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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

14 REALNETWORKS, INC., a Washington
Corporation; and REALNETWORKS HOME
15 ENTERTAINMENT, INC., a Delaware
16 corporation,

17 Plaintiffs and Counterclaim
18 Defendants,

19 v.

20 DVD COPY CONTROL ASSOCIATION, INC.,
a Delaware nonprofit corporation, DISNEY
21 ENTERPRISES, INC., a Delaware corporation;
PARAMOUNT PICTURES CORP., a Delaware
22 corporation; SONY PICTURES ENTER., INC., a
Delaware corporation; TWENTIETH CENTURY
23 FOX FILM CORP., a Delaware corporation;
NBC UNIVERSAL, INC., a Delaware
24 corporation; WARNER BROS. ENTER., INC., a
25 Delaware corporation; and VIACOM, Inc., a
Delaware Corporation.

26 Defendants and Counterclaim
27 Plaintiffs.
28

CASE NO: C 08 04548 MHP

**SUPPLEMENTAL DECLARATION
OF GORDON L. KLEIN IN
OPPOSITION TO DEFENDANTS'
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE RE;
PRELIMINARY INJUNCTION**

**Date: October 7, 2008
Time: 2:00 p.m.
Courtroom 15, 18th Floor**

1 I, Gordon Klein, declare as follows:

2 1. I am a faculty member at UCLA's Anderson School of Management, where I
3 have taught 11 accounting, tax, business law, and entrepreneurship courses in the undergraduate
4 program and MBA Program since 1981. Specifically, I have taught small business management,
5 profit forecasting, market segmentation, and business plan development in forecasting sales,
6 incremental costs, consumer behavior, risk-adjusted discounting, and statistical analysis. I was a
7 faculty member from 1987 to 2000 at UCLA's Law School, where I taught courses in accounting,
8 taxation, and financial analysis. I taught similar courses as an Adjunct Professor in the LLM in
9 Taxation Program at Loyola Law School in Los Angeles, California during fall 2001 and 2002. I
10 am a member of the California Bar (inactive), admitted in 1979, and a C.P.A., certified in the state
11 of Illinois in 1979. I have conducted executive education seminars in financial and tax aspects of
12 business management to, among others, partners at PricewaterhouseCoopers, members of the
13 German Bundestadt governing body, and the Finance Committee of the People's Republic of
14 China. I have authored several books concerning managerial accounting, cost accounting,
15 introductory accounting, managerial finance, and statistics, as identified in my curriculum vita. I
16 earned a B.B.A. from the University of Michigan Business School in 1976, graduating Phi Beta
17 Kappa, and I earned a J.D. from the University of Michigan Law School in 1979. My curriculum
18 vita, including a list of my publications over the last ten years, is attached at the end of this report
19 as Exhibit 1.

20 2. I have served as an expert witness in various cases, including cases in Federal
21 Court and in Los Angeles Superior Court, and I have served as a Superior Court referee in Los
22 Angeles and Orange Counties in cases involving damages calculations. I have served as an expert
23 in the area of damages in many cases, several of which involve media and consumer behavior,
24 including *Redondo Beach v. Shoemaker*, *Sharon Lechter v. Kiyosaki*, and *Crystal Jukebox v.*
25 *Anheuser Busch*. I have testified in several major tax matters that involve profit reporting,
26 including testifying on behalf of the US Attorney's Office in the case *United States v. Mitchelson*.
27 A list of my expert testimony experience for the last four years is attached hereto as Exhibit 2. I
28

1 am being compensated at a rate of \$550 per hour for my independent review and analysis
2 provided in this case.

3 3. In connection with this matter, I have reviewed various documents such as public
4 legal filings submitted by parties, including the Declaration of Michael Dunn. In addition, I
5 reviewed publicly available studies and reports regarding the scope and breadth of the impact of
6 piracy worldwide, including the Worldwide Study of Losses to the Film Industry and
7 International Economies Due to Piracy; Pirate Profiles, published by the Motion Picture
8 Association of America and an article from the *Journal of Marketing* published under the
9 auspices of the American Marketing Association.

10 4. I have been asked to address the issue of the Studios' claims that RealDVD's
11 presence in the marketplace threatens immediate and irreparable harm to the Studios. In his
12 declaration, Mr. Michael Dunn asserts two broad forms of harm: 1) that the Studios' recent and
13 planned channels of distribution such as "Digital Copy," "Burn-to-DVD," and "Managed Copy"
14 might be economically harmed by usurping the Studios' future sales opportunities,¹ and 2) that
15 the threat of "rent-rip-return" behavior under which a consumer retains a permanent copy of a
16 rented DVD is the "most obvious and ominous."²

17 5. With regard to unproven technologies and modes of distribution, Mr. Dunn
18 acknowledges that it is "premature to project revenues"³ from nonexistent products and services
19 that may not be technologically feasible or behaviorally desirable for consumers. It is indeed
20 difficult to quantify harms associated with products and services that have not yet been introduced
21 into the marketplace. However, such an absence of meaningful data concerning prices, costs, and
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23 ¹ Declaration of Michael Dunn in support of *Ex Parte* Applications of Plaintiffs for
24 Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction Thereof, 7:8-
9:2.

