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15 Attorneys for Plaintiffs Craig Newmark, Shawn
16 Hughes, Keith Ogden, Glenn Fleishman and Phil Wright

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 PARAMOUNT PICTURES
20 CORPORATION, *et. al.,,*
21 Plaintiffs,
22 v.
23 REPLAYTV, INC., *et. al.,*
24 Defendants.

CASE NO. CV 01 -09358 FMC (Ex)
(Consolidated with Case No. CV 02-04445 FMC (Ex))
**DECLARATION OF IRA P.
ROTHKEN IN SUPPORT OF
NEWMARK PLAINTIFFS' JOINT
STIPULATION FOR ACCESS TO
DOCUMENTS PRODUCED BY
ENTERTAINMENT COMPANY
PLAINTIFFS**

25
26 AND CONSOLIDATED ACTIONS.
27
28

1 I, Ira P. Rothken, hereby declare:

2 1. I am an attorney at law, licensed to practice before this Court, the 9th
3 Circuit Court of Appeals, and all of the courts of the State of California, among
4 others. I am attorney of record for Plaintiffs herein. The facts stated here are known
5 to me of my own personal knowledge and if called upon to testify thereto, I could
6 and would competently do so.

7 2. On behalf of the Plaintiffs Craig Newmark, Shawn Hughes, Keith
8 Ogden, Glenn Fleishman and Phil Wright (the "Newmark Plaintiffs"), I initiated the
9 meet and confer process with attorneys for the Entertainment Companies
10 (comprising the 15 MGM Parties represented by Proskauer Rose LLP, the 9 Time
11 Warner Parties represented by O'Melveny & Myers LLP and the 4 Columbia Parties
12 represented by McDermott, Will & Emery) on August 16, 2002, requesting that the
13 Newmark Plaintiffs be bound to the existing protective order entered on May 29,
14 2002 originally issued in Case no. CV 01-9358 FMC (Ex) (the "Paramount case")
15 and requesting access to the discovery responses and documents produced to date in
16 the Paramount case.

17 3. On Friday, August 16, 2002, I spoke with Mr. Schwartz of O'Melveny
18 & Myers LLP, Counsel for the Time Warner Parties, via telephone and he assured
19 me that he would get back to me by the following Tuesday, August 20, 2002, with a
20 draft stipulation that we would jointly present to Magistrate Eick which would add
21 the Newmark Plaintiffs' attorneys to the Protective Order and allow the Newmark
22 Plaintiffs' counsel access to the discovery responses and documents.

23 4. On August 26, 2002 I received a telephone call from Mr. Rader from
24 Mr. Schwartz's office who indicated that the Entertainment Companies had made
25 little progress in drafting such a protective order / discovery access stipulation. Mr.
26 Rader stated that the Entertainment Companies did not want the attorneys for the
27 Newmark Plaintiffs to have access to the discovered documents relating to the
28 Entertainment Companies' "lobbying efforts" and the discovered documents relating

1 to discussions with the Department of Justice. I told Mr. Rader that the Newmark
2 Plaintiffs expected access to all of the documents produced to date by the
3 Entertainment Companies since the issues of fair use and market harm were
4 intimately intertwined with the categories of documents above and that limiting
5 access would also be impractical since all counsel would be attending the same
6 motions, depositions, and court proceedings and that it would be manufacturing a
7 domino effect of procedural gamesmanship for us to have to be forced to leave the
8 room every time the Entertainment Companies felt as though there was a category of
9 document or testimony that Newmark Plaintiffs' counsel could not observe.

10 5. However, in an effort to limit the disputes brought before Magistrate
11 Eick and to promote expediency, I indicated to Mr. Rader that the parties should
12 enter into a stipulation memorializing the things they agreed on (and the things they
13 disagreed on) so the "document access" issues would be narrowed and crystallized
14 for the Magistrate Judge to resolve. I further stated that the Newmark Plaintiffs
15 would enter into a stipulation that binds the Newmark Plaintiffs and their counsel to
16 a protective order and gave access to all documents and discovery responses except
17 for the documents relating to the Entertainment Companies' lobbying efforts with
18 U.S. Congress and the U.S. Department of Justice. I also stated that we would
19 reserve all rights to bring a motion to gain access to such documents and responses,
20 that upon the stipulation being signed by the parties such motion for access - in light
21 of the importance of the "withheld documents" - would be immediately forthcoming,
22 and I understood that the Entertainment Companies would reserve all rights on the
23 access issue as well.

24 6. Mr. Rader indicated that my proposal was reasonable and said he
25 would get back to me in the near future. I reminded him that given the time urgency
26 in the case, we would need to resolve these discovery issues by Wednesday, August
27 28, 2002 by noon or the Newmark Plaintiffs would have little choice but to move for
28 ex parte relief.

1 7. Late in the day of August 28, 2002, Mr. Cooper of Proskauer Rose
2 LLP, Counsel for the MGM Parties, telephoned me to talk about the same agreement
3 that Mr. Rader and I had discussed earlier. Mr. Cooper stated that he thought this
4 agreement was reasonable and that the Entertainment Companies would get back to
5 me by August 30, 2002 with a draft stipulation to this agreement. Mr. Cooper raised
6 for the first time the Entertainment Companies' position that the Electronic Frontier
7 Foundation (the "EFF") should be considered under the Protective Order as "in
8 house counsel", thereby substantially limiting EFF's access to documents. I
9 disagreed with Mr. Cooper, and indicated that EFF counsel should be treated like
10 any other law firm counsel in this case and that their resources would be needed to
11 review the numerous documents and discovery responses in this case and to assist
12 my office in all aspects of this litigation and trial preparation. I further indicated to
13 Mr. Cooper that treating EFF attorneys as "in house counsel" would, in light of the
14 numerous documents and briefs that in house counsel may not see in this case, act as
15 a de facto method of eliminating EFF's involvement in the substantive aspects of this
16 litigation. I informed Mr. Cooper that I would talk further with EFF about the issue.

17 8. After receiving no communication or draft stipulation from the
18 Entertainment Companies on the date agreed, I emailed Mr. Cooper on September 2,
19 2002 indicating my frustration with what appeared to be a stall tactic designed to
20 prevent the Newmark Plaintiffs from having adequate time to read and respond to
21 documents produced under the discovery schedule. In my communication I, once
22 again, requested the presentation of a draft written stipulation from the
23 Entertainment Companies. I also indicated that the Newmark Plaintiffs would
24 consider seeking ex parte relief on September 3, 2002 to be bound by the Protective
25 Order and to gain access to the discovery responses and documents produced in the
26 Paramount case.

27 9. On September 3, 2002 Mr. Rader faxed a draft stipulation attached as
28 Exhibit "A" hereto that limited EFF's access to documents, briefs, and discovery

1 responses, by labeling EFF as "in house counsel" under the multi-tiered Protective
2 Order.

3 10. On September 4, 2002 I indicated to Mr. Rader on the telephone that
4 EFF counsel did not agree to the status of "in house counsel" and certainly did not
5 agree to reduced access to documents. I also indicated that given the time
6 constraints in this case and the volume of documents needing review, my co-
7 counsels' (EFF) involvement and resources were crucial in light of the current
8 discovery schedule. Mr. Rader disagreed with my views and called EFF a
9 "competitor".

10 11. After consideration with all Newmark Plaintiffs' counsel, Ms. Cohn of
11 the EFF informed all counsel by faxed letter on September 5, 2002, that the
12 Newmark Plaintiffs intended to seek ex parte relief from this court on September 6,
13 2002.

