

Exhibit L

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 11-20427-WILLIAMS

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.)

Deposition of JAMES BOYLE
(Taken by the Plaintiffs)
Raleigh, North Carolina
December 21, 2011

Reported by: Marisa Munoz-Vourakis -
RMR, CRR and Notary Public
TSg Job # 44315

1 that you asked, because it's an example of changing the
2 line between the realm of the protected and the realm
3 of the unprotected in the hope of generating more
4 innovation.

5 Q. In the course of your research, do you have
6 any experience designing statistical studies?

7 MR. GUPTA: Objection, vague and
8 ambiguous.

9 A. No, I do not.

10 Q. Are you trained in statistics?

11 A. No, I am not.

12 Q. In the course of your research, do you have
13 any experience analyzing large data sets?

14 MR. GUPTA: Objection, vague and
15 ambiguous.

16 A. No, I would say that I do not have the
17 experience as a statistician analyzing large data sets.
18 As an academic, I have to consider large amounts of
19 data all of the time and try and draw conclusions from
20 it, so it depends exactly what you mean by large data
21 sets.

22 Q. In your research, do you have any
23 experience analyzing on line networks?

24 MR. GUPTA: Objection, vague and
25 ambiguous.

1 businesses in a variety of ways, and so it is hard to
2 characterize them as merely one thing precisely because
3 users are using them for different purposes.

4 Q. Do you know how many files have been
5 uploaded to Hotfile?

6 MR. GUPTA: Objection, vague and
7 ambiguous, calls for speculation. It's
8 outside the scope of his report.

9 A. No, I do not.

10 Q. Do you know how many total downloads of
11 files there have been for Hotfile?

12 MR. GUPTA: Same objection.

13 A. No, I do not.

14 Q. Are you familiar with a report in this
15 litigation by Professor Richard Waterman?

16 A. Yes, I am.

17 Q. Have you reviewed it?

18 A. Yes, I have.

19 Q. Are you aware of his conclusions?

20 A. Yes, I am.

21 Q. Have you been asked to offer an opinion on
22 his conclusions?

23 MR. GUPTA: Objection, seeks work
24 product. I think that that's covered by
25 Rule 26, and you'll have an answer soon

1 A. No, I did not. I was asked to look at
2 examples of noninfringing uses.

3 In addition, I am not a statistician, as I
4 made clear on paragraph seven. This does not purport
5 to be a representative statistical sample.

6 Q. Getting to the summary of opinions,
7 paragraph nine, let's start with conclusion one, little
8 i, I guess. I'll just read it: First, there was a
9 high volume of usage of the Hotfile system for
10 activities that were either clearly noninfringing or
11 highly likely to be noninfringing.

12 Do you see that?

13 A. I do.

14 Q. What do you mean by a high volume of usage?

15 A. I mean that there was a large number of
16 downloads of material of that type.

17 Q. What is a large number of downloads?

18 A. Are you asking me in philosophical sense?

19 Q. How would you quantify what a large number
20 of downloads would be?

21 A. I found there were 1.7 million downloads.
22 That seemed to be a high number to me.

23 Q. If it was 10,000 downloads, would that be a
24 high number?

25 MR. GUPTA: Objection, incomplete

1 hypothetical.

2 A. It would depend very much on the facts and
3 why one was asking the question.

4 Q. Does it depend on the total number of
5 downloads from Hotfile overall?

6 MR. GUPTA: Objection, that's vague
7 and it lacks foundation.

8 A. I was attempting to give the court
9 information which would be useful in a determination of
10 whether or not there was substantial noninfringing uses
11 of the Hotfile service, and whether or not there were
12 uses of Hotfile which tended to militate against
13 inducement liability under the theory of Grokster.
14 Since that was the question I was attempting to answer,
15 I looked at the kinds of things that seem relevant in
16 answering that question.

17 Since the court in Sony stressed a number
18 of different factors in talking about noninfringing
19 uses, and the courts since Sony have stressed a number
20 of different factors in talking about the capabilities
21 of system for noninfringing uses, I tried to look,
22 where possible, at the types of usages of the Hotfile
23 system which seemed to fall within those categories.

