

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

E360INSIGHT, LLC,)	
an Illinois Limited Liability Company, and)	
DAVID LINHARDT, an individual)	
)	
Plaintiffs,)	06 CV 3958
)	
v.)	Judge Kocoras
)	
THE SPAMHAUS PROJECT,)	Magistrate Judge Brown
a company limited by guarantee and)	
organized under the laws of England, aka)	
THE SPAMHAUS PROJECT LTD,)	
)	
Defendant.)	

AGREED PROTECTIVE ORDER

WHEREAS, certain documents and information may be sought or produced by the parties to this case that one or more of the parties has a good faith belief contains trade secrets, proprietary information or other confidential information that can be the subject of protection under Fed. R. Civ. P. 26(c);

WHEREAS, the parties agree that this Agreed Protective Order is necessary to preserve the confidentiality of these documents and information, and that this Agreed Protective Order meets the requirements set forth by Fed. R. Civ. P. 26(c), the Seventh Circuit, and Local Rules;

WHEREAS, the Court has reviewed the terms and conditions of the Agreed Protective Order submitted by the parties and determined that there appears to be good cause for its entry, though issuance of this Agreed Protective Order will not be given

preclusive effect as a determination of good cause for Rule 26(c) purposes if, at a future time, a party or an interested member of the public moves for relief from the limitations of the Agreed Protective Order;

IT IS HEREBY ORDERED:

1. **Scope of Protective Order.** This Agreed Protective Order protects the confidentiality of documents and information provided or obtained in the course of discovery related to Plaintiffs' damages claim. This Agreed Protective Order is binding upon the parties, including their predecessors, successors, parents, subsidiaries, divisions and affiliated companies, companies under the direction and/or control of a party or its owner(s), and their respective attorneys, agents, representatives, officers, employees and others as set forth in this Agreed Protective Order.

2. **Definitions.** For purposes of this Agreed Protective Order:

(a) "Producing Party" or "Designating Party" shall mean the person or party (and its Outside Counsel) who is producing information to another person or party pursuant to any formal or informal discovery.

(b) "Receiving Party" shall mean the person or party (and its Outside Counsel) who is the recipient of information supplied by the Producing Party.

(c) "Outside Counsel" shall mean the outside law firms engaged by the parties to represent them in this litigation. "Outside Counsel" as used herein means Synergy Law Group, LLC and Jenner & Block, LLP. In-house attorneys, if any, do not qualify and shall not be considered as "Outside Counsel."

(d) "Confidential Information" means materials or information that the Designating Party has a good faith belief contains trade secrets, proprietary

information or other confidential information that can be subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure, and under the prevailing law of this Circuit, and includes but is not limited to:

- (i) Non-public financial information, such as net and gross revenue, profit and loss statements, earnings statements, accounts receivable/payable statements, including forecasts and plans;
- (ii) Non-public agreements with third parties which contain express confidentiality clauses;
- (iii) Non-public future financial, business and/or product plans that constitute proprietary information or trade secrets;
- (iv) Non-public customer and potential customer information that constitutes proprietary information or trade secrets;
- (v) Non-public supplier information, where such information is proprietary and does not encompass information provided by suppliers of staple products which are otherwise available to the public or relevant industry and similar prices; and
- (vi) Non-public information concerning employee wages and other personal employee information such as Social Security numbers;
- (vii) Proprietary information essential to the continuing operations of the parties, including but not limited to (1) the email addresses Spamhaus utilizes as “spamtraps” to detect unsolicited bulk email and (2) the identity of Spamhaus’s confidential

volunteers.

Information is not necessarily Confidential Information simply by virtue of falling within one of the foregoing categories; rather the Producing Party must have a good faith belief that the information constitutes or contains proprietary information, trade secrets or other confidential information that can be subject to protection under Fed. R. Civ. P. 26(c), and must have maintained the confidentiality of that information commensurate with that belief. The enumeration of the foregoing categories shall not be construed as suggesting or implying that information falling into one or more of these categories is discoverable in this litigation and shall not preclude any party from properly and timely objecting to the discovery of such information for any reason.

