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Intel Corp. v. Hamidi: Private Property, Keep Out—The Unworkable Definition of Injury for a Trespass to Chattels Claim in Cyberspace

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NOTE

INTEL CORP. v. HAMIDI: PRIVATE PROPERTY, KEEP OUT— THE UNWORKABLE DEFINITION OF INJURY FOR A TRESPASS TO CHATTELS CLAIM IN CYBERSPACE

INTRODUCTION

Imagine: it is a Monday morning and you are sitting at your desk with a cup of coffee in hand, ready to attack the day. You log on to your computer and check your e-mail, only to find that your in-box is full of hundreds of spam e-mail messages, i.e., junk mail that you will have to spend your precious time wading through before deleting, to ensure you do not inadvertently delete an essential message from a client or an instruction from your supervisor. Even though you are using a work computer, looking at your work e-mail account, during work time, there is nothing your employer can do about it. This is the process each employee must go through every day. Is this a reasonable burden to expect all businesses to shoulder?

With the rapid growth of the Internet, electronic mail has become a convenient and efficient method of communicating and transacting business. When problems arise in the context of improper use of electronic communications, including the Internet, courts have applied the common law tort of trespass to chattels.¹ Under this common law doctrine, a party can be held liable for damage caused by interfering with the private property of another. However, a recent decision of the California Supreme Court will make it harder to prove a trespass has occurred if the trespass is electronic because the court has narrowly construed the injury necessary to prove this cause of action.

The topic of this Note is the June 2003 opinion of the California Supreme Court in the case of *Intel Corp. v. Hamidi*.² In this case, Intel Corporation (“Intel”) filed an action against its disgruntled former employee, Kourosh Kenneth Hamidi (“Hamidi”), after he flooded Intel’s private e-mail system with unsolicited e-mail messages to its employees on six different occasions, despite Intel’s demand that he stop.³ The trial court entered summary judgment for Intel and issued a permanent injunction restraining and

1. See Marjorie A. Shields, Annotation, *Applicability of Common-Law Trespass Actions to Electronic Communications*, 107 A.L.R. 5th 549 (2003) (collecting and summarizing cases that have determined, under state law, the applicability of common law actions for trespass to electronic communications).

2. 71 P.3d 296 (Cal. 2003), *rev’g* 114 Cal. Rptr. 2d 244 (Ct. App. 2001).

3. *Intel Corp. v. Hamidi*, 114 Cal. Rptr. 2d 244, 246 (Ct. App. 2001).

enjoining Hamidi from sending messages to Intel's employees.⁴ The Court of Appeal for the Third District affirmed the trial court's grant of a permanent injunction, finding that Intel had shown damage from loss of productivity caused by worker distraction and time spent trying to block the e-mails.⁵ The California Supreme Court reversed, finding no injury to Intel's property or its legal interest in that property sufficient to support a trespass to chattels claim.⁶ Using a narrow definition of injury, which required actual physical damage to the computer system or impairment of its functioning, the court refused to consider Intel's economic loss due to decreased employee productivity and significant time spent by its security personnel trying to block or remove Hamidi's e-mail messages.⁷

The impact of the *Intel* decision on California businesses will be significant. Regardless of ownership and accompanying responsibility, a business will not be able to protect or control the use of its proprietary computer systems, nor the actions of employees who use those systems. This Note argues that the California Supreme Court applied a definition of injury that is unworkable given that the trespass was done electronically. In today's age of electronic communication, physical damage from electronic signals that sufficiently interfere with a computer system to the point where it causes a slowdown or crash are not the only type of injury a party may suffer. Injury sufficient for an electronic trespass to chattels claim should be more broadly construed to include foreseeable consequential economic damages, which are proximately caused by the trespasser. With the Internet revolution and its accompanying host of new legal issues, the law must evolve if it is to "meet economic, social, and scientific changes in society."⁸

Using the more appropriate and broader definition of injury, Intel proved sufficient injury to obtain relief, i.e., it sustained economic loss from its security department employee-hours trying to block Hamidi's e-mails and loss of employee productivity from the disruption Hamidi's numerous e-mails caused. Hamidi had been told his e-mail was not welcome, yet he continued to evade Intel's efforts to block it. Intentional trespass such as this should not be allowed to go unrestrained.

Part I of this Note describes the existing common and statutory law as it relates to trespass to chattels in electronic communication and other statutory bases for prohibiting improper electronic communications. Part II describes the factual and procedural history of the *Intel* case through the trial, appellate and supreme court decisions. Part III explains the theories under which

4. *Id.* at 247.

5. *Id.* at 250-52.

6. *Intel*, 71 P.3d at 308.

7. *Id.* at 307-08.

8. *Id.* at 330 (Mosk, J., dissenting). See also Julie Beauregard, Note, *Intel Corp. v. Hamidi: Trespassing in Cyberspace*, 43 JURIMETRICS J. 483, 489-90 (2003) (arguing that the trespass to chattels doctrine has been expanded to accommodate the lack of physical touching and a shift in the definition of harm that is evident in a cyberspace claim).

physical damage is not necessary to recover for trespass to chattels. Part IV argues that Intel should have been granted relief because not only did Intel prove it suffered injury in the form of economic damages that were related to its chattel, Hamidi's e-mail was also prohibited by California statutory civil and criminal laws. Moreover, the court should respect a business's legitimate interest in protecting and controlling its assets, which must include the right to exclude others. When proving physical injury is inappropriate because of the electronic nature of the trespass, and when the trespasser intentionally enters where he has been asked to leave, the court should more broadly construe injury in a cyberspace trespass claim to include foreseeable consequential economic harm that is proximately caused by the trespasser's actions. This Note concludes that Intel should have prevailed in this case of electronic trespass.

I. BACKGROUND—EXISTING LAW

A. *Trespass to Chattels*

Trespass to chattels is an arcane doctrine whereby one who intentionally uses or intermeddles with personal property of another can be held liable for that interference.⁹ A trespasser is liable where the "chattel is impaired as to its condition, quality, or value" or if "harm is caused to some . . . thing in which the possessor has a legally protected interest."¹⁰ A party seeking an injunction for trespass to chattels typically must show (1) the interference was intentional, (2) the interference was unauthorized, and (3) the interference proximately caused the injury.¹¹

The right to control one's private property is deeply embedded in the law.¹² Our system of private property ownership centers on the fundamental right to exclude others, thereby allowing the owner to fully control the property use.¹³ The tort of trespass to chattels parallels trespass to land in many respects, except with regard to the harm or dispossession required to be shown.¹⁴ While an intentional entry upon land of another is sufficient to constitute trespass whether it is harmful or not, a plaintiff is required to show le-

9. RESTATEMENT (SECOND) OF TORTS §§ 217-218 (2003). "Intermeddling" means intentionally bringing about a physical contact with the chattel. *Id.* § 217 cmt. e.

10. *Id.* § 218(b), (d).

11. Denise M. Howell, *California High Court Complicates Control of Unwanted E-Mails*, ANDREWS COMPUTER & INTERNET LITIG. REP., Nov. 18, 2003, at 10. After *Intel*, a trespass to chattels plaintiff should *also* be prepared to show (1) the chattel itself suffered quantifiable harm; (2) the owner instituted measures and incurred expenditures attempting to stop the trespass and preserve the chattel's functionality; and (3) the harm to the chattel is content neutral. *Id.*

12. Respondent's Brief at 9, *Intel v. Hamidi*, 71 P.3d 296 (Cal. 2003) (No. S103781).

13. *Id.*

14. 1 DAN B. DOBBS, *THE LAW OF TORTS* § 60, at 124 (2001).

gally recognizable harm to prevail on a trespass to chattels claim.¹⁵ Harm can be shown by: (1) actual dispossession, (2) loss of use for a substantial time, (3) impairment in the condition, quality or value of the chattel, or (4) harm to the possessor or to someone or something in which the possessor has a legally protected interest.¹⁶

A plaintiff can recover on the theory of trespass to chattels where the interference with personal property possession is “not sufficiently important to be classed as conversion, and so to compel the defendant to pay the full value of the thing with which he has interfered.”¹⁷ Yet, courts have found that any unlawful interference, however slight, with the enjoyment by another of that person’s personal property, can be sufficient for trespass.¹⁸ In modern American law, “[t]respass remains as an occasional remedy for minor interferences, *resulting in some damage*.”¹⁹

More recently, courts have started to adapt this doctrine, originally developed to protect physical property, in the context of cyberspace to put a stop to commercial spam, spiders, and automatic programs that are unwelcome and potentially damaging.²⁰ California courts have found that electronic signals generated and sent by a computer are sufficiently physically tangible to support a trespass to chattels cause of action.²¹

B. Unwelcome E-mail—Spam

The general public’s frustration with receiving an increasing number of unsolicited e-mail messages has prompted thirty-six states to enact laws governing unsolicited bulk and/or commercial e-mail (spam²²), primarily within the last four years.²³ While California has not yet adopted legislation

15. *Id.*

16. RESTATEMENT (SECOND) OF TORTS, *supra* note 9, § 218; *see also* DOBBS, *supra* note 14, at 124.

17. W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS § 14, at 85-86 (5th ed. 1984). Prosser & Keeton refer to trespass to chattels as the “little brother of conversion.” *Id.*

18. 75 AM. JUR. 2D *Trespass* § 16 (2003).

19. KEETON, *supra* note 17, § 15, at 90 (emphasis added).

20. Laura Quilter, *The Continuing Expansion of Cyberspace Trespass to Chattels*, 17 BERKELEY TECH. L.J. 421, 421 (2002).

