

Hon. Marsha J. Pechman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC.; APPLE, INC.; eBAY, INC.;
FACEBOOK, INC.; GOOGLE INC.;
NETFLIX, INC.; OFFICE DEPOT, INC.;
OFFICEMAX INC.; STAPLES, INC.;
YAHOO! INC.; AND YOUTUBE, LLC,

Defendants.

Case No. 2:10-cv-01385-MJP

**AGREED MOTION AND
[PROPOSED] PROTECTIVE
ORDER REGARDING THE
DISCLOSURE AND USE OF
DISCOVERY MATERIALS**

JURY DEMAND

NOTE ON MOTION CALENDAR:
April 13, 2011

Plaintiff Interval Licensing LLC (“Plaintiff”) and the above-named Defendants (“Defendants”) anticipate that documents, testimony, or information containing or reflecting confidential, proprietary, trade secret, and/or commercially sensitive information are likely to be disclosed or produced during the course of discovery, initial disclosures, and supplemental disclosures in this case and request that the Court enter this Order setting forth the conditions for treating, obtaining, and using such information.

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good cause for the following Agreed Protective Order Regarding the Disclosure and Use of Discovery Materials (“Order” or “Protective Order”).

1. **PURPOSES AND LIMITATIONS**

(a) Protected Material designated under the terms of this Protective Order shall be used by a Receiving Party solely for this case, and shall not be used directly or indirectly for

1 any other purpose whatsoever.

2 (b) To the extent that any one of Defendants in this litigation provides
3 Protected Material under the terms of this Protective Order to Plaintiff, Plaintiff shall not share
4 that material with the other Defendants in this litigation, absent express written permission from
5 the producing Defendant, except as expressly provided in this Order. This Order does not confer
6 any right to any one Defendant to access the Protected Material of any other Defendant.

7 (c) Plaintiff's counsel may serve unredacted documents (e.g., motions,
8 declarations, expert reports) containing Protected Material on Defendants' outside counsel of
9 record provided that (i) it is reasonably necessary for this litigation for Plaintiff to disclose the
10 information to outside counsel of record; and (ii) the Protected Material does not contain Source
11 Code or Confidential-Attorneys' Eyes Only materials related to infringement (e.g., documents
12 related to how Defendants' accused devices operate). However, upon demand from a defendant,
13 plaintiff's counsel will, within two business days, identify the following within the unredacted
14 document so that a defendant may create a redacted version: (i) direct quotes from Protected
15 Materials; (ii) citations to Protected Materials; and (iii) numbers/figures that come from Protected
16 Materials (e.g., annual sales figure where that information is not-public). Further, this provision
17 is without prejudice to any additional objection, including but not limited to relevance, by any
18 Defendant to Plaintiff's use of Defendant's Protected Material in any such document.

19 (d) The Parties acknowledge that this Order does not confer blanket
20 protections on all disclosures during discovery, or in the course of making initial or supplemental
21 disclosures under Rule 26(a). Designations under this Order shall be made with care and shall not
22 be made absent a good faith belief that the designated material satisfies the criteria set forth
23 below. If it comes to a Producing Party's attention that designated material does not qualify for
24 protection at all, or does not qualify for the level of protection initially asserted, the Producing
25 Party must promptly notify all other Parties that it is withdrawing or changing the designation.

26 2. **DEFINITIONS**

27 (a) "Discovery Material" means all items or information, including from any
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1 non-party, regardless of the medium or manner generated, stored, or maintained (including,
2 among other things, testimony, transcripts, or tangible things) that are produced, disclosed, or
3 generated in connection with discovery or Rule 26(a) disclosures in this case.

4 (b) "Outside Counsel" means (i) outside counsel who appear on the pleadings
5 as counsel for a Party, and (ii) partners and associates of such counsel to whom it is reasonably
6 necessary to disclose the information for this litigation.

7 (c) "Patents-in-suit" means U.S. Patent Nos. 6,263,507 (the "507 Patent"),
8 6,757,682 (the "682 Patent"), 6,034,652 (the "652 Patent"), 6,788,314 (the "314 Patent"), and
9 any other patent asserted in this action, as well as any related patents, patent applications,
10 provisional patent applications, continuations, and/or divisionals.

11 (d) "Party" means any party to this case, including all of its officers, directors,
12 employees, consultants, retained experts, and outside counsel and their support staffs.

13 (e) "Producing Party" means any Party or non-party entity that discloses or
14 produces any Discovery Material in this case.

15 (f) "Protected Material" means any Discovery Material that is designated as
16 "CONFIDENTIAL," "CONFIDENTIAL - ATTORNEYS' EYES ONLY," or "CONFIDENTIAL
17 - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE," and the contents thereof, as
18 provided for in this Order. Summaries and compilations containing the contents of Protected
19 Material shall be marked with the same confidentiality designation as the Protected Material.
20 Protected Material shall not include: (i) any materials that have been actually published or
21 publicly disseminated; and (ii) materials that show on their face they have been disseminated to
22 the public.

23 (g) "Receiving Party" means any Party who receives Discovery Material from
24 a Producing Party.

25 (h) "Source Code" means computer code, scripts, assembly, object code,
26 source code listings and descriptions of source code, object code listings and descriptions of
27 object code, and Hardware Description Language (HDL) or Register Transfer Level (RTL) files
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1 that describe the hardware design of any ASIC or other chip.

2 3. **COMPUTATION OF TIME**

3 The computation of any period of time prescribed or allowed by this Order shall be
4 governed by the provisions for computing time set forth in Federal Rule of Civil Procedure 6.

5 4. **SCOPE**

6 (a) The protections conferred by this Order cover not only Discovery Material
7 governed by this Order as addressed herein, but also any information copied or extracted
8 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
9 conversations, or presentations by Parties or their counsel in court or in other settings that might
10 reveal Protected Material.

11 (b) Nothing in this Protective Order shall prevent or restrict a Producing
12 Party's own disclosure or use of its own Discovery Material for any purpose.

13 (c) Nothing in this Order shall be construed to prejudice any Party's right to
14 use any Protected Material in court or in any court filing in electronic or hardcopy form, so long
15 as appropriate actions are taken to protect any Protected Material's confidentiality, such as filing
16 the Protected Material under seal.

