

EAGAN AVENATTI, LLP
Carlos X. Colorado, SBN 231031
ccolorado@eaganavenatti.com
520 Newport Center Drive, Suite 1400
Newport Beach, CA 92660
Telephone: (949) 706-7000
Facsimile: (949) 706-7050

Attorneys for Petitioner RUSSELL KNAGGS

Anna Hsia (SBN 234179)
ZWILLGEN LAW LLP
235 Montgomery Street, Suite 425
San Francisco, CA 94104
Telephone: (415) 590-2341
Facsimile: (415) 636-5965
anna@zwillgen.com

Bart Huff (admitted *pro hac vice*)
ZWILLGEN PLLC
300 N. LaSalle Street, Suite 4925
Chicago, IL 60654
Telephone: (312) 685-2278
bart@zwillgen.com

Nury Siekkinen (admitted *pro hac vice*)
ZWILLGEN PLLC
1900 M Street NW, Suite 250
Washington, DC 20036
Telephone: (202) 296-3585
nury@zwillgen.com

Attorneys for Respondent YAHOO! INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re: Application Pursuant to 28 U.S.C. §1782
of RUSSELL KNAGGS,

Petitioner,

- to take discovery of -

YAHOO! INC.,

Respondent.

Case No. 5:15-mc-80281-MEJ

STIPULATED PROTECTIVE ORDER

Magistrate Judge Maria-Elena James

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords from public disclosure and
8 use extends only to the limited information or items that are entitled to confidential treatment under
9 the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below,
10 that this Stipulated Protective Order does not entitle them to file confidential information under
11 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that
12 will be applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

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

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

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
20 as their support staff) for Petitioner as well as Respondent herein, whether in this proceeding or in
21 Petitioner’s UK Appeal.

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

26 2.5 Disclosure or Discovery Material: all items or information, regardless of the
27 medium or manner in which it is generated, stored, or maintained (including, among other things,
28

1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
2 responses to discovery in this matter.

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

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

12 2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely
13 sensitive "Confidential Information or Items" representing computer code and associated
14 comments and revision histories, formulas, engineering specifications, or schematics that define or
15 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure
16 of which to another Party or Non-Party would create a substantial risk of serious harm that could
17 not be avoided by less restrictive means.

18 2.9 House Counsel: attorneys who are employees of a party to this action. House
19 Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
21 entity not named as a Party to this action.

22 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
23 action but are retained to represent or advise a party to this action and have appeared in this action
24 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party,
25 and, in the case of Petitioner, retained counsel assisting with his UK Appeal.

26 2.12 Party: any party to this action, including all of its officers, directors, employees,
27 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

28 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery

1 Material in this action.

2 2.14 Professional Vendors: persons or entities that provide litigation support services
3 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
4 storing, or retrieving data in any form or medium) and their employees and subcontractors.

5 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as
7 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

8 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
9 Producing Party.

10 2.17 UK Appeal: the appeal of Petitioner’s criminal conviction in the United Kingdom
11 for which Petitioner seeks foreign discovery assistance herein.

12 3. SCOPE

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

26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations imposed by this
28 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order

1 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
2 defenses in this action, with or without prejudice; and (2) final judgment herein after the
3 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
4 including the time limits for filing any motions or applications for extension of time pursuant to
5 applicable law.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
8 Non-Party that designates information or items for protection under this Order must take care to
9 limit any such designation to specific material that qualifies under the appropriate standards. To the
10 extent it is practical to do so, the Designating Party must designate for protection only those parts
11 of material, documents, items, or oral or written communications that qualify – so that other
12 portions of the material, documents, items, or communications for which protection is not
13 warranted are not swept unjustifiably within the ambit of this Order.

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

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

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
23 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
24 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
25 designated before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents, but
28 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party

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

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

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
20 Designating Party identify on the record, before the close of the deposition, hearing, or other
21 proceeding, all protected testimony and specify the level of protection being asserted. When it is
22 impractical to identify separately each portion of testimony that is entitled to protection and it
23 appears that substantial portions of the testimony may qualify for protection, the Designating Party
24 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
25 to have up to 21 days to identify the specific portions of the testimony as to which protection is
26 sought and to specify the level of protection being asserted. Only those portions of the testimony
27 that are appropriately designated for protection within the 21 days shall be covered by the
28 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at

1 the deposition or up to 14 days afterwards if that period is properly invoked, that the entire
2 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY.”

