

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

CURTIS J NEELEY JR, MFA

VS

CASE NO. 5:09-cv-05151-JLH

NAMEMEDIA INC

Network Solutions LLC

Google Inc.

**THIRD BRIEF SUPPORTING MOTION REQUESTING LEAVE TO  
FILE AMENDED REPLACEMENT COMPLAINT**

**I Parties Added**

a. Yahoo Inc, AOL LLC, Microsoft Corporation, IAC, ICANN Inc, as well as the FCC are the parties that Plaintiff seeks to add in the same action that is now before the Court. They were not noticed until January when defendant NAMEMEDIA INC finally deleted the nude photographs as demanded and noticed by NAMEMEDIA as can be seen in the record as early as July 24, 2009. Plaintiff does not expect to file anything further.

**II Claims Added**

- a. Defendants Yahoo Inc, AOL LLC, Microsoft Corporation, IAC, each defamed the Plaintiff while violating his rights to exclusively control attribution to modified art or not to be credited to modified art that subjects the artist to public shame. They each attributed images not allowed to be broadcast on TV to minors and thereby disclosed information that the common person would prefer to maintain privately. Display of the original art photographs of the Plaintiff to minors is a manner of display abhorrent to the Plaintiff and thereby a defamation by AR Statute 16-63-207 as well as against "COPA" had it not been ruled overbroad, vague and an implied First Amendment Violation based on content. These Defects will soon be remedied and an enforceable statute will make it again illegal.
- b. The added Plaintiff's, as well as Google Inc, each go further and "broadcast" or traffic in pornography that affects all children and by including the Plaintiff's original figure nude art, they defame him and imply a consent of this trafficking of obscene material. It is so obscene it can't be entered without violating federal laws that prohibit trafficking such material in print.
- c. The added Plaintiff's, as well as Google Inc, violated substantive Due Process right to be free from displaying art unfit for public broadcast to minor children or compelling the Plaintiff to show adult art to his children by allowing them to use the internet without constant supervision. No "COPA" law is needed to guarantee this right that is already enjoyed in many overseas locations or by requiring using lycos.com for all searches.

- d. Defendant Network solutions LLC will face a claim of outrage caused by harassing communications as well as US Title 15 § 1125(d) trafficking in five domains of the Plaintiff since this action started as well as attempting to commit fraud by misleading the Plaintiff into feeling advertising of expiration dates was required. This fraudulent communication was a harassing response to a claim exactly counter to the fraudulent attempt to confuse a mentally challenged. The Lanham Trademark Claims are subject to equitable tolling and remain.
- e. Defendant NAMEMEDIA INC will face a claim for outrage resulting from harassing communications regarding <eartheye.com> and <sleepspot.com> as well as unjust enrichment for rejecting the offer of a domain while concealing the Plaintiff's impending legal action they were aware of from the opposing bidder, while using Plaintiff's interest to inflate the unjust enrichment they got from EDATS Inc. They will also face an exquisitely outrageous copyright liability for destroying publicly displayed art after July 24, 2009. This trespass was also discrimination against a disabled person.
- f. Defendant Google Inc will face a claim of outrage caused by harassing communications as well as violation of copyrights and privacy while defaming the Plaintiff. They will also face a claim of unjust enrichment for charging the Plaintiff for AdWords advertising on default selected "parked" sites as though they were Google search pages. These as well as a direct and contributory trademark violation that was concealed and was therefore not discovered till this action began. These acts are not subject to the Limitations Ruling in Docket #97.
- g. ICANN Inc will face a claim of detrimental reliance for allowing domain expiration dates to be advertised and causing all registrars including those for the Plaintiff's current domains to thereby have a false demand for all domains and thereby endangering all Plaintiff's current domains. Simply publicly listed if requested instead of advertised would prevent establishing fraudulent values and a demand for all potentially descriptive short domain names. ICANN Inc is aware of this and communicated the same on the phone to the Plaintiff recently, as evidence in trial will support.
- h. US Attorney General is an interested party now made a defendant because US Title 17 has been unconstitutional since May 31, 1790. The unconstitutional Statute has resulted in the United States "Copyright" laws being morally bankrupt since Benjamin Huntington and a publisher modified the Statute of Anne from Britain from 1709 and created a license fee for a right the Creator gave and gave it a deceptive moniker. Attribution as morally fundamental in several Countries and the United States respects this by Treaty. The Ninth Amendment better protects the right to attribution than the Statute that turned this fundamental right into a "license to sue". Plaintiff has already filed a Notice of Constitutional Challenge "Dkt 36" as required and now adds the US as joined Defendant based on the Court implications in Dkt #97 whereby moral attribution rights are missing in Title 17 subjecting Plaintiff to Substantive Due Process violations where Canadian artists are granted rights denied US citizens.

- i. The Federal Communications Commissions “FCC” is added and has been Malfeasant in their duties to regulate communications facilitated by “wire” as is their Statutory mission as established by Congress in the Communications act of 1934. The FCC recently failed to assert its Statutory Duty to regulate communications by “wire”.

### **III. Claims Once Erroneously Dropped/Dismissed**

- a. Plaintiff, erroneously, once completely agreed with the Network Solutions LLC Motion to Dismiss Docket #104. Statutory Limitations were treated as applicable to Network Solutions in error. Plaintiff agrees with portions of Google Inc Counsel Cross Motion for Reconsideration and Motion in Response to Docket #97. The Docket #109 citation of Stricker v. Union Planters Bank should in no way color this request because the request to amend here was by confused pro se pauper litigant and there it was by Counsel where the proposed amendment denied could already be seen to lack standing and all parties were relatively wealthy. Plaintiff’s standing and the applicability of equitable tolling as mentioned in Docket 119 could not be more obvious.
- b. Plaintiff asks the Court to issue Summons for the newly added Defendants AOL LLC, Yahoo Inc, Microsoft Corporation, IAC, and ICANN Inc the United States and the FCC. Plaintiff will diligently seek the information from the Secretary’s of their headquarter location States.

#### **Relevant standard**

- a. The federal Rules of Civil Procedure Rule 15(c)(1)(B) are the controlling legal standard
- b. This amendment asserts a claim that arose out of the conduct or occurrences attempted to be set out in the original pleading and are within the 120 days allowed by Federal Rules of CP Rule 4(m).
- c. Docket 117 ¶(I) labeled Legal Standard lists as follows. “Although leave to amend pleadings should generally be granted freely pursuant to Fed. R. Civ. P. 15(a), the Court should deny a motion for leave to amend if the amendment would be futile. Stricker v. Union Planters Bank, 436 F.3d 875, 878 (8th Cir. 2006); United States ex. rel. Lee v. Fairview Health Sys., 413 F.3d 748, 749 (8th Cir. 2005)”. This amendment can be seen to have standing and not be futile on its face.

Whereby; Plaintiff believes this action flawed against several already served Defendants unless amended due to errors of a brain damaged pro se party, amending will save all parties expenses and not waste the diligence of the Court already invested. Plaintiff does not herein repeated former improper conduct. Seven days will give enough time to locate the Agents for Service and submit them to Court for Certified postal USMS Summons as well as removing the irrelevant and so noted portion in the yet again properly attached Complaint exhibit and finally filing it with the Court. All Defendants may see the claim now obviously different and nothing herein is frivolous or improper in any manner and was not done to confuse or increase the expenses of the parties.

Respectfully and humbly submitted,

Curtis J Neeley Jr, MFA