

1 LEO P. CUNNINGHAM, State Bar No. 121605
 Email: lcunningham@wsgr.com
 2 COLLEEN BAL, State Bar No. 167637
 Email: cbal@wsgr.com
 3 MICHAEL A. BERTA, State Bar No. 194650
 Email: mberta@wsgr.com
 4 TRACY TOSH LANE, State Bar No. 184666
 Email: ttosh@wsgr.com
 5 WILSON SONSINI GOODRICH & ROSATI
 Professional Corporation
 6 One Market Street
 Spear Tower, Suite 3300
 7 San Francisco, CA 94105

8 Attorneys for Plaintiffs and
 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.
 24

25
 26 AND RELATED CASES
 27
 28

Case Nos. C08 04548 MHP;
 C08 04719 MHP

**DECLARATION OF LINDSEY
 GODFREY 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, Lindsey Godfrey, declare:

2 1. I am Litigation Attorney for plaintiff and counterclaim defendant RealNetworks, Inc.
3 ("Real"). I have personal knowledge of the facts set forth herein, and if called to testify, could
4 and would testify competently thereto.

5 2. On October 6, 2008, I sent an email from Real's Legal Department regarding the
6 preservation of documents for this litigation. I distributed this email to members of the Facet and
7 Vegas teams, as well as other employees, consultants and officers who may have had materials
8 and documents relevant to the litigation. This email, a true and correct copy of which is attached
9 hereto as Exhibit A, instructed recipients to "preserve all documents and electronic and hard
10 copy data from July 2007 to the present relating to any aspect of RealDVD, the CSS License
11 Agreement and the DVD CCA." On October 10, 2008, I forwarded this email to Richard
12 Wolpert.

13 3. On October 8, 2008, Rob Glaser, Real's Chief Executive Officer, sent an email
14 instructing employees to "retain all email and documents relating to RealDVD."

15 I declare under penalty of perjury under the laws of the State of Washington and the
16 United States of America that the foregoing is true and correct of my own personal knowledge,
17 and that this declaration is executed this 11th day of March, 2009 at Seattle, Washington.

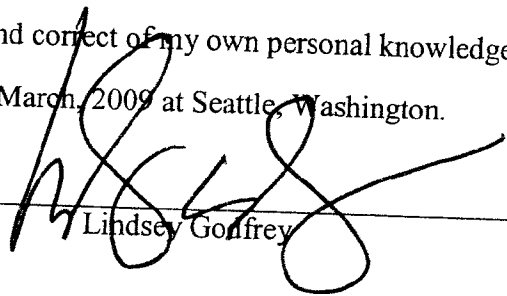
18
19 
20 _____
21 Lindsey Godfrey

EXHIBIT A

From: Lindsey Godfrey [mailto:lgodfrey@real.com]
Sent: Monday, October 06, 2008 3:46 PM
To: 'Rob Glaser'; 'jig@real.com'; 'bkimball@real.com'; 'bway@real.com'; 'Jeff Chasen'; 'Elizabeth Coppinger'; 'jlang@real.com'; 'jleitner@real.com'; Adam Cappio (adamc@real.com); Andrew Webster (awebster@real.com); 'tgraham@real.com'; 'jbuzzard@real.com'; 'Paul Gese'; 'jschussler@real.com'; 'Elizabeth Rogers'; 'rlazar@real.com'; 'pkevin@real.com'; 'philba@real.com'; 'Martin Schwarz'; 'jalbertson@real.com'; 'bwood@real.com'; 'mmcmurray@real.com'; 'jeckert@real.com'; 'Michael Carlson'; 'lcho@real.com'; 'rtan@real.com'; 'mspragins@real.com'; 'efox@real.com'; 'jpace@real.com'; 'zturcinov@real.com'; 'David Todd'; 'kmulligan@real.com'
Cc: 'lgodfrey@real.com'; 'vlieb@real.com'; 'Jim Bachesta'; 'ppeterson@real.com'
Subject: Document Retention Re Litigation with Movie Studios and DVD CCA

All:

As you probably know, RealNetworks, Inc. and RealNetworks Home Entertainment, Inc. have brought suit against various movie studios and the DVD Copy Control Association ("DVD CCA"), seeking a declaratory judgment that RealDVD does not violate the Digital Millennium Copyright Act and complies with the CSS License Agreement between Real and the DVD CCA. The studio defendants have asserted counterclaims against Real addressing the same issues raised in Real's declaratory judgment action.

