

ORIGINAL  
FILED  
08 SEP 30 AM 9:04  
RICHARD W. BIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 JAMES A. DIBOISE, State Bar No. 83296  
Email: jdiboise@wsgr.com  
2 COLLEEN BAL, State Bar No. 167637  
Email: cbal@wsgr.com  
3 MICHAEL A. BERTA, State Bar No. 194650  
Email: mberta@wsgr.com  
4 TRACY TOSH LANE, State Bar No. 184666  
Email: ttosh@wsgr.com  
5 WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation  
6 One Market Street  
Spear Tower, Suite 3300  
7 San Francisco, CA 94105

8 Attorneys for Plaintiffs  
REALNETWORKS, INC. and  
9 REALNETWORKS HOME  
ENTERTAINMENT, INC.

e-Filing

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

HRL

C 08 CASE NO. 4548

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

17 Plaintiffs,

18 v.

19 DVD COPY CONTROL ASSOCIATION, INC.,  
20 a Delaware nonprofit corporation, DISNEY  
ENTERPRISES, INC., a  
21 Delaware corporation; PARAMOUNT  
PICTURES CORP., a Delaware corporation;  
22 SONY PICTURES ENTERTAINMENT, INC., a  
Delaware corporation; TWENTIETH CENTURY  
23 FOX FILM CORP., a Delaware corporation;  
NBC UNIVERSAL, INC., a Delaware  
24 corporation; WARNER BROS.  
ENTERTAINMENT, INC., a Delaware  
25 corporation; and VIACOM, Inc., a Delaware  
26 Corporation.

27 Defendants.

COMPLAINT FOR  
DECLARATORY RELIEF

[DEMAND FOR JURY TRIAL]

28

1 1. This is an action for a declaratory judgment pursuant to 28 U.S.C. § 2201 and 28  
2 U.S.C. § 2202, brought by RealNetworks, Inc. ("RealNetworks") and RealNetworks Home  
3 Entertainment, Inc. ("RealNetworks Home") (together, "Plaintiffs") by and through counsel,  
4 against defendants Disney Enterprises, Inc., Paramount Pictures Corp., Sony Pictures  
5 Entertainment, Inc., Twentieth Century Fox Film Corp., NBC Universal, Inc., Warner Bros.  
6 Entertainment, Inc., Viacom, Inc. (collectively the "Studio Defendants") and DVD Copy Control  
7 Association ("DVD CCA") (where the Studio Defendants and the DVD CCA shall be referred to  
8 collectively as "Defendants") for the purpose of determining a question of actual controversy and  
9 the rights and obligations between the parties as follows:

10 **NATURE OF ACTION**

11 2. This action for declaratory relief arises as a result of a legal dispute between  
12 Plaintiffs and Defendants relating to Plaintiffs' innovative new software product known as  
13 "RealDVD." RealDVD has a variety of different functions, including the playback of DVDs  
14 placed into a computer's DVD drive, looking up information about the DVD from Internet  
15 databases, providing links to various information websites relevant to the chosen DVD, and  
16 storing an image of the copy-protected DVD to a computer hard drive for safekeeping and later  
17 playback purposes.

18 3. When the RealDVD software is used to make a personal copy of a DVD, it not only  
19 preserves the Content Scramble System ("CSS") encryption the Studio Defendants use to encrypt  
20 DVDs, but also incorporates an additional level of protection.

21  
22 4. The Studio Defendants are members of the DVD Copy Control Association, a not-  
23 for-profit association that licenses the CSS technology to, among others, manufacturers of DVD  
24 hardware and software, such as RealNetworks, pursuant to a standard license agreement ("CSS  
25 License Agreement"). The Studio Defendants assert that the CSS License Agreement grants the  
26 Studio Defendants, as third party beneficiaries, the right to enforce its terms against licensees, and  
27 in particular the right to prohibit the sale of the RealDVD product. See CSS License Agreement  
28 § 9.5.

