

EXHIBIT C

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SONY COMPUTER ENTERTAINMENT
7 AMERICA INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11
12 In re SONY PS3 LITIGATION

CASE NO. CV 09-04701 (MHP)

13 **STIPULATED PROTECTIVE ORDER**
14 **FOR COMPLEX LITIGATION**

15 Date:
16 Time:
17 Dept: 15
18 Judge: Hon. Marilyn Hall Patel

19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in this action are likely to involve production of
21 confidential, proprietary, or private information for which special protection from public
22 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
23 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
24 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
25 all disclosures or responses to discovery and that the protection it affords from public disclosure
26 and use extends only to the limited information or items that are entitled under the applicable
27 legal principles to treatment as confidential. The parties further acknowledge, as set forth in
28

1 Section 12, below, that this Stipulated Protective Order creates no entitlement to file confidential
2 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
3 reflects the standards that will be applied when a party seeks permission from the court to file
4 material under seal.

5 2. DEFINITIONS

6 2.1 Party: any party to this action, including all of its officers, directors, employees,
7 consultants, retained experts, and Outside Counsel of Record (and their support staff).

8 2.2 Non-Party: any natural person, partnership, corporation, association, or other legal
9 entity not named as a Party to this action.

10 2.3 Disclosure or Discovery Material: all items or information, regardless of the
11 medium or manner generated, stored, or maintained (including, among other things, testimony,
12 transcripts, or tangible things) that are produced or generated in disclosures or responses to
13 discovery in this matter.

14 2.4 "CONFIDENTIAL" Information or Items: information (regardless of how
15 generated, stored or maintained) or tangible things that qualify for protection under standards
16 developed under F.R.Civ.P. 26(c).

17 2.5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
18 Items: extremely sensitive "Confidential Information or Items" whose disclosure to another Party
19 or nonparty would create a substantial risk of serious injury that could not be avoided by less
20 restrictive means.

21 2.6 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
22 extremely sensitive "Confidential Information or Items" representing computer code and
23 associated comments and revision histories, formulas, engineering specifications, or schematics
24 that define or otherwise describe in detail the algorithms or structure of software or hardware
25 designs whose disclosure to another Party or non-party would create a substantial risk of serious
26 harm that could not be avoided by less restrictive means.

27 2.7 Receiving Party: a Party that receives Disclosure or Discovery Material from a
28 Producing Party.

1 2.8 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this action.

3 2.9 Designating Party: a Party or Non-Party that designates information or items that
4 it produces in disclosures or in responses to discovery as “CONFIDENTIAL”, “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
6 CODE”.

7 2.10 Challenging Party: a Party or Non-Party that challenges the designation of
8 information or items under this Order.

9 2.11 Protected Material: any Disclosure or Discovery Material that is designated as
10 “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
11 “HIGHLY CONFIDENTIAL – SOURCE CODE”.

12 2.12 Outside Counsel of Record: attorneys who are not employees of a Party but who
13 are retained to represent or advise a Party and have appeared in this action on behalf of that Party
14 or are associated with a law firm which has appeared on behalf of that Party.

15 2.13 House Counsel: attorneys who are employees of a Party. House Counsel does not
16 include any Outside Counsel of Record or any other outside counsel.

17 2.14 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
18 well as their support staffs).

19 2.15 Expert: a person with specialized knowledge or experience in a matter pertinent to
20 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
21 consultant in this action and who is not a past or a current employee of a Party or of a competitor
22 of a Party and who, at the time of retention, is not anticipated to become an employee of a Party
23 or a competitor of a Party.

24 2.16 Professional Vendors: persons or entities that provide litigation support services
25 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
26 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

27 3. SCOPE

28 The protections conferred by this Stipulation and Order cover not only Protected

1 Material (as defined above), but also any information copied or extracted therefrom, as well as all
2 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
3 presentations by parties or counsel to or in court or in other settings that might reveal Protected
4 Material. However, the protections conferred by this Stipulation and Order do not cover the
5 following information: (a) any information that at the time of disclosure to a Receiving Party is in
6 the public domain or after its disclosure to a Receiving Party becomes part of the public domain
7 as a result of publication not involving a violation of this Order; or (b) any information known to
8 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure
9 from a source who obtained the information lawfully and under no obligation of confidentiality to
10 the Designating Party. Any use of Protected Material at trial shall be governed by a separate
11 agreement and/or order.

