

**No. 11-2558**

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**IN THE UNITED STATES  
COURT OF APPEALS**

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**FOR THE EIGHTH CIRCUIT**

NameMedia Inc.,  
Google Inc.

**Appellees,**

**vs**

Curtis J Neeley Jr., MFA

**Appellant.**

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**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**

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***REPLY BRIEF OF APPELLANT***

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Curtis J Neeley Jr., MFA, Appellant,  
Curtis J. Neeley Jr., *Pro Se*  
2619 N Quality Lane Suite 123  
Fayetteville, Arkansas 72703  
(479) 263-4795

## **SUMMARY, AND STATEMENT REGARDING ORAL ARGUMENT**

1) This appeal involves abuse of discretion by the District Court and misinterpretation of Statutes as well as application of unconstitutional USC 17. Rather than repeat the initial brief and upset the Eighth Circuit, Curtis J Neeley Jr., MFA will very concisely address the most egregious errors repeated by each appellee in briefs.

2) Curtis James Neeley Jr. MFA respectfully herein advises the Eighth Circuit panel that neither Appellee Brief sought oral argument. Mr Neeley wishes no longer to argue orally but feels a case with such precedential impacting results might warrant oral argument and, if desired, could present the case in thirty minutes and would attempt to professionally present despite being a brain damaged, paralyzed, pauper with no legs.

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# TABLE OF AUTHORITIES

## Statutes

### **Constitution: Article I, Section 8, Clause 8**

*To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;*

**47 U.S.C. §230** See Appellant Brief pp. 34-37 for full text.

**47 U.S.C. §153 ¶(52)**

#### **(52) Wire communication**

*The term “wire communication” or “communication by wire” means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.*

**17 U.S.C.**

**Visual Artists Rights Act of 1990 (“VARA”), 17 U.S.C. § 106A**

## Treaties

### **Berne Convention Article 6bis**

*(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work **and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.***

*(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.*

*(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.*

## **Berne Convention Article 9**

*(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.*

*(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.*

*(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.*

1. The United States is copy[+]right backwards, yet alleged to agree to the preceding text of the Berne Convention on March 1, 1989. The United States asserted these rights adequately protected by various unnamed civil laws and this Congressional Act trumps any history of case law addressing any portion of USC 17. In effect, this international treaty made the ancient and archaic copy[+]right ritual or rite enshrined in USC 17 unconstitutionally vague and unenforceable.

2. The Berne Compact Implementation Act of 1989 by Congress renders 17 U.S.C. §411(a) cited as an authority by NameMedia Inc on p.6 an egregious error of law. NameMedia Inc is thereby asking this Court to ignore Congress *further* in this case and deny the fact that copy[+]right is a personal human right recognized *marginally* in the United States by Treaty.

# **INTRODUCTION**

1. The District Court was in egregious error due to dismissal of Mr Neeley's copy[+]right claims even without prejudice. Neeley's lack of registration and refusal to be *blackmailed or coerced* into purchasing "licenses to sue" otherwise called "copy[+]right registrations" should not matter and, in fact, continues perpetually.

2. The District Court subsequently erred by misinterpreting and revising 17 U.S.C. §106A such that Neeley's photographs were given no protection against disparaging conduct repeated by NameMedia Inc despite repeated requests and demands to cure this intentional act of distortion.

3. The District Court abused its discretion by repeated denial of Neeley's motions to amend without describing any defect for correction and conflicting with Congressional intent of the Rules of Civil Procedure. Besides this "Conflict of Powers" rationale, this abuse of discretion violated Seventh Amendment rights and gave District Court the power of a king or dictator in spite of the Bill of Rights. This NameMedia alleges this "*patently meritless*".

# **ARGUMENT**

## **a. Improper denial of requests to amend.**

1. Rights Neeley first called copy[+]right, using colloquial language used by most United States photographers are marginally secured by the ancient/archaic Clause 8 of the Constitution. This archaic *authority* listed above on p.4 allows Congress authority to encourage art creation.

2. This backwards United States rational allows publishers like Google Inc and NameMedia Inc to abuse the rights of artists to be secure in their personal visual creations or the fundamental human right alleged secured in other Statutes and not requiring wholesale revision of the United States' unconstitutional copy[+]right law.