1           5.       Despite the fact that a California court concluded over a year ago that the same type  
2 of copying methodology employed by RealDVD does not violate the CSS License Agreement (*see*  
3 *DVD Copy Control Association, Inc. vs. Kaleidescape, Inc.*, Superior Court Santa Clara County  
4 (No. 1:04 CV 031829), Judgment dated Apr. 13, 2007), the Studio Defendants, on their own behalf  
5 and on behalf of the DVD CCA, nonetheless have asserted that the RealDVD system violates the  
6 CSS License Agreement and the anti-circumvention provisions of the Digital Millennium  
7 Copyright Act (“DMCA”). On information and belief, the DVD CCA has asserted similarly.

9           6.       Accordingly, there exists an actual and justiciable controversy between Plaintiffs  
10 and the Defendants relating to their respective rights and legal duties under the CSS License  
11 Agreement and the DMCA. Plaintiffs seek a judgment declaring, among other things, that the  
12 CSS License Agreement permits Plaintiffs to manufacture and offer for sale the RealDVD  
13 product, and that the Plaintiffs do not violate the DMCA.

#### **JURISDICTION AND VENUE**

15           7.       This court has jurisdiction over the claims asserted because the underlying action  
16 concerns a federal question. The Defendants in this matter would be filing a claim against one or  
17 more of Plaintiffs under the DMCA. Because the crux of this matter involves a federal right, this  
18 court properly maintains jurisdiction over this action for declaratory relief under the DMCA under  
19 28 U.S.C. § 1331 and has supplemental jurisdiction of all other claims under 28 U.S.C. § 1367.  
20

21           8.       Venue is proper in this court pursuant to 28 U.S.C. § 1391(a)(2), because a  
22 substantial part of the events or omissions giving rise to the claim occurred in this District.  
23 Additionally, pursuant to § 10.4 of the CSS License Agreement, exclusive jurisdiction and venue  
24 over any dispute arising out of the agreement exists in the federal and state courts of Santa Clara  
25 County, California.  
26  
27  
28

1 **INTRADISTRICT ASSIGNMENT**

2 9. Pursuant to Civil Local Rule 3-2(c), this action may be assigned on a district-wide  
3 basis.

4 **THE PARTIES**

5 10. RealNetworks is a Washington corporation with its principal place of business in  
6 Seattle, Washington. It is engaged in the business of, among other things, developing,  
7 manufacturing, and selling platforms for the delivery of digital media.  
8

9 11. RealNetworks Home Entertainment, Inc. is a Delaware corporation with its  
10 principle place of business in Seattle, Washington. It is a subsidiary of RealNetworks and it is the  
11 entity that distributes the RealDVD product.

12 12. The DVD CCA is a Delaware nonprofit corporation, having offices located in  
13 Morgan Hill, California. It granted a license in the CSS technology to RealNetworks in the form  
14 of a written CSS License Agreement.  
15

16 13. Disney Enterprises, Inc. is a Delaware corporation with its principal place of  
17 business in Los Angeles, California. It is engaged in the business of, among other things, making  
18 motion pictures. It is a member of the DVD CCA.

19 14. Paramount Pictures Corp. is a Delaware corporation with its principal place of  
20 business in Los Angeles, California. It is engaged in the business of, among other things, making  
21 motion pictures. It is a member of the DVD CCA.  
22

23 15. Sony Pictures Entertainment, Inc. is a Delaware corporation with its principal place  
24 of business in Culver City, California. It is engaged in the business of, among other things,  
25 making motion pictures. It is a member of the DVD CCA.

26 16. Twentieth Century Fox Film Corp. is a Delaware corporation with its principal  
27 place of business in Los Angeles, California. It is engaged in the business of, among other things,  
28 making motion pictures. It is a member of the DVD CCA.

1 17. NBC Universal, Inc., is a Delaware corporation with its principal place of business  
2 in Universal City, California. It is engaged in the business of, among other things, making motion  
3 pictures. It is a member of the DVD CCA.

4 18. Warner Bros. Entertainment, Inc. is a Delaware corporation, with its principal place  
5 of business in Los Angeles, California. It is engaged in the business of, among other things,  
6 making motion pictures. It is a member of the DVD CCA.

