STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
Dana Eiser and the Lowcountry 9/12 Project, Plaintiffs, v. Righthaven LLC; SI Content Monitor LLC; Net Sortie Systems, LLC; Steve Gibson; Shawn Mangano; Steven Ganim; Anne Pieroni; John Charles Coons; Joseph Chu; Ikenna-Phillip Odunze; Edward Fenno; Fenno Law Firm, LLC; The Denver Post, LLC; MediaNews Group Inc.; Stephens Media LLC; Mark Hinueber; Sherman Frederick; and one or more John Does, Defendants.	Civil Action No. 2011-CP-10-4146 **COMPLAINT** **(Jury Trial Demanded)**

The Plaintiffs, complaining of the Defendants, would respectfully show unto this Court the following, which Plaintiffs are informed and believe to be true:

GENERAL FACTUAL ALLEGATIONS

1. This case relates arises from a nationwide lawsuit syndication scam run by Righthaven LLC, a Las Vegas company whose sole business is filing lawsuits despite the fact that it is not a law firm, has suffered no damages from the allegations in any of its complaints, and does not have the legal right to file the actions it files.

2. Billing itself as "The Nation's Pre-Eminent Copyright Enforcer," Righthaven's business model is not just based on barratry—Righthaven's business model *is* barratry.

3. Righthaven does not own newspapers or media websites or employ writers, photographers, or artists to generate content. Righthaven scans the Internet for

individuals who have republished material generated by others, purchases a sham assignment of the right to sue, then files a lawsuit alleging Righthaven's copyright has been infringed.

4. Righthaven files these suits without apparent regard for the legal merits of the claims. Righthaven has filed a variety of cases that would be downright frivolous even if brought by the true copyright holders. All of this is done despite the fact that Righthaven has suffered no damages whatsoever from the alleged infringement.

5. Righthaven often preys on persons who are unable to afford to defend themselves so as to extract cost-of-defense settlements from its victims. In aid of this effort, Righthaven's complaints make outlandish and unlawful demands. In dealing with unrepresented persons, Righthaven's employees often make false and misleading claims to attempt to induce payments by duress.

6. Righthaven has now brought its "business model" to South Carolina, filing a no-warning, poorly-investigated lawsuit against Dana Eiser over a blog post that republished material from The Denver Post. That lawsuit is presently pending in federal district court and is captioned Righthaven v. Eiser, No. 2:10-CV-3075-RMG (D.S.C. Charleston Division). The central problem with that lawsuit—like many other Righthaven suits—is that Mrs. Eiser simply did not author or post the material in question. Righthaven's profit margins do not apparently allow it to properly investigate lawsuits prior to filing them.

7. Mrs. Eiser is presently defending that action in federal district court and does not bring copyright issues before this court. Instead, this case seeks to establish that Righthaven is a business now operating in South Carolina whose business model—barratry—is barred by state law and constitutes an unfair trade practice. Barratry is a

crime[1] in South Carolina and therefore violates the public policy of this state. Because Righthaven's sole enterprise violates public policy, it is an unfair trade practice.

8. This case involves several other matters also relating to Righthaven, its associates, and their conduct vis-à-vis the Plaintiffs. Though obvious from the causes of action pled—all of which arise exclusively under South Carolina state law—Plaintiffs expressly disclaim that they seek such relief from this Court as would allow it to be deprived of jurisdiction under 28 U.S.C. § 1331. Righthaven is in the business of buying lawsuits for copyright infringement. While copyright infringement issues are properly for the federal district court, the "business of buying lawsuits" matter is fundamentally a state law concern.

PARTIES, VENUE, AND JURISDICTION

9. Plaintiff Dana Eiser is a resident of Dorchester County, South Carolina.

10. Plaintiff Lowcountry 9/12 Project is a South Carolina nonprofit corporation.

11. Plaintiff Eiser is the current president of the Lowcountry 9/12 Project and has been president at all times relevant to this action.

12. Defendant Righthaven LLC is a Nevada limited liability company.

13. Defendant SI Content Monitor LLC is an Arkansas limited liability company. SI Content Monitor is a member of Righthaven and has a direct, pecuniary interest in the outcome of Righthaven litigation. See Certificate of Interested Parties filed by Righthaven in Righthaven v. Brommell, No. 2:11-cv-724-RLH-RJJ (D.Nev.). SI Content Monitor is owned by persons associated with the Stephens family, the namesake of

[1] Plaintiffs in no way intend to threaten criminal prosecution for advantage in a civil proceeding. The fact that barratry is a criminal act under the South Carolina Code is highly relevant to this case because a business model based entirely on a crime is very likely to be an unfair trade practice.

Stephens Media LLC.

14. Defendant Net Sortie Systems, LLC is a Nevada limited liability company. Net Sortie Systems, LLC is a member of Righthaven and has a direct, pecuniary interest in the outcome of Righthaven litigation. Id. Net Sortie Systems, LLC is owned and managed by Defendant Steven Gibson.

15. Together, Defendants SI Content Monitor LLC and Net Sortie Systems, LLC own 100% of Righthaven.

16. Defendant Steve Gibson is a Nevada resident and attorney. Gibson is the CEO and manager of Righthaven. Gibson has worked on Righthaven v. Eiser.

17. Defendant Shawn Mangano is a Nevada resident and attorney. Mangano frequently represents Righthaven and has provided notice of intent to seek pro hac vice admission to South Carolina District Court so as to prosecute Righthaven v. Eiser.

18. Defendant Steven Ganim is a Nevada resident and a Florida attorney. Ganim is an employee of Righthaven. Ganim has worked on Righthaven v. Eiser.

19. Defendant Anne Pieroni is a Nevada resident and attorney. Pieroni is a former employee of Righthaven. Pieroni has worked on Righthaven v. Eiser.

20. Defendant John Charles Coons is a Nevada resident and attorney. Coons is a former employee of Righthaven.

21. Defendant Joseph Chu is a Nevada resident and attorney. Chu is a former employee of Righthaven.

22. Defendant Ikenna-Phillip Odonze is a Nevada resident and attorney. Odonze is a former employee of Righthaven. Odonze has worked on Righthaven v. Eiser.

23. Defendant Edward Fenno is a South Carolina attorney residing in Charleston

County. Defendant Fenno is the owner and manager of Defendant Fenno Law Firm, LLC.

24. Defendant Fenno Law Firm, LLC is a South Carolina limited liability company whose principle place of business is in Charleston County. Fenno and his firm represented Righthaven in Righthaven v. Eiser until withdrawing on May 18, 2011.

25. Defendant The Denver Post, LLC is a Colorado limited liability company.

26. Defendant MediaNews Group Inc. is a Colorado for-profit corporation.

27. Defendants The Denver Post, LLC and MediaNews Group Inc. operate The Denver Post newspaper in Denver, Colorado and will be referred to as "The Denver Post Defendants."

28. Defendant Stephens Media LLC operates the Las Vegas Review-Journal newspaper in Las Vegas, Nevada.

29. Defendant Mark Hinueber is a Nevada resident and attorney. Hinueber is Vice President and General Counsel of Stephens Media LLC.

30. Defendant Sherman Frederick was at times relevant to this action a CEO and columnist for Defendant Stephens Media LLC. Defendant Frederick is no longer CEO but remains employed as a consultant and columnist for Defendant Stephens Media LLC.

31. One or more John Doe Defendants are included in this action whose identities are not presently known to Plaintiffs. This category includes but is not necessarily limited to persons directly associated with the Righthaven scheme and persons with management responsibilities over Righthaven associates. Plaintiffs will seek leave to amend the Complaint in this action as the identities of such individuals come to light.

32. The Court of Common Pleas has jurisdiction over this action pursuant to Titles 14 and 15 of the South Carolina Code of Laws.

