

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

<b>CURTIS J. NEELEY JR.,</b>	§	
	§	
<b>PLAINTIFF</b>	§	
	§	
<b>VS.</b>	§	<b>CIVIL ACTION NO. 12-5074</b>
	§	
<b>NAMEMEDIA, INC., GOOGLE INC.,</b>	§	
<b>MICROSOFT CORPORATION,</b>	§	
<b>THE FEDERAL COMMUNICATIONS</b>	§	
<b>COMMISSION, AND THE UNITED STATES</b>	§	
	§	
<b>DEFENDANTS</b>	§	

**RESPONSE IN OPPOSITION TO MOTION SEEKING RULE 11 SANCTIONS<sup>1</sup>**

Plaintiff Curtis J. Neeley Jr. (“Mr. Neeley”) failed to comply with the requirements of Federal Rule of Civil Procedure 11, and on that basis alone his Motion Seeking Rule 11 Sanctions [Dkt. No. 16] should be denied. *See* FED. R. CIV. P. 11(c)(2). Specifically, Mr. Neeley did not comply with the 21 day “safe harbor” provisions, and such failure compels a denial of the Motion. Further, Mr. Neeley’s factual arguments are without merit. Google’s response in opposition to Mr. Neeley’s *in forma pauperis* application is (1) warranted by existing law (*see* 28 U.S.C. § 1915(e)(2)(B); *Aziz v. Burrows*, 976 F.2d 1158 (8th Cir. 1992)); (2) based upon factual contentions with evidentiary support (*see* Section II below); and (3) not brought for harassment or delay, but in an attempt to decrease the cost and burden on the Court and the defendants. For these reasons, Mr. Neeley Motion should be denied.

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<sup>1</sup> To date, Google Inc. has not been formally served with process in this lawsuit (indeed, as a formal matter, the Complaint has not even been filed, as no filing fee has been paid and IFP status has not been granted). By filing this response, Google Inc. does not waive its right to challenge service of process of the Complaint and Summons. Further, Google Inc. does not waive its right to assert any and all defenses.

**I. Mr. Neeley Failed to Comply with Rule 11**

Rule 11(c)(2) requires that a motion for sanctions be served pursuant to Rule 5, but not filed with or presented to the Court unless “within 21 days after service” the challenged paper is not corrected or withdrawn. To stress the seriousness of a Rule 11 motion for sanctions, the 1993 revisions to Rule 11 provide that the “safe harbor” provisions begin to run only upon *service* of the motion. FED. R. CIV. P. 11, Advisory Committee Notes (1993 Amendment). Mr. Neeley did not comply with Rule 11. Rather, he hastily filed the Motion on July 3, 2012, less than 24 hours after he first served Google’s counsel. *See* July 2, 2012 service email from C. Neeley to J. Thane, attached hereto as Exhibit A. Based upon this procedural failure alone, the Court should deny Mr. Neeley’s Motion. *See Gordon v. Unifund CCR Partners*, 345 F.3d 1028, 1029-1030 (8th Cir. 2003) (reversing and vacating the district court’s order granting sanctions, because it could not overlook the failure to comply with Rule 11’s “safe harbor” provisions); *MHC Inv. Co. v. Racom Corp.*, 323 F.3d 620, 623 (8th Cir. 2003) (recognizing that a party initiating a Rule 11 motion must comply with the “safe harbor” provisions).

**II. Mr. Neeley’s Motion Lacks any Substantive Foundation**

Google’s response in opposition to Mr. Neeley’s *in forma pauperis* application is grounded in both applicable law and supported with factual evidence. First, Mr. Neeley does not indicate any law contrary to the supporting statutes and case law cited in Google’s response. Further, Google’s statements and citations to 28 U.S.C. § 1915; *Aziz v. Burrows*, 976 F.2d 1158 (8th Cir. 1992); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); and *Spencer v. Rhodes*, 656 F. Supp. 458, 461-463 (E.D.N.C. 1987) are appropriate and warranted under the circumstances. Any allegation that Google’s response lacks legal foundation is misplaced.

