

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 CASE NO. 11-20427-WILLIAMS/TURNOFF

4 DISNEY ENTERPRISES, INC.,)
TWENTIETH CENTURY)
5 FOX FILM CORPORATION,)
UNIVERSAL CITY STUDIOS)
6 PRODUCTIONS LLLP,)
COLUMBIA PICTURES)
7 INDUSTRIES, INC., and)
WARNER BROS.)
8 ENTERTAINMENT, INC.,)

9 Plaintiffs,)

10 v.)

11 HOTFILE CORP., ANTON)
TITOV, and DOES 1-10)
12)
13 Defendants.)
14 _____)

15 H I G H L Y C O N F I D E N T I A L

16 (Pursuant to protective order, the following
17 transcript has been designated highly
18 confidential)

19 DEPOSITION OF MATTHEW LYNDE, Ph.D.
20 SAN FRANCISCO, CALIFORNIA
21 FRIDAY, DECEMBER 16, 2011
22
23

24 REPORTED BY: Linda Vaccarezza, CSR No. 10201
25 JOB NO.: 44313

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DECEMBER 16, 2011

10:07 A.M.

Deposition of MATTHEW LYNDE, Ph.D.,
held at the offices of Farella,
Braun & Martel, 235 Montgomery
Street, San Francisco, California, before
Linda Vaccarezza, a Registered
Professional Reporter and Certified
Shorthand Reporter of the State of
California.

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A P P E A R A N C E S:

ATTORNEY FOR THE PLAINTIFFS:

JENNER & BLOCK

BY: STEVEN B. FABRIZIO, ESQ.

1099 New York Avenue, NW

Washington, DC 20001

ATTORNEY FOR THE DEFENDANTS

HOTFILE CORP., AND ANTON TITOV:

FARELLA, BRAUN & MARTEL

BY: RODERICK M. THOMPSON, ESQ.

235 Montgomery Street

San Francisco, California 94104

[REDACTED]

15 Q. Well, broadening the question to
16 go beyond what you term the "wrongful takedown
17 notices," just in the way you do your
18 calculations, are any takedown notices treated
19 differently from any others in terms of the
20 economic impact they cause?

21 A. No. In the analysis I've done, I
22 have not distinguished between the impacts of
23 what are mostly, as I understand it, lawful and
24 correct takedown notices from wrongful takedown
25 notices, in terms of individual impact.

1 Q. And within the category that you
2 term "wrongful takedown notices," is it correct
3 that you also don't distinguish from one notice
4 to the other in terms of its estimated economic
5 impact?

6 A. That is correct. I was not able
7 to distinguish between individual types of
8 wrongful takedown notices. I've considered them
9 as a collectivity.

10 Q. Just to confirm, you did not
11 consider as to any individual takedown notices,
12 the publicity or public impact that that
13 particular notice had, correct?

14 MR. THOMPSON: Objection.
15 Overbroad and vague.

16 THE WITNESS: I did not do that
17 kind of analysis, apart from gaining an
18 awareness of -- of types of files, for
19 example, that might have been wrongfully
20 taken down.

21 Q. And is it also correct that in
22 your analysis you did not consider whether any
23 individual notice referred to a file that was
24 particularly popular or not?

25 MR. THOMPSON: Objection. Vague.

1 THE WITNESS: That is correct. I
2 did not have the means to potentially
3 calibrate individual wrongful takedowns
4 with the popularity rating of particular
5 files.

6 Q. And did you look to see whether
7 individual takedown notices resulted in, I think
8 you termed it "the erroneous termination of a
9 premium account"?

10 A. I did not look to see if there was
11 a particular link from a particular wrongful
12 takedown to a particular termination of a premium
13 account.

[REDACTED]

[REDACTED]

21 Is there, in your professional
22 judgment, a de minimis number of erroneous user
23 terminations that you would agree as a practical
24 matter doesn't result in any measurable injury to
25 Hotfile?

1 MR. THOMPSON: Objection. Vague.
2 And incomplete hypothetical.

3 THE WITNESS: Well, I'm not sure I
4 completely understand the context of the
5 question. But if it could be established
6 that there was a wrong termination that
7 would not have occurred but for a
8 wrongful takedown, the loss of that
9 subscription would indeed be a
10 quantifiable harm to Hotfile.

