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 9 REALNETWORKS, INC. and
 REALNETWORKS HOME
 10 ENTERTAINMENT, INC.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 REALNETWORKS, INC., a Washington
 Corporation; and REALNETWORKS HOME
 14 ENTERTAINMENT, INC., a Delaware
 corporation,

15 Plaintiffs,

16 v.

17 DVD COPY CONTROL ASSOCIATION, INC., a
 18 Delaware nonprofit corporation, DISNEY
 ENTERPRISES, INC., a Delaware corporation;
 19 PARAMOUNT PICTURES CORP., a Delaware
 corporation; SONY PICTURES ENTER., INC., a
 20 Delaware corporation; TWENTIETH CENTURY
 FOX FILM CORP., a Delaware corporation; NBC
 21 UNIVERSAL, INC., a Delaware corporation;
 WARNER BROS. ENTER. INC., a Delaware
 22 corporation; and VIACOM, Inc., a Delaware
 Corporation,

23 Defendants.
 24

25
 26 AND RELATED CASES
 27
 28

Case Nos. C08 04548 MHP;
 C08 04719 MHP

**DECLARATION OF TODD BASCHE IN
 SUPPORT OF PLAINTIFFS
 REALNETWORKS, INC. AND
 REALNETWORKS HOME
 ENTERTAINMENT, INC.'S
 OPPOSITION TO MOTION FOR
 SANCTIONS AND SPOLIATION**

Date: March 16, 2009
 Time: 2:00 p.m.
 Courtroom: 15

1 I, Todd Basche, declare:

2 1. I was a consultant / strategic advisor for plaintiff and counterclaim defendant
3 RealNetworks, Inc. ("Real") from 2007 until April 2008. I have personal knowledge of the facts
4 set forth herein, and if called to testify, could and would testify competently thereto.

5 2. As a consultant for Real, I advised members of the engineering team responsible for
6 developing Real's Windows-based software product known as Vegas. During my consulting
7 engagement for Real, I interacted primarily with members of the Vegas development team,
8 including Richard Wolpert and Jeff Chasen. I reported directly to Rob Glaser. I generated a
9 very small volume of documentation when I was engaged as a consultant by Real, all or
10 substantially all of the documentation that I generated regarding Vegas was sent to either Mr.
11 Wolpert, Mr. Chasen, or Howard Zeitz. I believe that all of my written documents that I created
12 regarding my work on Vegas were sent to other members of the Vegas team.

13 3. When my consulting work for Real ended in April 2008, I deleted my email and
14 documents relevant to my work for Real as part of my standard, customary practice when ending
15 any client engagement. When I deleted emails and documents related to Vegas, there was no
16 intention on my part to destroy information that could be relevant to any future litigation. In
17 addition, at the time I deleted these documents, I believed that Real employees had copies of the
18 documents that I destroyed. No one at Real instructed me to delete these documents, and I have
19 never been told by anyone at Real to delete any documents because they might be relevant to any
20 potential future litigation.

21 4. Although I testified in my deposition that I had destroyed all of my Vegas-related
22 documents, after searching my home on Friday, March 6, 2009, I located a back-up drive with
23 what I believe to be a substantial number, if not all, of the non-email documents related to my
24 work on Vegas. I have provided copies of these documents to counsel for Real.

25 5. In my deposition in this litigation, I also testified that I had used a prototype or beta
26 version of the Vegas software some time before I finished my consulting work in April 2008. I
27 am informed that the Studios are now contending in papers filed with the Court that I
28 intentionally destroyed the version of the prototype software that I was using that was on my

1 laptop, and that this was done intentionally to deprive the Studios of relevant documentation. At
2 least with respect to the contentions regarding the documents that I sent and generated, I believe
3 these contentions are incorrect.

4 (a) First, as noted above, my customary practice with all of my consulting engagements,
5 including but not limited to my engagement with Real, was and still is to delete all related
6 documentation at the conclusion of my consulting engagement.

7 (b) Second, my review of the beta code that was sent to me and loaded onto my laptop
8 was simply that – a review. I never wrote or modified any code for any Vegas, nor was I asked
9 to do so.

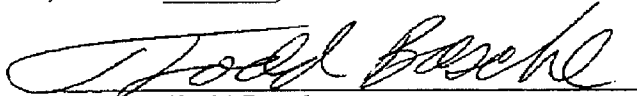
10 (c) Third, the version of the beta code I reviewed was, to my knowledge, not the only
11 copy of the software maintained by Vegas. As a software development organization, Real uses a
12 source code control system. In other words, Real maintained the source code of the product
13 internally, and not just on my laptop. To the best of my knowledge, the various versions of the
14 Vegas software that have existed over time were – and still should be – accessible to Real. In
15 addition, to the best of my knowledge, the exact version of the Vegas beta software that I used
16 was – and still should be – available to view, both in source and executable format. Moreover,
17 Messrs. Chasen and Wolpert also received the same version of the Vegas beta software code.
18 Therefore, I believe it would be wrong to suggest that this was deleting the only copy of the
19 then-current version of the code.

20 (d) Finally, I was never instructed by anyone at Real to destroy the code I had reviewed,
21 or any other documents given to me by Real or generated by me in my engagement. As I noted
22 above, I deleted any documents as part of my standard practice for working on any consulting
23 engagement. Since the Vegas beta code was software, I uninstalled it from my computer and
24 rebooted my computer so as not to introduce any instabilities into my laptop. This is my
25 standard practice for consulting engagements, where I am often given software that is under
26 development.

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct of my own personal knowledge, and that this declaration is executed this 10th day of March, 2009 at Los ALTOS, California.


Todd Basche