

EXHIBIT “C”

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DISNEY ENTERPRISES, INC., : CIVIL ACTION
ET AL., Plaintiffs, :
vs. :
HOTFILE CORP., ANTON TITOV, :
ET AL., :
Defendants. : NO. 11-20427

- - -
Tuesday, November 29, 2011
- - -

Videotaped deposition of RICHARD WATERMAN,
Ph.D., taken at the Law Offices of STRADLEY, RONON,
STEVENS & YOUNG, LLP, 2005 Market Street, Suite
2600, Philadelphia, Pennsylvania, on the above date,
beginning at 9:33 a.m., before Theresa Kepler, CCR,
RPR-Notary Public, there being present.

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LOVE COURT REPORTING, INC.
1500 Market Street
12th Floor, East Tower
Philadelphia, Pennsylvania 19102
(215) 568-5599

1 A. There is no reason whatsoever.

2 Q. Okay. Dr. Waterman, I'm handing you
3 now what's been marked as Exhibit 18.

4 Dr. Waterman, do you recall receiving
5 the subpoena for documents in this case?

6 A. I do recall that, yes.

7 Q. Is Exhibit 18 that subpoena?

8 A. It does appear to be that subpoena,
9 yes.

10 Q. I see you've turned or you've
11 previously turned to the second to last page, if you
12 could do so again and look at Request Number 1. Do
13 you see --

14 A. Excuse me.

15 Q. Do you see that?

16 A. Yes, I do.

17 Q. This request asks for all documents
18 considered in formulating your opinion in the
19 present litigation. Professor, or Dr. Waterman,
20 have you now produced in this case every document
21 that you considered in formulating your opinion?

22 A. Yes, I have done that.

23 Q. There is no document that you've
24 excluded?

1 A. There are no exclusions.

2 Q. Dr. Waterman, I note that you did not
3 produce or identify in your report any language or
4 web page appearing at the Hotfile website. Did you
5 rely in any way on the Hotfile website as it appears
6 on the Internet in forming your opinion today?

7 A. I have been on the Hotfile website so
8 I understand what it looks like and the nature of
9 what a link looks like, what it appears on the
10 Hotfile website, but in terms of the analyses that I
11 have done and which is the information behind my
12 opinion that information was not directly obtained
13 by myself but from records that Hotfile kept and
14 then were passed on to counsel.

15 Q. Did any of the statements on
16 Hotfile's website influence your opinion in any way?

17 A. No, in that I did not review the
18 entire Hotfile website in order to, you know,
19 determine the nature of the finds.

20 Q. So your analysis or your review of
21 the Hotfile website consisted of familiarizing
22 yourself with the website generally?

23 A. I think that's a great word for it,
24 "familiarization," that's what I was really doing on

1 the Hotfile website.

2 Q. And as you sit here today you can't
3 think of any specific web page or web language that
4 you considered in formulating your opinion?

5 A. No, there is nothing specific that
6 finds its way into my report in any way.

7 Q. Or that you relied on.

8 A. Or that I relied on.

9 Q. Have you ever uploaded a file
10 yourself to Hotfile?

11 A. No, I have not, sir, gone through
12 that process.

13 Q. Have you ever downloaded a file from
14 Hotfile?

15 A. To my recollection no, though I have
16 seen what a page of links looks like on Hotfile.

17 Q. How long in aggregate would you say
18 spent on Hotfile's website?

19 A. I would imagine something order of
20 30 minutes to an hour.

21 Q. There is no other documents you'd
22 like to produce now that you've considered or relied
23 on in forming your opinion?

24 A. No, there are no additional

1 documents.

2 Q. Did you meet with anyone to prepare
3 for your deposition today, Dr. Waterman?

4 A. I met yesterday with Mr. Pozza.

5 Q. For how long?

6 A. I believe it was approximately three
7 hours.

8 Q. Anyone else?

9 A. Yeah, at the meeting yesterday Duane
10 was the only person there.

11 Q. Did you have any other preparation
12 for your deposition today?

13 A. There was a phone call, a brief phone
14 call Sunday morning I believe it was, and on that
15 call was Steve Fabrizio as well as Duane here.

