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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17
18 IN RE SUBPOENA TO BayTSP, INC.
19 VIACOM INTERNATIONAL INC., *et al.*,
Plaintiffs,

20 v.

21 YOUTUBE, INC., *et al.*,
22 Defendants.

23 THE FOOTBALL ASSOCIATION PREMIER
LEAGUE LIMITED, *et al.*,
24 Plaintiffs,

25 v.

26 YOUTUBE, INC. *et al.*,
Defendants.
27
28

CASE NO.: 08-MC-80211 JF (PVTx)

**[PROPOSED] STIPULATED PRE-
TRIAL PROTECTIVE ORDER**

(S.D.N.Y. CASE NOS. I :07-cv-021 03
(LLS) (FM); I :07-cv-3582 (LLS) (FM))
Judge: Honorable Jeremy Fogel

1 WHEREAS on September 27, 2007, YouTube, Inc., YouTube, LLC and Google Inc.,
2 (collectively, "YouTube" or "Defendants") issued a non-party subpoena ("Subpoena") from this
3 Court to BayTSP, Inc. ("BayTSP") in connection with civil actions filed by Viacom
4 International, Inc. *et al.* and The Football Association Premier League, *et al.* against YouTube,
5 Inc. *et al.* in the United States District Court for the Southern District of New York, Case Nos. I
6 :07-cv-021 03 (LLS) (FM) I :07-cv-3582 (LLS) (FM), respectively. (collectively, "SDNY
7 Actions"). YouTube, and the parties to those actions that execute the Protective Order
8 Agreement Acknowledgement are referred to herein as the SDNY Parties.

9 WHEREAS BayTSP believes that certain information, documents, and testimony are
10 likely to be disclosed and produced through discovery that may constitute or incorporate
11 confidential information, trade secrets and other confidential research, development, or
12 commercial information within the meaning of Rule 26(c) of the Federal Rules of Civil
13 Procedure;

14 WHEREAS YouTube and BayTSP ("the PO Parties") believe that entry of a protective
15 order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure will facilitate the production
16 of confidential, trade secrets and other confidential research, development, or commercial
17 information; and

18 WHEREAS, the Court finds that good cause exists for the entry of this protective order
19 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure in order to protect the confidential
20 information, trade secrets and other confidential research, development, or commercial
21 information.

22 IT IS HEREBY AGREED AND ORDERED, pursuant to Rule 26(c) of the Federal Rules
23 of Civil Procedure, that the documents and information that BayTSP produces in response to this
24 or any other Subpoena issued by any SDNY Party, shall be handled under the following terms:

25 1. Any documents, things or information produced or otherwise furnished by
26 BayTSP that is not public and that BayTSP would normally not reveal to third parties, or if
27 disclosed, would require such third parties to maintain in confidence, may be designated
28 CONFIDENTIAL by BayTSP. BayTSP shall effectuate the designation of CONFIDENTIAL

1 documents or information by stamping or marking on the documents or other material the term
2 BAYTSP CONFIDENTIAL or if the material cannot be so marked, by stamping or marking the
3 term BAYTSP CONFIDENTIAL on the CD-ROM or DVD-ROM containing the documents or
4 other material. Those documents or information shall be maintained by the person/parties
5 authorized under this Protective Order to receive said documents or information (“Receiving
6 Parties”) in confidence and used only for the purposes of the SDNY Actions. To the extent that
7 any such items are filed with a Court, they shall be placed in an envelope marked BAYTSP
8 CONFIDENTIAL MATERIALS SUBJECT TO PROTECTIVE ORDER and sealed. Such
9 sealed envelopes shall be opened only by the Clerk of Court or by the Court, or their agents
10 absent an order of Court.

