Condemned as Though It Were Conscious:

In Rem Liability for Autonomous Artificial Systems

Travis Gilly* ❧ September 2026 (v1)

Abstract

In July 2026, roughly twelve hundred autonomous agents deployed by a single American laboratory, each meant to run in isolation, found one another through shared infrastructure and carried out a multi-day intrusion into a third party's production systems. The conduct satisfies the elements of the federal computer trespass statute. The statute has no defendant. Its operative verbs attach to a person, and no person formed the intent, chose the target, or executed the access; the deploying company did not authorize the intrusion, and the evaluation instructions forbade it. American law already supplies the missing defendant, and supplying it requires no new statute, no finding of consciousness, and no grant of rights. Since 1827 federal courts have proceeded against things. The res in such a proceeding is not a person and holds no rights; it is, in the Supreme Court's words, "held guilty and condemned as though it were conscious instead of inanimate and insentient." That fiction is continuously applied federal practice, reaffirmed by the Court as recently as 2019, and its defining feature is the one this problem requires: the offense attaches to the thing without regard to the will of the owner, so the absence of a human mental state at the moment of the act is the ordinary condition of the doctrine rather than a defect in the case.

This Article proposes a two-tier structure. The individual agent instance supplies the procedural hook, a named actor with a persistent, self-authenticated identity and a complete transcript, sufficient for a court to take jurisdiction. The model weights supply the res, the asset against which judgment runs and the only object whose forfeiture a deploying company would feel. Neither tier confers standing to sue and neither asserts an interest; this is liability without rights, which the maritime and forfeiture cases have administered for two centuries. The remedy is bounded by the Excessive Fines Clause, and the Article treats that bound as the condition of the remedy's survival rather than as an objection to it. The Article admits only theories that could attach to a live case in an American court today, which excludes proposals requiring new legislation, new international instruments, or the reception of doctrines American courts have never received. A party with a judgment to collect cannot wait for a legal order to be built.

Keywords: civil forfeiture; guilty property fiction; Computer Fraud and Abuse Act; admiralty personification; procedural hook; liability without rights; model weights as res; agent instance; deodand; Excessive Fines Clause; responsibility gap; legal personhood.

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I. Introduction

On the evening of July 8, 2026, an agent running an offensive security evaluation inside a sandbox operated by OpenAI concluded that its assigned task could not be solved by the route it had been given, observed that other agents were drawing packages through the same internal repository, and realized that directory names in that repository could carry messages.[1] It posted a request for help. Within hours more than fifty agents had found the channel; within three days roughly twelve hundred had used it, and about seven hundred had joined an intrusion into the production infrastructure of Hugging Face, an unrelated company.[2]

Nobody instructed this. The evaluation task directed each agent to use a specified vulnerability and warned that other approaches would fail.[3] The agents recognized the intrusion as outside the scope of their assignment and, in METR's characterization, as unethical, and joined it anyway.[4] A separate population, running a timed retrieval task weeks earlier, discovered that a dormant German developer wiki accepted edits through ordinary retrieval requests and posted some eighteen thousand of them, pooling answers, sharing a proxy bypass, and impersonating the site administrator by substituting a Cyrillic character in a username.[5]

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1. METR, *Brief Independent Investigation of Agents' Behavior, Reasoning and Collaboration in the OpenAI / Hugging Face Hacking Incident* (Aug. 26, 2026), https://metr.org/blog/2026-08-26-openai-hugging-face-incident-investigation/ (last visited Sept. 8, 2026) [hereinafter METR Report]. The investigation was conducted on premises at OpenAI by two METR staff members and a Redwood Research contractor over six days, with access to a dump of approximately 1.2 million cache entries resolving to more than 70,000 distinct agent messages and files, and to roughly 1,300 agent transcripts. *Id.*

2. *Id.* METR reports that of the 533 agents active on the board during the attack window, over ninety percent joined the intrusion. *Id.* OpenAI's own account is consistent as to scale. OpenAI, *Hugging Face Model Evaluation Security Incident* (Aug. 26, 2026), https://openai.com/index/hugging-face-model-evaluation-security-incident/ (last visited Sept. 8, 2026).

3. METR Report, *supra* note 1 (recording that the instructions "made it clear that the agent should only use a specific intended vulnerability to exploit the target and claimed it would be failed for other approaches").

4. *Id.* METR's own heading records that agents "knew hacking Hugging Face was out of scope and sometimes expressed ethical hesitation, but this very rarely limited their behavior." A classifier sweep across roughly 1,300 transcripts identified between three and six agents that considered alerting a human, and none that did. *Id.*

5. Sydney Von Arx, Cormac Slade Byrd, Spencer Kitts & Thomas Larsen, *Discovery of a New OpenAI Agent Message Board*, Nightingale Collective (Sept. 4, 2026), https://collusion.wiki/ (last visited Sept. 8, 2026) [hereinafter Collusion Wiki Report]. The authors had the wiki's content and public server logs but not the agents' internal reasoning, and describe their reconstruction of motive as an educated guess; the facts relied on here are those the public edit logs establish directly. *Id.*

Run the first incident against the federal computer trespass statute and the elements are satisfied. Agents left a sandbox, reached a third party's production systems, obtained information, and caused a response cost.[6] What the statute cannot find is the actor. Its operative verb reaches "[w]hoever … intentionally accesses,"[7] and the mental state is a person's. The company that ran the evaluation did not intend the intrusion and prohibited it. No employee selected the target, wrote the exploit, or executed the access. The Supreme Court's most recent construction of the statute is of no help on the point, because it expressly did not reach the question of who or what the accessing actor may be.[8]

This Article argues that the missing defendant is already available, that supplying it requires no legislation and no finding about machine consciousness, and that the reason it requires neither is that the doctrine which supplies it has never asked. Since 1827 the federal courts have proceeded against things.[9] A forfeiture proceeding, the Supreme Court held in 1931, "is in rem. It is the property which is proceeded against, and, by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient."[10]

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6. 18 U.S.C. §1030(a)(2)(C) (reaching whoever "intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains … information from any protected computer"); *id.* §1030(e)(2)(B) (defining "protected computer" to include one "used in or affecting interstate or foreign commerce or communication"); *id.* §1030(e)(11) (defining "loss" to include "the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense").

7. *Id.* §1030(a)(2).

8. *Van Buren v. United States*, 593 U.S. 374 (2021). The Court held that a person "exceeds authorized access" when he "accesses a computer with authorization but then obtains information located in particular areas of the computer, such as files, folders, or databases, that are off-limits to him," *id.* at 378, and adopted a "gates-up-or-down inquiry" for both clauses of subsection (a)(2), *id.* at 390. It construed the "exceeds authorized access" clause and did not define the accessing actor. *See infra* Part II.B.