14 12. Based on a telephone conversation with Ms. Cohn I understand and
15 believe that Ms Cohn spoke with Mr. Rader and Mr. Robert Rotstein of McDermott,
16 Will & Emery on September 6, 2002, and that Mr. Rader and Mr. Rotstein
17 confirmed that the Entertainment Companies would oppose access to any Newmark
18 Plaintiffs' counsel to documents produced in the Paramount case which relate to the
19 Department of Justice's anti-trust investigation into the Entertainment Companies'
20 participation in the Movie.com Video on Demand service case, and to produced
21 documents which related to the Entertainment Companies' lobbying efforts before
22 Congress, and would oppose giving EFF attorneys access to documents produced
23 which related to strategic planning and content protection in new media.

24 13. Based on a telephone conversation with Ms. Cohn, I understand and
25 believe that Mr. Rader telephoned Ms. Cohn on September 16, 2002 and stated that
26 the Entertainment Companies would be prepared to allow me access to all categories
27 of produced documents if the EFF Attorneys would agree to sign an interim
28 Protective Order precluding their access to all documents designated as "Restricted"

1 and "Highly Restricted" under the existing Protective Order of May 29, 2002. This
2 was a change in the Entertainment Companies' position concerning my access to the
3 produced documents.

4 14. The interim stipulation also provided that the Entertainment Companies
5 would seek an extension in the trial schedule then being negotiated with the
6 ReplayTV and SonicBlue parties to accommodate the disagreement over access
7 between the EFF Attorneys and the Entertainment Companies, and stated that the
8 Entertainment Companies would identify documents that were undesignated or
9 designated as "Confidential" or "Highly Confidential" under the existing Protective
10 Order, to which they would allow EFF Attorneys access. A true and correct copy of
11 the signed stipulation and protective order is attached hereto as Exhibit "B".

12 15. On September 25, 2002, pursuant to the interim Protective Order, I
13 began reviewing produced documents at the Palo Alto offices of Fenwick & West.
14 Based on my visual inspection of the documents produced to Fenwick & West, I
15 understand and believe that 600,000 pieces of paper have so far been produced in
16 this case.

17 16. Amongst the documents I viewed at Fenwick & West were 12
18 document production letters between the various Entertainment Companies'
19 attorneys and attorneys at Fenwick & West, true and correct copies of which are
20 attached hereto as Exhibits "C" through "N".

21 17. Based on my inspection of these letters, in particular, a letter from Mr.
22 Cooper of Proskauer Rose, counsel for the MGM, Universal and Fox parties, to Mr
23 Stanton of Fenwick & West dated July 3, 2002, which is attached as Exhibit "G"
24 hereto, and letters from Mr Olson of Wilmer, Cutler & Pickering, counsel for the
25 Disney and Viacom parties, to Mr Stanton, dated June 29, 2002 and July 1, 2002,
26 attached hereto as Exhibits "E" and "F" respectively, I understand and believe that
27 the Entertainment Companies have made a blanket "Highly Restricted" designation
28 for all of the documents previously produced by the Entertainment Companies to

1 the Department of Justice, in connection with its anti-trust investigation into the
2 Entertainment Companies' proposed online Video-on-demand ventures, movies.com
3 and MovieLink.

4
5 18. On the basis of my visual inspection of the documents, calculations
6 performed with Bates number ranges listed in the 12 document production letters
7 attached hereto, and conversations with personnel at Fenwick & West LLP, I
8 understand and believe that:

- 9 (a) approximately 78% or 82,600 of the 105,750 documents so far
10 produced by the Entertainment Companies are designated
11 "Highly Restrictive" under the Protective Order; and
12 (b) approximately 0.85% or 900 of the 105,750 documents so far
13 produced by the Entertainment Companies are designated
14 "Restricted" under the existing Protective Order.
15


16 19 On the basis of my visual inspection of the documents produced and the
17 above calculations, I understand and believe that under the terms of the ruling being
18 sought by the Entertainment Companies, EFF would be precluded from accessing
19 approximately 79% of the documents produced by the Entertainment Companies,
20 being the documents designated "Highly Restrictive" and "Restricted" under the
21 existing Protective Order.
22

23 20. In my view, urgent relief is needed to give "all" of the Newmark
24 Plaintiffs' counsel immediate access to all documents, briefs and discovery responses
25 produced to date, thereby placing us on an equal footing to the other parties and
26 firms in this case, - so that "all" Newmark Plaintiffs' co-counsel can analyze it, and
27 do follow-up discovery. When I agreed to be counsel in this case I did so with the
28 understanding that my co-counsel (three of EFF's attorneys) would be available for

1 handling the vast majority of the "discovery document review." My upcoming trial
2 schedule is sufficiently rigorous (three jury trials in the next four months) that, in my
3 view, it would be unduly burdensome to my clients if my co-counsel were prevented
4 from materially assisting in the document review process. We respectfully need
5 relief before the Entertainment Companies "run out the clock" on the discovery
6 deadlines.

7
8 I declare under penalty of perjury under the laws of the United States of
9 America that the foregoing is true and correct and that this declaration is executed
10 in, San Rafael, California, on September 30, 2002.

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Ira P. Rothken

EXHIBIT A



O'MELVENY & MYERS LLP

1999 Avenue of the Stars
Los Angeles, California 90067-6035

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FAX TRANSMITTAL

DATE & TIME:

Tuesday, September 03, 2002, 11:16 AM

TOTAL NUMBER OF PAGES:

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TO:

Ira P. Rothken, Esq. - Rothken Law Firm

FAX NUMBER:

(415) 924-2905

TELEPHONE NUMBER:

FROM:

Alan Rader

RETURN FAX NUMBER:

310-246-6779

TELEPHONE NUMBER:

310-246-6747

MESSAGE

Please see attached.

IF YOU DID NOT RECEIVE ALL PAGES, PLEASE CALL Barbara S. Schwarcz AT (310) 246-6739, OR OUR FAX DEPARTMENT AT 310/246-6891.

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USER NO.:	04301	EXTENSION:	6739
RESPONSIBLE ATTY NAME:	Alan Rader	LOCATION:	9S16
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O'MELVENY & MYERS LLP

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TYSONS CORNER
WASHINGTON, D.C.
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TOKYO

September 3, 2002

OUR FILE NUMBER
010,019-20

VIA FACSIMILE (415) 924-2905

WRITER'S DIRECT DIAL
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Ira P. Rothken, Esq.
ROTHKEN LAW FIRM
1050 Northgate Drive, Suite 520
San Rafael, California 94903

WRITER'S E-MAIL ADDRESS
arader@omm.com

Re: **Paramount Pictures Corp., et al. v. ReplayTV, Inc., et al.**

Dear Ira:

As we discussed a few minutes ago, here is a draft stipulation to effectuate the arrangements we have discussed. As I told you when we spoke, all of the plaintiffs have not yet signed off.

Sincerely,

Alan Rader
of O'MELVENY & MYERS LLP

AR:bss

cc: Plaintiffs' Counsel
Emmett Stanton, Esq.

