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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HANGINOUT, INC.,

Plaintiff,

vs.

GOOGLE INC.,

Defendant.

CASE NO. 13-CV-2811 AJB NLS

ESI PROTOCOL ORDER

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The Court ORDERS as follows:

1. This Order supplements all other discovery rules and orders. It streamlines Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination” of this action, as required by Federal Rule of Civil Procedure 1.

2. This Order may be modified for good cause. If the parties cannot resolve their disagreements regarding modifications, the parties may submit their competing proposals and a summary of their dispute.

3. Costs will be shifted for disproportionate ESI production requests pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory discovery tactics will be cost-shifting considerations.

4. A party’s meaningful compliance with this Order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.

5. Each requesting party will limit its ESI production requests to a total of ten custodians per producing party for all such requests, excluding requests for email which are addressed in paragraphs 7-9. A custodian may be identified by job description or function so long as it identifies a single person. The parties may jointly agree to modify this limit without the Court’s leave. The Court will consider contested requests for additional custodians per producing party, or requests for searches of servers, databases or other systems not maintained by a single person, upon showing of good cause and distinct need based on the size, complexity, and issues of this specific case. Should a party serve ESI production requests for additional custodians beyond the limits agreed to by the parties or granted by the Court pursuant to this paragraph, the requesting party may bear all reasonable costs

1 caused by such additional discovery. While there is no *per se* limit on quantity of
2 search terms for the identified custodians for non-email ESI, a party may not request
3 more than twenty search terms absent consent or Order of the Court granted for
4 good cause shown. Parties must meet and confer to limit ESI custodians and search
5 terms prior to approaching the Court for assistance on any ESI matters. Each party
6 must use a common set of search terms for all custodians of another party from
7 whom it seeks ESI.

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9 6. General ESI production requests under Federal Rules of Civil
10 Procedure 34 and 45 must not include email or other forms of electronic
11 correspondence (collectively “email”). To obtain email parties must propound
12 specific email production requests.

13 7. Email production requests will only be propounded for specific issues,
14 rather than general discovery of a product or business.

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16 8. Each requesting party must limit its email production requests to a total
17 of five custodians per producing party for all such requests. The parties may jointly
18 agree to modify this limit without the Court’s leave. The Court will consider
19 contested requests for additional custodians per producing party, upon showing of
20 good cause and distinct need based on the size, complexity, and issues of this
21 specific case. Should a party serve email production requests for additional
22 custodians beyond the limits agreed to by the parties or granted by the Court
23 pursuant to this paragraph, the requesting party may bear all reasonable costs caused
24 by such additional discovery.

25 9. Each requesting party will limit its email production requests to a total
26 of five search terms per custodian per party. The parties may jointly agree to
27 modify this limit without the Court’s leave. The Court will consider contested
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1 requests for additional search terms per custodian, upon showing a distinct need
2 based on the size, complexity, and issues of this specific case.

3 **I. GENERAL PROVISIONS**

4 A. The parties will make reasonable efforts to prepare responsive and non-
5 privileged data for production in accordance with the agreed-upon specifications set
6 forth below. These specifications apply to hard copy documents or electronically
7 stored information (“ESI”) which are to be produced in this litigation.
8

9 B. SECURITY. Both parties will make reasonable efforts to ensure that
10 any productions made are free from viruses and provided on encrypted media.
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12 C. CONFIDENTIALITY DESIGNATION. Responsive documents in
13 TIFF format will be stamped with the appropriate confidentiality designations in
14 accordance with the Protective Order in this matter. Each responsive document
15 produced in native format will have its confidentiality designation identified in the
16 filename of the native file.
17

18 D. FORMAT OF PRODUCTION. Hard copy documents will be
19 produced under the specifications outlined in Section III. Standard electronic files
20 such as email, documents, spreadsheets, presentations, web pages, and PDFs will be
21 produced under the specifications outlined in Section IV. The format of production
22 of large oversized hard copy documents and non-standard electronic files will be
23 discussed before production to determine acceptable production format.
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1 E. PRODUCTION MEDIA. Documents shall be produced on external
2 hard drives, readily accessible computer(s) or other electronic media (“Production
3 Media”). Each piece of Production Media shall identify a production number
4 corresponding to the production volume (e.g., “VOL001”, “VOL002”), as well as
5 the volume of the material in that production (e.g. “-001”, “-002”). Each piece of
6 production media shall also identify: (1) the producing party’s name; (2) the
7 production date; and (3) the Bates Number range of the materials contained on the
8 Production Media; and (4) the set(s) of requests for production for which the
9 documents are being produced.
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13 **II. DATA PROCESSING**