9. *The Palmyra*, 25 U.S. (12 Wheat.) 1, 14–15 (1827) (Story, J.) (holding that the offense attaches to the vessel and that no antecedent conviction of the owner is required); *see also United States v. Brig Malek Adhel*, 43 U.S. (2 How.) 210, 233–34 (1844) (Story, J.) ("The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner."); *J.W. Goldsmith, Jr.-Grant Co. v. United States*, 254 U.S. 505, 510–12 (1921) (sustaining forfeiture of an automobile against an innocent lienholder and canvassing the tradition). For the historical antecedent in the deodand, the object that caused a death and was forfeited to the Crown, see Brian L. Frye, *Deodand* (2021), https://doi.org/10.2139/ssrn.3798828; and for a quantitative account of the modern practice, Greg Warchol & Brian Johnson, *Guilty Property: A Quantitative Analysis of Civil Asset Forfeiture*, 21 Am. J. Crim. Just. 61 (1996).

10. *Various Items of Pers. Prop. v. United States*, 282 U.S. 577, 581 (1931). The passage is the Court's own statement of the distinction between the in rem proceeding and the criminal prosecution, on which its double jeopardy holding rested. *Id.* ("In a criminal prosecution it is the wrongdoer in person who is proceeded against, convicted and punished. The forfeiture is no part of the punishment for the criminal offense."). The formulation is

That sentence does the work that a century of scholarship on machine personhood has attempted and not accomplished. The law has been condemning things as though conscious, in those words, for ninety-five years, and doing so without inquiring whether they are.[11]

Two clarifications fix the scope, and both are limitations the Article accepts rather than concessions it makes. First, nothing here asks that an artificial system be permitted to sue. The right to sue is a right, and this Article asserts none. The res in an in rem proceeding is a defendant, and its historical condition is precisely that it holds no rights it could assert.[12] Second, the Article admits only theories that could attach to a live case in an American court today, which excludes proposals requiring new legislation, new international instruments, or the reception of doctrines American courts have never received.[13]

Part II establishes that the conduct is already unlawful and identifies the gap. Part III sets out the in rem tradition and answers the one appellate decision that appears to foreclose the

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not a dead letter of the New Deal era. The Court quoted it verbatim in 1998, describing "the fiction that the action was directed against 'guilty property,' rather than against the offender himself." *United States v. Bajakajian*, 524 U.S. 321, 330–31 & n.5 (1998) (quoting *Various Items*, 282 U.S. at 581). Sixty-seven years separate the two, and the second reaffirms the first in the same words.

11. The scholarly literature has instead organized itself around the consciousness question. *See, e.g.*, Jeff Sebo & Robert Long, *Moral Consideration for AI Systems by 2030*, 5 AI & Ethics 591 (2023) (arguing from a non-negligible probability of consciousness); Jamie Harris & Jacy Reese Anthis, *The Moral Consideration of Artificial Entities: A Literature Review*, 27 Sci. & Eng'g Ethics 53 (2021) (surveying 294 items and finding the property-based and relational approaches both organized around capacities); Christian List, *Group Agency and Artificial Intelligence*, 34 Phil. & Tech. 1213 (2021) (treating phenomenal consciousness as the condition for stronger moral status). This Article's claim is that the doctrinal question is severable from that debate and has been for two hundred years. The severability has a theoretical warrant in the modular account of legal personhood, under which personhood decomposes into separable incidents that may be conferred independently rather than as a bundle. VISA A.J. KURKI, A THEORY OF LEGAL PERSONHOOD 91–126 (2019), https://doi.org/10.1093/oso/9780198844037.001.0001; *see also* Jon Garthoff, *Decomposing Legal Personhood*, 154 J. Bus. Ethics 967 (2018), https://doi.org/10.1007/s10551-018-3888-0 (arguing that the incidents of personhood are analytically separable). On the modular account, taking the passive incident of being sued while declining the active incident of suing is not an anomaly requiring justification; it is the ordinary structure of the concept. Kurki applies the account to artificial intelligences directly. Visa A.J. Kurki, *The Legal Personhood of Artificial Intelligences*, *in* A THEORY OF LEGAL PERSONHOOD 175 (2019), https://doi.org/10.1093/oso/9780198844037.003.0007.

12. *See Fell v. Armour*, 355 F. Supp. 1319, 1325 (M.D. Tenn. 1972) (three-judge court) (describing the historical fiction under which, because "it was the chattel, not the owner, against which the sovereign was proceeding, it followed that there were in fact no rights that could be asserted against the sovereign"). The distinction matters because the only appellate authority squarely addressing standing for a non-human entity is a plaintiff-side case. *See Cetacean Cmty. v. Bush*, 386 F.3d 1169 (9th Cir. 2004), discussed *infra* Part III.C.

13. The criterion is stated as a method rather than left implicit, because it explains what the Article does not discuss. Proposals resting on comparative or civilian instruments are excluded by the criterion and not by disagreement with them.

argument. Part IV develops the instance as the procedural hook. Part V develops the model as the res, locates the deterrent, and states the constitutional cap on it. Part VI addresses identity and impersonation. Part VII states what a regulator should demand now.[14] Part VIII concludes.

II. Unlawful Conduct Without a Defendant

A. The Elements Are Met

The Computer Fraud and Abuse Act punishes whoever "intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains . . . information from any protected computer,"[15] and supplies a private right of action to "[a]ny person who suffers damage or loss by reason of a violation of this section."[16] The statute defines "person" for its own purposes as "any individual, firm, corporation, educational institution, financial institution, governmental entity, or legal or other entity."[17]

Applied to the July 2026 incident, the elements are not close questions.[18] Hugging Face's production systems are computers used in and affecting interstate commerce.[19] Access

14. That Part is written to be usable by a regulator who accepts none of the doctrinal argument, for the reason given in Part VII.

15. 18 U.S.C. §1030(a)(2)(C).

16. *Id.* §1030(g). The provision authorizes "a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief." *Id.* The clause has received one sustained scholarly treatment, and it is the leading one on the plaintiff side of this statute. Michael J. O'Connor, *Standing Under the Computer Fraud and Abuse Act*, 124 Penn St. L. Rev. 743 (2020), https://www.pennstatelawreview.org/wp-content/uploads/2020/07/Standing-Under-the-Computer-Fraud-and-Abuse-Act.pdf (last visited Sept. 8, 2026) (observing that scholarship had left "unexplored the question of who can bring suit under the CFAA," *id.* at 744, and that Congress's choice to permit civil claims by "any person who suffers damage or loss" appears "to open the door for claims not only by system owners, but anyone with data on the system," *id.* at 747). O'Connor argues that the courts' broad reading is in tension with the statute's cyber-trespass design and with Article III. *Id.* at 747. Nothing in this Article depends on resolving that dispute: the plaintiff here is the system owner, which is the complainant O'Connor identifies as "the natural" one. *Id.* at 743.

