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9   **UNITED STATES DISTRICT COURT**

10   **FOR THE EASTERN DISTRICT OF CALIFORNIA**

11

12 ICONFIND, INC.,) Case No. 2:11-CV-00319 GEB JFM
)
13   )
   Plaintiff,) **DOCUMENT PRODUCTION**
14   ) **AGREEMENT**
)
15   v.   )
)
16   )
 GOOGLE INC.,)
17   )
)
18   Defendant.)
)
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       DOCUMENT PRODUCTION AGREEMENT
       Case No. 2:11-CV-00319 GEB JFM

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This Stipulation Regarding the Format of Document Productions shall govern the parties in the above-captioned case (the "Litigation").

I.   GENERAL PROVISIONS

A.   The parties will make reasonable efforts to prepare responsive and nonprivileged data for production in accordance with the agreed-upon specifications set forth below. These specifications apply to hard copy documents or electronically stored information ("ESI") which are to be produced in this litigation.

B.   SECURITY. Both parties will make reasonable efforts to ensure that any productions made are free from viruses and may be provided on encrypted media for submission.

C.   CONFIDENTIALITY DESIGNATION. Responsive documents in TIFF format will be stamped with the appropriate confidentiality designations in accordance with the Protective Order in this matter. Each responsive document produced in native format will have its confidentiality designation identified in the filename of the native file.

D.   NON-STANDARD FILES. The format of production of non-standard electronic files, large oversized documents, etc. will be discussed before production to determine the optimal production format.

A.   PRODUCTION MEDIA. Documents shall be produced on external hard drives, readily accessible computer(s) or electronic media ("Production Media"). Each piece of Production Media shall identify a production number corresponding to the production volume (e.g., "VOL001", "VOL002"), as well as the volume of the material in that production (e.g. "-001", "-002"). Each piece of production media shall also identify: (1) the producing party's name; (2) the production date; and (3) the Bates Number range of the materials contained on the Production Media.

II.   DATA PROCESSING

A.   PASSWORD PROTECTED FILES. The parties agree to use commercially accessible software to open password-protected or encrypted files.

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B.   DEDUPLICATION. A party is only required to produce a single copy of a responsive document and a party may de-duplicate responsive ESI across Custodians. De-duplication may be done automatically via standard techniques such as those based on MD5 of SHA-1 hash values at the document family level. For emails with attachments, the hash value is generated based on the parent/child document grouping. A party may also de-duplicate email threads as follows: In an email thread, only the final-in-time document need be produced, assuming that all previous emails in the thread are contained within the final message. Where a prior email contains an attachment, that email and attachment shall not be removed.

C.   CULLING/FILTERING. Common system files need not be collected and searched. Common files that may be culled/filtered include those located in the National Software Reference Library ("NSRL") NIST hash set list. Additional culling of system file types based on file extension may also include, but are not limited to: WINNT, LOGS, DRVS, MP3, C++ Program File (c), C++ Builder 6 (cpp), Channel Definition Format (cdf), Creatures Object Sources (cos), Dictionary file (dic), Executable (exe), Hypertext Cascading Style Sheet (css) JavaScript Source Code (js), Label Pro Data File (IPD), Office Data File (NICK), Office Profile Settings (ops), Outlook Rules Wizard file (rwz), Scrap Object System file (dll), Temporary File (tmp), Windows Error Dump (dmp), Windows Media Player Skin Package (wmz), Windows NT/2000 Event View Log file (evt), Python Script files (.py, .pyc, .pud, .pyw), and Program Installers.

III.   PRODUCTION OF HARD COPY DOCUMENTS

A.   TIFFs. Documents that exist in hard copy format only shall be scanned and produced as single page Group IV TIFFs, with at least 300 dots per inch (dpi). Each TIFF image shall be named according to the corresponding bates number associated with the document. Each image shall be branded according to the bates number and agreed upon confidentiality designation. TIFFs shall show all text and images that would be visible to a user of the hard copy documents.

B.   OCR TEXT FILES. A commercially acceptable technology for optical character recognition "OCR" shall be used for all scanned, hard copy documents. OCR text shall be

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provided as a single text file for each document, and the filename itself should match its respective TIFF filename. The text files will not contain the redacted portions of the documents.

      C.   **DATABASE LOAD FILES/CROSS-REFERENCE FILES.** Documents should be provided with an image load file that can be loaded into commercially acceptable production software (e.g., Concordance, Summation). Each TIFF in a production must be referenced in the corresponding image load file. The total number of documents referenced in a production's data load file should match the total number of designated document breaks in the Image Load file(s) in the production.

      D.   **BATES NUMBERING**. All images must be assigned a unique Bates number that is sequential within a given document and across the production sets.

      E.   **UNITIZING OF DOCUMENTS.** In scanning paper documents, distinct documents should not be merged into a single record, and single documents should not be split into multiple records (*i.e.*, paper documents should be logically unitized). The parties will use reasonable efforts to unitize documents correctly.

IV.   PRODUCTION OF ELECTRONICALLY STORED INFORMATION

      A.   **TIFFs.** Unless excepted below, single page Group IV TIFFs should be provided, at least 300 dots per inch (dpi). Each TIFF image file should be one page and named according to the unique bates number, followed by the extension ".TIF". Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape).

      B.   **TEXT FILES.** For each document, a text file should be provided along with the image files. The text of native files should be extracted directly from the native file. However, if a document has been redacted or does not contain extractable text, OCR of the redacted document will suffice in lieu of extracted text.

      C.   **DATABASE LOAD FILES/CROSS-REFERENCE FILES.** Documents should be provided with an image load file that can be loaded into commercially acceptable production software (e.g., Concordance, Summation). Each TIFF in a production must be referenced in the corresponding image load file. Each TIFF in a production must be referenced in the corresponding

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image load file. The total number of pages referenced in a production's image load file should match the total number of TIFF files in the production.