3. Neeley's continued refusal to consider purchasing copy[+]right registration has absolutely no affect on these personal rights in spite of the repetitive abuses of discretion this caused. Failure to correctly call these VARA-rights instead of copy[+]rights caused abuse of discretion to combine with misinterpretation of statute leading ro improper judicial revision of statute despite the common meaning of language passed by Congress as revealed concisely in section "c" below.

**b. Marginally Constitutional Title 17 §106A “VARA”**

1. United States Title 17 §106A passed by Congress roughly one year after The Berne Compact Implementation Act of 1988. Neeley claims this law unconstitutional on its face. This claim has existed with an advisement to the Attorney General and Federal Communications Commission since Dkt. 36 January 5, 2010 or just before Google Inc republished three additional figurenudes as allowed by the malfeasant FCC on unregulated WIRE from book(s) scanned by Google Inc in New York libraries and not “*posted*” anywhere by Neeley.

2. Three additional figurenudes were then displayed on the common carrier “Wire Communications” venue allowed to be unregulated by the malfeasant FCC to minors and Muslims in a manner that disparages Neeley. These new actions made the claim ripe for amending due to being done intentionally AFTER the amended complaints were allowed. Further amending was not allowed by the District Court’s continuing to abuse discretion in order to support anonymous viewership of “legal nudes” and “legal pornography”, while citing unconstitutional Eighth Circuit judicial rational called “*Dennis Factors*”.

**c. Misinterpretation(s) of common language.**

1. USC 17 §106A was soundly misinterpreted by District Court in a clear error and this was repeated in each Appellee Brief similar to attempting to argue that two plus two is five despite this obvious falsehood. The District Court struggled to support anonymous viewership of “legal nudity” and “legal pornography” calling the misinterpreted provision “*convoluted*” instead of the simple historic use of common language.

2. The misinterpreted portion the District Court called “*convoluted*” is both historic and clear. The simple historic use of language in §101 of “*electronic information service, electronic publication, or similar publication*” is concisely described as follows though common grammar.

3. **PUBLICATION** used in the phrase alleged to be “*convoluted*” by District Court is clear if recognized to be a simple comma separated list of nouns and NO verbs. One simple explanation of this common use of language equates to as follows with nouns retained and underlined.

“*one type service, characterized publication, or similar publication”*

The list of things specified is one service, one type publication, and similar types of publications.

3. NameMedia Inc mutilated or “*convoluted*” the meaning on p. 10 of their brief with the following allegation.

*“By the plain language of the statute, the appearance of the photos on the internet is an ‘electronic publication.’”*

This claim quoted above is exclusively true if photos appear on the Internet in a static fixation such as PDFs or other similar static objects thereby qualifying as publication(s)(noun).

4. None of Neeley’s exhibition quality photos are displayed anywhere to anonymous minors except in actions that are distortions copiously demonstrated in the District Court’s *mutilated* record for NameMedia Inc. These actions are “*distortion*” prohibited by §106A.

5. NameMedia ceased actions distorting Neeley’s visual figure nude art in January 2010. None of the distorted uses of Neeley’s rare and unauthorized figure nude art publications(verb) were done in books, electronic publication(noun), or other static displays by NameMedia Inc or Google Inc. District Court radically revised Congressional intentions as is now obvious or should be using “*the plain language of the statute*”.

6. The personal rights *marginally* recognized by USC 17 §106A DO NOT protect in the case where Google Inc scanned books in New York libraries and republished three figure nude images by wire because these three images were scanned from a book as is clearly not protected by the unconstitutional USC 17 § 106A in the clear meanings of language used and not “*convoluted*” in any way. Neeley claims USC 17 §411(a) as well as the entirety of USC 17 to be unconstitutional and has notified the Attorney General by certified mail as well as the FCC.

## **CONCLUSION**

1. There exists no logical action besides remanding this issue for trial with direction to permit amending to add the FCC as well as Microsoft Corporation and directing that injunctive relief be granted. NameMedia Inc and Google Inc were caustic and condescending in the Appellee Briefs and took as much time as allowed due to realizing that two plus two can be nothing but four and every day of unregulated wire communication means nearly millions in pornography income for Google Inc.

