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13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA

15 REALNETWORKS, INC., a Washington  
 16 Corporation; and REALNETWORKS HOME  
 ENTERTAINMENT, INC., a Delaware  
 17 corporation,  
 18 Plaintiffs,  
 19 v.  
 20 DVD COPY CONTROL ASSOCIATION, INC., a  
 Delaware nonprofit corporation, et al.  
 21 Defendants.  
 22 And Related Counterclaims.  
 23

Case No. C08 04548 MHP  
**AMENDED ANSWER AND  
 COUNTERCLAIMS OF DEFENDANT  
 AND COUNTERCLAIMANT DVD COPY  
 CONTROL ASSOCIATION, INC.**

1 **PRELIMINARY STATEMENT**

2 Today, hundreds of millions of people throughout the world take for granted the DVD  
3 technology that allows them to watch movies and television programs at their convenience. But this  
4 stunningly successful technological breakthrough – virtually unimaginable a generation ago – did not  
5 develop spontaneously. It is the product of a delicate set of compromises achieved through painstaking  
6 negotiation among the companies that produce the content for DVDs and the consumer electronics and  
7 information technology companies that make the devices consumers use to play back and enjoy the  
8 content of their DVDs.

9 All three industries recognized a common interest – shared with consumers – to achieve a  
10 single format (the DVD) for delivering digital content to the public. To achieve this uniformity,  
11 however, the content providers needed strong assurance that the content delivery system would render  
12 it very difficult for the typical consumer to make unauthorized copies of the content providers’  
13 copyrighted materials. The consumer electronics and information technology companies, for their  
14 part, needed a content protection system that would not add unduly to the price of their products.

15 Enormous effort across industries produced a solution to the problem of protecting copyrighted  
16 works at a manageable cost – the DVD-Video Content Scramble System (CSS). Under this patented  
17 system (which was designed by Matsushita Electric Industrial Co., Ltd. and Toshiba Corporation in  
18 1996), the video data on every CSS protected DVD is encrypted – that is, the data on the disc is  
19 scrambled so that it cannot be copied or played coherently without first being decrypted through a  
20 process employing a set of decryption “keys.” Under a uniform and non-discriminatory license,  
21 anyone wanting to manufacture a product (hardware, software or other related technology) used for  
22 playing back CSS protected DVD content would be able to license these decryption keys and the  
23 authorized methods and processes for decryption. In exchange for this permission to use CSS,  
24 licensees would simply have to pay an administrative fee and agree to observe detailed specifications  
25 for the decryption and descrambling processes in order to achieve CSS’s underlying goal of facilitating  
26 ready playback of the DVD while preventing consumer copying of the underlying content. To this  
27 end, the specifications require, *inter alia*, that Licensees design their devices to follow a strict

1 authentication protocol and to playback DVD content only when the physical DVD disc is present in  
2 the device. Licensees pay no royalty whatsoever for using the CSS license and all are subject to the  
3 same structure for the license's use.

4 Plaintiffs in this action seek commercial gain by refusing to play by the rules that govern all  
5 their potential competitors. By becoming a CSS licensee, they have obtained the essential decryption  
6 keys permitting playback of DVD content. But they have deployed these keys in a software product  
7 for DVD playback (RealDVD) that violates the License Agreement's numerous protections that  
8 prohibit digital to digital copying in a personal computer environment. Plaintiffs falsely justify their  
9 flagrant breaches of the License Agreement based on a state court judgment – currently on appeal and,  
10 thus, not final – erroneously holding that CSS Licensees are not required to comply with the  
11 restrictions contained in a document entitled the “CSS General Specifications.” Plaintiffs' violations of  
12 the License Agreement, however, extend far beyond breaches solely of the CSS General Specifications  
13 and, accordingly, are not excused even under the decision on which Plaintiffs rely. Quite simply,  
14 Plaintiffs have created a product that vitiates the central purpose of the License Agreement and  
15 undermines the delicate set of compromises and understandings that, heretofore, have nurtured the  
16 success of DVD-related businesses.

