February 1, 2002

Honorable Ronald M. George, Chief Justice

and the Associate Justices

Supreme Court of California

350 McAllister Street

San Francisco, CA 94102-4783

Re: Intel Corp. v. Hamidi, (2001) 94 Cal.App. 4th 325

California Supreme Court No. S103781

(Third District Court of Appeal No. C033076)

Dear Chief Justice George and Associate Justices:

This letter of amicus curiae in support of a petition for review is respectfully submitted by the Electronic Frontier Foundation.

I. The Nature of the Applicant's Interest

The Electronic Frontier Foundation ("EFF") is a non-profit, civil liberties group working to protect rights in the digital world. EFF is based in San Francisco with members all over the United States, and maintains one of the most-linked-to Web sites (http://www.eff.org) in the world. EFF

encourages and challenges industry and government to support free expression, privacy, and openness in the information society. EFF has litigated and filed amicus briefs in many Internet cases. Thus, EFF's interest in this case.

II. Why This Court Should Grant Review

The facts of the case are simple: After defendant Kourosh Kenneth Hamidi was fired by plaintiff Intel Corporation ("Intel"), he sought to communicate with Intel employees at their Intel e-mail addresses. On six occasions, he sent e-mail to thousands of Intel employees. Intel demanded that Hamidi stop, but he refused. Intel sought, and ultimately received, an injunction prohibiting Hamidi from sending e-mail to Intel employees at their Intel e-mail addresses, based on the common-law tort of trespass to chattels.

Despite the apparent simplicity of these facts, however -- a company seeking to stop unwanted e-mail from a former employee -- this case now has important implications for the future of the Internet as a medium of free speech and of commerce.

On the surface, the decision of the Court of Appeal

injures the freedom of speech guaranteed by both the federal and state constitutions by upholding an injunction against protected speech.

But that result is not the most egregious aspect of this case. The free speech issue should never have been reached. The Court of Appeal majority only reached this constitutional issue by unnecessarily and unjustifiably distorting the ancient doctrine of trespass to chattels by removing any requirement of actual physical damage to the chattel. The majority ignored crucial differences between property in land and in chattels that have been emphasized by this Court. As a result, under the majority's analysis any unwanted electronic signal to an electronic device -- an e-mail message, even a click on a hyperlink -- can create tort liability. In so doing, the Court of Appeal not only committed serious legal errors that require correction, but resolved this case without considering the likely effects of its interpretation on speech and commerce on the Internet.

Given the inconvenience and annoyance of unwanted e-mail to computer network administrators and computer users, the desire to reduce it is understandable.[1] But the majority's analysis not only leads to a wrong outcome in this case but

also creates an unnecessary new tort that threatens the free flow of information on the Internet. Put simply, the majority's cure is far worse than the disease.

A. The Court of Appeal erroneously distorted the doctrine of trespass to chattels.

Had the Court of Appeal simply followed the law, this case would be unremarkable. Intel would have no cause of action, because Hamidi's e-mails did not physically damage Intel's computers or impair their condition, quality, or value. Nor was Intel dispossessed of its computers in any way.

In order to uphold the injunction against Hamidi's speech, however, the majority wrongly extended the doctrine of trespass to chattels. The majority's fundamental errors were to conflate real and personal property, and the physical with the electronic, online world. Intel's e-mail servers are personal, not real, property, and the contacts at issue are online, electronic contacts. A chattel owner's interest in the inviolability of a chattel has always been deemed weaker than a landownerÕs interest in the inviolability of land. Yet the majority invokes the notion of ÒtrespassÓ to Òprivate propertyÓ as though Hamidi had physically entered IntelÕs land and

damaged IntelÕs servers.

Indeed, even if IntelÕs servers were considered real property, no trespass action would lie. As this Court has held, even recovery for trespass to land must be "predicated upon the deposit of particulate matter upon the plaintiffs' property or on actual physical damage thereto. . . . All intangible intrusions, such as noise, odor, or light alone, are dealt with as nuisance cases, not trespass." (San Diego Gas & Electric Co. v. Superior Court (1996) 13 Cal.4th 893, 936, quoting Wilson v. Interlake Steel Co. (1982) 32 Cal.3d 229, 232-233 (citations omitted).) Thus, the Court of Appeal actually extended the reach of trespass to chattels beyond that of trespass to land.

