

Exhibit 12

From: Pozza, Duane [DPozza@jenner.com]
Sent: Thursday, February 02, 2012 6:30 AM
To: Schoenberg, Tony (28) x4963
Cc: Thompson, Rod (27) x4445; Leibnitz, Andrew (21) x4932; Fabrizio, Steven B; Platzer, Luke C
Subject: Disney Enterprises, Inc. v. Hotfile Corp. - source code

Tony,

Defendants' production of source code in response to the Magistrate Judge's order is plainly deficient. I understand that there are fewer than 10 excerpts of files that were produced. It is evident that defendants have withheld certain versions of revisions, as well as other portions of code critically related to the portions that were produced. Here again is what was required to be produced – the proposed order that I read into the record at the hearing itself:

[A]ny and all portions of Hotfile's source code files (including in-file programmer comments), source code revision history, or source code management system check-in comments that refer to, relate to, or are used for Hotfile's processes for disabling files or URL links in response to takedown notices, or its processes for using "hash" information to prevent or block specific subsequently uploaded files from being available for download.

If defendants do not reconsider and comply with the Order, we will move to enforce it. At this point in the litigation and in light of the Judge's order, we may seek contempt and a production of all source code so that defendants cannot further evade compliance (as well as attorneys' fees). We would like to discuss this today. Please let Luke and myself know a time that will work.

On a related note, as you know, we have an outstanding subpoena to Google for "Referral Traffic" reports for Hotfile. In our previous discussions of Hotfile's evidence of referral traffic, defendants have not objected to producing this kind of referral data, but instead claim they do not have it. Can you confirm that defendants have no objection to Google producing this data?

Thanks,
Duane

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