16 Q. And how long was that phone call?

17 A. I think that was approximately 20
18 minutes, it was a brief call.

19 Q. And that was two days ago?

20 A. That was two days ago, yeah.

21 Q. Dr. Waterman, what did you do to
22 prepare for rendering your opinion in this case?

23 MR. POZZA: I'd object that that is
24 vague and ambiguous.

1 Hotfile would fit into the definitions of cyb -- of
2 what people understand are cyberlockers.

3 Q. What is a cyberlocker?

4 MR. POZZA: Objection. This calls
5 for testimony on technical matters.

6 THE WITNESS: A cyberlocker as in the
7 instance of Hotfile is a site in which a user
8 can upload content, be presented with a link
9 to that content and then in some form may
10 share that link. That's typically the modus
11 operandi of a cyberlocker.

12 BY MR. LEIBNITZ:

13 Q. Are you an expert in law?

14 MR. POZZA: Objection. Vague.

15 THE WITNESS: I am clearly not
16 trained as a lawyer. I'm trained as a
17 statistician.

18 BY MR. LEIBNITZ:

19 Q. Are you trained as a technologist?

20 A. I -- I find the word "technologist"
21 very, very vague, but certainly in terms of -- of
22 computing a lot of my training would have involved,
23 because statistics, my discipline is a very broad
24 discipline, but the part that I have been involved

1 seeing in this particular time or, you know, area
2 for which the population was drawn would have no
3 particular reason for believing that it was
4 different from some other one. And that, you know,
5 wouldn't be a statistical statement that was driving
6 that because you need data to make a statistical
7 statement but one I would say of general expertise.

8 Q. Did you do that here in the Hotfile
9 case?

10 MR. POZZA: Objection. The question
11 is vague.

12 THE WITNESS: My statements in the
13 Hotfile case refer to what was hap -- in
14 terms of the analysis that I did refer to
15 January 2011.

16 BY MR. LEIBNITZ:

17 Q. Do you purport to opine in this case,
18 Dr. Waterman, about any behavior outside
19 January 2011?

20 MR. POZZA: Object as to the meaning
21 of behavior.

22 THE WITNESS: My numbers that I
23 present in the report are definitely
24 statements specifically about January, and

1 then I would say to the extent that the world
2 was similar before January, for example,
3 December, that if in -- if I had no reason to
4 believe that the world had changed
5 dramatically, you know, that there was no
6 event of interest that would change behavior,
7 then that the results that I provided would
8 give one a sense of what was likely happening
9 prior to that point.

10 BY MR. LEIBNITZ:

11 Q. Let's be very clear, sir. Do you
12 purport in this case to opine about behavior outside
13 January 2011?

14 MR. POZZA: Object -- same objection,
15 and asked and answered.

16 THE WITNESS: I would just reiterate
17 that the statements that I make are
18 absolutely related to January 2011, I mean,
19 because that was the population from which
20 the log file -- you know, we drew samples
21 from the January log file, so this is a
22 statement about January 2011. And the extent
23 to which a month of December of 2010 or
24 November 2010 would be expected to be similar

1 or, as I would say, I have no reason to
2 believe that the world changed in some
3 dramatic fashion, there was no massive event
4 of interest, then my sense would be that this
5 would give me good understanding of what was
6 -- what was likely to have happened
7 beforehand. But I wouldn't say that that
8 statement -- I wouldn't put that statement in
9 the same category as I would the one about
10 the population for which I drew the sample.

11 BY MR. LEIBNITZ:

12 Q. Dr. Waterman, in your opinion how
13 much infringement has happened by virtue of the
14 Hotfile website in the last 24 hours?

