IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF ARKANSAS

U.S. DISTRICT COURT
WESTERN DIST ARKANSAS
FILED
JUN 16 2014
CHRIS R. JOHNSON, Clerk
By
Deputy Clerk

Curtis J. Neeley Jr. **Plaintiff**

CASE NO. 14-cv-5135

5 Federal Communications Commissioners,
FCC Chairman Tom Wheeler et al,
US Attorney General Eric Holder Esq,
Microsoft Corporation,
Google Inc.

Defendants

Supplemental Reply Brief Supporting Reply or Reconsideration of Dismissal, Contempt, and Sanctions Still Pending for Order after the Show Cause Hearing

This Plaintiff stated during the hearing under oath to believe no further filings would be made because of not realizing ONLY Prosecuting Attorneys or licensed attorneys could seek civil damages for criminal, communications privacy violations and criminal computer frauds as told in open court during the hearing. It was apparent early in the hearing Honorable Timothy L. Brooks clearly intended to dispose of the claim presumed by this court to be *res judicata*. Curtis J. Neeley Jr. realized there would be dismissal, contempt, and sanctions. This realization quickly short-circuited the Plaintiff's ability to communicate contemporaneously. This communications disability is a result of a severe traumatic brain injury despite intensive speech therapy because a disability not realized can't be addressed.

This Plaintiff affirmed a belief of misreading criminal law and begged for forgiveness. Nothing that was sworn to was not believed to be true at the time sworn to but Honorable Timothy L. Brooks was clearly incorrect to tell this Plaintiff that civil damages had to be pursued by another party. The attached complaint should now be served with a stipulation like described further herein. If there is a law or regulation preventing this claim it is begged to be pointed out clearly in the order filed if already composed but not entered this is prayed to be treated as a motion for reconsideration.

1. Honorable Timothy L. Brooks interpreted the Wiretap Communications Act from 1968 as ONLY protecting the privacy of "*contemporaneous*" communications and ruled this law does not protect this Plaintiff in error and is not alone in this incorrect belief. Congress is, however, normally required for alteration of United States' statutes. "*Every circuit court to have considered the matter has held that an "intercept" under the ECPA must occur contemporaneously with transmission, not storage.*" *Fraser v. Nationwide Mut. Ins. Co.*, 352 F. 3d 107, 113 (**3rd Cir. 2003**); *United States v. Steiger,* 318 F.3d 1039, 1048-49 (**11th Cir. 2003**); *Konop v. Hawaiian Airlines, Inc.*, 302 F.3d 868 (**9th Cir. 2002**); *Steve Jackson Games, Inc. v. U.S. Secret Serv.*, 36 F.3d 457 (**5th Cir. 1994**); *Wesley College v. Pitts*, 974 F.Supp. 375 (D.Del.1997), summarily aff'd, 172 F.3d 861 (**3d Cir. 1998**); *United States v. Meriweather*, 917 F.2d 955, 960 (**6th Cir. 1990**). *Hoyle v. Dimond, Dist. Court*, WD New York 2013 in the **2nd Cir. 2013**

2. Honorable Timothy L. Brooks adopted the judicial interpretation of "intercept" under ECPA as a "matter of law" making this Plaintiff's claims absurd and warranting disposal by the Western District of Arkansas due to the complaint becoming complete "*gobbledygook*" after "*contemporaneous*" was added to a United States law by the ruling oligarchy though never intended or even implied by Congress.

> **intercept** verb \in-ter-sept\ : to stop and take someone or something that is going from one place to another place before that person or thing gets there.[1]

1 merriam-webster.com/dictionary/intercept

contemporaneous \con-tem-po-ra-ne-ous\ : existing or happening during the same time period[2]
gobbledygook \gob-ble-dy-gook\ : wordy and generally unintelligible jargon[3]

3. Elucidation now follows per research available "online"[4] without EVER using Google Inc search. There is disagreement between the U. S. circuits about whether computer communications are "*intercepted*" if acquired while in storage as defined in 18 U.S.C. § 2510(17). Circuit splits are one of the primary rationals for direct Supreme Court appeal that will now be pursued due to circuit and international differences in communications privacy laws. Honorable Timothy L. Brooks ignored the right to protect communications privacy and personal honor in the U.S. despite the "Progress Clause" authorizing Congress to protect communications privacy "for a time" for authors of original immoral material as well as 18 U.S.C. §2511 providing for protection of privacy.

