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17 Google Inc., YouTube, LLC, and Google UK Ltd.

18
                    UNITED STATES DISTRICT COURT
19
                  NORTHERN DISTRICT OF CALIFORNIA
20
                         SAN JOSE DIVISION
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22 | | |
   BE IN, INC., a New York corporation) CASE NO.: 5:12-cv-03373-LHK
23   )
          Plaintiff,   ) **[STIPULATED] ORDER RE:**
24   ) **DISCOVERY OF**
       v.   ) **ELECTRONICALLY STORED**
) **INFORMATION FOR STANDARD**
25 GOOGLE, INC., a California corporation;) **LITIGATION**
   YOUTUBE, LLC, a Delaware limited liability)
26 company; and GOOGLE UK LTD., a private)
   limited company registered in England and)
27 Wales,   )
)
          Defendants.   )
28   )

STIPULATED ESI ORDER   - 1 -
CASE NO: 5:12-CV-03373-LHK
pa-1596258

I. PURPOSE

This Order will govern discovery of electronically stored information ("ESI") in this case as a supplement to the Federal Rules of Civil Procedure, this Court's Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

II. COOPERATION

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this Court's Guidelines for the Discovery of ESI.

III. LIAISON

a) The parties have identified liaisons to each other who are and will be knowledgeable about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or will have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

b) Google appoints Riana Pfefferkorn (associate at outside counsel of record) as its e-discovery liaison.

c) Plaintiff Be In appoints Ashleigh Landis (associate at outside counsel of record) as its e-discovery liaison.

IV. PRESERVATION

The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

a) ESI created or received between the following date ranges will be preserved:

(1) for ESI pertaining to the development of Google Hangouts, from April 1, 2007 to June 28, 2012;

(2) for ESI pertaining to Google UK Ltd., from April 27, 2011 to June 28, 2012;

(3) for ESI pertaining to the "Watch With Your Friends" button on YouTube, LLC, from January 1, 2011 to June 28, 2012.

b) The parties will continue to meet and confer on preservation regarding time periods after the complaint was filed.

c) ESI created or received prior to April 1, 2007 that is maintained by custodian Serge Lachapelle and that relates to (i) the user interface features of the Marratech AG product(s) or (ii) customers for such product(s) will be preserved.

d) The parties understand that they have an obligation to preserve all evidence relevant to the case even if not enumerated in the above categories.

e) The parties have discussed the types of ESI they believe should be preserved and the custodians, or general job titles or descriptions of custodians, for whom they believe ESI should be preserved, e.g., "HR head," "scientist," and "marketing manager." The parties shall add or remove custodians as reasonably necessary.

f) The parties will continue to meet and confer and agree on the number of custodians per party for whom ESI will be preserved.

g) These data sources are not reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved pursuant to normal business retention, but not searched, reviewed, or produced:

1. backup systems and/or tapes used for disaster recovery; and

2. systems no longer in use that cannot be accessed.

h) Among the sources of data the parties agree are not reasonably accessible, the parties agree not to preserve the following:

1. voicemail messages;

2. information from handsets, mobile devices, personal digital assistants, and tablets that is duplicative of information that resides in a reasonably accessible data source;

3. automatically saved versions of documents and emails;

4. deleted, slack, fragmented, or other data accessible only by forensics;

5. random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;

6. on-line access data such as temporary internet files, history, cache, cookies, and the like;

7. dynamic fields of databases or log files that are not retained in the usual course of business;

8. data in metadata fields that are frequently updated automatically, such as last opened dates;

9. information created or copied during the routine, good-faith performance of process for the deployment, maintenance, retirement, and disposition of computer equipment; and

10. video files that are publicly accessible to both parties, e.g., videos posted on the Web. However, the parties shall preserve video files that (i) are not publicly accessible by both parties and (ii) relate to the conception of the allegedly proprietary elements and concepts at issue.

V. SEARCH

a) The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

b) Each party will use its best efforts to filter out common system files and application executable files by using a commercially reasonable hash or MIME type identification process. Files that may be filtered out during this process are located in the National Software Reference Library ("NSRL") NIST hash set list.

c) Each party is required to produce only a single copy of a responsive document (*i.e.*, it may produce multiple copies but is not required to do so) and each party may de-duplicate

responsive ESI (based on MD5 or SHA-1 hash values at the document level) across custodians. For emails with attachments, the hash value is generated based on the parent/child document grouping. A party may also de-duplicate "near-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 as a "near-duplicate." 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.

d) No provision of this Order affects any inspection of source code that is responsive to a discovery request and will be made available consistent with the protective order governing this case.

