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CENTRAL DIST. OF CALIF.
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17
 18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA

20 WESTERN DIVISION

21 **CV 08-06412**
 CASE NO.

S/O AJWx

22 UNIVERSAL CITY STUDIOS
 23 PRODUCTIONS LLLP, UNIVERSAL
 CITY STUDIOS LLLP, PARAMOUNT
 24 PICTURES CORPORATION,
 TWENTIETH CENTURY FOX FILM
 CORPORATION, SONY PICTURES
 25 TELEVISION INC., COLUMBIA
 PICTURES INDUSTRIES, INC., SONY
 26 PICTURES ENTERTAINMENT INC.,
 27 DISNEY ENTERPRISES, INC., WALT
 DISNEY PICTURES and WARNER
 BROS. ENTERTAINMENT INC.,

**DECLARATION OF MICHAEL
 DUNN IN SUPPORT OF EX PARTE
 APPLICATION OF PLAINTIFFS
 FOR TEMPORARY RESTRAINING
 ORDER AND ORDER TO SHOW
 CAUSE RE: PRELIMINARY
 INJUNCTION THEREOF**

28 Plaintiffs,

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vs.
REALNETWORKS, INC. and
REALNETWORKS HOME
ENTERTAINMENT, INC.,
Defendants.

1 I, Michael Dunn, hereby declare as follows:
2

3 1. I am the President of Twentieth Century Fox Home Entertainment LLC, a
4 subsidiary of Twentieth Century Fox Film Corporation ("Fox"). In that position, I
5 am responsible for Fox's DVD distribution business,¹ as well as its distribution of
6 content through other digital channels. I submit this declaration in support of the
7 application by Fox, Paramount, Universal, Warner Brothers, Disney and Sony
8 Pictures (collectively, the "Studios") for a temporary restraining order to prevent
9 RealNetworks from distributing its new RealDVD product. Except as expressly
10 noted, the facts stated herein are known to me personally. Certain of the numerical
11 data in this Declaration were assembled by members of my staff from records that
12 we maintain and rely upon in the ordinary course of our business, and I reviewed
13 their sources. If called upon and sworn as a witness, I could and would testify
14 competently to the contents of this Declaration.

15 2. I have been employed by Fox for twenty-one years. Throughout that
16 entire time, I have worked in the home entertainment end of Fox's business, and I
17 have become intimately familiar with Fox's efforts (and, more generally, the efforts
18 of others in the marketplace) to provide consumers with various means of accessing
19 entertainment content -- primarily movies and television shows -- for viewing at
20 home and on portable devices.

21 3. As set forth below, I strongly believe that RealDVD's presence in the
22 marketplace -- for even a brief period of time -- threatens immediate and irreparable
23 harm to Fox's business, and to the business of the other Studios. Over the course of
24 many years, Fox and the other Studios have worked hard to create distribution
25 channels that: (a) provide consumers with choices about how they wish to access
26 entertainment programming at different price points for different time periods and
27

28 ¹ Unless noted, the term "DVD" includes all discs, including DVD and Blu-ray.

1 different purposes; and (b) allow us, as content owners, to earn revenues *depending*
2 on how consumers choose to access that programming.

3 4. Some 175 million DVDs were rented in this country last month at an
4 average price of \$3.25. Some 50 million newly-released DVD movies were sold
5 during the same period at an average price of approximately \$18.50 (for non-Blu-
6 ray discs). Consumers made choices about whether to rent or buy, and Studios
7 received revenues that reflected those choices. *Next* month, RealDVD threatens to
8 convert a portion of those two hundred million \$3.25 rentals into \$3.25 *purchases*,
9 by allowing consumers to make permanent (and perfect) copies onto their
10 computers. The harm from such a conversion is clear and manifest. As described
11 below, this “rent-rip-and-return” threat is perhaps the most obvious and ominous,
12 but is only one example of the ways in which RealDVD threatens immediate and
13 massive economic injury to the Studios.

14 5. There is an entirely separate harm that deserves mention right up front.
15 RealDVD is holding itself out to millions of consumers as a “legal” product. If that
16 message turns out to have been incorrect (as I believe), law-abiding consumers will
17 have been exposed to an alluring but inaccurate message that threatens to change
18 permanently their perception of what can be done legally with DVDs, and thus their
19 behavior. Such damage is likely to be irreparable, as well.

20 OUR BUSINESS

21 6. Over time, Fox has observed that consumers’ lifestyles have changed as
22 technology has evolved. We view these changes as opportunities, and we strive
23 every day to anticipate and meet evolving consumer desires in ways that respect our
24 ownership interest in movies and TV shows that cost many millions of dollars to
25 produce. Indeed, developing and offering products and services to meet
26 consumers’ existing and emerging choices -- *at price points tailored to those*
27 *choices* -- is at the very heart of our business, and is essential for our survival.