24 So high volume here for me is --
25 1.7 million seems to me to be a large number, and

1 that's a large number of downloads of a particular
2 piece of software. In this case, a great many people
3 are acquiring this piece of software. I think a court
4 looking at that, looking at the distribution of
5 copyrighted material, looking at the incentivization of
6 creativity would say that the provision of copyrighted
7 content to 1.7 million people is a very substantial
8 use.

9 That would be a substantial use, regardless
10 of the total number of downloads from the Hotfile
11 service, but that was not what I was looking at.

12 Q. So the total number of downloads does not
13 matter in determining whether or not there is what you
14 characterize a high volume of usage?

15 MR. GUPTA: Objection, that
16 mischaracterizes the testimony. It's vague.
17 It lacks foundation. It calls for
18 speculation and it's asked and answered.

19 A. I think I did answer that question
20 previously, but I shall try and answer it again
21 slightly more tersely.

22 I think there are a number of factors that
23 one would look at in terms of volume. In this case, I
24 think one key feature is looking at substantial
25 noninfringing uses is to look at whether or not a

1 system allows for a particular kind of creativity or
2 cultural sharing and whether or not it allows a
3 relatively large number of people to profit from that.
4 That is one and only one of many factors that one might
5 consider in considering substantial noninfringing uses.

6 If one thinks, for example, of a book or a
7 movie, and I were able to tell you that this book or
8 movie was distributed to 1.7 million people, I think I
9 would say that is a high volume. I, as an author,
10 would be delighted were my books to be read by
11 1.7 million people. I imagine that the creators of
12 this software felt that that was a high volume.

13 So relative to that question, I think, yes,
14 that is indeed a high volume.

15 Q. Going down a bit, you say, and I'll just
16 read this to be precise: Using the Hotfile system to
17 share noninfringing software files was also a popular
18 usage of the system in relative and absolute terms.

19 Do you see that?

20 A. Yes, I do.

21 Q. How was it a popular usage in absolute
22 terms?

23 A. Because there were 1.7 million downloads of
24 those files.

25 Q. And how was it a popular usage in relative

1 terms?

2 A. Because the two most commonly downloaded
3 files were files of that type, that is to say,
4 noninfringing files.

5 Q. When you say commonly downloaded, what do
6 you mean?

7 MR. GUPTA: Objection, calls for
8 speculation.

9 A. The two files that were listed at the top
10 of the most downloaded files on the database as --
11 which I believe the plaintiffs also have, and that was
12 determined by Elysium Digital.

13 MR. GUPTA: I would just like to lodge
14 and objection. It may be helpful for
15 counsel, if you want more specifics on these
16 numbers, to actually direct the witness to
17 the different tables and other numbers in
18 the report.

19 A. The details are provided in the attached
20 documents.

21 Q. So you say the top two most downloaded
22 files on Hotfile were open source programs, correct?

23 A. Yes.

24 Q. You're looking at specific files, right?

25 A. Yes, I am, but let me qualify that

C E R T I F I C A T E

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2 I, Marisa Munoz-Vourakis, RMR, CRR and Notary Public,
3 the officer before whom the foregoing proceeding was
4 conducted, do hereby certify that the witness(es) whose
5 testimony appears in the foregoing proceeding were duly
6 sworn by me; that the testimony of said witness(es) were
7 taken by me to the best of my ability and thereafter
8 transcribed under my supervision; and that the foregoing
9 pages, inclusive, constitute a true and accurate
10 transcription of the testimony of the witness(es).

11 I do further certify that I am neither counsel for,
12 related to, nor employed by any of the parties to this
13 action in which this proceeding was conducted, and
14 further, that I am not a relative or employee of any
15 attorney or counsel employed by the parties thereof, nor
16 financially or otherwise interested in the outcome of the
17 action.

18 IN WITNESS WHEREOF, I have hereunto subscribed my name
19 this 27th of December, 2011.

20 MARISA MUNOZ-VOURAKIS

21 Notary #20032900127
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