

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:11-cv-00830-JLK

RIGHTHAVEN, LLC,

Plaintiff,

v.

LELAND WOLF, an individual, and
IT MAKES SENSE BLOG, an entity of unknown origin and nature,

Defendants.

**THE ELECTRONIC FRONTIER FOUNDATION'S
UNOPPOSED MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE**

The Electronic Frontier Foundation (“EFF”) respectfully requests that this Court grant leave to file an amicus curiae brief in support of Defendant’s Motion to Dismiss for Lack of Subject Matter Jurisdiction. Counsel for Plaintiff Righthaven LLC (“Righthaven”), Defendant Leland Wolf (“Defendant”), and amicus Citizens Against Lawsuit Abuse have consented to the filing of this brief. The parties have filed a stipulation agreement documenting this agreement and a proposed briefing schedule.

EFF is a non-profit, member-supported civil liberties organization working to protect rights in the digital world. *See generally* Electronic Frontier Foundation, <https://www.eff.org>. EFF and its over 14,000 dues-paying members have a strong interest in assisting the courts and policy-makers in striking the appropriate balance between intellectual property and the public interest.

This case will call on this Court to address the viability of a non-publishing litigation company’s business of suing bloggers and websites based on a purported transfer of the bare

right to sue. This issue is of critical importance to users on the Internet as individual online speakers have found themselves increasingly and inappropriately targeted the types of costly strategies at issue in this case. EFF's point of view—not yet fully represented by any party to this suit—will assist the Court in assessing the propriety of Righthaven's litigation approach.

In addition to offering a broader perspective, EFF's brief will discuss recent decisions from similar copyright cases brought by Righthaven in the District of Nevada over content owned by Stephens Media, publisher of the *Las Vegas Review-Journal*. See, e.g., *Righthaven LLC v. Democratic Underground, LLC*, No. 2:10-cv-01356-RLH, ___ F. Supp. 2d ___, 2011 WL 2378186 (D. Nev. June 14, 2011); *Righthaven LLC v. Hoehn*, No. 2:11-cv-00050-PMP, ___ F. Supp. 2d ___, 2011 WL 2441020 (D. Nev. June 20, 2011); *Righthaven LLC v. DiBiase*, No. 2:10-cv-01343-RLH, 2011 WL 2473531 (D. Nev. June 22, 2011); *Righthaven LLC v. Barham*, No. 2:10-cv-02150-RLH, 2011 WL 2473602 (D. Nev., June 22, 2011); *Righthaven LLC v. Mostofi*, No. 2:10-cv-01066-KJD, 2011 WL 2746315 (D. Nev. July 13, 2011). In particular, EFF's work as counsel to defendants in *Democratic Underground* and *DiBiase* led to the disclosure of the Strategic Alliance Agreement between Righthaven and Stephens Media. See Order on Req. to Unseal, *Democratic Underground*, No. 2:10-cv-01356-RLH, 2011 WL 1457743 (D. Nev. Mar. 8, 2011) (unsealing the SAA), Dkt. 75. The *amicus* brief will also explain how these decisions apply to the copyright lawsuits brought over the *Denver Post's* content. EFF has been deeply involved in these cases almost from their inception, allowing it to offer the Court another unique viewpoint.

For the foregoing reasons, EFF respectfully requests leave to file an amicus curiae brief, in support of Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

Dated: August 2, 2011

Respectfully submitted,

By /s/ Kurt Opsahl
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