

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

U.S. DISTRICT COURT
WESTERN DISTRICT ARKANSAS
FILED

Curtis J Neeley Jr., MFA

Plaintiff

DEC 17 2012

v

CASE NO. 12-5208

BY

CHRIS R. JOHNSON, CLERK

DEPUTY CLERK

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

Defendants

**BRIEF SUPPORTING OPPOSITION TO DKT. #14
MICROSOFT CORPORATION'S
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

The Supreme Court held that “[t]o survive a motion to dismiss, the factual allegations in a complaint, assumed true, must suffice ‘to state a claim to relief that is plausible on its face’”, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Amended Complaint easily exceeds this bar set by the Supreme Court and this is explained further herein.

I. INTRODUCTION

1. The wrongful “scienter” for Microsoft corporation’s continuing inaction or negligent violations of the privacy of the Plaintiff due former publication of indecent artwork after repenting for these creations and deleting them was recognized early in the history of common law in 1769, not a typo and from two-hundred-forty-three years ago, regarding unauthorized use 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” Lord Mansfield in *Millar v Taylor* (1769) 98 ER 201 at 252.

2. Microsoft Corporation told the Plaintiff no less than three times to see that “curtis neeley” text on the webpages causing the obscene text-image associations were removed thereby causing the disassociation to occur automatically creating a duty to perform as was promised.

II. PROCEDURAL BACKGROUND AND WRONGDOINGS OF MICROSOFT CORPORATION

1. The Amended Complaint presented unique new allegations of neglecting to act with twelve pages of supporting exhibits of decent text communications with Microsoft Corporation Customer Service that contained repeated admissions by Microsoft Customer Support against Microsoft Corporation's own interests. In Amended Complaint Attachment #2, exhibit "B", Microsoft Customer Support "Mark" states as follows.

"Thank you for contacting Bing Technical Support. This is Mark and I am glad to assist you with the Service Request 1184898261.

I understand that there are obscene images appearing when "curtis neeley site: michelle7-erotica.com" and "curtis neeley site: salon.com" is being searched on Bing. I can see how this concerns you. I tried searching for "curtis neeley site: michelle7-erotica.com" and "curtis neeley site: salon.com" on **Strict** and **Moderate** Safe Search settings and the obscene images didn't come up as a result. However after changing the Safe Search Setting to **Off**, the obscene images did come up."

The preceding admission from Amended Complaint exhibit "B" should leave this District Court questioning the condescending tone of "Microsoft Corporation's Motion to Dismiss for Failure to State a Claim" as much as this Plaintiff.

2. The common law right to privacy is supported by the Constitution and common law in Arkansas according to the opinion of the Arkansas Attorney General Opinion 96-101. This was Amended Complaint's exhibit "C" and was ignored by Microsoft Corporation as well as exhibit "B".

III. ARGUMENT

1. Microsoft Corporation's "inaction" after advised of an obscene image-text association left personal privacy and honor violations of obscene text-image associations remaining long after the "WEB" pages were revised and after repeatedly attempting to follow the promise of Microsoft Corporation's Customer Support that follows from ignored exhibit "B". This implied contract was given over and over and over creating repeated broken promises to perform updates of search results after advising this update would be done if Plaintiff made sure the "WEB" pages were cleared of the text "curtis neeley" or the offending images. The following contract that was implied and reaffirmed over and over was soundly violated over and over.

"Just like what my colleague inform you on the previous interactions. The best way for the URL's that you are requesting to be removed is for you to contact the site owner. Please be informed that site owner has a tool that they can utilize in removing the URL's that you are referring to from Bing.

Once the site owner has made the necessary changes or removal of the said URL's it will reflect in Bing on our normal refresh cycle."

Michael from Microsoft Corporation Customer Service quoted above repeated the HOAX creating a DUTY to perform that was also told to the Plaintiff by "Catherine" of the Online Safety Team that follows from ignored exhibit "B" attached to the ignored Amended Complaint as follows.

"Bing doesn't control the operation or design of websites indexed by Bing. Bing also doesn't control what these websites publish. If you have concerns about any content on the website, contact the owners of the website that publishes the information. If you have data privacy concerns, contact the data provider directly or go to their help to learn how to change your privacy settings. After the website removes the information and Bing has crawled the website again, the offensive or harmful information won't appear in our results.

Thank you,

Catherine

The Online Safety Team"

IV. CONCLUSION

1. The obscene and indecent images that return in specific searches mentioned repeatedly to Microsoft Customer Service as can be seen in ignored exhibit "B" are NOT images created or endorsed by the Plaintiff and remain improperly associated with the text "curtis neeley" **today** due to previous publications by the Plaintiff as much as a decade ago. **These have long been removed.** The fraudulent claim that altering the pages would resolve this offensive association is a wrong on its face and leaves this Plaintiff questioning the improper attitude of Microsoft Corporation.

2. Reckless inaction leaves vulgar images associated with the Plaintiff's personal name and these return for **any anonymous searcher.** This is nothing less than violation of privacy or a wrong that is an assault on Plaintiff's character and person as protected by common law since time immemorial. The "*allegedly*" obscene text-image associations can be seen resulting **still today** in the following Microsoft Corporation search queries documented in the ~~sealed~~ exhibits making these finally impossible to continue to ignore though Microsoft Corporation will continue to ignore the "*mere possibility of misconduct*" until ordered by this District Court to act.

