

1 GLENN D. POMERANTZ (SBN 112503)  
 Glenn.Pomerantz@mto.com  
 2 BART H. WILLIAMS (SBN 134009)  
 Bart.Williams@mto.com  
 3 KELLY M. KLAUS (SBN 161091)  
 Kelly.Klaus@mto.com  
 4 MUNGER, TOLLES & OLSON LLP  
 355 South Grand Avenue, 35th Floor  
 5 Los Angeles, CA 90071-1560  
 Tel: (213) 683-9100; Fax: (213) 687-3702  
 6

ROBERT H. ROTSTEIN (SBN 72452)  
 rxr@msk.com  
 ERIC J. GERMAN (SBN 224557)  
 eej@msk.com  
 MITCHELL SILBERBERG & KNUPP LLP  
 11377 West Olympic Boulevard  
 Los Angeles, California 90064-1683  
 Tel: (310) 312-2000; Fax: (310) 312-3100

7 GREGORY P. GOECKNER (SBN 103693)  
 gregory\_goeckner@mpaa.org  
 8 DANIEL E. ROBBINS (SBN 156934)  
 dan\_robbins@mpaa.org  
 9 15301 Ventura Boulevard, Building E  
 Sherman Oaks, California 91403-3102  
 10 Tel: (818) 995-6600; Fax: (818) 285-4403

11 Attorneys for Defendants/Counterclaim-Plaintiffs/Plaintiffs  
 12 COLUMBIA PICTURES INDUSTRIES, INC., DISNEY  
 13 ENTERPRISES, INC., PARAMOUNT PICTURES CORP.,  
 14 SONY PICTURES ENTERTAINMENT, INC., SONY  
 15 PICTURES TELEVISION INC., TWENTIETH CENTURY  
 16 FOX FILM CORP., NBC UNIVERSAL, INC., WALT  
 17 DISNEY PICTURES, WARNER BROS.  
 18 ENTERTAINMENT, INC., UNIVERSAL CITY STUDIOS  
 19 PRODUCTIONS LLLP, UNIVERSAL CITY STUDIOS  
 20 LLLP, AND VIACOM, INC.

21 UNITED STATES DISTRICT COURT  
 22 NORTHERN DISTRICT OF CALIFORNIA

23 REALNETWORKS, INC., et al.,  
 24 Plaintiffs,  
 25 vs.  
 26 DVD COPY CONTROL ASSOCIATION,  
 27 INC., et al.  
 28 Defendants.  
 AND CONSOLIDATED ACTIONS.

CASE NO. C 08-4548-MHP

**PUBLIC REDACTED VERSION:  
 DECLARATION OF REBECCA GOSE  
 LYNCH IN SUPPORT OF MOTION FOR  
 SANCTIONS FOR SPOILIATION OF  
 EVIDENCE**

Date: March 16, 2009  
 Time: 2:00 p.m.  
 Ctrm: 15 (Hon. Marilyn Hall Patel)

**DECLARATION OF REBECCA GOSE LYNCH**

I, Rebecca Gose Lynch, declare:

1. I am an attorney associated with the law firm of Munger, Tolles & Olson LLP, counsel of record for Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Paramount Pictures Corp., Sony Pictures Entertainment, Inc., Sony Pictures Television Inc., Twentieth Century Fox Film Corp., NBC Universal, Inc., Walt Disney Pictures, Warner Bros. Entertainment, Inc., Universal City Studios Productions LLLP, Universal City Studios LLLP, and Viacom, Inc. ("the Studios") in the above-captioned matter. I make this Declaration based upon my own personal knowledge, except where facts are stated upon information and belief, and if called upon to do so, I could and would testify competently to the matters stated herein.

2. Attached hereto are true and correct copies of excerpts of the following transcripts of proceedings in this litigation:

- Exhibit 1: Final Transcript of Deposition of Phillip Barrett.
- Exhibit 2: Rough Transcript of Deposition of Todd Basche.
- Exhibit 3: Rough Transcript of Deposition of James Bielman.
- Exhibit 4: Final Transcript of Deposition of James Brennan.
- Exhibit 5: Final Transcript of Deposition of Jeffrey Chasen.
- Exhibit 6: Final Transcript of Deposition of Nicole Hamilton.
- Exhibit 7: Final Transcript of Deposition of Richard Wolpert.
- Exhibit 8: Reporter's Transcript of Proceeding dated December 22, 2008.

3. Attached hereto as Exhibit 9 is a true and correct copy of excerpts from Real's Reply in Support of Motion to Preclude Claims Based on Non-CSS Technologies or, Alternatively, to Continue the Preliminary Injunction Hearing, and for the Appointment of a Discovery Referee.

4. Attached hereto are true and correct copies of the following documents produced by Real to the Studios in this litigation:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Exhibit 10: Email dated January 29, 2007, which was produced by Real bearing control number REAL105086.
- Exhibit 11: Email dated July 30, 2007, which was produced by Real bearing control number REAL051340-47.
- Exhibit 12: Email dated July 30, 2007, which was produced by Real bearing control number REAL098684-85.
- Exhibit 13: Email dated December 4, 2007, which was produced by Real bearing control number, REAL051130-66.
- Exhibit 14: Email dated December 11, 2007, which was produced by Real bearing control number REAL077776-82.
- Exhibit 15: Email dated January 4, 2008, which was produced by Real bearing control number REAL078285-86.
- Exhibit 16: Email dated April 17, 2008, which was produced by Real bearing control number REAL105695-08.
- Exhibit 17: Handwritten notes, which were produced by Real bearing control number REAL135584-604.

