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16 Attorneys for Defendants
DISNEY ENTERPRISES, INC.,
17 PARAMOUNT PICTURES CORP.,
TWENTIETH CENTURY FOX FILM CORP.,
18 WARNER BROS. ENTERTAINMENT, INC

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21
22

23 REALNETWORKS, INC. AND
REALNETWORKS HOME
24 ENTERTAINMENT, INC.,
25 Plaintiffs,
26 vs.
27 DVD COPY CONTROL ASSOCIATION,
INC., DISNEY ENTERPRISES, INC.,
28 PARAMOUNT PICTURES CORP., SONY

CASE NO. C-08-4548-HRL
PUBLIC REDACTED VERSION
NOTICE OF APPLICATION AND EX
PARTE APPLICATION OF
DEFENDANTS FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE RE: PRELIMINARY
INJUNCTION
Time: N/A

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PICTURES ENTERTAINMENT, INC.,
TWENTIETH CENTURY FOX FILM CORP.,
NBC UNIVERSAL, INC., WARNER BROS.
ENTERTAINMENT, INC., VIACOM, INC.

Date: N/A

Defendants.

1 **EX PARTE APPLICATION**

2 Defendants Disney Enterprises, Inc., Paramount Pictures Corp., Twentieth Century Fox
3 Film Corp., and Warner Bros. Entertainment, Inc., (collectively, "the Studios")¹ hereby apply *ex*
4 *parte* to this Court for:

5 1. A temporary restraining order ("TRO") restraining and enjoining Plaintiffs
6 RealNetworks, Inc. and RealNetworks Home Entertainment, Inc. ("Real") and all of their
7 officers, agents, servants, employees, and attorneys, and those persons in active concert or
8 participation or privity with any of them, from selling, offering, marketing or otherwise
9 trafficking in the software product known as RealDVD, or any product with substantially similar
10 functionality.

11 2. An order to show cause why a preliminary injunction, against the same persons
12 and restraining the same activities, should not issue.

13 ***This application has already been fully briefed.*** The Studios filed an identical *Ex Parte*
14 Application in the Central District of California on September 30, 2008, the same day on which
15 they filed their Complaint For Violation Of Digital Millennium Copyright Act, 17 U.S.C.
16 §§ 1201, *Et Seq.* And For Breach of Contract against Real. The Central District action was
17 assigned to the Honorable S. James Otero as Case No. CV08-06412 SJO AJWx.

18 The Studios provided notice to the Plaintiffs last week that they would be seeking a TRO
19 in the Central District. The Application was then fully briefed over the past week. Today, Judge
20 Otero issued an Order Transferring Action to the Northern District of California, which is
21 attached to the non-confidential version of this Application as Exhibit 11. He did not issue a
22 decision on the Studios' application for a temporary restraining order.

23 The Studios are thus re-filing their application and supporting papers in this Court along
24 with the opposition brief, declarations, and supporting papers filed by Plaintiffs. The Studios
25 submit that this Application can and should be immediately ruled upon.

26
27 ¹ Universal City Studios Productions LLLP, Sony Pictures Television Inc. and Columbia Pictures
28 Industries Inc. will be seeking to join this TRO application and the counterclaim filed herewith as promptly as possible.

1 Good cause exists for the foregoing Order. As set forth in the accompanying
2 Memorandum of Points and Authorities and supporting papers filed herewith, Real is violating
3 and will continue to violate 17 U.S.C. § 1201, *et seq.*, by manufacturing, offering to the public,
4 providing, or otherwise trafficking in a software product entitled "RealDVD." RealDVD (a) is
5 primarily designed and produced, (b) is marketed by Real and (c) has no commercially significant
6 use other than to circumvent the Content Scramble System technology that controls access to and
7 copying of the Studios' copyrighted works when those works are encrypted onto DVDs. As
8 further set forth in the Studios' Memorandum of Points and Authorities and supporting papers,
9 Real's conduct is causing and unless restrained will continue to cause immediate and irreparable
10 harm to the Studios, including to their DVD rental and sale markets, and to many other young and
11 developing markets for the distribution of Plaintiffs' works in digital format. Further, Real will
12 suffer no cognizable hardship in waiting for the very brief period until a preliminary injunction
13 motion can be briefed is real and immediate.

14 This Application is based on the following pleadings filed in the Central District of
15 California and attached to the non-confidential version of this *Ex Parte* Application: the
16 Memorandum of Points and Authorities (Exh. 1); the Declarations of Glenn D. Pomerantz
17 ("Pomerantz Decl.") (Exh. 2), Alan Bell ("Bell Decl.") (Exh. 3), Michael Dunn ("Dunn Decl.")
18 (Exh. 4), John P. J. Kelly ("Kelly Decl.") (Exh. 5) and in Support of the Studios' Application for
19 Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction; the Studios'
20 Reply Brief In Support of *Ex Parte* Application For TRO (Exh. 10). This Application is based
21 also on the following pleadings attached to the confidential version of this *Ex Parte* Application:
22 the confidential version of the Memorandum of Points and Authorities and the confidential
23 version of the Declaration of Glenn D. Pomerantz.

24 Also attached to the non-confidential version of this *Ex Parte* Application are Real's
25 opposition papers and supporting declarations: Real's Opposition to the Studios' *Ex Parte*
26 Application for a TRO (Exh. 6); the Declarations of Jacqueline Lang (Exh. 7), Jeffrey Buzzard
27 (Exh. 8), and Gordon Klein (Exh. 9) In Support of Real's Opposition to the Studios' *Ex Parte*
28 Application For A TRO.

