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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.) No. 11-20427-Jordan

HOTFILE CORP., ANTON TITOV,)
AND DOES 1-10,)

Defendants.)

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 Deposition of DAVID KAPLAN, taken on
2 behalf of Defendant, at 9:37 A.M., Wednesday,
3 October 12, 2011, at 633 West Fifth Street, Suite
4 3500, Los Angeles, California, before Jeanine
5 Curcione, C.S.R. No. 10223, RPR, pursuant to
6 notice.

7
8 APPEARANCES OF COUNSEL:

9 FOR THE PLAINTIFFS:

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15 AND

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21 FOR THE DEFENDANTS:

22 FARELLA BRAUN & MARTEL, LLP
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 San Francisco, California 94104

 ALSO PRESENT:

 EVAN M. ENGSTROM, ESQ.

 DAN ACKLEY, VIDEOGRAPHER

1 [REDACTED] [REDACTED]
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17 MR. FABRIZIO: Objection. Asked and 11:35:15
18 answered. Mischaracterizes the answer. 11:35:15
19 Q. BY MR. THOMPSON: I just want the 11:35:18
20 record to be clear. I think I'm repeating what 11:35:19
21 you just said? 11:35:21
22 A. The notice sending -- the results of 11:35:22
23 the notice sending are continually checked to see 11:35:23
24 what kind of errors if any are coming up. So 11:35:27
25 that -- that process has gone on from the very 11:35:32

1

beginning.

11:35:36

2

[REDACTED]

1 going to be reviewed after the fact, but the 11:36:33
2 process includes looking at generally every -- the 11:36:35
3 whole -- of the many links that are sent out or -- 11:36:38
4 well, links [and/or actions and hosting files 11:36:43
5 taken down on a daily basis, the results are 11:36:48
6 looked at and have always been looked at to 11:36:51
7 determine whether or not errors are being made, 11:36:54
8 and I would add that probably -- well, it was 11:36:55
9 really -- really because of the -- this litigation 11:36:58
10 that we continued to -- well, I should say the 11:37:01
11 information in the notices of deposition that were 11:37:06
12 provided that help us kind of further refine our 11:37:08
13 process and so we now have a daily audit that's 11:37:13
14 very specific in terms of the protocol it follows 11:37:20
15 to do the after -- to do the result checking. 11:37:23
16 Q. Before you received Exhibit 3, which is 11:37:28
17 the April deposition notice, was there any audit 11:37:31
18 process in place? 11:37:35
19 A. Yes. 11:37:36
20 Q. What was that audit process? 11:37:36
21 A. That process was that the -- people in 11:37:38
22 my department would look at the daily results of 11:37:43
23 links actioned by title, by site, and see whether 11:37:48
24 anything looked strange to them in terms of things 11:37:54
25 that were broken, for example, or titles that 11:38:00

1 looked like, they should -- they popped up higher 11:38:02
2 in the results or lower in the results than you 11:38:04
3 would have expected them to appear based on their 11:38:06
4 popularity. 11:38:09

5 Q. Before April when you look -- when your 11:38:12
6 people looked at the results, did they keep a 11:38:16
7 record of false positives? 11:38:18

8 MR. FABRIZIO: Objection. Vague as to 11:38:20
9 false positive. 11:38:22

10 Q. BY MR. THOMPSON: False positive is a 11:38:24
11 term you use; correct? 11:38:26

12 A. Well, it's used in -- it's used in some 11:38:27
13 of these documents, yes. Some of the documents 11:38:28
14 that were produced in the case, yes. 11:38:30

15 Q. You understand what it means? 11:38:32

16 A. Although we might have a slightly 11:38:34
17 different definition so I want to make sure that 11:38:36
18 we understand, when -- when -- that we're talking 11:38:38
19 about the same thing. 11:38:41

20 Q. Why don't you tell us what false 11:38:41
21 positives mean? 11:38:43

22 A. When we say false positive we mean -- 11:38:44
23 in -- within our department that the thing that 11:38:47
24 was returned doesn't look exactly like the thing 11:38:49
25 that was being searched for. So for example, 11:38:52

1 in this case? 11:40:00

2 A. Yes. 11:40:01

3 Q. Aside from documents that use the term 11:40:01

4 false positive, is there any other systematic 11:40:03

5 record of false positives maintained by Warner 11:40:07

6 before April? 11:40:10

7 MR. FABRIZIO: Objection. Lacks 11:40:10

8 foundation. 11:40:11

9 THE WITNESS: I'm not exactly sure what you 11:40:13

10 mean by systematic record. There's no summary 11:40:14

11 anywhere of -- of false positives. 11:40:17

12 Q. BY MR. THOMPSON: Okay. As a result of 11:40:20

13 receiving the April deposition notice, is it true 11:40:25

14 that Warner changed its procedure and instituted a 11:40:31

15 daily audit? 11:40:33

16 A. I would use the word improved. I mean, 11:40:35

17 like anything, not just after this deposition but 11:40:37

18 through the whole process. Any time we got 11:40:42

19 additional information that we thought we could 11:40:44

20 use to improve the process, we used it. So when 11:40:46

21 we got information in this case through that 11:40:49

22 deposition notice, we used it to improve the 11:40:51

23 process as well. 11:40:53

24 MR. FABRIZIO: Which deposition notice did 11:40:54

25 you refer to? 11:40:55

1 THE WITNESS: That's correct. We did not 11:42:13
2 download the content. 11:42:15

3 Q. BY MR. THOMPSON: Before April when you 11:42:19
4 received that deposition notice, did Warner 11:42:24
5 implement any steps specifically designed to 11:42:25
6 reduce the instances of false positives? 11:42:30

