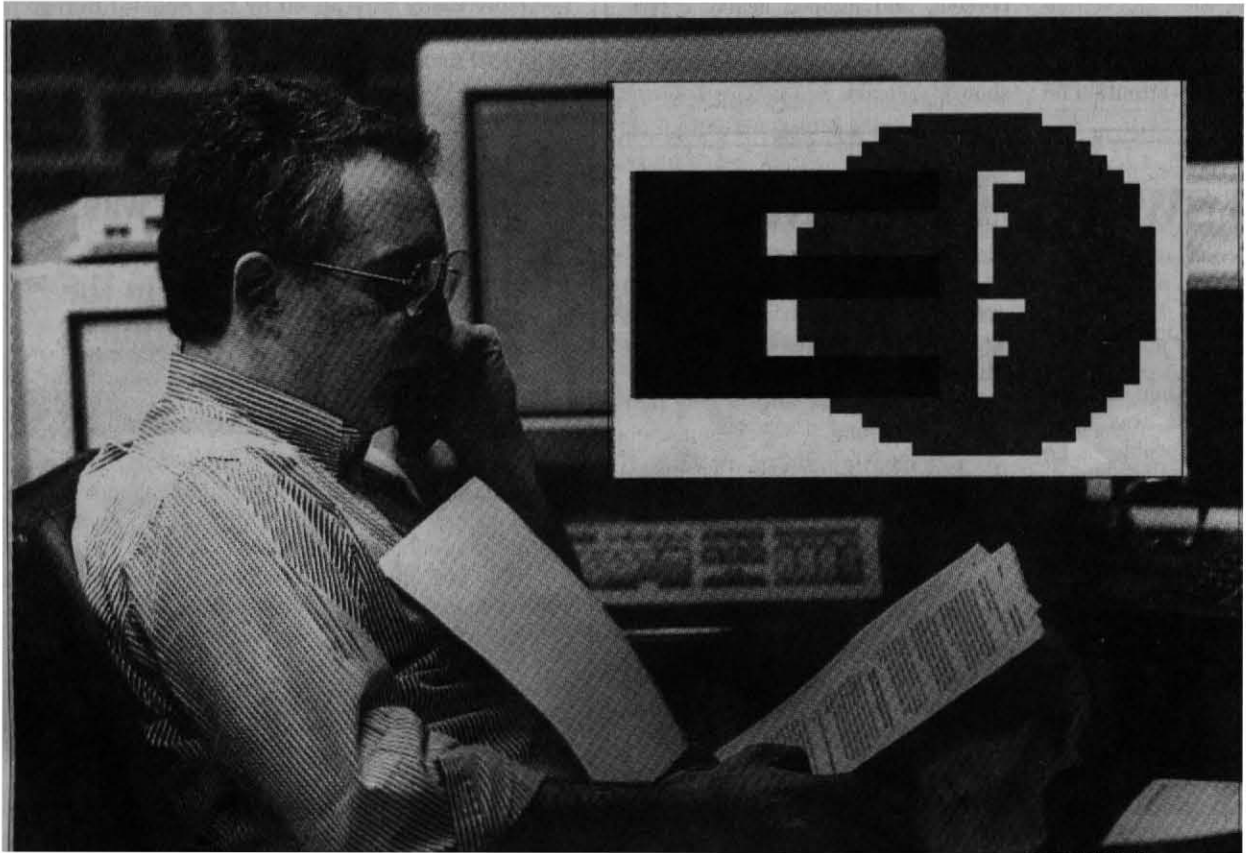


Business

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GLOBE STAFF PHOTO / DAVID L. RYAN

Four years after co-founding the Electronic Frontier Foundation, Mitch Kapor has competition.

Cyberspace confrontation

Defectors challenge the Electronic Frontier Foundation

By Simson L. Garfinkel
SPECIAL TO THE GLOBE

Computer hackers and policy wonks squared off this month over civil rights in cyberspace — and the hackers blinked.

When the dust had settled, three top officials of the Electronic Frontier Foundation, the high-profile civil rights group formed to protect personal freedoms along the information superhighway, abruptly resigned.

And the battle, which some felt was already lost in October when President Clinton signed the Digital Tele-

phony bill, giving police easier wiretap access to telephone networks, appeared to escalate.

The EFF defectors said they were forming a competing organization to guard electronic freedoms. They called it The Center for Democracy and Technology.

Meanwhile, members appear to be battling for the high ground over whether the EFF was too cozy with corporate America — particularly the giants of telecommunications and computer industries from which it receives a large portion of its funding — and whether it truly represents the independent spirit of electronic pioneers.

Publicly, the EFF's former policy director, Jerry Berman, the leader of the defectors, said there are no ill-feel-

EFF, Page 58

Defectors set to challenge Electronic civil rights group

■ EFF

Continued from page 57

ings between the two organizations. "EFF and our new center are working out the terms of our cooperation for the future," he said.

But Berman is telling his friends and associates that he feels let down by the EFF, which he believes got cold feet when its directors decided to compromise over the controversial wiretap bill.

"We were getting a little close to the sausage factory," agrees John Perry Barlow, lyricist for the Grateful Dead, who along with Lotus Development Co. founder Mitchell Kapor and Sun Microsystems Inc. executive John Gilmore formed EFF in 1990. "We don't mind watching people make sausage, but we don't want to get too much blood on [the EFF]."

