

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-20427-WILLIAMS/TURNOFF

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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HOTFILE CORP.,

*Counterclaimant,*

v.

WARNER BROS. ENTERTAINMENT INC.,

*Counterdefendant.*

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**WARNER'S MOTION AND MEMORANDUM OF LAW TO CONVERT  
REPORT AND RECOMMENDATION INTO AN ORDER**

Warner Bros. Entertainment Inc. ("Warner") respectfully moves to convert the Honorable William C. Turnoff's Report and Recommendation on Warner's Motion to Permit Use at Trial or Summary Judgment of Titov Ex. 27 in its Entirety, dated February 28, 2012 (the "Report"), into an Order. Warner requests this relief so as to have the benefit of the ruling in time to obtain and incorporate the relevant document, Titov Ex. 27, into Warner's Reply in Support of its Motion for Summary Judgment, which is currently due to be filed in less than two weeks on March 12, 2012. To make meaningful

use of the document (which Warner previously destroyed based on Hotfile's clawback), Warner must be able to obtain a copy from Hotfile in advance of Warner's summary judgment reply memorandum. Absent converting the Report into an Order, therefore, Warner will thus be unable to obtain a copy of the full document, or make use of it, until after in summary judgment briefing has concluded, and the relief recommended by the Report will effectively be mooted by the case schedule.

Because Warner's original motion goes to a nondispositive issue and was referred to the Magistrate Judge by the Court for appropriate disposition, Warner believes that under 28 U.S.C. § 636 and the rules of this Court, its motion can and should be resolved by an Order and that the Report and Recommendation procedure is not necessary here. *See* February 8, 2012 Order of Referral (Docket No. 248); 28 U.S.C. § 636(b)(1)(A); S.D. Fla. Magistrate L.R. 1(c). In addition, since Hotfile can file Objections to the Magistrate Judge's decision irrespective of whether that decision is styled as an "Order" or as a "Report and Recommendation" – and can, if it so chooses, raise a contingent evidentiary objection to Warner's use of the full Titov Ex. 27 in its summary judgment briefing pending the Court's resolution of any such Objection – converting the Report into an Order would not prejudice Hotfile's rights in any way. Therefore, Warner respectfully requests that the Court convert the Report into an order.

Dated: February 29, 2012

Respectfully submitted,

By: /s/ Karen L. Stetson  
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**CERTIFICATE OF GOOD FAITH CONFERENCE**

I HEREBY CERTIFY that, pursuant to Local Rule 7.1(a)(3), U.S. District Court for the Southern District of Florida, counsel for Plaintiffs have conferred with counsel for Defendant Hotfile Corp. in a good faith effort to resolve the issues raised in this Motion without court action, and have been unable to reach agreement.

Dated: February 29, 2012

By: /s/ Karen L. Stetson

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 29th day of February, 2012, I served the following document on all counsel of record on the attached service list via the Court's ECF System:

**Warner's Motion and Memorandum of Law to Convert Report and Recommendation into an Order**

I further certify that I am admitted to the United States Court for the Southern District of Florida and certify that this Certificate of Service was executed on this date.

By: /s/ Karen L. Stetson  
Karen L. Stetson

**SERVICE LIST**

**Disney Enterprises, Inc., et al. v. Hotfile Corp. et al.  
CASE NO. 11-CIV-20427-WILLIAMS-TURNOFF**

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