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 12 Declaratory Relief Claim Defendants

13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16

17 REALNETWORKS, INC., et al.,  
 18 Plaintiffs,  
 19 vs.  
 20 DVD COPY CONTROL ASSOCIATION,  
 INC., et al.,  
 21 Defendants.  
 22

CASE NO. C 08-4548-MHP  
**MOTION PICTURE STUDIOS' MOTION  
 IN LIMINE TO EXCLUDE EVIDENCE  
 AND TESTIMONY** [REDACTED]

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

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

CASE NO. C 08-4719-MHP  
**PUBLIC REDACTED VERSION**

1 **I. INTRODUCTION**

2 Real's pre-hearing filings and attorney argument [REDACTED]  
3 [REDACTED]  
4 [REDACTED]. The Court should exclude this evidence.

5 *First,* [REDACTED]  
6 [REDACTED]. Specifically, Real  
7 and the Studios entered into a Tolling Agreement, which expressly provides that [REDACTED]

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 As Real's counsel stated during the deposition of one of the Studios'  
12 witnesses, [REDACTED], Ex. B (Dunn.  
13 Depo.) at 192:21-193:4. Now Real is trying to do [REDACTED]

14 *Second,* [REDACTED]  
15 [REDACTED] rebut the Studios'  
16 motion for a preliminary injunction.

17 *Third,* evidence concerning [REDACTED] is independently  
18 excludable under Rule 403. There will be plenty for the Court and the parties to do during an  
19 already crowded preliminary injunction hearing without having to get into an irrelevant sideshow  
20 [REDACTED].

21 **II. FACTUAL BACKGROUND**

22 Real started developing its RealDVD technology in early 2007. Over the next year and a  
23 half, Real disclosed its plans for RealDVD to multiple third parties whom Real hoped to enlist as  
24 business partners. Real [REDACTED]  
25 [REDACTED]

26  
27  
28 [REDACTED]

1 [REDACTED]; *id.*, Ex. D (Real’s September 8, 2008 “blog” release: “Today we  
2 announced RealDVD.”).

3 On September 9, 2008, Real executed a “Confidentiality, Tolling and Forbearance  
4 Agreement” with the Studios (the “Tolling Agreement” or “Agreement”). Williams Decl., Ex. A.  
5 The Agreement expressly provides [REDACTED]

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 [REDACTED]  
17 [REDACTED] Real has made clear in its preliminary injunction filings  
18 and related arguments [REDACTED]

19 [REDACTED]. *See, e.g.*, Real’s Response Brief on  
20 Preliminary Injunction Motion (filed April 10, 2009) (“Real’s Response Brief”) at 1, 19; Real’s  
21 Opening Preliminary Injunction Brief (filed Mar. 19, 2009) (“Real’s Opening Brief”) at 18–19;  
22 Williams Decl., Ex. E (Tr. of Hr’g, Mar. 23, 2009) at 28:18–29:2; *id.*, Ex. F (Real’s Witness  
23 Disclosures for CEO Rob Glaser and Vice President Elizabeth Coppinger) at 1:21-22, 2:3-4.

24 **III. REAL’S ATTEMPT TO INTRODUCE EVIDENCE CONCERNING**  
25 **[REDACTED] VIOLATES THE PARTIES’ TOLLING**  
26 **AGREEMENT**

26 The Tolling Agreement could not be clearer [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

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[REDACTED] Real expressly  
agreed [REDACTED]

[REDACTED] Now  
Real is trying to do exactly what it said it would not do. Its arguments for trying to get out of its  
contractual promise are meritless.

*First*, Real claims that the “agreement no longer binds Real in light of the Studios’ breach  
of it, including by disclosing it to the Court in the Central District of California (before this case  
was transferred to the Northern District.” Real’s Opening Brief at 19 n.9. That is false. The truth  
is that Real opposed the Studios’ TRO motion by arguing that the Studios “have known since the  
first week of September that Real was planning to launch the RealDVD product by today  
[September 30],” and that the Studios’ motion thus should be denied based on improper delay.

Williams Decl., Ex. G at 1. The Agreement, however, is clear that the parties [REDACTED]

[REDACTED]  
[REDACTED]<sup>2</sup> The Agreement also  
[REDACTED] which is exactly  
what the Studios did in responding to Real’s improper argument of undue delay. *See id.*, Ex. H  
(Studios’ Oct. 1, 2008 TRO Reply Br.) at 1. Real’s argument rings especially false given that its  
own counsel acknowledged at a deposition of one of the Studios’ witnesses, over two months  
*after* the Studios filed their TRO motion, that any [REDACTED]

[REDACTED] The contention that the Studios breached the Agreement, and that Real therefore is  
justified to violate its terms, is without merit.

*Second*, Real suggests that the Studios [REDACTED]  
[REDACTED] Real’s Opening Brief at 19 n.9. This also is wrong. What really happened [REDACTED]

<sup>2</sup> Notably, [REDACTED]  
[REDACTED]

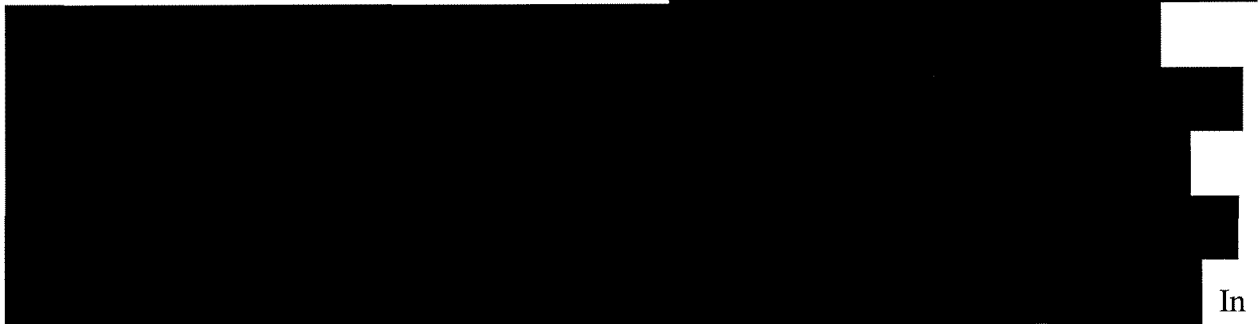
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**IV. REAL'S ATTEMPT TO INTRODUCE EVIDENCE CONCERNING**

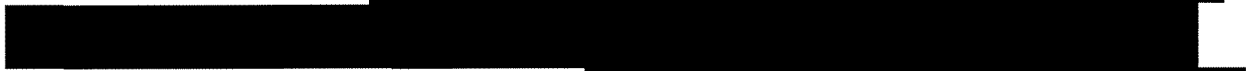
[Redacted]

Real's intention to offer evidence regarding



In

fact, Real approached multiple other third parties about working with Real on RealDVD through 2007 and 2008. Obviously,



Real also says that its introduction of



That is wrong. As demonstrated in Real's preliminary injunction papers,



