

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 15-228 (RGA)
	)	
ACTIVISION BLIZZARD, INC.	)	
	)	
Defendant.	)	
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ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 15-282 (RGA)
	)	
ELECTRONIC ARTS INC.,	)	
	)	
Defendant.	)	
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ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 15-311 (RGA)
	)	
TAKE-TWO INTERACTIVE SOFTWARE,	)	
INC., ROCKSTAR GAMES, INC. and	)	
2K SPORTS, INC.,	)	
	)	
Defendants.	)	

**[PROPOSED] PROTECTIVE ORDER GOVERNING THE  
DESIGNATION AND HANDLING OF CONFIDENTIAL MATERIALS**

To expedite the flow of discovery material, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, and to ensure that the parties are permitted reasonably

necessary uses of such materials in preparation for and in the conduct of trial, it is hereby ORDERED THAT:

1. **DEFINITIONS.** The terms defined in this Section 1 and parenthetically elsewhere shall, throughout this Order, have the meanings provided. Defined terms may be used in the singular or plural.

1.1 The “Action” means the above-captioned litigations.

1.2 “Party” means a party to the Action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

1.3 “Material” means all information, documents, testimony, and things produced, served or otherwise provided in this action by any Party or by any non-party.

1.4 “Designated Material” means any Material that is designated “CONFIDENTIAL”, “CONFIDENTIAL-- OUTSIDE COUNSEL ONLY”, and/or “RESTRICTED CONFIDENTIAL – SOURCE CODE” under this Order. Designated Material shall not include advertising or other materials that have been actually published or publicly disseminated.

1.5 “Designating Party” means a Party or non-party that designates any Material in productions, in disclosures, or in responses to discovery as “CONFIDENTIAL”, “CONFIDENTIAL-- OUTSIDE COUNSEL ONLY”, and/or “RESTRICTED CONFIDENTIAL – SOURCE CODE.”

1.6 “Producing Party” means any Party or non-party that discloses or produces Material in this Action.

1.7 “Receiving Party” means any Party receiving production or disclosure of Material in this Action.

1.8 “Confidential Material” means information, documents, and things the Designating Party believes in good faith constitutes trade secret or other confidential research, development, or commercial information that is maintained in confidence by the Designating Party and not generally known to others.

1.9 “Confidential -- Outside Counsel Only Material” means Confidential Material that the Designating Party believes in good faith has significant competitive value such that unrestricted disclosure to others would create a substantial risk of serious injury.

1.10 “Restricted Confidential – Source Code Material” means extremely sensitive “Confidential Material” representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

1.11 “Counsel of Record” means (i) outside counsel who has entered an appearance as counsel for a Party and has not subsequently withdrawn, (ii) partners, principals, counsel, associates, employees and contract attorneys of such outside counsel to whom it is reasonably necessary to disclose the information for this Action, including supporting personnel employed by the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters, and/or (iii) independent legal translators retained to translate in connection with this Action, or independent shorthand reporters retained to record and transcribe testimony in connection with this Action.

1.12 “Outside Consultant” means any person with specialized knowledge or experience in a matter pertinent to this Action who has been retained by Counsel of Record to

serve as an expert witness, or as a consultant in this Action, and who is not a current employee of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated to become an employee of a Party or of a competitor of a Party.

1.13 “Professional Vendors” means any persons or entities that provide litigation support services and their employees and subcontractors who have been retained or directed by Counsel of Record in this action, and who are not current employees of a Party or of a competitor of a Party and who, at the time of retention, are not anticipated to become employees of a Party or of a competitor of a Party. Litigation support services include but are not limited to: photocopying; videotaping; translating; designing and preparing exhibits, graphics, or demonstrations; organizing, storing, retrieving data in any form or medium; etc. Professional Vendors include ESI vendors and professional jury or trial consultants retained in connection with this litigation. Professional Vendors do not include consultants who fall within the definition of Outside Consultant.

1.14 “Termination” means the dismissal of the Action (whether through settlement or otherwise), or the entry of final judgment and expiration of all periods to appeal or to seek judicial review of such judgment or dismissal.

1.15 “Affiliate” shall mean, with respect to any Party, any other entity controlling, controlled by, or under common control with that Party. As used in this definition, the term “control” means the ownership of more than fifty percent (50%) of the ownership or equity interests of such entity.

1.16 “Patents-in-Suit” means U.S. Patent Nos. 6,701,344 (the “344 Patent”), 6,714,966 (the “966 Patent”), 6,732,147 (the “147 Patent”), 6,829,634 (the “634 Patent”), 6,910,069 (the “069 Patent”), 6,920,497 (the “497 Patent”), and any other patent asserted in

this Action, as well as any related patents, patent applications, provisional patent applications, continuations, and/or divisionals.

2. **SCOPE**

2.1 The protections conferred by this Order cover not only Designated Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof. Nothing herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules of this Court, or the Court's deadlines provided in any scheduling order or discovery order issued by the Court. Identification of any individual pursuant to this Order does not make that individual available for deposition, or any other form of discovery outside of the restrictions and procedures of the Federal Rules of Civil Procedure, the Local Rules of this Court, and the Court's deadlines provided in any scheduling order or discovery order issued by the Court.

2.2 Nothing in this Protective Order shall prevent or restrict a Producing Party's own disclosure or use of its own Designated Material for any purpose, and nothing in this Order shall preclude any Producing Party from showing its Designated Material to an individual who prepared the Designated Material.

2.3 Nothing in this Order shall be construed to prejudice any Party's right to use any Designated Material in court or in any court filing with the consent of the Producing Party or by order of the Court.

2.4 This Order does not confer any right to any Defendant's in-house attorney to access the Designated Material of any other Defendant. Furthermore, absent a specific agreement, no Defendant is required to produce its Designated Material to any other Defendant or Defendant's counsel, but nothing in this Order shall preclude such production.

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