17 (d) This Order is without prejudice to the right of any Producing Party to seek
18 further or additional protection of any Discovery Material or to modify this Order in any way,
19 including, without limitation, an order that certain matter not be produced at all.

20 5. **DURATION**

21 Even after the termination of this case, the confidentiality obligations imposed by this
22 Order shall remain in effect until a Producing Party agrees otherwise in writing or a court order
23 otherwise directs.

24 6. **ACCESS TO AND USE OF PROTECTED MATERIAL**

25 (a) **Basic Principles.** All Protected Material shall be used solely for this case
26 or any related appellate proceeding, and not for any other purpose whatsoever, including without
27 limitation patent prosecution or acquisition, patent reexamination or reissue proceedings, any
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1 business or competitive purpose or function, or any other litigation. Protected Material shall not
2 be distributed, disclosed or made available to anyone except as expressly provided in this Order.

3 (b) Patent Prosecution Bar. Absent the written consent of the Producing Party,
4 anyone who receives one or more items designated “CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” shall not
6 prosecute, supervise, or assist in the prosecution of any patent application involving technology
7 related to software for recommending information to a user or other information filtering
8 techniques aimed at notifying users of items that are likely to be of interest to that user or
9 software directed to the engagement of the peripheral attention of a person in the vicinity of a
10 display device, before any foreign or domestic agency, including the United States Patent and
11 Trademark Office. To the extent the technical subject matter in dispute changes, the parties agree
12 to meet and confer regarding the scope of this Patent Prosecution Bar. For purposes of this
13 paragraph, prohibited prosecution shall include, without limitation: invention identification,
14 invention evaluation, the decision whether to file a patent application for an invention,
15 preparation of and/or amendments to original, continuation, divisional, continuation-in-part,
16 request for continued examination, reexamination, reissue, substitute, renewal or convention
17 patent applications, claim drafting, drafting of any document to be filed with the United States
18 Patents and Trademark Office or any foreign patent office, or consultation on any of the above
19 matters with others performing these activities. However, a person who obtains or receives
20 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – ATTORNEYS’
21 EYES ONLY – SOURCE CODE” may assist in the prosecution of any reexaminations of the
22 Patents-in-Suit, as long as he or she does not reveal Protected Information to any reexamination
23 counsel or agent, is not involved in drafting, advising on, or suggesting amendments to claim
24 language, and does not use Protected Information for any purpose other than this litigation. These
25 prohibitions shall begin when access to “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
26 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” materials are first
27 received by the affected individual, and shall end one (1) year after the final resolution of this
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1 action, including all appeals.

2 (i) The above Patent Prosecution Bar shall not apply to a person whose
3 only receipt of items designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” is
4 comprised of items related only to financials, licensing, and market share information.

5 (ii) The parties expressly agree that the prosecution bar set forth herein
6 shall be personal to any such person who reviews CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY or CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE
8 material and shall not be imputed to any other persons or attorneys at the attorneys’ law firm or
9 company.

10 (c) Secure Storage. Protected Material must be stored and maintained by a
11 Receiving Party at a location and in a secure manner that reasonably ensures that access is limited
12 to the persons authorized under this Order.

13 (d) Legal Advice Based on Protected Material. Nothing in this Protective
14 Order shall be construed to prevent counsel from advising their clients with respect to this case
15 based in whole or in part upon Protected Materials, provided counsel does not disclose the
16 Protected Material except as provided in this Order.

17 (e) Limitations. Nothing in this Order shall restrict in any way a Producing
18 Party’s use or disclosure of its own Protected Material. Nothing in this Order shall restrict in any
19 way the use or disclosure of Discovery Material by a Receiving Party: (i) that is or has become
20 publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or known
21 to the Receiving Party independent of the Producing Party; (iii) that was previously produced,
22 disclosed and/or provided by the Producing Party to the Receiving Party or a non-party without
23 an obligation of confidentiality and not by inadvertence or mistake; (iv) with the consent of the
24 Producing Party; or (v) pursuant to Order of the Court.

25 (f) Cross-Production of Defendant Confidential Material. No Defendant is
26 required to produce its Protected Material to any other Defendant or Defendants, but nothing in
27 this Order shall preclude such production.

1 7. **DESIGNATING PROTECTED MATERIAL**

2 (a) Available Designations. Any Producing Party may designate Discovery
3 Material with any of the following designations, provided that it meets the requirements for such
4 designations as provided for herein: “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’
5 EYES ONLY,” or “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE
6 CODE.”

7 (b) Written Discovery and Documents and Tangible Things. Written
8 discovery, documents (which include “electronically stored information,” as that phrase is used in
9 Federal Rule of Civil Procedure 34), and tangible things that meet the requirements for the
10 confidentiality designations listed in Paragraph 7(a) may be so designated by placing the
11 appropriate designation on every page of the written material prior to production. For digital files
12 being produced, the Producing Party may mark each viewable page or image with the appropriate
13 designation, and mark the medium, container, and/or communication in which the digital files
14 were contained. In the event that original documents are produced for inspection, the original
15 documents shall be presumed “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” during the
16 inspection and re-designated, as appropriate during the copying process.

