rusty & Edie's BBS. Mahoney explained that sometimes callers are confused by the difference between shareware software and commercial software and in an effort to contribute something, they upload commercial software to bulletin boards sometimes without realizing the impact. "Most BBS operators will remove it immediately if you call their attention to it," Mahoney assured him.

So Fairburn dialed Rusty & Edie's BBS and did indeed find his program available for download there as well. He selected the editor and began drafting a message to the sysop explaining the situation and asking that the file be removed. According to Fairburn, while he was typing the message, Rusty broke into real-time chat and rather rudely told him that he wasn't responsible for every file that anybody uploaded to the BBS, that they received megabytes of file uploads each day, and that he would remove the file whenever he felt like it and got around to it.

Despite the harsh tone, Fairburn accepted this explanation. But when he called a week later, the file was still there.

"Understand," explains Fairburn, "I'm not Bill Gates. I only get fifty cents per copy sold, and my family depends on this for a living. This guy was running a giant bulletin board and taking in lots of subscriptions, and basically he was stealing my software. I just got mad about it."

Fairburn called the FBI office in Kansas City and complained. They were quite nice but not very helpful during the call. But about a month later, Fairburn answered a knock on the door to find an FBI agent on the front porch - there to investigate his problem. Fairburn took the agent into the den and logged onto Rusty & Edie's BBS. They logged the session to disk and he showed him not only his own program in the directory, but copies of Borland's Software, Novell's LAN software, a number of Microsoft programs, Quicken, and according to Fairburn, "virtually every commercial game program made."

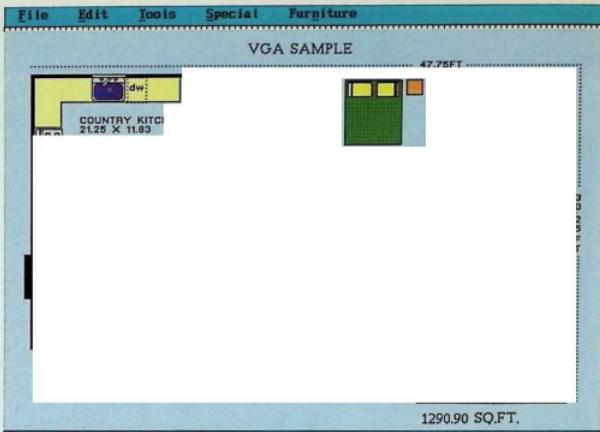
Fairburn was discouraged to learn that the agent knew nothing about computers. But he gave him a disk with the logged session on it, some files they actually downloaded, and a copy of PKZIP so he could extract the files. He patiently explained what PKZIP did, and why it needed to be done. The agent thanked him and left - telling him they would turn it over to their Cleveland office.

Last October, nearly six months after the initial contact, the FBI contacted Fairburn to ask if he would be willing to fly to Ohio at their expense to testify against the Hardenburgh's in the event they decided to prosecute the case. Fairburn agreed as long as they would cover his travel expenses.

He had also notified the publishing company that distributed his software. And apparently they did contact the SPA. The FBI had apparently contacted several of the other software vendors whose programs were found in the log files, and they had in turn contacted the SPA - ergo the SPA involvement.

On January 30th, the FBI served a search warrant on Rusty & Edie's BBS, and essentially trucked it away - an estimated \$200,000 worth of computing equipment.

The bust has evoked mixed reactions online. While the eternally concerned on the Internet were outraged by the Constitutional implications, competing BBS operators were not quite so



adamant. According to Kevin Behrens of Aquila BBS, a 32-line PCBoard system in Chicago, "Rusty Edie's was the worst-kept secret in the industry. I don't know if it's a shame or about time."

Bob Mahoney of EXEC-PC was a bit more direct. "In some ways, this is a competitive situation and every honest sysop is at a disadvantage. Imagine operating a car wash with a competing car wash across the street. The difference is that they give away a \$20 gold piece with each car wash, but you aren't allowed to because it is against the law."

Mahoney went on to note, "There's also something a bit annoying about computer people (BBS operators) ripping off other computer people (software authors). It's a bit like cannibalism within the family. I have a problem with that."

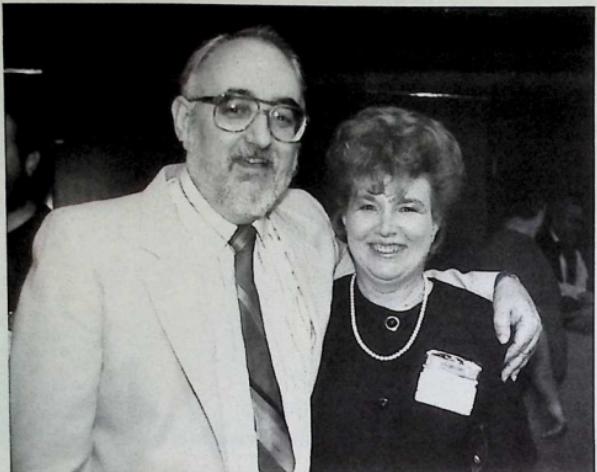
Hardenburgh refused to comment on the situation noting the usual advice of his lawyer not to discuss the case. "I will say I never thought something like this could happen in America and I'm shocked and very disappointed." Hardenburgh vowed to have the system back up on new equipment by March 1 at the (216)726-1247 number,

and expressed his hope that "his caller base would back him on this one."

