

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

CURTIS NEELEY, JR.,)
)
Plaintiff,)
)
vs.) Case No. 5:09CV05151-JLH
)
NAMEMEDIA, INC., NETWORK) Fayetteville, Arkansas
SOLUTIONS, INC.; and)
GOOGLE, INC.,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ERIN SETSER,
UNITED STATES DISTRICT COURT MAGISTRATE
DECEMBER 6, 2010

A P P E A R A N C E S

For the Plaintiff: Pro se

For the Defendants: MS. JENNIFER HALTOM DOAN
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REPORTED BY:

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PROCEEDINGS RECORDED STENOGRAPHICALLY; PRODUCED VIA C.A.T.

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2 PROCEEDINGS OF DECEMBER 6, 2010

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4 THE COURT: You may be seated. Sorry about that.
5 I think we have everything working now. We are on the
6 record this morning in the matter of Curtis Neeley versus
7 NameMedia and Google, Inc. We have Mr. Neeley present
8 representing himself. Good morning, Mr. Neeley.

9 THE PLAINTIFF: Good morning.

10 THE COURT: And if you could scoot that
11 microphone a little closer to you or maybe --

12 (Off the record briefly.)

13 THE PLAINTIFF: I can be just really loud.

14 THE COURT: Okay. We just need to make sure we
15 are picking you up. Okay?

16 THE PLAINTIFF: Thank you.

17 THE COURT: Okay. That's better. We have, for
18 Google, Ms. Jennifer Doan.

19 MS. DOAN: Yes, Your Honor.

20 THE COURT: Good morning, Miss Doan.

21 MS. DOAN: And with me is Mr. Michael Page.

22 MR. PAGE: Morning, Your Honor.

23 THE COURT: Good morning. Are you an attorney of
24 record in this matter or --

25 MR. PAGE: Yes, Your Honor.

1 THE COURT: Okay.

2 MS. DOAN: And he will be making the presentation
3 for Google as well.

4 THE COURT: Okay. Thank you. All right. We set
5 this matter for hearing this morning on a Motion for
6 Preliminary Injunction filed on October 25th by Mr. Neeley.
7 Mr. Neeley, do you have exhibits to submit this morning?

8 THE PLAINTIFF: Yes, ma'am.

9 THE COURT: Okay. And have you-all seen those
10 exhibits?

11 MR. PAGE: We have, Your Honor.

12 THE COURT: Okay. Do you stipulate to the
13 admission of those exhibits?

14 MR. PAGE: Is there any problem with any of them?

15 MR. PAGE: No, Your Honor. We would object to
16 the first one, which is labeled Ex. Child. I believe that
17 Mr. Neeley purports that it's part of a message sent to him
18 by one of his children, I'm not sure, but it's clearly not
19 subject to judicial notice. It's hearsay. It's best
20 evidence rules.

21 THE COURT: Okay. Well, when he goes to admit
22 that exhibit, I'll let you make your --

23 MR. PAGE: Right.

24 THE COURT: -- objection.

25 MR. PAGE: The remainder appear to be exhibits

1 from an earlier pleading that appear to be prints of
2 internet searches. We have no reason to believe they are
3 not authentic. We have no objection.

4 THE COURT: Okay. Are those exhibits numbered,
5 Mr. Neeley?

6 THE PLAINTIFF: Yes, ma'am.

7 THE COURT: Okay. Is there a copy for the Court
8 of the exhibits that are not in dispute? Do we have a
9 third copy?

10 THE PLAINTIFF: No third copy.

11 THE COURT: Okay. What we will do then --

12 MR. PAGE: Your Honor, I don't, I don't need
13 them, if you want them, I'll give you my set.

14 THE COURT: Okay. Thank you, Mr. Page.

15 MR. PAGE: No problem.

16 THE COURT: All right. It looks like the
17 exhibits you intend to introduce, the ones that are not in
18 dispute, are pages of photographs. We might just call this
19 a collective exhibit, Exhibit No. 1. If there's a certain
20 page you intend to refer to, Mr. Neeley, these pages don't
21 appear to be numbered other than on some of the pages you
22 have labels, Exhibit Ask, Exhibit Bing, so try to
23 identify -- if you refer to a certain page, try to identify
24 it for me, okay?

25 THE PLAINTIFF: Yes, ma'am.

1 THE COURT: Just so I can follow along and
2 opposing counsel can, too. Now, the exhibit that is in
3 dispute, once you begin to present your proof, you may
4 proffer that exhibit to the Court, and I'll hear the
5 defense's objection at that time. Okay?

6 THE PLAINTIFF: Yeah.

7 THE COURT: Okay, Mr. Neeley, do you have any
8 witnesses?

9 THE PLAINTIFF: No, ma'am.

10 THE COURT: Okay. Mr. Page, do you-all have any
11 witnesses this morning?

12 MR. PAGE: No, Your Honor.

13 THE COURT: Okay. All right. Just so we are all
14 on the same page here this morning, I want to make sure I'm
15 on the page I need to be on this morning. There have been
16 extensive filings in this case. The only issue before me
17 today is whether a preliminary injunction should be
18 granted. The only defendant you identified in that motion,
19 as I understand it, Mr. Neeley, is Google, is that correct?

20 THE PLAINTIFF: Yes, ma'am.

21 THE COURT: Okay. So NameMedia is not present
22 here today.

23 THE PLAINTIFF: No, ma'am.

24 THE COURT: Okay. All right. Now, you need to
25 understand, Mr. Neeley, that a preliminary injunction can

1 only be issued in relation to a pending claim for relief.
2 I've reviewed your pleadings and the Orders that have been
3 entered in this case, and, and I want to make sure I
4 understand what your claims, your remaining claims for
5 relief are. And if I'm incorrect, you correct me or I'll
6 ask defense counsel to do that. Okay. It looks like, as I
7 can gather, it looks like you have two claims for relief
8 remaining that have not been dismissed. One is a trademark
9 violation claim. The other is an outrage claim. Judge
10 Hendren, in an Order dated May 20th, reconsidered dismissal
11 of this claim, found that it was not barred by the statute
12 of limitations, and as I understand it, the outrage claim
13 is based on the defendant's allowing minors access to nude
14 photos attributable to you and indicating that the photos
15 are being displayed with your permission. I believe those
16 allegations are contained in paragraph 24 of your Amended
17 Complaint. I think that's document 53. Mr. Neeley, is
18 this your understanding of what your remaining claims are?

19 THE PLAINTIFF: Yes, ma'am. I believe that the
20 remaining claims are the fact -- when I believe these
21 allowed as this for -- as far as that they are showing
22 pictures that I did and saying that I said it was okay, and
23 they are nudes.

24 THE COURT: Okay. So that's the outrage claim,
25 what we will call the outrage claim, just to have a label

1 for it. Okay?

2 THE PLAINTIFF: All right.

3 THE COURT: And then I think you also have a
4 claim about trademark, trademark infringement that's still
5 pending.

6 THE PLAINTIFF: Those are unrelated, but, yes.

7 THE COURT: Pardon me?

8 THE PLAINTIFF: Unrelated, but, yes.

9 THE COURT: Okay. And I'll ask defense counsel,
10 is this your understanding of the remaining claims in this
11 matter?

12 MR. PAGE: That, that is correct, Your Honor.
13 Those are the only two remaining claims.

14 THE COURT: All right. Thank you. All right.
15 Now, so what I have to do is try to discern what claim your
16 Motion for preliminary injunction is related to in this
17 matter. It appears that it's related to your outrage
18 claim. The injunctive relief that you seek in your motion
19 now before the Court has to be based on the final
20 injunctive relief you seek in your Complaint. You asked
21 the Court to issue a preliminary injunction ordering Google
22 not to allow nude photos to be returned when your name is
23 searched unless the viewer is an adult or non-muslim,
24 correct?

25 THE PLAINTIFF: Yes, ma'am.

1 THE COURT: Okay. Now, in your Complaint, I
2 don't see that you've asked for this type of injunctive
3 relief. What I'm referring to is document 53. This is
4 your Amended Complaint, page eleven, your prayer for
5 relief. You asked -- I'm trying to find what relief you
6 have asked for that relates to the relief you seek in your
7 Motion for preliminary injunction. From what I can gather,
8 the only possible relief that's related is a prayer on page
9 eleven. You state plaintiff prays NameMedia, Inc., be
10 ordered to transfer Photonet to the Plaintiff where they
11 originally violated the nude photographs with no warning to
12 minors. Then you seek damages. Then you refer to the
13 sleep spot domain which doesn't relate to the injunctive
14 relief on the outrage claim. So what I need you to tell
15 me, Mr. Neeley, you need to be able to tie the Motion for
16 Preliminary Injunctive Relief to a pending claim in this
17 action. It appears that it is linked to the outrage claim,
18 but it does not appear in your Amended Complaint that you
19 seek final injunctive relief in the form that you seek in
20 your Motion for preliminary injunction. Can you tell me
21 how the two are related?

22 THE PLAINTIFF: I have attempted, excuse me, I
23 have attempted to amend the Complaint about nine ways to
24 Sunday and have been unallowed because of denis [sic]
25 factors.

1 THE COURT: Okay. So you sought to amend your
2 Complaint to seek the type of relief that you're seeking in
3 the Motion for preliminary injunction.

4 THE PLAINTIFF: Yes, ma'am.

5 THE COURT: Is that correct?

6 THE PLAINTIFF: Yes, ma'am.

7 THE COURT: You were denied leave to amend?

8 THE PLAINTIFF: I was denied leave to amend
9 because I have tried to amend too many times.

10 THE COURT: Well, I have to tell you, if you do
11 not have in your Amended Complaint, and that's what you are
12 bound by now, you've been denied leave to amend, so only
13 the claims in that Amended Complaint that have not been
14 dismissed are what will proceed any further in this action,
15 and if your injunctive relief is based on relief you sought
16 in an Amended Complaint that was not allowed to be filed, I
17 don't know that the Court can grant that injunctive relief.
18 It has to be based on claims you actually have pending
19 based on the Amended Complaint that was allowed that was
20 filed on January 22nd, so can you, can you tell me -- I'll
21 give you another opportunity -- does this request for
22 preliminary injunctive relief relate to the outrage claim
23 stated in your January 22nd Amended Complaint and to the
24 relief you seek in that Amended Complaint?

25 THE PLAINTIFF: No, ma'am, I do not believe that

1 it does. I believe that it relates to that Complaint;
2 however, since that time, NameMedia has stopped showing
3 nudes with my name on it.

4 THE COURT: So NameMedia has basically granted
5 you the injunctive relief you sought in your Amended
6 Complaint? Is that what you're saying?

7 THE PLAINTIFF: They did, yes; however, Google
8 still shows nude pictures with my name. That's why I am
9 trying -- I have attempted to get them to stop and they
10 have not.

11 THE COURT: Okay. Well, what -- we'll proceed
12 today with proof on the factors for preliminary injunction,
13 but I have to advise you, once, once Judge Hendren has made
14 a ruling on a motion to amend, that is the ruling. I think
15 you asked him to reconsider that; he's refused to do so, so
16 it cannot be re-litigated over and over. Today's not your
17 second bite at the apple to try to get this claim before
18 the Court. Do you understand that?

19 THE PLAINTIFF: Yes, ma'am.

20 THE COURT: Okay. But we'll proceed with proof
21 on the factors for a preliminary injunction. Perhaps,
22 going through that, you'll be able to relate it in some way
23 to your outrage claim and the relief you seek based on that
24 claim. Okay?

25 (No audible response.)

1 THE COURT: Now, Mr. Neeley, I'm not sure if you
2 are familiar with the factors that the Court has to
3 consider in deciding whether to grant a Motion for a
4 preliminary injunction. So I'll go through those with you
5 and then ask you if you want to testify regarding proof on
6 those factors or how you want to proceed. Okay? All
7 right. In ruling on a Motion for preliminary injunction,
8 the Court must consider the threat of irreparable harm to
9 the moving party, which would be you, the weight of this
10 harm as compared to any injury an injunction would inflict
11 on other interested parties, the probability that the
12 moving party will succeed on the merits, and the public
13 interest. So those are the four factors the Court is to
14 consider in deciding whether to grant your request for
15 preliminary injunctive relief. You said you do not have
16 any witnesses to call. Would you like to testify
17 regarding --

18 THE PLAINTIFF: Yes, ma'am.

19 THE COURT: -- these facts? Okay. What I'll
20 allow you to do is remain where you are. I think that will
21 be easier for you, but I need you to raise your right hand
22 and be sworn.

23 (Plaintiff sworn.)

24 THE COURT: Okay. Thank you, Mr. Neeley. All
25 right. Just to try to streamline this a little bit, I'll

1 ask you first if you want to testify regarding the threat
2 of irreparable harm if your motion is not granted. And
3 I'll let you go ahead, and I have your Plaintiff's Exhibit
4 1 here, if you want to refer to that, and there's also the
5 exhibit in dispute, and when you want to proffer that, you
6 just let me know and we will take up the objection at that
7 time. Okay?

