

IN THE UNITED STATES COURT  
WESTERN DISTRICT OF ARKANSAS  
**Ex. REPLACEMENT**

**CURTIS J NEELEY JR, MFA**

**VS**

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

**IAC**

**ICANN Inc**

**NAMEMEDIA INC**

**Network Solutions LLC**

**Google Inc**

**Yahoo Inc**

**Microsoft Corporation**

**United States**

**AOL LLC**

**Federal Communications Commission**

**Complaint for nonfeasance, trademark violations and privacy violations  
resulting in substantive defamations and US Title 17 Infringements as well  
as the unconstitutional Title 17 violating the Right to Due Process**

Comes now the Plaintiff, respectfully to this court and states for his complaint described as concisely as the severely brain-damaged, pro se litigant is able in this extremely complicated intellectual properties case including trademarks, Title 17 Infringements and repetitive public defamations and violations of “Due Process” and “Equal Access to the Law”. The tortuous actions are so numerous they prohibit concise titling or description. The severely brain injured Plaintiff is outraged by learning of the fraudulent business policies of the Defendants he discovered while researching how his own pre-teen daughter was exposed to his original photos of the figure nude as an object of art on the Internet. The Courts call this a “new medium” that is apparently exempt from even moderate regulation is an obvious error that violates the intention of the Communications Act of 1936. The particular actions can be described as follows and are supported by the existing docket entries and further supported by witnesses during trial.

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## Defendant NAMEMEDIA INC list of intentional tortuous offenses

1. Defendant NAMEMEDIA INC violated the Plaintiff's previously registered domains <eartheye.com> and <sleepspot.com> that were used in commerce with no purpose other than to sell them when they expired in 2003. This was at a time when the Plaintiff was an incompetent. This Lanham Act violation was subjected to a limitations ruling and dismissed originally. The Supreme Court ruled on May 24, 2010 that when torts continue to occur or one is repeated, the cause of action accrues from its last date of occurrence. This therefor reinstates the trademark and Title 17 violations of Defendant NAMEMEDIA INC due to the yearly renewals of each domain until the early 2009 offer to the Plaintiff to encourage his bid on the expiring domain. When the Plaintiff was unable to pay the several thousand they sought, the Defendant advertised selling it for \$2,300 and at the same time accrued a \$100,000 statutory liability. The Plaintiff had advised them that it was originally his and they ignored him outrageously and chose to sell the domain after having been advised and first involved legal Council of Erik Zilinek. Ted Olson alleged being contacted by the Plaintiff by telephone on some indeterminate date before he discussed the domain <eartheye.com> via email on Nov 29, 2007. Defendant NAMEMEDIA INC contacted the Plaintiff again on Jan 26, 2009 and Feb 13, 2009, and this lawsuit was started July 14, 2009. Defendant NAMEMEDIA INC violated <eartheye.com> and <sleepspot.com> annually when renewing the registrations rather than letting them expire and cease to resolve.

2. Plaintiff previously was trained in commercial photography and <eartheye.com> was the website he used for his art. He had continued to do his art photography as well as his commercial photography and had created a user profile at <photo.net> and uploaded some of his art while he was an incompetent or before recovering it on January 26, 2006. The Plaintiff was never aware of the ownership of <photo.net> but Defendant NAMEMEDIA INC purchased <photo.net> in 2007. Defendant NAMEMEDIA stopped allowing users of the site to delete art and began to claim perpetual license to all user content. They alleged it could be deleted but the Plaintiff soon discovered that was not possible and the Plaintiff began posting his photos elsewhere. On a forum posting in July 2009 the Plaintiff posted that the new site owners would face him in Court and he wished them to delete his art.

About July 24 Defendant NAMEMEDIA INC deleted his access to <photo.net> and yet continued preventing him from deleting his art which he continually demanded be done.

3. Hannah Thiem, the “Digital Millennium Copyrite Agent” (DMCA) of Defendant NAMEMEDIA INC, was notified and ignored the Plaintiff but was relying on the Plaintiff’s disability and paralysis to make mailing notices nearly impossible. The Plaintiff notified Ms Thiem using an IP beacon to confirm delivery as well as using MySpace and Flickr social websites. The Plaintiff also signed up as a new user at <photo.net> and posted comments on the photographs he had asked to be deleted where a period was actually an IP beacon.

