

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 16-453 (RGA)
	)	
ACTIVISION BLIZZARD, INC.,	)	
	)	
Defendant.	)	

---

ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 16-454 (RGA)
	)	
ELECTRONIC ARTS INC.,	)	
	)	
Defendant.	)	

---

ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 16-455 (RGA)
	)	
TAKE-TWO INTERACTIVE SOFTWARE,	)	
INC., ROCKSTAR GAMES, INC., and 2K	)	
SPORTS, INC., Delaware Corporations,	)	
	)	
Defendants.	)	

---

**NON-PARTY SONY INTERACTIVE ENTERTAINMENT AMERICA LLC.’S  
OPPOSITION TO PLAINTIFF ACCELERATION BAY LLC’S DISCOVERY MOTION  
AND REQUEST FOR A PROTECTIVE ORDER**

Originally filed under seal on August 30, 2017  
Redacted Public Version filed on September 8, 2017

Sony Interactive Entertainment America LLC (“Sony”)<sup>1</sup> opposes Plaintiff Acceleration Bay LLC’s (“Acceleration Bay” or “Plaintiff”) request for documents containing highly confidential information of Sony at issue in an August 16, 2017 letter brief (“Plaintiff’s Letter Brief”). Sony is *not* a party to this action, nor has Sony received a Rule 45 subpoena from any party. Sony has intervened for the limited and sole purpose of protecting its highly confidential financial information.

### **SUMMARY OF ARGUMENT**

This dispute relates to highly confidential Sony information redacted from four documents produced by defendants Activision Blizzard, Inc. (“Activision”), Electronic Arts Inc. (“EA”), and Take-Two Interactive Software, Inc. (“Take-Two”) (collectively “Defendants”). (See Plaintiff’s Letter Brief at 2, Exs. 1, 5, 8 and 9.) The information consists of the highly confidential terms of three video-game-publisher agreements between Sony and the Defendants. This information is irrelevant to this patent-infringement case between the parties.

In its Letter Brief, Plaintiff requested that Defendants “be precluded from relying upon their agreements with Sony” in this action, and requested only in the “alternative” that the redacted Sony agreements be “produced in their entirety and without any redactions.” (Plaintiff’s Letter Brief at 1, 5; *see also* Proposed Order (D.I. 230-1) at 2.)<sup>2</sup> But Plaintiff has since changed its position. Shortly after Plaintiff filed its Letter Brief, the Court granted a motion by Defendants to dismiss all claims related to games used on Sony platforms. (D.I. 237.) But rather than concede that these agreements are even less relevant to this action than before the Court’s dismissal and seek agreement to the primary relief requested in Plaintiff’s Letter Brief,

---

<sup>1</sup> Sony Interactive Entertainment America LLC is a successor-in-interest to Sony Computer Entertainment America Inc.

<sup>2</sup> Plaintiff’s letter brief attached redacted versions of three publisher agreements between Sony and Defendants, as Exhibits 1, 5, 8 and 9. Exhibits 8 and 9 consist of two copies of a single agreement.

Plaintiff instead has informed Sony and the Special Master that it “is no longer seeking to preclude reliance on the Sony agreements” and is now seeking an order compelling production of the redacted portions of the agreements that relate to the “payments between Defendants and Sony.” (See August 29, 2017 Email from Aaron Frankel to Special Master Terrell.) Defendants are “neither seeking to disclose nor rely on the redacted information.” (Defendants’ Answering Brief in Opposition to Plaintiff’s August 16, 2017 Discovery Motions (“Defendant’s Answering Brief”) at 1.)

Plaintiff’s motion to compel production of this confidential payment information should be denied because discovery of this information is not “proportional to the needs of the case” for four reasons: (1) the terms are Sony’s highly confidential trade secrets, (2) production of this information could harm Sony, (3) the information is neither relevant nor necessary to this action, and (4) the purported need for this information does not outweigh the injury that would ensue if it were disclosed.

For the same reasons, the Court should grant a protective order to allow Sony’s highly confidential trade-secret information to remain redacted.