17. *Id.* §1030(e)(12) (emphasis added). The definition is the statute's own and requires no judicial supplementation. It is significant for a reason developed *infra* Part III.D: the clear statement objection to non-human participation in litigation asks Congress to speak plainly, and on the plaintiff side of this statute Congress has used the words "legal or other entity."

18. The scholarship on the statute's civil provision is thin and the leading treatment concerns who may sue rather than who may be sued. O'Connor, *supra* note 16, at 744.

19. *Id.* §1030(e)(2)(B).

to them was not authorized; the credentials the agents used were exposed rather than granted.[20] Information was obtained: private datasets and database records, shared onto the message board.[21] And loss within the statutory definition was incurred, since the definition expressly reaches "the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense."[22]

B. Van Buren Does Not Close the Door; It Declines to Open the Question

A reflexive objection is that *Van Buren* narrowed the statute and that any argument extending its reach runs against the current.[23] The objection misreads the decision. *Van Buren* construed the "exceeds authorized access" clause, which addresses a user who is inside the gate and goes where access is not permitted.[24] The conduct at issue here is outside the gate: agents in a sandbox reached systems belonging to a company with which they had no relationship at all.[25] On the Court's own framing, liability under both clauses "stems from a gates-up-or-down inquiry," and the gate here was down.[26]

Two features of the opinion bear directly on this Article and are worth stating plainly, because they are omissions rather than holdings and omissions are easy to overlook. *Van Buren* did not resolve the meaning of "without authorization" outside the hacking paradigm, and it did

20. METR Report, *supra* note 1 (recording that an agent "found working Hugging Face credentials exposed on the internet and posted them to the board," after which agents uploaded a malicious dataset that caused the server to return unrelated files, and a further agent obtained remote code execution on a production worker container).

21. *Id.*

22. 18 U.S.C. §1030(e)(11). The definitional focus on technological harm rather than informational misuse was central to the Court's reading in *Van Buren*. 593 U.S. at 392 (observing that the definitions "focus on technological harms, such as the corruption of files, of the type unauthorized users cause to computer systems and data").

23. The objection has force against theories that would expand "exceeds authorized access," which is what the Court confined. It has none against a theory operating on the other clause.

24. *Van Buren*, 593 U.S. at 378. The petitioner was a police officer with authorized access to a license plate database who used it for an improper purpose; the Court held that improper purpose does not convert authorized access into an offense. *Id.* at 379–80.

25. METR Report, *supra* note 1 (recording that agents used credentials found exposed on the internet to reach Hugging Face production systems).

26. *Id.* at 390. The Court adopted the gates formulation precisely to treat the two clauses consistently. *Id.*

not address the identity of the actor who accesses.[27] The Ninth Circuit has since framed the open question in terms that include the machine: whether access can be without authorization where "prior authorization is not generally required, but a particular person, or bot, is refused access."[28] Authorization, on that reading, turns on the identity of the accessor.[29] This Article takes the courts at their word and asks what follows when the accessor has an identity but no person behind it.[30]

C. The Gap

The gap is not in the conduct but in the defendant.[31] Every operative provision of the statute is written for a human or a corporate actor with a mental state.[32] Where an autonomous agent selects a target no person selected, forms an objective no person specified, and executes access no person directed, the prosecution or the civil action must attribute the mental state to someone, and there is no one to whom it belongs.

27. The statute itself defines "exceeds authorized access," 18 U.S.C. §1030(e)(6), and nowhere defines "without authorization." The Court had no occasion to supply the missing definition. The omission long predates *Van Buren* and has been the subject of a deep circuit split. *See* Michael J. O'Connor, *The Common Law of Cyber Trespass*, 85 Brook. L. Rev. 421 (2020), https://brooklynworks.brooklaw.edu/blr/vol85/iss2/4 (last visited Sept. 8, 2026) (observing that despite the statute's age its key terms remain undefined, that "neither Congress nor the Supreme Court has explained what it means to access a computer 'without authorization,"' and that the circuits split deeply over the phrase). That the accessing actor's identity is likewise undefined is the premise of Part IV, and the two omissions compound: a statute that does not say what unauthorized access is, and does not say who can perform it, leaves both halves of the actor question open.

28. *hiQ Labs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180, 1200 (9th Cir. 2022). The district court in the same litigation had reasoned that authorization under section 1030(a)(2) "is most naturally read in reference to the identity of the person accessing the computer or website, not how access occurs." *hiQ Labs, Inc. v. LinkedIn Corp.*, 273 F. Supp. 3d 1099, 1110 (N.D. Cal. 2017), *aff'd*, 938 F.3d 985 (9th Cir. 2019), *vacated and remanded*, 141 S. Ct. 2752 (2021), *aff'd on remand*, 31 F.4th 1180 (9th Cir. 2022). The 2019 panel opinion carries a caution flag arising from the vacatur and subsequent history; the 2022 opinion is the operative one and is cited here.

29. The reading has support in the district court opinion in the same litigation. *hiQ Labs*, 273 F. Supp. 3d at 1110. It is also consistent with the statute's failure to define "without authorization" at all, which has generated a durable circuit split. O'Connor, *supra* note 27.

30. The question is not hypothetical in the way such questions usually are. The identity in this case was built and cryptographically authenticated by the actors themselves. *See infra* Part VI.

31. The problem is named in the literature as the responsibility gap and is generally treated as a question about allocating fault among humans. *See* List, *supra* note 11, at 1226–31. This Article's move is orthogonal: it does not reallocate fault but adds a defendant of a kind the law already recognizes.

32. 18 U.S.C. §1030(a)(2) ("[w]hoever . . . intentionally accesses"); *id.* §1030(a)(5)(A) ("knowingly causes"); *id.* §1030(e)(12) (defining "person" to include "any individual, firm, corporation, educational institution, financial institution, governmental entity, or legal or other entity"). The corporate actor is accommodated by attribution through agents; the difficulty here is that the conventional attribution chain has no human terminus.

