

**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 Inc.
Google Inc.

**Notice of Constitutional Challenge to US Title 15,
US Title 17, and Rules of C.P. Rule 11 from US Title 28**

Rules of C. P. 5.1 require District Courts certify to the Attorney General that a statute has been questioned as required by USC 28 § 2403(a) and Plaintiff now challenges the Statutes in Titles 17 and 15 and given by Title 28 in the Rules of Civil Procedure Rule 11(b) (2) “*Motions for Sanctions*” as individually described as follows.

I Challenge to United States Title 17

Publication technology and intellectual property characteristic have changed radically and US Title 17 regulating copyright is now unconstitutionally vague. This creates violations of substantive and procedural Due Processes for the Plaintiff. The

Defendants are each taking advantage of portions of the US Title 17 that are unconstitutionally vague to differing extents currently as follows.

Defendant NAMEMEDIA INC. is capitalizing on the unconstitutionally vague portions of USC 17 that do not address the new manner of fixation of a book of photographs. Copyright as codified is unconstitutional in its fundamental intention of encouraging registration of copyrights. The US Constitution says in the Ninth Amendment, “[t]he enumeration in the Constitution, of certain [copy]rights, shall not be construed to deny or disparage others retained by the people.”

The current statutory requirement that citizens pay for a right has a history of *ironically* relevant discussion in Congress. Once in the debate regarding a military exception for Conscientious Objectors to the Militia Act of 1792, when Rep. Aedanus Burke opposed conditioning exemptions on payment of a commutation fee, by complaining as reported, “[w]e are going to make a respectable class of citizens pay for a right to a free exercise of their religious principles....” *See 2 Annals of Cong.* 1865 (Joseph Gales, ed. 1834) The principles in this case are not religious, nevertheless, these rights never needed to be given. These rights exist much like air or water exists. All humans have equal access to these without enumeration. Copyright legislation the Court sees resurfacing repeatedly for nearly a millennium and the old reference from 1865 *Id.* is made particularly relevant to this particular Notice of Challenge and case because the Plaintiff and *Pro Se* author of this Notice was discharged from Active Duty from the United States Marines Corps as a Conscientious Objector to War. Plaintiff has always been principally driven and struggles to remain so although severely mentally and physically disabled. Plaintiff does not

remember serving three years or receiving Meritorious Promotions and reaching the rank of Corporal or electing to give up benefits accrued because of principles that conducting warfare is such a personal, individual decision not requiring religious beliefs to support refusal to accept war policies that require killing if individuals feel that organized war requires murder. There was no war or military action being conducted for Plaintiff to avoid by this Conscientious Objecting. Plaintiff was simply being true to a principle of conscience that is still held.

Plaintiff asserts copyright is a fundamental right and US Title 17 selectively codifies portions of it giving the enumerated rights protection of monetary value that has always been unconstitutional and may now finally be recognized as violating the Ninth Amendment of the US Constitution.

Paying a fee to buy rights to sue and enforce a fundamental right is illogical. Citizens of the United States must now pay and register to use US Courts to enforce a right by US Title 17 that measures values of right statutorily. It is hard to handle reading of US citizens accepting only those who can pay and register copyrights may use the Courts to enforce purchased licenses to sue. This wealthy class of US citizens can now only seek the fines provided by US Title 17 regardless of how malicious the transgression are, without US Title 17 recognizing punitive damage potentials. Copyright violations are usually profitable propositions carefully conducted where statutory fines and actual damages, never sufficiently provable, allow profits for violations. Plaintiff before the Courts now registers a Conscientious Objection to the principle of copyright law attempting quantification of rights given by the creator, evolution, or other creative process whereby the reader believes

air and water come to exist. Copyrights are rights as fundamental to United States citizens as free speech and the pursuit of happiness and other rights codified and vicariously enumerated in the Ninth Amendment. The first codified rights were published or “fixed” to use language relevant for this Copyright Title challenge. The first accepted enumeration of rights held beyond transgression by even a King has a fixation date known still today. *See Magna Carta* of June 16, (1215) 795 years is enough time for Courts to now finally recognize that attribution of copyrights is a fundamental right.

