

1 REGINALD D. STEER (SBN 056324)  
 rsteer@akingump.com  
 2 MARIA ELLINIKOS (SBN 235528)  
 mellinikos@akingump.com  
 3 **AKIN GUMP STRAUSS HAUER & FELD LLP**  
 580 California, 15th Floor  
 4 San Francisco, California 94104-1036  
 Telephone: 415-765-9500  
 5 Facsimile: 415-765-9501

6 EDWARD P. LAZARUS (SBN 212658)  
 elazarus@akingump.com  
 7 STEPHEN MICK (SBN 131569)  
 smick@akingump.com  
 8 MICHAEL SMALL (SBN 222768)  
 msmall@akingump.com  
 9 **AKIN GUMP STRAUSS HAUER & FELD LLP**  
 2029 Century Park East, Suite 2400  
 10 Los Angeles, California 90067-3012  
 Telephone: 310-229-1000  
 11 Facsimile: 310-229-1001

WILLIAM SLOAN COATS (SBN 94864)  
 Email: wcoats@whitecase.com  
 MARK R. WEINSTEIN (SBN 193043)  
 Email: mweinstein@whitecase.com  
 MARK F. LAMBERT (SBN 197410)  
 Email: mlambert@whitecase.com  
**WHITE & CASE LLP**  
 3000 El Camino Real  
 5 Palo Alto Square, 9th Floor  
 Palo Alto, CA 94306  
 Telephone: (650) 213-0300  
 Facsimile: (650) 213-8158

12 Attorneys for Defendant  
 DVD COPY CONTROL ASSOCIATION, INC.

13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 REALNETWORKS, INC., a Washington  
 corporation; and REALNETWORKS HOME  
 17 ENTERTAINMENT, INC., a Delaware  
 corporation,  
 18  
 Plaintiffs,  
 19  
 v.  
 20  
 DVD COPY CONTROL ASSOCIATION, INC.,  
 21 a Delaware non-profit corporation; et al.,  
 22  
 Defendants.  
 23  
 And Related Counterclaims

Case No. C08 04548 MHP  
 Case No. C08 04719 MHP (related case)

**DECLARATION OF JACOB PAK IN  
 SUPPORT OF DVD COPY  
 CONTROL ASSOCIATION, INC.'S  
 MOTION FOR PRELIMINARY  
 INJUNCTION**

24  
 25  
 26 **PUBLIC REDACTED VERSION**  
 27  
 28

1 I, Jacob Pak, declare:

2 1. I am the President of DVD Copy Control Association, Inc. (“DVD CCA”). This  
3 declaration is made in support of DVD Copy Control Association, Inc.’s Motion for Preliminary  
4 Injunction Against RealNetworks, Inc. and RealNetworks Home Entertainment. Unless stated  
5 upon information and belief, I make this declaration based upon my personal knowledge, and if  
6 called to testify as to the contents of this declaration, I could and would competently do so.

7 2. DVD CCA is a Delaware not-for-profit corporation. DVD CCA is responsible for  
8 licensing the Content Scramble System (“CSS”) to manufacturers of DVD hardware, discs and  
9 related products. According to DVD CCA records, the company became the licensing authority  
10 for CSS in December of 1999. CSS Licensees include the owners and manufacturers of the  
11 content distributed on CSS protected DVD discs; creators of encryption engines, hardware and  
12 software decrypters; and manufacturers of DVD Players and DVD-ROM drives.

13 3. As explained on DVD CCA’s website, [www.dvdcca.org](http://www.dvdcca.org) (the “DVD CCA  
14 Website” or the “Website”), “CSS is the protection system that has enabled the owners of movie  
15 content to provide consumers access to high quality DVD movies for home viewing on their  
16 video systems and computers. CSS prevents movies from being illegally duplicated, protecting  
17 the intellectual property of the manufacturers, producers and writers from theft. CSS is a two-part  
18 system for which manufacturers of both the movie content (discs) and hardware or software  
19 (players) purchase licenses. The information on DVD discs is encrypted. The DVD players -  
20 either a computer drive or a home video player - have technology to 'decrypt' the information so it  
21 can be viewed. CSS is critical to DVD.” (See Exhibit B, *below*)

22 4. I have been the President of the DVD CCA since January 1, 2008. My  
23 responsibilities as President of the DVD CCA include oversight of administrative functions  
24 related to DVD CCA’s licensing of the “CSS”. In my capacity as President of DVD CCA, I also  
25 work with the Secretary and the Treasurer of DVD CCA to maintain the DVD CCA’s books and  
26 records. As President of the DVD CCA, I answer and report to the DVD CCA Board of  
27 Directors. I also attend meetings of the DVD CCA Board of Directors and meetings of various  
28 committees of the DVD CCA, including the Content Protection Advisory Council. My

responsibility in attending such meetings is to assist in the administration of the meetings by overseeing the distribution of materials such as meeting notices, agendas, minutes of prior meetings, and other documents relating to such proceedings. I serve as President of the DVD CCA on a part time basis, and I receive no salary or compensation for serving in that role.

