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 Relief Claim Defendants  
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14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 REALNETWORKS, INC., *et al.*,  
 17 Plaintiffs,  
 18 vs.  
 19 DVD COPY BATES ASSOCIATION,  
 INC., *et al.*  
 20 Defendants.  
 21

CASE NO. C 08-4548-MHP

**STUDIOS' MOTION PURSUANT TO CIV.  
 L.R. 6-3 TO EXTEND TIME TO RESPOND  
 TO REALNETWORKS' SECOND  
 AMENDED COMPLAINT**

[Declaration of Rohit K. Singla and Proposed  
 Order filed herewith]

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

CASE NO. C 08-4719-MHP

1 RealNetworks, Inc. and RealNetworks Home Entertainment, Inc. (“Real”) filed a  
2 Motion for Leave to File a Second Amended Complaint to add purported antitrust claims on May  
3 13, 2009 — *seven months* after its original complaint, *eighteen months* after it discussed antitrust  
4 issues with its counsel, and some *two years* after it decided to develop RealDVD despite its  
5 knowledge that the DVD CCA contends such a product would violate the CSS License. The  
6 Studio Defendants do not oppose Real’s motion for leave to amend, but plan to move to dismiss  
7 Real’s antitrust claims on the pleadings under Rule 12.

8 Real’s proposed Second Amended Complaint explicitly asserts that Real’s last-  
9 ditch antitrust claims depend upon the construction of the CSS License, a matter that certainly  
10 will be addressed in the Court’s ruling on the preliminary injunction motions currently under  
11 submission. Although Real’s antitrust claims are inadequate under any interpretation of the CSS  
12 License, the Court’s interpretation of the CSS License will bear upon the specific issues to be  
13 addressed in the Studios’ Rule 12 motion. Thus, it would be most efficient to brief the motion to  
14 dismiss after the Court issues its preliminary injunction ruling; indeed, it would be a significant  
15 waste of party and judicial resources to brief and consider the Studios’ motion to dismiss where  
16 the arguments and issues to be addressed may vary depending on the Court’s construction of the  
17 License. Accordingly, pursuant to Civ. L.R. 6-3, the Studios respectfully request an extension of  
18 their time to respond to Real’s Second Amended Complaint until 30 days after the issuance of the  
19 preliminary injunction ruling. (Currently, the Studios’ response to the amended complaint will be  
20 due 10 days after the Second Amended Complaint is deemed filed. FED. R. CIV. P. 15(a)(3).)

21 Real has refused to agree to this proposed extension, even though it twice sought  
22 and received extensions of time to file its antitrust counterclaims. *See* Doc. No. 243. There is no  
23 danger of prejudice to Real, given that Real could easily have filed its antitrust claims in  
24 September 2008 with its original complaint — or even earlier.

25 **I. REAL ITSELF ALLEGES THAT ITS CLAIMS WILL BE AFFECTED BY THIS**  
26 **COURT’S PRELIMINARY INJUNCTION RULING**

27 Real’s Motion for Leave to Amend and Second Amended Complaint repeatedly  
28 state that Real’s antitrust claims depend on how the CSS License is construed. *See, e.g.*, Motion

1 for Leave to Amend at 3:9-10 (“Pursuant to the Studios’ and DVD CCA’s interpretation of the  
 2 CSS License Agreement . . .”); 3:13-15 (“Under the Studios’ and the DVD CCA’s interpretation.  
 3 . . .”); RealNetworks’ Second Amended Complaint at 14:7-8 (“According to this interpretation . .  
 4 . . .”); 22:16-17 (“*If* the DVD CCA and the Studio Defendants are right in their collective  
 5 interpretation of the CSS License Agreement . . .”); 22:23-24 (“*If* the Studio Defendants and the  
 6 DVD CCA are wrong in their interpretation . . .”).

7           While Real’s antitrust claims suffer from flaws that warrant dismissal under any  
 8 interpretation of the CSS License, it makes no sense to brief the motion to dismiss before the  
 9 Court’s ruling on the preliminary injunction motion. The Court’s interpretation of the CSS  
 10 License has the concrete potential to affect the content and presentation of one or both parties’  
 11 positions under Rule 12. Logic, efficiency and due concern for orderly proceedings dictate a  
 12 sequential approach here.

