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 13 craigslist, Inc.

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

17 craigslist, Inc., a Delaware corporation,

18 Plaintiff,

19 v.

20 GraphOn Corporation, a Delaware
 21 corporation,

22 Defendant.

Case No. CV-10-00604 EDL
Case No. CV-10-01156 EDL
Consolidated Actions

STIPULATED PROTECTIVE ORDER

23 GraphOn Corporation, a Delaware
 24 corporation,

25 Counterclaim Plaintiff,

26 v.

27 craigslist, Inc., a Delaware corporation,

28 Counterclaim Defendant.

1 2.6 Disclosure or Discovery Material: all items or information, regardless of the
2 medium or manner in which it is generated, stored, or maintained (including, among other things,
3 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
4 responses to discovery or filings with the Court in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
6 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
7 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
8 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
9 or of a Party's competitor.

10 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
11 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
12 Party or Non-Party would create a substantial risk of competitive harm.

13 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
14 sensitive "Confidential Information or Items" representing computer code and associated
15 comments and revision histories, formulas, engineering specifications, or schematics that define
16 or otherwise describe the algorithms or structure of software or hardware designs, disclosure of
17 which to another Party or Non-Party would create a substantial risk of competitive harm.

18 2.10 House Counsel: attorneys who are employees of a party to this action. House
19 Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
21 entity not named as a Party to this action.

22 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
23 action but are retained to represent or advise a party to this action and have appeared in this action
24 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.
25 Outside Counsel of Record include the attorneys' support staff.

26 2.13 Party: any party to this action, including all of its officers, directors, employees,
27 consultants, retained experts, and Outside Counsel of Record (and their support staffs).
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1 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this action.

3 2.15 Professional Vendors: persons or entities that provide litigation support services
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
5 organizing, storing, or retrieving data in any form or medium) and their employees and
6 subcontractors.

7 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
8 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as
9 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

10 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
11 Producing Party.

12 3. SCOPE

13 The protections conferred by this Stipulation and Order cover not only Protected Material
14 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
15 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
16 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
17 However, the protections conferred by this Stipulation and Order do not cover the following
18 information: (a) any information that is in the public domain at the time of disclosure to a
19 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
20 a result of publication not involving a violation of this Order, including becoming part of the
21 public record through trial or otherwise; and (b) any information known to the Receiving Party
22 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
23 obtained the information lawfully and under no obligation of confidentiality to the Designating
24 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations imposed by
27 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
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1 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
2 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
3 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
4 including the time limits for filing any motions or applications for extension of time pursuant to
5 applicable law.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
8 or Non-Party that designates information or items for protection under this Order must take due
9 care to limit any such designation to material that qualifies under the appropriate standards.

10 If it comes to a Designating Party's attention that information or items that it designated
11 for protection do not qualify for protection at all or do not qualify for the level of protection
12 initially asserted, that Designating Party should promptly notify all other parties that it is
13 withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
15 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
16 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
17 designated before the material is disclosed or produced. However, a Party may subsequently
18 designate material for protection if it comes to that Party's attention that Disclosure or Discovery
19 Material qualifies for protection. Such later designation shall have the same effect as if it was
20 made before the Disclosure or Discovery Material was disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents, but
23 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
24 Party affix the legend "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS'
25 EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to the protected document.
26 A Plaintiff may also add an additional legend, "HIGHLY CONFIDENTIAL - GRAPHON'S
27 ATTORNEYS' EYES ONLY." GraphOn, in addition to observing all of the conditions
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1 associated with documents marked HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,
2 shall not provide documents so marked to the non-designating Plaintiffs. For purposes of this
3 provision, Fox Audience Network, Inc. shall be regarded as a “Plaintiff.”

4 A Party or Non-Party that makes original documents or materials available for inspection
5 need not designate them for protection until after the inspecting Party has indicated which
6 material it would like copied and produced. During the inspection and before the designation, all
7 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
9 copied and produced, the Producing Party must determine which documents, or portions thereof,
10 qualify for protection under this Order. Then, before producing the specified documents, the
11 Producing Party must affix the appropriate legend “CONFIDENTIAL,” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
13 CODE” to such documents.

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
15 Designating Party identify, within 30 days, all protected testimony and specify the level of
16 protection being asserted.

