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14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 REALNETWORKS, INC., et al.,  
 17 Plaintiffs,  
 18 vs.  
 19 DVD COPY CONTROL ASSOCIATION,  
 INC., et al.  
 20 Defendants.  
 21

CASE NO. C 08-4548-MHP  
 Consolidated with Case No. C 08-04719-MHP

**MOTION PICTURE STUDIO PARTIES'  
 RESPONSE TO REALNETWORKS'  
 MOTION TO EXTEND PRELIMINARY  
 INJUNCTION SCHEDULE OR  
 EXCLUDE TOPICS**

**PUBLIC REDACTED VERSION**

22  
 23 AND CONSOLIDATED ACTION  
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1 Real paints a false and misleading picture of discovery. The reality is that Real has been  
2 seeking to delay discovery and to delay this litigation for its own strategic ends. In the meantime,  
3 the Studios' interests continue to be harmed by Real's failure to respect the DMCA.

4 Real waited weeks, until January 5, to serve its specific requests regarding  
5 ARccOS/RipGuard documents. The Studios have nonetheless already produced more than 5,000  
6 documents on ARccOS/RipGuard, almost everything that Real has requested and more than Real  
7 said it needed at the December hearing. The Studios identified *nine* potential witnesses to testify  
8 on Real's 30(b)(6) topics. Real has declined to proceed with *even one* of these depositions, even  
9 on topics unrelated to ARccOS and RipGuard. Real waited until January 9 to request documents  
10 from Sony DADC and Macrovision, the companies who developed those technologies.  
11 Macrovision then quickly produced its documents and offered a Rule 30(b)(6) witness to testify  
12 regarding RipGuard. *Real refused the deposition.*

13 The Studios even offered to delay the hearing three weeks until the week of March 23,  
14 which would more than compensate for any supposed document delay. But Real refused this  
15 compromise. It wants even more delay: a *six-week* extension because of a *two-week* delay in the  
16 production of ARccOS/RipGuard documents. Similarly, Real's request for a Magistrate Judge is  
17 not designed to accelerate matters (Real's papers do not even identify a live discovery dispute),  
18 but to perpetuate delay by inviting the parties to litigate every discovery dispute. The parties can  
19 be and will be ready to proceed in March.

20 Meanwhile, we learned just this morning, that although the Court expressly enjoined Real  
21 from "offering. . . or otherwise trafficking in software products known as RealDVD or any  
22 products substantially similar" and although Real has insisted to this Court

23 **REDACTED**

24 Real has been traveling the world — Japan, Korea, China, California, Las Vegas — on  
25 an aggressive sales campaign

26 **REDACTED**

27 This kind of conduct is the reason the  
28 Studios oppose further delay.





1 produce these documents as soon as possible. *Id.*, ¶¶ 3-11. That production is virtually complete,  
 2 with only a handful of additional documents that will be produced within days and that provide  
 3 no excuse for Real sitting on its hands. *Id.*, ¶ 11.

4 • ***Macrovision, the Manufacturer of RipGuard, Produced Its Documents and***  
 5 ***Made a Witness Available, but Real Declined to Proceed:*** Real insists it needs the technical  
 6 specifications for RipGuard and ARccOS, but it is the manufacturers of these products, Sony  
 7 DADC<sup>2</sup> and Macrovision, that have this information. Real waited until *January 9* to subpoena  
 8 these companies. Even so, those third party companies have moved expeditiously and Real  
 9 received Macrovision's documents on January 19. We are informed that production of Sony  
 10 DADC's documents will be completed in days, on the timeline to which Real and Sony DADC  
 11 independently agreed. Moreover, Macrovision, which makes RipGuard, offered Real a 30(b)(6)  
 12 witness on January 23, but *Real declined the deposition.* *Id.*, ¶ 12.

13 • ***The Studios Have Repeatedly Identified Witnesses on Rule 30(b)(6) Topics, But***  
 14 ***Real Will Not Schedule Even One Deposition:*** In December, Real served Rule 30(b)(6) notices  
 15 with more than 50 different topics to two Studios. The Studios quickly identified three witnesses  
 16 to testify on many of these topics, but Real declined to proceed. On December 22, the Court  
 17 made it clear that Real could depose six *individuals*. How did Real respond? It served *three* new  
 18 Rule 30(b)(6) notices, containing a combined total of 27 topics. Last Friday, we identified nine  
 19 witnesses from those three Studios and asked Real to pick whom it wished to depose. We are still  
 20 waiting for Real to schedule *just one* of these depositions, even on topics unrelated to ARccOS  
 21 and RipGuard (further belying Real's protestation that it cannot possibly take any depositions  
 22 without every single ARccOS and RipGuard document produced).

23 • ***Real Is Withholding Key Discovery and Redesigning***

24  
 25 **REDACTED**

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 28 <sup>2</sup> Real insinuates that Sony DADC is part of Sony Pictures, but it is not. It is a separate company  
 which Sony Pictures does not control.

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28**REDACTED**

**Appointment of a Magistrate Judge Will Only Invite Discovery Disputes.** There is no need for a Magistrate to hear discovery disputes. Real's motion does *not* identify any discovery that the Studios have failed to produce. The parties have not been inundating the Court with discovery letters. The major disputes have either been substantive (*e.g.*, should the hearing include Facet or ARccOS/RipGuard) or related to scheduling. Those disputes would not benefit from a Magistrate Judge. The only discovery dispute either side has identified in their respective papers is the *Studios'* complaint that RealNetworks has refused to provide some discrete items, *i.e.*, **REDACTED** This dispute is simple to resolve and does not require a Magistrate. Moreover, this is an expedited preliminary injunction proceeding. Neither party should expect the kind of complete and exhaustive discovery now that could follow the preliminary injunction hearing. The appointment of a Magistrate would be an invitation to both sides to litigate every single discovery dispute, leading only to further delay of the proceedings.

**In conclusion**, Real's motion should be denied; Real should be ordered to proceed with discovery promptly; to take the depositions it needs; to produce the basic materials that the Studios need **REDACTED** and to have its lawyers stop spending their days drafting meet-and-confer letters and start reviewing documents and taking and defending depositions. Only that way will the parties bring these preliminary injunction proceedings to conclusion.