33. Venue is proper in Charleston County under Title 15 Chapter 7 of the South Carolina Code of Laws due to the residences and principal places of business of the South Carolina defendants and because the most substantial part of the alleged acts or omissions giving rise to the causes of action pled herein occurred in Charleston County.

VEIL PIERCING

34. Plaintiffs seek to pierce the veil against Righthaven LLC and, by extension, SI Content Monitor LLC and Net Sortie Systems, LLC, and impose personal liability on the owners of those entities.

35. Upon information and belief, these entities are grossly undercapitalized for the purposes of the undertaking involved, given the following facts:

36. Righthaven's business model involves filing poorly researched lawsuits in attempts to leverage cost-of-defense settlements.

37. Righthaven is also facing a variety of counterclaims for money damages, including one seeking class action certification for 57 lawsuits Righthaven filed in Colorado. Def. Answer and Counterclaims and Class Action Counterclaim, Righthaven v. Buzzfeed, Inc., No. 1:11-cv-811-JLK (D.Colo.).

38. Righthaven observers estimate Righthaven's earnings so far to be approximately $486,500. See http://www.righthavenlawsuits.com.

39. Upon information and belief, Righthaven has employed approximately four lawyers during most of its approximately 15 month existence.

40. The median salary for a Las Vegas attorney is approximately $87,450 according to PayScale.com. If Righthaven pays its attorneys at the median, its salary overhead alone can be estimated at $437,250.

41. Many attorneys have ceased their associations with Righthaven for undisclosed reasons, possibly involving pay.

42. One such attorney, Defendant Fenno, potentially cited a failure of Righthaven to pay for his services as a basis for dissociating. In his motion to withdraw as Righthaven's counsel in Righthaven v. Eiser, Fenno referenced Rule 1.16(b)(5) of the South Carolina Rules of Professional Conduct: "Withdrawal is permissible [where] 'the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's service or payment. . . .'" Motion for Withdrawal, Righthaven v. Eiser, 2:10-cv-3075-RMG-JDA.

43. The lawsuits Righthaven files—275 so far—are all, to this point, copyright infringement lawsuits. The trouble with barratry based on poorly-investigated copyright infringement suits is that the Copyright Act allows an award of attorney's fees not just to a successful plaintiff but to the prevailing party. 17 U.S.C. § 505. Based on this statute, defendants who have successfully defended Righthaven actions are now seeking attorneys fees from Righthaven. E.g., Righthaven v. Democratic Underground, 2:10-cv-1356-RLH-RJJ (D.Nev.) (case involving obviously successful fair use defense where website commenter posted four paragraphs out of a 34 page story and linked back to the story); Righthaven v. Hill, 1:11-cv-211-JLK (D.Colo) (case against an autistic, disabled gentleman named Brian D. Hill). Plaintiff Eiser certainly intends to seek an attorney's fee award should she prevail in Righthaven v. Eiser, which—given that she had nothing to do with the alleged infringement—seems likely.

44. Were Righthaven a bona fide copyright holder and its suits well-investigated and grounded in fact and law, Righthaven would have nothing to fear from its cases. However, Righthaven's shoot-first-ask-questions-later approach will very likely prove

financially fatal as defendants, including Plaintiff Eiser, begin receiving attorney's fee awards.

45. Righthaven's barratry business model is marginally profitable with regard to successful cases, i.e. settlements, but is horrendously undercapitalized when liabilities are taken into account.

46. In fact, Righthaven's corporate setup—an LLC owned by two LLCs—appears entirely predicated upon the possibility that it will be subject to large awards, of attorney's fees or other damages, that it does not intend to pay. This is a hallmark of undercapitalization.

47. One reason Righthaven operates the way it does, as opposed to functioning as a legitimate law firm prosecuting cases in its clients' own names, is because its clients seek to insulate themselves from the potential liability that would result if they were to bring these suits themselves.

48. As it turns out, filing copyright infringement lawsuits is a losing proposition if each case has to be properly investigated. Because Righthaven's clients are understandably not interested in losing money on litigation, Righthaven steps in to file cases for them without proper investigation. The idea is that Righthaven will take the risk of adverse consequences, even while Righthaven's clients retain the authority to dictate who Righthaven sues.

49. "One fact which all the authorities consider significant in the inquiry, and particularly so in the case of the one-man or closely-held corporation, is whether the corporation was grossly undercapitalized for the purposes of the corporate undertaking." Hunting v. Elders, 359 S.C. 271, 597 S.E.2d 803 (Ct. App. 2004) (citation and quotation

omitted).

50. Stripping away the layers of corporate lawyering, Righthaven is most certainly a "one-man or closely-held" company, with Defendant Gibson at the center.

51. If Plaintiffs conclusions about Righthaven's financial situation are correct, even granting the fact that these conclusions are based on circumstantial evidence, Righthaven's horrendous undercapitalization and equitable issues associated with leaving innocent, prevailing defendants' attorney's fees unpaid justifies veil-piercing against Righthaven LLC and its two LLC members.

FOR A FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT

52. Plaintiff seek a declaratory judgment against all Defendants as follows:

53. Righthaven is a business presently operating in South Carolina.

54. Righthaven's business model exclusively consists of (1) looking for potential infringements of copyrights held by its clients; (2) purchasing what Righthaven claims to be assignments of potentially infringed copyrights from its client; and (3) filing lawsuits alleging Righthaven's copyright has been infringed.

55. Righthaven does not have any interest in the purportedly assigned copyright because Righthaven is not in the business of selling media.

56. Accordingly, Righthaven's business model constitutes barratry in violation of S.C. Code § 16-17-10(2)(a). This statute states: "Any person who shall [w]ilfully bring, prosecute or maintain an action, at law or in equity, in any court having jurisdiction within this State and has no direct or substantial interest in the relief thereby sought [s]hall be guilty of the crime of barratry."

57. Righthaven has brought, prosecuted, and maintained an action, Righthaven v.

Eiser, seeking legal and equitable relief, in the United States District Court for the District of South Carolina, Charleston Division, a court having jurisdiction within this state. Righthaven has no direct or substantial interest in the relief sought in Righthaven v. Eiser because Righthaven's sole business is the bringing of lawsuits. Righthaven is vindicating no wrong it suffered.

58. Righthaven's business model likewise constitutes barratry in violation of S.C. Code § 16-17-10(2)(d). This statute states: "Any person who shall [w]ilfully bring, prosecute or maintain an action, at law or in equity, in any court having jurisdiction within this State and directly or indirectly receives any money or other thing of value to induce the bringing of such action [s]hall be guilty of the crime of barratry."

59. Righthaven as a business has received money from investors, what purports to be an assignment of copyright, and, upon information and belief, other compensation to induce it to file the actions it files, including but not limited to Righthaven v. Eiser.

60. The actions of MediaNews Group Inc. and, possibly, The Denver Post, LLC and other Defendants also constitute barratry in violation of S.C. Code § 16-17-10(1)(a). This statute states: "Any person who shall [w]ilfully solicit or incite another to bring, prosecute or maintain an action, at law or in equity, in any court having jurisdiction within this State and has no direct or substantial interest in the relief thereby sought [s]hall be guilty of the crime of barratry."

61. With regard to Righthaven's filing of Righthaven v. Eiser, MediaNews Group Inc. and, possibly, The Denver Post, LLC and other Defendants have done exactly what is proscribed by S.C. Code § 16-17-10(1)(a).

62. The actions of MediaNews Group Inc. and, possibly, The Denver Post, LLC and

other Defendants further constitute barratry in violation of S.C. Code § 16-17-10(1)(d-e). This statute states: "Any person who shall [w]ilfully solicit or incite another to bring, prosecute or maintain an action, at law or in equity, in any court having jurisdiction within this State and directly or indirectly pays or promises to pay any money or other thing of value to, or the obligations of, any party to such an action or directly or indirectly pays or promises to pay any money or other thing of value to any other person to bring about the prosecution or maintenance of such an action [s]hall be guilty of the crime of barratry."

