

EXHIBIT 4

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 CASE NO. 11-20427-WILLIAMS
4

5 DISNEY ENTERPRISES, INC.,)
TWENTIETH CENTURY FOX FILM)
6 CORPORATION, UNIVERSAL CITY)
STUDIOS PRODUCTIONS LLLP,)
7 COLUMBIA PICTURES)
INDUSTRIES, INC., and)
8 WARNER BROS. ENTERTAINMENT)
INC.,)
9)
10 Plaintiffs,)
11)
v.)
12)
HOTFILE CORP., ANTON TITOV)
13 and DOES 1-10,)
14 Defendants.)

15
16
17 Deposition of JAMES BOYLE
18 (Taken by the Plaintiffs)
19 Raleigh, North Carolina
20 December 21, 2011
21
22

23 Reported by: Marisa Munoz-Vourakis -
RMR, CRR and Notary Public
24 TSg Job # 44315
25

1 APPEARANCE OF COUNSEL:

2 For the Plaintiffs:

3 DUANE POZZA, ESQ.

4 Jenner & Block

5 1099 New York Avenue, NW, Suite 900

6 Washington, DC 20001

7

8

9

10 For the Defendants:

11 DEEPAK GUPTA, ESQ.

12 Farella Braun & Martel

13 Russ Building

14 235 Montgomery Street

15 San Francisco, CA 94104

16

17

18

19 Deposition of JAMES BOYLE, taken by the

20 Plaintiffs, at Office Suites Plus, 3737 Glenwood

21 Avenue, Suite 100, Raleigh, North Carolina, on the 21st

22 day of December, 2011 at 11:04 a.m., before Marisa

23 Munoz-Vourakis, Registered Merit Reporter, Certified

24 Realtime Reporter and Notary Public.

25

1 BY MR. POZZA:

2 Q. Are you aware of whether all documents in
3 response to topic number eight have been produced?

4 MR. GUPTA: Objection, that's vague
5 and ambiguous and it lacks foundation.

6 A. Yes, I believe they have.

7 Q. Are you aware of whether all documents in
8 response to topic number nine have been produced?

9 MR. GUPTA: Objection. Same
10 objection, once again it lacks foundation
11 and it's vague and ambiguous, to the extent
12 it's being formulated specifically in the
13 passive voice.

14 A. Yes, I believe those documents have been
15 disclosed.

16 MR. POZZA: I'd like to mark Exhibit
17 3.

18 (The document referred to was marked
19 Plaintiff's Boyle Exhibit Number 3 for
20 identification.)

21 Q. Are you familiar with this document?

22 A. Assuming that this is an unmodified version
23 of my expert report, yes, I am.

24 Q. I'll represent that it is.

25 What is this document?

1 A. This is my expert report in this case.

2 Q. It describes a study you performed on
3 behalf of the defendants in this case?

4 MR. GUPTA: Objection, leading.

5 A. Yes, it does.

6 Q. What was the methodology of your study?

7 MR. GUPTA: Objection, that's vague
8 and ambiguous.

9 A. Can you be a little more precise? Would
10 you like me -- I'm happy to talk about the methodology
11 of the study. I just -- which I lay out in some detail
12 in the report, and we can go through it, which would be
13 my preference, carefully, but I want to know which
14 aspect of the methodology you want me to answer?

15 Q. We'll go through it carefully.

16 What was the hypothesis, if any, that you
17 were testing in your study?

18 MR. GUPTA: Objection, that's vague
19 and ambiguous.

20 A. There were at least two hypotheses that I
21 was testing; the first was that Hotfile was being used
22 for the distribution of content that was either clearly
23 noninfringing or highly likely noninfringing.

24 The second related hypothesis was that some
25 of those who were distributing content on Hotfile that

1 not in evidence and it's vague and
2 ambiguous.

3 A. The list of noninfringing uses that I
4 considered in this report were free and open source
5 software, cultural material made available under
6 licenses, such as creative commons licenses and public
7 domain material.

8 Q. And did you explore the distribution of
9 those three different kinds of materials?

10 MR. GUPTA: Objection, that's vague
11 and ambiguous.

12 A. Could you clarify the question, please?

13 Q. The original question was to list examples
14 of the uses of the Hotfile system you studied. So my
15 question is, did you explore the distribution of those
16 three different kinds of materials as opposed to say
17 the storage?

