

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY

Plaintiff

v.

Civil Action No. 08-11364-GAO

ZACK ANDERSON, RJ RYAN,
ALESSANDRO CHIESA, and the
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY

Defendants

PLAINTIFF'S MOTION FOR INTERIM PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff Massachusetts Bay Transportation Authority requests that this Court grant Plaintiff's Motion for Interim Protective Order. As grounds for this Interim Protective Order, Plaintiff states that it served to Defendant's counsel discovery requests on August 13, 2008, at 2:36 pm via email. Moreover, any such discovery should take place under the protection of this Interim Protective Order.

Attached to this Motion for Interim Protective Order is the Interim Protective Order that Plaintiff revised to apply only to the Preliminary Injunction discovery, which was done in light of the time that Defendant has to consider the terms of the Protective Order.

To allow discovery to proceed, Plaintiff respectfully requests the Court to allow entry of the Interim Protective Order.

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY

By its attorneys,

/s/ Maximillian J. Bodoin
Ieuan G. Mahony (BBO #552349)
Maximillian J. Bodoin (BBO # 667240)
HOLLAND & KNIGHT LLP
10 St. James Avenue
Boston, MA 02116
(617) 523-2700

/s/ Thomas F.S. Darling III
Thomas F.S. Darling III (BBO #558848)
MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY
State Transportation Building
7th Floor
10 Park Plaza
Boston, MA 02116
(617) 222-3174

Dated: August 14, 2008
Boston, Massachusetts

CERTIFICATE OF SERVICE

I, Ieuan G. Mahony, Attorney for the Massachusetts Bay Transportation Authority in connection with the above- captioned proceedings, hereby certify that on this 14th day of August, 2008, I served the foregoing **Plaintiff's Motion for Protective Order** by e-mail upon the following interested persons:

Party

Counsel

Zack Anderson, RJ Ryan,
and Alessandro Chiesa
(the "MIT Undergrads")

Emily Berger, Esquire
Email: emily@eff.org

Kurt Opsahl, Esquire
Email: kurt@eff.org

Marcia Hofmann, Esquire
Email: marcia@eff.org

Jennifer Granick, Esquire
Email: jennifer@eff.org

Massachusetts Institute
of Technology ("MIT")

Jeffrey Swope, Esquire
Email: JSwope@eapdlaw.com

/s/ Ieuan G. Mahony _____

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EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY

Plaintiff

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Civil Action No. 08-11364-GAO

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INTERIM PROTECTIVE ORDER

To apply to discovery in connection with the Preliminary Injunction hearing in this matter, this Court hereby enters this Interim Protective Order. The Parties are free to request revisions to this Interim Protective Order after completion of the Preliminary Injunction discovery period.

1. Definition of "Confidential Information." The term "Confidential Information" means information that is disclosed in discovery or pursuant to disclosure rules that is designated as confidential by any party or non-party to this litigation.

2. Scope. This Interim Protective Order shall apply to all information, documents and things subject to discovery in this action, including without limitation (a) testimony adduced at depositions upon oral examination or upon written questions pursuant to Rules 30 and 31, (b) answers to interrogatories pursuant to Rule 33, (c) documents produced pursuant to Rule 34, (d) information obtained from inspection of premises or things pursuant to Rule 34, and (e) answers to requests for admission pursuant to Rule 36.

3. Limitations on Designating Materials as "Confidential." Only information that is a trade secret or constitutes or contains sensitive non-public business or academic information may be designated as Confidential Information. By way of clarification and not by way of limitation, the following information shall not constitute Confidential Information: (a) information that is in or falls into the public domain (through no fault of the receiving party); (b) information that the receiving party obtains from a third party, who is authorized to disclose such information to the receiving party on a non-confidential basis; (c) information that the receiving party rightfully had in its possession prior to the producing party's disclosure; and (d) information the receiving party independently develops, without reference to the producing party's Confidential Information.

4. Method for Designating. Written information or documents, or any portion thereof, should be designated as Confidential Information by placing on each page a stamp or notice stating "CONFIDENTIAL" in a manner that will not interfere with the legibility of the written information. If information or documents are produced on a computer storage medium such as a CD-ROM, such information or documents should be designated as Confidential Information by placing a stamp or notice stating "CONFIDENTIAL" on the CD-ROM or other storage medium. If any Confidential Information is inadvertently produced without such stamp or notice, the producing party will provide written notice to the receiving party that the information or documents shall be treated as Confidential Information under the Interim Protective Order, and the producing party will promptly thereafter furnish the receiving party with a substitute set of documents bearing the correct stamp or notice and the receiving party will return or destroy the original set.

5. Timing of Designation. With respect to all original documents or things that are made available for inspection, designation by stamping as "CONFIDENTIAL" need not be made

until copies of the materials (or photographs or other facsimiles of things) are requested after inspection and selection by counsel. Making documents or things available for inspection shall not constitute a waiver of any claim of confidentiality, and all materials made available for inspection shall be treated as if designated as “Confidential” at the time of inspection.

