Arrrgh!

By: Jack Greiner on December 21, 2009 on graydon.law

Here's an interesting post about a recent decision from the United States Court of Appeals for the Fourth Circuit that upheld a securities fraud conviction against a stock tip newsletter. The defendant published a newsletter called "Pirate Investor." In the course of reporting on the activities of a company called USEC, the defendant claimed to have information from a "senior USEC executive" about the effective date of a major USEC contract. Pirate sent an e-mail indicating that it had valuable information about a contract approval from an unnamed company, and offered to disclose the company name if the recipients paid $1,000. The SEC contends that Pirate did not have any such information, and therefore it committed securities fraud when it claimed to have that information. Pirate argued that the court should find an exemption to the federal securities law for publishers of non-personalized financial news who do not have an interest in the underlying transaction. But the court found that Pirate's solicitations were sufficiently "in connection with" a stock transaction to justify liability. The court felt that the federal securities laws were designed to be flexible so that it could address unforeseen forms of fraud. The court also rejected Pirate's First Amendment defense, finding very simply that the First Amendment does not protect fraudulent speech. I'm not sure if this holding would apply to every tweet or Facebook posting, but if you use social media to discuss stock information, this might give you pause. Of course, if you call yourself "Pirate Investor" you might be asking for trouble.