4. The **Ninth Circuit** holds for a communication to be "*intercepted*" within the meaning of ECPA, "*it must be acquired during transmission, not while it is in electronic storage.*" See *Konop*, 302 F.3d at 878. This implies communications in electronic storage are possibly not being transmitted or one flavor of judicial "*dogma*" among many.

5. The **First Circuit** held, however, "*email messages*" are "*intercepted*" when they are acquired while in any "*transient electronic storage that is intrinsic to the communication process*." *United States v. Councilman*, 418 F.3d 67, 85 (1st Cir. 2005) (en banc). The **First Circuit** suggests electronic communications can be in "*electronic storage*" and during transmission at the same time. See *id.* p 79.

2 merriam-webster.com/dictionary/contemporaneous
3 merriam-webster.com/dictionary/gobbledygook
4 cybertelecom.org/security/ecpaexception.htm

6. How close the time of acquisition must be to transmission remains an open question in order to qualify as criminal "*interception*". It is clear to common people the judicial "*gobbledygook*" tacked into U.S. law does not mean simultaneous depending only on which oligarch twists this law to fit a desired ruling.

7. The **Eleventh Circuit** suggests "*contemporaneous*" must mean a communication "*in flight*" long after homing pigeons became obsolete. *United States v. Steiger,* 318 F.3d 1039, 1050 (11th Cir. 2003). The **First Circuit** held the "*contemporaneity*" requirement could be read to exclude only acquisitions "*made a substantial amount of time after material was put into electronic storage*" in *re Pharmatrak, Inc. Privacy Litigation*, 329 F.3d 9, 21 (1st Cir. 2003) This "reading" would also require a Congressional amendment because "*contemporaneous*" is not found in 18 U.S.C. §2511, nor implied anywhere therein but was alleged to be current law in error during the show cause hearing.

8. The United States Court for the Western District Court of Arkansas ruled this Plaintiff's claims regarding private communications being intercepted by Google Inc and Microsoft Corporation are nothing but "*gobbledygook*" warranting dismissal and sanctions. These mistakes of law are now protected by absolute judicial immunity.

9. This Plaintiff is determined to elucidate the illegal violations of private communications now being ignored by the United States' oligarchy twisting the English language and allowing criminal interception of private communications like when copy-right was written copy[rite] but spelled wrong in the [sic] "Copyright Act of 1790". This legal term remains misspelled preventing the U.S. from being an honorable nation subject to fair rule of law(s) protecting basic human rights like exist in Europe today.

10. The continuing deceptions by the ruling oligarchy explain partially why the United States is less honorable than most countries in the European Union today in law besides the fact most E.U. nations mandate judicial retirement at ages 68-70.

11. Google Inc could never have developed without the *Reno v ACLU* error of an immoral oligarchy[5] allowing crass violation of the right to control communications of potentially immoral or embarrassing and retracted material "for a time" without solicitations for indexing, plagiarism, or republications ever having been given.

12. Honorable Timothy L. Brooks ruled authors, like this Plaintiff, have no First or Fourth Amendment "Good Samaritan" rights to privately communicate "adult art" or other art <u>only</u> to logged-in parties despite the "Progress Clause" and 18 U.S.C.§2511.

13. This ruling is <u>absurd</u> and should now be reconsidered in order to make a better book or movie ending about how United States became the "*Land of the Free*" for viewing evil "*online*" due to an oligarchy beginning with the *Reno v ACLU,* 521 U.S. 844 mistake. This "free speech" mistake is extended now so statutory criminal violations of communications privacy, for this Plaintiff or other "Good Samaritan" authors, are allowed by Honorable Timothy L. Brooks shortly after Senate coronation though exempted specifically from the *Reno v ACLU,* 521 U.S. 844, "47 U.S.C. §230" mistake that occurred in 1997 when written in 1995. *See* 47 U.S.C. §230(e).

5 merriam-webster.com/dictionary/oligarchy - : a country, business, etc., that is controlled by a small group of people : the people that control a country, business, etc. : government or control by a small group of people : government by the few : a government in which a small group exercises control especially for corrupt and selfish purposes; also : a group exercising such control.

14. Few people care enough today about protecting random children from indecent communications and relegat this duty to parents. The ruling oligarchy is determined to protect the attractive nuisance of "*evil online*" created in the disguise of "free speech" despite China having twice as many users of broadband today than the United States with less indecency "*online*".

15. Honorable Timothy L. Brooks implied willingness to stretch 18 USC §2511(2)(g)(i) out now to protect organized crimes done by Google Inc and Microsoft Corporation ensuring America will always be the "Land of the Free" for "*online*" evil regardless of attempts to avoid exposing children to labeled evil by "Good Samaritan" artists like this Plaintiff before these "evil" communications were illegally intercepted.

