

# **EXHIBIT D**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BOURNE CO.,

Plaintiff, No. 07 Civ 8580 (DAB)

-vs-

TWENTIETH CENTURY FOX FILM  
CORPORATION, FOX BROADCASTING  
COMPANY, TWENTIETH CENTURY FOX  
TELEVISION, INC., TWENTIETH  
CENTURY FOX HOME ENTERTAINMENT,  
INC., FUZZY DOOR PRODUCTIONS, INC.  
THE CARTOON NETWORK, SETH  
MACFARLANE, WALTER MURPHY,  
Defendants.

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VIDEOTAPED DEPOSITION OF SANDRA WILBUR

New York, New York

March 19, 2008

Reported by:

Bonnie Pruszynski, RMR

1 S. Wilbur  
 2 what I did, in terms of trying to determine what  
 3 the chords were, I transcribed out what the piano  
 4 what actually playing.  
 5 Q I'm sorry.  
 6 A I transcribed out what the piano was  
 7 playing in the A section, that first part, so I  
 8 could be sure that I was hearing correctly what  
 9 the notes were.  
 10 Q And in the first three bars, there  
 11 are notes; correct?  
 12 A Right.  
 13 Q On the piano section?  
 14 A Right.  
 15 Q And is that the melody?  
 16 A That is an introduction.  
 17 Q Okay. And then moving on to bars  
 18 four, five, through nine, 10 through 14, for  
 19 example, what is the notation in the piano section  
 20 there?  
 21 A Chords.  
 22 Q What does --  
 23 A Well, what it's doing is that the  
 24 notation there is simply indicating that those  
 25 chords change on every half note. So, it changes,

1 S. Wilbur  
 2 it, the chord plays in the beginning of the  
 3 measure and then in the middle of the measure on  
 4 the third beat in the first one.  
 5 Let me see if there is any change, in  
 6 measures, for instance, seven, that is a whole  
 7 note; that means that the chord is held through  
 8 the whole bar.  
 9 So the harmonic rhythm, if you will,  
 10 is stated in that part, so that if you have, for  
 11 instance, measure five and six --  
 12 Q Yes.  
 13 A -- the chord plays on the first beat  
 14 and the second chord plays on the third beat and  
 15 it is held through for those two beats in both  
 16 cases. In measure seven, the chord is held for a  
 17 whole note. In measure ten, you have the C over G  
 18 is held for two beats, and then it changes, the  
 19 chord changes on the third beat, which is the D  
 20 minor seventh over G, and on the fourth beat it  
 21 changes to a G7 flat, I believe, if I can read  
 22 that correctly.  
 23 Q In those same bars that you just  
 24 referenced is the melody for the piano set forth?  
 25 MS. STARK: Objection, form.

1 S. Wilbur  
 2 A The melody for the piano?  
 3 Q Is the melody for the piano notated?  
 4 A No.  
 5 Q Do you know why not?  
 6 MS. STARK: Objection. This is not  
 7 her document.  
 8 A I didn't do this.  
 9 Q She is an expert. She can testify.  
 10 A Basically, it's very simple.  
 11 The chords are here. They are  
 12 indicated. How the piano player plays those  
 13 chords, whether in chords or broken arpeggios or  
 14 in other ways is left open.  
 15 Q What is that symbol that is, for  
 16 example, in -- there is two of them in bar five,  
 17 it appears to me, and correct me if I am wrong,  
 18 but it's a diamond shape with a line coming down.  
 19 What does that indicate?  
 20 A That is just showing harmonic rhythm.  
 21 It's just showing the rhythm of the chord. It's  
 22 just saying that the chord is held for two beats.  
 23 Q Look at page one of your report. In  
 24 that first sentence, in summary of findings, which  
 25 is seconds two A, it states: "Based on my

