

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-20427-JORDAN

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.*

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**DECLARATION OF ANTON TITOV IN SUPPORT OF DEFENDANTS' OPPOSITION  
TO PLAINTIFFS' EMERGENCY MOTION FOR ORDER PRESERVING EVIDENCE**

I, ANTON TITOV, declare as follows:

1. I am appearing in this case specially and I reserve my rights at this point to object to personal jurisdiction. I offer this Declaration in support of the opposition that Hotfile and I are filing to Plaintiffs' "Emergency Motion for Order Prohibiting Spoliation and Preserving Evidence." This declaration is based on personal knowledge unless indicated otherwise and all statements contained in this declaration are true and correct. If called as a witness, I could and would testify to the facts set forth in this declaration.

2. I am a founder, minority shareholder, and technologist at Hotfile – as well as the former CEO of Bulgaria's leading web-hosting company. I am a Russian citizen who has

resided in Bulgaria for the past two decades. My wife, son, mother, and brother also live in Bulgaria, where I pay taxes, possess bank accounts, and own a home and a car.

3. I am the Founder and President of Lemuria Communications, Inc. (“Lemuria”) which provides web hosting capabilities for Hotfile. I incorporated Lemuria in the United States after Hotfile learned that a Panamanian corporation could not obtain Internet Protocol addresses from the Latin American and Caribbean Internet Addresses Registry (LACNIC) for servers located outside of Latin America. By serendipity, the first agent I reached for purposes of incorporating a U.S. business happened to be located in Florida. I had never visited the United States prior to October 2009, when I visited Florida to incorporate and setup Lemuria’s business.

4. Although I spent the summer of 2010 in Miami Beach, I am not a permanent resident of the United States. To provide me with this Complaint, Plaintiffs had a process server come to my hotel while I was vacationing in Las Vegas, Nevada. I am not a permanent resident of Nevada either.

#### **Background on Hotfile**

5. Hotfile is an online file storage and sharing service for enterprises and individuals. Using Hotfile’s website, people can upload voluminous files onto the 700+ available servers in Dallas, obtain a web link (or “URL”) pertaining to those files, share that link with employees or invited members of the public, and in this way permit people to access files remotely from any internet-enabled location. With periodic maintenance fees, those files can remain securely stored indefinitely, thereby providing backup file storage capacity to companies. Also, open source software developers can store and share lengthy program files with online communities. Bloggers can share photos, video footage, or other files. Independent musicians,

photographers and film-makers can promote their albums and images and movies directly to fans and members of the public without relying upon studios for distribution or promotion.

6. As a hosting service, it is not Hotfile's role to access the contents of stored files. Hotfile does not generally access the information stored by users on its servers because, among other things, the quantity of data stored would make it impracticable and it would compromise users' privacy expectations. Hotfile employs fingerprinting as set forth below and takes down material in response to DMCA requests.

7. Hotfile derives revenue from "premium" subscriptions, whereby users pay up to \$9 per month for faster downloads and other benefits.

8. Founded in 2008, Hotfile is a Panamanian corporation with its principal place of business in Sofia, Bulgaria. Hotfile was founded to compete with the services provided by Google<sup>®</sup> Docs, Windows<sup>®</sup> Live SkyDrive, RapidShare<sup>®</sup>, DepositFiles<sup>®</sup>, MegaUpload<sup>®</sup>, and MediaFire<sup>®</sup>. Hotfile wholly owns Hotfile Ltd., a Bulgarian limited liability company, which supports Hotfile's website operations.

#### **The Safe Harbor Provisions Of The DMCA**

9. Hotfile is an online service provider with a designated agent at the copyright office and a posted repeat infringer policy. Attached hereto as Exhibit 1 is a true and correct copy of Hotfile's DMCA designated agent filing with the Copyright Office. Hotfile typically responds in under 24 hours of receiving a DMCA takedown notice.

10. Hotfile uses MD5/SHA1 digital fingerprinting technology, in cooperation with copyright owners, to detect and block copyrighted works from appearing on its website.

11. To take advantage of Hotfile's MD5/SHA1 filtering technology, a verified copyright owner can open a "special rightsholder account" with Hotfile. Hotfile has created special rightsholder accounts for any verified copyright owner that has requested one in the past.

Plaintiff Warner Brothers has created such an account. So has DtecNet, a third-party contractor who sends takedown notices on behalf of companies including some other plaintiffs. Microsoft is another example of a holder of a special rightsholder account owner.

12. Such special rightsholder account owners can enter identifying data for a protected work into Hotfile's filtering system. This is done by entering any Hotfile-generated URL for the work in question. Attached hereto as Exhibit 2 is a true and correct copy of the portal that allows such rightsholders to enter URLs for fingerprinting. After a file's URL has been entered into the system, Hotfile's filtering technology identifies a digital fingerprint for that file. That file is immediately suspended, meaning that it can no longer be downloaded. The file is also immediately blocked, and cannot be uploaded again by the same user or other users, even under a different name. Due to the limitations of filtering technology, it may be possible for users to subsequently upload an altered version of the file. If that occurs, the copyright owner can block the altered file by entering the new URL into the filtering system, which will immediately delete and block the altered file.