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

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

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

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
26 designate qualified information or items does not, standing alone, waive the Designating Party’s
27 right to secure protection under this Order for such material. Upon timely correction of a
28 designation, the Receiving Party must make reasonable efforts to assure that the material is treated

1 in accordance with the provisions of this Order.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
4 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
5 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
6 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
7 challenge a confidentiality designation by electing not to mount a challenge promptly after the
8 original designation is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
10 by providing written notice of each designation it is challenging and describing the basis for each
11 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
12 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
13 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
14 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
15 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
16 Party must explain the basis for its belief that the confidentiality designation was not proper and
17 must give the Designating Party an opportunity to review the designated material, to reconsider the
18 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
19 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
20 has engaged in this meet and confer process first or establishes that the Designating Party is
21 unwilling to participate in the meet and confer process in a timely manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
23 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
24 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
25 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
26 process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied
27 by a competent declaration affirming that the movant has complied with the meet and confer
28 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a

1 motion including the required declaration within 21 days (or 14 days, if applicable) shall
2 automatically waive the confidentiality designation for each challenged designation. In addition,
3 the Challenging Party may file a motion challenging a confidentiality designation at any time if
4 there is good cause for doing so, including a challenge to the designation of a deposition transcript
5 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a
6 competent declaration affirming that the movant has complied with the meet and confer
7 requirements imposed by the preceding paragraph.

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

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
17 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
18 defending, or attempting to settle this litigation or for the same purposes in connection with the UK
19 Appeal. Such Protected Material may be disclosed only to the categories of persons and under the
20 conditions described in this Order. When the litigation in this proceeding or in the UK Appeal has
21 been terminated, a Receiving Party must comply with the provisions of section 14 below (FINAL
22 DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location and in
24 a secure manner¹ that ensures that access is limited to the persons authorized under this Order.

25
26 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic
27 Protected Material in password-protected form. The Receiving Party may challenge the imposition of such
28 requirement pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the
Receiving Party is the "Challenging Party" and the Producing Party is the "Designating Party" for purposes
of dispute resolution.

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 this action or in the UK
5 Appeal, as well as employees of said Outside Counsel of Record to whom it is reasonably
6 necessary to disclose the information for this litigation and who have signed the “Acknowledgment
7 and Agreement to Be Bound” that is attached hereto as Exhibit A or an analogous document agreed
8 to by the parties herein with respect to persons who reside in the United Kingdom;

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

12 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
13 reasonably necessary for this litigation or for the UK Appeal, and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A) or an analogous document agreed to
15 by the parties herein with respect to persons who reside in the United Kingdom;

16 (d) the courts and their personnel (the United States District Court for the Northern
17 District of California and the UK Court of Appeal, including the Crown Prosecution Service);

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

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

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

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

6 (a) the Receiving Party’s Outside Counsel of Record in this action or in the UK
7 Appeal, as well as employees of said Outside Counsel of Record to whom it is reasonably
8 necessary to disclose the information for this litigation and who have signed the “Acknowledgment
9 and Agreement to Be Bound” that is attached hereto as Exhibit A or an analogous document agreed
10 to by the parties herein with respect to persons who reside in the United Kingdom;

11 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
12 for this litigation or for the UK Appeal, (2) who have signed the “Acknowledgment and Agreement
13 to Be Bound” (Exhibit A) or an analogous document agreed to by the parties herein with respect to
14 persons who reside in the United Kingdom, and (3) as to whom the procedures set forth in
15 paragraph 7.4(a)(2), below, have been followed;

16 (c) the courts and their personnel (the United States District Court for the Northern
17 District of California and the UK Court of Appeal, including the Crown Prosecution Service);

18 (d) court reporters and their staff, and Professional Vendors to whom disclosure is
19 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
20 to Be Bound” (Exhibit A); and

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

23 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information
25 or Items to Experts.

26 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
27 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or
28 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

1 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets
2 forth the full name of the Designated House Counsel and the city, state, and country of his or her
3 residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable
4 future primary job duties and responsibilities in sufficient detail to determine if House Counsel is
5 involved, or may become involved, in any competitive decision-making.

