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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

17 SYMANTEC CORPORATION,  
 18 Plaintiff-Counterclaim Defendant,  
 19 vs.  
 20 ACRONIS, INC., ACRONIS INTERNATIONAL  
 GMBH, AND OOO ACRONIS  
 21 Defendants-Counterclaimants.  
 22 AND RELATED COUNTERCLAIMS.

Case No. 3:12-cv-05331 JST

**STIPULATED PROTECTIVE ORDER  
FOR LITIGATION INVOLVING  
PATENTS, HIGHLY SENSITIVE  
CONFIDENTIAL INFORMATION  
AND/OR TRADE SECRETS;  
[PROPOSED] ORDER**

1     PURPOSES AND LIMITATIONS:

2     Disclosure and discovery activity in:

- 3             a. this action (“Acronis II”)
- 4             b. Symantec Corporation v. Acronis, Inc. and Acronis International GmbH, Case
- 5                 No. 11-cv-5310 (EMC) (“Acronis I”),<sup>1</sup> and
- 6             c. Acronis, Inc. and Acronis International GmbH v. Symantec Corporation, Case
- 7                 No. 12-cv-372(SLR), pending in the District of Delaware (“the Delaware
- 8                 Action”)

9 are likely to involve production of confidential, proprietary, or private information for which

10 special protection from public disclosure and from use for any purpose other than prosecuting this

11 litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to

12 enter the following Stipulated Protective Order. The parties acknowledge that this Order does not

13 confer blanket protections on all disclosures or responses to discovery and that the protection it

14 affords from public disclosure and use extends only to the limited information or items that are

15 entitled to confidential treatment under the applicable legal principles. The parties further

16 acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not

17 entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order

18 62 set forth the procedures that must be followed and the standards that will be applied when a

19 party seeks permission from the court to file material under seal.

20     DEFINITIONS

21             2.1     Challenging Party: a Party or Non-Party that challenges the designation of

22 information or items under this Order.

23             2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is

24 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule

25 of Civil Procedure 26(c).

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<sup>1</sup> Collectively, Acronis I and Acronis II are hereinafter referred to as the "Northern District of

28 California Actions."

1           2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
2 well as their support staff).

3           2.4     Designating Party: a Party or Non-Party that designates information or items that it  
4 produces in disclosures or in responses to discovery as “CONFIDENTIAL”, “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – SOURCE  
6 CODE”.

7           2.5     Disclosure or Discovery Material: all items or information, regardless of the  
8 medium or manner in which it is generated, stored, or maintained (including, among other things,  
9 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
10 responses to discovery in this matter.

11          2.6     Expert: a person with specialized knowledge or experience in a matter pertinent to  
12 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as  
13 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s  
14 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or  
15 of a Party’s competitor.

16          2.7     “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
17 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
18 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
19 less restrictive means.

20          2.8     “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely  
21 sensitive “Confidential Information or Items” representing computer code and associated  
22 comments and revision histories, formulas, engineering specifications, or schematics that define or  
23 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure  
24 of which to another Party or Non-Party would create a substantial risk of serious harm that could  
25 not be avoided by less restrictive means.

26          2.9     House Counsel: attorneys who are employees of a party to this action. House  
27 Counsel does not include Outside Counsel of Record or any other outside counsel.

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1           2.10 Non-Party: any natural person, partnership, corporation, association, or other legal  
2 entity not named as a Party to this action.

3           2.11 Outside Counsel of Record: attorneys who are not employees of a party to this  
4 action but are retained to represent or advise a party to this action and have appeared in this action  
5 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

6           2.12 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 staffs).

8           2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
9 Material in this action.

10          2.14 Professional Vendors: persons or entities that provide litigation support services  
11 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
12 organizing, storing, or retrieving data in any form or medium) and their employees and  
13 subcontractors.

14          2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
15 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as  
16 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

17          2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
18 Producing Party.

