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April 7, 2021

VIA ECF

Hon. Paul G. Gardephe
United States District Court
Southern District of New York
40 Foley Square, Room 2204
New York, NY 10007

Re: *Network-1 Technologies, Inc. v. Google LLC, et al.*, Nos. 1:14-cv-2396 & 1:14-cv-9558 (S.D.N.Y.)

Dear Judge Gardephe:

I write on behalf of Defendants Google LLC and YouTube, LLC (collectively, “Google”) to request leave to file under seal two exhibits submitted in connection with the parties’ joint letter regarding a dispute about Google’s Supplemental Responses to Interrogatory Nos. 7 and 13 and Google’s accompanying document production. Specifically, Google seeks to file under seal the Supplemental Interrogatory Responses themselves, as well as an excerpt from the report of Network-1’s damages expert. In each case, Google seeks to redact only small portions of the documents, not the documents in their entirety. Plaintiff Network-1 Technologies, Inc. (“Network-1”) does not object to the proposed redactions.¹

With respect to the Supplemental Interrogatory Responses, the redacted phrases discuss a confidential internal financial metric that Google uses to track and allocate costs. Additional information in the response provides corresponding dollar figures for the costs at issue; that information will be filed publicly. Taken together, however, the discussion of the internal financial metric and the monetary figures disclose Google’s conversion rate between the metric and dollars. This conversion rate is highly confidential and sensitive commercial information that is not disclosed publicly, or even to many Google employees. Ex. A.

¹ In accordance with Rule II.B of the Court’s Individual Rules of Practice in Civil Cases, the parties will publicly file the document with the proposed redactions and electronically file under a seal a copy of the unredacted document with the redactions highlighted.

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As for the excerpt from the report of Network-1's damages expert, Google seeks to redact three implied royalty rate percentages, but not the total royalty amounts that Network-1 seeks. Similar to the conversion discussed above, the implied royalty rate (which Google seeks to redact) combined with the total royalty amount (which will be filed publicly) would allow a reader to calculate the royalty base of YouTube's U.S. Content ID-related revenue. This is sensitive commercial information that Google does not track internally or report publicly. Ex. A.

The proposed redactions are necessary to avoid harm that could result from allowing competitors to access highly confidential information about Google's costs of doing business and the revenue specific business segments generate. Ex. A; *see, e.g., New York v. Actavis, PLC*, 2014 WL 5353774, at *3 (S.D.N.Y. Oct. 21, 2014) (observing that "[c]ost data is sensitive and potentially damaging if shared with competitors"). Google respectfully submits that the "privacy interests" implicated by these internal financial metrics outweigh any "presumption of access" that may attach by virtue of their filing in this action. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *see, e.g., Louis Vuitton Malletier S.A. v. Sunny Merchandise Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (approving redactions that were "generally limited to specific business information and strategies, which, if revealed, may provide valuable insights into a company's current business practices that a competitor would seek to exploit") (internal quotation marks omitted); *In re Keurig Green Mountain Coffee Antitrust Litig.*, 2014 WL 12772236, at *2 (S.D.N.Y. Nov. 5, 2014) (approving narrow redactions to "safeguard ... sensitive commercial information"); *GoSMiLE, Inc. v. Dr. Jonathan Levine, D.M.D. P.C.*, 769 F. Supp. 2d 630, 649–50 (S.D.N.Y. 2011) (concluding that certain exhibits should remain sealed because "the privacy interests of the defendants" in "proprietary material" relating to their "costs and budgeting" "outweigh the presumption of public access").

The proposed sealing is "narrowly tailored to achieve" the important objectives of preserving the confidentiality of Google's internal financial metric and revenue calculations, and preventing the competitive harm that could result from disclosure. *See Lugosch*, 435 F.3d at 121. Although Google seeks leave to seal specific phrases that would reveal Google's sensitive commercial information, it is not asking the Court to seal entire briefs or shield the parties' arguments or legal theories from public view. Moreover, Google's targeted redactions preserve the privacy of particular confidential commercial details without impeding the public disposition of this matter. The redacted information is contained in documents relevant to the Court's resolution of the dispute the parties present, but the redacted information is not itself necessary to the outcome. For example, Google does not rely on the paragraph of Network-1's expert's report that contains the proposed redactions; that paragraph simply happens to be on the same page as the material to which Google cites. The proposal therefore is fully consistent with the balance that courts must strike in determining which materials merit sealing. *See, e.g., GoSMiLE*, 769 F. Supp. 2d at 649–50 (S.D.N.Y. 2011); *BASF Plant Sci., LP v. Commonwealth Sci. & Indus. Research Org.*, 2020 WL 973751, at *15–16 (E.D. Va. Feb. 7, 2020) (sealing documents that reflect "confidential commercial information" because, among other things, "the

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parties have filed detailed public versions, which do not seek to completely seal their briefing, outlining in detail the legal and factual issues raised by the motions”).

For the foregoing reasons, Google respectfully requests leave to file redacted versions of the two aforementioned exhibits in connection with the parties’ discovery dispute.

Sincerely,

/s/ Andrew V. Trask

Andrew V. Trask

Enclosures

Cc: Counsel of Record (via ECF)