

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BE IN, INC., a New York corporation)
22) CASE NO.: 5:12-cv-03373-LHK
23 Plaintiff,) **[PROPOSED] STIPULATED**
24 v.) **PROTECTIVE ORDER**
25)
26 GOOGLE, INC., a California corporation,)
27 YOUTUBE, LLC, a Delaware limited liability)
28 company; and GOOGLE UK LTD., a private)
limited company registered in England and)
Wales,)
Defendants.)

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
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords from public disclosure
8 and use extends only to the limited information or items that are entitled to confidential treatment
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section
10 13.4, below, that this Stipulated Protective Order does not entitle them to file confidential
11 information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that
12 must be followed and the standards that will be applied when a party seeks permission from the
13 court to file material under seal.

14 **2. DEFINITIONS**

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

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
19 of Civil Procedure 26(c). In particular, Information or Items designated CONFIDENTIAL shall
20 mean all material produced for or disclosed in connection with this action to a receiving party that
21 constitutes confidential or commercially sensitive technical, sales, marketing, personal, or
22 financial information of the producing party (including any party to this action and any non-party
23 producing information or material voluntarily or pursuant to a subpoena or a court order in
24 connection with this action), or information that the producing party is under a legal obligation to
25 maintain as confidential, whether embodied in documentary, tangible or physical form, or the
26 factual knowledge of persons, and which has been so designated by the producing party.

27 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
28 well as their support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information or items that it
2 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

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

8 2.7 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert
10 witness or as a consultant in this action, (2) is not (a) a past or current employee of a Party or (b) a
11 current employee of a direct competitor of a Party in the technology or line of business relevant to
12 this action or (c) a past employee of such a competitor with a continuing connection to the former
13 employer such as ongoing consulting, contracting, service on a board or advisory board, or project
14 support, and (3) at the time of retention, is not anticipated to become an employee of a Party or of
15 a direct competitor of a Party in the technology or line of business relevant to this action. The
16 Parties agree that they will act reasonably and in good faith in making any assertion that an entity
17 is or is not properly deemed a direct competitor for purposes of this order. Any dispute
18 concerning whether an entity is or is not a direct competitor may be resolved pursuant to the
19 procedure set forth in paragraph 7.4(c) of this order.

20 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
21 Items: extremely sensitive “Confidential Information or Items” that contain extremely sensitive
22 information, the disclosure of which to another party would create a risk of competitive injury that
23 could not be avoided by less restrictive means. Protected Information designated HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY may include, but is not limited to: (i)
25 marketing, financial, sales, web traffic, research and development, or technical, data or
26 information; (ii) commercially sensitive competitive information, including, without limitation,
27 information obtained from a nonparty pursuant to a current Nondisclosure Agreement (“NDA”);
28 (iii) information or data relating to future products not yet commercially released and/or strategic

1 plans; (iv) trade secret, or other confidential research and development information; and, (v)
2 commercial agreements, settlement agreements or settlement communications, the disclosure of
3 which is likely to cause harm to the competitive position of the producing party; provided that
4 such information in categories (i)-(v) contains extremely sensitive information, the disclosure of
5 which to another party would create a risk of competitive injury that could not be avoided by less
6 restrictive means.

7 2.10 House Counsel: attorneys who are employees of a party to this action. House
8 Counsel does not include Outside Counsel of Record or any other outside counsel.

9 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
10 entity not named as a Party to this action.

11 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
12 action but are retained to represent or advise a party to this action and have appeared in this action
13 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

14 2.13 Party: any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
17 Material in this action.

18 2.15 Professional Vendors: persons or entities that provide litigation support services
19 (e.g., photocopying, videotaping, translating, preparing deposition transcripts, exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and their
21 employees and subcontractors.

22 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
23 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

24 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
25 Producing Party.

26 **3. SCOPE**

27 The protections conferred by this Stipulation and Order cover not only Protected Material
28 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)

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

12 **4. DURATION**

13 Even after final disposition of this litigation, the confidentiality obligations imposed by this
14 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
15 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
16 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
17 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
18 including the time limits for filing any motions or applications for extension of time pursuant to
19 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 shall use
23 reasonable care when designating Protected Material. Mass, indiscriminate, or routinized
24 designations are prohibited. Designations that are shown to be clearly unjustified or that have been
25 made for an improper purpose (e.g., to unnecessarily encumber or retard the case development
26 process or to impose unnecessary expenses and burdens on other parties) expose the Designating
27 Party to sanctions.