17 (c) Depositions and Testimony. Parties or testifying persons or entities may
18 designate depositions and other testimony with the appropriate designation by indicating on the
19 record at the time the testimony is given or by sending written notice of how portions of the
20 transcript of the testimony are designated within thirty (30) days of receipt of the transcript of the
21 testimony. If no indication on the record is made, all information disclosed during a deposition
22 shall be deemed “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until the time within which
23 it may be appropriately designated as provided for herein has passed. Any Party that wishes to
24 disclose the transcript, or information contained therein, may provide written notice of its intent
25 to treat the transcript as non-confidential, after which time, any Party that wants to maintain any
26 portion of the transcript as confidential must designate the confidential portions within seven (7)
27 days, or else the transcript may be treated as non-confidential. Any Protected Material that is
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1 used in the taking of a deposition shall remain subject to the provisions of this Protective Order,
2 along with the transcript pages of the deposition testimony dealing with such Protected Material.
3 In such cases the court reporter shall be informed of this Protective Order and shall be required to
4 operate in a manner consistent with this Protective Order. In the event the deposition is
5 videotaped, the original and all copies of the videotape shall be marked by the video technician to
6 indicate that the contents of the videotape are subject to this Protective Order, substantially along
7 the lines of "This videotape contains confidential testimony used in this case and is not to be
8 viewed or the contents thereof to be displayed or revealed except pursuant to the terms of the
9 operative Protective Order in this matter or pursuant to written stipulation of the parties."
10 Counsel for any Producing Party shall have the right to exclude from oral depositions any person
11 who is not authorized by this Protective Order to receive or access Protected Material based on
12 the designation of such Protected Material other than the deponent, deponent's counsel, the
13 reporter and videographer (if any). Such right of exclusion shall be applicable only during
14 periods of examination or testimony regarding such Protected Material.

15 8. **DISCOVERY MATERIAL DESIGNATED AS "CONFIDENTIAL"**

16 (a) A Producing Party may designate Discovery Material as
17 "CONFIDENTIAL" if it contains or reflects proprietary and/or commercially sensitive
18 information.

19 (b) Unless otherwise ordered by the Court, Discovery Material designated as
20 "CONFIDENTIAL" may be disclosed only to the following:

- 21 (i) Outside Counsel;
- 22 (ii) Outside Counsel's immediate paralegals and staff, and any copying
23 or clerical litigation support services working at the direction of such counsel, paralegals, and
24 staff;
- 25 (iii) Not more than three (3) representatives of the Receiving Party who
26 are officers or employees of the Receiving Party, who may be, but need not be, in-house counsel
27 for the Receiving Party, as well as their immediate paralegals and staff, to whom disclosure is
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1 reasonably necessary for this case, provided that: (a) each such person has agreed to be bound by
2 the provisions of the Protective Order by signing a copy of Exhibit A; and (b) no unresolved
3 objections to such disclosure exist after proper notice has been given to all Parties as set forth in
4 Paragraph 12 below;

5 (iv) Any outside expert or consultant retained by the Receiving Party to
6 assist in this action, provided that disclosure is only to the extent necessary to perform such work;
7 and provided that: (a) such expert or consultant has agreed to be bound by the provisions of the
8 Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current
9 officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the time
10 of retention to become an officer, director or employee of a Party or of a competitor of a Party;
11 and (c) no unresolved objections to such disclosure exist after proper notice has been given to all
12 Parties as set forth in Paragraph 12 below.

13 (v) Court reporters, stenographers and videographers retained to record
14 testimony taken in this action;

15 (vi) The Court, jury, witnesses, deponents, and court personnel;

16 (vii) Graphics, translation, design, and/or trial consulting services,
17 having first agreed to be bound by the provisions of the Protective Order by signing a copy of
18 Exhibit A;

19 (viii) Mock jurors who have signed an undertaking or agreement agreeing
20 not to publicly disclose Protected Material and to keep any information concerning Protected
21 Material confidential;

22 a. The parties shall meet and confer to draft an undertaking that will
23 be used by all parties in conjunction with any mock trials.

24 (ix) Any mediator who is assigned to hear this matter, and his or her
25 staff, subject to their agreement to maintain confidentiality to the same degree as required by this
26 Protective Order; and

27 (x) Any other person with the prior written consent of the Producing
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1 Party.

2 9. **DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL –**
3 **ATTORNEYS’ EYES ONLY”**

4 (a) A Producing Party may designate Discovery Material as
5 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” if it contains or reflects information that is
6 extremely confidential and/or sensitive in nature and the Producing Party reasonably believes that
7 the disclosure of such Discovery Material is likely to cause economic harm or significant
8 competitive disadvantage to the Producing Party. Materials may be designated
9 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only if the Producing Party believes in good
10 faith that designation as CONFIDENTIAL will not provide adequate protection.

11 (b) Unless otherwise ordered by the Court, Discovery Material designated as
12 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

13 (i) Outside Counsel;

14 (ii) Outside Counsel’s immediate paralegals and staff, and any copying
15 or clerical litigation support services working at the direction of such counsel, paralegals, and
16 staff;

17 (iii) Any outside expert or consultant retained by the Receiving Party to
18 assist in this action, provided that disclosure is only to the extent necessary to perform such work;
19 and provided that: (a) such expert or consultant has agreed to be bound by the provisions of the
20 Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current
21 officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the time
22 of retention to become an officer, director, or employee of a Party or of a competitor of a Party;
23 and (c) no unresolved objections to such disclosure exist after proper notice has been given to all
24 Parties as set forth in Paragraph 12 below.

25 (iv) Court reporters, stenographers and videographers retained to record
26 testimony taken in this action;

27 (v) The Court, jury, witnesses, deponents, and court personnel;

1 (vi) Mock jurors who have signed an undertaking or agreement agreeing
2 not to publicly disclose Protected Material and to keep any information concerning Protected
3 Material confidential;

4 a. The parties shall meet and confer to draft an undertaking that will
5 be used by all parties in conjunction with any mock trials.

6 (vii) Graphics, translation, design, and/or trial consulting services,
7 having first agreed to be bound by the provisions of the Protective Order by signing a copy of
8 Exhibit A;

9 (viii) Any mediator who is assigned to hear this matter, and his or her
10 staff, subject to their agreement to maintain confidentiality to the same degree as required by this
11 Protective Order; and

12 (ix) Any other person with the prior written consent of the Producing
13 Party.

14 10. **DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL –
15 OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE”**

16 (a) To the extent production of Source Code becomes necessary to the
17 prosecution or defense of the case, a Producing Party may designate Source Code as
18 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE” if it
19 comprises or includes confidential, proprietary, and/or trade secret Source Code.

20 (b) Nothing in this Order shall be construed as a representation or admission
21 that Source Code is properly discoverable in this action, or to obligate any Party to produce any
22 Source Code.

