

1 GLENN D. POMERANTZ (SBN 112503)
 Glenn.Pomerantz@mto.com
 2 BART H. WILLIAMS (SBN 134009)
 Bart.Williams@mto.com
 3 KELLY M. KLAUS (SBN 161091)
 Kelly.Klaus@mto.com
 4 MUNGER, TOLLES & OLSON LLP
 355 South Grand Avenue, 35th Floor
 5 Los Angeles, CA 90071-1560
 Tel: (213) 683-9100; Fax: (213) 687-3702
 6

ROBERT H. ROTSTEIN (SBN 72452)
 rxr@msk.com
 ERIC J. GERMAN (SBN 224557)
 ejg@msk.com
 MITCHELL SILBERBERG & KNUPP LLP
 11377 West Olympic Boulevard
 Los Angeles, California 90064-1683
 Tel: (310) 312-2000; Fax: (310) 312-3100

7 GREGORY P. GOECKNER (SBN 103693)
 gregory_goeckner@mpaa.org
 8 DANIEL E. ROBBINS (SBN 156934)
 dan_robbins@mpaa.org
 9 15301 Ventura Boulevard, Building E
 Sherman Oaks, California 91403-3102
 10 Tel: (818) 995-6600; Fax: (818) 285-4403

11 Attorneys for Motion Picture Studio Plaintiffs/Declaratory
 Relief Claim Defendants
 12
 13

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA

16 REALNETWORKS, INC., et al.,
 17 Plaintiffs,
 18 vs.
 19 DVD COPY BATES ASSOCIATION,
 INC., et al.
 20 Defendants.
 21

CASE NO. C 08-4548-MHP

PUBLIC REDACTED VERSION:
SUPPLEMENTAL DECLARATION OF
JONATHAN H. BLAVIN IN SUPPORT OF
STUDIO PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

Date: April 24, 2009
 Time: 9:00 a.m.
 Ctrm: 15 (Hon. Marilyn Hall Patel)

22 UNIVERSAL CITY STUDIOS
 23 PRODUCTIONS LLLP, et al.,
 24 Plaintiffs,
 25 vs.
 26 REALNETWORKS, INC., et al.
 27 Defendants.
 28

CASE NO. C 08-4719-MHP

1 2000), dated January 7, 2000.

2 5. Attached hereto as Exhibit 12 is a true and correct copy of the press
3 release, "RealNetworks Introduces RealDVD: The Best Way to Watch DVDs," available at
4 <http://www.realnworks.com/company/press/releases/2008/realdvd.html>, dated September 8,
5 2008.

6 6. Attached hereto as Exhibit 13 is a true and correct copy of the press release
7 "Survey: Consumers Demanding More from Their DVD Collections," available at
8 http://www.nclnet.org/news/2009/dvd_survey_04062009.htm, dated April 6, 2009.

9 7. Attached hereto as Exhibit 14 is a true and correct copy of the
10 Supplemental Declaration of Dr. John P.J. Kelly in Support of Studios' Motion for Sanctions for
11 Spoliation of Evidence, filed in this action, dated March 17, 2009.

12 I declare under penalty of perjury under the laws of the United States and
13 California that the foregoing is true and correct and that this Declaration was executed this 10th
14 day of April 2009, in San Francisco, California.

15
16 */s/ Jonathan H. Blavin*
17 _____
18 JONATHAN H. BLAVIN
19
20
21
22
23
24
25
26
27
28

REDACTED

EXHIBIT 1

REDACTED

EXHIBIT 2

REDACTED

EXHIBIT 3

REDACTED

EXHIBIT 4

REDACTED

EXHIBIT 5

REDACTED

EXHIBIT 6

REDACTED

EXHIBIT 7

EXHIBIT 8

United States District Court
Northern District of California

Before The Honorable Marilyn Hall Patel

Real Networks,)
Incorporated,)
)
Plaintiff,)
)
vs.)
)
DVD Copy Control)
Associates, et al.,)
)
Defendant.)
_____)

No. C08-4548 MHP

COPY

San Francisco, California
Tuesday, October 7, 2008

Reporter's Transcript Of Proceedings

Appearances:

For Plaintiff
RealNetworks, Inc.
and RealNetworks
Home Entertainment,
Inc., :

Wilson, Sonsini, Goodrich & Rosati
One Market Street
Spear Tower, Suite 3300
San Francisco, California 94105

By: James A. DiBoise, Esquire
Colleen Bal, Esquire
Michael A. Berta, Esquire
Tracy Tosh Lane, Esquire
Bryan Ketroser, Esquire

Reported By: Sahar McVickar, RPR, CSR No. 12963
Official Reporter, U.S. District Court
For the Northern District of California

(Computerized Transcription By Eclipse)

