

# **EXHIBIT “B”**

**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] DECLARATION OF ANTON TITOV**  
**IN SUPPORT OF**  
**MOTIONS FOR SUMMARY JUDGMENT**

I, ANTON TITOV, declare as follows:

1. I am a founder, minority shareholder, and technologist for defendant Hotfile Corporation and a defendant in this action. This declaration is based on personal knowledge unless indicated otherwise and all statements contained in this declaration are true and correct to the best of my knowledge. If called as a witness, I could and would testify to the facts set forth in this declaration.

**Background on Hotfile**

2. Since its launch in early 2009, Hotfile has offered premium file-hosting that enables its global user base to reliably store, use and share digital files. It works with literally any type of computer file. Hotfile is particularly well-suited to host large file types that are the future of the Internet. Hotfile has hosted over 100 million digital files on its high-performance networking and storage infrastructure. Hotfile hosts software, video, audio and virtually every other type of digital file that someone wants to store or share.

3. When a person first signs up with Hotfile or uploads a file they have always had to agree to Terms of Service and an Intellectual Property Policy which prohibit copyright infringement. Upon uploading, they receive a private URL link that is known only to them. Hotfile's Privacy Policy assures its customers that they can feel comfortable storing personal material in this way. Users can keep these links private for their own "personal cloud storage." Registered users can store files for three months without paying for premium service and if they want perpetual storage they must then upgrade to a premium account.

4. Hotfile also offers an efficient method of sharing files that may be too large to be sent via email. Users may wish to give access to their files to co-workers, friends and family. They could, for example, share work documents with colleagues, or transfer weekend photos to family, or upload an HD video of their softball game and share it with members of their team. This is effectively a more advanced and convenient form of "FTP" or "File Transfer Protocol" which has existed on the Internet for decades. Similarly, Hotfile can be used to "space-shift" content so that a user can himself use documents on different devices in different places.

**Likely Non-Infringing Content As Revealed Through Counter-Notifications**

5. As a provider of storage and hosting service, Hotfile does not in the ordinary course of business review the files it stores. Hotfile does not monitor what its users upload to its servers. Hotfile also does not index its content files for keyword searching. However, through occasional communications with its users Hotfile was generally aware that various video files, music files, software programs and graphical content on Hotfile.com were subject to DMCA counter-notifications, and appeared likely to have been uploaded by or with authorization of the content owner. The following email exchanges contain some examples:

a. A true and correct copy of an [REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 1 [REDACTED]

[REDACTED] A true and correct copy of an [REDACTED]

[REDACTED] is attached hereto as Exhibit 2

[REDACTED]

c. A true and correct copy of an [REDACTED]

[REDACTED]

Exhibit 3 [REDACTED]

d. A true and correct copy of an email string between the Hotfile Abuse Department and Herve Lemaire of LeakId dating from August of 2011 is attached hereto as Exhibit 4.

e. A true and correct copy of an email string involving the Hotfile Abuse Department, AH.FM and the IFPI dating from November of 2011 is attached hereto as Exhibits 5 and 6 (counternotification from music site followed by withdrawal of notice by IFPI).

6. Hotfile had no knowledge that the file-in-suit were infringing apart from notifications Hotfile may have received from the Studios regarding these alleged infringements. Hotfile does not in the ordinary course of business review the millions of files its users upload. Independent of copyright owner reports and the occasional report from a third-party, Hotfile does not come to know of specific files that are alleged to be infringing and Hotfile cannot independently review the 100 million+ files its users are hosting; we focus on tuning and optimizing our servers and networking infrastructure to provide a reliable hosting facility. Also, because Hotfile respects its user privacy we do not monitor their content.

**Features of Hotfile's Business Model**

7. The [REDACTED] founders of Hotfile decided upon a "freemium" business model, similar to the one used by Rapidshare. Under that model, users can store files for a limited time and get downloads at limited speeds for free. Hotfile's revenues come when users upgrade to "premium" subscriptions. Premium users pay up to \$9 per month for faster downloads, permanent file storage, and other benefits. This fixed fee does not vary based on what or how much use is made of Hotfile.com—they could be using Hotfile for personal cloud storage, downloading open source software, or streaming video. The fee compensates Hotfile for its

substantial investments in building out its state-of-the-art server and networking infrastructure. Hotfile does not have any advertising on its site. Hotfile earns all of its revenues from “premium” subscriptions.