21. *See, e.g.*, *Thrifty-Tel, Inc. v. Bezenek*, 54 Cal. Rptr. 2d 468, 473 (Ct. App. 1996); *CompuServe Inc. v. Cyber Promotions, Inc.*, 962 F. Supp. 1015, 1021 (S.D. Ohio 1997) (applying California law).

22. Use of the term “spam” as Internet jargon for unsolicited bulk e-mail (or “junk mail”), either commercial or non-commercial, “arose out of a skit by the British comedy troupe Monty Python, in which a waitress can offer a patron no single menu item that does not include spam: ‘Well, there’s spam, egg, sausage and spam. That’s not got *much* spam in it.’ . . . Hormel Foods Corporation, which debuted its SPAM® luncheon meat in 1937, has dropped any defensiveness about this use of the term and now celebrates its product with a website (www.spam.com).” *State v. Heckel*, 24 P.3d 404, 406 n.1 (Wash. 2001) (citations omitted).

that regulates unsolicited bulk electronic communication, it does regulate unsolicited commercial e-mail advertising.²⁴ Sections 17538.4 and 17538.45 of the Business and Professions Code regulate the conduct of persons and entities doing business in California who electronically transmit unsolicited advertising materials.²⁵

Section 17538.4 requires that a “person or entity conducting business in this state” who causes an unsolicited e-mail document to be sent (1) establish a toll-free telephone number or valid sender operated return e-mail address that recipients may use to notify the sender not to e-mail further unsolicited documents; (2) include as the first text in the e-mailed document a statement informing the recipient of the toll-free number or return address that may be used to notify the sender not to e-mail any further unsolicited material; (3) not send any further unsolicited advertising material to anyone who has

(last visited Jan. 30, 2004) (collecting and summarizing current state laws regulating spam). State laws typically require a combination of: (1) truth-in-routing information, (2) an opt-out mechanism, (3) labeling requirements, and (4) truth-in-subject lines. Bruce E.H. Johnson, *Is There a Constitutional Right to Bombard the Public With Penis Enlargement Proposals?*, 21-SUM COMM. LAW. 3, 5 (2003). Remedies typically include statutory damages per e-mail and a private right of action. *Id.*

24. See CAL. BUS. & PROF. CODE § 17538.4 (West 2003), *repealed by* 2003 Cal. Stat. 487, S.B. 186, 2003 Reg. Sess. (Cal. 2003) (approved Sept. 23, 2003; to have been effective Jan. 1, 2004), and CAL. BUS. & PROF. CODE § 17538.45 (West 2003), *amended by* 2003 Cal. Stat. 487, Cal. S.B. 186 (approved Sept. 23, 2003; to have been effective Jan. 1, 2004); see also *Ferguson v. Friendfinders, Inc.*, 115 Cal. Rptr. 2d 258, 260 (Ct. App. 2002). Section 17538.4 states that it will become inoperative upon the enactment of a federal law that prohibits or regulates unsolicited advertising by electronic mail. CAL. BUS. & PROF. CODE § 17538.4(i).

California anti-spam laws have been recently preempted by a new federal regime aimed at regulating spam e-mail. See Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003, Pub. L. No. 108-187, 117 Stat. 2699 (approved Dec. 16, 2003; effective Jan. 1, 2004) (codified partially at 15 U.S.C. §§ 7701-7713 (2003)). The CAN-SPAM Act preempts state laws that regulate commercial e-mail messages, except to the extent they prohibit false or deceptive practices, but leaves intact state law claims not specific to electronic mail, including trespass, contract, and tort law claims. 15 U.S.C. § 7707(b). Highlights of the CAN-SPAM Act include the requirement that unsolicited commercial e-mail messages be labeled (although not by a standard method) and include opt-out instructions and the sender’s physical address. See David E. Sorkin, *CAN-SPAM Act of 2003*, at <http://www.spamlaws.com/federal/summ108.html#s877> (last visited Jan. 30, 2004) (collecting and summarizing proposed and enacted federal laws regulating spam). The Act “prohibits the use of deceptive subject lines and false headers.” *Id.* The Act also empowers the Federal Trade Commission (but does not require it) to establish a “do-not-email” registry. *Id.* This Note discusses the California anti-spam laws in effect at the time the *Intel* action arose. Therefore, the CAN-SPAM Act that was adopted as this Note was being finalized is outside the scope of this Note.

25. CAL. BUS. & PROF. CODE §§ 17538.4, 17538.45; see *Ferguson*, 115 Cal. Rptr. 2d at 260. “Unsolicited e-mailed documents” are defined as “any e-mailed document or documents consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit” that are (a) addressed to a recipient who does not have an existing business or personal relationship with the e-mail initiator, and (b) not sent at the request of or with the express consent of the recipient. CAL. BUS. & PROF. CODE § 17538.4(e); see *Ferguson*, 115 Cal. Rptr. 2d at 260; see also CAL. BUS. & PROF. CODE § 17538.4(a)(2).

requested that such material not be sent; and (4) include in the subject line of each e-mail message "ADV:" as the first four characters or "ADV:ADLT" if the advertisement pertains to adult material.²⁶ Section 17538.4 applies to any unsolicited e-mailed documents that are delivered to a California resident via an electronic mail service provider's equipment located in California.²⁷ The state may bring a civil action against anyone who violates this section, seeking a maximum penalty of \$2,500 per violation.²⁸

Section 17538.45 further prohibits any person or entity from sending unsolicited e-mail advertisements through an electronic mail service provider's California equipment in violation of the mail service provider's policy.²⁹ In addition to any other remedies available, Section 17538.45 allows the electronic mail service provider to bring a civil action to recover the greater of actual damages or liquidated damages of \$50 per message, up to a maximum of \$25,000.³⁰ The prevailing party may also recover reasonable attorneys' fees.³¹

Recognizing that spam is not only an annoyance, but also a drain on corporate budgets and a threat to the continued usefulness of e-mail communication, the California Legislature recently bolstered its regulation of spam to be effective in 2004.³² The California Legislature found that: (a) spam comprised forty percent of all e-mail traffic in the United States, and experts predicted that this would increase to over fifty percent by the end of 2003, and (b) spam would cost U.S. companies an estimated \$10 billion dollars in 2003, with California companies shouldering \$1.2 billion of that amount.³³ In addition to the cost to companies, spam imposes a cost on users by taking

26. CAL. BUS. & PROF. CODE § 17538.4(a)-(g); see *Ferguson*, 115 Cal. Rptr. 2d at 260.

27. CAL. BUS. & PROF. CODE § 17538.4(d). "Electronic mail service provider" is defined as "any business or organization qualified to do business in this state that provides individuals, corporations, or other entities the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail." *Id.*; *Ferguson*, 115 Cal. Rptr. 2d at 260; see also CAL. BUS. & PROF. CODE § 17438.45(a)(3).

28. CAL. BUS. & PROF. CODE § 17536 (West 2003).

29. *Id.* § 17538.45(c).

30. *Id.* § 17538.45(f)(1).

31. *Id.* § 17538.45(f)(2).

32. See Cal. S.B. 186 (approved Sept. 23, 2003, effective Jan. 1, 2004, amending § 17538.45 and adding Article 1.8 (commencing with § 17529) to Chapter 1 of Part 3 of Division 7, and repealing § 17538.4).

33. Cal. S.B. 186, CAL. BUS. & PROF. CODE §§ 17529(a), (d) (West 2003). See also Saul Hansell, *Internet is Losing Ground in Battle Against Spam*, N.Y. TIMES, Apr. 22, 2003, at A1 (reporting that unsolicited e-mail currently constitutes 45% of all e-mail). Costs relating to spam stem from: decreased productivity, additional equipment, software, time needed to delete unwanted e-mail messages, server crashes, higher cost of Internet access due to disk space charges and connect time, and increased costs for ISPs to transmit spam that are passed along to subscribers. See Cal. S.B. 186; see also Online Advertising Legal Issues, *Spam E-mail*, at http://www.unc.edu/~cllee/Webpage/unsolicited_email.htm (last visited Jan. 30, 2004).

up valuable storage space in e-mail in-boxes, using costly computer, network and server bandwidth, and discouraging people from using e-mail.³⁴

California's new law prohibits unsolicited commercial e-mail from being sent either from or to a California e-mail address, unless the sender has a preexisting or current business relationship with the recipient, or unless the sender first receives the recipient's direct, opt-in consent.³⁵ In addition to other remedies available at law, the recipient, an electronic mail service provider, or the state attorney general may bring an action against the sender to recover either or both (a) actual damages or (b) liquidated damages of \$1,000 per e-mail, up to \$1 million per incident.³⁶ The prevailing plaintiff can also recover reasonable attorneys' fees and costs.³⁷

C. Criminal Penalties

In addition to civil remedies, criminal penalties exist in California for the knowing and unauthorized use of computer time, data processing, storage functions or other use of a computer, computer system, or computer network.³⁸ Penalties for a violation where the value of computer services misappropriated is less than \$400 include a fine not exceeding \$5,000 or imprisonment not exceeding one year, or both.³⁹ Penalties for a violation that results in victim expenditure of more than \$5,000, or where the value of computer services misappropriated is more than \$400, include a fine not exceeding \$10,000 or imprisonment not exceeding three years, or both.⁴⁰ The statute also prohibits the knowing and unauthorized use of an Internet domain name of any other individual, corporation or entity to send an e-mail that causes damage.⁴¹ An injured party who suffers damage or loss because

34. Cal. S.B. 186, CAL. BUS. & PROF. CODE § 17529(e).

35. CAL. BUS. & PROF. CODE §§ 17529.1-17529.2. "California e-mail address" is defined as (1) an e-mail address furnished by an electronic mail service provider that sends bills for maintaining that account to a mailing address in California, (2) an e-mail address ordinarily accessed from a computer located in California, or (3) an e-mail address furnished to a resident of California. *Id.* § 17529.1(b)(1)-(3). "Preexisting or current business relationship" means that "the recipient has made an inquiry and has provided his or her e-mail address, or has made an application, purchase, or transaction, with or without consideration, regarding products or services offered by the advertiser." *Id.* § 17529.1(l). Unsolicited "commercial e-mail advertisement" is defined as "any electronic mail message initiated for the purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit." *Id.* § 17529.1(c).