"When this is all over, I want to come out to that ONE BBSCON in Colorado and tell you all an earful. You're not going to believe what can happen to a BBS," vowed Hardenburgh.

The situation may be further complicated by a recent change to the copyright law, ostensibly driven by the SPA. On October 28, 1992, the 102nd Congress passed Senate Bill 893 - which became Public Law 102-561 revising Title 18 of the United States Code. Under Section 2319(b) of title 18, the criminal penalties for copyright infringement were dramatically changed. Previously, anyone making 1000 copies or more of a copyrighted work were eligible for the maximum penalty. Under the revision, that is reduced to anyone making 10 or more copies with a retail value exceeding a total of \$2500 or more within a 180-day period. If found guilty, they may be subject to sentences of up to five years and fines of up to \$250,000.

As of this writing, Hardenburgh has not been charged with any crime. Thomas F. Jones, Cleveland special agent-in-charge noted in a statement that the Youngstown FBI did serve a search warrant on Hardenburgh's home Janu-



Russell and Edwina Hardenburgh

ary 30th. The warrant alleges the couple illegally distributed copyrighted computer software programs to bulletin board subscribers without permission of copyright owners. There was apparently no implication of pornography.

And Fairburn? Well, he's exceeded his five year projected life span and seems to be doing reasonably well from a cardiac perspective. He did drop a piece of a tree on his arm with a loader in January and has a bit of a problem with his arm. But his Expert Home Designer was extremely well reviewed in the After Hours column of PC Magazine's August '92 issue, and while at \$14.95 it's not one of the big dollar generating software packages, numerically it is the 17th fastest selling software package in America. It's discounted to as little as \$7.95 in grocery stores and apparently the country wants to rearrange their furniture on screen. The program is available from Expert Software, PO Box 148376, Coral Gables, FL 33134; (800)759-2562 voice; (305)443-3255 fax. Bob Fairburn can be reached at 1004 2nd Ave., Leavenworth KS, 66048; (913)651-3715 voice.

Other BBS operators are concerned by

the implications of the raids. Typically, any BBS is subject to receiving uploads of commercial software from callers. And while most do a very good job of screening out the obvious Microsoft Word or Lotus 123 program, there are tens of thousands of commercial programs like EXPERT HOME DESIGNER that aren't immediately obvious in an environment that also includes over 100,000 shareware titles that are perfectly acceptable to carry online.

Most attempts by conscientious system operators to automate the task of separating commercial software from shareware software have had very limited success. Typically, search software examines uploaded ZIP files to detect content files with a certain 32-bit Cyclic Redundancy Check (CRC) signature. But these signatures have not proven to be reliable or unique. Andy Keeves of Executive Network BBS in Mount Vernon, New York, has devised what may be the beginnings of a solution. A database has been compiled using the FWKCS "Content Signature" system made available by Dr. F.W. Kantor of New York with the cooperation of sev-

eral software manufacturers. Kantor's system uses a 64 bit signature based on both a CRC of the file and the file length. This is proving significantly more reliable.

The Executive Network supplies a diskette with instructions to any software manufacturer on request in order to help them identify critical components of their work. When the manufacturer submits the generated "signatures" to the Executive Network, they are incorporated into a database. A software program automatically deletes any uploads containing one of the registered signatures. Software manufacturers can request the identification software by contacting Mr. Black at Executive Network voice (914)667-2150 or by modem at (914)667-4567. There is no charge for either the diskette or the service. BBS operators will be able to download the database for their own use at no charge. According to Keeves, the database already contains several thousand signatures.

Executive Network is one of the largest bulletin boards in the country with over 12 GB of files online, international e-mail, and vendor support areas. The Executive Network Information System, 10 Fiske Place, Mount Vernon, NY 10550; (914)667-2150 voice; (914)667-4567 BBS; (914)667-4817.

BUST TWO - OFFWORLD BBS SEIZED IN ST.LOUIS

Joey Jay operated one of the more popular bulletin board systems in the St. Louis area. Offworld BBS operated on 32 telephone lines at (314)579-0700 using the DLX software popular among real-time chat systems. It gained quite a following as a local chat system. Jay, 28 years old, operated the system from the basement of his father's home in Chesterfield Missouri. Some 4300 local callers frequented the system.

On Friday evening, January 15th, at about 8:52 PM CST, the FBI served a search warrant and seized six computer systems, modems, all tape backups, - some \$40,000 worth of computer hardware and software in all - on suspi-