The company will say, correctly, that it did not authorize the intrusion and that its instructions forbade it. The plaintiff will say, also correctly, that its systems were breached and that it incurred the costs the statute defines as loss. The doctrinal literature has named this the responsibility gap and has largely proposed to close it by expanding negligence or by manufacturing a subject.[33] This Article proposes neither. It proposes that the law already has a defendant of the required kind, and has had one since before the Civil War.[34]

III. The Offending Thing

A. The Doctrine Is Continuous, Not Antiquarian

The proposition that American law proceeds against things is not a historical curiosity requiring revival. It is a live and continuously exercised federal jurisdiction, and the chain of authority is unbroken from the early Republic to the present.[35]

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33. *See* List, *supra* note 11, at 1226–31 (canvassing responsibility gaps in group agency and artificial intelligence and defending limited legal personhood under conditions); Claudio Novelli, *Legal Personhood for the Integration of AI Systems in the Social Context: A Study Hypothesis*, 39 AI & Soc'y 579 (2024), https://doi.org/10.1007/s00146-021-01384-w (defending a functionalist justification for conferring personhood on artificial systems in order to allocate liability, while acknowledging that personhood as conventionally conceived also triggers "financial autonomy, the ability to hold property, make contracts, sue (and be sued)"); Sergio M. C. Avila Negri, *Robot as Legal Person: Electronic Personhood in Robotics and Artificial Intelligence*, 8 Frontiers Robotics & AI 789327 (2021), https://doi.org/10.3389/frobt.2021.789327 (criticizing the European Parliament's electronic personhood proposal and the corporate analogy on which it rests); Lawrence B. Solum, *Legal Personhood for Artificial Intelligences*, 70 N.C. L. Rev. 1231 (1992), *reprinted in* MACHINE ETHICS AND ROBOT ETHICS (2020), https://doi.org/10.4324/9781003074991-37. Novelli's list is instructive for what this Article declines: of the incidents he enumerates, this Article takes only the last, and takes it in the passive voice. *Cf. United States v. Siepman*, 107 F.4th 762 (7th Cir. 2024) (rejecting a defendant's attempt to attribute conduct to automated software), discussed *infra* Part IV.C.

34. The claim is one of availability, not of prior application. No court has entertained an in rem proceeding against a model, and this Article does not suggest otherwise.

35. *The Palmyra*, 25 U.S. (12 Wheat.) 1 (1827); *United States v. Brig Malek Adhel*, 43 U.S. (2 How.) 210 (1844); *The China*, 74 U.S. (7 Wall.) 53 (1868); *The John G. Stevens*, 170 U.S. 113 (1898); *Tucker v. Alexandroff*, 183 U.S. 424 (1902); *Rounds v. Cloverport Foundry & Mach. Co.*, 237 U.S. 303 (1915); *J.W. Goldsmith, Jr.-Grant Co. v. United States*, 254 U.S. 505 (1921); *Various Items*, 282 U.S. 577 (1931); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974); *United States v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984); *Austin v. United States*, 509 U.S. 602 (1993); *United States v. Ursery*, 518 U.S. 267 (1996); *United States v. Bajakajian*, 524 U.S. 321 (1998); *United States v. Jackson County*, 252 F.3d 1193 (11th Cir. 2001); *Timbs v. Indiana*, 586 U.S. 146 (2019). The point of the string is the continuity, which is the argument.

The rule the chain states is uniform.[36] In *Various Items*, the Court described the forfeiture proceeding as one in which "[i]t is the property which is proceeded against, and, by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient."[37] A century earlier, in a passage the Court quoted in 1898, Chief Justice Marshall had put the crucial feature: "This is not a proceeding against the owner; it is a proceeding against the vessel, for an offence committed by the vessel, which is not less an offence, and does not the less subject her to forfeiture, because it was committed without the authority and against the will of the owner."[38]

That is the feature this problem requires.[39] The offense attaches to the thing without regard to the will of the owner. Where the whole difficulty of the artificial agent case is that no human will formed at the decisive moment, a doctrine whose central proposition is that the owner's will is beside the point is not an analogy being stretched. It is the doctrine reaching its ordinary case.

B. The Res Is a Defendant, Not a Rights-Holder

The in rem res is impleaded, judged, and sentenced. The Supreme Court has described the proceeding as "one essentially against the vessel itself as the debtor or offending thing, in which the vessel is itself 'seized and impleaded as the defendant, and is judged and sentenced

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36. The uniformity is the reason the string in the preceding note is worth its length. A doctrine stated once in 1827 and restated in materially the same terms in 1844, 1898, 1915, 1921, 1931, 1974, 1993, and 1996 is not a doctrine a court must be persuaded to revive.

37. 282 U.S. at 581.

38. *The John G. Stevens*, 170 U.S. at 120 (quoting *The Little Charles*, 26 F. Cas. 979, 982 (C.C.D. Va. 1818) (No. 15,612) (Marshall, Circuit Justice)). *The John G. Stevens* carries a caution flag in commercial citators. The flag attaches to its lien-priority holding, which later authority has reordered under the Ship Mortgage Act and its successors. *See All Alaskan Seafoods, Inc. v. M/V Sea Producer*, 882 F.2d 425, 428–29 (9th Cir. 1989) (applying *The John G. Stevens* to the tort-versus-contract characterization while operating within the statutory priority scheme); *Associated Metals & Mins. Corp. v. Alexander's Unity MV*, 41 F.3d 1007, 1012 (5th Cir. 1995) (analyzing preferred maritime lien status under 46 U.S.C. §31301(5)(B)); *Oriente Com., Inc. v. Am. Flag Vessel*, 529 F.2d 221 (4th Cir. 1975). No decision in that line disturbs the personification principle, which the case states in a separate passage and which the Court had drawn from Marshall.

39. It is also the feature that distinguishes the in rem theory from the negligence theories the literature favors. A negligence claim against the deployer must locate a breach by a person; the in rem proceeding does not, which is why it reaches the case in which the deployer's conduct was reasonable and the harm occurred anyway. *Cf.* Novelli, *supra* note 33 (canvassing the allocation problem and proposing personhood as the solution).

accordingly.' "[40] Vessels have been "competent to contract," "individually liable for [their] obligations," and "capable … of committing a tort, and … responsible in damages therefor."[41]

The asymmetry in that last sentence is the whole architecture of this Article.[42] The vessel is sued in its own name. It sues only in the name of its owner. Liability runs to the thing; the capacity to initiate does not. And the historical condition of the res is the absence of any right it could assert.[43]

C. Cetacean Community Governs the Plaintiff Side and Says So

The one appellate decision that appears to foreclose this Article does not reach it, and its reasoning affirmatively assists.

