

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)
 ejg@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
 ENTERPRISES, INC., PARAMOUNT PICTURES CORP.,
 13 SONY PICTURES ENTERTAINMENT, INC., SONY
 PICTURES TELEVISION INC., TWENTIETH CENTURY
 14 FOX FILM CORP., NBC UNIVERSAL, INC., WALT
 DISNEY PICTURES, WARNER BROS.
 ENTERTAINMENT, INC., UNIVERSAL CITY STUDIOS
 15 PRODUCTIONS LLLP, UNIVERSAL CITY STUDIOS
 LLLP, AND VIACOM, INC.
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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19

20 REALNETWORKS, INC., et al.,

21 Plaintiffs,

22 vs.

23 DVD COPY CONTROL ASSOCIATION,
 INC., et al.

24 Defendants.
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CASE NO. C 08-4548-MHP

**DECLARATION OF DR. JOHN P. J. KELLY
 IN SUPPORT OF STUDIOS' MOTION FOR
 SANCTIONS FOR SPOILIATION OF
 EVIDENCE**

Ctrm: 15 (Hon. Marilyn Hall Patel)

PUBLIC REDACTED VERSION

26 AND CONSOLIDATED ACTIONS.
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DECLARATION OF DR. JOHN P. J. KELLY, PH.D.

I, John P. J. Kelly, declare as follows:

1. I have submitted a previous declaration in this matter, on September 30, 2008. I hereby incorporate my background and credentials as summarized in my previous declaration.

PRODUCED DOCUMENTS SUGGEST THAT REALNETWORKS HAD THE ARCCOS.ZIP FILE AT THE TIME OF PRODUCTION


2. The produced documents with Bates numbers REAL094704 to REAL094753 and REAL078875 to REAL078876 suggest that RealNetworks had possession of the ARccOS.zip file when those documents were processed.

3. REAL094704 is an email from Mr. Jeff Chasen (Vice President of RealNetworks' RealPlayer and Horizontal Products division) to tgraham@real.com with subject "arccoss." Attached hereto as Exhibit A is a true and correct copy of the documents produced at REAL094704 through 094753. The header of the email at REAL094704 indicates that "ARccOS.zip" is attached to the email.

4. REAL094705 to REAL094753 appear to be printouts reflecting the metadata or contents of several files including Windows executable and text files. The term metadata refers to information about the content or characteristics of a file. A ".zip" file is an archive that may contain a collection of other files (e.g., a mix of executables, documents and other types of files). The pages at REAL094705 to REAL094753 are consistent with printouts of files from a ".zip" archive file.

5. As an example, REAL094705-4717 and REAL094733-46 are printouts of metadata associated with five separate Windows executable files. From the information provided, I cannot determine the contents of these executable files, but the existence of the metadata suggests the existence of the underlying executables.

6. REAL094718-094727 

 A printout of a file can only be generated if the file existed at the time of document production.

1 7. Other produced documents support the view that REAL094705 to REAL094753
2 represent the contents of the "ARccOS.zip" file. [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 Attached hereto as Exhibit B is a true and correct copy of the
6 documents produced at REAL078875 through 078876. The presence of pages (REAL094728-
7 094729) [REDACTED]

8 [REDACTED]
9 [REDACTED] is consistent with those pages being at least a portion of the contents of
10 ARccOS.zip.

11 **PRODUCED DOCUMENTS SUGGEST THAT ARccOS.ZIP IS AT LEAST NOT**
12 **ENTIRELY CORRUPTED** :

13 8. I am informed that RealNetworks now claims that the ARccOS.zip archive file
14 attached to Mr. Chasen's email that was sent to tgraham@real.com (Bates number REAL094704)
15 is corrupted by a virus. In fact, the printouts provided as REAL094705-53 suggest that
16 ARccOS.zip was at least not entirely corrupted, and portions of it were not corrupted, at the time
17 of document production. For example, [REDACTED]

18 [REDACTED]
19 [REDACTED] See REAL094718-094727 and
20 REAL094728-094729. Furthermore, the files for which metadata was generated, even if
21 corrupted, are not so corrupted that they could not be accessed for the purpose of generating such
22 metadata reports.

23 9. If the ARccOS.zip archive file were produced, I could examine the archive to
24 determine whether it is in fact corrupted. If it is in fact corrupted, I can attempt to retrieve at least
25 the portions of the archive that were not corrupted. Specifically, if it is corrupted by a virus, I
26 may be able to clean and retrieve additional data therein.

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10. 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 Santa Barbara, California.



JOHN P. J. KELLY