# IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF ARKANSAS

Curtis J. Neeley Jr., MFA — Plaintiff

v

CASE NO. 12-05074

~~NameMedia Inc,~~
Google Inc,
Microsoft Corporation,
Federal Communications Commission,
United States. — Defendants

## Brief in Support of PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT

The Plaintiff now humbly brings this Supporting Brief and herein concisely and respectfully supports the Rule 59(e) Motion. The repeated errors of fact are clear and lead to repeated errors of law described as follows in sections I-V.

## I. *Res Judicata* ruled for Google Inc in error

### A. The District Court held and listed incorrect assertions as facts to support erroneous rulings.

---

1. The falsehoods treated as facts were used to explain the holdings and describe resulting in errors of fact paving the way to errors in the decision.

2. The distortion of facts and alleged errors follow from Docket #21 and are followed by concise FACTS requiring altering the judgment or amending the judgment to serve justice. (Emphasis will be added)

> "…Most of the claims plaintiff makes in the present case stem from the same underlying facts and occurrences that were the basis for the claims made in case #09-5151: plaintiff's artwork depicting nude figures, which he placed in the ***public domain***, were accessible to users, including minors, by conducting an internet search of plaintiff's name…"

**B. Most of the claims in this case have absolutely nothing substantively in common with those of (5:09-cv-5151). This generalization breaks down because there are more and greater differences than similarities between these two cases**

1. This would comparable to a finding of guilt for multiple killings being prohibited by *res judicata* after the first conviction. The underlying facts are often exactly the same for mass killings such as: 1) living in Hiroshima and,

2) being a citizen of Japan at that time. These two underlying facts warranted mass extermination during WWII, roughly sixty-seven years ago.

2. Artwork was copied and rebroadcast by Defendant Google Inc from entirely different locations and these were uploaded by **OTHER people** and **NOT the Plaintiff** without the written or implied permission of the creator, the Plaintiff.

3. These republications were done and continue uninvited and are not desired. This is diametrically opposed to the erroneous finding of *res judicata* but can be described inadequately to be exactly the same underlying facts like was done in error.

4. These facts were clearly stated in the Docket #20 Objection to the Report and Recommendations. These concise statements are sought repeated here from pages (2-4) in ¶¶(1-5) as if included again wholly.

5. This error alone warrants vacating Docket #20 due to being one *per se* demonstration of predisposition against Plaintiff personally and claiming being adequately advised despite ignoring Docket#20.

6. This error demonstrates the need once sought for requiring an uninterested jury of peers instead of a hearing by a single judge. This right of citizens was allegedly guaranteed by an Amendment that was cited in Docket #20 but was entirely ignored by the District Court along with the rest of Docket #20.

**C. The use of the term "public domain" for the entire "interwoven network" (internet) of wire and radio communications by the court is often claimed by improperly dismissed Defendant Google Inc and was ruled improper in *Golan v Holder,* (10-545).**

1. The Plaintiff donated ONLY three images depicting nude figures or 'figurenudes' to Wikipedia Foundation and released these only with Creative Commons license. This license plainly requires usage and attribution in a manner that does not harm the honor of the artist-licensor and prohibit assertions of endorsement of the manner of usage by licensees.

2. Calling the "interwoven network" (internet) of wire communications the "public domain" is one of the most common misperceptions about the "internet" of wire communications and this common misperception was treated as fact by the Honorable Jimm Larry Hendren rather than an absurd contention and was used to support the *res judicata* error of law.

## II. Google Inc "books" claim dismissal errors

1. In Arkansas, "[t]he right of privacy is invaded by:
   - Unreasonably intruding on the seclusion of others;
   - Appropriating another's name or likeness;
   - Giving unreasonable publicity to another's private life; *or*
   - Using publicity that unreasonably places another in a false light before the public."

*Dunlap v. McCarty,* 678 S.W.2d 361 (Ark. 1984).

2. The District Court failed to consider the first and third instances of prohibited violations of common law privacy recognized in Arkansas and misapplied the fourth while determined to dismiss this Plaintiff.

3. The claim of violation of privacy is also supported on Constitutional grounds in Arkansas consistent with *McCambridge v. City of Little Rock,* 298 Ark. 219, 766 S.W.2d 909 (1989).