1. Under California law, trespass to chattels requires significant physical harm to the chattel.

The tort of trespass to chattels Òlies where an intentional interference with the possession of personal property has proximately caused injury.Ó (Thrifty-Tel, Inc. v. Bezenek (1996) 46 Cal.App.4th 1559, 1566 (fn. omitted); see RESTATEMENT (SECOND) OF TORTS (1977) § 217 cmt. e (liability only if Òintermeddling is harmful to the possessorÕs

materially valuable interest in the physical condition, quality, or value of the chattelÓ).) The only exceptions were for loss of possession, which was deemed to constitute actual damage, or harm to some person or thing in which the possessor has a legally protected interest.

In Thrifty-Tel, electronic signals generated by computers that minors used to access plaintiff's telephone system overburdened plaintiffÕs telephone system, denying some subscribers access to phone lines. (Id. at 1564.) In this context, the electronic signals were deemed sufficiently tangible to maintain action for trespass to chattels.

Thus, the majority opinion distorts trespass to chattels in a basic but crucial way: it effectively eliminates the traditional requirement that the chattel (or the ownerÕs possession thereof) itself be significantly harmed by the defendantÕs physical contact with the chattel. As Judge Kolkey noted in dissent, the majority either eliminated any requirement of actual injury or treated the time spent reading and blocking unwanted e-mail as Òactual injuryÓ -- neither of which is consistent with California law. (Hamidi, 94 Cal.App.4th at 344, 347-348 (Kolkey, J., dissenting).)

To be sure, the Court of Appeal did not take the first step

in this direction. It relied on Thrifty-Tel to eliminate the requirement of actual physical contact with the chattel. But the reasoning of Thrifty-Tel is dubious to begin with. The authorities it relied on involved trespass to land, not trespass to chattels. (Burk (2000) The Trouble with Trespass, 4 J. SMALL & EMERGING BUS. L. 27, 33 (ÒThe Thrifty-Tel opinion blithely glosses over this distinction, noting simply that both legal theories share a common ancestryÓ); id. at n.52 (citing cases).)

An ownerÕs interest in the ÒinviolabilityÓ of personal property is far weaker than that for real property. (PROSSER AND KEETON ON TORTS (5th ed.1984) § 14, p. 87 (fns. omitted) (Òthe dignitary interest in the violability of chattels, unlike that as to land, is not sufficiently important to require any greater defense than the privilege of using reasonable force when necessary to protect themÓ); REST.2D TORTS, § 218, cmt. e ("The interest of a possessor of a chattel in its inviolability, unlike the similar interest of a possessor of land, is not given legal protection by an action for nominal damages for harmless intermeddlings with the chattelÓ).)

Moreover, electronic trespasses are not like physical trespasses; they lack Òthe immediacy and opportunity for

physical confrontation that provides a policy basis for the trespass cause of action.Ó (OÕRourke, Shaping Competition on the Internet: Who Owns Pricing Information (2000) 53 VAND.L.REV. 1965, 1994.) Accordingly, the social interest in protecting against virtual trespass that causes no damage is weaker than that for physical trespass, whether to land or chattels.

But while Thrifty-Tel distorted the traditional meaning of ÒphysicalÓ contact with the chattel to include electronic signals (46 Cal.App.4th at 1566 n. 6), in itself that extension was less fateful because Thrifty-Tel still required actual injury to the chattel, either to its value or operation. (Id. at 1567 (noting that Òmigrating intangibles . . . may result in a trespass, provided they do not simply impede an ownerÕs use or enjoyment of property, but cause damageÓ); id. at 1568-1569 (denying recovery for first trespass where plaintiff failed to mitigate damages); id. at 1569-1570 (requiring plaintiff to prove actual damages in order to recover under trespass to chattels theory).)

Here, there admittedly is no such harm. Rather than follow Thrifty-Tel, however, the majority relied on two other, consequential harms: Òloss of productivity caused by the

thousands of employees distracted from their work and by the time its security department spent trying to halt the distractions after Hamidi refused to respect Intel's request to stop invading its internal, proprietary e-mail system.Ó (Hamidi, 94 Cal.App.4th at 333.) In short, the majority went beyond Thrifty-Tel.