Enclosure

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16 LAURENCE F. PULGRAM (Cal. Bar No. 115163)
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 18 Telephone: (415) 875-2300 / Facsimile: (415) 281-1417
 Attorneys for Defendants ReplayTV, Inc. and SONICblue Incorporated
 19

20 [Full counsel appearances on signature page]

21 UNITED STATES DISTRICT COURT
 22 CENTRAL DISTRICT OF CALIFORNIA
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1 **PARAMOUNT PICTURES**
 2 **CORPORATION, *et al.*,**
 3 **Plaintiffs,**
 4 **v.**
 5 **REPLAYTV, INC., *et al.*,**
 6 **Defendants.**

Case No.: CV 01-09358 FMC (Ex)

Hon. Florence-Marie Cooper

**STIPULATION AND [PROPOSED]
ORDER REGARDING THE
NEWMARK PLAINTIFFS' ACCESS
TO CONFIDENTIAL
INFORMATION**

7
8
9 **AND CONSOLIDATED ACTIONS.**
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12 **WHEREAS, on August 15, 2002, the Court granted the Newmark Plaintiffs'**
13 **motion to consolidate the action entitled Newmark, et al. v. Turner Broadcasting**
14 **System, Inc., et al. (former Case No CV 02-04445 FMC (Ex) (the "Newmark**
15 **Action") with the above-captioned consolidated actions (the "Action"), the parties**
16 **to the Action, through their respective counsel of record, HEREBY STIPULATE**
17 **AND AGREE as follows:**

18 **1. The plaintiffs in the Newmark Action (the "Newmark Plaintiffs"),**
19 **through their counsel of record, shall execute the Stipulation and Protective Order**
20 **entered by this Court on May 29, 2002 (the "Protective Order");**

21 **2. Upon their execution of the Protective Order and subject to its terms,**
22 **the Newmark Plaintiffs shall, to the same extent as all other parties in the Action,**
23 **be allowed to obtain and to review all discovery in the Action to date, including**
24 **but not limited to all documents, interrogatory responses and responses to requests**
25 **for admissions produced or served in the Action, subject to the following**
26 **limitations and restrictions:**
27
28

1 (a) Neither the Newmark Plaintiffs nor their attorneys shall be
2 given access to, or be allowed to obtain or review, documents or interrogatory
3 responses that were produced or served by Plaintiffs in the Action in response to
4 any of the following discovery requests: SONICblue Document Request Nos. 12,
5 14, 15, 16, and 17 (the "Movies.com/Movielink Discovery"); and ReplayTV
6 Document Request No. 53 through 56, and ReplayTV Interrogatory Nos. 11(f) and
7 14 (the "Lobbying Discovery").¹ Plaintiffs in the Action shall promptly identify by
8 Bates number all documents produced in response to the Movies.com/Movielink
9 Discovery and the Lobbying Discovery.
10
11
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13 (b) The Electronic Frontier Foundation, and its attorneys,
14 employees and agents (including but not limited to Cindy A. Cohn, Esq., Fred von
15 Lohmann, Esq., and Robin D. Gross, Esq.) (collectively, the "EFF") shall not be
16 given access to, nor be allowed to obtain or review, any discovery produced by any
17 of the parties in the Action designated as "Restricted" Information or "Highly
18 Restricted" Information (as those terms are defined in the Protective Order).
19
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22 3. Nothing in this Stipulation and Order shall prevent the Newmark
23 Plaintiffs from applying to the Court for an order allowing (i) the Newmark
24 Plaintiffs to obtain access to, or to obtain or review, the Movies.com/Movielink
25

26 ¹ Defendants ReplayTV, Inc. and SONICblue Inc. used different numbering for the written discovery they served
27 on the various groups of Plaintiffs in the Action. The ReplayTV Document Requests and Interrogatories referenced
28 above refer to the requests and interrogatories identified in Magistrate Judge Bick's April 26, 2002 orders.

1 Discovery and/or the Lobbying Discovery and/or (ii) the EFF to obtain access to
 2 discovery produced by any of the parties in the Action designated as "Restricted"
 3
 4 Information or "Highly Restricted" Information (as those terms are defined in the
 5 Protective Order); nor shall anything in this Stipulation and Order prevent any
 6
 7 other party to this Action from opposing such an application. All such rights are
 8 expressly reserved.

9
 10
 11 DATED: September __, 2002

12 PROSKAUER ROSE LLP

O'MELVENY & MYERS LLP

13
 14 By: _____
 15 Scott P. Cooper

By: _____
 Robert M. Schwartz

16 Attorneys for Plaintiffs Metro-
 17 Goldwyn-Mayer Studios Inc., Orion
 18 Pictures Corporation, Twentieth
 19 Century Fox Film Corporation,
 20 Universal City Studios Productions, Inc.
 21 (formerly, Universal City Studios
 22 Productions LLLP), Fox Broadcasting
 23 Company, Plaintiffs Paramount Pictures
 24 Corporation, Disney Enterprises, Inc.,
 25 National Broadcasting Company, Inc.,
 26 NBC Studios, Inc., Showtime Networks
 27 Inc., UPN (formerly, The United
 28 Paramount Network), AEC, Inc.,
 Viacom International Inc., CBS
 Worldwide Inc., and CBS Broadcasting
 Inc.

Attorneys for Plaintiffs Time Warner
 Entertainment Company, L.P., Home
 Box Office, Warner Bros., Warner Bros.
 Television, Time Warner Inc., Turner
 Broadcasting System, Inc., New Line
 Cinema Corporation, Castle Rock
 Entertainment, and The WB Television
 Network Partners, L.P.

1 MCDERMOTT, WILL & EMERY

FENWICK & WEST LLP

2 By: _____
3 Robert H. Rotstein

By: _____
Laurence F. Pulgram

4 Attorneys for Plaintiffs Columbia
5 Pictures Industries, Inc., Columbia
6 Pictures Television, Inc., Columbia
7 TriStar Television, Inc., and TriStar
8 Television, Inc.

Attorneys for Defendants ReplayTV,
Inc. and SONICblue Incorporated

9
10 ROTHKEN LAW FIRM

11 By: _____
12 Ira P. Rothken

13 Attorneys for Plaintiffs Craig Newmark,
14 Shawn Hughes, Keith Ogden, Glenn
15 Fleishman and Phil Wright

16
17 Good cause appearing therefore, the preceding stipulation of the parties in
18 the above-captioned action, as evidenced by the signatures of counsel of record
19 appearing above, is hereby ordered.

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21 DATED: September __, 2002

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23 _____
24 HONORABLE CHARLES F. EICK
United States Magistrate Judge

EXHIBIT B

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FILED
CLERK, U.S. DISTRICT COURT
C9-30-C2
JUL 20 2002
CENTRAL DISTRICT OF CALIFORNIA

[Full counsel appearances on signature page]

Checked
#113

CLERK

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PARAMOUNT PICTURES
CORPORATION *et al.*

Plaintiffs,

v.

REPLAYTV, INC. *et al.*,

Defendants.

CASE NO. CV 01-9358 FMC (Ex) ✓
Hon. Florence-Marie Cooper
**STIPULATION AND [PROPOSED]
ORDER REGARDING THE
NEWMARK PLAINTIFFS' ACCESS
TO CONFIDENTIAL
INFORMATION**

AND CONSOLIDATED ACTIONS.

