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 13 PICTURES TELEVISION INC., TWENTIETH CENTURY
 FOX FILM CORP., NBC UNIVERSAL, INC., WALT
 14 DISNEY PICTURES, WARNER BROS.
 ENTERTAINMENT, INC., UNIVERSAL CITY STUDIOS
 15 PRODUCTIONS LLLP, UNIVERSAL CITY STUDIOS
 LLLP, AND VIACOM, INC.
 16

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

19 REALNETWORKS, INC., et al.,
 20 Plaintiffs,
 21 vs.
 22 DVD COPY CONTROL ASSOCIATION,
 INC., et al.
 23 Defendants.
 24

CASE NO. C 08-4548-MHP
 Consolidated with Case No. C 08-04719-MHP
 ANSWER OF STUDIO DEFENDANTS TO
 AMENDED COMPLAINT OF
 DECLARATORY JUDGMENT PLAINTIFFS
 AND COUNTERCLAIM-DEFENDANTS
 REALNETWORKS, INC. AND
 REALNETWORKS HOME
 ENTERTAINMENT, INC.

25 AND CONSOLIDATED ACTIONS.
 26

1 Disney Enterprises, Inc. (“DEI”), Paramount Pictures Corporation (erroneously named in
2 the Complaint as “Paramount Pictures Corp.”) (“Paramount”), Sony Pictures Entertainment Inc.
3 (erroneously named in the Complaint as Sony Pictures Entertainment, Inc.) (“Sony Pictures”),
4 Twentieth Century Fox Film Corporation (erroneously named in the Complaint as Twentieth
5 Century Fox Film Corp.) (“Fox”), NBC Universal, Inc. (“NBC Universal”), Warner Bros.
6 Entertainment Inc. (erroneously named in the Complaint as Warner Bros. Entertainment, Inc.)
7 (“Warner Bros.”), and Viacom Inc. (erroneously named in the Complaint as Viacom, Inc.)
8 (“Viacom”) (collectively, the “Studios”) hereby answer the allegations of Declaratory Judgment
9 Plaintiffs and Counterclaim-Defendants RealNetworks, Inc. and RealNetworks Home
10 Entertainment, Inc. (jointly, “Real”) contained in their Amended Complaint for Declaratory Relief
11 (“Complaint”) as follows:

12 1. The Studios admit that the Complaint purports to institute a declaratory judgment
13 action and that the allegations of the Complaint speak for themselves. Except as specifically
14 admitted, the Studios deny the allegations of Paragraph 1.

15 **NATURE OF ACTION**

16 2. The Studios admit and allege that the product marketed by Real as “RealDVD” is
17 used to circumvent the access- and copy-control technological measures on DVDs protected by
18 Copy Scramble System (“CSS”) or other technologies in order to make permanent, playable
19 copies on hard drives. The Studios admit and allege that the product referred to by Real as the
20 “New Platform” (the “New Platform”) is designed to circumvent the access- and copy-control
21 technological measures on DVDs protected by CSS or other technologies in order to make
22 permanent, playable copies on hard drives. Except as specifically admitted, the Studios are
23 without knowledge or information sufficient to form a belief as to the truth of the allegations in
24 Paragraph 2 of the Complaint and on that basis deny them.

25 3. The Studios deny the allegations of Paragraph 3 of the Complaint.

26 4. The Studios admit that Walt Disney Pictures, Paramount, Sony Pictures, Fox,
27 Universal City Studios LLLP and Warner Bros. (collectively, the “Beneficiary Claim Plaintiffs”)
28 are members of the DVD Copy Control Association (“DVD CCA”); that the DVD CCA is a not-

1 Agreement portion of the DVD CCA License Agreement, exclusive jurisdiction and venue over
2 any dispute arising out of that agreement exists in the federal and state courts of Santa Clara
3 County, California.

4 **INTRADISTRICT ASSIGNMENT**

5 9. The Studios admit that, for purposes of Civil Local Rule 3-2(c), assignment over
6 this action and the now-transferred related action filed by the DMCA and Beneficiary Claim
7 Plaintiffs is proper on a District-wide basis.