As Judge Kolkey noted, Òit is circular to premise the damage element of a tort solely upon the steps taken to prevent the damage. Injury can only be established by the completed tort's consequences, not by the cost of the steps taken to avoid the injury and prevent the tort; otherwise, we can create injury for every supposed tort.Ó (Id. at 348 (Kolkey, J., dissenting).)

The majority appeared to believe that HamidiÕs e-mails caused some physical disruption to IntelÕs e-mail system, saying that Hamidi should not be allowed to Òflood IntelÕs system to the penultimate extent before causing a computer crash.Ó (Id. at 335.) But nothing remotely resembling a Òcomputer crashÓ occurred, and nothing in the record even suggests that the computer systems were or ever would be overloaded by HamidiÕs e-mails. Hamidi simply wanted to communicate with Intel employees. As one commentator

noted, Ò[t]he trouble that the [Intel] employees are addressing is not that the computer systems are functioning improperly, but rather that they are functioning properly, receiving transmitted bits precisely as they were designed and intended to do.Ó (Burk, supra, 4 J. SMALL & EMERGING BUS. L. at 36.)

Judge Kolkey also noted: ÒNor can a loss of employees' productivity (by having to read an unwanted e- mail on six different occasions over a nearly two-year period) qualify as injury of the type that gives rise to a trespass to chattel. . . . Reading an e-mail transmitted to equipment designed to receive it, in and of itself, does not affect the possessory interest in the equipment.Ó (Hamidi, 94 Cal.App.4th at 348 (Kolkey, J., dissenting).) ÒNo case goes so far as to hold that reading an unsolicited message transmitted to a computer screen constitutes an injury that forms the basis for trespass to chattel.Ó (Ibid.) In every modern trespass to chattels case, there arguably was a significant effect upon the ownerÕs possessory interest.

Even in actions for trespass to land, such harm is insufficient. In Wilson, supra, the plaintiffsÕ use and enjoyment of their property was substantially disrupted by noise emanating from defendantÕs plant; the noise lowered the

market value of their homes, but did not cause any physical damage. This Court made clear that trespass to land requires Òthe deposit of particulate matter upon the plaintiffsÕ property or actual physical damage thereto. . . . actionable trespass may not be predicated upon nondamaging noise, odor, or light intrusion.Ó (32 Cal.3d. at 232-233 (citations omitted).)

This Court reiterated this principle in San Diego Gas, supra, where the plaintiffs alleged that electric and magnetic fields rendered their property Òunsafe and uninhabitable.Ó (13 Cal.4th at 937.) Explaining that this allegation referred only to Òa risk of personal harm to its occupants, which is manifestly different from damage to the property itselfÓ (Ibid (emphasis in original).), this Court rejected the attempt to characterize loss of market value as physical damage: ÒA diminution in property value . . . is not a type of physical damage to the property itself, but an element of the measure of damages when such damage is otherwise proved.Ó (Ibid (emphasis in original).)

Clearly, the harms on which the majority here relied are directly analogous to the harms that this Court has clearly rejected in trespass to land cases. As a result, the Court of AppealÕs distortion of trespass to chattels doctrine gives

chattel owners more protection than land owners.

The majority also sought to evade the requirement of actual injury to the chattel by noting that Intel sought an injunction, not damages. But as Judge Kolkey cogently observed, Ò[t]he fact the relief sought is injunctive does not excuse a showing of injury, whether actual or threatened. . . . The majority therefore cannot avoid the element of injury by relying on the fact that injunctive relief is sought here.Ó (Hamidi, 94 Cal.App.4th at 347 (Kolkey, J., dissenting).) Moreover, the issuance of injunctive relief traditionally requires consideration of the public interest, which, as shown below, militates strongly against the injunction here.

In short, the majority conflated electronic trespass to chattels with physical trespass to chattels, then with physical trespass to land -- and then went even further. Now, whenever electronic signals impinge upon a device without the ownerÕs consent, trespass to chattels may be invoked simply by giving notice to the sender of the signals.

2. The Court of AppealsÕ distortion of trespass-to-chattels doctrine threatens the Internet.

Judge Kolkey said in dissent that Ò[t]o apply this tort to

electronic signals that do not damage or interfere with the value or operation of the chattel would expand the tort of trespass to chattel in untold ways and to unanticipated circumstances.Ó (Id. at 345; id. at 348 (Òif a chattel's receipt of an electronic communication constitutes a trespass to that chattel, then not only are unsolicited telephone calls and faxes trespasses to chattel, but unwelcome radio waves and television signals also constitute a trespass to chattel every time the viewer inadvertently sees or hears the unwanted programÓ).)

