

# **EXHIBIT A**

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
	Haltom & Doan
	Crown Executive Plaza, Ste. 100
	6500 Summer Hill Road
	Texarkana, Arkansas 75503
	MR. MICHAEL H. PAGE
	Durie Tangri
	217 Leidesdorff Street
	San Francisco, California 94111

REPORTED BY:  
RICK L. CONGDON, RMR, FCRR  
Federal Official Court Reporter  
P. O. Box 8493  
Ft. Smith, Arkansas 72902

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 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 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 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 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



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.

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

OFFICIAL COURT REPORTER

U. S. DISTRICT COURTS

WESTERN DISTRICT OF ARKANSAS