

EXHIBIT 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DISNEY ENTERPRISES, INC.,
TWENTIETH CENTURY FOX FILM
CORPORATION, UNIVERSAL CITY
STUDIOS PRODUCTIONS LLLP,
COLUMBIA PICTURES INDUSTRIES,
INC., and WARNER BROS.
ENTERTAINMENT INC.,

Plaintiffs,

vs.

CASE NO.
11-20427-WILLIAMS-TURNOFF

HOTFILE CORP., ANTON TITOV,
and DOES 1-10,

Defendants.

AND RELATED CROSS-ACTION.

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER
VIDEOTAPED DEPOSITION OF DAVID P. KAPLAN, ESQUIRE
PURSUANT TO FEDERAL RULE 30(b)(6)

Los Angeles, California

Tuesday, December 13, 2011

Volume 1

Reported by:
LORI SCINTA, RPR
CSR No. 4811

Job No. 177476B

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA

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

11 Plaintiffs,

12 vs.

CASE NO.
11-20427-WILLIAMS-TURNOFF

13 HOTFILE CORP., ANTON TITOV,
14 and DOES 1-10,

15 Defendants.

16
17

AND RELATED CROSS-ACTION.

18 CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

19 Videotaped deposition of DAVID P. KAPLAN,
20 ESQUIRE, Volume 1, pursuant to Federal Rule 30(b)(6),
21 taken on behalf of Defendants and Counterclaimant,
22 at 633 West Fifth Street, Los Angeles, California,
23 beginning at 2:18 P.M. and ending at 4:58 P.M. on
24 Tuesday, December 13, 2011, before LORI SCINTA, RPR,
25 Certified Shorthand Reporter No. 4811.

1 APPEARANCES:

2

3 For Plaintiffs:

4

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For Defendants and Counterclaimant:

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Videographer:

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1 THE WITNESS: Yes.

2 MR. FABRIZIO: We didn't just run searches and
3 hand the results over to you and say, "This is a list of
4 what we contend is infringing."

5 We spent hundreds of man-hours, maybe
6 thousands, but certainly hundreds of man-hours having
7 human beings look through the metadata and all
8 information with regard to those files.

9 With regard to some of them, "they" may have in
10 fact been content files to look at but, in the main, we
11 did not yet have the content files.

12 So we advised defendants that we would get the
13 content files from defendants and do further analysis.

14 MR. ENGSTROM: What metadata was looked at?

15 MR. FABRIZIO: I believe all the metadata that
16 Hotfile made available to us was looked at.

17 BY MR. ENGSTROM:

18 Q Okay. And we'll talk about files that are
19 produced -- files that are -- content files that have
20 already been produced.

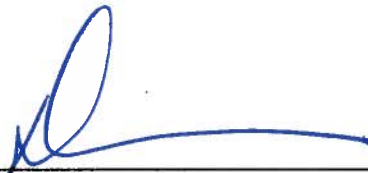
21 But is that your understanding as to what was
22 done and that is the basis for Warner's allegation -- or
23 identification of files in Schedule A that it alleges
24 are infringing?

25 A It is.

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I, DAVID P. KAPLAN, ESQUIRE, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this 13th day of January,
20 12, at Durham, California.
(City) (State)



DAVID P. KAPLAN, ESQUIRE
Volume 1

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ERRATA SHEET

Pg/Ln

Corrections

13 / 2 Change from: delete "No"

Change to: _____

15 / 7 Change from: "I don't"

Change to: "I'd"

72 / 18 Change from: add "on" before "a"

Change to: _____

___ / ___ Change from: _____

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Signature: 

Date: 12/13/2012

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I, the undersigned, a Certified Shorthand

3

Reporter of the State of California, do hereby certify:

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That the foregoing proceedings were taken

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before me at the time and place herein set forth; that

6

any witnesses in the foregoing proceedings, prior to

7

testifying, were duly sworn; that a record of the

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proceedings was made by me using machine shorthand

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which was thereafter transcribed under my direction;

10

that the foregoing transcript is a true record of the

11

testimony given.

12

Further, that if the foregoing pertains to

13

the original transcript of a deposition in a Federal

14

Case, before completion of the proceedings, review of

15

the transcript [x] was [] was not requested.

16

I further certify I am neither financially

17

interested in the action nor a relative or employee

18

of any attorney or party to this action.

19

IN WITNESS WHEREOF, I have this date

20

subscribed my name.

21

22

Dated: 12-15-11

23

24

LORI SCINTA, RPR

25

CSR No. 4811

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,
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Plaintiffs,

vs.

HOTFILE CORP., ANTON TITOV,
and DOES 1-10,

Defendants.

