

Righthaven Lawsuits a Reminder to Watch Your Website P's and Q's

March 2011

Think that "trolls" are limited to the worlds of fairy tales and patent lawsuits? Wrong. Righthaven, a Las Vegas company formed last Spring that is commonly referred to as a "copyright troll," has brought more than 230 lawsuits alleging copyright infringement over the Internet. Righthaven does not send cease and desist letters-it goes straight for the jugular with a lawsuit. Its strategy is simple-find Internet uses of newspaper articles and photographs that it believes are infringing; purchase the copyright ownership rights from the content owner (in most cases, the *Denver Post* and the *Las Vegas Review-Journal*); register the materials with the U.S. Copyright Office; file suit against users of the material; and go after the cash. The quick registration carries with it two very large sticks-the abilities to sue in federal court and seek statutory damages in an amount of up to \$150,000 per infringed work. Many of the defendants have deemed it cheaper and less disruptive to settle with Righthaven rather than fight what ultimately might have been a winning battle.

Since last Spring, Righthaven has sued numerous blogs and websites that re-post-or even excerpt-articles without permission. Many of these suits are based on comments or forum posts by a website's readers. Righthaven has broadened its horizons over the past few weeks to sue websites that re-post copyrighted photographs. In its most recent wave of lawsuits, Righthaven has filed at least 34 lawsuits to date alleging infringement of a *Denver Post* photo depicting an "enhanced TSA pat-down." These lawsuits typically demand enhanced statutory damages for willful infringement, and transfer of the defendant's website domain name to Righthaven. In many cases, the owners of these websites have downloaded the photo (which has gone viral) from sites such as Google Images and claim that they did not know the photo was legally protected.

It appears that many Righthaven targets are vulnerable to lawsuits because they have not implemented the proper procedures to claim protection from liability from infringing user-posted content under the Digital Millennium Copyright Act (DMCA) safe harbor provisions. Righthaven appears to count on the fact that-even where DMCA or fair use defenses might be available-for small websites, putting up a defense can cost more than Righthaven might be willing to accept in settlement. Thus, Righthaven has been building its coffers with small settlements that will enable it to finance suits against larger players. Indeed, recent days already have seen Righthaven file suit against *The Drudge Report* website and *Radio One*.

The Righthaven threat is a compelling reminder that all websites that accept any user-submitted content should conspicuously post proper DMCA policies on their websites and strictly adhere to them-including the appointment and registration of a DMCA agent for the receipt of notices, and the adoption, posting and implementation of policies for the termination of repeat infringers. You can register a DMCA agent by completing the form located here and mailing it with \$105 to: Copyright RRP, Box 71537, Washington, DC 20024. Moreover, website owners should periodically remind their site programmers that **no outside content** - including photos-should be downloaded from the Internet or used without a proper legal analysis into whether the material can be used without express permission from the copyright owner.