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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

**REPLY IN SUPPORT OF 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**

REPLY ISO STUDIOS' MOTION *IN LIMINE* RE [REDACTED]  
 CASE NOS. C08-4548-MHP/C08-4719-MHP

1 Real's arguments for excluding what plainly were [REDACTED]  
2 are meritless:

3 First, Real paints a misleading picture that it had "more than a half dozen business  
4 conversations with the Studios regarding RealDVD between mid-August [2008] and [REDACTED]

5 [REDACTED]. Opp. at 2:24-25 (emphasis added). In fact, Real had a discussion in [REDACTED] with  
6 [REDACTED]. Real then approached [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 What Real is saying is that, because it contacted [REDACTED] before  
12 launching RealDVD – and [REDACTED] before doing so – Real thereby  
13 demonstrated its "good faith" "intent" "to explore mutual business opportunities, and address the  
14 Studios' concerns." Opp. at 6:26-28. That is self-evidently wrong. If Real had been genuinely  
15 seeking cooperation [REDACTED] Real

16 would have instituted these discussions earlier than the eve of unveiling RealDVD. Real had  
17 numerous discussions with multiple third parties going back more than [REDACTED] before the  
18 product launch. See, e.g., Reply Declaration of Kelly M. Klaus, Ex. A [REDACTED]

19 [REDACTED]; id., Ex. B [REDACTED]  
20 [REDACTED]. Indeed, the very third parties that Real approached made it clear that  
21 Real should have been talking with the Studios. That is completely unsurprising, given that Real  
22 was planning to release a product that circumvents the Studios' access- and copy-controls and  
23 copies their copyrighted content. This was, for instance, [REDACTED] reaction when Real  
24 presented it with its plans for RealDVD:

25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

28 Id., Ex. C at 1.

1           Second, Real’s claim that the Studios “repeatedly” breached and waived any rights under  
2 the Tolling Agreement, is factually false and, in any event, a complete non-sequitur. Opp. at 3:6.

3 [REDACTED]  
4 [REDACTED]

5           Third, Real’s claim that it only intends to introduce evidence of [REDACTED]  
6 [REDACTED] to show “Real’s intent, good faith, and credibility,” and [REDACTED]

7 [REDACTED] Opp. at 6:1, 28, is wrong. The whole point of this self-serving  
8 testimony is to try to rebut the Studios’ showing on irreparable harm and balance of harms with  
9 the pious claim that Real “really, truly” wants to deal with rent-rip-return. Such use is squarely  
10 within the scope of [REDACTED]. See *Seroctin Research & Tech, Inc. v. Unigen Pharm., Inc.*, 541 F.  
11 Supp. 2d 1238, 1239 n.1 (D. Utah 2008) (granting a motion to strike evidence [REDACTED]  
12 [REDACTED] was offered as proof on “any fact bearing on  
13 [plaintiffs’] *prima facie* case for a preliminary injunction, including balancing the harms”).

14           Fourth, and finally, Real continues to pretend that the “only” possible harm from

15 <sup>1</sup> Real’s “breach/waiver” arguments are wrong. Real claims that it “never made any ...  
16 contention” in the Central District that the Studios had engaged in undue delay in seeking a TRO  
17 (something the Tolling Agreement precluded either side from arguing). *Id.* at 3:17-18  
(underscoring Real’s). This is Real’s first paragraph to the Court in the Central District in  
opposition to a TRO:

18           Plaintiffs filed a complaint and sought a TRO today seeking to disrupt  
19 Real’s in-progress launch of RealDVD this morning. Plaintiffs have known since  
20 the first week of September that Real was planning to launch the RealDVD  
21 product by today, and as is evident from the volume and content of Plaintiffs’ *ex*  
22 *parte* papers (comprising a 25-page brief and four inches of supporting  
23 documents), they have been preparing their papers for quite some time. Yet, they  
24 chose not to share those papers with Real until approximately 10:00 am this  
25 morning, in an apparent effort to block any possibility of a response from Real.

26 Williams Decl., Ex. G at 1:5-12. This argument – the first in Real’s brief in response to a TRO  
27 motion – plainly is inviting the Court to find that the Studios delayed not just serving Real with  
28 papers but filing a motion for a TRO.

29 Real also claims that Studio counsel asked Elizabeth Coppinger [REDACTED]  
30 [REDACTED]. In fact, Ms. Coppinger [REDACTED]

31 [REDACTED] See Williams Decl., Ex. B  
32 (Dunn. Depo.) at 192:21-193:4. Of course, by stopping the questioning of Studio witnesses – but  
33 sitting by while Ms. Coppinger and Mr. Wolpert offered [REDACTED]  
34 [REDACTED] – Real has created a one-sided and misleading record [REDACTED].

