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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 CONTROL ASSOCIATION,  
 20 et al.,  
 21 Defendants.

CASE NO. C 08-4548 MHP  
**MOTION PICTURE STUDIO PARTIES'  
 AND DVD CCA'S RESPONSE TO REAL'S  
 OPPOSITION TO CHANGES TO  
 PROPOSED PRELIMINARY  
 INJUNCTION ORDER**

Judge: Hon. Marilyn Hall Patel  
 Crtrm: 15

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

CASE NO. C-08-4719 MHP

1 The Studios and the DVD CCA have requested that the *summary* of the Preliminary  
2 Injunction Order be clarified to add the words “ARccOS-protected or RipGuard-protected” to  
3 make explicit that the injunction encompasses not only circumvention or breach of CSS but also  
4 circumvention of ARccOS and RipGuard. The request is based on the Court’s conclusion that  
5 “the Studios are likely to prevail on their claim that RealDVD circumvents ARccOS or RipGuard  
6 in violation of the copy-control section of the DMCA.” (Order ¶ 111.)

7 Real objects to the addition of the words “ARccOS” and “RipGuard” in the summary of  
8 the Court’s Order. Real does not argue that the Studios’ and DVD CCA’s request is in any way  
9 inconsistent with the Court’s Order or that it would work any substantive change in Real’s rights.

10 Rather, Real argues that the Studios and the DVD CCA missed a purported 30-day  
11 window to seek this change, supposedly established by the deadline imposed on *Real* to file its  
12 notice of appeal and statement of compliance with the injunction. Neither the Order itself nor the  
13 Federal Rules put a time limit on the Studios’ and DVD CCA’s request. To the contrary, the  
14 Court has ample authority to clarify its Order, even after a notice of appeal is taken. *See, e.g.,*  
15 Fed. R. Civ. P. 62(c) (“the court in its discretion may . . . modify . . . an injunction during the  
16 pendency of the appeal” of the injunction order); *A&M Records, Inc. v. Napster, Inc.*, 284 F.3d  
17 1091, 1098-99 (9th Cir. 2002) (rejecting argument that “district court lacked authority to modify  
18 the injunction pending appeal”).

19 The proposed modification is particularly appropriate under Rule 62(c) as it does not  
20 “materially alter the status of the case on appeal.” *Natural Resources Defense Council, Inc. v.*  
21 *Southwest Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). The proposed change is just a  
22 “minor adjustments that effectuat[e] the underlying purposes” of the Order’s “original  
23 requirements” and leaves “unchanged the core questions before the appellate panel.” *Id.* The  
24 modification proposed should not, thus, negatively affect the appellate process.

25 Real’s suggestion that the Studios and the DVD CCA delayed in submitting their  
26 modification is not only irrelevant under Rule 62(c), but also inaccurate. Rather than rush to seek  
27 relief from the Court, the Studios and the DVD CCA first attempted to negotiate reasonable  
28

1 modifications to the language of the Order with Real. Only when those efforts failed did the  
2 Studios and the DVD CCA request that the Court clarify the language of the Order.

3 Further, Real has not shown, and cannot show, any prejudice resulting from this minor  
4 modification to the Court's Order. Real complains that it has already filed a notice of appeal.  
5 But there is nothing in the changes sought by the Studios and the DVD CCA that affect Real's  
6 rights on appeal — unless Real plans to argue, contrary to fact, that the Order somehow did not  
7 find that Real's products likely circumvent ARccOS and RipGuard (and even then, Real's rights  
8 should not be affected given the substantive holdings in the body of the Order). In any case, Real  
9 has not even filed its opening appeal brief. Indeed, Real fails to note that it has recently filed an  
10 amended notice of appeal and has obtained a 32-day extension of time to file its opening brief,  
11 until early November.

12 Finally, Real complains that the Studios and the DVD CCA have not made clear whether  
13 Real must re-file its statement of compliance. The Studios and DVD CCA have already  
14 explained that their proposed order does not require any new statement of compliance.

15 DATED: October 1, 2009

16 Respectfully submitted,

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