63. With regard to Righthaven's filing of Righthaven v. Eiser, MediaNews Group Inc. and, possibly, The Denver Post, LLC and other Defendants have done exactly what is proscribed by S.C. Code § 16-17-10(1)(d-e).

64. Finally, that the Righthaven scheme constitutes a form of lawsuit syndication that is against South Carolina public policy.

FOR A SECOND CAUSE OF ACTION
UNFAIR TRADE PRACTICES

65. This cause of action is asserted by both Plaintiffs against all Defendants.

66. Defendant Righthaven has engaged in barratry, syndication of lawsuits in violation of public policy, and other improper activities described herein.

67. Defendant Righthaven's business model depends entirely on Righthaven's commission of barratry and lawsuit syndication in violation of public policy.

68. Because barratry is a criminal act in South Carolina and therefore violates public policy, a business whose business model depends entirely on barratry commits unfair trade practices.

69. Likewise, as lawsuit syndication is a violation of South Carolina public policy, a

business whose business model depends entirely on lawsuit syndication commits unfair trade practices.

70. In this case, Righthaven's barratry, syndication of lawsuits in violation of public policy, and/or other improper activities are trade practices in violation of the South Carolina Unfair Trade Practices Act, including but not limited to S.C. Code § 39-5-20.

71. Righthaven's actions are a willful violation of the South Carolina Unfair Trade Practices Act, including but not limited to S.C. Code § 39-5-20, as "willful violation" is defined by S.C. Code § 39-5-140(d).

72. Plaintiffs have suffered reputational, financial, and other harm caused by the Defendants' intentional commission of unfair trade practices.

73. Plaintiffs seek all damages and other such recoveries available under the law from a party intentionally committing unfair trade practices, including but not limited to statutory treble damages and attorney's fees.

74. This claim is asserted against all Defendants as joint tortfeasors of Righthaven for the following reasons:

75. Defendants SI Content Monitor LLC; Net Sortie Systems, LLC; Steve Gibson; Shawn Mangano; Steven Ganim; Anne Pieroni; John Charles Coons; Joseph Chu; Ikenna-Phillip Odunze; Edward Fenno; and Fenno Law Firm, LLC are or were owners, members, managers, or agents of Righthaven who have participated in the Righthaven scheme. Under South Carolina law, entities that participate in an unfair trade practice are jointly and severally liable.

76. Edward Fenno and Fenno Law Firm, LLC, are somewhat unique. Upon information and belief, the Fenno Defendants were hired as outside counsel for the

Righthaven v. Eiser matter sometime around November 19, 2010, the date the Righthaven applied to the U.S. Copyright Office for a copyright of the Rosen Letter.

77. Looking at the facts and circumstances surrounding Righthaven just before Fenno's retention, the circumstantial evidence strongly suggests a sinister intent.

78. Upon information and belief, Righthaven has included an attorney's fee demand in every one of the 275 cases it has filed thus far.

79. On August 26, 2010, Righthaven received what is, so far as Plaintiffs can determine, the first bit of pushback on the attorney's fee demand from U.S. Magistrate Judge Robert Johnston. Judge Johnston, holding a hearing in Righthaven v. Wong, 2:10-cv-00856-LRH-RJJ (D.Nev.), questioned the propriety of awarding "full freight" attorney's fees to Righthaven for work done by in-house counsel. See "Judge questions Righthaven over R-J copyright suit costs" by Steve Green, Las Vegas Sun, August 26, 2010, attached as Exhibit 1.

80. Such questions continued. On October 29, 2010, the Electronic Frontier Foundation and other attorneys representing the defendant in Righthaven v. DiBiase, 2:10-cv-1343-RLH-PAL (D.Nev), filed an extremely persuasive brief in support of a motion to dismiss Righthaven's attorney's fee demand.

81. Plaintiffs submit that it is no coincidence that just as Righthaven realized it would almost certainly be barred from attorney's fee awards due to all of its lawyers being in-house counsel, Righthaven began focusing on outside counsel to prosecute matters.

82. Upon information and belief, the Fenno Defendants were hired to prosecute the Righthaven v. Eiser mere days or weeks after the filing of the EFF brief.

83. Upon information and belief, Righthaven has not hired a single in-house attorney

since the EFF brief was filed in Righthaven v. DiBiase.

84. Upon information and belief, Righthaven has retained at least three firms as outside counsel since the EFF brief was filed in Righthaven v. DiBiase, including Defendant Fenno Law Firm.

85. Upon information and belief, Fenno Defendants and Righthaven conspired to set up an arrangement where Fenno Defendants would perform work as outside counsel that Righthaven had previously done in-house for the sole purpose of enhancing its settlement leverage by demanding attorney's fee awards that were nominally recoverable.

86. Further supporting these factual allegations, Fenno Defendants were not mere local counsel for Righthaven. Fenno Defendants were the only named counsel for Righthaven in Righthaven v. Eiser until withdrawing from that action. After the Fenno Defendants departure, Righthaven retained attorney Edward Bertele of Charleston. However, Bertele's first and only action in the case thus far, outside of filing a notice of appearance, is to seek consent for pro hac vice admission of Defendant Mangano.

87. That Bertele would merely serve as local counsel while Fenno would serve as lead counsel—in fact, Righthaven's only counsel—is strong evidence that Fenno's role in Righthaven was extensive and that Fenno's position as outside counsel was intended as nothing more than as device to skirt around the unrecoverability of in-house attorney's fees.

88. Had Fenno been mere local counsel for Righthaven, as Bertele presently is, he would not be a party to this action. However, the circumstantial evidence available to Plaintiffs strongly supports a conclusion that Righthaven's hiring of Fenno was done for the express purpose of increasing settlement leverage and recoverable attorney's fees

against hapless Righthaven defendants that emerged in South Carolina, including Plaintiff Eiser.

89. Upon information and belief, Fenno was a willing and knowledgeable participant in the Righthaven scheme in South Carolina. Fenno's role appears to have gone far beyond that of mere attorney into that of active co-conspirator, joint tortfeasor, and agent of Righthaven personally participating in the unfair trade practices. Fenno was at all times operating as an agent of Defendant Fenno Law Firm. Accordingly, the Fenno Defendants are jointly and severally liable for unfair trade practices committed by Righthaven.

90. The Denver Post, LLC and MediaNews Group Inc. conspired with Righthaven vis-à-vis its operations in South Carolina by entering into the (sham) assignment of the right to sue for infringements of the Rosen Letter.

91. Further, The Denver Post, LLC and/or MediaNews Group Inc. have the exclusive right to determine who Righthaven sues. Plaintiffs make this factual allegation on the basis of statements made by Defendant Hinueber on behalf of Defendant Stephens Media LLC and Paul Smith, President of WEHCO Newspapers. Stephens Media and WEHCO Newspapers are two major Righthaven clients.

92. In an article appearing in the Arkansas Democrat-Gazette, Exhibit 2 to the Complaint, Hinueber is quoted as saying "I can tell Righthaven not to sue somebody." In the same article, Smith is quoted as saying that if Righthaven discovers someone has violated WEHCO's copyright, "it would be [WEHCO's] decision whether or not to move forward with it[.]"

93. Given that Stephens Media LLC, WEHCO Newspapers, Inc., and MediaNews

Group Inc. are Righthaven's three major clients, it follows that MediaNews Group Inc. (and/or The Denver Post, LLC) must also have the right to decide if and when—and who—Righthaven sues.

94. Accordingly, MediaNews Group Inc. and/or The Denver Post, LLC authorized Righthaven to file Righthaven v. Eiser and, therefore, are joint tortfeasors with regard to Righthaven's commission of unfair trade practices in South Carolina.

