

# EXHIBIT D

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 \(contact\)](#)

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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](http://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.

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