3. Duties. If a party objects to the "confidential" designation of a document, the material shall be treated as "confidential" under this Order, until the Court enters an Order changing the designation. It shall be the duty of the party who seeks to invoke protection under this Agreed Protective Order to give notice, by designating in the manner required hereunder, the information claimed by such person or party to be confidential, and it shall be the duty of any other party or person who receives such information to maintain the confidentiality of such information hereunder. Designations of confidentiality under this Agreed Protective Order must be made by each party's counsel of record.

4. Marking of Produced Documents. All documents, or portions thereof, that the Producing Party asserts contain Confidential Information shall be clearly marked as either "Confidential" or "Highly Confidential - Attorney's Eyes Only" before they are produced to the Receiving Party..

The following categories of documents may be marked “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY”:

(a) Non-public future financial, business or product plans that constitute proprietary information or trade secrets;

(b) Non-public supplier information that constitutes proprietary information or trade secrets;

(c) Non-public customer and potential customer information that constitute proprietary information or trade secrets;

(d) Non-public information concerning employee wages and other personal employee information such as Social Security numbers, to the extent they have not been publicly disclosed or previously disclosed to the Receiving Party, and to the extent the employee has not consented to the Receiving Party’s review of the information;

(e) Non-public financial information, such as net and gross revenue, profit and loss statements, earnings statements, accounts receivable/payable statements, including forecasts and plans;

(f) Proprietary information essential to the continuing operations of the parties, including but not limited to (1) the email addresses Spamhaus utilizes as “spamtraps” to detect unsolicited bulk email and (2) the identity of Spamhaus’s confidential volunteers

All other documents containing Confidential Information may only be marked “CONFIDENTIAL.”

5. **Production of Original Files for Inspection.** In the event the Producing Party elects to produce original files and records for inspection by counsel, no markings need to be made in advance of the initial inspection. For purposes of the initial inspection, all documents produced shall be considered as “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” and access during the initial inspection shall be limited to the individuals specified in Paragraph 10(b)(i)-(vi) hereof. Upon selection by the inspecting party of specific documents for copying, the Producing Party may mark the copies of such documents containing Confidential Information as set forth above in Paragraph 4 hereof.

6. **Deposition Testimony.** Any person giving deposition testimony in this litigation as a representative of a party may designate any or all of the deposition testimony as containing Confidential Information. The person desiring to designate any portion of a deposition as containing Confidential Information shall do so on the record while the deposition is being taken, either personally or through counsel. The person desiring to designate the portion of the deposition as containing Confidential Information or their counsel may also at that time request that all persons other than the reporter, Outside Counsel, and the permitted persons specified in Paragraph 10(b), as applicable, hereof, leave the deposition room during the confidential portions of the deposition. The failure of such other persons to comply with a request of this type shall constitute substantial justification for Outside Counsel to advise the witness that he or she need not answer a question seeking the disclosure of Confidential Information. Alternatively, the transcript of the deposition may be designated as containing Confidential Information in accordance with this order by notifying the opposing party in writing, within thirty (30)

days of receipt of the transcript of the specific pages and lines of the transcript that contain Confidential Information. All such transcripts shall be treated as Confidential Material and subject to this Protective Order until a time thirty (30) days after a transcript of the deposition is received. Any portion of any deposition that is not designated as Confidential Material in accordance with this Protective Order, within thirty (30) days after a transcript of the deposition is received, shall not be entitled to the protection afforded under this Protective Order.

7. Interrogatories, Requests to Produce and Requests for Admission.

(a) If an Interrogatory, Request to Produce, or Request for Admission contains information claimed to be confidential by the party serving the discovery, such Interrogatory, Request to Produce, or Request for Admission may be marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY."

(b) If an answer to an Interrogatory or a response to a Request to Produce or a Request for Admission contains information claimed to be confidential, the answer or response may be marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" by the Producing Party.

