

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

12 Attorneys for Defendant and Counterclaimant
 13 DVD COPY CONTROL ASSOCIATION, INC.

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 nonprofit corporation, et al.
 22
 Defendants.
 23
 And Related Counterclaims.

Case No. C08 04548 MHP;
 C08 04719 MHP

**APPLICATION OF DVD COPY CONTROL
 ASSOCIATION, INC. TO SEAL
 HIGHLY CONFIDENTIAL VERSION OF
 RESPONSE MEMORANDUM IN SUPPORT
 OF MOTION OF DVD COPY CONTROL
 ASSOCIATION FOR PRELIMINARY
 INJUNCTION AND SUPPORTING
 DOCUMENTS**

- Lodged concurrently herewith:
- 1) [Proposed] Order Granting Application
 - 2) Documents Requested To Be Filed Under Seal

24
 25 AND RELATED CASES

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
26
27
28

Pursuant to Civil Local Rule 7-11 and 79-5, DVD Copy Control Association, Inc. (“DVD CCA”) respectfully applies for an order sealing the following documents:

- (1) Highly Confidential Version of Response Memorandum in Support of Motion of DVD Copy Control Association for Preliminary Injunction;
- (2) Exhibits 1 to 9 to the Declaration of Maria Ellinikos in Support of the Response Brief;
- (3) Declaration of John P.J. Kelly, Ph. D in Support of the Response Brief; and
- (4) Paragraph 4 to the Declaration of Jacob Pak in Support of the Response Brief.

A “compelling reason” exists to seal these documents. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (holding that “[a] party seeking to seal a judicial record . . . bears the burden of overcoming the ‘compelling reasons’ standard”); *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135-36 (9th Cir. 2003). The confidential material at issue divulges aspects of DVD CCA’s proprietary business, technical, and trade secret information regarding its Content Scramble System (“CSS”) technology. Additionally, the confidential material also divulges aspects of Real’s proprietary business, technical and trade secret information regarding RealDVD and its new platform. This material has been designated by Real as “confidential” or “highly confidential” pursuant to the protective order governing this litigation, and is thus being manually filed under seal.

This Application to Seal is narrowly tailored to protect the public’s interest in access to judicial records and the public policies favoring disclosure. *Kamakana*, 447 F.3d at 1178. DVD CCA has filed with the Court identical public redacted versions of the Response Memorandum in Support of its Motion for Preliminary Injunction, the Declaration of Maria Ellinikos in Support of the Response Brief and the Declaration of Jacob Pak in Support of the Response Brief.

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
26
27
28

For these reasons, the Court should grant the Application to Seal.

Dated: April 10, 2009

Respectfully submitted,
AKIN GUMP STRAUSS HAUER & FELD LLP
WHITE & CASE LLP

By _____/s/_____

Reginald D. Steer
Attorneys for Defendant and Counterclaimant
DVD COPY CONTROL ASSOCIATION, INC.