23 (c) Unless otherwise ordered by the Court, Discovery Material designated as
24 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE” shall be
25 subject to the provisions set forth in Paragraph 11 below, and may be disclosed, subject to
26 Paragraph 11 below, solely to:

27 (i) The Receiving Party’s Outside Counsel;

1 (ii) The Receiving Party's Outside Counsel's immediate paralegals and
2 staff, and any copying or clerical litigation support services working at the direction of such
3 counsel, paralegals, or staff;

4 (iii) Up to four (4) outside experts or consultants retained by the
5 Receiving Party to assist in this action, provided that disclosure is only to the extent necessary to
6 perform such work; and provided that: (a) such expert or consultant has agreed to be bound by the
7 provisions of the Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is
8 not a current officer, director, or employee of a Party or of a competitor of a Party, nor anticipated
9 at the time of retention to become an officer, director or employee of a Party or of a competitor of
10 a Party; (c) such expert or consultant is not involved in competitive decision-making on behalf of
11 a Party or a competitor of a Party; and (d) no unresolved objections to such disclosure exist after
12 proper notice has been given to all Parties as set forth in Paragraph 12 below. Without the
13 express prior written consent of the Defendant that produced the Protected Material, no expert or
14 consultant retained by a Defendant in this matter shall have access to "CONFIDENTIAL –
15 OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" Discovery Material produced by
16 another Defendant in this matter;

17 a. The above limit on the number of outside experts or consultants
18 applies to each set of source code for a particular Defendant. In other words, Plaintiff may have
19 up to four experts or consultants review each set of source of any one Defendant. The parties
20 agree to meet and confer in good faith after the production of source code on how to apply the
21 term "each set of source code" to the specific source code produced by the Defendant, but agree
22 that an updated version of the same Source Code file is not another "set."

23 (iv) Court reporters, stenographers and videographers retained to record
24 testimony taken in this action;

25 (v) The Court, jury, witnesses, deponents, and court personnel;

26 (vi) Source code may not be shown to mock jurors, but the Receiving
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1 Party may explain to mock jurors at a high level how a Defendant's accused devices work
2 provided that the mock juror has signed an undertaking or agreement agreeing not to publicly
3 disclose Protected Material and to keep any information concerning Protected Material
4 confidential;

5 a. The parties shall meet and confer to draft an undertaking that will
6 be used by all parties in conjunction with any mock trials.

7 (vii) Graphics, translation, design, and/or trial consulting services,
8 having first agreed to be bound by the provisions of the Protective Order by signing a copy of
9 Exhibit A;

10 (viii) Any mediator who is assigned to hear this matter, and his or her
11 staff, subject to their agreement to maintain confidentiality to the same degree as required by this
12 Protective Order; and

13 (ix) Any other person with the prior written consent of the Producing
14 Party.

15 11. **DISCLOSURE AND REVIEW OF SOURCE CODE**

16 (a) To the extent a Party makes Source Code available for inspection, the
17 Producing Party shall make all relevant and properly requested Source Code available for
18 inspection in electronic format, at one of the following locations of the Producing Party's
19 election: (1) the offices of an escrow agent located in Houston, Texas to be agreed upon in good
20 faith by the parties; (2) the offices of the Producing Party's outside counsel of record; or (3)
21 another location mutually agreed by the Parties. Source Code will be made available for
22 inspection between the hours of 8 a.m. and 6 p.m. on business days (i.e., weekdays that are not
23 Federal holidays), although the Parties will be reasonable in accommodating reasonable requests
24 by the Receiving Party to conduct inspections at other times. The Source Code will be made
25 available to the Receiving Party's experts in the same file format, with the same computer
26 environment and software tools, and subject to the same printing restrictions as made available to
27 the Producing Party's own experts, though the Source Code need not be reviewed by the
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1 Producing Party's experts at the same physical location as it was made available to the Receiving
2 Party's experts and the experts may choose different software tools, so long as they have the same
3 basic functionality.

4 (b) To the extent a Party makes Source Code available for inspection pursuant
5 to paragraph 11(a), it shall also make that Source Code available for inspection at its outside
6 counsel's office in Seattle, Washington from two weeks prior to the commencement of the trial
7 through the end of the trial. Any inspection pursuant to this sub-paragraph 11(b) shall be by
8 request of the Receiving Party for good cause, such request not to be unreasonably withheld by
9 the Producing Party.

10 (c) To the extent a Party makes Source Code that is designated
11 "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" available for
12 inspection and review, said inspection and review shall be subject to the following provisions,
13 unless otherwise agreed by the Producing Party:

14 (i) All Source Code shall be made available by the Producing Party to
15 the Receiving Party's outside counsel and/or experts at a location consistent with ¶11(a) and in a
16 secure room on a standalone computer without Internet access or network access to other
17 computers, as necessary and appropriate to prevent and protect against any unauthorized copying,
18 transmission, removal or other transfer of any Source Code outside or away from the computer on
19 which the Source Code is provided for inspection (the "Source Code Computer" in the "Source
20 Code Review Room"). The Producing Party shall at the Receiving Party's request provide up to
21 two Source Code Computers at each Source Code Review Room to facilitate concurrent review
22 by more than one person. The Producing Party shall install tools that are sufficient for viewing
23 and searching the code produced, on the platform produced, if such tools exist and are presently
24 used in the ordinary course of the Producing Party's business. The Receiving Party's outside
25 counsel and/or experts may request that additional commercially available software tools for
26 viewing and searching Source Code be installed on the computer(s), provided, however, that (a)
27 the Receiving Party or the Producing Party possesses an appropriate license to such software
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1 tools; (b) the Producing Party approves such software tools, and the Producing Party's consent
2 will not be unreasonably withheld; and (c) such other software tools are reasonably necessary for
3 the Receiving Party to perform its review of the Source Code consistent with all of the protections
4 herein. The Receiving Party must provide the Producing Party with the CD or DVD containing
5 such licensed software tool(s) or an appropriate license for downloadable tools at least seven (7)
6 days in advance of the date upon which the Receiving Party wishes to have the additional
7 software tools available for use on the Source Code Computer(s).