#### 17 **AMENDED ANSWER**

18 Defendant and Counterclaimant DVD Copy Control Association, Inc. (“DVD CCA”), submits  
19 this Amended Answer and Counterclaims in response to the Complaint of RealNetworks, Inc. and  
20 RealNetworks Home Entertainment, Inc. (“Plaintiffs”). Each paragraph of the Amended Answer  
21 responds to the correspondingly numbered paragraph of the Complaint.

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

NATURE OF THE ACTION

1  
2           2.       The first sentence of Paragraph 2 of the Complaint is a legal conclusion for which an  
3 answer is neither required nor appropriate. To the extent an answer is required, DVD CCA denies the  
4 allegations contained in that sentence. DVD CCA is without knowledge or information sufficient to  
5 form a belief as to the remainder of the allegations in Paragraph 2.

6           3.       DVD CCA is without knowledge or information sufficient to form a belief as to the  
7 allegations in Paragraph 3.

8           4.       DVD CCA admits that it is a not-for-profit corporation that licenses certain technology  
9 known as the Content Scramble System (“CSS”) pursuant to an agreement known as the CSS License  
10 Agreement; admits that Defendants Paramount Pictures Corp., Sony Pictures Entertainment, Inc.,  
11 Twentieth Century Fox Film Corp., and Warner Bros. Entertainment Inc., are members of the DVD  
12 CCA; and upon information and belief, admits the allegations in the second sentence of Paragraph 4  
13 referring to Defendants Paramount Pictures Corp., Sony Pictures Entertainment, Inc., Twentieth  
14 Century Fox Film Corp. and Warner Bros. Entertainment Inc.<sup>1</sup> Except as expressly admitted, DVD  
15 CCA denies the allegations of Paragraph 4.

16           5.       DVD CCA admits that judgment was entered last year in an action in California  
17 Superior Court, Santa Clara County, entitled *DVD Copy Control Association, Inc. v. Kaleidescape,*  
18 *Inc.*, No. 1:04 CV 031829, which is currently being appealed. DVD CCA denies that the Studio  
19 Defendants acted or spoke on behalf of DVD CCA concerning RealDVD. DVD CCA admits that it  
20 contends that RealDVD violates the CSS License Agreement. DVD CCA is without knowledge or  
21 information sufficient to form a belief as to the allegations referring to the Studio Defendants and  
22 denies the remaining allegations of Paragraph 5.

23           6.       Answering Paragraph 6, DVD CCA avers that it has not asserted any claim against  
24 Plaintiffs at this time under the Digital Millenium Copyright Act (“DMCA”); insofar as the Complaint  
25

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26           <sup>1</sup> Defendants Paramount Pictures Corp.; Sony Pictures Entertainment, Inc.; Twentieth Century  
27 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 purports to state a claim against DVD CCA under the DMCA, it is not ripe for adjudication. DVD  
2 CCA admits that there exists an actual and justiciable controversy between Plaintiff RealNetworks, Inc.  
3 and DVD CCA relating to their respective rights and legal duties under the CSS License Agreement.

4 **JURISDICTION AND VENUE**

5 7. DVD CCA admits that this Court has subject matter jurisdiction over this action under  
6 28 U.S.C. §§ 1331, 1338, 1367(a).

7 8. DVD CCA admits that venue is authorized in this judicial district. The remainder of the  
8 allegations contained in Paragraph 8 of the Complaint constitute legal conclusions for which an answer  
9 is neither required nor appropriate; insofar as any such allegations may be construed to require a  
10 response, DVD CCA denies them.

11 **INTRADISTRICT ASSIGNMENT**

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

14 **THE PARTIES**

15 10. DVD CCA is without knowledge or information sufficient to form a belief as to the  
16 allegations in Paragraph 10.

17 11. DVD CCA is without knowledge or information sufficient to form a belief as to the  
18 allegations in Paragraph 11.

19 12. DVD CCA admits that it is a Delaware nonprofit corporation with offices located in  
20 Morgan Hill, California and admits that it entered into a written CSS License Agreement with  
21 RealNetworks, Inc. Except as expressly admitted, DVD CCA denies the allegations of Paragraph 12.

