

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

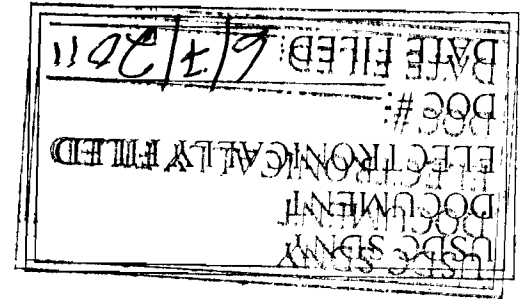
CBS BROADCASTING INC.,  
NBC STUDIOS LLC,  
UNIVERSAL NETWORK TELEVISION, LLC,  
NBC SUBSIDIARY (KNBC-TV) LLC,  
TWENTIETH CENTURY FOX FILM CORPORATION,  
FOX TELEVISION STATIONS, INC.,  
ABC HOLDING COMPANY INC., and  
DISNEY ENTERPRISES, INC.,

Plaintiffs,

-against-

FILMON.COM, INC.,

Defendant.



Civil Action No. 1:10-cv-7532  
(NRB)

~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER

The parties respectfully believe that disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Such information likely will include, among other things, sensitive agreements, purchase orders, invoices, financial statements, design materials, and customer information. Such sensitive information and data could be used by actual or potential competitors to gain an improper and unlawful competitive advantage in the marketplace, and therefore the parties believe that this Protective Order is necessary to prevent such harm to the parties.

IT IS HEREBY STIPULATED and agreed by and between counsel for the parties that the terms and conditions of this Stipulated Protective Order be entered pursuant to Fed. R. Civ. P. 26 (c) as follows:

1. This Stipulated Protective Order shall be applicable to and govern all sensitive information disclosed by or on behalf of any party, including, by way of example, depositions,

documents and materials produced in response to requests for production of documents, answers to interrogatories, responses to requests for admissions and all other discovery furnished, directly or indirectly, by or on behalf of any party or non-party in connection with this action pursuant to the Federal Rules of Civil Procedure, as well as all documents produced by either party in response to informal discovery requests, and computerized records, which the disclosing party designates as "Confidential" or "Restricted – Attorneys' Eyes Only."

2. A party shall make such a designation of "Confidential" or "Restricted – Attorneys' Eyes Only" only for sensitive information which the party in good faith believes may contain trade secrets or other confidential, competitive or proprietary business information used by it in, or pertaining to, its business, which the party takes appropriate efforts to keep confidential or which the party is otherwise required to keep confidential by agreement or law ("Confidential Records"). For a designation of Confidential Records as "Restricted – Attorneys' Eyes Only," the party must additionally believe in good faith that the Confidential Records must be subject to the restricted disclosure provided for below. The parties and all persons that obtain access to "Confidential" and "Restricted – Attorneys' Eyes Only" material may use such material solely for the purpose of prosecuting, defending, appealing, or attempting to settle this litigation. For the avoidance of doubt, the parties and persons with access to "Confidential" and "Restricted – Attorneys' Eyes Only" material may not use any of such material for any business, commercial, or competitive purpose, or during the course of any other case, litigation, or proceeding, whether or not factually related to this action, and must restrict their use of such material so as to maintain its confidentiality in accordance with the terms hereof.

3. Confidential Records designated as "Confidential" may be disclosed only to the following persons:

a. the attorneys working on this action on behalf of any party, including in-house attorneys;

b. any paralegal assistants, stenographic and clerical employees working under the direct supervision of such attorneys;

c. any parties to this action who are individuals, and the employees, directors or officers of parties to this action who are corporations or partnerships, to the extent necessary to further the interest of the parties in this litigation;

d. any person not employed by a party who is expressly retained or sought to be retained by any attorney described in paragraph 3 (a) to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work;

e. any witness who authored or received the Confidential Records prior to their production to the receiving party, provided that the witness will not be permitted to retain the Confidential Records unless the witness is otherwise authorized to do so; and

f. the Court and its authorized staff and any Magistrate Judge or Special Master appointed by the Court and his/her staff, and any other person who the Court has appointed or the parties have agreed will serve as mediator in this action, provided that the mediator shall destroy all documents, things or information marked "Confidential" or "Restricted – Attorneys' Eyes Only" within ten (10) days after the conclusion of such person's involvement in the mediation and shall not use such information for any purpose other than in connection with the mediation.