8 (ii) No recordable media or recordable devices, including without
9 limitation sound recorders, peripheral equipment, cameras, CDs, DVDs, or external drives of any
10 kind, or USB, Ethernet or other cables that could be used to transfer data off of a Source Code
11 Computer, shall be permitted into the Source Code Review Room. However, cellular telephones
12 and computers (including those with built in cameras) are permitted into the Source Code Review
13 Room, so long as those devices are not used in any way to record or image the Source Code. The
14 Producing Party has the option of having an employee of the Producing Party's outside law firm
15 of record be in the Source Code Review Room during inspection.

16 (iii) The Receiving Party's outside counsel and/or experts shall be
17 entitled to take notes relating to the Source Code but may not copy unreasonably large portions of
18 the Source Code (e.g., entire source code files or entire functions or methods where such
19 functions or methods are longer than a few lines) into the notes and may not take such notes
20 electronically on the Source Code Computer itself.

21 (iv) No copies of all or any portion of the Source Code may leave the
22 room in which the Source Code is inspected except as otherwise provided herein. No other
23 written or electronic record of the Source Code is permitted except as otherwise provided herein.
24 The Receiving Party may print limited portions of the Source Code when necessary to prepare
25 court filings or pleadings or other papers (including a testifying expert's expert report and
26 infringement contentions). The Receiving Party shall not print Source Code in order to review
27 blocks of Source Code in the first instance, i.e., as an alternative to reviewing that Source Code
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1 electronically on the Source Code Computer. Should the Producing Party object at any time on
2 the basis that the Receiving Party has printed an amount of source code that is unreasonable in
3 light of either of the two preceding sentences, the parties agree that the Producing Party may seek
4 a protective order on an expedited basis on the following schedule: any opposition papers shall be
5 due five days after the filing of the request, and any reply papers shall be due three days after the
6 filing of the opposition, with no surreplies. All Source Code shall be printed on paper provided
7 by the Producing Party that is pre-marked "CONFIDENTIAL—OUTSIDE ATTORNEYS' EYES
8 ONLY SOURCE CODE" and Bates numbered. Such paper may, at the election of the Producing
9 Party, be non-copyable paper. At the election of the Producing Party, the Receiving Party shall
10 either: 1) Print and provide the pages to the Producing Party, who shall make a copy of the pages
11 prior to the Receiving Party leaving the Source Code Review Room facility; or 2) print two
12 identical pages, one for the Receiving Party and one for the Producing Party. The Producing
13 Party has two (2) business days to object to the portions printed as unreasonable either because
14 the portion of the Source Code printed is not relevant to this Action or because the printed portion
15 does not comply with this paragraph. The Receiving Party may maintain a copy of the Source
16 Code printed, but shall not receive additional copies until the period for objections has expired. If
17 the Producing Party does not object during the objection period, the Receiving Party is entitled to
18 receive an additional four copies of the printed source code, and if the Producing Party objects
19 only to a portion of the printed source code, then the Receiving Party is entitled to receive an
20 additional four copies of the portions of the printed source code that was not subject to the
21 Producing Party's objection. If the Producing Party objects to the reasonableness of the printed
22 portion, then the Receiving Party shall destroy and certify that the printed portion objected to has
23 been destroyed. The Producing Party shall meet and confer with the Receiving Party within two
24 (2) calendar days of asserting the objection in an attempt to resolve the objection. Absent
25 agreement, the Producing Party has five (5) business days to file a motion for a protective order
26 with the Court. If the Producing Party fails to meet and confer with the Receiving Party within
27 two (2) calendar days of asserting the objection or fails to file a motion for a protective order with
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1 the Court within five (5) days of the meet and confer, then it waives its objection to the Source
2 Code and shall immediately produce copies of the printed Source Code to the Receiving Party.
3 Further, failure to object to the printing of such source code within the two (2) business day
4 period provided for by this sub-paragraph 11(c)(iv) is not a waiver of a Producing Party's
5 objections to use of such source code in court filings, expert reports, infringement contentions, or
6 exhibits used at depositions or at trial for any reason, including but not limited to relevance.

7 (v) Other than as provided above, the Receiving Party will not copy,
8 remove, or otherwise transfer any Source Code from the Source Code Computer including,
9 without limitation, copying, photographing, removing, or transferring the Source Code onto any
10 recordable media or recordable device.

11 (vi) All persons viewing Source Code shall sign on each day they view
12 Source Code a log that will include the names of persons who enter the locked room to view the
13 Source Code and when they enter and depart. The log shall remain at the Source Code review
14 location.

15 (vii) The Receiving Party's outside counsel of record may receive no
16 more than five (5) paper copies of any portions of the Source Code from a Producing Party
17 pursuant to Paragraph 11(c)(iv), not including copies attached to court filings, expert reports,
18 infringement contentions, or exhibits used at depositions or at trial, and shall maintain a log of all
19 paper copies of the Source Code. The log shall include the names of the reviewers and/or
20 recipients of paper copies and locations where the paper copies are stored. The Producing Party
21 shall be entitled to review the log after the litigation has ended or by Court order upon a showing
22 of good cause.

23 (viii) The Receiving Party's outside counsel of record and any person
24 receiving a copy of any Source Code shall maintain and store any paper copies of the Source
25 Code at their offices in a manner that reasonably prevents duplication of or unauthorized access to
26 the Source Code, including, without limitation, storing the Source Code in a locked room or
27 cabinet at all times when it is not in use.

1 (ix) To the extent that any transmission of printed copies of any Source
2 Code is explicitly permitted under this paragraph 11 or otherwise explicitly agreed to, in writing,
3 by the Producing Party, such transmission shall be accomplished in one or all of the following
4 manners, at the election of the Producing Party: (1) Written copies of any Source Code may be
5 transmitted by mail or courier provided that such written copies of Source Code are sent in a
6 lockbox and the key to said lockbox is sent under separate cover. The authorized Receiving Party
7 must keep the printouts in the lockbox when not reviewing them. (2) The authorized Receiving
8 Party may scan the written copies of any Source Code, encrypt the resulting image (using, for
9 example, TrueCrypt software), and send the encrypted image. The authorized Receiving Party
10 may decrypt the image only when needed and must re-encrypt or destroy the file when review is
11 complete or not in progress. (3) The Producing Party may transmit the Source Code itself, at its
12 own expense, and in a manner that it will be transmitted overnight.

