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Copyright vs. free speech on the Web

Ashland is involved in litigation involving a lawyer's doctored Web site photo of a conservative columnist

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for the Mail Tribune

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ASHLAND -- The city is embroiled in a lawsuit after temporarily shutting off a Web site that displayed a doctored photo depicting a nationally syndicated newspaper columnist in a pornographic situation.

The case pits the city -- operator of the Ashland Fiber Network Internet service -- and The Washington Post Co. against an Ashland lawyer known for winning an ownership lawsuit on behalf of the person who first registered www.sex.com as a Web domain.

AFN temporarily shut off a Web site last year operated by attorney Charles Carreon and his wife after receiving a complaint from conservative columnist Kathleen Parker that the site's use of her column was shot was a copyright violation.

The city filed a motion for summary judgment to dismiss the case in December, arguing that Carreon did not have a case. Carreon filed his response to the motion and a decision is pending.

Carreon said his lawsuit against Ashland is not about money. Instead, he wants greater protection against shutdowns for Web sites that show copyrighted material.

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"People rarely say, 'I did this litigation to give back to the community.' But I did," he said. "AFN is supposed to be operated as a public forum. This is a community where people have repeatedly expressed the desire for free speech."

The case began Aug. 1 when AFN got an e-mail from Parker, a conservative columnist with the Washington Post Writers Group whose column appears in more than 350 newspapers across the country.

"Many of my fans are children, some of whom are my own, who Google me frequently. I am also a frequent subject for school research projects and student papers. They do not need to see such a thing. I am asking for your help in getting this image off the Web as soon as possible."

Parker said she did not want to comment for this article.

After receiving the e-mail, City Attorney Mike Franzell told an AFN engineer to consult with InfoStructure, the private business that provides the Carreons with AFN Internet service.

Franzell said an InfoStructure representative instructed AFN to shut off the site. Within minutes, Carreon called the city and was informed of the copyright claim, but he quickly got InfoStructure to turn the site back on.

The site was down for about an hour, Franzell and Carreon agreed.

Carreon said shutting down his Web site did not remove the picture of Parker from the Internet and only succeeded in restricting his free-speech rights. The image of Parker and others on the Carreons' site with similar themes using the likenesses and names of other conservative national leaders are still easily obtained through a Web search, he noted. A Web search conducted Tuesday at the Mail Tribune showed the image of Parker remains on the Carreons' Web site.

Shortly after the incident, Carreon filed his lawsuit in U.S. District Court in Medford.

He said the city of Ashland runs AFN as a public forum and was not complying with First Amendment protections when it shut down the Web site.

Carreon may not have First Amendment protections because InfoStructure gave the instructions to have his Web site shut down, said Dennis Duleavy, an assistant professor of journalism at Southern Oregon University who studies copyright infringement and Internet issues. The First Amendment deals with government restrictions on free speech. A private company can shut down an Internet site, he said.

However, Duleavy said Carreon has won other precedent-setting Internet-related cases.

In 2003, Carreon recovered the rights to the Web site address www.sex.com for the man who first registered the name. That address is the most valuable domain name in the world, according to the online industry publication Domain Name Journal. Carreon said his client sold the domain name for \$15 million in 2006.

Law schools teach about the sex.com lawsuit, he said. The city of Ashland should have been more cautious about shutting down Carreon's Web site, Duleavy said.

"The act was not well thought out beforehand. They didn't know the extent of the consequences of their actions before they did it," Duleavy said. "They picked on the wrong guy."

But Franzell said the city of Ashland did not violate Carreon's free speech rights because AFN is a wholesaler of Internet services and was acting on the instructions of InfoStructure.

"I don't believe it was a government action," Franzell said.

Since Carreon filed his lawsuit, the city has adopted a formal policy to govern how it handles copyright infringement claims, Franzell said.

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