      D.   **BATES NUMBERING**. All images must be assigned a unique Bates number that is sequential within a given document and across the production sets.

      E.   **SPREADSHEETS.** TIFF images of spreadsheets may be produced in native format unless redacted, in which instance, spreadsheets will be produced in TIFF with OCR. The parties will make reasonable efforts to ensure that any spreadsheets that are produced only as TIFF images are formatted so as to be readable.

      F.   **PROPRIETARY FILES.** To the extent a response to discovery requires production of ESI accessible only through proprietary software, the parties should continue to preserve each version of such information. The parties shall meet and confer to finalize the appropriate production format.

      G.   **REQUEST(S) FOR ADDITIONAL NATIVE FILES.** If good cause exists to request production of specified files, other than those specifically set forth above, in native format, the party may request such production and provide an explanation of the need for native file review, which request shall not unreasonably be denied.

      H.   **REDACTION OF INFORMATION.** If documents are produced containing redacted information, the producing party shall supply a list of the documents for any such claim(s) of privilege, indicating the grounds for the redaction and the nature of the redacted material (e.g., privilege, trade secret, privacy). During the course of the litigation, an electronic copy of the originally, unredacted data shall be securely preserved in such a manner so as to preserve without modification, alteration or addition the content of such data including any metadata therewith.

V.   **PROCESSING OF THIRD-PARTY DOCUMENTS**

      A.   A party that issues a non-party subpoena ("Issuing Party") shall include a copy of this Stipulation with the subpoena and state that the parties to the litigation have requested that third-parties produce documents in accordance with the specifications set forth herein.

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1   **B.**   The Issuing Party shall produce any documents obtained pursuant to a non-party

2 subpoena to the opposing party.

3   **C.**   If the non-party production is not Bates-stamped, the Issuing Party will endorse the

4 non-party production with unique prefixes and Bates numbers prior to producing them to the

5 opposing party.

6   **D.**   Nothing in this stipulation is intended to or should be interpreted as narrowing,

7 expanding, or otherwise affecting the rights of the parties or third-parties to object to a subpoena.

8 **VI.   SEARCHING**

9   **A.   Electronic Keyword Searching.** The parties shall meet and confer to try to

10 develop a mutually agreeable list of search terms and protocols prior to the production of

11 documents. With respect to custodial documents, the parties will conduct electronic searches using

12 such agreed search term lists. The parties agree that instant messages and voicemails will not be

13 searched or produced. The parties agree that they will utilize commercially reasonable efforts to

14 open any encrypted files.

15   **B.   Locations That Will Be Searched for Responsive Documents.** The parties shall

16 meet and confer to try to develop a mutually agreeable list of custodians to be searched. The

17 parties will search any electronic files or folders, or other parts of media, including any internal and

18 external hard drives and other ESI venues (including, but not limited to, recordable optical media,

19 media cards, thumb drives, non-volatile memory, floppy disks, work desktop and laptop

20 computers, email servers, intranet servers, network shares, public data shares and/or database

21 servers) for each identified Custodian that the Custodian reasonably anticipates may contain non-

22 duplicative Responsive Documents.

23   The parties agree to search central repositories, including central databases, or relevant

24 portions thereof to the extent that the party reasonably anticipates they contain non-duplicative

25 Responsive Documents. The parties agree to meet and confer to limit the scope of production

26 from central repositories if the search of central repositories (or relevant portions thereof) that the

27 producing party anticipates contain Responsive Documents is unduly burdensome or is likely to

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be unreasonably inefficient in identifying relevant documents. Specifically, the parties recognize that certain repositories, by their nature, may not effectively or reasonably be searched using electronic search strings, and the parties agree to notify each other of any such repositories that contain Responsive Documents. The parties will then meet and confer to discuss the collection of Responsive Documents from such repositories, including potentially using other effective collection methodologies.

C.   Locations That Will Not Be Searched for Responsive Documents. The following locations will not be searched absent a showing of good cause and need not be preserved other than as in the normal course of business: personal digital assistants, mobile phones, voicemail systems, instant messaging logs and automated disaster recovery backup systems and/or disaster recovery backup tapes (unless such backup systems/tapes are accessible (i.e. actively used for information retrieval)). Notwithstanding the foregoing, the parties agree that Responsive Documents that a Custodian indicates are stored on an archival storage medium that the Custodian can readily identify and locate, that cannot be located in any other repository of information, and that can reasonably be searched, will be searched. In addition, nothing in this paragraph shall limit a receiving party's right to request from a producing party more information about the nature of and burden associated with obtaining documents from a particular location. The parties further recognize their obligations to preserve any potentially relevant sources of data, whether live or in archival form, for purposes of this litigation.

D.   Source Code. To the extent relevant to the Litigation, source code will be made available for inspection pursuant to the terms of the Protective Order.

VII.   MISCELLANEOUS PROVISIONS

A.   Objections Preserved. Nothing in this protocol shall be interpreted to require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity. The parties do not waive any objections as to the production, discoverability, admissibility, or confidentiality of documents and ESI.

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B. **No Effect on Cost Shifting.** Nothing in this Agreement shall affect, in any way, a producing party's right to seek reimbursement for costs associated with collection, review, and/or production of documents or ESI.

C. **Privilege Logs.** No Party shall be required to record on a privilege log any communications that occurred after the filing date of the original complaint, i.e., February 3, 2011.

Dated: May 9, 2011

By: _/s/ Brian E. Hahn_
    As Authorized on May 9, 2011
    Brian E. Hahn
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