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The Nevada Copyright Litigation Landscape without Righthaven

The copyright litigation scene in Nevada recently garnered attention – in fact, world-wide notoriety – in expert intellectual property circles with a series of cases filed by the copyright holding company Righthaven LLC, which was pursuing infringement claims concerning copyrights to articles in the local daily newspaper, the Las Vegas Review-Journal. A few legacies remain after Righthaven; one is the debate about the legitimacy of aggressive copyright enforcement by copyright holding companies instead of the original copyright holders, and another is the lesson that a transfer of a right to enforce copyright is not enough, by itself, to secure standing to sue for copyright infringement.

Another legacy of Righthaven is evident in the distorted statistics of copyright litigation in the U.S. District Court for the District of Nevada in 2010 and 2011. As Chart 1 below shows, the numbers of copyright cases filed in the court between 2000 and 2009 ranged between 18 and 46 cases, while in 2010 the number of copyright cases rose to an unprecedented 215 cases.

The change in the statistics caused by Righthaven is clear. Chart 2 compares the statistics for all copyright cases filed in the court with the statistics for copyright cases excluding Righthaven. The red columns are the copyright case numbers without Righthaven cases, and they document the fact that, following the surge of cases that coincided with the economic boom in Las Vegas that ended in 2007, case numbers, ex-Righthaven, returned to pre-2004 levels.
Righthaven also filed suits outside of Nevada; it sued in the U.S. District Court for the District of Colorado (57 cases in 2011) and in the U.S. District Court for the District of South Carolina (one case in 2010). In Colorado Righthaven cases doubled the number of copyright cases filed in that district in 2011 as compared to 2008 and 2009 and quadrupled the number of cases as compared to 2010. However, in Colorado, in contrast with Nevada where there was a return to the status quo ante after Righthaven, Colorado continues with its expansion of activity in the copyright area as Malibu Media, LLC, has filed 44 suits in the district court in a period of less than nine months in 2012, from January 1 to September 24.

[The above charts were prepared based on data provided by Lex Machina, Inc.]

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