28 If it comes to a Designating Party's attention that information or items that it designated

1 for protection do not qualify for protection at all or do not qualify for the level of protection
2 initially asserted, that Designating Party must promptly notify all other parties that it is
3 withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
5 (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,
6 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
7 designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents,
10 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
11 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY” to each page that contains protected material.

13 A Party or Non-Party that makes original documents or materials available for inspection
14 need not designate them for protection until after the inspecting Party has indicated which material
15 it would like copied and produced. During the inspection and before the designation, all of the
16 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
18 copied and produced, the Producing Party must determine which documents qualify for protection
19 under this Order. Then, before producing the specified documents, the Producing Party must affix
20 the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
21 EYES ONLY”) to each page that contains Protected Material.

22 (b) for testimony given in deposition or in other pretrial or trial proceedings,
23 that the Designating Party identify on the record, before the close of the deposition, hearing, or
24 other proceeding, all protected testimony and specify the level of protection being asserted. When
25 it is impractical to identify separately each portion of testimony that is entitled to protection and it
26 appears that substantial portions of the testimony may qualify for protection, the Designating Party
27 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
28 to have up to 21 days to identify the specific portions of the testimony as to which protection is

1 sought and to specify the level of protection being asserted. Only those portions of the testimony
2 that are appropriately designated for protection within the 21 days shall be covered by the
3 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
4 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
5 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY.” Designations shall be made by notifying all parties in writing of
7 the specific pages and lines of the transcript that should be treated as Protected Material.

8 The use of a document as an exhibit at a deposition shall not in any way affect its
9 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY.”

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

20 (c) for information produced in some form other than documentary and for any
21 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
22 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
23 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of
24 the information or item warrant protection, the Producing Party, to the extent practicable, shall
25 identify the protected portion(s) and specify the level of protection being asserted.

26 (d) All Protected Material not reduced to documentary, tangible or physical
27 form, or which cannot be conveniently designated as set forth in Section 5.2(a)-(c) or pursuant to
28 another confidentiality designation set forth in this Order, shall be designated by the Producing

1 Party by informing the Receiving Party of the designation in writing.

2 5.3 Inadvertent Failures to Designate. Inadvertent or unintentional production of
3 documents or things containing Protected Material that are not designated as one of the categories
4 of Protected Material at the time of production shall not be deemed a waiver in whole or in part of
5 a claim for confidential treatment. With respect to documents, the producing party shall
6 immediately upon discovery notify the other parties of the error in writing and provide
7 replacement pages bearing the appropriate confidentiality legend. In the event of any disclosure of
8 Protected Material other than in a manner authorized by this Order, including any unintentional or
9 inadvertent disclosure, counsel for the party responsible for the disclosure shall immediately notify
10 opposing counsel of all of the pertinent facts, and make every effort to further prevent
11 unauthorized disclosure including, retrieving all copies of the Protected Material from the
12 recipient(s) thereof, and securing the agreement of the recipients not to further disseminate the
13 Protected Material in any form. Compliance with the foregoing shall not prevent the producing
14 party from seeking further relief from the Court. Compliance with this Section shall not excuse a
15 violation of this Order or exempt a violating party from sanctions pursuant to this Order.

16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
18 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
20 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
21 challenge a confidentiality designation by electing not to mount a challenge promptly after the
22 original designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
24 process by providing written notice of each designation it is challenging and describing the basis
25 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
26 notice must recite that the challenge to confidentiality is being made in accordance with this
27 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
28 good faith and must begin the process by conferring directly (in voice to voice dialogue; other

1 forms of communication are not sufficient) within 14 days of the date of service of notice. In
2 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
3 designation was not proper and must give the Designating Party an opportunity to review the
4 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
5 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage
6 of the challenge process only if it has engaged in this meet and confer process first or establishes
7 that the Designating Party is unwilling to participate in the meet and confer process in a timely
8 manner.

9 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
10 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
11 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if
12 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties
13 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each
14 such motion must be accompanied by a competent declaration affirming that the movant has
15 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
16 the Designating Party to make such a motion including the required declaration within 21 days (or
17 14 days, if applicable) shall automatically waive the confidentiality designation for each
18 challenged designation. In addition, the Challenging Party may file a motion challenging a
19 confidentiality designation at any time if there is good cause for doing so, including a challenge to
20 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
21 this provision must be accompanied by a competent declaration affirming that the movant has
22 complied with the meet and confer requirements imposed by the preceding paragraph.

