

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NETWORK-1 TECHNOLOGIES, INC.

Plaintiff,

- against -

GOOGLE LLC and YOUTUBE, LLC

Defendants.

14 Civ. 2396 (PGG)

14 Civ. 9558 (PGG)

**STIPULATED SUPPLEMENTAL
PROTECTIVE ORDER GOVERNING SOURCE CODE**

PAUL G. GARDEPHE, U.S.D.J.:

WHEREAS, on October 29, 2014, this Court entered a Stipulated Confidentiality Agreement and Protective Order (No. 1:14-cv-02396, Dkt. No. 48) (the “Standing Protective Order”);

WHEREAS, the parties agreed in related Case No. 1:14-cv-09558, which has since been consolidated with Case No. 1:14-cv-02396, that the Standing Protective Order applies to that case as well (No. 1:14-cv-09558, Dkt. No. 23.1 ¶ 10);

WHEREAS, the Standing Protective Order stated that the parties will work together to determine whether source code material will be necessary in this case and, if so, will submit a second protective order governing the inspection of such material (No. 1:14-cv-02396, Dkt. No. 48 ¶ 10);

WHEREAS, both cases referenced above were stayed pending proceedings before the U.S. Patent and Trademark Office and the U.S. Court of Appeals for the Federal Circuit;

WHEREAS, following the lifting of the stays and the consolidation of the cases, all the parties to this action (collectively the “Parties” and individually a “Party”) now request that this Court issue a supplemental protective order pursuant to paragraph 10 of the Standing Protective Order and Federal Rule of Civil Procedure 26(c) to protect the confidentiality of any nonpublic and competitively sensitive source code information they disclose;

WHEREAS, the Parties, through counsel, agree to the following terms; and

WHEREAS, this Court finds good cause exists for issuance of an appropriately tailored confidentiality order governing source code,

IT IS HEREBY ORDERED that any person subject to this Order—including without limitation the Parties to this action (and their respective corporate parents, successors, and assigns), their representatives, agents, experts, and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order—will adhere to the following terms, upon pain of contempt:

1. This Order supplements the Standing Protective Order, and incorporates by reference the terms of the Standing Protective Order.
2. To the extent production of source code becomes necessary in this case, a Producing Party may designate material as “HIGHLY CONFIDENTIAL – SOURCE CODE” if it contains or substantively relates to a Party’s “Source Code,” which shall mean documents containing or substantively relating to confidential, proprietary, and/or trade secret text that defines software, firmware, or electronic hardware descriptions written in human-readable programming languages, including but not limited to C, C++, Java, assembler, VHDL, Verilog, and SQL. In the event that a document contains both information that may be properly designated “HIGHLY CONFIDENTIAL – SOURCE CODE” and information that may not be

properly designated “HIGHLY CONFIDENTIAL – SOURCE CODE,” if the “HIGHLY CONFIDENTIAL – SOURCE CODE” information comprises less than seventy-five percent (75%) of such document, then such document will be produced (1) in the ordinary manner (i.e., electronically), but with the “HIGHLY CONFIDENTIAL – SOURCE CODE” information redacted; and (2) in unredacted form, designated as “HIGHLY CONFIDENTIAL – SOURCE CODE, on a Source Code Computer (defined below). For avoidance of doubt, documents that do not contain or substantively relate to Source Code shall not be designated as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

3. Discovery Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to all of the protections afforded to “Confidential Outside Counsel Only” information and “Prosecution/Acquisition Bar Materials” by the Standing Protective Order. For the avoidance of doubt, where “Confidential Outside Counsel Only” information is entitled to a lesser degree of protection than “HIGHLY CONFIDENTIAL – SOURCE CODE,” the greater protections applicable to “HIGHLY CONFIDENTIAL – SOURCE CODE” shall apply. For the avoidance of doubt, all Discovery Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be considered “Prosecution/Acquisition Bar Materials.”

4. Unless otherwise ordered by the Court or permitted in writing by the Producing Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party’s outside counsel of record in this action (excluding any counsel of record affiliated with Amster Rothstein & Ebenstein LLP), as well as employees of said outside counsel of record to whom it is reasonably necessary to disclose the information for

this litigation (excluding any employees of Amster Rothstein & Ebenstein LLP);

(b) up to three (3) outside experts or consultants per party, pre-approved in accordance with paragraph 11 of the Standing Protective Order, provided that such persons first additionally execute the “Non-Disclosure Agreement Governing Source Code” (in the form annexed as an Exhibit hereto) and provide an executed copy to the Producing Party at least three (3) business days prior to accessing Source Code;

(c) the Court and its personnel;

(d) stenographic reporters, videographers, and their respective staff who are transcribing or videotaping a deposition wherein “HIGHLY CONFIDENTIAL – SOURCE CODE” information is being discussed, provided that such reporters and videographers shall not retain or be given copies of any portions of the Source Code, which if used during a deposition, will not be attached as an exhibit to the transcript but instead shall be identified only by its production numbers; and

(e) while testifying at deposition or trial in this action only: (i) any current or former officer, director, or employee of the Producing Party; (ii) any person designated by the Producing Party to provide testimony pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure; (iii) any person who authored, previously received (other than in connection with this litigation), or was directly involved in creating, modifying, or editing the “HIGHLY CONFIDENTIAL – SOURCE CODE” information, as evident from its face or reasonably certain in view of other testimony or evidence; and/or (iv) any outside expert or consultant who has been approved to access Source Code as set forth in paragraph 4(b). Persons authorized to view “HIGHLY CONFIDENTIAL – SOURCE CODE” information pursuant to this subparagraph shall not retain or be given copies of the “HIGHLY CONFIDENTIAL – SOURCE

CODE” information except while so testifying. Only printed copies of the Source Code will be provided to testifying witnesses during their testimony.

5. Any Source Code, including unredacted versions of documentation containing “HIGHLY CONFIDENTIAL – SOURCE CODE” information as described in paragraph 2, produced in discovery shall only be made available for inspection, not produced except as set forth below, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at the office of the Producing Party’s primary outside counsel of record. The Source Code shall be made available for inspection on a secured computer (the “Source Code Computer”) in a secured, locked room without Internet access or network access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of the Source Code onto any recordable media or recordable device. The secured computer shall have disk encryption and be password protected. Use or possession of any input/output device (e.g., USB memory stick, mobile phone or tablet, camera or any camera-enabled device, CD, floppy disk, portable hard drive, laptop, or any device that can access the Internet or any other network or external system, etc.) is prohibited while accessing the computer containing the Source Code (other than the non-networked computer and storage device described in paragraph 6 below for purposes of taking notes). All persons entering the locked room containing the Source Code must agree to submit to reasonable security measures to ensure they are not carrying any prohibited items before they will be given access to the locked room. The computer containing Source Code will be made available for inspection during regular business hours, upon reasonable notice to the Producing Party, which shall not be less than 3 business days in advance of the requested inspection. The Producing Party may visually monitor the activities of the Receiving Party’s representatives during any Source Code

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