

No. 11-2558

**IN THE UNITED STATES
COURT OF APPEALS**

FOR THE EIGHTH CIRCUIT

NameMedia Inc.,
Google Inc.

Appellees,

vs

Curtis J Neeley Jr., MFA

Appellant.

**AN APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
THE HONORABLE JIMM LARRY HENDREN, DISTRICT JUDGE,
UNITED STATES DISTRICT COURT**

BRIEF OF APPELLANT

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SUMMARY, AND STATEMENT REGARDING ORAL ARGUMENT

1) Curtis J Neeley Jr., MFA files this Action *pro se, in forma pauperis* as a result of the Appellees maliciously damaging Appellant's honor and reputation by republishing fine art nude photographs online before minors, Muslims, or any anonymous viewer after advised this was not desired. The claims dismissed included defamations or damages to honor and reputation after Mr Neeley gave notice to the 'DMCA' agents of NAMEMEDIA INC, Google Inc, and Microsoft Corporation. These defamations continue daily displaying nonfeasance of the FCC failing to regulate wire communications. The defamations and harms to the artist's honor have increased by Appellee Google Inc and Microsoft Corporation during this litigation. These defamations and harms to the Mr Neeley's honor are outrageous and were intentional and done for profit and each of them as abundantly abhorrent to the honor of the Curtis J Neeley Jr., MFA.

2) The Docket #267 dismissal of the "Visual Artists' Rights Act" Claim or Title 17 claim cause US Title 17 to now have a deceptive name that Mr Neeley herein no longer uses to further disparage fundamental RIGHTS that are recognized for foreign citizens by the Berne Convention Implementation Act of 1988 and were alleged as RECOGNIZED and not GRANTED by Congress in the Visual Artists' Rights Act or US Title 17 §106A from 1990.

3) Curtis James Neeley Jr. MFA respectfully requests twenty minutes per party for sufficient time to fully address the issues for presentation of this case and answer questions as this brief is concise but thorough.

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Statutes

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Copyright Act of 1909
1976 Copyright Act
47 U.S.C. §230
Berne Convention Implementation Act of 1988
Visual Artists Rights Act of 1990 (“VARA”), 17 U.S.C. § 106A

Treaties

Berne Convention for the Protection of Literary and Artistic Works
Berne Convention Article 6bis
Berne Convention Article 9

Registers of Copyrights

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JURISDICTIONAL STATEMENT

Curtis J Neeley Jr., MFA appeals from the rulings permitting Arkansas ACA 16-63-207 defamations and Federal US Title 17 § 106A violations of a Washington county Arkansas Appellant initiated by Appellee's doing business in Arkansas State. This litigation involves parties in various US District Court venues and involves a claim that involves Arkansas Statutes violated by Defendants from other States as well as Federal US Title 17 § 106A violations. Jurisdiction in the Western District of Arkansas where the Appellant resides now and when the actions occurred is proper and final rulings now made make this appeal timely.

Jurisdiction is proper and claims of any agreement by Mr Neeley to waive jurisdiction are deceptive. The Western District of Arkansas is and was proper and therefore the Eighth Circuit Court of Appeals is the correct jurisdiction for this appeal as final District Court orders are now entered.

STATEMENT OF THE ISSUES FOR REVIEW

- I. Whether the fundamental moral rights to control integrity of created art should be recognized as acknowledged and not granted. Moral rights were alleged as recognized by the Berne Convention Implementation Act of 1988. The Visual Artists Rights Act of 1990 was enacted by Congress but is now ignored on-the-wire communications common carrier called “the Internet”. This disparagement of a fundamental natural right should not continue. *See* The Ninth Amendment for recognition of all inalienable rights and the Fifth Amendment for implicit guarantee of Due Process.
- II. Whether misinterpretation of statutes should be allowed where 17 U.S.C. § 106A was interpreted as not applying to wire communications and Fed Rules of CP Rule 15 was violated using “*Dennis Factors*” not allowing amending consistent with evidence.
- III. Whether click-to-agree “*agreements*” not performing even rudimentary authentication are anything more than ignored coercions and should be treated as the deceptions Mr Neeley identifies them to be violating the Fifth Amendment rights of Mr Neeley guaranteeing Due Process when giving up a natural rights to control display of nude visual art to Mr Neeley’s children and other anonymous viewers.
- IV. Whether the Federal Communications Commission should be allowed to continue being malfeasant and not enforce content regulation of wire communications on the common wire carrier called “the Internet” while “*marginally*” regulating television and radio broadcasts on short-range common carriers. *See* 47 U.S.C. §230

STATEMENT OF THE CASE

(A) Nature of Case

1) This Appeal regards the continued unauthorized display of original nude and figure nude exhibition photographs and original nude images created by Curtis J Neeley Jr. MFA while learning how to create figure nude images exclusively rather than “art nude” images. Mr Neeley was a member of <photo.net> from May 2004 until 2009 and uploaded several nude images (6) to receive feedback from artists. Appellee NameMedia Inc purchased <photo.net> in 2007 and revised the “terms of service” to assert Mr Neeley’s continued use of <photo.net> granted perpetual license for display of all formerly submitted visual art. NameMedia Inc also began allowing nudity to be displayed to all visitors to increase Google Inc “AdSense” revenue as was contrary to the prior <photo.net> policy Mr Neeley was aware of when uploading the nude art and checking “nudity” to prevent display to minors or search engines by <photo.net>.

2) Mr Neeley was not aware of technical or other developments on the Internet except as encountered since 2004 due to severe traumatic brain injury. Mr Neeley’s minor daughter sent an angry email revealing distress due to the minor daughter’s friends at school searching for “Curtis Neeley” in image searches and encountering nude images despite not searching for nudity in even child safe searches.

3) Mr Neeley sought to delete the images with nudity at <photo.net> and was prevented by NameMedia Inc. Mr Neeley advised the NameMedia Inc DMCA Agent, Hannah Thiem, that the nudes were no longer authorized for display at <photo.net>. This first request was ignored. Google Inc ignored all DMCA Agent notices as well. Mr Neeley contacted the Federal Communications Commission (“FCC”) by wire communications and sought action to prevent the display of Mr Neeley’s nudity via wire communications to minors and was advised that the FCC did not regulate content on wire communications called instead “the Internet”.

4) Mr Neeley attempted to add every United States based search engine and the FCC to this action but was not allowed due to “*Dennis Factors*”. The second NameMedia Inc DMCA Agent caused display of the first six unauthorized nude images to cease after over nine months in District Court. Appellee Google Inc scanned photography books in libraries in New York during this litigation and digitally republished three additional figure nude images by Mr Neeley in 2010 despite this District Court proceeding although removing the book preview after the request for a preliminary injunction in the Western District of Arkansas. This Motion was dismissed for judicial economy during the interlocutory appeal. *See* Dkts 134, 135, 184, 198, 199, 206, 207, and 208.