36. Cal. S.B. 186, CAL. BUS. & PROF. CODE § 17529.8(a)(1).

37. CAL. BUS. & PROF. CODE § 17529.8(a)(2).

38. See CAL. PENAL CODE §§ 502(b)(4), (c)(3), (e)(1) (West 2003).

39. *Id.* § 502(d)(2)(A).

40. *Id.* § 502(d)(2)(B).

41. *Id.* § 502(c)(9). Penalties for violating this section include a fine not exceeding \$1,000 for a first violation that does not result in injury, and a fine not exceeding \$5,000 or imprisonment not exceeding one year, or both. *Id.* § 502(d)(5).

of unauthorized computer use can bring a civil action against the violator for compensatory damages and injunctive or other equitable relief.⁴²

II. STATEMENT OF THE CASE

A. *Factual History*

After being discharged by Intel,⁴³ Hamidi and others “formed an organization named Former and Current Employees of Intel (FACE-Intel) to disseminate information and views critical of Intel’s employment and personnel policies and practices.”⁴⁴ FACE-Intel⁴⁵ maintained a Web site⁴⁶ identifying Hamidi as the Webmaster and organization’s spokesperson for the purpose of publicizing such material.⁴⁷

While there was no evidence presented at the summary judgment hearing that Hamidi had breached Intel’s security system, Hamidi did state he obtained Intel’s employee e-mail directory from a floppy disk anonymously sent to him.⁴⁸ He then sent mass e-mails to as many as 35,000 Intel employees on six specific occasions over a twenty-one-month period.⁴⁹ The e-mails criticized Intel’s employment practices, warned employees that Intel’s prac-

42. *Id.* § 502(e)(1). Compensatory damages include the injured party’s expenditures that are reasonably and necessarily incurred to verify that the computer system, computer network, computer program, or data were not altered, damaged, or deleted. *Id.*

43. Intel was founded in 1968 to build semiconductor products and introduced the world’s first microprocessor in 1971. Intel Corp., *Intel Corporate Overview*, at <http://www.intel.com/pressroom/CorpOverview.htm> (last visited Jan. 30, 2004). Intel supplies the computer and communications industries with chips, boards, systems, and software building blocks to create advanced computing and communications systems. *Id.* “Intel’s mission is to be the preeminent building block supplier to the Internet economy.” *Id.* It employs 78,000 people, has revenues of \$26.7 billion (2002), and is ranked 65 by Fortune 500 Magazine. Intel Corp., *About Intel*, at <http://www.intel.com/intel/index.htm> (last visited Apr. 1, 2004). After his discharge, Hamidi brought unsuccessful actions against Intel for wrongful termination and workers compensation. Respondent’s Brief at 6, *Intel v. Hamidi*, 71 P.3d 296 (Cal. 2003) (No. S103781). Based on the Worker’s Compensation Appeals Board findings that Hamidi had been untruthful, it denied his claim for employment-related damages to his “psyche.” *Id.*

44. *Intel*, 71 P.3d at 301.

45. FACE-Intel’s mission is “To influence positive human resource policies and practices and create true long-term employment opportunities at Intel. To influence Intel to abolish its predatory Ranking and Rating system and replace it with a true performance review system, which [should] only be based on merits of employees performance. To influence Intel to stop age, disability, gender, race, and ethnicity discriminations.” FACE-Intel, *Who We Are*, at <http://www.faceintel.com/whoware.htm> (last visited Jan. 30, 2004).

46. The purpose of FACE-Intel’s website is to “identify, alert and rally Intel (and other electronic industry) employees so as to educate them as to the unsavory and discriminatory practices described [on FACE-Intel’s website] that have been perpetrated on [them] and may be perpetrated on them in the days, months and years to come,” and “to educate these individuals on how to survive downsizing and redeployment.” FACE-Intel, *Who We Are*, at <http://www.faceintel.com/whoware.htm> (last visited Jan. 30, 2004).

47. *Intel*, 71 P.3d at 301.

48. *Id.*

tices posed a danger to their careers, suggested employees move to other companies, solicited employees to participate in FACE-Intel, and urged employees to visit FACE-Intel's website.⁵⁰ The messages were calculated to upset Intel employees and disrupt company morale.⁵¹ The messages stated that FACE-Intel would remove an employee from its mailing list upon request, and 450 employees so notified FACE-Intel.⁵² Intel's computer use policy limited use of the e-mail system to company business.⁵³

When Intel demanded in writing in March 1998 that Hamidi stop sending e-mails to Intel's computer system, Hamidi asserted he had a right to do so and sent a new mass mailing in September 1998.⁵⁴ Although Intel was able to block some of the messages, Hamidi admitted he intentionally evaded Intel's security measures by using different sending computers.⁵⁵ While Intel did not present evidence that the receipt or internal distribution of Hamidi's electronic messages damaged its computer system or slowed or impaired its functioning, Intel did present evidence that many of its employee recipients asked the company to stop the messages.⁵⁶ Additionally, the company was impacted economically by the loss of productivity caused by the thousands of employees who were distracted from their work and by the significant time its security department spent trying to halt the distractions.⁵⁷

B. Procedural History

1. Trial and Appellate Court Decisions

When Hamidi refused to comply with Intel's request to stop invading its internal, proprietary e-mail system, Intel sued Hamidi and FACE-Intel, pleading causes of action for trespass to chattels and nuisance and seeking both actual damages and an injunction against the unwanted e-mail.⁵⁸ Intel later voluntarily dismissed its nuisance claim and waived its demand for damages, and the trial court entered default judgment against FACE-Intel for its failure to answer.⁵⁹ The court granted Intel's motion for summary judgment permanently enjoining Hamidi, FACE-Intel, and their agents "from

50. *Id.*

51. Respondent's Brief at 6, *Intel* (No. S103781). The messages stated that employees on redeployment were being targeted for termination and no jobs would be available for them. *Id.*

52. *Intel*, 114 Cal. Rptr. 2d at 247.

53. *Id.* at 246.

54. *Intel*, 71 P.3d at 301.

55. *Id.*

56. *Id.*

57. *Intel*, 114 Cal. Rptr. 2d at 250.

58. *Intel*, 71 P.3d at 301.

59. *Id.* See *Intel v. Hamidi*, No. 98AS05067, 1999 WL 450944, at *1 (Cal. App. Dep't

sending unsolicited e-mail to addresses on Intel's computer systems."⁶⁰ Hamidi appealed the summary judgment order but FACE-Intel did not.⁶¹

The California Court of Appeal, Third District, affirmed the judgment in a two-one decision, concluding that Intel had demonstrated its entitlement to an injunction based on a theory of trespass to chattels.⁶² The appellate court reasoned that even if Intel did not demonstrate "sufficient harm to trigger an entitlement to nominal damages," Intel had shown that Hamidi's conduct was trespassory, Hamidi had disrupted Intel's business by using its private property, and Intel was therefore entitled to the injunction.⁶³ The court pointed out that Hamidi was not being enjoined "from sending e-mail over the internet to Intel employees," as he had incorrectly asserted in his brief.⁶⁴ The court stated that he was "free to send mail—'e' or otherwise—to the homes of Intel employees," and that the injunction simply required that he air his views without using Intel's private property.⁶⁵

Hamidi acknowledged Intel's right to self-help, and in response to his urging that Intel could have taken further steps to fend off his e-mails, the court reasoned that because Hamidi had shown he would try to evade Intel's security, there was "no public benefit from this wasteful cat-and-mouse game which justifies depriving Intel of an injunction."⁶⁶ The court stated that even if a company could not precisely measure the harm resulting from an unwelcome intrusion, the fact that the intrusion occurs may nevertheless support a claim for trespass to chattels.⁶⁷ As other California cases have held, the court found that electronic signals generated by a computer system could be "sufficiently tangible" to support a trespass cause of action, regardless of whether they caused physical harm.⁶⁸

The court also held that the injunction did not violate Hamidi's free speech rights under either the First Amendment to the U.S. Constitution or article I, section 2, subsection (a) of the California Constitution, finding that judicial enforcement of neutral trespass laws at the bequest of a private property owner did not constitute state action.⁶⁹ It further held that an action to halt expressive activity on private property did not contravene the California Constitution unless the property is freely open to the public, and found private e-mail servers differed from the Internet because they are not tradi-

60. *Intel*, 71 P.3d at 301-02.

61. *Id.* at 302.

62. *Intel*, 114 Cal. Rptr. 2d at 252.

63. *Id.* at 249.

64. *Id.* at 258.

65. *Id.*

66. *Id.* at 249.

67. *Id.* (citing *Register.com, Inc. v. Verio, Inc.*, 126 F. Supp. 2d 238, 249-50 (S.D.N.Y. 2000) (applying New York law, based on the Restatement, holding "evidence of mere possessory interference is sufficient to demonstrate the quantum of harm necessary to establish a claim for trespass to chattels.")).