Defendant NAMEMEDIA INC is violating copyrights to images in the book “**Figure nude**” of Plaintiff. *See* Ex E-K. These were allegedly uploaded by a mentally defective and brain injured Plaintiff as excerpts of a book that is not yet “fixed” according to US Title 17 § 101 when “fixed” is treated as the physical printing. “**Figure nude**” was fixed November 2008 when treated as a publicly accessible book that can be viewed and purchased. *See* Ex. BIO. The protections offered by US Title 17 vaguely mandate a unique date that a copyright is established. This date is an unknown since the term “fixed” is now unconstitutionally vague in the case before this Court. Defendants should not deprive the Plaintiff of fundamental copyrights not enumerated properly that are granted by the Ninth Amendment because the US Title 17 is unconstitutionally vague regarding the date artwork is fixed or published and requires fees for these rights to be enforced by Courts. The use of vague copyright law discourages the creation of expensive new works of art and POD books like “**Figure nude**” are particularly affected.

Defendant NAMEMEDIA INC alleged already in this proceeding that their early violation of Plaintiff copyright entitles them to continue violating because of limitations

provided because the violation of the copyright began more than three years ago.

(See Docket #18, #19)

The date a photography book is “fixed” according to US Title 17 that Defendant NAMEMEDIA INC applies as providing affirmative defense due to limitations is unconstitutional in addition to being an erroneously inaccurate application of this vague law failing to enumerate rights acknowledged by the Ninth Amendment correctly.

In US Title 17 we read the relevant part of the title generally transcribed using modern language, “[display publicly means displaying where people besides family view artwork concurrently in unison or individually in separate places and at differing times.]” We see now that books may now be published and “fixed” at different times or concurrently.

A common person will be as likely to describe a book published in a fixed form after seeing the book offered online as they would be to describe any traditionally printed mass-market book as “fixed” and published in a book store.

Book printing processes no longer require large press runs. “**Figure nude**” is a print on demand (POD) book fixed physically when first purchased. Copyright for “**Figure nude**”, or any other print on demand (POD) book, does not need to be registered until books are first sold and “fixed”. Images that will be in the book or that are part of the creative process have copyright protections given by US Title 17 § 106(a). The vague use of US Title 17 only encourages violation of Plaintiff copyrights. This is contrary to the accepted goal of copyright legislation and will only result in less creation of such art.

Furthermore; US Title 17 § 408, labeled “**Copyright registration in general**”, states in the relevant part that, “such registration is not a condition of copyright protection”, and explicitly describes registration to not be a condition for copyright protection. Subsequently, the portion that spawns the Plaintiff Conscientious Objection, USC 17 § 411, is titled “**Registration and civil infringement actions**” and states “[**except for § 106(a)**], exclusive rights of attribution and integrity of a work of art, registration is required to file a suit”. Here Plaintiff contends that US Title 17 § 408 and US Title 17 § 411 are unconstitutionally vague and US Title 17 § 411 is diametrically opposed to US Title 17 § 408. It is of significant relevance to the case at hand that the Plaintiff copyrights that Defendant NAMEMEDIA INC is violating are the exclusive rights given the *Pro Se* pauper Plaintiff by US Title 17 § 106(a). These rights are ironically the exceptions noted in US Title 17 § 411. This unconstitutional statute Defendant NAMEMEDIA INC wishes the Court bar Plaintiff copyright claims with while ignoring the Ninth Amendment and Equal Access and Due Process. (See Docket #18, #19)

II Challenge to United States Title 15

Publication technology and marks used in trade have changed radically and US Title 15 is unconstitutionally vague as a result. The Defendants are each taking advantage of portions that are unconstitutionally vague to differing extents as follows.

Defendant NAMEMEDIA INC. is capitalizing on the unconstitutionally vague portions of US Title 15 that do not address the new potential use of domain names as

common law trademarks. Defendant Network Solutions Inc and NAMEMEDIA INC conspire regularly to profit from this ambiguity or unconstitutional vagueness of trademark law.

These two Defendants capitalize on the fact that Defendant Google Inc pays them licensing fees and profits outrageously with a common business policy of violating trademarks. Network Solution Inc and NAMEMEDIA INC first conspired to profit while violating the common law trademarks of Eartheye.com and SleepSpot.com when these domain names of the Plaintiff were near to expiration despite disclosed TM. Each Defendant profits by a Ponzi scheme type valuation they assign to potential common law trademark violations. They advertise domains that are about to expire for a period long enough to use fraudulently progressive tenses for instantaneous processes without respect to potential common law trademarks or TMs. They then conduct USPTO database searches and allege a fraudulent trademark research as protecting cybersquatting. Common law trademarks or TMs exists because uses of common-law copyrights for profits result in similarly fundamental rights common citizens refuse waiting for Courts to codify leaving it secured by the Ninth Amendment and common law.