Judge Kolkey was right; the majorityÕs approach creates enormous problems for the Internet and other forms of electronic communication. First, as an architectural matter, the majorityÕs approach would transform many commonly accepted Internet activities into potential trespasses. An example is the activities of search engines like Google, which automatically ÒcrawlÓ websites, indexing the information contained there. Under the majorityÕs approach, any website owner may simply inform a search engine that it may not ÒbrowseÓ his or her website -- or even post a Òno trespassingÓ sign on its website -- making any subsequent ÒcontactÓ by the search engine a trespass without any damage.

Similarly, trespass to chattels poses a threat to linking. Under the majorityÕs approach, any website could post a Òno linkingÓ sign. Although the law is unsettled as to whether websites have any legal right to prohibit unauthorized links, the majorityÕs extension of trespass to chattels doctrine would make the unwitting user who clicks on an unauthorized link a trespasser. (See Caffarelli, Note, Crossing Virtual Lines: Trespass on the Internet (1999), 5 B.U.J. SCI. & TECH. L. 6, 26-27 (noting that visiting and copying data from authorÕs website could potentially qualify as trespass).) That the websites being searched or linked to were publicly accessible would make no difference under the majorityÕs approach; after all, anyone can send e-mail to IntelÕs e-mail servers.

Both search engines and links are critical to the Internet. Because the Internet is so vast, only search engines give users the ability to find information of interest to them easily and quickly. Meanwhile, Òthe ability to link from one computer to another, from one document to another . . . regardless of its status or physical location is what makes the Web unique.Ó (ACLU v. Reno (E.D. Pa. 1999) 31 F.Supp.2d 473, 483, affÕd (3d Cir. 2000) 217 F.3d 162, cert. granted sub nom. ACLU v. Ashcroft (2001) 121 S.Ct. 1997, argued, Nov. 28, 2001.) Requiring permission to link, the predictable outcome of

creating a cause of action for unauthorized linking, would fundamentally alter the character of the Internet.

Moreover, such changes in the InternetÕs architecture are likely to have significant consequences for competition. In two federal cases, trespass to chattels has been used to prevent firms from aggregating price information. (Register.com, Inc. v. Verio, Inc. (S.D.N.Y.2000) 126 F.Supp.2d 238, 250; eBay, Inc. v. Bidder's Edge, Inc. (N.D.Cal. 2000) 100 F.Supp.2d 1058, 1066, 1071.) Company control over the dissemination of price information for products sold on the open market harms competition.

Unsurprisingly, several law review articles have criticized the application of this distorted trespass to chattels doctrine to the Internet. (OÕRourke, Property Rights and Competition on the Internet: In Search of An Appropriate Analogy (2001) 16 BERKELEY TECH. L.J. 561 (criticizing distortion of trespass to chattels in Register.com and eBay); Ballantine, Note: Computer Network Trespasses: Solving New Problems with Old Solutions (2000) 57 WASH & LEE L. REV. 209, 248 (Òfailure to allege or to support a showing of actual harm should have precluded Intel from prevailing on a trespass to chattels theoryÓ); Burk, supra, 4 J. SMALL &

EMERGING BUS. L. at 39-54; Developments in the Law -- The Law of Cyberspace (1999) 112 HARV. L. REV. 1574, 1622-34 (ÒDevelopmentsÓ); cf. Warner, Border Disputes: Trespass to Chattels on the Internet (2002) 47 VILL. L. REV. 117 (arguing for modified form of trespass to chattels but not discussing Hamidi).)

B. The Court of Appeals erroneously decided that the injunction did not infringe HamidiÕs right to free speech

These problems are only exacerbated given that many of the activities affected by trespass to chattels in cyberspace are speech activities. Developments, supra, 112 HARV. L. REV. at 1628 (Òplaintiffs are aggressively using the theory of electronic trespass to block unwanted speechÓ). Search engines and links are often used for academic, research, cultural and political purposes.Ê Hamidi was exercising his right to free speech; his sending e-mail to Intel employees at their Intel e-mail addresses was protected Òpeaceful pamphleteering.Ó (See Organization for a Better Austin v. Keefe (1971) 402 U.S. 415, 419 (Òpeaceful pamphleteering is a form of communication protected by the First Amendment . . . so long as the means are peaceful, the communication need

not meet standards of acceptabilityÓ).)