22 13. DVD CCA is without knowledge or information sufficient to form a belief as to the  
23 allegations in the first two sentences of Paragraph 13. DVD CCA denies the allegations of the last  
24 sentence of Paragraph 13.

25 14. DVD CCA is without knowledge or information sufficient to form a belief as to the  
26 allegations in the first two sentences of Paragraph 14. DVD CCA admits the allegations of the last  
27 sentence of Paragraph 14.

1 15. DVD CCA is without knowledge or information sufficient to form a belief as to the  
2 allegations in the first two sentences of Paragraph 15. DVD CCA admits the allegations of the last  
3 sentence of Paragraph 15.

4 16. DVD CCA is without knowledge or information sufficient to form a belief as to the  
5 allegations in the first two sentences of Paragraph 16. DVD CCA admits the allegations of the last  
6 sentence of Paragraph 16.

7 17. DVD CCA is without knowledge or information sufficient to form a belief as to the  
8 allegations in the first two sentences of Paragraph 17. DVD CCA denies the allegations of the last  
9 sentence of Paragraph 17.

10 18. DVD CCA is without knowledge or information sufficient to form a belief as to the  
11 allegations in the first two sentences of Paragraph 18. DVD CCA admits the allegations of the last  
12 sentence of Paragraph 18.

13 19. DVD CCA is without knowledge or information sufficient to form a belief as to the  
14 allegations in the first two sentences of Paragraph 19. DVD CCA denies the allegations of the last  
15 sentence of Paragraph 19 of the Complaint.

16 **FACTS**

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

18 20. DVD CCA is without knowledge or information sufficient to form a belief as to the  
19 allegations pertaining to the Studio Defendants in Paragraph 20. DVD CCA admits that motion picture  
20 content has been scrambled using CSS and stored on DVD discs that have been provided to customers,  
21 and that the content cannot be viewed unless it is descrambled for playback. DVD CCA admits that  
22 manufacturers of hardware and software that allows playback of DVD content protected by CSS must  
23 have access to the CSS technology through a valid license from DVD CCA. Except as expressly  
24 admitted, DVD CCA denies the allegations of Paragraph 20.

25 21. DVD CCA admits that it was formed with the cooperation of members of the motion  
26 picture, consumer electronics and information technology industries. DVD CCA admits that it  
27 licenses, through the CSS License Agreement, certain technology to manufacturers of devices and

1 software used to play back video content stored on DVD discs that has been scrambled using CSS.

2 Except as expressly admitted, DVD CCA denies the allegations of Paragraph 21.

3 22. DVD CCA admits the allegations in the first sentence of Paragraph 22 of the Complaint.  
4 On information and belief, DVD CCA admits the allegations of the second sentence of Paragraph 22  
5 that refer to Defendants Paramount Pictures Corp.; Sony Pictures Entertainment, Inc.; Twentieth  
6 Century Fox Film Corp.; and Warner Bros. Entertainment Inc. Except as expressly admitted, DVD  
7 CCA denies the allegations of Paragraph 22.

8 23. DVD CCA admits the allegations in the first sentence of Paragraph 23. The allegation  
9 in the second sentence of Paragraph 23 states a legal conclusion to which no response is required;  
10 insofar as that sentence may be construed to require a response, DVD CCA denies it.

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

12 24. DVD CCA is without knowledge or information sufficient to form a belief as to the  
13 allegations in Paragraph 24.

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

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

18 26. DVD CCA admits the allegations in the second sentence of Paragraph 26. Answering  
19 the first sentence, DVD CCA denies that the Studio Defendants acted or spoke on behalf of DVD CCA  
20 and is without knowledge or information sufficient to form a belief as to the remaining allegations in  
21 the first sentence.

22 27. DVD CCA is without knowledge or information sufficient to form a belief as to the  
23 allegations in Paragraph 27.