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

1 designation until the court rules on the challenge.

2 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

3 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
4 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
5 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
6 the categories of persons and under the conditions described in this Order. When the litigation has
7 been terminated, a Receiving Party must comply with the provisions of Section 14 below (FINAL
8 DISPOSITION).

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

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
12 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
13 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 Outside Counsel of Record to whom it is reasonably necessary to disclose the
16 information for this litigation;

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

20 (c) Experts (as defined in this Order) of the Receiving Party (1) to whom
21 disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment
22 and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
23 paragraph 7.4(a)(2), below, have been followed;

24 (d) the court and its personnel;

25 (e) court reporters and Professional Vendors to whom disclosure is reasonably
26 necessary for this litigation and who have either signed (i) the “Acknowledgment and Agreement
27 to Be Bound” (Exhibit A) or (ii) a non-disclosure agreement with the law firm or Party retaining
28 them;

1 (f) professional jury or trial consultants to whom disclosure is reasonably
2 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
3 Bound” (Exhibit A);

4 (g) during their depositions, witnesses in the action to whom disclosure is
5 reasonably necessary and as permitted by the terms of this Order, unless otherwise agreed by the
6 Designating Party or ordered by the court. Deposition testimony or exhibits to depositions that
7 reveal Protected Material may not be disclosed to anyone except as permitted under this Stipulated
8 Protective Order.

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

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
12 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
13 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” 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 and who have signed the “Acknowledgment and Agreement to Be
18 Bound” that is attached hereto as Exhibit A;

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

23 (c) the court and its personnel;

24 (d) court reporters and Professional Vendors to whom disclosure is reasonably
25 necessary for this litigation and who have either signed (i) the “Acknowledgment and Agreement
26 to Be Bound” (Exhibit A) or (ii) a non-disclosure agreement with the law firm or Party retaining
27 them;

28 (e) professional jury or trial consultants to whom disclosure is reasonably

1 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A);

3 (f) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information;

5 (g) With respect to any identification of any trade secret claims by Plaintiff (in a
6 pre-discovery identification statement, an interrogatory response, or a free-standing claim
7 identification statement) designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY”, any individual employee of any Defendant whom Plaintiff alleges has received and/or
9 misappropriated such information may have access to the trade secret claim identification, but
10 only in the presence of Outside Counsel of Record for Defendants. The employee shall take no
11 notes regarding, and shall receive no paper or electronic copies of, such trade secret claim
12 identifications. This provision is limited to individual employees and shall not be interpreted as
13 allowing disclosure to an identified group or category of employees unless each such employee
14 individually qualifies for such disclosure. This provision is limited to the identification of
15 individual trade secret claims Plaintiff has alleged were received and/or misappropriated by the
16 employee in question, and shall not permit such employee to view other individual trade secret
17 claim identifications that are not the subject of such an allegation.

18 7.4 Procedures for Approving or Objecting to Disclosure of “CONFIDENTIAL” or
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

20 (a) Unless otherwise ordered by the court or agreed to in writing by the
21 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
22 information or item that has been designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
23 – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written disclosure
24 to the Designating Party that (1) sets forth the full name of the Expert and the city and state of his
25 or her primary residence, (2) attaches a copy of the Expert’s current resume covering at least the
26 past ten years, (3) identifies the Expert’s current employer(s), (4) identifies (by name and number
27 of the case, filing date, and location of court) any litigation in connection with which the Expert
28 has offered expert testimony, including through a declaration, report, or testimony at a deposition

1 or trial, during the preceding five years, and (5) identifies any litigation in connection with which
2 the Expert has provided non-testimonial consultation during the preceding five years to the extent
3 permitted by confidentiality obligations to clients.

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

8 (c) A Party that receives a timely written objection must meet and confer with the
9 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
10 agreement within seven days of the written objection. If no agreement is reached, the Party
11 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
12 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking
13 permission from the Court to do so. Any such motion must describe the circumstances with
14 specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary,
15 assess the risk of the alleged harm identified by the Designating Party that the disclosure would
16 entail, and suggest any additional means that could be used to reduce that risk. In addition, any
17 such motion must be accompanied by a competent declaration describing the parties' efforts to
18 resolve the matter by agreement (i.e., the extent and the content of the meet and confer
19 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to
20 approve the disclosure.

