

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

- **Ray Harris, Rich Oney and Steve Winkelman** will be faculty members at the **National Business Institute's "Protecting and Enforcing Intellectual Property Rights in Arizona"** on July 19. 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>

PATENTS

- Just a week after rejecting the Federal Circuit's interpretation of the doctrine of equivalents, the U.S. Supreme Court has overturned another Federal Circuit decision. This time, the Supreme Court held that the Federal Circuit does not have jurisdiction over non-patent lawsuits, simply because the defendant has brought a patent infringement counterclaim.
<http://www.law.com/servlet/ContentServer?pagename=OpenMarket/Xcelerate/View&c=LawArticle&cid=1022954285185&t=LawArticle>
- *The New York Times* analyzes the Festo decision.
<http://www.nytimes.com/2002/06/03/business/03PATE.html>

ONLINE & E-COMMERCE ISSUES

- Matchmaker website operator does not get ISP immunity for content posted on its website because operator itself was a content provider who created member profiles.
[http://ipcenter.bna.com/PIC/ippic.nsf/\(Index\)/41E86E543A89090D85256BD100656097?OpenDocument](http://ipcenter.bna.com/PIC/ippic.nsf/(Index)/41E86E543A89090D85256BD100656097?OpenDocument)
- The federal law requiring libraries to use filtering software to protect children has been held unconstitutional. The court reasoned that the law violated the First Amendment as the software blocked protected free speech while often times not even blocking out the sort of obscene material targeted.
<http://news.com.com/2100-1023-929577.html>
- The Danish linking lawsuit is in the news again, as previously reported in *I-Law*.
<http://www.washingtonpost.com/wp-dyn/articles/A24159-2002Jun10.html>
- AOL's Clickwrap forum selection clause is held enforceable.
<http://pacer.mad.uscourts.gov/dc/opinions/collings/pdf/aolsj.pdf>
- Despite many online transactions taking place in Maryland, a Maryland court refuses to exercise jurisdiction in online dispute.
<http://www.usatoday.com/life/cyber/ccarch/2002/06/13/sinrod.htm>
- Be careful about to whom you send e-mails and what you put in them. Britain's Foreign Office learned this lesson the hard way when it accidentally e-mailed secret details of Prince Charles's trip to Poland to a business man.
<http://news.com.com/2110-1023-934703.html?tag=cdsht>
- Europe bans spam.
<http://www.theregister.co.uk/content/6/25515.html>
- Despite Microsoft's claims to the contrary, the EU is investigating whether Microsoft's .net passport system violates the EU's data privacy directive.
<http://news.com.com/2100-1001-934946.html>
- Although consumers say they worry about privacy, their behavior says otherwise. A recent survey shows that 70% of the public says they are concerned about online privacy, but only 42% bother to read website privacy policies. Moreover, 82% are willing to provide personal information in exchange for a "chance" to win \$100.

<http://www.nandotimes.com/technology/story/434496p-3475646c.html>

- Why won't doctors e-mail with patients? Fear of medical malpractice liability, lack of time, and lack of privacy are just some of the reasons. Here is an interesting article that discusses the question.
<http://www.nytimes.com/2002/06/06/technology/circuits/06DOCS.html>

TRADEMARKS

- Citing a steep drop off in trademark applications, the U.S. Trademark office is laying off one-third of its examining attorneys (approximately 135 lawyers).
<http://www.washingtonpost.com/wp-dyn/articles/A30107-2002May29.html>
- A new USPTO rule provides that certain documents sent by express mail will no longer get the mailing date (rather than the receipt date) as the date of filing. The rule will apply to those documents that can be filed electronically.
<http://www.uspto.gov/web/offices/com/sol/notices/expmailrule2.pdf>
- The owner of cheesygraphics.com must remove the word "velveeda" from its website even though the author of the site routinely refers to himself as "King Velveeda." Kraft obtained an injunction on the theory that "King Velveeda's" use of "velveeda" diluted the company's famous trademark. Below is a link to "King Velveeda's" website in which he describes his view of the lawsuit (please note that while the linked page below does not contain any porn, the site is reputed to be a porn site).
http://www.cheesygraphics.com/castle_hassle_home.html

DOMAIN NAMES

- The U.S. Senate held a hearing on ICANN with many Senators suggesting more government oversight is needed. Commentators agree. Here are links to stories about the hearing and to commentators views.
<http://www.wired.com/news/business/0,1367,53159,00.html>
<http://www.washingtonpost.com/wp-dyn/articles/A40540-2002Jun12.html>
<http://www.theglobeandmail.com/servlet/ArticleNews/printarticle/gam/20020613/TWGEIS>
<http://www.nytimes.com/2002/06/17/technology/17NECO.html>
- ICANN will soon be deciding who gets to run the .org domain.
<http://www.nytimes.com/2002/06/15/technology/15NET.html>
- In contradiction to several earlier decisions, a UDRP arbitrator has now held that the failure to use a domain name does not constitute evidence of bad faith in a UDRP proceeding.
<http://arbiter.wipo.int/domains/decisions/html/2002/d2002-0301.html>
- PricewaterhouseCoopers has been unable to obtain PWC.com through a UDRP proceeding.
<http://news.zdnet.co.uk/story/0,,t269-s2110965,00.html>
- The Reverend Jerry Falwell loses in a UDRP over jerryfalwell.com. The arbitration panel held that Reverend Falwell did not demonstrate trademark rights in his name.
<http://www.newsadvance.com/MGB0R9QH52D.html>

- The fact that you register a generic term as a domain name does not always prevent someone else from successfully claiming ownership of the domain name in a UDRP, as the registrants of virtualhospital.info and paint.biz recently learned.
<http://www.arbforum.com/domains/decisions/112596.htm>
<http://arbiter.wipo.int/domains/decisions/html/2002/d2002-0349.html>

COPYRIGHTS

- Posting on the Internet copyrighted building codes that were drafted by a private entity, but later adopted by several cities, is not copyright infringement because the code became part of the public domain when adopted.
<http://laws.lp.findlaw.com/getcase/5th/case/9940632cv2&exact=1>
- The battle between the movie and recording industries and content providers and consumer electronics makers continues. Consumer electronics makers have sued for a court declaration permitting owners of ReplayTV devices to copy television programs, delete ads, and move recorded content to other devices.
<http://www.washingtonpost.com/wp-dyn/articles/A9087-2002Jun6.html>
- In a related story, the judge who held that the makers of ReplayTV must track customers' use of the product has reversed her decision.
<http://news.com.com/2100-1040-930548.html>

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