17 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
18 other proceeding to include Protected Material so that the other parties can ensure that only
19 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
21 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

23 Transcripts containing Protected Material shall have an obvious legend on the title page
24 that the transcript contains Protected Material. Any transcript that is prepared before the
25 expiration of the 30-day period for designation shall be treated during that period as if it had been
26 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
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1 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
2 actually designated.

3 (c) for information produced in some form other than documentary and for any other
4 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
5 or containers in which the information or item is stored the legend “CONFIDENTIAL,” or
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL
7 – SOURCE CODE.”

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
10 confidentiality at any time.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
12 process by providing written notice of each designation it is challenging and describing the basis
13 for each challenge. The parties shall attempt to resolve each challenge in good faith, including by
14 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient).
15 In conferring, the Challenging Party must explain the basis for its belief that the confidentiality
16 designation was not proper and must give the Designating Party an opportunity to review the
17 designated material, to reconsider the circumstances, and, if no change in designation is offered,
18 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
19 stage of the challenge process only if it has engaged in this meet and confer process first.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
21 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
22 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 14 days
23 of the parties agreeing that the meet and confer process will not resolve their dispute. Each such
24 motion must be accompanied by a competent declaration affirming that the movant has complied
25 with the meet and confer requirements imposed in the preceding paragraph.

26 The burden of persuasion in any such challenge proceeding shall be on the Designating
27 Party. Pending the resolution of any challenge, all parties shall continue to afford the material in
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1 question the level of protection to which it is entitled under the Producing Party's designation
2 until the Court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
5 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
7 to the categories of persons and under the conditions described in this Order. When the litigation
8 has been terminated, a Receiving Party must comply with the provisions of section 16 below
9 (FINAL DISPOSITION).

10 Protected Material must be stored and maintained by a Receiving Party at a location and
11 in a secure manner that ensures that access is limited to the persons authorized under this Order.

12 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
13 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
14 disclose any information or item designated "CONFIDENTIAL" only to:

15 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
16 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
17 information for this litigation;

18 (b) the officers, directors, and employees (including House Counsel) of the Receiving
19 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
20 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
22 reasonably necessary for this litigation and who have signed the "Acknowledgment and
23 Agreement to Be Bound" (Exhibit A);

24 (d) the court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants, and
26 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
27 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
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1 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
2 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
3 unless otherwise agreed by the Designating Party or ordered by the court.

4 (g) the author or recipient of a document containing the information or a custodian or
5 other person who otherwise possessed or knew the information, or a person whose words or acts
6 are referenced in the document.

7 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
10 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
11 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
13 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
14 information for this litigation;

15 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for
16 this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
17 A); and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been followed.

18 (c) the court and its personnel;

19 (d) court reporters and their staff, professional jury or trial consultants, and
20 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
21 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

22 (e) the author or recipient of a document containing the information or a custodian or
23 other person who otherwise possessed or knew the information.

24 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
26 CODE” Information or Items Experts.

1 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
2 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
3 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
4 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a
5 written notice to the Designating Party that (1) sets forth the full name of the Expert and the city
6 and state of his or her primary residence, (2) attaches a copy of the Expert’s current resume, (3)
7 identifies the Expert’s current employer(s), (4) identifies each person or entity from whom the
8 Expert has received compensation or funding for work in his or her areas of expertise or to whom
9 the expert has provided professional services, including in connection with a litigation, at any
10 time during the preceding four years, and (5) identifies (by name and number of the case, filing
11 date, and location of court) any litigation in connection with which the Expert has offered expert
12 testimony, including through a declaration, report, or testimony at a deposition or trial, during the
13 preceding four years.

14 (b) A Party that makes a request and provides the information specified in the
15 preceding respective paragraphs may disclose the subject Protected Material to the identified
16 Expert unless, within 10 days of delivering the request, the Party receives a written objection
17 from the Designating Party. Any such objection must set forth in detail the grounds on which it is
18 based.

19 (c) A Party that receives a timely written objection must meet and confer with the
20 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
21 agreement. If no agreement is reached, the Party seeking to make the disclosure the Expert may
22 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
23 applicable) seeking permission from the court to do so. Any such motion must be accompanied
24 by a competent declaration describing the parties’ efforts to resolve the matter by agreement (i.e.,
25 the extent and the content of the meet and confer discussions) and setting forth the reasons
26 advanced by the Designating Party for its refusal to approve the disclosure.