6. Application to Depositions. Information disclosed at the deposition of (a) a party, (b) one of its past or present officers, directors, employees, agents, or vendors, or (c) an expert retained by a party, may be designated as Confidential Information by a statement on the record, or within thirty days of the receipt of the transcript of the deposition, that the testimony, or that part of the testimony, is confidential and subject to the provision of this Interim Protective Order.

7. Permitted Recipients. Confidential Information shall be used only for the purposes of this litigation, shall not be used by any recipient for any commercial purpose and shall not be disclosed, given, shown, made available, or communicated in any way to anyone other than:

- a. The attorneys of record for each of the parties to this litigation, and their partners, associates, paralegals, secretaries, and employees;
- b. The receiving party or parties;
- c. Not more than three (3) consulting or testifying experts retained by counsel for the receiving party in this action; provided, however, that no Confidential Information shall be revealed to such experts until the conditions detailed in paragraph 9 have been met;
- d. Graphics or design services retained by the parties in connection with this litigation;
- e. The Court and its personnel, including clerks and court reports; and
- f. The author(s) or prior recipient(s) of the Confidential Information.

8. License Permissions Not Covered. This Interim Protective Order does not hinder or effect the parties' ability to agree that the receiving party shall be entitled to copy, modify, transmit, or otherwise use Confidential Information provided by the producing party.

9. Responsible Disclosure Materials. This Interim Protective Order is intended to cover materials that one party produces to the other, where the receiving party is the one primarily interested in preserving the material's confidentiality, such as with respect to materials the producing party may provide that discusses potential or actual security vulnerabilities in the receiving party's computer systems and other software, systems ("**Responsible Disclosure Materials**"). With respect to Responsible Disclosure Materials, the receiving party shall have the right, within ten (10) days of its receipt of the disclosure (the "**Evaluation Period**"), to designate Responsible Disclosure Materials as "Confidential Information" of the receiving party under this Interim Protective Order, provided such Materials otherwise qualify as Confidential Information. If the receiving party does not designate Responsible Disclosure Materials as "Confidential Information" before expiration of the Evaluation Period, upon written notice to the receiving party (and a 48 hour opportunity in the receiving party to reconsider) the producing party shall not be required to treat Responsible Disclosure Materials as Confidential Information under this Interim Protective Order. Otherwise, the producing party shall treat Responsible Disclosure Materials as Confidential Information, unless an exception under this Interim Protective Order applies.

10. Disclosure to Experts. If any party desires to disclose or make available Confidential Information to any consulting or testifying expert, it must first identify the expert in writing to counsel for each of the other parties, who shall have ten (10) business days from receipt of such notice to object to disclosure to any of the experts so identified. Such identification shall include, at least, the full name and business address and/or affiliation of the proposed expert and a current curriculum vitae of the expert. The parties shall attempt in good faith to resolve any objections informally. If the objections cannot be resolved, the party seeking to disclose the Confidential Information to the expert may move for an Order of the Court allowing the disclosure.

In the event that objections are made and not resolved informally, disclosure of Confidential Information to the expert shall not be made except by Order of the Court.

11. Expert's Agreement to Order. Before Confidential Information may be disclosed to any expert, he or she must read this Interim Protective Order and execute a copy of the Affidavit attached as Exhibit A agreeing to be bound by the terms of this Interim Protective Order. The party disclosing such Confidential Information shall be responsible for retaining the original of the Affidavit signed by the expert to whom such Confidential Information is disclosed.

12. Use in Depositions. Nothing in this Interim Protective Order shall prohibit the use of, or reference to, any Confidential Information in court or in any deposition; provided, however, that the party using or planning to use such information shall take reasonable steps to eliminate or minimize the risk of disclosure to unauthorized persons.

13. Filing Confidential Information in Court. If a party wishes to file Confidential Information with the Court, such filing shall be accomplished in accordance with Local Rule 7.2.

14. Exception. Notwithstanding paragraph 12, upon no less than five (5) days notice to the producing party, Confidential Information identified in accordance herewith may be disclosed in testimony at an evidentiary hearing in this action, or disclosed at a hearing on a motion for preliminary injunction or a motion for summary judgment or other dispositive motion in this action, subject to the rules of evidence and subject to such further order as the Court may enter.

15. No Application to Trial. This Interim Protective Order applies only to the pre-trial phase of this action. Prior to the trial of the action, counsel for the parties shall attempt to reach agreement on the handling of Confidential Information. Counsel for the parties shall submit such agreement (or their respective proposals, if no agreement can be reached) to the Court for consideration.

16. Obligations to Safeguard. The recipient of Confidential Information that is provided under this Order shall maintain such information 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 (including dissemination to persons identified in paragraph 7) of such information as is exercised by the recipient with respect to its own proprietary information. Each individual who receives Confidential Information pursuant to this Order shall be deemed to have consented to the personal jurisdiction of this Court for the purpose of enforcement of this Order.