24 28. Upon information and belief, DVD CCA admits the allegations in Paragraph 28 that  
25 efforts between the Studio Defendants and the Plaintiffs have failed; insofar as this paragraph may be  
26 interpreted to refer to assertions of rights as between DVD CCA and Plaintiffs under the DMCA, DVD  
27 CCA avers that it has not asserted any claim against Plaintiffs at this time under the Digital Millenium

1 Copyright Act (“DMCA”), and insofar as the Complaint purports to state a claim against DVD CCA  
2 under the DMCA, it is not ripe for adjudication.

3 **FIRST CAUSE OF ACTION**

4 (Declaratory Relief under Contract Claim)

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

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

11 31. DVD CCA is without knowledge or information sufficient to form a belief as to the  
12 allegations in Paragraph 31.

13 **SECOND CAUSE OF ACTION**

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

15 32. DVD CCA incorporates by reference its responses contained in Paragraphs 1 through 28  
16 and 30 through 31 as if fully set forth herein.

17 33. DVD CCA admits that RealNetworks has executed a CSS License Agreement with  
18 DVD CCA. Except as specifically admitted, DVD CCA denies the allegations of Paragraph 33.

19 34. The allegations contained in the first sentence of Paragraph 34 constitute legal  
20 conclusions for which an answer is neither required nor appropriate; insofar as those allegations may  
21 be construed to require a response, DVD CCA denies them. DVD CCA denies the allegations  
22 contained in the second sentence of Paragraph 34.

23 35. The allegations contained in the first sentence of Paragraph 35 of the Complaint  
24 constitute legal conclusions for which an answer is neither required nor appropriate; insofar as those  
25 allegations may be construed to require a response, DVD CCA denies them. DVD CCA denies the  
26 allegations contained in the second sentence of Paragraph 35.

1 36. The allegations contained in Paragraph 36 of the Complaint constitute legal conclusions  
2 for which an answer is neither required nor appropriate; insofar as those allegations may be construed  
3 to require a response, DVD CCA denies them.

4 37. Answering Paragraph 37, DVD CCA avers that Plaintiffs' alleged Second Cause of  
5 Action, insofar as it purports to state a claim against DVD CCA, is not ripe for adjudication in that  
6 DVD CCA has not asserted any claim against RealNetworks under the Digital Millenium Copyright  
7 Act at this time. The allegations in the first sentence of Paragraph 37 constitute legal conclusions for  
8 which an answer is neither required nor appropriate; insofar as those allegations may be construed to  
9 require a response, DVD CCA denies them. DVD CCA denies the allegations in the second and third  
10 sentences of Paragraph 37 insofar as they purport to apply to DVD CCA.

11  
12 **AFFIRMATIVE DEFENSES**

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

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

15 **Second Affirmative Defense: Unclean Hands**

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

17 **Third Affirmative Defense: Waiver and Estoppel**

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

19 **COUNTERCLAIMS**

20 DVD CCA counterclaims against RealNetworks, Inc. and RealNetworks Home Entertainment,  
21 Inc. (collectively, "RealNetworks") as follows:

22 **NATURE OF ACTION**

23 1. This is an action for injunctive relief and damages arising from RealNetworks's breach  
24 of its written license agreement with DVD CCA and breach of the implied covenant of good faith and  
25 fair dealing which requires RealNetworks not to engage in conduct that damages DVD CCA's ability  
26 to obtain the benefits of that license agreement.

1 **JURISDICTION AND VENUE**

2 2. The court has jurisdiction over these counterclaims under 28 U.S.C. § 1367(a). Venue  
3 is proper in this court pursuant to 28 U.S.C. § 1391(a)(2).

4 **THE PARTIES**

5 3. DVD CCA is a Delaware not-for-profit corporation with its headquarters and principal  
6 place of business in Morgan Hill, California. It is responsible for developing, evaluating and licensing  
7 copy control and related technologies to participants at various levels in the Digital Versatile Disc  
8 (“DVD”) industry. DVD CCA is the licensor of the Content Scramble System, a system for protecting  
9 audio-visual works contained on DVDs to facilitate consumer playback of the content while preventing  
10 consumer copying and redistribution of the audio-visual works on the DVDs. DVD CCA licenses the  
11 Content Scramble System technology to companies that manufacture hardware and software products  
12 that playback CSS protected DVDs to viewers, recordable discs and related products, and to motion  
13 picture studios and other companies whose audio-visual works are protected using the Content  
14 Scramble System.

