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17 Attorneys for Defendants and Counter-complainants
DISNEY ENTERPRISES, INC., PARAMOUNT
18 PICTURES CORP., SONY PICTURES
ENTERTAINMENT, INC., TWENTIETH CENTURY FOX
19 FILM CORP., and WARNER BROS. ENTERTAINMENT,
INC.
20

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23

24 REALNETWORKS, INC., a Washington
Corporation; and REALNETWORKS
25 HOME ENTERTAINMENT, INC., a
Delaware corporation,
26

27 Plaintiffs and Counter-
defendants,
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CASE NO. C 08 4548 HRL

COUNTER-COMPLAINT

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vs.

DVD COPY CONTROL ASSOCIATION, INC., a Delaware nonprofit corporation, DISNEY ENTERPRISES, INC., a Delaware corporation; PARAMOUNT PICTURES CORP., a Delaware corporation; SONY PICTURES ENTERTAINMENT, INC., a Delaware corporation; TWENTIETH CENTURY FOX FILM CORP., a Delaware corporation; NBC UNIVERSAL, INC., a Delaware corporation; WARNER BROS. ENTERTAINMENT, INC., a Delaware corporation; and VIACOM, Inc., a Delaware Corporation,

Defendants and
Counter-complainants.

1 This Court has original subject matter jurisdiction over the first cause of action
2 pleaded herein pursuant to 28 U.S.C. §§ 1331 and 1338(a), and the Digital Millennium Copyright
3 Act, 17 U.S.C. §§ 1201, *et seq.* (the “DMCA”); and supplemental jurisdiction over the second
4 cause of action pleaded herein pursuant to 28 U.S.C. § 1367. Counter-complainants Disney
5 Enterprises, Inc., Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth
6 Century Fox Film Corporation, and Warner Bros. Entertainment Inc. (collectively, “Counter-
7 complainants”), by their attorneys, for their counter-complaint against RealNetworks, Inc.
8 (“RealNetworks”) and RealNetworks Home Entertainment, Inc. (“RealNetworks Home
9 Entertainment”) (jointly, “Real” or “Counter-defendants”), allege, on personal knowledge as to
10 themselves and information and belief as to others, as follows:

11 NATURE OF THE ACTION

12 1. Real has announced its intention to commence trafficking in a software product
13 called “RealDVD” that by design bypasses technological measures that protect against access to
14 and copying of movies from digital versatile discs (“DVDs”). As anyone who has ever watched a
15 popular movie on a DVD knows from the opening message, copying the content on the DVD is
16 strictly prohibited. RealDVD circumvents the technological measures that help to enforce this
17 prohibition.

18 2. Real admits that what RealDVD is doing “has been done illegally for awhile” with
19 other software products, a long line of which have been shut down by the federal courts. Real,
20 however, claims that RealDVD differs from its predecessors, and that when RealDVD
21 circumvents the DVD protection measures, it is “legal” and “100% legit.” There is nothing legal
22 or legitimate about it. Real unlawfully makes and sells a product that circumvents the DVD
23 protection measures and makes playable copies of protected content onto computer hard drives.

24 3. Counter-complainants own and/or control copyrights in many of the most
25 successful and critically acclaimed movies and recorded television programs released in the
26 United States and throughout the world, and they and their affiliates and licensees are among the
27 leading producers and distributors of such motion pictures content in the DVD format. Counter-
28 complainants have invested billions of dollars creating their content and distributing it to

1 consumers. Each Counter-complainant studio was unwilling to release its content on DVD until
2 technological measures were adopted to safeguard that content from access and copying.
3 RealDVD places Counter-complainants and their businesses at risk of immediate and widespread
4 harm. For the low price of \$29.99, RealDVD can be used to build a hard-drive library of
5 complete copies of motion picture content on DVDs, including from DVDs borrowed from
6 friends or rented (at a fraction of the purchase price) from NetFlix, Blockbuster or other rental
7 services. The misuse of Counter-complainants' content is of no concern to Real, which pockets
8 \$29.99 for every base product it sells – and an extra \$19.99 for each additional copy of the
9 software that will allow copied DVD content to be played on additional hard drives. It is small
10 wonder, then, that Real's CEO, Rob Glaser, anticipates his product's illicit use with a shrug and a
11 knowing wink: "If you want to steal, we remind you what the rules are and we discourage you
12 from doing it, but we're not your nanny."

