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7 Attorneys for ByteShield, Inc., Defendant AND Counter-
 8 Complainant

9 **IN THE UNITED STATES DISTRICT COURT**
 10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 MICROMEDIA, B.V., a corporation of The
 Netherlands, dba MICROMEDIA A.D.S.,

13 Plaintiff,

14 v.

15 BYTESHIELD, INC.,

16 Defendant.

18 BYTESHIELD, INC.,

19 Counter-Complainant,

20 v.

21 MICROMEDIA, B.V., a corporation of The
 Netherlands, dba MICROMEDIA A.D.S.,

22 Counter-Defendant.

Case No.: 10-CV-03861 EDL

**STIPULATED PROTECTIVE ORDER
 FOR LITIGATION INVOLVING
 HIGHLY SENSITIVE
 CONFIDENTIAL INFORMATION**

Dept: E

Judge: Hon. Elizabeth D. Laporte
 Complaint Filed: August 27, 2010

24 Plaintiff and Counter-Defendant Micromedia, B.V. and Defendant and Counter-
 25 Complainant ByteShield, Inc. (collectively, "the Parties"), respectively submit the following
 26 Stipulated Protective Order for Litigation Involving Highly Sensitive Confidential Information for
 27 consideration and entry by the Court.

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5 the Parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The Parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords from public disclosure and use
8 extends only to the limited information or items that are entitled to confidential treatment under the
9 applicable legal principles. The Parties further acknowledge, as set forth in Section 12.4, below, that
10 this Stipulated Protective Order does not entitle them to file confidential information under seal;
11 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
12 applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
17 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
18 of Civil Procedure 26(c).

19 2.3 Counsel: attorneys who are not employees of a party to this action but are
20 retained to represent or advise a party to this action and have appeared in this action on behalf of that
21 party or are affiliated with a law firm which has appeared on behalf of that party.

22 2.4 Designating Party: a Party or Non-Party that designates information or items
23 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the
26 medium or manner in which it is generated, stored, or maintained (including, among other things,
27 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
28 responses to discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert
3 witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a
4 Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a
5 Party or of a Party's competitor.

6 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
7 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party
8 or Non-Party would create a substantial risk of serious harm that could not be avoided by less
9 restrictive means.

10 2.8 Non-Party: any natural person, partnership, corporation, association, or other
11 legal entity not named as a Party to this action.

12 2.9 Party: any party to this action, including all of its officers, directors,
13 employees, consultants, retained experts, and Counsel (and their support staffs).

14 2.10 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
15 Material in this action.

16 2.11 Professional Vendors: persons or entities that provide litigation support
17 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
18 organizing, storing, or retrieving data in any form or medium) and their employees and
19 subcontractors.

20 2.12 Protected Material: any Disclosure or Discovery Material that is designated
21 as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

22 2.13 Receiving Party: a Party that receives Disclosure or Discovery Material from
23 a Producing Party.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected
26 Material (as defined above), but also (1) any information copied or extracted from Protected
27 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
28 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected

1 Material. However, the protections conferred by this Stipulation and Order do not cover the
2 following information: (a) any information that is in the public domain at the time of disclosure to a
3 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
4 result of publication not involving a violation of this Order, including becoming part of the public
5 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the
6 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
7 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
8 Protected Material at trial shall be governed by a separate agreement or order.

9 4. DURATION

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

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
19 Party or Non-Party that designates information or items for protection under this Order must take
20 care to limit any such designation to specific material that qualifies under the appropriate standards.
21 To the extent it is practical to do so, the Designating Party must designate for protection only those
22 parts of material, documents, items, or oral or written communications that qualify – so that other
23 portions of the material, documents, items, or communications for which protection is not warranted
24 are not swept unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
26 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
27 unnecessarily encumber or retard the case development process or to impose unnecessary expenses
28 and burdens on other parties) expose the Designating Party to sanctions.