8 **THE PARTIES**

9 10. On information and belief, the Studios admit that RealNetworks, Inc. is a
10 Washington corporation with its principal offices in Washington. Except as specifically admitted,
11 the Studios are without knowledge or information sufficient to form a belief as to whether
12 RealNetworks, Inc. is a corporation in good standing, or as to the truth of any other allegations in
13 Paragraph 10 of the Complaint and on that basis deny them.

14 11. On information and belief, the Studios admit that RealNetworks Home
15 Entertainment, Inc. is a Delaware corporation with its principal offices in Washington. Except as
16 specifically admitted, the Studios are without knowledge or information sufficient to form a belief
17 as to whether RealNetworks Home Entertainment, Inc. is a corporation in good standing, or as to
18 the truth of any other allegations in Paragraph 11 of the Complaint and on that basis deny them.

19 12. The Studios admit that the DVD CCA is a Delaware not-for-profit corporation that
20 has offices in Morgan Hill, California. The Studios further admit that Real obtained a DVD CCA
21 License under the pretense of purporting to build a DVD player, when in fact Real used the
22 technology it obtained under that License to build unauthorized DVD copying devices that are
23 used to circumvent CSS's access- and copy-control technological measures. Except as
24 specifically admitted, the Studios deny the allegations in Paragraph 12 of the Complaint.

25 13. DEI admits that it is a Delaware corporation and that its principal place of business
26 is in Burbank, California. Except as specifically admitted, DEI denies the allegations in
27 Paragraph 13 of the Complaint.

1 14. Paramount admits that it is a Delaware corporation; that its principal place of
2 business is in Los Angeles, California; that it is in the motion picture business; and that it is a
3 member of the DVD CCA. Except as specifically admitted, Paramount denies the allegations in
4 Paragraph 14 of the Complaint.

5 15. Sony Pictures admits that it is a Delaware corporation; that its principal place of
6 business is in Culver City, California; that it is in the motion picture business; and that it is a
7 member of the DVD CCA. Except as specifically admitted, Sony Pictures denies the allegations
8 in Paragraph 15 of the Complaint.

9 16. Fox admits that it is a Delaware corporation; that its principal place of business is
10 in Los Angeles, California; that it is in the motion picture business; and that it is a member of the
11 DVD CCA. Except as specifically admitted, Fox denies the allegations in Paragraph 16 of the
12 Complaint.

13 17. NBC Universal admits that it is a Delaware corporation; that its principal place of
14 business is in New York, New York; and that certain of its subsidiaries (including without
15 limitation Universal City Studios Productions LLLP and Universal City Studios LLLP) are in the
16 motion picture business. Except as specifically admitted, NBC Universal denies the allegations in
17 Paragraph 17 of the Complaint.

18 18. Warner Bros. admits that it is a Delaware corporation; that its principal place of
19 business is in Burbank, California; that it is in the motion picture business; and that it is a member
20 of the DVD CCA. Except as specifically admitted, Warner Bros. denies the allegations in
21 Paragraph 18 of the Complaint.

22 19. Viacom admits that it is a Delaware corporation; that its principal place of business
23 is in New York, New York; and that it participates, directly or indirectly, in the motion picture
24 business. Except as specifically admitted, Viacom denies the allegations in Paragraph 19 of the
25 Complaint.

26 **FACTS**

27 20. The Studios admit that they or their subsidiaries distribute movies on DVDs; that
28 the Studios or their subsidiaries use CSS to provide access- and copy-control technological

1 measures to safeguard against unauthorized access to and reproduction of their movies released on
2 DVDs; and that manufacturers of authorized DVD player devices utilize technology obtained
3 pursuant to the DVD CCA License Agreement to build licensed player devices. Except as
4 specifically admitted, the Studios deny the allegations of Paragraph 20 of the Complaint.

5 21. The Studios admit that the DVD CCA's membership includes representatives of the
6 motion picture, consumer electronics and computer (hardware and software) industries; that the
7 DVD CCA licenses CSS technology directly or indirectly pursuant to the DVD CCA License
8 Agreement, the complete contents of which vary depending upon the category selected by the
9 licensee; and that Exhibit 1 to the Complaint is a portion of the DVD CCA License Agreement
10 that Real entered into. Except as specifically admitted, the Studios deny the allegations of
11 Paragraph 21 of the Complaint.