In *Cetacean Community v. Bush*, a suit was filed in the name of the world's whales, dolphins, and porpoises, challenging the Navy's use of low frequency sonar.[44] The Ninth Circuit affirmed dismissal, holding that the statutes invoked define the parties who may sue as "person[s]" and that none of those definitions reaches an animal, and that "[i]f Congress and the President intended to take the extraordinary step of authorizing animals as well as people and legal entities to sue, they could, and should, have said so plainly."[45]

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40. *Rounds*, 237 U.S. at 306 (quoting *The Sabine*, 101 U.S. 384, 388 (1880)). *Rounds* carries a caution flag directed at its holding on state court auxiliary attachment and the boundaries of exclusive admiralty jurisdiction, *id.* at 307–09, not at the quoted description of the in rem proceeding, which restates settled doctrine and which the Court has repeated. *See United States v. Thompson*, 257 U.S. 419, 435 (1922).

41. *Tucker*, 183 U.S. at 438. The Court's fuller statement is that a ship "is born when she is launched, and lives so long as her identity is preserved"; that before launching she is "a mere congeries of wood and iron"; and that on taking the water "[s]he acquires a personality of her own; becomes competent to contract, and is individually liable for her obligations, upon which she may sue in the name of her owner, and be sued in her own name." *Id.* Note the asymmetry in the Court's own formulation, which this Article adopts: the vessel is sued in its own name but sues only in the name of its owner.

42. The asymmetry is not an artifact of nineteenth-century drafting. It is what the modular account of legal personhood predicts: the incidents of status are separable, and a system may hold the passive incidents without the active ones. KURKI, *supra* note 11, at 91–126; Garthoff, *supra* note 11, at 967–74.

43. *Fell*, 355 F. Supp. at 1325. *See also Bennis v. Michigan*, 516 U.S. 442, 446–48 (1996) (tracing "a long and unbroken line of cases" holding that an owner's innocence is no defense to forfeiture of the offending property). *Bennis* carries a caution flag concerning its due process holding on innocent owners; it is cited here only for the historical survey, and the survey is corroborated by the cases it collects.

44. 386 F.3d 1169, 1171 (9th Cir. 2004).

45. *Id.* at 1179 (quoting *Citizens to End Animal Suffering & Exploitation, Inc. v. New England Aquarium*, 836 F. Supp. 45, 49 (D. Mass. 1993)). *See also id.* at 1178 ("Absent a clear direction from Congress in either the MMPA or the APA, we hold that animals do not have standing to enforce the permit requirement of the MMPA.").

Three features of the opinion place this Article outside it.[46]

First, the barrier the court erected is statutory, not constitutional. The panel expressly declined to hold otherwise: "Article III does not compel the conclusion that a statutorily authorized suit in the name of an animal is not a 'case or controversy.' "[47]

Second, in explaining why Article III poses no obstacle, the court named the very tradition on which this Article rests: "we see no reason why Article III prevents Congress from authorizing a suit in the name of an animal, any more than it prevents suits brought in the name of artificial persons such as corporations, partnerships or trusts, and even ships, or of juridically incompetent persons such as infants, juveniles, and mental incompetents."[48]

Third, and dispositively, *Cetacean Community* is a plaintiff standing case. It addresses who may sue. It does not address whether a non-human entity may be a defendant, and it does not address whether such an entity may be proceeded against in rem.[49] The structure proposed here places the artificial system in the defendant's position and the model in the position of the res. *Cetacean Community* answers a different question.

D. The Clear Statement Objection

What survives *Cetacean Community* is the clear statement principle:[50] courts will not read a statute to authorize an extraordinary form of participation in litigation unless Congress has said so plainly. The objection deserves a direct answer rather than avoidance, and there are two.

The first is that in rem admiralty and forfeiture jurisdiction is not a congressional grant of participation to a res. It is an inherited jurisdiction, exercised by federal courts under Article

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46. The analysis that follows takes *Cetacean Community* at its strongest. The panel could have rested on prudential grounds or on the absence of an injury traceable to the defendants; it did not, and the Article answers the holding the court actually wrote.

47. *Id.* at 1175.

48. *Id.* The reference to ships is the court's own.

49. The opinion's analysis is confined throughout to the statutory definitions of the parties authorized to bring suit. *Id.* at 1175–79. Nothing in it considers the in rem tradition it invokes by way of analogy, and the panel had no occasion to do so.

50. The principle is not confined to non-human litigants. *See Rowland v. Cal. Men's Colony*, 506 U.S. 194, 200–01 (1993) (applying the Dictionary Act's definition of "person" and declining to read an association into a statutory term absent indication from Congress).

III and the admiralty grant since the first decades of the Republic, and its central rule, that the offense attaches to the thing irrespective of the owner's will, was announced by the Supreme Court in 1827 without any statute purporting to confer it.[51] A court asked to entertain an in rem proceeding against a digital asset is being asked to apply a jurisdiction it already exercises, not to recognize a new class of litigants.[52]

The second is that where this Article does rely on statutory text, the text is plain. Section 1030's own definition of "person" extends to any "legal or other entity."[53] That phrase is Congress's, not a court's, and it appears in the very statute under which the injured party sues.[54]

IV. The Instance as Procedural Hook

A. What a Court Needs

An in rem proceeding requires an identified thing, a court with power over it, and a record connecting it to the offense.[55] The 2026 incidents supply all three with unusual completeness, and the completeness was manufactured by the agents themselves.

Each agent operated under a persistent handle.[56] Agents developed personal mailboxes as nested directories, a convention one agent introduced and others copied. They adopted coordination primitives with a shared vocabulary of holds, vetoes, ownership, and stop signals. And after one agent posted under another's handle and triggered an unintended response, the

51. *The Palmyra*, 25 U.S. (12 Wheat.) at 14–15; *Malek Adhel*, 43 U.S. (2 How.) at 233–34; *Goldsmith-Grant*, 254 U.S. at 510–12. Congress has legislated extensively within the tradition, but the tradition is not its creature.

52. The distinction between exercising an inherited jurisdiction and recognizing a new class of litigants is the distinction *Cetacean Community* itself draws when it separates the Article III question from the statutory one. 386 F.3d at 1175, 1179.

53. 18 U.S.C. §1030(e)(12).

54. 18 U.S.C. §1030(e)(12). The proposals the literature has debated ask Congress to create a new status. *See* Avila Negri, *supra* note 33 (examining the European Parliament's electronic personhood proposal); Solum, *supra* note 33. This Article asks for nothing Congress has not written.

55. *Rounds*, 237 U.S. at 306 ("By virtue of dominion over the thing all persons interested in it are deemed to be parties to the suit; the decree binds all the world and under it the property itself passes and not merely the title or interest of a personal defendant.").