95. Defendants Stephens Media LLC, Mark Hinueber, and Sherman Frederick are likewise joint tortfeasors. All three have, upon information and belief, been involved with Righthaven since its formation and remain involved at present. Upon information and belief, all have participated in Righthaven's barratry and unfair trade practices.

FOR A THIRD CAUSE OF ACTION
DEFAMATION

96. This cause of action is asserted exclusively by Plaintiff Eiser against Defendants Gibson and, vicariously, Righthaven.

97. Gibson gave an interview to CNN and Fortune Magazine that was published on January 6, 2011. The interview, titled "Righthaven Q&A: C&D letters don't stop infringement," is still available online at http://tech.fortune.cnn.com/2011/01/06/righthaven-qa-cd-letters-dont-stop-infringement/. It is also attached as Exhibit 3.

98. Upon information and belief, this interview was given after Righthaven v. Eiser had been filed on December 2, 2010.

99. In the interview, Gibson refers to Righthaven defendants as "the infringement community" that "was caught . . . not obeying the law" and is "a community of thieves."

100. These statements are false and defamatory with respect to Plaintiff Eiser, who was widely known as a Righthaven defendant when these statements were published. Mrs.

Eiser's case received even more attention than the usual Righthaven cases because it was the first case brought outside of Nevada or Colorado, the locations of Righthaven's major client publications the Las Vegas Review-Journal and The Denver Post.

101. Gibson published these statements to CNN and Fortune Magazine and intended them to be published worldwide by CNN and Fortune Magazine, which they were.

102. No privilege attached to the making of the statements. While the statements referenced defendants to a lawsuit (persons Righthaven had "caught"), they were not made in connection with any sort of judicial or legal process, i.e. in open court or in a pleading or settlement demand, etc.

103. Gibson is at fault for the publication.

104. The statements involve claims of copyright infringement, breaking the law, and thievery and are therefore actionable irrespective of special harm.

105. At all times relevant to this cause of action, Gibson was acting in the course and scope of his position with Righthaven.

106. Accordingly, Righthaven is vicariously liable for Gibson's comments to the same extent as Gibson.

107. Plaintiff Eiser seeks all damages and other such recoveries available under the law from a party committing defamation.

FOR A FOURTH CAUSE OF ACTION

BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

108. This cause of action is asserted exclusively by Plaintiff Lowcountry 9/12 Group against Defendants The Denver Post, LLC and MediaNews Group Inc., the "Denver Post Defendants."

109. An agent of Plaintiff Lowcountry 9/12 Group, acting in the course and scope of

that agency relationship, visited The Denver Post website, http://www.denverpost.com, read the Rosen Letter that is the subject of Righthaven v. Eiser, and posted it on the Lowcountry 9/12 Group blog.

110. Visitors to The Denver Post website are customers of The Denver Post Defendants.

111. Accordingly, The Denver Post Defendants owe their customers the implied duty of good faith and fair dealing.

112. When an agent of the Lowcountry 9/12 Group visited The Denver Post website, The Denver Post Defendants owed to the Lowcountry 9/12 Group the duty of good faith and fair dealing.

113. Every page of The Denver Post website displays this notice: "This material may not be published, broadcast, rewritten or redistributed for any commercial purpose." This notice leads customers of The Denver Post to believe that they may indeed use material for noncommercial purposes.

114. The Lowcountry 9/12 Group is a noncommercial, nonprofit entity. The Lowcountry 9/12 Group's blog, at http://lowcountry912.wordpress.com/, does not sell advertising and never has. The noncommercial nature of the Lowcountry 9/12 Group is immediately ascertainable from a visit to its website.

115. The Denver Post Defendants, after discovering the Lowcountry 9/12 Group's blog displayed the Rosen Letter, never attempted to communicate to the Lowcountry 9/12 Group that the notice on The Denver Post website was misleading and contrary to The Denver Post Defendants' own position.

116. Further, The Denver Post Defendants take a variety of steps to actively encourage

users to share material on The Denver Post website, including but not limited to providing electronic tools to enable sharing of material in a variety of ways.

117. These actions give rise to a reasonable expectation on the part of The Denver Post website customers that noncommercial sharing of material is acceptable to and encouraged by The Denver Post Defendants.

118. After learning that the Lowcountry 9/12 Group blog had posted an article from The Denver Post, instead of operating in good faith and fair dealing by contacting the Lowcountry 9/12 Group and asking that the article be removed, the Denver Post Defendants instead arranged for a third party to sue the President of the Lowcountry 9/12 Group.

119. The Denver Post Defendants could have easily determined that the Lowcountry 9/12 Group in no way intended to harm The Denver Post by its posting. The posting gave full credit to The Denver Post and included a link back to the story on The Denver Post website. Regardless of whether the Lowcountry 9/12 Group's posting of the article constitutes actionable copyright infringement, no reasonable person could have believed the Lowcountry 9/12 Group was operating in bad faith.

120. However far the duty of good faith and fair dealing goes, it must clearly go this far: a business cannot lead—or mislead—a customer to believe he or she may do something, then arrange to have the customer sued without warning when they do the "something" in question. And it does not matter what the "something" is.

121. Further, a business in a superior position of knowledge about its industry has an obligation under the duty of good faith and fair dealing to recognize that its customers are not in a similar position. The Denver Post Defendants are in the newspaper business and

are allegedly familiar with intellectual property law. The Denver Post Defendants are likewise well aware that the vast majority of their customers are not at all familiar with intellectual property law. The Denver Post Defendants have an obligation under the duty of good faith and fair dealing not to exploit this position of superior knowledge to the detriment of their customers who unintentionally violate The Denver Post Defendants' rights, especially those who do so in a clearly de minimis fashion.

122. Nothing in this cause of action or elsewhere in this Complaint depends on an interpretation of copyright law from this Court. In fact, for the purposes of this cause of action, Plaintiffs do not object to the Court assuming arguendo that the posting of the Rosen Letter was copyright infringement. This cause of action has nothing to do with the nature of the right allegedly infringed by the customer. Instead, this cause of action rises and falls based entirely on basic principles of good faith and fair dealing as they relate to how a business can and cannot vindicates its rights—copyright or otherwise—against its customers.

123. Plaintiff Lowcountry 9/12 Group has suffered reputational, financial, and other harm caused by The Denver Post Defendants' breach of the duty of good faith and fair dealing.

124. Plaintiff Lowcountry 9/12 Group seeks all damages and other such recoveries available under the law from a party breaching the duty of good faith and fair dealing.

FOR A FIFTH CAUSE OF ACTION
BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING ACCOMPANIED BY A FRAUDULENT ACT

125. This cause of action is asserted exclusively by Plaintiff Lowcountry 9/12 Group against The Denver Post Defendants.

126. In addition to the material pled in support of the breach of the duty of good faith and fair dealing, The Denver Post Defendants committed fraudulent acts accompanying the breach.

127. The Denver Post Defendants used software to surreptitiously insert a code on material copied and pasted from The Denver Post website.

128. For example, when an agent of the Lowcountry 9/12 Group copied the Rosen Letter from The Denver Post and pasted it, the following text was inserted automatically by The Denver Post's software: "Read more: Rosen: A letter to the Tea Partyers – The Denver Post http://www.denverpost.com/opinion/ci_16147229#ixzz10NYc7ACn".

129. The first portion, i.e. "Read more: Rosen: A letter to the Tea Partyers – The Denver Post," indicates to a reasonable person that The Denver Post is aware the text has been copied and pasted and simply wishes to insert a link back to the article on The Denver Post's website.

130. Not so. In fact, upon information and belief, that text is inserted merely as a Trojan horse. The real reason for the text is so that it can insert the characters appearing after the pound sign, ixzz10NYc7ACn. This is a unique per-customer code generated to allow The Denver Post to associate a particular pasted copy with a specific customer's IP address for the purpose of identifying defendants for prosecution—and persecution—by Righthaven.