15 A. The last 24 hours I would not want to
16 provide an opinion on that because what I learned
17 about was January 2011, prior to the case being
18 brought. I think that once the case is brought, you
19 know, then behavior can change. That would be
20 exactly one of those instances, a kind of waterfall
21 or watershed type of event where I would anticipate
22 behavior to change, potentially change quite
23 dramatically once the case is brought.

24 And so I -- and I have no strong

1 basis to say one way or another what the result of
2 that would be, but typically when someone is told,
3 you know, that they are doing something illegal
4 their behavior changes, fundamentally changes. And
5 so we don't have -- I do not have information prior
6 to the case, so I don't want to say anything about
7 what happened. I think it was sometime in February
8 after that point in time.

9 Q. So you can't opine as you sit here
10 today that there was a non-zero level of
11 infringement in the last 24 hours on Hotfile?

12 MR. POZZA: Objection. Vague.

13 THE WITNESS: I have collected no
14 data on the last 24 hours. I, to be honest,
15 don't even know if the site exists in the
16 last 24 hours.

17 BY MR. LEIBNITZ:

18 Q. Can you provide an opinion today
19 about the level of infringement over the last week?

20 A. I would repeat the same answer as I
21 provided before that any time after the case was
22 brought and when defendants understood that this
23 litigation was going to happen that the behavior of
24 the site would have -- could have changed radically

1 as compared to before it was brought and since my
2 data is from the pre time period that is the time
3 period for which I'm most comfortable in making
4 statements. So I don't know whether the site exists
5 in all honesty so I don't know whether there's been
6 a download.

7 Q. So there may be a zero percent level
8 of infringement using Hotfile's technology in the
9 last week?

10 A. Likewise there could be 100 percent,
11 I agree that both are possibilities.

12 Q. So you can't testify that it's not
13 zero percent in the last week, right?

14 MR. POZZA: Objection. Asked and
15 answered.

16 THE WITNESS: As I say, my -- my
17 study's absolutely clear as to the where the
18 log file was drawn from which was January of
19 2011 and my report pertains to that period in
20 terms of the conclusions that I draw.

21 BY MR. LEIBNITZ:

22 Q. Can you testify as you sit here today
23 that there was a non-zero level of infringement in
24 the last week on Hotfile?

1 MR. POZZA: Objection. Asked and
2 answered. You're just asking the same
3 question.

4 THE WITNESS: As I said, it may have
5 been a hundred percent, it may have been
6 99 percent, it may have been 0 percent.

7 BY MR. LEIBNITZ:

8 Q. You can't tell one way or the other?

9 MR. POZZA: Objection. Asked and
10 answered.

11 THE WITNESS: As I've said, my data
12 set, the one that I've analyzed is to do with
13 January and so in terms of the numerical
14 quantities that I present in my report they
15 will refer to January 2011.

16 BY MR. LEIBNITZ:

17 Q. You can't testify as you sit here
18 today that there was a non-zero level of copyright
19 infringement using Hotfile's technology in the last
20 six months, can you?

21 MR. POZZA: Objection. Misstates
22 testimony. Vague.

23 THE WITNESS: Six months takes us
24 back to May of 2011. May of 2011 is after

1 the time period for which I have the log file
2 which is January. So as I noted in my
3 statements, the numerical statements that I
4 provided relate to January of 2011. The
5 amount of infringement that happened
6 subsequent to that event we have -- I have no
7 information on to make a determination as to
8 whether it's a hundred percent, 90 percent,
9 50 percent or your hypothetical of
10 zero percent.

11 I have not drawn a conclusion
12 about -- in my report didn't draw a
13 conclusion about what happened yesterday on
14 Hotfile.

15 BY MR. LEIBNITZ:

16 Q. Or in the last week, or in the last
17 month, or in the last six months, or indeed since
18 the Complaint was filed in this case.

19 MR. POZZA: Objection.

20 Argumentative.

21 THE WITNESS: That it correct, I --
22 I -- as I keep stating the data, the log file
23 that was used in this analysis was the log
24 file for January 2011. The sample was drawn

1 from file downloads in January of 2011 and
2 therefore the quantitative inferences pertain
3 to January 2011.