19 3.       SCOPE

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

5 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
15 or Non-Party that designates information or items for protection under this Order must take care to  
16 limit any such designation to specific material that qualifies under the appropriate standards. To  
17 the extent it is practical to do so, the Designating Party must designate for protection only those  
18 parts of material, documents, items, or oral or written communications that qualify – so that other  
19 portions of the material, documents, items, or communications for which protection is not  
20 warranted are not swept unjustifiably within the ambit of this Order.

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

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

3           5.2     Manner and Timing of Designations. Except as otherwise provided in this Order  
4 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
5 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
6 designated before the material is disclosed or produced.

7           Designation in conformity with this Order requires:

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

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

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1 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
2 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  
10 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at  
11 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire  
12 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
13 ATTORNEYS’ EYES ONLY.”

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

20 Transcripts containing Protected Material shall have an obvious legend on the title page  
21 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
22 pages (including line numbers as appropriate) that have been designated as Protected Material and  
23 the level of protection being asserted by the Designating Party. The Designating Party shall inform  
24 the court reporter of these requirements. Any transcript that is prepared before the expiration of a  
25 21-day period for designation shall be treated during that period as if it had been designated  
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise  
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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     If the Parties cannot resolve a challenge without court intervention, the Challenging  
10 Party shall file and serve a motion to challenge confidentiality under Civil Local Rule 7 (and in  
11 compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 21 days of the  
12 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
13 process will not resolve their dispute, whichever is earlier. The Challenging Party may file a  
14 motion challenging a confidentiality designation at any time if there is good cause for doing so,  
15 including a challenge to the designation of a deposition transcript or any portions thereof. Any  
16 motion brought pursuant to this provision must be accompanied by a competent declaration  
17 affirming that the movant has complied with the meet and confer requirements imposed by the  
18 preceding paragraph.

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

## 24 7.     ACCESS TO AND USE OF PROTECTED MATERIAL

### 25         7.1     Basic Principles:

26           (a)     A Receiving Party may use Protected Material that is disclosed or produced by  
27 another Party or by a Non-Party in connection with Acronis I, Acronis II, or the Delaware Action  
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1 only in any of these three cases, subject to other provisions of this Protective Order and Protective  
2 Orders in Acronis II and the Delaware Action, and only for prosecuting, defending, or attempting  
3 to settle any of these three litigations.<sup>2</sup> Such Protected Material may be disclosed only to the  
4 categories of persons and under the conditions described in this Order subject, in particular, to the  
5 disclosure limitations set forth in Section 7.1(b).

6 (b) Protected Material produced in connection with Acronis I or Acronis II may be  
7 disclosed to any experts that have been disclosed to and approved by the Producing Party in either  
8 Acronis I or Acronis II according to Section 7.3(b) below (in other words, experts approved for  
9 access to such Protected Material in Acronis I are approved for such access in Acronis II and vice  
10 versa). However, the Receiving Party may not disclose Protected Material produced or disclosed  
11 in either the Acronis I or Acronis II to an expert disclosed in the Delaware Action (“Delaware  
12 Expert”) unless the Delaware Expert has also been disclosed to and approved by the Producing  
13 Party in Acronis I or Acronis II according to Section 7.3(b) below.<sup>3</sup> When Acronis I, Acronis II,  
14 and the Delaware action have been terminated, the Receiving Party must comply with the  
15 provisions of section 15 below (FINAL DISPOSITION) of the respective Protective Orders  
16 entered in each case.

17 Protected Material must be stored and maintained by a Receiving Party at a location and in  
18 a secure manner<sup>4</sup> that ensures that access is limited to the persons authorized under this Order.

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21 <sup>2</sup> The parties acknowledge that nothing in Section 7.1 constitutes an agreement or  
22 representation that information disclosed in connection with one litigation is relevant to a claim or  
23 defense in another.

24 <sup>3</sup> Similarly, the parties agree that the Receiving Party will not disclose Protected Material  
25 produced or disclosed in the Delaware Action to any expert who has not been disclosed and  
26 approved by the Producing Party according to the expert disclosure provisions of protective order  
27 that will be entered in the Delaware Action. Further, to the extent the District of Delaware has  
28 more lenient requirements for a protective order, the parties agree to implement the same  
disclosure requirements and obligations in their Delaware Action Protective Order as set forth  
herein.

