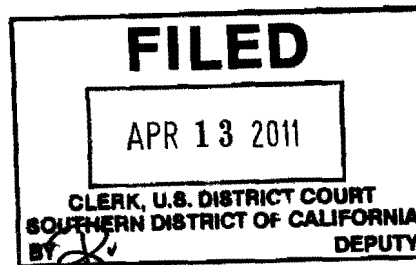


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8 Attorney for Plaintiff
9 LIBERTY MEDIA HOLDINGS, LLC



10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO DIVISION**

13 LIBERTY MEDIA HOLDINGS, LLC)
14 A California Corporation)

15 Plaintiff,)

16 vs.)

17 JAMES MARCH, individually; RYOICHI)
18 WATANABE, an individual; JASON PHILLIPS,)
19 an individual; DAVID SMITH, an individual;)
20 ADRUSH MEDIA, a foreign corporation;)
21 NAMEVIEW, INC. a foreign corporation;)
22 MYCLICKTO.COM, a California corporation;)
23 and DOES 1-500)

24 Defendants.)

Case No. 10-CV-1809-WQH-BLM

**NOTICE OF MOTION AND MOTION
FOR ORDER TEMPORARILY
SEALING PORTIONS OF THE FILE**

FILED UNDER SEAL

25 1. Pursuant to Local Rule. 79.2, Plaintiff LIBERTY MEDIA HOLDINGS, L.L.C.
26 (hereinafter, "Liberty") hereby files its Motion for Order Temporarily Sealing Portions of the
27 File. The Plaintiff requests that the instant Motion, as well as its Application for Limited
28 Temporary Restraining Order Freezing Domain Name Portfolio be filed under seal, as the relief
requested herein would alert the Defendants to the Plaintiff's intent and allow them to thwart the
relief sought in the Application for Temporary Restraining Order. The Plaintiff respectfully
requests the relief requested herein.

9

1
2 Dated: April 7, 2011

Respectfully submitted,



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CERTIFICATE OF SERVICE

As this document is being filed under seal so as not to alert Defendant as to Plaintiff's TRO, it is not being served on Defendant at this time, but it shall be served upon the Defendant pursuant to ECF No. 22 after the Court rules on the Application for Temporary Restraining Order.

Dated: April 7, 2011

Respectfully submitted,



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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO DIVISION**

10
11 LIBERTY MEDIA HOLDINGS, LLC)
A California Corporation)

12 Plaintiff,)

13 vs.)

14)
15 JAMES MARCH, individually; RYOICHI)
WATANABE, an individual; JASON PHILLIPS,)
16 an individual; DAVID SMITH, an individual;)
ADRUSH MEDIA, a foreign corporation;)
17 NAMEVIEW, INC. a foreign corporation;)
MYCLICKTO.COM, a California corporation;)
18 and DOES 1-500)

19 Defendants.)
20

Case No. 10-CV-1809-WQH-BLM

**POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR ORDER
TEMPORARILY SEALING PORTIONS
OF THE FILE**

FILED UNDER SEAL

21 1. This case involves foreign Defendants who have refused to participate in this action in
22 the misplaced hope that they can evade justice for their illegal cybersquatting enterprises. The
23 Defendants conducts their criminal enterprises offshore, using computer servers and
24 technological equipment all over the world. Plaintiff has a reasonable apprehension that if the
25 instant Motion and/or Motion for Temporary Restraining Order Freezing Domain Name
26 Portfolios of Defendants Ryoichi Watanabe, Jason Phillips, David Smith, Adrush Media, and
27 Nameview, Inc., (Motion for TRO) are made known to the Defendants, Defendants will
28 immediately transfer all of their domain name portfolios offshore in order to frustrate any

CF

1 judgment that this court may enter against it. See Declaration of Marc Randazza (Randazza
2 Dec.) ¶ 6.

3 2. Pursuant to Local Rule. 79.2, Plaintiff LIBERTY MEDIA HOLDINGS, L.L.C.
4 (hereinafter, "Liberty") hereby files its Motion for Order Temporarily Sealing Portions of the
5 File. The Plaintiff requests that the instant Motion, as well as its Application for Limited
6 Temporary Restraining Order Freezing Domain Name Portfolio be filed under seal, as the relief
7 requested would alert the Defendants to the Plaintiff's intent and allow them to thwart the relief
8 sought in the Application for Temporary Restraining Order.

10 3. Federal courts have the ability to issue orders permitting a party to file papers under seal.
11 *See, e.g., Nixon v. Sirica*, 487 F.2d 700, 706, n.12, 159 U.S.App.D.C. 58 (D.C. Cir. 1973)
12 (Courts may issue orders or writs necessary or appropriate in aid of their jurisdiction and
13 principles of law.) No statutes or rules limit or preclude a Court from sealing documents. *See*
14 *Crystal Grower's Corp. v. Dobbins*, 616 F.2d 458, 461, n.1 (10th Cir. 1980). The remedy of
15 temporarily sealing court papers serves a valid purpose; *i.e.*, frustrating a scofflaw's attempts to
16 move assets out of the jurisdiction in order to evade any real liability.