1 Appearances, continued:

2 For Defendant
3 DVD Copy Control
4 Association and
5 Disney Enterprises,
6 Inc.,:

Munger, Tolles & Olson
355 South Grand Avenue, 35th Floor,
Los Angeles, California 90071

By: Bart Harper Williams, Esquire
Kelly Max Klaus, Esquire

7 Motion Picture Association of America
8 15301 Ventura Boulevard, Bldg. E
9 Sherman Oaks, California 91403

By: Dan Robbins, Esquire
Gregory Goeckner, Esquire

10 Mitchell Silberberg & Knupp, LLP
11 11377 West Olympic Boulevard
12 Los Angeles, California 90064

By: Robert H. Rotstein, Esquire

13 Also Present:

Robert Kimball, Esquire
Senior Vice President/General Counsel
RealNetworks, Inc.

14 Bill Way, Esquire
15 Vice President/Deputy General Counsel
16 RealNetworks, Inc.

17
18 ---o0o---

19
20
21
22
23
24
25

1 permanent copy on that user's hard drive.

2 *THE COURT:* Which is not the case when you play a
3 DVD in a regular DVD player. Once you take it out, it's gone,
4 right?

5 *MR. DIBOISE:* Right, but you have the DVD.

6 *THE COURT:* Well --

7 *MR. DIBOISE:* There is no difference, Your Honor.

8 *THE COURT:* You have the DVD, yes.

9 *MR. DIBOISE:* Yes. And all those protections that
10 were on the --

11 *THE COURT:* Or I suppose if you rent it, you don't
12 have the DVD, right?

13 *MR. DIBOISE:* You had it at the time you watched
14 it --

15 *THE COURT:* Yeah.

16 *MR. DIBOISE:* And, at the time you made the copy.

17 *THE COURT:* And now that it resides on your hard
18 drive, you can give back the DVD, but you will have it forever,
19 right?

20 *MR. DIBOISE:* To -- yes, to watch, not to do
21 anything else with.

22 *THE COURT:* Except that, except that you can use, by
23 way of your external hard drive or thumb drive, or whatever,
24 what, for an additional \$19.99 you can copy it, correct?

25 *MR. DIBOISE:* To an account that is authorized to

1 be a rush to market. You could have waited to have that
2 decision made. Having only been out in the market a short
3 period of time, I think the harm is far less to RealNetworks in
4 this case than it would be to having who knows how many copies
5 out there, which might then be found to be unauthorized copies.

6 And, it's not very persuasive to say, well, you see,
7 you know, you're not saying maybe we're legitimate, you're
8 saying you are legitimate but comparing yourselves to all those
9 illegitimate companies out there. And this ought to be looked
10 at more favorably because you've got all those other people who
11 are ripping and doing these illegal things, and, therefore, I
12 should, apparently, in looking at the balance of hardships and
13 looking at whether -- you know, who is going to suffer the
14 greater injury, looking at the fact that you're apparently
15 going to supplant some part of the illegal market.

16 The problem is that there are serious questions here
17 about copyright violations, about DMCA violations, violations
18 of this contract, by a company who rushed to market and didn't
19 wait for any kind of an adjudication, by a company that can
20 stop right now, early in the inceptions of what it's doing,
21 rather than having us trying to figure out, down the road, how
22 many copies, and something that may be very difficult to
23 determine, how many copies of copyrighted material are out
24 there, and what the injuries are that are sustained as a result
25 of that.

CERTIFICATE OF REPORTER

I, Sahar McVickar, Official Court Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing. The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

/s/ Sahar McVickar

Sahar McVickar, RPR, CSR No. 12963

October 9, 2008

REDACTED

EXHIBIT 9

REDACTED

EXHIBIT 10

EXHIBIT 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

REALNETWORKS, INC.,

Plaintiff,

v.

STREAMBOX INC.,

Defendant.

) Docket No. C 99-2070 P

) Seattle, Washington

BEFORE THE HONORABLE MARSHA J. PECHMAN, UNITED STATES DISTRICT
JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JANUARY 7, 2000

APPEARANCES:

For the Plaintiff:

JAMES DiBOISE
ROB STEWART
DAVID KRAMER

For the Defendant:

ROBERT CARLSON
CHUN NG

Court Reporter:

Laurene Kelly, RDR, CRR
Room 600
1010 Fifth Avenue
Seattle, WA 98104
(206) 553-1899

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

ORIGINAL

WITHOUT REPORTER'S ORIGINAL SIGNATURE
THIS TRANSCRIPT IS NOT CERTIFIED

44

1 talk about who's going first.

2 MR. DiBOISE: How about the moving party?

3 MR. CARLSON: Have at it.

4 THE COURT: All right.

5 MR. DiBOISE: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. DiBOISE: The Internet is in a sense a new
8 development and a new mechanism for permitting the distribution
9 of information and communication among many people in varied
10 locations.