4. In the Attorney General opinion it was found that, "if the interest is claimed to be protectable on constitutional grounds, there must be a showing the harm to the individual as a result of the release of the information in question outweighs the importance of disclosing it"[1] and the applicability of this is clear. Plaintiff has clearly demonstrated harm to himself by the continued availability of these nudes.

5. There was absolutely NOTHING important in disclosing Plaintiff's prior sinful act of photographing the naked female figure. Any importance Defendant Google Inc might now invent and allege will pale in comparison to the Plaintiff's pre-teen daughter or school friends encountering

[1]Opinion No. 96-161 given by Arkansas Attorney General Winston Bryant on May 16, 1996 to State Senator Stanley Russ and now made publicly accessible from ag.arkansas.gov/opinions/docs/96-161.html by improperly unregulated wire communications.

the nude photos published in a library book several thousand miles away when searching in school libraries using the Plaintiff's personal name and being distressed, titillated, or ridiculed due to this privacy violation disclosing past Plaintiff sins.

6. The other common law violations were overlooked in error or due the predisposition to dismiss the Plaintiff like done. The convoluted reasoning used follows:

> "…Plaintiff [sic]"has failed" to explain how the publishing of his own artwork places him in a negative false light, nor has he alleged any falsity associated with the artwork or any malice in the manner in which it was published….."

7. The Arkansas common law privacy tort forbids placing the Plaintiff publicly in a false light unreasonably. There is no mention in the cited case of "negative" and **ANY "light" that is false** is a violation.

8. The "false light" would be that the Plaintiff desired minors or other anonymous persons to find nude photographs by searching for photographs in elementary school libraries using the Plaintiff's name.

9. The preceding "light" is not true and Defendant Google Inc should have known this due to facing the Plaintiff in (5:09-cv-5151) when republishing these three additional nudes. There will, of course, be ludicrous claims of "automation". These claims will show reckless disregard for Western District of Arkansas' Courts or recognition of an existing predetermination to dismiss the current "litigious" Plaintiff despite fact.

## III. Microsoft Corporation dismissal error

1. The Plaintiff again must question the contention that Docket #20 was considered in the least reading the following.

> "….[Plaintiff's]complaints have revolved around the fact that some of those images remain accessible through internet searches. Plaintiff has failed to state facts that would allow the Court to draw the reasonable inference that defendant Microsoft published plaintiff's nude artwork of its own accord. …."

2. From the ignored Docket #20, "The sun, moon, and stars can be called 'up in the sky' just like images can be called 'up on the internet'. Wholly different claims exist for what actually has been placed, where precisely placed, and by whom the different images were placed, in the same exact sky."

3. The paragraph above attempts to explain that "*on the internet*" is an utterly useless phrase that does NOT describe ANYTHING and is too generalized for legal use and demonstrates further the predisposition to dismiss the Plaintiff regardless.

4. Microsoft Corporation image searches for the Plaintiff's name returns **obscene** images associated with the Plaintiff's name currently due to some "hidden" rational. Microsoft Corporation was asked to halt this improper text-image association and responded by demanding court orders to stop this association. *See* Exhibit A.

5. Microsoft Corporation image searches for the Plaintiff's name when restricted to Wikipedia Foundation at Wikipedia.com return one nude image associated with the Plaintiff's name due to some "hidden" rational. Microsoft Corporation was asked to halt this improper text-image association and responded by demanding a court order to stop the improper and harassing text-image association. This order is still sought by the Plaintiff.

6. The Plaintiff will attach a copy of the communications with Microsoft Corporation but not the nude images returned that should not be republished by PACER or ANYONE. These search results were saved as PDFs and support claims against Microsoft Corporation vociferously as well as searches done at any time now by the Court or others after advised. Numerous witnesses will attest to this claim. *See* Exhibit A

## IV. FCC Dismissal error of fact and law

1. The Plaintiff apologizes for not supporting the claim and notes that the District Court could have examined the website listed and found no option for complaining "administratively" or otherwise about wire communication of indecent content that is called the internet in egregious error propagating the continued malfeasance of ignoring 47 USC §153 ¶(59).

2. On the FCC website, the Court could find fcc.gov/guides/open-internet and fcc.gov/topic/open-internet and

read the second page and find, "[t]he FCC does not regulate Internet content or applications", and see admission of malfeasance on regulation of the wire communications as defined in 47 USC §153 ¶(59). The Court response follows.