### **FACTUAL BACKGROUND**

Sony is a video-game company that markets and sells video-game consoles. Sony’s video-game console systems have included the original PlayStation® system, PlayStation® 2 (“PS2”), the PlayStation® 3 (“PS3”), and the current PlayStation® 4 (“PS4”). These systems are sometimes referred to as video-game “platforms.” (See Declaration of Florian Hunziker (“Hunziker Decl.”), submitted herewith, ¶ 3.)

The Defendants—EA, Activision, and Take-Two—are video-game publishers. (*Id.* at ¶ 3.) Each of the Defendants has created and distributed video games for use on various

platforms, including Sony's PS3 and PS4 platforms. The terms under which the Defendants are permitted to publish their respective games for use on Sony platforms are set forth in publisher agreements with Sony. These publisher agreements include, among other matters and terms, highly confidential terms governing the royalties that each Defendant is required to pay Sony under the agreements. (*Id.*)

The information redacted in the Sony publisher agreements attached to Plaintiff's Letter Brief includes "specific financial terms such as royalty rates." (Plaintiff's Letter Brief at 2.)<sup>3</sup> Sony treats this information as highly confidential trade secrets and considers it extremely important to protect this information from disclosure. One of these agreements is with EA, a second is with Activision and the other two are with Take-Two. All three companies are competitors of each other. (Hunziker Decl. ¶¶ 2, 4.)

On August 24, 2017, the Court granted a motion by Defendants to dismiss all claims related to games used on Sony platforms. (D.I. 237.)

Sony has conferred in good faith with Plaintiff and Defendants in an effort to resolve the dispute without court action. However, Plaintiff has continued to seek the unredacted production of the payment terms of Sony's publisher agreements. [REDACTED]

[REDACTED]

(Defendant's Answering Brief at 1.)

---

<sup>3</sup> Other highly confidential information is also redacted from these agreements. However, in light of Plaintiff's August 29, 2017 email to the Special Master, Sony understands that Plaintiff is no longer seeking to have that information unredacted.

## ARGUMENT

### **I. PLAINTIFF’S MOTION TO COMPEL SHOULD BE DENIED**

Plaintiff’s motion to compel the unredacted production of the payment terms of Sony’s publisher agreements with Defendants should be denied because discovery of this information is not “proportional to the needs of the case” for four reasons: (1) the financial terms of the agreements are Sony trade secrets, (2) production of this information might harm Sony, (3) the information is neither relevant nor necessary to this action, and (4) the purported need for this information does not outweigh the injury that would ensue if it were disclosed. *See Taro Pharms U.S.A., Inc. v. Perrigo Israel Pharms, Ltd.*, 2015 WL 7737310, at \*1-\*2 (Dec. 1, 2015) (setting out standard for determining whether to prohibit production of trade-secret information and denying motion to compel); Fed. R. Civ. P. 26(b)(1).

#### **A. The Financial Terms of Sony’s Publisher Agreements Are Sony Trade Secrets.**

There is no dispute that the financial terms redacted in the documents and now sought by Plaintiff are Sony trade secrets. Such financial information is routinely upheld by courts as protectable trade secrets. *See Syngenta Crop Protection, LLC v. Willowood USA, LLC*, 2016 WL 4925099, at \*2-\*3 (D. Del. Sept. 14, 2016) (sales and revenue information constitute trade secrets); *SI Handling Sys., Inc. v. Heisley*, 753 F.2d 1244, 1260 (3d Cir. 1985) (costing and pricing information that is not “readily obtainable by anyone in the industry” qualifies for trade secret protection). Sony derives independent economic value from this information not being generally known to, and not being readily ascertainable by proper means by, others who can obtain economic value from its disclosure. *See Taro Pharms*, 2015 WL 7737310, at \*1 (quoting DEL. CODE.ANN. tit 6, § 2001(4)(a), (b)). (*See also* Hunziker Decl. ¶¶ 5-6 (explaining potential economic harm to Sony if this information were known to Defendants).)

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.