11 With the advent of the Internet it became possible to
12 broadcast sound recordings, video recordings, any type of
13 speech in a digital format that sounded better than the format
14 that was available over the analog radio and television
15 broadcast signals. Because of the Internet's ability to
16 distribute content throughout the world, people were interested
17 in making certain that content was available for people to
18 view. The end user, the listener, the viewer wanted to see as
19 much content as possible.

20 But content owners were worried. They were worried
21 because if the end user got digital copies or received a
22 digital signal of their works subsequent copies could be made
23 without any degradation of the signal or the work itself.

24 So the clear analogy would be if you tape a
25 television program broadcast freely over the airwaves and you

1 tape it on your VCR you get an analog copy of what was
2 transmitted. If you then try and copy that copy, the signal
3 degrades. The copy degrades. And you can't make additional
4 near perfect copies.

5 Unlike that analog copy, digital copying makes near
6 perfect copies, and that's the great fear that content owners
7 have, that someone can take their signal, take the recording,
8 and literally remaster it and be able to distribute copies
9 throughout the world.

10 The incentive to create is impacted by the inability
11 of content owners to control that copy. What people want to do
12 on the one hand is to make works that people will buy, and if
13 they can't control the distribution of that work then they lose
14 the right that's granted them under the Copyright Act to
15 control the distribution and sale of their works.

16 This tension between what an end user wants to see
17 and what content owners are willing to provide freely led to
18 the debates that led to the creation of the Digital Millennium
19 Copyright Act, and it's that tension between end users wanting
20 to see content freely and in good quality and content owners
21 who want to protect the right to distribute their work that led
22 to the compromise that's embodied in the Digital Millennium
23 Copyright Act.

24 The Digital Millennium Copyright Act that we're
25 talking about here, Sections 1201 A 2 and 1201 B, really

1 address not the issue of copying but the protections that
2 content owners place on their recordings to prevent copying.
3 And that's an important distinction, given the opposition that
4 Streambox has made to RealNetworks' motion, and it's important
5 because there is no fair use defense to the Digital Millennium
6 Copyright Act and that there is no fair use, there is no right
7 to copy a digital stream like there is a right to copy the
8 analog stream that either can emanate from their speakers or
9 over the broadcast airwaves. And the reason there is no fair
10 use right to do that is because the Digital Millennium
11 Copyright Act said, you can't do it. Congress has made that
12 decision for us.

13 So if you really step back from this case and look at
14 it in its first blush characteristic, if there is no right to
15 copy, there is no fair use in making a copy, then the case
16 becomes fairly simple. You look at what Streambox has done
17 with its VCR, its Ripper, and its Ferret, the VCR and the
18 Ripper, and compare that to the Digital Millennium Copyright's
19 prohibitions, and you see that in fact they violate the act.

20 I want to save the Ferret because I want to use a
21 graphical exhibit to show you, I think, what really happens
22 here and may help you understand it a bit better. But to
23 answer your first question about how the Internet and the
24 Digital Millennium Copyright Act interact, that's the basic
25 understanding, is that it's this tension between being able to

1 mix and match the ability to take Aretha Franklin and mix it
2 with the Beatles?

3 MR. DiBOISE: They could do that. You could
4 basically take down -- if you could find the source files in an
5 unprotected format or if you could find sites that streamed
6 every song you wanted to listen to, you can make your own CD
7 without ever paying any copyright royalties to any of the
8 artists through these products.

9 What you do is you stream the first song you want to
10 hear, use the VCR to grab it, make a copy of it, translate it
11 into a whatever format, and then use a CD burner, CD writer to
12 write it onto a CD ROM drive that would literally make the CD
13 disk you put into your car player or into your Walkman. And
14 again it's taking the rights of the copyright holder, the
15 content owner, and depriving them of the ability to achieve the
16 royalties they would ordinarily get from buying a copy of their
17 CD.

18 The Ripper lets you do whatever you want to do with
19 the content owner's content, with the copyrighted material, and
20 the Copyright Act said that's a right that's reserved to the
21 copyright holder. It's the creation of these derivative works.
22 Changing the format creates a derivative work. It creates a
23 different form than the content owner has given you permission
24 to listen to. And those acts are taken in derogation of their
25 rights.

1 And that's what Section 1201 B of the DMCA says you
2 can't do. You cannot manufacture a device that is primarily
3 used to do that. You can't do it. And that's why I say the
4 case becomes very simple after you understand what it is
5 they're doing and what use people make of these products, to
6 see that if you'd simply apply those facts to the statute the
7 conclusion is inescapable. They violate the act.

8 The Ferret is different because it violates the
9 Copyright Act itself and RealNetworks' own copyright in the
10 RealPlayer software. That is a direct violation of the
11 Copyright Act and not the violation of the DMCA, but again it's
12 the same right of the content holder to be able to determine
13 the derivative works that Ferret interferes with.