25 ² Declaration of Michael Dunn in support of *Ex Parte* Applications of Plaintiffs for
26 Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction Thereof, p. 4
lns. 10-11.

27 ³ Declaration of Michael Dunn in support of *Ex Parte* Applications of Plaintiffs for
28 Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction Thereof, p. 9
lns. 1-2.

1 consumer demand customarily exists in many lost profits cases, including copyright and patent
2 infringement, trade defamation, and intentional interference with prospective economic
3 advantage. I am unaware of this absence of precise quantifiability ever being an adequate basis
4 for demonstrating irreparable harm. Rather, in my experience as a Superior Court Referee and
5 expert witness, courts require only reasonable certainty of estimation, not absolute certainty.
6 Indeed, absolute precision in forecasting lost profits and damages associated with a non-existent
7 product would impose an essentially impossible standard that few parties and damages experts
8 could ever satisfy.

9 6. With regard to the second claim of possible damages from the “rent-rip-return”
10 behavior allegedly created or increased as a result of RealDVD’s presence in the market, it is my
11 opinion that, if damages exist, they can be quantified by integrating the same four elements that
12 frequently and recurringly are at issue in estimating damages resulting from diverted sales. Those
13 elements are 1) the differential in price received by a plaintiff between the actual product and the
14 diverted product sold, 2) the attendant costs associated with actual and diverted products to
15 compute lost profits, 3) the size of the population subset that engages in behavior leading to
16 diverted sales, and 4) the quantity of sales diverted by this population subset.

17 7. One, the price differential element can be determined by comparing the price at
18 which the Studios sell DVDs to the price earned by the Studios from the rental of a DVD. Mr.
19 Dunn recites that DVDs were sold last month at “an average price of \$18.50” and DVDs were
20 rented at “an average price of \$3.25.”⁴ Although, the retail prices facing consumers identified by
21 Mr. Dunn are not a measure of the different prices collected by the Studios, these retail prices can
22 be readily converted into the Studios’ wholesale revenues using pricing data that the Studios
23 customarily maintain in the ordinary course of business and are required to report under
24 applicable SEC and tax rules.

25

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27 ⁴ Declaration of Michael Dunn in support of *Ex Parte* Applications of Plaintiffs for
28 Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction Thereof, p. 9
Ins. 1-2.

1 8. Two, the costs to the Studios associated with the sale or rental of a DVD can be
2 readily determined. Detailed cost of goods sold data, as well as related costs, are required to be
3 maintained under Generally Accepted Accounting Principles (“GAAP”) and tax rules. In
4 addition, in my experience, publicly-held companies such as the Studios customarily prepare
5 detailed product-by-product cost analyses, both on a historical and on a forecasting, or so-called
6 *pro forma*, basis.

7 9. Three, the quantity of RealDVD licensees can also be readily determined since
8 RealNetworks tracks each RealDVD download, including both paid subscriptions and unpaid trial
9 subscriptions. Again, RealNetworks, a publicly-traded company, is required to maintain records
10 of these sales under GAAP and tax rules.

11 10. Four, the displacement of DVD sales by consumers renting rather than buying
12 DVDs can be determined, if material, by well-established analytical techniques used by the
13 Studios in internal marketing studies and financial analysis. I am also aware that the Studios have
14 commissioned studies by outside consultants on the scope and breadth of the impact of piracy
15 worldwide. In addition, in my experience, market surveys can be used to estimate consumer
16 behavior including the use of products and their features.

17 11. As an example, I have reviewed the “Worldwide Study of Losses to the Film
18 Industry and International Economies Due to Piracy; Pirate Profiles,”⁵ which is attached hereto as
19 Exhibit 3. This study was commissioned by the major motion picture studios, which includes
20 most of the Defendants in this matter: Paramount Pictures Corporation, Sony Pictures
21 Entertainment, Inc., Twentieth Century Fox Film Corporation, Universal City Studios
22 Productions LLP, and Warner Bros Entertainment, Inc. The study recites that it provides “an
23 accurate and detailed assessment of the film industry’s worldwide losses to piracy and the
24
25

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27 ⁵ Worldwide Study of Losses to the Film Industry and International Economies Due to
28 Piracy; Pirate Profiles, published by the Motion Picture Association of America and available at
http://www.fact-uk.org.uk/site/media_centre/documents/2006_05_03leksumm.pdf.

