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8 Attorneys for Defendants  
 REALNETWORKS, INC. and  
 REALNETWORKS HOME  
 9 ENTERTAINMENT, INC.

10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA  
 12 WESTERN DIVISION

13 UNIVERSAL CITY STUDIOS )  
 14 PRODUCTIONS LLLP, UNIVERSAL )  
 CITY STUDIOS LLLP, PARAMOUNT )  
 15 PICTURES CORPORATION, )  
 TWENTIETH CENTURY FOX FILM )  
 16 CORPORATION, SONY PICTURES )  
 TELEVISION INC., COLUMBIA )  
 17 PICTURES INDUSTRIES, INC., SONY )  
 PICTURES ENTERTAINMENT, INC., )  
 18 DISNEY ENTERPRISES, INC., WALT )  
 19 DISNEY PICTURES and WARNER )  
 20 BROS. ENTERTAINMENT, INC., )

Case No: CV-08-06412 SJO AJW

**DECLARATION OF  
 JACQUELINE LANG IN  
 OPPOSITION TO *EX PARTE*  
 APPLICATION OF  
 PLAINTIFFS FOR  
 TEMPORARY RESTRAINING  
 ORDER AND ORDER TO  
 SHOW CAUSE RE  
 PRELIMINARY INJUNCTION**

21 Plaintiffs,  
 22  
 23 v.  
 24 REALNETWORKS, INC., and  
 REALNETWORKS HOME  
 ENTERTAINMENT, INC.  
 25  
 26 Defendants.

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1 I, Jacqueline Lang, declare as follows:

2 1. I am the Vice President of Marketing for Real Networks, Inc.  
3 (“Real”), and have been employed by Real since February of 2001. I have  
4 personal knowledge of the facts stated herein. I am over the age of eighteen, and  
5 would and could testify truthfully thereto if called as a witness.

6 2. Real was ready to officially release its RealDVD product on  
7 September 8, 2008 (“initial launch”). Real carefully planned the release of  
8 RealDVD for months, and timed the initial launch to coincide with the “DEMO  
9 Fall 08” Conference on September 8, where Real’s Chairman and CEO, Rob  
10 Glaser, was a speaker. The DEMO Fall 08 Conference was held in San Diego,  
11 California, and promoted itself as “The Launchpad for Emerging Technology.”  
12 Real intended for Mr. Glaser to announce RealDVD while speaking at the  
13 conference, and at the same time, Real would release the product and make it  
14 available to consumers. Real has consistently followed this practice, as timing the  
15 release of a new product with a technology conference permits Real to capitalize  
16 on the publicity surrounding a conference and reach an interested audience.

17 3. Shortly before the initial launch, Real was contacted by various studio  
18 plaintiffs, who objected to the release of the product, and expressed concerns that  
19 RealDVD violated the terms of the standard CSS license agreement with the DVD  
20 Content Control Association, as well as copyright law. The evening before the  
21 initial launch date of September 8, Real decided to abort the initial launch in order  
22 to try to resolve its differences with the studios in good faith. Instead of releasing  
23 RealDVD as planned on September 8, Real made last minute changes to its  
24 September 8, 2008 press release, announcing that the product would “be available  
25 this month.” This was the first time that Real had ever announced a product  
26 without simultaneously making it available to end users, and therefore, Real stated  
27 that it would release RealDVD during the month of September.  
28

1           4. Real expended considerable effort and resources to prepare for the  
2 initial launch of RealDVD that ultimately were not optimized when the launch was  
3 pulled in order to address the studios' concerns. For example, in preparation for the  
4 planned September 8 launch, Real's public relations department worked with an  
5 outside PR agency to reach dozens of different publications and encourage them to  
6 generate press regarding RealDVD. Leading up to the planned September 8 initial  
7 launch, Real's PR department and outside agency worked furiously promoting the  
8 product, giving demonstrations of the product and answering technical questions.  
9 Upon the September 8 announcement of RealDVD and in the days that followed,  
10 press regarding RealDVD appeared in the New York Times, Business Week,  
11 Newsweek, PC World and USA Today, among others. While these articles  
12 undoubtedly generated interested potential customers, such customers had no way  
13 to purchase RealDVD as the product was being held back by Real in an attempt to  
14 resolve the concerns of the studios.