13 4. Real was able to design RealDVD to circumvent the DVD protection technology
14 by misusing a limited license it obtained to make authorized DVD products. Specifically, in
15 August 2007, RealNetworks obtained a license from the organization that licenses the DVD
16 protection technology, the DVD Copy Control Association ("DVD-CCA") (the "DVD-CCA
17 License Agreement"). The DVD-CCA License Agreement authorized Real to make DVD *player*
18 products. Real, however, used the technology it obtained under the DVD-CCA License
19 Agreement to develop RealDVD, a DVD *copying* product that performs the completely
20 unauthorized function of circumventing CSS's access- and copy-controls to make digital-to-
21 digital playable copies from DVDs to computer hard drives. Real's misuse of the DVD
22 protection technology was not only unauthorized but was prohibited by the DVD-CCA license
23 agreement.

24 5. Counter-complainants are entitled to immediate relief from Real's flagrant
25 violation of their rights. RealDVD's assault on the market for DVDs is obvious: the ability to
26 use RealDVD to "rent (or borrow), rip, and return" motion picture content released on DVD
27 fundamentally changes the economic equation of buying DVDs. For example, why pay \$18.50
28 for a DVD if the same content can be copied permanently and perfectly for the two dollars (or

1 less) it costs to rent the movie? For that matter, why pay \$3.25 to “rent and rip” a movie if it can
2 be borrowed from a friend or acquaintance for free, copied with RealDVD and then returned?

3 6. The harm that RealDVD threatens to inflict is hardly limited to the sale and rental
4 of DVDs. RealDVD also poses an immediate threat to significant alternative means whereby
5 Counter-complainants distribute content in digital format to consumers. Counter-complainants
6 currently offer their content through video-on-demand channels, Internet download services (*e.g.*,
7 Amazon and iTunes), “Digital Download” DVDs (premium DVD packages that include a digital
8 copy suitable for download to a personal computer or portable device) and other channels.
9 Counter-complainants are actively pursuing and developing – and taking the associated risks of
10 investing money, time and technology in – these and other digital distribution channels.
11 RealDVD, which has incurred none of the risks and made none of the investments in these
12 businesses, threatens to undermine all of these present and potential channels, at significant cost
13 to Counter-complainants and their business partners.

14 7. The fact that Real is the entity trafficking in RealDVD greatly increases the threat
15 to Counter-complainants’ business. Real is no minor player in the information technology sector.
16 Real itself estimates that its products (*e.g.*, the RealPlayer) reside on millions of personal
17 computers in the United States and Real enjoys extensive brand recognition. Real plainly has the
18 capability, through these other Internet-connected products, to “blast” electronic messages to its
19 millions of users in an attempt to market its new RealDVD product. Moreover, Real styles itself
20 as a maker and distributor of lawful products, not as a renegade “hacker.” By promoting
21 RealDVD as completely legal and legitimate, Real conveys the false impression that conduct that
22 consumers have long understood to be wrong is now legal. This misleading promotion threatens
23 to drive up early and immediate adoption of RealDVD by millions of end-users, each of whom
24 will have downloaded a copy of RealDVD that can be used to evade DVD protection measures
25 and allow for unlawful copying on an enormous scale.

26 8. Real’s conduct will cause grave and irreparable harm to Counter-complainants
27 should it be allowed to continue unabated. Counter-complainants bring this action to stop that
28 harm and protect their rights.

THE PARTIES

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2 9. Counter-complainant Disney Enterprises, Inc. (“DEI”) is a corporation duly
3 incorporated under the laws of the State of Delaware with its principal place of business located
4 in Burbank, California.