5. True and correct copies of correspondence between counsel in this litigation are attached hereto as follows:

- Exhibit 18: Letter from Glenn Pomerantz to Robert Kimball dated September 25, 2008.
- Exhibit 19: Email string between Jamie DiBoise, Rohit Singla, Colleen Bal and Michael Berta dated January 9, 2009.
- Exhibit 20: Email between Rohit Singla, Leo Cunningham, Jamie DiBoise, Tracy Tosh Lane and Michael Berta dated February 3, 2009.
- Exhibit 21: Email string between Rebecca Lynch and Tracy Tosh Lane dated February 11, 2009.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Exhibit 22: Email string between Tracy Tosh Lane, Bart Williams,  
Jamie DiBoise, Colleen Bal and Michael Berta dated  
February 23, 2009.

I declare under penalty of perjury under the laws of the United States and  
California that the foregoing is true and correct and that this Declaration was executed this 25th  
day of February 2009, in San Francisco, California.

        /s/          
REBECCA GOSE LYNCH

**EXHIBITS 1-17 AND 20  
FILED UNDER SEAL**

## **EXHIBIT 18**

MUNGER, TOLLES & OLSON LLP

355 SOUTH GRAND AVENUE  
THIRTY-FIFTH FLOOR  
LOS ANGELES, CALIFORNIA 90071-1560  
TELEPHONE (213) 683-9100  
FACSIMILE (213) 687-3702

560 MISSION STREET  
SAN FRANCISCO, CALIFORNIA 94105-2907  
TELEPHONE (415) 512-4000  
FACSIMILE (415) 512-4077

September 25, 2008

ROBERT K. JOHNSON  
ALAN V. FRIEDMAN  
RONALD L. OLSON  
RICHARD B. VOLPERT  
DENNIS C. BROWNE  
ROBERT E. DENHAM  
JEFFREY I. WEINBERGER  
CARY B. LERMAN  
CHARLES D. SEGAL  
RONALD K. MEYER  
GREGORY P. STONE  
VILHA S. MARTINEZ  
BRAD O. BRIAN  
BRADLEY S. PHILLIPS  
GEORGE M. GARVEY  
WILLIAM D. TENKIO  
STEVEN L. GUSE  
ROBERT B. KHALUSS  
STEPHEN H. KUBSTOVICH  
JOHN W. SPIEGEL  
TERRY E. SANCHEZ  
STEVEN M. PERRY  
MARK B. HELM  
JOSEPH D. LEZ  
MICHAEL R. DOYEN  
MICHAEL E. SOLOFF  
GREGORY D. PHILLIPS  
LAWRENCE C. BARTH  
KATHLEEN M. McDOWELL  
GLENN D. POWERSANTE  
RONALD C. HAUBSMANN  
PATRICK J. CAFFERTY JR.  
JAY M. FLUITANI  
O'MALLEY H. MILLER  
SABORA A. SEVILLE-JONES  
MARK N. EPSTEIN  
HENRY WEISSMANN  
KEVIN D. ALLIED  
BART H. WILLIAMS  
JEFFREY A. HEINTZ  
JUDITH T. KITAHO  
KRESTIN LINSLEY MILES  
NARC T.O. DWORSKY  
JEROME C. ROTH  
STEPHEN D. ROSE  
JEFFREY L. BLEICH  
GARTH T. VINCENT

TED DAME  
MARK SHINDERMAN  
STUART W. SENATOR  
MARTIN D. BEYIN  
DANIEL P. COLLINS  
RICHARD E. OROGOYAN  
ROBERT L. DELL ANGELO  
BRUCE A. ABBOTT  
JONATHAN E. ALTMAN  
HARRY ANN TODD  
MICHAEL J. O'SULLIVAN  
KELLY M. KLAUS  
DAVID B. GOLDMAN  
BURTON A. GROSS  
KEVIN S. HASUDA  
HOJDOM HWANG  
KRISTIN S. ESCALANTE  
DAVID C. SINIELLI  
ANDREA WEISS JEFFRIES  
PETER A. DETRE  
PAUL J. WATFORD  
DANA S. TREISTER  
CARL M. MOOR  
DAVID M. ROSENZWEIG  
DAVID N. FRY  
LISA J. DENIKY  
MALCOLM A. WEINICKE  
GREGORY J. WEINART  
TANERIM J. GODLEY  
JAMES C. PUTTCH  
J. MARTIN WILHITE  
RICHARD ST. JOHN  
ROHIT SINGLA  
LUI S. LI  
CAROLYN HOECKER LUEDTKE  
C. DAVID LEE  
MARK M. KIM  
BRETT J. RODGA  
SEAN ESKOVITZ  
FRED A. ROWLEY, JR.  
KATHERINE M. FORSTER  
BLANCA FROMM TOLINO  
SUSAN R. SZABO  
KATHLEEN PAGES STONE  
MONIKA S. WIENER  
LYNN HEALEY SCADUTO  
RANOALL G. SOMMER