1 S. Wilbur  
 2 analysis, as discussed below, I have concluded  
 3 that "I Need a Jew" is extremely similar to "When  
 4 You Wish Upon a Star," incorporate large amounts  
 5 of the creative expression in "When You Wish Upon  
 6 a Star," and was obviously derived from "When You  
 7 Wish Upon a Star."  
 8 Is that your opinion?  
 9 A That is.  
 10 Q Do you believe that "I Need a Jew"  
 11 can serve as a substitute for "When You Wish Upon  
 12 a Star"?  
 13 MS. STARK: Objection. Outside the  
 14 scope of her report. You can answer.  
 15 A Can substitute, in terms of you mean  
 16 having this song put in the Pinocchio movie, is  
 17 that what you mean?  
 18 Q That is one example.  
 19 A No.  
 20 Q Okay. Do you ever consult with  
 21 companies regarding music to insert either in a  
 22 commercial or in a motion picture?  
 23 A Many times. All the time. Every  
 24 day.  
 25 MS. STARK: Objection. This is

1 S. Wilbur  
2 beyond the scope of Ms. Wilbur's report.  
3 MR. RIMOKH: Really. I would point  
4 you to her qualification section.  
5 MS. STARK: That is fine. You can  
6 ask her about her consulting, but --  
7 BY MR. RIMOKH:  
8 Q Anyway, in your role as the  
9 consultant, if one of your clients wanted to use  
10 "Wish Upon a Star" in a motion picture, would you  
11 accept the song "I Need a Jew" as a substitute for  
12 it?  
13 MS. STARK: Objection. You can  
14 answer.  
15 A It wouldn't happen.  
16 Q Why wouldn't it happen?  
17 MS. STARK: Objection. You can  
18 answer.  
19 A It's not the same.  
20 Q Okay. On page five of your report,  
21 item number ten, you state, "the basic chord that  
22 begins and ends each four-measure section is the  
23 same."  
24 What did you mean by that?  
25 A If you look at -- okay. What I said

1 S. Wilbur  
2 is that you have four measures -- on the first  
3 line?  
4 Q Yes. I'm sorry. We are looking at  
5 Exhibit I again?  
6 A Correct.  
7 Q One second, let me get there.  
8 Okay. Go ahead.  
9 A And the first chord is C in both?  
10 Q Okay.  
11 A The last chord of the four measures  
12 is C in the top and C over E, which simply means  
13 it's a C chord with an E in the base in the first  
14 version.  
15 Q Pardon me. What word is that listed  
16 or linked up to, so I can find my place?  
17 A It's on R, C in the --  
18 Q Is that the beginning or the end?  
19 A I'm sorry. Let me start again.  
20 Q Sure.  
21 A When and no-, no- as in nothing,  
22 there is a C chord in both.  
23 Q Got it.  
24 A If you look at the end of the line,  
25 who you are, above are is a C chord.

1 S. Wilbur  
2 Q Are you saying in both it's a C  
3 chord?  
4 A It's a C chord in both. It's a C  
5 over E in the base, which is basically a C chord  
6 with the E in the base, which is simply a C chord  
7 in first inversion. So that is the same basic  
8 chord.  
9 In measure five, between one on the  
10 bottom and N as in anything, there is, again, a C  
11 over E in the top.  
12 Q In "Wish Upon a Star"?  
13 A In "Wish Upon a Star."  
14 And in "I Need a Jew", it's C in the  
15 bottom.  
16 Q And you are saying those are the  
17 same?  
18 A Those are the same.  
19 Q Okay. If you look at measure eight,  
20 where you have the word "you" in "When You Wish  
21 Upon A Star," and "Jew" --  
22 Q Yes.  
23 A -- in "I Need a Jew."  
24 Q Um-hum.  
25 A You have the C chord in the beginning