12 22. The Studios admit that the DVD CCA License Agreement is the best evidence of
13 its contents, including without limitation the Beneficiary Claim Plaintiffs' rights under Section 9.5
14 of the document labeled CSS License Agreement portion of the DVD CCA License Agreement.
15 Except as specifically admitted, the Studios deny the allegations in Paragraph 22 of the Complaint.

16 23. The Studios admit that, on or about August 13, 2007, RealNetworks, Inc. executed
17 the portion of the DVD CCA License Agreement referenced in Paragraph 21 above. The
18 remaining allegations of Paragraph 23 of the Complaint are conclusions of law to which no
19 response is required. To the extent a response is required, the Studios deny the remaining
20 allegations in Paragraph 23 of the Complaint.

21 24. The Studios admit and allege that RealDVD is used to circumvent the access- and
22 copy-control technological measures on DVDs protected by CSS or other technologies in order to
23 make permanent, playable copies on hard drives. The Studios admit and allege that the New
24 Platform is designed to circumvent the access- and copy-control technological measures on DVDs
25 protected by CSS or other technologies in order to make permanent, playable copies on hard
26 drives. The Studios deny that RealDVD and the New Platform preserve the CSS encryption of
27 copied CSS-protected DVDs or enhance the original protections. Except as specifically admitted

1 or denied, the Studios are without knowledge or information sufficient to form a belief as to the
2 truth of the allegations in Paragraph 24 of the Complaint and on that basis deny them.

3 25. The Studios admit that in the first half of September 2008, Real announced its
4 intention to release RealDVD by the end of the month of September 2008. The Studios admit that
5 on October 20, 2008, Plaintiffs informed Studios' counsel that Plaintiffs were contemplating an
6 attempt to add an unidentified "second product" as a subject of this litigation. Except as
7 specifically admitted, the Studios deny the allegations of Paragraph 25 of the Complaint.

8 26. The Studios admit that, prior to Real's filing of the Complaint, counsel for the
9 DMCA Plaintiffs and the Beneficiary Claim Plaintiffs advised Real's counsel that his clients
10 intended to file a Complaint against Real in the United States District Court for the Central
11 District of California on September 30, 2008. The Studios further allege that RealDVD and the
12 New Platform are designed to circumvent the access- and copy-control technological measures on
13 DVDs protected by CSS or other technologies in order to make permanent, playable copies on
14 hard drives. Except as specifically admitted, the Studios deny the allegations of Paragraph 26 of
15 the Complaint.

16 27. The Studios are without knowledge or information sufficient to form a belief as to
17 what Real believes and on that basis deny Real's allegation about what it believes. The Studios
18 admit that Real has asserted as its litigating position before this Court that Real does not believe
19 RealDVD or the New Platform violate either the DMCA or the DVD CCA License Agreement.
20 Except as specifically admitted, the Studios deny the allegations of Paragraph 27 of the
21 Complaint.

22 28. The Studios admit that there has been no resolution of the disagreements between
23 the DMCA Plaintiffs and the Beneficiary Claim Plaintiffs, on the one hand, and Real, on the other.
24 Except as specifically admitted, the Studios deny the allegations of Paragraph 28 of the
25 Complaint.

26 **FIRST CAUSE OF ACTION**

27 29. The Studios repeat and incorporate their responses to the allegations contained in
28 Paragraphs 1 through 28 of the Complaint, as if fully set forth herein.

1 30. The Studios admit that the Beneficiary Claim Plaintiffs have filed a Complaint for
2 breach of contract against Real and that the allegations of the Complaint speak for themselves.
3 Except as specifically admitted, the Studios deny the allegations in Paragraph 30 of the Complaint.

4 31. The Studios deny the allegations in Paragraph 31 of the Complaint.

5 **SECOND CAUSE OF ACTION**

6 32. The Studios repeat and incorporate their responses to the allegations contained in
7 Paragraphs 1 through 31 of the Complaint, as if fully set forth herein.

8 33. The Studios admit that Real is a party to a DVD CCA License Agreement. Except
9 as specifically admitted, the Studios deny the allegations in Paragraph 33 of the Complaint.

10 34. The Studios deny the allegations of Paragraph 34 of the Complaint.

11 35. The Studios deny the allegations of Paragraph 35 of the Complaint.

