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

**Curtis J Neeley Jr., MFA** **PLAINTIFF**

**vs.** **NO. 09-05151**

**NAMEMEDIA INC.,**
**Google Inc.** **DEFENDANTS**

# Brief Supporting Opposition and Cross to Summary Judgment Motion

Curtis J Neeley Jr MFA respectfully communicates appreciation for the jurisprudence invested thus far by the United States Court for the Western District of Arkansas. Mr Neeley now states concisely why Honorable Jimm Larry Hendren should rule against the Defendant Google Inc and why this "simple case" could be the most impacting case in history. Google Inc has now admitted guilt for "conspiracy to cybersquat" <eartheye.com> and <sleepspot.com> and violation of Plaintiff's right to control integrity of original visual art. The only issue left is determination by a JURY regarding damages. These facts are concisely described as follows.

## Conspiracy Claim Explained

1. From the presumptuous filing of Docket 237 Plaintiff encountered the following listed legal holdings for conspiracy, "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action to be taken; (4) the commission of one or more unlawful overt acts; and (5) damages as the proximate result of the conspiracy." *American Home Mortgage Corp. v. Brown Appraisal Serv. et al.*, No. 06-cv-6073, 2007 U.S. Dist. LEXIS 16379, at *11 (W.D. Ark. 2007) citing *Lane v. Chowning*, 610 F.2d 1385, 1390 (8th Cir. 1979); Mason v. Funderburk, 247 Ark. 521, 446 S.W.2d 543 (1969)

2. Following the simple standards listed by Google Inc, the motion for Summary Judgment can now be used as a confessional and guilt is supported by the Supreme Court ruling that establishes the date for a repeated act as the last known occurrence and not the first as decided during this litigation in *Lewis v Chicago* (08-974) on May 24, 2010.

3. Plaintiff will herein use the criteria as listed and attempt to mutilate punctuation as little as possible while stating what is perhaps now finally obvious. (1) [Two] or more persons; NAMEMEDIA INC and Google Inc. (2) [An] object to be accomplished; Use of <eartheye.com> and <sleepspot.com> to generate income. (3) [A] meeting of the minds on the object or course of action to be taken; The AdSense for Domains use of each. (4) [The] commission of one or more unlawful overt acts; The AdSense for Domains use of each or use of <eartheye.com> and <sleepspot.com> to generate income and (5) [D]amages as the proximate result of the conspiracy; Lost income and ill gotten gains and loss of control of each domain.

4. The irony of the confessional or Motion for Summary Judgment is that the confessional could have been made at any time and saved on legal expense greatly. The fact that Defendant NAMEMEDIA INC perhaps used another conspirator for providing income for a few years does not diminish the "conspiracy to cybersquat" with Google Inc beginning in 2006. The Plaintiff is not aware of dates being given to continuing actions that were marginally recognized at this time in an error already overruled by *Lewis v Chicago* (08-974) on May 24, 2010.

# US Title § 106A (a) (2) Claim Explained

1. The claim that has been called "outrage", "defamation", and various other terms involving rights given to visual artists by the creator and recognized in the United States with passage of the Visual Artists Rights Act of 1990. These violated but protected rights are described as follows.

> **TITLE 17 > CHAPTER 1 > § 106A (a) (2)** shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation;

The listing of "other modification of the work" protects against prejudicial uses besides distortion and mutilation and is proven already in the record and the confessional.

2. The display of indecent wire communications---called the Internet to avoid regulation---has been done by Defendant Google Inc for decades to enable sale of pornography under the claim of free speech to ***allegedly*** anonymous persons.

3. Google Inc alleged entitlement to protections giving most Internet services immunity from State claims in bare error as a mater of law. The cases Google Inc cited involved display of caches of Usenet *text disparagements* or presentation of *text advertisements* by third parties. Google Inc asserts this entitlement in this action when not presenting entire caches or third party material. Google Inc has, in fact, become an "Internet content provider" as explained in Docket 206 with the exhibit attached but confused and then listed to be with Docket 207 by the severely brain injured Plaintiff in error.

