

Testimony of Alex Alben, Vice President of Government Affairs for RealNetworks, Inc.

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Before the Copyright Office and Commerce Department

My name is Alex Alben, and I am the Vice President of Government Affairs at RealNetworks, Inc. I greatly appreciate the opportunity to come before you today to address issues relating to the DMCA and the study on temporary copies that is so important for the continued evolution of distribution of media over the Internet.

In 1994, Rob Glaser founded RealNetworks on the bold premise that the Internet would one day be able to transport audio and video programs to consumers around the world. In an era of dial-up modems that trickled 9,600 bits of information per second to people's computers, the new company's technology solved the following problem: How to move big media files over slow networks to create a continuous audio experience similar to broadcast radio. We did this by perfecting streaming technologies that essentially slice big files, such as a radio program, into tiny packets, then send those packets one at a time over the most efficient Internet path to the end user's computer, where they are reassembled in sequence. In short, "streaming" the bits in small packages to the online listener.

The RealPlayer and RealServer systems facilitate both live and on-demand delivery of streaming programming. Unlike digital downloads, which require storage space on the user's pc and relatively fast Internet connections, streaming represents an incredibly efficient and inexpensive way for broadcasters—or "webcasters"—to deliver audiovisual content to their online audience.

The Rapid Growth of Streaming Media

RealNetworks demonstrated this in August of 1995, with the live RealAudio broadcast of a baseball game between the Seattle Mariners and New York Yankees. Technology enthusiasts and sports fans alike tuned in from all around the world, and in one fell swoop, a local broadcast became an International webcast.

From the outset, Rob Glaser and the company founders sensed that streaming promised to create a new platform for millions of users to become content publishers. At the same time that traditional media markets were characterized by increasingly concentrated ownership and fewer choices for consumers, thousands of individuals, businesses and established media companies rapidly adopted streaming as a vital new way to reach an eager new audience.

As the medium grew rapidly, we added RealVideo to our product line, enabling the RealPlayer to provide more content choices to more users. Where gate-keepers had long made all the program choices regarding what content was delivered over broadcast, cable and satellite systems, the streaming world empowered new voices to reach a mass audience. This was greatly enabled by the free distribution of the RealPlayer, which allowed users to play the widest range of Internet media formats, and by free or low-cost server solutions for content publishers.

Because we have always made a free version of the RealPlayer available to end users, the RealNetworks platform has rapidly proliferated. From 500,000 unique registered users in 1995, our audience grew to 14.4 million in 1997, 48 million in 1998, 95 million at the beginning of 1999 and over 155 million unique registered users as of this month.

Embrace of RealAudio and Video by Thousands of Content Partners

The explosive adoption of Real's streaming media platform would not have been possible without the creation of attractive content from a wide variety of sources, enabled by the distribution of our low-cost encoding and production tools.

From the humble beginnings of that first Mariners' broadcast, RealNetworks today has over 300 content partners. Independent and non-traditional programmers have found an efficient channel in the Internet to cost-effectively reach niche audiences. Similarly, major media companies have embraced our technology as a leveraged way to expand their reach on the web and drive consumers to both their web sites and to their off-line media outlets. In return, our RealGuide and content sites have delivered over 1 Billion impressions back to our content partners!

This process has created a virtuous circle in which RealNetworks' partners continuously create more unique content for the RealPlayer and RealJukebox, in turn attracting a wider audience and creating a true "network effect." As a result of these forces, over 350,000 hours of programming are created and webcast each week in RealMedia formats.

RealNetworks views these copyright owners and programmers as our partners in this enterprise to create a new programming medium—a medium that enriches audio-visual content with interactive features that add value for the American and global consumer.

Temporary Storage Facilitates Streaming Media

This revolution is made possible by a technology called a RAM buffer. It's an important part of this discussion, so let me take a moment to explain how it works:

In order to ensure the delivery of a continuous and fluid audio or video stream, the RealPlayer stores a portion of each streamed media file in the computer memory known as RAM—Random Access Memory. This helps straddle short delays in the connection between the streaming computer and the end user. The packets in the RAM buffer are discarded after they are perceived. This temporary storage enables a continuous listening or viewing experience of a long program, but only stores very small segments of any given media file under normal operation.

RAM buffers are used in a wide variety of consumer products—The Windows Media Player published by Microsoft, as well as consumer electronics products such as the Sony Walkman and its host of imitators. We would venture that millions of hours of music and video are enjoyed each day around the planet, by people using RAM buffering technologies.

The Need to Revise Copyright Law to Reflect New Technologies

Despite the incredible growth of digital media distribution over the Internet, copyright law has in some respects lagged behind and we believe that technical amendments are now required in order to give the new digital markets a level of certainty that they can continue to evolve in creative ways to deliver content to consumers.

As with the invention of the piano roll, phonograph, VCR and many other revolutions in mass media, copyright law has struggled to keep pace with the widespread adoption of new Internet technologies. Historically, copyright law has always struck a balance between allowing consumers to freely enjoy great works against the need to reward content creators for their labor.

For example, I have explained that a RAM buffer stores a media file in a player that delivers streaming audio to a listener. This storage facilitates the continuous listening experience, much like a traditional radio receiver that captures an analog signal and renders it audible to the human ear. The temporary storage of content does not constitute a “copy” of the entire copyrighted work and our law simply needs to be brought up to date to reflect the way the media is delivered to the end user.

Therefore, we urge the Copyright Office to recommend the changes to copyright law, first discussed during the passage of the DMCA in 1998, to codify certain exemptions for temporary copies that facilitate transmissions of content.

We have also have identified several changes in current law to enable digital e-commerce. These include, extending the First Sale doctrine to digital products. Just as physical record stores perform royalty free music for customers, digital music stores that directly promote the sale of CD's should operate under the same legal treatment. Finally, we need to update and modernize certain provisions regarding the creation and storage of ephemeral copies used in Internet transmissions. Millions of these transmissions occur on a daily basis as traffic is routed from node to node on the various networks of computers that comprise the Internet. Our copyright law should be updated to treat these computer traffic relays much like the radio towers we are familiar with in the analogue broadcast world.

Conclusions—We seek a Level Playing Field

These changes support a consistent theme—that digital media not be disfavored as a means of distributing content to consumers. Where copyright law allows for a consumer to sell a physical copy of an item that he or she has purchased, it should create the equivalent --with proper safeguards-- for purchased digital copies.

In this manner, the Internet will continue to thrive as a medium for the distribution of audio-visual content. The incredible job growth and entrepreneurial activity of the past six years will continue, so long as wise policymakers strive to create a level playing field for digital products. As a direct result, both consumers and content owners will benefit as the marketplace for digital media briskly evolves.

I'd be happy to answer any questions you might have.