



STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

NO. 12-2-18633-2SEA

Plaintiff,

CONSENT DECREE

v.

REALNETWORKS, INC., a
Washington Corporation,

Defendant.

I. JUDGMENT SUMMARY

- 1.1 Judgment Creditor: State of Washington
- 1.2 Judgment Debtor: RealNetworks, Inc.
- 1.3 Principal Judgment Amount:
 - a. Costs and Attorneys' Fees: See Section V.
 - b. Restitution: See Section IV.
- 1.4 Attorney for Judgment Creditor: Paula Selis, Assistant Attorney General
- 1.5 Attorney for Judgment Debtors: David Bateman, K&L Gates, LLP

Plaintiff, State of Washington, having commenced this action on May 24 2012, pursuant to the Unfair Business Practices--Consumer Protection Act ("Consumer Protection Act"), chapter 19.86 RCW;

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1 Defendant RealNetworks, Inc. ("Defendant") having been served with a Summons and
2 Complaint previously filed in this matter or having waived service; and

3 Plaintiff appearing by and through its attorneys, Rob McKenna, Attorney General; and
4 Paula Selis, Assistant Attorney General; and Defendant appearing by and through its attorney,
5 David Bateman, K&L Gates, LLP; and

6 Plaintiff and Defendant having agreed on a basis for the settlement of the matters alleged
7 in the Complaint, and to the entry of this Consent Decree against Defendant without the need for
8 trial or adjudication of any issue of law or fact; and

9 Plaintiff and Defendant having agreed that this Consent Decree does not constitute
10 evidence or an admission regarding the existence or non-existence of any issue, fact, or violation
11 of any law alleged by Plaintiff; and

12 Defendant recognizes and states that this Consent Decree is entered into voluntarily and
13 that no promises or threats have been made by the Attorney General's Office or any member,
14 officer, agent or representative thereof to induce them to enter into this Consent Decree, except as
15 provided herein; and

16 Defendant waives any right it may have to appeal from this Consent Decree; and

17 Defendant further agrees that it will not oppose the entry of this Consent Decree on the
18 grounds the Consent Decree fails to comply with Rule 65(d) of the Rules of Civil Procedure, and
19 hereby waives any objections based thereon; and

20 Defendant further agrees that this Court shall retain jurisdiction of this action for the
21 purpose of implementing and enforcing the terms and conditions of the Consent Decree and for all
22 other purposes; and

23 The Court finding no just reason for delay;

24 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
25 follows:
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II. GENERAL

2.1 Jurisdiction. This Court has jurisdiction of the subject matter of this action and of the parties. Plaintiff's Complaint in this matter states claims upon which relief may be granted under the provisions of the Consumer Protection Act, Chapter 19.86 RCW.

2.2 Defendant. For purposes of this Consent Decree the term "Defendant" where not otherwise specified shall mean RealNetworks, Inc.

2.3 Definitions. For the purposes of this Consent Decree, the following definitions apply:

A. "Clear and conspicuous" or "clearly and conspicuously," when referring to a statement, disclosure, or any other information, means that such statement, disclosure, or other information by whatever medium communicated is readily understandable and presented in such size, color, contrast, location, and audibility compared to other information with which it is presented that is readily apparent to the person to whom it is disclosed. If such statement, disclosure, or other information is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies in a manner that is readily noticeable and understandable. Further, a disclosure of information is not clear and conspicuous if, among other things, it is obscured by the background against which it appears or there are other materially distracting elements. Statements of limitation must be set out in close conjunction with the benefits described or with appropriate captions of such prominence that statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading. Nothing contrary to, inconsistent with, or in mitigation of any disclosure shall be permitted

B. "Free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a consumer receives a product or

1 service for free for an initial period and will incur an obligation to pay for the product or
2 service if he or she does not take affirmative action to cancel before the end of that period.

3 C. "Secondary subscription" means a free-to-pay conversion subscription
4 to one of Defendant's products or services in which a consumer was enrolled in instances
5 where, in the context of the offer and acceptance of a primary subscription to one of
6 Defendant's products or services, the online order path presented the consumer with a free-to-
7 pay conversion offer for a different product or service (the secondary subscription), in which
8 the consumer's assent was manifested by a pre-checked box. .

9 2.4 Notice. Within ten (10) business days of entry of this Decree, Defendant shall
10 inform and give actual notice of the terms and conditions of this Consent Decree to its
11 employees who are responsible for the functions described herein.

12 III. INJUNCTIONS

13 3.1 Application of Injunctions. The injunctive provisions of this Consent Decree
14 shall apply to Defendant and Defendant's successors, assigns, officers, agents, servants,
15 employees, representatives, and all other persons or entities in active concert or participation
16 with Defendant, but shall not apply to persons or entities that Defendant does not control.

