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Judgment Defendants
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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21

22 REALNETWORKS, INC., a Washington
Corporation; and REALNETWORKS
23 HOME ENTERTAINMENT, INC., a
Delaware corporation,

24 Plaintiffs,

25 vs.

26 DVD COPY CONTROL ASSOCIATION,
27 INC., DISNEY ENTERPRISES, INC.,
PARAMOUNT PICTURES CORP.,
28 SONY PICTURES ENTERTAINMENT,

CASE NO. C 08-4548-MHP

**DECLARATION OF GLENN D.
POMERANTZ IN SUPPORT OF MOTION
PICTURE STUDIO PLAINTIFFS'
OPPOSITION TO REAL'S MOTION TO
AMEND DECLARATORY JUDGMENT
COMPLAINT**

DATE: December 22, 2008
TIME: 9:00 a.m.
CTRM: 15 (Hon. Marilyn Hall Patel)

1 INC., TWENTIETH CENTURY FOX
2 FILM CORP, NBC UNIVERSAL, INC.,
3 WARNER BROS. ENTERTAINMENT,
4 INC., and VIACOM, INC.,
5 Defendants.

CASE NO. C 08-04719 MHP

6 UNIVERSAL CITY STUDIOS
7 PRODUCTIONS LLLP, UNIVERSAL
8 CITY STUDIOS LLLP, PARAMOUNT
9 PICTURES CORPORATION,
10 TWENTIETH CENTURY FOX FILM
11 CORPORATION, SONY PICTURES
12 TELEVISION INC., COLUMBIA
13 PICTURES INDUSTRIES, INC., SONY
14 PICTURES ENTERTAINMENT INC.,
15 DISNEY ENTERPRISES, INC., WALT
16 DISNEY PICTURES and WARNER
17 BROS. ENTERTAINMENT INC.,

18 Plaintiffs,

19 vs.

20 REAL NETWORKS, INC. and REAL
21 NETWORKS HOME
22 ENTERTAINMENT, INC.,

23 Defendants.

1 I, GLENN D. POMERANTZ, declare as follows:

2 1. I am a partner in the law firm of Munger, Tolles & Olson LLP, counsel of record
3 to the motion picture studio plaintiffs and declaratory judgment defendants (“Studios” or
4 “Plaintiffs”) in this action. The contents of this declaration are within my personal knowledge,
5 except as to those matters identified on information and belief, and as to those matters I believe
6 them to be true. If called as a witness in this action, I could and would testify competently to the
7 contents of this declaration.

8 2. The first time that defendant and declaratory judgment plaintiff RealNetworks,
9 Inc. (“Real” or “Defendant”) informed counsel for the Studios about the product that Real refers
10 to as the “New Platform” was on October 20, 2008. On that day, Real’s counsel, Colleen Bal,
11 spoke to my partner, Kelly Klaus, by telephone. I am informed and believe that during that
12 conversation, Ms. Bal told Mr. Klaus that Real was developing what she referred to as a “new
13 product” and that Real wanted to add this new product to the Studios’ preliminary injunction
14 motion. Ms. Bal did not provide any information about the new product, including what it does
15 or when Real plans to release it, during this conversation.

16 3. Mr. Klaus and I had another telephone conference with Ms. Bal on October 20.
17 We told her that there was no way our clients could make an informed decision about whether
18 they had a legal objection to this new product unless the clients themselves knew what the
19 product was. Ms. Bal stated that Real would only provide additional information about the new
20 product if the Studios agreed that such information would be limited to the Studios’ outside
21 counsel at Munger, Tolles & Olson and Mitchell Silberberg & Knupp. Ms. Bal specifically stated
22 that Real would not allow the Studios’ outside counsel of record who work at the Motion Picture
23 Association of America, Inc., Gregory Goeckner and Dan Robbins, to review any of this
24 information.