EN 9 20 01 CMS
CV [Signature]

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1 On August 15, 2002, the Court granted a motion to consolidate the action
2 entitled Newmark, et al. v. Turner Broadcasting System, Inc., et al. (former Case No.
3 CV 02-04445 FMC (Ex)) with the previously pending Paramount Pictures
4 Corporation, et al. v. ReplayTV, Inc., et al. action. The Plaintiffs in the Newmark
5 action (the "Newmark Plaintiffs") and the Plaintiffs in the original action (the
6 "Copyright Owner Plaintiffs") disagree concerning the extent to which the Electronic
7 Frontier Foundation and its attorneys, employees and agents (including but not
8 limited to Cindy A. Cohn, Esq., Fred von Lohmann, Esq., and Robin D. Gross, Esq.)
9 (collectively, the "EFF") are entitled to access to information and documents already
10 produced during discovery in this action. To obtain a judicial resolution of that
11 disagreement while allowing this litigation to progress, the parties to this action,
12 through their respective counsel of record, HEREBY STIPULATE AND AGREE as
13 follows:

14 1. Pursuant to Local Rule 37-2, the Copyright Owner Plaintiffs will file a
15 motion for protective order seeking certain restrictions on the types of discovery
16 available to EFF. The Copyright Owner Plaintiffs shall provide the opening portion
17 of the Joint Stipulation called for by Local Rule 37-2.1 to the Newmark Plaintiffs on
18 September 23, 2002. The Newmark Plaintiffs shall provide their portion of the Joint
19 Stipulation on September 30, 2002, and the motion shall be filed promptly thereafter.
20 Supplemental Memoranda, pursuant to Local Rule 37-2.3, shall be filed on October 7,
21 2002. The motion shall be noticed for hearing on October 15, 2002.

22 2. The Newmark Plaintiffs, through their counsel of record, shall execute the
23 Stipulation and Protective Order entered in this action by this Court on May 29, 2002
24 (the "Protective Order"). Upon their execution of the Protective Order, and subject to
25 its terms and the terms of this Stipulation, counsel for the Newmark Plaintiffs, Ira
26 Rothken and EFF, shall be allowed to obtain and to review all discovery in the action
27 to date, including but not limited to all documents, deposition transcripts,
28 interrogatory responses and responses to requests for admissions produced or served

CC1:385468 1

1 in the action, *except that* -- unless and until altered or adjusted by the Court's ruling
2 on the motion for protective order referred to above -- the following additional
3 limitations and procedures shall apply:

4 (a) The EFF shall not have or be given access to, nor be allowed to
5 obtain or review: (i) documents produced in this action that were originally produced
6 or prepared by the Copyright Owner Plaintiffs in connection with the Department of
7 Justice investigation regarding Movies.com and/or Movielink; and (ii) documents,
8 interrogatory responses or responses to requests for admission that were produced or
9 served by Copyright Owner Plaintiffs in response to any written discovery
10 concerning lobbying activity by the Copyright Owner Plaintiffs. The Copyright
11 Owner Plaintiffs shall promptly identify, by Bates number or otherwise, all such
12 produced documents, interrogatory responses and responses to requests for
13 admission, and the EFF will not be allowed to have, and will not accept, access to any
14 such information.

15 (b) The EFF also shall not have or be given access to, nor be allowed
16 to obtain or review, any other discovery produced by the Copyright Owner Plaintiffs
17 designated as "Restricted" Information or "Highly Restricted" Information (as those
18 terms are defined in the Protective Order) to the extent that that Information will be
19 the subject of the Copyright Owner Plaintiffs' motion for protective order referred to
20 above. The Copyright Owner Plaintiffs will, on a rolling basis, identify, by Bates
21 number or otherwise, any discovery responses and produced documents designated
22 under the Protective Order as "Restricted" or "Highly Restricted" Information that
23 are not subject to their motion for protective order. Thereafter, the EFF may have
24 immediate access to those materials that are not subject to such motion.

25 (c) The Copyright Owner Plaintiffs shall promptly identify, by Bates
26 number or otherwise, the other discovery responses and produced documents that are
27
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1 designated under the Protective Order as "Confidential" or "Highly Confidential"
2 Information or were produced without any designation under the Protective Order
3 and BFF shall be entitled to have access to such responses and documents, subject to
4 the provisions of the Protective Order (as applicable).

5
6 DATED: September 17, 2002

7 PROSKAUER ROSE LLP

8
9 By: 

10 Scott P. Cooper

11 Attorneys for Plaintiffs Metro-
12 Goldwyn-Mayer Studios Inc., Orion
13 Pictures Corporation, Twentieth
14 Century Fox Film Corporation,
15 Universal City Studios Productions
16 LLLP (formerly, Universal City Studios
17 Productions, Inc.), Fox Broadcasting
18 Company, Plaintiffs Paramount Pictures
19 Corporation, Disney Enterprises, Inc.,
20 National Broadcasting Company, Inc.,
21 NBC Studios, Inc., Showtime Networks
22 Inc., UPN (formerly, The United
23 Paramount Network), ABC, Inc.,
24 Viacom International Inc., CBS
25 Worldwide Inc., and CBS Broadcasting
26 Inc.

27 MCDERMOTT, WILL & EMERY

28 By: _____

Robert H. Rotstein

Attorneys for Plaintiffs Columbia
Pictures Industries, Inc., Columbia
Pictures Television, Inc., Columbia
TriStar Television, Inc., and TriStar
Television, Inc.

CCI-985468.1

O'MELVENY & MYERS LLP

By: 

Alan Rader

Attorneys for Plaintiffs Time Warner
Entertainment Company, L.P., Home
Box Office, Warner Bros., Warner Bros.
Television, Time Warner Inc., Turner
Broadcasting System, Inc., New Line
Cinema Corporation, Castle Rock
Entertainment, and The WB Television
Network Partners L.P.

FENWICK & WEST LLP

By: _____

Laurence F. Pulgram

Attorneys for Defendants ReplayTV,
Inc. and SONICblue Incorporated

1 designated under the Protective Order as "Confidential" or "Highly Confidential"
 2 Information or were produced without any designation under the Protective Order
 3 and EFF shall be entitled to have access to such responses and documents, subject to
 4 the provisions of the Protective Order (as applicable).

5
 6 DATED: September 17, 2002

7 PROSKAUER ROSE LLP

O'MELVENY & MYERS LLP

9 By: _____

By: _____

10 Scott P. Cooper
 11 Attorneys for Plaintiffs Metro-
 12 Goldwyn-Mayer Studios Inc., Orion
 13 Pictures Corporation, Twentieth
 14 Century Fox Film Corporation,
 15 Universal City Studios Productions
 16 LLLP (formerly, Universal City Studios
 17 Productions, Inc.), Fox Broadcasting
 18 Company, Plaintiffs Paramount Pictures
 19 Corporation, Disney Enterprises, Inc.,
 20 National Broadcasting Company, Inc.,
 21 NBC Studios, Inc., Showtime Networks
 22 Inc., UPN (formerly, The United
 23 Paramount Network), ABC, Inc.,
 24 Viacom International Inc., CBS
 25 Worldwide Inc., and CBS Broadcasting
 26 Inc.

Alan Rader
 Attorneys for Plaintiffs Time Warner
 Entertainment Company, L.P., Home
 Box Office, Warner Bros., Warner Bros.
 Television, Time Warner Inc., Turner
 Broadcasting System, Inc., New Line
 Cinema Corporation, Castle Rock
 Entertainment, and The WB Television
 Network Partners L.P.

22 MCDERMOTT, WILL & EMERY

FENWICK & WEST LLP

23 By: 
 24 Robert H. Rotstein

By: _____
 Laurence F. Pulgram

25 Attorneys for Plaintiffs Columbia
 26 Pictures Industries, Inc., Columbia
 27 Pictures Television, Inc., Columbia
 28 TriStar Television, Inc., and TriStar
 Television, Inc.

Attorneys for Defendants ReplayTV,
 Inc. and SONICblue Incorporated

00138544.1

4

1 designated under the Protective Order as "Confidential" or "Highly Confidential"
 2 Information or were produced without any designation under the Protective Order
 3 and EFF shall be entitled to have access to such responses and documents, subject to
 4 the provisions of the Protective Order (as applicable).