8. Hotfile offers an “affiliate program” that historically has distributed a portion of its revenue to users whose actions generate more premium subscribers—in proportion to how much downloading their uploaded files stimulate and other factors. Hotfile’s affiliate program allows the authors of copyrighted works to upload their content and be paid for their distribution on the Internet. Hotfile’s Affiliate program – like many others on the market – distributes a portion of its revenue to users whose actions generate more premium subscribers. Hotfile’s Affiliate program applies equally to all forms of digital files, regardless of whether they are video, software or anything else.

9. Some copyright owners, including Jdownloader, voluntarily upload their content on Hotfile. Hotfile first learned about Jdownloader only when it was contacted by the author of this software. Jdownloader is an open source software package. It is among Hotfile’s most frequently downloaded files and its authors are members of Hotfile’s affiliate program.

10. In the ordinary course of its business, Hotfile maintains a database that records and stores information about the files that Hotfile’s users upload to its servers. I am the primary designer of Hotfile’s database. Hotfile’s database procedures have evolved and improved over time. When a user uploads a file to Hotfile’s servers, Hotfile’s database automatically records information that is used to create the URL for the file and the date and time the file was uploaded. The database stores information regarding DMCA takedown notices directed at files, and information related to the date on which the files are deleted or deactivated (including when a copyright owner deletes or blocks a file using an SRA). Hotfile also stores information associated with the termination of a user.

11. Hotfile users convert to premium accounts to obtain allegedly “non-infringing” content at a rate five times higher than for content the Studios’ expert stated is “confirmed” infringing. This is shown in Exhibit 7, which is a true and correct copy of an Exhibit prepared by Elysium Digital and included in an expert report of Prof. Boyle. I have verified the data in this report by performing my own independent lookups of Hotfile’s data and believe it is accurate.

**Hotfile's Policies to Combat Copyright Infringement**

12. Hotfile's original February 2009 Terms of Service expressly forbade copyright infringement:

**Ownership of information and copyrights...**Services of Hotfile can be used in legitimate objectives. Transmission, distribution, or storage of any materials that violate laws is forbidden. This includes without restriction patented materials, copyright laws, trademarks, commercial secrets and other intellectual property rights....

Hotfile also informed repeat infringers that they were subject to termination. *Id.* (“Hotfile reserve[d] the right to immediately suspend or delete the account of a client, which, in the opinion of Hotfile, offends the present agreement or laws or decisions [including] offend[ing] copyrights...”) A true and correct copy of the Terms of Service on the Hotfile website as of February 23, 2009, obtained from the Internet Archive Wayback Machine, is attached hereto as Exhibit 8. To the best of my recollection, this is how the Terms of Service appeared on the Hotfile website in the February 2009 time frame.

13. The first version of Hotfile's website had a “report abuse” form for providing notice of suspected infringing links. Users would input an allegedly infringing URL into this form. This generated a message to Hotfile's abuse department. In response, Hotfile took down the links. A true and correct copy of the “report abuse” form on the Hotfile website as of March 2, 2009, obtained from the Internet Archive Wayback Machine, is attached hereto as Exhibit 9. To the best of my recollection, this is how the “report abuse” form appeared on the Hotfile website in the March 2009 time frame. Hotfile has continuously made the abuse@hotfile.com email address available on its website since its outset to the present.

14. Content owners – including the Studios and their agents -- have had no difficulty contacting Hotfile's abuse department. Attached hereto are examples of takedown notices sent by the Studios in the early months of the Hotfile website (which began operations in February 2009). Though in its earliest days Hotfile did not have a policy of sending an email confirming that works identified in a DMCA takedown notice were taken down, and thus no such emails are attached, I have supervised the review of Hotfile's database to confirm that the files identified in these early notices from the Studios were taken down soon after the notices were received. A review of the last download date for each of the identified files shows that these files had their “last upload” no later than soon after Hotfile received the DMCA notices:

a. A true and correct copy of a takedown notice from Warner dated April 29, 2009 is attached hereto as Exhibit 10. I supervised the review of Hotfile's database for the last download date for the files in this notice and it appears there were no downloads after April 29, 2009.

b. A true and correct copy of a takedown notice from Sony (i.e. Columbia) dated May 29, 2009 is attached hereto as Exhibit 11. I supervised the review of the last download date for the files in this notice and it appears there were no downloads after May 29, 2009.