28 7. Currently, Fox and the other Studios offer consumers a wealth of choices

1 regarding how they access movies and TV shows, and how they watch such
2 content. Using movies as an example, (a) consumers can choose to rent or purchase
3 them on DVD, allowing them to watch them on television sets at home, in their
4 minivans, on home computer screens, and on laptops and portable DVD players
5 when they travel; (b) consumers can download movies through online services such
6 as iTunes, and watch them on home computers or portable devices; (c) they can opt
7 to “rent” such downloaded movies for a limited period of time at one price point, or
8 “purchase” them at a higher price point, (d) consumers can “rent” movies by
9 watching them over cable-TV and satellite-TV systems in their homes and in
10 hotels; (e) they can purchase special versions of DVDs that allow them to make
11 copies onto their computer hard-drives, thus allowing their families to watch
12 movies using DVD players *and* computers and other portable devices; (e) currently,
13 or very shortly, they will be able to purchase movies online in a format that allows
14 them to burn their own DVDs, which will also permit them to watch using DVD
15 players *and* computers. The list could go on, and will continue to grow as
16 technology continues to evolve.

17 PRICE AND REVENUE DATA

18 8. The following paragraphs set forth facts concerning the prices currently
19 paid by consumers depending on the choices they make, and some of the revenue
20 streams that I believe will be significantly harmed by the distribution of the
21 RealDVD product.

22 9. Currently, consumers can choose to purchase a newly-released Fox movie
23 on DVD at an average cost of approximately \$18.50 (for non-Blu-ray discs).

24 10. Alternatively, if a consumer chooses only to rent a movie or TV show
25 for a limited time, the price is much lower. The average price that consumers pay
26 to rent a movie or TV show from outlets such as Blockbuster is approximately \$4.
27 Some consumers prefer to rent movies from subscription services such as Netflix.
28 Although such consumers do not pay on a per-DVD basis, average prices can be

1 calculated by dividing monthly subscription costs by the number of movies or TV
2 shows rented. Using that method, the average cost of a movie or TV show rented
3 through subscription services is approximately \$2.50. Yet other consumers rent
4 through kiosks at various locations, at an average price of approximately \$2. When
5 all three methods are considered together and weighted appropriately, the average
6 price to consumers for renting a movie or TV show is approximately \$3.25.²

7 11. The Studios, in the aggregate, received revenues of approximately \$12.5
8 billion from the sale of DVDs (net of returns) in 2007. By 2012, that figure is
9 projected to grow to approximately \$14.5 billion.³

10 12. In 2007, the Studios received revenues of approximately \$2 billion from
11 outlets (such as Blockbuster and Netflix) that rent DVDs. By 2012, that figure is
12 projected to grow to approximately \$2.5 billion.

13 13. All of the Studios currently offer movies and/or TV shows through one
14 or more internet download services such as iTunes, Amazon.com, MovieLink and
15 others. To use iTunes as an example, the typical price paid by consumers to
16 purchase a newly-released movie is \$14.99, or they can choose to rent such a movie
17 (*i.e.*, download it and watch it for a limited period of time) for \$3.99.

18 14. The Studios, in the aggregate, received revenues of approximately \$200
19 million from internet download services in 2007 (excluding revenues from
20 downloads of TV shows that had not yet been offered on DVD). By 2012, that
21 figure is projected to grow to approximately \$1 billion.

22 15. All of the Studios currently distribute movies through video-on-demand

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24 ² The dollar figures in Paragraph 10 are not independently researched or
25 calculated by Fox, but rather are the product of work done by third-party
26 consultants who routinely provide such data to us. Adams Media Services is one
such consulting service, whose data is reviewed and relied on by Fox (and by me
personally) in the ordinary course of our business.

27 ³ Aggregate figures in Paragraphs 11, 12, 14, 15 and 16 are based upon
28 numbers compiled by Adams Media Services. Fox often adjusts Adams' actual and
projected revenue figures by looking to other sources as well.

1 and pay-per-view services, which are offered by cable-TV operators (such as
2 Comcast and Time Warner Cable) and others. The average price that consumers
3 pay to watch a movie through such services is approximately \$4.

4 16. The Studios, in the aggregate, received revenues of approximately \$600
5 million from video-on-demand and pay-per-view services in 2007. By 2012, that
6 figure is projected to grow to approximately \$1 billion.