4 BY MR. LEIBNITZ:

5 Q. To be clear, you state no opinion as
6 to the level of infringement using Hotfile's
7 technology since the filing of the Complaint in this
8 case in February 2011, right?

9 A. By virtue of the data that I have
10 collected or the log file that I have had access to,
11 the January log file, the statements that I made
12 pertain up to the end of January. And as I said, in
13 general if there is a watershed type event, and the
14 bringing of the case would be such a type of
15 watershed type event, then I would acknowledge that
16 human behavior can change. Exactly in which way it
17 would change, I mean I wouldn't speculate, but I'm
18 confident that people do change their behavior.

19 And if I felt that behavior, that I
20 had no reason to believe that fa -- the ultimate
21 behavior had not changed, then I feel that my study
22 did give some sense of what was likely to be
23 happening. And so I would be more comfortable going
24 retrospectively behind January 2010 in just, you

1 know, saying that the -- what I learned in January
2 of 2011, sorry, 2011, is very likely to be more
3 representative of what happened in December 2010 or
4 November, points proximate in time, because I have
5 no reason to believe the world changed dramatically.

6 But given the case being brought in
7 February I think that, I don't know, but it's
8 possible the world changed quite dramatically in
9 terms of the Hotfile site, and if the world changed
10 dramatically in terms of the Hotfile site, then what
11 we learned in January might not be informative of
12 what happened in February, March, April and so on.

13 Q. Indeed you offer no numerical level
14 of infringement postulated to occur on the website
15 after January of 2011 in your report.

16 A. That is correct. My report does not
17 make statements post January 2011.

18 Q. All right. So, Dr. Waterman, what
19 countermeasures against copyright infringement has
20 Hotfile taken since its inception?

21 MR. POZZA: Objection. Calls for
22 speculation and vague.

23 THE WITNESS: I'm not intricately
24 aware of the intricacies of the steps that

1 Hotfile specifically may have taken. I
2 understand some of the steps because, as I
3 alluded to before, I'm aware of the ecosystem
4 and through the other cases that I've worked
5 on.

6 And so one of the measures, and
7 whether or not Hotfile took it I simply don't
8 know, is the concept of the takedown notice,
9 where a rights holder notes that their
10 material is being shared in an unauthorized
11 fashion and sends a notice. What happened at
12 that point, I do not know.

13 BY MR. LEIBNITZ:

14 Q. When did Hotfile implement its
15 takedown procedure?

16 A. I do not know.

17 MR. POZZA: Objection. It calls for
18 speculation and is vague.

19 THE WITNESS: I do not know.

20 BY MR. LEIBNITZ:

21 Q. What other measures against copyright
22 infringement did Hotfile take since its inception?

23 MR. POZZA: Same objection.

24 THE WITNESS: I am simply not aware

1 whether there were or not measures taken.

2 BY MR. LEIBNITZ:

3 Q. As you sit here today you are unaware
4 of any measures that Hotfile has taken to fight
5 copyright infringement.

6 MR. POZZA: Objection. This is vague
7 and it calls for speculation and is outside
8 the scope of expert testimony.

9 MR. LEIBNITZ: Correct.

10 THE WITNESS: There are many aspects
11 of the Hotfile site that I am not aware of or
12 the Hotfile business because that's not my
13 role within this case. My role within this
14 case is to provide an opinion as to, in the
15 month of January of 2011, the extent of or
16 the proportion of files that were associated
17 with infringing content.

18 So it is -- I will acknowledge there
19 is probably a million things about Hotfile as
20 a business that I don't know, but I don't
21 know them because I felt that for the point
22 or the purposes of me being retained in this
23 case those weren't relevant to the decisions
24 that I came up with.

1 BY MR. LEIBNITZ:

2 Q. So you didn't find it useful to know
3 in forming your opinion in this case what
4 countermeasures Hotfile has taken against copyright
5 infringement.