5. In addition to serving as the President of the DVD CCA, I am also the President of License Management International, Inc. ("LMI"), a company that provides licensing administration services to DVD CCA. In addition to providing license administration services for DVD CCA, LMI provides license administration services to several other technology licensing entities unrelated to DVD CCA.

6. I was promoted to President of LMI in 2006, and prior to that I was Director of Operations. I have been employed full time by LMI since 2004. In both my role as President and Director of Operations for LMI, I have been actively involved in the administration of licensing for CSS. Based on this experience, I have extensive personal knowledge of the uniform process that a prospective licensee must follow to become a CSS licensee.

7. Prospective licensees for CSS who express an interest to obtaining a license are directed to follow the procedures set forth on the DVD CCA Website. The process for obtaining a license to CSS is set forth step by step on the Website, and has not changed in any material respect since RealNetworks, Inc. ("Real") went through the process in 2007.

8. The DVD CCA Website provides substantial information about the background, history and purpose of CSS and the DVD CCA. The Website Homepage lists chronological announcements of the DVD CCA dating back to 1999, when the DVD CCA was formed and began administering the CSS license. One of the first links that appears on the Website Homepage takes the prospective licensee to a list of Frequently Asked Questions ("FAQs") about CSS and DVD CCA. This material includes a synopsis of the CSS technology and its purpose. True and correct printouts of the Homepage and the FAQs are attached hereto, respectively as **Exhibits A and B**.

9. A prospective licensee can obtain all of the necessary information about the CSS licensing procedures from the Website, which includes downloadable documents and other

materials. The prospective licensee can begin the licensing process by selecting one of several links or buttons appearing on the Homepage, including the "CSS" tab or link at the top of the Homepage. The CSS link takes the user to the "Content Scramble System (CSS)" page of the Website. A true and correct printout of the "Content Scramble System (CSS)" page is attached hereto as **Exhibit C**.

10. The "Content Scramble System (CSS)" page provides an overview of the licensing process and specifically directs prospective licensees how to proceed, depending on what type of implementation of CSS the prospective licensee has in its plans. For example, prospective licensees with plans to become CSS Disc Formatter Manufacturers, DVD Player Manufacturers, DVD Drive Manufacturers, CSS Decryption Module Manufacturers, Descrambler Manufacturers, Authenticator Module for DVD Drive, Authenticator Module for CSS Decryption Module, Verification Product Manufacturers, and/or Integrated Products Manufacturers are directed to select the "Process C" hyperlink (located at the bottom of the page) for further steps.

11. Upon selecting the Process C hyperlink, the prospective licensee is sent to a page designed to collect basic information (name, address, phone number, etc.) about the entity that is inquiring about a license to CSS. A true and correct printout of the Process C inquiry page is attached hereto as **Exhibit D**.

12. After providing the information called for by the inquiry page, the prospective licensee is taken to the part of the Website entitled "CSS Download Area." The CSS Download Area provides step by step instructions and contains links to the following documents: (1) the standard "CSS License Agreement" (Version 1.2), (2) the operative version of the CSS Procedural Specifications, (3) an Inquiry Sheet, and (4) an Application Process Flow Chart. (My declaration addresses the CSS License Agreement document and CSS Specifications applicable to Real below, in paragraphs 19-24). A true and correct printout of the "CSS Download Area" page is attached hereto as **Exhibit E**.

13. A true and correct copy of the Application Process Flowchart is attached as **Exhibit F**. The Application Process Flowchart elaborates on the step by step process that appears on the CSS Download Area page.

14. The first step in the process includes a requirement that the prospective licensee must complete and sign two copies of the CSS License Agreement document. Completing the CSS License Agreement document includes filling in "Exhibit C," which is the form that the licensee uses to indicate which CSS Membership Categories it chooses to join and to indicate that it wishes to purchase certain "CSS Specifications" (defined in Section 1.13 of the CSS License Agreement (*see* Exhibit K, below)) referred to as "Technical Specifications" (defined in Section 1.42 of the CSS Procedural Specifications (*see* Exhibit P, below)). The CSS Membership Categories are identified on "Exhibit C" to the CSS License Agreement and are explained in detail in a document entitled "CSS Membership Categories" that is linked to the Content Scramble System page (*see* Exhibit C, above). A true and correct copy of the CSS Membership Categories document is attached as **Exhibit G**, which I am informed and believe was also produced by Real in this case, labeled Real 001731-33.

15. In addition to sending DVD CCA two copies of the executed and completed CSS License Agreement Document, the prospective licensee sends in a completed Inquiry Sheet. A true and correct copy of a blank Inquiry Sheet from the Website is attached hereto as **Exhibit H**.

16. As indicated in the Application Process Flow Chart, upon receipt of the Inquiry Sheet and the signed and completed CSS License Agreement document, DVD CCA verifies the completeness and validity of the information provided. This verification and validation is carried out by LMI staff. Next, LMI staff send a DVD CCA invoice via e-mail to the prospective licensee.