18 MR. GUPTA: Objection, once again,
19 that assumes facts not in evidence, calls
20 for speculation and it's vague.

21 A. I would say that with some of the examples
22 that I was looking at, particularly open source
23 software, it appeared that competitors were uploading
24 the material or people were uploading the material,
25 which were open source licenses, and then it was being

1 downloaded by many, many others. That would seem to be
2 an example of distribution.

3 Some of the other kinds of uses, for
4 example, some of the public domain material consistent
5 either with distribution or with storage, and it's
6 conceivable, of course, that while the person who
7 uploaded the material to Hotfile did not mind other
8 people downloading it, that they also used it as their
9 own source of storage.

10 So, for example, were I an open source
11 developer who wished to make my software available to
12 the world, I could use Hotfile for that purpose, and I
13 had evidence that people did use it for that purpose,
14 but I might also use Hotfile as a way of storing the
15 material myself.

16 Q. So the next sentence in the report says,
17 defendant's counsel asked me to study the use of the
18 Hotfile service to store or distribute or download the
19 types of material described above, and it goes on.

20 Do you see that?

21 A. I do.

22 Q. So you did study the use of the Hotfile
23 service to both store and to distribute these three
24 different types of material?

25 MR. GUPTA: Objection,

1 Q. Turning to paragraph six, the last sentence
2 there, how did you determine whether Hotfile's
3 affiliate program compensated the open source software
4 developers for the software they write and freely
5 distribute?

6 MR. GUPTA: Objection, assumes facts
7 not in evidence.

8 A. I looked at two of the specific authors of
9 open source software identified in the study, that is
10 to say, JDownloader on one case and iREB and sn0wbreeze
11 on the other. I identified those who were uploading
12 that material from a variety of pieces of evidence,
13 including statements on the web site from which the
14 material originated, links directly to Hotfile and so
15 on.

16 I then asked Elysium Digital to find out
17 whether someone who appeared to be this person or to be
18 affiliated with this person was actually a member of
19 the affiliate program. I discovered in both of those
20 cases that they did appear to be.

21 In addition, I determined that the
22 affiliate program compensates people for files that are
23 downloaded. From those pieces of evidence, I concluded
24 that A, some open source developers were using Hotfile
25 to distribute their material. B, it appears that they

1 were members of the affiliate program. C, it appeared
2 that members of the affiliate program who were using
3 Hotfile to distribute their service would be
4 compensated.

5 Q. Did you examine other ways in which those
6 developers were being compensated?

7 MR. GUPTA: Objection, that's vague
8 and ambiguous and would call for
9 speculation.

10 A. When you say those, do you mean the
11 specific ones to which I just referred? Do you mean
12 all open source software distributors?

13 Q. I mean, the specific ones to which you
14 referred, specifically the developer of sn0wbreeze and
15 iREB.

16 MR. GUPTA: I'd like to lodge the same
17 objection and also add foundation.

18 A. I am not aware of other methods through
19 which the developer of iREB and sn0wbreeze is
20 compensated, but I simply don't know. I was looking at
21 the affiliate program.

22 Q. Did you consider doing a representative
23 statistical sample of the uses of Hotfile as a whole?

24 MR. GUPTA: Objection, it's vague and
25 ambiguous.

1 Q. Are you aware of -- do you believe that
2 there is data that would show the uses of the site by
3 those premium users?

4 MR. GUPTA: Objection, it's vague and
5 calls for speculation.

6 A. I am not aware of that data.

7 Q. So sub-iii, 9 sub-iii, let's start in the
8 middle of the sentence, I'm going to ask about this
9 language: Services, such as Hotfile, fill a gap in
10 internet's architecture by providing a convenient and
11 generic method of distributing or storing files that
12 are too large for e-mail.

13 Do you see that?

14 A. I do.

15 Q. What is the gap in the internet's
16 architecture to which you are referring?

17 A. The internet, the general internet, meaning
18 the whole packet switched system, allows, obviously,
19 certain forms of communication very easily.

20 For example, e-mail communication can
21 travel over the internet, as it used to over
22 proprietary systems, as a set of packets.

23 However, while e-mail is very easy to use
24 and people can easily log on to it and use it, and many
25 other things, such as web browsing are very easy to do,

1 one thing which is relatively hard to do over the
2 internet, without using a service such as Hotfile, is
3 to transfer a large file, and in fact, this has been
4 the subject of, you know, much commentary, much
5 internet humor, to the extent that that isn't an
6 oxymoron. This is a difficult thing to do.

