

Bar Talk

PEOPLE AND PRACTICES

Looking for line where Web use crosses into trespassing

We all know that e-mail spam is a pain in the you-know-what, but some courts consider it a form of trespass.

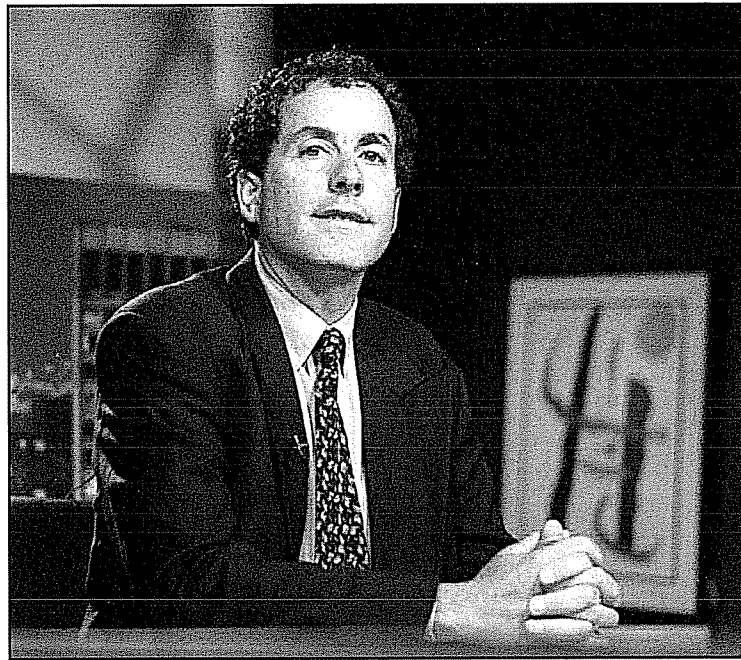
San Francisco-based Duane Morris partner Eric Sinrod will give two seminars this week on how trespass to chattels, a very old tort, is being applied to very new Internet phenomena.

Trespass to chattels generally means someone is deliberately interfering with someone else's

Sidebar possession of personal property. Usually this happens by stealing, breaking or somehow depriving the owner of the property, Sinrod said, but it was first applied in the Internet world in the late 1990s to spam. Internet service providers "were arguing that spam was a trespass to their chattel, the chattel being their server."

The spam did not destroy the servers handling the e-mails, but several courts agreed the unsolicited messages placed a significant enough burden on the servers and their ability to process regular e-mails that it constituted trespass to chattels, Sinrod said.

But as always happens with technology, things got more complex. And courts have begun to disagree on how the tort applies to other "virtual" invasions.



SHELLEY EADES

NEW TRICKS: Duane Morris partner Eric Sinrod, photographed while working on a studio recording last year, will speak in the Bay Area this week about how courts are applying the old trespass to chattels tort to the Internet.

Take "spiders," for instance. These computer programs, which can trawl information — such as Web auction results — off other sites, were blamed for trespass of chattels in a case involving eBay and a Massachusetts site called Bidder's Edge, Sinrod said. Bidder's Edge aggregated auction results from several sites at once to try to be a one-stop auction destination. A federal judge in San Jose determined that even though the eBay information was publicly avail-

able, the spiders placed a burden, albeit small, on eBay's servers.

In *eBay Inc. v. Bidder's Edge Inc.*, 99-21200, the court held that if other spiders joined in, it could "grind eBay to a halt," according to Sinrod.

In *Ticketmaster v. Tickets.com*, 99-7654, the U.S. District Court for the Central District of California went the other way.

Tickets.com didn't use spiders but provided links to Ticketmaster Web pages, allowing cus-

tomers to bypass a lot of pages that would normally precede a purchase on the Ticketmaster sites. Ticketmaster argued these "deep links" constituted trespass. The court disagreed, holding that the Internet is like a library, where people are free to access the information they want without jumping through hoops, Sinrod explained.

These cases, Sinrod said, raised a philosophical question about the Internet: Is publicly available Web page information much like library books, to be read at our convenience, or is it more like a storefront, where the information's owner has a measure of control over how we can access that information?

Several Internet-related cases all around the country are testing the interpretation of trespass to chattels, Sinrod said, predicting that the courts will gradually produce a more clearly defined interpretation.

"It takes time for the law to become relatively certain," he said. "Even as more certainty is gained over time, still on the edges it's unclear."

In the meantime, he'll speak at the seminars being organized by the Association of Corporate Counsel, which will be held in San Francisco and then Palo Alto on Wednesday and Thursday, respectively.

— Jessie Seyfer