

Elements of crime and intentional tort: trespass and linking on the internet



**ASSIGN
BUSTER**

Running head: DEAR SISTER, Elements of Crime and Intentional Tort:

Trespass and Linking on the Internet Affiliation of University/ course/ class
etc.)

Dear Sister,

This is in response to your recent e-mail, and the questions and concerns you have raised in it.

The answer to your first question is that Bidder's Edge used special software generically called " robots," or " crawlers" for automated access of eBay's server system in order to gain data, which it used for earning profits. When specifically prohibited by eBay, Bidder's Edge acted against eBay's prohibition and began unauthorized automated searches through proxy servers that confused eBay's system as to the origin of such searches. When eBay discovered this, it went to court.

The actions of Bidder's Edge mattered to eBay because it had a policy of granting licenses to automated institutional searchers. Unauthorized automated access of its systems exceeded the scope of consent given by eBay in its user agreement that parties had to agree to for access to its systems. Bidder's Edge, while challenging eBay's control of eBay's own systems, set up an example that could have influenced other institutional automated searchers to ignore the requirement of a license from eBay. This, in future, could have led to drastic economic losses to eBay, both by loss of license fees and by overburdening of its system capacity leading to reduced system performance, system unavailability, or data loss.

I found the answer to your second question on page 78 of Henry

Cheeseman's book where he defines trespass to personal property as " a tort that occurs whenever one person injures another person's personal property
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or interferes with that person's enjoyment of his or her personal property."

I will now answer your third question. Personally, I find that the definition of trespass to personal property given in Cheeseman's book encompasses the concept of trespass to personal property in the case of Bidder's Edge Vs. eBay and does not differ from applied California law. It is only that the court expressed on page 12 of the judgment:

" The analytic difficulty is that a wrongdoer can commit an ongoing trespass of a computer system that is more akin to the traditional notion of a trespass to real property, than the traditional notion of a trespass to chattels, because even though it is ongoing, it will probably never amount to a conversion."

However, the court ultimately found on page 19 of the order:

" it is undisputed that eBay's server and its capacity are personal property, and that BE's searches use a portion of this property. Even if, as BE argues, its searches use only a small amount of eBay's computer system capacity, BE has nonetheless deprived eBay of the ability to use that portion of its personal property for its own purposes. The law recognizes no such right to use another's personal property. Accordingly, BE's actions appear to have caused injury to eBay and appear likely to continue to cause injury to eBay."

It is principally on this ground that the court granted injunction to eBay and this conforms entirely to the second part of Cheeseman's definition " or interferes with that person's enjoyment of his or her personal property."

I hope that you find my letter helpful and would use robots only on sites from which you have obtained proper licenses and limit yourself within their scope.

Shae

REFERENCES

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Cheeseman R. Henry, (2006), Contemporary Business and Online Commerce Law. Upper Saddle River NJ: Prentice-Hall.

Ebay, Inc. v. Bidder's Edge, Inc. 100 F. Supp. 2d 1058 (N. D. Cal 2000).

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