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8 Attorneys for Plaintiffs
 9 REALNETWORKS, INC. and
 REALNETWORKS HOME
 10 ENTERTAINMENT, INC.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

14 REALNETWORKS, INC., a Washington)
 Corporation; and REALNETWORKS HOME)
 15 ENTERTAINMENT, INC., a Delaware)
 Corporation,)
 16)
 17 Plaintiffs,)
 18 v.)

CASE NO.: 3:08-cv-04548 MHP
**[PROPOSED] AMENDED
 COMPLAINT FOR
 DECLARATORY RELIEF**
DEMAND FOR JURY TRIAL

19 DVD COPY CONTROL ASSOCIATION, INC.,)
 a Delaware Nonprofit Corporation, DISNEY)
 20 ENTERPRISES, INC., a)
 Delaware Corporation; PARAMOUNT)
 21 PICTURES CORP., a Delaware Corporation;)
 22 SONY PICTURES ENTERTAINMENT, INC., a)
 Delaware Corporation; TWENTIETH)
 23 CENTURY FOX FILM CORP., a Delaware)
 Corporation; NBC UNIVERSAL, INC., a)
 24 Delaware Corporation; WARNER BROS.)
 25 ENTERTAINMENT, INC., a Delaware)
 Corporation; and VIACOM, Inc., a Delaware)
 26 Corporation.)
 27 Defendants.)

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1 in particular the right to prohibit the sale of the RealDVD product and products with similar
2 functionality such as the New Platform. *See* CSS License Agreement § 9.5.

3 5. Despite the fact that a California court concluded over a year ago that the same type
4 of copying methodology employed by RealDVD and the New Platform do not violate the CSS
5 License Agreement (*see DVD Copy Control Association, Inc. vs. Kaleidescape, Inc.*, Superior
6 Court Santa Clara County (No. 1:04 CV 031829), Judgment dated Apr. 13, 2007), the Studio
7 Defendants, on their own behalf and on behalf of the DVD CCA, nonetheless have asserted that
8 products with functionality like that in the RealDVD system and thus the New Platform violate the
9 CSS License Agreement and the anti-circumvention provisions of the Digital Millennium
10 Copyright Act (“DMCA”). On information and belief, the DVD CCA has asserted similarly.

11 6. Accordingly, there exists an actual and justiciable controversy between Plaintiffs
12 and the Defendants relating to their respective rights and legal duties under the CSS License
13 Agreement and the DMCA. Plaintiffs seek a judgment declaring, among other things, that the
14 CSS License Agreement permits Plaintiffs to manufacture and offer for sale the RealDVD product
15 and the New Platform, and that the Plaintiffs do not violate the DMCA.

16 **JURISDICTION AND VENUE**

17 7. This court has jurisdiction over the claims asserted because the underlying action
18 concerns a federal question. The Defendants in this matter would be filing a claim against one or
19 more of Plaintiffs under the DMCA. Because the crux of this matter involves a federal right, this
20 court properly maintains jurisdiction over this action for declaratory relief under the DMCA under
21 28 U.S.C. § 1331 and has supplemental jurisdiction of all other claims under 28 U.S.C. § 1367.

22 8. Venue is proper in this court pursuant to 28 U.S.C. § 1391(a)(2), because a
23 substantial part of the events or omissions giving rise to the claim occurred in this District.
24 Additionally, pursuant to § 10.4 of the CSS License Agreement, exclusive jurisdiction and venue
25 over any dispute arising out of the agreement exists in the federal and state courts of Santa Clara
26 County, California.

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INTRADISTRICT ASSIGNMENT

9. Pursuant to Civil Local Rule 3-2(c), this action may be assigned on a district-wide basis.

THE PARTIES

10. RealNetworks is a Washington corporation with its principal place of business in Seattle, Washington. It is engaged in the business of, among other things, developing, manufacturing, and selling platforms for the delivery of digital media.

11. RealNetworks Home Entertainment, Inc. is a Delaware corporation with its principal place of business in Seattle, Washington. It is a subsidiary of RealNetworks, and it is the entity that distributes the RealDVD product and is developing the New Platform.

12. The DVD CCA is a Delaware nonprofit corporation, having offices located in Morgan Hill, California. It granted a license in the CSS technology to RealNetworks in the form of a written CSS License Agreement.

13. Disney Enterprises, Inc. is a Delaware corporation with its principal place of business in Los Angeles, California. It is engaged in the business of, among other things, making motion pictures. It is a member of the DVD CCA.

14. Paramount Pictures Corp. is a Delaware corporation with its principal place of business in Los Angeles, California. It is engaged in the business of, among other things, making motion pictures. It is a member of the DVD CCA.

15. Sony Pictures Entertainment, Inc. is a Delaware corporation with its principal place of business in Culver City, California. It is engaged in the business of, among other things, making motion pictures. It is a member of the DVD CCA.

16. Twentieth Century Fox Film Corp. is a Delaware corporation with its principal place of business in Los Angeles, California. It is engaged in the business of, among other things, making motion pictures. It is a member of the DVD CCA.

17. NBC Universal, Inc., is a Delaware corporation with its principal place of business in Universal City, California. It is engaged in the business of, among other things, making motion pictures. It is a member of the DVD CCA.