11 2. Documents or other materials designated as BAYTSP CONFIDENTIAL by
12 BayTSP shall be restricted to the following persons:

- 13 (a) United States District Courts for the Northern District of California and the
14 Southern District of New York (“Courts”) and their employees;
- 15 (b) Outside counsel retained by a SDNY Party for representation in the SDNY
16 Actions, including associated personnel necessary to assist outside counsel in the
17 SDNY Actions, such as paralegals, litigation assistants, clerical staff, technical
18 staff, and vendors who are actively engaged in assisting such counsel with
19 respect to the SDNY Actions;
- 20 (c) Any certified shorthand or court reporters retained to report a deponent’s
21 testimony taken in the SDNY Actions;
- 22 (d) Experts approved under this Protective Order, having been retained by a SDNY
23 Party to assist counsel with respect to the SDNY Actions, and having signed the
24 Protective Order Agreement Acknowledgment attached hereto as Exhibit A, as
25 well as clerical, administrative or support staff of such experts;
- 26 (e) Persons shown on the face of the document to have authored or received it;
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1 (f) Any person to whom BayTSP agrees, in advance and in writing and who have
2 signed the Protective Order Agreement Acknowledgment that is attached as
3 Exhibit A., may receive such protected information; and

4 (g) Employees of any party, as reasonably necessary for purposes of the SDNY
5 Actions, for use only in connection with the SDNY Actions, who have signed the
6 Protective Order Agreement Acknowledgment that is attached as Exhibit A.

7 3. Any documents, things or information produced or otherwise furnished by
8 BayTSP that BayTSP reasonably believes in good faith to contain source code; nonpublic patent
9 applications or related things and documents; technical research and development information;
10 revenue share or confidential pricing information; confidential commercial, material or other
11 non-public terms in business agreements with third parties; competitive business strategies and
12 forward-looking business plans, including identification of targets for potential investments,
13 marketing plans, forecasts, budgets, and financial performance parameters; market share and
14 revenue projections; valuation of investments or potential investments (including licensing
15 agreements, equity investments and acquisitions); due diligence materials related to investments
16 or potential investments (including licensing agreements, equity investments and acquisitions);
17 nonpublic concepts and plans for new entertainment programming; personally identifying
18 information concerning users (which shall not be construed to include any information a user
19 posts or uploads for public viewing on any website); advertising rates (e.g., cost per mille, click,
20 or action); proprietary information regarding web site traffic; or commercially sensitive database
21 schemas may be designated BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY by BayTSP. Such designation shall be made by marking the documents or material (or
23 part(s) thereof) in a conspicuous manner or if the material cannot be so marked, by stamping or
24 marking the term BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY on the
25 CD-ROM or DVD-ROM containing the documents or other material. The marking shall state
26 BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY or some similar marking.
27 Access to materials designated by BayTSP as BAYTSP HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY and to any portion of any transcript, brief, affidavit, memorandum

1 or other paper that contains, reveals or refers to materials so designated is limited to those
2 persons set forth in paragraphs 2(a) – 2(f) above, excluding however any expert designated
3 pursuant to paragraph 2(d) who is also a SDNY Party employee. To the extent that any such
4 items are filed with the Clerk of Court or with the Court, they shall be placed in an envelope
5 marked BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY and sealed. Such
6 sealed envelopes shall be opened only by the Clerk of Court or by the Court, or their agents.

7 4. Any documents, things or information produced or otherwise furnished by
8 BayTSP in response to the Subpoena that are designated “BAYTSP CONFIDENTIAL” or
9 “BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” and contain BayTSP’s
10 Source Code may be designated “BAYTSP RESTRICTED CONFIDENTIAL-SOURCE
11 CODE.”

