

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

CURTIS J. NEELEY, JR.

PLAINTIFF

v.

Civil No. 12-5208

FEDERAL COMMUNICATIONS COMMISSION;  
MICROSOFT CORPORATION; and  
GOOGLE, INC.

DEFENDANTS

O R D E R

Now on this 7th day of February 2013, comes on for consideration plaintiff's **Motion for Leave to Further Amend the Amended Complaint** (document #48) and the responses and supplements thereto. The Court, being well and sufficiently advised, finds and orders as follows:

1. Plaintiff Curtis Neeley, Jr., acting pro se, filed this action on September 17, 2012, alleging privacy violations by the Federal Communications Commission (FCC), Microsoft Corporation, and Google, Inc., based on the return of nude images attributed to Mr. Neeley in various internet searches.

2. Mr. Neeley amended his Complaint as a matter of course on October 2, 2012 (document #5).

3. Thereafter, each separate defendant filed motions to dismiss the action, all of which remain pending and are ripe for review.

4. On January 16, 2013, Mr. Neeley filed the present motion, stating that he does not wish to add any claims but only

wishes to clarify the claims already pled and to revise the prayer for relief.

In addition to the motion, Mr. Neeley filed a supporting brief (document #49) and two "supplements" (documents #51 and #53). The final "supplement" -- which was offered after Microsoft Corporation and Google, Inc. filed their separate responses to the motion -- includes a copy of the proposed Second Amended Complaint (document #53-3). Pursuant to Local Rule 5.5(e), Mr. Neeley incorporates all prior supporting exhibits, as well as document #49-1 ("URL Wire Communications"), by reference.

5. Whether to grant or deny a plaintiff's motion to amend his pleading is within the sound discretion of the Court. *Popoalli v. Correctional Med. Servs.*, 512 F.3d 488, 497 (8th Cir. 2008). The Court should freely grant such a motion when justice so requires. Fed. R. Civ. P. 15(a)(2).

6. The proposed Second Amended Complaint differs only slightly from the Amended Complaint. Other than the addition of underlining or bolding for emphasis and the insertion of various adjectives, the only substantive changes appear to be as follows:

\* on page 3 at paragraph 6, six lines of text suggesting that the FCC implement new rules;

\* on page 9 at paragraph 2, an allegation that Microsoft's text-image associations are "reckless;"

\* on page 10 at paragraph 4, an allegation that Google

violated Mr. Neeley's "common law copy right and common law privacy as well as 47 USC §605;" and

\* interspersed throughout the document, allegations that the actions or omissions of the defendants violate Mr. Neeley's privacy and his "common-law right to not be associated with art."

The prayer for relief, beginning on page 14, is amended to seek compensatory and punitive damages based on the number of alleged violations, as well as compensation due to "non-fiduciary losses," which Mr. Neeley promises to explain in person before a jury.

7. In light of these proposed changes, albeit minor, the Court will grant Mr. Neeley's motion. The Court will consider document #53-3 to be the Second Amended Complaint; there is no need for Mr. Neeley to re-file it separately.

8. Because the amendment does not significantly alter the nature of the complaint, the Court assumes that the arguments made by the defendants in their motions to dismiss -- which remain pending -- apply to the Second Amended Complaint, as well. Thus, the Court will consider those motions as motions to dismiss the Second Amended Complaint. If this is in error, the defendants should so advise the Court within five days of this Order.

**IT IS THEREFORE ORDERED** that plaintiff's **Motion for Leave to Further Amend the Amended Complaint** (document #48) is **granted**. Docket #53-3 will be considered the Second Amended Complaint, so

that no separate filing is necessary.

**IT IS SO ORDERED.**

          /S/ Jimm Larry Hendren            
**JIMM LARRY HENDREN**  
**UNITED STATES DISTRICT JUDGE**