7 RECENT AND PLANNED CHANNELS OF DISTRIBUTION

8 17. Within just the last year, most of the Studios have begun to offer
9 consumers a new product called "Digital Copy." Described simply, "Digital Copy"
10 versions of DVD movies are sold -- at a higher cost than the regular version of the
11 same movie -- with an extra disc containing additional features. One of the features
12 of the second disc is the ability to place it in a computer's DVD drive and copy the
13 movie to a computer's hard drive. Digital Copy is particularly relevant because it
14 allows consumers to purchase from the Studios that which RealDVD is trying to
15 sell for its own benefit, *i.e.*, the ability to copy a movie onto their computer's hard
16 drive. An example of a movie currently being offered with and without Digital
17 Copy is *What Happens in Vegas*, which Fox released on DVD approximately one
18 month ago. The version with Digital Copy is currently offered on Amazon.com for
19 \$23.99,⁴ as opposed to the version without Digital Copy for \$19.99.⁵ Digital Copy
20 discs are sufficiently new that there is not yet a meaningful way to measure (or
21 project) revenue from them. However, Fox has invested time and resources in the
22 development of the Digital Copy product because we believe it meets a consumer
23 demand, and thus holds the promise of a meaningful revenue source going forward.

24
25 ⁴ [http://www.amazon.com/Happens-Vegas-Extended-Jackpot-](http://www.amazon.com/Happens-Vegas-Extended-Jackpot-digital/dp/B001C5LLQE/ref=sr_1_3?ie=UTF8&s=dvd&qid=1222736214&sr=1-3)
26 [digital/dp/B001C5LLQE/ref=sr_1_3?ie=UTF8&s=dvd&qid=1222736214&sr=1-3](http://www.amazon.com/Happens-Vegas-Extended-Jackpot-digital/dp/B001C5LLQE/ref=sr_1_3?ie=UTF8&s=dvd&qid=1222736214&sr=1-3)
(last visited on September 29, 2008).

27 ⁵ [http://www.amazon.com/What-Happens-Vegas-Widescreen-](http://www.amazon.com/What-Happens-Vegas-Widescreen-Cameron/dp/B001C5LLQ4/ref=sr_1_1?ie=UTF8&s=dvd&qid=1222618732&sr=1-1)
28 [Cameron/dp/B001C5LLQ4/ref=sr_1_1?ie=UTF8&s=dvd&qid=1222618732&sr=1-](http://www.amazon.com/What-Happens-Vegas-Widescreen-Cameron/dp/B001C5LLQ4/ref=sr_1_1?ie=UTF8&s=dvd&qid=1222618732&sr=1-1)
1 (last visited on September 29, 2008).

1 18. Fox is considering plans to offer another new product known as “Burn-
2 to-DVD.” Described simply, it will allow consumers who download movies or TV
3 shows online the choice of purchasing the right to copy such content onto a DVD,
4 and thus to play it on a television set through a DVD player. As of today, there is
5 very little product actually in the market with the “Burn-to-DVD” feature, but
6 online sites (like CinemaNow.com) are beginning to promote it,⁶ and major
7 computer manufacturers (such as Dell) are already offering devices that will
8 facilitate its growth.⁷ Once again, the “Burn-to- DVD” capability is too new to
9 allow for a meaningful estimate of revenues to the Studios. Again, however, Fox is
10 considering this product because we believe it addresses what may be a meaningful
11 consumer demand.

12 19. Beginning next year, all high-definition Blu-ray discs will offer
13 consumers the ability to make a copy of the content onto their computer hard
14 drives, and there is a significant possibility that a multi-industry agreement will be
15 reached soon to bring the same capability to standard definition DVDs as well.
16 This capability, referred to “Managed Copy” is, once again, similar to RealDVD’s
17 functionality, in that it allows consumers to have content both on a DVD and on
18 their computer’s hard drive. The critical difference is that (a) Managed Copy will
19 be authorized by content owners and (b) it will allow the content owners to capture
20 the extra value that it brings to the consumer.

21 20. Fox is continually considering yet additional options for consumers. For
22 example, Fox is currently planning to make movies and TV shows available on
23 flash media devices (which are like portable memory cards) through kiosks at retail
24 outlets. As with Digital Copy and Burn-to-DVD, such additional options are new

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26 ⁶ <http://www.cinemanow.com/RightNow.aspx>; search “burn dvd,” then click
on “Can I Burn a Video to DVD?” (last visited on September 29, 2008).

27 ⁷ [http://accessories.us.dell.com/sna/products/System_Drives/
28 productdetail.aspx?c=us&l=en&s=dhs&cs=19&sku=313-7051](http://accessories.us.dell.com/sna/products/System_Drives/productdetail.aspx?c=us&l=en&s=dhs&cs=19&sku=313-7051) (last visited on
September 29, 2008).