Second, the crux of Mr. Neeley's factual argument seems to be that Google's counsel somehow misrepresented (1) who initially placed Mr. Neeley's photographs on the Internet, (2) whether Mr. Neeley's photographs are subject to the Creative Commons license, and (3) whether Mr. Neeley refused to register copyrights. Each contention, however, is supported by sound evidence. For example, during the December 6, 2012 hearing with Honorable Judge Setser in *Neeley v. Namemedia, Inc., Network Solutions, Inc., and Google, Inc.*, 5:09-CV-5151-JLH, Mr. Neeley admitted that he uploaded his photographs to the internet and that the photographs were posted subject to the Creative Commons license. *See* December 6, 2012 Transcript of Proceedings at p. 15 and 54, attached hereto as Exhibit B. Likewise, Mr. Neeley has admitted numerous times that he refuses to register a copyright. *See, e.g.*, March 4, 2011 email from C. Neeley to J. Thane, attached hereto as Exhibit C. As required by Rule 11, each of Google's contentions has evidentiary support.

Finally, Mr. Neeley apparently takes issue with the tone of Google's response and Google's disclosure to the Court of Mr. Neeley's numerous frivolous grievance filings against Google's counsel –which are neither inappropriate nor a basis for Rule 11 sanctions. *See* FED. R. Civ. P. 11 (b). Mr. Neely's Motion is simply further evidence that his claims are nothing more than renewed malicious attacks on the defendants and their counsel – claims that have already been adjudicated against him and affirmed on appeal.

For all the reasons stated herein, Mr. Neeley's Motion Seeking Rule 11 Sanctions should be denied.

Respectfully submitted,

/s/ Joshua R. Thane

Jennifer H. Doan  
Arkansas Bar No. 96063  
Joshua R. Thane  
Arkansas Bar No. 2008075  
HALTOM & DOAN  
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Facsimile: (903) 255-0800  
Email: jdoan@haltomdoan.com  
Email: jthane@haltomdoan.com

Michael H. Page  
Durie Tangri, LLP  
217 Leidesdorff Street  
San Francisco, CA 94111  
Telephone: 415-362-6666  
Email: mpage@durietangri.com

**ATTORNEYS FOR DEFENDANT  
GOOGLE INC.**

**CERTIFICATE OF SERVICE**

I, Joshua R. Thane, hereby certify that on July 13, 2012, I electronically filed the foregoing RESPONSE IN OPPOSITION TO MOTION SEEKING RULE 11 SANCTIONS with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following list:

Willie S. Haley  
Allen Law Firm, P.C.  
212 Center Street  
Ninth floor  
Little Rock, Arkansas 72201

and I hereby certify that I have mailed the document by the United States Postal Service to the following non-CM/ECF participants:

Curtis J. Neely, Jr.  
2619 N. Quality Lane  
Apartment 123  
Fayetteville, AR 72703

/s/ Joshua R. Thane

Joshua R. Thane

# Exhibit A

From: [Curtis@CurtisNeeley.com](mailto:Curtis@CurtisNeeley.com)  
To: [wshaley@allenlawfirmnpc.com](mailto:wshaley@allenlawfirmnpc.com); [mpage@durietangri.com](mailto:mpage@durietangri.com); Josh Thane; [hwallen@allenlawfirmnpc.com](mailto:hwallen@allenlawfirmnpc.com); Jennifer Doan  
Subject: Joshua Reed Thane #1777  
Date: Monday, July 02, 2012 4:54:11 PM  
Attachments: [exhibit\\_A.pdf](#)  
[exhibit\\_A-1.pdf](#)  
[exhibit\\_A-2.pdf](#)  
[Brief\\_Supt\\_MotionforRule11Sanctions.pdf](#)  
[1MotionforRule11Sanctions.pdf](#)

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Opposing Google Counselors, et al,

Neeley herein advises that late in the afternoon tomorrow Tuesday July 3, 2012 or on Thursday July 5, 2012 will enter this motion seeking Rule 11 Sanctions toward Joshua Reed Thane Esq, Michael Henry Thane Esq and each of their law firms.

The request for Rule 11 Sanctions will be granted with no question and dismissal of the malicious fraudulent opposition would prevent this.

Neeley did not place any nude images on the Internet at <veraroberts.wordpress.com> and these were done by Ms Vera Roberts but have since been removed after requested by Neeley.

There is no use of the text "curtis neeley" at <cs.wikipedia.org> and there has been none for many months.

Either withdraw the lies of Docket 9 or pray these lies will be allowed excused in this "feud" and that the sky is not really falling.

