

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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ONLINE & E-COMMERCE ISSUES

- More on the Danish court deep linking decision.
<http://www.washingtonpost.com/wp-dyn/articles/A32718-2002Jul6.html>
<http://www.siliconvalley.com/mld/siliconvalley/news/editorial/3606498.htm>
<http://www.wired.com/news/politics/0,1283,53697,00.html>

The U.S. implications of this case may not be that great. It seems the decision turned on the European Union's Database Protection Directive. The U.S. does not have an equivalent law to this directive.

[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/F2F295E6A1AF223F85256BF90071E591?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/F2F295E6A1AF223F85256BF90071E591?OpenDocument)

- An Internet jurisdiction case. An Alabama court did not have jurisdiction over a woman who made allegedly defamatory statements over the Internet when the woman was located in Minnesota. The court followed the rule that libel occurs at the point of publication rather than in those places where the libel might be seen.
<http://www.nandotimes.com/technology/story/463677p-3707866c.html>
- Do you read and understand your software contracts? You should. There are dangers, sometimes expensive ones, for those who don't.
http://news.com.com/2009-1017-943258.html?tag=fd_lede
- A pop-up ad firm must stop having its unauthorized ads pop up when a websurfer visits various websites, unless the firm first obtains permission from the websites.
<http://www.nandotimes.com/technology/story/467718p-3740177c.html>
- Privacy group complains about ISPs that release customers' private information in exchange for not being sued. The group urges ISPs to do more to protect their customers' privacy, including notifying customers when the identity of an anonymous poster is sought.
<http://siliconvalley.internet.com/news/article.php/1383751>
<http://www.washingtonpost.com/wp-dyn/articles/A56260-2002Jul11.html>
- A new study shows that you are more likely to get a response to an e-mail if it is sent only to a single person rather than to a group.
<http://www.wired.com/news/culture/0,1284,53917,00.html>
- Radio stations are appealing a decision requiring them to pay royalties for music broadcast over the web.
<http://www.washingtonpost.com/wp-dyn/articles/A13524-2002Jul16.html>
- According to a new report, the Top 6 "best-connected" cities are: Chicago, Washington, Dallas, Atlanta, New York and San Francisco.
<http://www.nandotimes.com/technology/story/459421p-3677994c.html>
- The City Counsel for Liverpool, England has decided that the city officials and staff will not be allowed to use e-mail on Wednesdays. The city claims that the rule is designed to encourage workers to talk to each other more, and has nothing to do with alleged improper uses of e-mail.
<http://www.guardian.co.uk/internetnews/story/0,7369,752529,00.html>
- Speaking of improper use, a quarter of UK companies have fired employees for misuse of the Internet and 69% of those employees were fired for porn surfing.
<http://www.newscientist.com/news/news.jsp?id=ns99992520>
- This article says that students using the Internet for research are changing the way they think. "The Internet makes it ungodly easy now for people who wish to be lazy." Weren't students always lazy?

<http://www.washingtonpost.com/wp-dyn/articles/A9729-2002Jul15.html>

- Didn't *I-Law* just see this in *Minority Report*? Cabs in Toronto contain videoscreens with a GPS system that provides location sensitive advertising.
<http://www.wired.com/news/wireless/0,1382,53795,00.html>
- An Arizona law limiting an Arizona inmate's access to the Internet is being challenged.
<http://www.wired.com/news/business/0,1367,53832,00.html>
- ISP wins \$24 million in suit against spammer.
http://www.accessatlanta.com/ajc/epaper/editions/wednesday/atlanta_tech_d343bf1970a5d0990021.html

DEFAMATION, RIGHT OF PRIVACY, AND RIGHTS OF PUBLICITY

- Sure Tiger Woods wins virtually every golf tournament, but can he prevail in an intellectual property dispute? An artist who painted the golf icon at a golf tournament is now fighting the golfer over the use of his image in the painting. The battle pits the artist's First Amendment rights versus Tiger's right of publicity.
<http://www.sun-sentinel.com/sports/sfl-tigerpaint110jul11.story?coll=sfla%2Dsports%2Dheadlines>
- The privacy requirements for financial institutions contained in the Gramm-Leach-Bliley Act was found to be constitutional. Here is a link to the case.
<http://laws.lp.findlaw.com/dc/015202a.html>