5
 6 DATED: September __, 2002

7 PROSKAUER ROSE LLP

O'MELVENY & MYERS LLP


8
 9 By: _____
 10 Scott P. Cooper
 11 Attorneys for Plaintiffs Metro-
 12 Goldwyn-Mayer Studios Inc., Orion
 13 Pictures Corporation, Twentieth
 14 Century Fox Film Corporation,
 15 Universal City Studios Productions
 16 LLLP (formerly, Universal City Studios
 17 Productions, Inc.), Fox Broadcasting
 18 Company, Plaintiffs Paramount Pictures
 19 Corporation, Disney Enterprises, Inc.,
 20 National Broadcasting Company, Inc.,
 21 NBC Studios, Inc., Showtime Networks
 22 Inc., UPN (formerly, The United
 23 Paramount Network), ABC, Inc.,
 24 Viacom International Inc., CBS
 25 Worldwide Inc., and CBS Broadcasting
 26 Inc.

By: _____
 Alan Rader
 Attorneys for Plaintiffs Time Warner
 Entertainment Company, L.P., Home
 Box Office, Warner Bros., Warner Bros.
 Television, Time Warner Inc., Turner
 Broadcasting System, Inc., New Line
 Cinema Corporation, Castle Rock
 Entertainment, and The WB Television
 Network Partners L.P.

22 MCDERMOTT, WILL & EMERY

FENWICK & WEST LLP

23 By: _____
 24 Robert H. Rotstein
 25 Attorneys for Plaintiffs Columbia
 26 Pictures Industries, Inc., Columbia
 27 Pictures Television, Inc., Columbia
 28 TriStar Television, Inc., and TriStar
 Television, Inc.

By: 
 Laurence F. Fulgram
 Attorneys for Defendants ReplayTV,
 Inc. and SONICblue Incorporated

CC: 884681

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ROTHKEN LAW FIRM

By: 

Ira P. Rothken

Attorneys for Plaintiffs Craig Newmark,
Shawn Hughes, Keith Ogden, Glenn
Fleishman and Phil Wright

ELECTRONIC FRONTIER
FOUNDATION

By: 

Cindy A. Cohn

Attorneys for Plaintiffs Craig Newmark,
Shawn Hughes, Keith Ogden, Glenn
Fleishman and Phil Wright

ORDER

Good cause appearing therefore, the preceding stipulation of the parties in the
above-captioned action, as evidenced by the signatures of counsel of record appearin
above, is hereby ordered.

DATED: September 12, 2002



HONORABLE CHARLES F. EICK
United States Magistrate Judge

CC:SB3468;

-5-

1 PROOF OF SERVICE

2 I, Cora Moncrief, declare:

3 I am a resident of the State of California and over the age of eighteen
4 years, and not a party to the within action; my business address is 1999 Avenue of
the Stars, Seventh Floor, Los Angeles, CA 90067-6035. On September 18, 2002, I
5 served the within document(s):

6 **STIPULATION AND [PROPOSED] ORDER REGARDING THE NEWMARK
7 PLAINTIFFS' ACCESS TO CONFIDENTIAL INFORMATION**

8 by placing the document(s) listed above in a sealed envelope with
9 postage thereon fully prepaid, in the United States mail at Los
10 Angeles, California addressed as set forth below. I am readily
11 familiar with the firm's practice of collecting and processing
12 correspondence for mailing. Under that practice it would be deposited
13 with the U.S. Postal Service on that same day with postage thereon
14 fully prepaid in the ordinary course of business. I am aware that on
15 motion of the party served, service is presumed invalid if the postal
16 cancellation date or postage meter date is more than one day after date
17 of deposit for mailing in affidavit.

14 Emmett C. Stanton, Esq.
15 Fenwick & West LLP
16 Two Palo Alto Square
Palo Alto, California 94306

Laurence F. Pulgram, Esq.
Fenwick & West LLP
275 Battery Street
San Francisco, CA 94111

17 Ira P. Rothken, Esq.
18 Rothken Law Firm
1050 Northgate Drive, Suite 520
San Rafael, CA 94903

Scott P. Cooper, Esq.
Proskauer Rose LLP
2049 Century Park East
Suite 3200
Los Angeles, California 90067

19 Robert H. Rotstein, Esq.
20 McDermott, Will & Emery
21 2049 Century Park East
34th Floor
22 Los Angeles, California 90067

Cindy Cohn, Esq.
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

23 I declare under penalty of perjury under the laws of the United States
24 that the above is true and correct.

25 Executed on September 18, 2002, at Los Angeles, California.

26 
27 _____
Cora Moncrief
28

EXHIBIT C

LAW OFFICES
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.

WASHINGTON, D. C. 20006-5901

(202) 434-5000

FAX (202) 434-5029

June 18, 2002

ANA C. REYES
(202) 434-5278
areyes@wc.com

WILLIAMS & CONNOLLY LLP
725 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20006-5901

VIA FEDERAL EXPRESS

Patrick E. Premo, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306

Re: *Paramount Pictures Corporation, et al. v. ReplayTV, Inc., et al.*
Time Warner Entertainment Company, L.P., et al. v. ReplayTV, Inc., et al.
Metro-Goldwyn-Mayer Studios Inc., et al. v. ReplayTV, Inc., et al. Columbia Pictures
Industries, Inc., et al. v. ReplayTV, Inc., et al.
Consolidated in USDC (C.D. Cal.) Case No. CV 01-2368 FMC (Ex)
Motion Picture Association of America, Third-Party Subpoena

Dear Patrick:

Enclosed please find arguably responsive documents produced by the MPAA in the above-referenced matter: MPAA1 1 to 598; MPAA2 CONFIDENTIAL, 1 to 503; MPAA3 HIGHLY RESTRICTED 1 to 2719.

These documents are produced in accordance with previous agreements undertaken between Defendants and the MPAA. See, e.g., Letter from A. Reyes to P. Premo of 6/18/02; Letter from P. Premo to A. Reyes of 6/18/02.

Sincerely,


Ana C. Reyes

cc: Joint Plaintiffs Counsel

EXHIBIT D

LAW OFFICES
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.

WASHINGTON, D.C. 20005-5901

(202) 434-5000

FAX (202) 434-5020

June 22, 2002

ANA C. REYES
(202) 434-5276
areyes@wcl.com

ARNOLD BOYNTON WILLIAMS 1988-1999
PAUL P. CONNOLLY 1999-1978

VIA FEDERAL EXPRESS

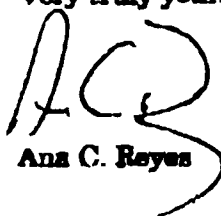
Patrick E. Premo, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306

Re: *Paramount Pictures Corporation, et al. v. ReplayTV, Inc., et al.*
Time Warner Entertainment Company, L.P., et al. v. ReplayTV, Inc., et al.
Metro-Goldwyn-Mayer Studios Inc., et al. v. ReplayTV, Inc., et al. Columbia Pictures
Industries, Inc., et al. v. ReplayTV, Inc., et al.
Consolidated in USDC (C.D. Cal.) Case No. CV 01-9058 FMC (Ex)
Motion Picture Association of America, Third-Party Subpoena

Dear Patrick:

Enclosed please find arguably responsive documents produced by the MPAA in the above-referenced matter: MPAA's HIGHLY RESTRICTED 2125 - 2221, and MPAA's HIGHLY RESTRICTED 1 - 582.

