

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JASON SKRIFVARS, an individual,

Plaintiff,

v.

ISTREAM PLANET CO., a Delaware  
Corporation

Defendant.

No. 2:16-cv-01590-TSZ

**STIPULATED PROTECTIVE  
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in the above-captioned action (the “Action”) is likely to involve production of confidential, proprietary, or private information, as more fully defined in Section 2 below (collectively “Protected Material”) for which special protection may be warranted.

Accordingly, the parties hereby stipulate to and petition this Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1           2.     PROTECTED MATERIAL – “CONFIDENTIAL” AND “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”

2           “CONFIDENTIAL” materials: Any documents (whether electronic or hard copy),  
3     discovery responses or deposition testimony, exhibits to depositions and hearings, portions of  
4     briefs or other court filings containing confidential, proprietary, or private information,  
5     including without limitation, financial information, trade secrets, personnel and compensation  
6     information or other commercially sensitive or personally sensitive information of a non-public  
7     nature or which is subject to third party confidentiality restrictions or obligations, may be  
8     designated as confidential (regardless of whether such designation is made by a party or by a  
9     non-party). Additionally, “Confidential” material shall include, but not be limited to, the  
10    following documents and tangible things produced or otherwise exchanged:

- 11           • Financial and business information;
- 12           • Stock Option Plans and related information;
- 13           • Stock valuations and related information;
- 14           • Personnel records of employees, including information related to compensation  
15           and participation in stock option plans;
- 16           • Tax information;
- 17           • Information subject to a legally protected right of privacy; and
- 18           • Any other information not in the public domain and that is reasonably and in  
19           good faith believed by the producing party to contain trade secret, proprietary,  
20           confidential or sensitive information.

21           “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” material shall include all or any part  
22    of any Confidential material, the disclosure of which to another Party or non-party would create  
23    a substantial risk of serious injury that could not be avoided by less restrictive means.

24           By designating materials as “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” the  
25    designating parties and their counsel represent they have a good faith belief that the materials  
26    so designated are not only Confidential but contain extremely sensitive and confidential

1 proprietary or personal information, including, without limitations, trade secrets and such  
2 information relating to third parties that could be used by a party to the direct and material  
3 detriment of the Designating Party.

4 3. SCOPE

5 The protections conferred by this agreement cover not only Protected Material (as  
6 defined above), but also (1) any information copied or extracted from Protected Material;  
7 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
8 testimony, conversations, or presentations by parties or their counsel that might reveal  
9 Protected Material. However, the protections conferred by this agreement do not cover  
10 information that is in the public domain or becomes part of the public domain through trial or  
11 otherwise.

12 4. ACCESS TO AND USE OF "CONFIDENTIAL" AND "CONFIDENTIAL-  
13 ATTORNEYS' EYES ONLY" MATERIAL

14 4.1 Basic Principles. A receiving party may use Protected Material that is  
15 disclosed or produced by another party or by a non-party in connection with this Action only  
16 for prosecuting, defending, or attempting to settle the same, and shall not be used for any other  
17 purpose. Protected Material may be disclosed only to the categories of persons and under the  
18 conditions described in this agreement. Protected Material must be stored and maintained by a  
19 receiving party at a location and in a secure manner that ensures that access is limited to the  
20 persons authorized under this agreement.

21 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
22 otherwise ordered by the court or permitted in writing by the designating party, a receiving  
23 party may disclose any Confidential material only to:

24 (a) the receiving party's counsel of record in this Action, as well as  
25 employees of counsel to whom it is reasonably necessary to disclose the information for this  
26 litigation;

1 (b) the officers, directors, and employees (including in-house counsel) of  
2 the receiving party to whom disclosure is reasonably necessary for this litigation;

3 (c) experts and consultants to whom disclosure is reasonably necessary  
4 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
5 (Exhibit A);

6 (d) the court, court personnel, and court reporters and their staff;

7 (e) vendors retained by counsel to assist in the hosting, duplication, or  
8 preparation of Confidential material and/or demonstrative/derivative aids for hearings, trial  
9 and/or mock jury sessions; provided, that counsel for the party retaining the copy or imaging  
10 service instructs the service not to disclose any Protected Material to third parties and to  
11 immediately return all originals and copies of any Protected Material;

12 (f) witnesses in the Action to whom disclosure is reasonably necessary  
13 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
14 otherwise agreed by the designating party or ordered by the court. Pages of transcribed  
15 deposition testimony or exhibits to depositions that reveal Confidential material must be  
16 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
17 under this agreement; and

18 (g) the author or recipient of a document containing the information or a  
19 custodian or other person who otherwise possessed or knew the information.

20 4.3 Disclosure of “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”  
21 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
22 designating party, a receiving party may disclose any Confidential-Attorneys’ Eyes Only  
23 material only to:

24 (a) the receiving party’s counsel of record in this Action, as well as  
25 employees of counsel to whom it is reasonably necessary to disclose the information for this  
26 litigation;

1 (b) for a corporate party, in-house counsel of the receiving party to  
2 whom disclosure is reasonably necessary for this litigation;

3 (c) experts and consultants to whom disclosure is reasonably necessary  
4 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
5 (Exhibit A);

6 (d) the court, court personnel, and court reporters and their staff; and

7 (e) the author or recipient of a document containing the information or a  
8 custodian or other person who otherwise possessed or knew the information.