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1 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
2 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
3 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

4 8. SOURCE CODE

5 (a) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE
6 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –
7 ATTORNEYS' EYES ONLY" information, and shall additionally be protected in accordance
8 with subparagraph (b) below.

9 (b) To the extent that any party wishes to obtain access to source code, the following
10 procedures shall apply:

11 i. The Producing Party shall make all properly requested source code
12 available for inspection on one stand-alone, non-networked personal computer running a
13 reasonably current version of the Microsoft Windows operating system ("Source Code
14 Computer"). Should it be necessary, the Source Code Computer may be configured by the
15 Producing Party to run on other mutually agreed upon operating systems, such as Linux. The
16 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto any
17 recordable media or recordable device.

18 ii. The Producing Party shall make the source code available in its native
19 format in a secure room at a secure facility at a location agreed to by the Producing and Receiving
20 Parties. The Producing Party shall make the source code available in such a way that the
21 produced source code reflects the file structure of the source code as it is maintained by the
22 Producing Party at the time of production of the source code.

23 iii. The Producing Party may visually monitor the activities of the Receiving
24 Party's representatives during any source code review, but only to ensure that there is no
25 unauthorized recording, copying, or transmission of the source code. Upon request by the
26 Receiving Party, the Producing Party shall cease looking at the computer screen being viewed by
27 the Receiving Party while the Receiving Party is reviewing the source code.

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1 iv. The Receiving Party may use appropriate tool software on the Source Code
2 Computer, which shall be installed by the Producing Party, including text editors and multi-file
3 text search tools such as “grep.” Should it be necessary, other mutually agreed upon tools may be
4 used. Licensed copies of agreed upon tool software shall be downloaded and installed on the
5 Source Code Computer by the Producing Party, and paid for by the Receiving Party. In no event
6 shall the Receiving Party use any compilers, interpreters or simulators in connection with the
7 Producing Party’s source code.

8 v. The Source Code Computer shall be made available from 9 am to 5 pm
9 local time, Monday through Friday (excluding holidays), and other days and/or times upon
10 reasonable request until the end of trial.

11 vi. At least three business days before the first inspection of the Source Code
12 Computer, the Receiving Party shall give counsel of the Producing Party notice of its intention to
13 inspect. At least twenty-four hours before each inspection thereafter, the Receiving Party shall
14 give counsel of the Producing Party notice of its intention to inspect. The Receiving Party shall
15 give three business days’ notices for the first inspection after the close of discovery.

16 vii. The Receiving Party shall identify all individuals who need access to the
17 source code under paragraph 7.3(b) above at least three days prior to the first inspection by such
18 individuals; after that identification, the Producing Party may object to providing source code
19 access to any persons so identified. The Receiving Party shall limit to two the number of its
20 Experts who may have access to the source code under paragraph 7.3(b) above. However, the
21 Producing Party shall discuss in good faith if the Receiving Party requests access for additional
22 Experts.

23 viii. Proper identification of all authorized persons shall be provided prior to
24 any access to the secure facility or the Source Code Computer. Proper identification is hereby
25 defined as a photo identification card sanctioned by the government of a U.S. state, by the United
26 States federal government, or by the nation state of the authorized person’s current citizenship.

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1 Access to the secure facility or the Source Code Computer may be denied, at the discretion of the
2 Producing Party, to any individual who fails to provide proper identification.

3 ix. The Receiving Party may request paper copies of limited portions of source
4 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports,
5 or other papers, or for deposition or trial, but shall not request paper copies for the purposes of
6 reviewing the source code other than electronically as set forth above. The Producing Party shall
7 provide all such source code in paper form including bates numbers and the label “HIGHLY
8 CONFIDENTIAL - SOURCE CODE.” The Producing Party may challenge the amount of source
9 code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set
10 forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving
11 Party is the “Designating Party” for purposes of dispute resolution.