7 In my personal experience, it is hard to
8 collaborate with colleagues around the world if one
9 needs to transfer large files, files that are too large
10 for e-mail, which is something that I sometimes need to
11 do, and so I personally have used services like
12 YouSendIt to transfer such files.

13 When I spoke of the gap in the internet's
14 architecture, I meant that without a service of the
15 kind that Hotfile appears to provide, it would be
16 difficult, if not impossible, for those that did not
17 own their own domain name or did not have the
18 capability to upload to a web page to share those large
19 files across the internet.

20 Q. What about using an FTP?

21 MR. GUPTA: Objection, lacks
22 foundation, calls for speculation.

23 A. FTP is certainly a method which experienced
24 users can use. First of all, I think many people
25 nowadays won't even know what FTP stands for. It

1 stands for file transfer protocol. Many browsers no
2 longer have it as a standard feature. There's actually
3 evidence along that fact. I think people find it a
4 difficult method to do it.

5 In order to transfer it, ideally, it's
6 actually much easier if you have your own server onto
7 which the files were loaded, in which case people can
8 download it using the conventional HTTP, the
9 conventional method over the web.

10 So FTP is certainly a method, but I don't
11 think it's a method that is either convenient or offers
12 all the features of services such as YouSendIt or
13 Hotfile.

14 Q. You testified earlier, correct me if I'm
15 wrong, that you're not familiar with how Bittorrent
16 technology works?

17 A. That is correct. I know in the abstract.
18 I believe Bittorrent to be appear to be a file sharing
19 system, but beyond that, I know very little.

20 Q. So do you know whether or not Bittorrent is
21 useful for distributing large files?

22 MR. GUPTA: Objection, calls for
23 speculation.

24 A. I do not. I do not believe that Bittorrent
25 provides a stable URL from which authorized versions of

1 on Hotfile was one of the searches?

2 A. Yes.

3 Q. For public domain materials, would you
4 describe this as a large number of downloads of public
5 domain content from Hotfile?

6 MR. GUPTA: Objection, it's vague.

7 A. Certainly not as high as the 1.7 million
8 download figure for the open source programs. I
9 included this because, as I understand the test in
10 Sony, the court in Sony and subsequent courts are
11 interested both in magnitude, that is to say, the
12 number of uses, but also in types of uses, and this is
13 illustrative of a type of use.

14 When we think about the uses of a system in
15 order to spread cultural material, we, at least I, in
16 interpreting the Sony and Napster test, are not looking
17 only at the number, although that is clearly something
18 that we do look at, but also at what this represents.
19 In some cases, it may represent intensity of
20 preference. People who really like Hamlet or Othello
21 rather than many people who like JDownloader.

22 And so, again, I was offering this to the
23 court for the court's assessment of this use of the
24 service to provide this kind of material.

25 I note that the Huck Finn, we had 45 hash

1 verified downloads of that particular book, and I think
2 one could come to different opinions as to whether or
3 not that is an important and substantial noninfringing
4 use. For myself, that seems like a viable and benign,
5 licit use of the service.

6 Q. Would you describe it as substantial?

7 A. I think that's a complex inquiry. In --
8 the Sony court refers to many different types of
9 material. It refers to a single film, My Man Godfrey,
10 which was in the public domain; refers to a single
11 television program, Mr. Rogers' Neighborhood, which he
12 allowed to be there; refers to a single national public
13 radio station which allowed, and it lists those in its
14 discussion of substantial noninfringing uses. To me,
15 that suggests strongly that the court in Sony cared
16 about what we might think of as a diversity of uses, as
17 well as about -- and did not believe that the important
18 thing to focus on was what the court of appeals in Sony
19 had focused on, which was predominant use.

20 So to me, that suggests that this kind of
21 information would be relevant to the court, but the
22 court, of course, will make the final determination on
23 whether that's true or not.

24 Q. So this is -- of these four works, there
25 are 49 verified downloads, correct?

1 open source development, a kind of creativity, and the
2 fact that the developers of that open source software
3 are actively choosing to use Hotfile licitly to spread
4 it and appear to be gaining some compensation, I
5 believe that a court would see that as significant in
6 the determination of substantial noninfringing uses.

7 Q. And in the sentence when you talk about the
8 most common uses, are you referring to those particular
9 downloaded files that iREB and sn0wbreeze?