Rather than repeating the prior copyright objections the Plaintiff asks the Court to read the preceding section substituting trademark for copyright. Trademark is another fundamental right supporting the Ponzi scheme the domain name economy is founded on. This fraudulent business policy is the reason Defendant NAMEMEDIA INC exists.

III Challenge to Rules of Civil Procedure Rule 11(b)(2) With Heading “*Motions for Sanctions*”

Both Statutes US Title 17 and US Title 15 fail logical and constitutional reviews and enable the quasi-criminal acts of each of the Defendants toward the Plaintiff to various extents as described above. Defendant NAMEMEDIA INC has currently asserted the 21 day safe haven for criminal actions of harassing communication due Rules of C P Rule 11. Defendant NAMEMEDIA INC stated correctly they are allowed 21 days for communicating harassing answers and threats without any consequence. (*See* Docket #30) Safe havens for criminal activities of otherwise illegal harassing communications are allowed contrary to Arkansas State Law Ann 5-71-209. This State law prohibits harassing communications like Defendant NAMEMEDIA INC commits as prescribed by the unconstitutional Rule 11 for 21 days.

US Title 28 § 2071(a) for the pertinent portion provides “all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business”.

The Rules of Civil Procedure Rule 11 that provides a safe haven of 21 days is unconstitutional when encouraging illegal acts like Defendant NAMEMEDIA INC committed. (*See* Docket #17) These answers given for harassment do not merit safe havens. Harassing communication occurs instantaneously and should not be allowed much less be allowed for 21 days. This is contrary to law and logic and violates the Fourteenth Amendment provisions for equal access to Due Process.

US Title 28 § 2071(a) gives this Court the option of making rules. This option now mandates the Court enter a Revision of Rule 11 because fraudulent answers are otherwise

being permitted and encouraged. This permits harassing communications. The Court must allow immediate redress of this criminal act so Rules of Civil Procedure Rule 11 prevent the criminal actions of the Plaintiff NAMEMEDIA INC required to be consistent with Arkansas State Law Ann 5-71-209 prohibiting harassing communications with an immediate criminal penalty of a Class A misdemeanor resulting in a \$1000 immediate penalty. Not requiring an immediate penalty for immediate harassing communication is illogical but might be allowed due to the supremacy of Federal Law to State Laws. Mentally disabled *Pro Se* Plaintiff is thereby completely confused and feels like a complete idiot as a result. Plaintiff would like to get the address from the Court for the Attorney General for serving this notice or email address if that is allowed to save postage.

WHEREFORE, Plaintiff has notified the Court of objections to legal protections vaguely given books by US Title 17 contrary to the Ninth Amendment. Plaintiff now also notifies the Court that US Title 15 is contrary to the Ninth Amendment and establishes trademarks for domains vaguely. Plaintiff notifies Court of existing permissions for criminal activities allowed by the Federal Rules of Civil Procedure Rule 11 as written. Plaintiff now prays the Court advise the Attorney General and of this objection and order a Local Rule whereby the safe havens for harassing communications provided by Federal Rules of Civil Procedure Rule 11 are no longer allowed. Regardless, Plaintiff has applied to withdraw the previously improper request for sanctions concurrently and will file Amended Brief Objecting to Harassing Answers and obey the portion of the provisions of Federal Rules of Civil Procedure Rule 11 the Plaintiff begrudgingly accepts while awaiting Court ruling on this motion. Plaintiff hopes the wait is not 21 days. The harassing communications have already been made and Plaintiff has already reported the harassment to Fayetteville Police and the Prosecuting Attorney. The 21 days and honest reply will not prevent a Motion Seeking Sanctions for the Filed Harassment now regardless of Answers that are finally not lies or fraudulently calculated harassing communications.

Respectfully submitted,

Curtis J Neeley Jr, MFA

CERTIFICATE OF SERVICE

I hereby certify that, by the ____ day of _____ 2010, Curtis James Neeley Jr, MFA will mail a copy of the foregoing to the attorney representing NAMEMEDIA INC at the following address:

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/s/Curtis J Neeley Jr, MFA
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