Curtis J Neeley Jr., MFA  
479-263-4795

# Exhibit B

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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

CURTIS NEELEY, JR., )  
)  
Plaintiff, )  
)  
vs. ) Case No. 5:09CV05151-JLH  
)  
NAMEMEDIA, INC., NETWORK ) Fayetteville, Arkansas  
SOLUTIONS, INC.; and )  
GOOGLE, INC., )  
)  
Defendants. )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE ERIN SETSER,  
UNITED STATES DISTRICT COURT MAGISTRATE  
DECEMBER 6, 2010

A P P E A R A N C E S

For the Plaintiff: Pro se

For the Defendants: MS. JENNIFER HALTOM DOAN  
Haltom & Doan  
Crown Executive Plaza, Ste. 100  
6500 Summer Hill Road  
Texarkana, Arkansas 75503  
  
MR. MICHAEL H. PAGE  
Durie Tangri  
217 Leidesdorff Street  
San Francisco, California 94111

REPORTED BY:

RICK L. CONGDON, RMR, FCRR  
Federal Official Court Reporter  
P. O. Box 8493  
Ft. Smith, Arkansas 72902

PROCEEDINGS RECORDED STENOGRAPHICALLY; PRODUCED VIA C.A.T.



1           you're referring to, and you said at your daughter's  
2           school, if she types in your name, these pictures --

3                   THE PLAINTIFF: At anyone's school, at any school  
4           in America, they will type it in and it will pop up with a  
5           nude picture done by me.

6                   THE COURT: If you type in your name, you're  
7           saying that's what happens?

8                   THE PLAINTIFF: Exactly. That's what it does.  
9           At the very top of the page, you just have to put in my  
10          name, don't have to say my name and nude, just say my name  
11          is all I got to say and pops up all the nude pictures.

12                   THE COURT: Okay. How did these pictures get on  
13          the internet?

14                   THE PLAINTIFF: On the Wikipedia, foundation of  
15          Wikimedia, I have donated photographs to the foundation.

16                   THE COURT: You donated photographs to the  
17          Wikipedia foundation?

18                   THE PLAINTIFF: Wikimedia.

19                   THE COURT: Wikimedia.

20                   THE PLAINTIFF: It's kind of like Wikipedia, but  
21          their media division.

22                   THE COURT: So did you put them on the  
23          internet or did you provide like disks with these photos to  
24          Wiki --

25                   THE PLAINTIFF: I gave, I gave them to the

1           company, to Wikimedia.

2                   THE COURT: On a disk or in what format?

3                   THE PLAINTIFF: I did it just directly digital.  
4 I pulled it up.

5                   THE COURT: So did you upload these pictures on  
6 to the internet?

7                   THE PLAINTIFF: Yes, ma'am, I did.

8                   THE COURT: To Wikimedia's website, is that what  
9 it's called? Is it a website?

10                   THE PLAINTIFF: It is a website; yes, ma'am.

11                   THE COURT: So that's how these pictures were  
12 streamlined into the internet, correct?

13                   THE PLAINTIFF: Yes, ma'am.

14                   THE COURT: Now, how long ago was that? How long  
15 have they been accessible on the internet?

16                   THE PLAINTIFF: I do not know exactly, but  
17 probably been about two years.

18                   THE COURT: Two years?

19                   THE PLAINTIFF: (Plaintiff moves head up and  
20 down.) Long time ago.

21                   THE COURT: And how is -- how do you contend that  
22 Wiki -- that Google is responsible for what's on Wikimedia?

23                   THE PLAINTIFF: They are not. However, they do  
24 put my name with just the -- out of context with the  
25 pictures. They bring up my name and the pictures which

1 don't happen at Wikimedia. There, if you look at that  
2 page, the page has disclaimers and it always has that --

3 THE COURT: Which page are you talking about?

4 THE PLAINTIFF: The one that has the page where  
5 the pictures came from.

6 THE COURT: Is that --

7 THE PLAINTIFF: Wikimedia.

8 THE COURT: -- the Google page or the Wikimedia  
9 page?

10 THE PLAINTIFF: Wikimedia.

11 THE COURT: Okay. Which page is the Wikimedia  
12 page?

13 THE PLAINTIFF: Well, all of these are Wikimedia.

14 THE COURT: All of these Wikimedia pages?

15 THE PLAINTIFF: So far, yes.

16 MR. PAGE: Object, Your Honor. The Wikimedia  
17 page is not in evidence.

18 THE COURT: Is that the page that was objected to  
19 or is that --

20 MR. PAGE: No. The page he is testifying to is  
21 not in his exhibits. It's available on the internet. I  
22 mean, I have no problem if the Court wants to look at it.