4. Confidential Records designated as "Restricted – Attorneys' Eyes Only" may be disclosed only to the following persons:

a. the attorneys working on this action on behalf of any party, including in-house attorneys;

b. any paralegal assistants, stenographic and clerical employees working under the direct supervision of such attorneys, with disclosure only to the extent necessary to perform their work in connection with this matter;

c. any person not employed by a party who is expressly retained or sought to be retained by any attorney described in paragraph 4 (a) to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work;

d. any witness who authored or received the Restricted – Attorneys’ Eyes Only Records prior to their production to the receiving party, provided that the witness will not be permitted to retain the Confidential Records unless the witness is otherwise authorized to do so; and

e. the Court and its authorized staff and any Magistrate Judge or Special Master appointed by the Court and his/her staff, and any other person appointed by the Court or whom the parties have agreed will serve as mediator in this action, provided that the mediator shall destroy all documents, things or information marked “Confidential” or “Restricted – Attorneys’ Eyes Only” within ten (10) days after the conclusion of such person’s involvement in the mediation and shall not use such information for any purpose other than in connection with the mediation.

5. a. Before any of the persons described in paragraphs 3 (d) and 4 (c) shall have access to Confidential or Restricted – Attorneys’ Eyes Only material, he or she must certify that he or she has been made aware of the provisions of this Order and has manifested his or her assent to be bound thereby by signing a copy of the annexed “Acknowledgement,” and the signed Acknowledgement must be served upon the opposing parties, along with a current resume or curriculum vitae reasonably identifying the person, each individual or company for which the person has done work in the past five years or with which the person has an agreement to do

work in the future, and his or her relationship, if any, to any party, competitor, or other client. The party that produced the Confidential or Restricted – Attorneys’ Eyes Only material shall then have five business days to serve a written objection to access by such person. Any written objection shall state with specificity the reason(s) for such objection. If such objection is made, there shall be no disclosure to such person except by agreement of the parties or by order of the Court, and counsel for the parties shall meet and confer in an effort to reach an agreement. Failing that and for good cause shown, the party opposing disclosure may file a motion, within five (5) days after the meet and confer, seeking preclusion of the disclosure. On any such motion, the party that designated the Confidential or Restricted – Attorneys’ Eyes Only material shall bear the burden of showing why disclosure to the person should be precluded.

b. The other persons described in paragraphs 3 and 4 shall have access to the Confidential and Restricted – Attorneys’ Eyes Only material pursuant to the terms of this Order without signing a copy of the annexed “Acknowledgement.” A list shall be maintained by counsel for the parties hereto of the names of all persons to whom the content of any Restricted – Attorneys’ Eyes Only material is disclosed, or to whom the information contained therein is disclosed, and such list shall be available for inspection by the Court and opposing counsel upon good cause shown. At the time of the termination of this lawsuit by settlement, judgment or otherwise, the parties hereto shall provide other counsel with a copy of the pertinent aforementioned lists upon request. The persons receiving Confidential or Restricted – Attorneys’ Eyes Only material are enjoined from disclosing it to any other person, except in conformance with this Order.

5. Each individual who receives any Confidential or Restricted – Attorneys’ Eyes Only material hereby agrees to subject himself/herself to the jurisdiction of this Court for the

purpose of any proceedings relating to the performance under, compliance with or violation of this Order.

6. The recipient of any Confidential or Restricted – Attorneys’ Eyes Only material that is provided under this Order shall maintain such Records in a secure and safe area and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such Records as is exercised by the recipient with respect to his or her own proprietary information.

