

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.

**DECLARATION OF DUANE C. POZZA IN SUPPORT OF PLAINTIFFS' RESPONSE
IN OPPOSITION TO DEFENDANTS' MOTION FOR SPECIAL SCHEDULING
ORDER REGARDING THE SAFE HARBOR PROTECTIONS OF THE DIGITAL
MILLENNIUM COPYRIGHT ACT**

I, Duane C. Pozza, hereby declare as follows:

1. I am a partner at the law firm of Jenner & Block LLP, and counsel to the plaintiffs Disney Enterprises, Inc., Twentieth Century Fox Film Corporation, Universal City Studios Productions LLLP, Columbia Pictures Industries, Inc., and Warner Bros. Entertainment Inc. ("plaintiffs"). The statements made in this declaration are based on my personal knowledge including on information provided to me by colleagues or other personnel working under my supervision on this case.
2. Plaintiffs are seeking leave to file under seal Exhibit A, which is an excerpt of documents produced by third party PayPal, Inc. showing aggregate payments, including those for

the last three months, received by Hotfile's Internet service provider Lemuria Communications Inc., a company owned by defendant Titov, that, as far as plaintiffs are aware, only serves Hotfile. Attached as Exhibit B is a true and correct copy of the Declaration of Anton Titov in Support of Lemuria Communications Inc.'s Motion to Dismiss filed by Lemuria Communications Inc. on December 20, 2010 in *Perfect 10, Inc. v. Hotfile Corp. et al.*, No. 3:10-cv-02031-MMA-POR (S.D. Cal.), in which Mr. Titov states that he owns Lemuria, that "Lemuria was formed for the purpose of providing web-hosting services, in particular for Hotfile.com," that Lemuria has a contract with Hotfile, Ltd. to provide web hosting services for Hotfile.com, and that Lemuria receives payment for those services only.

3. In the course of the parties' meet and confers regarding plaintiffs' discovery to defendants, defendants have objected to producing a number of documents related to Hotfile Corp.'s subsidiary Hotfile, Ltd. Though defendants' counsel has suggested that Hotfile Corp. will search for documents to the extent required under the Federal Rules, defendants have not been clear that all documents in the possession of Hotfile, Ltd. will be produced, and thus plaintiffs may need to proceed to use international discovery processes to obtain discovery from Hotfile, Ltd. Further, plaintiffs have sought defendants' consent to produce individuals who have performed work for Hotfile, some of whom apparently reside in Bulgaria, for depositions. But defendants have taken the position that discovery from such individuals must be sought under protocols for international discovery. Attached as Exhibit C is a true and correct copy of an email exchange between counsel, with the most recent email from defendants' counsel dated June 7, 2011, confirming defendants' position. (The names of the individual witnesses have been redacted from the email as they appear in the response to Interrogatory No. 1, and plaintiffs are seeking to file a copy of the original email under seal.)

4. Attached as Exhibit D is Defendants' Amended Supplemental Response to Plaintiffs' Interrogatory No. 2, dated June 2, 2011.

5. Attached as Exhibit E is a true and correct copy of Order Denying Plaintiffs' Motion for Preliminary Injunction, dated May 18, 2010, in *Perfect 10, Inc. v. Rapidshare A.G.*, No. 09-CV-2596 H (WMC), at 12-13 (S.D. Cal.) (Dkt. #71).

6. Attached as Exhibit F is a true and correct copy of Order Regarding Plaintiffs' Ex Parte Application for Order Amending Scheduling Order, dated April 12, 2007, in *Columbia Pictures Indus., Inc. v. Bunnell*, 06-cv-01093 FMC-JCx (C.D. Cal.) (Dkt # 117).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2011, at Washington, DC.



Duane C. Pozza