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 APPLE INC.

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

19 Aylus Networks, Inc.,  
 20 Plaintiff,  
 21 vs.  
 22 Apple Inc.  
 23 Defendant.

CASE NO. 3:13-cv-4700-EMC

**STIPULATED PROTECTIVE ORDER  
 REGARDING THE DISCLOSURE AND  
 USE OF DISCOVERY MATERIALS**

26 Plaintiff Aylus Networks, Inc. (“Plaintiff”) and Defendant Apple Inc.  
 27 (“Defendant”) anticipate that documents, testimony, or information containing or reflecting

1 confidential, proprietary, trade secret, and/or commercially sensitive information are likely to  
2 be disclosed or produced during the course of discovery, initial disclosures, and supplemental  
3 disclosures in this case and request that the Court enter this Stipulated Protective Order setting  
4 forth the conditions for treating, obtaining, and using such information.  
5

6 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds  
7 good cause for the following Stipulated Protective Order Regarding the Disclosure and Use of  
8 Discovery Materials (“Order” or “Protective Order”).

9 1. **PURPOSES AND LIMITATIONS**

10 (a) Protected Material designated under the terms of this Protective Order shall  
11 be used by a Receiving Party solely for this case, and shall not be used directly or indirectly for  
12 any other purpose whatsoever.  
13

14 (b) The Parties acknowledge that this Order does not confer blanket protections  
15 on all disclosures during discovery, or in the course of making initial or supplemental disclosures  
16 under Rule 26(a). Designations under this Order shall be made with care and shall not be made  
17 absent a good faith belief that the designated material satisfies the criteria set forth below. If it  
18 comes to a Producing Party’s attention that designated material does not qualify for protection at  
19 all, or does not qualify for the level of protection initially asserted, the Producing Party must  
20 promptly notify all other Parties that it is withdrawing or changing the designation.  
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22 (c) The parties acknowledge that this Stipulated Protective Order does not  
23 confer blanket protections on all disclosures or responses to discovery and that the protection it  
24 affords from public disclosure and use extends only to the limited information or items that are  
25 entitled to confidential treatment under the applicable legal principles. The parties further  
26 acknowledge, as set forth in Section 14.4 below, that this Stipulated Protective Order does not  
27 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
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1 procedures that must be followed and the standards that will be applied when a party seeks  
2 permission from the court to file material under seal.

3  
4 **2. DEFINITIONS**

5 (a) “Discovery Material” means all items or information, including from any  
6 non-party, regardless of the medium or manner generated, stored, or maintained (including, among  
7 other things, testimony, transcripts, or tangible things) that are produced, disclosed, or generated  
8 in connection with discovery or Rule 26(a) disclosures in this case.

9 (b) “Outside Counsel” means attorneys, paralegals, and their staff, and any  
10 copying or clerical litigation support services working at the direction of such counsel, paralegals,  
11 and staff who are not employees of a Party but are retained to represent or advise a Party and have  
12 appeared in this action on behalf of that Party or are affiliated with a law firm that has appeared on  
13 behalf of that Party.

14 (c) “Patents-in-suit” means U.S. Patent No. RE44,412, and any other patent  
15 asserted in this action, as well as any related patents, patent applications, provisional patent  
16 applications, continuations, and/or divisionals.

17 (d) “Party” means any party to this case, including all of its officers, directors,  
18 employees, consultants, retained experts, and Outside Counsel and their support staffs.

19 (e) “Producing Party” means a Party or non-party that discloses or produces  
20 any Discovery Material in this case.

21 (f) “Protected Material” means any Discovery Material that is designated as  
22 “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL  
23 - OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE,” as provided for in this Order.  
24 Protected Material shall not include: (i) advertising materials that have been actually published or  
25 publicly disseminated; (ii) materials that show on their face they have been disseminated to the  
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1 public; and (iii) any Discovery Materials known to the Receiving Party prior to the disclosure or  
2 obtained by the Receiving Party after the disclosure from a source who obtained the information  
3 lawfully and under no obligation of confidentiality to the Producing Party. This provision does  
4 not limit a Party's ability, or waive a Party's rights under the Federal Rules of Civil Procedure or  
5 any other rules or orders to enforce confidentiality obligations of the Parties or any other third  
6 parties, including, but not limited to, the right to claw back any inadvertently produced materials.  
7

8 (g) "Receiving Party" means a Party who receives Discovery Material from a  
9 Producing Party.

10 (h) "Source Code" means computer code, scripts, assembly, binaries, object  
11 code, source code listings and descriptions of source code, object code listings and descriptions of  
12 object code, and Hardware Description Language (HDL) or Register Transfer Level (RTL) files  
13 that describe the hardware design of any ASIC or other chip.  
14

15 3. **COMPUTATION OF TIME**

16 The computation of any period of time prescribed or allowed by this Order shall be  
17 governed by the provisions for computing time set forth in Federal Rules of Civil Procedure 6.  
18

19 4. **SCOPE**

20 (a) The protections conferred by this Order cover not only Discovery Material  
21 governed by this Order as addressed herein, but also any information copied or extracted  
22 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,  
23 conversations, or presentations by Parties or their counsel in court or in other settings that might  
24 reveal Protected Material.

25 (b) Nothing in this Protective Order shall prevent or restrict a Producing Party's  
26 own disclosure or use of its own Protected Material for any purpose, and nothing in this Order  
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1 shall preclude any Party from showing its Protected Material to an individual who prepared the  
2 Protected Material.

3 (c) Nothing in this Order shall be construed to prejudice any Party's right to use  
4 any Protected Material in court or in any court filing with the consent of the Producing Party or by  
5 order of the Court.  
6

7 (d) This Order is without prejudice to the right of any Party to seek further or  
8 additional protection of any Discovery Material or to modify this Order in any way, including,  
9 without limitation, an order that certain matter not be produced at all.

10 5. **DURATION**

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

19 6. **ACCESS TO AND USE OF PROTECTED MATERIAL**

20 (a) **Basic Principles.** A Receiving Party may use Protected Material that is  
21 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
22 prosecuting, defending or attempting to settle this litigation, and not for any other purpose. Such  
23 Protected Material may be disclosed only to the categories of persona and under the conditions  
24 described in this Order. When the litigation has been terminated, a Receiving Party must comply  
25 with the provisions of section 19 below (FINAL DISPOSITION). Protected Material must be  
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1 stored and maintained by a Receiving Party at a location and in a secure manner that ensures that  
2 access is limited to the persons authorized under this Order.