13 (x) Copies of Source Code that are marked as deposition exhibits shall
14 not be provided to the Court Reporter or attached to deposition transcripts; absent agreement of
15 the Producing Party, rather, the deposition record will identify the exhibit by its production
16 numbers. All paper copies of Source Code brought to the deposition shall be securely destroyed
17 in a timely manner following the deposition.

18 (xi) Except as provided in this paragraph 11(b), absent express written
19 permission from the Producing Party, the Receiving Party may not create electronic images, or
20 any other images, or make electronic copies, of the Source Code from any paper copy of Source
21 Code for use in any manner (including by way of example only, the Receiving Party may not scan
22 the Source Code to a PDF or photograph the code). Images or copies of Source Code shall not be
23 included in correspondence between the Parties (references to production numbers shall be used
24 instead), and shall be omitted from pleadings and other papers whenever possible.

25 (xii) A Party may make electronic copies of and include portions of
26 Source Code in filings with the Court, in presentations at any hearing or trial, and in its experts'
27 reports, provided that all Court filings containing Source Code must be filed Under Seal, all such
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1 electronic copies must be labeled “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY -
2 SOURCE CODE” as provided for in this Order. In addition, before displaying source code in
3 open court at any hearing or trial, Plaintiff will provide notice to the Producing Party to give the
4 Producing Party an opportunity to seek appropriate measures from the Court to protect the
5 confidentiality of the source code.

6 (d) To the extent that the Producing party makes electronic copies of Source
7 Code available to its testifying or consulting experts (or their support staff) who are retained for
8 analyzing the validity or infringement issues in this case in a manner that does not comply with
9 the provisions 11(a) – (c), the Producing Party shall within five (5) business days notify the
10 Receiving Parties of such disclosures. If a Receiving Party seeks access to the Source Code in the
11 same manner (excepting a specific location) and the Producing Party objects, the Receiving Party
12 may within five (5) business days make a motion to permit additional access as to the Producing
13 Party’s Source Code, and the burden shall be on the Producing Party to justify providing such
14 disparate access.

15 (e) The Receiving Party is not yet privy to the nature of the Producing Parties’
16 Source Code, including the format or the volume of the production. Accordingly, the provisions
17 in Paragraphs 10 and 11 governing Source Code may be modified by the Court upon a showing of
18 good cause.

19 12. **NOTICE OF DISCLOSURE**

20 (a) Prior to disclosing any Protected Material to any person described in
21 Paragraphs 8(b)(iii), 8(b)(iv), 9(b)(iii), or 10(c)(iii) (referenced below as “Person”), the Party
22 seeking to disclose such information shall provide the Producing Party with written notice that
23 includes: (i) the name of the Person; (ii) the present employer and title of the Person; (iii) an
24 identification of all of the Person’s employment or consulting relationships for the past four (4)
25 years, including direct relationships and relationships through entities owned or controlled by the
26 Person, or, if the identity of the employer is confidential, a detailed description of the engagement
27 and a statement that the employer was not a Party; (iv) an up-to-date curriculum vitae of the
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1 Person; and (v) a list of the cases in which the Person has testified at deposition, hearing, or trial
2 within the last five (5) years. During the pendency of this action, including all appeals, the Party
3 seeking to disclose Protected Material shall in a timely manner provide written notice of any
4 change with respect to the Person's involvement in the design, development, operation or
5 patenting of the technology claimed and/or disclosed in the Patents-in-Suit or accused of
6 infringement by Plaintiffs.

7 (b) Within five (5) business days of receipt of the disclosure of the Person, the
8 Producing Party or Parties may object in writing to the Person for good cause. In the absence of
9 an objection at the end of the five (5) day period, the Person shall be deemed approved under this
10 Protective Order. There shall be no disclosure of Protected Material to the Person prior to
11 expiration of this five (5) day period. If the Producing Party objects to disclosure to the Person
12 within such five (5) day period, the Parties shall meet and confer via telephone or in person
13 within three (3) business days following the objection and attempt in good faith to resolve the
14 dispute on an informal basis. If the dispute is not resolved, the Party objecting to the disclosure
15 will have seven (7) days from the date of the meet and confer to seek relief from the Court. The
16 burden of proof shall be upon the Party objecting to the disclosure to demonstrate good cause for
17 its objection. If relief is not sought from the Court within that time, the objection shall be deemed
18 withdrawn. If relief is sought, designated materials shall not be disclosed to the Person in
19 question until the Court resolves the objection.

20 (c) For purposes of this section, "good cause" shall mean an objectively
21 reasonable concern that the Person will, advertently or inadvertently, use or disclose Protected
22 Materials in a way or ways that are inconsistent with the provisions contained in this Order.

23 (d) Prior to receiving any Protected Material under this Order, the Person must
24 execute a copy of the "Agreement to Be Bound by Protective Order" (Exhibit A hereto) and serve
25 it on all Parties.

26 (e) An initial failure to object to a Person under this Paragraph 12 shall not
27 preclude the nonobjecting Party from later objecting to continued access by that Person for good
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1 cause relating to (1) intervening events that could not have been discovered through the exercise
2 of reasonable diligence when the expert was originally disclosed or (2) a failure to disclose
3 material information required to be disclosed by paragraph 12(a) by the party responsible for such
4 disclosure. Such an objection must be brought within three (3) days of the Party learning of
5 intervening events giving rise to such an objection. If an objection is made, the Parties shall meet
6 and confer via telephone or in person within three (3) days following the objection and attempt in
7 good faith to resolve the dispute informally. If the dispute is not resolved, the Party objecting to
8 the disclosure will have three (3) days from the date of the meet and confer to seek relief from the
9 Court. The designated Person may continue to have access to information that was provided to
10 such Person prior to the date of the objection. If a later objection is made, no further Protected
11 Material shall be disclosed to the Person until the Court resolves the matter or the Producing
12 Party withdraws its objection. Notwithstanding the foregoing, if the Producing Party fails to
13 move for a protective order within three (3) business days after the meet and confer, further
14 Protected Material may thereafter be provided to the Person.

