

Righthaven Affiliate Concedes That Brief Web Excerpt is Fair Use

Sheri Qualters

The National Law Journal | November 23, 2011



Laurence Pulgram

The latest chapter in the Nevada federal court saga launched by aggressive copyright plaintiff Righthaven LLC is a concession by its affiliate, *Las Vegas Review-Journal* publisher Stephens Media, that a brief news article excerpt in an online forum is not copyright infringement.

On Nov. 17, Stephens Media made the concession in its response to a summary judgment motion by Democratic Underground, a political Web site, in *Righthaven LLC v. Democratic Underground* the District of Nevada.

According to Democratic Underground's motion, Righthaven filed more than 200 copyright infringement cases in the District of Nevada claiming that Internet posters infringed copyrights assigned to it by Stephens Media. The cases sought statutory damages of up to \$150,000, seizures of domain names and attorney fees.

The case at hand began in August 2010, when Righthaven sued political discussion forum Democratic Underground and its principal, David Allen, for copyright infringement after a forum participant posted a five-sentence excerpt of a much longer news article copyrighted by Stephens Media.

With pro bono help from the Electronic Frontier Foundation and law firms that work on EFF cases, Democratic Underground filed counterclaims against Righthaven affiliate Stephens Media in September 2010.

In June 2011, District Judge Roger Hunt dismissed Righthaven for lack of standing. Hunt found that a strategic alliance agreement between Stephens Media and Righthaven did not grant Righthaven any of the exclusive rights under the 1976 Copyright Act required for standing to sue.

In July, Hunt ordered Righthaven to pay \$5,000 in sanctions for its "flagrant misrepresentation" to the court about its financial relationship with Stephens Media. Hunt denied Righthaven's motion to intervene in the case in August. The following month, Righthaven filed a notice of

appeal to the U.S. Court of Appeals for the 9th Circuit. Righthaven notified Hunt that it plans to appeal his dismissal of Righthaven's complaint for lack of subject matter jurisdiction and his ruling on Righthaven's attempted intervention.

On Oct. 24, Democratic Underground asked for summary judgment against counterclaim defendant Stephens Media. Democratic Underground argued that it had committed no "volitional act" that could underpin a claim for direct copyright infringement. It also claimed that the fair use doctrine, which allows limited use of copyrighted material without permission, mostly for creative, scholarship, teaching or similar uses, is a complete defense against the infringement claims at issue in the case.

Stephens Media stated in its filing that "it does not contest the substantive arguments presented by [Democratic Underground] on the issues of volitional act and fair use as applied to the material facts of this case."