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March 11, 2013

VIA FEDERAL EXPRESS

President L. Rafael Reif
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, MA 02139-4307

Re: *United States v. Aaron Swartz*
United States District Court, District of Massachusetts Crim No. 11-CR-10260 NMG

Dear President Reif:

I write respectfully to address MIT's response to the tragic prosecution of my former client, Aaron Swartz.

You recently appointed a committee, led by Professor Hal Abelson, to look into MIT's actions with respect to the investigation and prosecution of Mr. Swartz. It appeared at that time that MIT was interested in pursuing and uncovering the truth, and then sharing that with the broader MIT community, the United States Congress, and the public at large. MIT's recent actions, however, call that commitment into question.

In particular, MIT has resisted and is resisting any disclosure of the underlying evidence in the case, including the evidence furnished by MIT to the prosecutors. As you are no doubt aware, that evidence is covered by a Protective Order restricting its disclosure. Recently, in response to an inquiry from the *Wall St. Journal*, a representative of MIT made the following statement:

The decision to lift the protective order rests with the judge who put it in place. Documents provided by MIT in the Swartz case included individual names and information regarding MIT employees. It is MIT policy and practice to protect employee privacy. MIT provided the documents under the express understanding that they would be protected from disclosure, which is the purpose of the protective order. Given this, we are concerned about any public release of information about individual MIT employees: we will seek to protect their privacy. At the same time, MIT is eager to share important facts about its actions in the Aaron Swartz matter with the public: Professor Hal Abelson has been charged by President Rafael Reif with conducting an analysis that will be made public in the coming weeks.

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March 11, 2013

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The statement that "MIT provided the documents under the express understanding that they would be protected from disclosure" is just plain false. First, MIT provided those documents to the government before any Protective Order existed. Moreover, MIT could never have anticipated that the significant quantities of information it supplied to the government for use in a criminal case, which would necessarily result in a public trial, could possibly remain secret or confidential. The MIT witnesses identified in the materials would testify in public. The evidence would be displayed and discussed in open court. MIT's assertion that it had an expectation of confidentiality cannot have been made in good faith.

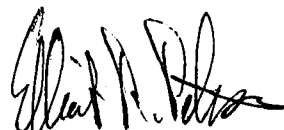
Professor Abelson's committee, and its lawyer representative Andrew Grosso, initially contacted me and asked me to make myself available for an interview. I agreed to do so. Thereafter, in the exchange of emails attached hereto, I pointed out to them my doubts about MIT's purported search for the truth, in light of its simultaneous efforts to conceal evidence of the truth. Thereafter, in an email also attached hereto, attorney Grosso cancelled the interview with me. MIT will therefore be the only person or group purporting to learn and report about the investigation and prosecution of Aaron, yet declining to speak to me.

I do not understand what MIT's position is with respect to pursuing a transparent and fair evaluation of the events giving rise to the prosecution of Aaron Swartz and MIT's role in that prosecution. But to the extent that MIT would tell its community and the public that it desires transparency, and is searching for the truth, MIT's actual behavior calls that into serious question.

If MIT is truly committed to transparency and a search for the truth regarding its role in the prosecution of Aaron Swartz, it should drop its opposition to the public disclosure of the underlying evidence that it furnished to the government in connection with the Aaron Swartz case. If it declines to do so, you, as MIT's President, should publicly explain why.

Thank you for considering the views expressed in this letter.

KEKER & VAN NEST LLP



Elliot R. Peters

Enclosures

ERP:aap

Elliot Peters

From: Andrew Grosso <Agrosso@att.net>
Sent: Wednesday, February 27, 2013 3:05 PM
To: Elliot Peters
Cc: hal@mit.edu; 'Douglas W Pfeiffer'; 'Peter A Diamond'
Subject: RE: Teleconference

Elliott,

We have received your email. I recommend that we postpone our interview for the time being. If, in the meantime, you have any information that you wish to provide to us for our consideration please feel free to send it to me.

- Andy

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-----Original Message-----

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Wednesday, February 27, 2013 12:52 AM
To: 'Douglas W Pfeiffer'; Andrew Grosso
Cc: Hal Abelson; Peter A Diamond
Subject: RE: Teleconference

Gentlemen,

I received from the MIT news office a confirmation that this statement was in fact issued by it on behalf of MIT. I have this evening provided the following response to the MIT news office:

"This statement is an insult to my intelligence. The documents were provided to the government before any protective order was entered, and directly contrary to this statement, with the express understanding that they would be used in a criminal prosecution, which would lead to a PUBLIC TRIAL, at which time the documents would be offered into evidence and the witnesses would testify, in public. MIT never could have expected these materials not to become public, and I find this statement to be shockingly misleading and insincere."