1 demographic profile of those engaged in piracy.”⁶ In other words, it is a “comprehensive study
2 examining a more complete picture of piracy including specifics about which countries have the
3 biggest problems with piracy; the impact on the economy; losses to industries in various countries
4 as well as losses to the major studios and a profile of the typical pirate.”⁷

5 12. In my opinion, performing an “accurate and detailed assessment” of worldwide
6 studio losses to piracy, painstakingly determined country by country, is a far more difficult
7 analytical challenge than estimating harm from the possible diversion of DVD sales to rentals.
8 This is especially true since the selling prices and rental prices of DVDs are readily known, the
9 costs of production are readily known, and the number of RealDVD licensees is readily known.
10 If the Studios can confidently assert that they have performed the daunting task of accurately
11 assessing the impact of piracy on local economies in Third World countries, the damages
12 calculation task at issue in this matter is exceedingly more straightforward, given the abundance
13 of audited data maintained by the large publicly-traded companies involved in the present dispute.

14 13. The detailed specificity and comprehensiveness of this motion picture industry
15 study is most impressive. The study is based on consumer demand⁸ and demonstrates the
16 Defendants’ ability to carefully estimate the magnitude and nature of allegedly illegal copying
17 activity with numerical precision, even in Third World countries. For example, the study
18 determined the average age and gender of a “pirate” partaking in various different illegal activities
19 (subset by downloading, making a copy, receiving a copy, or bootlegging) compared to the
20 average age of “non-pirates” in each of 22 countries.⁹ According to the study, MPAA studios lost
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23 ⁶ Worldwide Study of Losses to the Film Industry and International Economies Due to Piracy; Pirate Profiles, p. 1 (emphasis added).

24 ⁷ Worldwide Study of Losses to the Film Industry and International Economies Due to Piracy; Pirate Profiles, p. 1.

25
26 ⁸ Worldwide Study of Losses to the Film Industry and International Economies Due to Piracy; Pirate Profiles, p. 1.

27 ⁹ Worldwide Study of Losses to the Film Industry and International Economies Due to Piracy; Pirate Profiles, p. 5.
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1 \$6.1 billion to piracy in 2005, of which \$1.3 billion came from piracy in the United States.¹⁰
2 These numbers were further subset by three different categories of illicit activity (downloading,
3 copying, and bootlegging) and arrayed by varying geographic areas around the globe. The study
4 even estimates losses to local film companies in foreign countries such as Hungary and India that
5 are not members of the MPAA, as well as losses to MPAA members.¹¹ This study even expressly
6 states the lost tax revenues suffered by various countries, which confirms that the Defendants are
7 capable of estimating the prices, costs, extent of pirated activities, and lost profit-making
8 opportunities that are foundational elements in computing lost tax revenues.

9 14. The MPAA is not the only organization that has prepared or commissioned
10 studies on the impact of movie piracy. Organizations such as Solutions Research Group and
11 Futuresource Consulting have prepared reports that identify the average number of movies
12 copied, subset by the recency of the title's release for selected countries. These studies, as well as
13 the MPAA study, identify the demographic character of a typical movie-downloader. An article
14 published in the respected academic journal, *Journal of Marketing*, cites various other motion
15 picture industry studies that have reached detailed numerical conclusions about the impact of
16 illegal movie copying on the purchase and rental patterns of consumers. These studies were done
17 or commissioned by the MPAA and by the German Federal Film Board and cover the displaced
18 consumption of motion pictures through other distribution channels, including DVD rental and
19 DVD purchases, attributable to movie copying activity in an eight-country study and "on a global
20 level."¹²

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22
23 ¹⁰ Worldwide Study of Losses to the Film Industry and International Economies Due to
24 Piracy; Pirate Profiles, p. 2.

25 ¹¹ Worldwide Study of Losses to the Film Industry and International Economies Due to
26 Piracy; Pirate Profiles, p. 3.

27 ¹² Thorsten Hennig-Thurau, Victor Henning, & Henrik Sattler, "Consumer File Sharing of
28 Motion Pictures," *Journal of Marketing*, Vol. 71 (October 2007), p 2. Available at
http://www.uni-weimar.de/medien/marketing/l/filebrowser/files/Hennig-Thurau_Henning_Sattler_JM_2007.pdf.

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15. In conclusion, the Studios' publications of their own commissioned study in conjunction with the four detailed studies referenced above, confirms that possible methods exist for estimating the Defendants' economic harm, if any, attributable to RealDVD's presence in the marketplace.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of October, 2008 in Los Angeles, California.



Gordon L. Klein

EXHIBIT 1

Exhibit 1

GORDON L. KLEIN

24724 Calle Conejo
Calabasas, CA 91302

Phone: (818) 222 8357
Fax: (310) 825 3165
gklein@anderson.ucla.edu

SUMMARY

Gordon Klein has 25 years' experience as a faculty member at UCLA's Law School and Anderson School of Management, CPA, lawyer, court-appointed referee, arbitrator, State Bar consultant, and television commentator. He has extensive experience teaching and testifying in the areas of accounting, finance, damages, intellectual property, commercial law, marital dissolutions, professional responsibilities, and entrepreneurship.

