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19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

21	IO GROUP, INC., a California corporation,)	
22)	CASE NO.: C-06-03926 (HRL)
23	Plaintiff,)	
24)	
25)	STIPULATED PROTECTIVE ORDER
26	VEOH NETWORKS, Inc, a California)	
27	Corporation,)	
28	Defendant.)	Trial Date: October 9, 2007
)	Final Pretrial Conf.: October 2, 2007

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords extends only to the
8 limited information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 10 below, that this Stipulated
10 Protective Order creates no entitlement to file confidential information under seal; Civil Local
11 Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be
12 applied when a party seeks permission from the court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Party: any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information, regardless of the
17 medium or manner generated, stored, or maintained (including, among other things, testimony,
18 transcripts, or tangible things) that are produced or generated in disclosures or responses to
19 discovery in this matter.

20 2.3 "Confidential Information or Items" is limited to information that concerns or
21 relates to a trade secret or other confidential research, development or commercial information the
22 disclosure of which may cause significant harm to the competitive position of the producing party.

23 2.4 "Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
24 sensitive “Confidential Information or Items” whose disclosure to another Party or non-party
25 would create a substantial risk of serious injury that could not be avoided by less restrictive means.

26 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
27 Producing Party.

28

1 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
2 Material in this action.

3 2.7 Designating Party: A Party or non-party that designates information or items that it
4 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential –
5 Attorneys’ Eyes Only”.

6 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
7 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”.

8 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained
9 to represent or advise a Party in this action.

10 2.10 House Counsel: attorneys who are employees of a Party.

11 2.11 Counsel (without qualifiers): Outside Counsel and House Counsel (as well as their
12 support staffs).

13 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
14 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
15 consultant in this action and who is not a past or a current employee of a Party or of a competitor
16 of a Party and who, at the time of retention, is not anticipated to become an employee of a Party or
17 a competitor of a Party. This definition includes a professional jury or trial consultant retained in
18 connection with this litigation.

19 2.13 Professional Vendors: persons or entities that provide litigation support services
20 (e.g. photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
21 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

22 **3. SCOPE**

23 The protections conferred by this Stipulation and Order cover not only Protected Material
24 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
25 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
26 parties or counsel to or in court or in other settings that might reveal Protected Material.

27 **4. DURATION**

28

1 Even after the termination of this litigation, the confidentiality obligations imposed by this
2 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
3 otherwise directs. For a period of six months after the final termination of this action, this court
4 will retain jurisdiction to enforce the terms of this order.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or non-party that designates information or items for protection under this
8 Order must take care to limit any such designation to specific material that qualifies under the
9 appropriate standards. A Designating Party must take care to designate for protection only those
10 parts of material, documents, items, or oral or written communications that qualify so that other
11 portions of the material, documents, items, or communications for which protection is not
12 warranted are not swept unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
14 shown to be clearly unjustified, or that have been made for improper purpose (*e.g.*, to
15 unnecessarily encumber or retard the case development process, or to impose unnecessary
16 expenses and burdens on other parties), expose the Designating Party to sanctions.

17 If it comes to a Party's or non-party's attention that information or items that it designated
18 for protection do not qualify for protection at all, or do not qualify for the level of protection
19 initially asserted, that party or non-party must promptly notify all other parties that it is
20 withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
22 (*e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
23 that qualifies for protection under this Order must be clearly so designated before the material is
24 disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of depositions or other
27 pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
28 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on each page that contains

1 protected material. If only a portion or portions of the material on a page qualifies for protection,
2 the Producing Party also must clearly identify the protected portions(s) (e.g., by making
3 appropriate markings in the margins) and must specify, for each portion, the level of protection
4 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
5 EYES ONLY")

6 A Party or non-party that makes original documents or materials available for inspection
7 need not designate them for protection until after the inspecting Party has indicated which material
8 it would like copied and produced. During the inspection and before the designation, all of the
9 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
10 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
11 copied and produced, the Producing party must determine which documents, or portions thereof,
12 qualify for protection under this Order, then, before producing the specified documents, the
13 Producing party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
14 CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of the page that contains Protected
15 Material. If only a portion or portions of the material on a page qualifies for protection, the
16 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
17 markings in the margins) and must specify, for each portion, the level of protection being asserted
18 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
20 Party or non-party offering or sponsoring the testimony identify on the record, before the close of
21 the deposition, hearing, or other proceeding, all protected testimony, and further specify any
22 portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
23 ONLY". When it is impractical to identify separately each portion of testimony that is entitled to
24 protection, and when it appears that substantial portions of the testimony may qualify for
25 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
26 record (before the deposition or proceeding is concluded) a right to have up to 20 days after
27 receipt of the official transcript of the testimony to identify the specific portions of the testimony
28 as to which protection is sought to specify the level of protection being asserted

1 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only
2 those portions of the testimony that are appropriately designated for protection within the 20 days
3 shall be covered by the provisions of this Stipulated Protective Order.