5) Curtis J Neeley Jr., MFA, a very educated but brain injured visual artist, is unable to imagine how the FCC is able to fine CBS for the half-second “intentional” display of Janet Jackson’s pierced right nipple during the Super bowl halftime performance and yet allow this to be the most common wire communication image broadcast in 2004. Mr Neeley does not understand why the type language in the record at Dkt. 232 Attachment #1 (Exhibit A) has not already passed in order to cause the FCC to regulate the wire communications called “the Internet” rather than continuing to ignore policy stated in the “Communications Act of 1934”. *See* 47 U.S.C. §230. This Statute revision would cause the FCC to require “tagging” of objectionable content and would result in massive job creation and eventual budget surplus.

(B) Course of Proceedings

1.) Defamation was initially pled as “*copy+right*” using the common but misleading spelling for US Title 17 § 106A violations. Appellee NAMEMEDIA INC and Appellee Google Inc refused to stop displaying Mr Neeley’s original nude and figure nude art although the Digital Millennium Copy-right Agents were notified that this wire display was unauthorized and offensive. This notification is evidenced as received repeatedly in record for DMCA agents for Appellee NAMEMEDIA INC.

2) January 2010, months after served with this action, Appellee NAMEMEDIA INC changed Digital Millennium Copy-right Agents. Mr Neeley proceeded with monitored notification of the second Digital Millennium Copy-right Agent, Robb Rossell, in hopes of stopping the defamatory attributions and defamatory display to minors in any manner possible. Federal litigation was not yet successful nor was malicious use of the domain <namemedias.com> sufficient by this time for anything except causing the frivolous countersuit that is now dismissed.

3) Appellee NAMEMEDIA INC deleted the original nude and figure nude art of Mr Neeley that had been displayed claiming authorization by Mr Neeley for around a year against Appellant's wishes in spite of United States District Court litigation when second DMCA agent, Robb Rossell, was notified and Appellee NameMedia Inc alleged to cease display of unauthorized art to avoid continued harassment/annoyance of Mr Rossell.

4) The defamation by Appellee NAMEMEDIA INC ceased late in January 2010 within 48 hours of the monitored notification of the second Digital Millennium Copy-right Agent. Defamation did not then cease by Appellee Google Inc as hoped although decreasing. The continued display of Mr Neeley's figure nude art to anonymous viewers despite defamation caused Mr Neeley to investigate other search engines besides Google Inc.

5) Evidence was discovered and entered in the record establishing American Search Engines and the Federal Communications Commission to be required for complete relief. See Dkt. 73 Attachment #2, #4 labeled (Exhibit “Ex. Yahoo” and “Ex. BING” respectively). See Dkt. 129 Attachment #2, labeled (Exhibit “Ex. ASK”). Compare these to live searches for “Curtis Neeley” now and see that IAC/InterActiveCorp has ceased returning Mr Neeley’s nude art at <ask.com> and Microsoft Corporation has increased defamation at both <yahoo.com> and <bing.com>. See these wire communications results without Mr Neeley’s nude art returned from <go-oogle.net>.

6) Every day the nude and figure nude photographs by Mr Neeley are rebroadcast to anonymous viewers by search engines creates extreme moral defamations as well as publication of information obviously preferred maintained privately being revealed to anonymous people who are potentially children, Muslims, or atheist.

7) **Continued display of Mr Neeley’s original nude photography to anonymous viewers is an issue significant enough to be considered by the United States Supreme Court.**

8) The preceding emphasized ¶7 should be clear due to similarity to the alleged intentions of the “*Communications Decency Act of 1996*” and the alleged intentions of the “*Children’s Online Protection Act of 1998*”. This case is not being done desiring eventual invalidation to protect anonymous viewership of “legal nudity” and “legal pornography” like each Act of Congress was written.

9) Each Act of Congress in ¶8 shows desire to appease voters while protecting desires to view “legal pornography” and “legal nudity” anonymously via “the Internet”. Anonymous viewing of “legal pornography” or “legal nudity” is profitable and desired by most people including most lawyers and judges in this case attempting to protect access to anonymous “legal pornography”.

10) Muslims may only view naked slaves and only homosexual Muslim slaves may view nuked Muslim women according to the Noble Qur’an. Awareness of this fact causes distress for Mr Neeley when search engines rebroadcast nude fine art exhibit photographs done by Mr Neeley to Muslims anonymously. Mr Neeley has explored the teachings of the Muslim and Christian religions. Most Christians do not appreciate figure nude art and Muslims are not supposed to view nudity as directed by the Noble Qur’an.

11) An entire class of artists is disparaged by personal name to anonymous viewers and every producer of “legal pornography” or “legal nudity” is similarly disparaged. Most producers of “legal pornography” or “legal nudity” are not distressed when they are attributed to “legal pornography” or “legal nudity” by search engine rebroadcasts as is alleged by Appellees as well as claiming protection by truthful attribution.

12) Terri Weigel, or other artists, may chose to stop production of “legal pornography” or “legal nude art” but the unconstitutional US Title 17 will not then protect Terri Weigel, or others, due to lack of moral rights to control display of former “legal nude” visual art anchored in other laws. This “right” was deceptively alleged by Congress to exist in other laws in order to propagate Congressional desires to watch “legal pornography” while debating the Berne Convention Implementation Act of 1988, which was then passed on March 1, 1989.

13) It does not matter if anyone else recognizes defamation caused by continued display of prior productions of “legal nude” photography or “legal pornography” being broadcast out-of-context to children by search engines via personal name searches. The injunction formerly sought by Mr Neeley would help anchor the exclusive moral rights to attribution and display of “legal nude art” to anonymous viewers who might be minors or Muslims as creates shame for Mr Neeley whether realized or unrealized.

14) The missing fundamental natural moral rights leave US Title 17 unconstitutional since originally created by lawyers and publishers. The United States disparaged this human “right” first in 1790 when an educational textbook publisher, Noel Webster, teamed with a career lawyer, Benjamin Huntington, and modified the “*Statute of Anne*” into “The Copyright Act” in 1790. The hyphen was left out in order to give the effect of recognizing a “right” and not establishing “ritual for copying” like was done in the United States by a lawyer and a publisher and exists to this day and caused the **oxymoronic United States term “*copyright*” for copyrite.**

15) The most profitable uses of “the Internet” have been anchored in the immorality of US Title 17 coupled with the nonfeasant Federal Communications Commission while reinforced by Honorable Judges to whom “wire communications” are not understood due to being raised in a different era of communications technology including all considering this appeal and all humans over forty. Honorable judges are faced with ruling honorably despite growing up when wire communications were known as telegraph wires and “the Internet” wire communications did not exist.