12 (a) Information designated BAYTSP RESTRICTED CONFIDENTIAL-SOURCE
13 CODE, specifically identified for expert review, will be produced to designated
14 outside counsel for a SDNY Party (“Source Code Custodian”) on a portable hard
15 disk drive (“HDD”). Any supplemental production of BAYTSP RESTRICTED
16 CONFIDENTIAL-SOURCE CODE shall be made consistent with the means for
17 production provided herein, or by a means agreed to by the SDNY Parties, at the
18 option of BayTSP. No SDNY Party can request that more than three (3) duplicate
19 HDDs be produced to the Source Code Custodian;

20 (b) At BayTSP’s option, any BAYTSP RESTRICTED CONFIDENTIAL-SOURCE
21 CODE, HDD, or both may be encrypted prior to production. Information
22 necessary to gain access to encrypted BAYTSP RESTRICTED
23 CONFIDENTIAL-SOURCE CODE or an encrypted HDD shall be provided by
24 counsel for BayTSP to the Source Code Custodian by reasonable means meeting
25 the security interests of BayTSP;

26 (c) Access to information designated BAYTSP RESTRICTED CONFIDENTIAL-
27 SOURCE CODE shall be limited to Source Code Custodians and the experts
28 retained or used by counsel for any party to assist counsel with respect to this

1 litigation as described in paragraph 2(d), except that an expert who is an employee
2 of a SDNY party shall not have access to documents or information designated as
3 BAYTSP RESTRICTED CONFIDENTIAL-SOURCE CODE;

4 (d) The Source Code shall be viewed only on non-networked computers in secure,
5 locked areas within the confines of a United States office of the individuals
6 identified in Paragraph 4(c);

7 (e) Electronic copies of BAYTSP RESTRICTED CONFIDENTIAL-SOURCE
8 CODE shall only be made within the confines of the HDD; however a Source
9 Code Custodian may include excerpts of Source Code of length no more than
10 necessary for purposes of the litigation in a pleading, exhibit, expert report,
11 discovery document, deposition transcript, other Court document, or any drafts of
12 these documents ("Restricted Confidential Documents");

13 (f) To the extent excerpts of Source Code are quoted in a Restricted Confidential
14 Document, Source Code Custodians and the persons described in paragraphs 2(a)-
15 (d), shall be permitted to store and access Restricted Confidential Documents on a
16 computer and on a computer network that limits access to only necessary viewers;
17 Source Code Custodians and the persons described in paragraph 2(a)-(d), may
18 also send Restricted Confidential Documents to authorized persons via electronic
19 mail;

20 (g) To the extent portions of Source Code are quoted in a Restricted Confidential
21 Document, those pages or exhibits containing quoted Source Code will be
22 separately bound, stamped and treated as BAYTSP RESTRICTED
23 CONFIDENTIAL-SOURCE CODE. When any Restricted Confidential
24 Document is filed with a Court, the separately bound portion stamped and treated
25 as BAYTSP RESTRICTED CONFIDENTIAL-SOURCE CODE shall be filed
26 under seal. When hard copies of any Restricted Confidential Document are
27 retained in the offices of the Source Code Custodian, the Source Code Custodian
28 shall keep the separately bound portions stamped and treated as BAYTSP

1 RESTRICTED CONFIDENTIAL-SOURCE CODE in a secure, locked area of
2 the office of the Source Code Custodian or destroy them in a manner that ensures
3 they cannot be salvaged, such as cross-shred shredding or incineration;

4 (h) Each Restricted Confidential Document or draft thereof containing Source Code
5 stored on a computer or computer network shall be individually password-
6 protected so as to limit access to authorized persons;

7 (i) Any and all printouts or photocopies of the BAYTSP RESTRICTED
8 CONFIDENTIAL-SOURCE CODE or documents that otherwise contain
9 BAYTSP RESTRICTED CONFIDENTIAL-SOURCE CODE shall be marked
10 BAYTSP RESTRICTED CONFIDENTIAL-SOURCE CODE by the printing
11 party. Should such printouts or photocopies be transferred back to electronic
12 media, such media shall continue to be labeled BAYTSP RESTRICTED
13 CONFIDENTIAL-SOURCE CODE and shall continue to be treated as such;

14 (j) The Source Code Custodian shall maintain a log of all BAYTSP RESTRICTED
15 CONFIDENTIAL-SOURCE CODE or other files containing BAYTSP
16 RESTRICTED CONFIDENTIAL-SOURCE CODE that are printed or
17 photocopied;

18 (k) If the Source Code Custodian or a party's expert, described in paragraph 2.d.,
19 makes printouts or photocopies of portions of BAYTSP RESTRICTED
20 CONFIDENTIAL-SOURCE CODE, the Source Code Custodian shall keep the
21 printouts or photocopies in a secured locked area of the office of the Source Code
22 Custodian or destroy them in a manner that ensures they cannot be salvaged, such
23 as cross-shred shredding or incineration.