3 (b) Patent Prosecution Bar. Absent the written consent of the Producing Party,  
4 any individual who receives access to “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
5 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” information  
6 shall not be involved in any of the following: (i) the prosecution of patents or patent applications  
7 relating to the functionality, operation, and design of a content delivery system for delivery of  
8 content from a media server located on a wide area network to a media renderer using a mobile  
9 device (e.g., smartphone, tablet, etc.), including without limitation the patents asserted in this  
10 action and any patent or application claiming priority to or otherwise related to the patents asserted  
11 in this action, before any foreign or domestic agency, including the United States Patent and  
12 Trademark Office (“the Patent Office”); and (ii) on behalf of Aylus Networks, Inc., the acquisition  
13 of patents (including patent applications) with the right to sublicense, relating to the functionality,  
14 operation, and design of a content delivery system for delivery of content from a media server  
15 located on a wide area network to a media renderer using a mobile device (e.g., smartphone,  
16 tablet, etc.) For purposes of this paragraph, “prosecution” includes directly or indirectly drafting,  
17 amending, advising, or otherwise affecting the scope or maintenance of patent claims. Prosecution  
18 includes, for example, original prosecution, reissue, and reexamination proceedings. To avoid any  
19 doubt, “prosecution” as used in this paragraph does not include representing a party challenging a  
20 patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte*  
21 reexamination, or *inter partes* reexamination). This Prosecution Par shall begin when access to  
22 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE  
23 ATTORNEYS’ EYES ONLY – SOURCE CODE” information is first received by the affected  
24 individual, and shall end two (2) years after the final termination of this case.  
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1 (c) Secure Storage, No Export. Protected Material must be stored and  
2 maintained by a Receiving Party at a location in the United States and in a secure manner that  
3 ensures that access is limited to the persons authorized under this Order. To ensure compliance  
4 with applicable United States Export Administration Regulations, Protected Material may not be  
5 exported outside the United States or released to any foreign national (even if within the United  
6 States).

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8 (d) Legal Advice Based on Protected Material. Nothing in this Protective Order  
9 shall be construed to prevent counsel from advising their clients with respect to this case based in  
10 whole or in part upon Protected Materials, provided counsel does not disclose the Protected  
11 Material itself except as provided in this Order.

12 (e) Limitations. Nothing in this Order shall restrict in any way a Producing  
13 Party's use or disclosure of its own Protected Material. Nothing in this Order shall restrict in any  
14 way the use or disclosure of Discovery Material by a Receiving Party: (i) that is or has become  
15 publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or known  
16 to the Receiving Party independent of the Producing Party; (iii) previously produced, disclosed  
17 and/or provided by the Producing Party to the Receiving Party or a non-party without an  
18 obligation of confidentiality and not by inadvertence or mistake; (iv) with the consent of the  
19 Producing Party; or (v) pursuant to order of the Court.  
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22 7. **DESIGNATING PROTECTED MATERIAL**

23 (a) Exercise of Restraint and Care in Designating Material for Protection. Each  
24 Party or Non-Party that designates information or items for protection under this Stipulated  
25 Protective Order must take care to limit any such designation to specific documents and testimony  
26 that qualify under the appropriate standards. Mass, indiscriminate, or routinized designations are  
27 prohibited. If it comes to a Producing Party's attention that information or items that it designated  
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1 for protection do not qualify for protection at all or do not qualify for the level of protection  
2 initially asserted, that Producing Party must promptly notify the Receiving Party that it is  
3 withdrawing the mistaken designation.

4 (b) Manner and Timing of Designations. Except as otherwise provided in this  
5 Order, or as otherwise stipulated or ordered, Discovery Material that qualifies for protection under  
6 this Order must be clearly so designated before the material is disclosed or produced.

7 (c) Available Designations. Any Producing Party may designate Discovery  
8 Material with any of the following designations, provided that it meets the requirements for such  
9 designations as provided for herein: “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’  
10 EYES ONLY,” or “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE  
11 CODE.”

12 (d) Written Discovery and Documents and Tangible Things. Written  
13 discovery, documents (which include “electronically stored information,” as that phrase is used in  
14 Federal Rule of Procedure 34), and tangible things that meet the requirements for the  
15 confidentiality designations listed in Paragraph 7(a) may be so designated by placing the  
16 appropriate designation on every page of the written material prior to production. For digital files  
17 being produced, the Producing Party may mark each viewable page or image with the appropriate  
18 designation, and mark the medium, container, and/or communication in which the digital files  
19 were contained. In the event that original documents are produced for inspection, the original  
20 documents shall be presumed “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” during the  
21 inspection and re-designated, as appropriate during the copying process.

22 (e) Native Files. Where electronic files and documents are produced in native  
23 electronic format, such electronic files and documents shall be designated for protection under this  
24 Order by appending to the file names or designators information indicating whether the file  
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1 contains “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or  
2 “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE,” material, or  
3 shall use any other reasonable method for so designating Protected Materials produced in  
4 electronic format. When electronic files or documents are printed for use at deposition, in a court  
5 proceeding, or for provision in printed form to an expert or consultant pre-approved pursuant to  
6 paragraph 12, the party printing the electronic files or documents shall affix a legend to the printed  
7 document corresponding to the designation of the Designating Party and including the production  
8 number and designation associated with the native file. No one shall seek to use in this case a .tiff,  
9 .pdf or other image format version of a document produced in native file format without first (1)  
10 providing a copy of the image format version to the Producing Party so that the Producing Party  
11 can review the image to ensure that no information has been altered, and (2) obtaining the consent  
12 of the Producing Party, which consent shall not be unreasonably withheld.  
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15 (f) Depositions and Testimony. All deposition transcripts shall initially be  
16 treated as CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in their entirety for thirty (30) days  
17 following the production of the final transcript from the Court Reporter, after which time, the  
18 transcript will have no confidentiality designation, unless the parties identify which portions of the  
19 transcript should be designated under the Protective Order. The parties shall identify any portions  
20 of the transcript which they believe should be designated under the Protective Order and the  
21 designation of that portion within thirty (30) days following the production of the final transcript  
22 from the Court Reporter. Each party shall have fourteen (14) days following the designation of  
23 any portion of the transcript as covered under the Protective Order to object to that designation.  
24 Any Protected Material that is used in the taking of a deposition shall remain subject to the  
25 provisions of this Protective Order, along with the transcript pages of the deposition testimony  
26 dealing with such Protected Material. The court reporter shall be informed of this Protective  
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1 Order and shall be required to operate in a manner consistent with this Protective Order. In the  
2 event the deposition is videotaped, the original and all copies of the videotape shall be marked by  
3 the video technician to indicate that the contents of the videotape are subject to this Protective  
4 Order, substantially along the lines of “This videotape contains confidential testimony used in this  
5 case and is not to be viewed or the contents thereof to be displayed or revealed except pursuant to  
6 the terms of the operative Protective Order in this matter or pursuant to written stipulation of the  
7 parties.” Counsel for any Producing Party shall have the right to exclude from oral depositions,  
8 other than the deponent, deponent’s counsel, the reporter and videographer (if any), any person  
9 who is not authorized by this Protective Order to receive or access Protected Material based on the  
10 designation of such Protected Material. Such right of exclusion shall be applicable only during  
11 periods of examination or testimony regarding such Protected Material.  
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14 **8. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”**

15 (a) A Producing Party may designate Discovery Material as  
16 “CONFIDENTIAL” if it contains or reflects confidential, proprietary, and/or commercially  
17 sensitive information.

