

FENNEMORE CRAIG

I - Law

INTELLECTUAL PROPERTY LAW ALERT

As a friend of Fennemore Craig, we thought you might be interested in *Fennemore Craig I-Law*, a bi-weekly e-mail from Fennemore Craig's Intellectual Property Group that provides an update on e-commerce, Internet, trademark, patent, licensing and copyright news. Each issue will contain a sentence or two about the latest story with a link for those who want additional information. Periodically, on particularly important news, a more in-depth analysis will be provided.

Fennemore Craig counsels clients on Internet, branding and e-commerce issues and protection and commercial exploitation of patents, copyrights, trademarks, and trade secrets. Clients include a range of domestic and international businesses from Internet start-ups to large multi-nationals, in industries ranging from computer software and hardware to pharmaceuticals, toys, games, optics, and electronics.

If you think other people would benefit from this communiqué, please let them know that they may subscribe by sending an e-mail to Cheryl Martin-DeVries at cdevries@fclaw.com. If you would like to obtain back issues of *Fennemore Craig I-Law*, please refer to the Issues & Answers section of our web site at www.fennemorecraig.com.

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FENNEMORE CRAIG NEWS

- **Steve Winkelman** will be presenting at the **Law of the Internet Seminar** on October 8. He will be speaking on current e-commerce and intellectual property legal issues such as electronic signatures, the Digital Millennium Copyright Act and protecting trademarks and copyrights on the Internet.

<http://www.nbi-sems.com/seminfo/nbi-moreinfo.asp?session-id=8069&usersession=4A5B34E8-F29A-4657-A65A-7E21D56AC3AE&Division=NBI>

ONLINE & E-COMMERCE ISSUES

- Clickwrap agreement's forum selection clause is held enforceable.
<http://www.dccbar.org/dcca/pdf/01-cv-1101.pdf>
- Arizona Technology Council is launched.
<http://www.bizjournals.com/phoenix/stories/2002/09/02/daily17.html?f=et73>
- Strike two. Baseball failed to go on strike, but this did not stop Major League Baseball from striking out at fans on the Internet. MLB is trying to shut down fan websites.
<http://www.nandotimes.com/technology/story/519911p-4125758c.html>
- New report says new royalty fees could kill web music broadcasting.
<http://zdnet.com.com/2110-1106-956769.html>
- The jail cell will not be virtual. Man receives eight-year conviction for cyberstalking.
<http://www.nandotimes.com/technology/story/532629p-4215293c.html>
- ICANN is threatening to pull VeriSign's right to sell .com domain names unless the registrar does a better job of cleaning up the domain owner name information in its WHOIS database.
<http://www.washingtonpost.com/wp-dyn/articles/A34373-2002Sep3.html>
- Despite federal laws prohibiting the use of federal government resources for partisan purposes, the Bush administration's State Department website contained a link to the partisan Republican Party website. The link was contained in a picture of President Bush. Click on the picture and you learn how to donate money to the Republican Party.
<http://www.nytimes.com/2002/09/13/politics/13WEB.html>
- Osama Bin Laden lives...in Utah? Could it be? Well, if you've heard this or many of the other false rumors circulating on the Internet and in e-mail, you can now check whether they are true by visiting snopes.com, a website that debunks urban legends. The first link is to an article about the site, and the second link is to the site.
http://www.salon.com/tech/feature/2002/09/03/snopes_part2/index.html
<http://www.snopes.com/>
- Seems like too little, too late. Australia, which has legalized prostitution, at least in some places, has decided that Internet advertising of such things must be limited.
<http://www.smh.com.au/articles/2002/09/02/1030508179645.html>
- Napster, we hardly knew ya. The Napster saga comes to an end, as a judge blocks the sale of Napster to Bertelsmann. A liquidation of assets is next.
<http://www.washingtonpost.com/wp-dyn/articles/A34582-2002Sep3.html>

Well, maybe not quite the end. Porn company wants to buy Napster's assets. Brings a whole new meaning to "peer-to-peer."