VI. PRODUCTION FORMATS

The parties agree to produce documents in the formats described in Appendix 1 to this Order, and for each production, to provide a cover letter stating which custodians' documents are included in that production. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process.

VII.   DOCUMENTS PROTECTED FROM DISCOVERY

a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.

b) Communications with counsel who are or were counsel of record that post-date the filing of the complaint need not be placed on a privilege log. Communications may be identified on a privilege log by category, rather than individually, if appropriate.

c) Activities undertaken in compliance with the duty to preserve information are protected from discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

VIII. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown. Any such modified Stipulated Order will be titled sequentially as follows, "First Modified Stipulated Order re: Discovery of Electronically Stored Information for Standard Litigation," and each modified Stipulated Order will supersede the previous Stipulated Order.

IT IS SO STIPULATED, through Counsel of Record.

Dated: September 6, 2013   MORRISON & FOERSTER

                                    By: */s/ Charles Barquist*
                                            Charles Barquist

                                    Attorneys for Plaintiff
                                    Be In, Inc.

Dated: September 6, 2013   WILSON SONSINI GOODRICH & ROSATI

                                    By: */s/ Colleen Bal*
                                            Colleen Bal

                                    Attorneys for Defendants
                                    Google Inc., YouTube, LLC, and Google UK Ltd.

IT IS ORDERED that the foregoing Agreement is approved.

Dated: _____   _____
                                    Lucy H. Koh
                                    United States District Judge

APPENDIX 1

PRODUCTION FORMAT AND METADATA

1.   **Production Components.** Productions shall include, single page TIFFs, Text Files, an ASCII delimited metadata file (.txt, .dat, or .csv) and an image load file that can be loaded into commercially acceptable production software (e.g., Concordance). Each production directory should contain all or some of the following 4 sub-directories which will be saved on the root of each production media (CD/DVD or HD):

- IMAGES – Contains the images
- FULLTEXT – Contains extracted fulltext and or OCR
- DATA – Contains image load files, metadata load files, Nativelink load files, and/or Fulltext load files.
- NATIVES – Contains Native Files

2.   **Image Load File.** The parties shall provide an .LFP or .OPT file in accordance with standard specifications.

3.   **Metadata Fields and Metadata File.** Each of the metadata and coding fields set forth below that can be extracted shall be produced for each document. The parties are not obligated to populate manually any of the fields below if such fields cannot be extracted from a document, with the exception of the following: BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, and CUSTODIAN(S). The data load file shall contain a header listing the metadata fields in order. The metadata file shall be delimited according to the following characters:

- Delimiter = ¶ (ASCII:020)
- Text-Qualifier = þ (ASCII:254)
- New Line = ® (ASCII:174)
- Multi-value Delimiter: ; (ASCII:059)

Field Name	Field Description
BEGBATES	Beginning Bates number as stamped on the production image
ENDBATES	Ending Bates number as stamped on the production image

BEGATTACH	First production Bates number of the first document in a family
ENDATTACH	Last production Bates number of the last document in a family
CUSTODIAN(S)	Individual from whom the documents originated and individual(s) whose documents de-duplicated out; only relevant for global de-duplication.
SUBJECT	Subject line of email
TITLE	Title from properties of document
DATESENT	Date email was sent (format: MM/DD/YYYY)
TO	The name and email address of all recipients that were included on the "To" line of the email
FROM	The name and email address of the sender of the email
CC	The name and email address of all recipients that were included on the "CC" line of the email
BCC	The name and email address of all recipients that were included on the "BCC" line of the email
AUTHOR	Any value populated in the Author field of the document properties
FILENAME	Filename of an electronic document (Edoc or attachment)
DATEMOD	Date an electronic document was last modified (format: MM/DD/YYYY) (Edoc or attachment)
DATECREATED	Date the document was created (format: MM/DD/YYYY) (Edoc or attachment)
NATIVELINK	Native File Link (Native Files only)

