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# Intel case tests e-mail as free speech

Former worker prosecuted for electronic trespassing

By **Allyce Bess**

THE WALL STREET JOURNAL

Aug. 14 — When Ken Hamidi was fired from Intel Corp. in 1995 after a long workers' compensation battle, he didn't go quietly. Mr. Hamidi, 55 years old, spent the next two years criticizing the company in e-mails sent to thousands of co-workers. Convinced he was a victim of age discrimination, Mr. Hamidi even publicized his campaign by dressing as a cowboy and going on horseback to distribute printed versions of his messages to employees entering Intel's Folsom, Calif., facility, where he once worked. Now, the California Supreme Court will determine whether the former employee's e-mail is a form of electronic trespassing, as Intel claims, or an expression of free speech.

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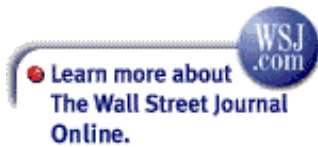
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THE CASE, one of the most closely watched in cyberlaw, is gaining wider attention and could be heard before the month is out. Although Intel already has won three court rounds, the state Supreme Court decided earlier this year to review the case partly because of the doggedness of Mr. Hamidi's young Harvard-trained lawyer, and partly because a cadre of "cyber rights" advocates have come to Mr. Hamidi's defense.

Battle lines hardened this past week with the filing of friend-of-the-court briefs on both sides of the case by groups as diverse as the American Civil Liberties Union, the Electronic Frontier Foundation and the U.S. Chamber of Commerce.

It all started in 1990 with a painful back injury that Mr. Hamidi, an Intel engineer, suffered when the car he was driving, on work time, was rear-ended. Mr. Hamidi contends the company didn't want to pay for workers' compensation costs related to the injury; Intel says Mr. Hamidi was fired for incompetence. Convinced that Intel's real motive was to be rid of an older, more costly employee, Mr. Hamidi launched his campaign, including his Internet missives.

### **17TH CENTURY LEGAL PRINCIPLE**

At issue is whether an unwanted, unsolicited e-mail can be actionable as a form of trespass. After Intel repeatedly asked Mr. Hamidi to stop sending his e-mails and he refused, the company sued him in 1998, charging him with "trespass to chattels" — a 17th century tort that prohibits meddling with and damaging another person's property for personal gain. Chattels is an old English word for "property," and the trespass-to-chattels tort has rarely been used in hundreds of years. Intel couldn't use the more common "trespass to land" complaint because Mr. Hamidi didn't actually step on Intel property.

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Mr. Hamidi's supporters argue that in charging him with "trespass to chattels" Intel is, in effect, trying to erect borders across the Internet. A ruling for Intel could set a precedent allowing anyone to sue anybody else for trespass at the mere presence of an electronic signal, they argue. For example, Yahoo Inc. could be sued by a company that doesn't want its Web site trolled by Yahoo's search engine. Or, eBay Inc. could sue a smaller online auctioneer for simply linking to its Web site.

Intel's reaction to Mr. Hamidi's e-mailings

highlights a growing problem at many companies, especially those in the technology field. Criticisms from disaffected shareholders and angry, laid-off employees often appear on a company's own electronic chat boards, Web sites and through e-mails.

"The Internet gave a megaphone to a lot of people who before weren't able to speak," says Cindy Cohn, legal director of the Electronic Frontier Foundation, which filed a brief on Mr. Hamidi's behalf. "A lot of big companies are uncomfortable with this more intrusive freedom of expression and they are trying to shut it down."

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"We are trying to make the public aware that the soul of the Internet is at stake here," says William McSwain, a lawyer at Dechert LLP in Philadelphia, the firm representing Mr. Hamidi on a pro bono basis. Being represented by Dechert also makes Mr. Hamidi's case highly unusual: Dechert has earned a reputation for representing powerful companies, not individuals waging crusades.

Mr. Hamidi first came to the attention of Mr. McSwain, 33, when he was studying law. A former infantry officer in the U.S. Marines Corps, Mr. McSwain's 1999 Harvard law-review article in support of Mr. Hamidi caught the eye of the ACLU, the EFF and other groups.

Soon after graduating and landing a job as an associate at Dechert, Mr. McSwain managed to persuade the firm to let him represent Mr. Hamidi at no charge.

"Dechert cares about this case because we care, and our clients care, about the long-run development of the Internet," Mr. McSwain says. "The Internet is not going to achieve its commercial potential if everybody who has an e-mail inbox, or who operates a Web site, can erect a virtual 'no trespassing' sign around that inbox or that Web site," he adds. "This could turn millions of Americans into criminals overnight, simply for looking at Web pages or sending unsolicited e-mails."

Intel spokesman Chuck Mulloy says the company never complains when Mr. Hamidi and his supporters stage protests outside its buildings, which the group has done a number of times. Mr. Hamidi may speak against Intel as often as he likes, Intel says, just not on the company's computer screens. "E-mail is where we draw the line," Mr. Mulloy says.

### **CRUSADER ON HORSEBACK**

No one disputes that Mr. Hamidi is more than a minor irritant to the tech titan. Along with allegations of discrimination, his e-mails also often contained warnings of layoffs at Intel and calls to current Intel employees to be wary of management.

His messages haven't gone unheard: His



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organization, FACEIntel, has hundreds of members, mostly other former Intel workers with grievances. And his e-mails often reveal detailed information about Intel that suggests someone inside is tipping him off.

In a message he sent shortly after the inauguration of the FACEIntel Web site he wrote: "Annual review time is very close, unfortunately many of you will be put on CAP [Intel's program to improve employee performance] or will be terminated. Regardless of were [sic] you are contact us we can help. We all together can influence Intel to once again become the employee oriented company that it used to be!!!"

Perhaps most maddening for Intel about Mr. Hamidi's crusade is that while he is brash and indignant, he also is reasoned — and he obeys the law. His stunt on horseback was in response to a court order to stop his e-mail campaign, an order he followed immediately.

Mr. Hamidi's supporters say his e-mails can't be considered trespass because they didn't damage any of Intel's physical computer equipment.

For its part, Intel says its wins so far represent a victory for any business seeking to control its workplace. Plus, Intel says, the e-mails harm employee morale, they threaten worker productivity and cost Intel money in the form of the time its technicians spent attempting to block the messages — a task they never achieved because Mr. Hamidi used a variety of tactics to outwit the screening programs of Intel's servers.

Mr. Hamidi, who now works for the state government but doesn't want to disclose which department, says he simply wants to warn Intel employees about company policies that he says are disguised forms of age and disability discrimination. "This is about free speech and nothing else," he says.

Besides getting support from the Chamber of Commerce, Intel is backed by the Labor Policy Association, an organization for human-resources executives, and a handful of employer groups in California.

The ACLU, EFF and legal scholars at the Berkeley Center for Law and Technology support Mr. Hamidi, as does the AFL-CIO.

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