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

21 (b) A Party that makes a request and provides the information specified in the
22 preceding respective paragraphs may disclose the subject Protected Material to the identified

23 _____
24
25 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then
26 the Expert should provide whatever information the Expert believes can be disclosed without violating any
27 confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and
28 confer with the Designating Party regarding any such engagement.

³ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work
prior to the termination of the litigation that could foreseeably result in an improper use of the Designating
Party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

1 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
2 receives a written objection from the Designating Party. Any such objection must set forth in detail
3 the grounds on which it is based.

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

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

20 8. PROSECUTION BAR

21 Absent written consent from the Producing Party, any individual who receives access to
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
23 SOURCE CODE" information shall not be involved in the prosecution of patents or patent
24 applications relating to mail systems before any foreign or domestic agency, including the United
25 States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph,
26 "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting
27
28

1 the scope or maintenance of patent claims.⁴ To avoid any doubt, “prosecution” as used in this
2 paragraph does not include representing a party challenging a patent before a domestic or foreign
3 agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*
4 reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information
6 is first received by the affected individual and shall end two (2) years after final termination of this
7 action.

8 9. SOURCE CODE

9 (a) To the extent production of source code becomes necessary in this case, a
10 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if
11 it comprises or includes confidential, proprietary or trade secret source code.

12 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
13 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph 8,
15 and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and
17 7.4.

18 (c) Any source code produced in discovery shall be made available for
19 inspection, in a format allowing it to be reasonably reviewed and searched, during normal business
20 hours or at other mutually agreeable times, at an office of the Producing Party’s counsel or another
21 mutually agreed upon location.⁵ The source code shall be made available for inspection on a
22 secured computer in a secured room without Internet access or network access to other computers,
23 and the Receiving Party shall not copy, remove, or otherwise transfer any portion of the source

24 _____
25 ⁴ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

26 ⁵ *Alternative:* Any source code produced in discovery shall be made available for inspection in a format
27 through which it could be reasonably reviewed and searched during normal business hours or other mutually
28 agreeable times at a location that is reasonably convenient for the Receiving Party and any experts to whom
the source code may be disclosed. This alternative may be appropriate if the Producing Party and/or its
counsel are located in a different jurisdiction than counsel and/or experts for the Receiving Party.

1 code onto any recordable media or recordable device. The Producing Party may visually monitor
2 the activities of the Receiving Party’s representatives during any source code review, but only to
3 ensure that there is no unauthorized recording, copying, or transmission of the source code.

4 (d) The Receiving Party may request paper copies of limited portions of source
5 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
6 other papers, or for deposition, trial, or appeal, but shall not request paper copies for the purposes
7 of reviewing the source code other than electronically as set forth in paragraph (c) in the first
8 instance. The Producing Party shall provide all such source code in paper form including bates
9 numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The Producing Party may
10 challenge the amount of source code requested in hard copy form pursuant to the dispute resolution
11 procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the
12 “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute
13 resolution.

14 (e) The Receiving Party shall maintain a record of any individual who has
15 inspected any portion of the source code in electronic or paper form, indicating the names of any
16 individuals inspecting the source code and dates and times of inspection, and the names of any
17 individuals to whom paper copies of portions of source code are provided. The Producing Party
18 shall be entitled to a copy of the record upon request, and at the conclusion of the litigation. The
19 Receiving Party shall maintain all paper copies of any printed portions of the source code in a
20 secured, locked space in the offices of the Receiving Party’s Outside Counsel of Record or Experts.
21 The Receiving Party shall not create any electronic or other images of the paper copies and shall
22 not convert any of the information contained in the paper copies into any electronic format. For
23 purposes of clarification, and without limiting the foregoing, the Receiving Party may not create,
24 use, access, or receive electronic images, photographic images, or any other images, of the source
25 code made from the paper copy; the paper copy may not be converted into an electronic document;
26 and the paper copy may not be scanned using optical character recognition technology. The
27 Receiving Party shall only make additional paper copies if such additional copies are (1) necessary
28 to prepare court filings, pleadings, or other papers (including a testifying expert’s expert report),

1 (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper
2 copies used during a deposition shall be retrieved by the Producing Party at the end of each day and
3 must not be given to or left with a court reporter or any other unauthorized individual. The
4 Receiving Party must provide notice to the Producing Party before including “HIGHLY
5 CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or expert report. All
6 paper copies shall be securely destroyed if they are no longer necessary in the litigation (*e.g.*, extra
7 copies at the conclusion of a deposition).

