On June 30, 2003, the Supreme Court of California decided *Intel Corp. v. Hamidi*, 2003 WL 21488209, an important decision regarding the ability of a corporation to prevent outsiders from sending mass e-mail messages to employees. As a result of the court's ruling in *Hamidi*, it may be more difficult for a corporation to enjoin an individual from sending mass e-mail messages to employees. Although the court in *Hamidi* based its decision on California state tort law, the court interpreted and relied upon, in-part, the widely used Restatement Second of Torts. Accordingly, it is likely that other state courts would consider the same provisions of the Restatement in evaluating similar cases.

Hamidi, a former employee of Intel, sent six different e-mail messages to as many as 35,000 Intel employees over a period of two years. The e-mails criticized Intel’s employment practices, warned recipient employees of the dangers those practices posed to their careers and suggested employees consider moving to other companies. Intel's efforts at blocking the transmission of the messages were only partly successful. Intel demanded that Hamidi stop issuing the e-mails, but Hamidi continued his campaign.

Intel sued Hamidi in California state court based on a “trespass to chattels” theory seeking to permanently enjoin Hamidi from sending future messages. Generally, trespass to chattels requires that some injury or damage must occur to the “chattels,” i.e., the property. The trial court granted summary judgment in favor of Intel, permanently enjoining Hamidi from sending “unsolicited e-mails to addresses on Intel’s computer systems.” The Court of Appeal affirmed. The California Supreme Court, however, reversed.

The court, in its reversal, held that under California law the tort of trespass to chattels does not encompass, and should not be extended to encompass, an electronic communication that neither damages the recipient computer system nor impairs its functioning. According to the court, such an electronic communication does not constitute an actionable trespass to personal property, i.e., the computer system, because it does not interfere with the possessor's use or possession of, or any other legally protected interest in, the personal property itself — some actual injury must have occurred in order for trespass to chattels to be actionable.

Given the court’s requirement of actual damages to sustain a cause of action under trespass to chattels, the case revolved around whether Hamidi’s actions caused or threatened to cause damage to Intel’s computer system. The court found that there was no evidence to indicate that Intel’s computer infrastructure or software was actually damaged, or even threatened to be damaged. Intel was not dispossessed of its computers; Hamidi’s messages did not prevent Intel from using its computers for any appreciable length of time; and Intel failed to prove that its system was slowed by the influx of Hamidi’s messages or that the messages imposed any marginal operation cost on Intel.

The court distinguished Intel's situation from those cases in which “spamming” was found to be actionable trespass because in each of the spamming cases, the plaintiff showed some interference, or threat of interference, with the efficient functioning of its computer system (e.g., burden on disk space or available memory, draining of processing power). The functional burden on Intel’s computer system, or the cost in time to individual recipients, did not in the court’s mind measure up to the burdens caused in the spamming cases.
Importantly, the court’s holding is limited to a “tort” analysis. From this perspective, the court’s decision in *Hamidi* makes sense — without any injury or damage, no tort has been committed. However, the decision does not preclude suits based on other theories such as defamation or interference with contract.

Short of some technological solution, what can be done to deter mass e-mailing, or at least increase the likelihood of bringing a successful cause of action?

1. Pursue a cause of action other than trespass to enjoin an individual from mass e-mailing. Depending on the situation, possible causes of action include defamation, interference with prospective economic relationships, interference with contract and intentional infliction of emotional distress.

2. If a trespass cause of action must be pursued to enjoin mass e-mail infiltration, retain an expert who can quantify for the court the amount of damage or impairment inflicted by the e-mails.

3. It is possible that appropriate restrictive covenants in employment agreements or computer-use policies may curtail this type of activity.

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