Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC, Plaintiff, v. AOL, INC.; APPLE, INC.; eBAY, INC.; FACEBOOK, INC.; GOOGLE INC.; NETFLIX, INC.; OFFICE DEPOT, INC.; OFFICEMAX INC.; STAPLES, INC.; YAHOO! INC.; and YOUTUBE, LLC, Defendants.	Civil Case No. 2:10-CV-01385-MJP **AGREED E-DISCOVERY PROTOCOL AND ORDER**

Pursuant to the Court's Scheduling Order (Docket No. 178), the parties, through undersigned counsel hereby submit the following Agreed E-Discovery Protocol and [Proposed] Order.

E-DISCOVERY PROTOCOL

In order to facilitate discovery, the parties agree to the production format for materials a party produces, as set forth below. The parties' agreement as to form of production for materials does not obligate a party to produce particular materials. Nor does it limit a party from producing materials in native format or by way of providing them for inspection.

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1. **Document Image Format.** ESI shall be produced electronically, in full text searchable PDF wherein the full text was extracted directly from the native file, or as single page, uniquely and sequentially numbered Group IV TIFF image files not less than 300 dpi resolution to enable the generation of searchable text using Optical Character Recognition ("OCR"). Where text may be extracted when the TIFF image file is generated, the image file shall be accompanied by a text file containing the extracted text; however, there is no obligation on a Producing Party to generate searchable text using OCR unless the Producing Party already has generated searchable text using OCR for its own use. To the extent the Producing Party later generates searchable text using OCR after the production of documents not containing searchable text, the Producing Party shall notify the Receiving Party and produce the searchable text upon request from the Receiving Party. The cover letter accompanying a document production shall indicate whether the documents contained in the production include searchable text files.

   a. **Database Load Files/Cross-Reference Files.** Documents shall be provided with (1) a Concordance delimited load file(s), (2) an Opticon delimited cross-reference file(s) showing document breaks and additional fields as identified in Section 4 below, and (3) an IPRO View LFP comma-delimited load file(s) showing document breaks. To the extent a producing party cannot produce Concordance delimit load files or IPRO View LFP comma-delimited load files, that party shall meet and confer with the requesting party regarding alternative formats for production.

   Example of Concordance Delimited File:

   þBegDocþ□þEndDocþ□þBegAttachþ□þEndAttachþ

   Example of Opticon Delimited File:

   MSC000001,MSC001,D:\IMAGES\001\MSC000001.TIF,Y,,,3
   MSC000002,MSC001,D:\IMAGES\001\MSC000002.TIF,,,,
   MSC000003,MSC001,D:\IMAGES\001\MSC000003.TIF,,,,
   MSC000004,MSC001,D:\IMAGES\001\MSC000004.TIF,Y,,,2
   MSC000005,MSC001,D:\IMAGES\001\MSC000005.TIF,,,,

   Example of LFP Comma-Delimited File :

   IM,ABC00001,D,0,@DEF1022;DEF1022\0000;ABC00001.TIF;2
   IM,ABC00002, ,0,@DEF1022;DEF1022\0000;ABC00002.TIF;2
   IM,ABC00003, ,0,@DEF1022;DEF1022\0000;ABC00003.TIF;2
   IM,ABC00004, ,0,@DEF1022;DEF1022\0000;ABC00004.TIF;2
   IM,ABC00005,D,0,@DEF1022;DEF1022\0000;ABC00005.TIF;2

   b. **Hard Copy Documents**. The production of hard copy documents shall include a cross-reference file that indicates document breaks and sets forth the Custodian associated with each produced document.

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c. **File Name**. Each document image file shall be named with the unique Bates Number of the page of the document in question, followed by the extension "TIF" or "PDF." File names should not be more than twenty characters long or contain spaces.

d. **Document Unitization**. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.

e. **Color**. Documents in color need not be produced in color. A party may request that a reasonable number of documents be produced in a color .PDF or .JPG format upon review of the other party's production. The parties reserve their respective rights to object to any such request.

