

Yeh Exhibit 152

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION

4 DISNEY ENTERPRISES, INC., Case No.
TWENTIETH CENTURY FOX FILM 11-20427
5 CORPORATION, UNIVERSAL CITY
STUDIOS PRODUCTIONS LLLP
6 COLUMBIA PICTURES INDUSTRIES
INC., and WARNER BROS.
7 ENTERTAINMENT, INC.,
8 Plaintiffs,

9 vs.

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

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14
15 HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
16

17 DEPOSITION OF DANIEL S. LEVY, PH.D.
18 SAN FRANCISCO, CALIFORNIA
19 TUESDAY, JANUARY 17, 2012
20

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22
23 REPORTED BY:
24 CYNTHIA MANNING, CSR No. 7645, CLR, CCRR
25 JOB NO. 45587

January 17, 2012

9:04 a.m.

Deposition of DANIEL S. LEVY, PH.D.,
taken on behalf of Plaintiffs, at 235 Montgomery
Street, 17th Floor, San Francisco, California,
before Cynthia Manning, Certified Shorthand
Reporter No. 7645, Certified LiveNote Reporter,
California Certified Realtime Reporter.

1 APPEARANCES:

2
3 FOR PLAINTIFFS:

4 JENNER & BLOCK
BY: DUANE POZZA, ESQ.
5 1099 New York Avenue, NW
Suite 900
6 Washington, DC 20001-4412
202.639.6000
7 dpozza@jenner.com
8

9 FOR DEFENDANTS:

10 FARELLA, BRAUN + MARTEL LLP
BY: ANDREW LEIBNITZ, ESQ.
11 235 Montgomery Street
17th Floor
12 San Francisco, California 94104
415.954.4400
13 aleibnitz@fbm.com
14

15 Also present:

16 Richard Waterman, Ph.D.
(Telephonically appeared except from 11:00
17 to 11:30 a.m. PST)
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[illegible]

24 Q. But just to be clear -- this might be
25 implicit in your answer -- do you have an opinion

1 on the level of infringement that is occurring on
2 Hotfile?

3 A. I haven't been asked to design a sample
4 to do that, and I haven't done so.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 Q. Just taking the month of January 2011,
10 do you have an opinion as to what percentage of
11 the downloads of files on Hotfile were
12 infringing?

13 A. I haven't been asked to come up with
14 that number. I don't have an opinion as to the
15 percent of files that were infringing.

16 I have -- I don't have an opinion as to
17 the percent of files that were infringing, but I
18 do believe it is not the figure that Dr. Waterman
19 produced, because I don't think his analysis was
20 based on a scientific sample.

21 Q. Do you think it's higher or lower than
22 his figure?

23 A. I think that is something that's
24 knowable, it's something that could be done, and
25 I don't think anyone in this matter has yet

1 provided the study that would provide a
2 scientific basis for that.

3 Q. So you have no reason to conclude
4 whether or not the actual level of infringement
5 is higher or lower than the number in
6 Dr. Waterman's report?

7 A. Well, I think to -- at this point, you
8 know, an opinion on that would be speculation.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 Q. Do you have any reason to believe that
15 the level of infringement in December of 2010 was
16 higher or lower than the 90 percent figure that
17 was provided in Dr. Waterman's report?

18 A. Again, it would be speculation to
19 suggest whether it was higher or lower. The
20 information in the sample could have been done to
21 analyze that, but Dr. Waterman didn't do that
22 sample.

23 Q. And you have not done it either?

24 A. I have not done that analysis in the
25 short time frame that I was provided since

- [REDACTED]
- [REDACTED]
- ■ [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- ■ [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- ■ [REDACTED]
- ■ [REDACTED]
- [REDACTED]
- [REDACTED]

25 Q. Taking into account all those

1 categories of downloads that were not included --
2 recorded in the Dailydownload file, do you
3 believe that the level of infringement in January
4 2011 was higher than 90 percent?

5 A. I believe one can make hypotheses about
6 that, and some factors would indicate that there
7 would be a reason to think that there could be a
8 change, a difference.

9 But in order to determine that, rather
10 than just speculating on it, you have to do the
11 study that provided the information needed to
12 determine the rate of infringement for downloads
13 in a given day or for a month or for any other
14 time period or geography you wanted to analyze.

15 Q. Do you have any reason to believe that
16 the number of infringing downloads in January
17 2011, counting all downloads, is lower than 90
18 percent?

19 A. Well, again, I could develop hypotheses
20 about that that could be tested. Countries are
21 different. On average, the countries in the
22 excluded -- just picking one -- and I haven't
23 gone through and developed an overall perspective
24 on it. But the countries that are excluded
25 are -- from the -- from the free downloads

1 include some very large poorer countries that
2 might have very different downloading behavior,
3 might use downloads in a very different way, may
4 be spending more time storing files, may use it
5 as a storage location.