http://news.com.com/2100-1023-957784.html?tag=cd_mh

- Madster's fileswapping service has been temporarily shut down by a court because it is a major facilitator of copyright infringement.
<http://www.washingtonpost.com/wp-dyn/articles/A38271-2002Sep4.html>
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/E78BE17BE5F2177285256C310051E7C3?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/E78BE17BE5F2177285256C310051E7C3?OpenDocument)
 - Top 10 e-mail hoaxes, including the one from the supposed Nigerian bank worker.
<http://zdnet.com.com/2100-1105-956504.html>
 - Here's a story on America's changed views of the Internet following September 11.
<http://www.nandotimes.com/technology/story/530109p-4196461c.html>
 - China is blocking access to certain search engines.
<http://www.washingtonpost.com/wp-dyn/articles/A5510-2002Sep11.html>
- Never mind. China stopped.
<http://www.washingtonpost.com/wp-dyn/articles/A7425-2002Sep12.html>
- For awhile, everyone wanted to be a .com. Then, no one wanted to be a .com. Well, this article says a better balance has been reached, and those companies, and only those companies, that really are .coms are now wanting to be known as .coms.
<http://www.ecommercetimes.com/perl/story/19390.html>
 - It appears that the first emoticon, those clever smiley faces made like this: :), was used in an electronic bulletin board discussion in 1982.
http://news.com.com/2100-1023-957817.html?tag=fd_top

DEFAMATION, RIGHT OF PRIVACY, AND RIGHTS OF PUBLICITY

- Music industry is trying to subpoena the name of an alleged music swapper from Verizon, but Verizon is arguing that providing the information would invade its subscriber's privacy.
<http://www.washingtonpost.com/wp-dyn/articles/A38034-2002Sep4.html>
- NIMBY has typically meant "Not In My Back Yard," but today the acronym should be changed to NIMPI, "No Information about Me Posted on Internet." The public does not seem happy that public court records (such as tickets, divorce proceedings, criminal arrests, etc.) are being put online and becoming easily accessible. People seem to want their own public records to be difficult to get. Yet, on the other hand, they don't seem to object to public information about others (such as celebrities or neighbors) being readily available.
<http://www.nytimes.com/2002/09/05/technology/circuits/05CINC.html>
- Librarians across the country are increasingly uneasy that Internet research, however innocent, can create a trail that makes one appear to the government as a suspect or enemy combatant. Librarians worry that such fears are stifling people's curiosity and rights to read, ask questions and seek information. "[A]ll I was doing was exercising a basic American right to ask questions, to investigate, to try to understand.... By taking those steps, I could have labeled myself as an enemy of the state.... That innocent curiosity traps you."
<http://www.nandotimes.com/technology/story/524355p-4158028c.html>

TRADEMARKS

- We're number 1! PricewaterhouseCoopers has ranked the USPTO website as the best federal government website. The first link is to the site and the second link is to the site's article about the ranking.
<http://www.uspto.gov>
<http://www.uspto.gov/web/offices/com/speeches/02-59.htm>

TRADE SECRETS

- An Illinois court has held that the Copyright Act does not preempt a state law's trade secrets claim.
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/AD3D15F710965A2285256C2500673A78?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/AD3D15F710965A2285256C2500673A78?OpenDocument)