10 A. IREB, sn0wbreeze, JDownloader, but also I
11 was talking about other open source programs which
12 weren't downloaded as many times but which were also
13 being downloaded.

14 In the next sentence, I very carefully add
15 the qualification, which is part of this: This report
16 does not attempt to present a statistically
17 representative sample of the usage of Hotfile, and I
18 have no personal knowledge of what Hotfile's uploaded
19 content or of user downloads is noninfringing.
20 Nevertheless, within the limits suggested by the
21 sentence, my investigation provided some striking
22 facts, and then I list the factual information, which
23 we have discussed.

24 Q. Are there any other potential noninfringing
25 uses of Hotfile, other than distributing those three

1 kinds of files that we've been discussing throughout
2 this deposition?

3 MR. GUPTA: Objection, calls for
4 speculation, asked and answered, goes beyond
5 the scope of his report.

6 A. Absolutely there are. I mention at the
7 beginning of the report that I don't attempt to do an
8 exhaustive study.

9 So, for example, one could use Hotfile to
10 store or to share material one had generated one self;
11 large briefs, large documents. One could use it to
12 share photographs. One could use it to store or get
13 access to federal government works which are in the
14 public domain for that reason. One could also use it
15 for uses that would be fair use.

16 So material which was copyright but which
17 because of the particular manner of its use, could be
18 considered fair use. So I think it is debatable.

19 I would argue that there are cases where
20 people can use storage in order to have archival or
21 backup copies in order to space shift content that they
22 had licitly purchased, and I think a service such as
23 Hotfile could be used for that, and Hotfile clearly
24 could, as a matter of technical potential, be used for
25 that.

1 MR. GUPTA: No, the covering e-mails
2 are just covering e-mails.

3 A. Most of my communication with Elysium was
4 by teleconference, by phone call, and then I would get
5 e-mails, which were basically the only purpose of the
6 e-mail was to include the attachment.

7 So to the best of my knowledge, you have
8 all of the information that I received from Elysium,
9 which were facts and data on which I rely for my
10 opinion, and I tried to be as scrupulous about that as
11 I was about the conservatism of the method here.

12 Q. This may provoke an objection. What do you
13 know about the use of Hotfile storage?

14 MR. GUPTA: I'll ask the witness not
15 to answer as to work product, and also
16 object that it's vague, ambiguous, calls for
17 speculation and lacks foundation.

18 MR. POZZA: Are you instructing the
19 witness not to answer?

20 MR. GUPTA: I'll give him limited room
21 to answer it. To the extent relevant to his
22 opening report, I think he can answer.

23 A. Based on the material in my opening report,
24 information there, I saw a design, which is consistent
25 with the use of Hotfile for storage.

1 I saw a few examples in my attempts to
2 think about and search to find examples of this. I
3 would come upon other material, such as PowerPoints,
4 for example, which suggested the possibility of
5 storage.

6 I saw in the course of my inquiry a fair
7 amount of zero download material that seemed to meet
8 written fact, which would be consistent with basically
9 personal backup, the file would be stored and you would
10 only download it if you lost it or garbled it so that
11 it's consistent with that, it certainly doesn't prove
12 it. And those are all the pieces of information that
13 are relevant to this report which, as I note, focuses
14 mainly on the three subjects we have been discussing;
15 namely, open source materials, public domain and
16 creative commons license material.

17 Q. Does Hotfile encourage the storage of
18 materials?

19 MR. GUPTA: Objection, vague and
20 ambiguous, calls for speculation as to
21 Hotfile's intent and goes beyond the expert
22 report.

23 A. In my opinion, that is something about
24 which a court would have to look at a number of
25 factors.

1 Hepatitis C?

2 A. It was found because I was trying to look
3 for different types of material on line. It
4 occurred -- on Hotfile. It occurred to me that there
5 might be creative commons licensed content stored that
6 was scientific in nature. I can't remember the exact
7 search that I did, but it included PowerPoint and some
8 science terms, and it turned up this file. As I noted,
9 that didn't have enough information on the file to say
10 it was infringing. I thought it was very unlikely that
11 it was infringing. It's not the kind of content that I
12 would imagine would be, but since I couldn't determine
13 that and since it didn't fall into the category, which
14 I was considering here, I excluded it from my
15 consideration.