9 4.4 Filing Protected Material. Before filing Protected Material or discussing  
10 or referencing such material in court filings, the filing party shall confer with the designating  
11 party to determine whether the designating party will remove the confidential designation,  
12 whether the document can be redacted, or whether a motion to seal or stipulation and proposed  
13 order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
14 the standards that will be applied when a party seeks permission from the court to file material  
15 under seal.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Protected Material. Each  
18 party or non-party that designates information or items for protection under this agreement  
19 must take care to limit any such designation to specific material that qualifies under the  
20 appropriate standards. The designating party must designate for protection only those parts of  
21 material, documents, items, or oral or written communications that qualify, so that other  
22 portions of the material, documents, items, or communications for which protection is not  
23 warranted are not swept unjustifiably within the ambit of this agreement.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
25 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
26

1 unnecessarily encumber or delay the case development process or to impose unnecessary  
2 expenses and burdens on other parties) may expose the designating party to sanctions.

3 If it comes to a designating party's attention that information or items that it designated  
4 for protection do not qualify for protection, the designating party must promptly notify all other  
5 parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in  
7 this agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated  
8 or ordered, disclosure or discovery material that qualifies for protection under this agreement  
9 must be clearly so designated before or when the material is disclosed or produced.

10 (a) Information in documentary form: (*e.g.*, paper or electronic  
11 documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or  
12 trial proceedings), the designating party must affix the word "CONFIDENTIAL" or  
13 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" to each page that contains Confidential  
14 material. If only a portion or portions of the material on a page qualifies for protection, the  
15 producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
16 markings in the margins).

17 (b) Testimony given in deposition or in other pretrial or trial  
18 proceedings: Any party may identify on the record during the hearing or proceeding, any claim  
19 of protected testimony, and any party or non-party may, within fifteen (15) days after receiving  
20 a deposition transcript, designate portions of the transcript, or exhibits thereto, as Protected  
21 Material.

22 (c) Other tangible items: the producing party must affix in a prominent  
23 place on the exterior of the container or containers in which the information or item is stored  
24 the word "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY." If only a  
25 portion or portions of the information or item warrant protection, the producing party, to the  
26 extent practicable, shall identify the protected portion(s).

1           5.3    Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the designating party's  
3 right to secure protection under this agreement for such material. Upon timely correction of a  
4 designation, the receiving party must make reasonable efforts to ensure that the material is  
5 treated in accordance with the provisions of this agreement.

6           6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

7           6.1    Timing of Challenges. Any party or non-party may challenge a  
8 designation of confidentiality at any time. Unless a prompt challenge to a designating party's  
9 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
10 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party  
11 does not waive its right to challenge a confidentiality designation by electing not to mount a  
12 challenge promptly after the original designation is disclosed.

13          6.2    Meet and Confer. The parties must make every attempt to resolve any  
14 dispute regarding confidential designations without court involvement. Any motion regarding  
15 confidential designations or for a protective order must include a certification, in the motion or  
16 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
17 conference with other affected parties in an effort to resolve the dispute without court action.  
18 The certification must list the date, manner, and participants to the conference. A good faith  
19 effort to confer requires a face-to-face meeting or a telephone conference.

20          6.3    Judicial Intervention. If the parties cannot resolve a challenge without  
21 court intervention, the designating party may file and serve a motion to retain confidentiality  
22 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The  
23 burden of persuasion in any such motion shall be on the designating party. Frivolous  
24 challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary  
25 expenses and burdens on other parties) may expose the challenging party to sanctions. All  
26  
27

1 parties shall continue to maintain the material in question as confidential until the court rules on  
2 the challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
4 OTHER LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation, either  
6 during or after the conclusion of this Action, that compels disclosure of any information or  
7 items designated in this Action as “CONFIDENTIAL,” or “CONFIDENTIAL–ATTORNEYS’  
8 EYES ONLY” that party must:

9 (a) promptly notify the designating party in writing and include a copy of the  
10 subpoena or court order, prior to the time for the designating party to object to the same;

11 (b) promptly notify in writing the party who caused the subpoena or order to  
12 issue in the other litigation that some or all of the material covered by the subpoena or order is  
13 subject to this agreement. Such notification shall include a copy of this agreement; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
15 the designating party whose Protected Material may be affected.

16 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Protected  
18 Material to any person or in any circumstance not authorized under this agreement, the  
19 receiving party must immediately (a) notify in writing the designating party of the unauthorized  
20 disclosure(s), (b) use its best efforts to retrieve all unauthorized copies of the Protected  
21 Material, (c) inform the person or persons (or counsel for such person or persons) to whom  
22 unauthorized disclosures were made of all the terms of this agreement, and (d) request that such  
23 person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached  
24 hereto as Exhibit A.



