IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF ARKANSAS

US DISTRICT COURT
WESTERN DISTRICT ARKANSAS
FILED
DEC 17 2012
CHRIS R. JOHNSON, CLERK
BY
DEPUTY CLERK

Curtis J Neeley Jr., MFA **Plaintiff**

v

CASE NO. 12-5208

Federal Communications Commission,
Microsoft Corporation,
Google Inc. **Defendants**

BRIEF SUPPORTING MOTION OPPOSING DOCKET #16
(GOOGLE INC.'S MOTION TO DISMISS)

Defendant Google, Inc. ("Google") moved the Court to dismiss Plaintiff's Amended Complaint with prejudice pursuant to 1) the principle of res judicata, 2) FRCP. Rule 12(b)(6) because it fails to state a claim, and 3) because it was allegedly frivolous, malicious, vexatious, and failed to comply with FRCP Rule 11. None of these rational apply to the Amended Complaint and are attempts to cloak the new valid claims inside utterly inapplicable arguments as is described more fully herein while retaining the general format of the near-frivolous motion.

BACKGROUND

1. This District Court ruled in (09-cv-5151) that moral copy[rite], 17 USC §106A, does not apply "online". Therefore; Republication of images placed "online" without filtration and accessible to the public like at photo.net, Wikipedia.org, or anywhere else "online" without adult filtration could perhaps fall under the improperly plead principle of *res judicata* that is now egregiously misapplied by Defendant Google Inc in Docket #16.

2. One valid new claim in *Neeley Jr v FCC et al,* (5:12-cv-5208) was the first time any claim has ever addressed Google trespassing on private computers used by the Plaintiff for indecent art sales. Google bypassed the adult filtration included by the Plaintiff to prevent anonymous indecent art viewership, as is improper on its face, and violates the intent of the laws Congress intended to preclude this type access to indecency though done too vaguely twice. See 47 USC §§ (230, 231) compared to proposed 47 USC §232 served to Representative Steve Womack of Arkansas that lacks any public demand for passage to preserve the "open porntemet".

APPLICABLE LAW

I Res Judicata

1. The usage of computers to display indecent art by wire communications can be compared to usage of physical locations to display indecent artwork. The Plaintiff, or any other artist, bears the responsibility for display of indecency to minors if this indecency is placed in a venue that will result in the likely exposure of minors to indecency. It makes absolutely no difference if this indecency is "*online*" or in a church quarterly. The Plaintiff sought venues allowing adult filtration such that visitors to these indecent computer presentations were required to log-in to view indecency and only after asserting being adult and waiving complete anonymity. This type filtration is currently used by the Plaintiff for ideologically sensitive political art as can be seen in operation today at <deviantart.com> though no nude images now remain. See Exhibit "HACK-1".

2. Defendant Google Inc has generally abused 17 USC §107 fair-use claims to trespass on private computers and fair-use has been unconstitutionally vague on its face since created in 1976 due to failing to consider spreading unwanted republication violating the author's personal privacy resulting in unwanted addition of exposure like done by Google Inc with books in New York as remains a valid NEW claim in the Amended Complaint.

3. The right of authors to repent was recognized to be protected by common law as early as **1769** regarding unauthorized usage of the personal name, "*to the disgrace and against the will of the author; propagat[ing] sentiments under his name, which he disapproves, repents and is ashamed of...* ", quoting Lord Mansfield in *Millar v Taylor* (1769) 98 ER 201 at 252.

4. The Plaintiff once published highly respected, internationally collected artwork displaying the naked female human figure. The Plaintiff has the right given by the Creator to repent for this manner of display of the naked human body.

5. Defendant Google Inc generally abuses 17 USC §107 and claims the **rite** for "robots" to trespass on private computers extinguished the **right** of this Plaintiff to repent. This **right** was granted by the Creator and no Court may allow Google to prevent repenting and choosing privately if past creations of indecent art may be left accessible to minors.

6. The Plaintiff acknowledges now sharing the common realization of most humans in the US regarding the indecent nature of public presentations of the naked human form. The Plaintiff will dedicate the remainder of his life to reversing twenty-plus years of using wire communications, books, and other works to spread acceptance of the naked human figure as "*wholesome nude art*".

7. Plaintiff once used the pervasive desire of ALL humanity to view the naked human shape along with the inevitable human ability to rationalize this desire to be only appreciating "*wholesome nude art*". The Plaintiff now realizes and asserts that no "*wholesome nude art*" has ever existed due to human nature for ALL humanity. The carefully lit and cautiously posed naked human figure presented exclusively as a "figurenude object of art" formerly by the Plaintiff after separating this usage from ALL sexuality. Naked bodies are indecent and can be used by viewers to violate the sanctity of the naked body with lust without respect to the author's intentions.

