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11 Attorneys for Plaintiff, IconFind Inc.

12  
 13 IN THE UNITED STATES DISTRICT COURT  
 14 FOR THE EASTERN DISTRICT OF CALIFORNIA

15	ICONFIND INC.,,	)	Case No. 2:09-CV-00109-WBS-JFM
16		)	
17	vs.	)	<b>STIPULATED PROTECTIVE ORDER</b>
18	YAHOO! INC.,	)	
19	Defendant.	)	

20  
 21 This Stipulation is entered into between Plaintiff, IconFind Inc., and Defendant, Yahoo! Inc.  
 22 (collectively referred to hereafter as the "Parties").

23 WHEREAS, the Parties assert that formal discovery in this litigation will require the  
 24 disclosure of information or materials that include trade secret or other confidential research,  
 25 development, technical, or commercial information within the meaning of Rule 26 of the Federal  
 26 Rules of Civil Procedure and, the Parties seek to ensure that such information is not made public,

1 disseminated beyond the extent necessary for this litigation, or used for any purpose other than in  
2 connection with this litigation;

3 WHEREAS, certain discovery cannot proceed in this case without disclosure of such trade  
4 secrets and other confidential information to counsel for the Parties;

5 WHEREAS, for the above reasons, the Parties submit that good cause exists for entry of this  
6 Protective Order.

7 NOW, THEREFORE, the Parties agree as follows:

8 1. As used in this Protective Order, these terms have the following meanings:

9 a. "Confidential Information" must be marked as Confidential Information and may include,  
10 but is not limited to:

11 I) all sensitive business and technical documents and tangible things;

12 ii) documents produced in this action, during formal discovery or otherwise;

13 iii) information of non-parties which the producing or designating party is under an  
14 obligation to maintain in confidence;

15 iv) answers to interrogatories and responses to requests for admission or other  
16 discovery requests;

17 v) deposition and hearing transcripts;

18 vi) affidavits, experts' reports, or memoranda of law;

19 vii) other materials designated pursuant to this Protective Order; and

20 viii) the information contained within the material described in paragraph 1(a) and  
21 its subsections and all copies, photographs, graphical reproductions, abstracts,  
22 excerpts, analyses, notes or other writings that contain, reflect, reveal or otherwise  
23 disclose such information;  
24

25 b. "Confidential" documents and things are Confidential Information designated pursuant to  
26 paragraph 2;  
27

1 c. "Confidential-Attorneys' Eyes Only" documents and things are a subset of Confidential  
2 Information designated pursuant to paragraph 5;

3 d. "Restricted Source Code" is computer source or documents that describe encoding or  
4 decoding algorithms used in computer source code.

5 e. "Documents" are all materials within the scope of Fed.R.Civ.P. 34, including, but not  
6 limited to, electronically stored information;

7 f. "Written Assurance" means an executed document in the form attached as Exhibit A.

8  
9 2. By identifying material as Confidential Information, a Party in good faith contends such  
10 information constitutes confidential information within the meaning of Rule 26 of the Federal Rules  
11 of Civil Procedure.

12 3. All Confidential Information shall be used solely for the purpose of this action, and no  
13 person receiving such information shall, directly or indirectly, transfer, disclose, or communicate in  
14 any way the contents to any person other than those specified in paragraph 4. Prohibited purposes  
15 include, but are not limited to, use for competitive purposes or the prosecution of intellectual  
16 property rights, including inchoate patent rights.

17 4. Access to any document or thing designated as "Confidential" shall be limited to:

18 a. the Court and its officers;

19 b. outside trial attorneys of record and their office associates, legal assistants, and  
20 stenographic and clerical employees;

21 c. independent vendors retained to copy, convert or process discovery material;

22 d. persons shown on the face of the document to have authored or received it, or where it is  
23 otherwise established that the Confidential Information is known to the person;

24 e. court reporters and videographers retained to record testimony;

25 f. pursuant to paragraph 11 herein, two designated in-house intellectual property attorneys  
26 for the Defendant, and two designated in-house corporate attorneys for the Defendant.  
27

1 g. pursuant to paragraph 11 herein, three designated employees for Plaintiff and three  
2 designated employees for the Defendant.

3 h. pursuant to paragraph 11 herein, outside independent persons (i.e., persons not currently  
4 employed by, consulting with, or otherwise associated with either Party) limited to  
5 independent experts and their staff retained to assist counsel of record for the parties in the  
6 conduct of this litigation.

7 5. The Parties shall have the right to further designate Confidential Information as  
8 "Confidential-Attorneys' Eyes Only."