15 13. **CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

16 (a) A Party shall not be obligated to challenge the propriety of any designation
17 of Discovery Material under this Order at the time the designation is made, and a failure to do so
18 shall not preclude a subsequent challenge thereto.

19 (b) Any challenge to a designation of Discovery Material under this Order
20 shall be written, shall be served on outside counsel for the Producing Party, shall particularly
21 identify the documents or information that the Receiving Party contends should be differently
22 designated, and shall state the grounds for the objection. Thereafter, further protection of such
23 material shall be resolved in accordance with the following procedures:

24 (i) The objecting Party shall have the burden of conferring either in
25 person, in writing, or by telephone with the Producing Party claiming protection (as well as any
26 other interested party) in a good faith effort to resolve the dispute. The Producing Party shall
27 have the burden of justifying the disputed designation;

1 (ii) Failing agreement, the Receiving Party may bring a motion to the
2 Court for a ruling that the Discovery Material in question is not entitled to the status and
3 protection of the Producing Party's designation. The Producing Party shall have the burden of
4 justifying the disputed designation. The Parties' entry into this Order shall not preclude or
5 prejudice either Party from arguing for or against any designation, establish any presumption that
6 a particular designation is valid, or alter the burden of proof that would otherwise apply in a
7 dispute over discovery or disclosure of information;

8 (iii) Notwithstanding any challenge to a designation, the Discovery
9 Material in question shall continue to be treated as designated under this Order until one of the
10 following occurs: (a) the Party who designated the Discovery Material in question withdraws
11 such designation in writing; or (b) the Court rules that the Discovery Material in question is not
12 entitled to the designation.

13 14. **SUBPOENAS OR COURT ORDERS**

14 (a) If at any time Protected Material is subpoenaed by any court, arbitral,
15 administrative, or legislative body, the Party to whom the subpoena or other request is directed
16 shall give prompt written notice thereof to every Party who has produced such Protected Material
17 and to its counsel and shall provide each such Party with an opportunity to move for a protective
18 order regarding the production of Protected Materials implicated by the subpoena. Nothing in this
19 paragraph should be construed as permitting disclosure of Protected Material to any third party
20 except as expressly provided in this order.

21 15. **FILING PROTECTED MATERIAL**

22 (a) Nothing in this Order shall permit a party to file a document under seal
23 except as may be permitted by separate Court Order in compliance with local Rule 5(g).

24 (b) If a party intends to file under seal with the Court any brief, document, or
25 materials designated as Protected Material under this Order, the party must follow the provisions
26 of this section and Local Rule 5(g).

27 (c) In accordance with Local Rule 5(g)(4), a motion or stipulation to seal shall
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1 provide a specific description of particular documents or categories of documents that a party
2 seeks to protect from public disclosure. The party or parties seeking to file material under seal
3 must also provide a clear statement of the facts justifying sealing sufficient to overcome the
4 strong presumption in favor of public access.

5 16. **INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

6 (a) The inadvertent production by a Party of Discovery Material subject to the
7 attorney-client privilege, work-product protection, or any other applicable privilege or protection
8 will not waive the applicable privilege and/or protection.

9 (b) Upon a request from any Producing Party who has inadvertently produced
10 Discovery Material that it believes is privileged and/or protected, each Receiving Party shall
11 immediately destroy such Discovery Material and all copies and certify as such by the Receiving
12 Party to the Producing Party.

13 (c) Nothing herein shall prevent the Receiving Party from preparing a record
14 for its own use containing the date, author, addresses, and topic of the inadvertently produced
15 Discovery Material and such other information as is reasonably necessary to identify the
16 Discovery Material and describe its nature to the Court in any motion to compel production of the
17 Discovery Material.

18 17. **FAILURE TO DESIGNATE PROPERLY**

19 (a) The failure by a Producing Party to designate Discovery Material as
20 Protected Material with one of the designations provided for under this Order shall not waive any
21 such designation provided that the Producing Party notifies all Receiving Parties that such
22 Discovery Material is protected under one of the categories of this Order within fourteen (14)
23 days of the Producing Party learning of the inadvertent failure to designate. The Producing Party
24 shall reproduce the Protected Material with the correct confidentiality designation within seven
25 (7) days upon its notification to the Receiving Parties. Upon receiving the Protected Material
26 with the correct confidentiality designation, the Receiving Parties shall destroy all Discovery
27 Material that was not designated properly.

1 (b) A Receiving Party shall not be in breach of this Order for any use of such
2 Discovery Material before the Receiving Party receives the Protected Material with the correct
3 confidentiality designation. Once a Receiving Party has received the Protected Material with the
4 correct confidentiality designation, the Receiving Party shall treat such Discovery Material at the
5 appropriately designated level pursuant to the terms of this Order. Such subsequent designation
6 of “CONFIDENTIAL,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
7 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” shall apply
8 on a going forward basis and shall not disqualify anyone who reviewed “CONFIDENTIAL,”
9 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE
10 ATTORNEYS’ EYES ONLY – SOURCE CODE” materials while the materials were not marked
11 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE
12 ATTORNEYS’ EYES ONLY – SOURCE CODE” from engaging in the activities set forth in
13 Paragraph 6(b).

14 18. **INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

15 (a) In the event of a disclosure of any Protected Material pursuant to this Order
16 to any person or persons not authorized to receive such disclosure under this Protective Order, the
17 Party responsible for having made such disclosure, and each Party with knowledge thereof, shall
18 immediately notify counsel for the Producing Party whose Protected Material has been disclosed
19 and provide to such counsel all known relevant information concerning the nature and
20 circumstances of the disclosure. The responsible disclosing Party shall also promptly take all
21 reasonable measures to retrieve the improperly disclosed Protected Material and to ensure that no
22 further or greater unauthorized disclosure and/or use thereof is made

23 (b) Unauthorized or inadvertent disclosure does not change the status of
24 Protected Material or waive the right to hold the disclosed document or information as Protected.