6 MR. POZZA: Objection. Vague and
7 misstates the testimony.

8 THE WITNESS: I would agree that it
9 is unnecessary for me to know what business
10 rules, we might call them business rules,
11 Hotfile implements because my goal was to
12 understand the activity that actually
13 happened on the site and hence a log file
14 which records the activity on the site is the
15 appropriate source of information for me to
16 make my decision.

17 As I say, there are many other
18 features of any business that are happening
19 that I would not be aware of, and typically I
20 don't need to be aware of them because they
21 don't pertain to the particular, in this
22 case, study or quantification that I'm trying
23 to make.

24 BY MR. LEIBNITZ:

1 Q. Have you now exhaustively stated your
2 awareness of all the countermeasures Hotfile has
3 taken against copyright infringement?

4 MR. POZZA: Objection. Vague.

5 THE WITNESS: As I say, I'm not
6 familiar with what I've term the business
7 rules that Hotfile has implemented, I'm just
8 simply not familiar with them.

9 BY MR. LEIBNITZ:

10 Q. When did Hotfile first begin
11 permitting content owners to seek the takedown of
12 allegedly infringing material?

13 MR. POZZA: Objection. Calls for
14 speculation, outside of the scope of the
15 testimony and is vague.

16 THE WITNESS: As I've said, these
17 sorts of facts weren't necessary for the
18 study, to implement the study that I was
19 asked to do and so I never -- I would not ask
20 that question because I did not feel that it
21 would be relevant to inform my study.

22 BY MR. LEIBNITZ:

23 Q. And you don't know as you sit here
24 today?

1 MR. POZZA: Same objections.

2 THE WITNESS: As I said, I think it's
3 unnecessary for the validity of my study to
4 know that.

5 BY MR. LEIBNITZ:

6 Q. Do you know it one way or the other
7 as you sit here today, Doctor?

8 MR. POZZA: Objection. Vague. I'm
9 not sure what "it" is.

10 BY MR. LEIBNITZ:

11 Q. Dr. Waterman, do you know as you sit
12 here today when Hotfile first began permitting
13 content owners to seek the takedown of allegedly
14 infringing material?

15 MR. POZZA: Same objection. It's
16 been asked and answered.

17 THE WITNESS: I'm -- I am not aware
18 of the date on which -- if such a -- you
19 know, how if such a rule is formulated or
20 followed.

21 BY MR. LEIBNITZ:

22 Q. When did Hotfile first start
23 preventing users terminated for alleged infringement
24 from signing back up to Hotfile using the same

1 e-mail address?

2 MR. POZZA: Objection. Calls for
3 speculation, lacks foundation, outside of
4 expert testimony and vague.

5 THE WITNESS: To my understanding
6 this is a very similar question to the
7 previous one that you've asked and so my
8 answer is going to be similar. There are
9 many, many aspects of the Hotfile site, its
10 business rule, its methodologies that I am
11 not aware of, and I'm not aware of them
12 because I didn't feel I needed to know them
13 in order to perform the study that I was
14 asked to provide.

15 BY MR. LEIBNITZ:

16 Q. As you sit here today you do not know
17 when Hotfile first started preventing users
18 terminated for alleged infringement from signing
19 back up to Hotfile using the same e-mail address,
20 correct?

21 MR. POZZA: Same objection. Asked
22 and answered.

23 THE WITNESS: Again, any question
24 about specific business rules that Hotfile

1 might have implemented I am not aware of
2 the -- of how they implement or what the
3 business rules were or how they implemented
4 them because I was asked to analyze the log
5 file and those business rules don't pertain
6 to the activity that I was asked to analyze.

7 BY MR. LEIBNITZ:

8 Q. So you don't know when Hotfile first
9 started preventing users from signing back up to
10 Hotfile using the same e-mail address after being
11 accused of alleged infringement.