Thus, after distorting a sound common-law doctrine limited to the protection of possessory interests, the majority was forced to consider the consequences of its reasoning: upholding a judicial order prohibiting HamidiÕs speech. It is no accident that the majority devotes nearly half of its opinion to an attempt to explain why a judicial prohibition on sending e-mail does not violate HamidiÕs right to free speech under both the federal and state constitutions.

1. The Court of Appeal wrongly concluded that the injunction does not implicate the First Amendment

The majority found that Òthis lawsuit does not implicate federal constitutional rights, for lack of state action.Ó (Hamidi, 94 Cal.App.4th at 337.) This decision was erroneous as a matter of law, because the Court of Appeal misunderstood the underlying law of First Amendment limits on state authority.

Judicial action aimed at restricting speech generally triggers constitutional scrutiny, even when the government is not a party. Defamation cases are the most obvious example.

As the U.S. Supreme Court said,

> Although this is a civil lawsuit between private parties, the Alabama court have applied a state rule of law which petitioners claim to impose invalid restrictions on their constitutional freedoms of speech and press. It matters not that that law has been applied in a civil action and that it is common law only, though supplemented by statute. . . . The test is not the form in which state power has been applied but, whatever the form, whether such power has in fact been exercised.

(New York Times v. Sullivan (1964) 376 U.S. 254, 265 (citations omitted).)

The principle is not confined to defamation. (See, e.g., Hustler Magazine, Inc. v. Falwell (1988) 485 U.S. 46, 50, 56 (liability for intentional infliction of emotional distress must take into account First Amendment standards); NAACP v. Claiborne Hardware Co. (1982) 458 U.S. 886; Keefe, supra; Blatty v. New York Times Co. (1986) 42 Cal.3d 1033.)

To distinguish this well-settled line of cases, the Court of Appeals seized upon doubt about the state action doctrine as expressed in Shelley v. Kraemer (1947) 334 U.S. 1. But

Shelley was not a First Amendment case. The rule of Sullivan and its progeny is not about ÒclassicÓ state action and is not related to the Ògovernmental functionÓ reasoning of Marsh v. Alabama (1946) 326 U.S. 501, 502 (addressing criminal liability of individual who Òundertakes to distribute religious literature on the premises of a company-owned townÓ).

Rather, it is about First Amendment limitations on state or common law. (E.g., Hustler, supra, 485 U.S. at 50 (referring to ÒFirst Amendment limitations upon a StateÕs authority to protect its citizens from the intentional infliction of emotional distressÓ).) The central concern of these cases is to create Òbreathing spaceÓ for individual speech. (Id. at 52.) Put simply, states may not ignore the effects of their laws on First Amendment liberties, even when these laws are invoked by private parties to protect private rights.

Much of the majorityÕs reasoning talismanically invokes the notion of Òprivate property.Ó (Hamidi, 94 Cal.App.4th at 339 (distinguishing Claiborne Hardware, Keefe, and Blatty as involving Òprivate tort actions,Ó not Òprivate propertyÓ).) But there is nothing magical about Òprivate propertyÓ in the speech context.[2] That something may be labeled private property does not eliminate First Amendment considerations.

The U.S. Supreme CourtÕs accommodation of private property and free speech carefully balanced the property rights of a shopping center owner against the rights of leafleters -- with no mention of state action at all. (Pruneyard Shopping Center v. Robins (1980) 447 U.S. 74, 88.) Copyright law, which creates a species of private property in information, is bounded by the First Amendment in at least two ways: the idea-expression dichotomy, and the fair use doctrine. The fair use doctrine allows a form of ÒtrespassÓ onto anotherÕs private informational property. Similarly, the state right of publicity is bounded by the First Amendment. (Comedy III Productions, Inc. v. Saderup (2001) 25 Cal.4th 387.)

Finally, the Court of Appeal reasoned that trespass cases are unlike defamation cases because the latter cases Òpit common law rights protecting reputation against the constitutional right of a newspaper to publish,Ó while in the former cases Òthe speakerÕs rights are pitted against a property ownerÕs rights -- of at least equal constitutional force.Ó (Hamidi, 94 Cal.App.4th at 337.)