14 A. KEYWORD SEARCHING. To the extent that keyword or other
15 methodologies are used to identify the universe of potentially responsive documents
16 to be processed for review, the parties shall meet and confer to try to develop a
17 mutually agreeable list of search terms and protocols prior to the production of
18 documents. Any search methodology employed must open compound and nested
19 files and de-compress archived files. The search utilities employed must support the
20 use of stemmed searches (e.g. using ~ to include variations on a keyword), wildcard
21 searches, Boolean searches, and proximity searching.
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25 B. CULLING\FILTERING. Each party will use its best efforts to filter
26 out common system files and application executable files by using a commercially
27 reasonable hash identification process. Hash values that may be filtered out during
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1 this process are located in the National Software Reference Library (“NSRL”)
2 NIST hash set list. Additional culling of system file types based on file extension
3 may include, but are not limited to: WINNT, LOGS, DRVS, MP3, MP4, WAV,
4 C++ Program File (c), C++ Builder 6 (cpp), Channel Definition Format (cdf),
5 Creatures Object Sources (cos), Dictionary file (dic), Executable (exe), Hypertext
6 Cascading Style Sheet (css), JavaScript Source Code (js), Label Pro Data File (IPD),
7 Office Data File (NICK), Office Profile Settings (ops), Outlook Rules Wizard File
8 (rwz), Scrap Object, System File (dll), Temporary File (tmp), Windows Error Dump
9 (dmp), Windows Media Player Skin Package (wmz), Windows NT/2000 Event
10 View Log file (evt), Python Script files (.py, .pyc, .pud, .pyw), Program Installers.

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14 C. DEDUPLICATION. A party is required to produce only a single copy
15 of a responsive document and a party may de-duplicate responsive ESI (based on
16 MD5 or SHA-1 hash values at the document level) across Custodians. For emails
17 with attachments, the hash value is generated based on the parent/child document
18 grouping. A party may also de-duplicate “near-duplicate” email threads as follows:
19
20 In an email thread, only the final-in-time document need be produced, assuming that
21 all previous emails in the thread are contained within the final message. Where a
22 prior email contains an attachment, that email and attachment shall not be removed
23 as a “near-duplicate.” To the extent that de-duplication through MD5 or SHA-1
24 hash values is not possible, the parties shall meet and confer to discuss any other
25 proposed method of de-duplication.
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1 **III. PRODUCTION OF HARD COPY DOCUMENTS**

2 A. TIFFs. Documents that exist only in hard copy format shall be scanned
3 and produced as single page Group IV TIFFs with at least 300 dots per inch (dpi).
4 Each TIFF image shall be named according to a unique corresponding bates number
5 associated with the document. Each image shall be branded according to the bates
6 number and the agreed upon confidentiality designation. Documents shall show all
7 text and images that would be visible to a user of the hard copy documents.
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10 In scanning hard copy documents, distinct documents should not be merged
11 into a single record, and single documents should not be split into multiple records
12 (*i.e.*, hard copy documents should be logically unitized). The parties will use
13 reasonable efforts to unitize documents correctly.
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16 B. OCR TEXT FILES. A commercially acceptable technology for optical
17 character recognition “OCR” shall be used for all scanned, hard copy documents.
18 OCR text shall be provided as a single multi-page text file for each document, and
19 the filename itself should match its respective TIFF filename. The text files will not
20 contain the redacted portions of the documents.
21

22 C. METADATA FIELDS. The following information shall be produced
23 in the delimited data file accompanying hard copy documents: (a) BEGBATES, (b)
24 ENDBATES, (c) BEGATTACH, (d) ENDATTACH, and (e) CUSTODIAN.
25

26 D. DATABASE LOAD FILES/CROSS-REFERENCE FILES.
27 Productions shall include, in addition to single page TIFFs and Text Files, (a) an
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1 ASCII delimited data file (.txt, .dat, or .csv), and (b) an image load file that can be
2 loaded into commercially acceptable production software (e.g., Concordance,
3 Summation). Each TIFF in a production must be referenced in the corresponding
4 image load file. The total number of pages referenced in a production's image load
5 file should match the total number of pages or TIFF files in the production. The
6 total number of documents referenced in a production's data load file should match
7 the total number of designated document breaks in the Image Load file(s) in the
8 production.

