IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF ARKANSAS

Curtis J Neeley Jr., MFA

v.

CASE NO. 5:09~cv~05151

NameMedia Inc.
Google Inc.

Supplement to Objection to Report and Recommendation by Honorable Erin L Setser from the December 6th Hearing Regarding Docket 184

Plaintiff removed nude images from the Defendant Google Inc image search without requiring a court order to the extent possible. The Plaintiff contacted every website that caused a figurenude or nude to be shown in a Defendant Google Inc "SafeSearch" image search for "Curtis Neeley". *See* Ex. D. This conflates to a violation of free speech simply looking back at the Harry Potter ruling from 2003. Requiring that the books be segregated to a special shelf caused them to be ostracized.

Report and Recommendation Allowed, but Error Filled.

The Plaintiff had not read 28 USC § 636 completely and does not believe this law is written properly to communicate the intent. Defendant Counselors read all the law entirely and realized that the statute authorizes referrals at 28 USC § 636 (b)(1)(B), but not decisions. The lack of judicial appointment affects this case greatly and the referral attempted to resolve this case more expeditiously and is appreciated. The referral to Magistrate Setser was proper but illustrates one rational for decisions on pretrial injunctions being excluded.

Eighth Circuit *En Banc* Tests

The Eighth Circuit considered Dataphase *en banc* because District Courts needed a firm rational for deciding preliminary injunctions. The judges spent a great deal of time and discussed using the terms *probability* versus *possibility* of success. The likelihood of success is **meaningless** in isolation. This was the rational described as least important of the four prongs that control the test in the objection of Docket 226 under the heading "C" on page 4. The relative injury to the parties and to the public is the required context for application of the likelihood prong and this was not considered adequately for the irreversible harm prong and not at all for the public impact prong.

Quoting from *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 113 (8 th Cir. 1981) but highlighting portions the Opposing Counselors missed in the case cited first by Defendants.

> "*16. In balancing the equities no single factor is determinative. The likelihood that plaintiff ultimately will prevail is meaningless in isolation. In every case, it must be examined in the context of the relative injuries to the parties and the public. If the chance of irreparable injury to the movant should relief be denied is outweighed by the likely injury to other parties litigant should the injunction be granted, the moving party faces a heavy burden of demonstrating that he is likely to prevail on the merits. Conversely, where the movant has raised a substantial question and the equities are otherwise strongly in his favor, the showing of success on the merits can be less.*
> *17. It follows that the court ordinarily is not required at an early stage to draw the fine line between a mathematical probability and a substantial possibility of success. This endeavor may, of course, be necessary in some circumstances when the balance of equities may come to require a more careful evaluation of the merits. But where the balance of other factors tips decidedly toward plaintiff a preliminary injunction may issue if movant has raised questions so serious and difficult as to call for more deliberate investigation.*"

"Online Service Provider" - Deceptive Google Inc Claim

Google Inc claimed to be an "Online Service Provider" during the hearing and repeated the outrageous claim of protection due to being an "Online Service Provider" to deceive this Court. The ridiculous claim of being an "Online Service Provider" was addressed by the Plaintiff in Docket 207 and was ignored by Magistrate Setser in error. Defendant Google Inc still clings to this deceptive claim in Docket 229. Defendant Google Inc deceived Magistrate Setser successfully and hopes now to deceive Honorable Jimm Larry Hendren and perpetuate the Google Inc deception.

"Online Service Provider" is terminology invented by Google Inc attempting to deceive Courts across the United States. Google Inc has successfully deceived US Courts until now. Online content providers like Google Inc are subverting the Communications Decency Act. Google Inc harvests content from anywhere they can access by wire and state that harvesting content from another and generating thumbnails and information summaries makes them immune from State laws as an "Online Service Provider".

