

# Exhibit A

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

CURTIS NEELEY, JR., )  
)  
Plaintiff, )  
)  
vs. ) Case No. 5:09CV05151-JLH  
)  
NAMEMEDIA, INC., NETWORK ) Fayetteville, Arkansas  
SOLUTIONS, INC.; and )  
GOOGLE, INC., )  
)  
Defendants. )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE ERIN SETSER,  
UNITED STATES DISTRICT COURT MAGISTRATE  
DECEMBER 6, 2010

A P P E A R A N C E S

For the Plaintiff: Pro se

For the Defendants: MS. JENNIFER HALTOM DOAN  
Haltom & Doan  
Crown Executive Plaza, Ste. 100  
6500 Summer Hill Road  
Texarkana, Arkansas 75503  
  
MR. MICHAEL H. PAGE  
Durie Tangri  
217 Leidesdorff Street  
San Francisco, California 94111

REPORTED BY:

RICK L. CONGDON, RMR, FCRR  
Federal Official Court Reporter  
P. O. Box 8493  
Ft. Smith, Arkansas 72902

PROCEEDINGS RECORDED STENOGRAPHICALLY; PRODUCED VIA C.A.T.

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1 name --

2 THE COURT: So you're saying --

3 THE PLAINTIFF: -- the whole page --

4 THE COURT: -- their system links it to you?

5 THE PLAINTIFF: Their system does; yes.

6 THE COURT: Okay.

7 THE PLAINTIFF: However, I say on the page, if  
8 you read the whole page, I detest Michael Peven's  
9 photography period, not just this one, but all of it, but  
10 besides this, this one in particular, and yet me saying  
11 that, makes this picture come up under my name? It don't  
12 seem very fair. It seems as though I am being told I  
13 cannot speak in a certain way. I am being prevented from  
14 speech.

15 THE COURT: Well, Mr. Neeley, do you, do you  
16 understand that when you post something on the internet,  
17 you're making a public posting? You understand that? When  
18 you go on there and blog about a photograph, it's likely  
19 that it's going to be -- your comment and your name are  
20 going to be linked to that photograph, so I'm having a hard  
21 time understanding why you fault Google for that. Would  
22 you not have a problem if just your posting was on there  
23 and it wasn't linked to the photograph, is that what you're  
24 telling me?

25 THE PLAINTIFF: As long as it does not come back

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1 up and show my name, yes, I will be able to do that. It  
2 will disappear in about a day or two, but --

3 THE COURT: It would -- I'm sorry?

4 THE PLAINTIFF: It will disappear by tomorrow.

5 THE COURT: What would disappear by tomorrow?

6 THE PLAINTIFF: The picture.

7 THE COURT: That -- Mr. Peven's picture?

8 THE PLAINTIFF: Yes.

9 THE COURT: You're saying it's going to be off  
10 the internet by tomorrow?

11 THE PLAINTIFF: No. It will no longer return for  
12 my name.

13 THE COURT: How is that happening?

14 THE PLAINTIFF: Because I have edited my blog  
15 entry. I have said -- so it no longer links to this  
16 picture.

17 THE COURT: So you were able to do that yourself?

18 THE PLAINTIFF: In theory I believe I have. In  
19 other words, it has not happened yet, but it should happen  
20 today.

21 THE COURT: So why are you suing Google then  
22 asking them to break the link to this if you, in fact, can  
23 do it yourself?

24 THE PLAINTIFF: I believe they should respect my  
25 wishes and not tell me that since you said you don't like

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1 THE COURT: Okay. Anything further you would  
2 like to offer, Mr. Neeley?

