

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

- **David Gray** practices in the area of corporate and business law with significant experience in business organizations, including the formation, organization and conduct of business of corporations, partnerships, limited liability companies, professional corporations and professional limited liability companies, special agreements between owners, mergers, consolidations and liquidations, and contracts of all types relating to business organizations, health care providers, and other professional services. David also advises business clients in trademark and copyright issues, as well as assignments, transfers and agreements relating to intellectual property. He received his B.A. (1974) from the University of Notre Dame, and his J.D. (1984), with distinction, from the University of Arizona College of Law. He is a member of the State Bar of Arizona, the Pima County Bar Association, and the American Bar Association.

RECENT TERRORIST ATTACKS

- The Internet was originally designed by the military to allow computerized command and control systems to survive in time of nuclear war. The theory: Even if one part of the system was destroyed, other parts of the system would survive and run independently. While the terrorist attacks on New York and Washington, D.C. were not part of a nuclear war, the Internet faced its stiffest test ever, as hundreds of thousands of people inundated the web seeking information in the aftermath of the attack. While some news sites went down, the Internet system as a whole performed admirably.
<http://www.ecommercetimes.com/perl/story/13463.html>
- The long-running technology debate over the appropriate balance between privacy and security has taken on new context in the wake of the recent terrorist attacks.
<http://news.cnet.com/news/0-1005-200-7141812.html>
<http://www.wired.com/news/politics/0,1283,46747,00.html>
<http://www.wired.com/news/politics/0,1283,46784,00.html>
- Hackers want to strike back against the terrorists.
<http://www.newsbytes.com/news/01/170025.html>
- Arab and Muslim hate speech has dramatically increased, including on the web, in light of the recent terrorist attacks.
<http://www.wired.com/news/culture/0,1284,46778,00.html>
- eBay is banning (at least temporarily) sales of items related to the World Trade Center and Pentagon.
<http://www.nandotimes.com/technology/story/77470p-1085831c.html>

ONLINE & E-COMMERCE

- The California State Assembly has passed a law (not yet signed by the Governor) that prohibits employers monitoring employee e-mail, unless the company informs employees that it is company policy to do so. Ironically, providing notice of monitoring (rather than prohibiting it) is viewed as a step in favor of privacy protection.
<http://www.newsbytes.com/news/01/169603.html>

- The 18-month trend of taking the ".com" out of .com company names continues, in large part because of the down turn in the .com market.
<http://www.nandotimes.com/technology/story/70777p-1001521c.html>
<http://www.wired.com/news/business/0,1367,46403,00.html>
- According to a recent decision, people do not have a reasonable expectation of privacy when using their own telephone.
<http://www.usatoday.com/life/cyber/ccarch/2001-08-31-sinrod.htm>
- Michigan's legislature is seriously considering setting up a special cybercourt. Briefs would be filed online and appearances would be done by teleconference. The legislation was passed by a state House committee.
<http://www.wlns.com/Global/story.asp?S=362375&nav=0RbP>
- You know those really annoying pop-up ads that pop up behind your browser when surfing online? Here is an article about a "pop-under ad" that advertises a service that stops the "pop-under ads" from popping up.
http://slate.msn.com/moneybox/entries/01-09-05_114814.asp
- As reported in a previous issue of *I-Law*, federal administrators have used a computer program to monitor federal judges' and their staffs' Internet usage on the job. The Judicial Conference of the United States, the ultimate authority on the operations of federal courts, appears unlikely to allow their own computers to be monitored by court administrators and most likely will decide to remove this computer program.
<http://www.tnr.com/091001/rosen091001.html>
<http://www.newsbytes.com/news/01/169922.html>
- The Department of Justice has decided not to seek the break up of Microsoft.
<http://www.nytimes.com/2001/09/07/technology/07SOFT.html>
<http://www.zdnet.com/zdnn/stories/news/0,4586,5096672,00.html?chkpt=zdnp1tp02>
<http://www.nandotimes.com/technology/story/74570p-1051612c.html>
- To avoid anti-trust problems arising from the merger of Hewlett Packard and Compaq, the merged company may be forced to give up having the computers display the COMPAQ trademark and let a third-party use the brand name.
<http://www.law.com/cgi-bin/gx.cgi/AppLogic+FTContentServer?pagename=law/View&c=Article&cid=ZZZFQ5LS9RC&live=true&cst=1&pc=3&pa=0&s=News&Explgnore=true&showsummary=0>

What will the law look like 1,000 years from now? While clearly the world and technology will be entirely different, it's not so clear the law will be. Really? How do we know? Many of the principles from Roman law from one or two thousand years ago are still in place. Take a look at one prognosticator's crystal ball.

<http://www.nytimes.com/2001/09/07/technology/07CYBERLAW.html>

TRADEMARKS

The USPTO is considering mandatory electronic filing for all trademark documents for which the USPTO has an electronic form.