12 x. All printed source code shall be logged by the Receiving Party to facilitate
13 the destruction certification as described in subparagraph xii below. The Receiving Party shall
14 maintain all paper copies of any printed portions of the source code in a secured, locked area. The
15 Receiving Party shall not create any electronic or other images of the paper copies and shall not
16 convert any of the information contained in the paper copies into any electronic format. The
17 Receiving Party shall only make additional paper copies if such additional copies are (1)
18 necessary to prepare court filings, pleadings, or other papers (including a testifying expert’s
19 expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its
20 case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the
21 end of each day and must not be given to or left with a court reporter or any other unauthorized
22 individual.

23 xi. No outside electronic devices, including but not limited to laptops, floppy
24 drives, zip drives, or other hardware shall be permitted in the secure room. Nor shall any cellular
25 telephones, personal digital assistants (PDAs), Blackberries, cameras, voice recorders,
26 Dictaphones, telephone jacks or other devices be permitted inside the secure room. The
27 Producing Party must make a telephone available in the secure room for the use (including long-
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1 distance calls) by the reviewer(s) of the source code. The Producing Party must also give the
 2 reviewer of the source code instructions on how to operate the telephone if requested. The
 3 Producing Party must keep and be responsible for the items prohibited in this section and may not
 4 inspect the prohibited items in any way. The Producing Party must keep and allow the use of the
 5 items prohibited in this section in a place that is in close proximity to the secure room. The
 6 Parties shall meet and confer in good faith regarding exceptions to this provision at the Receiving
 7 Party's request.

8 xii. Within sixty (60) days after the issuance of a final, non-appealable decision
 9 resolving all issues in the case, the receiving party must either serve upon the Producing Party, or
 10 certify the destruction of, all paper copies of the Producing Party's source code as well as
 11 documents, pleadings, reports, and notes reflecting or referring to such source code.

12 xiii. Access to and review of the source code shall be strictly for the purpose of
 13 investigating the claims and defenses at issue in the above-styled case. No person shall review or
 14 analyze any source code for purposes unrelated to this case.

15 xiv. Nothing herein shall be deemed a waiver of a Party's right to object to the
 16 production of source code. Absent a subsequent and specific court order, nothing herein shall
 17 obligate a Party to breach any third party license agreement relating to such source code.

18 xv. The Parties further acknowledge that some or all of the source code may be
 19 owned by non-Parties and outside a Party's possession, custody or control. Nothing herein shall
 20 be deemed a waiver of any non-Party's right to object to the production of source code or object
 21 to the manner of any such production.

22 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 23 OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that compels
 25 disclosure of any information or items designated in this action as "CONFIDENTIAL," or
 26 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL
 27 – SOURCE CODE" that Party must:

1 (a) promptly notify in writing the Designating Party;

2 (b) promptly notify in writing the party who caused the subpoena or order to issue in
3 the other litigation that some or all of the material covered by the subpoena or order is subject to
4 this Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
6 Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with the
8 subpoena or court order shall not produce any information designated in this action as
9 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
10 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from
11 which the subpoena or order issued, unless the Party has obtained the Designating Party’s
12 permission. The Designating Party shall bear the burden and expense of seeking protection in
13 that court of its confidential material – and nothing in these provisions should be construed as
14 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
15 another court.

16 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
17 IN THIS LITIGATION

18 (a) The terms of this Order are applicable to information produced by a Non-Party in
19 this action and designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such
21 information produced by Non-Parties in connection with this litigation is protected by the
22 remedies and relief provided by this Order. Nothing in these provisions should be construed as
23 prohibiting a Non-Party from seeking additional protections.

24 (b) In the event that a Party is required, by a valid discovery request, to produce a
25 Non-Party’s confidential information in its possession, and the Party is subject to an agreement
26 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:
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1 1. promptly notify in writing the Requesting Party and the Non-Party that
2 some or all of the information requested is subject to a confidentiality agreement with a Non-
3 Party;

4 2. promptly provide the Non-Party with a copy of the Stipulated Protective
5 Order in this litigation and the relevant discovery request(s).