8 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
9 LITIGATION

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

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

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

19 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
20 Designating Party whose Protected Material may be affected.⁶

21 If the Designating Party timely seeks a protective order, the Party served with the
22 subpoena or court order shall not produce any information designated in this action as
23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
24 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which
25 the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The

26
27 ⁶ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective
28 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 Designating Party shall bear the burden and expense of seeking protection in that court of its
2 confidential material – and nothing in these provisions should be construed as authorizing or
3 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

4 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
13 MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain inadvertently
15 produced material is subject to a claim of privilege or other protection, the obligations of the
16 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
17 is not intended to modify whatever procedure may be established in an e-discovery order that
18 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
20 communication or information covered by the attorney-client privilege or work product protection,
21 the parties may incorporate their agreement in the stipulated protective order submitted to the
22 court.

23 13. MISCELLANEOUS

24 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
25 seek its modification by the court in the future.

26 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
27 no Party waives any right it otherwise would have to object to disclosing or producing any
28 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no

1 Party waives any right to object on any ground to use in evidence of any of the material covered by
2 this Protective Order.

3 13.3 Filing Protected Material. Without written permission from the Designating Party or
4 a court order secured after appropriate notice to all interested persons, a Party may not file in the
5 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. Protected Material may only be filed
7 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
8 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
9 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
10 to protection under the law. If a Receiving Party's request to file Protected Material under seal
11 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the
12 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
13 instructed by the court.

14 14. FINAL DISPOSITION

15 Within 60 days after the final disposition of this action or the UK Appeal, as defined
16 in paragraph 4, whichever is later, each Receiving Party must return all Protected Material to the
17 Producing Party or destroy such material. Petitioner's Outside Counsel shall inform Yahoo's
18 Outside Counsel of the termination of the UK Appeal within 14 days after a final disposition in the
19 UK Appeal. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
20 compilations, summaries, and any other format reproducing or capturing any of the Protected
21 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit
22 a written certification to the Producing Party (and, if not the same person or entity, to the
23 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
24 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
25 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
26 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
27 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
28 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work

1 product, and consultant and expert work product, even if such materials contain Protected Material.
2 Any such archival copies that contain or constitute Protected Material remain subject to this
3 Protective Order as set forth in Section 4 (DURATION).

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 DATED: August 25, 2016

6 /s/Carlos X. Colorado
7 Carlos X. Colorado
8 EAGAN AVENATTI, LLP
9 520 Newport Center Drive
10 Suite 1400
11 Newport Beach, CA 92660
12 ccolorado@eaganavenatti.com

13 *Attorneys for Petitioner RUSSELL KNAGGS*

14 DATED: : August 25, 2016

15 /s/Nury A. Siekkinen
16 Anna Hsia (SBN 234179)
17 ZWILLGEN LAW LLP
18 235 Montgomery Street, Suite 425
19 San Francisco, CA 94104
20 Telephone: (415) 590-2341
21 Facsimile: (415) 636-5965
22 anna@zwillgen.com

23 Bart Huff (admitted *pro hac vice*)
24 ZWILLGEN PLLC
25 300 N. LaSalle Street, Suite 4925
26 Chicago, IL 60654
27 Telephone: (312) 685-2278
28 bart@zwillgen.com

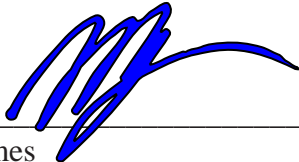
Nury Siekkinen (admitted *pro hac vice*)
ZWILLGEN PLLC
1900 M Street NW, Suite 250
Washington, DC 20036
Telephone: (202) 296-3585
nury@zwillgen.com

Attorneys for Respondent YAHOO! INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 26, 2016



Maria Elena James
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I have read
5 in its entirety and understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Northern District of California on [date] in the case of *In re Application of*
7 *Knaggs*, Case No. 15-mc-80281. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
10 not disclose in any manner any information or item that is subject to this Stipulated Protective
11 Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

19
20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____
23 [printed name]

24 Signature: _____
25 [signature]