8. Using Confidential Information in Other Documents. Any document, such as any pleading, memorandum, or other document, including transcripts, Depositions upon Written Questions, Interrogatories, Requests for Admission, and Requests to Produce, or any response thereto, that purports to reproduce or paraphrase any information that has previously been designated confidential shall have those

portions of the document marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY," as appropriate, by the party preparing such document or tangible thing and shall itself be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY," under the terms of this Agreed Protective Order.

9. Filing of Confidential Information With the Court. Unless and until any confidential designation lapses or is denied by the Court, prior to filing all transcripts of depositions or portions thereof, exhibits, Interrogatories and Answers to Interrogatories, Requests for Admission and Responses to Requests for Admission, and Requests to Produce and Responses to Requests to Produce, that have theretofore been designated as comprising or containing Confidential Information, or any pleadings or memoranda or other documents or tangible things purporting to reproduce or paraphrase such information, the Party wishing to file said document must file a motion with the Court for leave to file the document under seal prior to the due date of the particular filing and provide the Court with a complete version of the filing at issue as well as a version of that filing that redacts any portion comprising or containing Confidential Information that can then be filed with the Clerk pursuant to Court Order in accordance with Local Rules 5.8 and 26.2. No document may be filed under seal absent an order by the Court granting such a motion on a finding that there is good cause for sealing that particular document or portion of document.

10. Custody and Access to Confidential Information.

(a) Unless and until any confidential designation lapses or is denied by the Court, all transcripts of depositions or portions thereof, exhibits, Interrogatories and Answers to Interrogatories, Requests for Admission and Responses to Requests for Admission, Requests to Produce and Responses to Requests to Produce, pleadings, memoranda and/or other documents and tangible things, and any copies thereof, and all information obtained by an inspection of files, facilities or documents by Outside Counsel for any party pursuant to pretrial discovery in this action, whether formal or informal, that have been designated by the Producing Party as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” shall, when provided or delivered to the Receiving Party's Outside Counsel, be retained only in the custody of Outside Counsel and shall not be disclosed or used in contravention of this Agreed Protective Order.

(b) Unless and until such confidentiality designation lapses or is denied by the Court, access and copies of “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” information may be furnished to only the following persons (hereinafter “permitted persons”):

(i) Outside Counsel who are actively engaged in this action and the employees of such Outside Counsel whose duties require access to said information;

(ii) any persons designated on the face of the document as a preparer or prior recipient thereof or any person whom the Producing Party has already indicated to have been a preparer or

prior recipient thereof (hereinafter "prior recipient");

(iii) outside experts, who are not employees, officers, agents, attorneys, or directors of a party, requested by Outside Counsel to furnish technical or expert services or to give testimony with respect to the subject matter of the trial of this action;

(iv) the Court and its staff;

(v) court reporters at depositions and during trial;

(vi) outside copy vendors;

(c) Unless and until such confidentiality designation lapses or is denied by the Court, access and copies of "CONFIDENTIAL" information may be furnished to only the following persons (hereinafter "permitted persons"):

(i) those persons allowed access to "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" information as described in paragraphs 10(b)(i) to (vi) above as well as certain designated party representatives. Plaintiff's designated representative is David Linhardt. Defendants designated representative is Steve Linford.

(d) Prior to disclosing any Confidential Information of a Producing Party to any permitted person of a Receiving Party, such person shall sign an undertaking, in the form of Attachment A annexed hereto, whereby such person agrees to be bound by and comply with the terms of this Agreed Protective Order. The original of each such signed undertaking shall be retained by counsel for the Receiving Party.

(e) Prior to disclosing any Confidential Information of a Producing

Party to any outside expert, such person shall sign an undertaking, in the form of Attachment A annexed hereto, whereby such person agrees to be bound by and comply with the terms of this Agreed Protective Order.