7  
8 19. Viacom, Inc. is a Delaware corporation, with its principal place of business in New  
9 York, New York. It is engaged in the business of, among other things, making motion pictures. It  
10 is a member of the DVD CCA.

11 **FACTS**

12 **A. The CSS License Agreement And The DVD CCA.**

13  
14 20. The Studio Defendants sell DVD discs that contain movies, and such discs use the  
15 CSS technology to encrypt the content on the DVDs. Consequently, the content must be  
16 decrypted before the movie can be displayed. Thus, the manufacturers of hardware and software  
17 that permit the movies to be viewed (the consumer electronics and computer industries) must  
18 likewise have access to the CSS technology.

19  
20 21. To facilitate their mutual interests in the use of the CSS technology, the motion  
21 picture, consumer electronics, and computer industry formed the DVD CCA. The DVD CCA  
22 licenses the CSS technology to, among others, manufacturers of devices and software used to  
23 decrypt images on DVDs pursuant to a standard form CSS License Agreement (a copy of which is  
24 attached hereto as Exhibit 1).

25  
26 22. The CSS License Agreement imposes certain restrictions on its licensees, including  
27 the requirement that the licensees “comply with the version of the CSS Specifications which is in  
28 effect at the time such DVD Product is manufactured . . . .” CSS License Agreement § 4.2. The

1 Studio Defendants assert that the CSS License Agreement grants them the right to enforce certain  
2 of its provisions, including Section 4.2. *See* CSS License Agreement § 9.5.

3 23. On or about August 13, 2007, RealNetworks signed the CSS License Agreement.  
4 It is thereby entitled to use the CSS technology under the terms of that Agreement.

5 **B. Development Of The RealDVD System.**

6 24. RealDVD provides DVD users with, among other things, the ability to save a  
7 personal copy of a DVD they own on a secure hard drive for their own personal use. The copy  
8 preserves the CSS encryption. The RealDVD system thus protects the user from, among other  
9 things, damage or loss of a DVD, while ensuring that the encryption protection in the original  
10 DVD is maintained. Further, RealDVD enhances the original protection by incorporating an  
11 additional layer of protection at a level beyond that required by the CSS License Agreement. The  
12 RealDVD system also provides a number of other desirable features, such as parental controls that  
13 ensure children access only entertainment that is appropriate for their age, central storage that  
14 permits users to keep all the motion pictures they own in one easily accessible location, and the  
15 capability for users to watch their movies on a variety of devices they own for greater ease of use  
16 and convenience.

17 25. Approximately two weeks ago, Plaintiffs made known to the Defendants that the  
18 RealDVD system would be released on September 30, 2008.

19 **C. The Legal Dispute With The Studio Defendants**

20 26. Subsequently, the Studio Defendants, on their own behalf and on behalf of the  
21 DVD CCA of which they are members, advised Plaintiffs that they believed that the RealDVD  
22 product violated the CSS License in that the RealDVD product allegedly did not conform to the  
23 CSS Specifications. The Defendants further claim that the RealDVD product violates the anti-  
24 circumvention provisions of the DMCA.  
25  
26  
27  
28

1 27. Plaintiffs do not believe that the RealDVD product violates the CSS License  
2 Agreement or the DMCA or any rights of the Defendants, and have so advised the Studio  
3 Defendants.

4 28. Efforts to resolve this dispute have failed.

5 **FIRST CAUSE OF ACTION**

6 (Declaratory Relief under Contract Claim)  
7

8 29. Plaintiffs reallege and incorporate by reference the allegations contained in  
9 Paragraphs 1 through 28 as if fully set forth herein.