18 (b) Unless otherwise ordered by the Court, Discovery Material designated as  
19 “CONFIDENTIAL” may be disclosed only to the following:

20 (i) The Receiving Party’s Outside Counsel, such counsel’s paralegals  
21 and staff, and any copying or clerical litigation support services working at the direction of such  
22 counsel, paralegals, and staff;

23 (ii) Not more than three (3) representatives of the Receiving Party who  
24 are directors, officers, former CEO, Mark Edwards, or employees of the Receiving Party, who  
25 may be, but need not be, in-house counsel for the Receiving Party, as well as their immediate  
26 paralegals and staff, to whom disclosure is reasonably necessary for this case, provided that: (a)  
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1 each such person has agreed to be bound by the provisions of the Protective Order by signing a  
2 copy of Exhibit A; and (b) no unresolved objections to such disclosure exist after proper  
3 notice has been given to all Parties as set forth in Paragraph 12 below;

4 (iii) Any outside expert or consultant (as well as their staff) retained by  
5 the Receiving Party to assist in this action, provided that disclosure is reasonably appropriate to  
6 perform such work; and provided that: (a) such expert or consultant has agreed to be bound by  
7 the provisions of the Protective Order by signing a copy of Exhibit A; (b) such expert or  
8 consultant is not a current officer, director, or employee of a Party or of a competitor of a Party,  
9 nor anticipated at the time of retention to become an officer, director or employee of a Party or of  
10 a competitor of a Party; (c) such expert or consultant accesses the materials in the United States  
11 only, and does not transport them to or access them from any foreign jurisdiction; and (d) no  
12 unresolved objections to such disclosure exist after proper notice has been given to all Parties as  
13 set forth in Paragraph 12 below;

14 (iv) Court reporters, stenographers and videographers retained to record  
15 testimony taken in this action;

16 (v) The Court, jury, and court personnel;

17 (vi) Graphics, translation, design, jury and/or trial consulting personnel,  
18 having first agreed to be bound by the provisions of the Protective Order by signing a copy of  
19 Exhibit A;

20 (vii) Mock jurors who have signed an undertaking or agreement agreeing  
21 not to publicly disclose Protected Material and to keep any information concerning Protected  
22 Material confidential;

1 (viii) Any mediator who is assigned to hear this matter, and his or her  
2 staff, subject to their agreement to maintain confidentiality to the same degree as required by this  
3 Protective Order; and

4 (ix) Any other person with the prior written consent of the Producing  
5 Party.  
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7 9. **DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL –**  
8 **ATTORNEYS’ EYES ONLY”**

9 (a) A Producing Party may designate Discovery Material as “CONFIDENTIAL  
10 – ATTORNEYS’ EYES ONLY” if it contains or reflects information that is extremely  
11 confidential and/or sensitive in nature and the Producing Party reasonably believes that the  
12 disclosure of such Discovery Material is likely to cause economic harm or significant competitive  
13 disadvantage to the Producing Party. The Parties agree that the following information, if non-  
14 public, shall be presumed to merit the “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
15 designation: trade secrets, pricing information, financial data, sales information, sales or  
16 marketing forecasts or plans, business plans, sales or marketing strategy, product development  
17 information, engineering documents, testing documents, employee information, and other non-  
18 public information of similar competitive and business sensitivity.  
19

20 (b) Unless otherwise ordered by the Court, Discovery Material designated as  
21 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

22 (i) The Receiving Party’s Outside Counsel, provided that such Outside  
23 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*,  
24 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party;

25 (ii) Any outside expert or consultant (as well as their staff) retained by  
26 the Receiving Party to assist in this action, provided that disclosure is reasonably appropriate to  
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1 perform such work; and provided that: (a) such expert or consultant has agreed to be bound by the  
2 provisions of the Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is  
3 not a current officer, director, or employee of a Party or of a competitor of a Party, nor anticipated  
4 at the time of retention to become an officer, director, or employee of a Party or of a competitor of  
5 a Party; (c) such expert or consultant is not involved in competitive decision-making, as defined  
6 by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a  
7 competitor of a Party; (d) such expert or consultant accesses the materials in the United States  
8 only, and does not transport them to or access them from any foreign jurisdiction; and (e) no  
9 unresolved objections to such disclosure exist after proper notice has been given to all Parties as  
10 set forth in Paragraph 12 below;

11  
12 (iii) Court reporters, stenographers and videographers retained to record  
13 testimony taken in this action;

14  
15 (iv) The Court, jury, and court personnel;

16 (v) Graphics, translation, design, jury and/or trial consulting personnel,  
17 having first agreed to be bound by the provisions of the Protective Order by signing a copy of  
18 Exhibit A;

19 (vi) Any mediator who is assigned to hear this matter, and his or her  
20 staff, subject to their agreement to maintain confidentiality to the same degree as required by this  
21 Protective Order; and

22 (vii) Any other person with the prior written consent of the Producing  
23 Party.

24  
25 (c) In addition, a Party may disclose arguments and materials derived from  
26 Discovery Material designated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to mock  
27 jurors who have signed an undertaking or agreement agreeing not to publicly disclose Protected  
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1 Material and to keep any information concerning Protected Material confidential. A Party may  
2 not disclose to mock jurors any original, as-produced materials or information (including, for  
3 example, documents, deposition testimony, or interrogatory responses) produced by another Party  
4 designated as “CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”

5  
6 10. **DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL –  
OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE”**

7 (a) To the extent production of Source Code becomes necessary to the  
8 prosecution or defense of the case, a Producing Party may designate Source Code as  
9 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE” if it comprises  
10 or includes confidential, proprietary, and/or trade secret Source Code.

11  
12 (b) Nothing in this Order shall be construed as a representation or admission  
13 that Source Code is properly discoverable in this action, or to obligate any Party to produce any  
14 Source Code.