The Google Inc use of the Communications Decency Act is nothing but using the **Communication Decency Act to protect Google Inc while communicating indecency**. §230 is entitled "*Protection for private blocking and screening of offensive material*". Google Inc has subverted this statute to now protect Google Inc and other search engines when communicating indecency or exactly the opposite effect of what was intended. This subversion by Google Inc is made more ridiculous by §230 (f) where definitions are provided and where Google Inc is obviously NOT protected by §230 and is a (3) Information Content Provider or (4) Access Software Provider. "Online Service Provider" is a phrase that is not found in §230 and is a term used by Google Inc to subvert the United States' policy listed in §230 (b)(4) to remove disincentives for technology to help parents block or filter indecent material. Google Inc now prevents development and deployment of blocking technology as described in Exhibit "A" concisely.

Relative Injuries to Google Inc

Dataphase *en banc* ruling requires considering the relative injuries to the parties when considering an injunctive order. Google Inc was deceptive in telling the Magistrate that it would require "an insane amount of effort" to stop returning nudes in searches for the Plaintiff's personal name. Compare exhibit "D" and exhibit "E". Magistrate Setser asked the Plaintiff to put all the "Harry Potter" books (nudes) on a special shelf or attempt to remove them from the Wikipedia Foundation and cease presenting them unsigned on FineArtAmerica.com. This violated free speech by requiring the Plaintiff to communicate avoiding Google Inc disparagement instead of requiring a simpler and less injurious act of requiring filter modification by Google Inc.

Relative Injuries to the Public

The Eighth Circuit *en banc* ruling requires the consideration of the likelihood of success to be done in the context of the impact to the public as well. Magistrate Setser did not consider this at all. The parent public is immediately injured when "Curtis Neeley" is in an image search at Google Inc and almost all of them would not want figurenude or nude photographs to be shown to their children. Magistrate Setser pointed out that the Eighth Circuit violated their own test.

Irreparable Harm Error

Magistrate Setser did not address the fact that Google Inc returning figurenude images done by the Plaintiff for searches for "Curtis Neeley" causes immediate irreparable harm. Magistrate Setser asked the Plaintiff to "put all the Harry Potter books (photos) on a special shelf" or HIDE them so that Google Inc would *automatically* not defame him. The Plaintiff has removed the "Harry Potter books" (figurenudes) from around the library ("Internet") and modified speech to stop the irreparable harm from continuing. This alteration of speech was contrary to the First Amendment but was one timely way to prevent Google Inc from disparaging the Plaintiff. Magistrate Setser implied that because the Plaintiff could cease speaking or displaying art and prevent defamation, the irreparable harm prong of Dataphase did not support an injunction. Magistrate Setser then proceeded to state this factor, when coupled with Magistrate's belief about the success, made the other prongs of the test unnecessary. Instead of following all four prongs of Dataphase ruling, the Magistrate cited a ruling where the Eighth Circuit contradicted its own Dataphase ruling in error rather than ruling that all four prongs of the test were relevant.

Likelihood of Success Error

Magistrate Setser constrained the recommendation hearing to the improper State claim for Outrage. The copyright claims were dismissed by Honorable Jimm Larry Hendren without prejudice and would not have remained dismissed had the District Court Judge conducted the hearing. US Title 17 § 106A or the Visual Artists Rights Act gives the Plaintiff rights to exclusively control the integrity of and attribution to visual art. There have been almost no court rulings addressing visual art integrity in the twenty years the right has *allegedly* existed.

US Title 17 § 106A Claim

The Plaintiff hopes it unnecessary to file another interlocutory appeal but will not allow US Title 17 § 106A to continue being violated, -regardless of what is required. Defendant Google Inc stated that Google Inc did not "paint mustaches" on the art they had found and presented it exactly as it was found during the hearing and had no way to know if the art was a nude and no way to know if the viewer was Muslim or a minor. Google Inc then alleged it would be difficult to stop displaying nudes or figurenudes by the Plaintiff - in blatant error and claimed they were not going to start censoring the Internet for the innumerous "Curtis Neeley" people.