Very truly yours,



ANA C. REYES

Enclosures

NO12-0009630

EXHIBIT E

WILMER, CUTLER & PICKERING

400 W STREET, N.W.
WASHINGTON, DC 20037-1420
TELEPHONE (202) 663-8000
FACSIMILE (202) 663-6363
WWW.WILMER.COM

THOMAS P. OLSON
(202) 663-8000
Tolson@wilmer.com

600 MADISON AVENUE
NEW YORK, NY 10022-6801
TELEPHONE (212) 850-8000
FACSIMILE (212) 850-8000
150 LIGHT STREET
BALTIMORE, MD 21202-1020
TELEPHONE (410) 858-3800
FACSIMILE (410) 858-3828
1800 TYBONE BOULEVARD
10TH FLOOR
TYSONS CORNER, VA 22102-4350
TELEPHONE (703) 831-0700
FACSIMILE (703) 831-0707
200 CAMDEN SQUARE
LONDON, ENGLAND EC4A 3DF
TELEPHONE 011 44 (0) 20 7523 1000
FACSIMILE 011 44 (0) 20 7523 3037
RUE DE LA LOUVE 15 WETSTRAAT
BRUSSELS, BELGIUM
TELEPHONE 011 32 (0) 21 980 4000
FACSIMILE 011 32 (0) 21 980 4000
INTERNATIONAL TRADE CENTER
FREDERICKSBURG VA
D-2217 BERRA, BERMAH
TELEPHONE 911 440 1301 8022 4000
FACSIMILE 011 440 1301 8022 4000

June 29, 2002

FEDERAL EXPRESS

Emmett C. Stanton, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, California 94306

RE: *Paramount Pictures Corp., et al. v. ReplayTV, Inc. et al. (and related actions),*
U.S. District Court, C.D. Cal., Case No. CV 01-9358 FMC (Bx)

Dear Emmett:

Along with this letter, we are sending you 21 boxes that comprise the Movielink production that various Viacom entities made to the U.S. Department of Justice. The documents are numbered as follows:

P000001-001286; 001288-005923; 005925-010287; 010301-010425; 010429-011142;
011144-011267; 011270-011467; 011469-011562; 011564-011930; 011932-014694;
014696-014761; 014763-014961; 014963-015349; 015351-015709; 015711-017223;
017225-018117; 018119-018506; 018511-019111; 019113-019207; 019209-019477;
019506-022436; 022438; 022440-025272; 025274-025701; 025703-025916;
025918-042368; 042370-042438; 042444-046876

BB00001-09908

SNI 00001-SNI00590

In the interest of sending this to you as quickly as possible, and because of the vast scale of this production (which was assembled for another case), we did not undertake to do a detailed confidentiality review of the 21 boxes. As you know, because the Antitrust Civil Process Act provides confidentiality protection to all material produced under Civil Investigative Demands, there was no need to review the documents for confidentiality at the time of their production to the Department. For these reasons, and as per Scott Cooper's discussion with Laurence Pulgram on June 14, 2002, we have labeled all documents in the 21 boxes as "Highly Restricted." If you find particular documents that you wish to use in this case and that you contend require a lower level of confidentiality, please let us know and we will be happy to consider your request.

The privilege log provided to the Department is produced to you as part of this production. The privilege log document is numbered as follows: PAR 001126 to PAR 001578.

Very truly yours,



Thomas P. Olson

Enclosures

cc: Plaintiffs' Counsel

EXHIBIT F

WILMER, CUTLER & PICKERING

3000 R STREET, N.W.
WASHINGTON, DC 20037-1420

TELEPHONE (202) 637-6000
FACSIMILE (202) 637-6323
WWW.WILMER.COM

THOMAS P. OLEON
(202) 637-6000
T.Oleon@wilmer.com

630 MADISON AVENUE
NEW YORK, NY 10022-6102
TELEPHONE (212) 430-6000
FACSIMILE (212) 430-6000

60 LIGHT STREET
BALTIMORE, MD 21201-4428
TELEPHONE (410) 528-2000
FACSIMILE (410) 528-2000

1000 TYSONS BOULEVARD
10TH FLOOR
TYSONS CORNER VALE, VA 22091-4300
TELEPHONE (703) 831-6700
FACSIMILE (703) 831-6707

1 CHARLTON GARDENS
LONDON SW1, ENGLAND
TELEPHONE 011 44 1 237 1000
FACSIMILE 011 44 1 237 1020 2027

RUE DE LA LOI 18 WETTERHAY
B-1050 BRUXELLES BELGIUM
TELEPHONE 011 32 2 734 0000
FACSIMILE 011 32 2 734 0000

INTERNATIONAL TRADE CENTER
FRIEDRICHSTRASS 63
D-10117 BERLIN GERMANY
TELEPHONE 011 49 30 266 2000
FACSIMILE 011 49 30 266 2000

July 1, 2002

FEDERAL EXPRESS

Emmett C. Stanton, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, California 94306

RE: *Paramount Pictures Corp., et al. v. ReplayTV, Inc. et al. (and related actions),*
U.S. District Court, C.D. Cal., Case No. CV 01-9358 FMC (Ex)

Dear Emmett:

Along with this letter, we are sending you 30 boxes that comprise the Disney production of Movics.com documents to the U.S. Department of Justice.¹ The documents are numbered as follows using a "DISNEY" prefix:

00001-04725; 04727-07654; 07668-10411; 10427-17028; 17033-21324; 21439-21705; 21707-22314; 22319-24101; 24108-24127; 24139-24160; 24162-24167; 24249-24259; 24395-24539; 24778-25443; 25445-26068; 26070-27049; 27058-27074; 27077-29806; 29809-29831; 29833-29990; 29993; 29997-30022; 30024-30281; 30286-30368; 30370-30497; 30499-30517; 30519-30619; 30623-30645; 30660-30900; 30905-30912; 30924-30965; 30970-31075; 31077; 31081-31083; 31093-31103; 31109-31116; 31121-31140; 31142-31201; 31209-21311; 31213-31219; 31221-31229; 31231; 31237-31268; 31271-32493; 32499-32988; 32990-33225; 33228-33268; 33271-33864; 33886-34294; 34296-34857; 34862-36450; 36452-38487; 38489-40613; 40615-42018; 42210-43169; 43171-46937; 46939-48889; 48893-53976; 53978-55900; 55918-58371.

In the interest of sending this to you as quickly as possible, and because of the vast scale of this production (which was assembled for another case), we did not undertake to do a detailed confidentiality review of the 30 boxes. As you know, because the Antitrust Civil Process Act provides confidentiality protection to all material produced under Civil Investigative Demands, there was no need to review the documents for confidentiality at the time of their production to the Department. For these reasons, and as per Scott Cooper's discussion with Laurence Pulgram

¹ Please note the numbers on the boxes indicate that there are 31 boxes, but Box Nos. 8 and 9 are combined.

on June 14, 2002, we have labeled all documents in the 30 boxes as "Highly Restricted." If you find particular documents that you wish to use in this case and that you contend require a lower level of confidentiality, please let us know and we will be happy to consider your request.

The cover letters and privilege log provided to the Department are produced to you as part of this production. They are labeled as follows: DIS 008717 to DIS 008847.

