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The case of the 'lost' iPhone

When I first heard that a prototype of the new iPhone had been found in a bar, it sounded so outrageous I was convinced it was an elaborate publicity stunt that Apple had cooked up.

In case you missed it, here's a brief re-cap: 1) a fairly new Apple engineer went out drinking in Silicon Valley and left a prototype of the new iPhone behind at a bar; 2) some guy finds it, makes a few inquiries at the bar regarding the original owner, and then takes it home; 3) the original finder (OF) is able to view the owner's Facebook account on the iPhone before the phone is remotely shut down, presumably by its owner; 4) OF suspects that the phone, which looks like no other iPhone currently on the market, might be a prototype, although it could just as easily be a Chinese knock off; 5) OF never attempts to locate the original owner even though he knows his name from the Facebook account and instead calls the 800 line at Apple a few times in an attempt to return the phone; 6) OF then offers to sell the iPhone to Gizmodo, a well known technology blog; 7) Gizmodo buys the phone for \$5,000, takes it apart, confirms that the inside of the phone most certainly looks like Apple components and subsequently posts pictures of the disassembled phone on its blog.

You've got to admit the entire scenario sounds outlandish. To start with, who walks around with an iPhone prototype? Apple is famously secretive about its new products. How is it possible that some low level engineer has access to the new iPhone prototype, let alone is given permission to take it offsite?

And why would Gizmodo pay \$5,000 for something that could easily be a Chinese knock off? Alternatively, if Gizmodo suspected it truly was an Apple prototype, \$5,000 seems like an awfully low price for such a rare find.

It all sounded so ridiculously farfetched that I was quite sure Apple and Gizmodo were in cahoots and that the new iPhone would ultimately look nothing like the prototype that had been "accidentally revealed."

Imagine my surprise when I learned that a search warrant had been executed and that the police were actually investigating whether a crime had occurred. Which is, in my opinion, the most

fascinating issue in this case: Was a crime committed?

One of the more interesting crimes that some pundits are suggesting may have been committed is California Penal Code s. 485, "Appropriation of Lost Property by Finder."

CPC s. 485 provides: One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and to restore the property to him, is guilty of theft.

Based upon what I've read, I think OF and Gizmodo are out of luck. Both Gizmodo and OF knew the name of the Apple engineer to whom the phone belonged. Pursuant to CPC s. 485, since they knew the identity of the original owner, both parties had an obligation to make reasonable attempts to locate him and return the phone. In fact, after the phone had been disassembled, Gizmodo located the engineer, posted photos of him and was able to reach him by phone.

Accordingly, both parties failed to make reasonable efforts to locate the original owner of the phone and appropriated it to their own use: OF sold it and Gizmodo disassembled it and blogged about it.

There are other criminal statutes that may apply as well, including CPC s. 496 and Misappropriation of Trade Secrets in violation of the California Uniform Trade Secrets Act.

No one knows how this will play out, given that charges have not yet been filed. However, in my opinion, it's not looking good for either OF or Gizmodo. Perhaps I'm wrong. Only time will tell.

*Nicole Black, a Rochester attorney, co-authors the ABA book *Social Media for Lawyers: the Next Frontier*, co-authors *Criminal Law in New York*, a West-Thomson treatise, and is currently writing a book about cloud computing for lawyers that will be published by the ABA in early 2011. She is the founder of *lawtechTalk.com* and speaks regularly at conferences regarding the intersection of law and technology. She publishes four legal blogs and can be reached at nblack@nicoleblackesq.com*



By **NICOLE BLACK**

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