17 3.2 Injunctions. Defendant and its successors, assigns, officers, agents, servants,
18 employees, representatives, and all other persons or entities in active concert or participation
19 with Defendant are hereby permanently enjoined and restrained from directly or indirectly
20 engaging in the following acts or practices in regard to consumers in the United States:

21 A. Offering goods or services involving a free-to-pay conversion that does
22 not comply with the following requirements:

- 23 1. The offer must disclose clearly and conspicuously all material
24 terms of the offer.
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1 D. Beginning 120 days from the Entry of this Decree, failing to require
2 customer service representatives to send an email confirmation (or other type of
3 communication established as the primary communication method for the account) clearly and
4 conspicuously disclosing any changes made to the nature, price or terms of a customer's
5 subscription products as a result of a customer service interaction.

6 E. Failing to cancel a consumer's membership in a subscription program
7 within two (2) days of the consumer's request for such cancellation, with no additional charges
8 accruing following the date of the request (unless otherwise permitted by contract and clearly
9 disclosed as one of the material terms of the contract, pursuant to Paragraph 3.2(A)(1) above).

10 F. Failing to provide an email confirmation (or other type of
11 communication, established as the primary communication method for the account if the other
12 type of communication was used by the consumer to cancel the subscription) that a consumer's
13 subscription has been cancelled within 24 hours of such cancellation.

14 G. Failing to inform a consumer who contacts Defendant to cancel a
15 subscription of the existence of other subscriptions in the consumer's account.

16 H. Beginning 120 days from the Entry of this Decree, failing to develop
17 and implement a clearly and conspicuously displayed online mechanism by which any
18 consumer subscriber of a paid subscription product will be able to request, from within the
19 consumer's online account, the cancellation of any and all subscriptions associated with that
20 account.

21 I. With regard to paragraphs 3.2(C) through 3.2(G), Defendant shall not be
22 in violation of this Decree, nor shall any enforcement action be brought, unless there is a
23 pattern or practice of violations. If Plaintiff believes that a consumer has not been treated in a
24 fashion required by paragraphs 3.2(C) through 3.2(G), Plaintiff will notify Defendant in
25 writing of its belief and the surrounding circumstances, and Defendant shall then have fifteen
26 (15) business days from receipt of such written notice to investigate and provide a good faith

1 written response that explains the results of Defendant's investigation, including at a
2 minimum:

- 3 1. A statement explaining why Defendant believes it is in full
4 compliance with the injunction;
- 5 2. A detailed explanation of how the alleged event occurred; and
- 6 3. A statement that the alleged incident has been cured and how.

7 **IV. RESTITUTION**

8 4.1 Pursuant to RCW 19.86.080, Defendant shall provide up to \$2,000,000.00 (the
9 "Restitution Pool") as restitution to consumers, pursuant to the claims process described below.
10 In the event that payments to eligible consumers pursuant to this Section exceed
11 \$2,000,000.00, Defendant shall distribute restitution to claimants on a pro rata basis. In the
12 event that payment to eligible consumers is less than \$2,000,000, the sum of any funds
13 remaining in the Restitution Pool up to \$500,000.00 shall be paid to the Attorney General as
14 indirect restitution to consumers. The Attorney General shall use, or distribute the funds to a
15 third-party to use, the funds for consumer education purposes relating to Internet or mobile
16 commerce, Internet or mobile security in commercial transactions, or Internet or mobile
17 privacy, or for projects that enhance internet or mobile data security, or internet or mobile
18 privacy, at the sole direction of the Attorney General. Any funds remaining in the Restitution
19 Pool in excess of \$500,000.00 shall revert directly back to Defendant.

20 4.2 Restitution Claims Process:

21 A. Defendant shall retain and pay for a Claims Administrator who shall be
22 responsible for implementing the Restitution Claims Process.

23 B. For purposes of the Restitution Claims process, there will be three
24 Groups of consumers.

- 25 1. **GROUP 1** shall be comprised of the following:
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- a. From the pool of United States consumers who, between 1/1/07 and 12/31/09, enrolled in SuperPass, GamePass or Rhapsody as a secondary subscription, Defendant will identify:
 - i. During the period in which secondary subscriptions were presented in pairs, those consumers who left both pre-checked boxes checked; and
 - ii. During the period in which secondary subscriptions were presented singly, those consumers who failed to uncheck the pre-checked box.
 - b. Defendant will remove from the pool described in paragraph 4.2(B)(1)(a) any consumers who used their secondary subscription.
 - c. These potential Group 1 claimants will be provided with Notice of an ability to make a claim, along with instructions for doing so. Eligible Group 1 claimants will be those who allege that the enrollment in their secondary subscriptions(s) occurred without their consent or knowledge. Notice to potential Group 1 claimants will be sent by the Claims Administrator by email to the email addresses associated with the consumers' account records. The following shall apply to such emails:
 - i. The "display name" in the email "FROM" line will be "RealNetworks."