1. "curtis neeley" | See exhibit "CN"
2. "curtis neeley nude site:fineartamerica.com" | See exhibit "FAA"
3. "curtis neeley site:creative-nude.net" | See exhibit "CNNet"
4. "curtis neeley nude" | See "CN nude"
5. "curtis neeley site:salon.com" | See exhibit "S"
6. "curtis neeley site:model-forum.com" | See exhibit "M"
7. "curtis neeley site:michelle7-erotica.com" | See exhibit "M7-E"
8. Exhibit "Z-scienter" | See exhibit "Z-scienter"
9. All above and more may be accessed as PDFs with user-name "adult" and password "YeS" at curtisneeley.com/FCC/New_MSFT_exhibits

3. Searches (1, 3, 5, 7) above contain obscene images lacking any First Amendment excuse and displaying these to non-logged-in viewers was not wished by Congress but continues today to increase profits for Microsoft Corporation in the guise of "Free Speech".

4. These text-image associations are left long after Microsoft Corporation was advised of the inappropriateness and after the "allegedly" §230 indexed pages were revised. Microsoft Corporation Customer Service advised this would resolve the wrong. These broken promises were never addressed and yet Opposing Counsel prays this District Court will be misled and believe the absurd beginning law-student type allegations made in Docket #14.

5. The "Motion to Dismiss" for failing to state a claim is too outrageous and offensive to oppose concisely and not display anger caused by Microsoft Corporation's audacity. The mysterious "anonymous minors" could include the Plaintiff's children or their classmates. These details were not included because the Plaintiff feels sufficient moral duties exist for the Plaintiff to seek to ensure the inappropriate vulgar and obscene "curtis neeley" text-image associations cease in order to protect the safety of ANY anonymous person in the United States or on Earth who learn of this litigation and search for "curtis neeley" and limit this to random indecent sites. This litigation will be studied in law schools, Universities, and churches around the Earth forever. Perpetual international impact is now the obvious result of *Neeley Jr v FCC et al*, (5:12-cv-5208).

6. Microsoft Corporation's Counselor found it impossible to determine how maintaining the vulgar "status quo" seen now by logged-in public in the obscene or indecent exhibits of searches listed plainly in Amended Complaint's exhibit "B" could amount to the "*mere possibility of misconduct*" according to the outrageous "Motion to Dismiss".

7. Congress has tried repeatedly to prevent transmission of obscenity and indecency to anonymous minors by simultaneous wire and radio communications using the common, entirely inappropriate slang term for the international network of simultaneous wire and radio communications. See 47 USC §§ (230,231) and compare to Amended Complaint's exhibit "B".

8. The Federal Communications Commission has the statutory duty **ALREADY** to stop Microsoft Corporation or anyone else from making unsafe interstate and world-wide wire communications used in commerce and were given this duty **in 1934 by 47 USC §151**. The jury will be asked to assign damages for obvious misconduct of Microsoft Corporation and Google Inc that Congress has not yet successfully proscribed but established improper *scienter* demanding punishment. The intentions of Congress will clearly now begin to be followed after reading the last four pages of Amended Complaint's attached exhibit "B".

9. This objection attempts to follow the general form of the offensive eleven-page "Motion to Dismiss" but with numbered paragraphs to better comply with FRCP Rule 10(b).

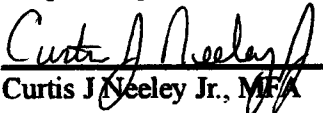
10. Plaintiff seeks denial of the offending docket #14 and prays this decision should include suitable non-fiscal admonitions encouraging reading Complaints and supporting exhibits carefully before responding and reminding Microsoft Corporation of FRCP Rule 11.

11. Plaintiff asks this District Court's denial also order that all Microsoft Corporation image searches of computers by wire communications using "curtis" or "neeley" to exclude four domains by default. (salon.com, michelle7-erotica.com, and creative-nude.net, model-forum.com) These searches would then return advisement that unfiltered searches including these four domains and "curtis" or "neeley" require logging-in with IP addresses recorded for thirty days to permit checking by authorities and denies access by all known proxy servers.

12. These four UnReguLated private computer locations accessible by wire long ago removed the text "curtis neeley" and/or the disturbing images. The Plaintiff was promised by Microsoft Corporation this would end the inappropriate and offensive association automatically. An Initial Scheduling Order and injunction is now sought that should force completing the promise not performed This action is trivial and costs the offending Defendant Microsoft Corporation absolutely nothing.

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Respectfully Submitted,

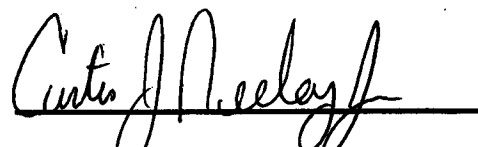

Curtis J. Neeley Jr., MFA

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 PDF's are often indecent or obscene and all access is logged.


Curtis J Neeley Jr MFA