5 10. Counter-complainant Paramount Pictures Corporation (“Paramount”) is a
6 corporation duly incorporated under the laws of the State of Delaware with its principal place of
7 business located in Los Angeles, California.

8 11. Counter-complainant Sony Pictures Entertainment Inc. (“Columbia TriStar”) is a
9 corporation duly incorporated under the laws of the State of Delaware with its principal place of
10 business located in Culver City, California.

11 12. Counter-complainant Twentieth Century Fox Film Corporation (“Fox”) is a
12 corporation duly incorporated under the laws of the State of Delaware with its principal place of
13 business located in Los Angeles, California.

14 13. Counter-complainant Warner Bros. Entertainment Inc. (“Warner Bros.”) is a
15 corporation duly incorporated under the laws of the State of Delaware with its principal place of
16 business located in Burbank, California.

17 14. On information and belief, Counter-defendant RealNetworks, Inc. is incorporated
18 under the laws of the State of Washington and has its principal place of business at 2601 Elliott
19 Avenue, Suite 1000, Seattle, Washington 98121.

20 15. On information and belief, Counter-defendant RealNetworks Home Entertainment,
21 Inc. is incorporated under the laws of the State of Delaware and has its principal place of business
22 at 2601 Elliott Avenue, Suite 1000, Seattle, Washington 98121.

JURISDICTION AND VENUE

23
24 16. The Court has subject matter jurisdiction over the federal law cause of action
25 pleaded herein pursuant to 28 U.S.C. §§ 1331 (federal question), and 1338(a) (any act of
26 Congress relating to copyright), and pursuant to the DMCA, 17 U.S.C. §§ 1201, *et seq.* Pursuant
27 to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the state law cause of action
28

1 pleaded herein because it is so related to Counter-complainants' claims under the DMCA as to be
2 part of the same case or controversy.

3 17. This Court has personal jurisdiction over Real, and venue is proper in this Judicial
4 District pursuant to 28 U.S.C. § 1391(b) because, *inter alia*, (a) Real and/or its agents are doing
5 business in this District; and (b) a substantial part of the events or omissions giving rise to this
6 lawsuit, as well as substantial injury to Counter-complainants, have occurred or will occur in
7 interstate commerce, in the State of California, and in the Northern District of California as a
8 result of Real's violations of the DMCA, as alleged in detail below. Venue also is proper in this
9 District pursuant to 28 U.S.C. § 1400(a) in that Real may be found in this District in light of its
10 extensive commercial activities here. Real also has expressly consented, in Section 9.5 of the
11 DVD-CCA License Agreement, to jurisdiction and venue in this Judicial District over the second
12 cause of action herein.

13 **BACKGROUND FACTS**

14 **Counter-complainants' Copyrighted Motion Pictures and Television Programs**

15 18. Counter-complainants, directly or through their affiliates, are engaged in the
16 business of developing, producing, and distributing, and licensing to others the right to distribute
17 and exhibit, copyrighted motion pictures and/or television programs in the United States and
18 throughout the world.

19 19. Counter-complainants, either directly or through their affiliates and/or licensees,
20 distribute their copyrighted works in various forms, including, without limitation, for exhibition
21 in theaters, through television broadcasts, through cable and direct-to-home satellite services
22 (including basic, premium, "pay-per-view" and "video on demand" television services), and
23 through digital download platforms such as the MovieLink, CinemaNow, Playstation Network,
24 iTunes, Xbox Live Marketplace, and Amazon Video on Demand services. In addition, Counter-
25 complainants distribute their motion pictures and/or television programs on DVD by selling them
26 directly or indirectly to the home viewing market. Further, consumers have the option to
27 purchase certain of Counter-complainants' copyrighted works in configurations that include –
28 often for an additional fee – DVDs with added features that include a so-called "Digital

1 Download” file, *i.e.*, a file containing a digital copy of the motion picture that can be uploaded to
2 a computer hard drive.