8 THE PLAINTIFF: Okay. On the exhibits that are
9 labeled the Ask and Bing and Yahoo, these are the three
10 other parties who were not allowed to this claim, and if
11 you look at those pages, on the Ask page, you'll see on
12 this page a nude, one nude; on the Bing page, you'll see
13 several; and, if you look on the Yahoo page, you again see
14 several, and then if you look on the, on the other
15 exhibits, I'm sorry, they are also on the Ask page, the
16 Bing page.

17 THE COURT: The first page? Okay.

18 THE PLAINTIFF: The ones that aren't -- don't
19 have, they don't have the words on them.

20 THE COURT: Okay. Okay.

21 THE PLAINTIFF: And the Bing and the Yahoo page,
22 they have all stopped showing nudes.

23 THE COURT: So these first three pages, the Ask,
24 that's like an Ask-dot-com website?

25 THE PLAINTIFF: Yes, ma'am.

1 THE COURT: A Bing website and a Yahoo website?

2 THE PLAINTIFF: They all three stopped since this
3 had begun.

4 THE COURT: At your request?

5 THE PLAINTIFF: Yes, ma'am.

6 THE COURT: Okay. Okay. Go ahead.

7 THE PLAINTIFF: And on the other one here, it
8 says Google, it's a printout from a page. It's on a
9 moderately safe search, on the child safe search at my
10 daughter's school, my name, her father's name typed into
11 her search engine pops up a bunch of nude pictures that I
12 did and that I did not do. However, she is extremely upset
13 by the fact that her father's name brings up nude pictures.

14 THE COURT: Are you referring to the exhibit that
15 has Exhibit A at the top and it has Google in the left-hand
16 corner?

17 THE PLAINTIFF: No, ma'am.

18 THE COURT: What page are you referring to?

19 THE PLAINTIFF: I'm looking at Google search
20 engine printout that has the first top left picture is a
21 nude. It's from Google.

22 THE COURT: Okay. It looks like it's page one,
23 two, three, page five of your packet.

24 THE PLAINTIFF: I have no idea. I'm sorry.

25 THE COURT: That's fine. I think I know what

1 you're referring to, and you said at your daughter's
2 school, if she types in your name, these pictures --

3 THE PLAINTIFF: At anyone's school, at any school
4 in America, they will type it in and it will pop up with a
5 nude picture done by me.

6 THE COURT: If you type in your name, you're
7 saying that's what happens?

8 THE PLAINTIFF: Exactly. That's what it does.
9 At the very top of the page, you just have to put in my
10 name, don't have to say my name and nude, just say my name
11 is all I got to say and pops up all the nude pictures.

12 THE COURT: Okay. How did these pictures get on
13 the internet?

14 THE PLAINTIFF: On the Wikipedia, foundation of
15 Wikimedia, I have donated photographs to the foundation.

16 THE COURT: You donated photographs to the
17 Wikipedia foundation?

18 THE PLAINTIFF: Wikimedia.

19 THE COURT: Wikimedia.

20 THE PLAINTIFF: It's kind of like Wikipedia, but
21 their media division.

22 THE COURT: So did you put them on the
23 internet or did you provide like disks with these photos to
24 Wiki --

25 THE PLAINTIFF: I gave, I gave them to the

1 company, to Wikimedia.

2 THE COURT: On a disk or in what format?

3 THE PLAINTIFF: I did it just directly digital.
4 I pulled it up.

5 THE COURT: So did you upload these pictures on
6 to the internet?

7 THE PLAINTIFF: Yes, ma'am, I did.

8 THE COURT: To Wikimedia's website, is that what
9 it's called? Is it a website?

10 THE PLAINTIFF: It is a website; yes, ma'am.

11 THE COURT: So that's how these pictures were
12 streamlined into the internet, correct?

13 THE PLAINTIFF: Yes, ma'am.

14 THE COURT: Now, how long ago was that? How long
15 have they been accessible on the internet?

16 THE PLAINTIFF: I do not know exactly, but
17 probably been about two years.

18 THE COURT: Two years?

19 THE PLAINTIFF: (Plaintiff moves head up and
20 down.) Long time ago.

21 THE COURT: And how is -- how do you contend that
22 Wiki -- that Google is responsible for what's on Wikimedia?

23 THE PLAINTIFF: They are not. However, they do
24 put my name with just the -- out of context with the
25 pictures. They bring up my name and the pictures which

1 don't happen at Wikimedia. There, if you look at that
2 page, the page has disclaimers and it always has that --

3 THE COURT: Which page are you talking about?

4 THE PLAINTIFF: The one that has the page where
5 the pictures came from.

6 THE COURT: Is that --

7 THE PLAINTIFF: Wikimedia.

8 THE COURT: -- the Google page or the Wikimedia
9 page?

10 THE PLAINTIFF: Wikimedia.

11 THE COURT: Okay. Which page is the Wikimedia
12 page?

13 THE PLAINTIFF: Well, all of these are Wikimedia.

14 THE COURT: All of these Wikimedia pages?

15 THE PLAINTIFF: So far, yes.

16 MR. PAGE: Object, Your Honor. The Wikimedia
17 page is not in evidence.

18 THE COURT: Is that the page that was objected to
19 or is that --

20 MR. PAGE: No. The page he is testifying to is
21 not in his exhibits. It's available on the internet. I
22 mean, I have no problem if the Court wants to look at it.

23 THE COURT: The Wikimedia page?

24 MR. PAGE: That's correct.

25 THE COURT: Okay.

1 MR. PAGE: But it's not part of his exhibits.

2 THE COURT: Okay. It appears that all of these
3 pages that you have submitted are Google pages. It has
4 Google in the corner.

5 THE PLAINTIFF: Yes, ma'am.

6 THE COURT: Okay. So they are Google pages.

7 THE PLAINTIFF: They are Google pages, but Google
8 got the content from Wikimedia. And said, Hey, this guy's
9 name is Curtis Neeley, and this is a picture he did. And I
10 am fairly adept at photography, but I don't want to be just
11 typing my name and coming up with nude pictures.

12 THE COURT: Well, tell me what you envisioned
13 when you uploaded these pictures to Wikimedia. Did you not
14 envision that people would be looking on Wikimedia's
15 website and seeing these pictures?

16 THE PLAINTIFF: They would; however, on that page
17 it disclaims of what I feel about the figure is appropriate
18 for being viewed.

19 THE COURT: What is the disclaimer on Wikimedia
20 page?

21 THE PLAINTIFF: I cannot remember it altogether,
22 but it basically says that I believe that the human form
23 can be an object of art and not as a sexy person, just an
24 object of art, not sexy.

25 MR. PAGE: Your Honor, I need to object. Were

1 that page in evidence, that would misstate the evidence.

2 THE COURT: Okay. Is that page part of the
3 exhibits attached to any pleading in this matter?

4 MR. PAGE: Not that I am aware of, Your Honor.

5 THE COURT: Okay. Do you have a copy of that --

6 THE PLAINTIFF: No, ma'am.

7 THE COURT: -- page? Well, your objection will
8 be noted. If you would like to obtain a copy of that page
9 and submit it after this hearing, that might clear the
10 matter up.

11 MR. PAGE: Okay, Your Honor.

12 THE COURT: So you say there's some sort of
13 disclaimer with a Wikimedia website. Now, can minors go on
14 to the Wikimedia website and access those photos?

15 THE PLAINTIFF: Yes, ma'am.

16 THE COURT: Okay. So tell me how that's
17 different. And you uploaded them on to this website.

18 THE PLAINTIFF: Yes, ma'am.

19 THE COURT: So I'm not following what your
20 objection is to minors accessing these photos.

21 THE PLAINTIFF: I'm objecting to them using my
22 name and only using my name and finding nude pictures.

23 THE COURT: Without the disclaimer? Is that what
24 the objection is?

25 THE PLAINTIFF: Well, period.

1 THE COURT: But, Mr. Neeley, are you not the one
2 that uploaded these on to Wikimedia where minors could
3 access these photos?

4 THE PLAINTIFF: I did. However, it is a
5 different -- Wiki is like saying it's in the encyclopedia,
6 in a different context.

7 THE COURT: Okay. Well, explain that to me. I'm
8 not an internet guru, so explain to me how that's
9 different, you putting them on the Wikimedia.

10 THE PLAINTIFF: Wikimedia is a user and visible
11 search that allows you to find, if you want to find, for
12 example, an art form, you type in the name of the art form,
13 it will come up, and it will tell you about it. Like in
14 this one, this one, I believe, is the entry for figure art.

15 THE COURT: Well, can someone go into Wikimedia
16 and just type in your name and pull up your photos?

17 THE PLAINTIFF: I do not know, but more than
18 likely so.

19 THE COURT: So they probably can.

20 THE PLAINTIFF: They probably can.

21 THE COURT: So why is it you're upset with Google
22 who you say is allowing access to these photos when
23 Wikimedia is also?

24 THE PLAINTIFF: Because Wikimedia is an
25 encyclopedia type of reference and no one goes and looks at

1 Wikimedia just to find naked pictures.

2 THE COURT: How do you know that, Mr. Neeley?

3 THE PLAINTIFF: Because it would be much easier
4 to go to Google.

5 THE COURT: Well, is it not possible for children
6 to type in Wikimedia and type in your name and pull up
7 these photographs?

8 THE PLAINTIFF: I imagine it would be. I'm not
9 sure.

10 THE COURT: So tell me again. I'm having a hard
11 time understanding why you're upset with Google, who you
12 say is allowing access to those photos when you acknowledge
13 that Wikimedia, where you placed these photos, is doing the
14 same thing other than you said it's more of an educational
15 reference. You feel like the --

16 THE PLAINTIFF: Also, the Wikimedia, I mean,
17 excuse me, the Google search engine is very popular and
18 kids like to type in their parents' name and it is a common
19 occurrence for them to "have you Googled your name?" I
20 mean, the fact of the matter is if my daughter or my son
21 type in their father's name or their friends, they see
22 nudes.

23 THE COURT: On Google?

24 THE PLAINTIFF: Yes.

25 THE COURT: Okay. And if they did that on

1 Wikimedia, would they also see nudes?

2 THE PLAINTIFF: They would.

3 THE COURT: Okay. With your name?

4 THE PLAINTIFF: Yes, ma'am. However, example, on
5 the second row here, the art nude P P R U, that's not
6 Wikimedia.

7 THE COURT: Okay. Tell me which picture you're
8 referring to.

9 THE PLAINTIFF: That's the second one down just
10 below, the second one down and next to the car wreck.

11 MR. PAGE: Do you mind if I look over... thanks.

12 THE COURT: I see a car wreck photograph.

13 THE PLAINTIFF: Just to the right of that one.

14 THE COURT: To the right of that?

15 THE PLAINTIFF: Yes, ma'am.

16 THE COURT: It says Curtis Neeley photograph 600
17 by 426, is that what you're referring to?

18 THE PLAINTIFF: No. 394 by 500.

19 THE COURT: Well, maybe I'm on a different page
20 from you. Let me try to find it. What is it a photograph
21 of, Mr. Neeley?

22 THE BAILIFF: Ask her. You want to --

23 THE COURT: Yeah. Thank you. Okay. All right.
24 I'm going to number this packet so that we can refer to the
25 page numbers.

1 THE PLAINTIFF: Anyway, the photograph, excuse
2 me, is -- that is there at the art nude P P R U is not -- I
3 have no control of that whatsoever. That is from a website
4 that got my pictures at some point in the past. I have no
5 idea when, but they are not pictures I wanted to even have
6 posted at all and I've asked them to delete them and they
7 won't.

8 THE COURT: Okay. For the record, you are
9 referring to page nine of your Exhibit 1, the second row of
10 photographs, the second picture from the left? And you
11 said that is not a picture taken by you.

12 THE PLAINTIFF: It is taken by me. I'm sorry.
13 It is a picture taken by me, but it is not a picture that I
14 uploaded anywhere. Someone somewhere got it and have along
15 with lots of other pictures they have that are not pictures
16 I wish to have shown.

17 THE COURT: How did it, how did this picture get
18 on the internet?

19 THE PLAINTIFF: I have no idea.

20 THE COURT: You think Google was responsible for
21 it?

22 THE PLAINTIFF: No, ma'am. I have no --

23 THE COURT: Do you have published books of
24 photographs out there?

25 THE PLAINTIFF: Yes, ma'am.

1 THE COURT: So it's possible that these were
2 uploaded from some of your published works?

3 THE PLAINTIFF: No.

4 THE COURT: It's not possible?

5 THE PLAINTIFF: No, ma'am.

6 THE COURT: Okay. How -- you said this is a
7 picture you took, so who could be responsible for it then?

8 THE PLAINTIFF: It could have been there, and I
9 have a little bit of memory problem and so sometime in my
10 past, probably in the late 1996, '97, '98, that area, I had
11 a -- I actually have no idea why I did it, but it was not
12 pleasant. There was things I would have rather not done.

