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15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

19 OVERTURE SERVICES, INC., a Delaware
 20 corporation,

21 Plaintiff,

22 v.

23 GOOGLE INC., a California corporation,

24 Defendant.

Case No. C 02-01991 CRB ADR

**[PROPOSED] SUPPLEMENTAL
 PROTECTIVE ORDER RE OUTSIDE
 COUNSEL ONLY SOURCE CODE**

Judge: Hon. Charles R. Breyer

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1 WHEREAS the parties on December 13, 2002 stipulated to a protective order governing
2 the disclosure of confidential information, the Honorable Charles R. Breyer signed that order on
3 December 16, 2002, and the order was filed on December 18, 2002 (hereinafter, the “Stipulated
4 Protective Order”);

5 WHEREAS Paragraph 4(e) of the Stipulated Protective Order states that, pending further
6 discussion regarding further restrictions applicable to source code, the parties need not produce
7 source code that would otherwise be designated Outside Counsel Only; and

8 WHEREAS the parties have met and conferred regarding further restrictions applicable
9 to source code, and have stipulated to the following further restrictions;

10 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED BY THE COURT as
11 follows:

12 1. As used herein, the terms “Outside Counsel Only,” “Outside Counsel Only
13 information,” “Producing Party,” and “Receiving Party” have the same meaning as they do in the
14 Stipulated Protective Order.

15 2. Computer source code properly designated Outside Counsel Only is referred to
16 herein as Outside Counsel Only Source Code. All Outside Counsel Only Source Code, as well
17 as all excerpts, extracts, abstracts, charts, summaries, and notes made from Outside Counsel
18 Only Source Code, shall be Outside Counsel Only Source Code information as well as Outside
19 Counsel Only information.

20 3. In addition to the restrictions set forth in the Stipulated Protective Order, the
21 following restrictions shall apply to the disclosure of any Outside Counsel Only Source Code
22 information:

23 (a) Any Outside Counsel Only Source Code shall be produced in text file
24 format (or another format agreed to by the Receiving Party) on a CD or other readily computer-
25 accessible media (the “Source Code Media”).

26 (b) The Receiving Party will not make any copies of the Source Code Media.

27 (c) The Receiving Party may use the Source Code Media to install the source
28 code on a single, password-protected, non-networked computer at the offices of the Receiving

1 Party's outside counsel.

2 (d) The Receiving Party may use the Source Code Media to install the source
3 code on a single, password-protected, non-networked computer at the offices of one independent
4 expert or independent consultant that it has designated pursuant to Paragraph 4(a)(i) of the
5 Stipulated Protective Order.

6 (e) Except when it is being used for the purposes of installing the Outside
7 Counsel Only Source Code on computers, as allowed by subparagraphs (c) and (d), above, the
8 Receiving Party shall maintain the Source Code Media in a secure location at the offices of its
9 outside counsel.

10 4. No Outside Counsel Only Source Code information shall be revealed or disclosed,
11 in whole or in part, directly or indirectly, to any individual described in Paragraphs 4(a) or 4(b)
12 of the Stipulated Protective Order, with the exception of outside counsel and the personnel of
13 outside counsel as set forth in Paragraph 4(a) of the Stipulated Protective Order, or to any
14 individual who is otherwise authorized to receive or view such information pursuant to
15 Paragraph 5 of the Stipulated Protective Order, unless and until that individual (a) is entitled,
16 under the terms of the Stipulated Protective Order, to review Outside Counsel Only information;
17 (b) has been given a copy of this Order; and (c) has duly completed and signed an undertaking in
18 the form attached hereto as Exhibit A ("Source Code Undertaking"). Any and all such signed
19 Source Code Undertakings shall be retained in duplicate by outside counsel of record for the
20 Receiving Party.

21 5. In addition, prior to revealing or disclosing, in whole or in part, directly or
22 indirectly, any Outside Counsel Only Source Code information to any persons designated as
23 independent expert witnesses or independent consultants pursuant to Paragraph 4(a)(i) of the
24 Stipulated Protective Order, the disclosing party shall send to the other party by facsimile and
25 first class mail a copy of the Source Code Undertaking executed by the independent expert
26 witness or independent consultant.

27 6. The restrictions in this Order are not intended to preclude the Receiving Party
28 from using reasonable excerpts of Outside Counsel Only Source Code in depositions exhibits,

1 trial exhibits, expert reports, and other documents for purposes of this action, subject to all of the
2 restrictions set forth in the Stipulated Protective Order that are applicable to Outside Counsel
3 Only information. However, the parties shall make best efforts to limit the number and size of
4 excerpts of Outside Counsel Only Source Code so used.

5 IT IS SO ORDERED.

6 Dated:

7
8 By: _____
9 THE HON. CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

10 SO STIPULATED.

11 Dated: January 8, 2003

BRINKS HOFER GILSON & LIONE

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13
14 By: _____
15 CHARLES M. MCMAHON
Attorneys for Plaintiff
OVERTURE SERVICES, INC.

16 Dated: January 8, 2003

KEKER & VAN NEST, LLP

17
18
19 By: _____
20 MICHAEL S. KWUN
Attorneys for Defendant
GOOGLE INC.

21 I hereby attest that concurrence in the filing of this document has been obtained from
22 Charles M. McMahon.

23 Dated: January 8, 2003

KEKER & VAN NEST, LLP

24
25
26 By: _____
27 MICHAEL S. KWUN
Attorneys for Defendant
28 GOOGLE INC.

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EXHIBIT A
UNDERTAKING

1. I have carefully read and understand the attached Supplemental Protective Order re Outside Counsel Only Source Code (the "Source Code Protective Order"), which has been entered by the United States District Court for the Northern District of California in an action captioned *Overture Services, Inc., v. Google Inc.*, Case No. C 02-01991 CRB ADR. The initially capitalized terms in this Undertaking shall have the meanings supplied in the Source Code Protective Order.

2. Pursuant to the Source Code Protective Order, I may be given access to Outside Counsel Only Source Code information in the above-referenced action. As a condition of access to that Outside Counsel Only Source Code information, and in consideration of that access; (a) I agree that I shall be bound by and comply with all the terms of the Source Code Protective Order, including those limiting disclosure and use of the Outside Counsel Only Source Code information, and (b) I submit to the jurisdiction of the United States District Court for the Northern District of California for the enforcement of the Source Code Protective Order.

3. By reason of this Undertaking, the obligations imposed on me by the Source Code Protective Order shall be enforceable by the Producing Party to redress any breach of the Source Code Protective Order or this Undertaking.

4. I have executed this Undertaking in duplicate on _____ whereupon it becomes binding in accordance with its terms.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this _____ day of _____, 200_ in _____.