12 4. DURATION

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

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
22 or Non-Party that designates information or items for protection under this Order must take care
23 to limit any such designation to specific material that qualifies under the appropriate standards.
24 To the extent it is practical to do so, the Designating Party should designate for protection only
25 those parts of material, documents, items, or oral or written communications that qualify - so that
26 other portions of the material, documents, items, or communications for which protection is not
27 warranted are not swept unjustifiably within the ambit of this Order.

28 Mass, indiscriminate, or routinized designations are prohibited. Designations that

1 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
2 unnecessarily encumber or retard the case development process, or to impose unnecessary
3 expenses and burdens on other parties), expose the Designating Party to sanctions.

4 If it comes to a Designating Party's attention that information or items that it
5 designated for protection do not qualify for protection at all, or do not qualify for the level of
6 protection initially asserted, that Designating Party must promptly notify all other parties that it is
7 withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
9 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
10 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
11 designated before the material is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents
14 but not transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
15 affix the legend "CONFIDENTIAL", "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
16 ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains
17 protected material. If only a portion or portions of the material on a page qualifies for protection,
18 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins) and must specify, for each portion, that protection is being
20 asserted.

21 A Party or Non-Party that makes original documents or materials available for
22 inspection need not designate them for protection until after the inspecting Party has indicated
23 which material it would like copied and produced. During the inspection and before the
24 designation, all of the material made available for inspection shall be deemed "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY". After the inspecting Party has identified the
26 documents it wants copied and produced, the Producing Party must determine which documents,
27 or portions thereof, qualify for protection under this Order, then, before producing the specified
28 documents, the Producing Party must affix the legend "CONFIDENTIAL", "HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
2 CODE” on each page that contains Protected Material. If only a portion or portions of the
3 material on a page qualifies for protection, the Producing Party also must clearly identify the
4 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
5 each portion, that protection is being asserted.

6 (b) for testimony given in deposition or in other pretrial or trial proceedings,
7 that the Designating Party identify on the record, before the close of the deposition, hearing, or
8 other proceeding, all protected testimony, and specify that protection is being asserted. When it is
9 impractical to identify separately each portion of testimony that is entitled to protection, and when
10 it appears that substantial portions of the testimony may qualify for protection, the Designating
11 Party may invoke on the record (before the deposition or proceeding is concluded) a right to have
12 up to 21 days to identify the specific portions of the testimony as to which protection is sought
13 and to specify that protection is being asserted.

14 Only those portions of the testimony that are appropriately designated for
15 protection within the 21 days shall be covered by the provisions of this Stipulated Protective
16 Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days
17 afterwards if that period is properly invoked, that the entire transcript shall be treated as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

19 All Parties shall give the other parties notice if they reasonably expect a
20 deposition, hearing or other proceeding to include Protected Material so that the other parties can
21 ensure that individuals present at those proceedings are authorized to be there and have signed the
22 “Agreement To Be Bound by Protective Order.” The use of a document as an exhibit at a
23 deposition shall not in any way affect its designation as “CONFIDENTIAL”, “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
25 CODE”.

26 Transcripts containing Protected Material shall have an obvious legend on the title
27 page that the transcript contains Protected Material, and the title page shall be followed by a list
28 of all pages (including line numbers as appropriate) that have been designated as Protected

1 Material by the Designating Party. The Designating Party shall inform the court reporter of these
2 requirements. Any transcript that is prepared before the expiration of a 21-day period for
3 designation shall be treated during that period as if it had been designated "HIGHLY
4 CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless otherwise agreed, and
5 after the expiration of that period only as actually designated.

6 (c) for information produced in some form other than documentary, and for
7 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
8 container or containers in which the information or item is stored the legend "CONFIDENTIAL",
9 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL
10 – SOURCE CODE". If only portions of the information or item warrant protection, the
11 Producing Party, to the extent practicable, shall identify the protected portions.