13 THE COURT: Okay.

14 THE PLAINTIFF: And the pictures are not -- this
15 one is very tasteful compared to what some of them are.

16 THE COURT: Okay. But you took this photograph?

17 THE PLAINTIFF: Yes, ma'am.

18 THE COURT: Okay. All right. Now, tell me. You
19 said these pictures have been on the internet for two
20 years. What I have to determine when we look at
21 irreparable harm, what we try to do is determine, if I
22 don't grant injunctive relief for you right now, will you
23 be irreparably harmed before this case goes to trial? I'm
24 not sure of your trial date. I think it's months away
25 still.

1 MR. PAGE: Next July, Your Honor.

2 THE COURT: In July? So what I have to
3 determine -- preliminary injunctive relief is just
4 temporary relief, Mr. Neeley. Do you need a break? Are
5 you doing okay?

6 THE PLAINTIFF: I'm okay.

7 THE COURT: Okay. You let me know if you need a
8 break. Okay?

9 THE PLAINTIFF: Okay.

10 THE COURT: What I have to determine is if I
11 don't grant this temporary relief, are you going to be
12 irreparably harmed before your trial comes around in July?
13 Now, these pictures have been out there for almost two
14 years, so it appears that whatever harm has been done has
15 occurred during that two-year period. Can you tell me why
16 you would need injunctive relief at this point and could
17 not wait until this matter is resolved at trial?

18 THE PLAINTIFF: Yes, ma'am. All the other three
19 corporations have stopped, and the other ones that are not
20 are now appearing to thumb their nose at me and the Court
21 by saying that why -- we can't do that; that's such a big
22 deal. But the fact of the matter I asked, I E C has
23 stopped, Yahoo has stopped, and Microsoft has stopped.

24 THE COURT: So if you go on to Yahoo and type in
25 your name --

1 THE PLAINTIFF: Yes, ma'am.

2 THE COURT: -- your contention is that these
3 photographs do not pull up?

4 THE PLAINTIFF: I am not sure they do not -- they
5 are not coming up.

6 THE COURT: Did you say you are sure that they
7 are not?

8 THE PLAINTIFF: They will not come up. No nudes
9 will come up with my name ever.

10 THE COURT: How did they stop that? Do you know?

11 THE PLAINTIFF: I have no idea exactly. It would
12 not be terribly difficult, I don't believe; however, I have
13 no idea specifically how they do it.

14 THE COURT: Okay. Well, you said these other
15 corporations have stopped.

16 THE PLAINTIFF: Yes, ma'am.

17 THE COURT: But tell me -- that doesn't really
18 tell me how you'll be irreparably harmed if Google does not
19 stop. The fact that the other corporations have stopped --

20 THE PLAINTIFF: Because Google is the most
21 popular for kids to use.

22 THE COURT: Okay. Is there anything else you
23 would like to testify about or present regarding the
24 irreparable harm factor, Mr. Neeley?

25 THE PLAINTIFF: On the exhibit I have an example

1 Gougul-oops!

2 THE COURT: It says oops?

3 THE PLAINTIFF: Yes.

4 THE COURT: All right. Let me get to that page.
5 Okay. Does it say Exhibit G O U G U L hyphen oops!?

6 THE PLAINTIFF: Yes. This is a scan or is
7 actually a printout from a book that Google apparently
8 scanned in New York during this trial or when litigation or
9 lawsuit or whatever. I don't know what it is.

10 THE COURT: Okay. Say that again. You said this
11 is a scan from --

12 THE PLAINTIFF: This is, this is a book that at
13 one time Google scanned and put online with a no preview
14 available during this very lawsuit.

15 THE COURT: Okay. For the record, it appears
16 that you are referring to page four of Plaintiff's Exhibit
17 1, the top of it has "The Renascent - Volume 3 -
18 Photography by Tara McDermott, Lorenzo Domnguez [sic] book
19 overview. This volume of The Renascent showcases
20 photography of many different styles and genres. The
21 technicians and artists who contributed have captured
22 subject matter that ranges a vast array of ideas, locales,
23 and impact. What resulted from the conglomeration of these
24 images is a striking look at the world from the perspective
25 of thoughtful observers. This is the third in a series of

1 cultural collections." Then it has "no preview available."

2 Has your name, "User review." And it has your name. "Is
3 this book scanned by Google already? My nude photography
4 is in this book and I already sued Google for violating my
5 copyrights and common law TMs. They say that if it is
6 already copyrighted they will pay \$60 for violating the
7 copyrights? I want sixty billion instead." This is the
8 page you're referring to, what I've just read?

9 THE PLAINTIFF: Yes, ma'am.

10 THE COURT: Okay. And you say that Google
11 scanned this page from a book?

12 THE PLAINTIFF: They scanned the book; however,
13 at the time that this happened -- that this -- I put this
14 into evidence, this was not -- they had not put the book
15 online. They had no preview available.

16 THE COURT: You are talking about -- you're not
17 actually talking about this page being put online by
18 Google, are you? You are talking about the book?

19 THE PLAINTIFF: No. The book is put online.
20 This is a page that reviewed that book. Originally when
21 they put it online --

22 THE COURT: Are you saying Google put the book
23 online?

24 THE PLAINTIFF: Yes; yes, ma'am.

25 THE COURT: And are you saying that the book

1 had --

2 THE PLAINTIFF: And then if you --

3 THE COURT: -- photographs taken by you?

4 THE PLAINTIFF: Yes, ma'am. Then if you move to
5 the Gougul-oops! 2 Exhibit...

6 THE COURT: Let me find that. You are talking
7 about another page that has that same --

8 THE PLAINTIFF: Yes, ma'am.

9 THE COURT: -- identifying caption on it? Okay.
10 Let me -- okay. Okay. It appears -- let's see. That
11 would be page 10 of Plaintiff's Exhibit. Okay. And --

12 THE PLAINTIFF: This was what during this
13 litigation they changed that page to look like.

14 THE COURT: You're saying Google changed this
15 Google books page?

16 THE PLAINTIFF: They put the book online.

17 THE COURT: Google put the book online?

18 THE PLAINTIFF: Yes, ma'am.

19 THE COURT: Okay. And what does this page ten of
20 your exhibit evidence?

21 THE PLAINTIFF: It shows that they posted nude
22 pictures from that book.

23 THE COURT: Okay. That's not the page you
24 referred me to.

25 THE PLAINTIFF: No, ma'am.

1 THE COURT: Are you saying on this Gougul-oops!
2 two page --

3 THE PLAINTIFF: They are all the same. It's the
4 same --

5 THE COURT: -- that it reflects the book was
6 offered online?

7 THE PLAINTIFF: They put it online and they
8 offered you to preview it for free, and do a search by name
9 and, poof, nude pictures by name again.

10 THE COURT: What evidence do you have that Google
11 put this book, scanned this book in and put it online?
12 What -- okay. Let me find --

13 THE PLAINTIFF: Gougul Exhibit 2, Gougul-oops!
14 Two.

15 THE COURT: Gougul-oops! Two, that would be page
16 12 of your exhibit?

17 THE PLAINTIFF: Has three pages of online nude
18 photography, two of which I've never uploaded anywhere
19 before ever.

20 THE COURT: Pardon me?

21 THE PLAINTIFF: Two of these pictures have never
22 been uploaded anywhere ever.

23 THE COURT: What evidence do you have that Google
24 is the entity that uploaded these?

25 THE PLAINTIFF: It's on their website,

1 Googlebooks- dot-com or books-dot-org.

2 THE COURT: And you think that means that they
3 are the entity that uploaded these because it was available
4 on their website?

5 THE PLAINTIFF: Yes. And they have also admitted
6 that they did in court in New York.

7 THE COURT: They admitted in court in New York?

8 THE PLAINTIFF: Yes, ma'am.

9 THE COURT: What proceeding are you referring to?

10 THE PLAINTIFF: The Authors Guild, et al, or
11 School.

12 THE COURT: These are, these are photographs
13 taken by you, is that correct?

14 THE PLAINTIFF: Yes, ma'am.

15 THE COURT: And in some court action in the State
16 of New York, these pictures were in dispute? Is that what
17 you're telling me?

18 THE PLAINTIFF: No. The fact that Google scanned
19 six million books in New York.

20 THE COURT: And was it proved in that action that
21 they scanned this book?

22 THE PLAINTIFF: They have admitted they have.
23 They have offered to settle there, but it has not been
24 ruled as fair yet.

25 THE COURT: They admitted this particular book

1 that they scanned?

2 THE PLAINTIFF: No.

3 THE COURT: They did not admit that?

4 THE PLAINTIFF: No.

5 THE COURT: They admitted to scanning other
6 books.

7 THE PLAINTIFF: They would -- have to ask them
8 that.

9 THE COURT: Pardon me?

10 THE PLAINTIFF: Did you scan the book?

11 THE COURT: I think they will get a chance to
12 present their case, and I'm sure that's an issue that they
13 will touch on.

14 THE PLAINTIFF: Okay.

15 THE COURT: So they did not admit that they
16 scanned this particular book?

17 THE PLAINTIFF: They did not specifically admit
18 it; no, ma'am.

19 THE COURT: Okay. Well, tell me then, what
20 evidence do you have that Google scanned this particular
21 book and uploaded it onto the internet?

22 THE PLAINTIFF: Because it has never been -- the
23 book has never been scanned by anybody, except, I guess,
24 Google or someone, someone who Google hired to do it, but
25 maybe not Google, but Google's library --

1 THE COURT: Do you think, Mr. Neeley, they, that
2 they might have to have the publisher's permission to do
3 that or that perhaps it was the publisher itself that would
4 have offered this book online?

5 THE PLAINTIFF: I do not believe so.

6 THE COURT: And why do you not --

7 THE COURT REPORTER: Could you repeat? I
8 couldn't hear.

9 THE PLAINTIFF: I do not believe so.

10 THE COURT: Why do you not?

11 THE PLAINTIFF: Because the publisher did not ask
12 me for permission to do the same thing.

13 THE COURT: Is it possible, though? Do you have
14 any proof one way or another as to who did this?

15 THE PLAINTIFF: No, I do not.

16 THE COURT: Okay. Anything else you would like
17 to present on the irreparable harm factor?

18 THE PLAINTIFF: No, ma'am. I believe that's it.

19 THE COURT: Okay. Are you doing okay? Do you
20 need a break?

21 THE PLAINTIFF: I'm doing okay.

22 THE COURT: Okay.

23 THE PLAINTIFF: I'm confused.

24 THE COURT: Pardon me?

25 THE PLAINTIFF: I'm confused, but I believe

1 that's just what happens.

2 THE COURT: Well, I think you are doing fine.
3 We'll try to just go through each factor and have you
4 testify about that factor. And if you would want to offer
5 any exhibits, okay, I have your packet of exhibits, and if
6 you want to at some point offer the one exhibit that has
7 not already been admitted, I'll allow you to do that after
8 hearing from defense counsel. All right. Let's go then,
9 Mr. Neeley, we will take these factors a little out of
10 turn. The probability that you will succeed on the merits
11 of this claim. What that means is you have to show that
12 it's probable that if this case proceeds to trial, you'll
13 actually win and get this final form of injunctive relief.
14 Now, I've already told you I don't think that's likely
15 because I don't see where you've actually pled this type of
16 final injunctive relief in the Amended Complaint. But I'll
17 let you address that factor, nonetheless. You tell me why
18 you feel you'll succeed on this claim if you proceed to
19 trial.

20 THE PLAINTIFF: I believe I will succeed on the
21 claim because I will move to amend the claim, and if he
22 again says the factors, the denis factors are what he uses,
23 I will have the Eighth Circuit overthrow it, because they
24 are not constitutional, in my opinion and the opinion of
25 anybody else. In other words --

1 THE COURT: Okay. Let me stop you right there,
2 Mr. Neeley.

3 THE PLAINTIFF: Okay.

4 THE COURT: How many times have you moved to
5 amend your Complaint already or asked for reconsideration
6 of that motion?

7 THE PLAINTIFF: I have no idea.

8 THE COURT: Well, I think it's been more than one
9 time and I think that issue has been ruled on. Now, I know
10 you are a pro se litigant, you are not an attorney, but you
11 are bound by the rules, and you don't get to keep asking
12 for that type of relief. Judge Hendren has ruled on it.
13 Is that not an issue you actually took to the Eighth
14 Circuit already?

15 THE PLAINTIFF: Well, no. The thing is I went to
16 the Eighth Circuit Court and they could not rule on any of
17 the rules because everything I took there was still pending
18 for one thing, and oh, man, if I'd waited another week or
19 another two weeks, I could have had a chance, and we would
20 have been done with this by now; however, I did not realize
21 that I could not appeal a pending ruling.

22 THE COURT: I'm looking at the Eighth Circuit
23 opinion right now. Give me a second here. I don't see
24 where the Eighth Circuit has ruled on -- I don't -- I don't
25 believe that was an issue you took to the Eighth Circuit,

1 and what you're telling me is you intend -- before this
2 action even goes to trial, are you saying you intend to
3 file another appeal with the Eighth Circuit?