SHORT E. MILLER  
MARIA BETERMAN  
ERIC J. LORENZINI  
KATHERINE K. HUANG  
ROSEMARIE T. RING  
JOSEPH J. YBARRA  
KATE K. ANDERSON  
ALISON J. MARKOWITZ  
E. DORSEY FLEGER-NEHE  
JAY K. SHYLA  
SUSAN TRAUSS BOTO  
JENNIFER L. POLSE  
TODD J. ROSEN  
BRIAN R. HOCHLEUTNER  
GRANT A. DAVIS-O'NEAL  
JASON RANTANER  
AMY C. TOVAR  
REBECCA GOSSE LYNCH  
JONATHAN H. BLAMK  
JOHN R. GRIFFIN  
KAREN J. FESSLER  
MICHELLE T. FREGOLANO  
J. RAJA LAWRENCE  
LUKA C. MIYAKE  
MELINDA EADES LEMOINE  
ANDREW W. SONG  
YOHANNE C. EDWARDS  
JULIE D. CANTOR  
SETH GOLDMAN  
FADIA RAFFAELIE WENDURY  
JOSHUA P. GROBAN  
VICTORIA L. BOESCH  
HALYTH J. CHEH  
BRAD SCHNEIDER  
ALEXANDRA LANG SUBMAN  
GENEVEVE A. COX  
MURAH KIM  
HISTY M. SANFORD  
BRIAN P. DUFF  
AIMEE FEINBERG  
JOEL O. WHITLEY  
KATHERINE L. HALL  
KATHERINE KU  
KIMBERLY A. CHI  
SHOSHANA E. BARNETT  
TINA CHAROENPOND

LEE S. TAYLOR  
DEREK J. KAUFMAN  
KIMBERLY D. ENGINAS  
MARCUS J. D'IEGO  
GABRIEL P. SANCHEZ  
BETHANY C. WOODARD  
PAULA R. LEVY  
CORNIE Y. CHIANG  
DAVID C. YANG  
WILLIAM E. CANO  
DANLY PAN  
BILL WARD  
HENRY E. ORREN  
BENJAMIN W. HOWELL  
WESLEY SHIP  
JACOB S. KRELLKAMP  
PAUL J. KATZ  
TYLER A. PROZEN  
JONATHAN H. WEISS  
ZACHARY KATZ  
DANIEL A. LYONS  
ELIZABETH J. HEURBAUER  
TREVOR D. DYER  
ERIC P. TITILE  
HEATHER E. TAKAHASHI  
KRISTINA L. WILSON  
KEVIN A. GOLDMAN  
ROBYN MALL BACON  
BERNARD A. ESKANDARI  
JENNY M. JIANG  
KEITH R.O. HAMILTON, II  
SORAYA C. KELLY  
PATRICK ANDERSON  
MARK R. YOHALEM  
JEFFREY Y. WU  
TUYAL MILLER  
MARK R. CONRAD  
DANIEL B. MCCARTHY  
RICHARD D. EBBENSHADE  
ALLISON B. STEIN  
PETER R. TAIT  
OF COUNSEL  
E. LEROY TOLLES  
1022-2008

\*A PROFESSIONAL CORPORATION

WRITER'S DIRECT LINE  
(213) 683-9132  
(213) 683-5132 FAX  
Glenn.Pomerantz@mto.com

Via Email and Facsimile

Robert Kimball, Esq.  
Sr. Vice President, Legal & Business Affairs  
RealNetworks, Inc.  
2601 Elliott Avenue  
Seattle, WA 98121

Re: RealDVD

Dear Mr. Kimball:

We have been retained by Disney, Fox, Paramount, Sony Pictures, Universal Studios and Warner Bros. ("the Companies") in connection with RealNetworks' planned distribution of "RealDVD" software, which we understand RealNetworks plans to start distributing as early as September 30. We maintain that RealDVD is designed and intended to avoid, bypass or otherwise impair the access control and copy-protection measures embedded on commercially released DVDs containing the Companies' motion picture and television content.

The Companies firmly believe that RealDVD, if launched into commerce, will result in rapid and widespread violation of their rights. We intend to file a lawsuit at the first opportunity on September 30 in federal court in Los Angeles to stop the unlawful distribution and sale of RealDVD. In order to prevent that irreparable injury pending a prompt and orderly adjudication of our clients' claims, we call upon RealNetworks to cease and desist from its planned launch until the Companies' motion to enjoin such distribution is determined and to provide us with certain information, as described below.

MUNGER, TOLLES & OLSON LLP

Robert Kimball, Esq.

September 25, 2008

Page 2

1. Will RealNetworks agree not to distribute and sell RealDVD until at least October 28? This schedule will permit the parties expeditiously to brief a request for immediate injunctive relief. It will also permit the Court to have sufficient time to consider the parties' submissions and, if it desires, to hold a hearing. We propose the following schedule:

- (a) The Companies shall file and serve their opening motion papers on Tuesday, September 30;
- (b) RealNetworks shall file and serve its opposition papers on Tuesday, October 7;
- (c) The Companies shall file and serve their reply papers on Tuesday, October 14; and
- (d) We will jointly request that the Court set our motion for hearing during the week of October 20 on a date and time convenient to the Court.