15 (c) Unless otherwise ordered by the Court, Discovery Material designated as  
16 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE” shall be  
17 subject to the provisions set forth in Paragraph 11 below, and may be disclosed, subject to  
18 Paragraph 11 below, solely to:

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20 (i) The Receiving Party’s Outside Counsel, provided that such Outside  
21 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*,  
22 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party;

23 (ii) Any outside expert or consultant retained (and their staff) by the  
24 Receiving Party to assist in this action, provided that disclosure is reasonably appropriate to  
25 perform such work; and provided that: (a) such expert or consultant has agreed to be bound by the  
26 provisions of the Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is  
27 not a current officer, director, or employee of a Party or of a competitor of a Party, nor anticipated  
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1 at the time of retention to become an officer, director or employee of a Party or of a competitor of  
2 a Party; (c) such expert or consultant is not involved in competitive decision-making, as defined  
3 by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a  
4 competitor of a Party; and (d) no unresolved objections to such disclosure exist after proper notice  
5 has been given to all Parties as set forth in Paragraph 12 below;

6 (iii) Court reporters, stenographers and videographers retained to record  
7 testimony taken in this action;

8 (iv) The Court, jury, and court personnel;

9 (v) Any mediator who is assigned to hear this matter, and his or her  
10 staff, subject to their agreement to maintain confidentiality to the same degree as required by this  
11 Protective Order; and  
12

13 (vi) Any other person with the prior written consent of the Producing  
14 Party.  
15

16 11. **DISCLOSURE AND REVIEW OF SOURCE CODE**

17 (a) Any Source Code that is produced by Plaintiff shall be made available for  
18 inspection in electronic format at the San Francisco office of its outside counsel, Quinn Emanuel  
19 Urquhart and Sullivan LLP, or any other location mutually agreed by the Parties. Any Source  
20 Code that is produced by Apple Inc. will be made available for inspection at the Silicon Valley  
21 office of its outside counsel, DLA Piper LLP, or any other location mutually agreed by the Parties.  
22 Source Code will be made available for inspection between the hours of 9 a.m. and 6 p.m. on  
23 business days (i.e., weekdays that are not Federal holidays), although the Parties will be  
24 reasonable in accommodating reasonable requests to conduct inspections at other times.  
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1 (b) Prior to the first inspection of any requested Source Code, the Receiving  
2 Party shall provide twenty-one (21) days notice of the Source Code that it wishes to inspect. The  
3 Receiving Party shall provide seven (7) days notice prior to any additional inspections.

4 (c) Source Code that is designated “CONFIDENTIAL – OUTSIDE  
5 ATTORNEYS’ EYES ONLY - SOURCE CODE” shall be produced for inspection and review  
6 subject to the following provisions, unless otherwise agreed by the Producing Party:

7 (i) All Source Code shall be made available by the Producing Party to  
8 the Receiving Party’s outside counsel and/or experts in a secure room on a secured computer  
9 without Internet access or network access to other computers and on which all access ports have  
10 been disabled (except for one printer port), as necessary and appropriate to prevent and protect  
11 against any unauthorized copying, transmission, removal or other transfer of any Source Code  
12 outside or away from the computer on which the Source Code is provided for inspection (the  
13 “Source Code Computer” in the “Source Code Review Room”). The Source Code Computer shall  
14 be a Windows or MacOS computer with a keyboard, mouse and at least a 24 inch Monitor, or a  
15 Windows or MacOS laptop. Apple shall make its source code available on an Apple MacBook  
16 Pro with a with a memory of at least 8 GB, processor speed of at least 2.66 GHz (Intel Core i7)  
17 operating on Mac OSX Snow Leopard (unless the Source Code is more easily reviewed on earlier  
18 versions of OSX) with FileVault enabled, XCode, Acrobat Reader, Text Edit, BBEdit, Text  
19 Wrangler, Office 2008 and SlickEdit. The Producing Party shall install tools that are sufficient for  
20 viewing and searching the code produced, on the platform produced, if such tools exist and are  
21 presently used in the ordinary course of the Producing Party’s business. The Receiving Party’s  
22 outside counsel and/or experts may request that commercially available software tools for viewing  
23 and searching Source Code be installed on the secured computer, provided, however, that (a) the  
24 Receiving Party possesses an appropriate license to such software tools; (b) the Producing Party  
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1 may reasonably object to software tools; and (c) such other software tools are reasonably  
2 necessary for the Receiving Party to perform its review of the Source Code consistent with all of  
3 the protections herein. The Receiving Party must provide the Producing Party with the CD or  
4 DVD containing such licensed software tool(s) at least fourteen (14) days in advance of the date  
5 upon which the Receiving Party wishes to have the additional software tools available for use on  
6 the Source Code Computer.

8 (ii) No recordable media or recordable devices, including without  
9 limitation sound recorders, computers, cellular phones, peripheral equipment, cameras, CDs,  
10 DVDs, or drives of any kind, shall be permitted into the Source Code Review Room. The  
11 Producing Party does agree, however, to make available one landline that may be used by experts  
12 to communicate with Outside Counsel of Record, but in no event shall more than four (4)  
13 consecutive lines of code be read out loud during any such communications and Outside Counsel  
14 agrees to not communicate via speaker phone during any such communications.

16 (iii) The Receiving Party's outside counsel and/or experts shall be  
17 entitled to take notes relating to the Source Code but may not copy the Source Code into the notes  
18 and may not take such notes on the Source Code Computer itself. In addition to the Source Code  
19 Computer, the Producing Party shall make available within the Source Code Review Room a  
20 Notetaking Computer for purposes of enabling the Receiving Party's outside counsel and/or  
21 experts to take notes relating to the Source Code. The Notetaking Computer shall have pre-  
22 installed a commercially reasonable text editing program, Microsoft Excel or OpenOffice Calc  
23 spreadsheet software, and an encryption program, such as TrueCrypt. The Reviewing Party shall,  
24 upon completion of its review, store its notes within an encrypted volume, such as TrueCrypt  
25 volume, protected by at least a 20-character password. Upon completion of each review session,  
26 the Producing Party shall, upon request by the Receiving Party, provide the Receiving Party with  
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1 an electronic storage medium, such as a USB storage device, containing the encrypted volume file  
2 with the notes taken by the Receiving Party. At the start of each review session, the Producing  
3 Party also shall, upon request by the Receiving Party, copy an updated encrypted volume file  
4 containing any revised notes taken by the Receiving Party, from such electronic storage medium  
5 onto the Notetaking Computer, for further editing. The Receiving Party shall maintain any notes  
6 taken removed from the Source Code Review Room in the encrypted form described above at all  
7 times when storing or transmitting them. The Producing Party shall not monitor or review any  
8 notes taken on the Notetaking Computer, shall not receive the encryption password, and shall not  
9 interact with any note files on the computer in any way except to transfer the encrypted volume  
10 files, without reviewing their contents, to and from a USB storage medium as described above.  
11 The use of such computer shall not be asserted to be a waiver of any privilege or protection. The  
12 Receiving Party's outside counsel and/or experts may not copy the Source Code into the notes.  
13 Any files containing notes taken on the Notetaking Computer shall be marked as  
14 "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" both in the  
15 file name and in the header or footer of each electronic page of the notes.