131. All of this is done without any notice to The Denver Post's customers. In fact, the "Read more" text appears to be inserted only to give the impression that the customer performing the copy-paste is doing nothing wrong, when in reality it is merely cover for the Trojan horse tracking code that The Denver Post will later use to assist Righthaven in

litigation against the customer.

132. The Denver Post's software could easily be configured to insert "Notice: You are violating The Denver Post's copyright." Instead, the software tricks unknowing users into believing they have done nothing wrong while simultaneously helping Righthaven sue them later.

133. This is a fraudulent act accompanying The Denver Post Defendants' breach of the duty of good faith and fair dealing.

134. Plaintiff Lowcountry 9/12 Group has suffered reputational, financial, and other harm caused by The Denver Post Defendants' breach of the duty of good faith and fair dealing accompanied by a fraudulent act.

135. Plaintiff Lowcountry 9/12 Group seeks all damages and other such recoveries available under the law from a party breaching the duty of good faith and fair dealing accompanied by a fraudulent act.

FOR A SIXTH CAUSE OF ACTION
TORTIOUS INTERFERENCE

136. This cause of action is asserted exclusively by Plaintiff Lowcountry 9/12 Group against Righthaven.

137. As described herein, The Denver Post Defendants breached their duties of good faith and fair dealing with Plaintiff Lowcountry 9/12 Group.

138. Such breaches were procured by Righthaven without privilege and with full knowledge of Plaintiff Lowcountry 9/12 Group's status as a customer of The Denver Post Defendants.

139. Plaintiff Lowcountry 9/12 Group has suffered reputational, financial, and other harm caused by Righthaven's tortious interference.

140. Plaintiff Lowcountry 9/12 Group seeks all damages and other such recoveries available under the law from a party committing the tort of tortious interference.

FOR A SEVENTH CAUSE OF ACTION
CIVIL CONSPIRACY

141. This cause of action is asserted by both Plaintiffs against all Defendants.

142. To the extent Plaintiffs are unable to recover damages on other claims raised in this action, Plaintiffs assert the tort of civil conspiracy.

143. Plaintiffs have suffered special damages, including reputational, financial, and other harm caused by Defendants' civil conspiracy.

144. Plaintiffs seek all damages and other such recoveries available under the law from a party committing the tort of civil conspiracy.

FOR AN EIGHTH CAUSE OF ACTION
TEMPORARY INJUNCTION

145. The Plaintiffs seek a temporary injunction against Righthaven freezing Righthaven's assets pending the resolution of this case unless Righthaven refutes Plaintiffs' assertions of gross undercapitalization.

146. Righthaven has claimed in papers filed in Righthaven v. DiBiase, 2:10-cv-1343-RLH-PAL (D.Nev) that

> It cannot be disputed that federal courts are authorized to freeze assets in the aid of ultimately satisfying a judgment in a case. Such action may be taken pursuant to federal law or state law. The freezing or seizure of assets may be warranted where damages are sought in addition to equitable relief. In fact, a district court may freeze assets before trial to secure the payment of attorney's fees.

Righthaven LLC's Opposition to Thomas A. DiBiase's Motion to Dismiss at 6.

147. Given Righthaven's litigating position in Righthaven v. DiBiase, it appears equitable to Plaintiff that the Court should freeze Righthaven's assets so as to satisfy an

eventual award of attorney's fees unless Righthaven can refute Plaintiff's contention that it is grossly undercapitalized.

FOR A NINTH CAUSE OF ACTION
PERMANENT INJUNCTION

148. The Plaintiffs seek a permanent injunction against all Defendants barring them from engaging in the unfair trade practices of barratry and syndication of lawsuits within the territorial boundaries of the State of South Carolina.

OTHER MATTERS

149. With respect to the foregoing, any and all inconsistent material is pled in the alternative. Such inconsistent material may—or may not—be specifically designated as such.

150. Factual allegations appearing anywhere herein are incorporated into each cause of action. To the extent material appearing in one portion of this pleading is applicable to another portion of this pleading and not inconsistent, the material is to be deemed incorporated therein.

151. To the extent material appearing herein is inconsistent with existing law, the Court is respectfully requested to allow good-faith argument for a change in the law.

152. All dates and times herein are approximate unless context clearly indicates an exact date or time is intended.

153. Any exhibits are incorporated herein by reference.

PRAYER FOR RELIEF

Wherefore, having fully pled the causes of action within the Complaint, the Plaintiffs demand a jury trial and pray for a judgment against the Defendants granting an award of damages, attorney's fees, costs, and other monies to the extent available under

law and such other relief as the Court deems to be just, equitable, and proper under the circumstances.

J. Todd Kincannon
THE KINCANNON FIRM
1329 Richland Street
Columbia, South Carolina 29201
Office: 877.992.6878
Fax: 888.704.2010
Email: Todd@TheKincannonFirm.com

THAD T. VIERS
COASTAL LAW LLC
1104 Oak Street
Myrtle Beach, South Carolina 29578
Office: 843.488.5000
Fax: 843.488.3701
Email: tviers@coastal-law.com

BILL CONNOR
HORGER AND CONNOR LLC
160 Centre Street
Orangeburg, South Carolina 29115
Office: 803.531.1700
Fax: 803.531.0160
Email: bconnor@horgerlaw.com

Attorneys for Plaintiff

June 13, 2011

Exhibit 1

Judge questions Righthaven over R-J copyright suit costs

By Steve Green

Las Vegas Sun

August 26, 2010

Las Vegas Sun
Courts:

Judge questions Righthaven over R-J copyright suit costs

Hearing in federal court brings first public comments from judge

By Steve Green (contact)

Thursday, Aug. 26, 2010 | 4:30 p.m.

A federal judge on Thursday questioned Las Vegas copyright enforcement company Righthaven LLC about the litigation costs it's expecting defendants to pay.

Righthaven since March has retroactively sued at least 103 website owners around North America after determining copyrights to Las Vegas Review-Journal stories were infringed on, and then obtaining the copyrights to those stories from the Review-Journal's owner Stephens Media LLC.

Righthaven is owned by two limited liability companies, each with 50 percent stakes. One of the LLCs is owned by Las Vegas attorney Steven Gibson, the other by members of Arkansas investment banking billionaire Warren Stephens' family. The Stephens family investments include Stephens Media and the Review-Journal.

Righthaven's lawsuits are typically filed against website operators and bloggers without Righthaven first trying to resolve the infringement issues out of court.

Righthaven says the suits are necessary to earn revenue for itself and to deter widespread online copyright infringement of newspaper stories.

But critics say the lawsuit campaign involves frivolous lawsuits and a shakedown campaign aimed at coercing settlements since Righthaven's settlement offers typically are less than the legal costs to fight the suits.

These charges -- denied by Righthaven -- have been made by defense attorneys as well as the freedom of speech advocacy group Electronic Frontier Foundation, which entered the fray Wednesday against Righthaven and which observers say is well staffed with expert copyright law attorneys.

A hearing Thursday in federal court in Las Vegas apparently was the first time one of the Nevada judges assigned to the Righthaven cases has commented publicly on them. None of the cases has reached a point where they've gone to trial or a judge has ruled on motions to dismiss.

Thursday's hearing, a telephone conference, was for one of Righthaven's earliest and most controversial cases: A suit against Allegra Wong of Boston, who published a noncommercial blog about cats, written from the point of view of cats. Her mistake was to post on her blog a Review-Journal story about a fire that killed some birds in Las Vegas -- it apparently was posted out of concern for the animals.

Critics, including a Los Angeles Times media writer, have suggested Righthaven went overboard in that case, given the nature of Wong's blog and the lack of any profit she could have earned by posting the Review-Journal story.