18 4. The relief requested in the Motion is narrow. The Plaintiff only wishes for specific
19 documents to be sealed, and only until its *ex parte* application for a TRO can be ruled upon.
20 Courts faced with more expansive requests to seal have granted such requests by finding that
21 failing to seal documents could cause irreparable harm to intellectual property plaintiffs. *See,*
22 *e.g., In re Vuitton et Fils S.A.*, 606 F.2d 1 (2d Cir. 1979). In *Vuitton*, the Court of Appeals noted
23 that the infringers caused purposeful confusion to the buying public; *i.e.*, making purchasers
24 believe they received the genuine article. This case is analogous as Defendant is engaged in
25 Lanham Act violations, namely 15 U.S.C § 1125(d).

1 5. In situations like the one presented here “giving the defendant notice of the application
2 for an injunction could result in an inability to provide any relief at all.” *In re Vuitton et Fils*
3 *S.A.*, 606 F.2d at 4. Similarly, in the present action, giving the defendants notice of the
4 application to seal portions of the file would render the motion meaningless, as the Defendants
5 could move all of their domains to an offshore registrar with the click of a mouse. Randazza
6 Dec. ¶ 8. Moreover, as Defendants have been served, the responsible parties are aware of the
7 present action and are likely monitoring any docket activity. Randazza Dec. ¶ 5.

9 6. Some Courts recognize a presumption in favor of a common law right of access to
10 judicial records. *See EEOC v. Erection Co.*, 900 F.2d 168, 170 (9th Cir. 1990). Other Court’s
11 favor a balancing approach; that being the public’s common law right of access against the
12 interests favoring non-disclosure. *See S.E.C. v. Van Waeyenberghe*, 990 F.2d 845, 848 (5th Cir.
13 1993) (citing *Nixon, supra*, 435 U.S. at 599). The purpose of transparency and access to judicial
14 records serves to: (1) promote the integrity of the judicial system; (2) curb judicial abuses; and,
15 (3) provide a more complete understanding of the judicial process. *See Littlejohn v. BIC Corp.*,
16 851 F.2d 673, 682 (3rd Cir. 1988). Denying Plaintiff Liberty’s request to seal this one filing and
17 its motion for TRO for a very limited time reinforces none of those purposes. This is especially
18 true since Defendants have defaulted, evidencing a lack of interest in participating in these
19 proceedings.
20

21
22 7. In a case analogous to this one, a District Court correctly stated that:

23 [T]he giving of notice to the defendants would be likely to result in the disappearance
24 of the counterfeit . . . goods and related records, or the “dumping” or transfer of the
25 counterfeit goods to unknown third parties, jeopardizing plaintiffs’ ability to prevent
26 irreparable injury, to stop the distribution of counterfeit . . . products, and to
27 determine the source and extent of the defendants’ dealings in the counterfeit . . .
28 products.

Fimab-Finanziaria Maglificio Biellese Fratelli Fil S.P.A. v. Kitchen, 548 F. Supp.
248, 249 (S.D. Fla. 1982)

1 8. A Court Order temporarily sealing portions of the file is proper. This will allow Plaintiff
2 Liberty to seek very limited relief – maintaining the status quo with respect to the location of the
3 Defendants’ domain name portfolio. If the Court refuses this request, Defendants will become
4 aware that Plaintiff is attempting to hold the Defendants accountable for their actions and will
5 likely move all domain names out of this court’s jurisdiction. See Randazza Dec. ¶ 6. Plaintiff
6 Liberty requests a temporary Court Order only until the court can rule on its TRO.
7

8 **III. Prayer for Relief**

9 9. **WHEREFORE**, Plaintiff Liberty respectfully requests this Court hereby:

10 (1) Issue an Order Temporarily Sealing the instant motion as well as allowing the
11 Plaintiff to file its application for a TRO under seal,

12 (3) Direct the United States Clerk of Court to seal those particular documents until the
13 Court rules on the TRO; and,

14 (4) Lift the seal immediately upon the Court’s ruling on the Application for TRO and
15 notice being given by the Plaintiff that is has served the TRO upon the relevant domain name
16 registrars and the Defendant electronically pursuant to ECF No. 22.

17 (5) Since there is absolutely no chance of harm to the Defendants, as the domains will not
18 cease to function, but will simply be locked from being transferred, no bond is necessary.
19

20
21 Dated: April 7, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

As this document is being filed under seal so as not to alert Defendant as to Plaintiff's TRO, it is not being served on Defendant at this time, but it shall be served upon the Defendant pursuant to ECF No. 22 after the Court rules on the Application for Temporary Restraining Order.

Dated: April 7, 2011

Respectfully submitted,



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9 LIBERTY MEDIA HOLDINGS, LLC

10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO DIVISION**

13 LIBERTY MEDIA HOLDINGS, LLC)
14 A California Corporation)

15 Plaintiff,)

16 vs.)