- ii. The subject line of the email will read “IMPORTANT LEGAL NOTICE REGARDING REFUND CLAIM FOR YOUR SUBSCRIPTION.”
- iii. The Claims Administrator shall make reasonable efforts to avoid having emails sent to “junk” or “spam” folders, or otherwise filtered.
- iv. If an email “bounces back,” the Claims Administrator shall provide the notice by U.S. Mail postcard to the mailing address associated with the consumer’s account record, if available. The postcard shall contain language that is the same as, or substantially similar to, the email notice, subject to space limitation.

2. **GROUP 2** shall be comprised of United States consumers, other than those in Group 1, who during the applicable period of time, enrolled in one of Defendant’s free-to-pay conversion subscription products and who allege that the enrollment occurred without consent or knowledge. The set of consumers eligible to participate in claims for Group 2 are any United States consumers who, between 1/1/07 and 12/31/09, enrolled in SuperPass, GamePass or Rhapsody, and who did not use their subscription.

- a. No direct notice will be provided to potential Group 2 claimants. The State will issue a press release and post notice on the Attorney General’s website advising

1 potential group members of their ability to make a claim
2 and the required procedures for doing so. The State will
3 publicize the restitution plan in the normal and usual
4 manner, consistent with the terms of this Consent Decree
5 and the relief provided herein.

6 3. **GROUP 3** shall be comprised of United States consumers, other
7 than those in Groups 1 and 2, who enrolled in one of Defendant's
8 subscription products during the applicable period of time and
9 who allege that they attempted to cancel their subscription but
10 were unaware that cancellation did not occur, resulting in
11 unwanted charges after the cancellation attempt. The set of
12 consumers eligible to participate in claims for Group 3 are any
13 United States consumers who communicated with Defendant's
14 customer service representatives between 1/1/07 and 12/31/09,
15 who requested that their subscription be cancelled, but who
16 continued to be billed for that subscription product, and who did
17 not use their subscription during that interval.

18 a. No direct notice will be provided to potential Group 3
19 claimants. The State will issue a press release and post
20 notice on the Attorney General's website advising
21 potential group members of their ability to make a claim
22 and the required procedures for doing so. The State will
23 publicize the restitution plan in the normal and usual
24 manner, consistent with the terms of this Consent Decree
25 and the relief provided herein.

26 C. In order to make a claim, the following procedure shall be implemented:

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1. Consumers from Groups 1, 2 and 3 will be able to make a claim for a refund by making a web-based submission. The web-based submission shall be designed and hosted by Defendant or the Claims Administrator. Claims must be received within 90 days of the Entry of this Decree (the "Claim Submission Period").
 2. The claim submission will require consumers to:
 - a. Provide their name, mailing address and email address;
 - b. Identify the subscription product (if known) for which they are making a claim;
 - c. Identify the account number (if known), email address, mailing address or other verifiable information for their subscription;
 - d. Select and identify the criteria by which they are claiming a refund;
 - e. Select and identify the data regarding their claim (e.g., subscription price, if known, and period of payment, if known) and the amount of their claim;
 - f. Acknowledge that their acceptance of a claim payment releases Defendant from claims regarding practices for which the claims process provides restitution;
 - g. Assert that they meet the eligibility criteria for their claim; and
 - h. Provide an E-sign electronic signature (or, in the case of claimants provided with a claim form under Paragraph 4.2(D) below, a physical signature), under penalty of

1 perjury, attesting to the accuracy of their claim
2 submission.

3 D. Potential claimants who contact Defendant to inquire about the claims
4 process shall be directed either to the Claims Administrator or to the Attorney General's Office
5 website for further information about the claims process. In the event that a consumer asserts
6 that he or she does not have access to the Internet, the Claims Administrator shall provide the
7 consumer with a claim form that may be submitted by postal mail.

8 E. The Claims Administrator will process the claim submissions and will
9 identify eligible claimants. Eligibility will be left to the discretion of the Claims
10 Administrator, who will be given access to Defendant's records, as reasonably required.
11 Defendant may, but need not, approve and pay claims that are not supported by Defendant's
12 records. For claims exceeding \$150, the Claims Administrator may require of claimants
13 additional proof as reasonably required to assess the eligibility and amount of any claim.