4 THE PLAINTIFF: Yes, ma'am.

5 THE COURT: Well, I think what is likely to
6 happen, Mr. Neeley, is again they will say they have no
7 jurisdiction to rule over that. I can't guarantee that,
8 but that, again, is a type of non-final action by the
9 District Court that is not appealable, so what you need to
10 focus on here is not telling me you're likely to succeed on
11 the merits because you're likely to win on appeal. That's
12 not the standard. The standard is you are likely to
13 prevail at trial. So tell me why on your existing
14 Complaint is there any likelihood that you will succeed on
15 this claim at trial?

16 THE PLAINTIFF: Not apparently so.

17 THE COURT: And one issue I'd like to hear from
18 you on, Mr. Neeley, Google has contended that they're
19 immune under the -- I believe the statute is called the
20 Communications Decency Act, is that correct?

21 MR. PAGE: That's correct, Your Honor.

22 THE COURT: Because they are only an internet
23 service provider and not a content provider. Can you tell
24 me -- I believe you contend in one of your Responses that
25 they are a content provider. Tell me the basis for that

1 contention.

2 THE PLAINTIFF: My basis for that contention is
3 that an internet service provider provides connectivity.
4 That is not what Google does.

5 THE COURT: And, I'm sorry. Is what?

6 THE PLAINTIFF: A ISP provides connectivity. In
7 other words, Cox or ATT or Verizon, those type of companies
8 are ones who provide connectivity and they are a service
9 provider. Google does not provide that.

10 THE COURT: Do you have any law in support of
11 that position? Tell me what -- how -- what do you base
12 that position on? Have you done some research or, you
13 know, what leads you to believe --

14 THE PLAINTIFF: If you look at the title of the
15 CADA or what they are calling their profession, what the
16 title says is Good Samaritan conduct -- protection for Good
17 Samaritan conduct, for protecting against indecent
18 material, so, in other words, what they are saying allows
19 them to transmit indecent material like I can -- I make --
20 indecent -- they are saying their protection is that the
21 Good Samaritan are allowed to prevent, prevent, so how does
22 it make sense that they can say, well, we have a Good
23 Samaritan protection. We can -- so we are going to let
24 everyone play it.

25 THE COURT: So they are what?

1 THE PLAINTIFF: So they are going to show us
2 whatever they want to show us.

3 THE COURT: Okay. You didn't answer my question
4 though.

5 THE PLAINTIFF: Sorry.

6 THE COURT: I asked you what proof do you have
7 that they are a content provider or what authority for that
8 position do you have that they are a content provider and
9 not simply an internet service provider?

10 THE PLAINTIFF: That the content on their
11 searches is from their computer, not from anyone else.

12 THE COURT: What computer are you referring to?

13 THE PLAINTIFF: G-static.

14 THE COURT: Pardon me?

15 THE PLAINTIFF: G-static-dot-com?

16 THE COURT: G-stat?

17 THE PLAINTIFF: G-static-dot-com.

18 THE COURT: G-static-dot-com. That's Google's
19 computer?

20 THE PLAINTIFF: They own the computer, yes, or
21 they control it.

22 THE COURT: And, and how do you contend that the
23 content came from their computer?

24 THE PLAINTIFF: Because if you examine the page
25 for the URLs the computer generates the page from, they are

1 all from Google G-static.

2 THE COURT: What pages are you talking about?

3 THE PLAINTIFF: Any Google page, and specifically
4 every exhibit has Google on here.

5 THE COURT: Okay. So are you contending that
6 Google puts the content on there?

7 THE PLAINTIFF: Yes, they did.

8 THE COURT: And what evidence do you have of that
9 other than the fact that you said the page will reflect
10 that it's from a G-static-dot-com computer?

11 THE PLAINTIFF: (The Plaintiff moves head up and
12 down.)

13 THE COURT: Okay. Does that mean that every page
14 that reflects that contains content that Google uploaded on
15 to the internet? Is that your position?

16 THE PLAINTIFF: Yes, ma'am.

17 THE COURT: And what evidence do you have of
18 that?

19 THE PLAINTIFF: They own G-static computer.

20 THE COURT: Okay. So, for instance, if you type
21 in my name, I have friends that have put things on the
22 internet, you know, that include me, and would it, would it
23 say G-static-dot- com?

24 THE PLAINTIFF: It would have a picture under
25 your name, so yes.

1 THE COURT: Okay. So even though my friends were
2 the ones that uploaded the picture, and not Google, it
3 would still say G-static-dot-com?

4 THE PLAINTIFF: Yes, ma'am.

5 THE COURT: Okay. So what that tells me is that
6 Google is not responsible for everything that comes up as
7 G-static-dot-com. Would you agree with me that just
8 because it says G-static-dot-com, that doesn't necessarily
9 mean they have uploaded the information?

10 THE PLAINTIFF: I would say that Google puts
11 everything there because the people who wrote the programs
12 called spiders went in and got the content from somewhere
13 on the web and came back and put it on the server, not a
14 person, but a spider or a roboter, whatever you call it,
15 the word, whatever the fantasy word is for basically a
16 computer brain that operates continually and goes and gets
17 pictures.

18 THE COURT: So you're saying Google, once
19 information is put on to the internet by whoever, that
20 Google, through some spider program, then gets it and puts
21 it into their database? Is that what you're saying?

22 THE PLAINTIFF: Yes, ma'am.

23 THE COURT: Okay. Okay. Any other evidence that
24 they are a content provider?

25 THE PLAINTIFF: If you look on Exhibit A, it has

1 a little red splash mark.

2 THE COURT: Okay. Give me a second. Okay.

3 THE PLAINTIFF: That picture was a particular
4 picture.

5 THE COURT: Okay. Now, I want to make sure I'm
6 identifying the correct picture. It looks like you're
7 referring to page five of Exhibit 1, the second row, the
8 picture on the far right that has a mark around it.

9 THE PLAINTIFF: Yes, ma'am.

10 THE COURT: Okay. Go ahead.

11 THE PLAINTIFF: This picture is a picture that
12 Google presents as a result of my name search again,
13 although I did not take the picture, it is a picture -- it
14 comes up under my name.

15 THE COURT: And how would that happen? How would
16 this picture be associated with your name? Do you have any
17 idea?

18 THE PLAINTIFF: I have a good idea, yes.

19 THE COURT: Okay. I need you to explain that to
20 me then.

21 THE PLAINTIFF: This picture is a picture done by
22 Michael Peven.

23 THE COURT: He took the picture?

24 THE PLAINTIFF: Yes, ma'am.

25 THE COURT: Is this him in the picture?

1 THE PLAINTIFF: I believe so. I don't know.

2 THE COURT: Okay. So Michael Peven took this
3 picture?

4 THE PLAINTIFF: Yes, ma'am.

5 THE COURT: Okay. And how is it being linked to
6 you?

7 THE PLAINTIFF: Because I have said on a blog
8 entry that I believe it's detestable that a man could have
9 a degree in photography and have done work like this as his
10 final project, a picture of his -- his -- a picture of his
11 own erect penis from 1979.

12 THE COURT: So that is how the picture has been
13 linked to you is through a blog entry?

14 THE PLAINTIFF: Yes, ma'am.

15 THE COURT: So, Mr. Neeley, you, in fact, linked
16 it to you then, did you not, by putting your name on a blog
17 entry?

18 THE PLAINTIFF: I said that I hate this picture
19 and I guess that I could -- that means I said I wanted to
20 see it by my name? It does not make sense I should --

21 THE COURT: How is Google responsible then for
22 this photograph being linked to your name?

23 THE PLAINTIFF: They have the mechanistic system
24 to go through and look at the whole page and finds my name
25 and finds his name and finds this picture and puts it on my

1 name --

2 THE COURT: So you're saying --

3 THE PLAINTIFF: -- the whole page --

4 THE COURT: -- their system links it to you?

5 THE PLAINTIFF: Their system does; yes.

6 THE COURT: Okay.

7 THE PLAINTIFF: However, I say on the page, if
8 you read the whole page, I detest Michael Peven's
9 photography period, not just this one, but all of it, but
10 besides this, this one in particular, and yet me saying
11 that, makes this picture come up under my name? It don't
12 seem very fair. It seems as though I am being told I
13 cannot speak in a certain way. I am being prevented from
14 speech.

15 THE COURT: Well, Mr. Neeley, do you, do you
16 understand that when you post something on the internet,
17 you're making a public posting? You understand that? When
18 you go on there and blog about a photograph, it's likely
19 that it's going to be -- your comment and your name are
20 going to be linked to that photograph, so I'm having a hard
21 time understanding why you fault Google for that. Would
22 you not have a problem if just your posting was on there
23 and it wasn't linked to the photograph, is that what you're
24 telling me?

25 THE PLAINTIFF: As long as it does not come back

1 up and show my name, yes, I will be able to do that. It
2 will disappear in about a day or two, but --

3 THE COURT: It would -- I'm sorry?

4 THE PLAINTIFF: It will disappear by tomorrow.

5 THE COURT: What would disappear by tomorrow?

6 THE PLAINTIFF: The picture.

7 THE COURT: That -- Mr. Peven's picture?

8 THE PLAINTIFF: Yes.

9 THE COURT: You're saying it's going to be off
10 the internet by tomorrow?

11 THE PLAINTIFF: No. It will no longer return for
12 my name.

13 THE COURT: How is that happening?

14 THE PLAINTIFF: Because I have edited my blog
15 entry. I have said -- so it no longer links to this
16 picture.

17 THE COURT: So you were able to do that yourself?

18 THE PLAINTIFF: In theory I believe I have. In
19 other words, it has not happened yet, but it should happen
20 today.

21 THE COURT: So why are you suing Google then
22 asking them to break the link to this if you, in fact, can
23 do it yourself?

24 THE PLAINTIFF: I believe they should respect my
25 wishes and not tell me that since you said you don't like

1 that picture, it's coming up under your name.

2 THE COURT: Okay. But you think within a day or
3 two that picture will no longer link to your name, is that
4 correct?

5 THE PLAINTIFF: Yes, ma'am.

6 THE COURT: Can you do that same thing for the
7 other photographs that are coming up when your name is
8 typed in?

9 THE PLAINTIFF: Not without a lot of legal
10 trouble. I have to get Wikimedia to install a robot
11 protocol that says do not search our pictures. That may be
12 possible, but that's a whole 'nother ballgame.

13 THE COURT: You say you would have to get
14 Wikimedia to install a robot protocol?

15 THE PLAINTIFF: A robot exclusion protocol. That
16 is the voluntary automated way Google has established to
17 not search your domain name.

18 THE COURT: So could you ask -- it would be
19 Wikimedia that would set this up?

20 THE PLAINTIFF: Yes.

21 THE COURT: Could you ask them to do that?

22 THE PLAINTIFF: I will.

23 THE COURT: Pardon me?

24 THE PLAINTIFF: I can. I suppose I can.

25 THE COURT: Okay. Would that take care of the

1 problem or would there still be photographs coming up on
2 Google's website? Even if Wikimedia installed this
3 protocol, would there still be photos coming up?

4 THE PLAINTIFF: There would be because of the one
5 in Russia.

6 THE COURT: What one in Russia?

7 THE PLAINTIFF: The one, the one that the -- the
8 one beside my car wreck.

9 THE COURT: That 394 by 500 picture?

10 THE PLAINTIFF: Yes, ma'am.

11 THE COURT: Is that what you're referring to?

12 THE PLAINTIFF: Yes, ma'am.

13 THE COURT: And that's a photo that was uploaded
14 in Russia, is that what you're saying?

15 THE PLAINTIFF: I believe so.

16 THE COURT: By who?

17 THE PLAINTIFF: I don't know, ma'am. I have been
18 unable to get ahold of them and get them to take it down.

19 THE COURT: Get ahold of who?

20 THE PLAINTIFF: Whoever does that website. The
21 website does not have -- is not in the right language.
22 It's in Russian or something. However, I have attempted --

23 THE COURT: So how is it that Google is
24 responsible for that photograph, if it's a different
25 website, a Russian website?

1 THE PLAINTIFF: They have chosen to show it with
2 my name.

3 THE COURT: So this comes up on Google?

4 THE PLAINTIFF: Yes.

5 THE COURT: Okay. And you're saying even if
6 Wikimedia installed this protocol, that this one photograph
7 would still come up?

8 THE PLAINTIFF: Yes, ma'am.

9 THE COURT: Okay. Anything else you would like
10 to offer, any testimony or evidence regarding your
11 probability of success on the merits, Mr. Neeley?

12 THE PLAINTIFF: No, ma'am.

13 THE COURT: Okay. All right. The other two
14 factors for the Court to consider, the weight of the harm
15 as compared to any injury an injunction would inflict on
16 other interested parties and also the public interest, do
17 you have any evidence you would like or testimony you would
18 like to offer regarding those two factors?

