

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

- It's not too late to register for the **National Business Institute's "Protecting and Enforcing Intellectual Property Rights in Arizona"** on July 19, where **Ray Harris, Rich Oney and Steve Winkelman** will be faculty members. Please visit the link below for more details and to register for the program.

<http://www.nbi-sems.com/seminfo/nbi-moreinfo.asp?session-id=7068&usersession=0A15381C-81B9-45B8-B414-7859B571F2A9&Division=NBI#faculty>

ONLINE & E-COMMERCE ISSUES

- In an important and unprecedented decision, a Danish court has upheld a website's prohibition on deep-linking into a site without permission. If other courts follow, such a rule could transform the way the Internet operates.

<http://www.washingtonpost.com/wp-dyn/articles/A28232-2002Jul5.html>

<http://www.washingtonpost.com/wp-dyn/articles/A32718-2002Jul6.html>

<http://www.siliconvalley.com/mld/siliconvalley/news/editorial/3606498.htm>

- According to this article (which was published before the decision above was issued), more and more websites are demanding that those who deep-link to their sites must first obtain permission to do so.

http://news.com.com/2100-1023-941556.html?tag=fd_top

For example, NPR was trying to prohibit linking to its site without its permission.

<http://www.wired.com/news/business/0,1367,53355,00.html>

Some things reconsidered. However, NPR has changed its linking policy, dropping the requirement that permission be obtained before linking to the NPR website.

<http://www.wired.com/news/politics/0,1283,53543,00.html>

- The Librarian of Congress has issued his decision cutting the royalty rate webcasters must pay the recording industry for webcasting music online. Webcasters say the fee is still too high and will force many web casters out of business.

<http://www.ecommercetimes.com/perl/story/18330.html>

http://news.com.com/2100-1023-938037.html?tag=cd_mh

- FTC requires that search engines must make clear which search hits are paid advertisements.

<http://www.nandotimes.com/technology/story/451296p-3611360c.html>

<http://www.nytimes.com/2002/07/02/technology/02SEAR.html>

California court affirms lower court's decision that eBay is not liable for a user's sports memorabilia fraud.

<http://www.washingtonpost.com/wp-dyn/articles/A51795-2002Jun26.html>

- Spain passes law regulating Internet content.

<http://www.siliconvalley.com/mld/siliconvalley/news/editorial/3556967.htm>

- New report says "digital divide" is disappearing.

<http://www.washingtonpost.com/wp-dyn/articles/A63831-2002Jun28.html>

- Website that published DVD encryption-cracking software has decided not to appeal further the decision to prohibit the publication of the software.
<http://www.nandotimes.com/technology/story/455650p-3645830c.html>
- A class action suit has been filed arguing that new copy-protected CDs are defective.
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/5402B71B5B825DB885256BDD0066A726?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/5402B71B5B825DB885256BDD0066A726?OpenDocument)
- You never know what you will find on eBay. Apparently, a minor league hockey team is for sale and a \$2 million bid has been placed.
<http://www.washingtonpost.com/wp-dyn/articles/A64369-2002Jun28.html>
- The U.S. Senate won't allow laptops on the floor of the Senate for fear it might damage the historic furniture.
http://news.com.com/2100-1023-937245.html?tag=cd_mh

DEFAMATION, RIGHT OF PRIVACY, AND RIGHTS OF PUBLICITY

- In New York, you only have one year to sue (or be sued) for defamation published on the Internet. That time starts when the article is initially put on the website, and it does NOT start over each time the article is downloaded.
<http://www.nytimes.com/2002/07/04/technology/04PUBL.html>
- People who attend the annual Burning Man Festival sometimes do so in the buff. Despite their willingness to publicly show their privates, the naked people have now sued for invasion of privacy because a website is selling videos of them over the Internet.
<http://www.nytimes.com/2002/07/05/national/05VIDE.html>
- Because Princess Diana died, she has no right of publicity. The Ninth Circuit Court holds that Princess Diana has no right of publicity after her death because British law does not recognize such a right.
<http://caselaw.lp.findlaw.com/data2/circs/9th/0056217p.pdf>
- Another story on the Australian libel case that concerns jurisdiction over internet libel. What happens when content is posted in one country but libels someone in another country? Which country's libel law governs? How many countries? Will content providers be subject to multiple standards?
<http://www.washingtonpost.com/wp-dyn/articles/A5695-2002Jun18.html>