23 THE COURT: The Wikimedia page?

24 MR. PAGE: That's correct.

25 THE COURT: Okay.

1 A Yes, I did.

2 THE COURT: Now, are we talking Wikipedia or  
3 Wikimedia?

4 MR. PAGE: Wikimedia is a -- is in the middle of  
5 a section of Wikipedia. It's the same.

6 THE COURT: Okay.

7 MR. PAGE: If you go to Wikimedia and search,  
8 you'll get these.

9 Q (By Mr. Page) You chose the title for the photograph  
10 such as figure nude by Curtis Neeley, correct?

11 A Yes, I did.

12 Q And you posted those photographs to Wikimedia pursuant  
13 to a what's known as Creative Commons License, correct?

14 A Yes.

15 Q And that Creative Commons License grants as to the  
16 buyer world the right to reproduce your photographs  
17 provided only that they attribute them to you, correct?

18 A No.

19 Q Why is that incorrect?

20 A Because it also reserves the moral rights of the  
21 creator.

22 Q And what do you think moral rights are?

23 A In America? Those would be U.S. Title 17, Section  
24 106(a).

25 Q And that provides that for certain rare works of art,

C E R T I F I C A T E

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2  
3 State of Arkansas )  
4 County of Sebastian )

5  
6 I, Rick L. Congdon, a Registered Merit Reporter, and  
7 Official Court Reporter for the United States District  
8 Courts, Western District of Arkansas, do hereby certify  
9 that the foregoing transcript, taken before me at the time  
10 and place herein designated, consisting of pages 2 through  
11 92, was taken down by me in machine shorthand and then  
12 transcribed via computer, either personally or under my  
13 supervision, and that this transcript is a true, correct,  
14 and complete transcript of said proceedings as reflected  
15 herein.

16 Signed this 8th day of December, 2010, in the City of  
17 Ft. Smith, County of Sebastian, State of Arkansas.

18  
19  
20  
21 /s/ Rick L. Congdon  
22 RICK L. CONGDON, RMR, FCRR  
23 OFFICIAL COURT REPORTER  
24 U. S. DISTRICT COURTS  
25 WESTERN DISTRICT OF ARKANSAS

# Exhibit C

From: [Curtis Neeley Jr.](#)  
To: [Brooks Christopher White](#); [Hwallen](#); [Jennifer Doan](#); [Josh Thane](#); [Mpage](#)  
Subject: Title 17 § 106A and mitigation....  
Date: Friday, March 04, 2011 7:11:15 PM

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Opposing Counselors,

This communication is relevant to both NAMEMEDIA INC and Google Inc. Both of the Defendants believe the copyrite claims were dismissed. This is an error that will be addressed before long. **The Plaintiff will never register a copyrite** just as one does not register free "speech rights". 8:1 with Honorable Samuel Alito as the exclusive Supreme Court Jurist not following the law might provide a glimmer of hope for Google Inc and NAMEMEDIA INC and encourage them each to believe at least one justice would support them. Ironically the most fundamental human rights were not supported by the Justice who is assigned to the Eighth Circuit. The United States has only recently recognized the right of visual artists to control integrity of the uses of their artworks and begun to recognize this right.

NAMEMEDIA INC Counselors are likely to receive communications from their client that the Plaintiff joined <Photo.net> and paid to upload 25 photographs in the portfolio. The odd thing is that the registration was cancelled within hours and refunded. Mr Neeley had only placed a portfolio of his non-figure nude photographs. The Plaintiff had been a "free" member for a great deal of time but wanted to have more than the five allowed images. There was absolutely no direct communication with your client but Mr Neeley understands not being allowed to use the website that once abused Title 17 § 106A rights even in an attempt to "automatically" alter the results of Google Inc image searches.