16) “Wire communications” defined in 47 U.S.C. § 153 ¶ (52) are misunderstood or not noticed by judges and most United States citizens. This fact was demonstrated by inability to see “the Internet” as the simple logical progression of communications via energy transmitted by wire by the second oldest and third longest serving Supreme Court Justice when ruling “the Internet” was a “*unique and wholly new medium*”. This Justice, born in 1920, has since retired but was seventy-seven when not identifying wire communications called “the Internet” in 1996.

17) This immense technological gap and this large cultural gap was caused by the pace of development of communications transmitted by wire and defamation of visual artists is supported by the unconstitutional US Title 17 violating rights acknowledged by the Ninth Amendment and encouraged by the nonfeasant FCC not regulating wire communications.

18) Curtis J Neeley Jr., MFA has tried to halt redistribution of Mr Neeley's original nude photography for over three years non-stop and has been unsuccessful thus far. Microsoft Corporation, however, ceased return of Mr Neeley's nude art while this case was being considered and before the District Court ruled 17 U.S.C. § 106A did not apply to Internet display of visual art due to misapplying an exception to the definition of visual art found in §101 and thereby misinterpreting 17 U.S.C. § 106A to exclude wire communications that did not exist when the Statute was considered by Congress when revising 17 U.S.C. to "*marginally*" comply with the Berne Protocol.

19) No display of existing visual art violates 17 U.S.C. § 106A on "the Internet" after the Statute was misinterpreted by the District Court in Dkt. 267. Visual art display on "the Internet" is nothing like electronic publications in 1990 when no search engines and no "Internet" existed. The District Court therefore, modified the Statute as considered to be Congressional prerogative requiring general citizen rational.

(C) Disposition Below

1) Appellant Curtis J Neeley Jr., MFA appeals United States Court for the Western District of Arkansas Dkts. 209, 267, 268 and 269 these denial, dismissal, and Summary Judgment orders dealt with denying the principle claim of violation of an artist's right to exclusively control presentation of visual art on wire communications to anonymous parties who may be minors, Muslims, or others and thereby shame the artist.

2) These orders denied repeated good-faith attempts to cause Appellee Google Inc et al to cease display of Mr Neeley's nude and figure nude visual art as well as pursuit of jury trial. Mr Neeley sought damages from Appellee NameMedia Inc for doing the same, while asserting a license acquired due to continued use of <photo.net> without authenticated digital signature. These orders also did not allow adding the FCC or other search engines due to misuse of Eighth Circuit precedence called "*Dennis Factors*".

3) The orders now appealed include references to numerous other improperly denied motions. The Eighth Circuit precedence using “*where it comes in the face of repeated failure to cure deficiencies by amendments previously allowed*” does not consider deficiencies never specifically listed and the only amendments allowed added parties discovered by that time.

4) **Federal Statutory Rules of Civil Procedure permit amending of a complaint “*at any time to conform to evidence*” quoting FRCP Rule 15.**

STATEMENT OF THE FACTS

1) The exclusive Moral Right to be attributed to created art is respected in South Korea, European countries, and all other developed countries. Lycos Inc, therefore, does not traffic in pornography or nude fine art to anonymous users or anyone as should be seen in the mutilated record. Docket #112 (Exhibit #4 Lycos) provides ample demonstration that **every** United States Search Engine exploits the unconstitutionality of US Title17 and the Federal Communications Commission’s refusing to follow their statutory mission to regulate wire communications. One foreign search engine chooses to not broadcast nudity and demonstrates ease of execution where any could cease presenting inappropriate content if electing to stop.

2) The “Communications Act of 1934” was enacted by Congress and the communications transmitted by wire have developed from telegraphs to become “the Internet” since 1934 but not a “*unique and wholly new medium*” as alleged in error in Supreme Court case ACLU v. Reno (117 S.Ct. 2329) and United States et al. v. American Civil Liberties Union et al. (1997) and scores of other cases where the “*unique and wholly new medium*” description of “the Internet” is reinforced instead of reconsidered more accurately the development of wire communications described better in 47 U.S.C. §153 ¶ (52) than in 47 U.S.C. §231 (E)(3). 47 U.S.C. §230(f)(1) has a mutilated and less understandable definition of “the Internet” as well.

3) Appellee Google Inc cites §230 as permission to rebroadcast “legal pornography” and justify rebroadcast of Mr Neeley’s nude and figure nude visual art to anonymous viewers despite no permission to do this either granted or implied by Mr Neeley.

4) “*Posting*” material to any computer attached to the wire communications common carrier network called “the Internet” should not be assumed to be a donation to the public domain as Appellee Google Inc believes to have established by use of the United States’ “fair-use” as well as now claiming “far-use” includes republishing visual art due to publication in library books where available for scanning or Google Inc content harvesting.

SUMMARY OF THE ARGUMENT

1) Mr Neeley joined <photo.net> in 2004 and uploaded various nude and figure nude photographs to obtain feedback from fellow photographic artist who were “members” of the site in order to view images “tagged” as nudes. Members had alleged being permitted to see nude art.

2) Appellee NameMedia Inc purchased <photo.net> in 2007 and revised the terms of use to assert perpetual licensure of all user images contributed. There was no requirement that Mr Neeley read the revision yet Appellee NameMedia Inc claimed to be granted perpetual licensure of Mr Neeley’s nude images due continued use of <photo.net>. Mr Neeley was banned from the site in 2009 and prevented from removing previously contributed nude and figure nude art without any waiver of “copy-rites”.

3) This violates 17 USC §106A until the Statute was misinterpreted/revised by District Court ruling in Dkt. 267 that is now appealed to be considered both as a clear error and to be considered *de novo*.

4) Mr Neeley contacted the Appellee NameMedia Inc DMCA agent and advised Hannah Thiem of the unauthorized display but was ignored until after around nine months in court and notification of the new DMCA agent. Appellee Google Inc ignored contacts of DMCA agents and harvested nude and figure nude images done by Mr Neeley from across “the unregulated Internet” and refuses now to stop redisplay of these.

5) Mr Neeley contacted every search Engine and advised each of the unauthorized harvesting of unpublished visual art and all search engines, besides Google Inc, ceased returning nudes in “Curtis Neeley” searches as disclosed in the record and as numerous witnesses will testify.

6) Microsoft Corporation resumed returning nudes in “Curtis Neeley” searches after the 17 U.S.C. §106A Claims were dismissed.

7) The Appellant filed a complaint with the FCC and was told that regulating Internet content was not in the statutory mission of the FCC in error.

8) Mr Neeley seeks relief from United States Court requiring the ceasing of all republication of Mr Neeley’s nude and figure nude visual art to anonymous viewers by image search engines and injunctive requirement that the FCC begin regulating wire communications as has been the FCC mission since 1934.