3 THE PLAINTIFF: I believe that's all. I believe  
4 that's all.

5 THE COURT: Okay. For the defense, is there  
6 anything you-all would like to offer?

7 MR. PAGE: No evidence to present, Your Honor.  
8 If you want closing arguments, we will be happy to.

9 THE COURT: Before we get to that stage, I would  
10 like to address Mr. Neeley. In your pleadings to the  
11 Court, you have made comments that could result in you  
12 being held in contempt of court. You have made comments  
13 regarding Judge Hendren and it hasn't just been pertaining  
14 to his rulings. You've made comments referring to him as  
15 senile, as logically challenged. Those comments can result  
16 in you being held in contempt of court. I'm not saying I'm  
17 going to do that right now, but I think that may be an  
18 issue Judge Hendren takes up with you. You've also made  
19 comments about opposing counsel that really have nothing to  
20 do with the merits of this action. They are more in the  
21 line of personal attacks. Now, I know Judge Hendren has  
22 entered one Order in this case. Do you recall that? He  
23 entered an Order stating that if you did not refrain from  
24 such comments, you could be sanctioned. Do you recall  
25 that, Mr. Neeley?

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1 dismissed, Mr. Neeley. And there's no reason for those  
2 comments. You did fine here today presenting yourself.  
3 You were very respectful to the Court. You were very  
4 respectful to opposing counsel. So what I'm getting at is  
5 those comments are not necessary. And they will only  
6 hinder your pursuit of this litigation. I will also stress  
7 that when Judge Hendren or myself have made a ruling in  
8 this matter -- now, I will issue a Report and  
9 Recommendation. You will have an opportunity, if I don't  
10 rule in your favor, to file objections to that, but any  
11 final Order, that is a final Order. You don't get to keep  
12 renewing your requests for relief. You have to accept the  
13 answer from the Court. When the case is finally decided,  
14 then you appeal it to the Eighth Circuit and you can take  
15 the issue up with them, but you need to refrain from making  
16 any comments about senility, someone being logically  
17 challenged. Those are harassing comments. They are --  
18 there's no doubt they are contemptuous. And Judge Hendren  
19 would have the absolute right to hold you in contempt of  
20 court for making those comments. Unless you've got a basis  
21 for those comments, and I do not believe there's any basis  
22 for those comments, other than that you disagree with his  
23 rulings. They're contemptuous. And it will be up to him  
24 to decide whether to hold you in contempt of court. And  
25 you need to refrain from making such comments about

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1 opposing counsel. I do not want any further e-mails to my  
2 settlement account. You were directed to send one e-mail  
3 regarding the settlement value of your case. I've been  
4 flooded with e-mails. I will no longer accept those  
5 e-mails. Miss McGruder, do I have a settlement statement  
6 from Mr. Neeley?

7 MS. MCGRUDER: You recently asked him to file  
8 one. It has not been filed yet, and you did not give a  
9 deadline for that.

10 THE COURT: Okay. I want -- I think I will limit  
11 it to a five-page settlement statement that specifically  
12 addresses which is my Order. That's it. Once I get that,  
13 I want no further e-mails from you. That e-mail account is  
14 for settlement purposes only, it is not for ex parte  
15 communications with myself or my law clerk. Do you  
16 understand that, Mr. Neeley?

17 THE PLAINTIFF: Yes, ma'am.

18 THE COURT: If I continue to receive those  
19 e-mails, I will consider taking action in this matter. And  
20 I believe that Judge Hendren will caution you in the same  
21 way that I have today, and what I really want to stress to  
22 you today is it's not necessary to go into personal  
23 attacks. It's not necessary to file motions asking for  
24 reconsideration over and over. You're bogging your case  
25 down. If you want your case to proceed, you accept a

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1 ruling, you move on, and you'll get a final resolution of  
2 your case. Now, it may not be the resolution that you  
3 want, but then you'll have your opportunity to appeal.  
4 Okay? You did a good job here today. You were very  
5 respectful, so I know you have the ability to do that, and  
6 I think you'll -- you represented yourself fine. You are  
7 articulate. You are intelligent. And if you'll use those  
8 skills in your pleadings, your case will progress just  
9 fine. If you do not and you continue to make the types of  
10 comments you have and file the types of motions that you  
11 have, you risk being sanctioned, your pleadings being  
12 stricken. You can be held in contempt of court and  
13 possibly your case even being dismissed, Mr. Neeley. Do  
14 you understand that?