19 THE PLAINTIFF: That was the one that I believe
20 the opposing counsel objected to, to being hearsay.

21 THE COURT: Okay. Let me, let me see that
22 exhibit. Do you have a copy there? I can't rule on it
23 without taking a look at it first. Do you have a copy,
24 Mr. Neeley? Okay.

25 MR. PAGE: You can have the one I have, Your

1 Honor.

2 THE COURT: Thank you. I'll take Mr. Page's copy
3 so you can hang on to yours. Okay? All right. The
4 proffered exhibit has "E X period child, guess what, I will
5 never apologize or forgive you. I'm tired of people --
6 redacted in brackets -- coming up to me saying Curtis
7 Neeley -- in brackets -- has nude photos on his page."
8 Tell me what this exhibit is, Mr. Neeley.

9 THE PLAINTIFF: This exhibit is an e-mail that I
10 received from my daughter -- my daughter, like I say, on
11 December 26, 2008.

12 THE COURT: So this is the content of an e-mail
13 you received from your daughter?

14 THE PLAINTIFF: Yes, ma'am.

15 THE COURT: Okay. Okay. Mr. Page, your
16 objection?

17 MR. PAGE: Hearsay and best evidence rule, Your
18 Honor.

19 THE COURT: I will overrule the objection. I
20 think for the purposes of a preliminary injunction the
21 Rules of Evidence are a little relaxed and I will,
22 therefore, allow you to admit this exhibit, Mr. Neeley.
23 This will be Plaintiff's Exhibit 2.

24 THE PLAINTIFF: This is already in docket -- this
25 is in docket, our exhibit. I can [unintelligible] --

1 THE COURT: Pardon me?

2 THE PLAINTIFF: This is an exhibit in the docket
3 already.

4 THE COURT: Okay. Well, for the purposes of our
5 hearing, we will have separate exhibits identified. Okay?

6 THE PLAINTIFF: Okay.

7 (Off the record briefly.)

8 THE COURT: Okay. And what does this go to,
9 Mr. Neeley? What's the relevance of this?

10 THE PLAINTIFF: This is an example of what --
11 this is an example of what happens when my daughter types
12 in my name in an image search engine at school or her
13 friends do. I have never had a nude photograph on my
14 website, well, since nineteen -- well, forever, nineteen --
15 2000, 2002, 2003, there's my Curtis-Neeley-dot-com website
16 has not had any on it. However, she has the impression
17 that it was somewhere.

18 THE COURT: You said you haven't had a nude
19 photograph on your website, Curtis-Neeley-dot-com, since
20 2002/2003?

21 THE PLAINTIFF: Yes, ma'am.

22 THE COURT: Okay. You did have nude photographs
23 prior to that?

24 THE PLAINTIFF: I have no idea.

25 THE COURT: You don't know what was on your own

1 website?

2 THE PLAINTIFF: No, ma'am. I was involved in car
3 wreck by then --

4 THE COURT: So you can't remember?

5 THE PLAINTIFF: Right. I lost three-quarters of
6 my memory.

7 THE COURT: Okay. Anything else you would like
8 to present, Mr. Neeley, any other testimony you would like
9 to offer?

10 THE PLAINTIFF: I suppose I would just say trying
11 to compare what can be -- what's going to harm them, I
12 don't understand what is harming them at all to not show
13 nudes that are in my name.

14 THE COURT: Okay.

15 THE PLAINTIFF: Especially with the fact that
16 their three competitors have all done what I've asked them
17 to do already.

18 THE COURT: Okay. But you don't know how they
19 did that, how they were able to do that?

20 THE PLAINTIFF: I don't know.

21 THE COURT: All right. Anything else? Would you
22 like to testify to anything else? You think you've covered
23 everything?

24 THE PLAINTIFF: I think I'm totally lost.

25 THE COURT: You are doing just fine, Mr. Neeley.

1 You are making sense and you are addressing the factors, so
2 you're doing just fine. All right. If you have no further
3 testimony, it will now be the defense's opportunity to
4 cross examine you, which means they get to ask you
5 questions. I'll, again, allow you to stay seated there,
6 and after they have asked you questions, if there's
7 anything else you would like to offer pertaining to your
8 case in chief, I'll allow you the opportunity to do that.
9 Okay? All right. Go right ahead, Mr. Page.

10 CROSS EXAMINATION

11 BY MR. PAGE:

12 Q Hello, Mr. Neeley. I'll try to be brief. You
13 testified earlier that you made blog posts that made
14 reference to Mr. Peven'S photographs, is that correct?

15 A Yes, sir.

16 Q And the blog post is the one that's captured September
17 14th as the date of infamy?

18 A Yes, sir.

19 Q Have you made any edits to that blog post in the last
20 couple of weeks?

21 A Yes.

22 Q As of a couple of weeks ago, Google's image search was
23 no longer returning Mr. Peven's photograph in response to
24 searches for your name, isn't that correct?

25 A That is correct.

1 Q And then you went into --

2 THE COURT: Wait, wait a minute. You said, you
3 acknowledged that as of the last couple of weeks, a search
4 is not returning the Pevens photo?

5 THE PLAINTIFF: Correct.

6 THE COURT: Now, I thought you told me that that
7 would happen in the next couple of days.

8 THE PLAINTIFF: It was gone, has reappeared, and
9 it will disappear again in a day or two.

10 THE COURT: So your testimony is it's reappeared?
11 Okay. Go ahead.

12 BY MR. PAGE:

13 Q And it reappeared because you edited your blog posts to
14 recreate the live links to it?

15 A Yes.

16 THE COURT: Okay. Say that -- I'm having a hard
17 time.

18 MR. PAGE: I'll repeat the question.

19 THE COURT: Okay.

20 Q The photograph to which you object reappeared in Google
21 searches because you edited your blog post to recreate the
22 live links to that photograph, correct?

23 A Correct.

24 Q And you did that for the purpose of establishing harm
25 that you could present to this Court in this hearing,

1 correct?

2 A No.

3 Q Why did you reactivate the links to the photograph that
4 had disappeared from Google's image search?

5 A Because Jennifer Haltom Doan, Esquire, told me that it
6 did not --

7 THE COURT: Mr. Neeley, I think you need, if you
8 can, to turn back around or hold that closer to you. Thank
9 you.

10 A Jennifer Haltom Doan, Esquire, told me in a post or
11 told me that the actual link was no longer imported as a
12 text. I did not think she was correct and so, I, therefore,
13 I put it back there and, poof, it came back, and, poof, it
14 came off.

15 Q So, poof, you deliberately placed a link to that
16 photograph on your blog site for the purpose of
17 establishing that that would cause the photograph to appear
18 in a Google image search, correct?

19 A Yes.

20 Q And you then, you then removed it again within the last
21 couple of days, correct?

22 A Yes.

23 Q And your expectation is that because that it will again
24 disappear from Google's image search results?

25 A Yes.

1 Q In other words, you have complete control over whether
2 the Michael Peven photograph appears in connection with
3 your name in Google image searches and have the ability to
4 turn it on and off at will, correct?

5 A Not exactly; no.

6 Q Why is that incorrect?

7 A It's incorrect because it is saying that I have
8 control. It depends upon whether or not they have the text
9 link or if it is not text linked.

10 Q And your actions, by changing it from a live link to
11 text, cause it to appear and disappear from Google image
12 searches, correct?

13 A I believe so; yes.

14 Q And you could do that over and over again, if you were
15 so inclined?

16 A I suppose so.

17 Q So you have completely -- you have the ability, which
18 you've already exercised once, and you've testified that
19 you just exercised again, to remove the offending
20 photograph from Google's image search results, correct?

21 A Yes.

22 Q You testified earlier as to your Wikipedia posts of
23 your photographs, correct?

24 A Yes.

25 Q You placed those photographs in Wikipedia, correct?

1 A Yes, I did.

2 THE COURT: Now, are we talking Wikipedia or
3 Wikimedia?

4 MR. PAGE: Wikimedia is a -- is in the middle of
5 a section of Wikipedia. It's the same.

6 THE COURT: Okay.

7 MR. PAGE: If you go to Wikimedia and search,
8 you'll get these.

9 Q (By Mr. Page) You chose the title for the photograph
10 such as figurenude by Curtis Neeley, correct?

11 A Yes, I did.

12 Q And you posted those photographs to Wikimedia pursuant
13 to a what's known as Creative Commons License, correct?

14 A Yes.

15 Q And that Creative Commons License grants as to the
16 buyer world the right to reproduce your photographs
17 provided only that they attribute them to you, correct?

18 A No.

19 Q Why is that incorrect?

20 A Because it also reserves the moral rights of the
21 creator.

22 Q And what do you think moral rights are?

23 A In America? Those would be U.S. Title 17, Section
24 106(a) .

25 Q And that provides that for certain rare works of art,

1 one must correctly attribute them to the author, correct?

2 A That's part of what -- [inaudible]

3 THE COURT REPORTER: That's part of what, sir? I
4 couldn't hear.

5 THE COURT: Mr. Neeley, you need speak directly
6 into the microphone. You probably need to turn back around
7 and face the microphone, if that's not uncomfortable for
8 you.

9 A The moral rights of a creator are in Title 17, Section
10 106(a), which are integrity and attribution, and
11 attribution, I believe, is what he just described, which
12 means, yes, for certain rare works you have to claim that
13 they are yours, however, and also integrity of the art,
14 which means that you cannot show it in a way that causes
15 the artist shame.

16 Q And in the case of your Wikimedia posts, the rights of
17 attribution that you provide on your page there are, and I
18 quote, "you must attribute the work in the manner specified
19 by the author or licensor," end quote. And under
20 attribution you write, "Curtis Neeley at E N dot
21 Wikipedia," correct?

22 A Again?

23 Q Your posting to Wikipedia provides that you require
24 under the Creative Commons License that anyone reproducing
25 this photograph must attribute it to you by name, correct?

1 A They must, but they must not do it in a way that
2 disparages me.

3 Q Okay. And reproducing your work without alteration and
4 attributing it to your name disparages you how?

5 A Because I do not believe that -- I do not believe that
6 a minor child or a practicing Muslim should be exposed to
7 my art.

8 Q Okay. Are you free to remove your postings from
9 Wikipedia?

10 A Yes.

11 Q Why have you not done so?

12 A Why would I?

13 Q To prevent Muslims and children from being able to see
14 them.

15 A That's easily done by asking Google not to show them.

16 THE COURT: I'm sorry. Again, you need to speak
17 directly into the microphone.

18 A I believe that it's just as easy to ask Google not to
19 show my pictures to the children and Muslims.

20 Q And if Google shut down entirely tomorrow, your
21 pictures would still be available to children and Muslims
22 on the Wikipedia site where you put them, correct?

23 A They would be.

24 MR. PAGE: I have nothing further, Your Honor.

25 THE COURT: Okay. Mr. Neeley, anything further

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1 THE COURT: SA?

2 THE PLAINTIFF: Yes, ma'am.

3 THE COURT: Like the initials, SA?

4 THE PLAINTIFF: Yes.

5 THE COURT: Create Comments by SA.

6 THE PLAINTIFF: Attribution 3.

7 THE COURT: 3? So if the defense produces that
8 to me, you think it's going to say that it -- they have the
9 authority to reproduce these photos as long as they are
10 attributable to you and not in a way that disparages you?

11 THE PLAINTIFF: Correct.

12 THE COURT: It will specifically say that?

13 THE PLAINTIFF: It will not, it will not say
14 that. I'm not sure what -- how it says disparages. It
15 probably says in a way that the artist would not be
16 offended.

17 THE COURT: In a way that?

18 THE PLAINTIFF: The artist would not find
19 offensive.

20 MR. PAGE: Your Honor, if it will help, I can
21 read it into the record.

22 THE COURT: Okay. Go ahead.

23 MR. PAGE: The provision on the page is you're
24 free to share, to copy, distribute, and transmit the work,
25 to remix, to adapt the work under the following conditions:

1 Attribution: You must attribute the work in the manner
2 specified by the author or licensor, open paren, but not in
3 any way that suggests that they endorse you or your use of
4 the work, close paren, period. And under attribution it
5 reads Curtis Neeley at E N dot Wikipedia as the attribution
6 artist to specify.

7 THE COURT: Okay. I would like to have a copy of
8 that as an exhibit.

9 MR. PAGE: We'll get that to you right now.

10 THE COURT: Okay. Thank you. Okay. Mr. Neeley,
11 how is it that you think that license has been violated by
12 Google?

13 THE PLAINTIFF: They -- I believe that Google is
14 aware of the fact that an artist would not want their
15 daughter, who is a minor, to see nude art done by them, by
16 their --

17 THE COURT: We went over this, Mr. Neeley. Your
18 daughter could access Wikimedia and access these photos,
19 correct?

20 THE PLAINTIFF: True.

21 THE COURT: Okay. So how is it that Google's has
22 done anything that Wikimedia has not?

23 THE PLAINTIFF: They have made it such that my
24 name results in a search for it.

25 THE COURT: Does your name not result in a search

1 for them on Wikimedia?

