

May 20, 2009

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Honorable Marilyn Hall Patel
United States District Court
Courtroom 15, 18th Floor
450 Golden Gate Ave.
San Francisco, CA 94102

Re: *RealNetworks v. DVD CCA, et al.*, Case No. C-08-4548-MHP

Your Honor:

Plaintiffs and Counter-Defendants RealNetworks, Inc. and RealNetworks Home Entertainment, Inc. (“Real”) today have submitted the Declaration of Peter Biddle in support of Real’s opposition to a preliminary injunction.

Mr. Biddle was the lead negotiator for Microsoft in the negotiation of the CSS License Agreement and related documents. He was a drafter of various provisions of the documentation at issue in this case and has never been employed or compensated by any of the parties to this litigation, to Real’s knowledge.

Mr. Biddle’s Declaration also provides a proffer of the testimony he would provide at trial in this matter regarding:

- The course of the negotiations of the CSS License Agreement from the perspective of Microsoft and the computer industry, *i.e.*, parties involved in the negotiations other than the Studios or DVD CCA.
- The intended meaning of certain provisions in the CSS License Agreement from the perspective of the drafter of those provisions, including the intended requirements and objectives for bus-authentication, bus-encryption/decryption, and the exception provided to the computer industry for the secure use of “user accessible buses.”
- The circumstances explaining why no “no-copy” provision was ultimately included in the CSS License Agreement and related documents.

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Real had been unsuccessful in locating Mr. Biddle until approximately May 6, 2009, and Real's counsel had no information regarding what Mr. Biddle could or would testify to, if anything, related to this case until this week. Mr. Biddle only today agreed to provide an executed declaration regarding his recollection of the negotiations over the CSS License Agreement.

Mr. Biddle's testimony is important evidence that rebuts the testimony of the Defendants' fact and expert witnesses on the intended and actual meaning of the CSS License requirements and whether those requirements constitute an implicit prohibition on making a secure copy of CSS-encrypted data to a hard drive in a computer system. As discussed in Mr. Biddle's Declaration, there is no such explicit restriction or intended implicit restriction in the CSS License Agreement – any such proposed restriction was actively and effectively rejected by the computer industry participants in the CSS negotiations.

Despite the timing of the submission of this important testimony, this evidence will be part of the record for any trial in this matter. As such, and given its significance in completing the picture for which Marsha King provided one side, Real requests that the Court consider this evidence prior to reaching its preliminary injunction determination. In order to allow the consideration of Mr. Biddle's testimony, Real will seek to facilitate Mr. Biddle's presence live, before the Court, subject to cross-examination, as soon as possible, if the Court believes that this will be helpful in considering his testimony.

We appreciate the Court's consideration of this matter.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation



Leo Cunningham

cc: Studio and DVD CCA Counsel