68. *Id.* at 251.

tional public forums.⁷⁰ Like its factories and hallways, telephones and manufacturing equipment, Intel owns and has a right to control its e-mail system, and “[n]o citizen has the general right to enter a private business and pester an employee trying to work.”⁷¹

2. California Supreme Court Decision

In a four-three decision, the California Supreme Court reversed, holding (a) the tort of trespass to chattels did “not encompass, and should not be extended to encompass, an electronic communication that neither damages the recipient computer system nor impairs its functioning;” (b) the temporary use of Intel’s computer processors and storage of Hamidi’s e-mail messages did not constitute a trespass because it did not interfere with Intel’s “use or possession of, or any other legally protected interest in” its computer system; and (c) the consequential economic damage Intel claimed was “not an injury to the company’s interest in its computers[,] which worked as intended and were unharmed by the communications.”⁷² Having concluded that trespass to chattels was not shown, the court did not address at length the freedom of speech constitutional issues.⁷³ However, it did posit that “[e]ven assuming a corporate employer could under some circumstances have claimed a personal” constitutional “right not to listen,” Hamidi did not violate that right because his messages were sent to “individual Intel employees, rather than Intel itself.”⁷⁴

The court reasoned that “in order to obtain injunctive relief the plaintiff must ordinarily show that the defendant’s wrongful acts threaten to cause irreparable injuries” that were not capable of being “adequately compensated in damages.”⁷⁵ Applying this test, the court found that Hamidi had not used the system in a manner “in which it was not intended to function or impaired the system in any way,” nor did Hamidi fail to honor employee requests to be removed from FACE-Intel’s mailing list.⁷⁶

In response to Intel’s contention that “while its computers were not damaged . . . its interest in the ‘physical condition, quality or value’ of the computers was harmed,” the court distinguished Hamidi’s actions from a line of cases relied on by Intel, including a series of federal district court decisions holding that unsolicited bulk e-mail sent through an Internet service

70. *Id.* at 256-57.

71. *Id.* at 257-58.

72. *Intel*, 71 P.3d at 300.

73. *Id.* at 311.

74. *Id.* at 312. The court noted that dissenting Justice Brown’s rationale of a “right not to listen,” based on the listener’s “personal autonomy,” would in any event support only a narrow injunction aimed at protecting the individual recipients who objected to receiving the messages, rather than a broad injunction against communication with all Intel employees. *Id.*

75. *Id.* at 303; see 5 WITKIN, CAL. PROCEDURE § 782, at 239 (4th ed. 1997).

provider's equipment constituted trespass to the ISP's computer system.⁷⁷ The court emphasized the actual or threatened interference with the computer's functioning that was present in the distinguished cases, but was absent from Intel's case.⁷⁸ The court also distinguished a more recent line of district court decisions where unauthorized robotic data collection from a company's publicly accessible website was found to be a trespass because of the harmful impact the activity could have on the functioning of the computer equipment, especially if replicated by other searchers.⁷⁹

The court disagreed that Intel's interest in its employee productivity, which was disrupted by Hamidi's messages, was a legally protected interest in its computer systems that was comparable to the loss of business reputation, customer goodwill, and employee time found in *CompuServe Inc. v. Cyber Promotions, Inc.* and its progeny.⁸⁰ Citing several sources that have questioned whether the economic injuries identified in *CompuServe* were sufficiently connected to the personal property,⁸¹ the court found that Intel's injuries were even less connected.⁸² While CompuServe's customers were annoyed because they were inundated with spam, which made use for personal communication more difficult and costly, the court stated this related to the *functioning* of CompuServe's electronic mail system.⁸³ In contrast, the court concluded that Intel's workers were distracted from their work not because of the frequency or quantity of Hamidi's messages, but because of the assertions and opinions the messages conveyed, making Intel's complaint about the *contents of the messages* rather than the functioning of the e-mail

77. *Id.* See *Thrifty-Tel, Inc. v. Bezenek*, 54 Cal. Rptr. 2d 468, 473 (Ct. App. 1996); *CompuServe Inc., v. Cyber Promotions, Inc.*, 962 F. Supp. 1015, 1021-23 (S.D. Ohio 1997); *Hotmail Corp. v. Van\$ Money Pie Inc.*, 1998 WL 388389, at *7 (N.D. Cal. 1998) (applying California law); *Am. Online, Inc. v. IMS*, 24 F. Supp. 2d 548, 550-51 (E.D. Va. 1998) (applying Virginia law); *Am. Online, Inc. v. LCGM, Inc.*, 46 F. Supp. 2d 444, 451-52 (E.D. Va. 1998) (applying Virginia law).

78. *Intel*, 71 P.3d at 304.

79. *Id.* at 305. See *eBay, Inc. v. Bidder's Edge, Inc.*, 100 F. Supp. 2d 1058, 1069-72 (N.D. Cal. 2000) (applying California law), and *Register.com, Inc. v. Verio, Inc.*, 126 F. Supp. 2d 238, 248-51 (S.D.N.Y. 2000) (applying New York law). *But cf.* *Ticketmaster Corp. v. Tickets.com, Inc.*, 2000 WL 1887522, at *4 (C.D. Cal. 2000) (applying California law) (finding no trespass where defendant's comparative use was very small and there was no showing that the use interfered with plaintiff's regular business).

80. *Intel*, 71 P.3d at 307 (citing *CompuServe*, 962 F. Supp. at 1023; *Hotmail*, 1998 WL 388389, at *7; *Am. Online*, 24 F. Supp. 2d at 550). In *CompuServe*, the defendant advertising company sent hundreds of thousands of unsolicited e-mail advertisements on behalf of themselves and their clients to Internet users, many of whom were CompuServe subscribers. 962 F. Supp. at 1017. Despite CompuServe's attempts to block the e-mail and its demands to cease and desist, the defendant sent an increasing volume of e-mail, which placed a significant burden on CompuServe's equipment and caused complaints from its subscribers threatening to discontinue their subscriptions. *Id.* at 1017-19. The court granted CompuServe an injunction enjoining the defendant from sending further unsolicited e-mail. *Id.* at 1028.

81. *Intel*, 71 P.3d at 307 (citing Quilter, *supra* note 20, at 429-30, and Dan L. Burk, *The Trouble with Trespass*, 4 J. SMALL & EMERGING BUS. L. 27, 35 (2000)).

82. *Id.*

system.⁸⁴ Believing that Intel sought to extend *CompuServe's* economic injury rationale to include the injurious effect of a communication's *contents* on its recipients, rather than the economic harm it suffered by transmission of the message through its system, the court refused to find Intel had suffered an impairment to the quality or value of its computer system.⁸⁵

While observing that academia has debated the viability of creating an absolute property right to exclude undesired communications, which may force spammers to internalize the costs they impose on ISPs and their customers, the court noted that such a property rule might also create substantial new costs in lost ease and openness of communication and in lost network benefits.⁸⁶ The *Intel* court deferred to the Legislature on the appropriateness of regulating non-commercial e-mail and other unwanted contact between computers on the Internet, and ultimately reversed the court of appeals decision.⁸⁷ The court held that Intel's claim for trespass to chattels was not actionable because Intel's consequential damages in the form of economic loss from decreased employee productivity and security personnel time were not sufficient to show actual or threatened injury to its computer system or its legally protected interest.⁸⁸ Because Intel's injury arose from disruption or distraction caused to its employees by the *contents* of Hamidi's e-mail messages, the court found Intel's injury was entirely separate from, and did not directly affect, the possession or value of its computer system.⁸⁹ The court held that Intel was, therefore, not entitled to summary judgment.⁹⁰

84. *Id.*

85. *Intel*, 71 P.3d at 307-08.

86. *Id.* at 310-11. On the one hand, amicus curiae Professor Epstein of the University of Chicago analogized cyberspace trespass to real property trespass (a company's computer server is its castle) and argued for computer server inviolability, predicting that allowing a website owner to deny access to a particular sending computer would simply lead to a market solution of individual licensing. *Id.* at 309-10. On the other hand, Professor Lemley of the University of California, Berkeley, argued that freedom of electronic communication would be reduced if each user was required to get advance permission from anyone with whom they wanted to communicate and anyone who owns the server through which their message must travel. *Id.* at 310. Professor Lessig of Stanford University argued that "[i]f machines must negotiate before entering any individual site, then the costs of using the network climb." *Id.* at 310-11 (quoting Lessig, *THE FUTURE OF IDEAS: THE FATE OF THE COMMONS IN A CONNECTED WORLD* 171 (2001)).

87. *Id.* at 311.

88. *Id.* The court noted that its holding was not intended to affect the legal remedies of Internet service providers against senders of unsolicited commercial bulk e-mail, where the primary complaint was that the extraordinary quantity of e-mail had impaired the computer system's functioning by overburdening the ISP's own computers and making the entire computer system harder to use for the ISP's customers. *Id.* at 300.

89. *Id.* at 300-01.

90. *Id.* at 311.

III. PHYSICAL INJURY IS NOT NECESSARY TO PROVE TRESPASS TO CHATTELS

Intel was denied relief on the theory that it failed to establish actual injury to its property.⁹¹ However, the rule requiring a showing of actual injury pertains to the award of damages, which Intel was not requesting, and there is no such showing required when a court is being asked to grant equitable relief against an intrusion.⁹² In addition to instances where an injured party has proven physical harm to the chattel, an injured party can seek redress for a trespass to chattels claim where there is a repeated trespass, where the trespass threatens injury, or the trespass disrupts business. Judicial enforcement of a trespass claim should not be limited to instances where physical injury has occurred.⁹³ Equitable relief in the form of an injunction can be appropriate without a showing of actual physical harm.⁹⁴

A. Repeated Trespass Can be Enjoined

The right to exclude is an important property right. Creative individuals will be less inclined to develop intellectual property if they cannot limit the terms of its transmission.⁹⁵ It is irrelevant that Hamidi offered to remove employees from his e-mail list after his act of trespass was complete. His communications were unwelcome, and Intel, the owner of the equipment he used to facilitate their dissemination, told him so. While it may not have affected the performance of Intel's system because Intel is one of the world's largest computer companies, Hamidi's repeated mass mailings took up valuable processing power and space on Intel's system that could not be otherwise used by Intel.

