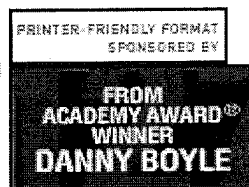


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Journalists Intend to Sue Hewlett-Packard Over Surveillance

By DAMON DARLIN

In an unusual step for the news media, three journalists whose private phone records were scrutinized by investigators working for Hewlett-Packard intend to sue the company for invasion of privacy.

The dispute stems from an investigation of Hewlett-Packard's directors initiated under the company's former chairwoman, Patricia C. Dunn. To try to uncover leaks from board members, private investigators examined the phone records of nine journalists who covered the company, as well as the records of some of their relatives.

While the dispute revolves around the issue of how the journalists' careers may have been damaged by having their phone records examined, the threat to sue also raises the question whether it is proper for a news organization or its reporters to sue a company they cover. It is certainly not common.

"We are preparing to file a lawsuit," said Kevin R. Boyle, a lawyer in the Los Angeles firm of Panish, Shea & Boyle, which was hired by three reporters for CNet Networks, an online technology news service, Dawn Kawamoto, Stephen Shankland and Tom Krazit.

CNet does not plan to join their lawsuit, but said that it might sue separately.

Mr. Boyle said the suit would not ask for a dollar amount of damages but would seek punitive damages against Hewlett-Packard, the world's largest computer company, which admitted acquiring the records through subterfuge, a practice called pretexting. Mr. Boyle said that while his clients are still employed by CNet, they are no longer allowed to cover Hewlett-Packard.

The threat to sue comes after several months of negotiations with the company. In December, Bill Lockyer, then California's attorney general, met with a majority of the nine

journalists in an attempt to get settlement talks started; the journalists' lawyers were at the meeting, as were lawyers for some of the news organizations they represented.

The original plan was to seek an amount equal to about \$250,000 for each journalist to be donated to an agreed-upon cause, like a journalism school program, Mr. Lockyer had said at the time.

Over the next several months, a group of seven journalists, whose phone records or whose families' records had been examined, debated whether to proceed and what the implications would be for their profession. The three CNet reporters split off from the group and sought separate representation.

The other four reporters — three from BusinessWeek and one from The New York Times — continue to pursue settlement discussions as a group, together with The New York Times Company.

Two reporters for The Wall Street Journal investigated by Hewlett-Packard, Pui-Wing Tam and George Anders, declined to seek compensation. The Wall Street Journal indicated in December that it would not take part in settlement talks or any legal action.

BusinessWeek also opted out of any involvement, though its three reporters — Peter Burrows, Ben Elgin and Roger O. Crockett — decided to pursue the matter privately. They are represented by a San Francisco lawyer, Terry Gross, who also represents John Markoff, a reporter for The New York Times, as well as The Times itself.

David E. McCraw, a lawyer for The New York Times, said Hewlett-Packard's spying operations were "designed to interfere with our journalism and, ultimately, to deprive our readers of information of importance to them."

He added that the newspaper was not looking for financial gain, but a settlement with the money donated to a worthy cause.

"The New York Times Company appreciates the steps that H.P. has taken to remedy the situation," Mr. McCraw said, "but we believe H.P. can and should do more to acknowledge the harm that was done and to demonstrate to other companies that may be tempted to engage in similar conduct that this is not an offense that carries no consequences."

At The Times, Mr. Markoff was not regularly assigned to cover Hewlett-Packard, but has written articles that mentioned the company. He can continue to do that, and does not write about the company's pretexting or related legal issues, according to Lawrence A. Ingrassia, the business editor of The Times.

At BusinessWeek, Mr. Elgin and Mr. Burrows had covered Hewlett-Packard in the past, but no longer do, and Mr. Crockett had contributed reporting to articles about the company. Patricia Walsh, a spokeswoman for McGraw-Hill, the parent company of BusinessWeek, said it would not comment on future coverage of H.P.

In an April meeting with H.P.'s outside law firm, Morgan, Lewis & Bockius of Philadelphia, the seven journalists requested an amount equal to several million dollars each, paid to them directly with their promise that most of the money, though not all, would be donated to charity. Hewlett-Packard's offer was closer to \$10,000 per reporter, roughly enough to cover the reporters' legal bills, according to several people involved in the talks.

"The discussions have not been fruitful to date, and we hope to resolve this without litigation," said Mr. Gross, of the firm Gross & Belsky in San Francisco.

News organizations and reporters generally decline to pursue financial settlements with companies or individuals they write about because of the possible perception that they might be trading coverage for compensation. Tom Bivins, a media ethics professor at the University of Oregon, called the Hewlett-Packard case "an odd one," but said he saw no ethical problem with journalists undertaking a suit.

"A journalist is a citizen, after all," he said.

But Professor Bivins said he saw potential problems going forward for the journalists involved. "If they tried to cover the company again, that would be an ethical problem."

The revelation of Hewlett-Packard's investigation led to the resignation of Ms. Dunn and two company lawyers, as well as the filing of felony charges in California against Ms. Dunn and four others.

A California judge dismissed the charges against Ms. Dunn in March and reduced the charges against three other defendants to misdemeanors.

The company agreed in December to pay \$14.5 million to settle a civil lawsuit filed by the California attorney general in connection with the spying. The company has also apologized to the journalists.

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