1 personal use. The copy preserves the CSS encryption. The RealDVD system and the New
2 Platform thus protect the user from, among other things, damage or loss of a DVD, while ensuring
3 that the encryption protection in the original DVD is maintained. Further, RealDVD and the New
4 Platform enhance the original protection by incorporating an additional layer of protection at a
5 level beyond that required by the CSS License Agreement. The RealDVD system and the New
6 Platform also provide a number of other desirable features, such as parental controls that ensure
7 children access only entertainment that is appropriate for their age, central storage that permits
8 users to keep all the motion pictures they own in one easily accessible location, and the capability
9 for users to watch their movies on a variety of devices they own for greater ease of use and
10 convenience.

11 25. Plaintiffs made known to the Defendants that the RealDVD system would be
12 released on September 30, 2008. By October 20, 2008 or earlier, Plaintiffs made known to the
13 Defendants the fact of the existence of the New Platform and that it would be brought to market
14 shortly.

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

16 26. The Studio Defendants, on their own behalf and on behalf of the DVD CCA of
17 which they are members, have advised Plaintiffs that they believed that products with
18 functionality like that in the RealDVD product and thus the New Platform violate the CSS License
19 in that neither product conforms to the CSS Specifications. The Defendants further claimed that
20 products with functionality like that in the RealDVD product and thus the New Platform violate
21 the anti-circumvention provisions of the DMCA.

22 27. Plaintiffs do not believe that the RealDVD product violates the CSS License
23 Agreement or the DMCA or any rights of the Defendants, and have so advised the Studio
24 Defendants. Likewise, Plaintiffs do not believe that the New Platform violates the CSS License
25 Agreement or the DMCA or any rights of the Defendants, and have so advised the Studio
26 Defendants.

27 28. Efforts to resolve this dispute have failed.

1 **FIRST CAUSE OF ACTION**

2 (Declaratory Relief under Contract Claim)

3 29. Plaintiffs reallege and incorporate by reference the allegations contained in
4 Paragraphs 1 through 28 as if fully set forth herein.

5 30. There is an actual and justiciable controversy relating to the legal rights and duties
6 of Plaintiffs and Defendants under the CSS License Agreement in that the Defendants have
7 advised Plaintiffs that they believe that products with functionality like that in the RealDVD
8 Product and thus the New Platform violate the CSS License Agreement. This controversy is of
9 sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

10 31. Thus, a declaration of Plaintiffs' rights under the CSS License Agreement is
11 necessary to protect Plaintiffs from uncertainty and insecurity, which is causing Plaintiffs injury
12 by, among other things, damaging its goodwill and disrupting its business. Without the requested
13 declaration of its rights, the Defendants will continue to jeopardize Plaintiffs' interests.

14 **SECOND CAUSE OF ACTION**

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

16 32. Plaintiffs reallege and incorporate by reference the allegations contained in
17 Paragraphs 1 through 31 as if fully set forth herein.

18 33. RealNetworks is a licensee of CSS technology, and both the RealDVD product and
19 the New Platform were designed to conform to the CSS Specifications. As a result, the RealDVD
20 product and the New Platform are authorized by the Defendants to utilize CSS technology to
21 access the content of DVDs to which the Studio Defendants own the copyrights.

22 34. Neither the RealDVD product nor the New Platform is primarily designed or
23 produced for the purpose of circumventing a technological measure that effectively controls access
24 to a copyrighted work, or that protects the right of a copyright owner. Rather, both the RealDVD
25 product and the New Platform ensure that the encryption protection in the original DVD is
26 maintained and enhanced by incorporating an additional layer of protection at a level beyond that
27 required by the CSS License Agreement.
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1 35. Both the RealDVD product and the New Platform have commercially significant
2 purposes and uses other than to circumvent a technological measure that effectively controls
3 access to a copyrighted work, or that protects the right of a copyright owner. By way of example
4 only, the RealDVD product and the New Platform each provide the owners of DVDs with the
5 ability to save a personal copy of a DVD on a secure hard drive for private use, and protect the
6 DVD owner against damage or loss of a DVD that he or she has obtained through legitimate
7 means.

8 36. Neither the RealDVD product nor the New Platform has been marketed for use in
9 circumventing a technological measure that effectively controls access to a copyrighted work, or
10 that protects the right of a copyright owner. Rather, the RealDVD Product has been marketed as
11 licensed software that “saves a secure copy of a DVD to the hard drive without removing or
12 altering the CSS encryption.” The New Platform will be marketed similarly upon release.

13 37. Plaintiffs request a judicial determination and declaration as to whether the
14 RealDVD product and the New Platform violate the provisions of 17 U.S.C. § 1201. Such a
15 judicial determination and declaration is necessary to protect Plaintiffs from uncertainty and
16 insecurity, which is causing Plaintiffs injury by, among other things, damaging its goodwill and
17 disrupting its business. Without the requested declaration of its rights, the Defendants will
18 continue to jeopardize Plaintiffs’ interests.

19 WHEREFORE, based on the foregoing, Plaintiffs respectfully request that the Court grant
20 the following relief:

- 21 a. A judgment declaring that the CSS License Agreement permits the manufacture,
22 distribution, and sale of the RealDVD product and the New Platform;
 - 23 b. A judgment declaring that the Plaintiffs do not violate the DMCA;
 - 24 c. Attorneys’ fees and costs; and
 - 25 d. Such other relief as this Court deems just and equitable.
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