The victim of an ongoing trespass could be irreparably harmed if the courts do not grant injunctive relief. For example, in *Register.com, Inc. v. Verio, Inc.*,⁹⁶ the plaintiff obtained an injunction barring a competitor from using search spiders to cull names from its general customer list (previously provided under license), after Register.com had withdrawn its consent for the defendant to review and revise the list.⁹⁷ The court found that mere possessory interference by defendant's search engines and use of Register.com's computer system capacity were sufficient to show the irreparable harm nec-

91. *Id.* at 318 (Brown, J., dissenting).

92. *Id.*

93. *Id.* at 323. *But see* Tyson Marshall, *Intel Corp. v. Hamidi: Trespass to Chattels, the Internet's Greatest Antagonist?*, 40 SAN DIEGO L. REV. 461, 479 (2003) (arguing the contrary).

94. *Intel*, 71 P.3d at 325.

95. *Id.*

96. 126 F. Supp. 2d 238 (S.D.N.Y. 2000).

97. *Id.* at 248-52.

essary for Register.com to prevail on its request for injunctive relief.⁹⁸ The court noted that in the absence of an injunction, Register.com had a valid fear that its servers could be flooded with search robots deployed by other competitors.⁹⁹

Similarly, in *eBay, Inc. v. Bidder's Edge, Inc.*,¹⁰⁰ the plaintiff obtained an injunction based on a trespass to chattels claim preventing an online auction aggregating site from using a program to conduct automated searches of eBay's site, without permission, in order to report pricing information.¹⁰¹ The court found that (1) the defendant intentionally and without authorization interfered with eBay's possessory interest in its computer system, (2) it was likely that eBay would prevail on the merits of its trespass claim because defendant's activities had diminished the quality or value of eBay's computer system, and there was a possibility that it would suffer irreparable harm, and (3) the public interest did not weigh against granting a preliminary injunction.¹⁰²

If we allow non-commercial unsolicited and unwelcome communications to be sent, despite the recipient's ineffective efforts to block them, the victim is left with no effective remedy. Virtually everyone would agree: receiving numerous telephone calls or faxes is harassment when the recipient has told the sender to stop and expends all efforts to block the incoming messages. An invisible line is crossed and the actions become a trespass, entitling the plaintiff to relief. Intel took the correct steps in seeking judicial relief when its efforts at self-help were ineffective. If the judiciary does not stand behind a victim who seeks legal redress for an invasion of its property, then we force that private party to make escalating self-help efforts with an outer limit that may be unacceptable. This is not the model our society is built upon. Despite Intel's request that he stop, Hamidi persisted. The court leaves Intel with no effective remedy.

Enormous amounts of unwanted paper mail can create a concrete potential harm that our courts are willing to recognize.¹⁰³ Mail sent after the recipient has requested the sender stop creates the additional burden on the recipient of scrutinizing the mail for objectionable material and exposes the recipient to possible harassment.¹⁰⁴ In *Tillman v. Distribution Systems of America*,¹⁰⁵ the court enjoined the unwanted delivery of newspapers onto a homeowner's property after the sender had been requested to stop.¹⁰⁶ While

98. *Id.* at 250-51.

99. *Id.* at 251.

100. 100 F. Supp. 2d 1058 (N.D. Cal. 2000).

101. *Id.* at 1064-72.

102. *Id.* at 1070-73.

103. See *Rowan v. United States Post Office Dep't*, 397 U.S. 728 (1970) (rejecting mass mailer's argument that a vendor has a constitutional right to send unwanted material to the home of another, after being asked to stop).

104. *Id.* at 735.

105. 648 N.Y.S.2d 630 (N.Y. App. Div. 1996).

106. See *Intel*, 71 P.3d at 320-21 (Brown, J., dissenting) (citing *Tillman*, 648 N.Y.S.2d at 15

the *Tillman* court did not quantify the damage created by the unwanted delivery, it stated that the homeowner was neither required to let unwanted newspapers accumulate, nor expend time and energy to gather and dispose of them.¹⁰⁷

Intel's employees were burdened by having to read and deal with Hamidi's messages, which were sent even though he was asked to stop. Like *Tillman*, the damage created by Hamidi's repeated unwanted e-mails need not be quantified to be enjoined. Intel's employees should not be required to spend their time and energy to read and deal with Hamidi's repeated e-mails, nor should they have to let them accumulate in their in-box. Hamidi's actions were a repeated trespass, capable of being enjoined irrespective of quantifiable physical injury.

B. Trespass That Only Threatens Injury can be Enjoined

Hamidi's intangible trespass was potentially damaging. Injunctive relief is appropriate where the defendant's wrongful act constitutes an actual or threatened injury to property or personal rights.¹⁰⁸ Courts have agreed that trespass which only threatens injury can nonetheless be enjoined. In *CompuServe*, the court held that CompuServe could sustain an action for trespass to chattels without showing a substantial interference with its right to possession of that chattel.¹⁰⁹ In *Thrifty-Tel, Inc. v. Bezenek*,¹¹⁰ the court held that the parents of a minor were liable to a long-distance telephone company for trespass to personal property when their son used confidential codes to gain access to the company's computer system and tie up the system in an effort to crack the access and authorization codes to make long-distance telephone calls without paying for them.¹¹¹

Intel was not seeking monetary damages; it was seeking only to prevent Hamidi from sending his unwanted messages. Not only did Hamidi's actions cause Intel to suffer real economic loss, Hamidi's mass mailings threatened injury to Intel's computer system. If Hamidi was allowed to send his bulk unsolicited e-mail, other private parties could do the same, and before long, Intel's private business e-mail system could be filled with unsolicited, non-business spam e-mail, causing it to slow or crash. The system's usefulness as a critical business tool would then be significantly impacted. As Justice Mosk argues in his dissent, "[t]he majority leave Intel, which has exercised

636).

107. *Tillman*, 648 N.Y.S.2d at 636. The *Tillman* court upheld the plaintiff's right to prevent the mail delivery, regardless of whether his objection was due to the quantity (volume) or quality (content) of the messages. *Id.*

108. See WITKIN, *supra* note 75, at 239.

109. *CompuServe Inc. v. Cyber Promotions, Inc.*, 962 F. Supp. 1015, 1022 (S.D. Ohio 1997).

110. 54 Cal. Rptr. 2d 468 (Ct. App. 1996).

111. *Id.* at 472-73.

all reasonable self-help efforts, with no recourse unless [Hamidi] causes a malfunction or systems 'crash.'"¹¹² Given Hamidi's persistence and his proven ability to circumvent their security measures, Intel had a legitimate concern that his trespass threatened damage to their business property.

C. Disruption of Business can be Enjoined

Contrary to the court's ultimate conclusion, it was not the contents of Hamidi's e-mails to which Intel objected—it was the disruption and economic loss of productivity they caused to Intel's business. The majority focuses on the content of Hamidi's messages rather than his repeated trespass and directs Intel to seek relief through content-based speech tort. However, Intel's action was not premised on an objection to the content of his messages.¹¹³ Intel did not seek to prevent him from expressing his ideas on the FACE-Intel web site, through private paper or electronic mail to employees' homes, or from picketing or posting billboards.¹¹⁴ Intel only objected to Hamidi's use of Intel's private property to advance his message.¹¹⁵ Intel experienced financial loss from its employee confusion and distraction in reading and dealing with the multiple unwanted e-mails and from its security personnels' efforts to block the e-mails, all paid for ultimately by Intel.

The supreme court majority agreed with the dissenting justice below who posited that, "if a chattel's receipt of an electronic communication constitutes a trespass to that chattel, then not only are unsolicited telephone calls and faxes trespasses to chattel, but unwelcome radio waves and television signals also constitute a trespass to chattel."¹¹⁶ But this analogy is flawed because it is missing an essential element: consent.¹¹⁷ The paradigm shifts from "unwelcome" to "unauthorized" once the defendant has been told to keep off or leave.¹¹⁸ When Intel demanded that Hamidi stop, his e-mails shifted from being not only unsolicited and unwelcome, but to being unauthorized. This is an essential point that the majority does not address when they instead focus on the lack of physical damage to Intel's computer system and the unwelcome contents of Hamidi's messages. However, this critical distinction

112. *Intel*, 71 P.3d at 326 (Mosk, J., dissenting).

113. But that is not to say that Intel would not have a right to object to his messages. The appellate court observed, "Intel has the right to exclude others from speaking on its property. Intel is not required to exercise its right in a 'content-neutral' fashion. Content discrimination is part of a private property-owner's bundle of rights." *Intel*, 114 Cal. Rptr. 2d at 255.

114. *Intel*, 71 P.3d at 313 (Brown, J., dissenting).

115. *Id.*

116. *Id.* at 308.

117. See Richard A. Epstein, *Cybertrespass*, 70 U. CHI. L. REV. 73, 85 (2003) (arguing that the common law doctrine of trespass to chattels is adaptable to a cyberspace claim).