12 MR. POZZA: Same objection, it's
13 assuming facts not in evidence and it's asked
14 and answered.

15 THE WITNESS: I agree I don't know
16 and I believe it's not a necessary fact to
17 inform my study.

18 BY MR. LEIBNITZ:

19 Q. Could it have been a month before
20 January 2011?

21 MR. POZZA: Objection. Calls for
22 speculation and vague.

23 THE WITNESS: I am unaware of the
24 date -- that if such a rule was put into

1 place and when it was put into place.

2 BY MR. LEIBNITZ:

3 Q. When did Hotfile implement hash
4 fingerprinting to prevent the file once taken down
5 for alleged infringement from being uploaded again?

6 MR. POZZA: Same set of objections.

7 This calls for speculation and lacks
8 foundation, assumes facts that are not in
9 evidence and is outside the scope of the
10 expert testimony and is vague.

11 THE WITNESS: Again, this is a
12 business rules type question. And as I've
13 answered before, I'm not aware of the
14 specific business rules that Hotfile
15 implemented, and therefore, in any particular
16 case I would be unaware of a date of starting
17 or stopping.

18 BY MR. LEIBNITZ:

19 Q. When did Hotfile hire a DMCA agent?

20 MR. POZZA: Same set of objections.

21 Speculative.

22 THE WITNESS: Again, this is another
23 question about their business operations, and
24 as a statistician who was asked to form an

1 opinion of the infringement level of activity
2 on a site, on the Hotfile site, knowing when
3 they hired such an agent would not be one of
4 the pieces of information that would be
5 required for me to formulate my study.

6 So I was not aware of such a hiring
7 and if I had been aware of such a hiring it
8 would not have changed the way that my study
9 would have been conducted.

10 BY MR. LEIBNITZ:

11 Q. When did Hotfile announce its DMCA
12 agent on its website?

13 MR. POZZA: Same objections. Calls
14 for speculation, lacks foundation, assumes
15 facts not in evidence, and is outside the
16 scope of expert testimony.

17 THE WITNESS: I'm going to make the
18 same response to that, that is another
19 question about the business operations of
20 Hotfile. I am not familiar with those
21 business operations, I am not familiar with
22 the initiation dates of various of these
23 business operations or business rules, and so
24 whether the event happened I don't know one

1 way or another, and given that I would not
2 know the date if it did happen.

3 BY MR. LEIBNITZ:

4 Q. When did Hotfile implement a
5 strikes-based repeat infringer policy?

6 MR. POZZA: Same set of objections.
7 It calls for speculation, outside the scope
8 of expert testimony, and is also vague as to
9 what a strikes based repeat offender policy
10 is.

11 THE WITNESS: I'm going to have to
12 provide the same answer as I provided before,
13 which was as I'm not aware of the operational
14 aspects in terms of those business
15 operations, business rules that Hotfile
16 initiated, I'm not aware of whether such a
17 program happened or the initiation or ending
18 date of such a program.

19 And the reason why these business
20 rules are not -- you know, I'm not overly
21 concerned with them from the point of view of
22 my study, was that my study confined itself
23 to what happened in January of 2011. And I
24 have a log file that actually provides a

1 complete record of, and we're talking the
2 recorded downloads, and my findings pertain
3 to the information that I have.

4 BY MR. LEIBNITZ:

5 Q. We only have one minute left, sir.
6 When did Hotfile implement vocal fingerprinting
7 endorsed by plaintiffs collectively here as ensuring
8 copyright compliance?

9 MR. POZZA: Object to calls for
10 speculation, lacks foundation, it's compound,
11 assumes of facts not in evidence, outside the
12 scope of expert testimony and is vague.

13 THE WITNESS: And I will answer the
14 same as I did before, which was because I am
15 not familiar with the business rules which
16 Hotfile implemented with regard to
17 infringement activities, I would not know
18 whether such an event took place and indeed
19 if it took place at the time at which it took
20 place.

21 And why was I -- why am I comfortable
22 sitting here not knowing that information?
23 Because I don't believe that it is relevant
24 to the analyses that I report.

1 THE VIDEOGRAPHER: We are now going
2 off the record. This completes Tape Number
3 1. The time is 11:53.

4 - - -

5 (Whereupon, a discussion was held off
6 the record.)