2 THE PLAINTIFF: I don't believe so, not the way
3 they do it on Google.

4 THE COURT: How is it different then?

5 THE PLAINTIFF: On Google it links to a picture,
6 brings up my pictures, and Wikimedia brings up a bunch of
7 articles.

8 THE COURT: Does it also bring up your
9 photographs?

10 THE PLAINTIFF: No. Links to them, not the
11 photographs.

12 THE COURT: Links to them. So all you would have
13 to do is click on a link and then your picture would be
14 seen?

15 THE PLAINTIFF: I believe so.

16 THE COURT: Okay. So, again, other than the
17 difference that there might be a -- you have to make an
18 extra click on a link, how is it that Google is doing
19 anything that Wikimedia is not?

20 THE PLAINTIFF: I don't know.

21 THE COURT: Okay. And you acknowledge that you
22 could go in there and remove the pictures from Wikimedia
23 and then the only picture that might still be out there is
24 the one that's on a website in Russia, is that correct?

25 THE PLAINTIFF: Yes.

1 THE COURT: Okay. Anything further you would
2 like to offer, Mr. Neeley?

3 THE PLAINTIFF: I believe that's all. I believe
4 that's all.

5 THE COURT: Okay. For the defense, is there
6 anything you-all would like to offer?

7 MR. PAGE: No evidence to present, Your Honor.
8 If you want closing arguments, we will be happy to.

9 THE COURT: Before we get to that stage, I would
10 like to address Mr. Neeley. In your pleadings to the
11 Court, you have made comments that could result in you
12 being held in contempt of court. You have made comments
13 regarding Judge Hendren and it hasn't just been pertaining
14 to his rulings. You've made comments referring to him as
15 senile, as logically challenged. Those comments can result
16 in you being held in contempt of court. I'm not saying I'm
17 going to do that right now, but I think that may be an
18 issue Judge Hendren takes up with you. You've also made
19 comments about opposing counsel that really have nothing to
20 do with the merits of this action. They are more in the
21 line of personal attacks. Now, I know Judge Hendren has
22 entered one Order in this case. Do you recall that? He
23 entered an Order stating that if you did not refrain from
24 such comments, you could be sanctioned. Do you recall
25 that, Mr. Neeley?

1 THE PLAINTIFF: I believe so.

2 THE COURT: Would you like me to read from that
3 Order? You think that's necessary, or do you recall what
4 Judge Hendren instructed you?

5 THE PLAINTIFF: I think I do.

6 THE COURT: All right. Well, tell me then, why
7 have you not complied with his Order? Why have you
8 continued to make personal attacks on opposing counsel and
9 on Judge Hendren himself?

10 THE PLAINTIFF: I do not believe "senile" is a
11 word that should be that offensive.

12 THE COURT: You don't believe "senile" should be
13 a word that's offensive.

14 THE PLAINTIFF: No, ma'am.

15 THE COURT: Do you have any -- tell me what your
16 cause is for believing that Judge Hendren is senile.
17 Because he ruled against you, is that what it is?

18 THE PLAINTIFF: No, ma'am.

19 THE COURT: What is it then?

20 THE PLAINTIFF: I believe that in his past, his
21 vision --

22 THE COURT: In his what?

23 THE PLAINTIFF: When he ruled that the Harry
24 Potter books should be able to be seen on library shelves
25 just like a book where might not [Plaintiff brushes against

1 microphone] special care, that was extremely, I thought,
2 thoughtful and extremely keen, and I believe he is no
3 longer able or no longer does that type keen ruling.

4 THE COURT: And what is your basis for that
5 belief?

6 THE PLAINTIFF: He has repeatedly done that
7 already in this case.

8 THE COURT: He has what?

9 THE PLAINTIFF: He has done that already in this
10 case several times.

11 THE COURT: What has he done specifically?

12 THE PLAINTIFF: He did not, consistently did not
13 allow me to amend --

14 THE COURT: So he ruled against you, so you
15 believe he's senile because he ruled against you? I want
16 concrete facts, Mr. Neeley, not that you disagree with a
17 ruling of his. I want to know the basis because, if you
18 have no basis for making that type of comment, you could be
19 held in contempt of court.

20 THE PLAINTIFF: Okay. I believe the fact that he
21 believes that stating disparaging speech by association on
22 one case in '93 was a bad thing.

23 THE COURT: Wait. I'm not following you. He
24 made a ruling in 1993, is that what you're saying?

25 THE PLAINTIFF: In 2003, I'm sorry.

1 THE COURT: He made a ruling in 2003?

2 THE PLAINTIFF: That stated that disparaging
3 against speech, there's -- putting a book in a certain
4 place made -- disparages the book, by putting it on the
5 shelf saying special parent permission, that was
6 disparaging that book. To me he is saying that using my
7 name in a library in a search is an example thing to
8 disparage me by, hey, you use his name for taking a bunch
9 of naked pictures.

10 THE COURT: Has he ruled that, Mr. Neeley? Has
11 he made that ruling? What I'm getting at, Mr. Neeley, is
12 you will be much better served if you refrain from personal
13 attacks in this case, because let me tell you what can
14 happen. I could strike the pleadings you filed in relation
15 to this Motion for Preliminary Injunction. You filed
16 pleadings calling Judge Hendren logically challenged and
17 senile. You made personal attacks. I think you accused
18 opposing counsel of committing fraud, and there's no
19 evidence that they have committed fraud in this case. What
20 that means is I could just strike your pleadings, motions
21 denied, wouldn't even have to have this hearing today. You
22 could also be sanctioned for the comments that you have
23 made. It could be monetary sanctions. You could be
24 required to pay a sum of money. It could be more severe
25 sanctions. It could result in your case just being

1 dismissed, Mr. Neeley. And there's no reason for those
2 comments. You did fine here today presenting yourself.
3 You were very respectful to the Court. You were very
4 respectful to opposing counsel. So what I'm getting at is
5 those comments are not necessary. And they will only
6 hinder your pursuit of this litigation. I will also stress
7 that when Judge Hendren or myself have made a ruling in
8 this matter -- now, I will issue a Report and
9 Recommendation. You will have an opportunity, if I don't
10 rule in your favor, to file objections to that, but any
11 final Order, that is a final Order. You don't get to keep
12 renewing your requests for relief. You have to accept the
13 answer from the Court. When the case is finally decided,
14 then you appeal it to the Eighth Circuit and you can take
15 the issue up with them, but you need to refrain from making
16 any comments about senility, someone being logically
17 challenged. Those are harassing comments. They are --
18 there's no doubt they are contemptuous. And Judge Hendren
19 would have the absolute right to hold you in contempt of
20 court for making those comments. Unless you've got a basis
21 for those comments, and I do not believe there's any basis
22 for those comments, other than that you disagree with his
23 rulings. They're contemptuous. And it will be up to him
24 to decide whether to hold you in contempt of court. And
25 you need to refrain from making such comments about

1 opposing counsel. I do not want any further e-mails to my
2 settlement account. You were directed to send one e-mail
3 regarding the settlement value of your case. I've been
4 flooded with e-mails. I will no longer accept those
5 e-mails. Miss McGruder, do I have a settlement statement
6 from Mr. Neeley?

7 MS. MCGRUDER: You recently asked him to file
8 one. It has not been filed yet, and you did not give a
9 deadline for that.

10 THE COURT: Okay. I want -- I think I will limit
11 it to a five-page settlement statement that specifically
12 addresses which is my Order. That's it. Once I get that,
13 I want no further e-mails from you. That e-mail account is
14 for settlement purposes only, it is not for ex parte
15 communications with myself or my law clerk. Do you
16 understand that, Mr. Neeley?

17 THE PLAINTIFF: Yes, ma'am.

18 THE COURT: If I continue to receive those
19 e-mails, I will consider taking action in this matter. And
20 I believe that Judge Hendren will caution you in the same
21 way that I have today, and what I really want to stress to
22 you today is it's not necessary to go into personal
23 attacks. It's not necessary to file motions asking for
24 reconsideration over and over. You're bogging your case
25 down. If you want your case to proceed, you accept a

1 ruling, you move on, and you'll get a final resolution of
2 your case. Now, it may not be the resolution that you
3 want, but then you'll have your opportunity to appeal.
4 Okay? You did a good job here today. You were very
5 respectful, so I know you have the ability to do that, and
6 I think you'll -- you represented yourself fine. You are
7 articulate. You are intelligent. And if you'll use those
8 skills in your pleadings, your case will progress just
9 fine. If you do not and you continue to make the types of
10 comments you have and file the types of motions that you
11 have, you risk being sanctioned, your pleadings being
12 stricken. You can be held in contempt of court and
13 possibly your case even being dismissed, Mr. Neeley. Do
14 you understand that?

15 THE PLAINTIFF: Yes, ma'am.

16 THE COURT: Okay. Is there anything you would
17 like to state in response?

18 THE PLAINTIFF: I apologize for having offended
19 everyone and I do not mean to offend Miss Doan, and I mean
20 to -- did not mean to offend you. I mean, I did -- when I
21 did say what I did, I meant to offend you, but I shouldn't
22 have. I'm sorry.

23 THE COURT: Okay. And I appreciate that,
24 Mr. Neeley. I hope that you can have a clean slate from
25 here on as you proceed with your litigation. It showed

1 good faith, the statement that you just made, and I hope
2 that you will continue along those lines. Okay? Now,
3 Mr. Neeley, is there any closing argument you would like to
4 make before we conclude these proceedings? And you
5 certainly do not have to. That's up to you.

6 THE PLAINTIFF: I suppose I would say that I --
7 I'm only -- I do not think it is very American to tell a
8 person what they can or cannot say, that I cannot donate
9 artwork to Wikimedia or cannot say things on a blog entry
10 or say things that are against a person who teaches
11 photography at the university, teaches photography who
12 shouldn't be teaching photography and that end up
13 condemning you, which I believe this has actually ended up
14 doing. I have no idea what I was going to say, so, anyway,
15 I would just like them not to show my pictures to anybody
16 with my name. I mean, if they use the word Curt Neeley
17 nude, well, then, sure, show them all, but not just Curt
18 Neeley.

19 THE COURT: Okay. Anything further, Mr. Neeley?
20 Okay. For Google?

21 MR. PAGE: Your Honor, I'll be brief. I think
22 the Court has hit most of the issues here. The first,
23 obviously, is that the claim -- most of the claims for
24 relief that Mr. Neeley purports are the basis for the
25 injunction motion are, as the Court noted, not in his

1 Complaint, so the analysis could end there. More to the
2 point, although Mr. Neeley says he would love to not be
3 associated with the things he put on the internet, the
4 bottom line is that he put them there. All Google does is
5 index material that other people place on the internet.
6 Google doesn't place it there. Google servers, of course,
7 have the results of Google's image searches and regular
8 searches on them. That's the G-static servers that
9 Mr. Neeley referred to. They are, I believe, the largest
10 single storer of data in the universe, certainly the
11 largest one that's not owned by a government. It contains
12 the current server results of everything on the internet.
13 That's Google's mission in life to make it so that you can
14 find anything that's out there. Google is not in the
15 position to make decisions as to who should look at what,
16 who should post what, who you should copy what. We index
17 it all. We, of course, then make our own broad cuts on
18 things that we don't permit, like child pornography and
19 things like that. But Mr. Neeley's decision to place his
20 photographs in the public domain was Mr. Neeley's decision
21 alone. He has complete control over the ability to remove
22 them from the public domain, should he used to want to
23 remove them, except in situations where he has, in fact,
24 licensed them to others with full permission to use them,
25 such as the publisher of the book in which his pictures

1 appear. Googlebook search indexes millions of books around
2 the world. The publishers with rights to those books have
3 the absolute right to tell Google not to index them and we
4 won't. If Mr. Neeley's publisher has not asked Google not
5 to index that book, that's between Mr. Neeley and his
6 publisher. As to Mr. Peven's photograph, which seems to be
7 Mr. Neeley's *bête noire*, we've seen clearly here today that
8 that is entirely under Mr. Neeley's control, and, in fact,
9 he has in the weeks leading up to this hearing deliberately
10 re-introduced the harm he complains of for the purpose of
11 supporting his motion. When he removed the link to that
12 work from his own blog, it, therefore, fell out of Google's
13 image search. When he put it back, it came back. He is
14 deliberately creating exactly the harm he seeks this Court
15 to enjoin. On that ground alone, the Court should deny his
16 motion. Unless the Court has any particular technical or
17 factual questions --

18 THE COURT: I do have a couple of questions.
19 Mr. Neeley stated that other companies, I believe he said
20 Yahoo and, and the Ask-dot-com have instituted some
21 protocol where the nude photos are not coming up when you
22 type in Mr. Neeley's name. Is that, is that correct? Do
23 you know?