I find this situation most troubling. I have taken at face value that your investigation is being conducted in good faith and in pursuit of the truth, on behalf of MIT. I now have no choice but to doubt that. The actual underlying evidence, especially emails among MIT employees, and correspondence reflecting tortured assistance provided to the government by the MIT general counsel's office in order to conjure up damages in excess of

\$5000 under the CFA, are the actual evidence of what occurred. For MIT to act like it is seeking the truth, while simultaneously suppressing public or Congressional access to the actual evidence, strikes me as duplicity of the highest order. This is especially true since MIT's stated reason for trying to keep the evidence secret -- a claimed expectation that it would remain confidential -- is so obviously false. How could anyone have ever believed evidence supplied in furtherance of a criminal prosecution culminating in a public trial would remain secret? To the extent MIT wishes to protect confidential identifying information about employees, that can easily be done via redaction. But that concern supplies no rationale to stonewall public access to the evidence. Under these circumstances I have no desire to provide information to MIT, so that MIT can then state that I have been interviewed, characterize my comments in whatever way it chooses, and then hide from the public the evidence that actually demonstrates what happened.

If you are serious about seeking the truth, I am happy to speak with you.

MIT's abandoning its spurious objections to the evidence becoming public would be a true sign of its interest in seeking the truth. If you are part of an effort to prevent the public from seeing the evidence, then I prefer not to participate in whatever type of exercise MIT has in mind. Please let me know which it is. And please make this correspondence part of any report you prepare.

Thank you.

Respectfully,

Elliot Peters

-----Original Message-----

From: Douglas W Pfeiffer [mailto:dwp@MIT.EDU]
Sent: Sunday, February 24, 2013 1:06 PM
To: Elliot Peters; Andrew Grosso
Cc: Hal Abelson; Peter A Diamond
Subject: RE: Teleconference

Mr. Peters,

I have forwarded your email to the MIT News Office.

Doug Pfeiffer

-----Original Message-----

From: Elliot Peters [mailto:EPeters@kvn.com]
Sent: Friday, February 22, 2013 11:47 AM
To: Douglas W Pfeiffer; Andrew Grosso
Cc: Hal Abelson; Peter A Diamond
Subject: RE: Teleconference

I received this email today from a Wall St. Journal reporter. Is it true that MIT is opposing the dissemination of the relevant underlying documents in this case? It is our view that the protective Order should be lifted and the underlying facts should be made public. The statement quoted below is less than clear about MIT's position.

Thanks,
Elliot

Still no answer from the Feds though the usaa told me it is being worked on.

I asked MIT about it and here's what the flack said:

The decision to lift the protective order rests with the judge who put it in place. Documents provided by MIT in the Swartz case included individual names and information regarding MIT employees. It is MIT policy and practice to protect employee privacy. MIT provided the documents under the express understanding that they would be protected from disclosure, which is the purpose of the protective order. Given this, we are concerned about any public release of information about individual MIT employees: we will seek to protect their privacy. At the same time, MIT is eager to share important facts about its actions in the Aaron Swartz matter with the public:

Professor Hal Abelson has been charged by President Rafael Reif with conducting an analysis that will be made public in the coming weeks.

Do you have Any idea what's going on?

Many thx

-----Original Message-----

From: Douglas W Pfeiffer [mailto:dwp@MIT.EDU]
Sent: Friday, February 22, 2013 6:37 AM
To: Elliot Peters; Andrew Grosso
Cc: Hal Abelson; Peter A Diamond
Subject: RE: Teleconference

All,

OK, we've rescheduled our phone conference for next Friday 3/1, at 11:00 AM eastern. Details are below.

--Doug

AUDIO BRIDGE CONFIRMATION.

To: Douglas Pfeiffer.

Dates: 3/1/13

Days: Friday

Time: 11am to 12:15pm.

Participants: 5

Assigned Phone: Number: " 617-324-7294

Prior to the beginning of your audio bridge you must share the assigned MIT telephone number shown above with all participants of the call. Each participant dials this number at the time of the conference and all callers are connected. When dialing the assigned number within MIT, only dial the last 5 digits. When dialing from outside MIT, you must dial the 10 digit phone number.

-----Original Message-----

From: Elliot Peters [mailto:EPeters@kvn.com]
Sent: Thursday, February 21, 2013 8:46 PM
To: Douglas W Pfeiffer; Andrew Grosso

Cc: Hal Abelson; Peter A Diamond
Subject: RE: Teleconference

Gentlemen,

I am VERY sorry but something has come up in one of my cases which makes me unable to make this call. I truly apologize. Could we reschedule for the same time (11 am eastern) on Tuesday, Wednesday, Thursday or Friday of next week, 2/26, 27, 28 or 3/1?

Thanks for your understanding.

Best,
Elliot