

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-20427-WILLIAMS-TURNOFF

DISNEY ENTERPRISES, INC.,  
TWENTIETH CENTURY FOX FILM CORPORATION,  
UNIVERSAL CITY STUDIOS PRODUCTIONS LLLP,  
COLUMBIA PICTURES INDUSTRIES, INC., and  
WARNER BROS. ENTERTAINMENT INC.,

*Plaintiffs,*

v.

HOTFILE CORP., ANTON TITOV, and  
DOES 1-10.

*Defendants.*

\_\_\_\_\_ /

HOTFILE CORP.,

Counterclaimant,

v.

WARNER BROS. ENTERTAINMENT INC.,

Counter-Defendant.

\_\_\_\_\_ /

**DECLARATION OF ANTHONY P. SCHOENBERG IN SUPPORT  
OF MOTION OF DEFENDANT AND COUNTER-CLAIMANT HOTFILE  
CORPORATION TO COMPEL DISCOVERY FROM PLAINTIFF AND  
COUNTER-DEFENDANT WARNER BROS. ENTERTAINMENT  
INC. OF WARNER'S TAKEDOWN INVESTIGATIONS**

I, Anthony P. Schoenberg, declare as follows:

1. I am an attorney at Farella Braun + Martel LLP and counsel for counterclaimant Hotfile Corporation ("Hotfile"). I have personal knowledge of the matters stated herein and, if called and sworn as a witness, I could and would competently testify to the facts set forth herein.

2. Attached hereto as Exhibit A are excerpts from a true and correct copy of the transcript of the 30(b)(6) Deposition of David Kaplan, taken on October 12, 2011.

3. Counsel for counter-defendant Warner Bros. Entertainment Inc. (“Warner”) originally designated the entirety of the deposition transcript of David Kaplan as Highly Confidential pursuant to the terms of the protective order entered in this case. Counsel for Warner has since agreed to re-designate as non-confidential only the portions of the transcript excerpted in Exhibit A. The remaining portions of the deposition transcript remain designated as Highly Confidential, so Hotfile has submitted only the non-confidential portions of the transcript necessary for the purposes of this motion in order to avoid having to file the present motion under seal.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16th day of November 2011, at San Francisco, California.

/s/ Anthony P. Schoenberg  
Anthony P. Schoenberg

# **EXHIBIT A**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

DISNEY ENTERPRISES, INC., )  
TWENTIETH CENTURY FOX FILM )  
CORPORATION, UNIVERSAL CITY )  
STUDIOS PRODUCTIONS LLP, )  
COLUMBIA PICTURES INDUSTRIES, )  
INC., AND WARNER BROS. )  
ENTERTAINMENT, INC., )  
Plaintiffs, )  
vs. )  
HOTFILE CORP., ANTON TITOV, )  
AND DOES 1-10, )  
Defendants. )

No. 11-20427-Jordan

HIGHLY CONFIDENTIAL

30(b)(6) Deposition of Warner Bros.

Entertainment, Inc.

by and through DAVID KAPLAN

WEDNESDAY, OCTOBER 12, 2011

LOS ANGELES, CALIFORNIA

ATKINSON-BAKER, INC.  
COURT REPORTERS  
(800) 288-3376  
www.depo.com

REPORTED BY: JEANINE CURCIONE  
CSR NO. 10223, RPR

FILE NO.: A505CAB

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Deposition of DAVID KAPLAN, taken on  
behalf of Defendant, at 9:37 A.M., Wednesday,  
October 12, 2011, at 633 West Fifth Street, Suite  
3500, Los Angeles, California, before Jeanine  
Curcione, C.S.R. No. 10223, RPR, pursuant to  
notice.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP  
BY: STEVEN FABRIZIO, ESQ.  
633 West Fifth Street  
Suite 3500  
Los Angeles, California 90071

AND

MOTION PICTURE ASSOCIATION OF AMERICA, INC.  
BY: KRISTA S. COONS, ESQ.  
15301 Ventura Boulevard  
Building E  
Sherman Oaks, California 91403

FOR THE DEFENDANTS:

FARELLA BRAUN & MARTEL, LLP  
BY: RODERICK M. THOMPSON, ESQ.  
235 Montgomery Street  
17th Floor Russ Building  
San Francisco, California 94104

ALSO PRESENT:

EVAN M. ENGSTROM, ESQ.