> "…The Court is not persuaded by plaintiff's unsupported contention and notes that regulations regarding the FCC's administrative procedure are found at 47 C.F.R. Part 1 (Practice and Procedure). Furthermore, a consumer complaint form can be accessed on the FCC's website at www.fcc.gov/complaints. Because plaintiff has not made any attempt to pursue an administrative remedy before the FCC, his claim should be dismissed…"

3. It would have been simple to search wire communications for the string "Curtis J Neeley site:fcc.gov" on Defendant Google Inc wire communications text searches and found notifications of the malfeasance complaint now dismissed in error filed with the FCC over and over and over for scores of results for YEARS and linked to hundreds of pages of complaints without a positive response. See Exhibit B and note dates.

4. It would have been simple to search wire communications for the text string “Curtis J. Neeley site:fcc.gov” on Defendant Microsoft Corporation wire communication searches and found links to many pages of complaints and advisements. Fewer links are found by Microsoft Corporation or others but using this text query and missing the prior administrative complaint process attempted supports only the predisposition to dismiss regardless of fact. Most FCC employees are aware of this as was discovered during preparation of this brief.

5. 28 USC § 2674 - Liability of United States clearly waives sovereign immunity but is followed directly by 28 USC § 2675 – “Disposition by federal agency as prerequisite; evidence”. These statutes were properly cited by the Magistrate in Docket #18 and are relevant in finding the errors now made.

6. 28 USC § 2675(a) contains the following pertinent text in section (a).

> "…The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section…"

7. Kim Mattos of the FCC Office of General Counsel was polite but refused to transfer the Plaintiff to FCC counselors and advised that the FCC would not address any complaint that has been filed for YEARS due to lack of jurisdiction regarding the internet and this FACT causes the Plaintiff to seek to exercise the option provided in 28 USC §2675(a) to now proceed in District Court for the tort of malfeasance before a jury.

## V. Dismissing United States: An error of fact and law

1. The District Court has no duty to search the complaint of litigious *pro se* Plaintiff's and attempt to find valid claims. The Plaintiff appreciates the attempt described as follows.

> "…The Court still cannot glean from this document any cognizable claim against the United States beyond plaintiff's general dissatisfaction with its laws and the way its courts have interpreted those laws…"

2. Supreme Court "gleaned" from the complaint in *Roe v Wade*, 410 U.S. 113(1973) an unprotected privacy right for females protecting the decision to treat fetuses as malignancies caused by sperm infestations and needing removal rather than these sperm infestations being "people" sought murdered by the female seeking an abortion.

3. Artists, -like the Plaintiff in this case, have similar interests in creations of art and feel the "artwork creations" or "children" are integral parts of themselves. This interest or need for exclusive control of created art was recognized to need protection by the dying author and inventor, Benjamin Franklin, in early America for the 1787 adoption of the Constitution, though too weak to attend and personally express support.

4. The Plaintiff is generally dissatisfied with United States' law as was noted. The Plaintiff is furthermore incensed at the audacity of Congress and United States' Courts now choosing to continue conspiring and helping maintain Noah Webster's coined word [sic] "copyright" and thereby defeat the personal intellectual rights protection thought authorized for Congress to protect in the Constitution in 1787 by the "Progress Clause".

5. These personal rights now sought protected by the Plaintiff are solidly anchored in the Constitution but have never been protected in the least. The unconstitutionally vague [sic] "Copyright Act of 1976" fails to protect the rights of authors for ANY time whatsoever due to congressional malfeasance.

6. The unconstitutionally vague "fair-use" FRAUD enshrined in 17 USC §107 in 1976 was a noble attempt to protect usage of art once creation was revealed or disclosed to the public.

7. The Plaintiff in this action considers the original creations of nude art from the Plaintiff's past to be unwanted malignancies. The public is unfortunately very aware of these sinful creations of indecent artwork. These were and are internationally collected.

8. The right to exclusively control the womb is generally recognized in the United States for a time. The right to exclusively control creations of indecent art was authorized for a time but Congress has failed to protect this right and continues malfeasance in this Constitutional duty.