2. In order to permit the proper framing of the relevant legal issues and to advance the prompt adjudication of this matter, please respond to the following:

- (a) Please describe the extent to which, if the Court were to enjoin the distribution, sale and use of RealDVD after copies of the software had already been distributed to computer users, RealNetworks will have the ability, without any action by the end-user, to disable all copies of the RealDVD product that have been distributed prior thereto, thereby eliminating end-users' access to any copies of copy-protected DVDs previously created using RealDVD?
- (b) Please provide us with contact information for the person we should contact to arrange for service and coordination of contacts with the Court.



MUNGER, TOLLIS & OLSON LLP

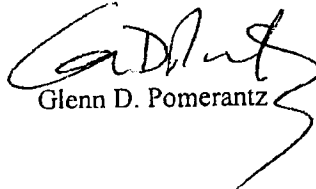
Robert Kimball, Esq.

September 25, 2008

Page 3

Because RealNetworks has indicated that it intends to launch RealDVD by the end of this month, please provide a response to these questions by the close of business tomorrow. This letter in no way constitutes a waiver of any rights, remedies, claims, or defenses, legal or equitable, that the Companies may have, all of which are expressly reserved.

Sincerely,



Glenn D. Pomerantz

## **EXHIBIT 19**

---

**From:** DiBoise, Jamie [JDiBoise@wsgr.com]  
**Sent:** Friday, January 09, 2009 2:23 PM  
**To:** Singla, Rohit; Bal, Colleen; Berta, Michael  
**Cc:** Pomerantz, Glenn; Klaus, Kelly; Barth, Lawrence; Steer, Reginald; Aull, Ashley; Mark F. Lambert; Weinstein, Mark R.; DiBoise, Jamie  
**Subject:** RE: technical requests

Rohit -- this is not hostage taking, just a simple exposition of the disparate positions the Studios are taking with respect to getting discovery and giving discovery.

You deposed Mr. Brennan and Mr. Barrett regarding Facet with a full document production and full knowledge of Real's position on the scope of the PI hearing. To seek more discovery on those topics you could have asked those gentlemen about is re-ploughing old ground.

We are not holding discovery on the Facet box hostage; we are allowing you to inspect the Facet box. You want more and we believe your current "more" request is both irrelevant and burdensome. If you want additional discovery regarding the Facet box you are inspecting, you may request it. Based on the specific request you make, we will respond.

However, what Real is complaining about is the flat out continued refusal of the Studios to produce ANY discovery on some topics and overly selective production on others. I invite you to read Tracy's letter to Larry of yesterday.

Further, your attempted justification below compares apples to oranges and is simply past history (not to mention incorrect with respect to both SmithGeiger and Ms. Hamilton). We are dealing with the discovery we want now as a result of the December 22nd hearing before Judge Patel, not what we were forced to do because of the Studios' past transgressions.

Finally, the scope of the PI hearing has been set by Judge Patel. You advanced these same arguments at the December 22nd hearing and the Court considered them and ruled. There is nothing for the Studios to accept or reject at this point; there is simply the Court's ruling and the PI hearing.

I make the same request of you and your colleagues that you make of me, let's work together to get each of us what we want within reasonable limits.

---

James A. DiBoise  
WSGR

2/24/2009

One Market Street  
Spear Tower Suite 3300  
San Francisco, CA 94105  
415.947.2114  
Fax No. 415.947.2099  
jdiboise@wsgr.com

---

**From:** Singla, Rohit [mailto:Rohit.Singla@mto.com]  
**Sent:** Friday, January 09, 2009 1:14 PM  
**To:** DiBoise, Jamie; Bal, Colleen; Berta, Michael  
**Cc:** Pomerantz, Glenn; Klaus, Kelly; Barth, Lawrence; Steer, Reginald; Aull, Ashley; Mark F. Lambert; Weinstein, Mark R.  
**Subject:** RE: technical requests

Thanks again for the prompt response. We have, although it may not look like it, resolved a number of my original requests. On the remaining open issues:

1. We plan to be there Monday morning to look at the Facet box. We are buying plane tickets. Right now, we expect Ashley Aull from our firm and Ravi Cherukuri to be there.
2. As for evidence on the Facet box, then we request a 30(b)(6) or PMK deposition on the Facet box you are showing as well as all the boxes you are not showing us to take place next Wed, Th, or Fri of next week (i.e., Jan. 14-16.) It is critical that this take place soon rather than later. I cannot see that there is any reason this would need to be delayed past Friday. Absent a deposition, we will need to reconsider whether we accept the scope of the proposed P.I. hearing.

5-7. I appreciate your clarifying your position.

Finally, I must respond to whatever is "galling" you all. As you know, I disagree with Real's repeated attempts to equate our request for specific, identified documents and things -- that all relate to Facet, RipGuard, and ARccOS -- with Real's broad requests for "all documents from the studios regarding X," particularly as some of your requests cover old ground. Moreover, this is starting to sound like more "hostage" taking, with which I fundamentally disagree, as you know. To give you one vivid example, Real refused to provide any witnesses for deposition (including third parties like Ms. Hamilton and Smith Geiger) until we complied Real's demands for witnesses on 50-some 30(b)(6) topics. I found that troubling. We have not and will not take that approach. So, for example, we offered witnesses on some of the 30(b)(6) topics without any demands that Real first produce its witnesses. To the extent we are going down the same road, I would ask Real to reconsider.