STANDARD OF REVIEW

1) This Court reviews dismissal of the Mr Neeley's Title 17 claims as well as refusals to allow filing of an Amended Complaint and add parties damaging the honor of this Mr Neeley specifically as can be seen repeatedly in the record if not viewing the District Court mutilated and ruined scans of submitted exhibits. This harm to Appellant honor is supported by the allowing of a nonfeasant Federal Communications Commission as well as by the fundamental MORAL right left missing in the "Copy-rite Act" since 1790. Application and interpretation of law is either logical or wrong as denial of rights "*minimally*" recognized by Congress in 17 USC § 106A and recognized in FRCP Rule 15.

2) The Eighth Circuit standard cited by the District Court and misused to justify misinterpretations of congressional Statutes should have applied. District Court's analysis is including for effect below.

"As the Eighth Circuit has explained, the goal of statutory analysis is to give effect to the intent behind enactment of the statute. If the language of the statute, reading all parts together and giving full effect to each part, is plain and unambiguous, the analysis ends and the Court applies the plain meaning. Only if there is an ambiguity does the Court delve into legislative history or other authorities to determine legislative intent. Estate of Farnam v. C.I.R., 583 F.3d 581, 584 (8th Cir.2009)", -

Above quote is District Court discussion of the cited case listed but then violated in Dkts. 97, 125, 209, 267, and 268 or most rulings in this Action.

3) Appellant asks the Eighth Circuit review this case *de novo* and not use the District Court assertions or error. While considering allowing Amending of the Complaint, Mr Neeley believes the Eighth Circuit has an opportunity to make the Eighth Circuit amending criteria more concise and *consistently* applicable than existing now. Quoting Docket 125 follows.

“The Eighth Circuit takes a liberal approach to the amendment of pleadings, as does FRCP 15. Leave to amend must be granted except in the following circumstances:

- *where the amendment will result in prejudicial delay or other undue prejudice;*
- *where it stems from bad faith or dilatory motive;*
- *where it comes in the face of "repeated failure to cure deficiencies by amendments previously allowed"[or;]*
- *where it would be futile.*

Dennis v. Dillard Department Stores, Inc., 207 F.3d 523, 525 (8thCir. 2000)”.

4) Underlining is added above for emphasis of portions clearly violating the intentions of Congress in FRCP Rule 15 using the plain unambiguous simple meaning of the language used of “at any time” and “to conform to evidence”. The Eighth Circuit Court thereby created “*Dennis Factors*” used by the District Court that are clearly more restrictive than FRCP Rule 15 Statute 28A Rule 15 as listed for the pertinent part as follows.

(2).... “A party may move — at any time, even after judgment— to amend the pleadings to conform them to the evidence and to raise an unpleaded issue.” —

5) The portion of FRCP Rule 15 listed on the preceding page has underlining added for emphases of portions that make “*Dennis Factors*” violate the intentions of FRCP Rule 15. The Appellant now asks the Eighth Circuit to clarify the formerly asserted judicial standards for amending using more common language as well as accepting that the Appellant does not believe the Supreme Court could uphold the Eighth Circuit Court’s asserted standards now called “*Dennis Factors*”. “*Dennis Factors*” are contrary to the intentions of FRCP Rule 15 or the standards set *by Congress* for amending.

6) The first and fourth “*Dennis Factor*” circumstances could be upheld but the other two will not be. The “*bad faith or dilatory motive*” circumstance violates the Seventh Amendment, as does “*repeated failure to cure*” for the same reason and puts judges in the position of a king.

7) Disagreeing with two of the circumstances that Mr Neeley feels give judges king-like powers counter to the entire Constitution and rational for the Declaration of Independence, Mr Neeley invites the Eighth Circuit to examine the evidence already in the record and see that the proposed amendment with added parties are founded in evidence in the record or now on “the Wire” otherwise judicially christened “the Internet”. Print files are visible at the mirror of the docket at the following UnReguLated location (“URL”) **and not as the District Court mutilated evidence by improper scanning to “PACER” making the costly preparation of exhibits wasteful and consideration of exhibits critical to this action impossible.**

curtisneeley.com/5-09-cv-05151/Docket/index.htm >.

ARGUMENT

I **FAILURE TO “REGISTER” SHOULD NOT BAR TITLE 17 CLAIMS AS MORAL RIGHTS WERE RECOGNIZED AND NOT GRANTED BY §106A**

1) United States Federal Title 17 is deceptively titled “The ‘Copy-right’ Act” without using the hyphen to convince parties, besides lawyers, that Title 17 recognizes moral rights that were intentionally not included when first created by a career lawyer and Judge plagiarizing the 1710 “*Statute of Anne*” on June 22, 1789.

2) The United States passed the Berne Convention Implementation Act of 1988 on March 1, 1989 and the title of the Act passed in 1989 is, therefore, as *deceptive* as “The ‘Copy-right’ Act” spelled with no hyphen.

3) Congress, during debate of U.S.C. Title 17 Statute in 1989, alleged the moral copy-rights recognized for authors in Berne Convention Treaty Countries were adequately anchored in the United States by other laws, therefore, not requiring further amending US Title 17 or “The ‘Copy-right’ Act” though spelled with no hyphen in order to mislead.

4) “The ‘Copy-right’ Act” had been unconstitutional for one hundred and ninety-eight years for violating fundamental personal rights secured in the Ninth Amendment as well as by violating the right to Equal Access to the Law and became more unconstitutional around two decades ago when rights known to be missing were alleged to be recognized for South Koreans, Canadians, Europeans and numerous other less morally challenged country’s citizens.

5) Congress alleged, in error, that moral “copy-rights” were sufficiently anchored in the United States by other existing laws. The other laws Congress asserted as covering the moral rights then recognized for foreigners do not require registrations or purchases of “registered licenses to sue” called “copy-right registrations” to protect. 17 U.S.C. is deceptive and unconstitutional since enacted in 1790 establishing a “rite” or government ritual and not recognizing a fundamental human “right”.

6) “Copy-rights” are nothing but “licenses to sue” that Appellee Google Inc believes extinguished currently in another Class-Action in the Southern District of New York where publishers, lawyers and judges again conspired to disparage the moral right to integrity of original art that was initially disparaged March 31, 1790 with passage of “The ‘Copy-right’ Act”.

7) In The Author's Guild et al v. Google Inc., 1:2005cv08136, Mr Neeley filed Docket #73 Exhibit #1 CHIN by certified mail. Appellee Google Inc announces this conspiracy has extinguished US Title 17 claims while announcing it groundbreaking and settled which it is not. See <books.google.com/googlebooks/agreement >

8) This *allegedly* “groundbreaking” litigation created *Google Inc copy-right alternatives* and was another conspiracy of lawyers and publishers not yet approved or appealed and has created another action due visual artists being improperly dismissed instead of added. See ASMP, PPA et al. v Google Inc., 1:2010-cv-2717 where Mr Neeley is an un-represented member of the class in that action due to the defamation caused by a book scanned by Google Inc with statutory damages of \$450,000 in that case. This further defamation was done during this litigation and screams for injunctive relief as well as punitive damages despite Appellee Google Inc voluntarily removing the book preview containing the figure nude images.