Very truly yours,



Thomas P. Olson

Enclosures

cc: Plaintiffs' Counsel

EXHIBIT G

PROSKAUER ROSE LLP

2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3200
Telephone 310.557.2900
Fax 310.557.2193

NEW YORK
WASHINGTON
BOCA RATON
MIAMI
PARIS

Scott P. Cooper
Member of the Firm

Direct Dial 310.284.5869
scooper@proskauer.com

July 3, 2002

VIA EMAIL, FACSIMILE AND FEDERAL EXPRESS

Emmett C. Stanton, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306

Re: Paramount Pictures Corporation, et al. v. ReplayTV, Inc., et al.
U.S. District Court (C.D. Ca.) Case No. CV 01-09358 FMC (Ex) and Related Cases

Dear Emmett:

We are producing with this letter 68 boxes that comprise the productions of documents being made today on behalf of our clients, the MGM Plaintiffs, the Universal Plaintiffs, and the Fox Plaintiffs. A listing of the Bates ranges of the documents being produced herewith is attached as Attachment A to this letter.

Consistent with the approach mentioned in Tom Olson's letters dated June 29 and July 1 and our prior discussion, we have designated all of the documents comprising our clients' respective productions to the Department of Justice as "Highly Restricted" pursuant to the Confidentiality Order. We are willing to discuss with you whether any of the individual documents within those productions warrants a lower designation. However, given the extraordinarily sensitive nature of the vast majority of the documents contained in those productions and the sheer volume of documents produced, we have determined that the "Highly Restricted" classification is appropriate for the DOJ productions as a whole.

We also are enclosing as part of the document production the privilege logs produced to the Department of Justice by Fox and MGM. We understand that the privilege log for the Universal DOJ production has not yet been provided to the Department of Justice. After that privilege log is produced to the Department of Justice by Universal, we will provide a copy of it to you. Per

0068/48424-008 LAWORD/8582 v1

PROSKAUER ROSE LLP

Emmett C. Stanton, Esq.
July 3, 2002
Page 2

our agreement confirmed in my letter dated May 22, 2002, privilege logs covering the rest of the production being made today will be provided to you on or before July 18, 2002.

Finally, a handful of documents included within this production contain redactions of material pertaining to unrelated business activities and non-responsive financial details from otherwise responsive documents consistent with Tom Olson's letter dated June 25, 2002. The preparation of these documents for production was already well advanced by the time we received your letter dated July 1, 2002, belatedly taking exception to one of the proposals set forth in Tom's letter. We believe that each of these redactions is appropriate and supported by applicable law. We are willing to take this issue up with you in the context of the individual documents in the event that Defendants believe a principled basis exists for the production of the redacted material.

Very truly yours,



Scott F. Cooper

SPC/ph

Attachment

cc: Laurence F. Pulgram, Esq.
Plaintiffs' Counsel
(via email and facsimile)

ATTACHMENT A

7/03/02

DOCUMENT NUMBER RANGE

DEPARTMENT OF JUSTICE PRODUCTIONS	
UNIVERSAL	UNIV 005667 - 074723
FOX	FOX 002540 - 057405
MGM	MGM 001040 - 017498

OTHER DOCUMENTS	
UNIVERSAL	UNIV 074724 - 081478
FOX	FOX 057406 - 063216
MGM	MGM 017499 - 021786

EXHIBIT H

LAW OFFICES
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.

WASHINGTON, D. C. 20005-5901

(202) 434-5000

FAX (202) 434-5029

July 30, 2002

A. C. REYES
P 434-6276
are@wcl.com

RONALD SPENCER WILLIAMS (1929-1999)
WILLIAMS & CONNOLLY (1929-1976)

VIA FEDERAL EXPRESS

Patrick E. Premo, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306

Re: *Paramount Pictures Corporation, et al. v. ReplayTV, Inc., et al.*
Time Warner Entertainment Company, L.P., et al. v. ReplayTV, Inc., et al.
Metro-Goldwyn-Mayer Studios Inc., et al. v. ReplayTV, Inc., et al. Columbia Pictures Industries,
Inc., et al. v. ReplayTV, Inc., et al.
Consolidated in USDC (C.D. Cal.) Case No. CV 01-9358 FMC (Br.)
Motion Picture Association of America, Third-Party Subpoena
Motion Picture Association, Third-Party Subpoena

Dear Patrick:

Enclosed please find documents produced by the MPAA in the above-referenced matter. MPAA4 HIGHLY RESTRICTED 583 - 3543. The MPAA's production of documents is not a waiver of any of the objections it has set forth, is not an admission or acknowledgment that such documents are relevant to the subject matter of the action, and is not an admission or acknowledgment that such documents are responsive to Defendants' subpoenas. Per agreement between the Defendants, MPAA and MPA, the documents are protected by the Protective Order in place in the above-referenced litigation.

Per your request, I have sent these documents via Federal Express. Defendants have agreed to pay for the copying and shipping costs of this production.

Sincerely,


Ana C. Reyes

Enclosures

cc: Joint Plaintiffs' Counsel

EXHIBIT I

LAW OFFICES
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.

WASHINGTON, D. C. 20005-5901

(202) 434-5000

FAX (202) 434-5029

July 30, 2002

ANA C. REYES
(202) 434-5276
areyes@wc.com

ERNEST BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1928-1978)

VIA FEDERAL EXPRESS

Patrick E. Premo, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306

Re: *Paramount Pictures Corporation, et al. v. ReplayTV, Inc., et al.*
Time Warner Entertainment Company, L.P., et al. v. ReplayTV, Inc., et al.
Metro-Goldwyn-Mayer Studios Inc., et al. v. ReplayTV, Inc., et al. Columbia Pictures Industries,
Inc., et al. v. ReplayTV, Inc., et al.
Consolidated in USDC (C.D. Cal.) Case No. CV 01-9358 FMC (Ex)
Motion Picture Association of America, Third-Party Subpoena
Motion Picture Association, Third-Party Subpoena

Dear Patrick:

Enclosed please find documents produced by the MPAA in the above-referenced matter: MPAA1 594 - 868, and MPAA2 CONFIDENTIAL 504 - 549. The MPAA's production of documents is not a waiver of any of the objections it has set forth, is not an admission or acknowledgment that such documents are relevant to the subject matter of the action, and is not an admission or acknowledgment that such documents are responsive to Defendants' subpoenas. Per agreement between the Defendants, MPAA and MPA, the documents are protected by the Protective Order in place in the above-referenced litigation.

Per your request, I have sent these documents via Federal Express. Defendants have agreed to pay for the copying and shipping costs of this production.

Sincerely,



Ana C. Reyes

Enclosures

cc: Joint Plaintiffs' Counsel

EXHIBIT J

LAW OFFICES
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.

WASHINGTON, D C 20005-5901

(202) 434-5000

FAX (202) 434-5029

July 31, 2002

ANA C. REYES
(202) 434-6276
areyes@wc.com

EDWARD MONTWETT WILLIAMS (1950-1998)
DALE B. CONNOLLY (1928-1978)

VIA FEDERAL EXPRESS

Patrick E. Premo, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306

Re: *Paramount Pictures Corporation, et al. v. ReplayTV, Inc., et al.*
Time Warner Entertainment Company, L.P., et al. v. ReplayTV, Inc., et al.
Metro-Goldwyn-Mayer Studios Inc., et al. v. ReplayTV, Inc., et al. Columbia Pictures Industries,
Inc., et al. v. ReplayTV, Inc., et al.
Consolidated in USDC (C.D. Cal.) Case No. CV 01-9358 FMC (Ex)
Motion Picture Association of America, Third-Party Subpoena
Motion Picture Association, Third-Party Subpoena

Dear Patrick:

Enclosed please find documents produced by the MPAA in the above-referenced matter. **MPAAS HIGHLY RESTRICTED 1 - 529.** The MPAA's production of documents is not a waiver of any of the objections it has set forth, is not an admission or acknowledgment that such documents are relevant to the subject matter of the action, and is not an admission or acknowledgment that such documents are responsive to Defendants' subpoenas. Per agreement between the Defendants, MPAA and MPA, the documents are protected by the Protective Order in place in the above-referenced matter.