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

24 **8. USE OF PROTECTED INFORMATION AT HEARING, DEPOSITION, OR**
25 **TRIAL; COURT FILINGS**

1 (a) Except as may be otherwise ordered by the Court, any person may be examined as a
2 witness at depositions and trial and may testify concerning all Protected Material of which such
3 person has prior knowledge. Without in any way limiting the generality of the foregoing:

4 (i) A present director, officer, and/or employee of a producing party may be examined and
5 may testify concerning (a) all Protected Material which has been produced by that party or, (b) in
6 the case of a witness who is a present director, officer, and/or employee of a Defendant, all
7 Protected Material produced by a Defendant or other Google-owned entity;

8 (ii) A former director, officer, agent and/or employee of a producing party may be
9 interviewed, examined and may testify concerning all Protected Material of which he or she has
10 personal knowledge, including any Protected Material that refers to matters of which the witness
11 has personal knowledge, which pertains to the period or periods of his or her employment, and
12 which has been produced by that party or, in the case of a witness who is a former director, officer,
13 and/or employee of a Defendant, was produced by a Defendant or other Google-owned entity;

14 (iii) Non-parties may be examined or testify concerning any Protected Material of a
15 producing party, which appears on its face or from other documents or testimony to have been
16 received from or communicated to the non-party as a result of any contact or relationship with the
17 producing party or a representative of the producing party, or where the producing party was a
18 Defendant, any contact or relationship with a Defendant or other Google-owned entity or a
19 representative of a Defendant or other Google-owned entity. Any person other than the witness,
20 his or her attorney(s), or any person qualified to receive Protected Material under this Order shall
21 be excluded from the portion of the examination concerning such Protected Material, unless the
22 producing party consents to persons other than qualified recipients being present at the
23 examination. If the witness is represented by an attorney who is not otherwise qualified under this
24 Order to receive such Protected Material, then prior to the examination the attorney must sign an
25 acknowledgement in the form of Attachment A hereto. In the event that such attorney declines to
26 sign such a statement prior to the examination, the parties, by their attorneys, shall jointly seek a
27 protective order from the Court prohibiting the attorney from disclosing Protected Material.

1 (b) Outside Counsel of Record for the parties are hereby authorized to be the persons who
2 may retrieve confidential exhibits and/or other confidential matters filed with the Court upon
3 termination of this litigation without further order of this Court, and are the persons to whom such
4 confidential exhibits or other confidential matters may be returned by the Clerk of the Court, if
5 they are not so retrieved.

6 (c) Protected Material shall not be copied or otherwise produced by a receiving party,
7 except for transmission to qualified recipients, without the written permission of the producing
8 party, or, in the alternative, by further order of the Court. Nothing herein shall, however, restrict a
9 qualified recipient from making working copies, abstracts, digests and analyses of Protected
10 Material designated CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY for use in connection with this litigation, and such working copies, abstracts, digests and
12 analyses shall be deemed Protected Material under the terms of this Order. Further, nothing herein
13 shall restrict a qualified recipient from converting or translating Protected Material designated
14 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY into machine-
15 readable form for incorporation into a data retrieval system used in connection with this action,
16 provided that access to that Protected Material, in whatever form stored or reproduced, shall be
17 limited to qualified recipients.

18
19 **9. PROSECUTION BAR**

20 Absent written consent from the Producing Party, any individual who receives access to “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information shall not be involved in the prosecution of
22 patents or patent applications relating to software relating to features or functionality disclosed in the
23 HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY information. For purposes of this paragraph,
24 “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope
25 or maintenance of patent claims. To avoid any doubt, “prosecution” as used in this paragraph does not
26 include representing a party in connection with a challenge to a patent before a domestic or foreign agency
27 (including, but not limited to, a reissue protest, *ex parte* reexamination, post grant review, or *inter partes*
28 review). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY” information is first received by the affected individual and shall end two (2) years after final
2 termination of this action.

3 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
4 **OTHER LITIGATION**

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

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

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

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

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

24 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
25 **THIS LITIGATION**

26 (a) The terms of this Order are applicable to information produced by a Non-Party in
27 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with

1 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
2 provisions should be construed as prohibiting a Non-Party from seeking additional protections. A
3 Non-Party's use of this Order to protect its Protected Material does not entitle that Non-Party
4 access to the Protected Material produced by any Party or Non-Party in this case.

