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 Counterclaim Defendants
 10 REALNETWORKS, INC. and
 REALNETWORKS HOME
 11 ENTERTAINMENT, INC.

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

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

17 Plaintiffs,

18 v.

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

25 Defendants.

Case Nos. C08 04548 MHP;
 C08 04719 MHP

**REALNETWORKS' OPPOSITION TO
 APPLICATION OF DVD CCA FOR
 ATTORNEYS' FEES AND COSTS
 PURSUANT TO MAY 5, 2009 ORDER
 OF THE COURT**

27 AND RELATED CASES

28

1 **REALNETWORKS' OPPOSITION TO APPLICATION OF DVD CCA FOR ATTORNEYS'**
2 **FEEES AND COSTS PURSUANT TO MAY 5, 2009 ORDER OF THE COURT**

3 RealNetworks, Inc. and RealNetworks Home Entertainment, Inc. ("Real") hereby oppose
4 the application for fees submitted by the DVD Copy Control Association, Inc. ("DVD CCA").
5 The DVD CCA seeks \$17,525.20 in attorneys' fees, an amount which reflects 27.3 hours of
6 attorney time purportedly expended by the DVD CCA to join the Studios' Motion for Sanctions.
7 Application at 2; Declaration of Teresa W. Wang in Support of Application of DVD CCA for
8 Attorneys' Fees and Costs Pursuant to May 5, 2009 Order of the Court ("Wang Decl.") at ¶¶ 2-5.
9 The fees requested by the DVD CCA should be denied.

10 First, the DVD CCA merely *joined* in the Studio Defendants' Motion for Sanctions. The
11 DVD CCA prepared a four-page Notice of Joinder and Joinder – a document which is primarily
12 devoted to twice listing seven issue sanctions that the DVD CCA sought, none of which was
13 granted by the Court. Even if the Court intended that the DVD CCA would be awarded fees for
14 merely joining the Studios' Motion, the \$17,525.20 claimed by the DVD CCA for preparing a 4-
15 page submission is excessive. By comparison, the Studio Defendants – which pursued and
16 conducted Ms. Hamilton's deposition, researched and drafted the lengthy Motion for Sanctions
17 and argued that motion at the hearing – claimed \$19,475.50 in fees relating to Ms. Hamilton's
18 notebooks. The DVD CCA cannot possibly have reasonably incurred roughly equivalent fees by
19 simply piggybacking on the work performed by the Studios. Notably, Real stipulated to the
20 Studio Defendants' fee submission; given the unreasonableness of the DVD CCA's position,
21 Real could not stipulate to the DVD CCA's requested fees.

22 Second, the DVD CCA has explicitly disregarded the Court's directive that fees were
23 only to be awarded for "pursuing the evidence of spoliation of Hamilton's notebooks and for
24 bringing this part of the sanctions motion" (Order at 20), and admittedly seeks all fees incurred
25 in connection with researching and preparing the Joinder.¹ Application at 2. The DVD CCA

26 _____
27 ¹ The DVD CCA asked only one question at Ms. Hamilton's deposition relating to the
28 notebooks and made no oral argument during the hearing of the Sanctions Motion.

1 admits that it did not partition fees specifically relating to Ms. Hamilton's notebooks as
2 instructed, but instead claims that "the legal arguments and research dedicated to the Hamilton
3 notebooks and Hamilton e-mails cannot be segregated from one another." *Id.* If the DVD CCA
4 cannot identify any fees relating to Ms. Hamilton's notebooks as the Court ordered, then the
5 DVD CCA should not be awarded any fees at all. Moreover, the Joinder itself reveals that it is
6 not primarily directed to the issue of Ms. Hamilton's notebooks: (1) only three sentences of the
7 Joinder even mention the Hamilton notebooks; (2) the requested sanctions which comprise the
8 majority of the Joinder are based entirely on Ms. Hamilton's deposition testimony and that cited
9 testimony does not mention or relate to the notebooks; and (3) the three cases cited in the Joinder
10 do not appear to relate to Real's alleged failure to preserve Ms. Hamilton's notebooks, but to
11 other issues discussed in the Joinder. In short, there is no merit to the DVD CCA's claim that it
12 should be awarded the entire purported cost of preparing the Joinder to the Studios' Motion for
13 Sanctions.

14 Courts have broad discretion under their inherent powers to sanction litigants. Order at
15 page 8. Nonetheless, an award of attorneys' fees as a form of sanctions for duplicative or
16 excessive attorney work is inappropriate. *Erum v. County of Kauai*, Civil No. 08-00113 SOM-
17 BMK, 2008 WL 2598138, at *5 (D.Hawaii June 30, 2008). Real respectfully submits that the
18 DVD CCA is not entitled to any fees for simply joining in another party's motion. If the Court is
19 inclined to award any fees to the DVD CCA, the \$17,525.20 sought by the DVD CCA is
20 excessive. Instead, the DVD CCA should be awarded at most 2.5 hours of attorney time at a
21 blended rate of \$653 per hour, for a total of \$1,632.50.² This amount represents approximately
22 8.5% of the amount claimed by the Studio Defendants, which performed virtually all of the work
23 relating to the Motion for Sanctions.

24 For all the foregoing reasons, the DVD CCA's Fee Application should be denied.
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27 ² The blended rate proposed by Real is the average of the hourly billing rates of the three
28 attorneys identified by the DVD CCA as participating in the preparation of the Joinder. *See*
Wang Decl. at ¶5 (relevant hourly rates are \$703.80, \$765 and \$490).

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Date: June 17, 2009

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/
Leo Cunningham

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ENTERTAINMENT, INC.