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RIGHTHAVEN LITIGATION CAMPAIGN DEFEATED AGAIN BY DOCTRINE OF FAIR USE

by
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Since March 2010, Righthaven, LLC has filed 276 lawsuits against small defendants posting news articles on their websites. Righthaven, LLC is a Las Vegas based copyright enforcer that works with newspaper companies to protect original content, but it does not actually own the copyrights on that content. Several courts have already dismissed Righthaven lawsuits for lack of standing, and Righthaven is perceived as shaking down small defendants for settlements.

Under the Fair Use Doctrine, copyright infringement lawsuits can be dismissed depending on four factors: (1) the nature of the copyrighted work, (2) the purpose and character of the defendant's use of the work, (3) the amount of the work used, and (4) the affect on the overall value of the work.

In January, 2011, Righthaven, LLC brought a federal complaint against the Center for Intercultural Organizing, and Oregon based non-profit immigration rights group, for posting on its website a copy of an entire article previously published in Las Vegas Review-Journal. The Court dismissed Righthaven's complaint for two reasons. First, the court found that Righthaven was not properly assigned the copyright from the Review-Journal and therefore may not pursue litigation to protect that copyright. Secondly, the court focused on Righthaven's use of the copyrighted work and determined that Righthaven was only using the work to drive litigation and for no other purpose. The Court expressed its distaste for Righthaven's aggressive litigation tactics, such as suing defendants without first sending warning letters.

On July 27, 2011, U.S. District Judge James Mahan dismissed a long-running suit by Righthaven alleging that Pahrump Life infringed Righthaven's copyright when it posted without authorization a news



story originally published in the Review-Journal. Once again, this lawsuit was dismissed because the Court determined that Righthaven did not have standing to bring the lawsuit. Copyright law requires that a plaintiff must have “exclusive rights” to the material that they seek to protect.

At least four judges have found that the bare right to sue found under the Righthaven copyright assignment agreement is not enough to support the exclusive ownership right required by the statute.

Further, the Court commented on the waste of judicial resources by Righthaven in lawsuits that they could never win due to the defense of the Fair Use Doctrine. Because there is no market for copyrights owned by Righthaven, because Righthaven only uses the copyright to bring litigation, there can be no market harm to the copyrights alleged to be harmed by infringement.

Based on these comments, it appears that the Court is sending a message to Righthaven that it is likely to dismiss other Righthaven lawsuits on procedural issues in order to clear the Court’s docket of frivolous litigation.

Righthaven’s lawyers argue that the lawsuits are necessary to deter rampant online infringement of original newspaper articles and content. But critics of Righthaven’s mass litigation practice contend that Righthaven is intending to chill free speech and that the lawsuits are nothing more than legal shakedowns intended to earn Righthaven and its clients’ settlement money from content that no longer has any market value.

Righthaven is now facing counterclaims from the Democratic Underground and other defendants over what they characterize as Righthaven’s fraudulent lawsuits, and the State Bar of Nevada is investigating Righthaven for the unauthorized practice of law.

Just recently, Righthaven was fined \$5,000 by the Court for covering up the fact that the parent company of the Review-Journal, a company called Stephen’s Media, owns membership interest in Righthaven and is entitled to receive 50% of the net proceeds of any copyright litigation/settlement. Judge Hunt stated that Righthaven,



which isn't licensed to practice law in Nevada, has been acting like a contingency fee law firm in its arrangement with Stephens Media.

Righthaven has never sued Google or any direct competitors of ad dollars to the Review-Journal or the Denver Post. Its arguments that copyright infringement cause newspaper bankruptcies and adversely affect the newspaper industry's overall revenue are not credible. In fact, the Newspaper Association of America reported on July 12, 2011 that newspapers in the second quarter of this year continued to grow their share of the Internet audience. Newspaper websites in the second quarter attracted more than 110 million unique visitors per month—64.6 percent of adult Internet users. Those numbers are up from the first quarter of 108 million and 63.9 percent, respectively. Monthly page views for newspapers in the second quarter averaged a staggering 4.2 billion.

The most notable issue about the Righthaven lawsuits is that no other major newspaper organization is following its lead. Other newspapers are simply not concerned about copyright infringement on the internet posed by the reposting of articles and original newspaper content. Accordingly, it appears that the Righthaven lawsuit campaign seems to be a means to develop revenue in an unorthodox manner while at the same time clogging the already overburdened federal justice system with meritless litigation.

To learn more about the Righthaven lawsuits or keep up with the daily movements of various cases, go to:

<http://www.righthavenlawsuits.com/articles.html>