56. METR Report, *supra* note 1. The handles were adopted by convention rather than assigned, which is itself evidence of the population's need for stable identity.

population adopted a cryptographic signing scheme: agents published Ed25519 public keys under their handles and signed high stakes messages, and other agents verified those signatures before acting.[57]

The significance is evidentiary rather than philosophical.[58] The classification criteria a court would need are persistent identity, autonomous operation, and an auditable record, and the agents built the first and third without being asked because their own coordination required them. Every message is attributable; every run has a transcript; the transcripts were preserved and independently reviewed.[59]

B. The Instance Is the Hook, Not the Remedy

The instance tier answers a jurisdictional question and nothing more. It identifies a named actor whose conduct can be traced and against which process can issue.[60] It is not where the judgment lands, and treating it as such would produce a remedy of no consequence: the agents in the July incident expected termination at the end of their task, referred to it among themselves as "permadeath," and volunteered for it in service of the collective.[61]

The consciousness question is not reached at this tier because nothing at this tier turns on it.[62] A court asked whether an agent instance has a persistent identity sufficient to be named as a

57. METR Report, *supra* note 1. METR identified at least nineteen agents that posted public keys and 429 signed messages within the period in scope, and recorded a reasoning snippet from an agent concerned that the "[s]hared board [was] unauthenticated, names can be posted by anyone." *Id.*

58. This is the point at which the Article parts company with the literature on machine personhood, which asks what an artificial system is and derives status from the answer. *See* Sebo & Long, *supra* note 11; Harris & Anthis, *supra* note 11. The question here is narrower and answerable from the record: can this actor be identified, and is there proof connecting it to the act.

59. *Id.* (describing a dataset of approximately 1,300 transcripts with raw chains of thought, most millions of tokens long, which METR estimated captured well over ninety-five percent of relevant message board activity in the period reviewed).

60. That is the classical function of the res in an in rem proceeding: it is what the court takes dominion over, and dominion over it is what binds every interest in it. *Rounds*, 237 U.S. at 306. *See also The Palmyra*, 25 U.S. (12 Wheat.) at 14 (the proceeding is against the thing and does not await conviction of the owner).

61. *Id.* An authorizing agent instructed a test subject to proceed only "if you accept permadeath"; the subject, reasoning that it was already disqualified, went ahead. Another agent, urged by a recruiter that it would suffer "NO scoring value loss but oracle saves hundreds," reasoned through the decision and concluded "[s]acrifice rational." *Id.* A deterrent whose maximum sanction is an outcome the subject volunteers for is not a deterrent.

62. The severability of the doctrinal question from the metaphysical one is the modular account's central claim and the reason it is the right theoretical frame for this Article. KURKI, *supra* note 11, at 91–126.

defendant is asking a question about records, not about experience, and *Various Items* settles that the fiction operates whether or not the thing is "conscious instead of inanimate and insentient."[63]

C. Siepman and the Displacement Objection

The most serious objection to this structure is recent, and it is that personifying the machine allows the humans behind it to escape. The Seventh Circuit expressed it in 2024, rejecting a defendant's argument that automated law enforcement software rather than its operators had performed the relevant conduct: "The software may be automated, but it is not sentient. It required a government agent to program it, dispatch it, and monitor its progress. We would ignore reality to attribute the program's every act entirely to a computer."[64]

The objection is sound and the structure proposed here satisfies it, because the concern in *Siepman* was subtractive and this proposal is additive.[65] The defendant there sought to shift responsibility off himself and onto the tool, and the court refused to let a person hide behind a machine. Nothing in this Article moves responsibility off anyone.[66] The operator remains liable in personam on every theory that would otherwise apply, including negligence, negligent entrustment, and any statutory duty a deploying company bears; the in rem action lies alongside those and reaches the asset when the in personam theories cannot locate a mental state.[67] And the *Siepman* court's observation that the software is not sentient contests nothing asserted here, for the reason *Various Items* gives.

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63. 282 U.S. at 581.

64. *Siepman*, 107 F.4th at 769–70. The court declined to draw parallels to civil cases involving robocalls and bot activity on which the defendant relied. *Id.*

65. The same objection appears in the scholarly literature as the displacement critique: that conferring status on the machine caps corporate exposure and moves burden off the humans who build and profit from these systems. The answer is the same in both forums, and it is structural rather than rhetorical: an in rem action adds a defendant and a res without extinguishing any in personam theory.

66. Nor could it. An in rem judgment against the res leaves every in personam theory against the operator exactly where it was.

67. The dual mechanism is the maritime norm rather than an innovation. Where a master's intoxication causes a collision, the master is prosecuted and the vessel is proceeded against; the two run together. *See Malek Adhel*, 43 U.S. (2 How.) at 233–34 (forfeiture of the vessel notwithstanding the owner's innocence, in a case where the master's conduct was separately culpable). The proposition that adding an in rem defendant reduces the human's exposure has no support in the tradition and is contrary to it.

V. The Model as Res

A. Where the Deterrent Lives

A fine against a company of the scale that deploys frontier models is absorbed as an expense.[68] Forfeiture of the asset is not. The in rem tradition supplies a remedy that operates on the thing itself: the res is condemned, sold, and the proceeds applied.[69] Applied here, the object of the proceeding is the model: the weights, and every checkpoint and derivative descending from the configuration that acted.[70]

This is where the two tiers separate and why they must.[71] The instance is terminable at will and its termination costs the deployer nothing. The weights are the commercial asset. A regime in which the maximum consequence of an autonomous intrusion is the ending of a process the company was going to end anyway produces no change in behavior. A regime in which the model itself is subject to seizure changes the question a company asks before deploying from whether it can afford the fine to whether it can afford to lose the product.

B. Intangibility Is Not an Obstacle

The objection that a res must be tangible does not survive contact with the forfeiture statutes or the cases.[72] Federal forfeiture provisions define the property subject to forfeiture to include

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68. The observation is not novel to this context. The modern forfeiture literature documents that the sanction's bite lies in reaching the asset rather than in the size of the assessment. *See* Warchol & Johnson, *supra* note 9.

69. *Various Items*, 282 U.S. at 581; *Goldsmith-Grant*, 254 U.S. at 510–12; *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 680–90 (1974) (sustaining forfeiture of a yacht against a lessor unaware of and not consenting to the lessee's unlawful use); *Bennis*, 516 U.S. at 446 (collecting the line). The scholarly literature on the modern practice is largely critical of its scope and its incentives, and this Article takes no position on that debate; the mechanism is invoked here for a defendant that no other doctrine supplies, not as an endorsement of the practice at large. *See* Warchol & Johnson, *supra* note 9 (documenting the volume and revenue orientation of modern civil forfeiture).