18 (iv) The Producing Party may visually monitor the activities of the  
19 Receiving Party's representatives during any Source Code review, but only to ensure that no  
20 unauthorized electronic records of the Source Code and no information concerning the Source  
21 Code are being created or transmitted in any way. The Producing Party will make a good faith  
22 effort to provide a separate room, in addition to the Source Code Review Room, where individuals  
23 reviewing source code can go to use their personal computers, cell phones, and otherwise work in  
24 privacy without any monitor from the Producing Party. The parties agree and acknowledge that  
25 there may be circumstances under which such a separate room may not be available. The Parties  
26 agree to work together in good faith to resolve any disputes that arise in this regard.  
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1 (v) No copies of all or any portion of the Source Code may leave the  
2 room in which the Source Code is inspected except as otherwise provided herein. Further, no  
3 other written or electronic record of the Source Code is permitted except as otherwise provided  
4 herein. The Producing Party shall make available a laser printer with commercially reasonable  
5 printing speeds for on-site printing during inspection of the Source Code. The Receiving Party  
6 may print limited portions of the Source Code only when necessary to prepare court filings or  
7 pleadings or other papers (including a testifying expert's expert report). Any printed portion that  
8 consists of more than fifteen (15) pages of a continuous block of Source Code shall be presumed  
9 to be excessive, and the burden shall be on the Receiving Party to demonstrate the need for such a  
10 printed copy. The Receiving Party shall not print more than 200 pages of Source Code during this  
11 case. The Producing Party agrees, however, to not unreasonably withhold requests to print  
12 additional Source Code and agrees that the burden of showing that any additional Source Code  
13 print-outs is unnecessary shall rest with the Producing Party. The Receiving Party shall not print  
14 Source Code in order to review blocks of Source Code elsewhere in the first instance, i.e., as an  
15 alternative to reviewing that Source Code electronically on the Source Code Computer, as the  
16 Parties acknowledge and agree that the purpose of the protections herein would be frustrated by  
17 printing portions of code for review and analysis elsewhere, and that printing is for the purpose of  
18 preparing court filings or pleadings or other papers (e.g., an expert report). Upon printing any  
19 such portions of Source Code, the printed pages shall be collected by the Producing Party. The  
20 Producing Party shall Bates number, copy, and label "CONFIDENTIAL – OUTSIDE  
21 ATTORNEYS' EYES ONLY - SOURCE CODE" any pages printed by the Receiving Party.  
22 Within seven (7) days, the Producing Party shall either (i) provide one copy set of such pages to the  
23 Receiving Party or (ii) inform the Requesting Party that it objects that the printed portions are  
24 excessive and/or not done for a permitted purpose. The Producing Party shall make itself available  
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1 to meet and confer within three (3) business days of any request by the Receiving Party to meet  
2 and confer in this regard. If, after meeting and conferring, the Producing Party and the Receiving  
3 Party cannot resolve the objection, the Receiving Party shall be entitled to seek a Court resolution  
4 of whether the printed Source Code in question is narrowly tailored and was printed for a permitted  
5 purpose. The burden shall be on the Receiving Party to demonstrate that such printed portions are  
6 no more than is reasonably necessary for a permitted purpose and not merely printed for the  
7 purposes of review and analysis elsewhere. The printed pages shall constitute part of the Source  
8 Code produced by the Producing Party in this action.  
9

10  
11 (vi) All persons who will review a Producing Party's Source Code on  
12 behalf of a Receiving Party, including members of a Receiving Party's outside law firm, shall be  
13 identified in writing to the Producing Party at least five (5) days in advance of the first time that  
14 such person reviews such Source Code. Such identification shall be in addition to any other  
15 disclosure required under this Order. All persons viewing Source Code shall sign on each day  
16 they view Source Code a log that will include the names of persons who enter the locked room to  
17 view the Source Code and when they enter and depart and the Producing Party shall maintain such  
18 log.  
19

20 (vii) Unless otherwise agreed in advance by the Parties in writing,  
21 following each day on which inspection is done under this Order, the Receiving Party's outside  
22 counsel and/or experts shall remove all notes, documents, and all other materials from the Source  
23 Code Review Room. The Producing Party shall not be responsible for any items left in the room  
24 following each inspection session, and the Receiving Party shall have no expectation of  
25 confidentiality for any items left in the room following each inspection session without a prior  
26 agreement to that effect. Proper identification of all authorized persons shall be provided prior to  
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1 any access to the secure room or the computer containing Source Code. Proper identification  
2 requires showing, at a minimum, a photo identification card sanctioned by the government of any  
3 State of the United States, by the government of the United States, or by the nation state of the  
4 authorized person's current citizenship. Access to the secure room or the Source Code Computer  
5 may be denied, at the discretion of the supplier, to any individual who fails to provide proper  
6 identification.  
7

8 (viii) Other than as provided above, the Receiving Party will not copy,  
9 remove, or otherwise transfer any Source Code from the Source Code Computer including,  
10 without limitation, copying, removing, or transferring the Source Code onto any recordable media  
11 or recordable device. The Receiving Party will not transmit any Source Code in any way from the  
12 Producing Party's facilities or the offices of its outside counsel of record.  
13

14 (ix) The Receiving Party's outside counsel of record may make no more  
15 than seven (7) additional paper copies of any portions of the Source Code received from a  
16 Producing Party pursuant to Paragraph 11(c)(v), not including copies attached to court filings or  
17 used at depositions, and shall maintain a log of all paper copies of the Source Code. The log shall  
18 include the names of the reviewers and/or recipients of paper copies and locations where the paper  
19 copies are stored. Upon two (2) day's advance notice to the Receiving Party by the Producing  
20 Party, the Receiving Party shall provide a copy of this log to the Producing Party.  
21

22 (x) The Receiving Party's outside counsel of record and any person  
23 receiving a copy of any Source Code shall maintain and store any paper copies of the Source Code  
24 at their offices in a manner that prevents duplication of or unauthorized access to the Source Code,  
25 including, without limitation, storing the Source Code in a locked room or cabinet at all times  
26 when it is not in use. No more than a total of ten (10) individuals of the Receiving Party shall  
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1 have access to the printed portions of the Producing Party's Source Code (except insofar as such  
2 code appears in any court filing or expert report).