7. Parties shall designate Confidential or Restricted – Attorneys’ Eyes Only material as follows:

a. In the case of Confidential Records produced pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, interrogatory answers, responses to requests for admissions, and the information contained therein, designation shall be made by placing the following legend on every page prior to production: “Confidential” or “Restricted – Attorneys’ Eyes Only.” In the event that a party inadvertently fails to stamp or otherwise designate a Confidential Record as Confidential or Restricted—Attorneys’ Eyes Only at the time of its production, it may do so by stamping or otherwise designating the Record and giving written notice to all Parties or their counsel of the new designation as being either Confidential or Restricted – Attorneys’ Eyes Only at any time after discovery of such error. All persons who are in possession of such after-production designated or re-designated materials and who are not within a category of persons who may possess such materials pursuant to Paragraphs 4 and 6 hereof shall promptly return all known copies of any such documents to the producing party or to a person who is within a category of persons who may possess such materials. Such after-production designated or re-designated materials shall be treated pursuant to the provisions of this Order.

b. In the case of depositions, designation of the portion of the transcript (including exhibits) which contains Confidential or Restricted – Attorneys’ Eyes Only material shall be made by a statement to such effect on the record in the course of the deposition or, upon review of such transcript by counsel for the party to whose Confidential or Restricted – Attorneys’ Eyes Only material the deponent has had access, which said counsel shall designate within fourteen (14) days after counsel’s receipt of the transcript. Counsel shall list on a separate piece of paper the numbers of the pages of the transcript containing Confidential or Restricted – Attorneys’ Eyes Only material, inserting the list at the end of the transcript, and mailing copies of the list to counsel for all parties so that it may be affixed to the face of the transcript and each copy thereof. Pending such designation by counsel, the entire deposition transcript, including exhibits, shall be deemed Confidential or Restricted – Attorneys’ Eyes Only; if no designation is made within fourteen (14) days after receipt of the transcript, the transcript shall be considered not to contain any Confidential or Restricted – Attorneys’ Eyes Only material.

c. Transcripts of depositions will not be filed with the Court unless it is necessary to do so for purposes of trial, motions for summary judgment, or other matters. If a deposition transcript is filed and if it contains Confidential or Restricted – Attorneys’ Eyes Only material, the transcript shall bear the appropriate legend on the caption page.

8. A party shall not be obligated to challenge the propriety of a Confidential or Restricted – Attorneys’ Eyes Only designation at the time made, and failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this litigation disagrees at any stage of these proceedings with such designation, such party shall provide to the producing party written notice of its disagreement with the designation. Consistent with Local Rule 37.2, the parties shall first confer in good faith in an effort to dispose of such dispute. If the dispute

any person or party not authorized under this Order, then the receiving party shall (a) advise the affected adverse party promptly, and in no event more than three (3) business days after discovery of the disclosure, that there has been such unauthorized disclosure; and (b) use its best efforts to obtain the return of any such Confidential Records and to bind such person to the terms of this Order.

13. Nothing in this Stipulation and Protective Order shall require disclosure of information that counsel contends is protected from disclosure by the attorney-client privilege or the attorney work-product immunity.

14. If information subject to a claim of attorney-client privilege or work product immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or work-product immunity for such information. If a party has inadvertently or unintentionally produced information subject to a claim of immunity or privilege, the information for which a claim of inadvertent or unintentional production is made shall be returned to the producing party within three (3) days of the producing party's request. Moreover, any notes or summaries referring or relating to any such inadvertently or unintentionally produced information shall be destroyed. In the event that any such information is contained in a produced document, all copies of that document, and any notes or summaries relating thereto that may have been made, shall be destroyed to the extent practicable. Nothing herein shall prevent the party returning such information from moving the Court for an Order compelling production of such information, but the unintentional or inadvertent production of that information shall not be a basis for such a motion.

15. Within sixty (60) days of the termination of litigation between the parties, all Confidential and Restricted – Attorneys' Eyes Only material, and all known copies thereof,



except such copies which have been filed with the Court, utilized in accordance with this Order, or which are and will continue to be maintained in a secure place pursuant to the continuing obligations of this Order, shall be returned to the party which produced it or shall be destroyed.

16. Except as specifically provided herein, the terms, conditions and limitations of this Order shall survive the termination of this action at the option of the designating party.