15 4. Upon information and belief, RealNetworks, Inc. is a Washington corporation with a  
16 place of business in Seattle, Washington and RealNetworks Home Entertainment, Inc. is a Delaware  
17 corporation with a place of business in Seattle, Washington.

18 **THE CSS TECHNOLOGY AND LICENSE**

19  
20 5. DVDs provide high quality images, such as motion pictures, digitally formatted on a  
21 convenient 5-inch disc that is resistant to wear and damage and allows for many attractive consumer  
22 features not available in other video formats. DVD video discs containing copyrighted works  
23 protected with the Content Scramble System, such as movies and other motion pictures, are licensed  
24 for playback by devices that also implement the licensed Content Scramble System technology.

25 6. The Content Scramble System technology and its associated license and specifications  
26 (collectively “CSS”) has played an essential part in enabling the owners of motion picture content to  
27 provide consumers access to high quality DVD motion pictures for home viewing on their video

1 systems and computers. CSS was designed to protect the intellectual property of the content owners  
2 while simultaneously placing all manufacturers of CSS playback products on a “level playing field” of  
3 specified implementation rules. As a technical and licensing matter, CSS is a two-part system. First,  
4 content owners are able to put their content, in encrypted form using CSS, onto DVD discs. Second,  
5 manufacturers of playback products include CSS decryption and descrambling capability in their  
6 products so that consumers can use them to view and hear the CSS protected content on the DVDs.  
7 Manufacturers of playback products must obtain licenses from DVD CCA in order to use CSS.

8 7. CSS has been critical to the success of the DVD video business. Because DVDs are  
9 “digital,” content from a single disc that is not protected by a system like CSS could be used as a  
10 perfect master for an unlimited number of exact copies. Without the kind of protection that CSS  
11 provides, the threat of widespread copying would have been an insurmountable obstacle to the release  
12 of motion picture content on DVD. CSS prevents, for example, the uploading of playable copies of  
13 DVDs onto the Internet where rampant theft might occur, copying DVDs to provide to friends who  
14 have not purchased the DVD, and creating and storing permanent copies of borrowed or rented DVDs  
15 on personal computer systems. Without these important limitations on the potential for copyright  
16 infringement, the motion picture studios would never have agreed to accept the DVD as a means of  
17 distributing movies, and consumers everywhere would have suffered.

18 8. A personal computer system poses serious challenges for protecting the copyrighted  
19 content of a DVD. Because the information traveling through a personal computer can be directly  
20 accessed by a consumer – who can store, copy or modify information in a variety of ways – CSS  
21 imposes stringent authentication rules that require any DVD playback software to be CSS-compliant;  
22 i.e., the software must follow the CSS rules that prohibit the making of permanent copies of the DVD,  
23 and are specifically designed to ensure that the original DVD is present in the drive tray during any  
24 playback operation. These CSS rules are imposed by the CSS Specifications as part of the License  
25 Agreement.

26 9. The contract between DVD CCA and RealNetworks which RealNetworks executed on  
27 August 13, 2007 is a written agreement which sets forth the terms and conditions under which DVD

1 CCA grants the right to use or implement the CSS technology. Under Paragraph 4.2 of the CSS  
2 License Agreement, RealNetworks is required to comply with these CSS Specifications. The CSS  
3 Specifications include the Procedural Specifications, "CSS General Specifications," "DVD Video  
4 Descrambler," "Authenticator Module for CSS Decryption Module," and "Authenticator Module for  
5 DVD Drive" – all of which the DVD CCA delivered to RealNetworks.

6 10. The CSS License Agreement requires particular hardware and software features to  
7 prevent copying, and generally requires all hardware and software to be designed to effectively  
8 frustrate efforts to defeat the copy protection. RealNetworks agreed pursuant to the License Agreement  
9 to implement certain features. One such feature required by the License Agreement is that end users  
10 have the physical DVD disc in the disc drive during authentication and playback.