118. See *id.* The author explains that while "[t]here are lots of phone calls and faxes that we would rather not receive," there are "few that we have forbidden." *Id.* Those unwelcome advances may be reason for rebuff, but once that rebuff comes, the defendant has crossed the line and no longer holds an implied license to communicate with the recipient. *Id.*

that Intel repeatedly demanded that he stop, and took all self-help efforts in its power, addresses the court's concern about the gray line between an unsolicited/unwelcome communication and an unauthorized trespass.

Although the court acknowledges that Intel has the right to use self-help to preclude Hamidi's e-mail, it refuses a corresponding request for injunctive relief when that self-help is ineffective. Hamidi sent his bulk mail through Intel's "proprietary computer system, using Intel's confidential employee e-mail lists and by adopting a series of different origination addresses and encoding strategies to elude Intel's blocking efforts."¹¹⁹ Like the situation in which Intel found itself, this leaves a business in a powerless position, open to the whim of whoever wants to take advantage of that privately-owned business property for their own use. Our society does not support this "free rider" concept.¹²⁰

Moreover, Hamidi did not use a "public commons" or "town square of the Internet" for his messages, but he used instead Intel's private, proprietary property.¹²¹ He directed his messages to a specific subset of individuals, with whom he had no current relationship. He did not communicate in such a way that anyone other than his target audience could hear or receive his message. Justice Mosk aptly cites an analogy that Hamidi's actions were "more like intruding into a private office mailroom, commandeering the mail cart, and dropping off unwanted broadsides on 30,000 desks."¹²²

IV. INTEL WAS ENTITLED TO RELIEF

The appellate court injunction was properly granted to restrain Hamidi's actions because Intel suffered actual injury in the form of economic harm, which was proximately caused by the disruption of its business and loss of employee time and productivity. Moreover, there is a sufficient nexus between this injury and Intel's interest in its computer system. A business's right to protect and control its assets should include the right to exclude others, even in cyberspace, who seek to expropriate those business assets for their own personal use.

In addition to trespassing on Intel's computer system, Hamidi's actions arguably violated California anti-spam and computer crime laws. The *Intel* case points out the "crack in the armor" of a trespass to chattels claim in cyberspace. Physical injury can be very difficult to prove when the communication is through mysterious electronic impulses; in that instance, the court should also consider foreseeable economic harm that is proximately caused by the sender's actions.

119. *Intel*, 71 P.3d at 326 (Mosk, J., dissenting).

120. *Id.* at 325-26.

121. *Id.* at 326.

122. *Id.*

A. Intel Suffered Injury in the Form of Economic Harm

“The harm necessary to trigger liability for trespass to chattels can be . . . harm to something other than the chattel itself.”¹²³ Harm sufficient for a trespass claim can come in many forms. For example, in *Thrifty-Tel*, the plaintiff’s computer system was so overburdened that some subscribers were denied access to phone lines.¹²⁴

In *CompuServe*, multiple e-mailings drained disk space and processing power, depriving CompuServe’s other subscribers from using those resources.¹²⁵ In *America Online, Inc. v. IMS*,¹²⁶ the plaintiff’s business goodwill and its possessory interest in its computer network were diminished when the defendant, after receiving a cease-and-desist letter, sent 60 million unauthorized advertisements to America Online’s subscribers over a 10-month period.¹²⁷

Lastly, in *Hotmail Corp. v. Van\$ Money Pie Inc.*,¹²⁸ the plaintiff, a provider of free Internet e-mail service, obtained an injunction against a defendant who sent spam and pornography to Hotmail subscribers in violation of their mail service agreement.¹²⁹ As a result of the defendant falsifying its return address, Hotmail was inundated with responses to the spam, including complaints from its subscribers and “bounced back” e-mails sent by defendant to nonexistent or incorrect e-mail addresses.¹³⁰ The court found that the e-mails took up a substantial amount of finite computer space and threatened to damage Hotmail’s ability to service its legitimate customers, caused Hotmail to incur added costs for personnel to sort through and respond to the misdirected e-mails, and damaged Hotmail’s business reputation and goodwill.¹³¹

123. DOBBS, *supra* note 14, at 124-25 (citing RESTATEMENT (SECOND) OF TORTS, *supra* note 9, § 218(d) cmt. j).

124. *Thrifty-Tel, Inc. v. Bezenek*, 54 Cal. Rptr. 2d 468, 471 (Ct. App. 1996); *but cf. Ticketmaster Corp. v. Tickets.com, Inc.*, 2000 WL 1887522 at *4 (C.D. Cal. 2000) (the court found that plaintiff was not entitled to a preliminary injunction where defendant’s use of plaintiff’s computer system was very small and there was no showing that the use interfered with plaintiff’s regular business).

125. *CompuServe Inc. v. Cyber Promotions, Inc.*, 962 F. Supp. 1015, 1022 (S.D. Ohio 1997).

126. 24 F. Supp. 2d 548 (E.D. Va. 1998).

127. *Id.* at 550-51.

128. 1998 WL 388389 (N.D. Cal. 1998).

129. *Id.* at *8. Hotmail’s case was bolstered by the fact that the defendant violated the express terms of its mail service agreement. While today most companies, including Intel, have computer use policies that regulate how an employee may and may not use business equipment, those policies may not be broad enough to contemplate actions similar to Hamidi’s. Had Intel’s policy expressly prohibited Hamidi’s actions, the court may have been more sympathetic to Intel’s position.

130. *Id.* at *2.

131. *Id.*

It is not a matter of “bootstrapping” as the majority suggests to consider Intel’s efforts and the costs it incurred to maintain the security and integrity of its server as real harm that impaired the quality and value of its computer system as an internal business device.¹³² Intel has concrete, proven damages: Hamidi used Intel’s computer resources; Intel’s employees were distracted by reading, deleting, responding to, and discussing his messages because of the intentional confusion they created; precious management time was drained to deal with the employee confusion and distraction; security department personnel time was used attempting to stop the messages from bothering Intel’s employees; and Intel was deprived of full use and complete control of its computers for its business purposes for more than a momentary or theoretical amount of time.

“The time needed to identify and delete 200,000 e-mail messages is not capable of precise estimation, but it is hardly theoretical or momentary.”¹³³ While one can argue it may only take six seconds to skim and delete an unwanted e-mail, consider this: If each e-mail took six seconds to skim and delete, it would take a total of 333 hours, or forty-two business days, to delete them all.¹³⁴ If Intel hired an employee dedicated solely to removing Hamidi’s unwanted e-mails, it would take that employee two entire months to finish.¹³⁵ As can often be the case, the sum of the whole is greater than the individual parts.

Hamidi caused damage by intruding upon Intel’s computer system and impairing Intel’s interest in its network.¹³⁶ Because information and its transmission have become more valuable, corporations and private individuals have pursued their own interests by appropriating the value of that information for private use.¹³⁷ Those appropriations of value include creating computer networks and Internet connections, which Intel used to provide its employees with resources to work more efficiently, research and communicate more rapidly.¹³⁸ Hamidi deprived Intel of its exclusive control over its valuable information system and appropriated that system for his own use to send and store his messages. Computer space costs money and reduces equipment available for other uses. The Intel employees were using company equipment during company time to view and deal with Hamidi’s messages. Intel suffered impairment in the value of its e-mail system when it

132. *Intel*, 71 P.3d at 328 (Mosk, J., dissenting).

133. *Id.* at 320 n.5 (Brown, J., dissenting). An owner who has been deprived of access to a chattel for “less than five minutes” has been able to recover for trespass. *Id.* at 323 (citing *Tubbs v. Delk*, 932 S.W.2d 454, 456 (Mo. Ct. App. 1996)).

134. *Id.* at 323 (Brown, J., dissenting).

135. *Id.*

136. See Susan M. Ballantine, Note, *Computer Network Trespasses: Solving New Problems with Old Solutions*, 57 WASH. & LEE L. REV. 209, 248 (2000).

137. *Id.*

138. *Id.* In addition to an interest in managing its network resources as its private property, Intel has an important interest in managing the physical use of the system, as well as the

was repeatedly misappropriated for Hamidi's purposes, and this should suffice to show injury.

B. Intel's Injury was Related to its Chattel

Contrary to the majority opinion, the Restatement recognizes that impairment to a chattel may be subjective, and injury is recognized not only when the trespass reduces the chattel's market value, but also when the trespass affects its value to the owner.¹³⁹ Even if chattel is used as intended, it is trespass if used by an unwanted party.¹⁴⁰ Merely interfering with an owner's ability to use the chattel supports a trespass claim.¹⁴¹ Not only did Hamidi interfere with Intel's private computer system, Intel's employees were required to spend their work time to restore the chattel, i.e. clear their in-boxes of his e-mails. Even though Intel's computer system may not have suffered physical harm or functional impairment, Intel lost resources deploying security measures, responding to employee concerns, and its employees were less productive as a result of Hamidi's invasion into its computer system.¹⁴² Intel has spent millions of dollars on its computer system,¹⁴³ Hamidi knowingly and purposefully appropriated it for his own personal purposes. The California Supreme Court unfairly expects Intel to subsidize Hamidi's speech by providing him with use of its e-mail system and by paying its employees to read and deal with his e-mail.

C. Businesses Must Have the Right to Exclude Others to Effectively Protect and Control Their Business Assets

Businesses have a legitimate right to protect their property from unauthorized and potentially harmful use. To encourage private investment in beneficial resources, a business must have the right to exclude others to protect the value of its private property.¹⁴⁴ Where the private property is a tool the employer uses for the productivity of its employees, such as a computer system, the property's value is in the employer's ability to put the tool to

139. *Intel*, 71 P.3d at 323 (Brown, J., dissenting); see RESTATEMENT (SECOND) OF TORTS, *supra* note 9, § 218 cmt. h.