<sup>4</sup> It may be appropriate under certain circumstances to require the Receiving Party to store  
any electronic Protected Material in password-protected form.

1           7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
3 information or item designated “CONFIDENTIAL” only to:

4           (a)     the Receiving Party’s Outside Counsel of Record in the actions set forth in  
5 paragraph 1, as well as employees of said Outside Counsel of Record to whom it is reasonably  
6 necessary to disclose the information for this litigation;

7           (b)     the officers, directors, and employees (including House Counsel) of the  
8 Receiving Party to whom disclosure is reasonably necessary for the actions set forth in paragraph  
9 1 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10          (c)     Experts (as defined in this Order) of the Receiving Party to whom  
11 disclosure is reasonably necessary for Acronis I and Acronis II and who have signed the  
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A) and their employees or staff to  
13 whom disclosure is reasonably necessary for this litigation and who have signed Exhibit A;

14          (d)     the courts in the actions set forth in paragraph 1 and its personnel;

15          (e)     court reporters and their staff, professional jury or trial consultants, and  
16 Professional Vendors to whom disclosure is reasonably necessary for the actions set forth in  
17 paragraph 1 and who have signed Exhibit A;

18          (f)     during their depositions, witnesses in the actions set forth in paragraph 1 to  
19 whom disclosure is reasonably necessary and who have signed the “Acknowledgment and  
20 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or  
21 ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that  
22 reveal Protected Material must be separately bound by the court reporter and may not be disclosed  
23 to anyone except as permitted under this Stipulated Protective Order.

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

26          (h)     Any other person with the prior written consent of the Producing Party.

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1 (a) Unless otherwise ordered by the court or agreed to in writing by the  
2 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
3 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
4 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c)  
5 first must make a written request to the Designating Party that (1) identifies the general categories  
6 of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
7 CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to  
8 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her  
9 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s  
10 current employer(s), (5) identifies each person or entity for the past 5 years including the  
11 identification of the case name and number, law firm, represented party/client, and the date range  
12 of the involvement: (i) for whom the Expert has provided professional services, or (ii) from whom  
13 the Expert received compensation or funding; except that if a particular instance of such services  
14 or funding was subject to an non-disclosure agreement or confidentiality obligation and the Expert  
15 understands he was not disclosed to the opposing side in that matter, the Receiving Party under  
16 this subsection (5) will need to disclose whether such services or funding were outside the field of  
17 backup and recovery technology and concerned Symantec Corporation, Acronis, Inc., or Acronis  
18 International GmbH or any predecessors or successors (merged, acquired or otherwise) parents,  
19 divisions, subsidiaries, associated organizations, joint ventures, and affiliates thereof, (6) identifies  
20 all of the Expert’s patents and pending patent applications in which the Expert is an inventor,  
21 assignee, or holds a financial interest, (7) identifies all source code relevant to this litigation in  
22 which the Expert holds a financial interest, and (8) identifies any professional services provided by  
23 the expert or any of his staff to Symantec, Acronis, Inc., or Acronis International GmbH or any  
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1 predecessors or successors (merged, acquired or otherwise), parents, divisions, subsidiaries,  
2 associated organizations, joint ventures, and affiliates thereof.

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

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9 (c) A Party that receives a timely written objection must meet and confer with the  
10 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
11 agreement within seven days of the written objection. If no agreement is reached, the Party  
12 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7  
13 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking  
14 permission from the court to do so. Any such motion must describe the circumstances with  
15 specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary,  
16 assess the risk of harm that the disclosure would entail, and suggest any additional means that  
17 could be used to reduce that risk. In addition, any such motion must be accompanied by a  
18 competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the  
19 extent and the content of the meet and confer discussions) and setting forth the reasons advanced  
20 by the Designating Party for its refusal to approve the disclosure.  
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23 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
24 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
25 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.  
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1 (b) If an expert disclosed and approved in the Northern District of California  
2 Actions and the Delaware Action (i) stops providing services for only the Delaware Action, (ii) no  
3 longer has any access to Protected Material designated in the Delaware Action, and (iii) notifies  
4 the Producing Party in writing of the withdrawal and the case(s) from which the expert is  
5 withdrawing, the Prosecution Bar as it applies to security software patents or patent applications  
6 shall end two years from the date of withdrawal and the Prosecution Bar as it applies to backup  
7 and recovery software patents or patent applications shall remain in effect until terminated  
8 according to the other terms of this paragraph 8;

