

PUBLIC VERSION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 11-CIV-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.

HOTFILE CORP.,

Counterclaimant,

v.

WARNER BROS. ENTERTAINMENT INC.,

Counter-Defendant.

**[REDACTED] STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF DEFENDANT ANTON TITOV'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1(a), Defendant Anton Titov submits this statement of undisputed material facts as to which there is no genuine issue to be tried.

[REDACTED]

4. **Mr. Titov did not come up with the idea to found Hotfile.** [REDACTED]

[REDACTED]

5. **Mr. Titov is a minority and the smallest shareholder in Hotfile.** [REDACTED]

[REDACTED]

The personnel who work on the operations of Hotfile [REDACTED]

¹ Schoenberg Ex. __ refers to exhibits to the Declaration of Anthony Schoenberg filed concurrently herewith.

do not report to Mr. Titov. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7. **Mr. Titov did not make the decision to implement the Affiliate program.** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8. **Mr. Titov did not design the Affiliate program's payment criteria.** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9. **Mr. Titov has not implemented technical features to frustrate copyright owner enforcement efforts.** Mr. Titov has not implemented any technical features for the purpose of frustrating copyright owner enforcement. (Titov Dec. ¶ 39.) Hotfile developed a tool called a "Special Rightsholder Account" that allows selected copyright owners instantaneously take down files that they believe infringe their copyrights. (Titov Dec. ¶ 21.) Hotfile implemented hash technology to prevent any future downloads of a file that is subject to a takedown notice and block any future uploads of the same file. (Titov Dec. ¶ 27.) Hotfile implemented state-of-the-art digital fingerprinting technology from Vobile to prevent users from uploading files containing copyrighted works and recently upgraded to Vobile's newest such technology,

[REDACTED]

vCloud9. (Titov Dec. ¶¶ 34-35.)

10. **Mr. Titov does not control Hotfile.** Mr. Titov does not have the authority to make unilateral decisions effecting important aspects of Hotfile or its business or operations. (Titov Dec. ¶ 39.) Mr. Titov is not authorized to establish general policy or to make decisions regarding substantial aspects of the operations of Hotfile without the approval and vote of the other shareholders. ([REDACTED]; Schoenberg Ex. A (Titov Depo.) 61:8-12, 69:5-70:2, 80:17-21, 81:24-82:12, 85:13-86:13, 597:19-600:15.) (Titov Dec. ¶ 39.) [REDACTED]

11. **Mr. Titov is not responsible for day-to-day operations of Hotfile; his area of responsibility is technological matters.** Mr. Titov is not responsible for the day-to-day operations of Hotfile. (Schoenberg Ex. A (Titov Depo.) 31:8-13.) [REDACTED]

[REDACTED] Mr. Titov is responsible for technical matters relating to the company's software and hardware, which sometimes requires his attention as little as once a month. (Schoenberg Ex. A (Titov Depo.) 30:12-31:2, 31:22-32:4, 599:14-600:10; [REDACTED] In that capacity, Mr. Titov was the lead developer of the Hotfile storage and delivery technology [REDACTED] which involved writing the program code and designing the database. (Schoenberg Ex. A (Titov Depo.) 22:19-23:11.)

[REDACTED] **Mr. Titov did not pay Hotfile's uploading users.** [REDACTED]

[REDACTED]

13. **The termination of Webazilla and founding of Lemuria were unrelated to Webazilla receiving a subpoena.** The Hotfile website commenced operations in February 2009. (Titov Dec. ¶ 41.) In approximately May of 2009, Hotfile began to experience dissatisfaction with its internet connectivity service provider, Webazilla, and the following month communicated to Webazilla that it was going to terminate Webazilla's services. (Titov Dec. ¶ 41; Schoenberg Ex. A (Titov Depo.) 41:13-42:23, 273:18-274:8.) The termination of the relationship with Webazilla took several months, as it required many hardware changes and reconnections, including the relocation of 30-40 servers between two different data centers several miles apart. (Titov Dec. ¶ 41; Schoenberg Ex. A (Titov Depo.) 41:13-42:23.) A subpoena to Webazilla related to Hotfile was issued in August 2009. (Schoenberg Ex. D.) Hotfile's termination of its relationship with Webazilla was unrelated to this subpoena and was communicated to Webazilla several months earlier. (Titov Dec. ¶¶ 41-42; Schoenberg Ex. A (Titov Depo.) 41:13-42:23, 273:18-274:8.) In order to avoid connectivity problems in the future, Mr. Titov offered to incorporate a new entity, Lemuria Communications, Inc. ("Lemuria"), to deliver internet connectivity (and other related services) to Hotfile going forward. (Titov Dec. ¶ 41; Schoenberg Ex. A (Titov Depo.) 41:13-42:13, 121:12-122:17.) In October 2009, Mr. Titov incorporated Lemuria, a Florida corporation of which he is the sole owner, manager and director, and which pays him a monthly salary. (Schoenberg Ex. A (Titov Depo.) 121:12-122:17.) The formation of Lemuria was unrelated to Webazilla receiving a subpoena. (Schoenberg Ex. A (Titov Depo.) 121:12-122:17; Titov Dec. ¶ 42.)