---

**From:** DiBoise, Jamie [mailto:JDiBoise@wsgr.com]  
**Sent:** Friday, January 09, 2009 12:45 PM  
**To:** Singla, Rohit; Bal, Colleen; Berta, Michael  
**Cc:** Pomerantz, Glenn; Klaus, Kelly; Barth, Lawrence; Steer, Reginald; Aull, Ashley; Mark F. Lambert; Weinstein, Mark R.; DiBoise, Jamie  
**Subject:** RE: technical requests

Rohit -- just to be clear, it will be important that we get a days notice not an hour's notice regarding inspecting the Facet box.

As to the other points you raise in your email, if you want evidence regarding the

facet box just include it in your discovery requests to us. We see no need to continue the dialogue on the Facet box as I have been very clear in my comments on exactly what it is you are being provided and we were equally as clear with the Court on December 22<sup>nd</sup> about what we would and could produce regarding the Facet box.

As to source code, the Facet source code continues to be available to you and your experts and a copy of same will be made available pursuant to the Protective Order once we get it finalized.

There is no compromise on earlier Facet boxes being made available. We have told you that we believe they are irrelevant to the PI hearing issues and it would truly be a burden for us to divert resources to track down and find any engineering Facet boxes that Mr. Barrett may have been referring to in his testimony.

This issue more than any other is especially galling to us in our efforts to negotiate discovery with the Studios. We have been met with outright refusals to produce relevant documents by the Studios on the ground that you will not go back over ground that has already been covered. We disagree with the foundation for that statement and with the principle it attempts to set up as a basis for guiding discovery efforts for this PI hearing. Yet, you at the very same time want to cover previously plowed ground regarding the Facet boxes that you covered in two full day depositions and previous document productions. While we will make every effort here to get the facts adduced for the Court to consider in the PI hearing, discovery is, as the Court explicitly stated at the December 22<sup>nd</sup> hearing, a two way street.

With respect to the wiki and the arccoss.zip files, yes, other than the fact that we have complied with our discovery obligations as to those documents as negotiated between the parties and that it is plowing old ground again, there is the additional consideration that it would be a extremely burdensome task for us to comply with your requests as it would entail substantial review by Real's lawyers and Real's employees to determine if your request could be complied with and then to review those materials prior to production.

---

James A. DiBoise  
WSGR  
One Market Street  
Spear Tower Suite 3300  
San Francisco, CA 94105  
415.947.2114  
Fax No. 415.947.2099  
[jdlboise@wsgr.com](mailto:jdlboise@wsgr.com)

---

**From:** Singla, Rohit [<mailto:Rohit.Singla@mto.com>]  
**Sent:** Thursday, January 08, 2009 7:47 PM  
**To:** DiBoise, Jamie; Bal, Colleen; Berta, Michael

2/24/2009

**Cc:** Pomerantz, Glenn; Klaus, Kelly; Barth, Lawrence; Steer, Reginald; Aull, Ashley; Mark F. Lambert; Weinstein, Mark R.

**Subject:** RE: technical requests

Thanks the prompt response Jamie. Some further clarification would be helpful:

1. We will make arrangements to come view the Facet box in your office, most likely on Monday or Tuesday during business hours.

2. You did not respond to our request for admissible evidence about what exactly is the box you are showing us: how close is it to the final production version, how was it constructed, on what is the design based if you have no technical specifications that you have not given us, etc., etc. As I mentioned, we are open to that taking the form of an early PMK-type deposition (next week?) or some kind of interrogatory response-type written statement. This may be fruitful to discuss on the phone.

3. As to the source code, I think we are on the same page. If there is a "current" Facet source code that is different from the "prior" code, we just want to make sure we have access to both. I understand you to be saying we do. Let me know if that is wrong.

4. We accept your representation that there are no more technical specifications.

5. Can you provide any proposed compromise on the "20" prior boxes? For example, maybe some would be easier to view than others. For example, Mark W. asked about the box shown in the March 2008 Facet User Guide submitted to the Court. Can we see that?

6/7. To make sure I understand your position, can you tell me if there is any reason that you will not provide the soft copy of the wiki and the arcos.zip files, other than that you believe you are not obligated to? Is it burdensome in some way?

8. Thanks for the confirmation.

Finally, can you let me know which of the issues below you think were new and not previously raised? That comment surprised me.

---

**From:** DiBoise, Jamie [mailto:JDiBoise@wsgr.com]

**Sent:** Thursday, January 08, 2009 7:00 PM

**To:** Singla, Rohit; Bal, Colleen; Berta, Michael

**Cc:** Pomerantz, Glenn; Klaus, Kelly; Barth, Lawrence; Steer, Reginald; Mark F. Lambert; Weinstein, Mark R.; DiBoise, Jamie

**Subject:** RE: technical requests

**Rohit – responding to your various requests below, I would first note that many of these requests are new and hadn't been raised previously with us. However, in the interests of resolving any issues amicably and to provide you with as much information as we can on an expedited basis, I can tell you the following in response to your questions.**

**We have available for defendants' inspection a Facet box in our office in**

2/24/2009

Seattle. You may inspect that Facet box at your scheduling convenience, within reason. Just contact mike or myself to firm up any details for defendants' inspection.