9 (c) If an expert disclosed and approved only either in the Northern District of  
10 California Actions or the Delaware Action (i) stops providing services for each of such actions, (ii)  
11 no longer has any access to Protected Material designated in such actions, and (iii) notifies the  
12 Producing Party in writing of the withdrawal and the case(s) from which the expert is  
13 withdrawing, the Prosecution Bar shall end two years from the date of withdrawal and shall apply  
14 only to backup and recovery software patents or patent applications if the expert was disclosed and  
15 approved in and withdrew from the Northern District of California Actions, and only to security  
16 software patents or patent applications if the expert was disclosed and approved in and withdrew  
17 from the Delaware Action; and

18 (d) In all situations other than those set forth in paragraphs 8(0) - 8(c), in the  
19 event that a person who receives access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
20 ONLY” or any “HIGHLY CONFIDENTIAL – SOURCE CODE” information (i) withdraws from  
21 working on all the actions this person worked on of the actions set forth in paragraph 1, (ii) no  
22 longer has any access to Protected Material designated in such actions, and (iii) notifies the  
23 Producing Party in writing of the date of withdrawal and the case(s) from which the individual is  
24 withdrawing, the Prosecution Bar end two (2) years after the date of withdrawal and apply to  
25 patents or patent applications relating to backup and recovery software and security software.

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1 9. SOURCE CODE

2 (a) A Producing Party may designate source code as “HIGHLY  
3 CONFIDENTIAL - SOURCE CODE” if it comprises or includes confidential, proprietary or trade  
4 secret source code.

5 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE  
6 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –  
7 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph  
8 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” information may be disclosed.

10 (c) The Receiving Party shall provide five (5) business days’ notice prior to  
11 commencing an inspection. The Receiving Party shall restrict its inspection to a reasonable  
12 number of days, from 9:00 a.m. to 5:00 p.m., or as otherwise agreed by the parties.

13 (d) A list of names of persons who will view the source code will be provided  
14 to the Producing Party in conjunction with any written (including email) notice requesting  
15 inspection.

16 (e) Any source code produced in discovery shall be made available for  
17 inspection in a format through which it could be reasonably reviewed and searched at an office of  
18 the Producing Party’s counsel or another mutually agreed upon location. The parties agree to meet  
19 and confer in good faith on a location reasonably convenient for both sides, including taking into  
20 consideration the location and convenience of each other’s experts. The source code shall be  
21 made available for inspection on a secured computer in a secured room without Internet access or  
22 network access to other computers (“Source Code Computer”), as necessary and appropriate to  
23 prevent and protect against any unauthorized copying, transmission, removal or other transfer of  
24 any source code outside or away from the computer on which the source code is provided for  
25 inspection. The parties agree to meet and confer if more than one Source Code Computer is  
26 necessary to maximize the efficiency of the inspection. The Receiving Party shall not copy,  
27 remove, or otherwise transfer any portion of the source code onto any recordable media or  
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1 recordable device. The Producing Party shall be entitled to have a person observe all entrances  
2 and exits from the source code viewing room. The Producing Party may also visually monitor the  
3 activities of the Receiving Party's representatives during any source code review, but only to  
4 ensure that there is no unauthorized recording, copying, or transmission of the source code.