12 36. The Studios deny the allegations of Paragraph 36 of the Complaint.

13 37. The Studios admit that Real seeks a declaratory judgment through its Complaint.
14 Except as specifically admitted, the Studios deny the allegations of Paragraph 37 of the
15 Complaint.

16 **AFFIRMATIVE DEFENSES**

17 **First Affirmative Defense**

18 (Unclean Hands)

19 As an affirmative defense to both causes of action in the Complaint, and without admitting
20 that Real properly instituted the Complaint as a declaratory judgment action, the Studios aver that
21 Real's causes of action are barred in whole or in part by the doctrine of unclean hands. Among
22 other things, Real obtained access to the CSS technology based on the pretense that it intended to
23 use that technology to build a DVD player. Real instead used that technology to build DVD
24 copiers, which are used to avoid, bypass, remove, deactivate or otherwise impair access- and copy-
25 control technological measures on DVDs protected by CSS or other technologies.
26
27

Second Affirmative Defense

(Waiver)

As an affirmative defense to both causes of action in the Complaint, and without admitting that Real properly instituted the Complaint as a declaratory judgment action, the Studios aver that Real's causes of action are barred in whole or in part by the doctrine of waiver. Among other things, Real obtained access to the CSS technology based on the pretense that it intended to use that technology to build a DVD player. Real instead used that technology to build DVD copiers, which are used to avoid, bypass, remove, deactivate or otherwise impair access- and copy-control technological measures on DVDs protected by CSS or other technologies.

Third Affirmative Defense

(Estoppel)

As an affirmative defense to both causes of action in the Complaint, and without admitting that Real properly instituted the Complaint as a declaratory judgment action, the Studios aver that Real's causes of action are barred in whole or in part by the doctrine of estoppel. Among other things, Real obtained access to the CSS technology based on the pretense that it intended to use that technology to build a DVD player. Real instead used that technology to build DVD copiers, which are used to avoid, bypass, remove, deactivate or otherwise impair access- and copy-control technological measures on DVDs protected by CSS or other technologies.

Fourth Affirmative Defense

(Judicial Estoppel)

As an affirmative defense to the second cause of action in the Complaint, and without admitting that Real properly instituted the Complaint as a declaratory judgment action, the Studios aver that Real is judicially estopped from claiming that RealDVD and the New Platform do not circumvent access- and copy-control technological measures that are protected pursuant to the DMCA. The positions that Real takes in its second cause of action regarding the application of the DMCA to RealDVD and the New Platform are inconsistent with positions that Real took in *RealNetworks, Inc. v. Streambox, Inc.*, No. 2:99-CV-02070 (W.D. Wash.). For example, in *RealNetworks, Inc. v. Streambox*, Real took the position that “[u]nder the DMCA, where content

1 owners use measures to prevent the copying or modification of their works, it is unlawful to
2 distribute products that enable end-users to override the content owners' preferences." Based on
3 its contentions in *RealNetworks, Inc. v. Streambox*, Real obtained favorable judicial rulings, in the
4 form of a temporary restraining order and a preliminary injunction. See 2000 WL 127311 (W.D.
5 Wash. 2000). In this case, however, Real takes the position that RealDVD and the New Platform
6 are not circumvention devices, even though content owners (including the Studios or their
7 subsidiaries) use CSS and other technologies to prevent the unauthorized copying or modification
8 of their works, and both RealDVD and the New Platform enable end-users to override the content
9 owners' preferences.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the Studios pray for judgment:

- 12 1. Dismissing with prejudice Real's Complaint in its entirety;
- 13 2. Awarding the Studios their costs, disbursements and reasonable attorney's fees
14 incurred in defending against the Complaint plus interest on any sums awarded thereunder; and
- 15 3. Awarding the Studios such other and further relief as this Court deems just and
16 proper, including but not limited to the relief sought in the Counter-Complaint filed in this Court
17 on October 3, 2008 and in the related Complaint filed in the Central District of California and
18 transferred to this Court on October 3, 2008, Case No. C 08-4719 MHP.

19
20 Dated: January 12, 2009

MITCHELL SILBERBERG & KNUPP LLP

21
22 By: _____ /s/
23 Robert H. Rotstein
24 Attorneys for Studio Defendants