AND RELATED CROSS-ACTION.

HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER
VIDEOTAPED DEPOSITION OF DAVID R. KAPLAN, ESQUIRE
PURSUANT TO FEDERAL RULE 30(b)(6)

Los Angeles, California

Wednesday, December 14, 2011

Volume 2

Reported by:
CHERYL R. KAMALSKI
CSR No. 7113

Job No. 179415

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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.
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Plaintiffs,

vs.

HOTFILE CORP., ANTON TITOV,
and DOES 1-10,

Defendants.

AND RELATED CROSS-ACTION.

HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Videotaped Deposition of DAVID R. KAPLAN,
ESQUIRE, Volume 2, pursuant to Federal Rule 30(b)(6),
taken on behalf of Defendants and Counterclaimant,
at 633 West Fifth Street, 37th Floor, Los Angeles,
California, beginning at 9:16 a.m. and ending at
12:33 p.m. on Wednesday, December 14, 2011, before
CHERYL R. KAMALSKI, Certified Shorthand Reporter
No. 7113.

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APPEARANCES:

For Plaintiffs:

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BY: EVAN M. ENGSTROM
Attorney at Law
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415.954.4400

Videographer:

VONYARN MASON
SARNOFF, a Veritext Company

1 THE WITNESS: Again, for theatrical features
2 alone there's probably like 8,000 titles. So the answer
3 is some of them were and some of them were not.

4 BY MR. ENGSTROM:

11:09 5 Q Okay. Were titles, movies, that Warner was
6 searching for infringing copies of on the Internet, were
7 all of those movies fingerprinted?

8 MR. POZZA: Objection; ambiguous and also
9 outside the scope of the notice.

11:10 10 THE WITNESS: I don't think all were.

11 BY MR. ENGSTROM:

12 Q How about now, today?

13 MR. POZZA: Objection; the question's
14 ambiguous, it's also outside the scope of the notice.

11:10 15 THE WITNESS: No, I don't think all are.

16 BY MR. ENGSTROM:

17 Q Okay. We can put this document away for now.
18 Well, I don't think I'll be coming back to it, so we can
19 just put it away.

11:10 20 Okay. You'll forgive me. I have to staple
21 these quickly.

22 Why don't I give you a copy so you can look at
23 it while I'm doing this. I'd like to mark this as
24 Exhibit 31.

11:11 25 (WB Exhibit 31 marked.)

1 MR. POZZA: Counsel, do you know if this has
2 previously been marked as an exhibit in the previous
3 Warner Bros. deposition?

4 MR. ENGSTROM: Off the top of my head, I don't.

11:12 5 THE WITNESS: It was, but --

6 MR. ENGSTROM: There may have been other
7 iterations of the document. I'm not sure if this
8 particular one was, because there were several e-mails
9 on that string of e-mails, I believe.

11:12 10 MR. POZZA: Okay. Well, I will object to any
11 questioning on this document to the extent that it is
12 duplicative of questioning that has already been asked
13 of the witness in the previous deposition, or the same
14 topic, for that matter.

11:12 15 BY MR. ENGSTROM:

16 Q So if you believe this was already marked as an
17 exhibit, do you recognize this document?

18 A I do.

19 Q Okay. Do you recall what -- do you recall
11:12 20 the -- strike that.

21 What business proposal -- and I'm quoting
22 here -- I should say Business Idea, which is the subject
23 line of the top level e-mail, "Business Idea for Hotfile
24 and Warner Bros.," do you -- can you explain what the
11:13 25 business idea is?

1 MR. POZZA: I'm going to object that this --
2 this was already covered at the last deposition, it's
3 repetitive. And we have objected to reopening any of
4 the testimony there.

11:13 5 MR. ENGSTROM: If you'd like to stipulate that
6 the foundation for this document has been laid, I'm more
7 than happy to ask different questions on it.

8 MR. POZZA: Not a speaking objection, but to
9 understand where this is going, are you just -- are you
11:13 10 asking about other things, but using this as a
11 foundation?

12 MR. ENGSTROM: I'm -- I'm asking questions
13 about this document that weren't asked in the previous
14 deposition that relate to the topic noticed here,
11:13 15 communications with Hotfile that relate to the studios'
16 main claim, not the counterclaim.

17 MR. POZZA: Okay. Well, you can ask questions.
18 But, you know, he testified as to what the, quote,
19 business idea was at length.

11:13 20 MR. ENGSTROM: And if we want to -- if you
21 can -- if you stipulate that the previous testimony
22 remains the same --

23 MR. POZZA: Well, we're not -- I'm not
24 withdrawing his previous testimony. We don't need to
11:14 25 question him again.