11. Restrictions on Use of Confidential Information. Unless and until the confidential designation lapses or is denied by the Court, no person or party shall disclose to anyone not specified in Paragraph 10(b) and (c), as applicable, hereof any information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” under this Agreed Protective Order, without prior written consent of the Producing Party or further order of the Court. Confidential Information disclosed pursuant to this Agreed Protective Order shall not be used for any purpose other than for purposes of this litigation, without further order of this Court.

12. Application to Third Parties Subject to Discovery. The terms of this Agreed Protective Order may be extended to any third party to whom a request or subpoena for production of documents and things or testimony has been directed by any party to this action upon notice to all other parties to this action, whereupon such third party shall be treated as a Producing Party under this Agreed Protective Order with respect to its response to such request or subpoena. Although the benefit of the proscriptions and limitations on use or disclosure provided by this Agreed Protective Order may be extended to documents, things, and testimony provided by a third party, neither such third party nor its counsel shall be provided access to Confidential Information produced by the parties to this action, except where the Agreed Protective Order otherwise specifically permits such access.

13. Information Not Subject to the Confidentiality Restrictions. The restriction on dissemination of Confidential Information contained herein shall not apply to:

- (a) Information that, prior to disclosure hereunder, is either in the possession or knowledge of a Receiving Party who is under no restriction with respect to the dissemination of such Confidential Information;
- (b) Information that is public knowledge or that subsequently becomes public knowledge other than through an act or omission of a Receiving Party the Confidential Information under the terms of this Agreed Protective Order; or
- (c) Information that subsequently becomes publicly known other than through an act or omission of a person receiving the information or is no longer held in confidence by the Producing Party;
- (d) Information acquired by the Receiving Party from a third party having the right to disclose such information or materials.

14. Inadvertent Disclosure of Confidential Information. In the event that Confidential Information or documents are inadvertently produced to opposing counsel without a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY" marking indicating their status as Confidential Information, and if counsel for the Producing Party designates such as Confidential Information within thirty (30) days of such disclosure, the Receiving Party shall, upon written request by the Producing

Party, retain all such information on a confidential basis. To the degree reasonably possible after such a request, such information or documents shall be fully subject to this Agreed Protective Order as if they had been initially so designated.

15. Inadvertent Disclosure of Privileged Information. In the event that attorney-client privileged information or attorney work product materials are inadvertently disclosed to opposing counsel pursuant to document production, and if counsel for the party producing the privileged material requests the return of the material within fourteen (14) days of discovering such inadvertent disclosure, counsel for the Receiving Party shall return the material promptly, without retaining copies, and there shall be no waiver of the attorney-client privilege or work product immunity by reason of such inadvertent disclosure. If the Receiving Party has extracted, copied, or used information from a document or other discovery material that is subsequently returned pursuant to the immediately preceding paragraph, to the extent possible, the extracted information will be expunged promptly and not thereafter used. However, to the extent that, prior to being notified of the inadvertent production, the Receiving Party uses such information in good faith in documents filed with the Court or at depositions, the Receiving Party will have no obligation to expunge such information from or otherwise alter any such documents filed with the Court or the transcript of any such deposition. Nothing in this paragraph shall prevent any party from challenging the designation or any document as privileged or as work product.

16. Use of Confidential Information at Hearing or Trial. Nothing contained in this Agreed Protective Order shall prejudice the right of any party to this action to use Confidential Information at any hearing or at trial in this action, including

briefing, provided that any pre-trial use shall be made only under conditions that preserve the confidentiality of such information, including the provisions of paragraph 9 hereof, and nothing in this Agreed Protective Order shall prevent the parties from providing, showing, or communicating Confidential Information to the Court if required in any proceeding herein.

17. Advice to Clients. Nothing in this Agreed Protective Order shall bar or otherwise restrict any attorney herein from rendering advice to his or her client with respect to this litigation and in the course thereof, referring to or relying upon his examination of Confidential Information of another party, provided, however, that in rendering such advice and in otherwise communicating with the client, the attorney shall not disclose the content or the source of any information designated “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” of another party.