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
13 designate qualified information or items does not, standing alone, waive the Designating Party's
14 right to secure protection under this Order for such material. Upon timely correction of a
15 designation, the Receiving Party must make reasonable efforts to assure that the material is
16 treated in accordance with the provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
19 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
20 designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic
21 burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right
22 to challenge a confidentiality designation by electing not to mount a challenge promptly after the
23 original designation is disclosed.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
25 process by providing written notice of each designation it is challenging and describing the basis
26 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
27 notice must recite that the challenge to confidentiality is being made according to this specific
28 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good

1 faith and must begin the process by conferring directly within fourteen days of the date of service
2 of notice (in voice to voice dialogue; other forms of communication are not sufficient). In
3 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
4 designation was not proper and must give the Designating Party an opportunity to review the
5 designated material, to reconsider the circumstances, and, if no change in designation is offered,
6 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
7 stage of the challenge process only if it has engaged in this meet and confer process first or
8 establishes that the Designating Party is unwilling to participate in the meet and confer process in
9 a timely manner.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
11 intervention, the Designating Party shall file and serve a motion under Civil Local Rule 7 (and in
12 compliance with Civil Local Rule 79-5, if applicable) to retain confidentiality within 21 days of
13 the initial notice of challenge or within fourteen days of the parties agreeing that the meet and
14 confer process will not resolve their dispute. Each such motion must be accompanied by a
15 competent declaration that affirms that the movant has complied with the meet and confer
16 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such
17 a motion or to file such declaration within 21 days shall automatically waive the confidentiality
18 designation for each challenged designation. Notwithstanding this provision, the Challenging
19 Party may file a motion challenging a confidentiality designation at any time if there is good
20 cause for doing so, including a challenge to the designation of a deposition transcript or any
21 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
22 competent declaration affirming that the movant has complied with the meet and confer
23 requirements imposed by the preceding paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the
25 Designating Party. Frivolous challenges, or those made for an improper purpose (e.g., to harass
26 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
27 to sanctions. Until the court rules on the challenge, all parties shall continue to afford the material
28 in question the level of protection to which it is entitled under the Producing Party's designation.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
3 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
5 to the categories of persons and under the conditions described in this Order. When the litigation
6 has been terminated, a Receiving Party must comply with the provisions of section 13, below
7 (FINAL DISPOSITION).

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

11 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
12 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
13 disclose any information or item designated CONFIDENTIAL only to:

14 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
15 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
16 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
17 hereto as Exhibit A;

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

21 (c) the named plaintiffs who have signed the "Agreement to Be Bound by
22 Protective Order" (Exhibit A);

23 (d) Experts (as defined in this Order) of the Receiving Party to whom
24 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
25 Bound by Protective Order" (Exhibit A);

26 (e) the Court and its personnel;

1 (f) court reporters, their staffs, professional jury or trial consultants, and
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
3 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

4 (g) during their depositions, witnesses in the action to whom disclosure is
5 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
6 (Exhibit A) unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
7 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
8 separately bound by the court reporter and may not be disclosed to anyone except as permitted
9 under this Stipulated Protective Order.

10 (h) the author or recipient of a document containing the information or a
11 person who otherwise possessed or knew the information.

12 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and
13 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items. Unless otherwise
14 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
15 disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS'
16 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

17 (a) the Receiving Party's Outside Counsel of record in this action, as well as
18 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
19 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
20 hereto as Exhibit A;

21 (b) the Receiving Party's House Counsel and their staff to whom it is
22 reasonably necessary to disclose the information for this litigation and who have signed the
23 "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

24 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
25 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective
26 Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,
27 have been followed];

28 (d) the Court and its personnel;

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1 (e) court reporters, their staffs, professional jury or trial consultants, and
2 professional vendors to whom disclosure is reasonably necessary for this litigation and who have
3 signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

4 (f) the author of a document containing the information or a person who
5 otherwise possessed or knew the information.

