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 9 REALNETWORKS, INC. and  
 REALNETWORKS HOME  
 10 ENTERTAINMENT, INC.

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 REALNETWORKS, INC., a Washington  
 14 Corporation; and REALNETWORKS HOME  
 ENTERTAINMENT, INC., a Delaware  
 15 corporation,

16 Plaintiffs,

17 v.

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

24 Defendants.

Case Nos. C08 04548 MHP;  
 C08 04719 MHP

**DECLARATION OF COLLEEN BAL  
 IN SUPPORT OF PLAINTIFFS AND  
 COUNTERCLAIM DEFENDANTS'  
 MOTION FOR LEAVE TO AMEND**

25  
 26 AND RELATED CASES  
 27

28  
 DECLARATION OF COLLEEN BAL  
 CASE NOS. 08-cv-04548 MHP  
 08-cv-04179 MHP

1 I, Colleen Bal, declare:

2 1. I am an attorney at law duly licensed to practice in the State of California and  
3 before this Court. I am a partner at the law firm of Wilson Sonsini Goodrich & Rosati, and one  
4 of the counsel for RealNetworks, Inc. and RealNetworks Home Entertainment, Inc. (collectively  
5 “Real”), plaintiffs and counterclaim defendants in the above-captioned matter. I make this  
6 Declaration in support of Plaintiffs’ and Counterclaim Defendants’ Administrative Motion for  
7 Leave to Amend. I have personal knowledge of the facts set forth herein and, if called as a  
8 witness, could and would testify competently thereto.

9 2. On the morning of October 20, 2008, I called counsel for the Studio Defendants,  
10 Kelly Klaus, to discuss the fact that Real was developing and would soon release a product  
11 similar in functionality to RealDVD. I told Mr. Klaus that Real sought to add the new product to  
12 the preliminary injunction proceedings, particularly in view of the Court’s statement at the  
13 October 8, 2008 temporary restraining order hearing that Real had “rushed to market” with  
14 RealDVD “and didn’t wait for any kind of adjudication.” As I indicated to Mr. Klaus at the  
15 time, I believed that incorporating the new product into the preliminary injunction proceedings  
16 might affect the Studios’ view of the scope of discovery and the hearing, and I wanted to give the  
17 Studios sufficient notice of the new product so that they could plan accordingly. I also told Mr.  
18 Klaus that since the product had not yet been released, information about the product was  
19 confidential and extremely sensitive.

20 3. In response, Mr. Klaus advised me that he would have to talk to the Studios to  
21 determine their position with respect to the addition of the new product into the proceedings. He  
22 also indicated that he believed he would need to be able to reveal confidential information about  
23 the product to his clients so that they could determine their positions on that issue, and he asked  
24 that I consider the extent to which Real would permit internal Studio representatives to have  
25 access to such information. At some point during our conversation, Mr. Klaus added his  
26 colleague Glenn Pomerantz into the discussion. I do not specifically recollect at what point Mr.  
27 Pomerantz joined the call.

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1           4.       Later that same day, I called Mr. Klaus to continue our discussions regarding the  
2 new product. I told Mr. Klaus that since our call earlier that morning, I had secured Real's  
3 agreement to disclose certain confidential information about the new product to at least one  
4 internal representative from each of the Studios, who I anticipated would have access to highly  
5 confidential information under the yet-to-be negotiated protective order, in addition to outside  
6 counsel. I expressly told Mr. Klaus that I was prepared to share that information with him during  
7 the telephone call, subject to the restriction that the information could only be shared with one  
8 client representative from each of the Defendant Studios, so that he could secure his clients'  
9 agreement to include the new product in the preliminary injunction proceedings. Mr. Klaus  
10 declined my offer of information, saying that he would have to confer with his clients before  
11 receiving it and that he hoped to provide a response to me shortly. I did not receive any further  
12 response from Mr. Klaus on the subject.

13           5.       The next day, October 21, 2008, we were directed by the Court's clerk to submit  
14 letter briefs regarding various disputes between the parties concerning the scope and length of  
15 the preliminary injunction hearing, and related discovery. In its letter (served electronically  
16 through the ECF system to all counsel, including counsel for the DVD CCA), Real requested that  
17 the new product be added to the preliminary injunction proceedings so that any injunction ruling  
18 would apply to both RealDVD and the new product. (Oct. 21, 2008 letter from Colleen Bal to  
19 Judge Patel, attached hereto as Ex. 1.). The Court did not address this request in its ruling, which  
20 was delivered by the Court's clerk during a telephone conference to Mr. Pomerantz and me late  
21 in the afternoon. Real had no opportunity to raise the issue directly with the Court.

22           6.       After the telephonic conference with Mr. Bowser, my colleague Michael Berta  
23 and I held a further telephone conference with Mr. Pomerantz to discuss the Court's ruling.  
24 Among other things, I reminded Mr. Pomerantz that Real wanted to adjudicate the new product  
25 along with RealDVD during the preliminary injunction hearing, and again asked for the Studios'  
26 position on that subject. In response, Mr. Pomerantz observed that Real could simply amend its  
27 complaint as of right at that point since neither the Studios nor the DVD CCA had answered. He  
28 stated that he believed that was the appropriate next step. Within about an hour or two of his

1 statement, defendant DVD CCA filed its answer, thereby preventing Real from amending its  
2 complaint as of right.

3 7. The new product that was the subject of these discussions is referred to in the  
4 proposed Amended Complaint as the “New Platform” because it does not yet have a release  
5 name. It is not described in great detail because prior to release such detail is highly confidential  
6 and competitively sensitive.

7 8. No longer able to amend as of right, on November 6, 2008 Real sent a draft  
8 proposed amended complaint to counsel for the Studios, and asked whether the Studios would  
9 stipulate to, or not oppose, its filing.

10 9. On November 7, Mr. Klaus responded by letter, stating that the Studios could not  
11 agree to the proposed amendment because they did not know enough about the new product to  
12 determine whether there is an actual controversy. (Nov. 7, 2008 Letter from Kelly Klaus to  
13 Michael Berta, attached hereto as Ex. 2.) Mr. Klaus does not acknowledge that I offered to  
14 provide him with such information on October 20, or that he declined my offer. In his letter, Mr.  
15 Klaus also disputes that I informed him on October 20 of “the fact of the existence of the New  
16 Platform and that it would be brought to market shortly.” (*Id.*) I did in fact provide him with  
17 that information. Consistent with the offer I made weeks ago to Mr. Klaus, Real remains ready  
18 to provide confidential information and discovery to the Studios concerning the new product.

19 10. The DVD CCA sent a similar letter on November 10, indicating that it would not  
20 agree to Real’s filing an amended complaint. (Nov. 10 Letter from Reginald Steer to Michael  
21 Berta, attached hereto as Ex. 3.) This letter is also incorrect in several respects, including in the  
22 claim that Real “belatedly” raised the issue of the new product “for the first time” on November  
23 6, 2008.

24 I declare under penalty of perjury under the laws of the United States that the foregoing is  
25 true and correct and that this declaration was executed this 11th day of November 2008 in San  
26 Francisco, California.

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/s/  
Colleen Bal