

United States District Court
Northern District of California
Before The Honorable Marilyn Hall Patel

Real Networks, Incorporated,
Plaintiff
vs.
DVD Copy Control Associates, et al.,
Defendant.

No. C08-4548 MHP

San Francisco, California
Tuesday, October 7, 2008

Reporter's Transcript Of Proceedings

[excerpt]

THE COURT: But the purpose of a TRO is not to provide some control data for some survey or a study. I mean, the question is whether, you know, issues such as likelihood of success on the merits and balance of hardships, you know all those factors.

MR. DIBOISE: Right, but it's also to preserve the status quo.

THE COURT: Well, the problem is how the status quo came to be, for one thing. So, I am going to extend the TRO, and here are the reasons: Because I'm not satisfied that, in fact, this technology is not -- is not in violation of the DMCA; that, in fact, it does comply with what is a very lengthy contract and some specifications that apparently there is some dispute about, you know, whether they apply or not, but certainly, they raise questions as well. There was an opportunity before rushing to market to have had these issues revolved, but that didn't happen.

MR. DIBOISE: Your Honor --

THE COURT: And now, having rushed to market, you throw yourselves on the Court -- hold on, I'm not finished.

MR. DIBOISE: I understand, Your Honor.

THE COURT: And, when I finish, there will be no need to say anything.

MR. DIBOISE: But there is a factual misunderstanding.

THE COURT: Hold on. There was a rush to market when there didn't need to be a rush to market. You could have waited to have that decision made. Having only been out in

the market a short period of time, I think the harm is far less to RealNetworks in this case than it would be to having who knows how many copies out there, which might then be found to be unauthorized copies. And, it's not very persuasive to say, well, you see, you know, you're not saying maybe we're legitimate, you're saying you are legitimate but comparing yourselves to all those illegitimate companies out there. And this ought to be looked at more favorably because you've got all those other people who are ripping and doing these illegal things, and, therefore, I should, apparently, in looking at the balance of hardships and looking at whether -- you know, who is going to suffer the greater injury, looking at the fact that you're apparently going to supplant some part of the illegal market. The problem is that there are serious questions here about copyright violations, about DMCA violations, violations of this contract, by a company who rushed to market and didn't wait for any kind of an adjudication, by a company that can stop right now, early in the inceptions of what it's doing, rather than having us trying to figure out, down the road, how many copies, and something that may be very difficult to determine, how many copies of copyrighted material are out there, and what the injuries are that are sustained as a result of that. I'm not persuaded that the TRO should not stay in place.

MR. DIBOISE: Understood.

THE COURT: So, it will stay in place.