14 We've submitted declarations from many content owners
15 detailing why it is they chose to use RealNetworks' products in
16 providing their protected works over the Internet. They only
17 chose to put those works on the Internet under the assumption
18 that someone could not copy them, change the format, and then
19 freely redistribute them. And that's exactly what the VCR and
20 the Ripper do.

21 And it's for that reason that those products need to
22 be enjoined and removed from the marketplace, because they
23 violate the act. 1203 gives you the authority to enjoin them.

24 And it's clear that irreparable injury is occurring
25 every day that someone can rip off the content owner's

1 recording and give it -- even if they give it to their friends
2 it's still in derogation of the copyright holder's rights.

3 1201 A 1 again controls the access, the secret
4 handshake. 1201 B is a provision that says you cannot
5 circumvent any copy-protected feature.

6 Our papers talk about a lot of rebuttal to what
7 Streambox has submitted in its opposition. I don't want to
8 repeat that here. I do want to emphasize one important point,
9 though. A lot of time has been spent, a lot of declarations
10 have been submitted by Streambox detailing what they contend is
11 a fair use of and what's protected by fair use.

12 The DMCA does not have a fair use exception. All it
13 has and part of the compromise that was engaged in in Congress
14 is a list of specific exemptions of the act, and they're all in
15 the act, 1202 -- I think 1201 and the letters I think starts
16 with K through M or N are the specific exemptions. 1203 or
17 1201 A 3 says that this act doesn't change the fair use law.
18 It doesn't say we're importing the fair use doctrine into the
19 DMCA.

20 All it says is that this statute, this modification
21 to the Copyright Act doesn't change the actual fair use
22 doctrines applied to actual infringement under the Copyright
23 Act, a different analysis, and it's that analysis that the
24 Court, the Supreme Court considered in the Sony Betamax case.
25 It did not have in the Sony Betamax case this direct indication

1 the DMCA -- doesn't really enter into the equation. The
2 statute says you may not defeat the circumvention, the access
3 control, and that's what VCR does. Its only purpose in life is
4 to enable somebody to copy a RealNetworks stream.

5 THE COURT: Well, counsel, your opposition has
6 basically outlined radio stations. They want their material to
7 be listened to.

8 MR. DiBOISE: You can broadcast and you can listen to
9 the stream. Sitting at your computer. Just like you can sit
10 in front of your radio or sit in your car or sit wherever you'd
11 like to sit and listen to your radio. Absolutely no
12 prohibition.

13 THE COURT: But doesn't the VCR simply allow you time
14 shift the way the other case law --

15 MR. DiBOISE: Time shifting doesn't apply to the
16 DMCA, because in order to time shift you have to make a copy,
17 and the whole act was designed to make certain that products
18 could not be made, distributed that permit you to defeat the
19 access controls and the rights of the copyright holder to say
20 whether or not you can copy.

21 If someone broadcasts a recording, a speech, you
22 could stick a microphone in front of your speaker and make an
23 analog copy of it, or you can make even a digital copy of the
24 analog stream, the analog sound coming out of the speaker.

25 But the real threat, the reason the DMCA was enacted

1 was to deal with the fact that there were digital streams that
2 permitted digital copying that would create copies that would
3 be perfect copies, and the tension that was struck between end
4 users who wanted to make those copies and the content owners
5 who wanted to prohibit those copies is what resulted in the
6 DMCA.

7 So when counsel says to you that there is no law,
8 there is nothing that stops an end user from making a copy of a
9 broadcast stream, he's wrong. The DMCA says you can't do it.
10 And if we go back to -- this VCR, this box here exists only to
11 replace this box, and it's this box that performs all of the
12 circumvent -- all of the access control defenses and the copy
13 defenses.

14 The content holder makes the decision that it wants
15 to encode, to modify its work into a protected file format, the
16 RealAudio file format. And it's that format that is broadcast.

17 If the content owner wanted to allow you to make a
18 copy, to download, to do whatever you wanted to do with their
19 work, there are lots of open formats they could choose to
20 record and distribute their content. MP3 is an example. If
21 the Backstreet Boys wanted you and everybody else in the world
22 to be able to download for a limited period of time or forever
23 a snippet of a song or a complete song, they could post it on a
24 server and allow you to download a MP3 file. But they didn't.

25 The people who have .RA files, the people who choose

1 to encode, to protect their copyrighted works by making them
2 into a RealAudio file, chose to do so, and it's their right
3 under the Copyright Act to protect that work and to protect it
4 from reproduction or the creation of derivative works. And
5 clearly changing the file format, changing the ability to make
6 derivative works copies and changing it from a .RA file to a
7 MP3 file is the right of the content owner, not the end user.

