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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
17 ENTERTAINMENT, INC., a Delaware
corporation,

18 Plaintiffs,

19 v.

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

27 Defendants.

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Case No. C08 04548 MHP

**ANSWER OF DEFENDANT DVD COPY
CONTROL ASSOCIATION, INC.**

1 DVD Copy Control Association (“DVD CCA”), a named Defendant in the above-captioned
2 action, by its undersigned attorneys, hereby submits its Answer in response to the Complaint of
3 RealNetworks, Inc. and RealNetworks Home Entertainment, Inc. (“Plaintiffs”) as follows:¹

4 1. The allegations contained in Paragraph 1 of the Complaint constitute legal conclusions
5 for which an answer is neither required nor appropriate. To the extent an answer is required, DVD
6 CCA denies the allegations contained in Paragraph 1 of the Complaint.

7 **NATURE OF THE ACTION**

8 2. The first sentence of Paragraph 2 of the Complaint is a legal conclusion for which an
9 answer is neither required nor appropriate. To the extent an answer is required, DVD CCA denies the
10 allegations contained in this sentence. DVD CCA is without knowledge or information sufficient to
11 form a belief as to the remainder of the allegations in Paragraph 2 and on that basis denies those
12 allegations.

13 3. DVD CCA is without knowledge or information sufficient to form a belief as to the
14 allegations in Paragraph 3 and on that basis denies those allegations.

15 4. DVD CCA admits that it is a not-for-profit association that licenses certain technology
16 known as the Content Scramble System (“CSS”) pursuant to an agreement known as the CSS License
17 Agreement. DVD CCA admits that Defendants Paramount Pictures Corp., Sony Pictures
18 Entertainment, Inc., Twentieth Century Fox Film Corp., and Warner Bros. Entertainment Inc., are
19 members of the DVD CCA. Upon information and belief, DVD CCA admits the allegations in the
20 second sentence of Paragraph 4 with respect to Defendants Paramount Pictures Corp; Sony Pictures
21 Entertainment, Inc.; Twentieth Century Fox Film Corp and Warner Bros. Entertainment Inc.² Except
22 as expressly admitted, DVD CCA denies the allegations of Paragraph 4 of the Complaint.

23
24
25 ¹ Plaintiffs and DVD CCA were unable to reach agreement on a stipulation granting DVD
26 CCA additional time to file its response to the Complaint, even though counsel for DVD CCA had not
27 been retained in this action until October 14, 2008. DVD CCA anticipates that it will be filing an
28 amended answer with counterclaims in accordance with Fed. R. Civ. P. 15(a) once it has had an
opportunity to more fully investigate Plaintiffs’ allegations.

² Defendants Paramount Pictures Corp; Sony Pictures Entertainment, Inc.; Twentieth Century
Fox Film Corp.; Warner Bros. Entertainment Inc.; Disney Enterprises, Inc.; NBC Universal, Inc, and
Viacom, Inc are referred to collectively herein as the “Studio Defendants.”

1 5. As to the first sentence of Paragraph 5 of the Complaint, DVD CCA admits that
2 judgment was entered last year in an action in Santa Clara Superior Court entitled *DVD Copy Control*
3 *Association, Inc. v. Kaleidescape, Inc.*, No. 1:04 CV 031829, which is currently being appealed. DVD
4 CCA denies that the Studio Defendants acted or spoke on behalf of DVD CCA. DVD CCA is without
5 knowledge or information sufficient to form a belief as to the allegations relating to the Studio
6 Defendants, and on that basis denies them. DVD CCA denies the remaining allegations of Paragraph 5
7 of the Complaint.

8 6. DVD CCA admits the allegations of Paragraph 6 of the Complaint.

9 **JURISDICTION AND VENUE**

10 7. DVD CCA admits that this Court has subject matter jurisdiction over this action under
11 28 U.S.C. §§ 1331, 1338, 1367(a).

12 8. DVD CCA admits that venue is authorized in this judicial district. The remainder of the
13 allegations contained in Paragraph 8 of the Complaint constitute legal conclusions for which an answer
14 is neither required nor appropriate, and DVD CCA denies them on that basis.

15 **INTRADISTRICT ASSIGNMENT**

16 9. Paragraph 9 does not contain any allegation of fact that requires a response from DVD
17 CCA.

18 **THE PARTIES**

19 10. DVD CCA is without knowledge or information sufficient to form a belief as to the
20 allegations in Paragraph 10 and on that basis denies those allegations.

