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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 RICHARD
 WOLPERT 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

WOLPERT DECL. IN SUPPORT OF OPP. TO MOTION
 FOR SANCTIONS AND SPOILIATION,
 CASE NOS.: C08 04548 MHP; C08 04719 MHP

1 I, Richard Wolpert, declare:

2 1. I am an outside advisor for plaintiff and counterclaim defendant RealNetworks, Inc.
3 (“Real”). I am a member of the team responsible for developing Real’s Windows-based
4 software product known as Vegas, and its yet-to-be released integrated hardware product known
5 by the code name Facet. I have personal knowledge of the facts set forth herein, and if called to
6 testify, could and would testify competently thereto.

7 2. Between 2000 and 2004, I was employed by Real as its Chief Strategy Officer. From
8 early 2005 until early 2008, I was a part-time employee of Real with the title of Advisor. From
9 early 2008 to the present, I have been a consultant for Real with the same title. During my
10 tenure and consulting work with Real, I have interacted with other members of the Vegas or
11 Facet teams, including Jeff Albertson, Phil Barrett, Brent Wood, Todd Basche, Elizabeth
12 Coppinger, Chris Nunciato, Jeff Chasen, Rob Glaser, Martin Schwartz, and Harold Zeitz. I
13 report directly to Rob Glaser in my role as an Advisor.

14 3. I have preserved all of my work-related emails that I sent during my work on the
15 Vegas or Facet projects, and I do not believe that I have deleted any documents related to Vegas
16 or Facet. My ordinary practice is to save email messages that are related to my work, and I also
17 save all non-email files that relate to my work on Vegas and Facet on my local hard drive.
18 Moreover, I never delete any emails from my sent mail box.

19 4. On or about October 10, 2008, I received an email from Real’s legal department
20 regarding the preservation of documents for this litigation. Although I received these litigation
21 hold instructions, this did not require me to alter my regular retention practices because I do not
22 delete documents related to Vegas or Facet. After receiving these litigation hold instructions, I
23 continued to retain documents that may be related to my work on the Vegas or Facet projects. I
24 believe I have preserved all of my documents that may be related to this litigation. Further, the
25 contents of my hard drive were copied in connection with this litigation in October 2008.

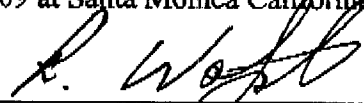
26 5. I also believe I have saved all emails and documents I received from Todd Basche in
27 relation to Vegas or Facet.

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1 6. I have never been told by anyone to delete any email, whether with respect to this
2 litigation or with respect to anything else on the Vegas or Facet projects. Phil Barrett has never
3 instructed or otherwise requested that I delete any emails, and to my knowledge never instructed
4 anyone else to delete any emails or documents. I have never heard any other Real employee
5 instruct other Real employees to delete emails or destroy documents related to this litigation or
6 otherwise.

7 7. I was previously deposed in this litigation by the Motion Picture Studios Defendants
8 and the DVD Copy Control Association. At one point during my deposition, I made the
9 statement that "I delete tons of stuff everyday." The attorney questioning me on this topic did
10 not ask any specific questions or follow-up questions as to what materials I delete regularly. My
11 statement about deleting "tons of stuff everyday" was in no way meant to include email and
12 documents that I receive in connection with my work on Vegas or Facet. Instead, as I testified at
13 the deposition, I am also the managing partner of an early stage venture capital fund known as
14 the Mail Room Fund, have personal investments in about a dozen companies and I am a
15 consultant to Accel Partners. Since I am not an employee of Real, I use my personal laptop for
16 all of my work, including work for the Mail Room Fund and Accel Partners. As I testified at my
17 deposition, in connection with my roles at the Mail Room Fund and Accel Partners, I receive
18 numerous unsolicited email messages every day, many of which include PowerPoint
19 presentations as attachments. When I made the statement that "I delete tons of stuff everyday," I
20 was referring to these types of unsolicited messages, and not to anything that I would have
21 received or generated regarding Vegas or Facet.

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



Richard Wolpert