3 (xi) For depositions, the Receiving Party shall not bring copies of any  
4 printed Source Code. The parties shall make a good faith effort to provide at least five (5) days  
5 notice before the date of the deposition about the specific portions of Source Code the Receiving  
6 Party wishes to use at the deposition, and the Producing Party shall bring printed copies of those  
7 portions to the deposition for use by the Receiving Party. Should notice be provided in less than five  
8 (5) days, Apple will make its best effort to bring printed copies of those portions to the deposition  
9 for use by the Receiving Party. Copies of Source Code that are marked as deposition exhibits shall  
10 not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition  
11 record will identify the exhibit by its production numbers. All paper copies of Source Code  
12 brought to the deposition shall remain with the Producing Counsel's outside counsel for secure  
13 destruction in a timely manner following the deposition.  
14  
15

16 (xii) Except as provided in this sub-paragraph, absent express written  
17 permission from the Producing Party, the Receiving Party may not create electronic images, or any  
18 other images, or make electronic copies, of the Source Code from any paper copy of Source Code  
19 for use in any manner (including by way of example only, the Receiving Party may not scan the  
20 Source Code to a PDF or photograph the code). Images or copies of Source Code shall not be  
21 included in correspondence between the Parties (references to production numbers shall be used  
22 instead), and shall be omitted from pleadings and other papers whenever practical. If a Party  
23 reasonably believes that it needs to submit a portion of Source Code as part of a filing with the  
24 Court, the Party shall file a Motion to File Under Seal and all portions of the Source Code and all  
25 reference pertaining to the Source Code shall be sealed. Access to the Receiving Party's  
26 submission, communication, and/or disclosure of electronic files or other materials containing any  
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1 portion of Source Code (paper or electronic) shall at all times be limited solely to individuals who  
2 are expressly authorized to view Source Code under the provisions of this Order. The Receiving  
3 Party shall maintain a log of all such electronic copies of any portion of Source Code in its  
4 possession or in the possession of its retained consultants, including the names of the reviewers  
5 and/or recipients of any such electronic copies, and the locations and manner in which the  
6 electronic copies are stored. Additionally, any such electronic copies must be labeled  
7 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE” as provided  
8 for in this Order.  
9

10           12.    **NOTICE OF DISCLOSURE**

11                   (a)    Prior to disclosing any Protected Material to any person described in  
12 Paragraphs 8(b)(iii), 9(b)(ii), or 10(c)(ii) (referenced below as “Person”), the Party seeking to  
13 disclose such information shall provide the Producing Party with written notice that includes:  
14

15                   (i) the name of the Person;

16                   (ii) a current curriculum vitae of the Person;

17                   (iii) the present employer and title of the Person;

18                   (iv) an identification of all of the Person’s past and current employment and consulting  
19 relationships, including direct relationships and relationships through entities  
20 owned or controlled by the Person, including but not limited to an identification of  
21 any individual or entity with or for whom the person is employed or to whom the  
22 person provides consulting services relating to the design, development, operation,  
23 or patenting of a content delivery system for delivery of content from a media  
24 server located on a wide area network to a media renderer using a mobile device  
25 (e.g., smartphone, tablet, etc.); or provides consulting services at the time of  
26 execution of Exhibit A hereto relating to the acquisition of intellectual property  
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1 assets relating to a content delivery system for delivery of content from a media  
2 server located on a wide area network to a media renderer using a mobile device  
3 (e.g., smartphone, tablet, etc.).

4 (v) an identification by patent application number of all pending patent applications on  
5 which the Person is named as an inventor, in which the Person has any ownership  
6 interest or in which the Person is involved at the time of or within sixty (60) days of  
7 execution of Exhibit A hereto advising on, consulting on, preparing, prosecuting,  
8 drafting, editing, amending, or otherwise affecting the scope of the claims relating  
9 to a content delivery system for delivery of content from a media server located on  
10 a wide area network to a media renderer using a mobile device (e.g., smartphone,  
11 tablet, etc.);

12  
13 (vi) a list of the cases in which the Person has testified at deposition or trial within the last  
14 five (5) years.  
15

16 Further, the Party seeking to disclose Protected Material shall provide such other information  
17 regarding the Person's professional activities reasonably requested by the Producing Party for it to  
18 evaluate whether good cause exists to object to the disclosure of Protected Material to the outside  
19 expert or consultant. During the pendency of and for a period of two (2) years after the final  
20 resolution of this action, including all appeals, the Party seeking to disclose Protected Material  
21 shall immediately provide written notice of any change with respect to the Person's involvement  
22 in the design, development, operation or patenting of a content delivery system for delivery of  
23 content from a media server located on a wide area network to a media renderer using a mobile  
24 device (e.g., smartphone, tablet, etc.).  
25

26 (b) Within fourteen (14) days of receipt of the disclosure of the Person, the  
27 Producing Party or Parties may object in writing to the Person for good cause. In the absence of  
28



1 an objection at the end of the fourteen (14) day period, the Person shall be deemed approved under  
2 this Protective Order. There shall be no disclosure of Protected Material to the Person prior to  
3 expiration of this fourteen (14) day period. If the Producing Party objects to disclosure to the  
4 Person within such fourteen (14) day period, the Parties shall meet and confer via telephone or in  
5 person within three (3) business days following the objection and attempt in good faith to resolve  
6 the dispute on an informal basis. If the dispute is not resolved, the Party objecting to the  
7 disclosure will have five (5) business days from the date of the meet and confer to seek relief from  
8 the Court. If relief is not sought from the Court within that time, the objection shall be deemed  
9 withdrawn. If relief is sought, designated materials shall not be disclosed to the Person in question  
10 until the Court resolves the objection.  
11

12 (c) For purposes of this section, “good cause” shall include an objectively  
13 reasonable concern that the Person will, advertently or inadvertently, use or disclose Discovery  
14 Materials in a way or ways that are inconsistent with the provisions contained in this Order.  
15

16 (d) Prior to receiving any Protected Material under this Order, the Person must  
17 execute a copy of the “Agreement to Be Bound by Protective Order” (Exhibit A hereto) and serve  
18 it on all Parties.

19 (e) An initial failure to object to a Person under this Paragraph 12 shall not  
20 preclude the nonobjecting Party from later objecting to continued access by that Person for good  
21 cause. If an objection is made, the Parties shall meet and confer via telephone or in person within  
22 five (5) days following the objection and attempt in good faith to resolve the dispute informally.  
23 If the dispute is not resolved, the Party objecting to the disclosure will have seven (7) days from  
24 the date of the meet and confer to seek relief from the Court. The designated Person may continue  
25 to have access to information that was provided to such Person prior to the date of the objection.  
26 If a later objection is made, no further Protected Material shall be disclosed to the Person until the  
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1 Court resolves the matter or the Producing Party withdraws its objection. Notwithstanding the  
2 foregoing, if the Producing Party fails to move for a protective order within seven (7) business  
3 days after the meet and confer, further Protected Material may thereafter be provided to the  
4 Person.

5  
6 13. **CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

7 (a) A Party shall not be obligated to challenge the propriety of any designation  
8 of Discovery Material under this Order at the time the designation is made, and a failure to do so  
9 shall not preclude a subsequent challenge thereto.