c. A true and correct copy of a takedown notice from Fox dated April 25, 2009 is attached hereto as Exhibit 12. I supervised the review of the last download date for the files in this notice and it appears there were no downloads after April 25, 2009.

d. A true and correct copy of a takedown notice from Disney dated June 17, 2009 is attached hereto as Exhibit 13. I supervised the review of the last download date for the files in this notice and it appears there were no downloads after June 17, 2009.

e. A true and correct copy of a takedown notice from Universal dated October 3, 2009 is attached hereto as Exhibit 14. I supervised the review of the last download date for the files in this notice and it appears there were no downloads after October 4, 2009.

15. In April 2009, within months of its launch, Hotfile expanded the policy statement on its website to state, "Hotfile (www.hotfile.com) is an Online Service Provider under Title II of the Digital Millennium Copyright Act, 17 U.S.C. Section 512 ..." (*Id.*) That policy identified Hotfile's designated agent for DMCA notices by the [abuse@hotfile.com](mailto:abuse@hotfile.com) email address:

To exercise your DMCA rights, your Proper DMCA Notice must be sent to Designated Agent of hotfile.com to email: [abuse@hotfile.com](mailto:abuse@hotfile.com). . . . When a Proper DMCA notification is received by Designated Agent, or when hotfile.com becomes otherwise aware that copyright rights are infringed, it will remove or disable access to infringing materials as soon as possible.

A true and correct copy of the DMCA policy statement on the Hotfile website as of April 27, 2009, obtained from the Internet Archive Wayback Machine, is attached hereto as Exhibit 15. To the best of my recollection, this is how the DMCA policy statement appeared on the Hotfile website in the April 2009 time frame.

16. In December 2009, Hotfile formally registered a Designated DMCA Agent with the U.S. Copyright Office along with the abuse@hotfile.com email address. A true and correct copy of [REDACTED] is attached hereto as Exhibit 16.

17. In approximately May 2010, Hotfile updated the Intellectual Property Policy on its website. That policy included Hotfile's designated agent's name and address and states:

(1) accommodate and not interfere with standard technical measures (as defined by the DMCA) used to identify and protect copyrighted works; (2) disable access to or remove content that it believes in good faith may infringe the copyrights of third parties; and (3) discontinue service to users who repeatedly make such content available or otherwise violate HotFile's Terms of Service. Please do not abuse the HotFile service by using it to distribute materials to which you do not have the rights.

A true and correct copy of a printout from Archive.org dated May 2010 is attached hereto as Exhibit 17. To the best of my recollection, this is how the DMCA policy statement appeared on the Hotfile website in the May 2010 time frame. The pertinent information has remained in place through the present time.

18. A true and correct copy of the Hotfile Terms of Service as of April 2011 is attached hereto as Exhibit 18. A true and correct copy of the April 2011 Hotfile Intellectual Property Policy is attached hereto as Exhibit 19. A true and correct copy of the April 2011 Hotfile Privacy Policy is attached hereto as Exhibit 20. When a person signs up for Hotfile or uploads a file, s/he agrees to be bound by these terms and policies.

19. Based on my experience with and knowledge of Hotfile's takedown processes, it is my belief that at least 95% of files in a DMCA takedown notice are deleted or deactivated within 48 hours of receipt of the notice.

**Hotfile's Special Rightsholder Accounts ("SRAs")**

20. In late April 2009, a representative of Plaintiff Warner Brothers requested a "takedown tool" to more quickly remove infringing content "rather than sending an official takedown abuse notice every time URL's are identified." A true and correct copy of an email chain containing this April 29, 2009 request from Michael Bentkover of Warner Brothers to the Hotfile abuse email box is attached hereto as Exhibit 21.

21. Based on this idea, Hotfile engineered and offered SRAs to eligible content owners. SRAs streamline the conventional DMCA notice-and-takedown procedure. With SRAs, rightsholders, who attest under the DMCA that they have authority of the copyright



owner, can enter a list of URLs for files on Hotfile's systems, and those files are automatically taken down; no further action by Hotfile is required. With SRAs, any verified copyright holder can directly and instantly command Hotfile's servers to block any file. It is the ultimate form of notice-and-takedown. A true and correct copy of a print-out of the user interface for this system is attached hereto as Exhibit 22.

