

**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-CV-5208-JLH</b>
	§	
<b>FEDERAL COMMUNICATIONS</b>	§	
<b>COMMISSION, MICROSOFT CORP.,</b>	§	
<b>GOOGLE INC.,</b>	§	
	§	
<b>DEFENDANT</b>	§	

**GOOGLE INC.’S MOTION TO DISMISS**

In response to Plaintiff Curtis J. Neeley Jr.’s (“Mr. Neeley”) Amended Complaint for Violations of Privacy Rights and Failure to Regulate Safety for Simultaneous Wire and Radio Communications as well as Violation of the Exclusive Right to Control Creations For A Time Protected by 42 U.S.C. § 1983 (“Complaint”) (Dkt. No. 5), Defendant Google, Inc. (“Google”) moves the Court to dismiss with prejudice Plaintiff’s Complaint against Google pursuant to 1) the principle of res judicata, 2) FED. R. CIV. P. 12(b)(6) because it fails to state a claim, and 3) because it is frivolous, malicious, vexatious, and fails to comply with FED. R. CIV. P. 11.

1. This lawsuit represents Mr. Neeley’s third wave of a continual grudge against Google for alleged wrongs he perceives, which all flow from the same sequence of events.

2. Mr. Neeley originally sued Google in 2009 alleging trademark and copyright violations and intentional infliction of emotional distress. *Curtis J Neeley, Jr. v. NameMedia, Inc., et al.*, Case No. 5:09-cv-5151-JLH (“*Neeley I*”). All of Mr. Neeley’s claims, save one, were dismissed on March 1, 2010 (*Neeley I*, Dkt. No. 97), which was subsequently affirmed by the

Eighth Circuit in August 2010 (*Neeley I*, Dkt. Nos. 166-1 and 166-2), and denied certiorari by the Supreme Court. (*Neeley I*, Dkt. No. 203). Summary judgment was entered for Google on the remaining claim on June 7, 2011 (*Neeley I*, Dkt. No. 268), which was subsequently appealed to the Eighth Circuit and affirmed on February 15, 2012. (*Neeley I*, Dkt. No. 290-1).

3. After his final appellate loss in *Neeley I*, Mr. Neeley promptly filed a new complaint on April 8, 2012, based on the same facts as *Neeley I* and alleging invasion of privacy, defamation, and violation of artist's moral rights under 17 U.S.C. § 106A. *Curtis J Neeley, Jr. v. NameMedia, Inc., et al.*, Case No. 5:12-cv-5074-JLH ("*Neeley II*"). This Court adopted Magistrate Judge Setser's recommendation to dismiss Mr. Neeley's complaint under the doctrine of res judicata and because it was frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). See Order, *Neeley II*, (Dkt. No. 21); Magistrate Judge's Report and Recommendation, *Neeley II*, (Dkt. No. 18).

4. Mr. Neeley again immediately filed this third complaint. All three of these lawsuits, regardless of Mr. Neeley's various appellations and alleged causes of action, arise from the same operative facts. Mr. Neeley took photographs of nude models and uploaded them to the internet. Mr. Neeley also had some of his images published in a collection of photographic art. Mr. Neeley's images were properly attributed to him as his creations. Since that time, Mr. Neeley has become incensed that an internet image search of his name will return these images, and began his litigious vendetta.

5. Indeed, at the December 6, 2010 hearing before Magistrate Judge Setser, Mr. Neeley admitted that he could control whether these images were linked to his name and, thus, would be returned by Google's image search engine. See Transcript of Proceedings Before the Honorable Erin Setser, United States District Court Magistrate, Dec. 6, 2010 ("Transcript") at

43, 53, *Neeley I* (Dkt. No. 216). He also admitted posting the images to Wikimedia subject to the Creative Commons License, which grants the right to reproduce the images as long as they are properly attributed to the creator. *Id.* at 54-56, 58-59. Mr. Neeley further acknowledged that he could remove the images from Wikimedia. *Id.* at 84-85.

6. At no time has Mr. Neeley alleged, nor does Google have, any control or authority to remove these images from the websites on which he or others placed them. And Mr. Neeley steadfastly refuses to register a copyright for any of his works, thus barring any claim of infringement.

7. Mr. Neeley's Complaint in this case alleges no new facts against Google, and fails to otherwise state a claim upon which relief can be granted. Mr. Neeley's Complaint also fails to meet the requirements of FED. R. CIV. P. 11 and is frivolous, malicious, and vexatious. As such, the Complaint should be dismissed. Moreover, Google intends to seek proper relief to prevent further litigation by Mr. Neeley of frivolous and vexations claims arising out of this same fact pattern without Mr. Neeley first receiving the Court's approval.

8. Google's supporting brief is filed contemporaneously with this motion and is incorporated by reference.

For all of these reasons and those stated in the supporting brief, Google respectfully requests that the Court dismiss all claims against Google with prejudice, and for all other relief as the Court finds equitable, just or appropriate.

Respectfully submitted,

\s\ Jennifer H. Doan

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**ATTORNEYS FOR DEFENDANT  
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**CERTIFICATE OF SERVICE**

I, Jennifer H. Doan, hereby certify that on November 29, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to CM/ECF participants, and I hereby certify that I have mailed the document by the United States Postal Service to the following non-CM/ECF participants:

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\s\ Jennifer H. Doan  
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