14 F. Within 60 days after the close of the Claim Submission Period,
15 Defendant or the Claims Administrator shall complete the processing of claims, and shall
16 report to the State on their processing results, including the number of claims made the type of
17 claims made, the identity of those who made claims, the amount of claims paid, the identity of
18 those whose claims were denied, and the reasons for denial. For any claim that the Claims
19 Administrator determines is not eligible, the Claims Administrator shall alert the claimant by
20 email. Any claimant whose claim is denied may submit their claim to an independent third-
21 party neutral for reconsideration. Defendant may also challenge the eligibility of any claim.
22 Defendant will compensate the third-party neutral for its fees and costs in the review of any
23 claim.

24 G. Consumers shall be entitled to refunds according to the following
25 provisions:
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1. Eligible consumers in Group 1 shall be entitled to a refund of all subscription fees for their unused secondary subscriptions.
2. Eligible consumers in Group 2 shall be entitled to a refund of all subscription fees for their unused subscriptions.
3. Eligible consumers in Group 3 shall be entitled to a refund of fees paid after their unsuccessful attempt to cancel a subscription.
4. If a consumer is eligible as part of Group 1, and is also eligible as part of Group 3 (i.e. has been charged for a secondary subscription which he or she has unsuccessfully attempted to cancel), the consumer will be eligible for the refund accorded to Group 1.
5. Any restitution amounts for which consumers are eligible in Groups 1, 2 and 3 shall take into account any credits, chargebacks or settlement amounts already paid.

V. MONETARY PAYMENT

5.1 Pursuant to RCW 19.86.080, Defendant shall pay the costs and reasonable attorneys' fees incurred by Plaintiff in pursuing this matter in the amount of \$400,000.00 (Four Hundred Thousand Dollars).

5.2 Payment owing under this provision shall be in the form of a valid check paid to the order of the "Attorney General—State of Washington" and shall be due and owing on August 1, 2012. Payment shall be sent to the Office of the Attorney General, Attention: Cynthia Lockridge, Administrative Office Manager, 800 Fifth Avenue, Suite 2000, Seattle, Washington, 98104-3188.

1 **VI. ENFORCEMENT**

2 6.1 Violation of any of the injunctions contained in this Consent Decree, as
3 determined by the Court, shall subject Defendant to a civil penalty pursuant to RCW 19.86.140.

4 6.2 This Consent Decree is entered pursuant to RCW 19.86.080. Jurisdiction is
5 retained for the purpose of enabling any party to this Consent Decree with or without the prior
6 consent of the other party to apply to the Court at any time for enforcement of compliance with
7 this Consent Decree, to punish violations thereof, or to modify or clarify this Consent Decree.

8 6.3 Representatives of the Office of the Attorney General shall be permitted to access,
9 inspect and/or copy relevant and discoverable business records or documents under control of
10 Defendant in order to monitor compliance with this Consent Decree within 14 days of written
11 request to Defendant, provided that the inspection and copying shall be done in such a way as to
12 avoid disruption of Defendant's business activities.

13 6.4 Representatives of the Office of the Attorney General may be permitted to
14 question Defendant, or any officer, director, agent, employee or independent contractor of any
15 corporation affiliated with Defendant, in deposition, pursuant to the provisions and notice
16 requirements of CR 30, in order to monitor compliance with this Consent Decree.

17 6.5 Nothing in this Consent Decree shall be construed as to limit or bar any other
18 governmental entity or consumer from pursuing other available remedies against Defendant.

19 6.6 Under no circumstances shall this Consent Decree or the name of the State of
20 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their
21 employees or representatives be used by Defendant in connection with any selling, advertising, or
22 promotion of products or services, or as an endorsement or approval of Defendant's acts, practices
23 or conduct of business.

24 **VII. DISMISSAL AND WAIVER OF CLAIMS**

25 7.1 This Consent Decree resolves with prejudice all issues raised by the Attorney
26 General pertaining to the acts or omissions addressed in the Complaint filed in this matter. Upon

1 entry of this Consent Decree, all claims in this matter, not otherwise addressed by this Consent
2 Decree, are dismissed.

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4 DONE IN OPEN COURT this _____ day _____, 2012.

MAY 24 2012

NANCY BRADBURN JOHNSON

5
6 JUDGE

7 Approved for Entry and Presented by:

Approved for Entry, Notice of Presentation
Waived:

8 ROB MCKENNA
9 Attorney General

K&L GATES LLP

10 Paula Selis
11 PAULA SELIS, WSBA #12823
12 Assistant Attorney General
13 Attorneys for Plaintiff
14 State of Washington

David Bateman
15 DAVID BATEMAN, WSBA #14262
16 Attorney for Defendant RealNetworks, Inc.