PROFESSIONAL DESIGNATIONS

- Certified Public Accountant (registered in Illinois)
- Attorney (non-practicing, California)

EDUCATION

University of Michigan Law School (J.D., 1979)

University of Michigan Business School (B.B.A, 1976)

HONORS

- Phi Beta Kappa
- Beta Alpha Psi
- Burroughs Corporation Scholar
- Branstrom Scholar
- Regents-Alumni Scholar

Exhibit 1

EMPLOYMENT

UCLA, Anderson School of Management (1981 - present)

Teach 15 different courses in accounting, business law, tax planning, financial statement analysis. Topics include compensation planning, cost accounting, quantitative aspects of marketing, financial derivatives, LLC and partnership dissolution, investments, valuation, new venture initiation, contracts, profit forecasting, and entrepreneurship. Granted security of employment in 1988.

UCLA School of Law (1987 – 2000)

Law and Financial Analysis instructor. Course emphasizes how financial and statistical data should be analyzed and presented in trial advocacy. Topics include damage calculations, profit forecasting, valuation, bankruptcy, and marital dissolutions.

Loyola Law School (2001 - 2002)

Adjunct Professor, LL.M. in Taxation Program. Tax Planning and Accounting for Lawyers. Courses focus on structuring corporate, partnership, and LLC transactions, financial statement analysis, professional and fiduciary duties, and trial advocacy.

Expert Witness/Arbitrator/Referee (1986-present)

Have testified as an expert in federal and state court in several well-publicized cases, including US v. Marvin Mitchelson and Rothenberg v. Roseanne Barr.

Have served as an arbitrator in over 150 commercial cases, involving contract, securities, and partnership disputes. Member of the Accounting, Commercial Arbitration, and IRS Tax Shelter Dispute Panels of the American Arbitration Association. Also have served as an LA Superior Court referee and Orange County Superior Court referee.

Public Speaker/Media Commentator (1986-present)

Conducted seminars for numerous organizations, including the California Society of CPAs, Deloitte and Touche, the Finance Ministry of the People's Republic of China, members of the German Bundestadt (Parliament), Head Start Advanced Management Conference, JP Morgan, KPMG, Merrill Lynch, and Price Waterhouse Coopers.

Expert on the CPA exam and accountant liability. Have trained over 14,000 California financial professionals to pass the CPA exam.

Nationally recognized investment and accounting expert who frequently appears on CNBC and CNN Radio. Has also has appeared in the Wall Street Journal, New York Times, Forbes, Fortune, Business Week, Los Angeles Times, People, Bloomberg News, and on CNN, NPR, MTV, and ABC Nightly News.

Exhibit 1

Corporate Officer/Director (1989 – present)

Co-founder, director, or CFO of various closely-held enterprises, including Accounting Opportunities Advisors, Inc, a hedge fund management company; Accounting Opportunities Fund, LLC, a hedge fund; Accounting Value Fund, LLC, a hedge fund; BackupNet International, a data backup software licensor; and Westin Communications, a financial publishing company.

Investment Banking Consultant (2004 –present)

Serve as an expert consultant to investment banks, hedge funds, and other pooled investment organizations. Affiliated with the Gerson Lehrman Group.

California State Bar Enforcement Division (2001)

Forensic investigator. Evaluated whether a suspended attorney had complied with the financial and ethical requirements to merit reinstatement.

Attorney (1979-1980)

Tax attorney. Ervin, Cohen, and Jessup, Beverly Hills, CA. Currently non-practicing status.

BOOKS AUTHORED

- Business Law
- Business Statistics
- Cost Accounting
- Introductory Accounting
- Introductory Economics
- Managerial Finance
- Managerial Accounting
- Contributing Editor, The Knowledge Exchange's Encyclopedia of Business

Exhibit 1

UNIVERSITY COURSES TAUGHT / EXPERTISE

Accounting for Lawyers

The record-keeping process, auditor's liability, asset valuation, financial ratios, liability determination, discount rate determination, contract interpretation of financial covenants and accounting, usury and interest rate analysis, cash flow analysis, and accrual determinations of income and expense.

Advanced Accounting

Mergers and acquisition techniques, consolidated reporting, professional responsibilities, fiduciary reporting, foreign currency transactions, bankruptcy and insolvency reporting, partnership accounting, intangibles valuation, government-wide statements, nonprofit accounting, earn-outs, contingent price adjustments, and goodwill determination.

Business Plan Development

The venture capital process, structuring the marketing, sales, and general business strategy of an emerging or expanding business enterprise

Cost Accounting

Sales and operational budgeting, profit forecasting, cost behaviors and allocations, breakeven analysis, net present value analysis, evaluating division and executive performance.

Intermediate Accounting I

Revenue recognition, accounting estimates, intangibles valuation including goodwill, contingent liabilities, realization and matching principles, royalty income, accounting theory, asset swaps, depreciation, time value of money, research and development, patents, and trademarks.

Intermediate Accounting II

Bonds and other financing instruments, convertible securities, stock options, equity, Statement of Cash Flows, operating and capital leases, sale-leasebacks, and real estate financing techniques, pensions, and deferred taxes.