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

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this
6 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
7 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
8 designated before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic documents, but
11 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
12 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
13 ONLY" to each page that contains protected material. If only a portion or portions of the material
14 on a page qualifies for protection, the Producing Party also must clearly identify the protected
15 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,
16 the level of protection being asserted.

17 A Party or Non-Party that makes original documents or materials available for
18 inspection need not designate them for protection until after the inspecting Party has indicated which
19 material it would like copied and produced. During the inspection and before the designation, all of
20 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
21 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
22 copied and produced, the Producing Party must determine which documents, or portions thereof,
23 qualify for protection under this Order. Then, before producing the specified documents, the
24 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected Material.
26 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
27 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
28 margins) and must specify, for each portion, the level of protection being asserted.

1 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
2 the Designating Party identify on the record, before the close of the deposition, hearing, or other
3 proceeding, all protected testimony and specify the level of protection being asserted. When it is
4 impractical to identify separately each portion of testimony that is entitled to protection and it
5 appears that substantial portions of the testimony may qualify for protection, the Designating Party
6 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
7 to have up to 21 days to identify the specific portions of the testimony as to which protection is
8 sought and to specify the level of protection being asserted. Only those portions of the testimony
9 that are appropriately designated for protection within the 21 days shall be covered by the provisions
10 of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition
11 or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be
12 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

19 Transcripts containing Protected Material shall have an obvious legend on the title
20 page that the transcript contains Protected Material, and the title page shall be followed by a list of
21 all pages (including line numbers as appropriate) that have been designated as Protected Material
22 and the level of protection being asserted by the Designating Party. The Designating Party shall
23 inform the court reporter of these requirements. Any transcript that is prepared before the expiration
24 of a 21-day period for designation shall be treated during that period as if it had been designated
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
26 agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

27 (c) for information produced in some form other than documentary and for any
28 other tangible items, that the Producing Party affix in a prominent place on the exterior of the

1 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
3 information or item warrant protection, the Producing Party, to the extent practicable, shall identify
4 the protected portion(s) and specify the level of protection being asserted.

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
6 to designate qualified information or items does not, standing alone, waive the Designating Party’s
7 right to secure protection under this Order for such material. Upon timely correction of a
8 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
9 accordance with the provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
12 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
14 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
15 confidentiality designation by electing not to mount a challenge promptly after the original
16 designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
18 process by providing written notice of each designation it is challenging and describing the basis for
19 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
20 must recite that the challenge to confidentiality is being made in accordance with this specific
21 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith
22 and must begin the process by conferring directly within 14 days of the date of service of notice. In
23 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
24 designation was not proper and must give the Designating Party an opportunity to review the
25 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
26 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of
27 the challenge process only if it has engaged in this meet and confer process first or establishes that
28 the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

1 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
2 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
3 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
4 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
5 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
6 competent declaration affirming that the movant has complied with the meet and confer
7 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
8 motion including the required declaration within 21 days (or 14 days, if applicable) shall
9 automatically waive the confidentiality designation for each challenged designation. In addition, the
10 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
11 good cause for doing so, including a challenge to the designation of a deposition transcript or any
12 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
13 competent declaration affirming that the movant has complied with the meet and confer
14 requirements imposed by the preceding paragraph.

15 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or
17 impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to
18 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file
19 a motion to retain confidentiality as described above, all parties shall continue to afford the material
20 in question the level of protection to which it is entitled under the Producing Party's designation
21 until the court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this case only for
25 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
26 disclosed only to the categories of persons and under the conditions described in this Order. When
27 the litigation has been terminated, a Receiving Party must comply with the provisions of section 13
28 below (FINAL DISPOSITION).

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

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
5 disclose any information or item designated “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Counsel in this action, as well as employees of said
7 Counsel to whom it is reasonably necessary to disclose the information for this litigation and who
8 have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
9 A;

10 (b) the officers, directors, and employees of the Receiving Party to whom
11 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and
12 Agreement to Be Bound” (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
14 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

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

20 (f) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
22 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
23 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
24 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
25 this Stipulated Protective Order.

