

## Social Media Law Update

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### [Chapter Two: Blog Hyperlinks To News Stories - Copyright Infringement Or Not](#)

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The first dismissal of a copyright infringement action filed by Righthaven took place as we went to press with "[Blog Hyperlinks to News Stories = Copyright Infringement or Not?](#)" And, as we predicted, the litigation approach used by Righthaven of suing without sending a cease and desist letter in advance, and filing numerous actions in a short period of time, has resulted in some arguably proactive equitable relief by the court.

In [Righthaven LLC v. Realty One Group, Inc.](#), the court exercised its discretion and granted a motion to dismiss based on the Fair Use doctrine. In most cases, courts will not dismiss at the pleading stage based on the Fair Use doctrine, because the four factors of this defense usually require some development of the facts through discovery. But, with over 165 cases filed by Righthaven in less than a year, the federal courts in Nevada seem ready to dispose of these actions at the pleading stage when appropriate.

In *Realty One Group*, defendant Michael Nelson was a realtor with an Internet blog that provides information concerning home ownership in Las Vegas, Nevada. On his blog, he displayed without permission the first eight sentences of a thirty sentence news article– "Program may level housing sale odds" ("Article"). The Article had been published by the Las Vegas Review Journal who transferred its rights for the Article to Righthaven. Righthaven filed for and received copyright registration for the Article. This transfer and registration occurred about one month after Nelson displayed the Article.

Unlike the majority of Internet blogs that are sued by Righthaven, Nelson decided to fight the action rather than settle early. Nelson filed a motion to dismiss on the grounds that his use was protected by the Fair Use doctrine. In its decision, the court recognized the high burden for motions to dismiss. The court also applied the four factors listed in the Copyright Act, Section 107.

First, the court found that "the purpose and character of Nelson's blog is both commercial and educational in nature" since he was hoping to create business for himself from his blog. This will probably be the case for most blogs since they either receive advertising dollars or have some business development reason behind them. Nonprofit educational purposes, on the other hand, are usually covered by the Fair Use doctrine.

Second, the court looked at the nature of the copyrighted work. The court found that the eight sentences copied by Nelson contained factual news reporting (as opposed to reporter commentary) which favored Nelson's fair use of the copyrighted Article. Factual news reporting is not given the same deference as commentary since it is viewed as informational rather than creative. And, news alone (*e.g.* facts) are not entitled to copyright protection.

Third, the court found that eight, newsy sentences out of 30 sentences in the Article weighed in favor of a fair use of the copyrighted Article.

Fourth, and finally, the court found that Nelson's hyperlink to the Article was not a bad thing.

"The court finds that Nelson's use of the copyrighted material is likely to have little to no effect on the market for the copyrighted news article. Nelson's copied portion of the Work did not contain the author's commentary. As such, his use does not satisfy a reader's desire to view and read the article in its entirety the author's original commentary and thereby does not dilute the market for the copyrighted work. Additionally, Nelson did not infringe Righthaven's copyright as a matter of law and the court shall grant Nelson's motion."

This final point is worth emphasizing. When a brand strategist with a working knowledge of the Internet read our original article concerning the Righthaven copyright infringement actions, she was frankly stunned. Emily Aiken of the Story Studio, posted the following comment:

"Links are the capital of the internet. That is the irony here. The more links a source has pointing back to it the better the organic search results are for it giving that source a better page rank on Google. That means The Las Vegas Review will have more traffic to its site and be able to charge more for its digital advertising. Hyperlinks are actually viewed as valuable by many content creators."

And, finally, the court's decision offers some helpful guidelines for blogs with hyperlinks to copyrighted material: (1) Less is more (or better when it comes to the Fair Use doctrine); and (2) Remember to save the commentary to the original source material – "Just the facts, ma'am" (Sgt. Friday, Dragnet). Stay closer to the facts in any material that is used directly in the blog, and avoid including the author's thought process or commentary if you are using text from the copyrighted material.

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