Exhibit 1

Law for Entrepreneurs

Contract liability and remedies, enterprise organization, agency, secured financing, bankruptcy, debt collection, the Uniform Commercial Code, unfair competition, price discrimination, antitrust, and the rights and duties of partners, officers, directors and shareholders.

Managerial Accounting

Core principles of accounting. Required of all MBA candidates.

Small Business Management

Quantitative analysis with imperfect information, market analysis, statistical analysis of data, Internet and e-commerce opportunities, workers' compensation, independent contractors, intellectual property, business strategy, franchises, goodwill valuation and determination, OSHA, personnel issues, labor relations, wrongful termination, employment contracts, and the regulatory environment.

Structuring Entrepreneurial Deals

Valuation and organization of closely-held enterprises, bootstrap financing, ownership and profit allocation, nontraditional valuation techniques, valuing unproven technologies, valuing intellectual property, the cost of capital, capital structure decisions, estate planning, retirement planning, securities laws, insider trading, and Section 1244 stock.

Tax Principles and Policy

Individual tax planning, tax return preparation, the alternative minimum tax, tax aspects of real estate investing and financing, timing assets acquisitions and dispositions, like-kind exchanges, capital gains versus ordinary income characterizations, professional duties of tax preparers, defined benefit and defined contribution plans, tax aspects of the employment and independent contractor relationships, and deferred compensation.

Taxation and Management Decisions

The formation and liquidation of enterprises, dividend distributions, stock redemptions, acquisition techniques, and analyzing partnership, S corporation, and LLC agreements.

EXHIBIT 2

Exhibit 2

PREVIOUS TESTIMONY

Within the past four years, I have served as a testifying expert in the following matters:

Daut v. Eastern Star Homes, Superior Court, Orange County, case #05CC09116

Summary: Wrongful termination in violation of public policy; tax fraud; damages

DR Management, LLC v. United States, US District Court, Northern District of California, Oakland Division, case #05-01010 MMC

Summary: real estate tax planning; existence of income and character as capital gain

Kerr, et al v. CBIZ Southern California LLC, Superior Court, Los Angeles County, case #BC356298

Summary: Investors' reasonable reliance on financial data; trustee's fiduciary duty

Swain, et al v. American Capital Strategies, Superior Court, Los Angeles County, case #BC352310

Summary: Damages; lost business opportunities; business valuation

PHC Sharp Holdings, Inc. v. Wenk, Superior Court, Orange County, case #07CC09285

Summary: Damages re fraud; business valuation

Lechter v. Kiyosaki, et al, District Court, Clark County, NV, case #A549886

Summary: Fiduciary duty; reasonableness of compensation

Wilson v. Altema, Inc., Superior Court, Los Angeles County

Summary: Securities law; damages; fiduciary duty

Exhibit 2

BHE v. MTS Products and Ben Hsia, Superior Court, Los Angeles County,
case #EC 041097

Summary: Damages; business valuation

Auerbach Acquisition Assoc., Inc v. Daily, Superior Court, Los Angeles County,
case # BC285134

Summary: Venture capital; business valuation; derivatives valuation; financial
resources; borrowing capability

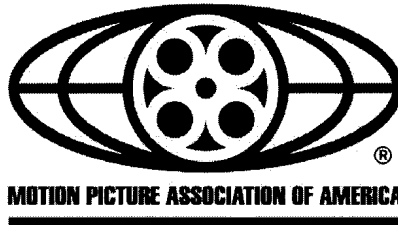
Williams, Trustee v. Gannon, Second District Court, Montana, case #DV 02 201

Summary: Bankruptcy; cash flow; business forecasting

Casey, Trustee v. US Bank

Summary: Damages; embezzlement, cash flow forecasting and tracing

EXHIBIT 3



WORLDWIDE STUDY OF LOSSES TO THE FILM INDUSTRY & INTERNATIONAL ECONOMIES DUE TO PIRACY; PIRATE PROFILES

“The film industry is a thriving economic engine that generates jobs and exports in countries all over the world. We are calling on governments internationally to continue to work with us in limiting the impact of piracy on local economies and the film industry. Movies are a valuable product and intellectual property must be respected. This study will help us better analyze and focus our efforts to fight movie theft.”

Dan Glickman, Chairman and CEO of the Motion Picture Association, Inc. (MPAA)

In 2004, the major motion picture studios commissioned the MPAA to do a study to get a more accurate and detailed snapshot of the film industry's losses to piracy worldwide. The intent was to provide the industry with a tool for government advocacy and also a more complete picture of where to attack film copyright theft in anti-piracy efforts. The MPAA has already begun using this data to work with governments on strengthening copyright laws and illustrating local losses to their economies and their own film industries.

This study is the first comprehensive study examining a more complete picture of piracy including specifics about which countries have the biggest problems with piracy; the impact on the economy; losses to industries in various countries as well as losses to the major studios and a profile of the typical pirate. It also for the first time assesses losses due to Internet piracy.

