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 9 REALNETWORKS, INC. and
 REALNETWORKS HOME
 10 ENTERTAINMENT, INC.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

14 REALNETWORKS, INC., a Washington)
 Corporation; and REALNETWORKS HOME)
 15 ENTERTAINMENT, INC., a Delaware)
 corporation,)
 16)
 17 Plaintiffs and Counterclaim)
 Defendants,)
 18)
 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)
 Delaware corporation; and VIACOM, Inc., a)
 25 Delaware Corporation.)

26)
 27 Defendants and Counterclaim)
 Plaintiffs.)
 28

CASE NO: C 08 04548 MHP

PUBLIC REDACTED VERSION
SUPPLEMENTAL DECLARATION
OF JACQUELINE LANG IN
OPPOSITION TO DEFENDANTS'
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER

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

Dockets.Justia.com

1 I, Jacqueline Lang, declare as follows:

2 1. I am the Vice President of Marketing for RealNetworks, Inc. ("Real"), and have
3 been employed by Real since February of 2001. I have personal knowledge of the facts stated
4 herein. I am over the age of eighteen, and would and could testify truthfully thereto if called as a
5 witness.

6 2. Real is a relatively small software company competing in an industry dominated by
7 larger companies such as Microsoft, Apple and Adobe. One way Real is able to effectively
8 compete in this market is by producing innovative products and being the first to market with its
9 innovations. Real's strategy is to bring its products to market quickly, and to negotiate relatively
10 long term contracts for the distribution of its products. Such distribution contracts allow Real to
11 "lock" its products into distribution channels before larger, more powerful companies have a
12 competitive product to sell, which prevents Real's product from being easily displaced.

13 3. Real began development of RealDVD approximately 12 months ago. Throughout
14 the development process, Real has been conscious of the need to get RealDVD to market and in
15 distribution as quickly as possible to capture the advantages of being the first (or one of the first)
16 products to market. While there have been DVD "rippers" (which allow a user to copy DVD
17 content) available for years, Real anticipated being the first CSS licensed product available at a
18 price point of approximately \$30-\$50.

19 4. Real was ready to officially release RealDVD on September 8, 2008 ("initial
20 launch"). Real carefully planned the release of RealDVD for months, and began negotiating
21 distribution contracts with desirable partners in advance of the initial planned launch of
22 RealDVD.

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3 5. Real also devoted considerable efforts to the marketing of RealDVD. I understand
4 that defendants have challenged Real's marketing of RealDVD as "legal" and "legit". I have
5 always been conscious in directing the marketing of RealDVD to be respectful of the legal rights
6 of copyright holders. When Real has discussed RealDVD as "legal" or "legit", it is always in the
7 context of the product being utilized by users to make personal back-up copies of DVDs that they
8 own. Real has never promoted RealDVD as a legal means to copy DVDs that a user does not
9 own. In fact, Real's marketing materials addressing the "Frequently Asked Questions" regarding
10 RealDVD explicitly caution users that it is legal to save movies with RealDVD "provided that
11 you are the owner of the original DVD and you use your saved copy solely for personal use."
12 Real further informs users that they will not be able to share their saved movies with their friends
13 and families, as the DVDs saved with Real DVD will only play on the user's PC with the license
14 keys purchased by the users. Attached as Appendix A hereto is a true and correct copy of the
15 "Frequently Asked Questions" relating to RealDVD available at www.realdvd.com. Attached as
16 Appendix B hereto is a true and correct copy of the "RealDVD Features" page available at
17 www.realdvd.com, which discusses copying only with respect to the user's own DVD collection,
18 promoting that RealDVD protects users from "searching through boxes, scratching, damaging
19 and losing your discs". Further, when a user utilizes RealDVD to make a back-up copy of their
20 DVD content, the user is warned with an "admonition screen" stating: "RealDVD is for saving a
21 DVD that you own. If you do not own this DVD, select Play."

22 6. Real timed the initial launch of RealDVD to coincide with the "DEMO Fall 08"
23 Conference on September 8, where Real's Chairman and CEO, Rob Glaser, was a speaker. The
24 DEMO Fall 08 Conference was held in San Diego, California, and promoted itself as "The
25 Launchpad for Emerging Technology." Real intended for Mr. Glaser to announce RealDVD
26 while speaking at the conference, and at the same time, Real would release the product and make
27 it available to consumers. Real has consistently followed this practice, as timing the release of a
28

1 new product with a technology conference permits Real to capitalize on the publicity surrounding
2 a conference and reach an interested and technologically savvy audience.