9 6. Disclosure of "Confidential-Attorneys' Eyes Only" information shall be limited to the  
10 persons designated in paragraphs 4(a), (b), (c), (d), (e), and (h) only.

11 7. Confidential Information designated as "Confidential-Attorneys' Eyes Only" shall be  
12 limited to information that the designating party believes constitutes, discloses or relates to  
13 information regarding (i) pending or future patent applications, (ii) ongoing product development  
14 information, (iii) sales, costs, margins, inventory, profitability, and expenses with respect to any  
15 product, (iv) future marketing or business plans or strategies for existing or new products, including  
16 but not limited to competitive analyses, marketing strategies, and proprietary marketing tools, (v)  
17 competitive intelligence, (vi) licenses, and (vii) third party supplier agreements.

18 8. The producing party may further sub-designate computer source code or documents that  
19 describe encoding or decoding algorithms used in computer source code as "Restricted Source Code"  
20 by appending "Restricted Source Code" to any of the above two designations.

21 9. In the case of documents, interrogatory answers, responses to requests for admission, and  
22 the information contained therein, designation shall be made by placing the "Confidential,"  
23 "Confidential-Attorneys' Eyes Only," or "Restricted Source Code" legend on the front page of any  
24 such document and any subsequent page containing such information, clearly indicating which  
25 portions of the document contain Confidential Information. In lieu of marking the original of a  
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1 document that contains Confidential Information prior to inspection, counsel for the Disclosing Party  
2 may orally designate such documents being produced for inspection as "Confidential,"  
3 "Confidential-Attorneys' Eyes Only," or "Restricted Source Code" by specifying the portions that  
4 contain "Confidential," "Confidential-Attorneys' Eyes Only," or "Restricted Source Code"  
5 information, thereby making them subject to this Order. Any copies of such documents must be  
6 marked with the legend by the Disclosing Party at the time they are supplied to the Receiving Party.

7  
8 10. Third Parties producing documents or things in the course of this action may also  
9 designate the material as "Confidential," "Confidential-Attorneys' Eyes Only," or "Restricted Source  
10 Code" subject to the same protections and constraints as the Parties to the action and references  
11 herein to Party/Parties shall apply equally to Third Parties. A copy of this Protective Order shall be  
12 served along with any subpoena served in connection with this action.

13  
14 11. Each person appropriately designated pursuant to paragraphs 4(f), 4(g), and 4(h) to  
15 receive Confidential Information shall execute a "Written Assurance" in the form attached as Exhibit  
16 A. Opposing counsel shall be notified at least ten (10) business days prior to disclosure to any such  
17 person. For disclosure to persons identified in paragraph 4(h), the notice shall state the name and  
18 address of the person to whom disclosure is proposed and include a resume of the background,  
19 qualifications and employment or affiliations of such person, including all prior engagements as a  
20 consultant or expert witness on behalf of any company in the last 5 years and all past and present  
21 employment or other affiliation with any Party or competitor of any Party. If a Party objects in  
22 writing to such disclosure within ten (10) business days after receipt of notice, no disclosure shall  
23 be made until the Party seeking disclosure obtains the prior approval of the Court or the objecting  
24 Party.

25  
26 12. All depositions or portions of depositions taken in this action that contain Confidential  
27 Information may be designated in their entirety as "Confidential," "Confidential-Attorneys' Eyes  
28 Only," or "Restricted Source Code" if all of the information therein is Confidential and if not then

1 only those portions that are Confidential are to be designated as Confidential and thereby obtain the  
2 protections accorded other documents. Confidentiality designations for depositions shall be made  
3 either on the record or by written notice to the other Party within ten (10) business days of receipt  
4 of the transcript. Unless otherwise agreed, all preliminary transcripts of such testimony shall be  
5 treated in their entirety as "Confidential" until thirty (30) calendar days following receipt of the final  
6 transcript. The party so designating shall have the obligation, within thirty (30) calendar days  
7 following receipt of the final transcript of such testimony, to further notify the opposing party and  
8 the court reporter in writing of the specific pages and lines of the transcript that contain the  
9 Confidential Information. Such written notification shall then be attached by the receiving party  
10 and/or reporter to the transcript and each copy thereof in its possession, custody, or control. If no  
11 designation is made at the deposition and within thirty (30) calendar days after receipt of the final  
12 transcript, the transcript shall be considered not to contain any "Confidential Information". If, during  
13 the course of a deposition, questions are asked that require the disclosure of "Confidential  
14 Information", the party whose information is to be disclosed may require that only qualified persons  
15 under paragraph 4 or 5, the deponent, the deponent's counsel, persons who are qualified to have  
16 access to such information, and the court reporter shall be allowed to be present during such portion  
17 of the deposition.  
18

19 13. Documents and things produced for inspection shall be treated by the inspecting party  
20 as "Confidential-Attorneys' Eyes Only" until copies are provided.