Wong, who isn't represented by an attorney, told the court in a letter that she gave the Review-Journal full credit and a link to the Review-Journal website, and that the story was removed from her blog after she learned she was being sued.

U.S. Magistrate Judge Robert Johnston asked Gibson and Wong on Thursday what could be done to settle the case.

Gibson noted media attention about the case and said he would be interested in settling with Wong immediately and in doing so would show "leniency" and "humaneness."

Gibson said Righthaven's costs in the case would likely total up to $1,800 including the court filing fee, an expedited copyright registration, costs to serve Wong, legal work and office overhead.

"That would be a low settlement for us," said Gibson, who typically demands damages of $75,000 and forfeiture of website names but has been known to settle for $5,000 or less and lets settling defendants keep their website names.

"It's a lot for me," Wong, 57, said of the $1,800, adding she's unemployed and receives financial support from a companion.

Upon learning of her situation, and despite "what we feel is clearly copyright infringement," Gibson said he would settle for less, but didn't name an amount. He did amend his statement about Righthaven's costs as likely coming in at $1,300 to $1,500 rather than the $1,800.

Johnston then asked about provisions in the copyright law allowing him to order damages of just $200 for unwillful infringement and for him to use discretion in awarding costs and fees.

"It sounds like this can be a lot less than four figures," Johnston said. But the judge didn't elaborate on whether the "less than four figures" comment referred to potential damages, or costs, or both.

Gibson, though, said he wouldn't concede that Wong's infringement was not willful.

"We don't believe the $200 number is applicable in these circumstances," he said.

Johnston then asked about the costs incurred by Righthaven, wondering if Righthaven could have avoided the $150 costs of service by a Boston constable by simply mailing the suit to Wong and asking her to voluntarily accept service that way.

Gibson acknowledged mailing lawsuits to defendants and asking them to accept service by mail is an option, but said efforts to locate Wong and her co-defendant, her son Emerson Wong, were unsuccessful prior to the filing of the suit.

Wong said she first learned she was being sued when someone from the media tried to communicate with her by placing a comment on her blog. That's how the Las Vegas Sun tried to contact her for comment after she was sued.

Since then, Wong said she has taken the blog down because of unwanted media attention including inquiries from the Los Angeles Times, the Boston Herald and a radio station in New Hampshire.

"I took the blog down several weeks ago because it is not worth it, to be contacted for interviews," she said.

"I received no letters and no phone calls from Righthaven," Wong said.

The judge also asked Gibson about the legal costs for Wong's suit, wondering what the rate per hour is for Righthaven's in-house attorneys.

Noting 103 suits have been filed in five months, Johnston said: "I would think it's pretty standardized by now" and later saying "they all look about the same to me."

Gibson noted circumstances are different in each case. Some of the cases involve jurisdictional issues for defendants not living in Nevada, and some involve direct postings by website operators like Wong while others involve third-party posters and these include different legal arguments.

Wong said she alone ran the blog, which her son had registered for her, causing Johnston to ask Gibson why her son was also named in the suit.

"So someone didn't research that one very well," Johnston said.

Gibson, though, said Emerson Wong is a valid defendant since he was the registrant, administrative contact, technical contact and billing contact of the Internet domain name allegrawong.com.

The judge asked Gibson about the hourly legal rate he would use in determining costs and Gibson said that's still being determined.

Johnston asked about the hourly rate for one of the Righthaven attorneys, whom the judge said is a 2007 UNLV law school graduate.

Gibson said the hourly rate for such an attorney at a private law firm would be $160 to $190, though in Righthaven's case that would be discounted because the attorney serves as in-house counsel.

In the end, the judge said he would schedule a confidential settlement conference by telephone in hopes that Righthaven can reach an agreement with Wong.

Separately, Righthaven has picked up a new client: WEHCO Media, a privately-owned company in Little Rock, Ark., that has 15 daily newspapers, 13 weekly newspapers and 13 cable television companies in Arkansas, Texas, Oklahoma, Missouri, Mississippi and Tennessee.

Its biggest papers include the Arkansas Democrat-Gazette in Little Rock and the Chattanooga Times Free Press in Tennessee.

Paul Smith, president of WEHCO Newspapers Inc., said in a Democrat-Gazette story Thursday: "It's a pretty serious matter when someone takes your copy, information you've spent a lot of money to produce."

He added, according to the story: "I think you'll find many newspapers that [will] use [Righthaven] and other firms like this to try to stop people from pirating their information."

WEHCO says on its website that it has a partnership with Stephens Media in which the operations of their Northwest Arkansas publications were combined last November.

Also, Righthaven filed at least its 103rd copyright infringement lawsuit on Wednesday in federal court in Las Vegas.

The latest defendant is Josephine Franklin, whom Righthaven says has a blog called therightwingwarriors.wordpress.com. That site allegedly displayed without authorization a June 13 column by Review-Journal columnist Vin Suprynowicz called "Ask the tyrants why they're opposed." The Review-Journal and its columnist were credited for the information, court records show.

Franklin, whose Twitter account indicates she lives somewhere in California, couldn't immediately be reached for comment on the allegations.

Exhibit 2

Firm Holds Websites to the Law

By Toby Manthey

Arkansas Democrat-Gazette

August 26, 2010

Arkansas Democrat-Gazette - August 26, 2010

Firm Holds Websites to the Law

By Toby Manthey

A Las Vegas company, Righthaven LLC, is using a new approach to help news organizations protect their news content - filing lawsuits against website owners who post copyrighted articles without permission.

Media companies since the advent of the Internet have worried about others distributing and profiting from content without authorization, whether it be people downloading music or films, or reading entire articles on message boards.

Such practices deprive creators and businesses of revenue and recognition by discouraging sales of authorized products, and by sapping advertising revenue by diverting Internet traffic from legitimate websites, such firms say.

"There is an ongoing discussion in the United States about how to protect intellectual property that's produced not just by newspapers but by all content producers because the Web has changed the dynamic," said Mark Hinueber, vice president and general counsel for Las Vegas-based Stephens Media, a Righthaven client that owns several Arkansas publications, as well as the Las Vegas Review-Journal.

Steve Gibson, Righthaven's chief executive, wouldn't describe how Righthaven's business model works, although he said the company has software, "systems" and other technology that help it identify copyright infringement.

Hinueber said he assigns to Righthaven the copyright of a story that has been infringed upon. With ownership of the story, Righthaven files suit.

Righthaven typically makes money from settlements, said Gibson, who added that none of the cases have gone to a jury trial so far.

Righthaven often has demanded $75,000 of website owners who infringe upon a copyright and for the owner to transfer control of the site to Righthaven, lawsuits show. That's the approach it used in a July 20 suit against thearmedcitizen.com, which features stories of people who have been saved by using guns to defend themselves.

Other media also have tried to protect their copyrights on the Internet by suing people who misappropriate content, including people who illegally download music files. The Recording Industry Association of America has sued more than 35,000 people over such violations, the Wall Street Journal has reported. The association has discontinued the lawsuit effort, which it says on its website was to teach fans about the law, the consequences of breaking it and about

what sites they can legally download music from.

The association cites an estimate by the Institute for Policy Innovation, a conservative think tank in Lewisville, Texas, saying music piracy worldwide cost $12.5 billion in economic losses annually and more than 71,000 jobs in the United States.

Gibson said the public is beginning to better understand that it can't use other people's content on the Internet without permission.

"Even if you give an attribution for it or a link to it, it doesn't mean it's no longer a copyright infringement," Gibson said.

Hinueber said "our folks are out there every day with blood, sweat and tears covering stories, and you don't have the right to take somebody else's intellectual property that they worked hard on." He later added: "Some guy in his bathrobe in his basement doesn't get the right to cut and paste our stories." WEHCO Media, which owns the Arkansas Democrat-Gazette, said it also intends to work with Righthaven.