3 7. Shortly before the initial launch, the studio defendants informed Real that they
4 objected to the release of RealDVD, and expressed concerns that the product violated the terms of
5 the standard CSS License Agreement with the DVD Copy Control Association, as well as
6 copyright law. The evening before the initial launch date of September 8, Real decided to abort
7 the initial launch in order to try to resolve its differences with the studios in good faith. Instead of
8 releasing RealDVD as planned on September 8, Real made last minute changes to its September
9 8, 2008 press release, announcing that the product would "be available this month." This was the
10 first time that Real had ever announced a product without simultaneously making it available to
11 end users, and therefore, Real stated that it would release RealDVD during the month of
12 September.

13 8. Real expended considerable effort and resources to prepare for the initial launch of
14 RealDVD. Real's efforts were ultimately not optimized when the launch was pulled in order to
15 address the studios' concerns. For example, in preparation for the planned September 8 launch,
16 Real's public relations department worked with an outside PR agency to reach dozens of different
17 publications and encourage them to generate press regarding RealDVD. Leading up to the
18 planned September 8 initial launch, Real's PR department and outside agency worked furiously
19 promoting the product, giving demonstrations of the product and answering technical questions.
20 Upon the September 8 announcement of RealDVD and in the days that followed, press regarding
21 RealDVD appeared in the New York Times, Business Week, Newsweek, PC World and USA
22 Today, among others. While these articles undoubtedly generated interested potential customers,
23 such customers had no way to purchase RealDVD as the product was being held back by Real in
24 an attempt to resolve the concerns of the studios.

25 9. Real also committed advertising resources to the planned initial September 8
26 launch. Real purchased approximately \$175,000 of web media and ads throughout the Internet to
27 be run on certain specific days around September 8 to promote RealDVD. When Real decided to
28 abort the initial product launch, Real was forced to pull back all of its advertising efforts and ask

1 its advertising partners to delay the committed-to advertising. Such advertisers were under no
2 obligation to delay the planned RealDVD advertising, and Real expended significant goodwill in
3 asking its advertising partners to try to find other sponsors on virtually no notice to fill the ad
4 spots for the committed days.

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9 11. In keeping with its public statements that it would release the RealDVD product
10 during the month of September, Real released and made the RealDVD product available for
11 download on September 30, 2008, at 8:00 a.m. EST.

12 12. In anticipation of the September 30 launch, Real made a tremendous PR push to
13 attempt to recreate as much as possible the initial publicity “buzz” that surrounded RealDVD at
14 the time of the planned initial September 8 launch. In the days leading up to the September 30
15 launch, Real’s PR department and outside PR agencies again contacted numerous media outlets
16 encouraging them to write articles regarding RealDVD. While Real made extensive PR efforts
17 for the September 30 launch, many of the publications which had already generated press
18 regarding RealDVD were not willing to run second articles on the product. Real also engaged in
19 extensive advertising efforts related to the September 30 launch of RealDVD, including
20 purchasing advertising space and key word searches on the Internet.

21 13. The TRO entered by the Court on Friday, October 3, 2008 forced Real to halt all
22 distribution of RealDVD. After receiving notice of the Court’s Order, Real deactivated the web
23 pages devoted to distributing RealDVD so that distribution of the product on www.realdvd.com
24 would be immediately stopped.

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3 14. Given the Court's Order, distribution of RealDVD was abruptly stopped. Real had
4 previously emailed over 15 million existing users of Real products regarding RealDVD, who
5 were now directed to a web page stating that "RealDVD is currently unavailable." Further, in
6 order to try to mitigate the confusion of having a product that was suddenly not available, Real
7 contacted all of its advertising partners who were running ads regarding RealDVD and halted the
8 advertising campaign. As explained above, this was the second time that Real asked its
9 advertising partners to pull all advertising for RealDVD with no notice – thereby negatively
10 impacting Real's relationship with its advertising partners and impairing Real's ability to reach
11 advertising deals with these partners in the future. Real also deactivated the "key word" searches
12 it had purchased from search engines such as Google.