8 What you hear today from Streambox's counsel and
9 Streambox is I'm the end user. I want what I can get. And I
10 don't care if it's in derogation of the rights of the content
11 holder, the copyright holder, because that's what they have
12 said. They have said if it's broadcast it should be mine.

13 Well, in the Sony decision there are some aspects of
14 that, and there was some testimony and there was some evidence
15 that the Supreme Court considered that the content owners
16 weren't offended by the notion of time share.

17 But this is different. Here we have content owners
18 who have seen the statute, who were there at the birth of the
19 statute and the debates in Congress as to what the statute was
20 going to say, and who have now made available for streaming
21 purposes their content under the belief that it will be
22 protected. And it would be protected but for the VCR and the
23 Ripper.

24 The point is that they have made the choice, the
25 copyright holder has made the choice, has come to RealNetworks

1 and has said, we're going to use your services to protect our
2 material so that it can be streamed so we don't have to worry
3 about it being copied, and what they have now is a device, what
4 they see themselves faced with now is a device that circumvents
5 the access control and circumvents the copy protection features
6 which are reserved to the copyright holder.

7 Those two things are exactly what Section 1201 A 2
8 prevents and 1201 B prevents of the Digital Millennium
9 Copyright Act. That's what that law was designed to do. It
10 was enacted after the Sony decision and it was enacted after
11 much debate.

12 It's not a question of Congressional intent. It's
13 clearly in the statute. There is no fair use to circumvent
14 access controls or copy protection features. All the fair use
15 that we're talking about is if you happen to get a copy of a
16 file you can make another copy of that file, but it doesn't say
17 it's fair to try and defeat my protections that I've built into
18 that broadcast to make a copy. It is not fair to do that,
19 because the DMCA says you're not allowed to do it.

20 And it's a different -- apples and oranges when you
21 talk about fair use. There is no fair use to circumvent.
22 There is fair use to make use of works that have been broadcast
23 and you have a copy of them.

24 Again the distinction comes back to analog copies
25 versus digital copies. There is a greater fear. Congress made

1 THE COURT: Let me advise you of that. I'll do that
2 through Mr. Ward.

3 MR. DiBOISE: Thank you.

4 THE COURT: Okay. Counsel, I have a continuation of
5 a suppression hearing that's going on here. The marshals, I'm
6 sure, are waiting to get in. So if I could have you vacate as
7 quickly as possible. I don't mean to give you the bum's rush,
8 but I need to have the courtroom. We'll be at recess.

9 (At 11:02 a.m. proceedings were adjourned.)

10 --oOo--

11 I certify that the foregoing is a correct transcript
12 from the record of proceedings in the above-entitled matter.

13
14

Laurene Kelly

15 This 9th day of JANUARY, 2000.
16
17
18
19
20
21
22
23
24
25

EXHIBIT 12



Worldwide | Login | Contact Us

HOME

PRODUCTS & SERVICES

INDUSTRY SOLUTIONS

SUPPORT

COMPANY

2008 PRESS RELEASES

- ↑ Company
- ↑ Press Room
- Press Releases
- ⋮ 2008
- 2007
- 2006
- 2005
- 2004

REALNETWORKS INTRODUCES REALDVD: THE BEST WAY TO WATCH DVDS

RealDVD Lets Consumers Save, Organize and Watch DVDs On Their PC and On The Go

SAN DIEGO, CA, DEMOFall — September 8, 2008 — Digital entertainment services company RealNetworks® today unveiled RealDVD™, the first mainstream PC application allowing consumers to easily save their DVDs to their hard drive. RealDVD makes it easy to save DVDs to a PC or portable hard drive and watch them later without the physical discs. Unlike existing consumer applications on the market today, RealDVD is licensed DVD software that saves a secure copy of a DVD to the hard drive without removing or altering the CSS encryption.

"RealDVD gives consumers a great new way to get more out of their DVDs," said Rob Glaser, chairman and CEO of RealNetworks. "RealDVD continues in Real's tradition of consumer innovation over the past 15 years alongside RealAudio, RealJukebox, RealArcade, Rhapsody, and, most recently, RealPlayer 11."

RealDVD eliminates the hassle of searching through piles of DVD cases to find a missing disc and the disappointment of finding a favorite disc scratched and unplayable. Saving DVDs lets consumers create a valuable back-up copy of their digital library on their computer or portable drive for playback at home or on the road. RealDVD is ideal for traveling on business or entertaining the kids on a long trip with instant access to a variety of content and no physical discs to manage. Laptop users will appreciate improved battery life as the disc drive is no longer needed for video playback. Saving DVDs to portable hard drives creates an easy to manage personal library that is great for travel. Content saved to portable drives can be played on up to five machines licensed to an individual user.