3 20. A DVD is a digital storage medium that is capable of storing the digital video and
4 audio information that comprises a full-length motion picture (or other audiovisual work). Since
5 the introduction of DVDs into the marketplace, DVD has become the dominant medium for the
6 distribution of movies or other audiovisual works for home viewing.

7 21. Counter-complainants have invested (and continue to invest) substantial sums of
8 money and effort each year to develop, produce and distribute motion pictures and/or television
9 programs protected under copyright and other laws. Real’s illegal actions, as described below,
10 deprive Counter-complainants of their exclusive rights and the economic value of those rights.

11 **The DVD Technology and the Content Scramble System (“CSS”)**

12 22. DVDs are five-inch wide optical discs that contain recorded material in digital
13 form, in this case Counter-complainants’ copyrighted motion pictures and/or television programs.
14 Commercial entertainment DVDs also typically contain ancillary or “bonus” material, *e.g.*,
15 interviews or deleted scenes, which is also subject to copyright protection. DVD technology has
16 significantly improved the clarity and overall quality of home viewing of pre-recorded content,
17 *e.g.*, viewing audiovisual material on a television or computer screen.

18 23. Because DVDs contain material in digital form, they present a heightened risk of
19 illegal reproduction and distribution of copyrighted material. Without appropriate safeguards, the
20 material can be digitally copied and transmitted repeatedly without degradation of the clarity and
21 overall quality. The distribution of works in digital form on DVDs also presents an increased risk
22 that illegal digital copies of Counter-complainants’ copyrighted works will be transmitted over
23 the Internet, stored in computer memory, or duplicated for unlawful sale, transfer or exchange.
24 Once these copies are “in the clear” and in the hands of others, repeated reproduction and
25 distribution are possible, and the unlawful processes can be replicated endlessly.

26 24. To substantially lower the risks of such illegal copying, each Counter-complainant
27 insisted upon the development of an access control and copy prevention system to safeguard
28 against access to and reproduction of their copyrighted works released in digital form on DVD

1 format. Counter-complainants currently use the Content Scramble System, or “CSS,” for this
2 purpose.

3 25. CSS is an encryption-based security and authentication system that requires the
4 use of appropriately licensed and configured hardware, such as a DVD player or computer DVD
5 drive, to decrypt, unscramble and play back the material contained on encrypted DVDs. CSS
6 includes elements of encryption and other security and authentication measures that require DVD
7 playback products to operate with certain keys in order to descramble and play back copies of the
8 material contained on the DVDs. CSS also safeguards against reproduction and distribution of
9 such keys and of the copyrighted audiovisual content released on DVD format.

10 26. The CSS technology is licensed by the DVD-CCA. The DVD-CCA licenses the
11 CSS technology enabling the manufacture of CSS-compliant products. CSS has been licensed to
12 hundreds of DVD player and drive manufacturers (both hardware and software) and DVD content
13 distributors in the United States and around the world. All sectors of the DVD industry, including
14 the software and hardware manufacturers of DVD players, drives and replicators and of
15 descrambling modules that must be employed in DVD products, as well as disc replicators and
16 content providers (including Counter-complainants and other motion picture and television
17 studios), have adopted CSS as direct licensees of DVD-CCA or by contracting through CSS
18 licensees.

19 27. DVD-CCA licenses CSS subject to strict requirements that prevent misuse of the
20 DVD content by licensed players. These controls are intended to ensure, among other things, that
21 DVD player technology is used only to enable viewing – and not copying – of DVDs. Nothing in
22 the DVD-CCA License Agreement authorizes a licensee to create a product to make playable
23 copies of DVD content.

24 28. Counter-complainants have relied upon the security provided by CSS in
25 manufacturing, producing and distributing to the public their copyrighted works in standard
26 definition DVD format.