FCC should be added

There is a ridiculously simple way to prevent indecent art from being communicated by wire and this could now be the end result of this litigation without settlement. All the other search providers ceased returning nudes and figurenude in searches for exclusively "Curtis Neeley". The other search providers attempted to mitigate impact of this litigation and are no longer desired added as parties. The FCC being ordered to start enforcing existing laws regarding wire communications would categorically solve the problem for not only "Curtis Neeley" searches but even for "Curtis Neeley nude photo" searches for every search engine. These search result queries are included for each major United States search engine as well as Lycos Inc. *See* Exhibit B. This is included in unfiltered searches so Defendant Google can see that some others harvest figurenudes and nudes by the Plaintiff. The violation of Plaintiffs art has never been exclusively by Google Inc.

Economy of Judicial Process

This litigation will begin resolving in July when the JURY decides without the Federal Communications Commission being added. The FCC is aware of this proceeding and already communicated with the Plaintiff, as have several Supreme Court Clerks. All of them except one agreed with the Plaintiff on the impact of this litigation. The Plaintiff realizes that the Earth's population will less dislike Bin Laden than the Plaintiff when exhibit "A" becomes enforced and required. Poof. There will be NO porn except for *allowed* adults. *See* Exhibit A.

The Federal Communications Commission not being allowed added is contrary to the Federal Rules of CP because the FCC is the only party able to categorically prevent Plaintiff's indecent photographs regardless of the intent of the searching party. The Plaintiff can limit this litigation to original nude and figurenude art done by the Plaintiff and returned in "*child friendly*" searches while at school using exclusively "Curtis Neeley" for searches and not require the FCC to regulate wire communications as already required by law. The other search engines have ceased and exclusively Google Inc returns nude and figurenude art created by the Plaintiff in child safe searches for "Curtis Neeley". See Exhibit C. A narrow preliminary injunction will allow this litigation to complete without the Federal Communications Commission and with only the current allowed parties.

Display of art in a way that is not approved by the Plaintiff means display of indecent nude or figurenude art to a minor or Muslim and violates the author's right to control the integrity of art. This right is protected in the United States by US Title 17 § 106A. Statutory damages for display of the six images by NAMEMEDIA INC and fourteen images by Google Inc result in three million dollars before punitive awards are added due to the intentional nature of the violations.

This moral right to control art integrity was added to US Title 17 to prevent the United States from violating the Berne Treaty and being the only developed country on Earth with no law protecting the moral rights of artists. The Visual Artists Rights Act (VARA) has not been tested in the United States Courts and this case will now be precedential. This litigation can resolve without the Federal Communications Commission added if the Plaintiff seeks only to enforce integrity for one search setting. The process described in exhibit "A" would reserve rights to integrity in all searches and not just child safe searches for "Curtis Neeley" like this preliminary injunction will allow.

Ending Internet Pornography

This litigation could end the existence of the "Open Internet" as a free-for-all pornography venue. Pornography is the primary commercial rational for the existence of the Internet and the Courts have declared it a "new medium" in ridiculous error. The Internet is just what people describe wire communications as to avoid regulation by the Federal Communications Commission.

Ending Internet Pornography (cont)

The system described in exhibit "A" will result in the Internet being nothing but another communications venue regulated by the Federal Communications Commission. *See* Exhibit A. Requiring all computers connected to wire now called the "Internet" to be rated by directory and requiring all browsers to recognize these ratings before display of material makes the "Internet" immediately become as regulated as movies are now. This will not require reinventing wire communications (the Internet). The robots text protocol is already in use by search engines and was used maliciously by NAMEMEDIA INC in this very litigation to prevent sleepspot.com from being displayed by the Internet Archive already. Decency controls have existed for several decades and disincentives prevent them from being required although the system described in the exhibit will be rediscovered independently.

The Plaintiff will prosecute this litigation and then begin another action against the Federal Communications Commission and all search engines or Defendant Google Inc will advise the other search engines to help them pay to settle. Unless Google Inc settles, the result will be that pornography will be as viewable as it has ever been but NOT unless authorized by the computer purchaser as described in exhibit A. No church computer, government computer, school computer, and no computer used by a minor would ever present explicit material by wire.