Previous MPAA surveys were based on losses due to hard goods piracy (bootlegging) only and contained no assessment of losses due to Internet piracy. The MPAA estimated that the film industry lost \$3.5 billion to hard goods piracy while a Smith Barney study conducted in 2003 stated that the industry lost \$5.4 billion to piracy including Internet piracy.

The study was conducted over 18 months in 22 countries. It is based on consumer demand as opposed to previous assessments which were calculated by calculating losses based on DVD seizures.

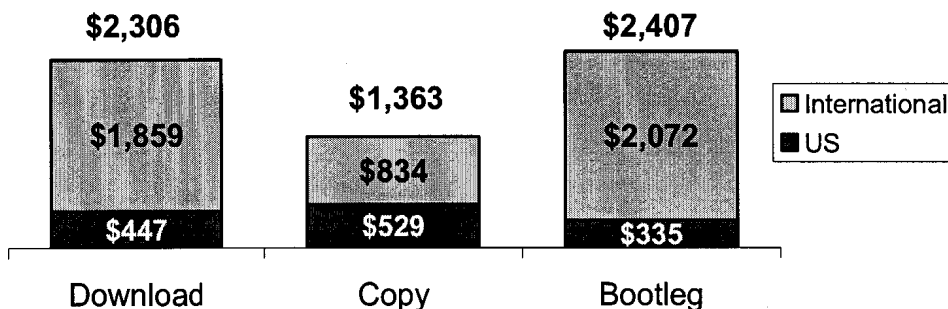
SUMMARY OF LEK DATA

“The findings in this study reinforce the need for a multi-pronged approach to fighting piracy,” Glickman said. “As an industry, we have to continue to educate people about copyright laws and the consequences of breaking those laws. At the same time, we have to provide legitimate, hassle-free ways for consumers to obtain movies at a reasonable cost. In the meantime we will continue to work with governments and law enforcement around the world to ensure copyright law is prevalent and enforced.”

According to the study, MPAA studios lost \$6.1 billion to piracy in 2005, which is consistent with a piracy study conducted by Smith Barney in 2003 that predicted the motion picture industry would lose \$5.4 billion to piracy in 2005.

Of the \$6.1 billion in lost revenue to the studios, \$1.3 billion came from piracy in the United States and \$4.8 billion internationally, with nearly half of that loss occurring in Europe. About \$2.4 billion was lost to bootlegging*, \$1.4 to illegal copying* and \$2.3 billion to Internet piracy.

**MPA Member Company Revenue Loss
United States vs. International (USD\$M)**



- *Bootlegging: *Obtaining movies by either purchasing an illegally copied HS/DVD/VCD or acquiring hard copies of bootleg movies.*
- *Illegal copying: *Making illegal copies for self or receiving illegal copies from friends of a legitimate VHS/DVD/VCD*
- *Internet piracy: *Obtaining movies by either downloading them from the Internet without paying or acquiring hard copies of illegally downloaded movies from friends or family.*

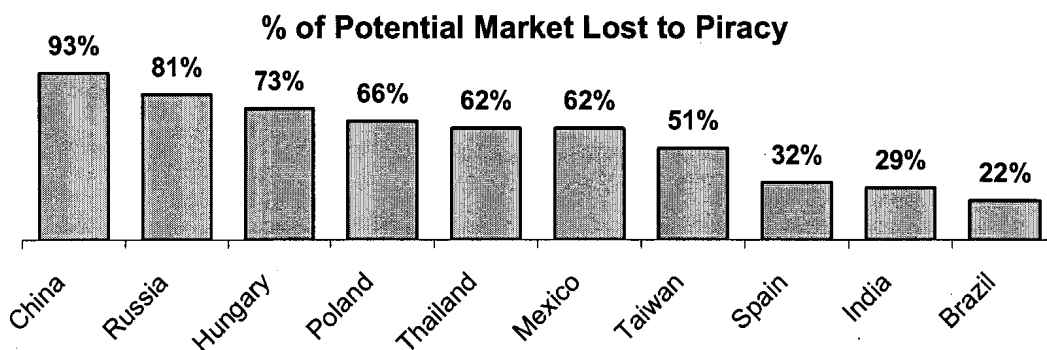
INTERNATIONAL FILM INDUSTRY LOSSES

The chart below reflects losses to local film industries specifically in those countries as well as MPAA member company losses in each respective country.

