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8
 9 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

10 WANG XIAONING, YU LING, SHI TAO,
 11 and ADDITIONAL PRESENTLY
 12 UNNAMED AND TO BE IDENTIFIED
 INDIVIDUALS,

13 Plaintiff,

14 v.

15 YAHOO!, INC., a Delaware Corporation,
 YAHOO! HONG KONG, LTD., a Foreign
 16 Subsidiary of Yahoo!, ALIBABA.COM, INC.
 a Delaware Corporation, AND OTHER
 17 PRESENTLY UNNAMED AND TO BE
 IDENTIFIED INDIVIDUAL EMPLOYEES
 18 OF SAID CORPORATIONS,

19 Defendant.

Case No. C07-02151 CW

**DEFENDANTS' MOTION FOR
 PROTECTIVE ORDER GOVERNING
 CONFIDENTIAL INFORMATION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT**

Date: September 20, 2007

Time: 2:00 p.m.

Location: Courtroom 2

Judge: Hon. Claudia Wilken

20
 21 TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE THAT ON September 20, 2007, at 2:00 p.m in Courtroom 2,
 23 4th Floor, United States Courthouse, 1301 Clay Street, Oakland, California, defendant Yahoo!,
 24 Inc. ("Yahoo!") and specially appearing defendant Yahoo! Hong Kong Ltd. ("YHKL") will and
 25 hereby do move for the entry of a Protective Order governing the disclosure of confidential
 26 information in this action. This motion for a protective order is brought pursuant to Rule 26(c) of
 27 the Federal Rules of Civil Procedure on the grounds that good cause exists to award protective
 28 relief to limit the disclosure and dissemination of defendants' trade secrets and confidential

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 YAHOO!'S MOT. FOR PROTECTIVE
 ORDER

1 commercial information. Defendants' proposed Protective Order, which is based on the Northern
2 District of California's form stipulated protective order, provides necessary safeguards for the
3 parties to produce sensitive and confidential information in this action.

4 This motion is based on this Notice of Motion and Motion, the pleadings on file in this
5 matter, the following Memorandum of Points and Authorities, the [Proposed] Protective Order
6 and Declaration of Matthew T. Kline filed concurrently herewith, and any further argument the
7 Court might allow.

8 YHKL joins this motion without waiving, and specifically reserving, its objection to the
9 exercise of personal jurisdiction in this case.

10 Dated: August 15, 2007

DANIEL M. PETROCELLI
MATTHEW T. KLINE
O'MELVENY & MYERS LLP

11
12
13 By: 

14 Daniel M. Petrocelli
15 Attorneys for Defendant YAHOO!, INC. and
16 Specially Appearing Defendant YAHOO!
17 HONG KONG, LTD
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1 **I. INTRODUCTION**

2 Defendants seek the entry of a standard protective order preventing the dissemination of
3 evidence the parties designate “confidential.” The parties have met and conferred and agree on
4 the need for the protection of confidential material, but not on the terms of a protective order.
5 Defendants require the protective order they propose, in part, because YHKL will soon be filing a
6 motion to dismiss for lack of personal jurisdiction, and YHKL’s briefing will make reference to
7 trade secrets regarding YHKL’s business and the extent of its contacts to California. A protective
8 order will also be required to cover certain discovery in this case.

9 **II. MEET AND CONFER EFFORTS**

10 Defendants sought to negotiate a stipulated protective order with plaintiffs. *See* Decl. of
11 Matthew T. Kline in Support of Defs.’ Mot. for Entry of a Protective Order ¶¶ 3-5 (“Kline Decl.”)
12 (filed herewith). On July 26, 2007, defendants sent plaintiffs a draft protective order, which was
13 based on the Northern District of California’s form protective order. *See id.* ¶ 3. (For the Court’s
14 convenience, a redline showing the minor differences between the form order and defendants
15 proposed order is attached. *See id.* ¶ 2, Ex. A.) After exchanging several emails, the parties met
16 and conferred telephonically on August 8, 2007, and continued to exchange emails discussing this
17 matter over the past week. *Id.* Exs. B, C. Efforts to reach a stipulated protective order proved
18 unsuccessful. Plaintiffs demanded that the protective order include provisions that were, in
19 defendants’ view, unnecessary and burdensome, as explained below.