24 MR. PAGE: I have absolutely no idea what other
25 companies have done internally. I know that fewer results

1 show up when I personally go do a Yahoo search; however, I
2 do find some nudes attributed to Mr. Neeley. But what
3 Yahoo or Microsoft choose to show or not show in their name
4 search is no concern of mine or the Court's. Google's
5 search -- Google is quite justifiably proud of the fact
6 that it indexes the web better than anyone else, and we
7 consistently find more things than anyone else. We believe
8 that's why we are the leading search engine in the world.

9 THE COURT: Well, just out of curiosity, is it
10 possible for Google to prevent these pictures from coming
11 up when you type in his name?

12 MR. PAGE: No. Well, not, not without an insane
13 amount of effort. For one thing, search is completely
14 automated. It goes out, it crawls the web, it sees what's
15 there, and it reports it back. The machine has no way of
16 knowing whether a picture is nude, whether the person
17 searching for it is Muslim. All it knows is that there are
18 some bits out there that say Curtis Neeley and there are
19 other bits on the same page and there are pictures.

20 THE COURT: But it would be possible to just stop
21 any photographs from it?

22 MR. PAGE: Yes. But if you go and do a Google
23 search for Curtis Neeley, you'll find that there are a lot
24 of Curtis Neeleys in the world, and a lot of them have
25 posted a lot of their photographs, and you can see the

1 birthday parties of innumerable Curtis Neeleys out there.
2 There is no way for us to selectively go in and block the
3 people who happen to be searching for this Curtis Neeley.
4 Similarly, there is no way for us to selectively search the
5 photographs that this person really on any given day finds
6 offensive, even though he put them there himself. As a
7 practical matter, moreover, if we were to take down a link
8 to a particular posting, the next time someone else put the
9 photographs somewhere else and our crawler found it, it
10 would come right back. We report on the current state of
11 the internet. We can individually, of course, block
12 results, but we are -- but Google has very strong
13 institutional reasons not to start playing censor to the
14 internet based on everyone's request. There is no end to
15 that whole --

16 THE COURT: You said you can choose to block
17 child pornography. How do you do that?

18 MR. PAGE: By, by hiring a lot of people to look,
19 by searching keywords that indicate child pornography, by
20 responding to notifications from all sorts of art
21 organizations that provide us notice about child
22 pornography. It's a very large, you know, our indecency
23 folks are a very large organization that work very hard,
24 and it is never, of course, never perfect. It is a game of
25 Whack a Mole, but we devote significant resources to that.

1 It is not a simple matter.

2 THE COURT: Okay. Now, if Mr. Neeley contacted
3 Wikimedia and told them to remove the pictures, would they
4 still be available on Google?

5 MR. PAGE: Only very briefly. One of the things
6 you'll notice when you do a Google search and then click on
7 a link, is you almost never get to a page where you get an
8 error that says this page is no longer available, because
9 we don't want users chasing dead links. The next time
10 Google's spiders crawl that Wikipedia, they won't find that
11 page, and it will get deleted from the index. The time
12 delay on that varies, depending on how frequently a site is
13 visited. For instance, if you deleted something from
14 ESPN-dot-com, Google search would stop linking to it in a
15 matter of minutes because thousands of people hit every
16 day.

17 THE COURT: So you think within a couple of
18 days --

19 MR. PAGE: A couple of days, a couple weeks at
20 most. I would suspect on Wikipedia it would be a couple of
21 days, but Mr. Neeley has already done that experiment for
22 us. He keeps taking the link on and off of his blog, which
23 is not a major site. It is not one that gets crawled
24 particularly quickly, and each time he turns that switch on
25 or off, the photograph from Mr. Peven appears in Google

1 image search and then disappears. Mr. Neeley has
2 demonstrated to this Court his ability to make these
3 pictures go away anytime he wants to.

4 THE COURT: Do you know how difficult a process
5 it would be -- I know you can't speak for Wikimedia, but if
6 you have any knowledge, how difficult a process it would be
7 if Mr. Neeley contacted them and told them he wanted those
8 pictures removed from the internet? Can he do that? Do
9 you know?

10 MR. PAGE: I believe it's his page at Wikipedia.
11 He can take it down immediately.

12 THE COURT: It's his actual page?

13 MR. PAGE: I believe. It's like a blog post.
14 It's his own. He can take it away anytime he wants. And
15 even if it was some sort of arrangement where he had
16 entered into a contract with Wikimedia that says they get
17 to leave it up, well, that's one -- that would be a
18 contract he entered into. And I'm sure -- I have no idea
19 how long it would take to talk Wikimedia into taking it
20 down, if you asked them to. One of his problems,
21 unfortunately, is the obvious way that most people take it
22 down, works of theirs that are on the internet that they
23 don't want there is they send a DMCA notice, a Digital
24 Media Copyright App notice saying that's my work. It's not
25 up with my authority. Please take it down. And internet

1 service providers respond by taking it down. I assume he
2 could send one of those to Wikimedia. Wikimedia may turn
3 around and go, I'm sorry; it's there by license because you
4 told us we could. And the other problem is that Mr. Neeley
5 refuses to register any copyrights, so he actually doesn't
6 have any copyright claims, but I assume that there -- it
7 would be a fairly simple matter for him to unring the bell
8 he rung with Wikimedia. And, again, that's his bailiwick.

9 THE COURT: Okay. One last question. The book
10 that Mr. Neeley alleges Google made available on the
11 internet, "The Renascent Volume 3 Photography," can you
12 address that?

13 MR. PAGE: Only anecdotally. I mean, it's not in
14 the case. I don't have any -- I mean, there's no testimony
15 on it. I can tell you that what Googlebook search does.
16 Googlebook search is a project between Google and a number
17 of academic libraries around the world, about thirty at
18 Harvard and Cal and Stanford and it's hopefully expanding
19 out further, where Google has undertaken to scan the
20 content of every book in their collection and make them
21 searchable. There has been extensive class action
22 litigation between both publishers and Google over what
23 happens if the publisher doesn't grant permission or you
24 can't find the publishers or if it's an orphan work. It's
25 a very complex settlement that's being set up, but the

1 rules basically on Googlebook is Google will search
2 searches and indexes, works, and you can search by the text
3 of any work and you can see sample pages. If the publisher
4 of the work asks Google to remove the work from Google
5 search, Google removes it. So the idea is to provide
6 basically the Library of Congress but searchable entirely
7 subject to the rights of publishers, and if publishers want
8 to say I don't want my book in there, we take it down.
9 Presumably whoever publishes the book that Mr. Neeley's
10 photograph is in, owns the rights, and can tell Google to
11 remove it or not. I have no idea. It's not in this case.
12 It's not an issue in this case. I have no idea who the
13 publisher is, whether they have communicated with Google,
14 whether Mr. Neeley's communicated with them. It's not an
15 issue in this case. His copyright claims have been
16 dismissed.

17 THE COURT: Well, I think what this might go to
18 is whether Google's a content provider and would they be a
19 content provider -- well, first of all, do they, do they
20 scan these books in, does Google?

21 MR. PAGE: A contractor does.

22 THE COURT: For Google?

23 MR. PAGE: It's a joint project with the
24 universities and there's some contractor that actually does
25 the physical scanning, but it's essentially --

1 THE COURT: But they are books available in
2 public libraries?

3 MR. PAGE: Exactly. It's a mechanical version of
4 Google search. All right? It's searching books that are
5 on shelves rather than elsewhere on the internet, but under
6 the Communications Decency Act, there is no dispute but
7 that Google is a provider of online services. Search
8 engines are the paradigmatic provider of online services.
9 There's dozens and dozens of rules. Section 230 cases have
10 found that providers like Google are, in fact, online
11 service providers and are absolutely immune from state law
12 claims of outrage or defamation or anything else. We've
13 cited to the Court a couple of cases in which Google itself
14 was a provider who was found immune under Section 230.
15 There is no basis for the claim that they are not subject
16 to 230, got immunity. The Good Samaritan section to which
17 Mr. Neeley referred is a different section of the
18 Communications Decency Act. What it provides is that
19 people who sell tools to filter content like the kind of
20 tool you buy to put on your home computer to keep your
21 child from seeing things, if you don't want your child to
22 see them, that they cannot be held liable as a result of
23 having provided these services. It's a remedial actions
24 kind of provision. You won't get -- you won't get exposed
25 to liability by trying to write tools to filter. You can't

1 turn around and then sue them and then say your filter left
2 this picture, but it is a completely different section of
3 the CDA.

4 THE COURT: Okay. So a contractor scans books,
5 puts them on Google's --

6 MR. PAGE: The text is scanned. It's OCR'd.
7 It's indexed. Google has a massive database that has
8 images of all the pages and full text search.

9 THE COURT: Okay. And you don't have to receive
10 permission from the publishers to do that, is that correct?

11 MR. PAGE: That's actual -- that is what the
12 whole class action is about.

13 THE COURT: Okay.

14 MR. PAGE: Google's position, which I believe is
15 correct, is that that is a fair use; that it's -- that
16 indexing that content does not require the copyright
17 holder's permission any more than indexing the rest of the
18 web needs permission from the people, provided if Google
19 were to turn around and sell copies of those books, of
20 course, that would be an issue. But we believe that
21 providing thumbnails of the books just like thumbnails of
22 images is fair use. Publishers have objected to it. The
23 settlement has an incredibly baroque set of provisions
24 whereby certain publishers can object in certain ways and
25 royalties are paid in certain ways for works, and, et

1 cetera, et cetera. It's a very complex administrative
2 proceeding for what to do with all of the different
3 possible publishers.

4 THE COURT: Okay. Anything further?

5 MR. PAGE: Nothing, Your Honor, unless you have
6 further questions.

7 THE COURT: No, not at this time. Mr. Neeley,
8 would you like to respond?

9 THE PLAINTIFF: I have, I have objected, I have
10 objected to the case in New York as well.

11 THE COURT: You have objected to the case in New
12 York?

13 THE PLAINTIFF: Yes, I have.

14 THE COURT: What do you mean by that?

15 THE PLAINTIFF: I have said that I do not believe
16 it's fair.

17 THE COURT: You filed something in New York, is
18 that what you're telling me --

19 THE PLAINTIFF: I believe I did.

20 THE COURT: -- regarding the settlement?

21 THE PLAINTIFF: Yes, ma'am.

22 THE COURT: Okay. Okay. Anything further?

23 THE PLAINTIFF: No, ma'am.

24 THE COURT: For the defense?

25 MR. PAGE: Nothing.

1 THE COURT: Mr. Neeley, one last thing I'll say
2 to you is you have acknowledged that you could contact
3 Wikimedia and ask them to remove these pictures. While
4 that may not be your chosen way of handling this matter, it
5 certainly would prevent -- it sounds like it certainly
6 would prevent viewing of your pictures by children or
7 anyone else that you don't want to see them. So, you know,
8 that -- you might need to think about pursuing that avenue
9 of relief. You have spent a lot of time and effort on this
10 litigation. You have put the defense to a considerable
11 burden in this case, and it appears that you yourself could
12 take some action and alleviate the problem, if not
13 entirely, pretty close to entirely, so I think you need to
14 consider doing that, and if you continue with this
15 litigation, first of all, I've cautioned you, Judge
16 Hendren's already cautioned you, no more personal attacks.
17 Your pleadings could be stricken if you do so. There could
18 be other sanctions that I've already explained, but if you
19 continue with this litigation, Google is spending a
20 significant amount of time and money defending this action,
21 and if it turns out that your claims are baseless and that
22 you could, in fact, take care of this problem that you are
23 complaining about, you could face some sort of sanctions
24 for that, Mr. Neeley, that -- they are spending a lot of
25 time and money in this action, and you've acknowledged to

1 me here today that you could take care of the problem
2 yourself or you could at least make some efforts to do so,
3 so I would caution you that you need to strongly consider
4 doing that. You need to really look at the heart of this
5 matter and what it is that you are upset with, and if it
6 truly is, as you say, that minors and Muslims are viewing
7 your pictures and that is so offensive to you, then take
8 steps. If you can take steps -- I know I certainly would,
9 if I had something going on that was offensive to me and I
10 personally could take some steps to take care of it.
11 That's called personal responsibility, Mr. Neeley. And you
12 need to do that. There could be consequences if you do
13 not. You cannot just sue someone and drag them through
14 litigation for years when there's something you could do to
15 prevent the problem you are complaining of. Do you
16 understand that, Mr. Neeley?

17 THE PLAINTIFF: I do understand that.

18 THE COURT: You got any response to that?

19 THE PLAINTIFF: I believe I have done everything
20 I can do other than going back and undoing everything I've
21 done.

22 THE COURT: Can you not go contact Wikimedia?

23 THE PLAINTIFF: I will go contact them, of
24 course.

25 THE COURT: You are going to contact them, is

1 that what your --

2 THE PLAINTIFF: Yes. I will go online and ask
3 them if they will put a robotic exclusion protocol on that
4 page so it not become searched by Google.

5 THE COURT: Okay. You are making that
6 representation to the Court, Mr. Neeley, so I will hold you
7 to that representation.