9) There is no provision for paupers to access The “Copy-right” Act. This HOAX is only licensure for copying or regulations for the proper government sanctioned **rite of copying** original art or ritual for copying given the disparaging name of “Copy-right”. This first conspiracy between lawyers and publishers was a hoax in 1790 and still is today. The District Court asserted, in error, that failure to purchase “license to sue” warranted a dismissal of US Title 17 violations of the moral rights left anchored in other laws by Congress on March 1989. None of the *allegedly* anchoring laws required licensure to acquire like *fundamental* rights.

10) Appellant asserts, yet again, that prosecution of defamation prohibited by Arkansas law ACA 16-63-207 does not require registration nor will U.S.C. Title 17 after recognized as unconstitutional since signed by President George Washington. This determination will not require anything but application of existing Constitutional law and application of the unambiguous and simple meanings of language.

11) The Visual Artists Rights Act (“VARA”) or 17 U.S.C. § 106A was passed in 1990 and further alleges to RECOGNIZE and not GRANT moral rights to visual artists except via use of “*shall have*” to slip past legally untrained Congressmen and voters et al. Visual artists have no need for encouragement in order to “promote” the creation of art as alleged in the Constitution but needed the moral right to finally control integrity and attribution to original art to now be recognized as “*accidentally*” already done by Congressmen in 17 U.S.C. §106A despite the aid of Google Inc lobbyists. *See* dictionary and Statute quotes included herein.

12) This **right** was “marginally” recognized by 17 U.S.C. § 106A yet the United States remains the most backwards developed country by “marginally” recognizing that 17 U.S.C. is unconstitutional and inadequate and was crafted to continue deceiving the general public and Congress as 17 U.S.C. has consistently done since 1790 but now aching for revision.

II

<p>MIS-INTERPRETATION OF STATUTE WAS AN INAPPROPRIATE CONFLICT OF POWERS JUDICIALLY ALTERING CONGRESSIONAL STATUES AND EQUATES TO INAPPROPRIATE SUMMARY JUDGMENT IN THIS CASE</p>
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1) The District Court was thorough in the appealed Arkansas Western District Court case, Neeley v NAMEMEDIA INC et al in Docket No. 125 in ¶ #2 there stating:

“As the Eighth Circuit has explained, the goal of statutory analysis is to give effect to the intent behind enactment of the statute. If the language of the statute, reading all parts together and giving full effect to each part, is plain and unambiguous, the analysis ends and the Court applies the plain meaning. Only if there is an ambiguity does the Court delve into legislative history or other authorities to determine legislative intent. Estate of Farnam v. C.I.R., 583 F.3d 581, 584 (8th Cir.2009)”.

Above quoting the discussion of analysis given without quotation marks of the cited case listed but misapplied reading §106A as follows for the pertinent portions of 17 U.S.C. §106A as well as §101 with bold shown as in the United States Statute and not added.

*(a) **Rights of Attribution and Integrity.**— Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—*

(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; and

(3) subject to the limitations set forth in section 113 (d), shall have the right—

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

*(c) **Exceptions.**—*

(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of “work of visual art” in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

2) Section 101 then follows and the statute is quoted with bold added to portions misinterpreted in Dkt. 267 rendering 17 U.S.C. § 106A invalidated by District Court considering the common meaning of language.

A “work of visual art” is—

(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author;
or

(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include—

(A)

(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, **electronic information service, electronic publication, or similar publication;**

(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

(iii) any portion or part of any item described in clause (i) or (ii);

(B) any work made for hire; or

(C) any work not subject to copyright protection under this title.

3) Appellant was advised in Dkt. 267 that the rights to exhibit photographs was not covered by “rights” thought RECOGNIZED in 106A(3) because the District Court misinterpreted USC 17 §106A to no longer protect against disparaging Internet display of exhibition quality images although this “judicial revision” of Statute would otherwise require an Act of Congress or decision processes supported by the general public.

4) Since 1990 passage of the (“VARA”), there have been unimaginable developments in wire communications now called the Internet for disguise. There was no online image search engine as well as no search engines or Internet existing like now has developed back in 1990. Text only search engines first developed around 1994 with Lycos Inc. Appellee Google Inc was founded in 1996 and had no image searching.

5) Congress could not have created an *exception* for wire communication of visual art otherwise protected by 106A(2) by including - “*electronic information service, electronic publication, or similar publication*” - to therein include display of visual art by wire communications intentionally in a manner that brings shame to the artist who created the visual art as Appellee Google Inc does along with all United States image search engines now except IAC/InterActiveCorp at <ask.com>.

6) Examining the common meaning of the language used when creating the Statute that would allow 17 U.S.C. §106A to “marginally” comply with the Berne Protocol and U.S.C. 17 §106A(a)(2) follows.

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right,

The first dictionary definition of “*distortion*” is now cited.
distortion. *Dictionary.com Unabridged*. Random House, Inc. 04 Aug. 2011.
Dictionary.com <<http://dictionary.reference.com/browse/distortion>>.

dis·tor·tion: [dih-stawr-shuhn] noun

1. an act or instance of distorting.

The second dictionary definition of distort is now cited.
"distort." *Dictionary.com Unabridged*. Random House, Inc. 04 Aug. 2011.
Dictionary.com <<http://dictionary.reference.com/browse/distortion>>.

dis·tort [dih-stawrt] verb (used with object)

2. to give a false, perverted, or disproportionate meaning to; misrepresent: to distort the facts.

6) “*Prevent any intentional distortion...*” from §106A can be understood to mean “**prevent any intentional action giving false meaning or perversion...**” using the simple common meaning of the Statute passed while attempting to “*marginally*” comply with the Berne Protocol. It can be seen that the United States forbids acts that distort or pervert visual art as is done when nudes are shown to minors thereby implying this wished allowed by the original artist despite advisements this type display is abhorrent.

7) The United States Congress could not have imagined an image search engine like Appellee Google Inc now displaying nude exhibition art photographs by Mr Neeley to minors or anonymous viewers and not being fined by the FCC for inappropriate wire communications like is now being done. Before the ruling of Dkt. 267, other United States search engines of <bing.com> and therefore <yahoo.com> ceased retuning nudes in image searches for “curtis neeley” as evidenced in the record.