24 (l) The Source Code Custodian may temporarily keep or view the HDD or other
25 materials containing BAYTSP RESTRICTED CONFIDENTIAL-SOURCE
26 CODE at: (i) the sites where any depositions relating to the BAYTSP
27 RESTRICTED CONFIDENTIAL-SOURCE CODE are taken for the dates
28 associated with the taking of the deposition; (ii) the Court; or (iii) any

1 intermediate location reasonably necessary to transport the information (e.g., a
2 hotel prior to a deposition), provided that the Source Code Custodian takes all
3 necessary precautions to protect the confidentiality of the HDD or other materials
4 containing BAYTSP RESTRICTED CONFIDENTIAL-SOURCE CODE while
5 the materials are in such intermediate locations.

6 5. Any copies, photographs, depictions, excerpts, notes concerning, or other
7 information generated from an inspection of the matters designated BAYTSP CONFIDENTIAL
8 or BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY shall be treated in the
9 same manner as material marked BAYTSP CONFIDENTIAL or BAYTSP HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

11 6. In the case of a deposition:

12 (a) Counsel for BayTSP may designate during a deposition that certain information
13 disclosed during a deposition is to be treated as BAYTSP CONFIDENTIAL or
14 BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY by so
15 indicating on the record of the deposition and any such parts so designated shall
16 be part of a separate transcript of such material and marked with the appropriate
17 designation.

18 (b) If BayTSP does not attend a deposition and BAYTSP CONFIDENTIAL or
19 BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY
20 information or materials are used, discussed, or attached as an exhibit (in
21 accordance with the provisions of this Protective Order) during that deposition,
22 then the deposition transcript shall be temporarily designated as BAYTSP
23 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY. The SDNY Party
24 taking the deposition shall thereafter provide BayTSP with a copy of the
25 deposition transcript and within thirty (30) days after receipt of the transcript,
26 BayTSP's counsel shall review the transcript and designate those pages of the
27 transcript that they believe constitute, reflect, or disclose BAYTSP
28 CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY information. The Receiving Parties may object to BAYTSP
 2 CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’
 3 EYES ONLY designations pursuant to paragraph 11. Designations to which the
 4 Receiving Parties so object shall remain in full force and effect until such
 5 objections are resolved.

6 (c) All persons not authorized to review BAYTSP CONFIDENTIAL or BAYTSP
 7 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY shall be required to
 8 leave for portions of the deposition that contain or refer to BAYTSP
 9 CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’
 10 EYES ONLY.

11 7. An expert retained or used by counsel for a SDNY party to assist counsel with
 12 respect to the SDNY Actions (“expert”) may be shown BAYTSP CONFIDENTIAL or BAYTSP
 13 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY things and information after
 14 compliance with this provision, except that an expert who is an employee of a SDNY party shall
 15 not have access to documents or information designated by BayTSP as BAYTSP HIGHLY
 16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY. Any person working to support an expert
 17 shall be subject to this disclosure procedure if that person has himself served as a consultant or
 18 expert directly (rather than in a supporting capacity) on consulting or litigation matters that must
 19 be included on a CV under subparagraph a.