16 Q. Do you know whether or not that link is
17 publicly available?

18 A. I believe it is.

19 Q. I guess did you find it by searching on
20 Google as opposed to searching by Hotfile's own data?

21 A. Yes, I found it by searching on Google.

22 Q. So that's an example of personal storage
23 but with a publicly available link that would allow
24 other people to download that?

25 MR. GUPTA: Objection,

1 mischaracterizes his testimony and seeks
2 speculation.

3 A. As I said, I ended up excluding this,
4 because it wasn't the type of material in there, and,
5 again, because I applied this extremely conservative
6 squeaky clean analysis, I couldn't tell that that was
7 personal -- the facts were consistent with that, and
8 yes, the link was publicly available.

9 Q. Now, in the scope of this report, have you
10 considered any data about the number of files that are
11 never -- that are uploaded but not ever downloaded from
12 Hotfile?

13 A. In the scope of this report, I have not
14 considered that.

15 Q. In the scope of this report, have you
16 considered the extent to which Hotfile is used to
17 upload files only for personal retrieval by the
18 uploader?

19 A. No, in the scope of this report, I did not
20 specifically consider it as an example of files which I
21 would identify those numbers. I did list it in the
22 report as a potential, noninfringing use. The report
23 is offering the court facts about potential,
24 noninfringing uses. I say the system is consistent
25 with that. That is in my report, that is to say, it

SIGNATURE PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



Digitally signed by James Boyle
DN: cn=James Boyle, o, ou,
email=boyle@law.duke.edu, c=US
Date: 2012.01.23 13:24:53 -05'00'

JAMES BOYLE

SUBSCRIBED AND SWORN to before me this _____
day of _____, 20__.

NOTARY PUBLIC

My Commission expires: _____

1 TRANSCRIPTION

2 MMV

3 CASE NAME: Disney vs. Hotfile

4

5

6 WITNESS NAME: JAMES BOYLE

7 DATE: December 21, 2011

8

9	PAGE	LINE	READS	SHOULD READ
10	18	17	No, I have not.	I have downloaded one file.
11	59	6	signal	signature
12	64	8	illicitly	licitly
13	65	17	that in fact file	in fact that file
14	67	21	is	has
15	76	13	infringing	noninfringing
16	83	10	indecent	inducement
17	102	12	mutual	neutral
18	111	4	do it	use
19	120	14-15	and telling	and in addition told
20	141	15	hope file	Hotfile
21	155	10	license material	licensed
22	165	8	less	lesser
23	167	16	copyright	copyrighted
24				
25				

C E R T I F I C A T E

1
2 I, Marisa Munoz-Vourakis, RMR, CRR and Notary Public,
3 the officer before whom the foregoing proceeding was
4 conducted, do hereby certify that the witness(es) whose
5 testimony appears in the foregoing proceeding were duly
6 sworn by me; that the testimony of said witness(es) were
7 taken by me to the best of my ability and thereafter
8 transcribed under my supervision; and that the foregoing
9 pages, inclusive, constitute a true and accurate
10 transcription of the testimony of the witness(es).

11 I do further certify that I am neither counsel for,
12 related to, nor employed by any of the parties to this
13 action in which this proceeding was conducted, and
14 further, that I am not a relative or employee of any
15 attorney or counsel employed by the parties thereof, nor
16 financially or otherwise interested in the outcome of the
17 action.

18 IN WITNESS WHEREOF, I have hereunto subscribed my name
19 this 27th of December, 2011.

20 _____
MARISA MUNOZ-VOURAKIS

21 Notary #20032900127
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 11-20427-WILLIAMS

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.)

Continued Deposition of JAMES BOYLE

Volume II

(Taken by the Plaintiffs)

Raleigh, North Carolina

January 19, 2012

Reported by: Marisa Munoz-Vourakis -
RMR, CRR and Notary Public
TSG Job # 45588

1 APPEARANCE OF COUNSEL:

2 For the Plaintiffs:

3 DUANE POZZA, ESQ.

4 Jenner & Block

5 1099 New York Avenue, NW, Suite 900

6 Washington, DC 20001

7

8

9

10 For the Defendants:

11 DEEPAK GUPTA, ESQ.

12 Farella Braun & Martel

13 Russ Building

14 235 Montgomery Street, 17th Floor

15 San Francisco, CA 94104

16

17

18 o0o

19

20 Continued Deposition of JAMES BOYLE,

21 taken by the Plaintiffs, at Office Suites Plus, 3737

22 Glenwood Avenue, Suite 100, Raleigh, North Carolina, on

23 the 19th day of January, 2012 at 9:38 a.m., before

24 Marisa Munoz-Vourakis, Registered Merit Reporter,

25 Certified Realtime Reporter and Notary Public.

1 Q. What is Exhibit 2?

2 A. **Exhibit 2 appears to be my rebuttal report.**

3 Q. This is your rebuttal report submitted in
4 this Hotfile litigation, correct?

5 A. **That appears to be the case. I haven't**
6 **read all of it, but assuming it's as I submitted it,**
7 **then that would be true.**