This distinction makes no difference here. That a property owner has constitutional rights is not in doubt. But the quality of the rights at stake implicates only the question

of how such rights should be balanced, not the question of whether judicial enforcement of those rights implicates the First Amendment at all. The U.S. Supreme Court confirmed this point in holding that a landowner has no Fifth Amendment takings claim against a state-created right to speak on private property. (Pruneyard, 447 U.S. at 82-88; cf. Nebraska Press AssÕn v. Stuart (1976) 427 U.S. 539 (judicial gag order intended to protect criminal defendantÕs Sixth Amendment right to a fair trial found to be invalid prior restraint).)

2. The Court of Appeals wrongly concluded that state action was lacking under the California Constitution

The majority also erred in finding that the injunction did not implicate the state constitutional right of free speech.[3] The majority used the rule: Òactions to halt expressive activity on oneÕs private property do not contravene the California Constitution unless the property is freely open to the public.Ó (Hamidi, 94 Cal.App.4th at 341, citing Golden Gateway Center v. Golden Gateway Tenants Association (2001) 26 Cal.4th 1013, 1033; id. at 1036.) It then assessed IntelÕs e-mail servers in terms of the public forum doctrine.

Here again the majority elides the distinctions between ÒvirtualÓ and physical property and between chattels and land. Tellingly, the majority says that ÒIntel is as much entitled to control its e-mail system as it is to guard its factories and hallways.Ó (Hamidi, 94 Cal.App.4th at 342.) Golden Gateway and its predecessor, Robins v. Pruneyard Shopping Center (1979) 23 Cal.3d 899, affÕd. sub nom. Pruneyard, supra, are cases involving property in land. This case is about trespass to chattels, not trespass to land.

The majority compounds its error by analyzing the speech issues in terms of the public forum doctrine. The question is not, however, whether IntelÕs e-mail servers can be deemed a public forum; EFF does not claim that they are a public forum. Rather, EFF claims that state or common-law doctrines underlying such judicial relief must provide breathing space for free speech, and that judicial action that restrains communications based on the content of those communications requires speech scrutiny.

Thus, even assuming that trespass to chattels can be applied in this case, the Court of Appeals completely failed to address the free speech issues and for this reason alone this case should be reviewed by this Court.[4]

III. Conclusion

The Court of Appeal first distorted trespass to chattels doctrine and was then forced into constitutional terrain that it should not have entered in the first place. In neither step did the Court of Appeal manifest any recognition of the potential effects of its reasoning on commerce and speech over the Internet. The petition for review should be granted in order to correct these errors and avoid the unnecessary decision of constitutional issues.

Sincerely yours,

Lee Tien
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Electronic Frontier Foundation

END NOTES

1 The state legislature has already addressed the problem of unwanted e-mail. (Hamidi, 94 Cal.App.4th at 352 (Kolkey, J., dissenting) (citing Bus. & Prof. Code, §§ 17538.4, 17538.45); Ferguson v. Friendfinders, Inc. (2002)___ Cal.App.4th ___, 15 Cal.Rptr.2d 258 (upholding

Bus. & Prof. Code, §17538.4 against dormant Commerce Clause challenge).)

2 Judicial application of trespass to chattels is unlikely to raise speech issues. But the fact that a tort typically is not used against speech does not insulate judicial enforcement when it is so used. (See generally NAACP v. Claiborne Hardware (1981) 458 U.S. 886 (applying First Amendment scrutiny to state application of common-law tort of malicious interference with business).) The harms alleged by Intel here stem primarily from the communicative impact of HamidiÕs speech on Intel and its employees, which is necessarily based on content. (Forsyth County v. Nationalist Movement (1992) 505 U.S. 123, 134 (ÒListenersÕ reaction to speech is not a content-neutral basis for regulation.Ó).) Thus, while trespass to chattels may typically raise no speech issues, its application here does.

3 Its analysis is somewhat unclear: while the majority appears to suggest that there was no state action and thus no constitutional claim, it goes on to analyze the propriety of the injunction on free speech grounds.

4 EFF does not address the proper resolution of the speech issue in this letter, although EFF will do so if this Court

accepts the petition for review and permits EFF to submit an amicus brief.