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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12 VIACOM INTERNATIONAL, INC., ET)
AL,)
13)
Plaintiffs,)
14)
v.)
15)
YOUTUBE, INC., ET AL.,)
16)
Defendants.)
17 _____)

Case No.: C 08-MC-80211 JF (PVT)

**ORDER RE PARTIES PROPOSED
FORM OF PROTECTIVE ORDER**

18 On June 30, 2009, the parties filed a [Proposed] Stipulated Pre-Trial Protective Order. Based
19 on the form of order submitted,

20 IT IS HEREBY ORDERED that no later than July 24, 2009 the parties shall brief whether
21 this court may enter a stipulated pretrial protective order in the above-captioned action in light of its
22 pendency in another district and the language set forth in Rule 26(c)(1) (“A party from whom
23 discovery is sought may move for a protective order in the court where the action is pending – or as
24 an alternative on matters relating to deposition, in the court for the district where the deposition will
25 be taken.”). In the order granting defendant YouTube’s motion to compel dated January 14, 2009,
26 the court had stated that the parties may agree that a stipulated protective order relating to BayTSP’s
27 other clients shall govern from this district. (“January 14, 2009 Order”). Upon further
28 consideration, however, the court finds that additional briefing is needed.

1 IT IS FURTHER ORDERED that the parties shall submit a revised form of order that
2 rewords Paragraph 13 to read as follows:

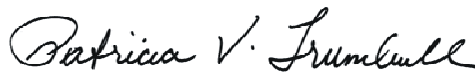
3 "Each party shall make efforts that are 'reasonably designed' to protect its
4 privileged materials. *See Gomez v. Vernon*, 255 F.3d 1118, 1131-32 (9th Cir. 2001).
5 What constitutes efforts that are reasonably designed to protect privileged materials
6 depends on the circumstances; the law does not require 'strenuous or Herculean
7 efforts,' just 'reasonable efforts.' *See, e.g., Hynix Semiconductor, Inc. v. Rambus,*
8 *Inc.* 2008 WL 350641, *1-*2 (ND Cal., Feb. 2, 2008); *see also*, FED.R.CIV.PRO.
9 26(f)(3) advisory committee's notes to 2006 amendments (discussing the substantial
10 costs and delays that can result from attempts to avoid waiving privilege, particularly
11 when discovery of electronic information is involved). When a particular Rule 34
12 request requires a production or inspection that is too voluminous, expedited or
13 complex (such as certain electronic productions) to allow for an adequate pre-
14 production review, the parties may enter into non-waiver agreements for that
15 particular production. If the requesting party is unwilling to enter into such an
16 agreement, the Producing Party may move the court for a non-waiver order.

17 "In the event that, despite reasonable efforts, a Producing Party discovers it
18 has inadvertently produced privileged materials, then within 30 calendar days the
19 Producing party shall notify the Receiving Party that the document(s) or materials
20 should have been withheld on grounds of privilege. After the Receiving Party
21 receives this notice from the Producing Party under this paragraph, the Receiving
22 Party shall not disclose or release the inadvertently produced material to any person
23 or entity pending resolution of the Producing Party's claim of privilege. The parties
24 shall hold a meet and confer, as defined in Civil Local Rule 1-5(n), as soon as
25 reasonably possible after a notice of inadvertent production. If the Producing Party
26 and Receiving Party agree that the inadvertently produced material is privileged, and
27 was disclosed despite efforts by the Producing Party that were 'reasonably designed'
28 to protect the materials, then the Receiving Party shall return or certify the
destruction of all copies (including summaries) of such material. If no agreement is
reached, then within 10 court days after the meet and confer, the Producing Party
must seek a ruling from this court to establish that the material is privileged and that
the Producing Party did not waive the privilege by inadvertently producing the
material. If the Producing Party seeks such a ruling, the Receiving Party shall not
disclose or release the inadvertently produced material to any person or entity
pending the court's ruling on the Producing Party's motion."

IT IS FURTHER ORDERED that the stipulated protective order shall provide appropriate
instructions for requesting confidential materials be filed under seal pursuant to Local Rule 79-5.

IT IS FURTHER ORDERED that, pending entry of the final form of protective order, the
provisions of the parties' proposed form of protective order, as modified herein, shall govern the
handling of confidential information exchanged or disclosed during discovery in this case.

Dated: July 2, 2009


PATRICIA V. TRUMBULL
United States Magistrate Judge