21 11. DVD CCA is without knowledge or information sufficient to form a belief as to the
22 allegations in Paragraph 11 and on that basis denies those allegations.

23 12. DVD CCA admits that it is a Delaware nonprofit corporation having offices located in
24 Morgan Hill, California. DVD CCA admits that it entered into an agreement with RealNetworks in the
25 form of a written CSS License Agreement, in which a license was granted pursuant and subject to the
26 terms of that agreement. Except as expressly admitted, DVD CCA denies the allegations of Paragraph
27 12 of the Complaint.

1 13. DVD CCA is without knowledge or information sufficient to form a belief as to the
2 allegations in the first two sentences of Paragraph 13 and on that basis denies those allegations. DVD
3 CCA denies the allegations of the last sentence of Paragraph 13 of the Complaint.

4 14. DVD CCA is without knowledge or information sufficient to form a belief as to the
5 allegations in the first two sentences of Paragraph 14 and on that basis denies those allegations. DVD
6 CCA admits the allegations of the last sentence of Paragraph 14 of the Complaint.

7 15. DVD CCA is without knowledge or information sufficient to form a belief as to the
8 allegations in the first two sentences of Paragraph 15 and on that basis denies those allegations. DVD
9 CCA admits the allegations of the last sentence of Paragraph 15 of the Complaint.

10 16. DVD CCA is without knowledge or information sufficient to form a belief as to the
11 allegations in the first two sentences of Paragraph 16 and on that basis denies those allegations. DVD
12 CCA admits the allegations of the last sentence of Paragraph 16 of the Complaint.

13 17. DVD CCA is without knowledge or information sufficient to form a belief as to the
14 allegations in the first two sentences of Paragraph 17 and on that basis denies those allegations. DVD
15 CCA denies the allegations of the last sentence of Paragraph 17 of the Complaint.

16 18. DVD CCA is without knowledge or information sufficient to form a belief as to the
17 allegations in the first two sentences of Paragraph 18 and on that basis denies those allegations. DVD
18 CCA admits the allegations of the last sentence of Paragraph 18 of the Complaint.

19 19. DVD CCA is without knowledge or information sufficient to form a belief as to the
20 allegations in the first two sentences of Paragraph 19 and on that basis denies those allegations. DVD
21 CCA denies the allegations of the last sentence of Paragraph 19 of the Complaint.

22 **FACTS**

23 **A. The CSS License Agreement and The DVD CCA.**

24 20. DVD CCA is without knowledge or information sufficient to form a belief as to the
25 allegations pertaining to the Studio Defendants in Paragraph 20 and on that basis denies those
26 allegations. DVD CCA admits that motion picture content has been scrambled using the CSS and
27 stored on DVD discs that have been provided to customers and that the content cannot be viewed
28 unless it is descrambled for playback. DVD CCA admits that manufacturers of hardware and software

1 that allows playback of content protected by CSS on DVDs must have access to the CSS technology
2 through a proper license with DVD CCA. Except as expressly admitted herein, DVD CCA denies the
3 allegations of Paragraph 20 of the Complaint.

4 21. DVD CCA admits that it was formed with the cooperation of the motion picture,
5 consumer electronics and information technology industries. DVD CCA admits that it licenses,
6 through the CSS License Agreement, certain technology to manufacturers of devices and software used
7 to play back video content stored on DVD discs that has been scrambled using CSS. Except as
8 expressly admitted herein, DVD CCA denies the allegations of Paragraph 21 of the Complaint.

9 22. DVD CCA admits the allegations of the first sentence of Paragraph 22 of the
10 Complaint. On information and belief, DVD CCA admits the allegations of the second sentence of
11 Paragraph 22 with respect to Defendants Paramount Pictures Corp; Sony Pictures Entertainment, Inc.;
12 Twentieth Century Fox Film Corp and Warner Bros. Entertainment, Inc. Except as expressly admitted
13 herein, DVD CCA denies the allegations of Paragraph 22 of the Complaint.

14 23. DVD CCA admits the allegations in the first sentence of Paragraph 23. The allegation
15 in the second sentence of Paragraph 23 states a legal conclusion to which no response is required, and
16 as such, DVD CCA denies it.

17 **B. Development Of The RealDVD System.**

18 24. DVD CCA is without knowledge or information sufficient to form a belief as to the
19 allegations in Paragraph 24 and on that basis denies those allegations.

20 25. Upon information and belief, DVD CCA admits that Plaintiffs previously notified
21 certain Studio Defendants that the RealDVD system would be released by September 30, 2008. DVD
22 CCA denies the remaining allegations in Paragraph 25 of the Complaint.