Sponsored by the FBI and passed by Congress just before the November elections, the Digital Telephony bill drew sharp criticism and opposition from organizations such as the American Civil Liberties Union and the Electronic Privacy Information Center, another Washington cyberspace think tank.

After originally opposing the bill, EFF played an active role in rewriting the legislation last summer and then supported passage.

The Digital Telephony law requires that companies modify the nation's telephone system so calls can be more easily wiretapped by the Federal Bureau of Investigation and other law enforcement agencies. The FBI had lobbied for the legislation for more than

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two years, saying that new digital telephones and other advances were making it difficult to conduct electronic surveillance.

The law allocates more than \$500 million in taxpayer money for the proposed changes to the nation's telecommunications infrastructure.

EFF was largely credited with killing an earlier version of the bill drafted by the Bush administration two years ago. Under the Clinton administration, however, the FBI renewed its efforts to have the legislation passed.

EFF staffers say they were positive some form of the Digital Telephony legislation was going to be approved and they reasoned it was better to be involved in making it the most "user friendly" they could.

"We knew that many of our friends were retiring, or losing" re-election bids, recalls Drew Taubman, EFF's director. "We realized that the best chance we had to accomplish some of the things that we wanted to accomplish for privacy was in the last session."

EFF, however, successfully narrowed the scope of the bill by excluding the Internet and other on-line services from its reach. EFF also fought to have strong new privacy protections added to the bill. Nevertheless, the main purpose of the bill remained: To involve law enforcement up-front in the design of the nation's telephone system to allow easy access for wiretaps.

"It shifts a lot of regulation of the phone system to a law enforcement agency, away from the FCC," says Robert Smith, editor of *The Privacy Journal*. "It really shifts the emphasis, to make the phone system an instrument of law enforcement, instead of a vehicle for communication."

The ACLU and other civil rights organizations were almost unanimous in their condemnation of the bill, as were people posting messages on numerous Internet news group networks. Only the EFF visibly supported the legislation, which was quickly passed by a voice vote in both houses of Congress in early October and unceremoniously signed into law on the tarmac by President Clinton before he flew to the Middle East to witness the peace treaty signed between Israel and Jordan.

Now many of EFF's members feel betrayed. "I was surprised," says Len Tower Jr., a Cambridge programmer who is a heavy user of electronic mail. "I think that the bill was bad law. The foundation was supposed to be out there protecting our rights in the cyber frontier. They didn't."

EFF member Michael H. Riddle, who is general counsel for Greater Omaha Public Access Unix Corp., said EFF should have maintained its original opposition.

"It may well be that Digital Telephony was destined to pass regardless of lobbying efforts, but I'm not completely convinced that a well-mounted campaign couldn't have forced the FBI into a much more embarrassing position," he said.

Upset by a rash of computer seizures by police and Secret Service agents around the United States, EFF's three wealthy founders originally billed their organization as a "hacker defense fund." But its members increasingly became interested in policy issues and moved from Cambridge to Washington in January 1991.

Although EFF was envisioned as a membership organization similar to the ACLU, the organization has subsisted largely on contributions from Kapor, the Kapor Family Foundation and major corporations. According to records in the Massachusetts attorney general's Office of Public Charities, EFF received \$1,052,721 in contributions in 1993, the last year on record. Of that money, \$312,546 came from Kapor, \$155,000 came from telecommunications corporations and \$337,500 from computer corporations.

Two of EFF's largest contributors were AT&T and Microsoft; each gave the organization \$75,000.

Now some people are charging that EFF's corporate sponsorship has colored its approach to civil rights.

"Jerry protected the phone companies in the wiretap negotiation by getting the government to cough up half a billion dollars," alleges Marc Rotenberg, director of the Electronic Privacy Information Center, who was one of the most vocal opponents of the Digital Telephony legislation.

Earlier versions of the bill required that phone companies pay for the changes to their networks by applying for rate increases. "Once the telephone companies' objection to the wiretap bill went away, EFF's objection to the wiretap bill went away," says Rotenberg, who has worked closely with EFF on other issues.

EFF says its critics - especially Rotenberg - simply do not understand the political process.

"It was painful for all of us. I don't think that there was a person working here who wanted to support a wiretap bill," says Taubman. "Unfortunately, part of what we said we wanted to do was be effective, and that means being adults, and making those choices."

In defending its support of the bill, EFF's leadership repeatedly points to positive protections for privacy which were written into the law at its request.

"I really think that what we did was far more worthy of praise than criticism, in the final analysis," says Barlow. "I am so dismayed about how much credibility EFF lost among people who didn't take the time to figure out what we did."

Among other things, Barlow notes EFF had language removed from the legislation that would have required telephone companies to give law enforcement the ability to perform wiretaps remotely and without the knowledge of telephone company officials.

Nevertheless, in October, shortly after the passage of the bill, EFF's board decided that the organization would cease being a player in the inside-the-beltway political game. This December, when EFF moved from its old offices that it shared with Podesta and Associates, a well-placed Washington law firm, Berman and his policy group stayed behind.

EFF, meanwhile, will refocus its priorities and fund-raising activities, Taubman said.

Last week it named computer law authority David Johnson as chairman of EFF's board, and also named technology writer and venture capitalist Esther Dyson vice chairwoman.

"We are about to get involved in intellectual property in a big way," said Taubman. "That is going to [upset] some corporations. Our views on intellectual property are not the same as Microsoft's."