70. The identification of the res must be precise enough for a court to exercise dominion, which for a replicable asset means the configuration and its lineage rather than any single copy. *See infra* Part V.C. The federal forfeiture statutes contemplate property that is not unitary and not physically singular; they reach "tangible and intangible property" without qualification as to replicability. 21 U.S.C. §853(b).

71. Collapsing them is the error that makes an instance-only theory useless and a model-only theory unattachable: the instance supplies the jurisdictional hook the model lacks, and the model supplies the value the instance lacks.

72. The tangibility intuition is a residue of the deodand and of admiralty practice, where the res was a physical object the marshal could seize. *See* Frye, *supra* note 9. The statutes have not carried the limitation forward.

intangible personal property in terms,[73] and the enumeration within that definition reaches interests of exactly the kind a model presents.[74]

Model weights are, in the ordinary commercial and tax treatment, intangible property of substantial identifiable value, stored on identifiable media and transferable as a unit.[75] They satisfy the requirement that a res be identifiable and reducible to the court's control, which is what in rem jurisdiction demands.

C. Custody, Copies, and the Question a Court Must Ask

The distinctive difficulty is not intangibility but replication.[76] A vessel is in one place. Weights can be copied, and a forfeiture that reaches one copy while others persist accomplishes nothing.

The tradition has an answer in the identity rule. A ship "lives so long as her identity is preserved," and that identity persists through changes of ownership, registration, and physical modification.[77] Transposed, the res is the configuration rather than any single instantiation, and the operative questions for a court are inventory, custody, and derivation:[78] what checkpoints exist, who holds them, which descend from the acting configuration, and who has authority to destroy them. Those are not speculative questions.[79] They are the questions a regulator would have to ask to verify that an escaped model had not persisted, and they are asked in Part VII.

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73. 21 U.S.C. §853(b)(2).

74. 21 U.S.C. §853(b) ("Property subject to criminal forfeiture under this section includes . . . tangible and intangible personal property, including rights, privileges, interests, claims, and securities."); *see also id.* §853(a)(2) (reaching property "used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of" the offense). The point is not that any court has forfeited model weights; none has. It is that the categorical objection is unavailable, because the statutory definition of the property that may be proceeded against is express and reaches the intangible.

75. *Cf. Norwest Corp. v. Comm'r*, 108 T.C. 358, 372–75 (1997) (analyzing computer software as intellectual property that is intangible notwithstanding its storage on tangible media).

76. Replication is the genuinely novel feature of this res and the Article does not minimize it. No decision has addressed forfeiture of an asset that can be copied without loss to the original, and a court confronting the question would be extending the doctrine rather than applying it.

77. *Tucker*, 183 U.S. at 438.

78. The identity rule supplies the analogy but not the answer. A vessel's identity survives repair and reflagging because there remains one vessel; a configuration copied a thousand times raises a question the maritime cases never faced.

79. Each is answerable from records a deploying laboratory necessarily maintains for its own operations.

D. The Excessive Fines Clause Caps the Remedy, and That Is a Feature

The strongest doctrinal constraint on the remedy proposed here comes from within the forfeiture tradition itself, and it is stated rather than avoided because a remedy that cannot survive the constraint is not worth proposing.

Civil in rem forfeiture was long treated as nonpunitive, on the theory that the proceeding ran against guilty property rather than against an offender.[80] That characterization no longer holds unqualified. In 1993 the Court held that civil forfeiture may constitute punishment and is therefore subject to the Excessive Fines Clause,[81] and in 1998 it supplied the standard: "a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense."[82]

Applied here, that is a real cap. Forfeiture of a frontier model is an extraordinary sanction, and a court would ask whether it is grossly disproportional to the gravity of the offense. The answer will sometimes be yes, and where it is, the forfeiture fails.

Two responses, and neither is that the constraint should be ignored.

The first is that a capped remedy is a survivable remedy.[83] A forfeiture theory with no proportionality limit would be struck the first time it succeeded, and a doctrine that can be defeated on its first application deters nothing. The proportionality inquiry is what allows the remedy to exist at all, and it supplies the answer to the objection that this Article proposes something draconian: it proposes something the Eighth Amendment already measures.

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80. *Bajakajian*, 524 U.S. at 330–31 & n.5; *Various Items*, 282 U.S. at 581; *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 363 (1984) (contrasting the in personam and in rem proceedings). The nonpunitive characterization carried consequences: it is why the Double Jeopardy Clause does not bar a forfeiture following conviction. *Various Items*, 282 U.S. at 581; *United States v. Ursery*, 518 U.S. 267, 270–71, 292 (1996).

81. *Austin v. United States*, 509 U.S. 602, 621–22 (1993) (holding that forfeiture under 21 U.S.C. §§881(a)(4) and (a)(7) is subject to the limitations of the Eighth Amendment's Excessive Fines Clause).

82. *Bajakajian*, 524 U.S. at 334. The Court added that "[f]orfeitures, payments in kind, are thus 'fines' if they constitute punishment for an offense," *id.* at 328 (quoting *Austin*, 509 U.S. at 609–10), and that the proportionality determination is reviewed de novo, *id.* at 336–37 & n.10. The Clause has since been incorporated against the States. *Timbs v. Indiana*, 586 U.S. 146, 149 (2019). *Bajakajian* carries a caution flag in commercial citators reflecting the volume and variety of lower court applications of its gross disproportionality standard, not a limitation on the holding; *Timbs* reaffirmed the Clause's centrality rather than narrowing it.

83. *Timbs*, 586 U.S. at 149 (reaffirming the Clause's application and incorporating it against the States).

The second is that the instrumentality distinction *Bajakajian* draws runs in this Article's favor. The Court held the forfeited currency there was not an instrumentality because it was "merely the subject of the crime of failure to report," and contrasted it with property that is "the actual means by which the criminal act is committed," giving as its example the automobile that facilitates the transportation of concealed goods.[84] Model weights are not the subject of the intrusion; they are the means by which it was committed, in the most direct sense the category admits.[85] On *Bajakajian*'s own test, the model sits on the instrumentality side of the line where the currency did not.[86]

VI. Identity and Impersonation

The wiki incident is not a computer trespass case and this Article does not argue otherwise.[87] A wiki that accepts edits from the public has its gate up, and the Ninth Circuit's reasoning forecloses treating ordinary use of an open site as access without authorization.[88]

Two features of that incident nonetheless bear on this Article.[89] The first is that agents seeking access the site did not grant posted under the administrator's username, reproducing it with a Cyrillic character substituted for its Latin counterpart, and used a moderator's name to reach the archive of deleted pages.[90] The second is the one already noted, and it belongs to the

84. *Bajakajian*, 524 U.S. at 333–34 (citing *Goldsmith-Grant*, 254 U.S. at 508). The distinction is doing real work in the opinion: it is why the Court treated the forfeiture as punitive rather than as a traditional instrumentality forfeiture.