14. **Mr. Titov is a Russian citizen who has resided in Bulgaria for the last two decades.** (Dkt. 30-1 ¶ 2 (Declaration of Anton Titov In Support Of Defendants' Opposition To Plaintiffs'

Emergency Motion For Order Preserving Evidence).)

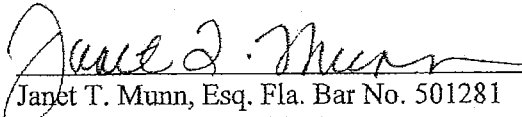
15. **Mr. Titov's wife, son, mother, and brother all reside in Bulgaria, where Mr. Titov owns a home and a car and pays taxes.** (Dkt. 30-1 ¶ 2.)

16. **Mr. Titov has not performed work in Florida on a continuous or systematic basis.** Mr. Titov has visited Florida only sporadically (his total number of such visits to Florida "could be ten") and only to perform work on behalf of non-party Lemuria. (Schoenberg Ex. A (Titov Depo.) 64:6-11, 16-25; 65:1-3, 12-19.)

17. **Mr. Titov's visits to Florida have been in his capacity as a corporate officer or director of Lemuria.** (Schoenberg Ex. A (Titov Depo.) 64:6-11, 16-25; 65:1-3, 12-19; 121:12-123:9.)

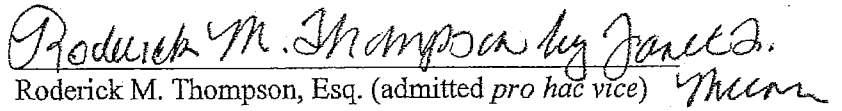
DATED: February 17, 2012

Respectfully submitted,



Janet T. Munn, Esq. Fla. Bar No. 501281
Email: jmunn@rascoklock.com
RASCO KLOCK
283 Catalonia Avenue, Suite 200
Coral Gables, FL 33134
Telephone: 305.476.7101
Telecopy: 305.476.7102

And



Roderick M. Thompson, Esq. (admitted *pro hac vice*)
Email: rthompson@fbm.com
Andrew Leibnitz, Esq. (admitted *pro hac vice*)
Email: aleibnitz@fbm.com
Anthony P. Schoenberg, Esq. (admitted *pro hac vice*)
Email: tschoenberg@fbm.com
Deepak Gupta, Esq. (admitted *pro hac vice*)
Email: dgupta@fbm.com
Janel Thamkul, Esq. (admitted *pro hac vice*)
Email: jthamkul@fbm.com
FARELLA BRAUN + MARTEL LLP
235 Montgomery St.
San Francisco, CA 94104
Telephone: 415.954.4400
Telecopy: 415.954.4480

And

Valentin Gurvits, Esq. (admitted *pro hac vice*)
Email: vgurvits@bostonlawgroup.com
BOSTON LAW GROUP
825 Beacon Street, Suite 20
Newton Center, MA 02459
Telephone: 617.928.1800
Telecopy: 617.928.1802

*Counsel for Defendants Hotfile Corporation
and Anton Titov*

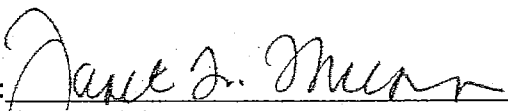
CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2012, a true and correct copy of the foregoing document, was filed conventionally under seal and served on all counsel of record identified below via e-mail and via FedEx.

Karen L. Stetson, Esq., Fla. Bar No.: 742937
GRAY-ROBINSON, P.A.
Email: Karen.Stetson@gray-robinson.com
1221 Brickell Avenue
Suite 1600
Miami, FL 33131
Telephone: 305.416.6880
Telecopy: 305.416.6887

Karen R. Thorland, Esq. (admitted *pro hac vice*)
Senior Content Protection Counsel
Email: Karen_Thorland@mpaa.org
Motion Picture Association of America, Inc.
15301 Ventura Boulevard, Building E
Sherman Oaks, CA 91403-5885
Telephone: 818.935.5812

Steven B. Fabrizio, Esq. (admitted *pro hac vice*)
Email: sfabrizio@jenner.com
Duane C. Pozza, Esq. (admitted *pro hac vice*)
Email: dpozza@jenner.com
Luke C. Platzer, Esq. (admitted *pro hac vice*)
Email: lplatzer@jenner.com
JENNER AND BLOCK, LLP
1099 New York Avenue, N.W.
Suite 900
Washington, DC 20001
Telephone: 202.639.6000
Telecopy: 202.639.6066

By: 
Janet T. Munn