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

13 **IV. PRODUCTION OF ELECTRONICALLY STORED INFORMATION**

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15 A. TIFFs. Unless excepted below, single page Group IV TIFFs should be
16 provided at least 300 dots per inch (dpi). Each TIFF image file should be one page
17 and named according to the unique bates number, followed by the extension ".TIF".
18 Each image shall be branded according to the bates number and the agreed upon
19 confidentiality designation. Original document orientation should be maintained
20 (i.e., portrait to portrait and landscape to landscape).

21
22 B. TEXT FILES. A single multi-page text file shall be provided for each
23 document, and the filename itself should match its respective TIFF filename. When
24 possible, the text of native files should be extracted directly from the native file.
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1 Text files will not contain the redacted portions of the documents and OCR text files
2 will be substituted instead of extracted text files for redacted documents.

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4 C. METADATA FIELDS AND PROCESSING. Each of the metadata
5 and coding fields set forth in Appendix 1 that can be extracted shall be produced for
6 that document. The parties are not obligated to populate manually any of the
7 metadata fields in Appendix 1 if such fields cannot be extracted from a document,
8 with the exception of the following: (a) BEGBATES, (b) ENDBATES, (c)
9 BEGATTACH, (d) ENDATTACH; and (e) CUSTODIAN, which should be
10 populated by the party or the party's vendor. The parties will make reasonable
11 efforts to ensure that the metadata fields automatically extracted from the documents
12 are correct; however, the parties acknowledge that such metadata may not always be
13 accurate and might instead contain irrelevant or incorrect information. Parties may
14 request other native files be produced as described in Section IV.I. below. To the
15 extent that the term "native" is used in this agreement, it means either in native or
16 otherwise comparable format. Thus, for example, if a Google slide presentation is
17 to be produced in native format, producing the document as a .ppt file would be
18 appropriate.
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24 D. DATABASE LOAD FILES/CROSS-REFERENCE FILES.

25 Productions shall include, in addition to single page TIFFs and Text Files, (a) an
26 ASCII delimited data file (.txt, .dat, or .csv), and (b) an image load file that can be
27 loaded into commercially acceptable production software (e.g., Concordance,
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1 Summation). Each TIFF in a production must be referenced in the corresponding
2 image load file. The total number of documents referenced in a production's data
3 load file should match the total number of designated document breaks in the Image
4 Load file(s) in the production. Each TIFF in a production must be referenced in the
5 corresponding image load file. The total number of pages referenced in a
6 production's image load file should match the total number of pages or TIFF files
7 in the production. The total number of documents in a production should match the
8 total number of records in the database load file.
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12 E. BATES NUMBERING. All images must be assigned a unique Bates
13 number that is sequential within a given document and across the production sets.

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15 F. PRESENTATIONS. The parties shall take reasonable efforts to
16 process presentations (e.g., MS PowerPoint, Google Slides) with hidden slides and
17 speaker's notes unhidden, and to show both the slide and the speaker's notes on the
18 TIFF image.

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20 G. SPREADSHEETS. TIFF images of spreadsheets (e.g., MS Excel,
21 Google Sheets) need not be produced unless redacted, in which instance,
22 spreadsheets shall be produced in TIFF with OCR Text Files. Native copies of
23 spreadsheets shall be produced with a link in the NativeLink field, along with
24 extracted text and applicable metadata fields set forth in Appendix 1. A TIFF
25 placeholder indicating that the document was provided in native format should
26 accompany the database record. If a spreadsheet has been redacted, TIFF images
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1 and OCR text of the redacted document will suffice in lieu of a native file and
2 extracted text. The parties will make reasonable efforts to ensure that any
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4 spreadsheets that are produced only as TIFF images are formatted so as to be
5 readable.

6 H. PROPRIETARY FILES. To the extent a response to discovery
7
8 requires production of ESI accessible only through proprietary software, the parties
9 should continue to preserve each version of such information. The parties shall
10 meet and confer to finalize the appropriate production format.

11 I. REQUEST(S) FOR ADDITIONAL NATIVE FILES. If good cause
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13 exists to request production of certain files, other than those specifically set forth
14 above, in native format, the party may request such production and provide an
15 explanation of the need for native file review, which request shall not unreasonably
16 be denied. Any native files that are produced shall be produced with a link in the
17 NativeLink field, along with extracted text and applicable metadata fields set forth
18 in Appendix 1. A TIFF placeholder indicating that the document was provided in
19 native format should accompany the database record. If a file has been redacted,
20 TIFF images and OCR text of the redacted document will suffice in lieu of a native
21 file and extracted text.