21 14. Computer source code and documents that describe encoding or decoding algorithms  
22 used in computer source code may be sub-designated within the two designations by appending  
23 "Restricted Source Code" to the designation. Documents and things so sub-designated will be  
24 subject to all of the restrictions of the main designation and will also be subject to the following  
25 additional restrictions and provisions:  
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1 a. The producing party shall produce materials sub-designated "Restricted Source Code," if  
2 available in electronic form, on up to three (3) password protected laptops or, if the  
3 producing party so wishes, on CD Rom. If the producing party provides materials  
4 sub-designated "Restricted Source Code" on CD Rom, the receiving party shall load the  
5 contents of the CD Rom onto up three (3) password protected laptop(s). At the request of  
6 the receiving party's counsel and if laptop(s) were provided by the producing party, the  
7 producing party shall make its best efforts to provide, as quickly as possible, on the laptop(s),  
8 any software or analytical tool requested by the receiving party's counsel and/or  
9 experts/consultants. The laptops shall not be connected to a network or to the internet. The  
10 receiving party's counsel and experts/consultants shall not alter, dismantle, disassemble or  
11 modify the laptops in any way, and shall not attempt to circumvent any security feature of  
12 the laptops. Nothing in this paragraph shall be construed to prevent the receiving party's  
13 counsel or experts/consultants from analyzing or copying materials sub-designated  
14 "Restricted Source Code" from one memory location to another within the laptop, provided  
15 that no electronic copies shall be removed from the laptops.  
16

17 b. The laptops described above shall only be kept at the offices of outside counsel or in a  
18 secure location at the office and/or home of the receiving party's independent expert(s) or  
19 consultant(s), subject to compliance with the procedures outlined in paragraph 9. None of  
20 the laptops shall leave the office to which it is delivered, or the United States, with the  
21 exception that a party's independent expert or consultant may transport a laptop between his  
22 or her home and office, or to the office of outside counsel, provided that, in transport, the  
23 expert/consultant maintains the laptop within his or her personal possession to the extent  
24 permitted by law. Neither outside counsel nor an expert or consultant shall not operate the  
25 laptop in the presence of any person not approved to receive the materials as designated  
26 under this Protective Order.  
27

1 c. The up to three (3) laptops and each electronic, written, and printed copy of materials  
2 sub-designated "Restricted Source Code" shall be stored securely when not in use, in such  
3 a manner to prevent misappropriation of such materials. While in use, the laptops and such  
4 designated materials shall not be left unattended by counsel of record or the independent  
5 expert/consultant.

6 d. No copies shall be made of source code or other materials sub-designated pursuant to this  
7 paragraph, whether physical, electronic, or otherwise, except for: (I) electronic copies  
8 created on the laptops, whether temporary copies created in the normal operation of a  
9 computer system or output files created from source code analysis tools and/or utilities; (ii)  
10 excerpted written and printed portions for use in, and preparation for, court filings and  
11 proceedings, expert reports, and depositions of persons or entities permitted to access the  
12 designated material; and (iii) such other uses to which the parties may agree or that the Court  
13 may order. Any printed copies shall be limited only to those portions of the sub-designated  
14 materials for which a printed copy is needed at the time. Any printed copies of material  
15 sub-designated "Restricted Source Code" shall be securely maintained by counsel of record  
16 and/or the independent expert/consultant, shall be marked "Restricted Source Code" on each  
17 page, shall be printed on non-white colored paper and shall be destroyed as soon as they are  
18 no longer needed.

19 e. A written log shall be maintained by counsel of record and the independent  
20 expert/consultant for all printed copies of materials sub-designated pursuant to this  
21 paragraph. The log shall record the date, the number of pages printed and the identity of the  
22 person who created the printed copies.

23 f. A written log shall be maintained by counsel of record and the independent  
24 expert/consultant that records the name of all persons accessing materials sub-designated  
25 pursuant to this paragraph, including the date of access and the person's title.  
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1 g. The independent expert/consultant shall be provided with no more than a single copy of  
2 any materials sub-designated "Restricted Source Code." The independent expert/consultant  
3 shall not be permitted to transmit electronically or in any other way, or disseminate copies  
4 of any materials sub-designated "Restricted Source Code."