11 Q. Even if it was just a single
12 wrongful termination of a premium account?

13 A. Yes.

14 Q. And what if it was a single
15 erroneous termination of a non-subscription,
16 non-premium account?

17 A. If I understand your question
18 correctly -- we discussed this a little bit
19 before -- that possibly could indirectly lead to
20 the loss of a paying account, and therefore
21 revenue, but the connection would be, as I
22 understand, a little more difficult to
23 establish.

24 But if it could be established,
25 then indeed the loss of a subscription account

1 would be an economic harm to Hotfile.

2 Q. In your analysis, did you attempt
3 to make that connection between terminations of
4 non-premium users and economic harm to Hotfile?

5 A. I did not.

[REDACTED]

█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]

5 Does that model assume that each
6 takedown notice sent by Warner, whether properly
7 or erroneously, is responsible equally for each
8 dollar of lost profits due to Warner that you've
9 calculated?

10 MR. THOMPSON: Objection. Vague.

11 THE WITNESS: If I understand your
12 question correctly, with other things
13 equal it does presume an equal impact of
14 takedown notices ultimately, whether they
15 be correct takedown notices or wrongful
16 takedown notices, on their average
17 impact, that is correct.

█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]

█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]

8 Q. And that is one of the assumptions
9 of your model, is it not, that takedown notices
10 result in lost revenues and lost profits
11 regardless of whether they are wrongful or not
12 wrongful?

13 MR. THOMPSON: Objection. Assumes
14 facts.

15 THE WITNESS: Well, in a general
16 sense, that is correct.

17 Q. So then is it fair to say that the
18 model that you've used assumes that -- well,
19 maybe I should put it a different way.

20 In the model that you have used,
21 takedown notices that have not been considered
22 wrongful are responsible for the bulk of the lost
23 profits that Hotfile suffered from February 2011
24 through September 7, 2011; is that correct?

25 A. In the model that I've considered

1 here in terms of estimating damages to Hotfile
2 from wrongful notices, it is correct.

3 As I consider that -- as I
4 indicated earlier this morning, the interaction
5 between the takedown notice process, which I
6 understand provides notice of copyrighted subject
7 matter which shouldn't be on the website and
8 ultimately that might be related with notice to
9 up loaders, that if they upload copyrighted
10 material they will be terminated, that the
11 termination process occurs. And if that's
12 associated with premium accounts, that can result
13 in a loss in revenue.

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

1 THE WITNESS: In parallel to the
2 discussion I put forward this morning
3 about the structure of the model, yes.
4 That would be a similar and parallel
5 assessment.

[REDACTED]

[REDACTED]

18 being to estimate the lost profit impact
19 due to wrongful takedowns. But included
20 in that chain in terms of an assessment
21 of an impact of rightful takedowns, as I
22 said, would need to be an assessment of
23 these other factors that would be related
24 to potential impact on revenue, which we
25 discussed, and including the change in

1 Hotfile policy in terms of the
2 termination three strike rule in
3 February.

4 Q. So in order to make a final
5 determination as to whether the rest of the lost
6 profits are attributable to the correct notices
7 you would need to look at things like the
8 publicity associated with them, whether they are
9 related to popular files, whether they resulted
10 in erroneous termination or terminations of
11 premium account users, and the rest of those
12 factors that we talked about earlier?

13 MR. THOMPSON: Objection.

14 Overbroad and asked and answered.

15 THE WITNESS: If I understand your
16 question correctly, I believe indeed
17 those need to be assessed.

18 Q. And in your damages model, looking
19 at lost profits due to wrongful notices, did you
20 look at any of those considerations on an
21 individual basis?

22 MR. THOMPSON: Objection.

23 Overbroad and vague.

24 THE WITNESS: Given my review of
25 the evidence I was not aware, with

█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]

7 Do you agree that Hotfile is not
8 injured by taking down a file that is, in fact,
9 copyright infringing?

10 MR. THOMPSON: Objection. Vague.
11 Calls for a legal conclusion, and to the
12 extent it states Mr. Titov's testimony.