11 **REALNETWORKS HAS BREACHED THE CSS LICENSE AGREEMENT**

12 11. The CSS License Agreement between DVD CCA and RealNetworks allows  
13 RealNetworks to manufacture only DVD Video Descramblers ("Descramblers"), Authenticator  
14 Modules for CSS Encryption Modules, and Authenticator Modules for DVD Drives ("Authenticators")  
15 in accordance with CSS Specifications. Under the CSS License Agreement, RealNetworks is not  
16 licensed to develop, design, manufacture or use DVD Products that are in Membership Categories that  
17 RealNetworks did not select as part of its licensing. The DVD CCA imposes these license restrictions  
18 and requirements in order to maintain the content integrity and security provided by the CSS  
19 technology.

20 12. RealNetworks has developed a software product known as RealDVD that runs on  
21 personal computers running the Microsoft Windows operating system.

22 13. DVD CCA is informed and believes that RealDVD operates as follows: after a user  
23 inserts a physical DVD into the DVD-ROM drive of a personal computer running RealDVD, the  
24 software presents the user with the option of copying the contents of the DVD onto the computer.  
25 After the DVD has been copied onto the computer using RealDVD, the copy is available for playback  
26 through the RealDVD user interface and can be played back without the physical DVD. RealDVD thus  
27 allows users to create permanent libraries of playable motion pictures on their hard drives or other

1 storage devices, without regard to whether they actually own or have rented or borrowed the DVDs,  
2 creating a further risk of distribution or access of those copies to other users. These actions are  
3 directly contrary to the essential purpose and intent of CSS and constitute a serious breach of the CSS  
4 License.

5 14. RealNetworks is in breach of Section 4.2 of the CSS License Agreement, which  
6 requires a licensee to comply with the CSS Specifications, because RealDVD – a software DVD  
7 Product – violates requirements imposed by at least the following provisions:

- 8 a. RealNetworks is in violation of the requirements imposed by “Authenticator Module for  
9 CSS Decryption Module”;
- 10 b. RealNetworks is in violation of the requirements imposed by “DVD Video  
11 Descrambler”;
- 12 c. RealNetworks is in violation of the requirements imposed by “CSS General  
13 Specifications”; and
- 14 d. RealNetworks is in violation of the requirements imposed by the Procedural  
15 Specifications.

16 15. Pursuant to these provisions of the CSS License Agreement, a CSS compliant DVD  
17 Product for use in a personal computer environment must playback CSS protected content through  
18 direct interaction with, and transmission of data from, a DVD that is in a DVD drive at the time of  
19 playback, without making a permanent copy of the content. RealNetworks is also in violation of  
20 Section 2.1 of the CSS License Agreement because RealDVD constitutes a CSS Decryption Module,  
21 and RealNetworks failed to join the CSS Decryption Module Membership Category.

22 16. RealDVD is designed and marketed as an inexpensive, easy to use software product that  
23 facilitates a casual DVD user’s ability to make free, usable copies of CSS-protected DVDs on a  
24 personal computer hard disk drive or other storage media, including copies of DVDs that the user does  
25 not own or possess at the time of playback. Accordingly, these breaches seriously threaten the  
26 fundamental balance of interests that has enabled motion picture companies and others to distribute  
27 copyrighted content to the public on DVD, and the level playing field that the CSS license creates

1 among all Licensees and potential Licensees. This balance can be preserved only if the integrity of  
2 CSS is respected by all who license it.

3 17. RealNetworks's breaches therefore cause irreparable harm to the integrity and security  
4 afforded by the CSS system and cause irreparable harm to the interests of providers of copyrighted  
5 content on DVD, creators of hardware and software for playback of CSS protected DVDs and the  
6 public, to whom content is made available on DVD because of the CSS technology.

7 18. DVD CCA first learned of RealDVD in early September of 2008, at or around the time  
8 of its announcement by RealNetworks.