Fast Facts:

- RealDVD saves an exact copy of the DVD image to a PC's internal or portable hard drive. Users can simultaneously watch and save a DVD
- Saved DVDs are then encrypted and locked again to make sure they cannot be shared or stolen
- Saving DVDs takes an average of 10-40 minutes, and takes up roughly 4-8 gigs of space
- RealDVD lets users pause and auto resume playback where they

left off

- DVDs saved on a portable hard drive can be played on up to 5 PCs per user with an authorized copy of RealDVD
- Watching a saved DVD uses less battery life than viewing content from a disc in the drive
- Browse cover art, genre, title rating and actor information, imported automatically during saving
- Parental controls ensure children only access entertainment that is appropriate for their age
- Fifty percent of U.S. broadband households have over 50 DVDs in their collections, and last year consumers spent more than \$16 billion purchasing DVDs (*According to TDG Reports & Screen Digest*)
- Hollywood shipped 1.1 billion DVD discs in 2007 — nearly 30 million more than in 2006 (*According to Screen Digest*)

In 1995 RealNetworks gave the Internet a voice with the first-ever Internet broadcast via the release of the RealAudio® Player, an innovation that garnered Real a coveted Emmy Award® by The National Academy of Television Arts & Sciences. Two years later RealNetworks became the first to bring streaming video to the Web with RealPlayer®, and followed that innovation with RealJukebox®, one of the first products allowing consumers to save their CDs to PCs, build media libraries and transfer to devices. Last year Real re-introduced a new version of RealPlayer, featuring a consumer-friendly download button that made it one-click simple to save Web video. RealDVD is the next step in bringing video entertainment to the PC.

RealDVD will be available this month from www.realdvd.com. Consumers can register to be one of the first to receive RealDVD for a limited-time discount offer of \$29.99 (\$20.00 off the retail price of \$49.99). Additional licenses [up to 4] are available at a discounted price of \$19.99.

ABOUT REALNETWORKS

RealNetworks, Inc. delivers digital entertainment services to consumers via PC, portable music player, home entertainment system or mobile phone. Real created the streaming media category in 1995 and has continued to lead the market with pioneering products and services, including: RealPlayer®, the first mainstream media player to enable one-click downloading and recording of Internet video; the award-winning Rhapsody® digital music service, which delivers more than 1 billion songs per year; RealArcade®, one of the largest casual games destinations on the Web; and a variety of mobile entertainment services, such as ringback tones, offered to consumers through leading wireless carriers around the world. RealNetworks' corporate information is located at www.realnetworks.com/company.

EXHIBIT 13

about NCL» publications» NCL news» join NCL» search» contact us»

releases & advisories

NCL news



Survey: Consumers Demanding More from Their DVD Collections

Near-Unanimous Agreement: Consumers Believe Backing up DVD Content is a Right; Many Bothered by Inability to Do So

Release Date: April 6, 2009

Contact: 202-835-3323, media@nclnet.org

Washington, DC—Americans' attitudes towards DVDs are evolving and driving expectations about their use, according to a new survey released today by the National Consumers League. The Opinion Research Corporation survey of 1,000 consumers, aged 18-64, who own a personal computer, conducted March 11-16, finds that—amidst a backdrop of a slowing market and troubled economy, when consumers' satisfaction may be more important than ever—Americans are overwhelmingly interested in the ability to copy or back up their DVDs to their computers and laptops.

With 69 percent of respondents reportedly watching DVDs on their computers, and with more than a third saying they've had to repurchase lost or damaged DVDs in the past, consumers are resoundingly interested in the ability to back-up their DVD content. According to the survey, 90 percent (and 93 percent of those with children in the household) agree that DVD owners should be able to copy a DVD to their computer in the same way that they save music from a CD.

For years, consumers have been able to freely copy and back up the content on their compact disc (CD) collections to their hard drives and other devices. Given the growing availability of affordable hard drives capable of storing the contents of multiple DVDs, NCL wanted to examine whether the expectation of freedom of usage from the CD market is translating to the consumer DVD market.

Consumers currently have limited options for saving the contents of most commercial DVDs to their computers, whether for back up purposes or simply so that they can easily access their DVD library without carrying around the actual discs. Some "expanded" editions of DVDs, which are usually sold at an additional cost, come with the ability to save an additional copy to a computer. NCL, the nation's oldest consumer advocacy group, commissioned the study to examine consumers' opinions related to the entertainment content stored in their DVD collections.

"Clearly, advances in technology have left consumers expecting a great deal of freedom when it comes to movies that they've purchased," said Sally Greenberg, NCL Executive Director. "Consumers' attitudes towards saving content have been shaped by their ability to freely copy the contents of their CD collections to their computers and iPods. Our survey shows that they are eager to have that same ability with their DVDs and are frustrated that the market has not adapted to meet that desire."