This Litigation Will Balance the Budget

This litigation will result in balancing the budget by creating the non-profit FCC search engine where profits offset expenses and taxes. Google Inc, Yahoo Inc, Microsoft Corporation, and IACI/InterActiveCorp would continue to exist and continue to alter their results but the FCC Search would become the de-facto source for searching and for advertising. The government helped Google Inc when it was first created and there was talk at that time of Google Inc being non-profit. This occurred while the Plaintiff was creating sleepspot.com software in the late '90s. All profitable search engines exist domestically due to the United States not having moral "copyrites" secured in the Copyright Act.

Europe or elsewhere lacking intellect is not why search engines are a United States phenomena. **Creating FCC wire communication search engines will quickly result in budget surplus and Google Inc irrelevance for googling**. The FFC search will be a "*Google Inc alternative*" to mirror the claim of litigating "*copyright alternatives*" in New York.

See Artists Guild et al v Google Inc, (1:2005cv08136)

Settlement prospects

The Plaintiff in this litigation is severely brain injured as well as severely disabled. No amount of money on Earth will make the Plaintiff whole. The Plaintiff has offered an amount for settling that would allow ceasing litigation and not continuing and thereby allowing pornography to exist exactly as it does today for *allowed* adults. The Plaintiff would not then encourage anyone else to attempt to protect the integrity of explicit art after "repenting". It should be obvious by now that the Plaintiff was once a genius and is now extremely brain injured but not an idiot. The process of wire communication regulation like described in exhibit "A" will occur in the next ten years regardless by political processes. The Plaintiff will not partake of this or encourage this if settling. Punitive damages are warranted in this case and the public has a commission already and is the unnamed class. The Plaintiff has studied "copyrite" more than any lawyer or judge who has ever lived or will live as well as every specific issue addressed in this litigation. Defendants have already alleged punitive damages are not allowed in US Title 17 but failed to observe that punitive damages have repeatedly been awarded like 1.43 billion was awarded recently for "copyright" violations that were not nearly as maliciously done as in this case.

The Plaintiff has rejected an anonymous offer that may have been a prank call. Plaintiff will not settle for any amount of money with Defendant NAMEMEDIA INC but has offered an amount to settle with Google Inc that will remain undisclosed. Settlement is one concern of Court but justice is another. Plaintiff settling for money will permit injustice for a few years by Google Inc and other search engines. Plaintiff has ceased free speech to *automatically* cause searches to stop violating art integrity for the SafeSearch setting for Google Inc as far as possible to this point.

The temptation to settle for money remains but this litigation can be the most universally impacting litigation in Earth's history. Settling leaves "Exhibit A" sealed and known by only Google Inc, the District Court Judge and the parties helping Google Inc fund settling as well as select CN Foundation members as insurance.

Conclusion

The Plaintiff is sick of litigating and would like to resume creating art, yet is scared to be recorded in history as the man who ended the "Open Internet" of porn. A preliminary injunction addressing all the prongs of Dataphase would cost Defendant Google Inc absolutely nothing and stop the potential harm to the public in searches for 'Curtis Neeley" until the trial. Defendant Google Inc has the Plaintiff's absolute minimum offer for settling silently and allowing this to disappear. Otherwise; Interlocutory appeal as a pauper and/or a new trial will occur. A new trial is already warranted soundly as certainly as two plus two is four. Plaintiff prays that the ARWD Court grant a narrow preliminary injunction preventing children from seeing nudes or figurenudes as a result of image searches for "Curtis Neeley" on Google Inc while in school. This will give Google Inc time to decide to settle and not face another interlocutory appeal. The injunction will not address the integrity of visual art completely or the primary motivation of this litigation. US Title 17 § 106A violations are one rational for appeal that exists now. This concern would be addressed at a hearing *en novo*. Plaintiff knows the end results of this action but not how justice will occur or how long justice will take. Plaintiff is not sure which US Court or what political process it will begin with but already knows the opinion of one Eighth Circuit Clerk and eight Supreme Court Clerks. Justice begins with a preliminary injunction recognizing the US Title 17 claims that exist but were not alleged sufficiently.

Respectfully submitted,

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Curtis J. Neeley Jr., MFA