8. Arkansas has recognized the existence of f**four actionable forms** of invasion of privacy.

(1) appropriation, which consists of the use of the plaintiff's name or likeness for the defendant's benefit; (like using "curtis neeley" to sell advertisements)
(2) intrusion, which is the invasion by one defendant upon the plaintiff's solitude or seclusion; (e.g. internationally expanding publication of naked images to minors from a New York library book while facing Plaintiff in United States District Court)
(3) public disclosure of private facts, which is publicity of a highly objectionable kind, given to private information about the plaintiff, even though it is true and no action would lie for defamation; and (e.g. internationally expanding publication of naked images to minors from a New York library book while facing Plaintiff in United States District Court)
(4) false light in the public eye, consisting of publicity that places the plaintiff in a false light before the public (e.g. internationally expanding publication of naked images before minors from a New York library book while facing Plaintiff in United States District Court)

Citing *MILAM v. BANK OF CABOT (Brown J.)*, 96-899 S.W.2d (1997), adding underlined text.

II. FED. R. CIV. P. 12(b)(6)

1. This District Court dismissed (5:12-cv-5074) without prejudice saying "*Plaintiff has failed to explain how the publishing of his own artwork places him in a negative false light*".

2. The Plaintiff hopes this is now explained due to Plaintiff's repenting and recognizing prior "*artwork creations*" violated the sanctity of the naked human body. Plaintiff now asserts that any presentation of the naked form, regardless of how carefully lit or posed, remains the naked human figure and offends most moral humans. "Nude art" was the terminology used to legitimize NAKED images as "*wholesome nude art*".

3. The improper nature of the naked form was recently realized by the city of San Francisco resulting in banning being naked in public except for prior approved events.

4. *Time, Inc. v. Hill*, 385 U.S. 374 (1967), the Supreme Court held that First Amendment protection precluded recovery upon a cause of action for "false light invasion of privacy by a private individual against a publishing company in the absence of proof that the Defendant published the information with knowledge of its falsity or in reckless disregard of the truth".

5. The Plaintiff prays this District Court recognizes Defendant Google Inc shows "**reckless disregard of the truth**" or in the alternative that a jury should decide if unwanted expansions of indecent publishing before minors that was never intended and creating additional exposure to naked images internationally before minors while facing this Plaintiff for violations of the moral right to control naked image redistribution "online" was demonstration of a "**reckless disregard of the truth**".

III. FED. R. CIV. P. 11

1. Plaintiff believes this District Court should not grant Docket #16 or "Google Inc's Motion to Dismiss" due to Plaintiff's bringing valid new claims that are neither frivolous nor precluded by any properly applied legal rational. The privacy claim's deficits were corrected as instructed.

2. In the event of dismissal of Google Inc, the Plaintiff prays the District Court grant the order barring Plaintiff from further pursuit of Google Inc without prior Court approval since nothing besides this order or death will cause the Plaintiff to stop seeking to mitigate twenty-plus years of creating naked images. Propagating indecent art is the primary reason Google Inc exists today within an inexplicable profit bubble that is clearly evil and unsafe due to failing to refuse to index unlabeled content in order to promote anonymous indecency using bogus claims of "Free Speech".

3. Plaintiff's drive to correct the evil wrongs of today's digital culture can be recognized looking at the Times Record reporting from October 24, 2012. "Womack Meets With Constituents In Greenwood", as follows.

> "Curtis Neeley of Fayetteville argued the Federal Communications Commission already has the authority to regulate content, but needs a change in FCC policy to enforce regulation.
>
> Neeley told Womack the FCC has a duty to safeguard children from being exposed to nudity on the Internet and provided Womack with a bill he drafted that would force the FCC to do just that."

Amended Complaint attachment #2 exhibit "B" pages (14-18) reflect the bill proposal that was delivered to Honorable Representative Steve Womack although the Plaintiff does not remember using the inappropriate slang term for simultaneous wire and radio communications underlined in the quote above.

4. It is commonly held by US citizens that the "*WEB*" must now be regulated in some way by somebody if asked privately. Europe is already beginning this and soon Google Inc "snippets" will require licensing in the robots rating file in Europe and in the US. Defendant Google Inc was recently found guilty of violating "*copyright*" in France for the trespass in New York on 10,000 books scanned like the one described, but IGNORED, in the Amended Complaint. Google Inc was fined $430,000 plus interest with a $13,080 fine per day until stopping these unauthorized republications.

5. This trivial level of fine for all Google Inc's admitted wrongdoings world-wide would only be $430,000,000 and equates to just $43 per book "*copyright*" violated. Google Inc will soon no longer exist as the near-exclusive profit harvesting entity due to the communications paradigm shifting to digital and United States' unconstitutional "*fair-use*" being disallowed for simultaneous wire and radio communications violating the private right to control personal expressions and determine that complete anonymity is not permitted.