We have retained the law firm of Wilson Sonsini Goodrich & Rosati to represent us in this action. Over the next few months, our attorneys will be spending time at the Company to collect documents, interview employees, and work with us to prepare the case. Please provide your full cooperation if asked to be interviewed or to locate documents. All of your discussions with our attorneys are privileged and confidential and will not be disclosed to anyone outside of the Company. If you are approached by any attorneys from outside of RealNetworks who do not identify themselves as from Wilson Sonsini Goodrich & Rosati, please refer them to me.

In the meantime, it is very important to the defense of the case that no potentially relevant documents be destroyed. Therefore:

PLEASE DO NOT DESTROY, DISCARD, ALTER OR ERASE ANY DOCUMENT OR COMPUTERIZED INFORMATION GENERATED ON OR AFTER JULY 1, 2007 TO THE PRESENT RELATING TO: (1) REALDVD, INCLUDING THE DEVELOPMENT, MARKETING AND DISTRIBUTION OF REALDVD; (2) THE CSS LICENSE AGREEMENT AND REAL'S ACTIVITIES UNDER THAT AGREEMENT, AND (3) THE DVD CCA, INCLUDING ANY COMMUNICATIONS WITH THE DVD CCA.

THIS RETENTION POLICY APPLIES TO ALL ELECTRONIC AND HARD COPY INFORMATION, INCLUDING LETTERS, MEMOS, REPORTS, HANDWRITTEN NOTES, E-MAILS, COMPUTER RECORDS AND PROGRAMS, DATA STORED ON HARD DRIVES, AND BACKUP TAPES.

Please continue to maintain these documents and information until further notice.
Thank you for your cooperation. If you have any questions or concerns, please contact me.

Lindsey Godfrey
Litigation Attorney
RealNetworks, Inc.
2601 Elliott Ave.
Seattle, WA 98121
(206) 892-6921

From: Lindsey Godfrey [mailto:lgodfrey@real.com]
Sent: Monday, October 06, 2008 3:59 PM
To: 'jrbrennan@real.com'; 'jbielman@real.com'; 'dwatson@real.com'
Cc: 'lgodfrey@real.com'; 'vlieb@real.com'; 'Jim Bachesta'; 'ppeterson@real.com'; 'philba@real.com'
Subject: Document Retention Re Litigation with Movie Studios and DVD CCA

All:

As you probably know, RealNetworks, Inc. and RealNetworks Home Entertainment, Inc. have brought suit against various movie studios and the DVD Copy Control Association ("DVD CCA"), seeking a declaratory judgment that RealDVD does not violate the Digital Millennium Copyright Act and complies with the CSS License Agreement between Real and the DVD CCA. The studio defendants have asserted counterclaims against Real addressing the same issues raised in Real's declaratory judgment action.

We have retained the law firm of Wilson Sonsini Goodrich & Rosati to represent us in this action. Over the next few months, our attorneys will be spending time at the Company to collect documents, interview employees, and work with us to prepare the case. Please provide your full cooperation if asked to be interviewed or to locate documents. All of your discussions with our attorneys are privileged and confidential and will not be disclosed to anyone outside of the Company. If you are approached by any attorneys from outside of RealNetworks who do not identify themselves as from Wilson Sonsini Goodrich & Rosati, please refer them to me.