17. No Admissions. Nothing contained in the Interim Protective Order shall be construed as an admission by any party that receives documents or other materials designated “Confidential” that such materials are, in fact, Confidential within the meaning of this Interim Protective Order. For good cause, any party may request that the Court revoke, modify, or amend a party’s designation of information as Confidential. Such a motion may be filed five days after the moving party serves a written request for modification or revocation to the party that designated the information as confidential. The party that initially made the designation of “Confidential” shall bear the burden of proving that such information is Confidential within the meaning of this Interim Protective Order. All documents and other materials designated as “Confidential” shall be treated by any recipient as such under the terms of this Interim Protective Order unless and until such designation is revoked by the designating party or by the Court pursuant to this paragraph.

18. Disclosure to Other Persons. In the event that a party shall desire to provide access to information, documents or things identified as Confidential hereunder to any person or category of persons not included in paragraph 7 hereof, and if the other party objects thereto, it shall move this Court for an order that such person or category of persons may be given access to the Confidential Information. In the event that the motion is granted, such person or category of

persons may have access to the Confidential Information provided that such person or persons have agreed in writing before such access is given to be bound by the terms of this order, in the form set out in Exhibit A to this Interim Protective Order.

19. No Waiver. Nothing contained in this Interim Protective Order shall be construed as a waiver by any party of its right to object to any discovery request made in this action. The execution of this Interim Protective Order shall not constitute a waiver by any party of any applicable privilege.

20. Attorney-Client Materials. Inadvertent production of attorney-client privileged or attorney work-product information shall not waive the attorney-client privilege or attorney work-product immunity if a request for return of such documents or information is made promptly after a producing party learns of its inadvertent production. This provision is not intended to affect the status of any document previously produced by any party in previous litigation.

21. No Restrictions on a Party's Own Confidential Information. Nothing contained in this Interim Protective Order shall affect the right of the designating party to disclose its own Confidential Information to any person or entity, except with respect to Responsible Disclosure Materials under paragraph 9.

22. Application to Non-Parties. The terms of this Interim Protective Order are applicable to Confidential Information provided by a non-party in connection with this litigation, and such Confidential provided by a non-party shall be protected by the remedies and relief provided by this Interim Protective Order, and subject to its exceptions.

23. Effective Date. This Interim Protective Order shall become effective between the parties upon their execution hereof, and shall govern the exchange of Confidential Information between them prior to entry of this Interim Protective Order as an Order of the Court.

24. Conclusion of Proceedings. Upon final termination of this action, including all appeals, the attorneys for each party shall assemble and return to the opposing party all Confidential documents and Confidential things produced by the opposing party and shall destroy all copies thereof made by the party which the respective parties have in their possession, custody or control. The attorneys for the parties shall be entitled to retain all litigation documents, including exhibits and their own memoranda, containing Confidential Information but such litigation documents and memoranda shall be used only for the purpose of preserving a file on this action, and shall not, without the written permission of the opposing party or an order of this Court, be disclosed to anyone other than those to whom such information was actually disclosed, in accordance with this Stipulation and Order, during the course of this action.

25. Modifications. This Interim Protective Order may be modified by written stipulation of the parties without further Order of the Court; provided that any material modifications, or modifications that alter practice under the Local Rules or Federal Rules, require Court approval.

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY

By its attorneys,

Ieuan G. Mahony (BBO #552349)
Maximillian J. Bodoïn (BBO # 667240)
HOLLAND & KNIGHT LLP
10 St. James Avenue
Boston, MA 02116
(617) 523-2700

Thomas F.S. Darling III (BBO #558848)
MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY
State Transportation Building

ZACK ANDERSON, RJ RYAN,
ALESSANDRO CHIESA

By their attorneys,

Jennifer Stisa Granick, CA No. 168423
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
San Francisco, CA 94110
415.436.9333 x 134

Marcia Hofman, Esq.
ELECTRONIC FRONTIER FOUNDATION
1875 Connecticut Ave., Suite 650
Washington, DC 20009

7th Floor
10 Park Plaza
Boston, MA 02116
(617) 222-3174

202-797-9009

Kurt Opsahl
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell St.
San Francisco, CA 94110
415-436-9333
Fax: 415-436-9993
Email: kurt@eff.org

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY

By its attorneys

Jeffrey Swope
Edwards Angell Palmer & Dodge LLP
111 Huntington Avenue
Boston, Massachusetts 02199 USA
617-239-0100

Emily A. Berger, BBO No. 650841
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
San Francisco, CA 94110
415.436.9333 x 134

August ____, 2008

SO ORDERED:

GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

Date:

EXHIBIT A

MASSACHUSETTS BAY
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AFFIDAVIT

I, _____, state under the penalties of perjury that I have read the Interim Protective Order entered by the Court in this action, and acknowledge that I am bound and agree to be bound by its terms. I hereby consent to the personal jurisdiction of the above-referenced Court for any proceedings involving the enforcement of that Order.

Signature: _____

Print Name: _____

Date: _____

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