25 19. **FINAL DISPOSITION**

26 (a) Not later than sixty (60) days after the Final Disposition of this case, each
27 Party shall return all Discovery Material of a Producing Party to the respective outside counsel of
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1 the Producing Party or destroy such Material, at the option of the Producing Party. For purposes
2 of this Order, “Final Disposition” occurs after an order, mandate, or dismissal finally terminating
3 the above-captioned action with prejudice, including all appeals.

4 (b) All Parties that have received any such Discovery Material shall certify in
5 writing that all such materials have been returned to the respective outside counsel of the
6 Producing Party or destroyed. Notwithstanding the provisions for return of Discovery Material,
7 outside counsel may retain one set of pleadings, correspondence and attorney and consultant work
8 product (but not document productions) for archival purposes, but must return or destroy any
9 pleadings, correspondence, and consultant work product that contain Source Code.

10 20. **DISCOVERY FROM EXPERTS OR CONSULTATIONS**

11 (a) Testifying experts shall not be subject to discovery with respect to any
12 draft of his or her report(s) in this case. Draft reports, notes, or outlines for draft reports are also
13 exempt from discovery.

14 (b) Discovery of materials provided to testifying experts shall be limited to
15 those materials, facts, consulting expert opinions, and other matters actually relied upon by the
16 testifying expert in forming his or her final report, trial, or deposition testimony or any opinion in
17 this case. No discovery can be taken from any non-testifying expert except to the extent that such
18 non-testifying expert has provided information, opinions, or other materials to a testifying expert
19 relied upon by that testifying expert in forming his or her final report(s), trial, and/or deposition
20 testimony or any opinion in this case.

21 (c) No conversations or communications between counsel and any testifying or
22 consulting expert will be subject to discovery unless the conversations or communications are
23 relied upon by such experts in formulating opinions that are presented in reports or trial or
24 deposition testimony in this case.

25 (d) Nothing in Paragraphs 20(a)–(c) shall alter or change in any way the
26 requirements in Paragraph 11 regarding printing of Source Code, and Paragraph 11 shall control
27 in the event of any conflict.

1 21. **PRIVILEGE LOGS**

2 (a) Post-Complaint Communications. No Party shall be required to record on
3 a privilege log any communications that occurred after the filing date of the original complaint,
4 i.e., August, 27, 2010.

5 (b) Communications with Counsel of Record. No Party shall be required to
6 record on a privilege log any communications that were sent to or received from outside counsel
7 of record in this litigation and that relate to this litigation and which contain no other senders or
8 recipients aside from (1) outside counsel of record in this litigation and its support staff or (2) the
9 Party.

10 (c) Except as provided above in subparagraphs (a) and (b), a party must
11 prepare a privilege log that identifies all documents withheld or redacted. The privilege log shall
12 contain the following information:

- 13 (i) the date of the document;
- 14 (ii) the document's author and/or signatory;
- 15 (iii) the identity of all persons designated as addressees or copyees;
- 16 (iv) a description of the contents of the document that, without revealing
17 information itself privileged or protected, is sufficient to understand the subject matter of the
18 document and the basis of the claim of privilege or immunity;
- 19 (v) a notation identifying whether the author, addressees, or copyees is
20 the Producing Party's lawyer;
- 21 (vi) document type (e.g., email, Excel spreadsheet, Word document,
22 letter, memorandum);
- 23 (vii) the type or nature of the privilege asserted (e.g., attorney-client
24 privilege, work product doctrine, etc.); and
- 25 (viii) the document numbers corresponding to the first and last page of
26 any withheld or redacted document.

27 (d) Each individual e-mail communication in an e-mail stream (i.e., a series of
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1 e-mails linked together by e-mail responses and forwarding) that is withheld or redacted on the
2 grounds of privilege, immunity or any similar claim shall be separately logged. The parties shall
3 not be required to log identical e-mail communications that are included in different or
4 duplicative e-mail streams provided the individual e-mail communication that is being withheld
5 or redacted has been logged in accordance with this Paragraph.

6 (e) Privilege logs shall be served in a word processing or spreadsheet format.

7 22. **MISCELLANEOUS**

8 (a) Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future. By stipulating to this Order, the Parties
10 do not waive the right to argue that certain material may require additional or different
11 confidentiality protections than those set forth herein.

12 (b) Termination of Matter and Retention of Jurisdiction. The Parties agree that
13 the terms of this Protective Order shall survive and remain in effect after the Final Determination
14 of the above-captioned matter. The Court shall retain jurisdiction after Final Determination of
15 this matter to hear and resolve any disputes arising out of this Protective Order.

16 (c) Successors. This Order shall be binding upon the Parties hereto, their
17 attorneys, and their successors, executors, personal representatives, administrators, heirs, legal
18 representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and
19 experts, and any persons or organizations over which they have direct control.

20 (d) Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order, no Party waives any right it otherwise would have to object to disclosing or
22 producing any information or item. Similarly, no Party waives any right to object on any ground
23 to use in evidence of any of the material covered by this Protective Order. This Order shall not
24 constitute a waiver of the right of any Party to claim in this action or otherwise that any
25 Discovery Material, or any portion thereof, is privileged or otherwise non-discoverable, or is not
26 admissible in evidence in this action or any other proceeding.

27 (e) Modification by Court. This Order is subject to further court order based
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1 upon public policy or other considerations, and the Court may modify this Order sua sponte in the
2 interests of justice. The United States District Court for Western District of Washington is
3 responsible for the interpretation and enforcement of this Order. All disputes concerning
4 Protected Material, however designated, produced under the protection of this Order shall be
5 resolved by the United States District Court for the Western District of Washington.

6 **IT IS SO ORDERED.**

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9 Hon. Marsha J. Pechman
10 United States District Judge
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EXHIBIT A

I, _____, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *Interval Licensing LLC v. AOL, Inc., et al.*, United States District Court, District of the Western District of Washington, Seattle Division, Civil Action No. 2:10-cv-01385-JMP. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: _____

Present occupation/job description: _____

Name of Company or Firm: _____

Address: _____

Dated: _____

[Signature]

1 DATED this 13th day of April, 2011.

2
3 /s/ Matthew R. Berry

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