25 4. I am informed and believe that on October 21, Ms. Bal called Mr. Klaus and told
26 him that she thought she could convince her client to allow one in-house lawyer at each Studio to
27 have access to information about the new product. Ms. Bal said that such information could not
28 be shared within any Studio beyond that one in-house counsel.

1 5. On November 6, Ms. Bal's partner, Michael Berta, sent us Real's Proposed
2 Amended Complaint and requested the Studios' consent to its filing. The Proposed Amended
3 Complaint for the first time referred to the new product as the "New Platform." On November 7,
4 Mr. Klaus of our firm sent a letter to Berta, explaining that our clients could not consent to Real's
5 filing of the amended complaint because our clients still did not know what that product was and
6 therefore whether they had a legal objection to it. A true and correct copy of Mr. Klaus's
7 November 7 letter to Mr. Berta is attached hereto as Exhibit A.

8 6. On November 15, I spoke to Ms. Bal by telephone regarding the schedule for
9 preliminary injunction discovery. During that call, Ms. Bal again raised the issue of the New
10 Platform and indicated that Real wanted it to be part of the preliminary injunction proceedings. I
11 reiterated to Ms. Bal that because Real had failed to tell our clients anything about the New
12 Platform, our clients could not know if they had a legal objection to the New Platform and, if they
13 did, whether they would want to seek a preliminary injunction to restrain its distribution. Ms. Bal
14 identified a document that Real had produced in discovery concerning the New Platform. Real
15 had designated the document "Highly Confidential" under the Protective Order. Because of this
16 designation, I told Ms. Bal that we were not able to disclose the document to our client
17 representatives who would need to evaluate the New Platform in order to determine whether the
18 Studios object to it. Ms. Bal asked me who those representatives were. I told her that I did not
19 have a list of those individuals but that at each Studio, the list likely would include a mix of
20 people involved in business issues, with the advice of legal counsel. Ms. Bal told me she thought
21 there should be a way for all those representatives to have access to information about the New
22 Platform and at the same time preserve Real's confidentiality interests. I told Ms. Bal that Real
23 should make a proposal for how to accomplish that. As of this date, Real's counsel has not made
24 such a proposal.

25 7. Real has produced documents to the Studios as part of preliminary injunction
26 discovery. I am informed by my colleagues who have been involved in the review of these
27 documents, and based thereon I believe, that there are some documents in Real's preliminary
28 injunction discovery production that appear to discuss a product that is different from RealDVD,

1 and that presumably is the “New Platform” referred to in Real’s Proposed Amended Complaint.
2 Our firm has not located any documents in Real’s production that are specification or architecture
3 documents that explain the technology underlying the New Platform’s operation. Real has not
4 produced any product samples of the New Platform. From our firm’s review of Real’s
5 documents, it appears that Real has designated all documents concerning the New Platform
6 “Highly Confidential,” which means that we are precluded from sharing these documents with
7 any persons inside the Studios other than a limited number of in-house counsel authorized to
8 review “Highly Confidential” documents.

9 8. The parties have reached general agreement regarding a discovery and briefing
10 schedule for the preliminary injunction motion. The Court currently has calendared that motion
11 for hearing January 27-29, 2009, although my partner Bart Williams, who is the Studios’ lead
12 counsel, has requested that the Court move that hearing to an earlier date in January because of a
13 conflict with a previously scheduled trial date in a criminal case in another court where Mr.
14 Williams is lead trial counsel for the defendant. (The Studios also would be amenable to a
15 hearing on any open dates starting in mid-February.) Under the agreed-upon schedule, the parties
16 have exchanged documents and are scheduled to conduct fact depositions during the period
17 December 1-16. Expert reports are due to be served on December 19, and expert depositions are
18 to conclude by January 7, 2009. Opening briefs on the motion are due on January 13.

19 I declare under penalty of perjury under the laws of the United States that the foregoing is
20 true and correct and that this declaration was executed this 1st day of December 2008 at Los
21 Angeles, California.

22
23 /s/

24 _____
25 GLENN D. POMERANTZ
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