Survey Highlights: DVDs are in widespread use beyond the TV set

More than a third (35 percent) of consumers surveyed reported owning more than 50 DVDs, with the average household owning 78 DVDs, but consumers are no longer exclusively using a conventional television-and-DVD-player configuration:

- 69 percent of respondents—and 74 percent of those with children—reported that they (or members of their family) use a computer to watch DVDs.
- Nearly a third of respondents (31 percent) use a portable or in-car DVD player regularly. For respondents with children in the household, portable DVD players are even more common, with 40 percent reporting regular use.
- More than a third (38 percent) of respondents reported that they have had to repurchase at least one DVD because it was lost or damaged. For respondents with children in the household, this number increased to 45 percent.

“Consumers are taking their DVDs on the road with them,” said John Breyault, NCL’s Vice President for Public Policy, Telecommunications and Fraud. “With the growth in popularity and affordability of hand-held and car-based DVD players and video-capable MP3 players, when and where consumers watch movies has changed dramatically.”

Survey Highlight: Consumers indicate a high desire to copy DVDs

While the majority of consumers (82 percent) have never saved a copy of a purchased DVD to their computers’ hard drives, and a small number (4 percent) has tried and failed, respondents demonstrated overwhelming interest in being able to do so:

- Nearly all (90 percent; 93 percent with kids in the house) say DVD owners should be able to copy a DVD to their computer in the same way that they save music from a CD.
- Half of those surveyed (51 percent) were bothered that they can’t save most DVDs to their hard drives without cracking the encryption or purchasing an expanded version of the DVD; these numbers were higher among those respondents with children in the household (56 percent) or between the ages of 25 and 34 (67 percent). In this age group, 92 percent think they should have this right.
- Nearly half (46 percent) of those who said they should be able to save a copy of a DVD onto their hard drive have had to repurchase DVDs due to loss or damage.

Survey Highlight: The economy and the DVD Market - Is there a further slow-down ahead?

While the great majority of consumers (89 percent) are satisfied with the value they are getting out of the DVDs they purchase, many reported that the economy has changed their DVD buying habits:

- More than half of respondents (55 percent) said that they are currently purchasing fewer DVDs than they did a year ago.
- Four in ten (41 percent) said they expect to purchase fewer DVDs one year from now.
- However, 41 percent said the ability to save a copy of their DVDs to their computer or laptop would make their DVD collections more valuable, and 40 percent said it might cause them to buy more DVDs.

For complete survey results, including an executive summary and a copy of the questionnaire, visit www.nclinet.org/drm. The National Consumers League thanks RealNetworks for the unrestricted

educational grant that made this survey possible.

###

About the National Consumers League

Founded in 1899, the National Consumers League is America's pioneer consumer organization. Its mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. NCL is a private, nonprofit membership organization. For more information, visit www.nclnet.org.

Survey Methodology

1,000 online surveys were administered to adults 18-64, who personally own a desktop or laptop computer, between Wednesday, March 11th and Monday, March 16th, 2009. Data was then weighted to better represent the national Internet population. Variables included in the weighting are gender, region, age, and race.

About Opinion Research Corporation

Opinion Research Corporation, an *infoGroup* company, has offered innovative solutions to the toughest market research challenges of clients worldwide since 1938. Since the 1960s, ORC has conducted CARAVAN®, the USA's longest continuously running consumer omnibus. In addition, the firm has been conducting national, speech reaction, state and flash/overnight polls for CNN since April 2006. To learn more, visit www.opinionresearch.com.

Fraud.org • LifeSmarts • StopChildLabor.org • SOSRx • Phishinginfo.org

EXHIBIT 14

1 GLENN D. POMERANTZ (SBN 112503)
 Glenn.Pomerantz@mto.com
 2 BART H. WILLIAMS (SBN 134009)
 Bart.Williams@mto.com
 3 KELLY M. KLAUS (SBN 161091)
 Kelly.Klaus@mto.com
 4 MUNGER, TOLLES & OLSON LLP
 355 South Grand Avenue, 35th Floor
 5 Los Angeles, CA 90071-1560
 Tel: (213) 683-9100; Fax: (213) 687-3702
 6

ROBERT H. ROTSTEIN (SBN 72452)
 rxr@msk.com
 ERIC J. GERMAN (SBN 224557)
 efg@msk.com
 MITCHELL SILBERBERG & KNUPP LLP
 11377 West Olympic Boulevard
 Los Angeles, California 90064-1683
 Tel: (310) 312-2000; Fax: (310) 312-3100

7 GREGORY P. GOECKNER (SBN 103693)
 gregory_goeckner@mpaa.org
 8 DANIEL E. ROBBINS (SBN 156934)
 dan_robbins@mpaa.org
 9 15301 Ventura Boulevard, Building E
 Sherman Oaks, California 91403-3102
 10 Tel: (818) 995-6600; Fax: (818) 285-4403