15 THE PLAINTIFF: Yes, ma'am.

16 THE COURT: Okay. Is there anything you would  
17 like to state in response?

18 THE PLAINTIFF: I apologize for having offended  
19 everyone and I do not mean to offend Miss Doan, and I mean  
20 to -- did not mean to offend you. I mean, I did -- when I  
21 did say what I did, I meant to offend you, but I shouldn't  
22 have. I'm sorry.

23 THE COURT: Okay. And I appreciate that,  
24 Mr. Neeley. I hope that you can have a clean slate from  
25 here on as you proceed with your litigation. It showed

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1 me here today that you could take care of the problem  
2 yourself or you could at least make some efforts to do so,  
3 so I would caution you that you need to strongly consider  
4 doing that. You need to really look at the heart of this  
5 matter and what it is that you are upset with, and if it  
6 truly is, as you say, that minors and Muslims are viewing  
7 your pictures and that is so offensive to you, then take  
8 steps. If you can take steps -- I know I certainly would,  
9 if I had something going on that was offensive to me and I  
10 personally could take some steps to take care of it.  
11 That's called personal responsibility, Mr. Neeley. And you  
12 need to do that. There could be consequences if you do  
13 not. You cannot just sue someone and drag them through  
14 litigation for years when there's something you could do to  
15 prevent the problem you are complaining of. Do you  
16 understand that, Mr. Neeley?

17 THE PLAINTIFF: I do understand that.

18 THE COURT: You got any response to that?

19 THE PLAINTIFF: I believe I have done everything  
20 I can do other than going back and undoing everything I've  
21 done.

22 THE COURT: Can you not go contact Wikimedia?

23 THE PLAINTIFF: I will go contact them, of  
24 course.

25 THE COURT: You are going to contact them, is

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1 that what your --

2 THE PLAINTIFF: Yes. I will go online and ask  
3 them if they will put a robotic exclusion protocol on that  
4 page so it not become searched by Google.

5 THE COURT: Okay. You are making that  
6 representation to the Court, Mr. Neeley, so I will hold you  
7 to that representation.

8 THE PLAINTIFF: I will do that today.

9 THE COURT: Okay.

10 THE PLAINTIFF: Well, whenever I get home. I  
11 will ask them --

12 THE COURT: Tell me, if you do that, and if they  
13 remove the pictures, what's left of your claim here? What  
14 other grievance do you have against Google?

15 THE PLAINTIFF: That they have restricted me from  
16 having free speech.

17 THE COURT: You don't have that claim. That is  
18 not a claim in your Complaint, Mr. Neeley, so if they  
19 remove the pictures, the two claims you have, I guess  
20 you've got a trademark infringement claim, but your outrage  
21 claim, which is based on access to these pictures, if you  
22 are able to contact Wikimedia and they remove those  
23 pictures, does not resolve your outrage claim?

24 THE PLAINTIFF: Mostly, yes, ma'am.

25 THE COURT: Okay.

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MR. PAGE: Your Honor, could I clarify one thing? What Mr. Neeley just proposed doing was trying to create a situation in which Wikimedia -- he would leave his photographs in place on Wikipedia/Wikimedia, but ask them to try to block Google's indexing from seeing them. The solution is much simpler. If he doesn't want people seeing his photographs, take them off the internet. He is not proposing to remove his photographs from Wikimedia. He's proposing to have to be able to leave them up there for anyone to see there, but keep Google from indexing them.

THE COURT: Well, is there a problem with him doing that?

MR. PAGE: Not to me, but if it, if in fact it doesn't --

THE COURT: Are you saying Wikimedia might not be amenable to that?

MR. PAGE: It may be a problem with Wikipedia. It certainly would be a problem to the Muslims and children that Mr. Neeley is trying the protect, if that is, in fact, what he's doing. If that is his concern, he should simply take the photographs down. And if he fails, I don't want the Court to have the impression that he's done everything he could to keep these from showing up in Google searches. Everything he could is simply remove the photographs.

