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 Counterclaim Defendants
 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.
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25
 26 AND RELATED CASES
 27
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Case Nos. C08 04548 MHP;
 C08 04719 MHP

**DECLARATION OF JAMES BRENNAN
 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, James Brennan, declare:

2 1.I am a Software Development Engineer for plaintiff and counterclaim defendant
3 RealNetworks, Inc. ("Real"). I am currently a member of the engineering team responsible for
4 developing Real's yet-to-be-released integrated hardware product known by the code name
5 Facet. I have personal knowledge of the facts set forth herein, and if called to testify, could and
6 would testify competently thereto.

7 2.I have been employed by Real since November 2007. I report directly to Brent Wood.

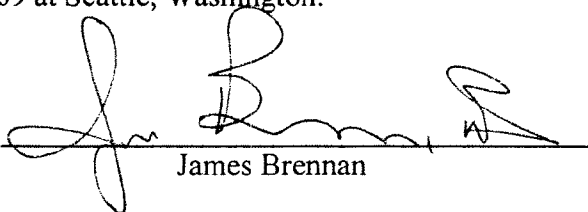
8 3.On or about October 6, 2008 I received an email from Real's legal department
9 regarding the preservation of documents for this litigation. Although I received the litigation
10 hold instructions, this did not require me to alter my regular practices. My ordinary practices are
11 not to delete work-related messages from my email inbox or sent mail. My ordinary practices
12 are also to save all work related electronic documents other than email on my hard drive.
13 Because I do not delete emails or otherwise destroy documents that are related to my work on
14 Facet, I believe I have preserved the documents that I have sent or received that may be related
15 to this litigation. Further, the contents of my hard drive were copied in connection with this
16 litigation in October 2008.

17 4.I have never been told by anyone to delete any email or other documents, whether with
18 respect to this litigation or with respect to anything else on the Facet project. Although members
19 of the Facet development team discussed minimizing the use of words like "ripping" in our
20 correspondence because the term could be misconstrued to suggest that we were doing
21 something improper, I was never told to delete emails that contained the words "rip," "ripper," or
22 "ripping." Phil Barrett has never instructed or otherwise requested that I delete any emails, and I
23 am not aware that Mr. Barrett ever instructed anyone else to delete emails. To my knowledge,
24 no other Real employee has instructed anyone working on the Facet or Vegas (Real's Windows-
25 based software product) projects to delete emails or destroy documents.

26 5.In the course of my employment, I interacted with Nicole Hamilton on a regular basis
27 while she was a member of the Facet development team. At no point did I hear Ms. Hamilton
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1 express any concerns regarding the legality of Facet, or imply or suggest that our work on Facet
2 was illegal or unethical.

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

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8 James Brennan

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