13. Hotfile has had an abuse policy to combat infringement since its outset and maintains a policy of terminating the accounts of repeat copyright infringers in compliance with the DMCA. Hotfile terminates the accounts of users who have repeatedly uploaded files that are or are asserted to be protected by copyright.

14. Hotfile recently decided to be even more aggressive against repeat infringers and beginning on or around February 18, 2011 further tightened its policies.

#### **Hotfile's Preservation Of All Potentially-Relevant Evidence**

15. Hotfile maintains and preserves a broad spectrum of data, even when not in active litigation. It has acted to preserve more data in response to litigation obligations. Hotfile is

currently preserving the following electronic information, corresponding to the areas discussed in Plaintiffs' motion.

16. "Content Files": Hotfile is preserving all content files on its systems, even those that are inactive, are the subject of a DMCA takedown notice, or are being deleted by users.<sup>1</sup> Instead of being "deleted," files are actually being "suspended," i.e. disabled from being publicly accessible. Hotfile took on the expense of this preservation effort itself, because Plaintiffs refused to share in the cost.

17. "Content Reference Data, User Data and Activity Data": This category is vague.

- a. *Content Reference Data*. Hotfile is preserving content file metadata and databases of the content files on its systems. Some fields in the database, such as download counts, are changing but essential information is being maintained.
- b. *User data*. Hotfile maintains identifying information on its users in a database, including a list of content files a user has uploaded. Hotfile is logging events of significance, such as when a user performs a task such as changing his or her password. Hotfile is maintaining records of payments to users for downloads of their uploaded content, as Plaintiffs requested. Plaintiffs can obtain some of this information from third-parties such as PayPal as well.<sup>2</sup>

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<sup>1</sup> These files are stored across approximately 700 servers that have RAID backup capability.

<sup>2</sup> Plaintiffs' suggestion that the account suspensions starting on around February 18, 2011 somehow mean that user information was deleted is false. All of that user information is still available.

c. *Activity Data.* In addition to IP addresses for uploaders, which Hotfile has recorded and preserved almost since its inception, soon after this case was filed, Hotfile started affirmatively logging each download of a content file, including a time stamp, user IP address, number of bytes, number of seconds for the transfer, whether the user is premium or not, TCP quality information, the IP address serving the file, user id of the downloader (if not anonymous), and upload id. The IP addresses for users should give Plaintiffs the ability to look up, using public databases, the countries of origin for Hotfile's users. To the extent Hotfile outsources any user tracking data functions to third parties, such as Google Analytics, Hotfile is not deleting any of that user activity data in its possession. There is some "activity data" that Hotfile does not maintain, such as IP addresses of users who may click on the Hotfile "Frequently Asked Questions" page.

18. "Communications Regarding the Hotfile Service Including Records of Communications With Users and Website Operations Via Any of Defendants' Email Systems Or Addresses": Hotfile is preserving Hotfile-related emails for its principals and employees. Hotfile does not record phone calls with its customer service employees, so there is nothing of that nature to be preserved.

19. "Business And Marketing Plans Related To Defendants' Hotfile-related Businesses": Hotfile agrees to preserve business and marketing plans without representing that any such plans exist.

20. “Internal Communications Between And Among Defendants And Their Employees Regarding Defendants’ Hotfile-Related Businesses”: Hotfile is preserving all emails regarding the Hotfile business exchanged among its principals and employees.

#### **The Declaration of Dr. Ian Foster**

21. I have reviewed Dr. Foster’s Declaration. I believe his declaration is vague and incorrect on a number of points.

22. Dr. Foster states that, “The effective functioning of Hotfile as a content dissemination site requires that it be possible, by examining these files, to determine the content embodied therein (for example, if a Content File represented a particular motion picture, that fact could be determined by examining the file itself).” Hotfile cannot examine files that are encrypted or password protected archives. Similarly, Dr. Foster is vague as to whether by “examine” he is referring to manual review, or review by technical means such as content filtering/fingerprinting. Any of these methodologies poses a variety of challenges.

23. Dr. Foster suggests that Hotfile must maintain, for each Content File, “the link associated with that file.” In reality, while the link itself is not kept in the database, it can be readily constructed from the data that is there.

24. Dr. Foster suggests that Hotfile must maintain for each Content File, “The number of times the file has been downloaded.” Hotfile generally counts completed downloads, which means that if a user decides to abort the download process in the middle, Hotfile will not count this download. Hotfile also takes measures to prevent inflation of download numbers.

25. Dr. Foster suggests that Hotfile must use certain information regarding each request to download a Content File, including country. Country, with some level of accuracy, can be derived from IP address. In normal operation, Hotfile derives the country of the user that



downloaded the file to determine if the download is qualifying for affiliate payment or not, but does not record the country in the database. Hotfile is keeping IP address for downloads for this litigation.

26. Dr. Foster states that Hotfile must maintain “[b]asic account information.” This is vague because it fails to define what fields are expected.

27. Dr. Foster is incorrect that Hotfile must maintain “[w]hich Content Files the user has downloaded (if the user is a premium user),” in its normal business. However, as part of the litigation hold, such download information is being logged.

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 27th day of February 2011, at Sofia, Bulgaria.

Anton Titov

