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K Kendall Brill Klieger MEMORANDUM ENDO

Because of the prospect that its disclosure may reveal anti-piracy methods, this document (Ex 33 to the Schapiro Declaration in support of Google's Reply Brief) shall remain sealed: So ordered
Louis L. Stanton
7/29/10

July 1, 2010

VIA HAND DELIVERY

Hon. Louis L. Stanton
United States District Judge
Southern District of New York
United States Courthouse, Courtroom 21C
500 Pearl Street
New York, NY 10007-1312

Re: *Viacom Int'l, Inc. v. Google, Inc.*, Case No. 07-cv-2103 (LLS)

Your Honor:

This firm represents third-party BayTSP. As background, BayTSP provides services to help the entertainment industry, software and videogame developers, and the publishing industry manage and prosecute online piracy. BayTSP is often retained by the legal department of its clients in order to facilitate the legal department's strategy of preventing and prosecuting online piracy. In virtually all circumstances, BayTSP is bound by strict confidentiality requirements in its dealings with its customers due to the sensitive and confidential nature of the work performed.

Google served BayTSP with a subpoena issued out of the United States District Court for the Northern District of California (the "Subpoena"). In response to the Subpoena, BayTSP produced approximately four million pages of documents. During the summary judgment briefing in this case, numerous BayTSP documents were used as evidence by both parties. At each stage of briefing, BayTSP was asked if it objected to the unsealing of the BayTSP documents submitted in support of the briefs. Until now, BayTSP has not objected to the unsealing of any such documents.

BayTSP, however, is now compelled to object to the unsealing Exhibit 33 to the Declaration of Andrew Schapiro submitted by Google in support of its reply brief (the "Confidential Document"). The Confidential Document relates to anti-piracy work performed by BayTSP for non-party the Motion Picture Association of America ("MPAA"). The Confidential Document contains sensitive and competitive information not only of BayTSP, but of non-party MPAA, relating to both of these non-parties' anti-piracy strategies and practices.¹ BayTSP does not want

¹ The instant request before Your Honor relates to whether the Confidential Document should remain under seal. Separately, pursuant to the Subpoena (which is governed by a protective order issued by the Northern District of California), BayTSP has informed Google that it believes the document contains privileged information, that BayTSP produced the document inadvertently, and that Google should return it pursuant to the protective order's "clawback"

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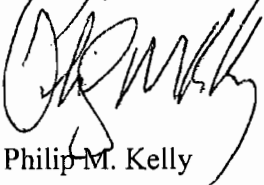
its confidential anti-piracy methods to be publicly disseminated, not only to prevent competitors from obtaining an unfair advantage but also to prevent content pirates from developing measures to fight off anti-piracy efforts.

BayTSP's sealing request is narrowly-tailored. Out of the numerous BayTSP documents relied upon by the parties on summary judgment, this is the first and only document that BayTSP has sought to keep sealed. Courts in this circuit and elsewhere have repeatedly granted narrowly-tailored requests for sealing that involve confidential and sensitive business information, particular when the information is that of a third party. *See, e.g., Standard Inv. Chartered, Inc. v. Nat'l Ass'n of Secs. Dealers*, No. 07 Civ. 2014, 2008 WL 199537, at * 8 (S.D.N.Y. Jan. 22, 2008) (holding that party's "interest in protecting confidential business information outweighs the qualified First Amendment presumption of public access"); *Ball Memorial Hosp., Inc. v. Mutual Hosp. Ins., Inc.*, 784 F.2d 1325, 1346 (7th Cir. 1986) (finding that confidential pricing data is subject to protective order); *SI Handling Sys., Inc. v. Heisley*, 753 F.2d 1244, 1260 (3rd Cir. 1985) (noting that internal information related to pricing and profit margin "is not information that is readily obtainable by anyone in the industry" and thus "qualifies for trade secret protection"); *Competitive Techs. v. Fujitsu Ltd.*, 286 F. Supp. 2d 1118, 1147 (N.D. Cal. 2003) (recognizing that information concerning the existence, status and substance of business negotiations can constitute a trade secret); *United States v. Dentsply Int'l. Inc.*, 187 F.R.D. 152, 157 (D. Del. 1999) (protecting disclosure of "sales and marketing plans, strategic plans, financial forecasts, margin information ... [and] pricing information"); *In re Adobe Sys., Inc. Secs. Litig.*, 141 F.R.D. 155, 161-62 (N.D. Cal. 1992) (finding that filing documents under seal is the primary means to preserve "parties' (and third parties') legitimate expectation that confidential business information, proprietary technology and trade secrets will not be publicly disseminated").

In light of the foregoing authorities and the confidential and sensitive nature of the document, BayTSP respectfully requests that the Court maintain the Confidential Document under seal.

Please feel free to contact me if I may provide any further information.

Sincerely,



Philip M. Kelly

cc: Scott Wilkens, Esq. (via email)
Michael Rubin, Esq. (via email)

(footnote continued)

provisions. Google has disagreed with the privilege assertion, and BayTSP is currently exhausting its meet and confer requirements under the governing protective order.