1 S. Wilbur  
2 of that measure, and you end with a G7 chord.  
3 In the next measure, nine --  
4 Q Um-hum.  
5 A -- you start with a C chord in  
6 both --  
7 Q Um-hum.  
8 A -- on the first word. And if you go  
9 four measures out, you end in the same way, in  
10 measure 12 as you did in measure four.  
11 Q On C, is that what you are saying?  
12 A C, on the second syllable of extreme,  
13 and again in the -- in the "I Need A Jew", it's a  
14 C over E.  
15 Q Stop for one second. Just as a  
16 matter of notation, you have just referenced that  
17 in bar 12, it ends in a C chord. Is there a  
18 reason that you don't place a C over the "I Need a  
19 Jew" song?  
20 A That -- there is a reason, because  
21 the C over E is held for the whole bar. So that  
22 it starts earlier, but it's playing during that  
23 entire bar.  
24 Q It's still there at that end note?  
25 A Right, same note.

1 S. Wilbur  
 2 MR. RIMOKH: I'm sorry. Can you  
 3 bring me there?  
 4 MS. STARK: Sure, in paragraph J.  
 5 MR. RIMOKH: Right.  
 6 A "Harmonically, the pieces are also  
 7 quite related. It has already been pointed out  
 8 that the beginning and end of every four  
 9 measures," that would have to be qualified as I  
 10 qualified it earlier, "uses the basic chords.  
 11 There are 58 chords in "When You Wish Upon a Star"  
 12 and 65 chords, including the last four that occur  
 13 after the last word is sung," in "I Need a Jew"  
 14 would be added.  
 15 I also qualified some of the things  
 16 that I said earlier, but they are in the record,  
 17 and I think that they would apply to every other  
 18 instance in the report.  
 19 MS. STARK: Okay. I have no further  
 20 questions.  
 21 MR. RIMOKH: I have nothing.  
 22 MS. STARK: Okay. Thank you.  
 23 THE VIDEOGRAPHER: The time is  
 24 5:15 p.m., March 19, 2008, and we are off  
 25 the record.

1 S. Wilbur  
 2 pages of this deposition to be a true and correct  
 3 transcript, subject to the corrections, if any,  
 4 shown on the attached page.  
 5  
 6 SANDRA WILBUR  
 7 Subscribed and sworn to before me this  
 8 day of \_\_\_\_\_,  
 9  
 10 NOTARY PUBLIC  
 11  
 12  
 13  
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 25

1 S. Wilbur  
 2 (Discussion held off the record.)  
 3 MR. RIMOKH: Let's go back on the  
 4 record.  
 5 Just we are going back on the record  
 6 just for a second just to mark the two DVD's  
 7 that were played during the deposition.  
 8 The first one is a DVD that states  
 9 Walt Disney's Pinocchio. It states,  
 10 "limited issue" on the top of it, but we  
 11 have all agreed that that is the motion  
 12 picture Pinocchio.  
 13 And that will be Wilbur Exhibit 2.  
 14 And as Wilbur Exhibit 3, we are going  
 15 to mark a DVD which came from The Family Guy  
 16 box set of season three, and it is disk  
 17 three of season three, and it contains  
 18 episodes 17 through 21, and it includes the  
 19 episode "When You Wish Upon a Weinstein,"  
 20 which was played during the deposition.  
 21 (Wilbur Exhibit 2 and Wilbur Exhibit  
 22 3 marked for identification as of this  
 23 date.)  
 24 I, SANDRA WILBUR, the witness herein, do  
 25 hereby certify that the foregoing testimony of the

1  
 2 STATE OF NEW YORK ) Pg. of Pgs.  
 3 COUNTY OF NEW YORK )  
 4 I wish to make the following changes  
 5 for the following reasons:  
 6 PAGE LINE  
 7 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
 8 \_\_\_\_\_ REASON: \_\_\_\_\_  
 9 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
 10 \_\_\_\_\_ REASON: \_\_\_\_\_  
 11 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
 12 \_\_\_\_\_ REASON: \_\_\_\_\_  
 13 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
 14 \_\_\_\_\_ REASON: \_\_\_\_\_  
 15 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
 16 \_\_\_\_\_ REASON: \_\_\_\_\_  
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 25