4. The Plaintiff had demanded that the art be removed repeatedly because it was art of the nude figure. The Plaintiff became aware that it was displayed to minors and was very likely to have caused his minor child’s outrageous communication of December 26, 2008. The Plaintiff’s severe traumatic brain injury, which once left him incompetent, is permanent. Curtis J Neeley Jr does not remember a daughter living with him prior to his injury. Despite this fact, the Plaintiff loves her and sought diligently to be the best absent parent he was able to be.

5. Curtis J Neeley Jr, MFA, believes that no minor, no atheist, and no practicing Muslim should be exposed to his figure nude art. Shortly after this lawsuit was entered, the Plaintiff realized that Defendant NAMEMEDIA INC and Defendant Google Inc operated an image search on <photo.net> that attributed nude photographs to him by name and displayed them to minors or any anonymous visitor. This lawsuit was served on Defendant NAMEMEDIA INC but the attribution and display of nude art continued after the “DMCA” agent listed as Hannah Thiem had viewed the notice and she or NAMEMEDIA INC chose to ignore it.

6. In January 2010, the Plaintiff discovered a new “DMCA” agent was listed for Defendant NAMEMEDIA INC. Plaintiff set out to repeat his monitored “DMCA” notification to get the images deleted expeditiously. Plaintiff researched the DMCA agent and determined that his posted address was where he operated a website design business. Plaintiff contacted all his disclosed clients and asked that they relay the notice regarding nude art being displayed against Plaintiff’s wishes while allegedly being shown to minors by specific permission, Defendant NAMEMEDIA INC then finally deleted the pornographic photos and ceased attributing him with his “pornographic” art around January 24, 2010 as a result of the second

“DMCA” notice. Plaintiff stopped using <namemedias.com> as a protest site since they deleted the images he was using it to protest.

### **Defendant Google Inc repetitive tortuous offenses**

7. Defendant Google Inc began Lanham Act violations of <eartheye.com> and <sleepspot.com> at some indeterminate date after the 2003 expiration of each registration. They chose to license these domains in AdSense for Domains and acquired \$200,000 statutory liability that was also reacquired annually until <eartheye.com> was sold and until repetitive notifications that <sleepspot.com> was involved in TM litigation after the service of this action finally stopping AdSense for Domain use and reverting to stealth profiting.

8. Defendant Google Inc sold advertisement to the Plaintiff in AdWords on domains it licensed exclusively for Google Inc AdSense for Domains and did not disclose the ads were run on deceptive domains they were cybersquatting. This was a scheme to defraud and caused detrimental reliance. This was a fraudulent business policy used by Google Inc AdSense for Domains for millions of dollars of unjust enrichment each year.

9. Defendant Google Inc attributed Plaintiff’s pornography with no concern for US Title 17 violations continually on <Google.com> and on <photo.net> until Defendant NAMEMEDIA INC deleted the pornography after the second “DMCA” agent, Robb Rossel, caused them to finally be deleted in January 2010.

10. Defendant Google Inc attributed the Plaintiff to pornographic art by image searches of his personal name from various websites where the Plaintiff had disclosed his art creation by choice. Google Inc did not perform a valid check for viewer age and allowed anonymous viewership.

### **Defendant United States unconstitutional offense**

11. The US Title 17 never acknowledged the fundamental moral right to attribution when it was first adopted in March 31, 1970 and disparaged the “Right to Attribution” when it was first created to establish a license to control publication of copies of original art. This impacts the Plaintiff continually and particularly when the Plaintiff is disclosed as the creator of art involving a nude photograph to an entirely anonymous viewer. It is recognized for South Koreans because of the “Berne Protocol implementation Act of 1988” and is therefore unconstitutional by violating “Due Process” and “Equal Access to the Law” and the Ninth Amendment protection of moral rights to attribution.

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## Defendant Federal Communication Commission nonfeasance

12. The Federal Communications Commission (FCC) was created by the Communications Act of 1936 and given a statutory mission as follows:

*SEC. 2. (a) The provisions of this Act shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Philippine Islands or the Canal Zone, or to wire or radio communication or transmission wholly within the Philippine Islands or the Canal Zone*

The FCC has been nonfeasant by not regulating transmission of energy used to communicate by wire since the Internet was first developed. It is nothing but the transmission of communications by wire as they have advanced. The early telegraph operators were the true pioneers of the Internet and were regulated by the FCC. As the Internet developed into an international web of machines interconnected by wire for the purpose of telecommunication, the FCC decided to abandon its statutory duty to regulate the communications by wire. The Courts have held this is a “new medium” where reception of a message requires action on the receiver’s part or a request. This assertion by Court personnel is simply a ridiculous failure to recognize it as a logical development of the telegraph or the telephone.