4. The non-precedential *Parker* decision cited the Third Circuit rulings citation of *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003) stating, "[t]hrough § 230, *Congress granted most Internet services immunity from liability for publishing false or defamatory material so long as the information was provided by another party. As a result, Internet publishers are treated differently from corresponding publishers in print, television and radio*", with internal quotation shown in italics. This was followed immediately with the following with emphasis here added:

> ***In this case****, there is no doubt that Google qualifies as an "interactive computer service" and not an "information content provider." Thus, it is eligible for immunity under § 230.*

5. Honorable Jimm Larry Hendren can now see the non-precedential finding was couched with "[i]n this case" and yet Google Inc uses *Parker* to support the claim now before the court. Google Inc claims to be an "online service provider" in spite of irrelevant cases cited while providing new content. *Parker v Google* involved cached verbatim copies of third party *textual* disparagements instead of the creation of new content based on portions of material harvested from third parties and presented with context removed as done in Google Inc image searches.

6. Google Inc then cites *Goddard v. Google,* 640 F. Supp. 2d 1193 (N.D. Cal. 2009). The separate and presumptuous Defendant cited a case that involved advertisements served by Google Inc EXACTLY as created by third-party advertisers in Google Inc AdWords. Plaintiff *agrees* with the holdings in the case cited. The *Goddard* ruling recognizes that the presenter of an online advertisement should not be treated as the speaker of the advertisement. In the action now before Honorable Jim Larry Hendren, Google Inc hopes this court will not read the cited cases or even their summaries or use common logic. These two cases do not support the confessional or Motion for Summary Judgment in the least but rather eviscerate their claims.

7. The truthfulness of the attributions may mitigate Google Inc damages when the JURY determines damages but Google Inc scanned books found in New York libraries and proceeded to post these online and removed other content. Google Inc skipped text and images to ensure that three additional figurenudes were shown and not the text regarding the Creator.

8. Regardless of what claim has repeatedly been thought to have been made; No claim is contrary to law as asserted by Google Inc while trying to deceive Honorable Jimm Larry Hendren by citing irrelevant legal cases and admitting guilt but not guilt in 2003.

## Summary Judgment Cross-Claim

1. The Plaintiff is a severely brain injured pauper and not a lawyer or law student. Plaintiff has no desire whatsoever to litigate and is therefore anxious for this "simple case" being resolved and being over as it can be now as a matter of law.

2. Separate Defendant Google Inc admitted "conspiring to cybersquat", however, not from 2003 till 2006. This admission makes liability determination nothing but a matter of law and leaves only damages remaining for a jury.

## Massive Weight of "Simple Case" Explained

1. Docket 232 Attachment #1 Exhibit A will allow the Internet to simply become another broadcast venue that is as regulated as ALL others already are by the Federal Communications Commission (FCC).

2. The Federal Communications Commission should be an added defendant in the pending Motion for Reconsideration. The FCC is aware of this litigation and alleges being prepared already and will not require additional time.

3. Google Inc could already immediately require any website shown in their search engine be rated by directory in order that Google Inc would not display adult material to minors. Google Inc does not do this simply to support pornographic profitability.

4. The United States should apologize to the entire Earth for allowing the Internet to develop into the Earth's wire-line for porn but will not.

5. The Internet would not be blocked by countries like China or by others if it was not primarily used for pornography as could not be more obvious.

# Prayer or Conclusion

1. The Plaintiff is aware it is scary being the litigation that causes the beginning of the END of the “Open Internet” or “porn-by-UnReguLated wire communications” (URLs) but the Plaintiff has accepted the duty and respectfully asks Honorable Jimm Larry Hendren to consider Summary Liability the appropriate judgment.

2. The Honorable Jimm Larry Hendren was asked for a Summary Judgment by pretentious and presumptive Defendant Google Inc and the Plaintiff asks that liability for “conspiracy to cybersquat” and liability for “defamation” both being the Summary Judgment returned leaving damages to be determined by the JURY.

3. The Plaintiff knows the end results of this litigation. Honorable Jimm Larry Hendren will either be the Judge who recognized the moral rights included in law and gave the judgment initiating the end of porn-by-wire or be the judge last protecting porn-by-wire who was overruled by the Supreme Court.

4. The Plaintiff prays that Honorable Jimm Larry Hendren now grant Summary Judgment establishing guilt as confessed by Google Inc and leaving damage determination for an Arkansas jury.

5. The concurrently filed Motion for Reconsideration by the Plaintiff was not done to upset Honorable Jimm Larry Hendren who wears the blindfold of JUSTICE but was filed to give this Court rational for review of obvious errors in law.

Respectfully,

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Curtis J Neeley Jr, MFA