5 15. Any Party who inadvertently fails to identify documents or things as "Confidential,"  
6 "Confidential-Attorneys' Eyes Only," or "Restricted Source Code" shall have ten (10) business days  
7 from the discovery of its oversight to correct its failure. Such failure shall be corrected by providing  
8 written notice of the error and substitution copies of the inadvertently produced documents or things.  
9 Either Party receiving such inadvertently unmarked or improperly marked documents or things shall  
10 make reasonable efforts to retrieve documents and things distributed to persons not entitled to  
11 receive such Confidential Information.  
12

13 16. The following section shall constitute the Parties' agreements concerning inadvertent  
14 production of information properly subject to protection against discovery due to a privilege or  
15 immunity.

16 a. If information that is otherwise properly subject to a claim of attorney-client privilege,  
17 attorney work product immunity or any other legal privilege protecting it from discovery is  
18 inadvertently produced, the fact or circumstances of such inadvertent production shall in no  
19 way be relied upon as a ground to support any argument that the information is no longer  
20 subject to the privilege or immunity. Nor shall such inadvertent production prejudice or  
21 otherwise constitute a waiver of, or estoppel as to, any claim of privilege, work product  
22 immunity or other ground for withholding production to which the designating Party or other  
23 person otherwise would be entitled.

24 b. If a written claim of inadvertent production is made pursuant to paragraph 12 and its  
25 subsections, with respect to information then in the custody of another Party, upon receipt  
26 of such written notice, such Party shall promptly destroy or return to the claiming Party or  
27

1 person (I) the inadvertently produced information, (ii) any and all copies or reproductions  
2 thereof, and (iii) any and all copies of summaries or notes based thereon or relating thereto,  
3 of which the receiving Party is aware, unless the receiving Party wishes to challenge the  
4 claim that the information would have properly been subject to a privilege or immunity  
5 before it was inadvertently produced.

6 c. If the Party receiving the inadvertently produced material wishes to challenge the claim  
7 of privilege or immunity, it must notify the producing Party of its challenge within ten (10)  
8 business days of receiving the notice of inadvertent production, and move the Court for a  
9 ruling on the propriety of the claim of privilege or immunity within seventeen (17) business  
10 days of receiving the notice of inadvertent production. As stated, such motion shall not rely  
11 upon in any manner or assert as a ground for entering such an Order the fact or circumstances  
12 of the inadvertent production. During the pendency of such motion, the receiving Party shall  
13 make no other use or disclosure of the subject material or the information contained therein.

14 d. If the producing Party prevails on its privilege or immunity claim, the receiving Party shall  
15 promptly return the material and all copies or reproductions thereof of which it is aware and  
16 shall delete all references to or descriptions of the privileged information contained in any  
17 written materials.

18 e. Once a document or information has been used during a deposition, used as an exhibit to  
19 a pleading filed with the Court, identified for potential use at trial, including in discovery  
20 responses, or otherwise disclosed to the Court, the producing Party has thirty (30) calendar  
21 days from the date of disclosure to provide notice of the inadvertent production.  
22 Notwithstanding any other provision of this protective order, failure to provide notice within  
23 this thirty-day period shall constitute a waiver of any and all applicable privileges and  
24 immunities with respect to the inadvertently produced documents or information only.  
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1           17. If a Party files a document containing Confidential Information with the Court, it shall  
2 do so in compliance with Local Rules 39-140 and 39-141 and any appropriate Electronic Case  
3 Filing Procedures for the Eastern District of California. Prior to disclosure of Confidential  
4 Information at trial or a hearing, the Parties may seek further protections against public disclosure  
5 from the Court.

6           18. Either Party may at any time request a change in the designation of any information  
7 designated "Confidential," "Confidential-Attorneys' Eyes Only," and/or "Restricted Source Code."  
8 Any such document or thing shall be treated as designated until the change is completed. If the  
9 requested change in designation is not agreed to, the Party seeking the change may move the Court  
10 for appropriate relief, providing notice to either Party whose designation of produced document or  
11 things as "Confidential," "Confidential-Attorneys' Eyes Only," and/or "Restricted Source Code" in  
12 the action may be affected. The Party asserting that the material is Confidential shall have the burden  
13 of proving that the information in question is within the scope of protection afforded by  
14 Fed.R.Civ.P.26(c).