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1 **Real Obtains A DVD-CCA License And Uses The Licensed Technology To Develop A**
2 **Circumvention Product, RealDVD**

3 29. On or about August 13, 2007, Counter-defendant RealNetworks executed a DVD-
4 CCA License Agreement in order to become a licensee of CSS technology.

5 30. With the benefit of the CSS technology it obtained with authorization to build a
6 product to *play* DVDs, Real developed RealDVD, a product that makes playable, permanent
7 *copies* of DVDs. RealDVD bypasses the CSS protection measures by making a complete, bit-for-
8 bit copy of the entire contents of a CSS-protected DVD onto either a local computer hard drive or
9 a connected external USB hard drive. These copies are fully playable from the hard drive. A
10 user of RealDVD can register up to four additional computer hard drives to their RealDVD
11 account, for an additional charge of \$19.99 each. Once registered, each of these additional hard
12 drives will play at least those copies saved to an external USB hard drive connected to the first
13 computer registered to the user's account.

14 31. The purpose and use of RealDVD is to circumvent, unlawfully and without any
15 authorization, the CSS access control and copy control systems that protect Counter-
16 complainants' content on DVDs. Counter-complainants have not granted any license,
17 permission, or authorization to Real or its end-users to circumvent CSS as described herein.

18 32. RealDVD, by design and operation, causes immediate and irreparable harm to
19 Counter-complainants and their exclusive rights protected under federal law. Users of RealDVD
20 can load their entire DVD collection – or a series of DVDs they rent from services like
21 Blockbuster or Netflix – to computer hard drives to create electronic “jukeboxes.” RealDVD also
22 can be used to load entire DVD collections of friends and neighbors, thus creating a significantly
23 expanded library. Although RealDVD's graphic user interface warns users not to do so,
24 RealDVD does not stop an end-user from loading rented or borrowed DVDs onto a computer,
25 illegally copying the entire content, and thereby obtaining a permanent, playable copy of the
26 content for the minimal price of a rental fee or for free (in the case of borrowed DVDs).

1 person with that person's knowledge for use in circumventing protection afforded by a
2 technological measure that effectively protects a right of a copyright owner under this title in a
3 work or a portion thereof.

4 37. CSS is a judicially recognized technological measure employed by the DMCA
5 Counter-complainants that (a) effectively controls access to works protected by the Copyright Act
6 and (b) effectively protects the DMCA Counter-complainants' copyrights by controlling whether
7 an end user can reproduce, manufacture, adapt, publicly perform and/or distribute copies of their
8 copyrighted works or portions thereof.

9 38. Real offers to the public, provides, and/or otherwise traffics in a software product
10 – RealDVD – that (a) is primarily designed or produced for the purpose of circumventing CSS or
11 the protection afforded by CSS; (b) has only limited commercially significant purpose or use
12 other than to circumvent CSS or the protection offered by CSS; and/or (c) is marketed by Real
13 and/or others acting in concert with it with the knowledge that RealDVD is used to circumvent
14 CSS or the protection afforded by CSS.

15 39. By circumventing CSS and by offering to the public and providing the services
16 hereinabove alleged, Real has violated 17 U.S.C. §§ 1201(a)(2), and 1201(b).

17 40. The DMCA Counter-complainants will sustain actual damage in that, among other
18 things, the value of their copyrighted works will be reduced and their goodwill will be harmed as
19 a result of Real's violation of 17 U.S.C. §§ 1201(a)(2), and 1201(b). The DMCA Counter-
20 complainants also are entitled to Real's profits from its violations of 17 U.S.C. §§ 1201(a)(2), and
21 1201(b). Alternatively, at the DMCA Counter-complainants' election, Counter-complainants are
22 entitled to an award of the maximum statutory damages as permitted by the DMCA, 17 U.S.C.
23 § 1203(c).