5           (¶) The Producing Party shall install such tools or programs that are reasonably  
6 necessary to review and search the code produced on the platform produced. The Receiving Party  
7 may request that additional review tools and programs be added to the Source Code computer, and  
8 the Providing Party may not unreasonably refuse to install such additional tools and programs. If  
9 the Receiving Party wants to use other tools or programs, the Receiving Party must provide the  
10 software and proof that it is licensed. The Receiving Party's outside counsel and/or expert shall be  
11 entitled to take notes relating to the source code but may not copy substantial portions of the  
12 source code into the notes. For purposes of this provision, fifteen or more lines of code is  
13 "substantial." No copies of all or any portion of the source code may leave the room in which the  
14 source code is inspected except as otherwise provided herein. Further, no other written or  
15 electronic record of the source code is permitted except as otherwise provided herein.

16           The Producing Party shall allow the Receiving Party to create files on the Source Code  
17 Computer as necessary for the Receiving Party's analysis, for example in a separate directory on  
18 the Source Code Computer to be established by the Producing Party. The Producing Party agrees  
19 that it will not review, analyze, share, distribute, or use the files created by the Receiving Party  
20 except as stated herein. Acronis has asserted that such files created by Acronis's representatives  
21 will contain work product or other protected information. Acronis does not waive such protection  
22 by leaving the files on Symantec's computer or by agreeing to have them reviewed by a third party  
23 as stated herein. Without agreeing with that assertion, Symantec acknowledges that such a claim  
24 has been made and agrees not to review, analyze, share, distribute, or use the files created by the  
25 Receiving Party unless permitted to do so by the Court, and further agrees that Acronis has not  
26 waived any protection afforded these files, including due to a neutral third party review or the files  
27 location on Symantec's computer. The Producing Party has the right to have a neutral third party  
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1 (“Neutral Party”) review the electronic note files made by the Receiving Party on the Source Code  
2 Computer to ensure that the note files created by the Receiving Party are consistent with all other  
3 provisions and are subject to and receive the applicable protections conferred by the Protective  
4 Order. If the Producing Party elects to have a Neutral Party review the electronic note files made  
5 by the Receiving Party, the Receiving Party is not permitted to take those electronic note files with  
6 them at the conclusion of the inspection. The parties will immediately meet and confer about the  
7 scope and content of the review that is to be conducted by the Neutral Party and on the timing and  
8 procedure for making these files available to the Receiving Party.<sup>5</sup> Both parties reserve the right  
9 to raise additional issues regarding the timing and procedure for making these files available to the  
10 Receiving Party after the third-party review is complete. All expenses associated with the Neutral  
11 Party review shall be paid for by the party requesting the review. The parties may request relief  
12 from the Court pursuant to the procedures of the judge in charge of discovery issues in each  
13 respective case (Acronis I, Acronis II, or the Delaware Action) if they are unable to agree on the  
14 timing and procedure for making these files available to the Receiving Party and the parameters of  
15 the Neutral Party review.

16           (g) Subject to the other provisions of this Protective Order, the Receiving Party  
17 may bring with it to the secure offices a cell phone and laptop computer. The Receiving Party is  
18 permitted to take notes on the laptop computer but shall not be permitted to include any of the  
19 Producing Party’s Source Code or Source Code comments in any such notes. The Receiving Party  
20 may include references to the file, function, or object name and line number(s) of code, and such

21 \_\_\_\_\_  
22 <sup>5</sup> At a minimum, Symantec has requested that the Neutral Party identify (1) How many pages  
23 of notes are contained within electronic notes and files created by the Receiving Party, (2)  
24 Excluding attorney notations, how many lines of source code in total are contained in electronic  
25 notes and files created by the Receiving Party, and (3) How many segments of source code within  
26 the electronic notes and files created by the Receiving Party contain 2 or more lines of code.

27 Acronis has already advised that it will agree that the neutral third party may convey to the  
28 Producing Party whether or not these note files contain any portion of the produced code that is 14  
lines or greater in length, as already required by paragraph 9(f). Acronis is prepared to meet and  
confer re further details as long as no work product information is conveyed without making the  
showing required by Rule 26(b)(3). Acronis also requested that a “line” of code be defined as a  
line of actual code, and any lines that contain only code comments or whitespace, but not code, be  
excluded from the count.

