

# 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 )  
Defendants. )  
13 )  
14

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

15  
16 (Pursuant to protective order, the following  
17 transcript has been designated highly  
confidential)

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

1           A P P E A R A N C E S:

2           ATTORNEY FOR THE PLAINTIFFS:

          JENNER & BLOCK

3           BY: STEVEN B. FABRIZIO, ESQ.

          1099 New York Avenue, NW

4           Washington, DC 20001

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7           ATTORNEY FOR THE DEFENDANTS

          HOTFILE CORP., AND ANTON TITOV:

8           FARELLA, BRAUN & MARTEL

          BY: RODERICK M. THOMPSON, ESQ.

9           235 Montgomery Street

          San Francisco, California 94104

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[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.



[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]

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 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]



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]

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.





[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]

[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 30<sup>th</sup> day of *January*, 2012.

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State of California  
County of San Francisco  
Subscribed and sworn to (or affirmed) before me  
on this 30<sup>th</sup> 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