



A Website Providing File-Hosting or “Cyberlocker” Services to Internet Users Wins Dismissal of Disney’s Direct Copyright Infringement Claim, but Disney’s Claim for Secondary Copyright Infringement Through Hotfile Users’ Copying and Distribution of Copyrighted Material Survives

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by [Phillip Barengolts, Trademark Attorney](#)

Hotfile hosts files uploaded by its users.¹ A user receives a unique link to each of his files hosted by Hotfile, so the user can access a file from anywhere with an Internet connection. The user also can share the link to his file with others. And that is all you probably need to know about Hotfile to understand the basis for the Motion Picture Association of America’s suit for copyright infringement, styled *Disney Enterprises, Inc. v. Hotfile Corp.*, 1:11-cv-20427 (M.D. Fla. July 8, 2011).² You can learn much more about Disney’s allegations regarding Hotfile’s business model, including its creative money generating scheme of subscribers and third-party affiliates, in the opinion by the United States District Court for the Southern District of Florida on Hotfile’s motion to dismiss both direct and secondary copyright infringement claims.

Disney alleged direct copyright infringement, as well as secondary liability under theories of inducing infringement, contributory infringement and vicarious infringement. Hotfile moved to dismiss on the ground that it could not be liable for direct copyright infringement because it has no control over the files that a user chooses to upload to Hotfile’s servers.

The court dismissed Disney’s direct copyright infringement claim because “nothing in the complaint alleges that Hotfile...took direct, volitional steps to violate the plaintiffs’ [copyrights].” *Citing Religious Technology Center v. Netcom On-Line Communication Services*, 907 F. Supp. 1361 (N.D.

¹ See <http://www.hotfile.com/>.

² Available at http://www.pattishall.com/pdf/Disney_v_Hotfile.pdf



Cal. 1995). The court distinguished two comparable cases recently decided by the Southern District of New York³ primarily because it found their reasoning on the issue of direct copyright infringement unconvincing. That is, the Court here found the conclusions in those cases supported secondary infringement claims and not direct infringement.

It went on, however, “To be sure,...Hotfile allegedly encourage[s] the massive infringement.” Furthermore, the Court noted that Disney’s secondary liability claims included allegations that “Hotfile (1) has complete control over the servers that users employ to infringe, (2) has the technology necessary to stop this type of infringement, (3) refuses to stop the massive infringement, and (4) actually encourages the infringement because the infringement increases its profits.” These allegations were sufficient to state a claim of secondary copyright infringement.

Undoubtedly, this litigation will continue and it will be interesting to see Hotfile’s arguments for avoiding secondary liability under *MGM Studios, Inc. v. Grokster*, 545 U.S. 913 (2005), including DMCA and other defenses. Stay tuned.

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³ *Arista Records LLC v. Usenet.com, Inc.*, 633 F.Supp.2d 124 (S.D.N.Y. 2009) and *Capitol Records, Inc. v. Mp3Tunes, LLC*, 611 F.Supp.2d 342 (S.D.N.Y. Oct. 16, 2009)