24 41. Real's conduct, unless enjoined and restrained by the Court, will cause grave and
25 irreparable injury to the DMCA Counter-complainants, who have no adequate remedy at law.
26 Pursuant to 17 U.S.C. § 1203, the DMCA Counter-complainants are entitled to a permanent
27 injunction prohibiting further violations of § 1201.
28

1 access to, duplication of, and/or redistribution of CSS-protected content. One such measure is
2 that, in order for a user of a DVD to watch a motion picture, a physical DVD must be present in
3 the player or computer DVD disk drive, a provision that the RealDVD software clearly violates.

4 46. RealDVD fails to comply with the DVD-CCA License Agreement, including the
5 CSS Specifications, by, among other things, allowing Counter-complainants' copyrighted content
6 to be viewed without having a physical DVD in the disk drive of the computer. This is in
7 material breach of Section 4.2 of the DVD-CCA License Agreement.

8 47. RealNetworks' breaches of Section 4.2 of the DVD-CCA License Agreement will
9 injure The Beneficiary Claim Counter-complainants by exposing their valuable copyrighted
10 content to infringement of their exclusive rights, including without limitation the exclusive right
11 of reproduction. Such injury is irreparable in that money damages alone cannot compensate the
12 Beneficiary Claim Counter-complainants for such injury. Accordingly, as set forth below, the
13 Beneficiary Claim Counter-complainants seek injunctive relief as authorized by the DVD-CCA
14 License Agreement. Such measures are necessary and appropriate to protect the Beneficiary
15 Claim Counter-complainants' copyrighted works.

16 48. As a direct and proximate result of RealNetworks' breaches of the DVD-CCA
17 License Agreement, the Beneficiary Claim Counter-complainants will incur mitigation costs to
18 remedy the effects of those breaches, and have and will incur attorneys fees enforcing their rights.

19 49. The Beneficiary Claim Counter-complainants further allege, on information and
20 belief, that RealNetworks' conduct was willful and/or malicious.

21 50. Pursuant to Section 9.5 of the DVD-CCA License Agreement, the Beneficiary
22 Claim Counter-complainants are entitled to an award of reasonable attorneys' fees, expenses and
23 costs of up to \$2 million, as well as recovery of the Beneficiary Claim Counter-complainants'
24 mitigation costs of up to \$100,000, all as set forth in Section 9.5 of the DVD-CCA License
25 Agreement.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, Counter-complainants pray for judgment against Real and
28 against all of its affiliates, agents, servants, employees, partners and all persons in active concert

1 or participation with it, for the following relief:

- 2 (a) On the first cause of action, a temporary restraining order and preliminary
3 and permanent injunctive relief enjoining Real and all of its employees,
4 officers, directors, agents, servants, affiliates, attorneys, successors and
5 assigns, and all those acting directly or indirectly in concert or participation
6 with any of them, from violating Counter-complainants' rights under the
7 DMCA by selling, offering, marketing or otherwise trafficking in
8 RealDVD, or any product with substantially similar functionality;
- 9 (b) On the first cause of action, an award to the DMCA Counter-complainants
10 of damages they have sustained or will sustain by reason of Real's
11 violation of 17 U.S.C. §§ 1201(a)(2) and/or 1201(b), all profits derived by
12 Real from such conduct, or in lieu thereof, should the DMCA Counter-
13 complainants so elect, such statutory damages as the Court shall deem
14 proper as provided in 17 U.S.C. § 1203(c), including damages for each act
15 of circumvention, device, product, component, offer or performance of
16 service in violation of 17 U.S.C. §§ 1201(a)(2) and/or 1201(b);
- 17 (c) On the second cause of action, preliminary and permanent injunctive relief
18 enjoining RealNetworks and anyone acting in concert with it from
19 violation of the DVD-CCA License Agreement, including but not limited
20 to the obligations set forth in Section 4.2 of the DVD-CCA License
21 Agreement;
- 22 (d) On both causes of action, an order directing that Real file with the Court
23 and serve upon counsel for Counter-complainants within thirty (30) days
24 after the entry of such order or judgment, a report in writing and under oath
25 setting forth in detail the manner and form in which Real has complied
26 with the injunction;

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