16. The statute twisted into excusing indulgences in private displays of communications (declared to be pornography or other age-restricted material) during the Show Cause Hearing follows for careful elucidation of this error.

> *(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—*
> *(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;*

The **general public** may NOT access the images marked as private "evil" by authors at <deviantart.com> except as criminally aided by Google Inc and Microsoft Corporation or other criminal image engine conspirator "*contemporaneously*". This is the crime now protected by Honorable Timothy L. Brooks due to this Plaintiff's valid, legal claim being called "*gobbledygook*" instead of submitted to a jury per U.S. law. The short, simple attached complaint should now be allowed but is "contemporaneously" intercepted by this Western District Court. See exhibit "Complaint".

17. Looking at the portion of the statute above and noting "*intercept or access*" are used together makes "*contemporaneity*" nothing more than judicial "*dogma*" allowing the current holding though being counter to clear United States law.

18. The abuse of private electronic communications of evil intended only for authenticated access "*contemporaneously*", like in this claim, compare to the violations of privacy for "strippers" when performances inside strip clubs are secretly recorded and broadcast on television and made accessible to anyone subscribing to two "stations". This compares to uses of only Google Inc or Microsoft Corporation image searches to criminally look inside an area where only authenticated adults are otherwise allowed. Does this "real-world" comparison to "*online*" make the immoral but allowed crime herein more understandable or simply further offend the ruling oligarchy?

19. The ability of an artist to create original "adult art" or other original art and then **exclusively control** use of this original creation of "adult art" or other immoral visual art "*for a time*" was alleged to be protected by various U.S. laws in the recent *Golan v Holder,* (10-545) holding.(*quote omitted*) The moral right to forbid display of original "adult art" or other original visual art to children was alleged to be supported by various U.S. laws besides the Copy[rite] act of 1790 as modified today but remaining misspelled after the *Golan v Holder,* (10-545) holding to create the United States' "porn-ter-net" of immoral free speech stretched out now around "Good Samaritan" disclosures.

20. The 1790 linguistic fraud by Noah Webster and an early career oligarch, Benjamin Huntington, created the most profitable organized immorality in all of history allowing ads to be sold on indexes built from unsolicited copies of potentially private communications because these were not hidden or labeled. This clear immorality is now extended by Honorable Timothy L. Brooks to include indexing of hidden communications labeled by "*Good Samaritans*" as not fit for public display.

21. The "Omnibus Crime Control and Safe Streets Act" of 1968 contains the "Wiretap Act" in Title III and is yet another various U.S. law being misunderstood after plead to protect Plaintiff's private wire communications though called "*gobbledygook*" in the show cause hearing. The definition of "*gobbledygook*" is wholly dependent on the speaker. "G*obbledygook*" has no meaning alone except language confusing one party.

22. It is interesting to this Plaintiff that "$ax^2 + bx + c = 0$" is "*gobbledygook*" to most people. Those who recognize "$ax^2 + bx + c = 0$" to be the quadratic equation are sometimes not aware this is the generalized form for the parabolic shape. It would be further "*gobbledygook*" or yet still more "*gobbledygook*" to state this is also the generalized form of a line when "a" is zero. The generalized form of a circle centered at point (h, k) is "$(x-h)^2 + (y-k)^2 = r^2$". It is then positively mathematical "*dogma*" beyond most minds on Earth when related to "$a^2 + b^2 = c^2$" or the Pythagorean Theorem understood generally since the Babylonians in 2000-1776 B.C. or around as far in the past as the human fetus was given protections of an individual person by clear law not considered in the honorable *Roe v Wade* ruling but included as an authority in the Eighth Circuit a*micus* filed by this Plaintiff in (14-1891). *See* Exodus 21:22-25.

23. Google Inc and Microsoft Corporation make billions violating the fundamental moral human right to control communications affecting honor like was described as "*gobbledygook*" when brought in this complaint though internationally recognized by the European Union Court of Justice against Google Inc recently. (May 2014)

24. This Plaintiff will never again pursue the "*gobbledygook*" claim brought in this complaint before any United States Court after a direct Supreme Court appeal and Eighth Circuit are denied without comment like an unnamed but identified SCOTUS Clerk addicted to pornography advised would be done if ever again before the Supreme Court attempting to "*fix the net*"and protect innocent but curious random children.

25. Europe will now quickly join China in exceeding the U.S. in online commerce because access to rated communications of evil will not still be called "free speech" and be broadcast in the wire medium against the wishes of the original immoral author.