1 or in their planning stages, and it would be premature to project revenues from
2 them.

3 THE THREATS POSED BY RealDVD

4 21. I am familiar with the RealDVD product that RealNetworks has
5 announced its intention to launch. Based on my experience in this business, I
6 strongly believe that if RealNetworks is permitted to offer that product, it will
7 threaten immediate and massive economic injury to the Studios.

8 22. RealDVD will give consumers a strong incentive to rent a DVD movie
9 for \$3.25 and make a perfect permanent copy -- instead of purchasing the same
10 movie for \$18.50. Alternatively, the consumer may simply borrow the movie from
11 a friend and copy it for nothing. Either way, the Studios will be harmed.

12 23. Similarly, if consumers can create perfect and permanent copies of
13 movies or TV shows for \$3.25 (rental) or \$0 (borrowing), I believe they will be
14 significantly less likely to purchase or rent those movies or TV shows through
15 online download services, through video-on-demand or pay-per-view services, or
16 otherwise.

17 24. The same holds true for "Digital Copy," "Burn-to DVD," "Managed
18 Copy" and other new products and services. If consumers can obtain (for \$3.25 or
19 \$0) perfect and permanent copies of movies and TV shows on their computer hard
20 drives, they will have much less incentive to pay for the right to copy DVD movies
21 onto their hard drives, or to pay for the right to copy downloaded movies from their
22 hard drives onto DVDs.

23 25. It is also my strong belief that the harms described above, though they
24 are likely to be very significant, will be extremely hard to measure in dollar terms
25 based on the nature of our products and for many other reasons. Movies and TV
26 shows are not fungible. It will be extraordinarily difficult to assess what portion of
27 a decline in DVD sales and rentals (for example) is a result of copying by RealDVD
28 users; of fluctuations in the economy; of competing entertainment options; of

1 consumer tastes and desires; or of any of a number of other factors.

2 26. In connection with our newer products and services, and those that are
3 still in their planning stages, such quantification of harm becomes even more
4 difficult. Nonetheless, I am convinced that RealDVD will significantly harm such
5 emerging channels -- which hold significant promise both for the Studios and their
6 legitimate licensees such as iTunes, Amazon.com, and many others -- if their
7 development is thwarted by RealDVD's attempt to usurp for itself the value of the
8 growing digital marketplace.

9 27. RealDVD threatens yet another type of very significant harm to the
10 Studios' business. RealNetworks is a well-known brand whose existing products
11 have broad penetration among computer users. RealDVD appears to be very simple
12 to use, and its interface is likely to be very appealing to consumers -- particularly to
13 consumers who want to build "virtual libraries" of movies and TV shows. I have
14 gone to the RealDVD website and reviewed the ways in which Real is touting its
15 new product. I am particularly troubled by RealDVD holding itself out as "legal."
16 I understand that issue will be contested in this lawsuit but, in the meantime,
17 millions of consumers are likely to start believing that making permanent copies of
18 DVDs onto their hard drives is permissible. If RealDVD's "legal" claim turns out
19 to have been incorrect (as I believe), consumers will have been exposed to an
20 inaccurate message that threatens to change permanently their perception of what
21 can be done legally with DVDs, and thus their behavior. Such damage is likely to
22 be irreparable, as well.

23 28. The Studios, acting through the MPAA, have spent millions of dollars to
24 discourage unlawful activities such as pirating and unauthorized copying of movies.
25 The Studios never have licensed any third party to offer a lawful product that would
26 allow the copying of DVDs onto hard drives (and to my understanding, the
27 encryption technology we use on our DVDs does not even permit for such a
28 license). Even the brief presence in the market of a known brand (such as

1 RealNetworks) offering consumers a supposedly "legal" product that can be used to
2 copy DVDs threatens grave harm to our efforts to shape consumers' attitudes and
3 behavior -- harm that may never be undone.

4

5 I declare under penalty of perjury under the laws of the United States and the
6 State of California that the foregoing is true and correct.

7

8 Executed on this 29th day of September, 2008, at Los Angeles, California.

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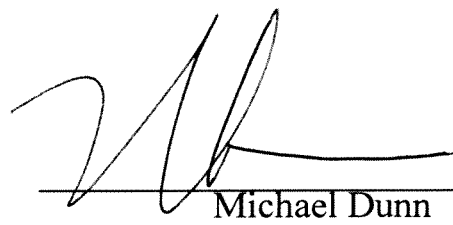
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Michael Dunn

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