TRADEMARKS

- U.S. trademark application filings decreased 23% in 2001. This is the first time in a decade that the number of applications has decreased.
<http://www.law.com/servlet/ContentServer?pagename=OpenMarket/Xcelerate/View&c=LawArticle&cid=1024078860521&t=LawArticle>
- Another study confirms that trademark owners prevail in approximately 80% of UDRP proceedings.
<http://www.nytimes.com/2002/06/24/technology/24MARK.html>

- Proof of fame of a product mark, even when used in tandem with a famous house mark, may be established without consumer survey evidence. Evidence concerning sales, advertising and news media commentary was sufficient to sustain evidence of Bose's Acoustic Wave mark.
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/1E9FBD1C7517C9F485256BE20058F0E3?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/1E9FBD1C7517C9F485256BE20058F0E3?OpenDocument)

DOMAIN NAMES

- ICANN says it will be at least a year before more new domains are added.
<http://www.washingtonpost.com/wp-dyn/articles/A605-2002Jun17.html>
- Domain name reseller Go Daddy has won a court order stopping VeriSign from sending notices to Go Daddy's customers that say the customer's domain name is about to expire.
<http://news.com.com/2100-1023-937940.html>
- ICANN proposes its own reform, which would include a \$.25 fee for every domain name registered while removing public participation from the board.
<http://www.wired.com/news/politics/0,1283,53410,00.html>
<http://www.icann.org/committees/evol-reform/blueprint-20jun02.htm>
- There's no business like .biz. A new report indicates that 74% of registered .biz domain names contain no content. Moreover, 25% of the .biz domain names are registered by the same entity that registered the .com website.
<http://cyber.law.harvard.edu/tlds/001/>
- You can call me Nokia, or you can call me BMW or you can call me Sony.... The British domain .me.uk is available for people who want to register their personal names as domain names (similar to the .names domain). So British individuals, say John Cleese for example, could register JohnCleese.me.uk. The first dispute decision over a .me.uk domain name has been decided, and the person who claimed his nickname was "nokia" was not allowed to keep nokia.me.uk. Apparently, the adjudicator was persuaded by the fact that this person also seemed to believe that his nicknames included, BMW, NISSAN and SONY, as he had registered those .me.uk domain names as well.
http://www.demys.net/news/02_jun_24_nokia.htm
<http://www.nominet.net/drs/decisions/nokia-v-jawad.html>
- ICANN has floated two new proposals: (1) giving domain name owners a 30-day grace period for renewing their expired domain names; and (2) creating a waiting list for domain names that are not renewed.
http://news.com.com/2100-1023-939813.html?tag=fd_top
- One of the oldest domain name dispute continues: The sex.com case is now on appeal.
<http://www.wired.com/news/business/0,1367,53588,00.html>
- Reportedly, Ford has dropped its lawsuit over the domain name f**kGeneralMotors.com. As *I-Law* readers will recall, the domain name was registered by a party upset with General Motors, but the domain name was then linked to Ford's website. While the two automobile giants do not appear to be best friends, Ford felt the domain name sent the wrong message about its view of its competitors. The domain name registrant won in the lower court.
<http://www.2600.com/news/display.shtml?id=1225>

- Alanis Morissette has brought a cybersquatter lawsuit. There is no indication why the singer did not file a less expensive UDRP.
http://news.com.com/2100-1023-941320.html?tag=cd_mh
- The city of Stockholm has been trying (unsuccessfully) to obtain the stockholm.com domain name for years. Now a porn site has purchased the domain name and plans to show the "natural beauty and charm" of the city.
<http://australianit.news.com.au/articles/0,7204,4640600%5E15342%5E%5Enbv%5E15306-15319,00.html>

COPYRIGHTS

- Here is another article on the constitutionality of the extension of the copyright term by 20 years. It contains excerpts from the briefs filed for the U.S. Supreme Court.
<http://www.washingtonpost.com/wp-dyn/articles/A22075-2002Jul3.html>

PATENTS

- Oral testimony of prior public use is not sufficient evidence to invalidate a patent.
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/89A6B46311B831ED85256BD800742CB6?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/89A6B46311B831ED85256BD800742CB6?OpenDocument)
- USPTO is increasing its efforts to encourage electronic patent filings. The Office has awarded contracts to 5 companies that will help provide for electronic patent filings.
<http://news.com.com/2100-1017-937089.html>
- Judge invalidates patent for diarrhea medicine on the grounds that the improvements were obvious and added simply to stop competition from generic drug makers now that the original patent for the medicine's main ingredient was about to expire.
<http://biz.yahoo.com/law/020626/71459-4.html>

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