26. Plaintiff asks Honorable Timothy L. Brooks to reconsider the clear mistakes now perpetuated after over five years and fine or sanction this Plaintiff only as will allow feeling honorable and fair after promoting display of -"adult art" considered by the originating artist(s) to be inappropriate for display to children or the random public. This ruling will allow labeled "adult art" to be shown to unauthenticated children anywhere by organized criminals like Google Inc and Microsoft Corporation for profit. Both criminal conspirators are aware JPG images should be rated for "bots" to categorize before publication as should NOW be mandated for all interstate communications of images by wire communications (47 U.S.C. §153 ¶(59)), to fulfill the FCC mission.

27. Congress should now be asked to fix the "*online*" wrong now allowed or promoted since *Reno v ACLU* using some imaginary "*[holy] new medium*" for waiving moral responsibilities for free "*wholesome pornography*[6]" or other "adult art" declared by even "Good Samaritan" authors to be inappropriate for display to minors in the Western District Court of Arkansas.

28. 47 U.S. Code § 230 – entitled "*[p]rotection for private blocking and screening of offensive material*" contains a subsection entitled "*(c) Protection for "Good Samaritan" blocking and screening of offensive material*". This exact section was held in the *Reno v ACLU,*521 U.S. 844 mistake to protect Google Inc, et al while building an index of anything including unlabeled offensive material and now even labeled offensive material authors do not wish random children to view as is clearly immoral.

29. The law obviously intended by Congress to protect minor children has been completely made into judicial "*gobbledygook*" by the United States' oligarchy or into "'*dogma*" doing exactly the opposite of the intentions of Congress.

30. This was now stretched out around even labeled "adult art" by Honorable Timothy L. Brooks in the first year of maybe a forty-plus year rule. The public may not notice or is addicted to freely accessing immorality or is addicted to feeling superior for not accessing immorality when free immoral communication distributions are allowed accessed by wholly unauthenticated "indulgences" via the "porn-ter-net".

6 Mr Neeley Jr does not believe ANY "pornography" is "wholesome" but this could not include the obscene.

31. "*Good Samaritan*" authors are generally immoral authors wishing for their own potentially immoral communications or communications identified as needing age restriction to not be shown to random public children. "Good Samaritans" are now wholly dis-empowered by Honorable Timothy L. Brooks invalidating private communications law. See 18 U.S.C. §2511 for the wholly invalidated statute.

32. Honorable Timothy L. Brooks holds authors have absolutely no human rights to control their speech or private communications except through not speaking or not creating art. This will be a sad conclusion to the book or "Christian movie" if not reconsidered now and corrected or during an Eighth Circuit or SCOTUS appeal.

33. When Congress writes U.S. laws, the language used is intended to be given the meaning normally understood by the public without judicial "*dogma*". "*Intercept*" has never had any "*contemporaneous*" aspect and does not have this today except as inserted by various circuit oligarchs. The private communications Edward Snowden "*intercepted*" and revealed to the world were not intercepted "*contemporaneously*" or while "*in flight*" but will help pursuit of privacy eventually despite being criminal.

34. Honorable Timothy L. Brooks "*intercepted*" this complaint and referred to this "*intercepted*" complaint as "*gobbledygook*" for being legally confusing though not done by any attorney and though *pro se* complaints should generally be read more broadly where validity is presumed rather than like here where *res judicata* was presumed.

35. Per FRCP Rule 11; This claim and the contentions made within are warranted by existing law and are supported by facts and honorable arguments for interpreting "*intercept*" with no "*contemporaneity*" aspect and using the common meaning generally held for "*intercept*" and like is, in fact, given in 18 U.S.C. §2510(4) as follows.

> *"intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.*

36. The organized criminal "*or other acquisition*" of private content done by Google Inc and Microsoft Corporation and factually supported with exhibits has no requirement for ANY "*contemporaneity*" as defined in the United States law until created by judicial "*dogma*" not agreed to by Congress or the international community but established by Article III oligarchs entitled to absolute judicial immunity for this immorality.

37. The short, simple complaint attached includes the computer frauds never before considered as well as the federal civil claims allowed per 18 U.S.C. §2520(b)(2) and civil claims authorized for violations of 5-41-103 by Arkansas law 5-41-106(a)(1). Federal jurisdiction is proper due to diversity of jurisdiction and this Plaintiff has clear standing. No United States' prosecuting attorney and no paid attorney is needed for pursuit of civil damages before an Arkansas jury in this federal court because the FCC is a party.