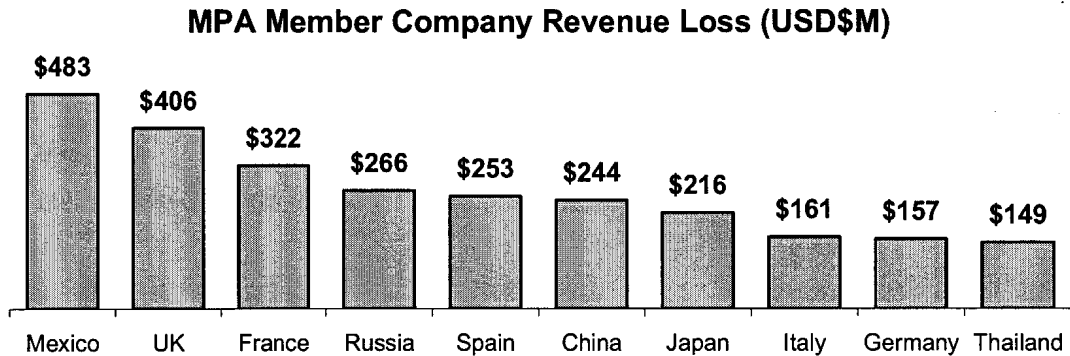
	(USD\$M)	
	MPAA	Non-MPAA Memco
China	565	2,124
France	604	943
Japan	375	367
Russia	622	278
UK	787	220
Thailand	271	194
Spain	478	192
India	12	174
US	2,561	163
Mexico	954	161
Germany	353	137
Italy	316	126
Poland	200	72
Netherlands	84	45
Sweden	66	42
Korea	28	36
Taiwan	220	35
Brazil	172	26
Hong Kong	8	16
Hungary	184	15
Canada	211	14
Australia	171	8

WORST OFFENDERS

The countries where piracy is most prevalent as a percentage of the marketplace are China, Russia and Hungary. Below is an assessment of the percentage of potential market lost due to piracy.



The countries where member companies suffered the greatest losses are Mexico, UK and France. That does not necessarily mean that is where piracy is most prevalent. Various markets were surveyed in different ways because some markets can be assessed for losses due to legitimate markets, others can only be assessed by lost opportunity. Below is an assessment of the MPA member company revenue lost due to piracy.



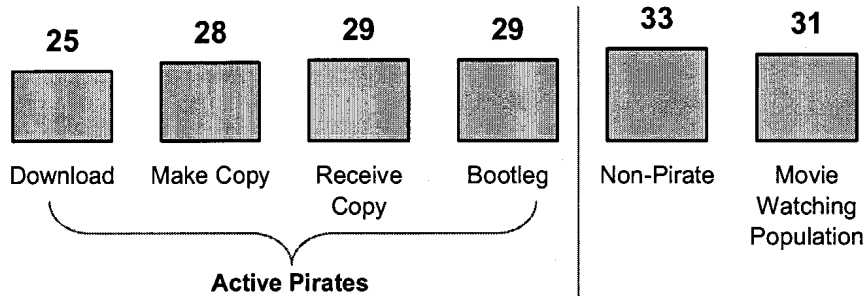
The chart below shows that China, France, UK, and Russia lose significant tax revenues due to piracy.

	Tax Loss Estimates (USD\$M)				
	Theatrical	Rental	Sell-Through	PPV/VOD	Total
China	--	--	228	--	228
France	31	36	154	4	225
UK	43	33	90	10	176
Russia	76	18	68	--	162
Spain	19	27	34	1	81
Italy	13	17	41	2	73
Germany	23	15	11	1	50
Hungary	3	6	37	--	47
Poland	7	12	25	--	44
Japan	8	6	22	1	37
Canada	9	5	17	3	34
Thailand	5	3	24	--	33
Brazil	6	6	17	--	30
Sweden	2	11	7	--	20
India	--	--	18	--	18
Australia	5	5	8	--	18
Netherlands	3	9	5	--	17
Taiwan	5	4	4	--	13
Korea	6	--	1	--	6

PROFILE OF A PIRATE

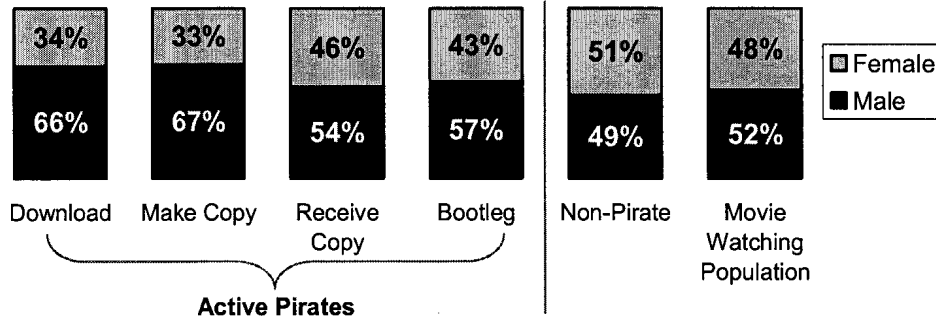
The average film copyright thief is male, between the ages of 16-24 and lives in an urban area. College students in the U.S., Korea and Hungary contribute the most to each country's individual loss. The 16-24 age range represents a disproportionately high percentage of pirates, especially downloaders, across the 22 directly researched countries. It is even higher in the U.S., where the same age range represents 71% of downloaders.