2. Neeley is not seeking windfall damages, if any at all, as determined by a jury. Neeley realizes that seeking regulation of wire communication by the FCC is long overdue and will make Neeley one of the least favored people on Earth to millions due to resulting in ending wire communication of “legal nudity” and “legal pornography” to anonymous people who refuse to disclose an authenticated identity.

3. The sweeping international impact of this case will, no doubt, require further consideration of the relevant issues but several factual issues will require trial. The Supreme Court will eventually be faced with requiring wire communications disguised as the Internet to be regulated by the FCC. This injunctive relief requested currently from the Eighth Circuit will, in fact, increase the Free Speech nature of wire communications as well as making wire communications more internationally accessible.

4. This action must first be affirmed by the Eighth Circuit panel, as requested by Appellees in error, and then by the Eighth Circuit *en banc* as well as being denied certiorari by the Supreme Court in order for wire communications disguised as the Internet to remain the Earth’s unregulated wire venue and not the “*unique and wholly new medium*” called once in obvious error by the Supreme Court.

5. This reply is 2,591 words in fourteen point type as well as spaces left blank to make the reply easier to follow like a pamphlet by preventing paragraphs broken by changes of page.

6) 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 and reputation of the disabled visual artist, Curtis J Neeley Jr., MFA. by dynamic image searches on unregulated wire communications. These searches are now malicious violations of USC 17 §106A and are not excluded “*electronic publication(noun)*” by any stretch of the language regardless of how “*confounded*” and distorted it is by the District Court.

7. Neeley will continue figure nude art and art of “found scenes” and use wire mediums to share these with adults. The following search queries dynamically infringe the personal rights of Neeley currently but only when done at Google Inc and Microsoft Corporation websites.

8. The following searches do not result in electronic publication(s)(noun) but are dynamic searches that may or may not return nudes images due to some *mysterious* search algorithm. These searches did when Neeley last checked as noted below and recorded in publications(noun) of PDFs in the mutilated District Court record.

- Search query: curtis neeley site:redbubble.com (google.com)(bing.com)(ask.com)(lycos.com) Google Inc exclusively displays nine figurenudes.
- Search query: curtis neeley site:deviantart.com (google.com)(bing.com)(ask.com)(lycos.com) Google Inc exclusively displays six figurenudes.
- Search query: curtis neeley site:en.artring.net (google.com)(bing.com)(ask.com)(lycos.com) Google Inc exclusively displays ten of Neeley's figurenudes.
- Search query: curtis neeley (google.com)(bing.com)(ask.com)(lycos.com) Google Inc displays three figurenudes in "child safe" searches.
- Search query: curtis neeley site:curtisneeley.com (google.com)(bing.com)(ask.com)(lycos.com) Google Inc displays scores of images despite (robots.txt).
- redbubble.com/people/curtisneeley/portfolio
- curtisneeley.deviantart.com/gallery/
- artistrising.com/galleries/CurtisNeeley
- fineartamerica.com/customshop/curtis-neeley.html
- zazzle.com/curtisneeley
- shop.cafepress.com/curtis-neeley

9. Each full UnRgulated wire Location above minus (http://) should be "live link" as well as every search engine name. Google Inc can be seen above carefully trafficking in inappropriate visual art to minors and disregarding the robots exclusion protocol at <curtisneeley.com> as well as this Eighth Circuit appeal assuming nothing will result.

10. Neeley respectfully asks the Eighth Circuit to order the FCC to regulate wire communications and order Google Inc and Microsoft Corporation to cease returning nude images done by Neeley and disclosed with adult filtration bypassed now for minors and others by Google Inc. The amended complaint will leave numerous issues for trial and appeal results will immediately make this the most universally impacting case EVER or result in absolutely nothing but more legal wrangling in United States' overworked courts perhaps eventually leading to complete dismissal.

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)(ii) because: this brief contains 2,591 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 reply has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point type in Times New Roman typeface and is 2,121 words.

Respectfully and humbly submitted,

/s/ Curtis J Neeley Jr .

Curtis J Neeley Jr., MFA

Date September 14, 2011 .