17. The prospective licensee then pays the invoice, and upon verification of payment receives licensee status. Also upon verification of payment, the licensee is sent (1) CSS License Certificates (for applicable Membership Categories); (2) a countersigned CSS License Agreement Document, (3) a document entitled General Description of the DVD Content Scramble System, and (4) applicable Confidential and Highly Confidential Information, which includes portions of the CSS Specifications applicable to the licensee's selected Membership Categories.

18. My review of Real's file indicates that Real became a CSS licensee by following the standard application and licensing processes discussed above. DVD CCA records maintained

by LMI show that a person named Nicole Hamilton of Real contacted DVD CCA licensing administrators with LMI on June 18, 2007. Our response on June 19, 2007 directed Real to follow the application process set forth on the Website and provided Real with key licensing information (also available on the Website). A true and correct copy of the e-mail chain is attached as **Exhibit I** (Real 42558-61) (without attachments since they are included as exhibits separately). Exhibit I shows that we attached to one of our responses a copy of the CSS License Agreement document (*see* Exhibit J, below), the (then current) CSS Procedural Specifications (*see* Exhibit P, below (current version)), and a copy of the CSS Membership Categories document that is referenced above as Exhibit G. (*See* Exhibit I at Real 42559-60).

19. DVD CCA's records show that Real submitted an executed CSS License Agreement dated August 13, 2007, which was countersigned by then President of the DVD CCA, John Hoy, on August 23, 2007. A true and correct copy of the CSS License Agreement executed by DVD CCA and Real, with Exhibits, is attached hereto as **Exhibit J** (Real 1411-44; 1824-27; 1881; 1864; 1884; 1887; 1890-92; 1901-10; 2855) .

20. "Exhibit C" to Real's CSS License Agreement shows that it initially joined the following CSS Membership Categories: (1) Descrambler Manufacturer; and (2) Authenticator Module for CSS Decryption Module Manufacturer. The same "Exhibit C" shows that Real chose to purchase a Series 609 Technical Specification and a Series 809 Technical Specification, which are specific to the Descrambler Manufacturer and Authenticator Module for DVD CSS Decryption Module Manufacturer Membership Categories, respectively. When DVD CCA issues Technical Specifications, it assigns a serial number to each of the documents that is unique to the licensee and prints the serial number in the footer of the document along with the name of licensee. *See* Exhibits L-O below.

21. On September 11, 2007, Real acknowledged receipt of certain documentation DVD CCA delivered to it in accordance with DVD CCA's standard licensing practice, including the following CSS Specifications identified by uniquely assigned serial numbers and reflecting Real's corporate name, the classification of the document as "Confidential" or "Highly Confidential" information under the CSS License Agreement in parentheses: (1) GEN-05316

(Confidential); (2) 609-05099 (Confidential); (3) 609-05099 (Highly Confidential); (4) 809-05083 (Confidential); and (5) 809-05083 (Highly Confidential). Attached hereto as **Exhibit K** (Real 1831) is a true and correct copy of the Receipt of Documents form reflecting receipt of the above referenced CSS Specifications by Real. Later, Real joined an additional Membership Category – Authenticator Module for DVD Drive Manufacturer -- and purchased a corresponding Technical Specification for that particular category, which was delivered with the following serial number designation: 709-05030 (Confidential) and 709-05030 (Highly Confidential). See Exhibit O, below.

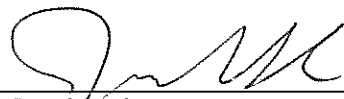
22. The CSS Specifications identified in the previous paragraph are Technical Specifications, all of which belong to Version 1.10, are dated November 2000, and share a common format and visual features. The chart below lists CSS Specifications applicable to Real as of September 30, 2008 by reference to serial number (if applicable), title, the document label numbers assigned to them by Real in this case, and by Exhibit to this declaration:

Serial No.	CSS Specification Title	Production Label	Exhibit
GEN-05316	CSS General Specifications ("General Specifications") (Confidential)	Real 1321-47	<b>L</b>
609-05099	DVD Video Descrambler ("Descrambler Specifications") (Confidential / Highly Confidential)	Real 1446-83	<b>M</b> <b>(Confidential Only)</b>
809-05083	Authenticator Module for CSS Decryption Module (Confidential / Highly Confidential)	Real 1279-1314	<b>N</b> <b>(Confidential Only)</b>
709-05030	Authenticator Module for DVD Drive (Confidential / Highly Confidential)	Real 1241-1278	<b>O</b> <b>(Confidential Only)</b>
NA	CSS Procedural Specifications Version 3.1 (Not Confidential)	DVD016760-824	<b>P</b>

23. The General Specifications are automatically sent to licensees that sign up for the Membership Categories Real joined. Because the General Specifications are CSS Specifications that are generally applicable across numerous CSS Membership Categories, they are provided free of charge.

24. Under The CSS License Agreement (Exhibit J), that CSS License Agreement document itself and the CSS Specifications identified in the chart above (relevant portions of which are attached as Exhibits L-P) make up the "Agreement" between Real and DVD CCA.

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct and that this declaration was executed at Morgan Hill, California, this 18th day of March, 2009.

  
\_\_\_\_\_  
Jacob Pak