6 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
8 CODE" Information or Items to "Experts".

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

25 (b) A Party that makes a request and provides the information specified in the
26 preceding respective paragraphs may disclose the subject Protected Material to the identified
27 Expert unless, within fourteen days of delivering the request, the Party receives a written
28

1 objection from the Designating Party. Any such objection must set forth in detail the grounds on
2 which it is based.

3 (c) A Party that receives a timely written objection must meet and confer with
4 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
5 agreement within seven days of the written objection. If no agreement is reached, the Party
6 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the Court
8 to do so. Any such motion must describe the circumstances with specificity, set forth in detail the
9 reasons for which the disclosure to the Expert is reasonably necessary, assess the risk of harm that
10 the disclosure would entail and suggest any additional means that might be used to reduce that
11 risk. In addition, any such motion must be accompanied by a competent declaration in which the
12 movant describes the parties' efforts to resolve the matter by agreement (i.e., the extent and the
13 content of the meet and confer discussions) and sets forth the reasons advanced by the
14 Designating Party for its refusal to approve the disclosure.

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

18 8. SOURCE CODE.

19 (a) To the extent production of Source Code becomes necessary in this case, a
20 Producing Party may designate Source Code as "HIGHLY CONFIDENTIAL - SOURCE CODE"
21 if it comprises or includes confidential, proprietary and/or trade secret Source Code.

22 (b) Protected Material designated as "HIGHLY CONFIDENTIAL - SOURCE
23 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL -
24 ATTORNEYS' EYES ONLY" information, and may be disclosed solely to the individuals to
25 whom "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" information may be
26 disclosed, as set forth in Paragraphs 7.3 and 7.4.

27 (c) Any Source Code produced in discovery shall be made available for
28 inspection in a format through which it could be reasonably reviewed and searched during normal

1 business hours or other mutually agreeable times at an office of the Producing Party's counsel or
2 another mutually agreed location. The Source Code shall be made available for inspection on a
3 secured computer in a secured room without Internet access or network access to other
4 computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of
5 the Source Code onto any recordable media or recordable device. The Producing Party may
6 visually monitor the activities of the Receiving Party's representatives during any Source Code
7 review, but only to ensure that there is no unauthorized recording, copying, or transmission of the
8 Source Code.

9 (d) The Receiving Party shall be allowed to request paper copies of limited
10 portions of Source Code that are reasonably necessary for the preparation of court filings,
11 pleadings, expert reports or other papers or for deposition or trial, but shall not request paper
12 copies for purposes of reviewing the Source Code elsewhere instead of reviewing it electronically
13 as set forth in paragraph (c) in the first instance. The Producing Party shall provide all such
14 Source Code in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL -
15 SOURCE CODE." The Producing Party may challenge the amount of Source Code requested in
16 hard copy form pursuant to the timeframes set forth in the dispute resolution procedures of
17 Paragraph 6 whereby the Producing Party is the "Challenging Party" and the Receiving Party is
18 the "Designating Party" for purposes of dispute resolution.

19 (e) The Receiving Party shall maintain a record of any individual who has
20 inspected any portion of the Source Code in electronic or paper form. The Receiving Party shall
21 maintain all paper copies of any printed portions of the Source Code in a secured, locked area.
22 The Receiving Party shall not create any electronic or other images of the paper copies and shall
23 not convert any of the information contained in the paper copies into any electronic format. The
24 Receiving Party shall only make additional paper copies if such additional copies are (1)
25 necessary to prepare court filings, pleadings, or other papers (including a testifying expert's
26 expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its
27 case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the
28 end of each day, and must not be given to or left with a Court Reporter or any other individual.

1 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION.