22. SRAs became available in the summer of 2009. A true and correct copy of an email chain where Warner stated SRAs would be "ideal," and Hotfile offered an SRA to Warner is attached hereto as Exhibit 23.

23. Hotfile reached out to the Studios to encourage adoption of SRAs. Many content owners and their content-protection agents have adopted SRAs. A true and correct copy of an email offering an SRA to NBC Universal dated June 16, 2010 is attached hereto as Exhibit 24. A true and correct copy of an email offering an SRA to Columbia/Sony dated October 16, 2010 is attached hereto as Exhibit 25.

24. Many content owners and their content-protection agents have adopted SRAs. PeerMediaTechnologies, DtectNet, OpSec, and BayTsp, contractors that assist Warner Brothers, HBO, Paramount, and others to enforce their copyrights, are among those who have opened such accounts.

a. A true and correct copy an [REDACTED] is attached hereto as Exhibit 26.

b. A true and correct copy an [REDACTED] is attached hereto as Exhibit 27.

c. A true and correct copy an [REDACTED] is attached hereto as Exhibit 28.

d. A true and correct copy an [REDACTED] is attached hereto as Exhibit 29.

25. Content owners, including these Studios, have used Hotfile SRAs extensively and effectively. Today, there are approximately one hundred such accounts in active use.

26. Hotfile has received positive feedback from content owners, including some of the plaintiffs in this case and their representatives, regarding the SRAs. Some of those emails are attached below.

a. True and correct copies of [REDACTED] are attached hereto as Exhibits 30 and 31.

b. A true and correct copy an email string between Michael Bentkover of Warner Brothers and the Hotfile Abuse Department dated April 14, 2010 is attached hereto as Exhibit 32.

c. A true and correct copy an email string between Natasha Lakeman of BayTSP and the Hotfile Abuse Department dated April 13-15, 2010 is attached hereto as Exhibit 33.

#### **Use of MD5 Hashing**

27. Soon after launching SRAs, Hotfile implemented hashing technology so that once a file was deleted (by SRA or DMCA takedown notice) all identical copies were removed from the system and copies of the same file were prevented from being downloaded in the future, even under a different name and even if uploaded by a different user. This was accomplished by generating an MD5 hash for each file.

#### **Warner Business Partnership**

28. In 2010, Warner proposed a business partnership to use Hotfile as a distribution platform by including links on Hotfile to ecommerce sites where Warner Bros content is hosted. As part of those discussions, Warner suggested that links from Hotfile would go to “iTunes, Amazon [and] WBSshop” so that Hotfile could obtain “affiliate commissions.” A true and correct copy an email string reflecting this offer is attached hereto as Exhibit 34.

#### **This Lawsuit**

29. Until the filing of this Complaint, Hotfile believed that its content protection policies were satisfactory to the Studios. The filing of this lawsuit on February 8, 2011 therefore came as a surprise.

30. I have reviewed the files-in-suit identified by the Studios in response to Hotfile’s Interrogatory Number 1. These files constitute less than 1% of the files that Hotfile has hosted. Hotfile took down every single file-in-suit for which an SRA request or DMCA takedown notice

was received after February 18, 2011 within 48 hours of Hotfile's receiving the notice of infringement.

#### **Repeat Infringer Termination Policy**

31. Since its outset, Hotfile has exercised its discretion to terminate users for repeat copyright infringement. Attached hereto as Exhibit 35 is spreadsheet HF00000048 reflecting some of the users (shown by Hotfile user number) who Hotfile has terminated since the Hotfile website began operations in February 2009, through the production date of this spreadsheet. I requested that this information be obtained from Hotfile's database. This spreadsheet shows terminations of 2,469 accounts in the pre-Complaint time period of which over 40 were for copyright infringement. I have highlighted the rows of the spreadsheet to show the recorded terminations prior to the filing of this lawsuit which were for repeat copyright infringement. Hotfile did not track all terminations in its earliest months of its operations and did not always record reasons and dates for termination so the number of pre-Complaint terminations for repeat copyright infringement were in fact higher.

32. The Studios did not once before filing the Complaint in this action ask Hotfile to strengthen the repeat infringer policy by affirmatively seeking out infringers. Upon reviewing the Complaint, Hotfile learned for the first time that the Studios were purportedly dissatisfied with its repeat infringer policy. To address this concern, in February 2011, Hotfile proactively instituted a "three-strikes" policy.