23 **C. The Legal Dispute With The Studio Defendants**

24 26. DVD CCA denies that the Studio Defendants acted or spoke on behalf of DVD CCA.
25 DVD CCA is without knowledge or information sufficient to form a belief as to the remaining
26 allegations in the first sentence of Paragraph 26 of the Complaint and on that basis denies those
27 allegations. DVD CCA admits the allegations in the second sentence of Paragraph 26.

1 27. DVD CCA is without knowledge or information sufficient to form a belief as to the
2 allegations in Paragraph 27 and on that basis denies those allegations.

3 28. Upon information and belief, DVD CCA admits the allegations in Paragraph 28 that
4 efforts between the Studio Defendants and the Plaintiffs have failed.

5 **FIRST CAUSE OF ACTION**

6 (Declaratory Relief under Contract Claim)

7 29. DVD CCA incorporates by reference its responses contained in Paragraphs 1 through 28
8 as if fully set forth herein.

9 30. DVD CCA admits that there is an actual and justiciable controversy relating to the legal
10 rights and duties of Plaintiffs and DVD CCA under the CSS License Agreement. DVD CCA is without
11 knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 30
12 and on that basis denies those allegations.

13 31. DVD CCA is without knowledge or information sufficient to form a belief as to the
14 allegations in Paragraph 31 and on that basis denies those allegations.

15 **SECOND CAUSE OF ACTION**

16 (Declaratory Relief under the Digital Millennium Copyright Act, 17 U.S.C. § 1201)

17 32. DVD CCA incorporates by reference its responses contained in Paragraphs 1 through 31
18 as if fully set forth herein.

19 33. DVD CCA admits that RealNetworks has executed a CSS License Agreement with
20 DVD CCA. Except as otherwise admitted, DVD CCA denies the allegations of Paragraph 33 of the
21 Complaint.

22 34. The allegations contained in the first sentence of Paragraph 34 of the Complaint
23 constitute legal conclusions for which an answer is neither required nor appropriate and DVD CCA
24 denies them on that basis. DVD CCA denies the allegations contained in the second sentence of
25 Paragraph 34 of the Complaint.

26 35. The allegations contained in the first sentence of Paragraph 35 of the Complaint
27 constitute legal conclusions for which an answer is neither required nor appropriate and DVD CCA
28

1 denies them on that basis. DVD CCA denies the allegations contained in the second sentence of
2 Paragraph 35 of the Complaint.

3 36. The allegations contained in Paragraph 36 of the Complaint constitute legal conclusions
4 for which an answer is neither required nor appropriate. To the extent an answer is required, DVD
5 CCA denies the allegations contained in Paragraph 36 of the Complaint.

6 37. The allegations in the first sentence of Paragraph 37 constitute legal conclusions for
7 which an answer is neither required nor appropriate and DVD CCA denies them on that basis. DVD
8 CCA is without knowledge or information sufficient to form a belief as to the allegations in the second
9 sentence of Paragraph 37 and on that basis denies those allegations.

10 **AFFIRMATIVE DEFENSES**

11 **First Affirmative Defense: Failure to State a Claim**

12 The Complaint fails to state a claim upon which relief can be granted.

13 **Second Affirmative Defense: Unclean Hands**

14 Plaintiffs' claims are barred by the doctrine of unclean hands.

15 **Third Affirmative Defense: Plaintiffs' Breach of the CSS License Agreement**

16 Plaintiffs' claims are barred because Plaintiffs' development, design, manufacture, use, offer to sell,
17 and/or sale of RealDVD materially breach Sections 2.1 and 4.2, among others, of the CSS License
18 Agreement.

19 **Fourth Affirmative Defense: Waiver and Estoppel**

20 Plaintiffs' claims are barred by the doctrines of Waiver and Estoppel.

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WHEREFORE, Defendant DVD CCA prays that the Court:

- A. Enter judgment in favor of DVD CCA, and against Plaintiffs, thereby dismissing Plaintiffs' Complaint in its entirety, with prejudice, and Plaintiffs taking nothing by way of their claims;
- B. Award DVD CCA costs of suit, including reasonable attorneys' fees; and
- C. Award DVD CCA such other relief as this Court deems proper under the circumstances.

Dated: October 21, 2008

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP
WHITE & CASE LLP

By _____ /s/
Reginald D. Steer
Attorneys for Defendant
DVD COPY CONTROL ASSOCIATION, INC.