8) Shortly after the rulings now on appeal, Microsoft Corporation resumed return of nudes in searches for “Curtis Neeley”. Microsoft Corporation now returns more nude images by Curtis J Neeley Jr., MFA at <bing.com> and <yahoo.com> and explicit pornographic images and *allegedly* artistic nude images at <bing.com> and <yahoo.com> not done by or approved by Curtis J Neeley Jr., MFA in results of image searches for “curtis neeley”. Microsoft Corporation DMCA Agents were again notified and Microsoft Corporation is therefore again a desired added party to make this claim “*consistent with evidence*” now “on-the-wire” called “the Internet”.

III **THE FEDERAL COMMUNICATIONS COMMISSION HAS NOT PERSUED THEIR STATUTORY MISSION MANDATING REGULATION OF COMMUNICATIONS BY WIRE. THIS MISSION FAILURE CAUSES WIRE COMMUNICATIONS TO DISPLAY INAPROPRIATE VISUAL ART BY CURTIS NEELEY TO MINORS UNDER THE GUISE OF FREE SPEECH AS SHOULD NOT BE ALLOWED TO CONTINUE GIVEN THE TECHNICAL TRIVIALITY OF CEASING TO ALLOW DISPLAY OF INAPROPRIATE NUDE CONTENT TO MINORS.**

1) The findings and policies of the wire communications backwards United States is found alleged in US Statute labeled “Protection for private blocking and screening of offensive material” and follows in its entirety for four pages of the complete ignored text of U.S.C. 47 §230.

Protection for private blocking and screening of offensive material

(a) Findings

The Congress finds the following:

- (1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.
- (2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.
- (3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.
- (4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.
- (5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

It is the policy of the United States—

- (1) to promote the continued development of the Internet and other interactive computer services and other interactive media;
- (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for “Good Samaritan” blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(f) **Definitions**

As used in this section:

(1) **Internet**

The term “Internet” means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) **Interactive computer service**

The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) **Information content provider**

The term “information content provider” means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) **Access software provider**

The term “access software provider” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

- (A) filter, screen, allow, or disallow content;
- (B) pick, choose, analyze, or digest content; or
- (C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

-----end of 47 U.S.C. §230-----

2) The preceding 851 words are ignored by the Federal Communications Commission yet *continually* misapplied by Appellee Google Inc in order to allow wire communications of indecent content that harms children and millions around the Earth.

3) Appellee Google Inc uses the “*Good Samaritan*” portions repeated on preceding p. 36 for protection while conspiring to traffic indecent “indexes” with “legal pornography” and “legal nude” art producers instead of blocking anything. “*Good Samaritan*” is a reference to the book Christians and Mr Neeley consider Holy and the written “Word of God”. The portions of the Statute using the religious colloquialism of “*Good Samaritan*” are the portions misused by Appellee Google Inc maliciously to allow trafficking of wire communications content most Christians consider inappropriate and immoral and believe should incur penalties and be criminal to communicate to minors or anonymous users. Google Inc, therefore, conspires to traffic inappropriate content to minors with providers of inappropriate content.

4. The Communications Act of 1934, the Communications Assistance for Law Enforcement Act, and the Launching Our Communities' Access to Local Television Act of 2000 are codified in Title 47 where Section 230 policy reproduced verbatim above is ignored by the FCC in particular as well as by most all United States citizens in general.

5) The mission of the FCC listed at <fcc.gov/what-we-do> follows.

“The Federal Communications Commission regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. It was established by the Communications Act of 1934 and operates as an independent U.S. government agency overseen by Congress”...

The above is similar to the entry in the Communications Act of 1934 as follows.

“AN ACT To provide for the regulation of interstate and foreign communication by wire or radio, and for other purposes...”

6) The FCC now IGNORES the communication by wire portion of the Act of Congress in their Statutory Mission as included for the pertinent portion of 47 U.S.C. §151 as follows.

*“for the purpose of promoting safety of life and property through the use of **wire and radio communications**, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign **commerce in wire and radio communication**, there is created a commission to be known as the “Federal Communications Commission”*

7) The highlighting is added on the p. 40 reproduction in order to cause noticing instead of ignoring by the Eighth Circuit Court and motivate granting an injunction ordering the FCC to begin the FCC mission defined by Congress as would protect the honor of Mr Neeley as well as protecting the honor of millions of people on Earth due to the United States ceasing to communicate inappropriate content by wire to anonymous viewers in the ruse of Freedom of Speech. This farce currently keeps the Internet from allowing Free Speech by permitting search engines to rebroadcast speech made by wire out of context regardless of the desires of the speakers under the cloak of “fair-use” and thereby working counter to the intentions of U.S.C. 17 and the First Amendment.

CONCLUSION

1) Whereas, the Appellant, Curtis J Neeley Jr., MFA, asks the Eighth Circuit Court of Appeals to remand and overrule allowing the action amended provisionally and ordered served on each Party added by Certified Mail as well as granting the preliminary injunctions like requested in Docket #134 and as included concisely in the addendum.

2) The Appellant was once an idiot and a dimwit as well as clinically incompetent and “insane” due to severe traumatic brain injury but is now only an idiot who offends too often due to frontal lobe brain damage and herein apologizes as well as states no bad attitude whatsoever is desired again herein to be shown. This Appeal is more than the normally allowed thirty pages but is 11,419 words and includes fourteen point type as well as spaces left blank to make the brief easier to follow like a book by preventing paragraphs broken by changes of page.

3) A misinterpretation of Statute was used, reconsidered, and repeated. Appellant Mr Neeley asserts that the standard for application of law and interpretations of Statute are either logical or incorrect and were both illogical and incorrect in this case as should now be clear.

4) Appellant seeks remanding this action and stipulating the allowance of the Provisional Complaint included in the appendix as well as Provisional Injunctions.

5) Defamation increased as seen in the Exhibits to Docket #135. *See* Attachment #1 (Exhibit Google-Oops) and Attachment #2 (Exhibit Google-Oops2). These are not again printed and submitted but are available by wire communications called the Internet as well as this brief to the entire Earth.

6) All evidentiary exhibits may be seen in color as filed, as can all exhibits, instead of as scanned into the record by the Fayetteville District Court office with older equipment reducing them to gray scale and illegible and therefore useless due to the low scan qualities. The Eighth District Court may see the Docket by wire communications as may the general public at the following link.