8 THE PLAINTIFF: I will do that today.

9 THE COURT: Okay.

10 THE PLAINTIFF: Well, whenever I get home. I
11 will ask them --

12 THE COURT: Tell me, if you do that, and if they
13 remove the pictures, what's left of your claim here? What
14 other grievance do you have against Google?

15 THE PLAINTIFF: That they have restricted me from
16 having free speech.

17 THE COURT: You don't have that claim. That is
18 not a claim in your Complaint, Mr. Neeley, so if they
19 remove the pictures, the two claims you have, I guess
20 you've got a trademark infringement claim, but your outrage
21 claim, which is based on access to these pictures, if you
22 are able to contact Wikimedia and they remove those
23 pictures, does not resolve your outrage claim?

24 THE PLAINTIFF: Mostly, yes, ma'am.

25 THE COURT: Okay.

1 MR. PAGE: Your Honor, could I clarify one thing?
2 What Mr. Neeley just proposed doing was trying to create a
3 situation in which Wikimedia -- he would leave his
4 photographs in place on Wikipedia/Wikimedia, but ask them
5 to try to block Google's indexing from seeing them. The
6 solution is much simpler. If he doesn't want people seeing
7 his photographs, take them off the internet. He is not
8 proposing to remove his photographs from Wikimedia. He's
9 proposing to have to be able to leave them up there for
10 anyone to see there, but keep Google from indexing them.

11 THE COURT: Well, is there a problem with him
12 doing that?

13 MR. PAGE: Not to me, but if it, if in fact it
14 doesn't --

15 THE COURT: Are you saying Wikimedia might not be
16 amenable to that?

17 MR. PAGE: It may be a problem with Wikipedia.
18 It certainly would be a problem to the Muslims and children
19 that Mr. Neeley is trying to protect, if that is, in fact,
20 what he's doing. If that is his concern, he should simply
21 take the photographs down. And if he fails, I don't want
22 the Court to have the impression that he's done everything
23 he could to keep these from showing up in Google searches.
24 Everything he could is simply remove the photographs.

25 THE COURT: Mr. Neeley, what is your intention?

1 And I'm not trying to force you into doing something you
2 don't want to do, but I am saying that if you sue someone
3 alleging they are doing something to cause you harm when
4 you, in fact, may be the cause of that harm, there could be
5 repercussions for that. They have had a lot of attorney's
6 fees expended in this case, and if it turns out that that
7 claim was meritless and you could have prevented this harm,
8 you might be responsible for some attorney's fees. There
9 are repercussions to suing somebody when there's no basis
10 for the claim. So what I'm saying is if it is possible for
11 you to alleviate the harm you are complaining of, what's
12 your intentions on how -- do you have any intention to try
13 to do that, and if so, what is that intention?

14 THE PLAINTIFF: I will, I will, first of all,
15 attempt to ask Wikimedia/pedia to do a robotic exclusion
16 protocol. However, if that is not possible, it's not like
17 a blog posting. It is actually an article that I submitted
18 information to them, and so they have rights to use it.
19 It's kind of like me saying, okay, I give it to you
20 forever, but, oh, I just was kidding. That's kind of hard
21 to say. How can you give something away free and then,
22 say, okay, no, not forever, just for two weeks or three
23 weeks or a year? I can try. I don't know what the rules
24 are.

25 THE COURT: So you're not sure if they will, they

1 will grant your request, is that what you're saying?

2 THE PLAINTIFF: I'm not sure if they will
3 grant --

4 THE COURT: Okay. What would you request them to
5 do, to remove all of your photographs or block Google from
6 indexing them?

7 THE PLAINTIFF: Right. First, I will ask them to
8 block Google from indexing with their robotic exclusion
9 protocol; in other words, do not show thumbnails from these
10 pages, and then if that is not acceptable to them, I guess
11 I will try and see about getting the photographs deleted.
12 And if that's something I can and do, then I can do that, I
13 will do that immediately, but if there is something inside
14 of my profile that I believe have been picked up, I can get
15 rid of those, and if I can, I will.

16 THE COURT: Do you agree, Mr. Neeley, that that
17 might help alleviate some of the problem you're complaining
18 about?

19 THE PLAINTIFF: It would.

20 THE COURT: Okay. And do you have any objection
21 to taking that action you just stated you intend to take?

22 THE PLAINTIFF: I do not.

23 THE COURT: Okay. Okay, Mr. Neeley, what I'll do
24 then is if you have no objection to this, I will take this
25 motion under advisement. It's hard for me to say that

1 it's -- there's any, you know, any reason to grant
2 injunctive relief until I see whether you've been able to
3 remove the pictures and get the relief that you're seeking,
4 so I think my ruling would be a little bit premature. So
5 what I would like to do is take this under advisement,
6 leave the record open. I have asked for a couple of
7 exhibits from defense counsel. I think the disclaimer, is
8 that correct, on Wikimedia --

9 MR. PAGE: Yeah, the Wikimedia posting pages we
10 will forward to you.

11 THE COURT: Okay. Go ahead.

12 MR. PAGE: Your Honor, we would, we would urge
13 the Court simply to deny the motion before Mr. Neeley plays
14 around with Wikipedia. There are endless grounds to deny
15 this regardless of whether it's possible to take down his
16 media pages. If we were to posit that it was physically
17 impossible to do anything with them, it should be denied on
18 so many other grounds, but it should not be left hanging,
19 but that, obviously, if you wish to wait to see what he
20 does --

21 THE COURT: Well, I would like to leave the
22 record open and take the matter under advisement to see if
23 Mr. Neeley is taking some -- he's represented to the Court
24 that he is going to take some action to alleviate the real
25 problem in this case. That might, you know, resolve in

1 large part his outrage claim, and I think it does pertain
2 to whether injunctive relief is warranted. I think it's
3 doubtful, very doubtful in this case that injunctive relief
4 is warranted, but I would like to see what steps you can
5 take, Mr. Neeley, to get rid of these offensive photos.
6 Can you give me a time frame? I want some sort of
7 documentation from you, Mr. Neeley, that you've done this.

8 THE PLAINTIFF: I can, I can --

9 THE COURT: Can you give me a time frame where
10 you could provide that to the Court?

11 THE PLAINTIFF: Yes, ma'am. I can provide you by
12 Wednesday afternoon with my five-page, my five -- one
13 five-page e-mail --

14 THE COURT: The settlement statement? Okay.
15 That's separate now. I need that separately. Okay?
16 Five-page settlement statement --

17 THE PLAINTIFF: I'll send you one e-mail that
18 says that and another one that says same e-mail address --

19 THE COURT: What I would like you to do is
20 actually file something with the Court. You know how you
21 file pleadings?

22 THE PLAINTIFF: Yes.

23 THE COURT: What I would like you to do or
24 let's -- you could file it as a supplemental exhibit in
25 support of your motion, so it would actually be docketed

1 with the Court. Are you on the ECF system?

2 THE PLAINTIFF: No, ma'am.

3 THE COURT: You're not? Well, then you can mail
4 it then.

5 THE PLAINTIFF: I am coming Wednesday to be
6 dressed down, I'm sure, by Judge Hendren.

7 THE COURT: Well, I don't know that's --

8 THE PLAINTIFF: But, I mean, I understand. I
9 have offended him apparently and --

10 THE COURT: I don't know that you've offended
11 him, Mr. Neeley. He doesn't take offense very lightly, but
12 you have raised serious matters that he has to address, and
13 he's not bringing you to court to dress you down. He is
14 bringing you to court to address those matters. Okay?
15 So --

16 THE PLAINTIFF: Okay.

17 THE COURT: -- back to the point, if Wednesday --
18 by Wednesday you think you will have had time to find out
19 whether these photographs can be removed?

20 THE PLAINTIFF: Yes, ma'am.

21 THE COURT: Okay. What I'll do is, by Wednesday
22 if you will file whatever documentation you have to show
23 that you've made efforts and what the results of your
24 efforts have been, if you can file that with the Court on
25 Wednesday -- if you need additional time, because it may

1 take you some time to be in contact with Wikimedia and to
2 find out what steps they can take, then you just -- you can
3 contact my chambers. I believe you have our phone number,
4 our chambers --

5 THE PLAINTIFF: I may have. I'm not sure.

6 THE COURT: -- phone number? Or you can file a
7 motion. Let's do this. If by Wednesday you don't have the
8 documentation you need, then instead of filing the
9 documentation, you file a Motion for Extension of Time with
10 the Court and let me know how long you need to get that
11 documentation, because I want thorough documentation of the
12 efforts you've made to remove these pictures and the
13 response from Wikimedia, whether they are able to do that.
14 Okay?

15 THE PLAINTIFF: Yes, ma'am.

16 THE COURT: So either file the documentation
17 Wednesday or file a Motion for Extension of Time.

18 MR. PAGE: And, Your Honor, just to clarify, the
19 hearing in front of Judge Hendren is on Thursday at 1:30.

20 THE PLAINTIFF: Thursday.

21 MR. PAGE: I just want to make sure that
22 everybody knows.

23 THE COURT: Okay. Well, that's fine, then,
24 Mr. Neeley. You can, you can do that on Thursday. Okay?

25 THE PLAINTIFF: That's because I am coming here

1 Thursday, so, yes.

2 THE COURT: Okay. And like I said, if you are
3 not able to get all of the documentation by then, file a
4 Motion for Extension of Time. Now, again, Mr. Neeley, I'll
5 say you did a good job here today. You're articulate.
6 You're intelligent. I understand you're upset about the
7 photos that are out there. I think that's the real meat of
8 this lawsuit that's bothered you and, as I said, I think it
9 might go a long way if you can take steps personally to
10 remove those photographs. And you need to refrain from
11 personal attacks on the Court, on opposing counsel, and
12 just focus on your litigation, on what claims are pending
13 before the Court and try to get those resolved. Okay?
14 Anything further, Mr. Neeley?

15 THE PLAINTIFF: Yes. What is your opinion on
16 interlocutory appeal?

17 THE COURT: I can't, I can't give you an opinion
18 on that, Mr. Neeley. Some things are appealable, most
19 things are not. The Court of Appeals' jurisdiction is
20 pretty limited when it comes to an interlocutory appeal.
21 There are only certain things that they will take up, and
22 most things you have to wait until your case is decided,
23 and then seek appeal of the entire matter. Otherwise, a
24 case can be going on for years if you are going back and
25 forth.

1 THE PLAINTIFF: Thank you.

2 THE COURT: Okay? Anything further from the
3 defense?

4 MS. DOAN: Your Honor, only the practical matter,
5 for the exhibits that you've requested, we'll file those
6 today by the CMF post. Is that okay?

7 THE COURT: That's fine, and we'll just call --
8 will there be two exhibits or one exhibit?

9 MS. DOAN: I think it is all the same exhibit.

10 MR. PAGE: It's a single page. We may also dig
11 down to the underlying licenses if you want to see those.

12 THE COURT: Whatever you think. We'll just call
13 it Defense Exhibit 1 and I'll ask that Mr. Neeley be
14 provided a copy --

15 MS. DOAN: Absolutely.

16 THE COURT: -- of that as well. All right. Is
17 there anything further we need to take up?

18 THE PLAINTIFF: If he puts them online, I will
19 get it by PACER.

20 THE COURT: Anything further, Mr. Neeley?

21 THE PLAINTIFF: I would like to let the opposing
22 parties know that I do not need anything, that's going to
23 go through PACER. I will get it, pay my eight cents or
24 whatever, and get it, and there's no need for them to print
25 out all of this and mail it to me.

1 THE COURT: So you don't want them to mail things
2 to you?

3 THE PLAINTIFF: No, they do not need to mail
4 things to me, because PACER and eight cents get that.

5 THE COURT: Well, I think that they might prefer
6 to mail things, just to make --

7 MS. DOAN: We are required to, I believe, since
8 he is not a CMF user.

9 THE COURT: I think under the rules, to actually
10 serve you with pleadings, they are required to do that.

11 THE PLAINTIFF: Okay.

12 THE COURT: And it might save you a little bit of
13 money, anyway, so that's why they are doing that; they are
14 required to under the rules. Okay?

15 THE PLAINTIFF: Okay.

16 THE COURT: All right. Is there anything further
17 we need to take up at this time? All right. We will take
18 this matter under advisement, await the additional exhibit
19 from defense counsel and the documentation from Mr. Neeley.
20 Court will be adjourned.

21 (End of proceedings.)
22
23
24
25

C E R T I F I C A T E

State of Arkansas)
)
County of Sebastian)

I, Rick L. Congdon, a Registered Merit Reporter, and
Official Court Reporter for the United States District
Courts, Western District of Arkansas, do hereby certify
that the foregoing transcript, taken before me at the time
and place herein designated, consisting of pages 2 through
92, was taken down by me in machine shorthand and then
transcribed via computer, either personally or under my
supervision, and that this transcript is a true, correct,
and complete transcript of said proceedings as reflected
herein.

Signed this 8th day of December, 2010, in the City of
Ft. Smith, County of Sebastian, State of Arkansas.

/s/ Rick L. Congdon
 RICK L. CONGDON, RMR, FCRR
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