13 15. The TRO has also caused Real to lose out on valuable press coverage regarding
14 RealDVD. Prior to the injunction, a writer from the New York Times agreed to use the
15 RealDVD product and write a review for publication. Over the weekend, Real informed the
16 writer that the product was not available and therefore, he will not be able to write the article.
17 Real has received numerous press inquiries regarding the sudden unavailability of RealDVD.

18 16. While the TRO entered on Friday has caused Real to lose credibility and goodwill
19 with its advertising partners and customers, a continued injunction would be disastrous to the
20 ultimate success of RealDVD. As explained above, the cloud of illegality that the studios have
21 raised over RealDVD

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22 If RealDVD is enjoined, Real will have no opportunity to enter into the early
23 distribution agreements that are crucial for the product to be successful. As discussed in
24 paragraph 4, Real is currently negotiating with at least ten companies regarding the distribution of
25 RealDVD (and has identified a number of other potential distribution partners) and Real
26 anticipates that at least some of these deals will be consummated prior to the 2008 holiday
27 season. This opportunity will be completely foreclosed if RealDVD is enjoined. It is critical for
28 Real to have an opportunity to negotiate distribution contracts for RealDVD now, while it still

1 has the "first mover advantage" of being the only CSS licensed product at this price point. In
2 promoting the release of RealDVD, Real has explained its product in detail to the market (and to
3 its competitors), provided demonstrations and answered technical questions. While the technical
4 details of RealDVD have not been released, competitors have been alerted both to the feasibility
5 and the attractiveness of a similar product. It is only a matter of time before a larger and more
6 powerful company releases a similar product. Even a brief interruption in Real's ability to
7 distribute RealDVD, gain momentum in the market, and execute distribution deals poses an
8 irreparable business risk to Real.

9 17. Further, it is critical for the success of RealDVD that the product gain traction in
10 the market prior to the holiday season. As is the case with most companies, Real's financial
11 expectations for RealDVD include strong holiday sales which it would almost certainly fail to
12 achieve if the product were not available to consumers during the next few months leading up to
13 the holidays (when holiday purchases are made). Real expects that sales of RealDVD in the
14 fourth quarter of 2008 will account for 25%-40% of its sales of that product on an annual basis.

15 18. A continued injunction would also cause Real to lose all credibility with its
16 customers and potential customers, shareholders, analysts, advertising partners, PR contacts and
17 the market generally. Even if Real were ultimately allowed to resume sales of the product, Real
18 is unlikely to be able to conduct a successful "third" launch the product, irreparably harming the
19 ultimate success of RealDVD, and perhaps other Real offerings.

20

21 I declare under penalty of perjury that the foregoing is true and correct. Executed at
22 Bellevue, Washington on October 6, 2008.

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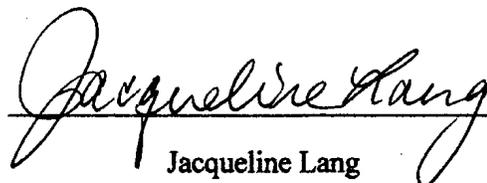
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Jacqueline Lang

APPENDIX A

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Frequently Asked Questions

[Expand all questions](#)

1. What is RealDVD?

RealDVD is an easy-to-use application that lets you save your DVDs - movies, TV shows, or home DVDs - to your PC digitally and legally. Best of all, you can play them from your hard drive whenever and wherever you want without the discs.

2. Can I save my DVDs to my PC's hard drive?

Yes. RealDVD lets you save a copy of your DVDs to your hard drive so you can access your movie collection quickly and easily - without the discs.

3. Can I save my DVDs to a portable hard drive?

Yes. You can save as many DVDs to a portable drive as space allows. In fact, saving your entire collection to a portable drive is a great option. Then you'll have the flexibility of watching all your movies - on any PC running your authorized copy of RealDVD.

4. Will I need DVDs or a DVD drive to play my movies?

No. Once you save your movies to your PC or portable hard drive, there's no need for DVDs or a DVD drive. Watch your movies straight from your computer. Or just connect a portable drive to your authorized PC and you're good to go - anytime, anywhere.

5. What media formats does RealDVD support?

Right now RealDVD lets you save and play Digital Video Discs (DVDs) only. It does not currently support BluRay, HD-DVD, VCD or SVCD formats.

