

**No. 11-2558**

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**IN THE UNITED STATES  
COURT OF APPEALS**

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**FOR THE EIGHTH CIRCUIT**

NameMedia Inc.,  
Google Inc.

**Appellees,**

**v**

Curtis J Neeley Jr., MFA

**Appellant.**

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**AN APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
THE HONORABLE JIMM LARRY HENDREN, DISTRICT JUDGE,  
UNITED STATES DISTRICT COURT**

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***MOTION FOR EN BANC REVIEW***

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Curtis J Neeley Jr., MFA, Appellant,  
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## **Concise rational for *en banc* review**

1) The Eighth Circuit “*approach to amending*” was called “*Dennis Factors*” by the District Court in egregious error. Supreme Court cases were misused creating instead “*Dennis Factors*” enlarging discretion for District Court denying motions to amend. The Eighth Circuit Panel citing of *Foman v. Davis*, 371 U.S. 178, 182 (1962) inside *Dennis v. Dillard Department Stores, Inc.*, 207 F.3d 523, 525 (8<sup>th</sup> Cir. 2000) in ¶14 were called “*Dennis factors*” by District Court on page 10 of Dkt 125 as follows from page 6 though single spaced, indented, and using 13 point type.

“The Eighth Circuit takes a liberal approach to the amendment of pleadings, as does **F.R.C.P. 15**. Leave to amend must be granted except in the following circumstances:

- \* where the amendment will result in prejudicial delay or other undue prejudice;
- \* where it stems from bad faith or dilatory motive;
- \* where it comes in the face of "repeated failure to cure deficiencies by amendments previously allowed"; or
- \* where it would be futile.

*Dennis v. Dillard Department Stores, Inc.*, 207 F.3d 523, 525 (8<sup>th</sup> Cir. 2000).”

2) The case used involved abuse of discretion in denying JC Penny’s motion to amend an answer to include an affirmative defense. The “*Dennis factors*” appeal resulted in a new trial citing the Supreme Court from 1962 and no “*Dennis factors*”.

3) The District Court alleged Mr Neeley's continued failure to purchase "license to sue" called copy[]right registration was refusal to correct defects not listed. Mr Neeley continues refusing to purchase "license to sue" at this time and invites the entire Eighth Circuit to review the rite for making copies of original art called a copy[]right in error in the United States. The copy rite or copy ritual called copy[]right in error in the United States will not survive this action requiring Supreme Court consideration as well as Congressional review.

4) The Eighth Circuit is now asked to review this action *en banc*. This motion precedes the panel ruling due to the extreme effect this litigation will have on the entire Earth. The Federal Communications Commission continues not to regulate 47 USC §153 ¶(52) wire communication and Google Inc and Microsoft Corporation continue display of Mr Neeley's original nude and figure nude art to minors despite three years in Federal Court and the plain meanings of United States laws.

5) No Eighth Circuit panel wants regulation of the once "open Internet" to result from ruling "the Internet" wire communications should have been regulated by the Federal Communications Commission all along as is obvious to the international community.

6) The District Court ruling that “the Internet” was an exempted electronic publication item like a disk, magazine, book, map or other exempted physical object listed as excepted items not visual art protected by 17 USC §106A excluded in 17 USC §101. This ruling was clear error and resulted in United States’ courts further straining to interpret laws marginally recognizing copy “rights” despite the clear fact these “rights” are not recognized except in the Ninth and Fifth Amendment.

7) The unconstitutional disparaging of the right to be secure in personal visual art creations like granted in modern democracies will require this action be considered by the entire Supreme Court. Mr Neeley seeks an *en banc* ruling despite no pending adverse decision in order to prevent leaving the *en banc* appeal venue for the opposition to create further delay.

8) Two plus two is always four. Mr Neeley marvels and questions the Supreme Court’s not admonishing Anthony Falzone Esq for arguing that recognizing copy[]right for the first time was adding another period to the already granted zero-year copy[]right period. This argument is like stating the electronic publication process was meant used in the list of physical items exempted from visual art like done by one confused District Court judge and repeated by each Appellee Counselor.

9) Two plus two is still always four. Anthony Falzone Esq argued recognizing copy[]right for the first time added another second period to the zero-year copy[]right period granted. The Stanford law professor argued this recently in *Golan v. Holder*, (10-545) on Oct 5<sup>th</sup> 2011.

10) Mr Neeley contends being *pro se* and *in forma pauperi* means oral arguments are not considered despite Mr Neeley knowing more about copy[]right law than Stanford law professor Anthony Falzone Esq or any judge in the United States. Professor Falzone orally made a complete fool of the *Golan v. Holder* oral argument while not recognizing the entire Free Speech argument operates more in the interest of enforcement of copy[]right than violation of copy[]right. Common sense and law should not be complete opposites as appearing now to be.

11) The country a person is born in should not determine inalienable rights like the ability to control the integrity of visual art or of written text. Appellee Google Inc sought some formal recognition of a public ownership of all art regardless of where published once the “*invented and idiotic*” zero-year copy[]right term had expired in *Golan v. Holder*.

12) *Neeley v NameMedia Inc, et al*, (5:09-cv-05151)(11-2558) will have international impact due to the fact that the Federal Communications Commission allowing of both Microsoft Corporation and Google Inc to display Neeley's nude and figure nude art before minors and unauthenticated viewers by wire will be ordered ceased. Regulation of wire communications described in USC 47 §153 ¶(52) will be ordered begun even when called "the Internet" for disguise or honest mistake.

13) The personal right to control original art was marginally recognized in 17 USC § 106A in 1990. The personal right to control original art always existed secured in the Ninth Amendment operating in conjunction with the right to be secure in the person anchored in the Fifth Amendment.

14) Curtis J Neeley Jr., MFA realizes motions for *en banc* review normally awaits adverse rulings. Eighth Circuit Clerks advised Neeley that panel rulings could await resolution for several months on Oct 17, 2011.

15) There exists no controversy or complicated balancing of public versus private interests in this action in order to order discontinuation of the malfeasance of the Federal Communications Commission.

16) The ruling in this action requires no more of a decision than requiring existing laws to be followed. *Neeley v NameMedia Inc, et al*, (5:09-cv-05151) (11-2558) could have resulted in ONLY Neeley's original nudes and figure nudes not being communicated by wire, however, image search engines displaying nudes will no longer be allowed by the Federal Communications Commission to unauthenticated viewers.

17) The United Kingdom recently required Internet Service Providers to require authenticated filtration of wire communications called the Internet and this is already required by United States law but is not done due to Federal Court rulings hoping to maintain the free flow of wire communications of "*legal pornography and legal nudity*" like done by Curtis J Neeley Jr., MFA.

Whereas, included herein are sufficient rational for *en banc* review of the pending appeal **before rulings** either adverse to or granting are made, Curtis J Neeley Jr., MFA requests *en banc* review and oral *pro se* argument by Curtis J Neeley Jr., MFA if desired.

Respectfully and humbly submitted,

/s/ Curtis J Neeley Jr .

Curtis J Neeley Jr., MFA