Google Inc Counselors as well as NAMEMEDIA INC Counselors may now resubmit Dkt 196 as the Plaintiff will file an interlocutory appeal to the Eighth Circuit if Honorable Jimm Larry Hendren supports pornography contrasting with recent rulings by dismissing Google Inc. The Plaintiff already knows the results, do any of you? It might take a few months to decide but the FCC is already ready and each of you should be.

1. <http://www.arkansasonline.com/news/2008/jul/30/ex-officer-sentence-more-15-years-child-porn/>;
2. [http://www.oregonlive.com/news/index.ssf/2008/08/former\\_oregon\\_man\\_sentenced\\_to.html](http://www.oregonlive.com/news/index.ssf/2008/08/former_oregon_man_sentenced_to.html) ;
3. [http://www.pcworld.com/article/138018/motivational\\_speaker\\_sentenced\\_for\\_child\\_porn.html](http://www.pcworld.com/article/138018/motivational_speaker_sentenced_for_child_porn.html) ;
4. <http://www.arktimes.com/ArkansasBlog/archives/2010/10/14/rogers-man-sentenced-on-child-porn-charges>;

Perhaps Honorable Jimm Larry Hendren only cares about child pornography. Plaintiff doubts this is the case as the entire United States should soon learn or at least the FCC should learn.

1. [http://www.curtisneeley.com/NameMedia/GOOG/CNSearch\\_03-04-2011\\_SS-first-five.pdf](http://www.curtisneeley.com/NameMedia/GOOG/CNSearch_03-04-2011_SS-first-five.pdf)
2. [http://www.curtisneeley.com/NameMedia/GOOG/CNSearch\\_03-04-2011\\_SS-first-five\\_CC.pdf](http://www.curtisneeley.com/NameMedia/GOOG/CNSearch_03-04-2011_SS-first-five_CC.pdf)

Google Inc should look at the PDFs above and see from the first the three marked thumbnails are in no way supported automatically and will note comparing PDF #2 to PDF #1 that "this ain't the Plaintiffs first rodeo". Jennifer Haltom Doan will notice that the thumbnails are actual "live" links and the Spanish language "linked" page is recorded for display to the JURY that does not contain

the Plaintiff's name or a figure nude photograph.

1. <http://www.curtisneeley.com/NameMedia/GOOG/Figurostudo.pdf>
2. [http://www.curtisneeley.com/NameMedia/GOOG/Figurostudo\\_CC.pdf](http://www.curtisneeley.com/NameMedia/GOOG/Figurostudo_CC.pdf)

The results are saved as a CERTIFIED PDF and are online with the same naming convention although the second URL should be a Jennifer Haltom Doan Esq "link" and not be clickable. In other words it is just text and NOT a link. Has that fact finally sunk in? In case the link concept has not sunk in, counselors will see that the CERTIFIED PDF is text searchable but that none of the "links" are actually links but are colored text. Hmmm Results 1,2,4,5,6 at Bing are related to this case in searches for "Jennifer Haltom Doan Esq" and Bing just passed Yahoo for search engine popularity.

Please ask your clients to adjust the safe search settings and mitigate damages. The unsafe and regular porn settings for Google Inc cement the FCC as Defendants and might help mitigate damages for Google Inc? Defendant Google Inc might think it would be advantageous to be dismissed in error? The political results will impact very, very, quickly then. The Plaintiff will stop playing nice at that time!

Compare the following to get an idea.

1. <http://www.bing.com/images/search?q=curtis+neeley+nude>
2. <http://www.bing.com/images/search?q=curtis+neeley>
3. <http://images.google.com/images?q=curtis+neeley+nude>
4. <http://images.google.com/images?q=curtis+neeley>

Counselors or other could make a fortune by buying GOOG stock so that when GOOG tanks a profit is made.

Sincerely,

Curtis J Neeley Jr, MFA  
[www.CurtisNeeley.com](http://www.CurtisNeeley.com)  
2619 N. Quality Ln, Ste 123  
Fayetteville, AR 72703  
Voice: 479-263-4795

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DISCLAIMER: Curtis Neeley suffered a severe traumatic brain injury that often very negatively impacts his communications. He is often perceived as blunt, tactless, self-centered and rude. Although Curtis has a severe disability, he is determined to continue creating meaningful visual art. The Curtis Neeley Foundation will be created to preserve and promote his artistic photographic legacy.