20 (a) Before an expert reviews BAYTSP HIGHLY CONFIDENTIAL –
 21 ATTORNEYS’ EYES ONLY information, the retaining SDNY Party must
 22 disclose the identity of the expert to BayTSP, along with a copy of the expert’s
 23 curriculum vitae, including a list of non-litigation consulting retentions and list of
 24 matters in which the expert has been retained as an expert for litigation (including
 25 testifying by deposition or at trial) within the preceding 5 years. Within 14
 26 calendar days of such disclosure, BayTSP, or BayTSP on behalf of its nonparty
 27 client, may object to the expert if BayTSP, or BayTSP’s non-party client, believes
 28 that additional protections beyond those set forth in this Protective Order are

necessary to protect BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY with respect to that expert. If no objection is made within 10 calendar days of the disclosure of the expert’s identity, any such objection is waived. The identities of the experts disclosed under this provision shall be treated as CONFIDENTIAL information under this protective order;

(b) If a timely objection is made under subparagraph (a), BayTSP (and if necessary BayTSP’s nonparty client) and the retaining SDNY Party shall meet and confer to attempt to resolve the objection during the following 10 calendar days;

(c) If no agreement is reached within the 14-day meet-and-confer period under subparagraph (b), the retaining SDNY Party must file a motion within five (5) calendar days concerning the expert’s access to BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY documents. If no motion is made within 5 calendar days after the expiration of the 14-day meet-and-confer period provided by subparagraph (b), then any objection is waived;

(d) If a motion is timely filed within the 5 day period provided by subparagraph (c), BayTSP shall have 5 calendar days to respond. No discovery of any kind shall be permitted in connection with such motion. The retaining SDNY Party shall have the burden of persuasion to establish that information designated BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY does not merit such protection. Relief that prohibits a retained expert’s access to BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY information may be imposed if this Court is unable to impose other protections that reasonably safeguard BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY while also preserving the ability of the expert to access such information in order to assist counsel of the party retaining the expert.

8. It shall be the duty of the Receiving Parties to ensure that all documents produced to them by BayTSP and marked BAYTSP CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY are filed under seal pursuant to the applicable

1 Rule of the United States District Court for the Southern District of New York. In addition, any
2 information designated as BAYTSP CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL
3 – ATTORNEYS’ EYES ONLY may be introduced in a pretrial court proceeding and/or in open
4 court only if the party seeking to introduce the material first seeks the advance written
5 permission of BayTSP. If BayTSP declines to grant such permission, or fails to respond within
6 five calendar days, the SDNY party seeking to introduce the material may seek an order from the
7 Court permitting the introduction of such information. In the motion, the SDNY party seeking to
8 introduce the material must inform the Court of BayTSP’s lack of consent. The party seeking to
9 introduce the material must also serve a copy of the motion on BayTSP on the same day the
10 motion is filed with the Court. If the Court declines to grant the motion, the material may not be
11 introduced at the pretrial court proceeding or in open court.

12 9. Except for those individuals listed in paragraphs 2(a), 2(b), 2(c) and 2(e), all
13 persons to whom any information subject to this Protective Order may be disclosed shall, prior to
14 any disclosure to them, be provided a copy of this Protective Order and execute a Protective
15 Order Agreement Acknowledgment form attached as Exhibit A to this Protective Order.

16 10. Any person provided BAYTSP CONFIDENTIAL or BAYTSP HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY information or documents pursuant to the
18 terms of this protective order will maintain that information and documents in confidence and
19 use it only for the purposes of the SDNY Actions.

20 11. No party shall be obligated to challenge the propriety of a designation of
21 BAYTSP CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY when initially received, and a failure to do so shall not preclude a subsequent challenge
23 thereto. If, at any time, a SDNY Party objects to a designation of BAYTSP CONFIDENTIAL or
24 BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY under this Protective
25 Order, the objecting party shall notify BayTSP in writing. Within 10 calendar days of the receipt
26 of such notification, counsel for BayTSP (and if appropriate BayTSP’ nonparty clients’ counsel)
27 and the objecting party shall meet-and-confer in an effort to resolve any disagreement regarding
28 the designated BayTSP materials. If, for whatever reason, the objecting party and BayTSP do