15           19. Within sixty (60) calendar days of the termination of this action, including any appeals,  
16 each Party shall either destroy or return to the opposing Party all Confidential Information designated  
17 by the opposing Party and all copies of such Confidential Information, and shall destroy all extracts  
18 and/or data taken from such Confidential Information. Each Party shall provide a certification as to  
19 such return or destruction as within the sixty (60) calendar day period. Attorneys shall be entitled to  
20 retain, however, a set of all documents filed with the Court and all correspondence generated in  
21 connection with the action.  
22

23           20. Either Party may apply to the Court for a modification of this Protective Order, and  
24 nothing in this Protective Order shall be construed to prevent a Party from seeking such further  
25 provisions enhancing or limiting confidentiality as may be appropriate.  
26

1           21. No action taken in accordance with this Protective Order shall be construed as a waiver  
2 of any claim or defense in the action or of any position as to discoverability or admissibility of  
3 evidence.

4           22. In the event that any party having possession, custody, or control of any Confidential  
5 Information of another party is served with a subpoena or other judicial process demanding the  
6 production or disclosure of any such Confidential Information, the party shall provide the Receiving  
7 and Disclosing Parties with a copy of the subpoena or other judicial process within seven (7)  
8 calendar days and shall cooperate with the parties in any reasonable effort to prevent the production  
9 or disclosure of Confidential Information. The Disclosing Party asserting the Confidential  
10 designation shall have the burden of defending against such subpoena, process, or order. The party  
11 receiving the subpoena or other process or order shall be entitled to comply with it except to the  
12 extent the Disclosing Party asserting the "Confidential" designation has promptly notified the party  
13 receiving the subpoena or other process order of its intent to take immediate legal action to quash  
14 the subpoena, in which case the party shall not produce such documents while such legal proceedings  
15 are pending or the Disclosing Party is successful in obtaining an order modifying or quashing the  
16 subpoena or other process or order. In no event shall the Receiving Party be required to violate a  
17 Court Order.  
18

19           23. The obligations imposed by this Protective Order shall survive the termination of this  
20 action provided, however, that this Protective Order shall not be construed: (a) to prevent any party  
21 or its attorneys from making use of information which was lawfully in its possession prior to its  
22 disclosure by the Disclosing Party; (b) to apply to information which appears in issued patents or  
23 public records or printed publications or becomes publicly known other than as a result of disclosure  
24 by the Receiving Party, or (c) to apply to information that any party or its attorneys have, after  
25 disclosure by the Producing Party, lawfully obtained from a party or third party having the right to  
26 disclose such information. The Court retains jurisdiction over the Parties, and any persons provided  
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1 access to Confidential Information under the terms of this Order, with respect to any dispute over  
2 the improper use of such Confidential Information.

3 24. A testifying expert's draft reports, notes, outlines, and any other writings leading up to  
4 his final report(s) in this case are exempt from discovery. In addition, all communications with, and  
5 all materials generated by, a testifying expert with respect to his work on this case are exempt from  
6 discovery unless relied upon by the expert in forming his opinions. The expert must produce his final  
7 report and all materials on which he relied.

8 SO STIPULATED.

9 Dated: July 27, 2009

10 ICONFIND INC.

YAHOO! INC.

11 By: /s/ Anna B. Folgers  
12 Anna B. Folgers (Pro Hac Vice)  
13 NIRO, SCAVONE, HALLER & NIRO

By: /s/ Jennifer A. Kash  
*signature authorized on 7/27/09*  
Jennifer A. Kash (Cal. Bar No. 203679)  
QUINN EMANUEL URQUHART OLIVER &  
14 HEDGES, LLP

15  
16 **IT IS SO ORDERED.**

17 **Dated: September 1, 2009.**

18  
19   
20 UNITED STATES MAGISTRATE JUDGE

21 /iconfind.po  
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26  
27

28 **STIPULATED PROTECTIVE ORDER**

EXHIBIT A

I, \_\_\_\_\_, declare and say that:

1. I am employed as \_\_\_\_\_, by

2. I have read the Protective Order entered in IconFind, Inc. v. Yahoo! Inc., Case No. 2:09-CV-00109-WBS-JFM and have received a copy of the Protective Order

3. I promise that I will use any and all "Confidential," "Confidential-Attorneys' Eyes Only," "Restricted Source Code" information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such "Confidential," "Confidential-Attorneys' Eyes Only," or "Restricted Source Code" information with anyone other than the persons allowed access to that level of designated information in accordance with the Protective Order.

5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the Eastern District of California with respect to enforcement of the Protective Order.

6. I understand that any disclosure or use of "Confidential," "Confidential-Attorneys' Eyes Only," or "Restricted Source Code" information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_