2. **Searchable Text.** In addition to TIFF or PDF images, each production will include text files corresponding to the TIFF or PDF files described above.

a. **Electronic Documents**. The full text of each native electronic document shall be extracted ("Extracted Text") and produced in a text file. The Extracted Text shall be provided in searchable ASCII text format (or Unicode text format if the text is in a foreign language) and shall be named with the unique Bates Number of the first page of the corresponding TIFF or PDF document followed by the extension ".txt" or ".pdf".

b. **Hard Copy**. Hard copy documents shall be scanned using Optical Character Recognition technology and searchable ASCII text files shall be produced (or Unicode text format if the text is in a foreign language). Each file shall be named with the unique Bates Number of the first page of the corresponding TIFF or PDF document followed by the extension ".txt" or ".pdf".

c. **Redacted Documents**. Redacted documents shall be scanned using Optical Character Recognition technology and searchable ASCII text files shall be produced (or Unicode text format if the text is in a foreign language). Each file shall be named with the unique Bates Number of the first page of the corresponding TIFF or PDF document followed by the extension ".txt" or ".pdf". Extracted text will not be provided for redacted documents.

3. **Production Media.** Documents shall be produced on external hard drives or readily accessible computer or electronic media (the "Production Media"). Each piece of Production Media shall identify a production number corresponding to the production with which the documents on the Production Media are associated (*e.g.*, "V001", "V002"), as well as the volume of the material in that production (*e.g.*, "-001", "-002"). For example, if the first production wave by a party comprises document images on three hard drives, the party shall label each hard drive in the

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following manner: "V001-001", "V001-002", and "V001-003". Each piece of Production Media shall also identify: (1) the producing party's name; (2) the production date; (3) the Bates Number range of the materials contained on the Production Media; and (4) the set(s) of requests for production for which the documents are being produced.

4. **Metadata.** For all Electronic Documents where metadata exists, an ASCII text file (or Unicode text format if the metadata text is in a foreign language) shall be produced setting forth the fields set forth below. The parties reserve the ability to request that additional Metadata Fields be set forth or provided for certain specified Electronic Documents upon review of the other party's production. The parties reserve their respective rights to object to any such request. The parties are under no obligation to create metadata for any document.

FIELD	**DESCRIPTION**
BEGDOC	Beginning Bates number assigned to each document.
ENDDOC	Ending Bates number assigned to each document.
BEGATTACH	Beginning Bates number assigned to the group of documents to which the parent document and any attachment documents are associated.
ENDATTACH	Ending Bates number assigned to the group of documents to which the parent document and any attachment documents are associated.
DOCTYPE	Document type as identified by metadata associated with the native document indicating the extension of the application that created the native document (*e.g.*, .doc, .ppt, .htm).
File Name	Original file name.
Custodian	The name of the person from whose files the document was obtained.
File Path	The file path information for the document.
Date Created	Date that the document was created.
Last Modified Date	Date that the file was last modified.

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Additional Fields for Emails:

To	All information contained in the "To" field of the email.
From	All information contained in the "From" field of the e-mail.
CC	All information contained in the "CC" field of the e-mail, as well as all other discernable copyees.
Bcc	All information contained in the "BCC" field of the email, as well as all other discernable blind copyees.
Date Sent[1]	Date the E-mail was sent, including month, date, and year.
Subject	Verbatim subject or re: line, as stated in the e-mail.
Date Received	Date the E-mail was received, including month, date, and year.
Time Sent	Time the E-mail was sent, including hour, minute, second, and time zone.

5. **Duplicates.** To the extent duplicate documents (based on MD5 or SHA-1 hash values at the document level) reside within a party's data set, each party is only required to produce a single copy of the responsive document from each custodian. To the extent that de-duplication through MD5 or SHA-1 hash values is not possible, the parties shall meet and confer to discuss any other proposed method of de-duplication.

6. **Original Documents:** Nothing in this Protocol shall eliminate or alter any Party's obligation to retain Native Format copies, including associated metadata, of all ESI produced in the Litigation and original hard copy documents for all paper discovery produced in the Litigation.

7. **Sources That Are Not Reasonably Accessible.** Materials retained in tape, floppy disk, optical disk, or similar formats primarily for back-up or disaster recovery purposes should be considered not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B) and, accordingly, should not be subject to production unless specific facts demonstrate a particular need for such evidence that justifies the burden of retrieval. Following reasonable notice by a requesting party for facts supporting a

[1] To the extent that information in the Date Sent and Time Sent fields, as defined above, are both part of the Date Sent field, that is sufficient; the parties do not need to parse them as separate fields.

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claim that responsive ESI is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B), a party must identify and describe those sources of ESI that it contends are not reasonably accessible by providing information about the nature of any limitations on access and the likely costs that might be incurred in producing such ESI, and the method used for storage of such ESI.

PROPOSED ORDER

The forging E-Discovery Protocol shall be adopted by the Court and used by the parties in this case.

SO ORDERED this 2nd day of March, 2011.

Marsha J. Pechman
United States District Judge

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