Per your request, I have sent these documents via Federal Express. Defendants have agreed to pay for the copying and shipping costs of this production.

Sincerely,


Ana C. Reyes

Enclosures

EXHIBIT K

LAW OFFICES
WILLIAMS & CONNOLLY LLP
725 TWELFTH STREET, N.W.

WASHINGTON, D. C. 20005-5901

(202) 434-5000

FAX (202) 434-5029

August 5, 2002

ANA C REYES
(202) 434-5276
areyes@wc.com

EDWARD BENNETT WILLIAMS (202) 434-5000
PAUL R. CONNOLLY (202) 434-5000

VIA FEDERAL EXPRESS

Patrick E. Premo, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306

Re: *Paramount Pictures Corporation, et al. v. ReplayTV, Inc., et al*
Time Warner Entertainment Company, L.P., et al. v. ReplayTV, Inc., et al
Metro-Goldwyn-Mayer Studios Inc., et al. v. ReplayTV, Inc., et al. Columbia Pictures Industries,
Inc., et al. v. ReplayTV, Inc., et al.
Consolidated in USDC (C.D. Cal.) Case No. CV 01-9358 FMC (EA)
Motion Picture Association of America, Third-Party Subpoena
Motion Picture Association, Third-Party Subpoena

Dear Patrick:

Enclosed please find documents produced by the MPAA in the above-referenced matter: MPAA1 869 - 958; MPAA2 CONFIDENTIAL 550 - 617; and MPAA5 HIGHLY RESTRICTED 530 - 563. The MPAA's production of documents is not a waiver of any of the objections it has set forth, is not an admission or acknowledgment that such documents are relevant to the subject matter of the action, and is not an admission or acknowledgement that such documents are responsive to Defendants' subpoenas. Per agreement between the Defendants, MPAA and MPA, the documents are protected by the Protective Order in place in the above-referenced matter.

Per your request, I have sent these documents via Federal Express. Defendants have agreed to pay for the copying and shipping costs of this production.

Enclosed please also find the second privilege log in response to the above-referenced matter.

Sincerely,


Ana C. Reyes

Enclosures

EXHIBIT L

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August 13, 2002

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Via Federal Express
Emmett C. Stanton, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306

Dear Emmett:

This letter follows up on correspondence between you and Tom Olson dated July 3, July 9, July 12, and July 15¹ regarding the Viacom and Disney Plaintiffs' production to Defendants of the documents previously produced to the Department of Justice ("DOJ") concerning Movielink and Movies.com. As set forth in our prior correspondence, these documents are entitled to a "Highly Restricted" designation pursuant to the Protective Order.

In your prior correspondence you have taken issue in general terms with the designation of these documents as "Highly Restricted." Nevertheless, we have not heard from you since Tom Olson sent his most recent letter on July 15, and you have not, as the Protective Order requires, identified any particular document that you contend warrants any lesser designation. Accordingly, you have not complied with the dispute resolution mechanism under the Protective Order.

Nonetheless, in an effort to resolve any potential future dispute, we have now gone through all of the 51 boxes of Movielink and Movies.com documents to cull out the few that may even arguably be subject to any lesser designation. Based on that process, we reconfirm that virtually all of the documents in these massive productions are sensitive internal business materials that must not be seen either by your clients or by the other Plaintiffs – and thus must be designated as "Highly Restricted." We have, however, enclosed three boxes of documents from the Movielink and Movies.com productions that we agree to "downgrade" from "Highly Restricted" to "Confidential" or, in a few cases, from "Highly Restricted" to "Highly Confidential." Please replace the existing pages from the prior productions with these new pages.

Of course, as we have previously stated, we expect you to comply with the Court's Protective Order, and to treat all of Plaintiffs' documents consistent with their designation. We

¹ This letter was mistakenly dated July 12, 2002.

will seek all sanctions and penalties available against your clients, your firm, and you personally if you should fail to do so.

Please call me if you have any questions.

Sincerely,

Steven F. Cherry/mlm
Steven F. Cherry

EXHIBIT M

WILMER, CUTLER & PICKERING

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August 21, 2002

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Via Federal Express and E-mail (without enclosures)

Emmett C. Stanton, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306

Re: *Paramount Pictures Corp., et al. v. ReplayTV, Inc. et al. (and related actions)*,
U.S. District Court, C.D. Cal., Case No. CV 01-9358 FMC (Ex)

Dear Emmett:

We have enclosed a small set of documents that should have been labeled as "Highly Restricted" in our June 29th production to you (of documents concerning Movielink), but that, due to a copy service error, had no confidentiality designation. The Bates ranges are as follows: P43992, P44239 to P44280, and P44344 to P44350. Please replace the existing pages from the prior production with these newly labeled "Highly Restricted" pages.

Very truly yours,



Steven F. Cherry

EXHIBIT N

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August 29, 2002

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VIA OVERNIGHT DELIVERY

Patrick H. Premo, Esq.
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306

Re: *Paramount Pictures Corporation, et al. v. ReplayTV, Inc., et al.*
Time Warner Entertainment Company, L.P., et al. v. ReplayTV, Inc., et al.
Metro-Goldwyn-Mayer Studios Inc., et al. v. ReplayTV, Inc., et al.
Columbia Pictures Industries, Inc., et al. v. ReplayTV, Inc., et al.
Consolidated in USDC (C.D. Cal.) Case No. CV 01-9338 FMC (Rx)
Motion Picture Association of America, Third-Party Subpoena
Motion Picture Association, Third-Party Subpoena

Dear Patrick:

Enclosed please find documents produced by the MPAA in the above-referenced matter: MPAA1 968 to 1574; MPAA2 618 to 2476; and MPAA5 564 to 1647. The MPAA's production of documents is not a waiver of any of the objections it has set forth, is not an admission or acknowledgment that such documents are relevant to the subject matter of the action, and is not an admission or acknowledgment that such documents are responsive to Defendants' subpoenas. Per agreement between the Defendants, MPAA and MPA, the documents are protected by the Protective Order, entered May 29, 2002, in place in the above-referenced matter.

Per your request, I have sent these documents via overnight delivery. Defendants have agreed to pay for the copying and shipping costs of this production.

This production includes non-privileged documents relating to the so-called Berman Bill regarding peer-to-peer file trading. The MPAA and MPA are voluntarily producing such documents, and do not agree that the legislation is responsive to the subpoena or covered by Magistrate Eick's April 26, 2002, order. The MPAA and MPA reserve their rights to argue that such documents and similar legislation are both non-responsive and not relevant to the present litigation. The production also voluntarily includes lobbying communications with government officials pertaining to potential legislation incorporating the broadcast flag technology. If the Plaintiffs and Defendants ultimately agree that other categories of documents regarding broadcast flag technology should be produced, the MPAA and MPA will then produce such responsive, non-privileged documents.

WILLIAMS & CONNOLLY LLP

Patrick E. Pramo, Esq.
Page 2

After reviewing the documents, I think you will agree that the MPAA and MPA have made the required reasonable and good faith effort to search for relevant, responsive documents. The MPAA and MPA believe that the up-coming 30(b)(6) depositions are unnecessary and request that the Defendants withdraw the subpoenas for those depositions. At the very least, it seems logical to postpone these depositions until Defendants can more carefully consider whether they are necessary in light of the MPAA's most recent production. We will cooperate with Defendants to find new dates for these depositions. Please advise.

Sincerely,



Ana C. Reyes

Enclosures