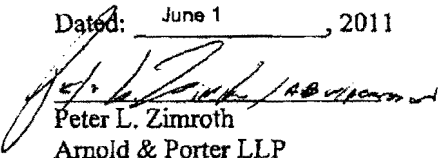
17. The parties agree that they shall be bound and will conduct discovery in accordance with this proposed Stipulated Protective Order until it or another form of Protective Order has been entered by the Court in this case.

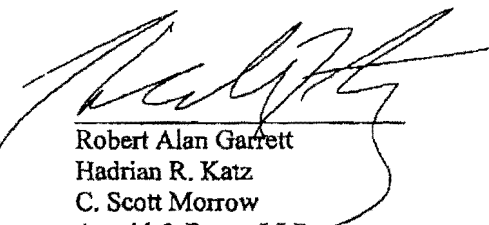
18. This Order is without prejudice to the right of any party to seek relief from the Court, upon good cause shown, from any of the provisions contained in paragraphs 1 through 18, inclusive hereof.

19. If a party is served with a subpoena or an order issued in other litigation that would compel disclosure of any Confidential Records designated in this action as "Confidential" or "Restricted – Attorneys' Eyes Only," that party must so notify the party that produced the Confidential Records immediately in writing and in no event more than three business days after receiving the subpoena or order. Such notification must include a copy of the subpoena or order. The party served with the subpoena or order must also immediately inform in writing the person that caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is the subject of this Protective Order. In addition, the party served with the subpoena or order must deliver a copy of this Protective Order promptly to the person in the other litigation that caused the subpoena or order to issue. The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the party in this case that produced the Confidential Records an opportunity to try to protect its confidentiality interests in the court from which the subpoena or

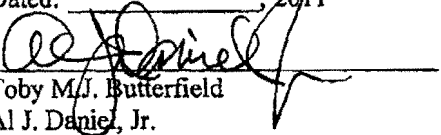
order issued. The latter party shall bear the burdens and the expenses of seeking protection in that court of its confidential material, and nothing in these provisions should be construed as authorizing or encouraging a party in this action to disobey a lawful directive from another court.

Dated: June 1, 2011

  
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Dated: \_\_\_\_\_, 2011

  
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**SO ORDERED.**

Dated: June 3, 2011  
New York, New York

  
Naomi Reice Buchwald  
United States District Judge

*mi*

**EXHIBIT A**

**ACKNOWLEDGMENT AND REPRESENTATION OF  
PERSONS HAVING ACCESS TO CLASSIFIED INFORMATION**

I hereby agree to abide by the terms of the Stipulated Protective Order (the "Protective Order") entered in the action captioned *CBS Broadcasting, Inc., et al. v. Filmon.com, Inc.*, Civil Action No. 10-cv-7532 (NRB), pending in the United States District Court for the Southern District of New York (the "Action"), in order to gain access to non-public, confidential information and information otherwise protected by the Protective Order. Accordingly, I further represent to the United States District Court for the Southern District of New York the following:

1. I have read the Protective Order and I understand its provisions and terms. I understand that I have the right to consult an attorney regarding the meaning of any provision of the Protective Order or this Acknowledgment and Representation. Any questions I had regarding the Protective Order or this Acknowledgment and Representation have been answered by counsel.

2. My current address and telephone number is:

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3. My current job title and employer are:

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4. My current employer's address is:

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5. I shall use information I learn as a result of having access to Restricted – Attorneys' Eyes Only material protected under the Protective Order solely for purposes of the Action and for no other purposes, and shall not disclose Confidential or Restricted – Attorney's Eyes Only Discovery material except as authorized by the Protective Order.

6. I further understand that any unauthorized use or disclosure by me of such "Confidential" or "Restricted – Attorneys' Eyes Only" material or information will be treated as a breach of the Stipulated Protective Order for which I may be liable and which may be

punishable as a contempt of Court.

7. I shall return to counsel who provided them to me all materials containing material protected under this Protective Order within the earlier of 10 days of my termination of participation in the Lawsuit or 60 days of my receipt of notice of termination of the Action.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing statements and representations are true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ at \_\_\_\_\_.

By: \_\_\_\_\_

\_\_\_\_\_  
Type or Print Name