

Excerpts from

**Intel Corp v. Hamidi**

Supreme Court of California, 2003.  
30 Cal.4th 1342, 71 P.3d 296, 1 Cal. Rptr. 3d 32.

[Editor's Note: I have deleted citations without ellipses.]

In *Thrifty-Tel, Inc. v. Bezenek (Thrifty-Tel)*, the California Court of Appeal held that evidence of automated searching of a telephone carrier's system for authorization codes supported a cause of action for trespass to chattels. The defendant's automated dialing program "overburdened the [plaintiff's] system, denying some subscribers access to phone lines" showing the requisite injury.

Following *Thrifty-Tel*, a series of federal district court decisions held that sending UCE through an ISP's equipment may constitute trespass to the ISP's computer system.

In each of these spamming cases, the plaintiff showed, or was prepared to show, some interference with the efficient functioning of its computer system. In *CompuServe*, the plaintiff ISP's mail equipment monitor stated that mass UCE<sup>a</sup> mailings, especially from nonexistent addresses such as those used by the defendant, placed "a tremendous burden" on the ISP's equipment, using "disk space and drain[ing] the processing power," making those resources unavailable to serve subscribers. (*CompuServe*.) Similarly, in *Hotmail Corp. v. Van\$ Money Pie, Inc.*, the court found the evidence supported a finding that the defendant's mailings "fill[ed] up Hotmail's computer storage space and threaten[ed] to damage Hotmail's ability to service its legitimate customers." *America Online, Inc. v. IMS*, decided on summary judgment, was deemed factually indistinguishable from *CompuServe*; the court observed that in both cases the plaintiffs "alleged that processing the bulk e-mail cost them time and money and burdened their equipment." The same court, in *America Online, Inc. v. LCGM, Inc.*, simply followed *CompuServe* and its earlier *America Online* decision, quoting the former's explanation that UCE burdened the computer's processing power and memory.

Building on the spamming cases, in particular *CompuServe*, three even more recent district court decisions addressed whether unauthorized robotic data collection<sup>4</sup> from a company's publicly accessible Web site is a trespass on the company's computer system. The two district courts that found such automated data collection to constitute a trespass relied, in part, on the deleterious impact this activity could have, especially if replicated by other searchers, on the functioning of a Web site's computer equipment.

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<sup>a</sup> "UCE," according to the court, stands for "unsolicited commercial bulk e-mail." Please don't ask me what happened to the "B."

<sup>4</sup> Data search and collection robots, also known as "Web bots" or "spiders," are programs designed to rapidly search numerous Web pages or sites, collecting, retrieving, and indexing information from these pages. Their uses include creation of searchable databases, Web catalogues and comparison shopping services.