13 MR. FABRIZIO: I'll take my
14 chances on that one.

15 THE WITNESS: Well, I'm not sure I
16 understand the full context of the
17 question, because it's my understanding
18 that Hotfile has a policy of not allowing
19 infringing material and taking down
20 material for which it receives notice
21 that it's infringing, so that would not
22 be a part of its expectation of revenue.

23 Q. So infringing files are not part
24 of Hotfile's expectation of revenue, to your
25 understanding?

1 A. That is my understanding, yes.

2 Q. And do you have that understanding
3 through people at Hotfile?

4 A. Not specifically, but from my
5 review of the materials and my understanding of
6 Hotfile's policy of taking down material for
7 which it receives notice that the copyright owner
8 does not concur that that is appropriately on the
9 Hotfile site. And that's what Hotfile does, it
10 takes those files down.

11 Q. So from an economic perspective,
12 if Hotfile removes from its site a file that is,
13 in fact, copyright infringing, that does not
14 affect Hotfile's expected revenues?

15 MR. THOMPSON: Objection. Vague
16 and overbroad.

17 THE WITNESS: Well, for -- with
18 respect to its policy of not having
19 infringing files and taking them down
20 timely when they have received notice,
21 which I understand is their policy and
22 obligation, yes. It's my understanding
23 that business models is based on users
24 using the site to store and share files
25 for which they have rights.

1 Q. So if Warner Brothers had
2 mistakenly sent a takedown notice to Hotfile for
3 a file that in fact contained a Disney movie, an
4 infringing copy of a Walt Disney movie, is
5 Hotfile injured by removing the infringing copy
6 of the Disney movie?

7 MR. THOMPSON: Objection. Calls
8 for a legal conclusion.

9 THE WITNESS: Well, if I
10 understand the context of your question,
11 perhaps not specifically with respect to
12 that file, but there are other potential
13 impacts on the business in terms of its
14 operations and its goodwill and
15 reputation.

16 Q. There are other potential impacts
17 on the business and its goodwill as a result of
18 Hotfile removing an infringing copy of a Disney
19 movie?

20 A. Not from a -- as I said in my
21 answer, not from a specific removal, which is
22 appropriate, and according to its policy, no.

23 Q. Well, let me just put it this
24 way.

25 Does it matter in terms of

1 Hotfile's lost profits or -- strike that.

2 In terms of injury to Hotfile,
3 does it make a difference whether Warner Brothers
4 sends a notice for an infringing copy of a Disney
5 movie, or Disney sends a notice for infringing
6 copy of a Disney movie?

7 MR. THOMPSON: Objection.

8 Incomplete hypothetical. Vague.

9 THE WITNESS: If I understand your
10 question correctly, no. Because in
11 either case it is material that the
12 copyrighted owner does not agree belongs

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

[REDACTED]

12 You have previously testified that
13 if a file is actually infringing, the impact to
14 Hotfile is the same regardless of who sends
15 Hotfile the notice, correct?

16 MR. THOMPSON: Objection. Vague
17 and misstates testimony.

18 THE WITNESS: If I'm recalling the
19 earlier question within the context of
20 the -- within the context that I
21 understand, if it's a copyrighted
22 material that shouldn't be on the
23 website, yes. It doesn't matter who
24 sends the notice in terms of economic
25 impact.

[REDACTED]

[REDACTED]

17 Q. Well, Mr. Titov testified that in
18 that case where a user was assigned three strikes
19 without counting any of the Warner strikes, that
20 Hotfile did not consider -- did not consider that
21 a wrongful termination.

22 In your understanding of the
23 Hotfile system, do you have reason to disagree
24 with him?

25 MR. THOMPSON: Excuse me.

1 Objection. Incomplete hypothetical.
2 Overbroad.

3 You can answer.

4 THE WITNESS: I do not have any
5 reason to agree with him --

6 Q. Agree or disagree?

7 A. I do not have any reason to
8 disagree with him, so...

[REDACTED]

1
2
3 We have previously talked about a
4 situation where a user was terminated based on a
5 wrongful notice, and I believe you referred to
6 that as a wrongful termination.