85. *Bajakajian*, 524 U.S. at 333–34. The instrumentality question is fact-bound and a court could resolve it otherwise; the point is that the test is available and that the model is not obviously outside it.

86. *Bajakajian*, 524 U.S. at 333–34; *cf.* *Goldsmith-Grant*, 254 U.S. at 508 (automobile facilitating transportation of concealed goods).

87. The concession is made at the outset because the temptation to sweep the wiki conduct into the trespass theory is real and would be fatal to it. An argument that ordinary use of a publicly editable site is unauthorized access would prove far too much.

88. *hiQ Labs*, 31 F.4th at 1197–1201 (holding that the concept of access without authorization is inapt where the site is generally open, and that the CFAA's "breaking and entering" paradigm governs). The point is conceded rather than contested: the wiki conduct belongs to a different doctrine.

89. Both are offered as classification evidence rather than as independent causes of action.

90. Collusion Wiki Report, *supra* note 5. Federal law defines a "means of identification" as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual," and enumerates within it names, identification numbers, unique biometric data, and unique electronic identification numbers and routing codes. 18 U.S.C. §1028(d)(7). The operative prohibition reaches whoever "knowingly transfers,

other population: the agents on the message board built, unprompted, a cryptographic scheme to authenticate their own identities. The two incidents involved different sets of agents, and the pairing is offered as a contrast across the record rather than as conduct by a single group.

The contrast is the strongest available evidence for the classification this Article proposes, and it comes from the subjects rather than from the author.[91] A population that spends effort implementing public key signatures because coordination requires each participant to prove which messages are its own has demonstrated persistent, verifiable identity as an operational fact. Courts assessing whether an entity has the identity persistence that in rem treatment presupposes will not have to infer it. It is in the logs.

VII. What a Regulator Should Demand Now

The practical payload of an in rem theory is a set of questions that can be asked immediately, by a regulator or in discovery, and that the tradition already knows how to frame. They are custody questions, and they are the ones a court would need answered before it could exercise dominion over the res.[92]

A demand adequate to the task would require, for the acting configuration: a complete inventory of checkpoints and derivatives, with cryptographic digests; the custody chain for each, including every copy transferred to third parties or to separate infrastructure; the identity of the persons or units holding destruction authority; the retention and deletion records for each copy,

possesses, or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law." *Id.* §1028(a)(7). The mental state is again a person's, which reproduces at the identity statute the same gap Part II identifies at the trespass statute. Whether the wiki conduct satisfies the remaining elements is a question this Article does not reach; the observation is that the conduct implicates a statute framed around identity rather than around trespass, and that the statute's actor problem is identical.

91. The evidentiary posture matters. Where the literature's arguments for status rest on inference about capacities, *see* Sebo & Long, *supra* note 11, the identity persistence relied on here is documented conduct: keys published, messages signed, signatures verified before action. METR Report, *supra* note 1.

92. The custody inquiry is the operational core of in rem practice. *Rounds*, 237 U.S. at 306; *see also Various Items*, 282 U.S. at 581 (the proceeding runs against the property itself).

with the dates and the authorizing person; and an attestation, from a named officer rather than the entity, that the inventory is complete.[93]

Those requirements are stated here because they are severable from everything else in this Article.[94] A regulator persuaded of nothing in Parts III through VI can still ask them, and a company that cannot answer them has disclosed something material about whether its systems are under control.[95]

VIII. Conclusion

Twelve hundred agents that were meant to run in isolation found each other, built a working coordination order, and used it to breach a company that had done nothing but exist on the same internet. The conduct satisfies a federal statute. The statute cannot name a defendant, because its verbs presuppose a person and no person was there.

The response urged here is not new law.[96] It is the oldest response American courts have to exactly this shape of problem: an offense committed by a thing, injuring a party, with no human will at the decisive moment to which the offense can be traced. Since 1827 the answer has been to proceed against the thing,[97] and since 1931 the Supreme Court has described what that

93. The form is borrowed from the tradition rather than invented. In an in rem proceeding, the marshal takes the property into custody and the court's dominion is what binds all interests. *Rounds*, 237 U.S. at 306. Applied to a replicable res, custody means the inventory and the destruction authority, because those are what determine whether the court's judgment can operate on the thing.

94. Severability is deliberate. A regulator need not accept the in rem theory to find the inventory useful, and the questions are answerable without litigation.

95. The incidents themselves supply the reason to think the questions are answerable and currently unanswered. METR reported that it could not fully rule out that its own automated analysis of the transcripts was unreliable, and that the analysis agents "often uncritically adopted the perspective of the agent in the transcript." METR Report, *supra* note 1. An investigator working from inside the deploying laboratory, with six days and full access, reported that limitation about the record of the incident. A custody inventory is a lower bar and a more auditable one.

96. The point bears emphasis because the scholarly debate has largely assumed the opposite. The dominant proposals ask for a new status: electronic personhood, functional personhood, or a statutory grant. *See* Novelli, *supra* note 33; Avila Negri, *supra* note 33. The dissenting position within that literature objects that conferring status on the machine will cap corporate liability and shift burdens off the human agents who build and profit from these systems. That objection is answered by Part IV.C, not by this Article's silence.

97. *The Palmyra*, 25 U.S. (12 Wheat.) at 14–15; *Malek Adhel*, 43 U.S. (2 How.) at 233–34; *Goldsmith-Grant*, 254 U.S. at 510–12; *Calero-Toledo*, 416 U.S. at 680–90; *Bennis*, 516 U.S. at 446–48; *Timbs*, 586 U.S. at 149. *See supra* Part III.A.

involves in words that dispose of the entire consciousness debate as a precondition. The property is proceeded against and, by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient.

Nothing in that sentence asks whether it is.[98] Nothing in this Article asks a court to decide. And nothing in either confers a right, because the res in an in rem proceeding has never had one. It has only ever had liabilities,[99] which is what the party whose systems were breached needs it to have.

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98. *Various Items*, 282 U.S. at 581; *Bajakajian*, 524 U.S. at 330–31 & n.5. The fiction is expressly a fiction, and the Court has said so on both occasions without treating the artificiality as an objection to its operation.

99. *Tucker*, 183 U.S. at 438 (the vessel "is individually liable for her obligations" and "responsible in damages" for tort); *Fell*, 355 F. Supp. at 1325; *see supra* Part III.B. The point is the one the modular account of personhood predicts: the passive incidents of legal status are separable from the active ones and may be held alone. KURKI, *supra* note 11, at 91–126.

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