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 DVD COPY CONTROL ASSOCIATION, INC.

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA

16 REALNETWORKS, INC., a Washington
 Corporation; and REALNETWORKS HOME
 17 ENTERTAINMENT, INC., a Delaware
 corporation,

18 Plaintiffs,

19 v.

20 DVD COPY CONTROL ASSOCIATION, INC., a
 21 Delaware nonprofit corporation, et al.

22 Defendants.

23 And Related Counterclaims.

24
 25 AND RELATED CASES
 26
 27
 28

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Case No. C08 04548 MHP;
 C08 04719 MHP

**RESPONSE OF DVD COPY CONTROL
 ASSOCIATION, INC. TO
 REALNETWORKS' MOTION TO
 EXTEND PRELIMINARY INJUNCTION
 SCHEDULE OR EXCLUDE TOPICS;**

**DECLARATION OF REGINALD D.
 STEER**

**Before: Hon. Marilyn Hall Patel
 Dept: Courtroom 15
 Date: February 3, 2009
 Time: 2:00 p.m. Telephone Conference**

1 Defendant and Counterclaimant DVD Copy Control Association, Inc. (“DVD CCA”) responds
2 as follows to the motion of RealNetworks, Inc. (“Real”) to extend the preliminary injunction schedule
3 or exclude topics, and to appoint a Discovery Magistrate.

4 DVD CCA favors the prompt resolution of this matter and, for that reason, is against the
5 lengthy extension requested by Real. DVD CCA plans to be ready to proceed on March 3, per the
6 schedule established in the December 22, 2008 hearing. In addition, lead counsel for DVD CCA is not
7 available in mid-April, when Real’s counsel has requested that the hearing take place. See Declaration
8 of Reginald D. Steer, ¶2.

9 In an effort to avoid burdening the Court with this matter, counsel for DVD CCA participated
10 in a telephone conference with counsel for Real and counsel for the Studios on Wednesday, January 28,
11 in which counsel for DVD CCA and counsel for the Studios suggested that the parties compromise on
12 a new hearing date of March 23, 2009. In the course of that telephone conference, counsel for DVD
13 CCA informed Real’s counsel that, in any event, he is not available in mid-April. Steer Decl., ¶2.
14 Real’s counsel said he would consult with his colleagues and his client and respond the next day. On
15 Thursday, January 29, Real’s counsel rejected the compromise, stating that it does not allow enough
16 time for Real to get ready for the hearing. Id.

17 DVD CCA continues to believe that scheduling the preliminary injunction hearing to start
18 either on March 3 or March 23 would be appropriate, providing sufficient time for Real’s counsel to
19 prepare while still moving toward an efficient resolution. However, DVD CCA opposes Real’s
20 alternative request to exclude certain topics from the preliminary injunction hearing because doing so
21 would unnecessarily multiply these proceedings. If the Court concludes that a lengthier extension is
22 appropriate, then DVD CCA respectfully requests that the matter be heard either in the first full week
23 or the last week of April, or in early May.

24 DVD CCA is not directly involved in any discovery dispute with Real that would require the
25 appointment of a Magistrate Judge or discovery master. Contrary to the position taken by Real, DVD
26 CCA believes that such an appointment could slow the progress of this litigation, rather than expedite
27 it. DVD CCA does, however, join in the discussion at pages 4 and 5 of the Studios’ Response filed
28

1 today, which points out that Real has not provided needed discovery concerning the “New Platform”,
2 or “Facet” as it is referred to be Real.

3 Dated: January 30, 2009

Respectfully submitted,

4 AKIN GUMP STRAUSS HAUER & FELD LLP

5 WHITE & CASE LLP

6
7 By _____ /s/

8 Reginald D. Steer
Attorneys for Defendant and Counterclaimant
9 DVD COPY CONTROL ASSOCIATION, INC.

DECLARATION OF REGINALD D. STEER

10 Reginald D. Steer declares:

- 11 1. I am lead counsel to defendant and counterclaimant DVD Copy Control Association, Inc.
- 12 (“DVD CCA”) in this matter. I am a partner in the firm of Akin Gump Strauss Hauer & Feld,
- 13 LLP and a member of the California State Bar. This declaration is based upon my own
- 14 knowledge and I could competently testify to the matters set forth herein, if called upon to do so.
- 15 2. On Wednesday, January 28, 2009, I participated in a telephone conference with Glenn
- 16 Pomerantz, of Munger Tolles and Olson, LLP, counsel for the Studios in this action, and James
- 17 DiBoise, of Wilson Sonsini Goodrich and Rosati, LLP, counsel for RealNetworks (“Real”). Mr.
- 18 Pomerantz and I proposed to Mr. DiBoise that the parties agree to continue the preliminary
- 19 injunction hearing in this matter to March 23. I told Mr. DiBoise that, in any event, I am not
- 20 available in mid-April, when he had proposed holding the hearing. Mr. DiBoise said he would
- 21 get back to us the next day, and he did so. He rejected the proposed compromise on the ground
- 22 that it does not allow sufficient time for Real’s counsel to prepare.