1           9.     INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
2     PROTECTED MATERIAL

3           When a producing party gives notice to receiving parties that certain inadvertently  
4     produced material is subject to a claim of privilege or other protection, the obligations of the  
5     receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
6     provision is not intended to modify whatever procedure may be established in an e-discovery  
7     order or agreement that provides for production without prior privilege review. Parties shall  
8     confer on an appropriate non-waiver order under Fed. R. Evid. 502.

9           10.    NON TERMINATION AND RETURN OF DOCUMENTS

10          Within sixty (60) days after the termination of this Action, including all appeals, each  
11     receiving party must return all Protected Material to the producing party, including all copies,  
12     extracts and summaries thereof, upon written request by the disclosing party. Alternatively, the  
13     parties may agree upon appropriate methods of destruction.

14          Notwithstanding this provision, counsel for the parties are entitled to retain archival  
15     copies of all documents filed with the court, trial, deposition, and hearing transcripts,  
16     correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
17     consultant and expert work product, and other materials which counsel deem are necessary for  
18     business, bar, or malpractice purposes, even if such materials contain confidential material. In  
19     addition, there shall be no obligation to return or destroy materials that are contained in emails,  
20     backup tapes and/or electronic formats that are not reasonably assessable, even if those  
21     materials have been specifically labeled as “CONFIDENTIAL” or “CONFIDENTIAL-  
22     ATTORNEYS’ EYES ONLY.”

23          The confidentiality obligations imposed by this agreement shall remain in effect until a  
24     designating party agrees otherwise in writing or a court orders otherwise.

25          11.    CHANGING DESIGNATIONS

26          A designating party may change any designation by providing written notice to the  
27     receiving party(ies) and reproducing the Protected Material with the correct designation. Any

1 unintentional disclosure of Protected Material as a result of an incorrect designation shall not be  
2 deemed a waiver in whole or in part of the designating party's claim of confidentiality either as  
3 to the specific information disclosed therein or on the same or related subject matter, provided  
4 that the designating party informs the receiving party(ies) of its mistake within a reasonable  
5 time.

6 12. APPLICATION TO NON-PARTIES

7 This Order applies to all non-parties that are served with subpoenas in connection with  
8 the litigation or who otherwise produce documents or are noticed for deposition in connection  
9 with the litigation, and all such non-parties are entitled to the protection afforded hereby.

10 13. RIGHT TO ASSERT OTHER OBJECTIONS

11 By stipulating to the entry of this Order, no party waives any right it otherwise would  
12 have to object to disclosing, producing, or the admissibility of any information or item on any  
13 ground. The parties specifically agree that they shall not use this Order to support a waiver  
14 argument in any discovery motion, or to argue that any Party waived its objections to produce  
15 or have any particular documents or information admitted.

17 14. EFFECT WITHOUT COURT ORDER.

18 The parties agree to be bound by, and are entitled to rely upon, the terms of this Order  
19 once it has been signed by the parties' counsel, pending the entry of this Order or an alternative  
20 thereto which is satisfactory to the parties, by the Court, and the parties further agree that any  
21 violation of this Order's terms at such time shall be subject to the same sanctions and penalties  
22 as if this Order has been entered by the Court.  
23  
24  
25  
26  
27

1 DATED this 20th day of July, 2017.

2 Davis Wright Tremaine LLP  
3 Attorneys for iStreamPlanet Co., LLC

4 By /s/ Paula L. Lehmann  
5 Paula L. Lehmann, WSBA #20678  
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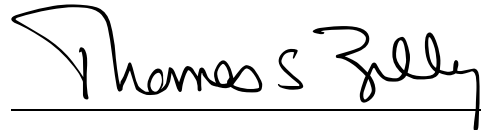
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18 J. Ryan Gustafson, Admitted pro hac vice  
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20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21 DATED this 25th day of July, 2017.

22 

23 Thomas S. Zilly  
24 United States District Judge

1  
2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty  
6 of perjury that I have read in its entirety and understand the Stipulated Protective Order that  
7 was issued by the United States District Court for the Western District of Washington in Seattle  
8 on \_\_\_\_\_ [date] in the case of *Skrifvars v. Turner Broadcasting, et al.*, Case No.  
9 2:16-cv-01590-TSZ (the "Action"). I agree to comply with and to be bound by all the terms of  
10 this Stipulated Protective Order and I understand and acknowledge that failure to so comply  
11 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
12 that I will not disclose in any manner any information or item that is subject to this Stipulated  
13 Protective Order to any person or entity except in strict compliance with the provisions of this  
14 Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the  
16 Western District of Washington in Seattle for the purpose of enforcing the terms of this  
17 Stipulated Protective Order, even if such enforcement proceedings occur after termination of  
18 this Action.

19 Date: \_\_\_\_\_

20 City and State where sworn and signed: \_\_\_\_\_

21 Printed name: \_\_\_\_\_

22 Signature: \_\_\_\_\_