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

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

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

15 3. make the information requested available for inspection by the Non-
16 Party.

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

24 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
26 Material to any person or in any circumstance not authorized under this Stipulated Protective
27 Order, the Receiving Party shall immediately (a) notify in writing the Designating Party of the
28 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected

1 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
2 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and
3 Agreement to Be Bound” that is attached hereto as Exhibit A. Compliance with the foregoing
4 shall not prevent the producing party from seeking further relief from the Court. Compliance with
5 this Section shall not excuse a violation of this Order or exempt a violating party from sanctions
6 pursuant to this Order.

7 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
8 **PROTECTED MATERIAL**

9 When a Producing Party gives notice to Receiving Parties that certain inadvertently
10 produced material is subject to a claim of privilege or other protection, the obligations of the
11 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
12 provision is not intended to modify whatever procedure may be established in an e-discovery order
13 that provides for production without prior privilege review.. Nothing in this Order shall require
14 production of material that a party contends is protected from disclosure by the attorney-client
15 privilege, the work product immunity, common interest doctrine, or other privilege, doctrine,
16 right, or immunity (collectively “Privileged Information”). If Privileged Information is
17 nevertheless inadvertently or unintentionally produced, such production shall in no way prejudice
18 or otherwise constitute a waiver or estoppel as to any such privilege, doctrine, right or
19 immunity. Any party that inadvertently produces Privileged Information may obtain the return of
20 those materials by promptly notifying the recipient(s) and expressly articulating the basis for the
21 asserted privilege or immunity. The recipient(s) shall gather and return all copies of the
22 inadvertently produced Privileged Information to the producing party, or certify to the producing
23 party that they have been destroyed and/or deleted. Notwithstanding this provision, outside
24 litigation counsel of record are not required to delete inadvertently produced Privileged
25 Information that may reside on their respective firm’s electronic back-up systems that are over-
26 written in the normal course of business, provided such inadvertently produced Privileged
27 Information is not used for any other purpose following counsel’s receipt of the producing party’s
28 notice that the Privileged Information should not have been produced.

1 **14. MISCELLANEOUS**

2 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the court in the future.

4 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
7 Party waives any right to object on any ground to use in evidence of any of the material covered
8 by this Protective Order.

9 14.3 Filing Protected Material. Without written permission from the Designating Party
10 or a court order secured after appropriate notice to all interested persons, a Party may not file in
11 the public record in this action any Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
13 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a
15 sealing order will issue only upon a request establishing that the Protected Material at issue is
16 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
17 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
18 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected
19 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by
20 the court.

21 14.4 Waiver of Notice Requirements. Any of the notice requirements herein may be
22 waived, in whole or in part, but only in writing signed by an attorney of record for the party
23 against whom such waiver will be effective.

24 14.5 Post-Filing Communications. No party shall be required to identify on their
25 respective privilege log any document or communication dated on or after September 1, 2011,
26 which constitutes or reflects a communication with specific lawyers or law firms indicated in this
27 paragraph, and which absent this provision, the party would have been obligated to so identify on
28 said privilege log. As for Defendants, such law firms are Wilson Sonsini Goodrich & Rosati and

1 Baker & McKenzie. As for Plaintiff, such law firms are Weil Gotshal & Manges, Davis Wright &
2 Tremaine, Clifford Chance, Gibson Dunn & Crutcher, and Morrison & Foerster. In addition, no
3 party shall be required to identify on their respective privilege log any document or
4 communication dated on or after June 28, 2012, which constitutes or reflects a communication
5 with House Counsel, and which absent this provision, the party would have been obligated to so
6 identify on said privilege log. The parties shall exchange their respective privilege document logs
7 at a time to be agreed upon by the parties following the production of documents, but in no event
8 later than 30 days after service of the response to the discovery request pursuant to which the
9 privileged document or communication is responsive.

10 14.6 No Agreement Concerning Discoverability. The identification or agreed upon
11 treatment of certain types of discovery material does not reflect agreement by the parties that the
12 disclosure of such categories of discovery material is required or appropriate in this action. The
13 parties reserve the right to argue that any particular category of discovery material should not be
14 produced for reasons other than its confidential nature, including, where applicable, because such
15 material constitutes legally protected private information of third party users of a Party's product.

