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September 7, 2022

VIA ECF

Hon. Paul G. Gardephe
U.S. 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-PGG-SN & 1:14-cv-9558-PGG-SN (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 five exhibits submitted in connection with the parties' joint letter regarding a dispute arising from a supplemental expert report served on August 26, 2022 by Plaintiff Network-1 Technologies, Inc. ("Network-1"). Specifically, Google seeks leave to seal portions of the recently served expert report that is the subject of the joint letter (Exhibit A) as well as excerpts of two expert reports previously served by Google (Exhibits B and C), an excerpt of the transcript of a deposition of a Google employee (Exhibit D), and an interrogatory response (Exhibit F). In each instance, Google has applied targeted redactions to the exhibits, and it is not seeking to seal the filing in its entirety. In accordance with Rule II.B of the Court's Individual Rules, Google will publicly file the documents with the proposed redactions and file under a seal a copy of the unredacted documents with the redactions highlighted. Network-1 does not object to the proposed redactions.

The exhibits that Google seeks leave to file in redacted form have been designated "Confidential Outside Counsel Only" by Google under the Stipulated Confidentiality Agreement and Protective Order because they contain "non-public, confidential information that provides a commercial advantage" and that "describes with particularity the technical implementation" of Google's "products or services." ECF No. 48 ¶ 3. Google respectfully submits that its redactions are warranted because its interests in maintaining the confidentiality of certain commercially sensitive information outweigh the "presumption of access" that generally attaches to judicial documents. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006); *see id.* at 120 (explaining that a court should "balance competing considerations" when determining whether sealing is warranted, including "the privacy interests of those resisting disclosure"). Many of the redacted passages describe specific techniques for structuring or searching data that Google keeps confidential in order to preserve its competitive standing. For example, a number of the redactions cover portions of expert reports that characterize confidential source code that implements aspects of Google's Content ID system. *See, e.g.*, Ex.

A ¶¶ 53–54 and 126–28. Other passages have been redacted because they contain descriptions by fact of expert witnesses of proprietary algorithms or parameters used by Google in its Content ID system that could not be ascertained without access to Google's confidential source code or related documentation. *See, e.g.*, *id.* ¶¶ 49–52 and 107–112. Courts routinely authorize the sealing of this kind of confidential "technical information" because public disclosure "could allow competitors an unfair advantage, and would thus be highly prejudicial." *Kewazinga Corp. v. Microsoft Corp.*, 1:18-cv-4500-GHW, 2021 WL 1222122, *7 (S.D.N.Y. Mar. 31, 2021) (evaluating a request in a patent infringement litigation to seal "confidential and proprietary data collection procedures, image processing procedures, specific hardware used to perform these procedures, and confidential details about … specific algorithms and the names of specific variables and functions in [the defendant's] source code"); *see also Hypnotic Hats, Ltd. v. Wintermantel Enters., LLC*, 335 F. Supp. 3d 566, 600 (S.D.N.Y. 2018) (explaining that "categories commonly sealed" include documents "containing trade secrets" or "confidential research and development information").

The particular design choices and other technical details reflected in the redacted passages are the result of extensive research and development efforts by teams of Google computer scientists and software engineers. Publicizing the confidential details of the techniques used by Google could allow competitors to benefit from Google's substantial investments in its proprietary methods for determining instances of reuse of video, audio, and melody content. The proposed redactions are therefore necessary to avoid competitive harm. *See, e.g.*, *Nixon v. Warner Commncn's, Inc.*, 435 U.S. 589, 598 (1978) (observing that "the right to inspect and copy judicial records is not absolute" and noting approvingly that courts have sealed "business information that might harm a litigant's competitive standing"). Moreover, the Content ID system was designed in part to discover and deter adversarial behavior by copyright infringers, including those who intentionally modify copyrighted music, movies, and other works in an effort to distribute them unlawfully without detection. Infringers could attempt to exploit knowledge of the confidential techniques and parameters used by Google, which could prove detrimental not only to Google itself, but also to copyright holders who rely on the Content ID system to manage reuse of their content on YouTube. It is well established that judicial records should be sealed in order to avoid these kinds of harms to parties and non-parties. *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 to "judicial documents" 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").

As the enclosed highlighted exhibits indicate, Google's proposed redactions are limited to the confidential and commercially sensitive details regarding Google's Content ID system and related aspects of its internal operations. Google is not seeking to seal this filing in its entirety, and the arguments advanced in the parties' joint letter will remain on the public docket. This targeted approach is consistent with the balance that courts must strike in determining which materials merit sealing. *See, e.g.*, *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 documents should remain sealed because "the privacy interests of the defendants" with respect to "proprietary material concerning the defendants' marketing strategies, product development, costs and budgeting" should "outweigh the presumption of public access"); *BASF Plant Sci., LP v. Commonwealth Sci. &*

Indus. Research Org., No. 2:17-cv-503-HCM, 2020 WL 973751, at *15–16 (E.D. Va. Feb. 7, 2020) (sealing exhibits that reflect "confidential commercial information" because, among other things, "the 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 Exhibits A through D and Exhibit F to the parties' joint letter of September 7, 2022.

Sincerely,

/s/ Andrew V. Trask

Andrew V. Trask

Cc: Counsel of Record (via ECF)