The Facet box made available for inspection is the Facet product with the functionality that Real plans to release. Although the actual physical box eventually manufactured may well look different and be a different size with a different layout due to supply or optimization issues, as the Judge recognized at the hearing, the functionality at issue in this case is on the Facet box made available for defendants' inspection and is what is scheduled for production. Because we have made available what is at issue and what is scheduled for production, your request to review other boxes (request 6) that are not what is scheduled for production is unnecessary and irrelevant to this injunction proceeding, as well as simply not possible to do in the time frame we have for this hearing.

With respect to Request 3, the current Facet code and prior Facet code have already been made available to you and your experts have been reviewing it, so we believe that issue is now closed.

On request 4, as we have stated previously, we are unaware of any such documents that have not been produced, as was also confirmed by the witnesses you have already deposed on this issue.

On requests 6 and 7, we have provided both the wiki and the email you reference in the form agreed to by the parties for document productions, both in soft copy.

On request 8, we are meeting our obligations on evidence preservation.

---

James A. DiBoise  
WSGR  
One Market Street  
Spear Tower Suite 3300  
San Francisco, CA 94105  
415.947.2114  
Fax No. 415.947.2099  
[jdlboise@wsgr.com](mailto:jdlboise@wsgr.com)

---

**From:** Singla, Rohit [mailto:Rohit.Singla@mto.com]  
**Sent:** Thursday, January 08, 2009 6:58 AM  
**To:** DiBoise, Jamie; Bal, Colleen; Berta, Michael  
**Cc:** Pomerantz, Glenn; Klaus, Kelly; Barth, Lawrence; Steer, Reginald; Mark F. Lambert; Weinstein, Mark R.  
**Subject:** technical requests

Jamie --

As you suggested, I am sending you a specific list of the items that we discussed this morning that the Studio defendants want produced by the 9th. Items 1-5 were discussed before the Court. We believe all should be discrete, easily locatable items that Real should be able to promptly produce. I have been inquiring about the arccoss.zip file for weeks now, with no response.

I appreciate your discussing these with your client and your team and letting us know if you have any issues with this list:

1. Access to (or a copy of) the "final" Facet prototype in whatever form it is in, as soon as possible. I appreciate your agreement that we could take photos of the prototypes, and we will treat them as highly confidential.
2. As I mentioned, we will also need as soon as possible an admissible representation from Real regarding the "final prototype". Based on what you have told us so far, we are unclear on what the product actually is, how close it is to final, etc. We may be able to negotiate some kind of written description (analogous to a rog response). Or it may be easiest for this to take the form of an early 30(b)(6) deposition, ahead of the rest of the discovery schedule.
3. The current Facet source code. You mentioned that the Facet source code might have been (or might be) changed from the version made available in November. If that is the case, we would like the current code, as well as copies of the version from November.
4. Any technical documentation, particularly of the Facet hardware design(s), that we have not already been provided. We have not seen hardware specifications.
5. Access to each of the "20 prototypes," or proofs of concept or call-them-what-you will, for Facet. As with the "final prototype," we understand we will be allowed to take pictures of any boxes.
6. A soft copy (electronic copy) of the current Facet Wiki, that permits us to view revision histories, etc.
7. The original arccoss.zip file that was attached in emails sent to/from Mr. Chasen.
8. Finally, please confirm that Real is preserving all versions of Facet and RealDVD source code and all Facet "prototypes" or "proofs of concept" or any other physical embodiment.

Thanks.

2/24/2009



This email and any attachments thereto may contain private, confidential, material for the sole use of the intended recipient. Any review, copying, this email (or any attachments thereto) by others is strictly prohibited. intended recipient, please contact the sender immediately and permanently and any copies of this email and any attachments thereto.

This email and any attachments thereto may contain private, confidential, and p material for the sole use of the intended recipient. Any review, copying, or d this email (or any attachments thereto) by others is strictly prohibited. If y intended recipient, please contact the sender immediately and permanently delet and any copies of this email and any attachments thereto.

This email and any attachments thereto may contain private, confidential, and privil material for the sole use of the intended recipient. Any review, copying, or distri this email (or any attachments thereto) by others is strictly prohibited. If you ar intended recipient, please contact the sender immediately and permanently delete the and any copies of this email and any attachments thereto.

2/24/2009

## **EXHIBIT 21**

---

**From:** Lynch, Rebecca  
**Sent:** Wednesday, February 11, 2009 1:21 PM  
**To:** Tosh Lane, Tracy  
**Cc:** Barth, Lawrence; Singla, Rohit; Berta, Michael; Nelson, Christopher; ~REALDVD  
**Subject:** RE: My notebooks

Tracy:

We are concerned by your email, and I write to seek clarification of the facts.

Ms. Hamilton has clearly stated that she turned over 3 or 4 notebooks containing her handwritten notes regarding the development of RealDVD to Rishi Matthew and Dale DeWhitt of RealNetworks during a meeting in late September 2008.