18. Contesting Confidentiality Designations. Nothing in this Agreed Protective Order shall be construed as a finding or agreement that any materials or information designated as confidential actually constitutes or contains proprietary or confidential information or trade secrets. There shall be no obligation to challenge the designation of materials or information as confidential when made, and failure to do so shall not preclude a subsequent objection to maintaining those materials or information as confidential. A person objecting to the designation of information as confidential may, after making a good faith effort to resolve any such objection, apply to this Court for a ruling that the information or materials shall not be so designated. If such a motion is filed, the Designating Party shall bear the burden of demonstrating the propriety of the designation, based on a showing of good cause that the material constitutes or contains

proprietary or confidential information or trade secrets. If such a showing is not made to the satisfaction of the Court, the information shall no longer be treated as Confidential Information. While such motion is pending the material designated as confidential shall continue to be treated as Confidential Information, pursuant to this Agreed Protective Order.

19. Reservation of Other Objections. This Agreed Protective Order is intended to provide a mechanism for the handling of Confidential Information and documents to which there is no objection to disclosure or production other than confidentiality. Each party reserves the right to timely object on any other appropriate ground to any disclosure of information or to any production of any documents or part(s) thereof.

20. Redaction of Documents.

- (a) If a Producing Party so chooses, it may redact from documents produced to the Receiving Party material subject to attorney-client privilege or work-product immunity, or subject to other objections beside confidentiality.
- (b) Documents produced for inspection and later copying may be provided in either redacted or unredacted form. If a copy of any inspected document is requested, one copy may be redacted prior to furnishing it to counsel for the Receiving Party notwithstanding inspection of such documents in unredacted form.
- (c) The deletion of all material redacted shall be clearly indicated


by visibly marking all of the redacted information in black, with the word "REDACTED" printed in white lettering over the black redacted area.

- (d) A party redacting any document on any grounds shall place a corresponding entry on its privilege log.

21. Conclusion of this Litigation. Upon the final conclusion of this litigation, all persons to whom Confidential Information has been disclosed shall, without demand, either (a) destroy, or (b) return to the party that originally produced it, all Confidential Information (and all copies of such material) and all other documents containing information taken from Confidential Information, except that each party's Outside Counsel may retain copies of pleadings, briefs, motions and the like actually filed in court that include Confidential Information. All recipients of Confidential Information shall certify in writing that they have complied with the provisions of this paragraph. Upon the final conclusion of this litigation, any Confidential Information produced hereunder that has been submitted for identification or into evidence at any hearing or trial in this litigation may be withdrawn by counsel for the person who offered such Confidential Information into evidence, and the Clerk is authorized to deliver said Confidential Information to said counsel. Any such Confidential Information not returned to counsel may be destroyed by the Clerk.

The Parties, through counsel, agree to the terms of this Agreed Protective Order.

SO ORDERED THIS 2nd day of April, 2008.


Honorable Judge Charles P. Kocoras

ATTACHMENT A

NON-DISCLOSURE AGREEMENT

I, _____, have read the Agreed Protective Order, dated _____, 20078, entered in the action styled *e360Insight, LLC and David Linhardt v. The Spamhaus Project aka The Spamhaus Project LTD.*, Civil Action No. 06 CV 3958 on the docket of the U.S. District Court for the Northern District of Illinois, Eastern Division, and agree to comply with the terms thereof. I also consent to personal jurisdiction and venue in the U.S. District Court for the Northern District of Illinois, Eastern Division, for the limited purpose of any proceeding to enforce the provisions of this Non-Disclosure Agreement.

I will not divulge any information covered by the Agreed Protective Order to any person for any purpose, other than that directly associated with my official duties in connection with the instant litigation. Neither will I directly nor indirectly use or allow the use of such information for any purpose other than that directly associated with my official duties in connection with the instant litigation.

Further, I will not by direct action, discussion, recommendation, or suggestion to any person reveal the nature or content of any information covered by this Agreed Protective Order.

Date: _____

Employer: _____

Position: _____

Address: _____

Relationship with party making disclosure: _____