<http://www.inta.org/news/efiling.shtml>

- As the global marketplace gets smaller and smaller, an old trademark problem gets bigger and bigger: gray market goods. Gray market goods are legitimate trademarked products made for sale in other countries that find their way back to their home country (often at a lower price). A group of high tech companies are banding together to stop gray goods, expressing concern that consumers may receive products that won't have tech support or a valid warranty or that may not work in the home country.

<http://www.siliconvalley.com/docs/news/tech/076259.htm>

DOMAIN NAMES

The public can now register .info domain names.

<http://www.newsbytes.com/news/01/169933.html>

- The .name domain will go live in December.
<http://www.wired.com/news/business/0,1367,46609,00.html>
- ICANN will proceed to finalize contracts with the domain name registrars for .museum, .coop, and .aero, but has decided to delay the contract for .pro for now.
<http://www.nandotimes.com/technology/story/76673p-1075425c.html>
- WIPO has issued a new report recommending that new rules be issued for handling disputes over certain types of domain names including geographical, personal name, ethnic groups, pharmaceutical name and trade name domain names. The first link is to the report. The following links are to media coverage.
<http://wipo2.wipo.int/process2/report/index.html>
<http://www.nandotimes.com/technology/story/72616p-1023762c.html>
<http://www.nytimes.com/reuters/technology/tech-tech-internet.html>
- The .biz registry has been charging applicants for domain names that have never been available. For example, biz.biz is on the ICANN/Registry reserve list which means no one can register it. Yet, NeuLevel, the company responsible for assigning .biz domain names, is letting people pay money to reserve that domain name.
<http://www.msnbc.com/news/624000.asp?0si=->
- A panel of UDRP arbitrators did not agree with a typosquatter's argument that web surfers actually enjoy looking for misspelled domain names and he further argued that web surfers expect those domain names to be owned by unrelated third-parties.
<http://www.newsbytes.com/news/01/169890.html>
- A new lawsuit has challenged the constitutionality of UDRP proceedings on the grounds that they lack meaningful judicial review.
<http://www.newsbytes.com/news/01/169824.html>

COPYRIGHTS

- Be sure to register Release 2.0. To sue for copyright infringement, one must have the allegedly infringed work registered with the U.S. Copyright Office. This requirement has been highlighted by a recent court decision that held that it is not sufficient to have registered the original work if you are claiming infringement of a derivative work. The derivative work itself must be registered.
<http://www.law.com/cgi-bin/gx.cgi/AppLogic+FTContentServer?pagename=law/View&c=Article&cid=ZZZWAKOGCRC&live=true&cst=1&pc=3&pa=0&s=News&Explgnore=true&showsummary=0>
- Supporters of the Russian programmer who was arrested for presenting a paper on how to crack DVD encryption technology have declared war on the Digital Millennium Copyright Act.
<http://www.zdnet.com/zdnn/stories/news/0,4586,5096421,00.html?chkpt=zdnp1tp02>
<http://www.law.com/cgi-bin/gx.cgi/AppLogic+FTContentServer?pagename=law/View&c=Article&cid=ZZZ8SJ161RC&live=true&cst=1&pc=3&pa=0&s=News&Explgnore=true&showsummary=0>

Interestingly, following the arrest of the Russian programmer for violation of the DMCA, Russia has warned its computer programmers about the dangers of traveling to the U.S.

<http://www.siliconvalley.com/docs/news/tech/046890.htm>

- Critics vehemently disagree with the U.S. Copyright Office's conclusion that the DMCA need not be changed.
http://www.salon.com/tech/feature/2001/08/31/dmca_report/index.html
- The complexity of cyberlaw that is created by the merger of technology, jurisdiction and legal issues is explored in an article that discusses a recent Canadian decision that held the posting of information on a website created an implied license for others to copy for their personal use.
<http://news.globetechnology.com/servlet/GAMArticleHTMLTemplate?tf=globetechnology/TGAM/NewsFullStory.html&cf=globetechnology/tech-config-neutral&slug=TWGEIS&date=20010906>
- eBay held not liable for sale of copyright infringing products on the auction website.
http://www.internetnews.com/ec-news/article/0,,4_880291,00.html
<http://www.nandotimes.com/technology/story/74512p-1049013c.html>
- The recording industry has released "copy-protected" music CDs in the U.S. to see whether consumers will object. One consumer has objected, claiming it is an unfair business practice for the CDs not to contain a label indicating the change. To see the story, follow the link and page down to *DeLise v. Fahrenheit Entertainment*.
<http://www.law.wayne.edu/litman/newdev.html>

PATENTS

- The U.S. Solicitor General has filed a brief with the U.S. Supreme Court on behalf of the federal government urging that the *FESTO* decision went too far and asked the Court to vacate the Federal Circuit's decision that severely limited the patent doctrine of equivalents.
<http://www.law.com/cgi-bin/gx.cgi/AppLogic+FTContentServer?pagename=law/View&c=Article&cid=ZZZJGRS12RC&live=true&cst=1&pc=3&pa=0&s=News&Explgnore=true&showsummary=0>

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