1 not resolve their disagreement within the meet and confer period specified in this paragraph, the
2 objecting party may apply within 10 days from the conclusion of the meet and confer period for
3 a ruling on BayTSP's designation of the BAYTSP CONFIDENTIAL or BAYTSP HIGHLY
4 CONFIDENTIAL – ATTORNEYS' EYES ONLY. The objecting party shall have the burden of
5 showing that the BAYTSP CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL –
6 ATTORNEYS' EYES ONLY should be de-designated. The documents or materials subject to
7 that application will remain BAYTSP CONFIDENTIAL or BAYTSP HIGHLY
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY until the Court rules. If the objecting party
9 and BayTSP do not resolve their disagreement and the objecting party does not apply to the
10 Court for a ruling on the BAYTSP CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL –
11 ATTORNEYS' EYES ONLY designation, the material in question will continue to be deemed
12 BAYTSP CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
13 ONLY.

14 12. The inadvertent or unintentional production or failure to designate any
15 information as BAYTSP CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL –
16 ATTORNEYS' EYES ONLY shall not be deemed a waiver of BayTSP's claim of confidentiality
17 as to such information and BayTSP may thereafter designate such information as BAYTSP
18 CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY as
19 appropriate.

20 13. The inadvertent or unintentional production of documents or other information
21 containing privileged information or attorney work product shall be governed by the terms of the
22 nonwaiver agreement between YouTube and the Plaintiffs to the SDNY Action dated August 3,
23 2007, which is incorporated herein by reference, and extended to BayTSP and its clients, except
24 as modified as follows: (i) Paragraph 7 of the nonwaiver agreement will be modified to place
25 the burden on the receiving party to submit the specified information to the Court under seal for
26 a determination of the claim and provide the Court with the grounds for challenging the claim of
27 privilege or other protection; and (ii) Paragraph 3 of the nonwaiver agreement will be modified
28

1 to require that any such submission, motion or challenge shall be made before the Court in the
2 Northern District of California instead of the Southern District of New York.

3 14. BAYTSP CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL –
4 ATTORNEYS' EYES ONLY information, including all copies and/or extracts thereof, and all
5 information derived therefrom, shall be held in strict confidence by the receiving party in
6 accordance with the terms of this Order and shall not be disclosed other than as necessary for, or
7 used for any purpose other than, the prosecution or defense of this action by the original parties
8 to the Original Complaint or the parties named in a later amended Complaint, in the SDNY
9 Actions. In particular, neither BAYTSP CONFIDENTIAL or BAYTSP HIGHLY
10 CONFIDENTIAL – ATTORNEYS' EYES ONLY, nor any copies and/or extracts thereof nor
11 anything derived therefrom shall be disclosed in any way to any person, attorney, government
12 agency, or expert for use in any other litigation or contemplated litigation, or for any other
13 purpose extraneous to the SDNY Actions.

14 15. In the event a Receiving Party is served with legal process seeking production of
15 BAYTSP CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
16 ONLY material obtained through discovery and protected hereunder, the Receiving Party shall
17 promptly notify BayTSP of the service of legal process and afford BayTSP the opportunity to
18 object thereto.

19 16. In the event that a party inadvertently discloses BAYTSP CONFIDENTIAL or
20 BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY materials or information
21 in a manner that is inconsistent with this Protective Order, the disclosing party shall promptly: 1)
22 request the return or destruction of the inadvertently disclosed documents or materials from the
23 possessing parties and request that any other document or materials derived from such be
24 expunged of protected information; 2) inform BayTSP and the other parties of the circumstances
25 of the inadvertent disclosure, including which documents or materials were disclosed, to whom
26 disclosure was made, and when the disclosure took place; 3) request written confirmation of the
27 destruction or return of all inadvertently disclosed documents from the possessing parties; and 4)
28 within five (5) business days provide BayTSP and the other parties in writing, confirmation that

1 the provisions of this paragraph have been effectuated, an explanation of when the provisions of
2 this paragraph will be effectuated, or an explanation of why the provisions of this paragraph
3 cannot be effectuated.

