

Free speech group fights lawsuits vs. news sharers

September 30 2010, By CRISTINA SILVA , Associated Press Writer

(AP) -- A San Francisco group that defends online free speech is taking on a Las Vegas company it says is shaking down news-sharing Internet users through more than 140 copyright infringement lawsuits filed this year.

The Electronic Frontier Foundation's counterclaim represents the first significant challenge to Righthaven LLC's unprecedented campaign to police the sharing of [news content](#) on blogs, political sites and personal Web pages.

At stake is what constitutes fair use - when and how it is appropriate to share content in an age where newsmakers increasingly encourage readers to share stories on Facebook, Twitter, Digg and other social networking sites.

The EFF argues that the lawsuits limit free speech and bully defendants into costly settlements by threatening \$150,000 in damages and the transfer of domain names. The foundation represents Democratic Underground LLC, which Righthaven sued in August for posting parts of a Las Vegas Review-Journal article on a message board.

Many of the cases involve stories originally published by the Review-Journal, Nevada's largest newspaper and the flagship of Stephens Media LLC.

"This case is a particularly abusive instance of a broad and aggressive

strategy by Stephens Media, working in conjunction with its 'little friend' Righthaven as its front and sham representative, to seek windfall recoveries of statutory damages and to exact nuisance settlements by challenging a fair use of an excerpt of an article that Stephens Media makes freely available on the Internet," says the counterclaim filed in Las Vegas federal court this week.

Righthaven's [chief executive officer](#), Steve Gibson, called EFF's claims "inflammatory."

"That's just ridiculous, and the reason it is ridiculous is that I don't think there has been any defendant that we've called to shake them down for a settlement," he said.

Dozens of the lawsuits have been settled privately, and Righthaven and Stephens Media declined to disclose the terms. The EFF says the settlements have averaged about \$5,000.

Movie and music producers have previously targeted individuals who illegally share copyright content. What makes Righthaven's business model unique is that it buys copyrights from news companies like Stephens Media and then aggressively files lawsuits without first giving defendants a chance to remove the content in question.

Allen Lichtenstein, a lawyer for the Nevada American Civil Liberties Union, said the lawsuits unnecessarily pursue the full force of copyright law. He is representing Lisa Linowes, a New Hampshire blogger who was sued after posting a story about wind energy from Stephens Media's Ely Times. Lichtenstein said Linowes would have immediately removed the post if Righthaven had sent a cease-and-desist order.

Other defendants include the Nevada Democratic Party, the Progressive Leadership Alliance of Nevada and Republican U.S. Senate candidate

Sharron Angle.

Mark Hinueber, vice president and general counsel for Stephens Media, declined to comment on EFF's counterclaim. He has said the lawsuits help protect the company's content by discouraging would-be offenders.

But Kurt Opsahl, a senior staff attorney for the EFF, said Righthaven's goal is to drum up cash from people who can't afford to fight the lawsuits. Some of the cases involve people who cited and linked to the original source.

"This is a copyright troll," Opsahl said. "They are trying to exploit a loophole in the copyright system ... for conduct that has not really caused any harm at all."

Opsahl said the lawsuits themselves cause harm by stifling open communication.

"Linking to articles and excerpting from them is part of the lifeblood of the online community," he said. "They are not trying to hurt the Review-Journal. In fact, many of them are excited about the coverage."

Gibson said readers do not have the right to reprint content simply because a news site encourages them to post links on [social networking sites](#).

"You can't say, 'Because I believe I am doing the party I am infringing on a benefit I am entitled to do it,'" Gibson said.

The lawsuits are being closely watched by news companies that are struggling to protect their content as more people rely on the Web for news and ad revenue in printed newspapers dwindles.

Righthaven's practice of suing without first providing offenders an opportunity to remove the content has been widely debated.

"The news media has just not done stuff like this before," said Eric E. Johnson, a University of North Dakota law professor who focuses on [copyright infringement](#) and intellectual property issues. "The news media has this sense of public responsibility and a deep sense of ethics and the public trust ... this seems like a straightforward effort to make money. It's mean."

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