In the meantime, it is very important to the defense of the case that no potentially relevant documents be destroyed. Therefore:

PLEASE DO NOT DESTROY, DISCARD, ALTER OR ERASE ANY DOCUMENT OR COMPUTERIZED INFORMATION GENERATED ON OR AFTER JULY 1, 2007 TO THE PRESENT RELATING TO: (1) REALDVD, INCLUDING THE DEVELOPMENT, MARKETING AND DISTRIBUTION OF REALDVD; (2) THE CSS LICENSE AGREEMENT AND REAL'S ACTIVITIES UNDER THAT AGREEMENT, AND (3) THE DVD CCA, INCLUDING ANY COMMUNICATIONS WITH THE DVD CCA.

THIS RETENTION POLICY APPLIES TO ALL ELECTRONIC AND HARD COPY INFORMATION, INCLUDING LETTERS, MEMOS, REPORTS, HANDWRITTEN NOTES, E-MAILS, COMPUTER RECORDS AND PROGRAMS, DATA STORED ON HARD DRIVES, AND BACKUP TAPES.

Please continue to maintain these documents and information until further notice. Thank you for your cooperation. If you have any questions or concerns, please contact me.

Lindsey Godfrey
Litigation Attorney
RealNetworks, Inc.
2601 Elliott Ave.
Seattle, WA 98121
(206) 892-6921

From: Lindsey Godfrey [mailto:lgodfrey@real.com]
Sent: Monday, October 06, 2008 4:07 PM
To: 'Karissa Dixon'; 'billb@real.com'; 'lkoperski@real.com'
Cc: 'vlieb@real.com'; 'Jim Bachesta'; 'ppeterson@real.com'; 'lgodfrey@real.com'
Subject: Document Retention Re Litigation with Movie Studios and DVD CCA

All:

As you probably know, RealNetworks, Inc. and RealNetworks Home Entertainment, Inc. have brought suit against various movie studios and the DVD Copy Control Association ("DVD CCA"), seeking a declaratory judgment that RealDVD does not violate the Digital Millennium Copyright Act and complies with the CSS License Agreement between Real and the DVD CCA. The studio defendants have asserted counterclaims against Real addressing the same issues raised in Real's declaratory judgment action.

We have retained the law firm of Wilson Sonsini Goodrich & Rosati to represent us in this action. Over the next few months, our attorneys will be spending time at the Company to collect documents, interview employees, and work with us to prepare the case. Please provide your full cooperation if asked to be interviewed or to locate documents. All of your discussions with our attorneys are privileged and confidential and will not be disclosed to anyone outside of the Company. If you are approached by any attorneys from outside of RealNetworks who do not identify themselves as from Wilson Sonsini Goodrich & Rosati, please refer them to me.

In the meantime, it is very important to the defense of the case that no potentially relevant documents be destroyed. Therefore:

PLEASE DO NOT DESTROY, DISCARD, ALTER OR ERASE ANY DOCUMENT OR COMPUTERIZED INFORMATION GENERATED ON OR AFTER JULY 1, 2007 TO THE PRESENT RELATING TO: (1) REALDVD, INCLUDING THE DEVELOPMENT, MARKETING AND DISTRIBUTION OF REALDVD; (2) THE CSS LICENSE AGREEMENT AND REAL'S ACTIVITIES UNDER THAT AGREEMENT, AND (3) THE DVD CCA, INCLUDING ANY COMMUNICATIONS WITH THE DVD CCA.

THIS RETENTION POLICY APPLIES TO ALL ELECTRONIC AND HARD COPY INFORMATION, INCLUDING LETTERS, MEMOS, REPORTS, HANDWRITTEN NOTES, E-MAILS, COMPUTER RECORDS AND PROGRAMS, DATA STORED ON HARD DRIVES, AND BACKUP TAPES.

Please continue to maintain these documents and information until further notice. Thank you for your cooperation. If you have any questions or concerns, please contact me.

Lindsey Godfrey
Litigation Attorney
RealNetworks, Inc.
2601 Elliott Ave.
Seattle, WA 98121
(206) 892-6921