3 If a Party is served with a subpoena or an order issued in other litigation that
4 would compel disclosure of any information or items designated in this action as
5 “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
6 “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification must
8 include a copy of the subpoena or court order;

9 (b) promptly notify in writing the Party who caused the subpoena or order to
10 issue in the other litigation that some or all the material covered by the subpoena or order is the
11 subject of this Protective Order. Such notification shall include a copy of this Stipulated
12 Protective Order; and

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

15 If the Designating Party timely seeks a protective order, the Party served with the
16 subpoena or order shall not produce any information designated in this action as
17 “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
18 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from
19 which the subpoena or order was issued or obtaining the Designating Party’s permission. The
20 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
21 confidential material - and nothing in these provisions should be construed as authorizing or
22 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

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

25 (a) The terms of this Order are applicable to information produced by a Non-
26 Party in this action and designated as “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”, and such
28 information produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be construed as
2 prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required by a valid discovery request to produce
4 a Non-Party's confidential information in its possession and the Party is subject to an agreement
5 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 1. promptly notify in writing the Requesting Party and the Non-Party
7 that some or all the confidential information requested is subject to the confidentiality rights of a
8 Non-Party;

9 2. promptly provide the Non-Party with a copy of the Stipulated
10 Protective Order in this litigation, the relevant discovery request(s), and a reasonably particular
11 description of the information requested; and

12 3. make the information requested available for inspection by the
13 Non-Party.

14 (c) If the Non-Party fails to object or seek a protective order from this Court
15 within fourteen days of receiving the notice and accompanying information, the Receiving Party
16 may produce the Non-Party's confidential information responsive to the discovery request. If the
17 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
18 in its possession or control that is subject to the confidentiality rights of the Non-Party. Absent a
19 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection
20 in this Court of its Protected Material.

21 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL. If a
22 receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to
23 any person or in any circumstance not authorized under this Stipulated Protective Order, the
24 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
25 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
26 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and
27 (d) request such person or persons to execute the "Acknowledgment and Agreement to Be
28 Bound" that is attached hereto as Exhibit A.

1 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL. When a Producing Party gives notice to the other parties that certain
3 inadvertently produced material is subject to a claim of privilege or other protection, the
4 obligations of the parties that received such material are those set forth in Rule 26(b)(5)(B) of the
5 Federal Rules of Civil Procedure. This provision is not intended to modify whatever procedure
6 may be established in an e-discovery order that provides for production without prior privilege
7 review.

8 13. FILING PROTECTED MATERIAL. Without written permission from the
9 Designating Party or a court order secured after appropriate notice to all interested persons, a
10 Party may not file in the public record in this action any Protected Material. A Party that seeks to
11 file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
12 material may only be filed under seal pursuant to a court order authorizing the sealing of the
13 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
14 only upon a request establishing that the Protected Material at issue is privileged or protectable as
15 a trade secret or otherwise entitled to protection under the law.

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

1 such materials contain Protected Material. Any such archival copies that contain or constitute
2 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION),
3 above.

4 15. MISCELLANEOUS

5 15.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
6 seek its modification by the Court in the future.

7 15.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
8 Order no Party waives any right it otherwise would have to object to disclosing or producing any
9 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
10 Party waives any right to object on any ground to use in evidence of any of the material covered
11 by this Protective Order.

12 15.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
13 laws and regulations relating to the export of technical data contained in such Protected Material,
14 including the release of such technical data to foreign persons or nationals in the United States or
15 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
16 data and the Receiving Party shall take such measures necessary to ensure compliance.

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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1 Dated: March 11, 2010

GISKAN SOLOTAROFF ANDERSON &
STEWART LLP

3 KAMBERLAW LLC

4 FINKELSTEIN THOMPSON LLP

5 By /s/ Oren S. Giskan

6 OREN S. GISKAN
7 SCOTT KAMBER
8 ROSEMARY RIVAS
9 Attorneys for Plaintiffs
JOHN KENNEDY, JOHN EVERS,
EVERETT HORM, GARY KATZER AND
LESLIE LALUZERNE

10 Dated: March 11, 2010

DLA PIPER LLP (US)

12 By /s/ John R. Hurley

13 LUANNE SACKS
14 JOHN R. HURLEY
15 Attorneys for Defendant
16 SONY COMPUTER ENTERTAINMENT OF
17 AMERICA INC.

18 I hereby attest that I have obtained the concurrence of all other signatories in the
19 filing of this document.

20 Dated: March 11, 2010

DLA PIPER LLP (US)

22 By /s/ John R. Hurley

23 JOHN R. HURLEY
24 Attorneys for Defendant
25 SONY COMPUTER ENTERTAINMENT OF
26 AMERICA INC.

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PURSUANT TO STIPULATION, IT IS SO ORDERED. SUBJECT TO ATTACHED MODIFICATION.