DOMAIN NAMES

- Judgment in the sex.com case is affirmed.
<http://news.com.com/2110-1023-956399.html?tag=cshrt>
- The longest ever UDRP, over two years, was finally decided. Stanley Works gets stanley-tools.com and three other domain names.
<http://www.arbforum.com/domains/decisions/94671.htm>
- The Anti-Cybersquatting Protection Act allows "in rem" jurisdictions in lawsuits for bad faith registrations when the Court does not have personal jurisdiction over the registrant of a domain name. Now, the Fourth Circuit has interpreted the Act to allow "in rem" suits for infringement and dilution claims as well as for bad faith registration claims.
<http://pacer.ca4.uscourts.gov/opinion.pdf/002414.P.pdf>
<http://www.law.com/servlet/ContentServer?pagename=OpenMarket/Xcelerate/View&c=LawArticle&cid=1030821185175&t=LawArticleIP>
- Having lost a UDRP, Rev. Jerry Falwell is now in court trying to get the jerryfalwell.com domain name that currently is a parody site. The first link is to media coverage; the second link is to the website.
http://news.com.com/2100-1023-957422.html?tag=fd_top
www.jerryfalwell.com
- Speaking of parodies.... AFLAC, the insurance company that uses a talking duck to market itself, says that the Democratic Ohio Governor candidate's use of a talking duck to criticize his Republican opponent is too similar to the AFLAC duck. The first link is to the media coverage; the second link is to the taftquack.com parody website.
<http://www.nandotimes.com/technology/story/531367p-4205104c.html>
www.taftquack.com
- Zoinks! Like, hey Scoob, Hanna-Barbera has gotten the scoobydoo.co.uk domain name on appeal after losing the original decision to, like, a fan website. The decision contains a fairly good discussion of fan sites and how they should be treated.
<http://www.nic.uk/drs/appeals/hannabarbera-v-hay.html>

COPYRIGHTS

- The famous photo of three fireman raising a flag after September 11 (see first link) has been licensed by the photographer for many products, but he won't be licensing its use for wine and cigarette lighters. The article about the licensing is found at the second link.
<http://www.poynter.org/centerpiece/nppa/photo/AOAFeature.htm>
<http://www.philly.com/mld/inquirer/news/editorial/3987094.htm>
- You know that really annoying disclaimer that they use during baseball telecasts? ("This copyrighted telecast is the property of Major League Baseball, and any reproduction, retransmission....") Its evil twin is making its way into e-mails. Unfortunately though, in some cases it has grown to 1500 words.
<http://www.law.com/servlet/ContentServer?pagename=OpenMarket/Xcelerate/View&c=LawArticle&cid=1030821153186&t=LawArticleTech>
- The California Republican candidate for Governor has launched e-Gray, a website parody of eBay to attack his opponent Governor Gray Davis. Unfortunately for Candidate Simon, eBay is not amused and is considering suing the candidate for copyright and trademark infringement. The first link is to media coverage; the second link is to the site.
<http://www.nandotimes.com/technology/story/525695p-4166725c.html>
<http://e-gray.com/>
- Here is an overview of the developing legal battle between ISPs and the recording Industry.
http://news.com.com/2100-1023-957023.html?tag=fd_lede
- A company can perfect a security interest in unregistered copyrighted works by following state law rules (typically by filing the proper form under the UCC). Perfecting security interests in registered copyrighted works requires following the federal statutory scheme.
<http://www.law.com/jsp/article.jsp?id=1030821205079>
- Xena and Hercules are not only superheroes, but possibly copyright infringers, too. This is just another industry learning the hard way that the creator of an artistic work -- not the one who ordered the work -- is the owner, unless there is a written agreement saying otherwise. In this instance, a ghostwriter of the music for the Xena and Hercules television series is seeking royalties on the works he wrote. A composer was hired by the series' creators to write the music, but a ghostwriter did much of the work. The series' creators never obtained an assignment from the ghostwriter.
<http://www.law.com/servlet/ContentServer?pagename=OpenMarket/Xcelerate/View&c=LawArticle&cid=1030343784380&t=LawArticleIP>

PATENTS

- Discovery of the natural cancer-fighting properties of broccoli is not the sort of discovery that is patentable. "While [the patent holder] may have recognized something quite interesting, it simply has not invented anything new,"
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/15265E713EEEB56E85256C2500673992?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/15265E713EEEB56E85256C2500673992?OpenDocument)
- E-mail by eBay to a patentholder seeking to purchase online auction patents is a key piece of evidence in a patent infringement lawsuit that could cost eBay millions of dollars.

http://news.com.com/2100-1017-956638.html?tag=fd_top

- In case you are holding your PC far away so you can read this.... A company has obtained a patent for a mirror with prescription lenses mounted over it. "The visual effect is to see one's image as if glasses were on without having glasses on."
<http://www.nytimes.com/2002/09/09/technology/09PATE.html>
- Bank claims Paypal violates its business method patent for online transactions.
<http://www.latimes.com/technology/la-fi-paypal10sep10.story>

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