

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-20427-JORDAN

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'S PROPOSED] ORDER PROHIBITING SPOILIATION AND PRESERVING EVIDENCE

Upon consideration of Plaintiffs' Emergency Motion for Order Prohibiting Spoliation and Preserving Evidence, Defendants' Opposition, and all of the papers submitted by both sides in relation thereto, the Court rules as follows:

1. Plaintiffs' Emergency Motion is DENIED. However, to the extent Plaintiffs wish to agree with Hotfile to a *bilateral* document preservation order, that order shall include the following terms:

- a. Plaintiffs shall preserve,¹ and immediately take efforts to prevent from expiring and/or being deleted or overwritten, all documents and electronically stored information reasonably related to issues raised in this litigation in their possession, custody, or control, including the following:

¹ No party is required to log data that may temporarily exist in the RAM of their computers that they do not log in the ordinary course of business, unless expressly set forth in this Order.

- i. All documents relating to Hotfile, Anton Titov, or Lemuria Communications (“Hotfile”), including but not limited to:
 - Investigations of Hotfile or its known users or affiliates. *See* Complaint ¶ 37.
 - Communications with third parties (including the MPAA, DTecNet, Liberty Media, and Perfect 10) regarding Hotfile. *See id.*
 - Use and effectiveness of Special Rightsholder Accounts such as available to Plaintiffs at Hotfile.
 - Takedown notices to Hotfile. 17 U.S.C. § 512(c), (f).
 - Any alleged harm or damages to Plaintiffs caused by Hotfile. *See* Complaint ¶¶ 6, 54 (alleging “staggering and irreparable” harm).
- ii. All documents regarding the legitimacy or illegitimacy of the business models of online file-hosting services, including RapidShare, MegaUpload, MediaFire, DepositFiles, Google Docs, and Windows Live SkyDrive. *See* Complaint ¶ 39 (“Hotfile’s entire business model depends upon widespread copyright infringement” and asserting that that there is nothing legitimate about Hotfile’s model); *see also* Reply at 2.
- iii. All documents evidencing copyrighted material that Plaintiffs or their affiliates have voluntarily made available to the public on the Internet. *See UMG Recordings, Inc. v. Veoh Networks Inc.*, 665 F. Supp. 2d 1099, 1101 (C.D. Cal. 2009) (SonyBMG, ABC, CBS, ESPN, Viacom and Warner Television found to be voluntarily posting content to alleged infringer Veoh).

- iv. All documents regarding Plaintiffs' ownership and validity of any of the copyrights asserted against Hotfile, including copyright registrations, assignments, licenses, notices, and work-for-hire agreements. *See Effects Assoc., Inc. v. Cohen*, 908 F.2d 555, 557 (9th Cir. 1990) (rejecting claim that "transfer of copyright without a written agreement, *an arrangement apparently not uncommon in the motion picture industry*, conforms with the requirements of the Copyright Act.") (emphasis added).
- v. All documents regarding any video fingerprinting service, including Vobile, or any of the "simple measures" that Plaintiffs allege would remedy their copyright issues with Hotfile.

Complaint ¶ 39.

- b. Plaintiffs are required to preserve all such evidence that is in their possession, custody, or control, including data in the possession of (1) their affiliates, *see* Complaint ¶ 15 (discussing "affiliates"); (2) dtechnet.com, which has acted as Plaintiffs' agent in sending takedown notices to Hotfile, and (3) the Motion Picture Association of America, which filed this lawsuit on behalf of the named Plaintiffs who are its members.

2. Plaintiffs' request for expedited discovery is DENIED.

IT IS SO ORDERED.

Dated: _____, 2011.

United States Magistrate Judge