13           The parties should not be required to brief and argue these antitrust claims in the  
 14 abstract, and based upon alternative interpretations of the CSS License. There is every reason to  
 15 wait until the Court’s ruling on the preliminary injunction motions before addressing the merits of  
 16 Real’s antitrust claims. It will benefit both the parties and the Court.

17 **II. REAL IS OBVIOUSLY IN NO HURRY, ITSELF, AND WILL SUFFER NO**  
 18 **PREJUDICE FROM AN EXTENSION OF THE STUDIOS’ TIME TO RESPOND**

19           Real, furthermore, will suffer no prejudice from the extension: Real delayed  
 20 bringing its antitrust claims for almost two years.

21 **A. RealNetworks Delayed Pleading Its Antitrust Claims.**

22           None of the matters alleged by Real in its proposed Second Amended Complaint  
 23 are new: its antitrust claims focus on the structure and organization of the DVD CCA, the nature  
 24 of the CSS system and license, the Studios’ purported interpretation of the CSS License, and  
 25 Real’s failure to obtain a Studio’s endorsement of its unlawful circumvention product. *See, e.g.*,  
 26 RealNetworks’ Second Amended Complaint at ¶¶ 22, 50-51 (structure of DVD CCA); ¶¶ 39-40  
 27 (interpretation of CSS License); ¶¶ 46-47, 49, 69-72 (failure to obtain endorsement). Every one  
 28 of these alleged matters was well-known to Real in September 2008, when it filed its first

1 Complaint. Nothing in Real's proposed Second Amended Complaint turns on evidence  
2 uncovered in discovery. Indeed, Real was aware of the DVD CCA's interpretation of the CSS  
3 License as early as *April 2007*, when it first began the RealDVD project. *See* PI Exh. 5 (at  
4 REAL051154). Real discussed with its counsel antitrust issues relating to the DVD CCA's  
5 position on copying of DVDs in *October 2007*. *See* Singla Decl. Exh. A (at REAL098372)  
6 (meeting agenda with counsel regarding "anti-trust" issues relating to the copying of CSS  
7 protected DVDs from October 2007). The declaratory judgment Real sought in September 2008  
8 was specifically premised upon its disagreement with that long-public interpretation by the DVD  
9 CCA. *See* Complaint, Dkt. No. 1, at ¶¶ 5-6, 26, 29-31.

10 The timing of Real's effort to plead antitrust claims thus had nothing to do with its  
11 discovery of any new facts. Rather, it appears to have been a tactical decision. In any case, Real  
12 has been in absolutely no hurry to bring these claims to the Court's attention and cannot plausibly  
13 claim prejudice due to an orderly, logical and efficient sequencing of proceedings.

14 **B. Real Itself Has Sought and Received Months of Extensions**

15 Real's refusal to grant the Studios an extension of time stands in sharp contrast to  
16 Real's own repeated request to the DVD CCA which resulted in a *six-week* extension of time to  
17 respond to the DVD CCA's Second Counterclaim and to file its own antitrust claim against the  
18 DVD CCA. *See* Dkt. No. 239 (extending time to answer from March 30 to May 13, 2009).  
19 Furthermore, Real sought and received repeated continuances of the preliminary-injunction  
20 hearing, which was originally scheduled to begin in November 2008 and ultimately did not  
21 commence until April 24, 2009. The limited extension that will result from granting the Studios'  
22 request will have far less effect on Real than the delays it has itself initiated.

23 **III. CONCLUSION**

24 Accordingly, the Studios respectfully request that the Court extend the deadline for the  
25 Studios to respond to Real's Second Amended Complaint to 30 days after the Court issues its  
26 ruling on the Studios' Motion for Preliminary Injunction. In the alternative, the Studios request  
27 an extension of time to respond to Real's Second Amended Complaint to July 31, 2009.

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DATED: June 29, 2009

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/s/  
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Plaintiffs/Plaintiffs

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ENTERPRISES, INC., PARAMOUNT PICTURES  
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SONY PICTURES TELEVISION INC., TWENTIETH  
CENTURY FOX FILM CORP., NBC UNIVERSAL,  
INC., WALT DISNEY PICTURES, WARNER BROS.  
ENTERTAINMENT, INC., UNIVERSAL CITY  
STUDIOS PRODUCTIONS LLLP, UNIVERSAL CITY  
STUDIOS LLLP, AND VIACOM, INC.

DATED: June 29, 2009

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