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18 **UNITED STATES DISTRICT COURT**
 19 **DISTRICT OF NEVADA**

20 RIGHTHAVEN, LLC,
 21 Plaintiff,
 22 v.
 23 GARRY NEWMAN,
 24 Defendant.

Case No.: **2:10-cv-01762-JCM -PAL**

**DECLARATION OF GARRY NEWMAN
 IN SUPPORT OF DEFENDANT'S
 MOTION TO DISMISS**

**DECLARATION OF GARRY NEWMAN IN SUPPORT OF
 DEFENDANT'S MOTION TO DISMISS**

I, GARRY NEWMAN, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am over the age of eighteen (18) and make this Declaration based on my personal knowledge.
2. I am a citizen and resident of Great Britain. I was born in England, and have resided in England my entire life.
3. I have never been to Nevada.

- 1 4. Although I am the individual listed at the domain registrar as the contact for the website
2 on which Plaintiff alleges the unauthorized reproduction appeared, facepunch.com, I do
3 not personally own facepunch.com, nor do I control it in my individual capacity. Rather,
4 that website is owned by Facepunch Studios Ltd., which is registered as a Limited
5 Company in the United Kingdom, organized under the laws of Great Britain. A certified
6 copy of the Certificate of Incorporation of Facepunch Studios Ltd. (the "Company") is
7 attached hereto as **Exhibit A**.
- 8 5. I have an ownership interest in The Company, and I am one of two directors of the
9 company. The company has no employees.
- 10 6. Facepunch.com is a website forum for online game users and enthusiasts. It provides a
11 forum for gamers to share their thoughts on various issues and topics.
- 12 7. From its inception through today, facepunch.com has been controlled out of the offices of
13 the Company in England. The Company has no other offices.
- 14 8. The Complaint alleges that a literary work entitled: "'Death ray' scorched hair" (the
15 "Work") was reproduced without authorization (as referenced in Exhibit 2 of the
16 Complaint) on the website facepunch.com on approximately September 25, 2010.
- 17 9. Exhibit 2 to the Complaint shows that the user who posted the alleged unauthorized
18 reproduction has the user name "Wii60." The user name "Wii60" does not belong to me,
19 the Company, or any director or agent of the Company Further, I have never used
20 "Wii60" to post content on facepunch.com, nor has any director or owner of the
21 Company.
- 22 10. I do not direct or create content that third parties, such as Wii60, post on the forum. Nor
23 does the Company, or any other director or owner of the Company.
- 24 11. On October 12, 2010, Plaintiff filed the Complaint. Prior to filing the Complaint,
25 Plaintiff never sent a cease & desist letter requesting removal of the alleged unauthorized
26 reproduction; had it done so, I would have disabled the thread to the post as soon as I had
27 received it.
- 28 12. Immediately upon learning of Plaintiff's allegations, I, acting in my corporate capacity
with the Company, disabled the thread to the posting that is referenced in Exhibit 2 of the
Complaint. I did this from The Company's offices in England on November 4, 2010.


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- 13. I have never conducted business in Nevada.
- 14. Further, I have never solicited business in Nevada; designated an agent for service of process in Nevada; held a license in Nevada; incorporated in Nevada; paid taxes in Nevada; or had a bank account in Nevada.
- 15. Prior to receiving notice of the Complaint, I had never heard of Righthaven or the *Las Vegas Review – Journal*.
- 16. As facepunch.com’s readership is worldwide and not focused on or limited to any particular geographic region, I disagree with Plaintiff’s contention that reproduction of the Work on facepunch.com was of specific interest to Nevada residents. To the contrary, my experience has been that interest in facepunch.com is based on visitors’ identity as a gamer, regardless of their residency.
- 17. None of the servers supporting the website facepunch.com are located in Nevada.
- 18. Given that I am a British citizen residing in England, defending this lawsuit in Nevada would be close to impossible for me. I have limited funds and cannot afford to travel to Nevada for the multiple hearings and depositions that would be required. Participating by telephone would put me at a disadvantage to Plaintiff. Having to defend this lawsuit in Nevada would result in a substantial hardship for me.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, pursuant to Section 1746(1) of Title 28 of the United States Code.

Executed on: June 28, 2011

By: 
Garry Newman

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