7 If a user was terminated because
8 of three strikes having nothing to do with Warner
9 notices, you would not consider that a wrongful
10 termination, would you?

11 MR. THOMPSON: Objection. Calls
12 for a legal conclusion.

13 THE WITNESS: If I'm understanding
14 the context of the question, that would
15 be correct.

16 Q. Have you analyzed whether that
17 ever happened, whether any of the users that were
18 terminated -- strike that.

19 Have you ever analyzed whether any
20 of the users that received strikes based on the A
21 through D notices already had three strikes
22 without counting the strikes assigned by the
23 Warner notices?

24 A. I have not done that analysis.
25

[REDACTED]

10 Q. You would agree with me, would you
11 not, that if Hotfile only began assigning strikes
12 based on notices on February 18, 2011, that any
13 of the files on Exhibit A through D that were the
14 subject of notices sent before February 18, 2011
15 could not have resulted in users being terminated
16 as a result of the Warner notices?

17 MR. THOMPSON: Objection.
18 Incomplete hypothetical.

19 THE WITNESS: If I understand your
20 question correctly, and the date of the
21 initiation of the policy, for involuntary
22 terminations due to that policy, I
23 believe that would be correct.

[REDACTED]

[REDACTED]

5 Do you have any evidence, and did
6 you consider any evidence that any Hotfile user
7 failed to purchase a premium account as a result
8 of the takedown notices reflected on Exhibits A
9 through D of the counterclaim?

10 A. Failed to purchase an account?
11 Well, that -- I don't believe that data set would
12 exist since those are all the people for which
13 there would be no records.

14 Q. So then the answer would be, no,
15 you don't? You're not aware of any evidence?

16 A. Nor would any exist logically.

[REDACTED]

[REDACTED]

11 Can you identify a single Hotfile
12 premium user who cancelled his or her
13 subscription from Hotfile as a result of the
14 takedown notices reflected on Exhibits A through
15 D of the counterclaim?

16 A. I'm not aware of evidence with
17 regard to a single user.

18 Q. Let me broaden that.

19 Are you aware of any Hotfile
20 premium users who cancelled their premium
21 subscription as a result of any takedown notices
22 sent to Hotfile by Warner Brothers?

23 A. I am not aware of specific
24 evidence with regard to any group of premium
25 users with respect to those takedown notices.

1 Q. You're killing me with the
2 "specifics" here.

3 Are you aware of a single Hotfile
4 premium user who cancelled his or her premium
5 subscription as a result of any takedown notices
6 sent by Warner Brothers?

7 A. I am not aware of such specific
8 evidence.

[REDACTED]

█ [REDACTED]
█ [REDACTED] █
█ [REDACTED]
█ [REDACTED]

5 Q. I realize that's an assumption of
6 your damages model. My question, though, is to
7 try to -- to try to figure out whether there was
8 any evidence of any adverse effect on Hotfile's
9 business reputation or goodwill coming from the
10 Exhibit A through D takedowns?

11 A. I do not have specific evidence
12 from the Exhibit A through D takedowns to
13 reputation or goodwill.

14 Q. Are you aware that any takedown
15 notice sent by Warner Brothers has had an adverse
16 impact on Hotfile's business reputation or
17 goodwill?

18 A. I am not sure I understand the
19 distinction --

20 Q. My first question --

21 A. -- between the questions.

22 Q. My first question was related to
23 the A through D works; my second question was
24 related to any Warner takedown notice.

25 So with that clarification, let me

1 just ask the question in a whole.

2 Are you aware of any Warner
3 Brothers takedown notice that has resulted in an
4 adverse impact on Hotfile's business reputation
5 or goodwill?

6 A. I'm not aware of any such specific

█ [REDACTED]

8 Q. Are you aware of any evidence of
9 negative feedback from users -- strike that.

10 Are you aware of any evidence of
11 negative feedback from users based on the
12 takedown notices reflected on Exhibits A through
13 D of the counterclaim?