38. It is now prayed Honorable Timothy L. Brooks will carefully examine the short, simple complaint attached and the supporting affidavits entered during the hearing including university professor(s) and a professional photographer with a degree in photography and science. It was difficult to gather supporting affidavits so quickly but it was obvious to these supporters, including published Phd's, this complaint has never before been pursued. University of Arkansas law professors were approached but were generally on summer vacations or did not have time to adequately consider the affidavit.

39. Honorable Timothy L. Brooks told this Plaintiff from the bench in egregious error that only a prosecuting attorney could seek civil damages for these crimes and made it clear the decision to dismiss and sanction had already been made. This Plaintiff became scared realizing the Article III oligarch planned to ignore United States statute and the Arkansas laws that should apply to authorize a jury trial. The public will eventually become aware of these injustices after the miracles in this Plaintiff's life. Just watch.

40. Plaintiff is pursuing: 1) this private wire communications crime; and 2) the filed AR abortion law appeal *amicus* (14-1891); and 3) assisting with one "AR Marriage law" appeal *amicus*. These argue against any "*fixation*" on a single issue as alleged in open court besides various U.S. Court injustices like done again herein.

41. It is hard for this Plaintiff to feel or describe ANY United States' judicial process as worthy of respect or honor after Honorable Timothy L. Brooks authorized violations of 18 U.S.C. §2511, intended to protect private wire communications, and inaccurately described civil pursuit of damages for these crimes as impossible.

42. This current injustice will follow repeated improper rulings by this District Court that 17 U.S.C. §106A does not protect for "*online*" display of art protected by 17 U.S.C. §106A everywhere else. This court intends to rule "[*anything involving online or web searches*]" violates principles of *res judicata* though wire communications privacy pursuant to 18 U.S.C. §2511 was never before any court in the United States and is here called *res judicata* and is again a dishonorable ruling but is protected yet again by complete judicial immunity for United States' Article III oligarchy.

43. This Plaintiff noted no order was entered after ten business days and hoped it was due to having been wrong to assert: 1) a lack of standing for pursuit of civil damages for criminal communications violations; and 2) a failure to include diversity of jurisdiction in pleadings; and 3) a lack of standing for pursuit of civil damages for criminal computer frauds. This claim, however, has resolved as dishonorably as the other attempts for justice thus far.

44. This Plaintiff "*respects*" this court's decision(s) ONLY due to fearing the absolute power of federal courts to ignore laws passed by Congress at will. These ignored laws, like the Seventh Amendment, 18 U.S.C. §2511, and A.CA. 5-41-103 are taught in United States' schools but usurped by a judicial oligarchy immune to all except the history there will never be in the current end-times. Honorable Timothy L. Brooks is likely to still be on the bench when Christ returns. *See* Luke 21:32

45. This Plaintiff prays Honorable Timothy L. Brooks orders concurrently filed exhibit "Complaint" be filed and served along with a judicial declaration like:

> "The legal principle of *res judicata* does not apply to this complaint because no court in the Eighth Circuit has considered violations of private wire communications "*online*" per 18 U.S.C. §2511 or A.C.A. 5-41-103."

46. The prior tort of 17 U.S.C. §106A violations "*online*" was incorrectly alleged to be the same thing as the current pursuit of civil damages demanded for communications privacy crimes. This Plaintiff fears this District Court's determination to dismiss this claim without respect to United States law(s). The results of this litigation will be publicly accessible "*online*" forever. This party seeks a simple explanation for the dismissal and contempt citing authorities used besides judicial immunity for not following clear United States law(s). Allowing the attached complaint with certification of not being subject to *res judicata* is the ONLY honorable result and is now plead.

Respectfully Submitted[6],

s/Curtis J Neeley Jr.

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6 Please note the repeated use of honorable and respectful tenor herein indicates more a fear of further injustice than respect based on prior just and honorable United States Court rulings.

IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF ARKANSAS[1]

Curtis J Neeley Jr. **Plaintiff**

CASE NO. _14-cv-5135

5 Federal Communications Commissioners,
FCC Chairman Tom Wheeler et al,
US Attorney General Eric Holder Esq, **Defendants**
Microsoft Corporation,
Google Inc.

CERTIFICATE OF SERVICE

Plaintiff, Curtis J Neeley Jr, most respectfully affirms under penalty of perjury this will be filed and scanned by the United States Court for the western District of Arkansas and this scan will then be mirrored free "online" at TheEndofPornbyWire.org within 24 hours and be made available perpetually for free.

Respectfully Submitted,

s/ Curtis J Neeley Jr.

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1 also submitted before EVERYONE "online" on Earth at TheEndofPornbyWire.org