Righthaven has filed about 100 lawsuits in federal court in Nevada since March, when it began initiating the suits. Defendants include people and companies outside that state.

In a July 13 request for leave to conduct discovery in one of its cases, Righthaven said "the public display" of copyrighted stories has the detrimental effect of diverting valuable Internet traffic away from "the original source of publication." Hinueber said, "We welcome people to take a look at it on our websites, but not to take it and sell Google ads around it." Righthaven touts its service as a way for newspapers to make money and protect their property. In one lawsuit, it cited a Pew Internet and American Life Project report that said three-quarters of news consumers get news "thanks to e-mails or posts on social media sites." Launce Rake, spokesman for the Progressive Leadership Alliance of Nevada, a liberal nonprofit, said his group and others weren't warned before they were sued by Righthaven.

"We ... would have appreciated the opportunity to correct any issues that might exist, absent a legal proceeding," Rake said.

Gibson has said that sending warning notices to website owners is expensive and not effective. The alliance ultimately reached a confidential settlement with Righthaven, Rake said.
A rival of the Las Vegas Review-Journal, the Las Vegas Sun, whose website contains more than 30 stories about Righthaven, wrote that Righthaven has been "widely pounded" in news stories and Internet forums "for suing mom-and-pop-type bloggers, nonprofit groups and special-interest websites." Newspapers in the past have typically requested that stories be removed from a site and replaced with links to a newspaper's site, the Sun noted.

The news staff of the Sun competes with the staff of Stephens' Las Vegas Review-Journal even though its print edition is distributed as a package with the Review-Journal as part of a joint-operating agreement, a business structure that allows competing newspapers in a town to share advertising and other business functions. The Sun's print edition is eight pages on weekdays, and

more stories are posted online than in the print version, said Tom Gorman, the newspaper's senior editor for print.

Sherman Frederick, the president of Stephens Media and publisher of the Review-Journal, in a column that ran in the July edition of Editor & Publisher, a trade journal for the newspaper industry, wrote that "it is our primary hope that Righthaven will stop people from stealing our stuff. It is our secondary hope, if Righthaven shows continued success, that it will find other clients looking for a solution to the theft of copyrighted material." Paul Smith, president of WEHCO Newspapers, Inc., said, "It's a pretty serious matter when someone takes your copy, information you've spent a lot of money to produce." He added: "I think you'll find many newspapers that [will] use [Righthaven] and other firms like this to try to stop people from pirating their information." Frederick said the Stephens "grubstaked" - advanced money to - and contracted with Righthaven. Hinueber said the investment in Righthaven was made by a company affiliated with the Stephens family.

If Righthaven discovers someone has violated WEHCO's copyright, Smith said, "it would be [WEHCO's] decision whether or not to move forward with it," such as if the newspaper didn't want to pursue a case against a charitable organization.

"In most cases, if someone has taken our content and put it up on their website or used it in a print publication without our permission, at this point I would say that there's a very good chance that we would tell [Righthaven] to go forward with whatever legal action they needed to take to stop this," Smith said.

Hinueber said the approach of Righthaven and Stephens is evolving.

"We're starting to look at the individual sites a little more closely than when we first started," Hinueber said. "I can tell Righthaven not to sue somebody." So far, he said, he hasn't done that much, "but I have to be cognizant of who the defendant is - if it's a church or a school someplace or some kid and his high school paper. We're getting more sensitive all the time to these issues." Gibson added that he'd like to think there's "a humane side to Righthaven." "We have reached some settlements that are significantly less in dollar amount than some others," Gibson said. "And we take those things into consideration as to how sophisticated they were and how culpable they were." Majorwager.com, Inc., of Canada, a sports-betting site sued by Righthaven for using Stephens Media stories, said in court documents that Righthaven's suit "is arguably frivolous and nothing more than a thinly disguised shakedown." Righthaven wants to "extract a settlement" and knows the expense of defending against the suit will "far outweigh the value of this case," it argued.

Majorwager argued in court documents that the stories were posted by a third party.

Wired.com, a technology news website, described Righthaven as "borrowing a page from patent trolls." A patent troll is a company or person who buys patents for the purpose of suing others who may be infringing upon it, rather than for using the patent to create a product.

Smith said WEHCO would share in whatever settlement Righthaven obtains.

Smith said he knew of no previous instances in which the company had sued someone for posting a story online. Many violations in the past went unnoticed by the company, he said.

"That's part of the appeal of this," Smith said. "They've got ways to track this." Gibson said Righthaven is "as much a technology company as anything," because it offers a solution for "systematically identifying" possible copyright infringement. He declined to say how the company does that, other than to say it is "proprietary technology" and that there are systems and software that do so. Hinueber said Stephens provides Righthaven with a feed of locally produced copy, and Righthaven scours the Web for infringements.

So far, Gibson said, the company is profitable, but he wouldn't say what the size of any of its settlements have been.

"We're not engaging in settlements in a manner that will mean that we can't continue to do what we're doing," Gibson said.

Copyright law allows for the "fair use" of some copyrighted content, but that's limited to purposes such as news reporting, teaching and criticism. Factors used to judge whether the use is "fair" include the amount of content used and whether the use is for nonprofit or commercial purposes.

Hinueber said, "We have a little statement that says: `We love links.' If you want to post a headline and the first paragraph and a link to our story, we're happy with that. You'll never hear from us. And if you want to take a paragraph or two from one of our stories and want to comment on it and criticize it, fine. ... That's fair use." Hinueber acknowledged that by suing people who like and post their stories, newspapers could anger their fans.

But often, he said, "these websites are not in your marketplace. They're not really your fans. They're coming in on a one-time or two-time basis and taking the stories to relate to whatever it is they're selling Google ads around."

Exhibit 3

Righthaven Q&A: C&D letters don't stop infringement

By John Patrick Pullen

CNNMoney

January 6, 2011

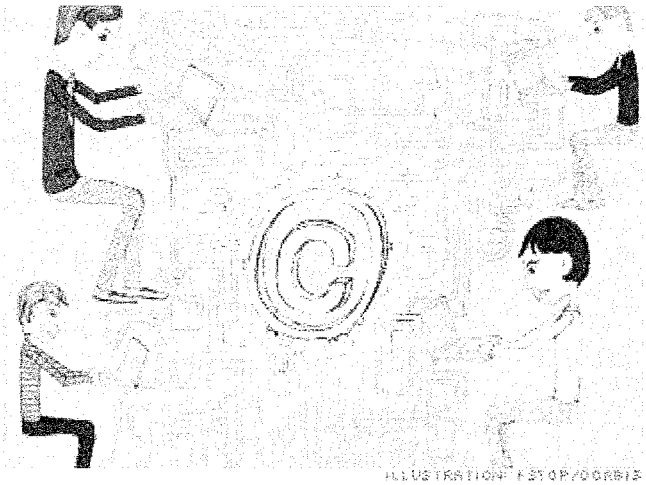
Righthaven Q&A: C&D letters don't stop infringement

comments

January 6, 2011: 12:39 PM ET

Steven Gibson, founder of Righthaven, spoke with *Fortune* for our story on his work in copyright lawsuits. Below, an edited excerpt of our interview with him.

Interview by John Patrick Pullen, contributor



Fortune: In the column from May 2010 where _Review-Journal_ writer Sherman Frederick described new arrangements with Righthaven, he called it a technology firm. How is Righthaven a technology firm?

Gibson: Sherman Frederick does not speak for us, and we did not ghostwrite that column. I've never met him.

Righthaven deploys technology to ascertain infringements and reproductions. Righthaven is a company that is very forward looking in understanding that the economy of the next several decades will become further developed as an information-based economy, therefore the assets that will be be created will be protect by copyright.

"If you operate a website (liberal or otherwise) and don't know what "fair use" is in the context of American copyright and Constitutional law, then I suggest you talk to your copyright lawyer and find out." That's a quote from Frederick's column. But fair use is open

to interpretation. Would it be fair to say that your lawsuits are actively refining that interpretation for the digital age?