Average Age - 22 Directly Researched Countries



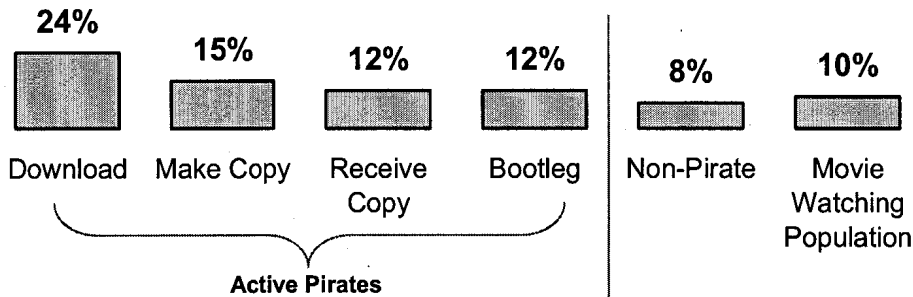
On average, those who are actively pirating tend to be in their mid to late 20s, while non-pirates and the general movie watching population are in their 30s.

Gender - 22 Directly Researched Countries



While non-pirates and general movie watchers are split almost evenly between males and females, active pirates are more likely to be male.

College Students - 22 Directly Researched Countries



Active pirates are more likely to be in college than non-pirates and general movie watchers, especially download pirates.

WORKING TO FIGHT PIRACY AROUND THE WORLD **MPAA ACCOMPLISHMENTS**

At home and abroad, online and in the streets, the Motion Picture Association of America has been successfully attacking the problem of piracy through a multi-pronged approach of education, litigation, and enforcement.

ENFORCEMENT

The MPAA and MPA have been working with law enforcement agencies worldwide in cracking down on copyright theft.

October 2005: MPAA officials in California and Texas assist with largest recovery of counterfeit DVDs and CDs in U.S. history (operation netted \$120 million in counterfeit material).

February 2006: Belgian and Swiss authorities shut down Razorback2, the number-one eDonkey peer-to-peer server facilitating the illegal file swapping of approximately 1.3 million users simultaneously.

February 2006: Crackdown on highly trafficked Torrent, eDonkey and News Group sites responsible for illegal swapping by millions of users around the world. They provide a massive directory of illegal content to users and encourage people to traffic in copyrighted motion pictures, televisions shows, music, software and games.

March 2006: MPAA collaborates with the National Association of Theater Owners and Canadian associations to launch online training program www.FightFilmTheft.org in U.S. and Canada to combat illegal camcording in movie theaters.

EDUCATION

The MPAA is working to curb piracy through several influential education initiatives, collaborating with Weekly Reader and a leading Internet safety educator Wired Safety, among others.

November 2005: MPAA launches a public service announcement contest for college students in partnership with Students in Free Enterprise.

April 2006: MPAA and Weekly Reader launch a new education program to inform parents, educators and students about Internet safety.

April 2006: MPAA and RIAA launch systematic program to identify and curtail campus Local Area Network ("LAN") piracy at universities across the country by alerting 40 university presidents in 25 states of LAN System abuse.

LITIGATION & LEGISLATION

The MPAA continues to see important legislative and legal successes that are vital to the health of the motion picture industry moving forward.

April 2005: President signs Family Entertainment and Copyright Act of 2005, making camcording in theaters a federal felony.

June 2005: Supreme Court in MGM vs. Grokster unanimously rules against online networks that encourage illegal distribution of copyrighted files.

January 2006: International motion picture pirate leader Randolph Hobson Guthrie III pleads guilty in a Mississippi federal court to conspiracy to traffic in counterfeit goods, forfeiting \$800,000 to U.S. government.

May 2006: Bill introduced in Senate Commerce Committee to protect broadcast content from piracy.

TECHNOLOGY

The MPAA's Office of Technology is working to ensure that film copyrights are protected and that consumers can enjoy movies when and how they want.

New advanced technology for high definition TV is now available that allows consumers to attain managed copies of pre-recorded discs.

Progress is also being made toward establishing technical standards that will allow consumers to move film content amongst home entertainment network devices.

The major studios have invested in Movielabs which will explore new technologies to protect content.

Studios are also experimenting with new business models and harness new technologies to deliver content:

- Warner Brothers partners with Free Record Shop using P2P distribution
- Universal partners with LoveFilm in UK, offering downloads
- CBS and Verizon FiOS TV partner to carry select programs
- Disney offers feature length film on I-tunes for \$9.99
- CBS delivers college basketball "March Madness" online
- ABC offers free downloads at ABC.com
- Disney re-launches MovieBeam – online delivery of VOD
- NBC Universal launches Aeon Digital set top box
- CBS offers select programs at \$1.99 on demand
- Warner Bros. launches P2P service In2Movies in Germany
- Fox announces VOD and DVD windows collapsed
- NBC Universal announces Peer Impact deal
- Disney announces deal with iTunes
- Google Video beta launched – essentially is going with a wholesale reseller model – creating an iTunes like store.