THE COURT: Mr. Neeley, what is your intention?

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1           And I'm not trying to force you into doing something you  
2           don't want to do, but I am saying that if you sue someone  
3           alleging they are doing something to cause you harm when  
4           you, in fact, may be the cause of that harm, there could be  
5           repercussions for that. They have had a lot of attorney's  
6           fees expended in this case, and if it turns out that that  
7           claim was meritless and you could have prevented this harm,  
8           you might be responsible for some attorney's fees. There  
9           are repercussions to suing somebody when there's no basis  
10          for the claim. So what I'm saying is if it is possible for  
11          you to alleviate the harm you are complaining of, what's  
12          your intentions on how -- do you have any intention to try  
13          to do that, and if so, what is that intention?

14                   THE PLAINTIFF: I will, I will, first of all,  
15                   attempt to ask Wikimedia/pedia to do a robotic exclusion  
16                   protocol. However, if that is not possible, it's not like  
17                   a blog posting. It is actually an article that I submitted  
18                   information to them, and so they have rights to use it.  
19                   It's kind of like me saying, okay, I give it to you  
20                   forever, but, oh, I just was kidding. That's kind of hard  
21                   to say. How can you give something away free and then,  
22                   say, okay, no, not forever, just for two weeks or three  
23                   weeks or a year? I can try. I don't know what the rules  
24                   are.

25                   THE COURT: So you're not sure if they will, they

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1 will grant your request, is that what you're saying?

2 THE PLAINTIFF: I'm not sure if they will  
3 grant --

4 THE COURT: Okay. What would you request them to  
5 do, to remove all of your photographs or block Google from  
6 indexing them?

7 THE PLAINTIFF: Right. First, I will ask them to  
8 block Google from indexing with their robotic exclusion  
9 protocol; in other words, do not show thumbnails from these  
10 pages, and then if that is not acceptable to them, I guess  
11 I will try and see about getting the photographs deleted.  
12 And if that's something I can and do, then I can do that, I  
13 will do that immediately, but if there is something inside  
14 of my profile that I believe have been picked up, I can get  
15 rid of those, and if I can, I will.

16 THE COURT: Do you agree, Mr. Neeley, that that  
17 might help alleviate some of the problem you're complaining  
18 about?

19 THE PLAINTIFF: It would.

20 THE COURT: Okay. And do you have any objection  
21 to taking that action you just stated you intend to take?

22 THE PLAINTIFF: I do not.

23 THE COURT: Okay. Okay, Mr. Neeley, what I'll do  
24 then is if you have no objection to this, I will take this  
25 motion under advisement. It's hard for me to say that

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1           it's -- there's any, you know, any reason to grant  
2           injunctive relief until I see whether you've been able to  
3           remove the pictures and get the relief that you're seeking,  
4           so I think my ruling would be a little bit premature. So  
5           what I would like to do is take this under advisement,  
6           leave the record open. I have asked for a couple of  
7           exhibits from defense counsel. I think the disclaimer, is  
8           that correct, on Wikimedia --

9                   MR. PAGE: Yeah, the Wikimedia posting pages we  
10           will forward to you.

11                   THE COURT: Okay. Go ahead.

12                   MR. PAGE: Your Honor, we would, we would urge  
13           the Court simply to deny the motion before Mr. Neeley plays  
14           around with Wikipedia. There are endless grounds to deny  
15           this regardless of whether it's possible to take down his  
16           media pages. If we were to posit that it was physically  
17           impossible to do anything with them, it should be denied on  
18           so many other grounds, but it should not be left hanging,  
19           but that, obviously, if you wish to wait to see what he  
20           does --

21                   THE COURT: Well, I would like to leave the  
22           record open and take the matter under advisement to see if  
23           Mr. Neeley is taking some -- he's represented to the Court  
24           that he is going to take some action to alleviate the real  
25           problem in this case. That might, you know, resolve in

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