DAN ACKLEY, VIDEOGRAPHER

1 foundation. 12:04:46

2 THE WITNESS: Well, I think I would put it 12:04:48

3 this way. The -- the statement is based on our 12:04:49

4 faith of the overall system that we developed. 12:04:54

5 Errors are made in any system that's being 12:04:58

6 developed. The fact that we took any errors that 12:05:00

7 we discovered and used them to improve the system 12:05:03

8 I think further gave us confidence that the system 12:05:06

9 was one that was the best one that we could 12:05:08

10 create. 12:05:10

11 So our good faith belief comes from our 12:05:11

12 faith in the system 12:05:15

12:05:18

12:05:21

12:05:22

12:05:27

5	MR. THOMPSON: Okay.	14:03:57
6	Q. What did you do in August of 2011 with	14:04:00
7	respect to the two to three month historical	14:04:02
8	review?	14:04:08
9	A. We searched through the results to look	14:04:10
10	for situations where it looked like the URL may	14:04:15
11	indicate that the content was something other than	14:04:19
12	what was intended to be taken down.	14:04:22



1           A. Yes. 14:11:19

2           Q. Did Kazi and Pilch produce a written 14:11:19

3 work product? 14:11:23

4           A. Yes. 14:11:27

5           Q. What form did that take? 14:11:28

6           A. It was a report of the changes 14:11:31

7                           to 14:11:39

8 identification of other errors like on the site 14:11:45

9 itself that they -- that looked like -- that it 14:11:50

10 seems to them existed as a result of the three 14:11:56

11 month look back. 14:11:58

12           Q. You said changes 14:12:01

13   Did they 14:12:05

14 provide recommendations as to what they thought 14:12:09

15 should be changed, or did they just give you a 14:12:11

16 report as to what they found? 14:12:13

17           A. The former. And then in some cases 14:12:16

18 then depending on what it was immediately 14:12:22

19 implemented the change. 14:12:25

7 MR. FABRIZIO: I believe the event you are 13:56:03  
8 discussing was work product done at the request of 13:56:05  
9 counsel in analyzing the counter-claims in this 13:56:09  
10 case. That's why I think it's a privileged matter 13:56:13  
11 what the results of our analysis are. We're happy 13:56:16  
12 to as you regularly tell me talk about what was 13:56:19  
13 done as a factual matter, but we are entitled to 13:56:22  
14 the results of our analysis of your claims just as 13:56:25  
15 you're entitled to the legal analysis of our 13:56:30  
16 claims. 13:56:32

17 MR. THOMPSON: And it's privileged as to 13:56:32  
18 whether or not he found or Warner found false 13:56:33  
19 positives? 13:56:36

20 MR. FABRIZIO: The results of an analysis 13:56:37  
21 that were done by and at the direction of 13:56:38  
22 litigation counsel and counsel in this case in the 13:56:41  
23 process of analyzing the counter-claims or your -- 13:56:44  
24 I think at that point it may have been the 13:56:49  
25 threatened counter-claims is clearly -- the 13:56:52

1 results of that process are clearly work product. 13:56:54  
2 That is quintessential work product. 13:56:59  
3 MR. THOMPSON: [You can't create a false 13:57:02  
4 positive either exist or they don't exist. It 13:57:05  
5 wasn't created for you. 13:57:06  
6 MR. FABRIZIO: They were analyzed. That's 13:57:07  
7 like saying you don't create a legal opinion. It 13:57:08  
8 either exists or it doesn't. You just express it. 13:57:11

15           THE WITNESS: I can say it again. The good 17:01:22  
16    faith belief that any particular link is linking 17:01:24  
17    to infringing content comes from our belief that 17:01:33  
18    we've built a system that's very robust and, you 17:01:36  
19    know, always capable of being improved when we get 17:01:39  
20    information indicating that errors have been made, 17:01:44  
21    or it appears that errors have been made, but the 17:01:48

6	MR. FABRIZIO: Let me answer. There was a	14:16:44
7	review and analysis based on the counter-claims	14:16:47
8	that was done as work product. There was what I	14:16:51
9	refer to as an on-going quality control process,	14:16:53
10	an audit if you will, that may have been beginning	14:16:58
11	in that same time period. They are separate	14:17:00
12	processes. As to the latter we have not asserted	14:17:04
13	any claim of privilege whatsoever. As to the	14:17:06
14	former, we have asserted the claim of privilege as	14:17:08
15	I have here today.	14:17:11