6 There are all kinds of hypotheses that
7 would -- would suggest that it could be that it's
8 lower.

9 But in order to determine that you'd
10 have to study it, as I've said many times, you'd
11 have to capture the data and look at the data
12 that you want to understand the behavior of,
13 rather than speculate on it.

[illegible]

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[illegible]

████████████████████

[REDACTED]

[REDACTED]

████████████████████

[REDACTED]

24 Q. We were talking about storage of files
25 on Hotfile before the break, and we were talking

1 about what I termed zero download files.

2 Do you recall that?

3 A. Yes.

4 Q. And those are files for which there are
5 no downloads recorded in the Uploaddownload
6 table; is that correct?

7 A. That's what we were talking about.

8 Q. Have you been asked to do a further
9 analysis to determine what percentage of those
10 files are uploaded just for storage?

11 A. I haven't been asked to do that.

12 Q. What further information would you need
13 in order to determine what percentage of those
14 files were uploaded just for storage?

15 A. Well, I don't know that I could list
16 all the information that you would need. But
17 some of the information that we were talking
18 about before would be needed; more information
19 about excluded downloads for the features that
20 the Uploaddownload file didn't have.

21 You might be able to perform some
22 analysis based on the log files to determine --
23 to gather some more information on that. That
24 might take some sort of model-based analysis, not
25 just straight sampling.

1 I haven't thought about it, so -- I
2 could think about it and I think I could design a
3 sample and then related model-based analysis or
4 other analysis to analyze that.

5 Q. Would it be a separate analysis based
6 on analyzing a separate set of data?

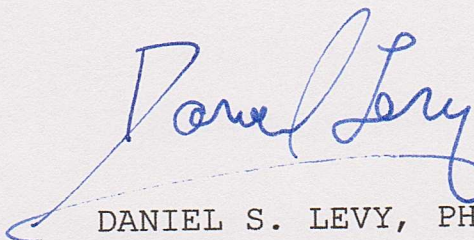
7 A. You know, I don't know. I just
8 haven't -- I haven't thought about it. I don't
9 know what -- at the moment, you know -- what the
10 best way to go about it would be. And, you know,
11 there may be multiple ways to go about it.

12 But I haven't been asked to develop
13 that, so I'm not sure exactly how that would be
14 done at the moment.

DECLARATION UNDER PENALTY OF PERJURY

I, DANIEL S. LEVY, PH.D., do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on January 17, 2012; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this 21 day of Feb
2012, at 211 Congress st, Boston, Mass. ~~California~~


DANIEL S. LEVY, PH.D.

1 IN THE MATTER OF: Disney Enterprises, et al.
vs.

2 Hotfile, and Anton Titov

3
4 DATE: January 17, 2012

5 WITNESS: Daniel S. Levy, Ph.D.

6 Reason codes:

- 7 1. To clarify the record.
8 2. To conform to the facts.
9 3. To correct transcription errors.

10 Page 40 Line 7 Reason 1
11 From 109 to Dailydownload

12 Page 51 Line 11 Reason 3
13 From Conclusion to Confusion

14 Page 52 Line 9 Reason 3
15 From 100 to 900

16 Page 84 Line 19 Reason 3
17 From Dailydownloads to daily down loads

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20
21
22 PL

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24 DANIEL S. LEVY, PH.D.

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10 Page 84 Line 20 Reason 3
11 From Dailydownload to daily down load

12
13 Page 84 Line 21 Reason 3
14 From Case, to Case

15
16 Page 139 Line 24 Reason 3
17 From Download to Dailydownload

18
19 Page Line Reason
20 From to

21
22 PL

23 DANIEL S. LEVY, PH.D.
24
25

1 STATE OF CALIFORNIA)

2 :ss

3 COUNTY OF SAN MATEO)

4 I, CYNTHIA MANNING, a Certified Shorthand
5 Reporter of the State of California, do hereby
6 certify:

7 That the foregoing proceedings were taken
8 before me at the time and place herein set forth;
9 that any witnesses in the foregoing proceedings,
10 prior to testifying, were placed under oath; that
11 a verbatim record of the proceedings was made by
12 me using machine shorthand which was thereafter
13 transcribed under my direction; further, that the
14 foregoing is an accurate transcription thereof.

15 I further certify that I am neither
16 financially interested in the action, nor a
17 relative or employee of any attorney of any of
18 the parties.

19
20 IN WITNESS WHEREOF, I have subscribed
21 my name this 19th day of January, 2012.

22
23
24 _____
25 CYNTHIA MANNING, CSR No. 7645, CCRR, CLR