20 **III. ARGUMENT**

21 **A. A Protective Order to Is Needed to Safeguard Confidential Information.**

22 “[F]or good cause shown,” the Court may issue protective orders limiting or setting
23 conditions on the disclosure of “trade secret[s] or other confidential research, development, or
24 commercial information” FED. R. CIV. P. 26(c)(7); *see also* SCHWARZER ET AL., CAL. PRAC.
25 GUIDE: FED. CIV. PRO. BEFORE TRIAL, § 11:1110 (Rutter 2007). Courts routinely issue orders
26 granting confidential status to trade secrets and sensitive commercial and other information. *See,*
27 *e.g., Slade v. Gates*, No. CV 01-8244-RMT (EX), 2003 WL 21920285, at *1 (C.D. Cal. July 30,
28 2003) (limiting disclosure of confidential documents to counsel only); *Official Unsecured*

1 *Creditors Comm. of Media Vision Tech., Inc. v. Jain*, 215 F.R.D. 587, 590 (N.D. Cal. 2003)
2 (same); *ICG Commc'ns, Inc. v. Allegiance Telecomm.*, 211 F.R.D. 610, 615 (N.D. Cal. 2002)
3 (same); *Upjohn Co. v. Hygieia Biological Labs.*, 151 F.R.D. 355, 361 (E.D. Cal. 1993) (same);
4 *Nat'l Mortgage Equity Corp. Mortgage Pool Certificates Sec. Litig.*, 120 F.R.D. 687, 692 (C.D.
5 Cal. 1988) (same); *Davidson Pipe Co. v. Laventhol and Horwath*, 120 F.R.D. 455, 465 (S.D.N.Y.
6 1988) (same); *GTE Prods. Corp. v. Gee*, 112 F.R.D. 169, 172 (D. Mass. 1986) (same); *Pfeiffer v.*
7 *K-Mart Corp.*, 106 F.R.D. 235, 236-37 (S.D. Fla. 1985) (same).

8 To justify the entry of a protective order, a party need only make a "threshold showing of
9 good cause to believe that discovery will involve confidential or protected information."

10 *Parkway Gallery Furniture, Inc. v. Kittinger/Pennsylvania House Group, Inc.*, 121 F.R.D. 264,
11 268 (M.D.N.C. 1988). Indeed, "[a] 'blanket' protective order (e.g., forbidding each party from
12 disclosing any information produced in discovery absent permission from the other party or the
13 court) is often obtained without a substantial showing of good cause for each document covered
14 by the order." SCHWARZER ET AL., *supra*, § 11:1126.5.

15 This action is likely to involve disclosure of confidential, proprietary, and private
16 information that should be protected from public dissemination. Such information includes
17 confidential financial and technological information regarding defendants' businesses. Plaintiffs,
18 too, may seek to protect certain information of their own, especially if they urge it is necessary to
19 avoid the risk of reprisals from the Chinese government.

20 More immediately, YHKL requires a protective order to protect information relevant to its
21 upcoming motion to dismiss for lack of personal jurisdiction. Specifically, YHKL intends to
22 provide confidential financial and technical information to demonstrate its absence of significant
23 contacts with California and its presence in Hong Kong as a separate, independent business and
24 corporate entity. Both Yahoo! and YHKL operate web portals offering a variety of internet-based
25 services. Both companies, as do their competitors and peers, consider details concerning the
26 number and origin of visitors to their websites to be sensitive, trade-secret information. *See* Kline
27 Decl. ¶¶ 6-7. Indeed, even the methods that Yahoo! and YHKL use to track the traffic on their
28 websites are proprietary. *See id.* Public disclosure of these details would be detrimental of the