9 **FIRST CLAIM FOR RELIEF**

10 **(Breach of Contract)**

11 19. DVD CCA realleges and incorporates by reference paragraphs 1 through 18 above.

12 20. The CSS License Agreement is a valid and binding written contract between DVD CCA  
13 and RealNetworks. DVD CCA has performed all of its obligations under the CSS License Agreement.

14 21. RealNetworks has materially breached the CSS License Agreement by, in and among  
15 other ways, developing and distributing RealDVD, which (a) includes functionality prohibited by the  
16 CSS License Agreement, (b) fails to implement CSS in the manner required by the CSS License  
17 Agreement, (c) fails to effectively prevent the creation of permanent copies of CSS protected DVD  
18 content onto personal computers, and (d) fails to require authentication and play back of CSS protected  
19 DVD content from a physical DVD disc.

20 22. RealNetworks is not a CSS Licensee in the CSS Decryption Module Membership  
21 Category; by developing, designing, manufacturing and using Real DVD, which constitutes a CSS  
22 Decryption Module, it has violated the scope of its CSS License Agreement.

23 23. As a direct and proximate result of RealNetworks's breaches of the CSS License  
24 Agreement, DVD CCA has suffered damages in an amount according to proof at trial. In addition,  
25 DVD CCA is suffering irreparable injury as a direct and proximate result of RealNetworks's breaches  
26 of the CSS License Agreement and is entitled to a declaration of its right to terminate the Agreement;

1 alternatively, DVD CCA is entitled to specific performance and injunctive relief pursuant to Section  
2 9.2 of the CSS License Agreement and applicable law.

3 **SECOND CLAIM FOR RELIEF**

4 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

5 24. DVD CCA realleges and incorporates by reference paragraphs 1 through 18 and 20  
6 through 23, above.

7 25. The CSS License Agreement is a valid and binding written contract between DVD CCA  
8 and RealNetworks. DVD CCA has performed all of its obligations under the CSS License.

9 26. RealNetworks is a sophisticated company that is in the business of providing digital  
10 media services; it fully understood the importance of the CSS protections provided to DVD content  
11 when it entered into the CSS License Agreement. By entering into the CSS License Agreement,  
12 RealNetworks promised to fulfill the requirement that it implement particular architectures that  
13 effectively prevent the creation of permanent copies of the contents of DVDs onto personal computers  
14 and otherwise provide reasonable security and protection for DVD content, require that the protected  
15 physical DVD be in the drive during authentication and playback and effectively protect confidential  
16 technical CSS data licensed under the CSS License Agreement. Despite having undertaken this  
17 promise, RealNetworks intentionally developed a software product, Real DVD, which violates the CSS  
18 License Agreement and, if allowed to be sold, would result in the appropriation by RealNetworks of  
19 revenues that would otherwise go to DVD content providers.

20 27. RealNetworks has breached the covenant of good faith and fair dealing implied in the  
21 CSS License Agreement by, in and among other ways, developing and distributing RealDVD, which  
22 (a) includes functionality prohibited by the CSS License Agreement, (b) fails to implement CSS in the  
23 manner required by the CSS License Agreement, (c) fails to effectively prevent the creation of  
24 permanent copies of CSS protected DVD content onto personal computers, and (d) fails to require  
25 authentication and play back of CSS protected DVD content from a physical DVD disc. RealNetworks  
26 intentionally designed RealDVD so that it violates both the letter and the spirit of the CSS License  
27 Agreement and undermines the fundamental purposes of the CSS License Agreement.



- 1 E. Award DVD CCA costs of suit; and
- 2 F. Award DVD CCA such other relief as this Court deems proper under the circumstances.

3  
4 Dated: November 10, 2008

Respectfully submitted,  
AKIN GUMP STRAUSS HAUER & FELD LLP  
WHITE & CASE LLP

7  
8 By \_\_\_\_\_ /s/  
Reginald D. Steer  
9 Attorneys for Defendant and Counterclaimant  
DVD COPY CONTROL ASSOCIATION, INC.

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