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 DVD COPY CONTROL ASSOCIATION, INC.

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 REALNETWORKS, INC., a Washington
 Corporation; and REALNETWORKS HOME
 17 ENTERTAINMENT, INC., a Delaware
 corporation,

18 Plaintiffs,

19 v.

20 DVD COPY CONTROL ASSOCIATION, INC., a
 21 Delaware nonprofit corporation, et al.

22 Defendants.

Case No. C08 04548 MHP
 Case No. C08 04719 MHP (related case)

**JOINDER OF DEFENDANT AND
 COUNTERCLAIMANT DVD COPY
 CONTROL ASSOCIATION, INC. IN
 MOTION PICTURE STUDIOS'
 OPPOSITION TO REALNETWORKS,
 INC. AND REALNETWORKS HOME
 ENTERTAINMENT, INC.'S MOTION
 FOR LEAVE TO AMEND**

24 And Related Cases

1 DVD Copy Control Association, Inc. (“DVD CCA”) joins in the Motion Picture Studios’
2 Opposition to Real’s Motion to Amend Declaratory Judgment Complaint and adopts the arguments and
3 supporting evidence set forth therein, as its own.

4 In addition, the DVD CCA categorically denies the assertion contained in the Motion for Leave
5 to Amend filed by RealNetworks, Inc. and RealNetworks Home Entertainment, Inc. (together “Real”)
6 and the Bal Declaration filed in support of that Motion that DVD CCA “precipitously” filed its answer
7 to Real’s Complaint on October 21, 2008 in order to prevent Real from amending as of right. *See*
8 Motion at 5; Bal Decl., ¶ 6. Nothing could be further from the truth. In fact, DVD CCA answered on
9 October 21 because its Answer was due on October 20 and, in response to a request for extension from
10 DVD CCA’s counsel, Real’s counsel had refused to provide more than a one-day extension of time to
11 respond to the Complaint, except on conditions that were unacceptable to DVD CCA. Declaration of
12 Reginald D. Steer, ¶ 2, Exhibit A. It is also baffling that Real would accuse DVD CCA of trying to cut
13 off its right to amend when, at the time DVD CCA filed its answer, Real’s counsel had never
14 mentioned that Real was considering amending its complaint and had not made known to DVD CCA
15 any information about the so-called “New Platform” that is the subject of its proposed amendment.
16 *Id.*, ¶ 3.

17 It is unusual to oppose a motion to amend the complaint when litigation is at an early stage, but
18 this is not the usual situation. Here, the parties are working on a demanding schedule to prepare for a
19 preliminary injunction hearing involving a high-technology product. Real’s proposed Amended
20 Complaint tells the reader almost nothing about the second high-technology product it wants to bring
21 into the case – the “New Platform” -- other than that Real alleges it “is developing the New Platform”
22 (Proposed Amended Complaint, ¶ 11) and that it functions “like” the first product (RealDVD). Yet
23 Real wants to have the New Platform’s compliance with the CSS License Agreement adjudicated on
24 the same preliminary injunction schedule as applies to RealDVD. As Real’s Motion states, “Real
25 proposes to amend its Complaint for Declaratory Relief filed on September 20, 2008 (“Complaint”) so
26 that the Court may determine, at the same time it adjudicates the RealDVD product, that the New
27 Platform also does not violate the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1201, *et*
28

1 seq or fail to comply with the standard-form CSS License Agreement to which Real is licensed.”

2 Motion at 2 (emphasis added). To allow this would be unfair to DVD CCA and the Studios. Real
3 admits that, “The Court’s decision as to whether Real may amend its complaint is independent from
4 the question of whether the New Platform may be considered at the preliminary injunction hearing
5 scheduled for January 27-29, 2009.” Motion at 3. However, Real’s assertion that both questions
6 should be answered in the affirmative is wrong.

7 The Motion to Amend should be denied because Real has offered no reason at all for its failure
8 to include the vaguely-described “New Platform” in its Complaint and because, as explained in the
9 Studios’ Opposition, there is no basis for Real’s proposed allegation that the DVD CCA contends that
10 the New Platform violates the CSS License Agreement. Nor can there be, because DVD CCA has
11 been left to guess what the New Platform is, what it does and how it does it. *See Proposed Amendment*
12 ¶ 5. Indeed, Real’s submission nowhere suggests that Real ever provided any description of the New
13 Platform to DVD CCA, beyond vague references to its existence.

14 On the other hand, DVD CCA respectfully submits that even if the Court were to allow the
15 requested amendment, it should not allow the preliminary injunction proceeding to be expanded to
16 include the New Platform. Having been sued by Real and having filed its own counterclaims for
17 breach of contract and breach of the covenant of good faith and fair dealing, DVD CCA intends to
18 protect the integrity of its License Agreement by participating in the briefing and argument of the
19 preliminary injunction proceedings. DVD CCA has been participating in discovery, but has not
20 received from Real any discovery other than what has been provided to the Studios. Therefore, DVD
21 CCA would be prejudiced for the same reasons shown by the Studios. *See Studios’ Opposition* at 7-8.

22 Dated: December 1, 2008

Respectfully submitted,

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25 By _____/s/
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