***See* <curtisneeley.com/5-09-cv-05151/Docket/index.htm>**

7) **No previous court ruling or law supports the controversial issue of anonymous viewership of “legal nudes” and denial of responsibility for the act of viewing “legal nudes”.** Two federal Statutes *allegedly* attempted to halt trafficking of “legal pornography” and “legal nudity” to the anonymous but were never enforced. Mr Neeley believes legislators intentionally used overbroad language to continue anonymous “surfing” for pornography. Comparing this issue to the signing of petitions for passing laws authorizing viewing “legal pornography” anonymously, the Supreme Court has already ruled the privacy claim outweighed by the important need to verify the identity of supporters for even controversial issues. *See Doe v. Reed*, (09-559)

8) Anonymous display of nude art done by Mr Neeley shames in violation of US Title 17 when shown like done by all United States Search Engines with continual defamatory wire communications besides IAC/InteractiveCorp at <ask.com>. Legislators, Judges, SEC lawyers and Apposing Counsel take advantage of missing moral portions of US Title 17 and refusal to regulate communications by wire by the nonfeasant FCC despite findings and policy listed in 47 U.S.C. §230 herein included. These criteria contribute to the continual rebroadcast and consumption of pornography and Mr Neeley’s “pornography” or fine art nudes being made accessible to the Appellant’s minor children and others as well as Muslims and atheists as contrary to the moral rights to control attribution to original art denied Mr Neeley without concern for Due Process or the FCC malfeasance ignoring United States’ wire communications regulation mission. Wire Communications should be regulated or “*censored*” just as other common carriers have been since 1934.

9) Moral “copy-rights are denied Terri Weigel and millions of others by every United States Search Engine besides IAC/InteractiveCorp at <ask.com>. The results of the <Lycos.com> broadcast for “Curtis Neeley” can be seen in the record. The Lycos Inc broadcast does not display any nudity prohibited by the FCC to be rebroadcast on television and exposing anonymous viewers.

10) The Appellant request the action be remanded and a Provisional Complaint be allowed filed and served with Provisional Preliminary Injunctions preventing continued defamation of the honor of the disabled visual artist Curtis J Neeley Jr., MFA.

Respectfully and humbly submitted,

/s/ Curtis J Neeley Jr .

Curtis J Neeley Jr., MFA

Certificate of Compliance with Rule 32(a)

1) This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because: this brief contains 8,746 words, excluding the parts of the brief exempted by Fed., . R. App. P. 32(a)(7)(B)(iii).

2) This brief complies with the typeface requirements of Fed. R. App. P.32(a)(5) and the * type style * requirements * of Fed. R. App. P.32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point type in Times New Roman typeface and is 11,427 words.

Respectfully and humbly submitted,

/s/ Curtis J Neeley Jr .

Curtis J Neeley Jr., MFA

Date _____.

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 (GOOG),
Microsoft Corporation (MSFT),
Federal Communications Commission (FCC).**

COMPLAINT FOR DEFAMATIONS AND U.S.C. 17 §106A ABUSES AND REFUSAL TO REGULATE WIRE COMMUNICATIONS BY THE FCC

Comes now the Mr Neeley, respectfully and states for his complaint described as concisely as the severely brain-damaged, pro se litigant is able in this extremely complicated intellectual properties case including Title 17 Infringements and repetitive public defamations and violations of “Due Process” and “Equal Access to the Law”. Mr Neeley’s pre-teen daughter was exposed to original photos of the figure nude as an object of art on the Internet. Courts call this a “*new medium*” in error. Wire communications are apparently exempt from even moderate regulation in an obvious error that violates the intention of the Communications Act of 1934. The particular actions can be described as follows and supported by the existing docket entries and will be further supported by witnesses and slide presentations during trial.

I. NameMedia Inc

Original Artwork Theft in violation of US Title 17

1. Mr Neeley previously was trained in commercial photography and <eartheye.com> was the website used for his art. Mr Neeley continued to do art photography as well as commercial photography and created a user profile at <photo.net> and uploaded some art while an incompetent or before recovering guardianship on January 26, 2006. Mr Neeley was never aware of the ownership of <photo.net>. Defendant NameMedia Inc purchased <photo.net> in 2007. Defendant NameMedia Inc stopped allowing users of the site to delete art and began to claim perpetual licensure to all user content. NameMedia Inc alleged photos could be deleted but Mr Neeley soon discovered that was false and Mr Neeley began posting photos elsewhere. On a forum posting on July 12, 2009, Mr Neeley posted that the new site owners would face him in Court and Mr Neeley wished for them to delete his art. About July 24, 2009 Defendant NameMedia Inc prevented Mr Neeley's access to <photo.net> and yet continued preventing deletion of his user art, which was continually demanded.

NameMedia Inc US Title 17 Violations or Defamations

2. Hannah Thiem, the “Digital Millennium Copyrite Agent” (DMCA) of Defendant NameMedia Inc, was notified and ignored Mr Neeley but was relying on Mr Neeley’s disability and paralysis to make mailing notices nearly impossible. Mr Neeley notified Ms Thiem using an IP beacon to confirm delivery as well as using MySpace and Flickr social websites. Mr Neeley also signed up as a new user at <photo.net> and posted comments on the photographs requested deleted where a period was actually an IP beacon. Many of these image displays were then tracked, as evidence will show during the jury trial.

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

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

5. In January 2010, Mr Neeley discovered a new DMCA agent was listed for Defendant NameMedia Inc. Mr Neeley set out to repeat his monitored notification to get the images deleted expeditiously. Mr Neeley researched the DMCA agent by wire and determined that the posted address was where Robb Rosell operated a website design business. Mr Neeley contacted all disclosed clients of the DMCA and asked that they relay the notice regarding nude art being displayed against Mr Neeley's wishes while allegedly being shown to minors by specific permission. Defendant NameMedia Inc then finally deleted the pornographic photos and ceased attributing Mr Neeley with "pornographic" art around January 24, 2010 as a result of the second DMCA notice. Mr Neeley then stopped USING <namemedias.com> as a protest site since <photo.net> deleted the images Mr Neeley USED <namemedias.com> to protest.

II.

Google Inc

Google Inc Defamation claiming authorization during litigation

6. Defendant Google Inc attributed Mr Neeley's 'figure nude' images *correctly* with no concern for US Title 17 violations or defamation continually on <google.com> and on <photo.net> until Defendant NameMedia Inc deleted the 'figure nude' images after the second DMCA agent, Robb Rossel, caused deletion on or after January 24, 2010 but not until then.

7. Defendant Google Inc attributes Mr Neeley to pornographic art by image searches of his personal name from various websites where Mr Neeley had disclosed his art creation by choice and from images Mr Neeley never had on his website as described more fully later. Google Inc allowed and now allows anonymous viewership of anything to support profits.

8. Mr Neeley will show the jury how Yahoo Inc, Microsoft Corporation, and IAC/InterActiveCorp ceased returning nudes for image searches of the Mr Neeley's personal name during this litigation when made aware it disturbed Mr Neeley and asks how Google Inc could dare to say that ceasing to return nudes for searches for "Curtis Neeley" would require shutting down Google.com. *See* Docket 73 Ex #2 Yahoo, #4 Bing and perform wire searches now and compare.

Google Inc republication of nude art scanned from a library book

9. After this lawsuit was filed and after Google Inc had filed an answer claiming the affirmative defense of failure of Mr Neeley to mitigate damages on March 2010, Google Inc continued to expand their defamatory actions after Mr Neeley's request to Amend on March 17th, 2010 where in Docket #111 # 1 Exhibit (Third Amended Complaint) in the Conclusion/Prayer section ¶ #2 on p. 18 Mr Neeley stated as follows.