9. The Plaintiff does not believe there is a fundamental moral right to kill a fetus yet the Plaintiff agrees that *Roe v Wade*, 410 U.S. 113(1973) was decided properly. This decision recognizing the right to privacy now sets precedence for Western District of Arkansas finding that Congress is malfeasant in protection of authors' rights as well as the FCC being malfeasant in protecting the safety of interstate and world-wide wire communications and for finding that 47 USC §230(c)(3) is facially invalid as is 17 USC §107 though 17 USC §107 is furthermore unconstitutionally vague.

## VI. CONCLUSION

1. The Plaintiff regrets having offended the Honorable Jimm Larry Hendren in the past. This offense is hoped not herein repeated despite recognition of the fact that the District Court is predisposed to stretch and find rational supporting dismissal of this "litigious" Plaintiff.

2. The Supreme Court found Susan B. Anthony guilty of voting while female in 1873 and fined her $100. The fine was never paid though preceding female suffrage by over 48 years.

3. The Plaintiff has discussed this present action with one Eighth Circuit Court clerk, numerous Supreme Court clerks and Kim Mattos at the FCC by telephone as well as two parties refusing to provide identification except to attorneys at the Copyrite Office advising the Plaintiff to seek legal representation.

4. The appeal will be allowed to the Eighth Circuit as a pauper and then to the Supreme Court as a pauper. Both of these United States' Courts are aware of this current action and have been for several years as should have been clear in *FCC v Fox*, (10-1293) ruling or should be apparent now.

5. This case is clearly a better venue for addressing the allowance of indecent content in communications by the FCC than *FCC v Fox*, (10-1293) as well as being a better venue for addressing copyrite law than *Golan v Holder;* (10-545).

6. This action is also better for addressing the fundamental "Google Books" issue than *Author's Guild, et al v Google Inc*, (1:05-cv-08136-DC) though now on interlocutory appeal by Google Inc due to recent class certification. The Plaintiff feels that Defendant Google Inc in this case is correct in the NY case arguing against class certification as a matter of law.

# PRAYER

The Plaintiff, Curtis J. Neeley Jr. MFA, respectfully prays that Honorable Jimm Larry Hendren alters or amends the prior judgment and find as follows:

1. Defendants Google Inc and Microsoft Corporation should be subject to preliminary injunctions requiring return of no nude photographs in searches for the Plaintiff's name regardless of where found and what other terms are used.

2. Defendant FCC should be given a preliminary injunction requiring regulating **ALL** interstate and world-wide wire and radio communications that are received in the Western District of Arkansas or simply obeying the laws now existing. *See* 47 USC §151.

3. The Western District of Arkansas should rule that 47 USC §230(c)(1) is facially invalid for allowing violations of the constitutionally and common law secured right to privacy and that 17 USC §107 is unconstitutionally vague and unenforceable and fails to address the constitutionally and common law secured right to privacy as well.

4. The Western District of Arkansas should declare that the Attorney General, Vice President, and Speaker of the House malfeasant for not seeking protection of individual rights authorized in the Progress Clause and instead are propagating the coining of the *per se* disparaging term [sic] "copyright" for the copyrite ritual in the United States.

5. This Plaintiff, a severely brain injured pauper, respectfully prays that Honorable Jimm Larry Hendren withdraw the "certification" that the Plaintiff not be allowed to appeal as a pauper. The Plaintiff has been advised this "certification" will be ineffective but the assertion that the Plaintiff's claims are frivolous is particularly offensive and should be withdrawn since this should never have been done.

6. The Plaintiff prays that the District Court appoint counselor(s) for aid in preparation of this civil claim for trial since this claim impacts all people on earth who use wire communications disguised as the internet and all people in the United States who now create or once created indecent art and now wish to exclusively control this indecent art for a time like the Constitution alleged to authorize Congress to protect in 1787 that was never done.

---

2619 N Quality Ln
Suite 123
Fayetteville, AR 72703
479-263-4795
curtis@curtisneeley.com

Respectfully submitted,

_____

Curtis J Neeley Jr., MFA

# Certificate of Service

I, Curtis J Neeley Jr, certify that on this 13th day of August 2012, I served a copy of the foregoing electronically on listed and opposing but un-served Google Inc counselors. This is stated under penalty of perjury. NameMedia Inc counselors were not served since this claim should not involve this properly dismissed Defendant at all.

_____

Curtis J Neeley Jr., MFA