Will you please tell us today whether Ms. Hamilton's notebooks were destroyed or disposed of and, if so, provide us with details including timing, persons involved, etc. If her notebooks are within the custody, possession or control of RealNetworks (including WSGR or any other counsel), we ask that you confirm that fact by return email, and we request they be produced immediately. If the notebooks still exist but are not within the custody, possession or control of RealNetworks, will you kindly advise us by return email of their whereabouts, and of the circumstances in which they left RealNetworks' custody, possession or control.

Finally, will you please clarify what you mean when you say that RealNetworks does not have "notebooks . . . for . . . the other custodians." If no other custodians from whom you collected documents kept notebooks, the inquiry may end there. If any of them did, we would ask the same questions set forth above with respect to Ms. Hamilton's notebooks: (i) were they destroyed or disposed of?; (ii) are they in RealNetworks' custody, possession or control?; and (iii) if neither, where are they?

Thank you -Becca

---

**From:** Tosh Lane, Tracy [mailto:TTosh@wsgr.com]  
**Sent:** Wednesday, February 11, 2009 10:18 AM  
**To:** Lynch, Rebecca  
**Cc:** Barth, Lawrence; Singla, Rohit; Berta, Michael; Nelson, Christopher  
**Subject:** RE: My notebooks

Becca,

We have produced both hard copy and electronic responsive documents for our custodians, and have confirmed that Real does not have the notebooks you are requesting for Nicole Hamilton or the other custodians. Thanks.

Tracy

---

**From:** Lynch, Rebecca [mailto:Rebecca.Lynch@mto.com]  
**Sent:** Monday, February 09, 2009 2:20 PM  
**To:** Tosh Lane, Tracy  
**Cc:** Barth, Lawrence; Singla, Rohit  
**Subject:** FW: My notebooks

Please let me know when you have time to discuss this issue. It was not our understanding that core custodians' notebooks, notes and other hard copy documents that were responsive to our document requests were excluded from collection or production. If Ms. Hamilton (a core custodian) kept a notebook about the development of RealDVD and it contained the various keywords in our requests, we would view that as responsive.

I can talk this afternoon or tomorrow morning. Thanks. -Becca

---

**From:** Tosh Lane; Tracy  
**To:** Singla, Rohit; Nicole Hamilton  
**Cc:** Steer, Reginald ; Bal, Colleen ; Berta, Michael ; DiBoise, Jamie  
**Sent:** Fri Feb 06 14:10:34 2009  
**Subject:** RE: My notebooks  
Rohit,

Engineering notebooks were not requested by the Studios and Real did not agree to produce them. As I mentioned in my last email, after much meeting and conferring with Mr. Barth we made very specific agreements regarding production and Real has honored those agreements and produced its documents. As Mr. Barth has pointed out many times, given the timeframe for the preliminary injunction proceeding, not every conceivable relevant document is being produced at this stage of the proceeding.

Thanks.

Tracy

---

**From:** Singla, Rohit [Rohit.Singla@mtb.com]  
**Sent:** Friday, February 06, 2009 11:30 AM  
**To:** Nicole Hamilton; Tosh Lane, Tracy  
**Cc:** Steer, Reginald  
**Subject:** RE: My notebooks

Tracy --

Ms. Hamilton asked me about these documents this morning. I told her that I do not think we were provided these notebooks by RealNetworks. Please let me know if I am mistaken.

If they were not produced to us, please produce them to us as soon as possible, and certainly well in advance of Ms. Hamilton's deposition next Friday. Not only do they appear highly relevant to the litigation, but it appears that Ms. Hamilton believes her notebooks would assist her testimony.

I understand if you need a day or two to review the notebooks for privilege. In that case, we have no objection to RealNetworks' providing copies to Ms. Hamilton before they are provided to us.

---

**From:** Nicole Hamilton [mailto:nicole@nicolehamilton.com]  
**Sent:** Friday, February 06, 2009 11:15 AM  
**To:** Singla, Rohit; 'Tosh Lane, Tracy'  
**Subject:** My notebooks

Thinking ahead to the deposition, it is very important to me not only that I cooperate fully, behave professionally and answer truthfully and to the best of my ability, but that, to the every extent possible, that my answers should be accurate. In anticipation that many of the questions may be of a detailed nature, asking specifically what happened when, it would be very helpful to me to be able to refer to my contemporaneous hand-written notes, contained in a series of 3 or maybe 4 spiral-bound notebooks which I turned over to Rishi Matthew and Dale DeWhitt in the meeting at which I was terminated.

Regards,  
Nicole

---

Nicole Hamilton  
16645 NE 46th Street  
Redmond, WA 98052-5441  
H: 425-702-8134  
C: 425-765-9574  
nicole@nicolehamilton.com

This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution this email (or any attachments thereto) by others is strictly prohibited. If you are not intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments thereto.

This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution this email (or any attachments thereto) by others is strictly prohibited. If you are not intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments thereto.

## **EXHIBIT 22**

---

**From:** Singla, Rohit  
**Sent:** Monday, February 23, 2009 2:56 PM  
**To:** ~REALDVD  
**Subject:** FW: Outstanding Document Production Questions

---

**From:** Tosh Lane, Tracy [mailto:TTosh@wsgr.com]  
**Sent:** Monday, February 23, 2009 2:50 PM  
**To:** Williams, Bart; DiBoise, Jamie; Bal, Colleen; Berta, Michael  
**Cc:** Pomerantz, Glenn; Singla, Rohit; Klaus, Kelly; Barth, Lawrence  
**Subject:** RE: Outstanding Document Production Questions

Dear Bart,

I am responding to your email to Jamie as I have been the person primarily involved in document discovery.