33. Hotfile's post-February 18, 2011 "three-strikes" policy terminates and blacklists users who receive three DMCA notices of claimed infringement or SRA requests. Under its three-strikes policy, Hotfile tracks how many times it receives notices of claimed infringement for a user under the DMCA or by SRA. Once a user receives three strikes, all their files are suspended, their account is permanently terminated and their email address is blacklisted. ■

■  
■ Since February 18, 2011, Hotfile has terminated thousands of users pursuant to this strengthened repeat infringer policy as shown on Exhibit 35.

#### **Implementation of Vobile Fingerprinting**

34. In the summer of 2011, Hotfile supplemented its hash fingerprinting technology by adopting Vobile MediaWise. Vobile is a commercial fingerprinting system that identifies

potentially infringing content uploaded to Hotfile's servers by its users. See www.vobileinc.com. The Vobile technology utilizes advanced digital fingerprinting to identify files that match copyrighted works contained in Vobile's reference fingerprint database, which Hotfile understands includes works owned by the Studios. Attached hereto as Exhibit 36 is a true and correct copy of [REDACTED]

35. More recently, Hotfile has implemented vCloud9. vCloud9 is a recently released fingerprinting technology from Vobile that works with storage and cloud services like Hotfile. Attached hereto as Exhibit 37 is a true and correct copy [REDACTED]. vCloud9 identifies less than 5% of audio/video content uploaded to Hotfile to be a match for reference fingerprints in Vobile's database, which includes whatever copyrighted content each of the studios chooses to protect. Attached hereto as Exhibit 38 is a true and correct copy of a Vobile vCloud9 screenshot showing a less than 5% match rate for audio/video content hosted at Hotfile. Hotfile blocks files that return matches when checked by vCloud9.

**Recent Policy Changes**

36. Hotfile recently modified its Affiliate Program in response to market shifts so it no longer counts encrypted files for affiliate credit, no longer offers a site referral affiliate program, and counts credits only based on premium conversions (not download counts). Hotfile now requires users to attend an online "copyright school" on their first strike. On a users' second strike they are disqualified from the affiliate program, and on their third strike they are terminated from Hotfile.

**Hotfile and [REDACTED]**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Duties and Responsibilities at Hotfile**

39. I do not have the authority to make unilateral decisions affecting important aspects of Hotfile or its business or operations. Likewise, I am 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.

I have not – nor has Hotfile -- implemented any technical features for the purpose of frustrating copyright owner enforcement. Hotfile accommodates and does not interfere with measures that are used by copyright owners to identify or protect copyrighted works.

[REDACTED]

**Webazilla Relationship**

41. The Hotfile website commenced operations in February 2009. In approximately May of 2009, we began to experience dissatisfaction with our Internet connectivity service provider, Webazilla, and the following month we communicated to Webazilla that we were going to terminate Webazilla's services. Shortly thereafter, we began deploying all new servers to be used with a new Internet connectivity provider, Limelight. 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. In order to avoid these problems in the future, I offered to incorporate a new entity, Lemuria Communications, Inc. ("Lemuria"), to deliver Internet connectivity (and other related services) to Hotfile going forward. Thus, in October 2009, I incorporated Lemuria, a Florida corporation of which I am the sole owner, manager and director, and which pays me a monthly salary. Lemuria thereafter commenced providing Hotfile with its Internet connectivity utilizing a variety of bandwidth sources (including Limelight). Lemuria's operations have begun to expand beyond providing services to Hotfile, as it now provides colocation and connectivity services to an unrelated company called Neterra, which is in the streaming television business.

42. Throughout this litigation, the Studios have claimed that the decision to form Lemuria and sever the relationship with Webazilla was a response to Webazilla receiving a subpoena related to Hotfile. That is not true. We terminated Webazilla because we were dissatisfied with the service we were receiving from Webazilla due to issues with the quality of the bandwidth providers Webazilla worked with and resulting problems with connectivity. Forming Lemuria and terminating Webazilla was a way to ensure that Hotfile would have a reliable connectivity provider and avoid future connectivity problems, which is very important for a company like Hotfile that operates a web-based business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 17 day of February 2012, at Sofia, Bulgaria.

Anton Titov