1 references will not be considered Source Code or Source Code comments. Inclusion of any  
2 Source Code or Source Code comments in any such notes constitutes a violation of the protective  
3 order. If the Receiving Party represents that the notes on the laptop comply with this provision,  
4 such notes are agreed to contain work-product and not be subject to any third-party review.

5           (h) The Producing Party shall produce to the Receiving Party printed copies of  
6 requested files contained on the Producing Party's Source Code Computer under the following  
7 terms and conditions:

8           (1) For each of the actions set forth in paragraph 1, the Receiving Party  
9 may request, in total, up to 1000 pages of hard (non electronic) copies of those portions of  
10 source code that it, in good faith, considers necessary to the preparation of each case. For  
11 good cause shown and for each of the actions set forth in paragraph 1, the Receiving Party  
12 may request an additional 500 pages of hard (non electronic) copies of those portions of  
13 source code that it, in good faith, considers necessary to the preparation of each case.  
14 Notwithstanding the foregoing, a receiving Party may not request a hard copy of more than  
15 20 consecutive pages of source code absent express permission of the producing Party or  
16 an order from the Court. A "page" for the purposes of this limitation will be defined as an  
17 8.5 x 11" sheet of paper with 12 point font. This consecutive page limitation will not  
18 preclude any Party from seeking additional consecutive pages for good reason. If any  
19 dispute arises concerning the number of consecutive pages, the producing Party and  
20 receiving Party shall meet and confer in good faith to attempt to resolve this dispute  
21 without the Court's involvement. The Producing Party shall provide all such source code  
22 in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL -  
23 SOURCE CODE."

24           (2) A request for printed copies of files shall include, on a file-by-file  
25 basis, the complete file path associated with each file. If additional information is required  
26 to uniquely identify the requested files, then the request shall include, on a file-by-file  
27 basis, such additional information;

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1 (3) A party may request multiple versions or revisions of the same file,  
2 but the requesting party must specify the exact dates or the exact numbers for each version  
3 or versions sought. The Producing Party and the Receiving Party shall cooperate in  
4 identifying the precise files which are sought;

5 (4) The Producing Party shall have three (3) business days in which to  
6 object in writing as to the extent or relevance of the requested printout(s). If no such  
7 objection is made, the Producing Party shall produce a copy of the printout(s) to the  
8 Reviewing Party pursuant to the terms of Paragraph 7.3. If objection is made, the parties  
9 shall meet and confer within three (3) business days in a good faith attempt to resolve the  
10 objection. If the objection is not resolved, the Producing Party shall have five (5) business  
11 days after the expiration of the meet and confer period (i.e., eight (8) business days from  
12 the date of the request) in which to file a motion for relief from production of the  
13 printout(s) that are the subject of the objection. The printout(s) shall be retained by the  
14 Producing Party, and not produced, pending the Court's resolution of the motion.

15 (5) Any copy of a Source Code file (in electronic or paper form) shall  
16 be marked and designated as "HIGHLY CONFIDENTIAL-SOURCE CODE," and the  
17 Receiving Party must keep the printed copy of Source Code in a locked location to prevent  
18 duplication of or unauthorized access to the source code. Any source code designated  
19 "HIGHLY CONFIDENTIAL-SOURCE CODE," shall be disclosed and disseminated only  
20 to the individuals identified in Paragraph 7.3. The Producing Party shall clearly identify  
21 the file path of the underlying file as well as an additional information required to uniquely  
22 identify the underlying file on any printed copy of a Source Code file.

23 (±) Unless otherwise agreed in advance by the parties in writing, following  
24 each inspection, the Receiving Party's outside counsel and/or experts shall remove all notes,  
25 documents, laptops, and all other materials from the room that may contain work product and/or  
26 attorney-client privileged information. The Producing Party shall not be responsible for any items  
27 left in the room following each inspection session.