Before responding to your specific questions, I want to highlight that the parties agreed from the outset that document discovery relating to the preliminary injunction motion would be limited. We agreed to collect documents from limited custodians responsive to targeted requests. We realize that you want additional information and documents, and we certainly have follow-up questions as well for the Studios regarding additional responsive documents. When we have asked such questions in the past, counsel for the Studios has reminded me that we are in an expedited proceeding, and that there most certainly are relevant documents which have not been searched for and produced as one would expect in regular discovery. I can tell you Real has lived by all of its discovery agreements and obligations, conducted a reasonable search and produced responsive documents.

In response to your specific questions:

1. Notebooks: We have inquired of Real and are informed that our document custodians did not have responsive notebooks, and that such notebooks were not generally kept. We understand that Nicole Hamilton claims that she kept a series of notebooks and are continuing to inquire of Real as to their whereabouts, if they exist. However, to date, we have not located such notebooks of Nicole Hamilton. The only notebook of Ms. Hamilton's that we have located thus far contains a log regarding source code access.
2. ARccOS Zip File: We understand that the file is corrupted by a virus. We have gone back to our document vendor to double check the file and have received confirmation that it is corrupt. We have produced this document to you as we had it and as agreed.
3. Wolpert's Documents: Real has taken appropriate steps to preserve all employees documents, including Mr. Wolpert's.
4. Basche's Documents: We did not collect documents from Mr. Basche because when we inquired of him he did not have any responsive documents. We did collect from Mr. Zeitz, however, and as you know, Mr. Basche testified that while he did not recall generating any documents relating to the Facet project, and that he may have generated one document relating to RealDVD, he sent whatever documents he produced and hard copy documents to Harold Zeitz.

I also want to respond to the questions posed by Mr. Singla in his February 19 email:

1. Further Depositions of Brennan and Barrett: We disagree that the Court ordered that these individuals be deposed again or that the Court understood that the Defendants have already deposed each of these witnesses for 7 hours. Please point to the portion of the transcript you are relying upon.

2/24/2009

2. Facet Prototypes: We further disagree that the Court ordered that Real provide access to every possible iteration of the Facet product. Indeed, when Mr. Singla raised the issue of additional Facet prototypes to the Court during the February 3 telephonic hearing, the Court did not order Real to provide additional access and instead specifically stated that we should "go on what we have now." See Transcript, pp. 31-36. We have provided the Studios access to a feature-complete Facet prototype and consider the matter closed.

3. Hamilton Documents: Ms. Hamilton has asserted that the DVDs provided to Peter Chu (which we have been unable to open to date) contain back-ups of her Real laptop. Ms. Hamilton's laptop was collected and searched for responsive documents in the course of Real's document production in this case. There is no reason for us to spend considerable time reviewing additional documents which are duplicative.

4. Bielman documents: Mr. Bielman's documents have been collected and produced according to the parties' agreements. I am not aware of the specific DVD Walk statistics you are referring to, and Mr. Bielman testified that he had not seen documents reflecting such statistics and that he did not know who would have them (nor did he say when they would have been created). We have collected documents from key custodians as agreed and are not willing to go back and search on a document-by-document basis for additional documents. We did not agree to conduct follow-up searches or to supplement our document productions (and the Studios have never undertaken this effort) and the limited time before PI hearing simply does not permit it.

I have spent significant time tracking down answers to respond to your specific questions (hopefully so that these can be closed once and for all). Given the impending expert discovery, briefing and PI hearing, we do not think it is productive to spend time revisiting document production issues. We need to move forward to be ready for April 1.

Tracy

---

**From:** Williams, Bart [mailto:Bart.Williams@mto.com]  
**Sent:** Friday, February 20, 2009 4:52 PM  
**To:** DiBoise, Jamie; Tosh Lane, Tracy; Bal, Colleen; Berta, Michael  
**Cc:** Pomerantz, Glenn; Singla, Rohit; Klaus, Kelly; Barth, Lawrence  
**Subject:** Outstanding Document Production Questions  
**Importance:** High

Jamie - We have received no response to any of the questions in the attached emails. These are very serious issues, and we need to know the answers to these questions immediately, since we may bring these issues to the Court's attention and seek appropriate relief. We also request an explanation for what was done, if anything, to preserve Mr. Basche's and Mr. Wolpert's documents.

Given the tardiness of your responses, and the speed with which the April 1 hearing is approaching, we hereby request that you respond by 2:00 p.m. on Monday, February 23.

Thank you.

Bart H. Williams | Munger, Tolles & Olson LLP  
355 South Grand Avenue | Los Angeles, CA 90071  
Tel: 213.683.9295 | Fax: 213.683.5195 | Bart.Williams@mto.com | www.mto.com

This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution is prohibited.

2/24/2009



this email (or any attachments thereto) by others is strictly prohibited. If you are intended recipient, please contact the sender immediately and permanently delete the and any copies of this email and any attachments thereto.

2/24/2009