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## Is This the Birth of the Copyright Troll?

Joe Mullin

Corporate Counsel | August 16, 2010

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Steve Gibson

Steve Gibson is a bit taken aback by the attention his new business, copyright holding company Righthaven LLC, has begun to attract. He probably shouldn't be.

After all, when you file more than 100 infringement suits in just a few months—using a batch of newspaper copyrights to target, among others, political discussion boards, a major political party, and several of the newspaper's own sources—it's the sort of thing people tend to notice, and not always in a good way.

"It's unbelievable," says Gibson. "There appears to be a groundswell of interest in our business model." The business in question is based on an unusual shoot-first, ask-questions-later approach to IP litigation that appears to have little, if any, precedent.

Gibson founded Righthaven to file suits based on newspaper copyrights he has acquired. So far, nearly all of Righthaven's suits are based on copyrights originally owned by the Las Vegas Review-Journal, Nevada's largest newspaper. Armed with those copyrights—and using a proprietary technology that he won't discuss—Gibson searches the Web to find examples of infringement. When he finds what he's looking for, he sues. As far as he's concerned, he's doing something that copyright holders should have started doing a long time ago.

"Since the advent of the Internet, there has been an ocean of infringements of copyright that have gone unaddressed," Gibson says. "I've also seen that many media companies have been facing financial difficulties. I was inspired to pursue technological solutions and marry them with the available legal machinery."

Of course, there is other legal machinery available to do what Gibson is doing, and those named in Righthaven suits and their allies wonder why the company doesn't send Digital Millennium Copyright Act takedown notices or cease-and-desist letters before filing suit.

Gibson says those he sues haven't followed the DMCA's safe harbor provisions closely enough to gain the immunity from copyright suits that those provisions offer.

Many targets of the Righthaven lawsuits are political blogs and discussion boards, both liberal and conservative, which have posted content—nearly always entire articles—written by Review-Journal reporters.

In at least two cases, Righthaven has sued Review-Journal sources. For instance, the company sued Anthony Curtis—a Las Vegas gaming promoter whose website bills him as offering "the best information about Las Vegas and gambling"—after Curtis posted a [column](#) by R-J staffer Mike Weatherford online. (Weatherford had interviewed Curtis and wrote the column at issue based entirely on a survey conducted by Curtis's company.)

In a second suit, Righthaven filed a copyright claim against [Steve Stern](#), a former reporter who runs his own Las Vegas public relations firm and has served as a source for Review-Journal reporters.

Another unusual Righthaven target is the Nevada Democratic Party, which Gibson sued for posting an Review-Journal story on its website.

Mark Hinueber, general counsel of Review-Journal parent company Stephens Media, acknowledges that Stephens owns a small stake in Righthaven. But Hinueber insists that the prospect of making money is not what motivated the company to do business with Gibson.

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"My hope," says Hinueber, "is we will raise awareness of copyright laws, and have more links back to our site, and have less of our material infringed on the Internet."

Both Gibson and Hinueber agree that Righthaven's copyright enforcement campaign has some kinks to be worked out, especially when it comes to targeting the paper's own sources.

"It was a learning curve experience," Hinueber says of the suit against Curtis, which Righthaven eventually dropped. He notes that many websites ask permission before posting the paper's articles, and that he routinely grants such permissions. "I agree that we shouldn't sue sources. But it also reminds sources that just because we wrote about you, doesn't mean you can post the whole article on your website."

Despite what he sees as an occasional misstep, Gibson says he believes his unique IP enforcement push could help change the culture of the Internet when it comes to matters of copyright: "We've already seen communications to my company saying, 'What can I do to change my behavior, so I'm not disrespecting someone else's copyrights?'"

While nearly all the lawsuits filed so far have been based on Review-Journal copyrights, Gibson says he has additional clients and will be filing suits on behalf of those entities soon.

Of the suits he's already filed, Gibson says about 30 percent have settled. While the settlements are all confidential, Las Vegas Sun reporter Steve Green [reported this week](#) that the settlement amounts range from \$2,185 to \$5,000. None of the settlements have included a transfer of the defendant's domain name to Righthaven, a demand made in each of the initial Righthaven complaints.

Critics disagree that Righthaven could have any kind of positive effect and refer to the company as a "copyright troll" engaged in shaking down blogs. Stephen Bates, an assistant professor at UNLV's Hank Greenspun School of Journalism, calls the Righthaven suits "lawful but preposterous" and a "waste of judicial resources."

Greenberg Traurig IP partner Ian Ballon says Gibson's business model reflects the changing nature of the media landscape—and the efforts by those among the old guard to maintain some measure of control over what becomes of their content once it's published.

"Newspapers face a legitimate problem of infringement online," says Ballon. "The emergence of a copyright holding company likely reflects frustration on the part of some newspapers with online infringement." Ballon warns, however, that judges may not be inclined to award large fees in cases to a plaintiff who sues indiscriminately.

Miami attorney Marc Randazza, who helped the National Organization for the Reform of Marijuana Laws defend itself against a Righthaven suit, put it somewhat more colorfully in an interview with the Las Vegas Sun reporter. "It's like setting a hungry wild pig loose in a china shop to find a piece of bacon," Randazza said. "It'll get the bacon, but it will destroy everything else in the process."

For more on Righthaven, see:

- Coverage by Las Vegas Sun reporter Steve Green [here](#) and [here](#).
- This [story](#) from Wired News.
- Los Angeles Times media columnist James Rainey weighs in [here](#).

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