14 MR. THOMPSON: Objection.
15 Overbroad and vague.

16 THE WITNESS: I'm not aware of
17 specific evidence with respect to user.

18 Q. I'm broadening it to all of
19 Warners' takedown notices.

20 Are you aware of any negative
21 feedback from any Hotfile user related to any
22 takedown notice sent by Warner Brothers?

23 A. I'm not aware of specific evidence
24 on that.

█ [REDACTED]

[REDACTED]

9 Q. Do you believe it is a fair
10 statement that as of today if you count your
11 hours approved for your deposition, that
12 Cornerstone Research has accrued more than
13 \$20,000 worth of fees in this matter?

14 A. That's likely to be the case.

15 Q. So if you look at Schedule 1 of
16 Lynde Exhibit 1, Cornerstone Research has
17 probably incurred more fees twice -- strike
18 that.

19 Cornerstone Research has incurred
20 more fees in this case than the total damage you
21 estimate in Schedule 1?

22 A. I believe that's correct.

23 Q. And the total you estimate in
24 Schedule 1.1 as well?

25 A. Correct.

1 MR. FABRIZIO: Okay. I'm good.

2 Thank you, Dr. Lynde.

3 (Time noted: 5:59 p.m.)

4

5

6

Matthew R. Lynde

7

MATTHEW LYNDE

8

9

10

Subscribed and sworn to before me *See Below*

11

This *30th* day of *January*, 20*12*.

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State of California
County of San Francisco
Subscribed and sworn to (or affirmed) before me
on this 30th day of January, 2012
by Matthew Lynde
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.
Signature *Matthew Lynde* (Seal)

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Errata to the Deposition of Matthew R. Lynde
 December 16, 2011
Disney Enterprises, Inc. et al. v. Hotfile Corp., et al.
Hotfile Corp., et al. v. Disney Enterprises, Inc. et al.

Page	Line	Now reads	Should read	Reason
9	13	"didn't"	"don't"	Misspoke
42	14	"affect"	"effect"	Transcribing error
52	9-10	"up loader"	"uploader"	Transcribing error
75	3	"I result"	"results"	Misspoke
84	9	"up loaders"	"uploaders"	Transcribing error
118	14	"prescription"	"subscription"	Misspoke
126	10	"focused in"	"focused on"	Transcribing error
150	4	"I was"	"I"	Misspoke
157	25	"basis is"	"basis"	Transcribing error
162	17	"have"	"have;"	Transcribing error
178	23	"an"	"a"	Transcribing error
179	18	"or"	"where"	Transcribing error
185	15	"MegaDownload"	"Megaupload"	Misspoke
212	22	"over"	"of"	Transcribing error
212	22	"and"	"that"	Transcribing error
213	10	"it's bought and"	"its robot"	Transcribing error
218	1	"variants"	"variance"	Transcribing error
218	22	"is you"	"is that you"	Transcribing error
245	3	"ELLS"	"Yale"	Transcribing error
262	18	"provided"	"have been provided"	Transcribing error
276	19	"Tolav"	"Kolev"	Transcribing error

1/30/12
 Date

Matthew R. Lynde
 Matthew R. Lynde

Mark McQuillen
 Notary Public



State of California San Francisco
 County of San Francisco
 Subscribed and sworn to (or affirmed) before me
 on this 30 day of January, 2012
 by Matthew R. Lynde
 proved to me on the basis of satisfactory evidence
 to be the person(s) who appeared before me.
 Signature *Mark McQuillen* (Seal)

1 C E R T I F I C A T E

2 STATE OF CALIFORNIA)

3)

4 COUNTY OF SAN FRANCISCO)

5 I, LINDA VACCAREZZA, a Certified
6 Shorthand Reporter for the State of
7 California, do hereby certify:

8 That MATTHEW LYNDE, the witness
9 whose deposition is hereinbefore set
10 forth, was duly sworn by me and that such
11 deposition is a true record of the
12 testimony given by such witness.

13 I further certify that I am not
14 related to any of the parties to this
15 action by blood or marriage; and that I
16 am in no way interested in the outcome of
17 this matter.

18 IN WITNESS WHEREOF, I have hereunto
19 set my hand this 29th day of December
20 2011.

21
22 _____
23 LINDA VACCAREZZA, CSR. NO. 10201
24
25