TRADEMARKS

- The Electronic Frontier Foundation is seeking to overturn a decision requiring taxes.com to revise its web pages. Taxes.com's website refers to a competitor (J.K. Harris) so often that the site shows up high on the list of hits for a search engine query for "J.K. Harris." However, these uses, according to EFF, were not in metatags, but in the web pages themselves.
http://www.eff.org/IP/20020710_eff_pr_taxes.html
- Hail to the Victors. Universities and colleges are dealing with more and more trademark infringements, including knock-offs and piracy.
http://enquirer.com/editions/2002/07/08/loc_protecting_their.html
- Fubu wins trademark lawsuit over O5 mark.
<http://www.law.com/servlet/ContentServer?pagename=OpenMarket/Xcelerate/View&c=LawArticle&cid=1024078987460&t=LawArticleIP>
- The United States Patent and Trademark Office is planning on raising trademark fees by over 10%. Congress needs to approve the hike in fees, however.
http://www.uspto.gov/web/offices/com/strat2001/21stCSP_Legislation.pdf
- Shell has sued one of its franchisees for trademark infringement and dilution because the franchisee is selling a separately branded gas at the franchise location. Shell claims that the franchisee is using the Shell brand to attract customers to the station and then switching them to the competitive product instead. Amazingly, the franchise agreement apparently does not prohibit the franchisee from selling another company's gasoline.
<http://www.law.com/servlet/ContentServer?pagename=OpenMarket/Xcelerate/View&c=LawArticle>

&cid=1024079004263&t=LawArticleIP

TRADE SECRETS

- Theft of trade secrets in California that are worth more than \$50,000 leads to mandatory jail time.
<http://www.law.com/servlet/ContentServer?pagename=OpenMarket/Xcelerate/View&c=LawArticle&cid=1024078985514&t=LawArticleIP>

DOMAIN NAMES

- Molson was awarded "Canadian.biz" in an arbitration proceeding, but the original registrant is filing suit to overturn the decision.
<http://ca.news.yahoo.com/020707/6/nhyd.html>
- Rev. Jerry Falwell has decided to bring a suit to recover jerryfalwell.com, after he failed to recover the domain name from a parodyist in a UDRP proceeding.
<http://www.newsadvance.com/news/archive/MGBBWYVFP2D.html>
- It can body-slam the former Worldwide Wrestling Federation (now World Wrestling Entertainment), but fails to handle a French bathroom and kitchen furniture company. That's right. The World Wildlife Fund, which had successfully obtained the wwf.com domain name from the wrestling organization, has been unable to obtain panda.biz from the bath and kitchen company. The World Wildlife Fund has used the panda as its symbol for many years and owns panda.org.
<http://news.com.com/2110-1023-942557.html?tag=cdsht>
- The owner of the UNIX trademark has recovered unix.org in a UDRP proceeding. The panel felt that the registrant's links to commercial sites-- despite the non-commercial nature of the site--was sufficient evidence of bad faith.
<http://arbiter.wipo.int/domains/decisions/html/2002/d2002-0297.html>
- Following on the footsteps of rocker Peter Frampton's domain name victory, singer Van Morrison has recovered vanmorrison.com in a UDRP proceeding against an unofficial fan club.
<http://www.silicon.com/bin/bladerunner?30REQEVENT=&REQAUTH=21046&14001REQSUB=REQINT1=54398>
- Following in the footsteps of Bruce Springsteen and Sting, Ted Turner loses UDRP dispute over tedturner.com.
<http://arbiter.wipo.int/domains/decisions/html/2002/d2002-0251.html>
- Anti-choice activist registered numerous domain names that use the names of media outlets and pro-choice organizations, including NOWaborts.com, WashingtonPostMurders.com, etc. Warning: These sites apparently contain some fairly gruesome abortion photos.
<http://www.suntimes.com/output/news/cst-nws-abort11.html>

PATENTS

- A patent claim term takes on its ordinary meaning unless an intent to limit or expand the meaning is "manifest." Thus, a patent claim is not limited to the single embodiment disclosed in the patent, but to any embodiment that falls within the scope of the claim.
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/B1DAD7CB899279D785256BEA005DB151?OpenDo](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/B1DAD7CB899279D785256BEA005DB151?OpenDo)

cument

- Handspring and Palm's hand-held devices do not violate ATM maker's patent, according to a U.S. District Court judge.
http://news.com.com/2100-1040-943372.html?tag=fd_top
- For the first time in 20 years, a case involving interpretation of patent law has been transferred to the 11th Circuit Court of Appeals. As *I-Law* readers will recall, the transfer was mandated by the recent U.S. Supreme Court decision holding that the Federal Circuit Court of Appeals (which normally has exclusive jurisdiction over patent appeals) does not have jurisdiction over a non-patent case because the defendant filed a patent counterclaim.
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/EE2332A073B5C03E85256BF700478345?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/EE2332A073B5C03E85256BF700478345?OpenDocument)
- The United States Patent and Trademark Office is planning on raising patent fees by over 19%. It just has to get Congress to agree.
http://www.uspto.gov/web/offices/com/strat2001/21stCSP_Legislation.pdf
- Alleged infringer has the burden of proving that the patent prosecution history changed a patent claim's ordinary meaning.
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/9AB9D7C08E4A24D485256BF7004783A3?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/9AB9D7C08E4A24D485256BF7004783A3?OpenDocument)

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