11 Attorneys for Defendants/Counterclaim-Plaintiffs/Plaintiffs
 12 COLUMBIA PICTURES INDUSTRIES, INC., DISNEY
 ENTERPRISES, INC., PARAMOUNT PICTURES CORP.,
 13 SONY PICTURES ENTERTAINMENT, INC., SONY
 PICTURES TELEVISION INC., TWENTIETH CENTURY
 14 FOX FILM CORP., NBC UNIVERSAL, INC., WALT
 DISNEY PICTURES, WARNER BROS.
 15 ENTERTAINMENT, INC., UNIVERSAL CITY STUDIOS
 PRODUCTIONS LLLP, UNIVERSAL CITY STUDIOS
 16 LLLP, AND VIACOM, INC.

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19

20 REALNETWORKS, INC., et al.,
 21 Plaintiffs,
 22 vs.
 23 DVD COPY CONTROL ASSOCIATION,
 INC., et al.
 24 Defendants.
 25

CASE NO. C 08-4548-MHP
**SUPPLEMENTAL DECLARATION OF DR.
 JOHN P. J. KELLY IN SUPPORT OF
 STUDIOS' MOTION FOR SANCTIONS FOR
 SPOILIATION OF EVIDENCE**

Ctrm: 15 (Hon. Marilyn Hall Patel)

26 AND CONSOLIDATED ACTIONS.
 27
 28

1 **SUPPLEMENTAL DECLARATION OF DR. JOHN P. J. KELLY**

2 I, Dr. John P. J. Kelly, declare as follows:

3 1. I have previously filed Declarations in this matter, on September 30, 2008; October 6,
4 2008; and February 25, 2009. I incorporate my background and credentials as summarized in
5 those previous declarations.

6 2. On March 10, 2009, my staff and I received a file named "ARccOS.zip" (the "Archive
7 File") from Munger, Tolles & Olson, LLP as an attachment to an email. I was informed that the
8 Archive File was produced by RealNetworks. I was also informed that RealNetworks contends
9 that the Archive File is corrupted by computer virus.

10 3. My testing and use of ARccOS.zip have indicated that neither the Archive File nor
11 any of the files contained therein are infected by a virus or otherwise corrupted. I have seen no
12 evidence that would have supported RealNetworks' contention to the contrary.

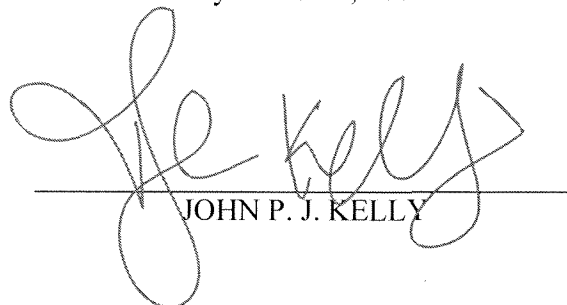
13 4. Upon receiving the Archive File, I scanned it with McAfee Total Protection Service
14 software, version number 4.7.0.538 Patch 003b, for any computer viruses. That software, which
15 was updated as recently as March 8, 2009 at 11:42:31 PM, did not detect any computer virus in
16 the Archive File, nor did it generate any other errors indicating corruption of the Archive File.

17 5. After the virus-scanner indicated that the file was not infected with any computer virus
18 or corrupted, I was easily and successfully able to extract all the files from the Archive File to a
19 folder. The resultant folder included several files and subfolders. I scanned the resultant folder
20 again with McAfee Total Protection Service software (mentioned above) for any computer virus.
21 The software did not detect any computer virus in any of the files in the folder, nor did it generate
22 any other errors indicating corruption of such files.

23 6. I was able to access all the files extracted from the "ARccOS.zip" Archive File. The
24 Archive File consists of several Microsoft-Windows-executable files such as
25 "SetupDVDDecrypter_3.5.4.0", which is the installer file for the DVD ripper program "DVD
26 Decrypter," as well as "FixVTS", "crc32" and "PgcEditPreview". In addition, there are text files
27 such as "psl2_install", which contains instructions to install the PSL2 (Anti-ARccOS) plug-in for
28 PgcEdit and DVD Decrypter, and "lgpl" which contains the GNU Lesser General Public License.

1 The Archive File also includes "psl2_plugin.tcl", a file that appears to be software associated with
2 a PSL2 plug-in written in the TCL scripting language. All of these files, and the others within the
3 Archive, were accessible and/or usable, and showed no signs whatsoever of corruption.

4 I declare under penalty of perjury under the laws of the United States that the foregoing is
5 true and correct and that this declaration was executed this 17th day of March, 2009 at Santa
6 Barbara, California.

7
8 
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JOHN P. J. KELLY