15           5. Real also committed advertising resources to the planned initial  
16 September 8 launch. Real purchased approximately \$175,000 of web media and  
17 ads throughout the Internet to be run on certain specific days around September 8 to  
18 promote RealDVD. When Real decided to abort the initial product launch, Real  
19 was forced to pull back all of its advertising efforts and ask its advertising partners  
20 to delay the committed-to advertising. Such advertisers were under no obligation  
21 to delay the planned RealDVD advertising, and Real expended significant goodwill  
22 in asking its advertising partners to try to find other sponsors on virtually no notice  
23 to fill the ad spots for the committed days.

24           6. In keeping with its public statements that it would release the RealDVD  
25 product during the month of September, Real released and made the RealDVD  
26 product available for download on September 30, 2008, at 8:00 a.m. EST.

27           7. In anticipation of the September 30 launch, Real made a tremendous  
28 PR push to attempt to recreate as much as possible the initial publicity "buzz" that

1 surrounded RealDVD at the time of the planned initial September 8 launch. In the  
2 days leading up to the September 30 launch, Real's PR department and outside PR  
3 agencies again contacted numerous media outlets encouraging them to write  
4 articles regarding RealDVD. While Real made extensive PR efforts for the  
5 September 30 launch, many of the publications which had already generated press  
6 regarding RealDVD were not willing to run second articles on the product. Real  
7 also engaged in extensive advertising efforts related to the September 30 launch of  
8 RealDVD, including purchasing advertising space and key word searches.

9 8. If Real were enjoined from distributing RealDVD, the results to Real  
10 would be devastating. Particularly in light of Real's good faith decision to pull the  
11 September 8 launch to try to accommodate the plaintiff studios, the failure to  
12 successfully launch RealDVD on this second effort would cause Real irreparable  
13 loss of credibility with its customers and potential customers, shareholders,  
14 analysts, advertising partners, PR contacts and the market generally. Much of the  
15 goodwill and trust Real has developed over the years would be lost. Even if Real  
16 were ultimately allowed to resume sales of the product, the ultimate success of  
17 RealDVD, and perhaps other Real offerings, would be irreparably impaired.

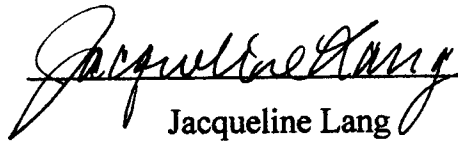
18 9. In addition, Real currently has a "first mover advantage" with respect  
19 to the RealDVD product as there are no legal competitive products at this price  
20 point. In promoting the release of RealDVD, Real has explained its product in  
21 detail to the market (and to its competitors), provided demonstrations and answered  
22 technical questions. While the technical details of RealDVD have not been  
23 released, competitors have been alerted both to the feasibility and the attractiveness  
24 of a similar product. Any further delay in the release of RealDVD will pose an  
25 unacceptable business risk to Real, as Real could lose its first mover advantage  
26 which could never be recovered.

27 10. Further, it is critical for the success of RealDVD that the product gain  
28 traction in the market prior to the holiday season. As is the case with most

1 companies, Real's financial expectations for RealDVD include strong holiday sales  
2 which it would almost certainly fail to achieve if the product were not available to  
3 consumers during the next few months leading up to the holidays (when holiday  
4 purchases are made). Real expects that sales of RealDVD in the fourth quarter of  
5 2008 will account for 25%-40% of its sales of that product on an annual basis.

6 11. Finally, if distribution of the newly-released RealDVD product were  
7 enjoined, Real would be forced to cancel its advertising commitments and halt its  
8 media campaign for a second time. If the distribution of RealDVD were enjoined,  
9 Real would almost certainly not be able to engage in a successful PR campaign  
10 relating to RealDVD for a third time, which would irreparably impair the ultimate  
11 success of RealDVD in the market.

12  
13 I declare under penalty of perjury that the foregoing is true and correct.  
14 Executed at Bellevue, Washington on September 30, 2008.

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17 Jacqueline Lang

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