13. A telephone does not transmit to the receiver unless the receiving user answers the ringing phone. A telegraph wire conducts no communications without a receiver to translate the transmitted energy. The communications the FCC allows that involves pornography is transmitted continuously in case a receiver might accidentally answer the perpetually ringing phone, and typing “Curtis Neeley” can be equated into answering the transmission by wire that is being broadcast continually by every Search Engine Defendant who has gathered the “Curtis Neeley” broadcast that they feel will profit them best when it is received by an anonymous receiver. All names have customized broadcasts that are broadcast continually and compare to the sunlight being “broadcast”. It will affect the public but is still a “broadcast” of energy similar to the broadcast of “Curtis Neeley” that all American Search Engine Defendants do.

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14. The perpetual nonfeasance of the FCC has impacted the Plaintiff by the FCC refusing to assert their statutory mission of regulating communications by energy transmitted by wire. The images the Search Engine Defendants each broadcast perpetually attribute art by the Plaintiff involving nude figures some would consider pornography that would not be allowed broadcast on television but are available to any anonymous viewer by wire because of the FCC nonfeasance. The Children Online Protection Act (COPA) was ruled as overbroad by the Third Circuit Court as planned by Congress because of FCC nonfeasance and failure to explain Search Engine Broadcasts by wire to the Court.

## **Search Engine Broadcasting Defendant repetitive tortuous offenses**

15. Search Engine Broadcasting Defendants continually broadcast nudity they each place in their “Curtis Neeley” broadcast while hoping an anonymous viewer will request it. Their “Curtis Neeley” broadcast attributes pornography to “Curtis Neeley” before anonymous receivers and avoids regulation via the nonfeasant FCC and is supported by the unconstitutional Title 17 failure to recognize the exclusive right to be attributed to art and especially for art displayed in a way that shames the artist. The owners of <Google.com>, <Yahoo.com>, <BING.com>, <AOL.com>, and <Ask.com> each broadcast pornography that the nonfeasant FCC would not allow transmitted by television. The owners are to be the added defendants.

16. The Search Engine Broadcasting Defendants use their “Curtis Neeley” broadcast and this use of the Plaintiff’s personal name, which is shared by his father, results in repetitive “attributions” to pornographic images in a manner that is outrageous defamation. Neither, the Plaintiff, nor his father condones broadcasting pornography to an anonymous viewer who refuses to take responsibility for the viewership of pornography.

## **The Defendant Network Solutions LLC repetitive tortuous offenses**

17. Defendant Network solutions LLC first accrued a Lanham Act liability of \$200,000 when they advertised <eartheye.com>, and <sleepspot.com> in 2003. This Lanham act liability was dismissed due to limitations and remains excused because they have not advertised domains owned by the Plaintiff or prevented them from expiring as they would naturally.

This was repetitively done by Google Inc and NAMEMEDIA INC, thereby tolling limitations until the last trespass.

18. Network Solutions LLC would be dismissed and remain dismissed if they had not trafficked <sleepspot.org>, <CurtisNeeley.com>, <Master-of-Photography.US>, <figurenude.com>, <OzarkPhotos.net>, and <Groupf16.org> to the Plaintiff in 2009 and 2010. This business policy of perpetually trafficking any domain creates a current Lanham Act statutory liability of \$600,000. The Network Solutions LLC fraudulent business policy was demonstrated in 2003 to be advertising expiration dates of domains they do not own. This arguably has been dismissed due to limitations for the 2003 actions. Liability will be reacquired in April 2011 when Network Solutions LLC advertises the expiration of <sleepspot.org> or causes the domain to be registered by another for no purpose of bona fide commerce. The Lanham Act Title 15 § 1125(d) mentions for the relevant portions:

*(B)(i)(VI) the person's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;*

*(D)(1)(E) As used in this paragraph, the term "traffics in" refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.*

19. Network Solutions LLC has evidence of a prior pattern of conduct while the registrar for the plaintiff for <eartheye.com> and <sleepspot.com> where they demonstrated treating expiring domains as a commodity to be offered for registration instead of quietly ceasing to display a website. In July 2011 when the Plaintiff's registration expires, it will be advertised or be allowed to be registered and will thereby create a \$100,000 statutory liability for trafficking for Network Solutions LLC and this is an impending certainty at this time.