DATED: 3/12, 2010

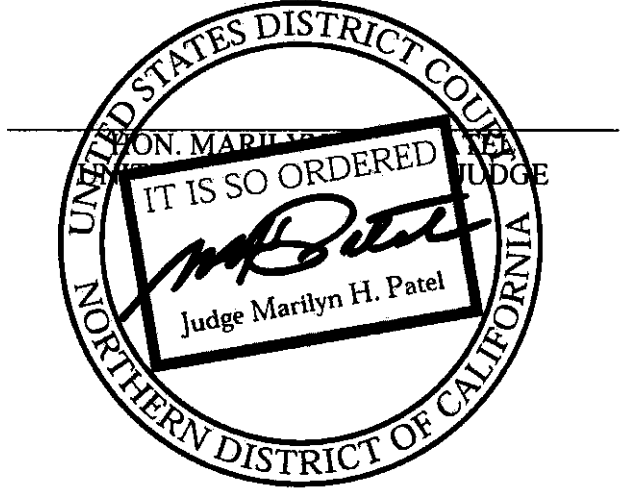


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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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 case of [*In re Sony PS3 Litigation* (Case No. CV 09-04701 (MHP))]. 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: _____

[printed name]

Signature: _____

[signature]

ORDER APPROVING AND MODIFYING STIPULATED PROTECTIVE ORDER

IN C 09-4701 MHP *In re Sony PS3 Litigation*

The above (attached) stipulation re confidentiality is approved except as follows:

- 1) Counsel shall narrowly tailor the documents, materials or papers that come within this order
- 2) As applied to documents, materials or papers filed with the court, this order shall be used sparingly to cover only those items that are clearly trade secret, come within clearly defined areas of privileges accepted in the federal courts, or have a compelling need for confidentiality.
- 3) Documents, material or papers submitted as exhibits to or in support of motions or for pretrial, trial or other court proceedings shall not be filed under seal except by order the court. The parties are reminded that the federal courts are public fora and matters to be heard by the court are conducted publicly. Furthermore, documents, materials or other papers submitted as exhibits will remain as part of the court record and may not be withdrawn without order of the court.
- 4) Under no circumstances shall memoranda or pleadings required to be filed with the court pursuant to the Federal Rules of Civil Procedure or the Civil Local Rules of this District be filed under seal.

IT IS SO ORDERED.

Dated: 3/12/2010



Marilyn Hall Patel
United States District Court Judge

Fischer, Kathleen

From: ECF-CAND@cand.uscourts.gov
Sent: Tuesday, March 16, 2010 11:18 AM
To: efilings@cand.uscourts.gov
Subject: Activity in Case 3:09-cv-04701-MHP Kennedy v. Sony Computer Entertainment America Inc. Protective Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court
Northern District of California
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Case Name: Kennedy v. Sony Computer Entertainment America Inc.

Case Number: 3:09-cv-04701-MHP

Filer:

Document Number: 35

Docket Text:

STIPULATED PROTECTIVE ORDER; Signed by Judge Marilyn Hall Patel on 3/12/2010. (Attachments: # (1) Supplement)(awb, COURT STAFF) (Filed on 3/16/2010)

3:09-cv-04701-MHP Notice has been electronically mailed to:

3/16/2010

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3:09-cv-04701-MHP Please see General Order 45 Section IX C.2 and D; Notice has NOT been electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\09-4701 Proto.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=3/16/2010] [FileNumber=6187131-0]

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411bb5b90f302ca3f742cb0a530e1fc540a35a4b742dc01560fce752e14]]

Document description:Supplement

Original filename:C:\fakepath\PS3ProtectiveOrder.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=3/16/2010] [FileNumber=6187131-1]

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