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1           (⊕)     The Producing Party shall provide to the Receiving Party five copies of  
2 hard (non-electronic) copies of source code. No additional copies of hard (non-electronic) copies  
3 of source code or portions of source code shall be made without the agreement of the producing  
4 Party, regardless of whether such source code was initially produced in hard-copy format or  
5 whether such hard copies were made pursuant to the preceding sub-Paragraph. A party may  
6 request additional hard copies of portions of the code only as needed for use at depositions,  
7 hearings, trial, or court filings. The Receiving Party shall only include such excerpts as are  
8 reasonably necessary for the purposes for which such part of the source code is used. To the  
9 extent portions of source code are quoted in a Source Code Document, either (1) the entire  
10 document will be stamped and treated as HIGHLY CONFIDENTIAL-SOURCE CODE or (2)  
11 those pages containing quoted source code will be separately bound, and stamped and treated as  
12 HIGHLY CONFIDENTIAL-SOURCE CODE.

13           (⊕)     The Receiving Party shall maintain a log of any individual who has  
14 inspected any portion of the source code in electronic or paper form. The log shall include the  
15 dates and times of any access, all printed or electronic copies of the source code that are delivered  
16 by the Receiving Party to any qualified person and the names of the recipients of copies and  
17 locations where the copies are stored. The log shall be provided by the Receiving Party to the  
18 Producing Party upon request.

19           (⊕)     The Receiving Party shall maintain all paper copies of any printed portions  
20 of the source code and all electronic files that contain source code in a manner that prevents  
21 duplication of or unauthorized access to the source code, for example, 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. All  
24 paper copies shall be securely destroyed if they are no longer in use (e.g., unmarked and/or spare  
25 copies at the conclusion of a deposition).

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1 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
2 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”, “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – SOURCE  
6 CODE” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification shall  
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 of the material covered by the subpoena or order is  
11 subject to 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.<sup>6</sup>

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

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27 <sup>6</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its  
confidentiality interests in the court from which the subpoena or order issued.

1 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
2 LITIGATION

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

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

12 (1) promptly notify in writing the Requesting Party and the Non-Party  
13 that some or all of the information requested is subject to a confidentiality agreement with  
14 a Non-Party;

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

18 (3) make the information requested available for inspection by the Non-  
19 Party.

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

1 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

9 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
10 MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
12 produced material is subject to a claim of privilege or other protection, the obligations of the  
13 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). If  
14 information is produced in discovery that is subject to a claim of privilege or of protection as trial-  
15 preparation material, the party making the claim may notify any party that received the  
16 information of the claim and the basis for it. After being notified, a party must promptly return,  
17 sequester, or destroy the specified information and any copies it has and may not use or disclose  
18 the information until the claim is resolved. The Parties may promptly present the information to  
19 the court under seal for a determination of the claim. The producing party must preserve the  
20 information until the claim is resolved.

21 14. MISCELLANEOUS

22 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
23 seek its modification by the court in the future.

24 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
25 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
26 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
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1 Party waives any right to object on any ground to use in evidence of any of the material covered  
2 by this Protective Order.

3           14.3   Filing Protected Material. Without written permission from the Designating Party  
4 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
5 the public record in this action any Protected Material. A Party that seeks to file under seal any  
6 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected  
7 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
8 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a  
9 sealing order will issue only upon a request establishing that the Protected Material at issue is  
10 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
11 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-  
12 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected  
13 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by  
14 the court.

15 15.    FINAL DISPOSITION

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

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 DATED: April 19, 2013

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7  
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DATED: April 19, 2013

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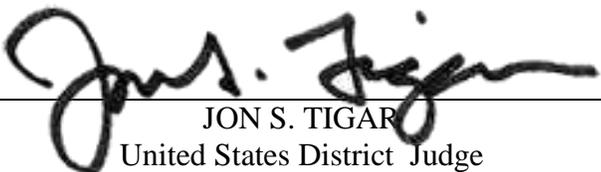
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International GmbH, and OOO Acronis

**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: April 30, 2013

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JON S. TIGAR  
United States District Judge

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