140. *Intel*, 71 P.3d at 323 (Brown, J., dissenting). Justice Brown cites the Restatement's example that A's act of using B's toothbrush could extinguish its value to B. *Id.* The brushing constitutes a trespass because it impairs the brush's subjective value to A, rather than its objective market value. *Id.* See RESTATEMENT (SECOND) OF TORTS, *supra* note 9, § 218 cmt. h.

141. *Intel*, 71 P.3d at 323 (Brown, J., dissenting).

142. Beauregard, *supra* note 8, at 491 (arguing that the trespass to chattels doctrine should permit a court to use its equity power to protect against a continued trespass that has these effects).

143. *Intel*, 71 P.3d at 313 (Brown, J., dissenting).

productive use.¹⁴⁵ If the employer's ability to direct the use of the tool is compromised, the value of that property is reduced.¹⁴⁶

Intel maintained a proprietary computer network as a tool for transacting and managing its business.¹⁴⁷ While Intel's company policy could have limited or restricted its employees' personal use of its Internet connection, Intel chose not to do so and instead allowed reasonable personal use.¹⁴⁸ However, Intel was not allowed to control its computer system, nor the time of its employees, as it desired. It was instead rendered helpless as a result of Hamidi's actions. Furthermore, Intel's employees do not have a "core right" to spend company time reading and responding to Hamidi's e-mail.¹⁴⁹ The decision whether or not to continue receiving Hamidi's e-mail at work does not belong to the employees.¹⁵⁰ Just like its telephones and manufacturing equipment, Intel owns its e-mail system and provides these resources to its employees for work purposes.¹⁵¹ Intel's only alternative is to deny all personal access to the Internet, which is not a sensible solution.¹⁵²

Likewise, agreeing to connect to the Internet does not mean the recipient has agreed to be harassed, or to be inundated with communications. As Justice Mosk recites the appellate court's example, "connecting one's [private] driveway to the general system of roads does not invite demonstrators to use the property as a public forum."¹⁵³ Nor would it invite the public to repeatedly use that driveway for their own purposes, after being asked to leave. To more adequately protect a business's investment in its private network information and activities, the trespass to land theory may indeed prove a better analogy than trespass to chattels.¹⁵⁴ If the court limits its applicability to cases where consent has been expressly revoked, the trespass to land analogy is reasonable in the cyberspace context.¹⁵⁵

Moreover, messages sent through the Internet are cheap and pass the cost on to the receiver.¹⁵⁶ Hamidi had alternative ways to reach his target au-

145. *Id.*

146. *Id.*

147. *Intel*, 71 P.3d at 326 (Mosk, J., dissenting).

148. *Id.* Intel's computer usage guidelines stated that the computer system "is to be used as a resource in conducting business. Reasonable personal use is permitted, but employees are reminded that these resources are the property of Intel and all information on these resources is also the property of Intel." *Id.* Examples of personal use that would not be considered reasonable expressly include "use that adversely affects productivity." *Id.*

149. *Intel*, 114 Cal. Rptr. 2d at 258.

150. *See id.*

151. *Id.*

152. *See id.*

153. *Intel*, 71 P.3d at 330-31 (Mosk, J., dissenting).

154. *See Ballantine, supra* note 136, at 212-13 (arguing that a real property trespass analogy eliminates the need to show tangible harm and allows a private network provider to prevail upon a showing that the trespasser continued to send unwanted e-mail despite notice that permission had been denied).

155. *Id.* at 253.

dience—home e-mail, picketing, paper mail sent to employees' homes, or advertising.¹⁵⁷ However, he would incur the cost of his communication using these methods. Instead, he successfully shifted the costs of his communication to Intel.¹⁵⁸

Because an employer is oftentimes responsible for its employees' use of workplace equipment, and employees look to their employer to protect them during work,¹⁵⁹ the employer should be allowed to regulate the actions of its employees that are done in the course and scope of their employment, during business hours, on business premises, using business assets. An employer has a legitimate interest in monitoring employee e-mail to protect against liability and poor productivity.¹⁶⁰ Intel has an interest in ensuring that its private property is not used as an implement for harming productivity and disrupting its own workplace.¹⁶¹ Intel also has a legitimate interest in ensuring that its employees have a workplace environment that is not distracting or offensive.¹⁶² Here, Intel only asks the court to support its legitimate business request.

The e-mail addresses of Intel employees were private; they belonged to Intel and were not published for use other than for company business.¹⁶³ Hamidi obtained the disk wrongly, and he knew it.¹⁶⁴ If Intel published their list of employee e-mail addresses to the general public, Hamidi may have been able to show that Intel instead invited communication; but Intel did not. Hamidi knew Intel's computer use policy stated that it was for business use only.¹⁶⁵

~clee/Webpage/unsolicited_email.htm (last visited Jan. 30, 2004).

157. *Intel*, 71 P.3d at 313 (Brown, J., dissenting); *Intel*, 114 Cal. Rptr. 2d at 257.

158. *Intel*, 71 P.3d at 313 (Brown, J., dissenting).

159. For example, the employer can be sued for failing to take sufficient steps to prevent workplace harassment, and the employer must provide workers' compensation insurance to its employees.

160. See Jarrod J. White, *E-mail@Work.Com: Employer Monitoring of Employee E-Mail*, 48 ALA. L. REV. 1079, 1079-80 (1997) (citing studies that found over twenty percent of e-mail users have received sexually harassing e-mail, which could subject an employer to a sexual discrimination lawsuit based on that e-mail evidence). In addition to potential sexual discrimination or sexual harassment suits, an employer may potentially be liable if an employee abuses the e-mail system to orchestrate an illegal operation. *Id.*

161. Respondent's Brief at 14, *Intel* (No. S103781).

162. *Id.* Consider the precarious situation an employer may be placed in if, based on the decision in *Intel*, it was required to shield its employees from incoming offensive e-mails to prevent being subjected to a workplace harassment claim. See *id.* at 14 n.3.

163. See *Intel*, 71 P.3d at 327 (Mosk, J., dissenting).

164. It is hard to imagine one who receives an anonymous disk in the mail, containing what he knows is a confidential, proprietary list of e-mail addresses from his former employer, who maintains a computer use policy with which he is familiar, claiming he did not know it was wrong for him to have the disk.

165. Even if an employer's computer use policy does not cover an employee after termination from employment, the employee must still be generally familiar with the policy con-

D. Hamidi's E-mail Violated California Statutory Laws

Hamidi's e-mail trespass was also a form of unlawful spam. There is no bright-line distinction between commercial and non-commercial speech.¹⁶⁶ "The term 'spam' refers broadly to unsolicited bulk e-mail (or "'junk' e-mail"), which 'can be either commercial (such as an advertisement) or non-commercial (such as a joke or chain letter).'"¹⁶⁷ Courts have found that spam constitutes a trespass to chattels because it is an intentional intermeddling with the chattel of another that causes harm by impairing the value of the chattel to its owner.¹⁶⁸ Moreover, the communications Hamidi sent have the same qualities as commercial communications and so are analogous to spam, which is strictly regulated under California law.¹⁶⁹

Hamidi's communications were sent on behalf of an organization (FACE-Intel), not an individual. FACE-Intel is a California non-profit corporation, whose members contribute their time and money to pay the entity's expenses.¹⁷⁰ Hamidi's communications were intended to advertise the services of FACE-Intel in bringing together a collective uprising against Intel. FACE-Intel's mission and purpose is to influence not only Intel and its employees, but also other electronic industry employees.¹⁷¹ However, California's anti-spam laws do not provide that the promotion of services must be for profit, nor do they provide that the promotion must be done by a for-profit organization, to fall within the statute.¹⁷² The e-mails were unsolicited and sent to a massive list of recipients with whom Hamidi did not know or have a relationship. Hamidi was able to send approximately 200,000 e-mails in total before Intel received the initial injunction.¹⁷³

166. *Intel*, 71 P.3d at 322 n.7 (Brown, J., dissenting).

167. *State v. Heckel*, 24 P.3d 404, 406 n.1 (Wash. 2001) (citing Sabra Anne Kelin, *State Regulation of Unsolicited Commercial E-Mail*, 16 BERKELEY TECH. L.J. 435, 436 n.10 (2001)). "There is considerable debate regarding whether 'spam' encompasses only unsolicited commercial e-mail (UCE) or all UBE [unsolicited bulk e-mail], regardless of its commercial nature." *Intel*, 71 P.3d at 322 n.7 (Brown, J., dissenting) (citing David E. Sorkin, *Technical and Legal Approaches to Unsolicited Electronic Mail*, 35 U.S.F. L. REV. 325, 333-35 (2001)).

168. See Ballantine, *supra* note 136, at 233-34. See, e.g., *Am. Online, Inc. v. IMS*, 24 F. Supp. 2d 548, 550-51 (E.D. Va. 1998) (granting summary judgment for claim of trespass to chattels when defendant sent unauthorized bulk commercial e-mail over plaintiff's computer network); *CompuServe Inc. v. Cyber Promotions, Inc.*, 962 F. Supp. 1015, 1028 (S.D. Ohio 1997) (granting injunction for trespass to chattels against defendant advertising company who sent high volume of unsolicited e-mail over plaintiff's computer system).

169. See *supra* notes 22-37 and accompanying text. Alternatively, the majority suggested that the Legislature "may see fit in the future also to regulate noncommercial e-mail, such as that sent by Hamidi." *Intel*, 71 P.3d at 311.

170. FACE Intel, *Frequently Asked Questions*, at <http://www.faceintel.com/FAQ.htm> (last visited Nov. 9, 2003) (on file with California Western Law Review).