4.   **TIFFs.** Documents that exist only in hard copy format shall be scanned and produced as TIFFs. Unless excepted below, documents that exist as ESI shall be converted and produced as TIFFs. Unless excepted below, single page Group IV TIFFs should be provided, at least 300 dots per inch (dpi) for all documents. The parties agree to produce TIFF files in black-and-white for all document categories, unless the party receiving the document requests color images (*e.g.*, on reviewing a document or set of documents (*e.g.*, a subset of documents in a particular production, or a subset of documents from a particular custodian), that party may request that the opposing party produce such document or reasonably identifiable subset of documents in color, and the party receiving such request shall provide such document or set of

documents in color reasonably promptly, such provision not to be unreasonably withheld). Documents shall not be split across folder directories, and the parties shall provide an image load file (e.g., .OPT file) that defines the document page breaks. The parties shall include one load file per production volume, containing the same name as the production volume (e.g., MoF-PD001.lfp). Each TIFF image shall be named according to a unique corresponding Bates number associated with the image of the page. Each image shall be branded according to the Bates number and the agreed upon confidentiality designation. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). TIFFs shall show all text and images that would be visible to a user of the hard copy documents.

5. **Text Files.** A single multi-page text file shall be provided for each document, and the filename should match the Bates number labeled on the first page of the corresponding TIFF filename. A commercially acceptable technology for optical character recognition "OCR" shall be used for all scanned, hard copy documents. When possible, the text of native files should be extracted directly from the native file. Text files will not contain the redacted portions of the documents and OCR text files will be substituted instead of extracted text files for redacted documents. Multi-page text files shall use Unicode UTF-16 encoding.

6. **Image Load Files / Data Load Files.** Each TIFF in a production must be referenced in the corresponding image load file - (IPRO (.LFP), OPTICON (.OPT)). The total number of documents referenced in a production's data load file (CONCORDANCE (.DAT)) should match the total number of designated document breaks in the Image Load file(s) in the production. The total number of pages referenced in a production's image load file should match the total number of TIFF files in the production. The total number of documents in a production should match the total number of records in the data load file. The parties agree to produce one load file each per production volume, and to name such load files the same as the production volume. (EXAMPLE: MOF-PD001.OPT or MOF-PD001.LFP, MOF-PD001.DAT). Data load files shall use Unicode UTF-16 encoding.

7. **Bates Numbering.** All images must be assigned a unique Bates number that is sequential within a given document and across the production sets. Each Image will have the production number endorsed in the lower right hand corner of the document.

8. **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.

9. **Redaction Of Information.** If documents are produced containing redacted information, an electronic copy of the original, 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 therein.

10. **Spreadsheets.** TIFF images of spreadsheets (MS Excel, Google Sheets) need not be produced unless redacted, in which instance, spreadsheets shall be produced in TIFF with OCR Text Files. Native copies of unredacted spreadsheets shall be produced with a link in the NativeLink field, along with extracted text and applicable metadata fields set forth in Paragraph 3. Each file should be named with the Bates number labeled on the first page of each corresponding DOCUMENT, plus any confidentiality designation given to the DOCUMENT or portions thereof (Example: MOF-PD000000001_DESIGNATION.xls). A TIFF placeholder indicating that the document was provided in native format should accompany the database record. If a spreadsheet has been redacted, TIFF images and OCR text of the redacted document will suffice in lieu of a native file and extracted text. 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.

11. **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.

12. **Request(s) for Additional Native Files.** If good cause exists to request production of certain 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. Any native files that are produced shall be produced with a link in the NativeLink field, along with extracted text and applicable metadata fields set forth in Paragraph 3. A TIFF placeholder indicating that the document was provided in native format should accompany the database record. If a file has been redacted, TIFF images and OCR text of the redacted document will suffice in lieu of a native file and extracted text. To the extent any party converts electronically stored information produced in native format to PDF, TIFF image or paper, for use as exhibits or otherwise, the PDF, image or printout shall include the production document identification number as the prefix of any Bates number branded or stamped on the PDF, image or printout. The PDF, image or printout shall also include a brand or stamp of any Confidentiality or other designation, and the hash signature of the native formatted file produced electronically.

13. **Production Media.** Documents shall be produced on external hard drives, readily accessible computer(s) or other electronic media ("Production Media"). Each piece of Production Media shall identify a production number corresponding to the production volume (e.g., "VOL001," "VOL002"). 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.

CERTIFICATION

I, Colleen Bal, am the ECF User whose identification and password are being used to file the **[Proposed] Stipulated Order Regarding Discovery of Electronically Stored Information**. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Charles Barquist has concurred in this filing.

Dated: September 6, 2013   WILSON SONSINI GOODRICH & ROSATI

                                            By: */s/ Colleen Bal*
                                                Colleen Bal

                                            Attorneys for Defendants
                                            Google Inc., YouTube, LLC, and Google UK Ltd.