10 (b) Any challenge to a designation of Discovery Material under this Order shall  
11 be written, shall be served on outside counsel for the Producing Party, shall identify particularly  
12 the documents or information that the Receiving Party contends should be differently designated,  
13 and shall state the grounds for the objection. Thereafter, further protection of such material shall  
14 be resolved in accordance with the following procedures:

15 (i) The objecting Party shall have the burden of conferring either in  
16 person, in writing, or by telephone with the Producing Party claiming protection (as well as any  
17 other interested party) in a good faith effort to resolve the dispute. The Producing Party shall have  
18 the burden of justifying the disputed designation;

19 (ii) Failing agreement, the Receiving Party may bring a motion to the  
20 Court for a ruling that the Discovery Material in question is not entitled to the status and  
21 protection of the Producing Party's designation. The Parties' entry into this Order shall not  
22 preclude or prejudice either Party from arguing for or against any designation, establish any  
23 presumption that a particular designation is valid, or alter the burden of proof that would otherwise  
24 apply in a dispute over discovery or disclosure of information;  
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1 (iii) Notwithstanding any challenge to a designation, the Discovery  
2 Material in question shall continue to be treated as designated under this Order until one of the  
3 following occurs: (a) the Party who designated the Discovery Material in question withdraws such  
4 designation in writing; or (b) the Court rules that the Discovery Material in question is not  
5 entitled to the designation.  
6

7 14. **SUBPOENAS OR COURT ORDERS**

8 (a) If at any time Protected Material is subpoenaed by any court, arbitral,  
9 administrative, or legislative body, the Party to whom the subpoena or other request is directed  
10 shall immediately give prompt written notice thereof to every Party who has produced such  
11 Discovery Material and to its counsel and shall provide each such Party with an opportunity to  
12 move for a protective order regarding the production of Protected Materials implicated by the  
13 subpoena.  
14

15 15. **FILING PROTECTED MATERIAL**

16 (a) Absent written permission from the Producing Party or a court Order  
17 secured after appropriate notice to all interested persons, a Receiving Party may not file or disclose  
18 in the public record any Protected Material.

19 (b) Any Party is authorized under Civil Local Rule 79-5 to file under seal with  
20 the Court any brief, document or materials that are designated as Protected Material under this  
21 Order. However, nothing in this section shall in any way limit or detract from this Order's  
22 requirements as to Source Code.  
23

24 16. **INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

25 (a) The inadvertent production by a Party of Discovery Material subject to the  
26 attorney-client privilege, work-product protection, or any other applicable privilege or protection,  
27 despite the Producing Party's reasonable efforts to prescreen such Discovery Material prior to  
28

1 production, will not waive the applicable privilege and/or protection if a request for return of such  
2 inadvertently produced Discovery Material is made promptly after the Producing Party learns of  
3 its inadvertent production.

4 (b) Upon a request from any Producing Party who has inadvertently produced  
5 Discovery Material that it believes is privileged and/or protected, each Receiving Party shall  
6 immediately return such Protected Material or Discovery Material and all copies to the Producing  
7 Party, except for any pages containing privileged markings by the Receiving Party which shall  
8 instead be destroyed and certified as such by the Receiving Party to the Producing Party.

9 (c) Nothing herein shall prevent the Receiving Party from preparing a record for  
10 its own use containing the date, author, addresses, and topic of the inadvertently produced Discovery  
11 Material and such other information as is reasonably necessary to identify the Discovery Material  
12 and describe its nature to the Court in any motion to compel production of the Discovery Material.  
13

14  
15 17. **INADVERTENT FAILURE TO DESIGNATE PROPERLY**

16 (a) The inadvertent failure by a Producing Party to designate Discovery  
17 Material as Protected Material with one of the designations provided for under this Order shall not  
18 waive any such designation provided that the Producing Party notifies all Receiving Parties that  
19 such Discovery Material is protected under one of the categories of this Order within fourteen (14)  
20 days of the Producing Party learning of the inadvertent failure to designate. The Producing Party  
21 shall reproduce the Protected Material with the correct confidentiality designation within seven (7)  
22 days upon its notification to the Receiving Parties. Upon receiving the Protected Material with the  
23 correct confidentiality designation, the Receiving Parties shall return or securely destroy, at the  
24 Producing Party's option, all Discovery Material that was not designated properly.

25 (b) A Receiving Party shall not be in breach of this Order for any use of such  
26 Discovery Material before the Receiving Party receives such notice that such Discovery Material  
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1 is protected under one of the categories of this Order, unless an objectively reasonable person  
2 would have realized that the Discovery Material should have been appropriately designated with a  
3 confidentiality designation under this Order. Once a Receiving Party has received notification of  
4 the correct confidentiality designation for the Protected Material with the correct confidentiality  
5 designation, the Receiving Party shall treat such Discovery Material (subject to the exception in  
6 Paragraph 17(c) below) at the appropriately designated level pursuant to the terms of this Order.

8 (c) Notwithstanding the above, a subsequent designation of  
9 “CONFIDENTIAL,” “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL  
10 – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” shall apply on a going forward  
11 basis and shall not disqualify anyone who reviewed “CONFIDENTIAL,” “CONFIDENTIAL –  
12 ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY  
13 – SOURCE CODE” materials while the materials were not marked “CONFIDENTIAL –  
14 ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY  
15 – SOURCE CODE” from engaging in the activities set forth in Paragraph 6(b).

17 18. **INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

18 (a) In the event of a disclosure of any Discovery Material pursuant to this Order  
19 to any person or persons not authorized to receive such disclosure under this Protective Order, the  
20 Party responsible for having made such disclosure, and each Party with knowledge thereof, shall  
21 immediately notify counsel for the Producing Party whose Discovery Material has been disclosed  
22 and provide to such counsel all known relevant information concerning the nature and  
23 circumstances of the disclosure. The responsible disclosing Party shall also promptly take all  
24 reasonable measures to retrieve the improperly disclosed Discovery Material and to ensure that no  
25 further or greater unauthorized disclosure and/or use thereof is made  
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1 (b) Unauthorized or inadvertent disclosure does not change the status of  
2 Discovery Material or waive the right to hold the disclosed document or information as Protected.

3 19. **FINAL DISPOSITION**

4 (a) Not later than ninety (90) days after the Final Disposition of this case, each  
5 Party shall return all Discovery Material of a Producing Party to the respective outside counsel of  
6 the Producing Party or destroy such Material, at the option of the Producing Party. For purposes  
7 of this Order, “Final Disposition” occurs after an order, mandate, or dismissal finally terminating  
8 the above-captioned action with prejudice, including all appeals.

9 (b) All Parties that have received any such Discovery Material shall certify in  
10 writing that all such materials have been returned to the respective outside counsel of the  
11 Producing Party or destroyed. Notwithstanding the provisions for return of Discovery Material,  
12 outside counsel may retain one set of pleadings, correspondence and attorney and consultant work  
13 product (but not document productions) for archival purposes, but must return any pleadings,  
14 correspondence, and consultant work product that contain Source Code.