4 Transcript pages containing Protected Material must be separately bound by the court
5 reporter, who must affix to each such page the legend “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, as instructed by the Party or non-party
7 offering or sponsoring the witness or presenting the testimony.

8 (c) for information produced in some form other than documentary and for any other
9 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
10 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only portions of the
12 information or item warrant protection, the Producing Party, to the extent practicable, shall
13 identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly
14 Confidential – Attorneys’ Eyes Only”.

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
16 designate qualified information or items as “Confidential” or as “Highly Confidential – Attorneys’
17 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection
18 under this Order for such material. If material is appropriately designated as “Confidential” or as
19 “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the
20 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
21 that the material is treated in accordance with the provision of this Order.

22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
24 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
25 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
26 waive its right to challenge a confidentiality designation by election not to mount a challenge
27 promptly after the original designation is disclosed.
28

1 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
2 confidentiality designation must do so in good faith and must begin the process by conferring
3 directly (in voice to voice dialogue) with counsel for the Designating Party. In conferring, the
4 challenging Party must explain the basis for its belief that the confidentiality designation was not
5 proper and must give the Designating party an opportunity to review the designated material, to
6 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for
7 the chosen designation. A challenging Party may proceed to the next stage of the challenge
8 process only if it has engaged in this meet and confer process first.

9 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
10 designation after considering the justification offered by the Designating Party may file and serve
11 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
12 that identifies the challenged material and sets forth in detail the basis for the challenge. Each such
13 motion must be accompanied by a competent declaration that affirms that the movant has
14 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
15 forth with specificity the justification for the confidentiality designation that was given by the
16 Designating Party in the meet and confer dialogue.

17 The burden of persuasion in any such challenge proceeding shall be on the Designating
18 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
19 question the level of protection to which it is entitled under the Producing Party's designation.

20 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
22 produced by another Party or by a non-party in connection with this case only for prosecuting,
23 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
24 the categories of persons and under the conditions described in this Order. When the litigation has
25 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
26 DISPOSITION).

27 Protected Material must be stored and maintained by a Receiving Party at a location and in
28 a secure manner that ensures that access is limited to the persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
3 information or item designated CONFIDENTIAL only to:

4 (a) the Receiving Party’s Outside Counsel of record in this action as well as employees
5 of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including House Counsel) of the Receiving
7 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
8 “Agreement to Be Bound by Protective Order” (Exhibit A);

9 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
10 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
11 Protective Order” (Exhibit A);

12 (d) the Court and its personnel;

13 (e) court reporters, their staffs, and professional vendors to whom disclosure is
14 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
15 Protective Order” (Exhibit A);

16 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
17 necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).
18 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected material
19 must be separately bound by the court reporter and may not be disclosed to anyone except as
20 permitted under this Stipulated Protective Order.

21 (g) the author of the document or the original source of the information.

22 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
23 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
24 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

26 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
27 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
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1 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
2 hereto as Exhibit A;

3 (b) the Receiving Party's Senior House Counsel directly involved in supervision of the
4 instant litigation to whom disclosure is reasonably necessary for this litigation and who have
5 signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A.
6 Parties reserve the right to seek a further protective order from the court to specifically exclude
7 House Counsel from viewing certain documents;

8 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary
9 for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit
10 A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

11 (d) the Court and its personnel;

12 (e) court reporters, their staffs, and professional vendors to whom disclosure is
13 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
14 Protective Order" (Exhibit A); and

15 (f) the author of the document or the original source of the information.