1 competitive interests of both Yahoo! and YHKL. *See id.* Hence, there is good cause to enter the
2 order defendants seek.¹

3 **B. The Protective Order Defendants Proposed Is Appropriate.**

4 Defendants' proposed protective order is based on this Court's standard form order and
5 will protect the parties' interests. Plaintiffs do not dispute that a protective order is appropriate
6 for certain documents. Nor have they proposed an alternative order of their own. Instead, they
7 raise four general concerns about the order, and every time we have asked for specific line edits
8 to address their concerns, they have declined to provide any.

9 1. Plaintiffs' first objection is that the protective order is too broad. *See Kline Ex. C* at 3,
10 ¶¶ 1-2. Plaintiffs cite no law for this general proposition, nor could they, as the order defendants
11 propose tracks this Court's form order, which is made available to litigant's on the Court's
12 website. *See id.* ¶ 2; *cf. Wood v. Vista Mannor Nursing Center*, No. C 06-01682-JW (PVT), 2007
13 WL 832933 (N.D. Cal. Mar. 14, 2007) (using N.D. Cal. model protective order).

14 2. In their second objection, plaintiffs ask defendants to include a provision in the order
15 requiring the parties to explain each and every confidentiality designation they make. This is
16 unnecessary and only designed to deter reliance on the protective order. *See Kline Decl. Ex. C* at
17 3, ¶¶ 2-3. As it currently drafted, Section 5.1 of the Court's form order (and defendants'
18 proposed order) instructs parties not to over-designate documents as confidential. Section 6
19 provides plaintiffs the means to challenge any designation they dispute. Plaintiffs have neither
20 contended nor proven that defendants will indiscriminately designate documents as confidential.
21 Moreover, unlike privilege logs—which make sense, because the opposing party never sees
22 privileged documents its opponent withholds—a confidentiality log is make-work. Plaintiffs'
23 counsel will see the documents defendants mark “confidential” and can object to these
24 designations if they so choose.

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27 ¹ Since this Motion for a Protective Order will be heard after YHKL files its motion to dismiss,
28 YHKL will provide any confidential evidence supporting its motion after the Court enters a
protective order. *See Kline Decl.* ¶ 8.

1 3. Plaintiffs' third objection is that, if documents marked confidential become public by
2 means other than improper leaks, the documents should no longer be treated as confidential. *See*
3 *id.* at 3, ¶ 4. Again, this objection is designed to further dilute the protection afforded by the
4 Court's form order. As we explained to plaintiffs, Section 6 of the proposed order provides them
5 the means to argue that documents should no longer be treated as confidential if and when they
6 have become public in a legitimate way. *See id.* Ex. B at 2.

7 4. Plaintiffs last objection is to require that no protective be entered unless it is "link[ed]
8 to the discovery process." *See id.* at 3. This, too, is inappropriate. Plaintiffs have not explained
9 what it means to "link" the protective order to the discovery process, or why it is necessary to
10 include such cryptic language. As best we can discern, plaintiffs appear to be saying they will not
11 agree to a protective order unless defendants commit to commence discovery. *See id.* But as we
12 have informed plaintiffs' counsel, this is not sensible, appropriate, or necessary. Discovery will
13 proceed in accordance with the applicable rules and orders of the Court. To the extent defendants
14 have objections to discovery in whole or in part, they cannot and will not stipulate them away as a
15 *quid pro quo* for plaintiffs' agreement to a protective order. Furthermore, in light of YHKL's
16 impending motion to dismiss, a protective order is required independent of discovery.

17 **IV. CONCLUSION**

18 Defendants motion should be granted.

19 Dated: August 15, 2007

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21
22 By: 

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25 Specially Appearing Defendant YAHOO!
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