That's a great question. Yes, I believe that theres no question that the fair use debate is a function of case law and on various facts that arise for court ajudication and jury consideration with respect for fair use. We are absolutely continuing to develop the law of copyright in the area in respect to fair use. There is very substantial guidance in the courts already that make it clear that the kinds of reproduction that Righthaven is addressing is not fair use.

Not surprisingly, you've met with a large amount of criticism on the Internet, but you are within your rights to protect your copyrights. Why haven't an equally vocal group of advocates spoken out on your behalf?

I receive numerous communications from the community represented by authors and publishers that are very supportive of us. You need to put things in perspective. What is the quality or the volume of the infringement community versus the creative community? There are generally more takers than creators.

Your work — merely because you published it on the Internet — they believe it's public domain. Unfortunately that is ignorance of the law. I think the more insightful commentary is whether the law needs to be changed. That's a legitimate debate.

Righthaven has been characterized as being "Copyright Trolls," a construct based off the "Patent Troll" scheme of companies buying up under-protected patents and then suing people who have utilized the technology. What's your response to this characterization?

If it's name calling without substance, it's not worthy of comment. If the comment is that we are taking a fresh approach to help stem the tide of infringement on the internet — and not intended to be merely pejorative — I don't have a problem with it. It's hard for me to reply to name calling, because it's not part of the debate of copyright protection or not.

Assuming that's not fair use, what is being really said? Is it a complaint that the infringement community was caught and is not obeying the law? Or is it that there is some enforcement out there, and that's not really a bad thing. If there's a community of thieves that complained vociferously and then called the people who were doing it bad names, then it is what it is.

Many of the organizations that you have brought suit against are small, sometimes even non-profits. How has it come to pass that so many of the companies have been small and relatively underfunded or unable to pay for legal defense?

There have been many organizations that are apparently well funded. We don't have the ability to determine the relative wealth when we file a lawsuit. There are many individuals that are wealthier than some companies, and there are many non-profits that have a funding stream that is substantial. I believe the 9th Circuit Court of appeals in the Worldwide Church of God case does not create an immunity against copyright infringement. If that were true, on a weekly basis, any nonprofit could copy *Fortune* magazine and distribute it. That doesnt make sense.

We believe that if a website publishes a work that is searchable, the fact that it may appear on a large media domain or smaller domain isn't neessarily going to redefine if it was redirected. If a viewer does a search, the topical story may first appear first on the non-profit rather than the original site. We don't discriminate in terms of infringement, whether the owner has a lot or a little money.

Frankly, if I thought about — it and I just did now — if Righthaven was after money only, logic would dictate that we would only going after people who had a lot of money. If pure greed was the only single motivator, we would potentially ignore those who don't have as much money as the others.

That said, we're a for profit company.... There's nothing in any legal doctrine that indicates that we do not have the right to operate in a manner that will have market constraints.

Why not do as most other media companies do, and ask that offenders take down the copyright material?

I disagree with the premise of your question, but for the sake of argument, let's assume the premise is true. You're asking why we don't do what someone else does.... I believe that there is a substantial growth of opinion and understanding that cease and decist letters are not effective in stemming the tide of infringement. If we as a society determine that copyright infringement is not something our society wants to see, and minimization is a societal good — if those premises are true — its fair to say there's little incentive for people who receive a cease and desist to stop illegally reproducing content. If you know that that you'll only get a letter....

Most, if not all, of your cases seek the maximum penalty of $150,000. Considering that some of the instances are excerpts, and the small size (or nonprofit status) of the typical defendent, why do you seek that much?

That's a technical legal matter. There are certain things I'm advised under counsel not to discuss.

You also seek forfeiture of the offender's domain name. This award is unprecedented in copyright law — you've even admitted as much in the DiBiase case: "Righthaven concedes that such relief is not authorized under the Copyright Act. That concession aside, Righthaven maintains the court is empowered to grant such relief under appropriate circumstances." Why does Righthaven feel they are entitled to the offender's domain name, and how many domain names has Righthaven been awarded to date?

Type your comment here.

It may very well be that is something that we continue to seek, depending on how the case evolves. For the most part, the vast majority of our cases have settled. For those who haven't, we're at the beginning stages of litigation, so the issue hasn't been settled yet. As we pursue default judgements, it will be very relevant.

Righthaven has filed a suit against the Drudge Report, alleging that they reposted a photograph from the Denver Post — one of your new clients. Would it be fair to say that Drudge is Righthaven's most well-known and funded legal opponent to date? It seems

uncharacteristic for Righthaven to go after such a high-profile media company — why the change?

I can't say that. It would be speculation on my behalf. You can look through our cases yourself and see.

In Righthaven v. the Center for Intercultural Organizing (CIO), the issue of harm has been brought up. How are these cases harming your company, as owners of the copyright?

I that the issue of harm is not technically concordant with the principles of the copyright act. The copyright owner is entitled to seek out the infringement and receive damage from that infringement. Righthaven is the copyright owner, and we are following the law with respect to the courts.

The best question is to look at the factors in the court's assessing of the the damages under particular circumstances. We have not had an opportunity yet to address those questions before any court. There will be a time to do so. The vast majority are settling and the rest are in the nascent realm of litigation.

In that case, you have objected to the friend of the court brief filed by Jason Schultz. In that brief, Schultz argued that the case should be dismissed under fair use, and that the *Review-Journal* encourages readers to share their stories. Why do you object to this brief, other than the arguments outlined in it?

We have given a detailed, well reasoned response to this. I don't have time to go over it again.

How is it different for EFF to be involved or inserting their involvement in these cases, than for Righthaven — who did not own the copyrights at the time of the infringements — to raise them in the first place?

There are remarkable differences between the two. You're talking about the difference between someone taking ownership and someone being in the position of legal counsel. Then you're talking about the difference of being hired as a legal counsel and then coming in as an amicus. Then you're talking about the difference between coordinating legal counsel and being legal counsel. [If discussed in detail], it would be a long and potentially out of context answer that I would give you.

But Schultz's argument raises an excellent point: In the Social Media era, where does sharing end, stealing begin, and fair use continue to apply? Isn't that what Righthaven is really fighting to define?

No. I think that for the most part, we were very, very concerned about professor Schultz brief in our cases. In our view they were looking at the context of, for example, is Google or Google-type entities copyright infringers for thumbnails — which is very different than where the defendant, in that case, publicly displayed 100 percent of an article. In the case that Professor Schultz is discussing, we don't believe there is a meaningful debate that someone can take an article 100 verbatim and replicate it on the internet. We don't believe that society, by way of the courts, is debating that question.

Society may be debating, tangentially, linking or cacheing — and many of those questions have been answered. What really is happening here is a realization of the infringement community that the days of merely receive a takedown letter are over, and that people will have a means to protect their ownership rights. Like you're taught in grammar school, it's not right to take someone else's work, whether it's cheating or plagiarizing. Whether the Internet permits you to do it, that doesn't make it right. If you read the case law on these issues... even the *Las Vegas Sun* agrees — no one out there thinks 100 percent taking is fair use. At some level, I applaud the *Las Vegas Sun* on that report. Might I add, they seem to be providing more balanced reporting on this issue of late.

Posted in: Copyright, Copyright Infringement, copyrightinfringement, Denver Post, Domain name, Electronic Frontier Foundation, Las Vegas Review-Journal, Lawsuit, Patent Troll, Stephens Media

More from Fortune Tech

Apple's share price inside the reality distortion field: $376.13

Apple's 5.7% drop last week was par for the course

Did Apple forget to secure the iCloud trademark?

VIEW ALL

Join the Conversation

Sort by Newest first

Subscribe by RSS

Login below to leave a comment

CNNMoney

Like