

# Digital Transactions: Part Two: Assignment 6

Intel Corp. v. Hamidi, 71 P.3d 296 (Cal. 2003)

- Hamidi, disgruntled former Intel employee, sending emails to Intel email addresses to those who do not object
- Trial court enjoined Hamidi, appellate court affirmed, on trespass to chattels theory

... under California law the tort does not encompass, and should not be extended to encompass, an electronic communication that neither damages the recipient computer system nor impairs its functioning . . .

Our conclusion does not rest on any special immunity for communications by electronic mail; we do not hold that messages transmitted through the Internet are exempt from the ordinary rules of tort liability. To the contrary, e-mail, like other forms of communication, may in some circumstances cause legally cognizable injury to the recipient or to third parties and may be actionable under various common law or statutory theories. Indeed, on facts somewhat similar to those here, a company or its employees might be able to plead causes of action for interference with prospective economic relations, interference with contract or intentional infliction of emotional distress. And, of course, as with any other means of publication, third party subjects of e-mail communications may under appropriate facts make claims for defamation, publication of private facts, or other speech-based torts. Intel's claim fails not because e-mail transmitted through the Internet enjoys unique immunity, but because the trespass to chattels tort unlike the causes of action just mentioned- may not, in California, be proved without evidence of an injury to the plaintiffs personal property or legal interest therein.

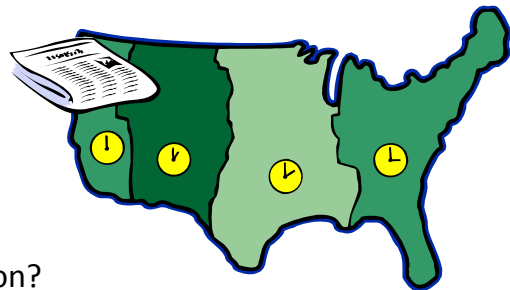
[\_But, contrast this outcome with “spam” – unsolicited commercial bulk e-mail (UCE) and ISP intermediaries\_]

Intel Corp. v. Hamidi, 71 P.3d 296 (Cal. 2003)

- Conversion, and its dispossession, versus trespass to chattels and its interference and injury (with the injury needing a connection to the personal property interfered with)
  - Reject “impairment by content” under trespass to chattels
- Hamidi used the Intel email system as it was intended and designed to function; he did not send overloading volume
  - Spamming cases
  - Robotic collection - eBay v. Bidder's Edge, Inc., 100 F. Supp. 2d 1058 (N.D. Cal. 2000), and similar cases
- The court rejects the proposed extension of California’s trespass to chattels tort to the situation of Hamidi’s use
- Opinion authors:
  - Werdegar;
  - concurring: Kennard;
  - dissenting: Brown, Mosk
    - “The law of trespass to chattels has not universally been limited to physical damage.”

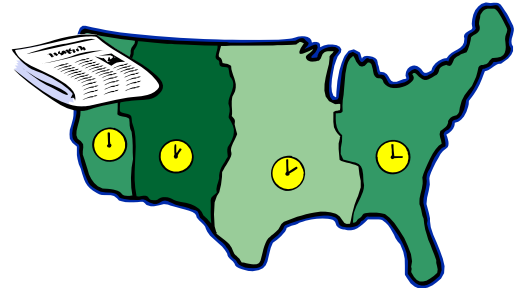
## INS v. AP (U.S. 1918) [NOT ASSIGNED]

- Dispute
- Questions
  - Property in news?
  - If so, survive publication?
  - Are INS’ acts of appropriation unfair competition?
- What does the designation of the news as “quasi property” mean?



## INS v. AP (U.S. 1918) [NOT ASSIGNED]

- Rights of public to use AP's news versus rights of a competitor to use it
- Is INS reaping where it has not sown?
- Did AP abandon the news by publishing it?



## NBA v. Motorola (2d 1997) [NOT ASSIGNED]

- Motorola system sent game updates to pagers by gathering information from broadcasts
- NBA had competing pager delivery system

(i) a plaintiff generates or gathers information at a cost;  
(ii) the information is time-sensitive;  
(iii) a defendant's use of the information constitutes free-riding on the plaintiff's efforts;  
(iv) the defendant is in direct competition with a product or service offered by the plaintiffs; and  
(v) the ability of other parties to free-ride on the efforts of the plaintiff or others would so reduce the incentive to produce the product that its existence or quality would be substantially threatened.

# CFAA Background

- Exceed . . .
- Authorized – code based; contract based; norms-based
  - To gain access to the information; Or, also include ways in which allowed-to-have information is used?
- Access – also needed to prove the CFAA claim
  - Getting “inside” versus merely “knocking on the door”
  - Expansive approach: sending email to a recipient computer system
  - Less expansive: “port scans” are not access
- OR: access without authorization
- 18 U.S.C. § 1030(a)
  - Seven distinct crimes related to exceeding authorized access
- § 1030(g) – civil remedy for some violations

# EF Cultural Travel BV v. Zefer Corp. (1st Cir. 2003)

- Zefer using “scraper tool” to collect pricing info from EF website
  - Sold collected info to EF competitor, Explorica
- Dist. Ct. - § 1030(a)(4) (federal computer fraud statute) – issued preliminary injunction that scraper went beyond “reasonable expectations” of ordinary users
- Affirmed on alternative basis
  - Zefer had no confidential information that it used in the scraper tool
    - Explorica executives are former employees of EF
  - At the time the scraper operated, the EF website had not explicit statement prohibiting bots, robots, or similar devices
- “lack of authorization may be implicit, rather than explicit”
  - “But we think that in general a reasonable expectations test is not the proper gloss on subsection (a)(4) and we reject it.”
- Affirm an alternative, narrower scope and grounds for the preliminary injunction

## Assignment Six Problems

- 6.1 to 6.2
- 6.3 & 6.4
- 6.5