26 (g) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information.
28

1 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
2 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
3 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

5 (a) the Receiving Party’s Counsel in this action, as well as employees of said
6 Counsel to whom it is reasonably necessary to disclose the information for this litigation and who
7 have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
8 A;

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

13 (c) the court and its personnel;

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

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

19 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

21 (a) Unless otherwise ordered by the court or agreed to in writing by the
22 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
23 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
24 ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that
25 (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
26 ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
27 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a
28 copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies

1 each person or entity from whom the Expert has received compensation or funding for work in his or
2 her areas of expertise or to whom the expert has provided professional services, including in
3 connection with a litigation, at any time during the preceding five years,¹ and (6) identifies (by name
4 and number of the case, filing date, and location of court) any litigation in connection with which the
5 Expert has offered expert testimony, including through a declaration, report, or testimony at a
6 deposition or trial, during the preceding five years.

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

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

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

25
26 _____
27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
28 party, then the Expert should provide whatever information the Expert believes can be disclosed
without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
shall be available to meet and confer with the Designating Party regarding any such engagement.

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

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

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

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

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

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

21 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
22 THIS LITIGATION

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

28

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

4 1. promptly notify in writing the Requesting Party and the Non-Party that
5 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

6 2. promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
8 description of the information requested; and

9 3. make the information requested available for inspection by the Non-
10 Party.

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

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

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

11 12. MISCELLANEOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
13 to seek its modification by the court in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
15 Order no Party waives any right it otherwise would have to object to disclosing or producing any
16 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
17 Party waives any right to object on any ground to use in evidence of any of the material covered by
18 this Protective Order.

19 12.3 Export Control. Disclosure of Protected Material shall be subject to all
20 applicable laws and regulations relating to the export of technical data contained in such Protected
21 Material, including the release of such technical data to foreign persons or nationals in the United
22 States or elsewhere. The Producing Party shall be responsible for identifying any such controlled
23 technical data, and the Receiving Party shall take measures necessary to ensure compliance.

24 12.4 Filing Protected Material. Without written permission from the Designating
25 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
26 in the public record in this action any Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
28 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at

1 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
2 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
3 protection under the law. If a Receiving Party's request to file Protected Material under seal
4 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
5 Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise
6 instructed by the court.

7 13. FINAL DISPOSITION

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

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: January 25, 2011

WASSERMAN, COMDEN, CASSELMAN &
ESENSTEN, L.L.P.

4

ROBERT L. ESENSTEN
KATHRYN S. MARSHALL

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By: /s/ Kathryn S. Marshall

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KATHRYN S. MARSHALL

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Attorneys for Plaintiff, MICROMEDIA B.V.,
a corporation of The Netherlands, *dba*
MICROMEDIA A.D.S.

8

9 DATED: January 25, 2011

DUANE MORRIS, LLP

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STEPHEN H. SUTRO

11

JENNIFER B. FISHER

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JESSICA ARLAUCKAS BOHL

13

By: /s/ Jennifer B. Fisher

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JENNIFER B. FISHER

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Attorneys for Defendant, BYTESHIELD,
INC.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

17

DATED: January 28, 2011

Elizabeth D. Laporte

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Elizabeth Laporte

19

United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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2
3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that
5 I have read in its entirety and understand the Stipulated Protective Order that was issued by the
6 United States District Court for the Northern District of California on [date] in the case of
7 _____ ***Micromedia B.V. v. ByteShield, Inc., Case No. 3:10-cv-03861-EDL***. I
8 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
9 understand and acknowledge that failure to so comply could expose me to sanctions and punishment
10 in the nature of contempt. I solemnly promise that I will not disclose in any manner any information
11 or item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

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

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

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
24 [printed name]

25 Signature: _____
26 [Signature]

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