

EXHIBIT D

United States District Court
Northern District of California

Before The Honorable Marilyn Hall Patel

RealNetworks, Incorporated,)
et al.,)

Plaintiff,)

vs.)

DVD Copy Control)
Association, Incorporated,)
et al.,)

Defendant.)

COPY

No. C08-4548 MHP

and related

No. C08-4719 MHP

San Francisco, California
Monday, December 22, 2008

Reporter's Transcript Of Proceedings

Appearances:

For Plaintiff: Wilson, Sonsini, Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304-1050
By: Michael A. Berta, Esquire
James DiBoise, Esquire
Leo Cunningham, Esquire
Tracy Tosh Lane, Esquire

For Defendants: White & Case
3000 El Camino Real
Five Palo Alto Square, 9th Floor
Palo Alto, California 94306
By: Mark Frederick Lambert, Esquire

(Appearances continued on next page.)

Reported By: Sahar McVickar, RPR, CSR No. 12963
Official Reporter, U.S. District Court
For the Northern District of California

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Sahar McVickar, C.S.R. No. 12963, RPR
Official Court Reporter, U.S. District Court
(415) 626-6060

1 again. That is immutable. That is the fundamental
2 characteristic of the product.

3 **THE COURT:** Yes.

4 **MR. WILLIAMS:** I just want to be clear: We would
5 not take the position that the Facet product falls under the
6 ambit of the Court's order that you've already issued unless
7 it's fully litigated properly where we know what the product
8 is. So we would not take that position, we do recognize that
9 that would be unreasonable.

10 **THE COURT:** But what I understand Mr. Cunningham is
11 saying is that at least now the way that the TRO is crafted,
12 and perhaps what you are seeking, you know, for the preliminary
13 injunction, is broad enough that it would, in fact, cover this,
14 albeit not naming the product itself.

15 **MR. WILLIAMS:** I think that's right. But then
16 issue, would -- if it played out the way we think would be
17 appropriate, if and when the product is released, then our
18 client would have the opportunity to move on that and say that
19 it either does or does not fall under the order.

20 **THE COURT:** Well, how long would it take, given
21 whatever else you think you need, and given the fact that this
22 iteration is going to be reiterated and reiterated and
23 reiterated, perhaps, but I don't know how long they anticipate
24 for this to be a work in progress, but, I think Mr. Cunningham
25 is suggesting that the way that it operates is known now and is

1 tell our clients today what Facet does, at least as far as what
2 we understand, that is, the highly confidential designation.
3 We can bypass that in order to describe to our clients and the
4 operations people what it does, as a general matter; number
5 two, that the they point us to the source code sections that
6 are the actual source code for the product; number three, that
7 we be permitted to get all of the technical specifications, the
8 current ones for the Facet product, not ones that are outdated.

9 **THE COURT:** All of this by when?

10 **MR. WILLIAMS:** Immediately.

11 Number 4; that we be permitted to redepose the two
12 witnesses who are the supposed experts on Facet who told us
13 that the technical specifications that we were looking at were
14 not the current versions; number 5, that they give us access to
15 prototypes for the product, or at least one or two so that we
16 can actually test the product --

17 **THE COURT:** To your experts.

18 **MR. WILLIAMS:** To our experts.

19 **THE COURT:** And not to the --

20 **MR. WILLIAMS:** Correct. Not to our operations
21 people, correct, so that we can test it in the same way that
22 our experts test --

23 **MR. DIBOISE:** Your Honor, with respect to the
24 specifications issue that has been raised by the studios here,
25 Mr. Barrett, who is the most senior executive at Real DVD

CERTIFICATE OF REPORTER

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/s/ Sahar McVickar

Sahar McVickar, RPR, CSR No. 12963

December 29, 2008

Sahar McVickar, C.S.R. No. 12963, RPR
Official Court Reporter, U.S. District Court
(415) 626-6060