7 A. Yes. 11:42:33

8 Q. What did you do? 11:42:35

9 A. Well, every time we -- we had any issue 11:42:36
10 we -- if there was an error that looked like 11:42:40
11 something wasn't working the way it was supposed 11:42:44
12 to we tried to figure out how to fix it so it 11:42:46
13 could have been situations where we shut off a 11:42:50
14 robot so we could figure out why it wasn't working 11:42:52
15 the right way. 11:42:55

16 Now, I'm giving you examples as opposed 11:42:56
17 to specific -- like I know that on this date we 11:42:58
18 did something or something else. I'm giving you 11:43:01
19 examples of the kinds of things that we did, if 11:43:04
20 that's okay, because I don't -- probably -- 11:43:06
21 without looking at documents I wouldn't be able to 11:43:07
22 tell you on a given day what was done with respect 11:43:09
23 to a specific situation. 11:43:12

24 Q. We can come back to this when we get 11:43:15
25 into specific documents. 11:43:17

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, not that we understood that 12:05:15

13 we were creating a system that would be error free 12:05:18

14 because I think we believed that any system 12:05:21

15 whether it's robotic or whether it has humans 12:05:22

16 involved reviewing things is prone to have errors. 12:05:27

17 Q. BY MR. THOMPSON: Isn't it true, 12:05:35

18 Mr. Kaplan, that the statement made by Warner in 12:05:35

19 using the SRA was not accurate with respect to 12:05:39

20 each of the URLs listed in Attachment A to Exhibit 12:05:42

21 2? 12:05:48

22 MR. FABRIZIO: Objection. Asked and 12:05:48

23 answered and continues to lack a foundation. You 12:05:50

24 can answer. 12:05:59

25 THE WITNESS: On these I have not seen or 12:06:01

1 Q. Mr. Bentkover in the e-mail below that 12:19:30
2 had written to Mr. Fronda, "Thanks, but we can't 12:19:33
3 have a system where we take down items we 12:19:38
4 shouldn't -- which shouldn't be removed." Is that 12:19:44
5 Warner's position? 12:19:45

6 A. I would modify that to say we know that 12:19:54
7 any system is going to result in some errors. 12:19:56
8 That's just the nature of doing antipiracy work at 12:20:00
9 scale, but our goal should always be to reduce 12:20:02
10 those errors and any time we find that there's an 12:20:04
11 error take action to correct it. 12:20:07

12 Q. Did Warner always take action to 12:20:10
13 correct errors? 12:20:13

14 A. Yes. 12:20:13

15 Q. Even before the April deposition 12:20:14
16 notice? 12:20:16

17 A. Yes. 12:20:17

18 Q. Let me go back to your testimony about 12:20:53
19 Warner, what Warner does do with respect to 12:21:00
20 checking the results of the robot, and I think you 12:21:05
21 referred to particularly that the results of the 12:21:14
22 notice sending robot are checked. 12:21:17

23 A. Yes. 12:21:23

24 Q. And you referred to daily audits; is 12:21:23
25 that right? 12:21:27

1 the context of this e-mail acceptable to Warner? 13:47:26

2 MR. FABRIZIO: Objection. Overbroad. 13:47:32

3 Lacks foundation. 13:47:33

4 THE WITNESS: We wouldn't be happy -- it 13:47:34

5 depends on the time you're talking about and 13:47:36

6 whether there was a possibility to further reduce 13:47:39

7 that level based on additional steps we could 13:47:44

8 take. 13:47:48

9 Q. BY MR. THOMPSON: And Warner was 13:47:51

10 satisfied that over time you were successful in 13:47:52

11 reducing the level of false positives? 13:47:53

12 A. I am confident that we developed a 13:47:56

13 system that would allow us over time to continue 13:47:58

14 to reduce the false positive level in response to 13:48:01

15 errors that we discovered or were pointed out to 13:48:04

16 us by others. 13:48:06

17 Q. And it's true that you could reduce the 13:48:20

18 false positive level even more if you took the 13:48:22

19 time to download and review each file? 13:48:25

20 MR. FABRIZIO: Objection. Lacks 13:48:30

21 foundation. 13:48:30

22 THE WITNESS: Yeah. And I don't 13:48:31

23 necessarily agree with that. One, the -- that 13:48:33

24 process would never work for a system at -- at 13:48:41

25 scale to be effective. 13:48:45

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, DAVID KAPLAN, hereby certify under
penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

Executed this _____ day of
_____, 2011, at
_____, California.

DAVID KAPLAN

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REPORTER'S CERTIFICATE

I, JEANINE CURCIONE, C.S.R. NO. 10223, RPR, in and for the State of California, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth and nothing but the truth.

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting under my direction, and the same is a true, correct and complete transcript of said proceedings.

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved the right of signature;

I further certify that I am not interested in the event of the action.

Witness my hand this 26th day of October, 2011.

Certified Shorthand
Reporter for the
State of California