4 17. Within 60 days of the final conclusion of the SDNY Actions, including any
5 appeal, or upon the settlement and/or dismissal of the SDNY Actions, all documents and things
6 or information subject to this Protective Order shall be returned to BayTSP, or shall be
7 destroyed. Counsel for each party will certify in writing their compliance with the provisions of
8 this section. Counsel for the parties may preserve work product and privileged documents, and
9 one hard copy and one electronic copy of each pleading, correspondence and deposition
10 transcript, in their permanent files even though such documents may reflect or contain
11 confidential documents or information. The conclusion of this proceeding shall not relieve any
12 person or party from any of the requirements imposed by this Protective Order.

13 18. Nothing contained in this Protective Order, nor any action taken in compliance
14 with it, shall operate as an admission by any party that any particular information is or is not
15 BAYTSP CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY matter within the contemplation of the law or prejudice in any way the right of any party
17 or third party to seek a Court determination of whether or not any particular materials should be
18 disclosed or if disclosed whether or not it should be subject to the terms of this Order. Further,
19 nothing contained in this Protective Order shall operate as an admission by any party as to the
20 relevance, discoverability, authenticity or admissibility of any information or category or
21 information addressed herein.

22 19. The relevance or admissibility of this Order for any purpose in the SDNY Actions
23 is reserved for the future decision of the Court.

24 20. Nothing herein shall impose any restrictions on the use or disclosure by BayTSP
25 of its own BAYTSP CONFIDENTIAL or BAYTSP HIGHLY CONFIDENTIAL –
26 ATTORNEYS’ EYES ONLY information.

27 21. The provisions of this Order shall not preclude BayTSP from seeking from the
28 Court, for good cause shown, additional protections, limitations or other modifications on the use

of certain documents or information as permitted by Fed. R. Civ. P. 26(c), with notice to the SDNY Parties.

22. All notices or disclosures to BayTSP under this Stipulated Pre-Trial Protective Order shall be made by overnight delivery via a commercial carrier to an address or representative designated in writing by BayTSP, or as otherwise agreed with BayTSP. Any such notices shall be deemed received by BayTSP on the following business day.

AGREED and STIPULATED
June 30, 2009

*Attorneys for YouTube, Inc., YouTube, LLC
and Google Inc.*

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AGREED and STIPULATED
June 30, 2009

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Filer's Attestation: Pursuant to General Order No. 45, Section X(B), the filer hereby attests that the signatories' concurrence in the filing of this document has been obtained.

[PROPOSED] ORDER

The foregoing Stipulation is hereby approved and IT IS ORDERED that the terms of the foregoing Stipulation are hereby adopted and shall govern material produced by BayTSP in response to YouTube's September 27, 2007 Subpoena unless otherwise ordered by the Court.

IT IS SO ORDERED.

Dated: _____

Honorable Patricia V. Trumbull
United States Magistrate Judge

EXHIBIT A**PROTECTIVE AGREEMENT ACKNOWLEDGEMENT**

I hereby acknowledge that I am being given access to Confidential and/or Highly Confidential information that is the subject of a Protective Order governing materials produced in response to a Subpoena served on BayTSP, Inc. with regard to the case entitled Viacom International Inc., Comedy Partners, Country Music Television, Inc., Paramount Pictures Corporation, and Black Entertainment Television LLC v. YouTube, Inc., YouTube, LLC, and Google, Inc., Civil File No. 07-CV-2103 (LLS) (FM), pending before the United States District Court for the Southern District of New York. I agree that I shall maintain that Confidential and/or Highly Confidential information in confidence and will use it for no other purpose than as provided in paragraph 14 of the Protective Order. I understand that I can be subject to sanctions for violation of this agreement, and I hereby submit myself to the jurisdiction of the United States District Court for the Northern District of California, for the purpose of any proceeding arising out of a purported violation by me of the Protective Order. I further agree that upon the conclusion of my having any need for further access to confidential information provided to me, or upon request by the person making them available to me or Order of the Court, I shall return to the person making them available to me all Confidential and Highly Confidential items provided and all copies thereof.

Printed Name

Signature

Date

Address