

1 JAMES A. DIBOISE, State Bar No. 83296
 Email: jdiboise@wsgr.com
 2 COLLEEN BAL, State Bar No. 167637
 Email: cbal@wsgr.com
 3 MICHAEL A. BERTA, State Bar No. 194650
 Email: mberta@wsgr.com
 4 WILSON SONSINI GOODRICH & ROSATI
 Professional Corporation
 5 One Market, Spear Tower, Suite 3300
 San Francisco, CA 94105
 6 Telephone: (415) 947-2000
 Facsimile: (415) 947-2099

7 Attorneys for Defendants
 8 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
 DISNEY PICTURES and WARNER
 19 BROS. ENTERTAINMENT, INC.,
 20

21 Plaintiffs,

22 v.

23 REALNETWORKS, INC., and REAL
 24 NETWORKS HOME
 ENTERTAINMENT, INC.
 25

26 Defendants.
 27
 28

CASE NO.:
CV 08-06412 SJO AJWx

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

1 I, Gordon Klein, declare as follows:

2 1. I am a faculty member at UCLA's Anderson School of Management,
3 where I have taught 11 accounting, tax, business law, and entrepreneurship courses
4 in the undergraduate program and MBA Program since 1981. In addition, I was a
5 faculty member from 1987 to 2000 at UCLA's Law School, where I taught courses
6 in accounting, taxation, and financial analysis. I taught similar courses as an
7 Adjunct Professor in the LLM in Taxation Program at Loyola Law School in Los
8 Angeles, California during fall 2001 and 2002. I am a member of the California Bar
9 (inactive), admitted in 1979, and a C.P.A., certified in the state of Illinois in 1976. I
10 have conducted executive education seminars in financial and tax aspects of
11 business management to, among others, partners at PricewaterhouseCoopers,
12 members of the German Bundestadt governing body, and the Finance Committee of
13 the People's Republic of China. I have authored several books concerning
14 managerial accounting, cost accounting, introductory accounting, and managerial
15 finance, as identified in my curriculum vita. I earned a B.B.A. from the University
16 of Michigan Business School in 1976, graduating Phi Beta Kappa, and I earned a
17 J.D. from the University of Michigan Law School in 1979. My curriculum vita,
18 including a list of my publications over the last ten years, is attached at the end of
19 this report as Exhibit 1.

20 2. I have served as an expert witness in various cases, including cases in
21 Federal Court and in Los Angeles Superior Court, and I have served as a Superior
22 Court referee in Los Angeles and Orange Counties. I have testified in several major
23 tax matters, including testifying on behalf of the US Attorney's Office in the case
24 *United States v. Mitchelson*. A list of my expert testimony experience for the last
25 four years is attached hereto as Exhibit 2. I am being compensated at a rate of \$550
26 per hour for my independent review and analysis provided in this case.
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1 3. I have been asked to address issue of the Studios' claims that
2 RealDVD's presence in the marketplace threatens immediate and irreparable harm
3 to the Studios.

4 4. I understand that the Studios have represented that the threat of "rent-
5 rip-return" behavior is the most obvious and ominous.¹ I further understand that the
6 Studios have represented that RealDVD is improperly holding itself out to
7 consumers as a "legal" product.

8 5. Based on my understanding, it is my opinion that the Studios' analysis
9 confuses two distinct markets: the legal market which RealDVD addresses and the
10 illegal market.

11 6. I have examined the characteristics of several products which enable
12 the copying of DVD files. Attached as Exhibit 3 is a table comparing these
13 products.

14 7. From an economic point of view, these products represent two
15 different markets because consumers who wish to operate in an illegal environment
16 are not aided by RealDVD.

17 8. In a recent article published in PC Magazine, the author states,
18 "Unfortunately, the resulting [RealDVD] movie files are locked up tighter than
19 Hannibal Lecter; you can play them on up to five licensed PCs, but you can't watch
20 them on your iPod or other device. As such, RealDVD doesn't really give users what
21 they want: a way to put their purchased movies on their PCs and move them to
22 iPods, iPhones, PSPs, and network attached devices....Essentially, we want the same
23 freedom with DVDs that we have with CDs, and there are lots of DVD-ripping and
24 file-converting tools online that give users that freedom. Many of the best ones are
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27 ¹ Declaration of Michael Dunn in support of *Ex Parte* Applications of Plaintiffs for
28 Temporary Retraining Oder and Order to Show Cause re: Preliminary Injunction Thereof, p. 4
Ins. 10-11.

1 free or accept donations..."² Another article states that RealDVD is "a [really] more
2 cumbersome way of doing something that [consumers have] already been doing for
3 years now with DVD Decrypter, AnyDVD, Handbrake, MacTheRipper, RipIt and
4 the like."³

5 9. Based on this information, it is my opinion that RealDVD wouldn't
6 have any significant impact on the end-user's choice between illegal encryption-
7 stripping products which enable a bit-for-bit copying of a DVD file and RealDVD
8 player which 1) is more expensive (\$30 compared to mostly freeware) and 2) has
9 results which are inferior (i.e., more restrictive) compared to those obtainable by one
10 of the other products.

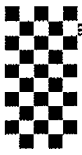
11 10. In addition, I have been asked to address the Studios' allegations that
12 damages are not quantifiable if they are significant at all. In his declaration, Mr.
13 Michael Dunn articulates many facts that assist in this exercise. For instance, he
14 states that last month DVD rentals were 175 million at an average price of \$3.25.
15 He also states that 50 million new DVD movies were sold at an average price of
16 \$18.50. Assuming *arguendo* that the RealDVD player might increase the number of
17 "rent-rip-return" events, Mr. Dunn's information provides important data to quantify
18 lost revenues associated with consumers' actions in copying a rented DVD in lieu of
19 purchasing it outright.

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26 ² Monson, Kyle, "7 Tools for Ripping Your DVDs," 9/11/08, PC Magazine, accessed
27 9/25/08, http://www.pcmag.com/print_article2/0,1217,a%253D231870,00.asp

28 ³ Paczkowski, John, "Rent. Rip. Return.", 9/8/08, All Things Digital, accessed 9/30/08,
<http://digitaldaily.allthingsd.com/20080908/rent-rip-return/>



11. It is my opinion that there are also a number of ways to quantify damages which meet the legal requirement of reasonable certainty. For example, one could conduct surveys of potential users to estimate possible diverted units. This data, when coupled with pricing data and cost data customarily maintained by the Studios in the ordinary course of business, would allow for damages to be ascertained with a reasonable degree of certainty.

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

Gordon Klein

September 30, 2008