16 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL –
17 ATTORNEYS' EYES ONLY" to "Experts"

18 (a) Unless otherwise ordered by the court or agreed in writing by the Designating Party, a
19 Party that seeks to disclose to an "Expert" (as defined by this Order) any information or item that
20 has been designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" first must
21 make a written request to the Designating Party that: (1) identifies the specific HIGHLY
22 CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the Expert,
23 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
24 attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5)
25 identifies each person or entity from whom the Expert has received compensation for work in his
26 or her areas of expertise or to whom the expert has provided professional services at any time
27 during the preceding five years, and (6) identifies (by name and number of the case, filing date,
28

1 and location of the court) any litigation in connection with which the Expert has provided any
2 professional serves during the preceding five years.

3 (b) A Party that makes a request and provides the information specified in the
4 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
5 within seven court days of delivering the request, the Party receives a written objection from the
6 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

7 (c) A Party that receives a timely written objection must meet and confer with the
8 Designating Party (though direct voice to voice dialogue) to try to resolve the matter by
9 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may
10 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
11 applicable) seeking permission from the court to do so. Any such motion must describe the
12 circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert
13 is reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any
14 additional means that might be used to reduce that risk. In addition, any such motion must be
15 accompanied by a competent declaration in which the movant describes the parties' efforts to
16 resolve the matter by agreement (*i.e.*, the extent and the content of the meet and confer
17 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to approve
18 the disclosure.

19 In any such proceeding the Party opposing disclosure to the Expert shall bear the burden of
20 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
21 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

22 Identification of the Expert for this purpose shall not be construed to constitute a waiver of
23 any privilege, including, *inter alia*, the attorney work product doctrine.

24 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
25 **OTHER LITIGATION**

26 If a Receiving Party is served with a subpoena or an order or other lawful court process
27 issued in other litigation that would compel disclosure of any information or items designated in
28 this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES

1 ONLY”, the Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
2 immediately and in no event more than three court days after receiving the subpoena or order.
3 Such notification must include a copy of the subpoena or court order.

4 The Receiving Party also must immediately inform in writing the party who caused the
5 subpoena or order to issue in the other litigation that some or all the material covered by the
6 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
7 deliver a copy of this Stipulated Protective Order promptly to the party in the other action that
8 caused the subpoena or order to issue.

9 The purpose of imposing these duties is to alert the interested parties to the existence of
10 this Protective Order and to afford the Designating Party in this case an opportunity to try to
11 protect its confidentiality interest in the court from which the subpoena or order issued. The
12 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
13 confidential material and nothing in these provisions should be construed as authorizing or
14 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

15 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

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

23 **10. FILING PROTECTED MATERIAL.**

24 Without written permission from the Designating Party or a court order secured after
25 appropriate notice to all interested persons, a Party may not file in the public record in this action
26 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
27 with Civil Local Rule 79-5.
28

1 **11. FINAL DISPOSITION.**

2 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
3 after the final termination of this action, each Receiving Party must return all Protected Material to
4 the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,
5 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
6 Protected Material. With permission in writing from the Designating Party, the Receiving Party
7 may destroy some or all the Protected Material instead of returning it. Whether the Protected
8 Material is returned or destroyed, the Receiving Party must submit a written certification to the
9 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
10 deadline that identifies (by category, where appropriate) all the Protected Material that was
11 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
12 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
13 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
14 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
15 even if such materials contain Protected Material. Any such archival copies that contain or
16 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
17 (DURATION), above.

18 **12. MISCELLANEOUS**

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
20 seek its modification by the Court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
22 Order no Party waives any right it otherwise would have to object to disclosing or producing any
23 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
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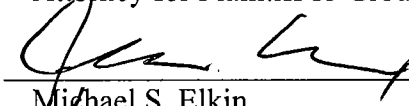
1 Party waives any right to object on any ground to use in evidence of any of the material covered
2 by this Protective Order.

3 PURSUANT TO STIPULATION, IT IS SO ORDERED.

4
5 DATED: _____
6 Hon. Howard R. Lloyd
7 United States Magistrate Judge
8 Northern District of California

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10
11 DATED: _____ By: _____
12 Gill Sperlein
13 General Counsel, Io Group, Inc.
14 Attorney for Plaintiff Io Group, Inc.

15 DATED: *March 13, 2007* By: 
16 Michael S. Elkin
17 Jennifer A. Golinveaux
18 WINSTON & STRAWN
19 Attorneys for Defendant
20 Veoh Networks, Inc.

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California in the case of **Io Group, Inc. v. Veoh Networks, Inc. Case No. C 06-3926 HRL**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or time that is subject to this Stipulated Protective Order to any person or entity except in the strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____