ARGUMENT

I. Res Judicata Prevents Litigating the Same Claims Using New Labels But is Inapplicable Now

1. The errors in the "Motion to Dismiss" rational from p5 follow and are then identified as utterly inapplicable. These were perhaps alleged due an honorable error and mistake and were not intentionally brought to increase costs as would be frivolous.

> "Mr. Neeley claims now that Google violates his privacy for continuing to associate his name with the nude images which Mr. Neeley himself originally uploaded to the internet and sold to be published. Id. Mr. Neeley makes no new allegations, and his complaint clearly stems from the same factual situation which he has previously litigated – and lost – twice. Res judicata must now bar this and any further attempts to relitigate these claims."

2. The Plaintiff's valid NEW claims are regarding having placed nude images on the "*WEB*" on private computers that OBEY 47 USC §231 and require those desiring to view these nudes be identified as contactable, logged-in viewers electing to view nudity. This was done to obey the wishes of Congress that can be assumed to be the wishes of United States' citizenry. 47 USC §231 was ruled too broadly written leaving wire and radio communications safety enforcement only for FCC rulings due jurisdiction granted in 1934 by Congress in 47 USC §151.

3. The "*violations of privacy*" in the Amended Complaint are due to Google Inc bypassing the filtration installed on <deviantart.com> and <redbubble.com>. This identity verifiable filtration was done to comply with the general public's demand that viewers of indecency or nudity be identifiable as contactable adults after expressing desires to view nudity. This private personal decision of the Plaintiff was violated by Google Inc.

4. The NEW, valid claim involves display of nudity the Plaintiff clearly marked as not suitable for minors. The computer owners at <deviantart.com> removed these from display to the anonymous as the Plaintiff sought. Google Inc trespassed on the Plaintiff's private personal choice regarding who should be allowed to see the nudity once offered. The nudes have since been removed in order to prevent this trespass and new **anti-google** images were marked as inappropriate for minors for the purposes of demonstration. See exhibit HACK-1

5. Google Inc personnel have excluded most **anti-google** images *mysteriously* from searches for "curtis neeley" and yet refused to do this "hacking" when nudes were sought excluded. The Google Inc programmers are hopelessly fighting a loosing battle due to the Plaintiff's vastly superior ability and attention as is apparent or will be clear after examining supporting exhibits entirely including the attached explanations. See Exhibit "HACK-2".

6. These **anti-google** images still result from both "safe" and "unsafe" searches. This fact is clear proof that these are not excluded from searches due to being marked NSFW as would be proper and should **already be done** and was sought in the Amended Complaint. *See* curtisneeley.com/FCC/New_GOOG_exhibits with user name "adult" and password of "YeS" for hundreds of supporting evidence files prepared for jury review but too costly now to print.

7. The Australian <redbubble.com> computer or "*WEB*"-site filtration was initially bypassed but this bypassing ceased during *Neeley v Namemedia Inc et al*, (5:09-cv-5151) or *Neeley I*. This was documented EXTREMELY well with hundreds of indecent exhibits that can be seen above. Printing of these is too costly and the current "Motion to seal" ensured some were seen.

8. The Court should not misapply *res judicata* like Google hopes might happen and this section should sufficiently rebut this erroneous and nearly frivolous claim.

II. The Amended Complaint Brings New Claims and Corrects the Privacy Claim Deficit.

1. Google Inc seeks to use the defense listed in FRCP Rule 12 (b)(6) of failure to state a claim. This can not be used when valid correctable claims, like are now filed, are entered. The constitutionally secured right to privately choose what is proper for children to view is a claim that has ached to be addressed since 1996 "online". Congress has yet to successfully address this but has tried twice and been stopped by US Courts. This valid state duty will not be ignored after Docket #5 Attachment #2 is considered by Congress and the FCC.

III. The Amended Complaint Clearly Complies with Rule 11.

1. Google Inc counselors are trying to compare Plaintiff's demand to movie sequels. The Plaintiff has brought clear claims that must now be relieved. Legal filings are inappropriate venues for comic relief. e.g. "*Neeley I*", "*Neeley II*", "*Neeley III*"

IV. Dismissal [sic]"Of" Neeley's Claims, if Dismissed, Should Be With Prejudice

1. [sic] "*Relitigation*" is not a word or does not exist in standard dictionaries. The word is not permitted to exist due to the principle of *res judicata*. This does not stop Google Inc counselors from using [sic]"*relitigation*" in their "Motion to Dismiss". The fourth section also capitalized "[o]f" as may reveal Google Inc's clear desire to choose what rules are allowed to apply to Google Inc. Publishing images in a book or to the "*WEB*" are not donations to the "*public domain*". Google Inc requires this now to be left exclusively for Google Inc's decision. See Exhibit "HACK-6"". Google Inc now requires users of the "*WEB*" or the rest of us to accept this assertion and learn to deal with it.

