



The Electronic Frontier Foundation (“EFF”) moves the Court pursuant to Federal Rule of Civil Procedure 24(b) for leave to intervene in this action for the limited purpose of filing a motion to unseal a portion of the record. Specifically, EFF seeks to unseal a portion of the Court’s order on Plaintiffs’ motion for summary judgment on Hotfile’s counterclaim, and portions of the briefs and factual materials submitted for and against that motion. EFF previously filed a brief *amicus curiae* in opposition to the motion. EFF’s proposed motion to unseal is attached hereto as Exhibit 1, and a proposed order is attached as Exhibit 2.

### **MEMORANDUM OF LAW**

“Once a matter is brought before a court for resolution, it is no longer solely the parties’ case, but also the public’s case.” *Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013, 1016 (11th Cir. 1992). There is a strong common law presumption in favor of public access to court records. *Wilson v. American Motors Corp.*, 759 F.2d 1568, 1569 (11th Cir. 1985); *In re Alexander Grant & Co. Litigation*, 820 F.2d 352, 355 (11th Cir. 1987).

Hotfile’s counterclaim concerned the design and operation of plaintiff Warner Bros. Entertainment’s system for identifying and issuing takedown notices for allegedly infringing material pursuant to Section 512 of the Digital Millennium Copyright Act. The usefulness of takedown systems implementing Section 512, and their potential for abuse, are subjects of intense, current public debate for which little public information exists. Because the rights of the public are at stake in this case, any member of the public has standing to unseal and view the records. *Brown*, 960 F.2d at 1016. The Eleventh Circuit has held in analogous cases that third parties have standing to intervene for the purpose of seeking to unseal court records. *In re Alexander Grant*, 820 F.2d at 354. Portions of the Court’s order on plaintiffs’ motion for summary judgment on Hotfile’s counterclaim, and portions of the briefs and factual materials submitted for and against that motion contain valuable information to which the public should have access.

This motion is timely because the Court recently ordered the parties to file “a joint document identifying information disclosed in this case that must remain confidential, its

location, and the rationale for its confidentiality by January 31, 2014.” Paperless Order, ECF No. 652 (Dec. 3, 2013). The plaintiffs filed a response to this order on February 3, 2014 (ECF No. 666-1), and the Court has not yet issued a decision concerning ongoing confidentiality.

Therefore, EFF requests leave to intervene in this action for the purpose of filing the attached motion to unseal.

**CERTIFICATE OF GOOD FAITH CONFERENCE**

I hereby certify that counsel for the movant, Mitchell L. Stoltz, Esq., conferred with all parties or non-parties who may be affected by the relief sought in this motion, including counsel for Plaintiffs and Defendants, in a good faith effort to resolve the issues. Counsel for Defendants has informed the undersigned that Defendants do not oppose the relief sought herein. Counsel for Plaintiffs has informed the undersigned that Plaintiffs oppose this motion.

Respectfully submitted,

Dated: February 26, 2014

ELECTRONIC FRONTIER FOUNDATION

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 26, 2014, I caused a true copy of the foregoing to be filed using the Court's Electronic Case Filing system, which served a copy on all counsel of record via e-mail.

/s/ Dineen Pashoukos Wasylik  
Dineen Pashoukos Wasylik