15 20. **DISCOVERY FROM EXPERTS OR CONSULTANTS**

16 (a) Absent good cause, drafts of reports of testifying experts, and reports and  
17 other written materials, including drafts, of consulting experts, shall not be discoverable.

18 (b) Reports and materials exempt from discovery under the foregoing  
19 Paragraph shall be treated as attorney work product for the purposes of this case and Protective  
20 Order.

21 (c) Testifying experts shall not be subject to discovery with respect to any draft  
22 of his or her report(s) in this case. Draft reports, notes, or outlines for draft reports developed and  
23 drafted by the testifying expert and/or his or her staff are also exempt from discovery.

1 (d) Discovery of materials provided to testifying experts shall be limited to  
2 those materials, facts, consulting expert opinions, and other matters actually relied upon by the  
3 testifying expert in forming his or her final report, trial, or deposition testimony or any opinion in  
4 this case. No discovery can be taken from any non-testifying expert except to the extent that such  
5 non-testifying expert has provided information, opinions, or other materials to a testifying expert  
6 relied upon by that testifying expert in forming his or her final report(s), trial, and/or deposition  
7 testimony or any opinion in this case.  
8

9 (e) No conversations or communications between counsel and any testifying or  
10 consulting expert will be subject to discovery unless the conversations or communications are  
11 relied upon by such experts in formulating opinions that are presented in reports or trial or  
12 deposition testimony in this case.  
13

14 (f) Materials, communications, and other information exempt from discovery  
15 under the foregoing Paragraphs [20(a)–(c)] shall be treated as attorney-work product for the  
16 purposes of this case and Order.

17 (g) Nothing in Protective Order, include Paragraphs [20(a)–(c)], shall alter or  
18 change in any way the requirements in Paragraph 11 regarding Source Code, and Paragraph 11  
19 shall control in the event of any conflict.  
20

21 21. **MISCELLANEOUS**

22 (a) Right to Further Relief. Nothing in this Order abridges the right of any  
23 person to seek its modification by the Court in the future. By stipulating to this Order, the Parties  
24 do not waive the right to argue that certain material may require additional or different  
25 confidentiality protections than those set forth herein.

26 (b) Termination of Matter and Retention of Jurisdiction. The Parties agree that  
27 the terms of this Protective Order shall survive and remain in effect after the Final Determination  
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1 of the above-captioned matter. The Court shall retain jurisdiction after Final Determination of this  
2 matter to hear and resolve any disputes arising out of this Protective Order.

3 (c) Successors. This Order shall be binding upon the Parties. This Order shall  
4 also be binding upon the Parties' attorneys, and their successors, executors, personal  
5 representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions,  
6 employees, agents, retained consultants and experts, and any persons or organizations over which  
7 they have direct control who received access to the Discovery Materials.

8  
9 (d) Right to Assert Other Objections. By stipulating to the entry of this  
10 Protective Order, no Party waives any right it otherwise would have to object to disclosing or  
11 producing any information or item. Similarly, no Party waives any right to object on any ground  
12 to use in evidence of any of the material covered by this Protective Order. This Order shall not  
13 constitute a waiver of the right of any Party to claim in this action or otherwise that any Discovery  
14 Material, or any portion thereof, is privileged or otherwise non-discoverable, or is not admissible  
15 in evidence in this action or any other proceeding.

16  
17 (e) Burdens of Proof. Notwithstanding anything to the contrary above, nothing  
18 in this Protective Order shall be construed to change the burdens of proof or legal standards  
19 applicable in disputes regarding whether particular Discovery Material is confidential, which level  
20 of confidentiality is appropriate, whether disclosure should be restricted, and if so, what  
21 restrictions should apply.

22  
23 (f) Modification by Court. This Order is subject to further court order based  
24 upon public policy or other considerations, and the Court may modify this Order *sua sponte* in the  
25 interests of justice. The United States District Court for the Northern District of California is  
26 responsible for the interpretation and enforcement of this Order. All disputes concerning  
27  
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1 Protected Material, however designated, produced under the protection of this Order shall be  
2 resolved by the United States District Court for the Northern District of California.

3 (g) Discovery Rules Remain Unchanged. Nothing herein shall alter or change  
4 in any way the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules for  
5 the United States District Court for the Northern District of California, or the Court's own orders.  
6 Identification of any individual pursuant to this Protective Order does not make that individual  
7 available for deposition or any other form of discovery outside of the restrictions and procedures  
8 of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for  
9 the Northern District of California, or the Court's own orders.  
10

11  
12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 QUINN EMANUEL URQUHART &  
14 SULLIVAN, LLP

DLA PIPER LLP (US)

15 /s/ Amar L. Thakur

/s/ Christine K. Corbett

16 Harold A. Barza  
17 Amar L. Thakur  
18 Vincent Pollmeier

MARK D. FOWLER  
CHRISTINE K. CORBETT  
ROBERT BUERGI  
ROBERT WILLIAMS  
ERIK R. FUEHRER  
JONATHAN HICKS

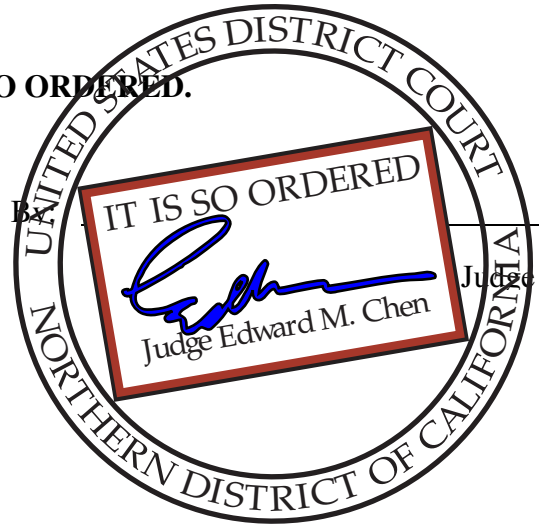
19 Attorneys for Plaintiff,  
Aylus Networks, Inc.

20 Attorneys for Defendant,  
21 Apple Inc.  
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**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: 5/8/14



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**ATTESTATION CLAUSE**

I, William O. Cooper, am the ECF User whose identification and password are being used to file this Stipulated Protective Order. In compliance with Civil Rule 5-1(i)(3), I hereby attest that Christine Corbett has concurred in this filing.

Dated: May 8, 2014

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By: /s/ William O. Cooper  
WILLIAM O. COOPER  
Attorneys for Plaintiff,  
Aylus Networks, Inc

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**EXHIBIT A**

I, \_\_\_\_\_, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *Aylus Networks, Inc. v. Apple Inc.*, United States District Court, Northern District of California, San Francisco Division, Civil Action No. 3:13-cv-4700-EMC. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: \_\_\_\_\_

Present occupation/job description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of Company or Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]