6. Does RealDVD let me save content from my Digital Video Recorder?

No. RealDVD does not allow you to save content from your DVR or other digital media devices to your PC. RealDVD only lets you save your DVD discs to your PC's hard drive.

7. How long does it take to save a movie?

That depends on the speed of your DVD drive and the length of the movie. Typically, it can take as little as 10 minutes with a 16x DVD drive (20 min./8x, 40 min./4x and 80 min./2x).

8. Can I use my computer while I'm saving a movie?

Yes. You can use your PC normally while RealDVD saves your movie and you can watch your movie while it saves.

9. How much hard drive space do I need to save a movie?

RealDVD makes an exact physical copy of your DVD content. Since typical DVD movies range in size from 4GB to 9GB, you can expect to consume a similar amount of space on your hard drive each time you save a DVD.

10. Is it legal to save movies with RealDVD?

Yes, provided that you are the owner of the original DVD and you use your saved copy solely for your personal use.

11. Will I be able to share my movies with friends?

No. The DVDs you save with RealDVD will only play on your PC with the License Key you purchased.

12. Can I watch a movie on my TV from my laptop running RealDVD?

Yes. You can connect any PC running RealDVD to your television and watch movies as long as your version of Windows supports this activity.

13. Can I use my TV remote control with RealDVD?

No. However, this is a feature we hope to add in a future RealDVD release.

14. Can I import my home movies?

Yes. You can save your home movies to your PC with RealDVD as long as they're saved in digital video disc (DVD) format. RealDVD does not support DVD data discs that contain other video formats.

15. Does RealDVD have Parental Controls?

Yes. RealDVD has Parental Controls that let you restrict access to movies based on MPAA ratings.

Have more technical questions?

Learn more at our
[Knowledgebase FAQs](#)

 16. How does the quality of the RealDVD video compare to the original DVD?

Because RealDVD makes an exact copy of your disc, the quality of the video is identical to the quality of your original DVD.

 17. Can I import movies to my home network server and play them on my media center system?

No, not currently. But we do hope to add this functionality in a future release.

 18. Will RealDVD work with Windows Media Center?

RealDVD will install and run on Windows Media Center PCs, but it must be run as an application (just like you would on a laptop or desktop PC). Although RealDVD doesn't currently integrate with the Media Center user interface, it will in a future release.

Have more technical questions? Visit our RealDVD Knowledgebase FAQ.

[Real.com](#)

[My Account](#) | [Customer Support](#) | [Site Map](#) | [Privacy Policy](#) | [Terms of Use](#)

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APPENDIX B


[Join Email List](#)
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RealDVD Features

Your favorite movies, TV shows, scenes and actors are all just a click away. No more searching through boxes, scratching, damaging and losing your discs. Your entire collection is safe, manageable and viewable anywhere and anytime you want. And it's completely legal.

Watch your DVDs anywhere – without the discs



Go anywhere

Play any of your DVDs straight from your authorized laptop or portable hard drive.



Watch everything

Save your entire DVD collection to your PC or portable hard drive, then play them back without the discs.



Easy to use

Watch and save your DVDs simultaneously. Plus you can stop at any time and resume saving where you left off.



Find your movies – fast

Browse by cover art, genre, title, rating, and actor. Then simply click and play.



Never lose your place

RealDVD remembers where you are, so you can stop, shut down and come back later without losing your spot in the movie.



Skip ahead, jump back and slide

Your favorite scene. The best lines. Great action sequences. Skip, jump or "slide" to any part of the movie you want, even between chapters.



Start watching immediately

RealDVD's intuitive design and quick menus let you save and play movies, skip previews, show subtitles, and access most other features in a click or two.



Let your kids play

Parental Controls allow you to control the types of movies children can access.



Become a film buff

Dig deeper into your movies with detailed plot synopses and cast lists. Plus get more info and photos via links to Film.com.



Protect your discs

Using RealDVD keeps your discs safe – no more scratches, skips, blips, or lost titles.



Save Battery Power

RealDVD saves up to 12% of your battery power versus watching a movie that's spinning in your laptop.



Totally legit

RealDVD is 100% legal, so you can save movies with confidence.

System Requirements

[Real.com](#)
[My Account](#) | [Customer Support](#) | [Site Map](#) | [Privacy Policy](#) | [Terms of Use](#)

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