6 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
8 Material to any person or in any circumstance not authorized under this Stipulated Protective
9 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
10 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
11 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
12 made of all the terms of this Order, and (d) request such person or persons to execute the
13 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

14 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
15 PROTECTED MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain inadvertently
17 produced material is subject to a claim of privilege or other protection, the obligations of the
18 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
19 provision is not intended to modify whatever procedure may be established in an e-discovery
20 order that provides for production without prior privilege review. Pursuant to Federal Rule of
21 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
22 communication or information covered by the attorney-client privilege or work product
23 protection, the parties may incorporate their agreement in the stipulated protective order
24 submitted to the court.

25 13. PROSECUTION BAR

26 Any Protected Material provided by a Producing Party is automatically subject to a
27 PROSECUTION BAR. Any person who receives a document designated subject to the
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1 PROSECUTION BAR may not participate, directly or indirectly, or prosecute, supervise, or
2 assist in the prosecution, preparation, or amending of any patent claim or application on behalf of
3 any party—other than the Producing Party of the Protected Material — involving the particular
4 technology or information disclosed in the Protected Material from the time of receipt of such
5 information through and including one (1) year following the entry of a final non-appealable
6 judgment or order or the complete settlement of all claims against all parties in this action. In
7 addition to and notwithstanding the preceding sentence, any person subject to the
8 PROSECUTION BAR shall not draft or assist in the drafting of any claim or amendment to any
9 claim of the patent-in-suit pursuant to a re-examination proceeding for a period ending one (1)
10 year after the final resolution of this litigation (including any appeals); otherwise, participation,
11 including but not limited to the discharge of the duty of candor and good faith, in re-examination
12 proceedings is permitted.

13 14. WITHHOLDING AND REDACTION

14 (a) A Producing Party need not list in any such log or produce any documents created
15 after the start of the present litigation that reflect attorney-client communications related to the
16 present litigation or contain work product related to the present litigation. Additionally, a
17 Producing Party need not list in any such log or produce any documents created in anticipation of
18 and related solely to the present litigation.

19 15. MISCELLANEOUS

20 15.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
21 seek its modification by the court in the future.

22 15.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
23 Order no Party waives any right it otherwise would have to object to disclosing or producing any
24 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
25 no Party waives any right to object on any ground to use in evidence of any of the material
26 covered by this Protective Order.

1 15.3 Filing Protected Material. Without written permission from the Designating Party
2 or a court order secured after appropriate notice to all interested persons, a Party may not file in
3 the public record in this action any Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
5 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material
6 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
7 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
8 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
9 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the
10 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
11 79-5(e) unless otherwise instructed by the court.

12 16. FINAL DISPOSITION

13 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
14 Receiving Party must return all Protected Material to the Producing Party or destroy such
15 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
16 compilations, summaries, and any other format reproducing or capturing any of the Protected
17 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
18 submit a written certification to the Producing Party (and, if not the same person or entity, to the
19 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
20 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
21 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
22 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
23 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
24 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
25 product, and consultant and expert work product, even if such materials contain Protected
26 Material. Any such archival copies that contain or constitute Protected Material remain subject to
27 this Protective Order as set forth in Section 4 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

October 20, 2010

PERKINS COIE LLP

By: /s/ Christopher Kao
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Attorneys for Plaintiff and Counterclaim
Defendant
craigslist, Inc.

October 20, 2010

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October 20, 2010

WATSON ROUNDS

By: /s/ Michael Rounds
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Attorneys for Defendant and Counterclaim
Plaintiff
GraphOn Corporation

I, Christopher Kao, hereby attest, pursuant to N.D. Cal. General Order No. 45, that the concurrence to the filing of this document has been obtained from each signatory hereto.

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October 20, 2010

PERKINS COIE LLP

By: /s/ Christopher Kao
Christopher Kao (SBN 237716)
CKao@perkinscoie.com

Attorneys for Plaintiff and Counterclaim
Defendant
craigslist, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: October 26, 2010



Honorable Judge Elizabeth D. Laporte

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I
 have read in its entirety and understand the Stipulated Protective Order that was issued by the
 United States District Court for the Northern District of California on _____ [date] in the
 following cases, which have been consolidated: *craigslist v. GraphOn Corporation*, CV-10-1156
 (EDL) and *MySpace, Inc. v. GraphOn Corporation*, 10-CV-0604 (EDL). I agree to comply with
 and to be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
 of contempt. I solemnly promise that I will not disclose in any manner any information or item
 that is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____