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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.
 24

25
 26 AND RELATED CASES
 27
 28

Case Nos. C08 04548 MHP;
 C08 04719 MHP

**DECLARATION OF JEFF LEITNER IN
 SUPPORT OF PLAINTIFFS AND
 COUNTERCLAIM DEFENDANTS
 REALNETWORKS, INC. AND
 REALNETWORKS HOME
 ENTERTAINMENT, INC.'S
 OPPOSITION TO MOTION FOR
 SANCTIONS AND SPOILIATION**

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

1 I, Jeff Leitner, declare:

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

5 2. I have been employed by Real since June 1996. I became involved with Real's
6 Windows-based software product, known as Vegas, in November 2007 when I was tasked with
7 creating the software framework for the product. I have interacted regularly with Real
8 employees Jeff Chasen, Robert Nelson, Jeff Buzzard, Tim Graham, and Chris Nunciato with
9 regard to Vegas. I report directly to Jeff Chasen, who is the Vice President of Video Product
10 Development for Vegas. I have also occasionally interacted with employees of Real working on
11 the yet-to-be released integrated hardware product known by the code name Facet.

12 3. As part of my responsibilities on the Vegas team, I have written and modified source
13 code for the Vegas product. A full record of all my additions and modifications is maintained in
14 CVS, the open-source version control system software that Real uses. CVS preserves an archive
15 of all previous versions of Real's software products. CVS maintains a full record of any changes
16 that are made, including documentation regarding the identity of the individual making the
17 change and the date and time of the change. CVS also allows for the creation of a "snapshot" of
18 the particular source code as it is existed at any previous point in time.

19 4. I receive email and other electronic documents attached thereto from members of the
20 team related to Vegas. It is my general practice to save any emails and other documents that I
21 believe I will need in the future to project folders on my computer. In general, my practice is to
22 move email messages that I believe I will not need in the future to my "deleted items" folder in
23 Microsoft Outlook. For example, CVS generates an automatic notification every time any user
24 makes changes to the Vegas source code. These notifications are emailed to me and other
25 members of the team who are on the distribution list. Since a full record of the changes is
26 maintained in CVS, and since the number of notifications on any given day is enormous, it has
27 been my general practice to permanently delete these automatically generated notifications.

28

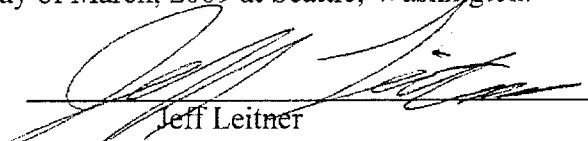
1 However, it is also my general practice never to empty or permanently delete the other email
2 items in my deleted items folder.

3 5. I generally do not maintain hard copies of documents, although I have a few hard
4 copies of documents related to Vegas that I printed from electronic copies. I have maintained
5 copies of these hard copy documents.

6 6. On or about October 6, 2008, I received an email from Real's legal department
7 regarding the preservation of documents for this litigation. To the best of my ability, I have
8 preserved documents and emails related to Vegas since receiving these litigation hold
9 instructions, with the exception of the automatically generated notifications mentioned above.
10 Further, the contents of my hard drive were copied in connection with this litigation in October
11 2008.

12 7. I have never been told by anyone on either the Vegas team or the Facet team to delete
13 any email or destroy any document, whether with respect to this litigation or with respect to
14 anything else on the Vegas or Facet projects. I am not aware of any Real employee instructing
15 another Real employee to delete any email or destroy any document related to the Vegas project
16 whether with respect to this litigation or with respect to anything else regarding the Vegas
17 project. Although some members of the Vegas team have occasionally discussed refraining from
18 using words like "ripping" in our correspondence because the term could be misconstrued, I was
19 never told to delete emails or other documents that contained the words "rip," "ripper," or
20 "ripping." Similarly, although some members of the Vegas team orally discussed not describing
21 ARccOS as "Digital Rights Management" or "DRM" because we believed that to be an
22 inaccurate description, I was never told to delete any emails or other documents containing those
23 terms.

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

27
28 
Jeff Leitner