1 MR. ENGSTROM: Okay. Fair enough.

2 MR. POZZA: It's just not the time to ask him
3 questions you already asked. I mean, if you want to ask
4 him different questions about the affirmative claims,
11:14 5 that's fine.

6 BY MR. ENGSTROM:

7 Q Let me ask this. Why did Warner Bros. propose
8 this to Hotfile?

9 A I think we covered that, too, in the previous
11:14 10 deposition. So --

11 MR. POZZA: Yeah. I'm --

12 THE WITNESS: -- I would be inclined to just --
13 just to say what I said before was the reason.

14 BY MR. ENGSTROM:

11:14 15 Q Which was what?

16 A I may not say it this time with the exact same
17 words. That's my only --

18 Q Okay. Sure.

19 MR. POZZA: Yeah. No. I'm going to -- I'm
11:14 20 going to object to this as asked and answered.

21 MR. ENGSTROM: Fine.

22 MR. POZZA: There was extensive questioning and
23 explanation of -- of this -- this e-mail chain. I don't
24 think it's necessary to get back into it again.

11:14 25 MR. ENGSTROM: Are you instructing him not to

1 answer?

2 MR. POZZA: I'm going to object to it as asked
3 and answered.

4 MR. ENGSTROM: Okay.

11:14 5 MR. POZZA: And he can state that he's already
6 answered it and he sticks by his previous answer.

7 BY MR. ENGSTROM:

8 Q You can answer.

9 A Yeah, I -- we testified about that -- I
11:14 10 testified to that in the previous deposition. And I --
11 I stick by whatever I said in the previous deposition.

12 Q Did -- did Warner Bros. offer the same business
13 idea or similar business idea to other hosting sites?

14 MR. POZZA: Object to this in that it's
11:15 15 ambiguous and outside the scope of the deposition
16 notice.

17 THE WITNESS: This idea never really got off
18 the ground at all. So I don't know exactly what --
19 exactly what it would have been had Hotfile said yes, we
11:15 20 were interested in talking to you more about this so --
21 I can't say we offered this to somebody else because
22 there was never anything offered here, is what I'm
23 trying to say.

24 BY MR. ENGSTROM:

11:15 25 Q Proposed. The proposal. Was this proposed to

1 other hosting sites?

2 MR. POZZA: I have the same objections as to
3 ambiguity and outside the scope of the notice.

4 THE WITNESS: So I'm referring to now --
11:16 5 because this is the only basis for what the proposal
6 would have been, is the e-mail that Ethan sent in
7 February of 2010, which is, I guess, the first e-mail in
8 this chain, that talks about including links on Hotfile
9 to e-commerce sites where Warner Bros. content is
11:16 10 hosted. And I don't believe we contacted other one-
11 click downloading sites with that proposal.

12 BY MR. ENGSTROM:

13 Q Why was Hotfile the only one-click downloading
14 site that Warner Bros. contacted with that proposal?

11:17 15 MR. POZZA: I'm going to object to the extent
16 that this covers testimony that he's already had about
17 this proposal, as you've characterized it.

18 THE WITNESS: Yeah, I did testify as to why we
19 contacted Hotfile at the time, which was that it was a
11:17 20 site that had a lot of traffic on it, and it looked like
21 maybe they would be amenable to some anti- -- you know,
22 taking steps to minimize the piracy on the site, and
23 that if there was a commercial incentive for them to do
24 that, maybe they'd be more inclined to, you know,
11:17 25 eliminate the piracy of Warner Bros. content.

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ERRATA SHEET

Pg/Ln Corrections

132 / 16 Change from: "to have up -- prescreened"

Change to: "to have - prescreened"

139 / 2 Change from: _____

Change to: _____

199 / 6 Change from: "They were"

Change to: "they were not"

___ / ___ Change from: _____

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I, DAVID R. KAPLAN, ESQUIRE, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this 13th day of January, 2012 at Burbank, California.
(City) (State)



DAVID R. KAPLAN, ESQUIRE
Volume 2

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:


3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were duly sworn; that a record of the
7 proceedings was made by me using machine shorthand
8 which was thereafter transcribed under my direction;
9 that the foregoing transcript is a true record of the
10 testimony given.

11 Further, that if the foregoing pertains to
12 the original transcript of a deposition in a Federal
13 Case, before completion of the proceedings, review of
14 the transcript [] was [x] was not requested

15 I further certify I am neither financially
16 interested in the action nor a relative or employee
17 of any attorney or any party to this action.

18 IN WITNESS WHEREOF, I have this date subscribed
19 my name.

20
21 Dated: 12/27/2011

22
23 
24 CHERYL R. KAMALSKI
25 CSR No. 7113