7 - - -

8 THE VIDEOGRAPHER: We are now on the
9 record. The time is 11:56.

10 BY MR. LEIBNITZ:

11 Q. Dr. Waterman, can you now exclude the
12 possibility that immediately prior to January 2011
13 Hotfile took actions impacting the level of
14 infringement through its technology?

15 MR. POZZA: Objection. Calls for
16 speculation and is vague.

17 THE WITNESS: That seems to be a
18 summary question of all of the business rules
19 that you have been talking about that they
20 have -- might have addressed infringement
21 activity, and as I said before I'm not aware
22 of the complete set of business rules. I'm
23 not of aware of when they were initiated, and
24 so what Hotfile did as a business in

1 December 2010 I'm simply not in a position to
2 have an opinion on.

3 BY MR. LEIBNITZ:

4 Q. So you cannot testify as you sit here
5 today that there was a non-zero level of copyright
6 infringement, say, in the first 24 hours of
7 Hotfile's existence?

8 MR. POZZA: Objection. Calls for
9 speculation and is vague.

10 THE WITNESS: I mean, I think I've
11 repeated many times that my study draws data
12 from January 2011, and the basic statistical
13 paradigm is that we have a population, in
14 this case it's the log file associated with
15 downloads of files from Hotfile. We draw a
16 sample from that population, and my
17 inferences are related to that population,
18 January 2011.

19 And so those are what my -- the
20 numbers that I've provided my report relate
21 to directly. That was the scope of those
22 specific findings.

23 BY MR. LEIBNITZ:

24 Q. So you don't purport to opine about

1 the level of infringement at Hotfile prior to
2 January 2011?

3 MR. POZZA: Objection. Asked and
4 answered.

5 THE WITNESS: I would say that the
6 statements that I make about January 2011,
7 and I will stand and defend to the end
8 because they are based purely on the
9 scientific method of drawing a sample from a
10 population, etcetera.

11 To the extent that they inform us as
12 to what happened prior to 2000 -- January of
13 2011 to me is the extent to which there might
14 have been watershed events prior to that
15 process that changed the entire nature of the
16 site and whether or not such events occurred.

17 Now, if somebody told me that no such
18 events occurred, that the belief was that
19 the -- that there was stability in the nature
20 of the site, then I would feel quite
21 comfortable that the results that I had for
22 January told me something about what was
23 going on prior to that month, but I wouldn't
24 put the same, you know -- I wouldn't put them

1 forward as forceful -- forcefully as I will
2 about what's happening in January.

3 BY MR. LEIBNITZ:

4 Q. Because they are not based on the
5 scientific method, correct?

6 A. Because they are not based -- I mean,
7 will say things very forcefully about January
8 because I have a sample from January. I will say
9 whenever I make something, a statement outside that
10 population one has to acknowledge that it's -- I --
11 and I haven't done that within my report, I hasten
12 to make that point that that's not my -- my report
13 is about January 2011. But, you know, it is the
14 nature of many activities when we talk about the
15 scientific method. We develop it in the classroom
16 or the laboratory, but we get to apply it in the
17 world.

18 And I -- so I mean, I'm picking up on
19 the word "the scientific method." I mean, often in
20 science we actually make statements and conclusions
21 outside our population. Maybe we not -- we don't
22 want to ideally but we do, so the example that I can
23 always think of are drug trials. In order to find
24 out whether a drug is useful or not we tend to do a

1 trial. The trial has what's called informed
2 consent. Not everybody consents to being in a
3 trial, and so you might make the argument that those
4 people who weren't in the trial, that those in the
5 trial are not a representative group of all people,
6 but we only found out how the drug was working on
7 the group who chose to be in the trial, not those
8 outside, yet we still feel comfortable in making
9 prescription decisions for the individual who walks
10 into the doctor's office with high blood pressure.