17 JAMES MARCH, individually; RYOICHI)
18 WATANABE, an individual; JASON PHILLIPS,)
19 an individual; DAVID SMITH, an individual;)
20 ADRUSH MEDIA, a foreign corporation;)
21 NAMEVIEW, INC. a foreign corporation;)
22 MYCLICKTO.COM, a California corporation;)
23 and DOES 1-500)

24 Defendants.)

Case No. 10-CV-1809-WQH-BLM

**DECLARATION OF MARC
RANDAZZA IN SUPPORT OF MOTION
FOR ORDER TEMPORARILY
SEALING PORTIONS OF THE FILE**

FILED UNDER SEAL

25 I, MARC RANDAZZA, declare under penalty of perjury that:

- 26 1. I am the counsel for Plaintiff Liberty Media Holdings, LLC.
- 27 2. The following statements are based upon personal knowledge of the facts, and if called
28 to, I would be able to competently testify to the facts contained herein.
3. I am familiar with the actions of foreign-based, offshore intellectual property pirates. It is
within my knowledge and expertise that when intellectual property thieves become aware that
their actions may result in legal liability, they quickly take steps to evade such liability.
4. As such, Plaintiff Liberty needs assistance in order to ensure that the foreign intellectual
property pirates for whom a default has been entered—RYOICHI WATANABE, JASON

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1 PHILLIPS, DAVID SMITH, ADRUSH MEDIA, AND NAMEVIEW, INC.—in the instant case
2 do not spirit all U.S. – based assets to unreachable jurisdictions with the click of a mouse.

3 5. As Defendants are aware of the action, they are likely monitoring activity in this case.

4 6. In my opinion, gained through my years of experience pursuing intellectual property
5 scofflaws, if the Defendants become aware that Plaintiff is attempting to obtain an order keeping
6 its only U.S based assets, its domain name portfolio, from being moved offshore, I believe that
7 the Defendants will take steps to move its portfolio offshore in order to frustrate any judgment by
8 this court.

9 7. As such, it is necessary to file both the Motion Temporarily Sealing Portions of the File
10 and the Motion to Freeze Domains under seal.

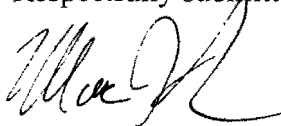
11 8. I have personal knowledge of how domain name registrars work, and I am personally
12 aware of the fact that a domain name registrant can move domain names from one registrar to
13 another by making a simple electronic request in their domain name registration account.

14 9. If the relevant registrars are provided with the Whois record for the offending domains,
15 they will be able to identify all other domains registered through them, which are held by the
16 Defendants.

17 10. Since there is absolutely no chance of harm to the Defendants, as the domains will not
18 cease to function, but will simply be locked from being transferred, no bond is necessary

19 Dated: April 7, 2011

Respectfully submitted,



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CERTIFICATE OF SERVICE

As this document is being filed under seal so as not to alert Defendant as to Plaintiff's TRO, it is not being served on Defendant at this time, but it shall be served upon the Defendant pursuant to ECF No. 22 after the Court rules on the Application for Temporary Restraining Order.

Dated: April 7, 2011

Respectfully submitted,



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO DIVISION

LIBERTY MEDIA HOLDINGS, LLC
A California Corporation

Plaintiff,

vs.

JAMES MARCH, individually; RYOICHI
WATANABE, an individual; JASON PHILLIPS,
an individual; DAVID SMITH, an individual;
ADRUSH MEDIA, a foreign corporation;
NAMEVIEW, INC. a foreign corporation;
MYCLICKTO.COM, a California corporation;
and DOES 1-500

Defendants.

Case No. 10-CV-1809-WQH-BLM

**ORDER GRANTING MOTION FOR
ORDER TEMPORARILY SEALING
PORTIONS OF THE FILE**

FILED UNDER SEAL

THIS CAUSE came before the Court on Plaintiff's Motion to Temporarily Seal Portions of the File (hereinafter, the Motion). The Court, having considered the Motion and being otherwise duly advised, it is hereby

ORDERED AND ADJUDGED that the Motion is granted. Therefore, the Motion, as well as Plaintiff's Application for Limited Temporary Restraining Order Freezing Domain Name Portfolio (herinafter Application for TRO) shall be filed under seal. Such portions of the file shall remain under seal until the Court's ruling on the Application for TRO and notice being

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1 given by the Plaintiff that is has served the TRO upon the relevant domain name registrars and
2 the Defendants electronically pursuant to ECF No. 22.

3 As soon as the Court rules on the Application for TRO, the Plaintiff shall serve all of the
4 sealed documents, and the Court's Order on the Application for TRO upon the Defendants
5 pursuant to ECF No. 22, and the clerk shall unseal all of the file.
6

7 **IT IS SO ORDERED.**

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9 Dated: _____, 2011

United States District Judge

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