16 14.7 No Limitation on Legal Representation. Nothing in this Protective Order shall
17 preclude or impede outside litigation counsel of record's ability to communicate with or advise
18 their client in connection with this litigation based on such counsel's review and evaluation of
19 Protected Information, provided however, that such communications or advice shall not disclose
20 or reveal the substance or content of any Protected Information other than as permitted under this
21 Protective Order.

22 14.8 Agreement Upon Execution. Each of the parties agrees to be bound by the terms of
23 this Order as of the date counsel for such party executes this Order, even if prior to entry of this
24 order by the Court.

25 14.9 Section Headings. The section headings used in this Order shall be intended for
26 convenience only and shall not be deemed to supersede or modify any provisions.

27 14.10. Interpretation, Enforcement, and Continuing Jurisdiction. The United States
28 District Court for the Northern District of California is responsible for the interpretation and

1 enforcement of this Order. After termination of this litigation, the provisions of this Order shall
2 continue to be binding except with respect to that discovery material that becomes a matter of
3 public record. This Court retains and shall have continuing jurisdiction over the parties and
4 recipients of the Protected Information for enforcement of the provision of this Order following
5 termination of this litigation. All disputes concerning Protected Material produced under the
6 protection of this Order shall be resolved by the United States District Court for the Northern
7 District of California.

8 14.11 Violations. If any Party violates the limitations on the use of Protected Material as
9 described in this Order, the Party violating this Order may be subject to sanctions as ordered by
10 the Court. In the event motion practice is required to enforce the terms of this Order, the
11 prevailing Party on such a motion may be awarded, in the discretion of the Court, costs, expenses,
12 and fees, including attorney or other professional fees, incurred in connection with the discovery
13 of the violation and the preparation, filing, and arguing of the motion or any other proceedings
14 resulting from the violation.

15 14.12. Export Control. Disclosure of Protected Material shall be subject to all applicable
16 laws and regulations relating to the export of technical data contained in such Protected Material,
17 including the release of such technical data to foreign persons or nationals in the United States or
18 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
19 data. The Receiving Party shall take measures necessary to ensure compliance as to such
20 identified controlled technical data under its custody or control.

21 14.13. Communication with Testifying Experts. With respect to discoverability of
22 information from testifying experts, the Parties agree that FRCP 26 shall apply.

23 **15. FINAL DISPOSITION**

24 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
25 Receiving Party must return all Protected Material to the Producing Party or destroy such material,
26 at the election of the Producing Party. As used in this subdivision, “all Protected Material”
27 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
28 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,

1 the Receiving Party must submit a written certification to the Producing Party (and, if not the same
2 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category,
3 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
4 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
5 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
6 Counsel are entitled to retain two archival copies of all pleadings, motion papers, trial, deposition,
7 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
8 reports, attorney work product, and consultant and expert work product, even if such materials
9 contain Protected Material. In addition, if Protected Material is contained in e-mails, back-up
10 tapes, and/or other electronic formats, there shall be no obligation to return or destroy that
11 material. Protected Material in non-archival databases such as Concordance must be returned or
12 destroyed. Any permitted copies that contain or constitute Protected Material remain subject to
13 this Protective Order as set forth in Section 4 (DURATION). In the event that a Party is dismissed
14 before the entry of a final non-appealable judgment or order, this same procedure shall apply to
15 any Protected Material received from or produced to the dismissed Party.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 Dated: September ____, 2013

MORRISON & FOERSTER LLP

18 By: /s/

19 Charles S. Barquist

20 *Attorneys for Plaintiff*

21 Be In, Inc.

22
23 Dated: September , 2013

WILSON SONSINI GOODRICH & ROSATI

24 By: /s/

25 Colleen Bal

26 *Attorneys for Defendants*

27 Google Inc., Google UK, Ltd., and YouTube, LLC

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____

THE HONORABLE LUCY H. KOH
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

My name is _____.

I reside at _____.

My present employer is _____.

My present occupation or job description is _____.

I 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 *Be In, Inc. v. Google Inc. et al.*, Case No. 5:12-CV-03373-LHK. 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 understand that I am to retain all copies of any documents designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY, or any similar designation, in a secure manner and in accordance with the terms of said 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: _____

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Printed name: _____
[printed name]

Signature: _____
[signature]