“Plaintiff is an overlooked, outraged artist not part of the class in New York because his original photographic art is published in a book that was already seen at <Books.Google.com> and has a registered copyright from 2006 titled “The Renascent| Vol. 3| Photography”.

10. Mr Neeley prepared an exhibit but forgot to include it. The omitted exhibit reveals only that, “No preview is available”, and had the wrong author listed. It revealed the distress of the Mr Neeley as follows.

Is this book scanned by Google already? My nude photography is in this book and I already sued Gogle for violating my copyrights and common law TMs. They say that if it is already copyrighted they will pay \$60 for violating the copyrights? I want 60 billion instead.

11. The posted review above was deleted when Google decided to expand their defamation and this action causes outrage as well as demonstrating intentionally increasing their exposure and thereby showing disrespect for Court. Mr Neeley has often shown poor attitudes since this action started but defaming artists again while facing him in Federal Court for defamation is an admission of not considering this US Court Action sincerely enough to mitigate the damages created and the opposing Counsel actually commented on the posted comment demonstrating being aware of this posting in the record.

See Docket 135 Ex. 1 Google-Oops

<curtisneeley.com/NameMedia/Google-Oops.pdf>

See Docket 135 Ex. 2 Google-Oops2

<curtisneeley.com/NameMedia/Google-Oops2.pdf>

12. Defendant Google Inc uses their “Curtis Neeley” broadcast using the Mr Neeley’s personal name, which is shared by his father, and results in repetitive “attributions” to pornographic images in a manner that is outrageous defamation. Neither the Mr Neeley, nor his father, condones broadcasting pornography to an anonymous viewer who refuses to take responsibility for the viewership of pornography. Neither would allow their children or grandchildren to view nudity presented by Google Inc using the personal name only.

The Google Inc 2010 defamation during litigation

13. Google Inc Books after March 7, 2010 and attributed Mr Neeley correctly to three original ‘figure nude’ art photographs shown to anonymous users including minors, atheists, and Muslims as is offensive and shames the Mr Neeley and violates rights to privacy. Mr Neeley granted Joseph Morse permission electronically to place his photos in a book, which Mr Morse then did. Courts have ruled that publication of a book online requires a new authorization and the Google Inc fair-use argument has already been rejected by numerous United States Courts.

III. Microsoft Corporation

14. Microsoft Corporation initially returned few of Mr Neeley’s nudes in searches for “Curtis Neeley” but entirely ceased returning nude images in these searches during the first three year litigation perhaps believing this would result in not being added.

See Dkt # 73 # **4** Exhibit **BING**

15. When the US Title 17 §106A claim was misinterpreted to not be protecting the Internet, in error, Microsoft Corporation began return of Mr Neeley’s nudes as well as scores of nudes not done by Mr Neeley.

IV. Federal Communications Commission “FCC” **Federal Communications Commission Nonfeasance**

15. The Federal Communications Commission (FCC) regulated wire communications when they were the only way to deliver communications across the ocean. When wire communications as described in the Communications Act of 1934 evolved to be a worldwide apparatus connected to either end of the wire the FCC abandoned regulation of content by wire. The FCC reports not regulating wire as is obvious by looking at the record and comparing this to CBS v FCC, (06-3575) and attempting to understand how the nude images of the Mr Neeley are transmitted by wire and how searching for Teri Weigel by wire results in transmissions by wire of explicit pornography. Children must lie and be unsupervised or only search for “Curtis Neeley” at <google.com>.

Prayer for injunctive and punitive relief

16. Mr Neeley seeks creation of a nonprofit Search Engine Alternative that does not violate US Title 17 after revised to acknowledge the Human Rights to Attribution and uses income to offset taxes and is controlled by an elected board with board members representing the States based on population. Mr Neeley asks for jury assistance in establishing a just compensation beyond Mr Neeley's traumatically brain injured mind's abilities to imagine since a JURY award is not subject to being set aside or reduced for violating Due Process, as will be claimed.

17. Defendant NameMedia Inc who instigated this action and who acted maliciously should face no less than 500,000 in statutory damages ordered awarded and rights to the domain <photo.net> awarded to Mr Neeley since initially used to defame Mr Neeley and punitive award as set by a jury.

18. Defendants Google Inc and Microsoft Corporation should be ordered to cease return inappropriate nude results by Mr Neeley not allowed broadcast on daytime television for all uses of the Mr Neeley's personal name as a temporary preemptive injunctive order made unquestionably necessary during this litigation and maturing to become permanent after trial.

FCC Injunctive Relief

19. Mr Neeley prays that Federal Communications Commission be ordered to regulate wire communications as defined exactly in 47 U.S.C. §315 ¶ (52) but not regulated in an ultimate act of hypocrisy. The FCC should be ordered to require that all computers attached to one end of the common carrier “wire” be regulated and that the wire division of the FCC create a search engine and require mandatory self-rating of computers attached to the wires initially called “the Internet” and establish fines for wire communications of indecency to minors. A period of 180 days shall pass before policing of Wire Communications would begin where connecting a file to “wire” and disclosing the “location” wherein a search engine might index or disclose the file or location is considered “communications by wire”.

19. Search engines indexing copies of indecent content or content locations would be treated as conspiring transmitters of the indexed indecency as if the search engine had originally communicated the indecency due to gathering the indecency and then choosing to republish the indecency or location for profit.

20. The FCC should be ordered to cease all internal use of the term the “Internet” except as the term for the early unregulated wire communications venue.

21. The FCC should be ordered to regulate wire browser distribution where all “browsers” must be FCC “approved” and browsers must have a plug-in or mechanism where the FCC “robot exclusion protocol” prevents display of any wire location not rated or rated above the computer purchaser’s settings. A website directory rated “R” would therefore never be displayed on a computer set to only view “G” websites.

22. The Robot Exclusion Protocol (“REP”) would be used to rate directories of the computer attached to one end of the wire and “REP” would be made mandatory by the FCC wire division. The FCC would handle fining for wire communications when not rated or rated inconsistent with current FCC television and radio standards just as the FCC does now for television and radio.

23. Extra-national violations of the established REP would require that no search engine list the violator or acquire the same liability or fine the extra-national violator would have had.

24. The FCC search engine profits would fund the wire division of the FCC and fund Social Security, Medicaid or otherwise offset taxes.

25. **Curtis J Neeley Jr., MFA realizes that this prayer contains no “windfall” damages whatsoever and Mr Neeley simply desires that the right thing be done to finally establish wire communications as a borderless common carrier that is safe for children.**

Respectfully Submitted,

Curtis J Neeley Jr., MFA