2. Eric Schmidt, CEO of Google Inc, has told the "rest of us" that if we do not want anything to be known regarding what we do on the "*WEB*", we should just not use the "*WEB*".

V. Google Inc Sought Appropriate Remedies Preventing Further Litigation of These Claims

1. Google Inc will no longer exist as the most profitable PORN website on Earth before the Plaintiff ceases to end Google Inc's authoritarian rule of anonymous "*WEB*" porn access.

2. Google Inc's legal claims compare to home-builders sued for failing to install correctly grounded wiring. These home-builders, using Google Inc's plead logic, can not then be sued for failing to install insulation due to *res judicata*. These two claims are grounded in the same house built and both claims should have been brought together.

3. Google Inc's erroneous claims compare to car dealers being sued for failing to properly inflate vehicle tires. These car dealers, if Google Inc's plead logic is applied, may not be sued for failing to fill the crankcase with lubricant due to *res judicata*. These two claims are based on the same "*operative criteria*" regarding failure to fill a portion of a vehicle that was sold to the public. In further keeping with Google Inc's plead, warped logic, it does not matter if the car is the same or not because these claims involve the same "*operative criteria*", – cars presented to the public.

<u>CONCLUSION</u>

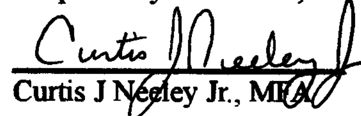
1. If United States statutory damages for intentional violations of copy[rite] were used instead of the negligible $43/book France used for 10,000 books, the $150,000 fine would be 1.5 Billion. If computed for the ten million books scanned now in New York, the fine would be 1,500 billion or 1.5 trillion. This does not address the fact that there are often multiple visual artists per book like

the 19 photographers in the book that was scanned when the Plaintiff's right to personal privacy was violated though only four others were included in the book preview with the Plaintiff.

2. The backwards United States **rite** for copying art will soon no longer exist and the "***WEB***" will no longer exist the way it does today. The word copy[rite] in the United States was always incorrect as is now clear. The word commonly used for the slang contraction of various terms used describing **inter**national **net**works of **inter**actively **net**worked wire and radio communications is not suitable for usage in ANY legal filings or ANY law and was not used in the Amended Complaint except in footnote #5 as an adjective describing a type of wire but never as a noun.

3. This "slang" term will never again be used by the Plaintiff to refer to the "***WEB***" in a legal filing. Plaintiff prays the District Court not grant Docket #16. A concise motion for Summary Judgment will follow. The FCC and/or DOJ may also unsuccessfully seek dismissal. There are no questions remaining to be tried by a JURY except the amount of fiscal exemplary damages to be awarded from Corporate Defendants or the (11.6 - 25 billion) these awards should be due the harm recklessly done this Plaintiff, US parents, and all spouses in order to profit unreasonably though this is NOT A CLASS action.

Respectfully Submitted,



Curtis J Neeley Jr., MFA

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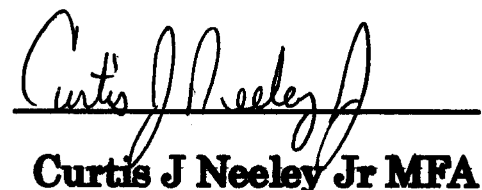
CERTIFICATE OF SERVICE

I, Curtis J. Neeley Jr., MFA, do hereby certify that on December 17, 2012, I filed the forgoing personally and the District Clerk will scan this and make it accessible via CM/ECF. Furthermore; every docket entry of Neeley Jr v FCC et al, (5:12-cv-5208) will be accessible by wire communications perpetually including a free mirror of the District Court Docket with freely provided electronic copies of every filing. The docket will be updated within 24-hours after any paper is filed by Neeley and can be accessed from the following UnRegulated Locations. (URLs)

1. CurtisNeeley.com/FCC/Neeley-Jr_v_FCC-et-al.htm
2. CurtisNeeley.com/FCC/New_GOOG_exhibits
3. CurtisNeeley.com/FCC/New_MSFT_exhibits

URL #1 is the mirror of the Docket. URL #2 is the password protected directory with access to all exhibit files prepared that are not accessible at URL #3. The username for logging in is "adult" and the password is "YeS" and proper case is required. These PDFs are often indecent or obscene and all access is logged.



Curtis J Neeley Jr MFA