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## The ICANN Inc tortuous offenses and scheme to defraud

20. ICANN Inc has had a standing policy for all registrars allowing registration without requiring transfers of registration ownership to require a use for a *bona fide* good, service, or free speech use and licensure from the previous registrar. ICANN Inc thereby conspires with the Search Engine Broadcasting Defendants and the Domain Name Trafficking Defendants so that every short potentially easily typed domain has a value for Search Engine advertisers. By maintaining this fraudulent policy, ICANN Inc causes “parked” or fraudulent domains to have values to Google Inc AdSense for Domains not related to *bona fide* uses. ICANN does not include all similar domains with the domain registered for commerce, and this causes typographical errors of registrations to have value. ICANN Inc provides the motive for the standing policy of Network Solutions LLC to offer the domain requested in different extensions that might result in confusion or registrations in order to prevent cybersquatting.

21. ICANN Inc does not allow a low cost challenge process whereby a domain that is used by Google AdSense for Domains to exclusively sell ads for Google Inc, like was done when this Plaintiff purchased advertising on “parked” or fraudulent sites, to result in voiding of the deceptively licensed site.

22. Every domain registered by the Plaintiff must therefore be continually registered or become a fraudulent domain used for accidental traffic. This creates a demand for every domain the Plaintiff has and does not allow for his domains to simply expire and wait until the Plaintiff is able to complete the planned uses without paying an annual fee.

## **Conclusion and prayer for relief**

23. Whereas the Plaintiff has faced a tortuous swarm of activity, he asks for Court ordered relief as follows to mitigate his damages due to distress and to compensate for the distress as well as establishing injunctions that prevent the actions from recurring. In the interest of punishing the Defendants who acted recklessly when causing the damages the Plaintiff seeks a Jury to establish a truly punitive award that could amount to more than a billion dollar award as well as finally requiring a revision of Title 17 to recognize fundamental moral right to attribution. The Plaintiff seeks creation of a nonprofit Search Engine Alternative that does not violate Title 17 after revised to acknowledge the “Rights to Attribution” and uses its income to offset taxes and is controlled by an elected board with board members representing the States based on population.



Plaintiff asks that the jury assist in establishing a just compensation beyond his traumatic brain injured mind's abilities to imagine.

24. Defendant Network Solution LLC who did not perhaps mean to distress but did so as a matter of policy should face an injunction to never advertise the expiration dates of any of the Plaintiff's domains. Statutory damages total of \$600,000 for the offers of the Plaintiffs current domains might be sufficient punishment, but the jury would be asked to decide.

25. Defendant NAMEMEDIA INC who instigated this action and who acted very maliciously should face no less than 200,000 in statutory Lanham Act awards and no less than 15 million dollar punitive award per domain violated. For the Defamation they instigated NAMEMEDIA INC should face a punitive award of not less than 35 million dollars or ten percent of their company value and the award of sleepspot.com as well as 100,000 for the destruction of the sleepspot.com artwork and rights to the violating domain <photo.net>.

26. Defendant Google Inc should face a punitive award for a business policy of selling display of advertisements on "parked" or fraudulent sites licensed exclusively for Google AdSense for Domain. Compensatory awards for the damages would be insignificant for this Plaintiff alone but should be punitive as determined by a jury.

27. Defendant Google has a business policy of violating the fundamental exclusive right to attribution and do this to profitably traffic in pornography by search engine broadcasts since the FCC is nonfeasant and allow this where other countries do not. For the actions of defamation of the Plaintiff, Google Inc should face an injunction to return no nudes for any image search containing the name of the Plaintiff plus 100 million dollars for a punitive award.

28. The United States should face an injunction that the exclusive moral rights to attribution be recognized in Title 17 and all uses of the previously used word "copyright" be recognized to now include the moral right to attribution.

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29. Defendant Federal Communications Commission should face an injunction that no communication be allowed by wire that is not allowed on television to be consumed by anonymous viewers and requiring all future browsers to include an assertion that the viewer wishes to view pornography that is triggered by visitation of a properly coded site where IP visitation is always publicly accessible for a fee. The assertion would remain activated until deactivated by the computer's administrator.

30. Defendant ICANN Inc should face injunctive relief that all similar domains be included with every business use and that all registrars be required to assert evidence of a transfer of registration from any registered domain and requiring that registration expiration dates be undisclosed except to the registering entity. This injunctive relief would quickly end the fraudulent uses of all domain names and the need for Title 15 § 2515(d)

31. ICANN Inc should also be directed to require a registration fee for inquiring into whether a domain was registered to prevent abuse of registration.

32. Owners of <Yahoo.com>, <BING.com>, <Ask.com>, and <Google.com> should be ordered to not return results not allowed returned by <lycos.com> for all uses of the Plaintiff's personal name.

Respectfully Submitted,

Curtis J Neeley Jr. MFA

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