10 30. There is an actual and justiciable controversy relating to the legal rights and duties  
11 of Plaintiffs and Defendants under the CSS License Agreement in that the Defendants have  
12 advised Plaintiffs that they believe the RealDVD Product violates the CSS License Agreement.  
13 This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory  
14 judgment.  
15

16 31. Thus, a declaration of Plaintiffs' rights under the CSS License Agreement is  
17 necessary to protect Plaintiffs from uncertainty and insecurity, which is causing Plaintiffs injury  
18 by, among other things, damaging its goodwill and disrupting its business. Without the requested  
19 declaration of its rights, the Defendants will continue to jeopardize Plaintiffs' interests.  
20

21 **SECOND CAUSE OF ACTION**

22 (Declaratory Relief under the Digital Millennium Copyright Act, 17 U.S.C. § 1201)

23 32. Plaintiffs reallege and incorporate by reference the allegations contained in  
24 Paragraphs 1 through 31 as if fully set forth herein.

25 33. RealNetworks is a licensee of CSS technology, and the RealDVD product was  
26 designed to conform to the CSS Specifications. As a result, the RealDVD product is authorized  
27 by the Defendants to utilize CSS technology to access the content of DVDs to which the Studio  
28 Defendants own the copyrights.

1           34.     The RealDVD product is not primarily designed or produced for the purpose of  
2 circumventing a technological measure that effectively controls access to a copyrighted work, or  
3 that protects the right of a copyright owner. Rather, the RealDVD product ensures that the  
4 encryption protection in the original DVD is maintained and enhanced by incorporating an  
5 additional layer of protection at a level beyond that required by the CSS License Agreement.  
6

7           35.     The RealDVD product has commercially significant purposes and uses other than  
8 to circumvent a technological measure that effectively controls access to a copyrighted work, or  
9 that protects the right of a copyright owner. By way of example only, the RealDVD product  
10 provides the owners of DVDs with the ability to save a personal copy of a DVD on a secure hard  
11 drive for private use, and protects the DVD owner against damage or loss of a DVD that he or she  
12 has obtained through legitimate means.  
13

14           36.     The RealDVD Product has not been marketed for use in circumventing a  
15 technological measure that effectively controls access to a copyrighted work, or that protects the  
16 right of a copyright owner. Rather, the RealDVD Product has been marketed as licensed software  
17 that "saves a secure copy of a DVD to the hard drive without removing or altering the CSS  
18 encryption."  
19

20           37.     Plaintiffs request a judicial determination and declaration as to whether the  
21 RealDVD product violates the provisions of 17 U.S.C. § 1201. Such a judicial determination and  
22 declaration is necessary to protect Plaintiffs from uncertainty and insecurity, which is causing  
23 Plaintiffs injury by, among other things, damaging its goodwill and disrupting its business.  
24 Without the requested declaration of its rights, the Defendants will continue to jeopardize  
25 Plaintiffs' interests.  
26

27           WHEREFORE, based on the foregoing, Plaintiffs respectfully request that the Court grant  
28 the following relief:

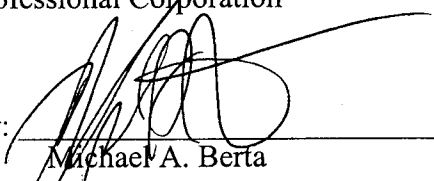


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- a. A judgment declaring that the CSS License Agreement permits the manufacture, distribution, and sale of the RealDVD product;
- b. A judgment declaring that the Plaintiffs do not violate the DMCA;
- c. Attorneys' fees and costs; and
- d. Such other relief as this Court deems just and equitable.

Dated: September 30, 2008

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By:   
\_\_\_\_\_

Attorneys for Plaintiffs REALNETWORKS,  
INC. and REALNETWORKS HOME  
ENTERTAINMENT, INC.

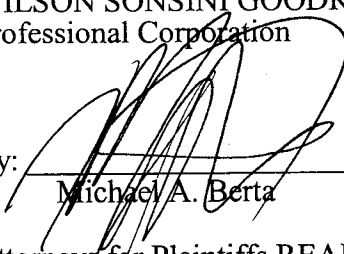
**DEMAND FOR JURY TRIAL**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiffs hereby demand a jury trial as provided by Rule 38 of the Federal Rules of Civil Procedure.

Dated: September 30, 2008

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By:   
\_\_\_\_\_

Attorneys for Plaintiffs REALNETWORKS,  
INC. and REALNETWORKS HOME  
ENTERTAINMENT, INC.