11 You know, and so though we might like
12 from a scientific point of view to say, no, we don't
13 have informed consent, it causes potentially some
14 bias in our findings we -- we live with it. And in
15 that sense, you know, I -- I would acknowledge that
16 I am most secure in my statements about the
17 population and that's what I will defended till the
18 cows come home, you see. And outside I am --
19 outside of that population I would just want to have
20 a lot more information about how the world was
21 working outside that population.

22 Q. Do you have that information
23 sufficient to back-cast from January of 2011 now?

24 MR. POZZA: Objection as to form.

1 It's vague.

2 THE WITNESS: To do -- my -- the
3 objective of my study was not to back-cast.
4 I -- I -- you know, that was not the point of
5 it so I haven't tried to do that up to now.
6 And because I haven't tried to do it I
7 haven't tried to pull that information that
8 might help me feel that that was a
9 comfortable thing to do.

10 BY MR. LEIBNITZ:

11 Q. So you offer no opinion as you sit
12 here today, Dr. Waterman, about whether there were
13 non-zero levels of infringement at Hotfile or using
14 Hotfile's technology in the first two years of its
15 existence.

16 MR. POZZA: Objection. It's vague
17 and misstates the witness' testimony.

18 THE WITNESS: My study does not
19 pertain to or relate to that specific time
20 period. It pertains to January 2011.

21 BY MR. LEIBNITZ:

22 Q. So you don't purport to state or
23 opine that Hotfile had a non-zero level of copyright
24 infringement through the use of its technology at

1 any time prior to January 2011; is that fair?

2 MR. POZZA: Objection. Misstates the
3 testimony and it's been asked and answered.

4 THE WITNESS: As I said, my study
5 does not pertain to that period. And it may
6 have been a hundred percent infringement for
7 all I know. It may have been 50. It may
8 have been zero.

9 My study was designed and it's very
10 explicitly stated in the report that as to --
11 the log file was January 2011 and I'm -- my
12 conclusions are related to what was going on
13 in January of 2011.

14 MR. LEIBNITZ: Thank you, sir. Let's
15 take a break.

16 THE WITNESS: Okay.

17 THE VIDEOGRAPHER: We are now going
18 off the record. The time is 12:03.

19 - - -

20 (Whereupon, there was a recess in the
21 proceedings.)

22 - - -

23 THE VIDEOGRAPHER: We are now on the
24 record. The time is 12:59.

1 Password protected could have content
2 in it but you simply can't access through
3 because one doesn't have the password but one
4 could have other meta-information associated
5 with it that would help make a determine of
6 infringement status, so I don't see the two
7 as equivalent.

8 BY MR. LEIBNITZ:

9 Q. Are there other opinions that you are
10 going to render in this case that you have not
11 stated today?

12 A. At this stage I have no preparation
13 or other opinions to make.

14 Q. Have you conducted a study of the
15 percentage of infringement files unloaded to Hotfile
16 but not downloaded? I think you answered that
17 before.

18 A. I have not conducted any other
19 studies of the Hotfile site apart from this
20 Dailydownloads study for January 2011.

21 Q. Are you aware of the number of
22 illegal files that were excluded or replaced in your
23 study?

24 A. I don't have the exact number but it

1 was a small number, not material to the conclusions.

2 Q. Are there further inquiries that you
3 expect to undertake before trial?

4 A. At po -- at this point in time I have
5 no expectation of initia -- additional analyses.

6 Q. Is there anything that you'd like to
7 consider further but have not?

8 MR. POZZA: Object to the question as
9 vague, as ambiguous.

10 THE WITNESS: With regard to the
11 opinion that I've presented here today and in
12 my report I have all the materials that I
13 feel are required to give an accurate
14 description of the infringement activity of
15 Hotfile in January of 2011.

16 BY MR. LEIBNITZ:

17 Q. Have you been asked to do anything
18 further?

19 A. At this stage I have no further
20 requests on my time.

21 MR. LEIBNITZ: Okay. Let's take a
22 break.

23 THE VIDEOGRAPHER: We are now going
24 off the record. This completes Tape Number