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DVD COPY CONTROL ASSOCIATION, INC.

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

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

17 Plaintiffs,

18 v.

19 DVD COPY CONTROL ASSOCIATION, INC., a
Delaware nonprofit corporation, et al.

20 Defendants.

Case No. C08 04548 MHP
Related Case No. C08 CV 04719 MHP

**[PROPOSED] ORDER GRANTING
MOTION OF DVD COPY CONTROL
ASSOCIATION, INC. TO DISMISS
COUNTERCLAIMS**

Before: Hon. Marilyn Hall Patel

Courtroom: 15

Date: September 14, 2009

Time: 2:00 p.m.

21
22 AND RELATED CASES
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[PROPOSED] ORDER GRANTING MOTION TO DISMISS
CASE NO. C08 04548 MHP; C08 CV 04719 MHP

1 The Court having considered the Motion of DVD Copy Control Association, Inc. (“DVD CCA”)
2 to dismiss the Counterclaims of RealNetworks, Inc. and RealNetworks Home Entertainment, Inc.
3 (collectively, “RealNetworks”), and good cause appearing, IT IS HEREBY ORDERED that:

4 (1) DVD CCA’s motion to dismiss RealNetworks’s First, Second, and Third Causes of
5 Action against DVD CCA is GRANTED.

6 (2) The Court concludes as a matter of law that RealNetworks’s First Cause of Action, for
7 Group Boycott in Violation of Section 1 of the Sherman Act, fails to state a claim upon which relief may
8 be granted because RealNetworks does not plausibly allege that DVD CCA took part in any conspiracy
9 to violate the antitrust laws. Moreover, RealNetworks First Cause of Action fails to state a claim upon
10 which relief may be granted because (1) DVD CCA’s conduct as licensor of CSS technology cannot be
11 part of an antitrust conspiracy because it is the conduct of a single entity, not of more than one entity as
12 is required to state a claim for an antitrust conspiracy and (2) all of the actions that are alleged to be part
13 of the supposed conspiracy are immunized from liability by the *Noerr-Pennington* doctrine.

14 (3) The Court further concludes as a matter of law that RealNetworks’s Second Cause of Action,
15 for violation of the Cartwright Act (Bus. & Prof. Code § 16700 et seq.), and Third Cause of Action, for
16 violation of California Unfair Competition Law (Bus. & Prof. Code § 17200 et seq.), fail for the same
17 reasons, because they are premised on the same allegations as RealNetworks’s Sherman Act claim.

18 It is so ORDERED.

19 Dated: _____, 2009

21 _____
The Honorable Marilyn Hall Patel
United States District Judge

22 Submitted by:

23 AKIN GUMP STRAUSS HAUER & FELD, LLP

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26 By: _____/s/_____
REGINALD D. STEER