171. See *supra* notes 45-46.

172. See *supra* notes 23-36 and accompanying text.

The typical e-mail user would agree—this is spam—a large quantity of unsolicited, unwanted e-mail sent by an unknown organization to promote its ideas (either its services or its product) upon the recipient. Hamidi's actions should, therefore, fall under California's regulation of spam. Because Hamidi did not comply with the requirements of California's Business and Professions Code, his actions should be prohibited.

E-mail users do not want to see spam rights encouraged or protected.¹⁷⁴ One of the primary reasons is because spammers are not required to internalize the costs they impose on ISPs and recipients of their e-mails.¹⁷⁵ E-mail is cheap to send, but may be costly on the receiving end.¹⁷⁶ This causes a shift in costs from sender to recipient that resembles "sending junk mail with postage due or making telemarketing calls to someone's pay-per-minute cellular phone."¹⁷⁷ Before the computer, a person could not easily disrupt a business without significant cost; but with a computer and through mass mailing, that person can easily and at virtually no cost disrupt, damage, and interfere with another's business.¹⁷⁸

Moreover, in addition to common law tort and statutory anti-spam claims, Hamidi's actions arguably violated California criminal law prohibiting the unauthorized use of computer services. Illegitimately obtaining the unauthorized service of a mail delivery system, thereby allowing the defendant to obtain free advertising, has been found to violate other state anti-computer crime statutes.¹⁷⁹ Hamidi's actions are similar. He knew his mass e-mails were unwelcome at Intel and that they were taking up valuable network resources and storage space on Intel's system, yet he continued to send them. He knew he had been directed to stop. He knew Intel claimed a proprietary interest in its computer system and its confidential employee e-mail addresses, and his possession of the disk containing the e-mail addresses was unauthorized. He knew and intended that Intel would suffer loss through lack of employee productivity by reading, deleting, responding, discussing, and through its security personnel trying to block his multiple messages. Yet

174. See Marshall, *supra* note 93, at 479.

175. See Ferguson v. Friendfinders, Inc., 115 Cal. Rptr. 2d 258, 267 (2002).

176. *Id.* at 268.

177. State v. Heckel, 24 P.3d 404, 410 (Wash. 2001).

178. Intel, 71 P.3d at 330 (Mosk, J., dissenting).

179. See Am. Online, Inc. v. LCGM, Inc., 46 F. Supp. 2d 444, 451 (E.D. Va. 1998). The court found that the defendant had violated the Virginia Computer Crimes Act, Va. Code Section 18.2-152.3(3), which provided that "[a]ny person who uses a computer or computer network without authority and with the intent to [c]onvert the property of another shall be guilty of the crime of computer fraud." *Id.* By disguising the electronic header information, which allowed the defendant to send its messages through America Online's system despite its blocking filters and mail controls, the defendant unlawfully transferred the costs of sending its messages to American Online. *Id.* See also Am. Online, Inc. v. Nat'l Health Care Disc., Inc., 121 F. Supp. 2d 1255, 1273-77 (N.D. Iowa 2000) (applying Virginia law) (holding that a spammer who harvested e-mail addresses and sent unsolicited bulk e-mail to ISP's customers in violation of its terms of service, had accessed ISP's computers without authorization, thus violating computer crime laws).

he purposefully evaded detection by disguising his messages and was successful in transferring to Intel the cost of delivering his bulk messages. Hamidi's actions should have subjected him to criminal and civil penalties under California law as well.

E. Injury Sufficient for Trespass to Chattels Should be Broadened

In cases of cyberspace trespass, injury, though real, may be very hard for a party to prove. Therefore, this Note posits that injury sufficient for trespass to chattels should include foreseeable consequential economic harm that is proximately caused by the trespasser's actions. This should be reasonably limited to situations where a showing of physical harm may not be feasible and the trespasser has clear notice that his entry is unwelcome and unauthorized. Just because harm may be hard to quantify (e.g., burden on the computer system, use of computer disk space, intangible electrons), does not mean it does not exist.¹⁸⁰ Injury to a chattel should be expanded given today's electronic age and use of technology, to include economic injury that is the foreseeable and proximate consequence of the trespasser's actions.

Some courts have been willing to acknowledge that non-traditional damage claims are equally viable. In *Oyster Software, Inc. v. Forms Processing, Inc.*,¹⁸¹ the court declined to dismiss a trespass to chattels claim because Oyster had successfully shown evidence of some "use" of its computer system when the defendant's agent sent robots to Oyster's website to copy Oyster's metatags.¹⁸² The court found that the "negligible load" and "minimal interference" on Oyster's system did not prevent it from prevailing on its trespass claim because the copying of the metatags was sufficient.¹⁸³ In *CompuServe*, the court acknowledged that harm to business reputation and goodwill were viable claims of injury, aside from the physical impact of the messages.¹⁸⁴ The California Supreme Court should do the same.

Where a showing of actual physical injury is not feasible because of the electronic nature of the trespass or because the trespass has not yet caused a total system crash, the court should look more broadly at an injury claim to include those damages which are foreseeable and proximately caused by the trespasser. A business has a legally protected interest in its computer system, the electronic messages that flow to and from that system, and in ensuring its employees are allowed to perform their work without interference from unwelcome and harassing outsiders who have been asked to leave. It is unrea-

180. *Intel*, 71 P.3d at 320 (Brown, J., dissenting).

181. 2001 WL 1736382 (N.D. Cal.).

182. *Id.* at *11-13 (applying California law). "Metatags" are Hypertext Markup Language ("HTML") code which describe the contents of an Internet web site to a search engine. *Id.* at *1 n.3.

183. *Id.* at *13.

184. *CompuServe Inc. v. Cyber Promotions, Inc.*, 962 F. Supp. 1015, 1022-23 (S.D.

sonable to turn an injured party away until a major physical crash that can be more easily quantified occurs.

CONCLUSION

Every person or employer who owns property should have the right to put up a "No Trespassing" sign, have that sign respected by the public, and backed by judicial enforcement when necessary.

Courts must balance the competing public policies of freedom of expression against the protection of private property interests from unauthorized use.¹⁸⁵ While some propose a new legal framework to accomplish this,¹⁸⁶ the historical common law doctrine of trespass to chattels can be easily molded to accommodate the electronic age. If courts are willing to apply this doctrine in a progressive light, we need not create a new cause of action or adopt new legislation to protect private property in cyberspace.¹⁸⁷ As we look to the future and the seemingly endless opportunities the Internet provides, we must reexamine the way in which trespass to chattels will likely occur to ensure the injury component we require an injured party to prove is realistic. In cyberspace, trespass may occur in non-traditional, non-physical ways; therefore, the injury that occurs may also be non-traditional and non-physical. But it is nonetheless a real injury.

The business community should be concerned with the floodgate effect that this California Supreme Court ruling will create: mass electronic mailings *into* business environments, with no way for the employer to control the flow or limit the financial exposure those mailings will create. While protecting expressive activity is one of the cornerstones our society is built upon, an unwilling listener should not have to bear the costs of that speech by surrendering its business assets for the speaker's use. In many businesses, including Intel, one of its primary assets is its employees' time and services; the physical definition of injury this court requires does not give credence to human capital. Unable to appeal to either the courts or the legislature, businesses would be forewarned to hold on tightly to their employee e-mail ad-

185. See Ronnie Cohen & Janine S. Miller, *Towards a Theory of Cyberspace: A Proposal for a New Legal Framework*, 10 RICH. J.L. & TECH 2, 52-65 (2003) (proposing a new legal framework to balance online access and speech rights with online property rights, under which particular uses of the Internet are designated as "places of public accommodation," which carry with them certain protectable rights).

186. *Id.*

187. *But see* Burk, *supra* note 81, at 27 (proposing a new theory of "digital nuisance" in lieu of a cyberspace trespass action to better balance the competing interests created in bulk e-mail cases not well-suited for the arcane common law tort). See also R. Clifton Merrell, Note, *Trespass to Chattels in the Age of the Internet*, 80 WASH. U. L.Q. 675, 676 (2002). "[A]pplying trespass to chattels to the Internet is like driving a horse and buggy on the information super-highway." *Id.* This commentator suggests that a legislative solution should be found to strike a balance between the competing interests of protecting businesses and their investment information and bandwidth, while still encouraging the growth and freedom of communication of the Internet.

dresses to prevent future Hamidis from flooding their company e-mail systems.¹⁸⁸ It appears inevitable that at some point, legislative regulation of unsolicited bulk e-mail (rather than simply unsolicited commercial bulk e-mail) will be required.¹⁸⁹

Here, Hamidi intentionally and knowingly used Intel's computer system to repeatedly send mass mailings to its employees, knowing full well and intending that his communications would cause a reaction in Intel's employees. Hamidi knew and intended to enter Intel's private domain, even though Intel requested that he leave, intentionally using Intel's own private property to air his personal views. Intel runs a business, and, like its photocopy machines and its telephone system, it must be able to protect and control its computer system and its employees' time for its own business purposes.

Despite Intel's demands that he stop, and its efforts at self-help, Hamidi persisted in intruding where he was not welcome. Intel posted a "Private Property, Keep Out" sign, but Hamidi refused to comply, and the California Supreme Court refuses to honor it.

*Patty M. DeGaetano**

188. Laura Hodes, *The Recent California Decision on Intel and Email: Less Significant Than it May Seem*, FINDLAW'S WRIT, at http://writ.corporate.findlaw.com/commentary/20030717_hodes.html (Jul. 17, 2003).

189. Marc Alexander, *Trespass to Chattel and Unsolicited Bulk Email*, 45-SEP ORANGE COUNTY LAW. 18, 20 (2003).

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