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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 PHIL BARRETT
 IN SUPPORT OF REALNETWORKS
 AND REALNETWORKS HOME
 ENTERTAINMENT'S OPPOSITION TO
 MOTION FOR SANCTIONS AND
 SPOILIATION**

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

[PUBLIC REDACTED VERSION]

1 I, Phil Barrett, declare:

2 1. I am Senior Strategic Advisor for plaintiff and counterclaim defendant RealNetworks,
3 Inc. ("Real"). I currently lead the team that is developing Real's Facet product, one of the two
4 products that are the subject of litigation between Real and the DVD CCA and Studios. I have
5 personal knowledge of the facts set forth herein, and if called to testify, could and would testify
6 competently thereto.

7 2. I have been employed by Real on two occasions. I was one of Real's first employees,
8 and helped to found the company in 1994 with Rob Glaser, the current Chief Executive Officer.
9 In 2003, I left RealNetworks to pursue other interests. In January 2007, Mr. Glaser asked me to
10 return to Real, and after a short time I was placed in charge of developing the product that
11 became Facet. The members of the Facet team that I supervise or have supervised, either
12 directly or indirectly, include, among others, Jeff Albertson, James Bielman, Jim Brennan,
13 Nicole Hamilton, Steve Hastings, John Moore, David Watson, and Brent Wood.

14 3. On or about October 6, 2008 I received written instruction from Real's legal
15 department regarding the preservation of documents in connection with this litigation. In a Facet
16 team meeting in early October 2008, I instructed the members my team to preserve all
17 documents and emails relating to the project.

18 4. Although I received the above-referenced litigation hold instructions, those
19 instructions did not require me to alter my regular document retention practices. Indeed, it is and
20 has at all relevant times been my practice to preserve my Real documents and e-mails. I do not
21 delete work-related messages from my email inbox or sent mail folder, and I generally save all
22 other electronic documents as local files on my hard drive. Once saved, I do not delete these
23 files. I rarely generate or receive any hard copy documents. Because I do not delete emails or
24 otherwise destroy documents in the ordinary course of business, I believe I have preserved all
25 documents that may be related to this litigation. The contents of my hard drive were copied in
26 connection with this litigation in October 2008.

27 5. I understand that a former employee and member of my team, Nicole Hamilton, has
28 testified that I have instructed other members of the Facet team to delete emails that might have

1 been relevant to this litigation. That claim is false. I have never deleted any materials or
2 documents that I knew were or could be relevant to this litigation, whether before the litigation
3 was actually commenced on September 30, 2008 or thereafter. Nor have I ever told anyone on
4 the Facet team (or any other Real employee) to delete email either with respect to this pending
5 litigation or because the email might have been relevant to this litigation. To my knowledge, no
6 one has at Real ever given any instructions to delete any emails that may be relevant to this
7 litigation – either before or after this lawsuit was commenced. Although I asked members of the
8 Facet team to minimize their use of words like “ripping” in written correspondence because that
9 term can be misconstrued, I never instructed anyone to delete emails that contained the words
10 “rip,” “ripper,” or “ripping.” Similarly, although I asked members of the Facet development
11 team not to describe ARccOS as “Digital Rights Management” or “DRM” because I believed
12 and still believe that ARccOS is not DRM, I never told anyone to delete emails containing those
13 phrases.

14 6. I am also aware that the Studios contend that any notebooks maintained by Ms.
15 Hamilton are the only comprehensive record on the development of Facet. This contention is
16 also wrong. The most comprehensive record on the development of Facet is the source code.
17 Real maintains a central repository of the source code that is backed up. Real maintains records
18 of the modifications at the source code level, along with comments made by the coders. The
19 only exceptions to this are for source code that is contractually required to be isolated and
20 secured, such as the CSS code as required by the CCA license.

21 7. [REDACTED]

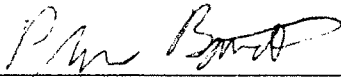
22 [REDACTED]

23 [REDACTED]

24 [REDACTED]. Prior to her transfer, Ms. Hamilton had expressed a strong desire to remain on the Facet
25 team because she believed in the product and wanted to continue working on its development.
26 Further, at no time, either prior to her transfer or after, did Ms. Hamilton ever inform me that she
27 believed the work she or anyone else was doing on Facet was unethical or illegal. I understand
28 that the group to which Ms. Hamilton transferred [REDACTED]

1 [REDACTED]
2 [REDACTED]

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

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7 _____
8 Phil Barrett

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