8 MR. POZZA: And just for the record,
9 I'll note the text of the report itself,
10 there were some attached exhibits that were
11 also sent, but those are not included in
12 this exhibit, although some of them we'll
13 look at later.

14 Q. We went over this a bit last time, but what
15 is your educational background?

16 A. **I have an LLB law degree from Glasgow**
17 **University and an LLM and an SJD from Harvard Law**
18 **School.**

19 Q. And what are you formally trained in?

20 MR. GUPTA: Objection, vague and
21 ambiguous.

22 A. **I am trained as a lawyer and legal scholar.**

23 Q. What bar are you a member?

24 A. **I'm not a member of the bar.**

25 Q. Have you ever been a member of the bar?

1 (Off the record at 5:15 p.m.)

2 (On the record at 5:18 p.m.)

3 BY MR. POZZA:

4 Q. If you look at paragraph 53, is this a
5 statistical analysis you present here?

6 A. This is an analysis of the data in -- that
7 Hotfile keeps under the log heading paid for connected
8 to the Zebrak study, the Zebrak/Waterman study, and in
9 particular using Mr. Zebrak's categories in order to
10 indicate of the paid for files, that is to say, the
11 files that were the files that caused users to convert
12 to the premium service that caused them to actually --
13 the files on which they chose to select premium, what
14 percentage of the daily download total of those files
15 were the ones which caused the user to convert to
16 premium.

17 Q. Do you know what queries were used to
18 generate this table?

19 MR. GUPTA: Objection, vague as to
20 queries.

21 BY MR. POZZA:

22 Q. Database queries?

23 A. So I'm not sure what you mean by database
24 queries. Basically what I was trying to describe there
25 was the arithmetic process that went through there. So

1 material, yes.

2 Q. Are you purporting to claim that this
3 allowed you to draw any opinions or conclusions about
4 Hotfile?

5 A. I would say that these numbers indicate
6 that the category that Mr. Zebrak identified as
7 noninfringing had a much higher conversion rate, that
8 is to say, a rate of converting people to premium than
9 the confirmed infringing.

10 I'd say in addition, that Mr. Zebrak's
11 confirmed infringing category was the lowest of all of
12 the types of content, lower even than unknowable, and
13 so I think I can from that draw the conclusion that
14 Hotfile was gaining economic success from noninfringing
15 material, number one, I can conclude that; and number
16 two, that they were actually gaining more economic
17 success proportionately from noninfringing material
18 than from confirmed infringing or highly likely
19 infringing material.

20 Q. Can you extrapolate these results from the
21 1750 files to the broader population of files on
22 Hotfile?

23 A. I believe it is the assertion of
24 Dr. Waterman and Mr. Zebrak that the study can be
25 extrapolated. I, for the reasons in this report, I

SIGNATURE PAGE

you.

(Whereupon the deposition was concluded at 5:43 p.m.)

(Signature reserved.)



Digitally signed by James Boyle
DN: cn=James Boyle, o, ou,
email=boyle@law.duke.edu, c=US
Date: 2012.01.31 15:55:27 -05'00'

JAMES BOYLE

SUBSCRIBED AND SWORN to before me this _____

day of _____, 2012

NOTARY PUBLIC

My Commission expires: _____

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Marisa Munoz-Vourakis, RMR, CRR and Notary Public, the officer before whom the foregoing proceeding was conducted, do hereby certify that the witness(es) whose testimony appears in the foregoing proceeding were duly sworn by me; that the testimony of said witness(es) were taken by me to the best of my ability and thereafter transcribed under my supervision; and that the foregoing pages, inclusive, constitute a true and accurate transcription of the testimony of the witness(es).

I do further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in which this proceeding was conducted, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereof, nor financially or otherwise interested in the outcome of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23rd of January, 2012.

MARISA MUNOZ-VOURAKIS
Notary #20032900127