22 J. REDACTION OF INFORMATION. If documents are produced
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24 containing redacted information, an electronic copy of the original, unredacted data
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1 shall be securely preserved in such a manner so as to preserve without modification,
2 alteration or addition the content of such data including any metadata therein.

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

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

10 B. The Issuing Party shall produce any documents obtained pursuant to a
11 non-party subpoena to the opposing party.

13 C. If the non-party production is not Bates-stamped, the Issuing Party will
14 endorse the non-party production with unique prefixes and Bates numbers prior to
15 producing them to the opposing party.

17 D. Nothing in this stipulation is intended to or should be interpreted as
18 narrowing, expanding, or otherwise affecting the rights of the parties or third-parties
19 to object to a subpoena.

21 **VI. SOURCES**

22 A. **SOURCES THAT WILL BE SEARCHED FOR RESPONSIVE**
23 **DOCUMENTS.** The parties shall meet and confer to try to develop a mutually
24 agreeable list of custodians to be searched and search terms to be used. The parties
25 will search any electronic files or folders, or other parts of media, including any
26 internal and external hard drives and other ESI venues (including, but not limited to,
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1 recordable optical media, media cards, thumb drives, non-volatile memory, floppy
2 disks, work desktop and laptop computers, email servers, intranet servers, network
3 shares, public data shares and/or database servers) for each identified Custodian that
4 the Custodian reasonably anticipates may contain non-duplicative Responsive
5 Documents.
6 Documents.

7
8 The parties agree to search central repositories, including central databases, or
9 relevant portions thereof to the extent that the party reasonably anticipates may
10 contain non-duplicative Responsive Documents. The parties agree to meet and
11 confer to limit the scope of production from central repositories if the search of
12 central repositories (or relevant portions thereof) that the producing party anticipates
13 contain Responsive Documents is unduly burdensome or is likely to be
14 unreasonably inefficient in identifying relevant documents. Specifically, the parties
15 recognize that certain repositories, by their nature, may not effectively or reasonably
16 be searched using electronic search strings, and the parties agree to notify each other
17 of any such repositories that contain Responsive Documents. The parties will then
18 meet and confer to discuss the collection of Responsive Documents from such
19 repositories, including potentially using other effective collection methodologies.
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24 **B. SOURCES THAT WILL NOT BE SEARCHED FOR RESPONSIVE**
25 **DOCUMENTS.** The following sources will not be searched under any
26 circumstances, and as such need not be preserved: automated disaster recovery
27 backup systems and/or disaster recovery backup tapes; RAM or temporary files;
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1 temporary internet files, history, cache, cookies, and other on-line access data; data
2 in metadata fields that are updated automatically such as last-opened dates; server,
3 system, or network logs; personal digital assistants, mobile devices, voicemail
4 systems; and off the record instant messaging logs. In addition, to the extent that
5 custodial email are being collected and search, the parties agree that only sent and
6 received custodial emails will be searched and that, with respect to documents that
7 automatically save, only the most recent version of such documents existing at the
8 time of collection need be searched. Notwithstanding the foregoing, the parties
9 agree that Responsive Documents that a Custodian indicates are stored on an
10 archival storage medium that the Custodian can readily identify and locate, that
11 cannot be located in any other repository of information, and that can reasonably be
12 searched, will be searched. In addition, nothing in this paragraph shall limit a
13 receiving party's right to request from a producing party more information about
14 the nature of and burden associated with obtaining documents from a particular
15 source. The parties further recognize their obligations to preserve any potentially
16 relevant sources of data, whether live or in archival form, for purposes of this
17 litigation.

24 **VII. PRIVILEGE**

25 A. Nothing in this Agreement shall be interpreted to require disclosure of
26 irrelevant information or relevant information protected by the attorney-client
27 privilege, work-product doctrine, or any other applicable privilege or immunity.
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1 The parties do not waive any objections as to the production, discoverability,
2 admissibility, or confidentiality of documents and ESI. Disclosures among
3 defendants' attorneys of work product or other communications relating to issues of
4 common interest shall not affect or be deemed a waiver of any applicable privilege
5 or protection from disclosure.
6

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8 B. Pursuant to Fed. R. Evid. 502(d), the production of a privileged or
9 work-product-protected document is not a waiver of privilege or protection from
10 discovery in this case or in any other federal or state proceeding. For example, the
11 mere production of privileged or work-product-protected documents in this case as
12 part of a mass production is not itself a waiver in this case or any other federal or
13 state proceeding. A producing party may assert privilege or protection over
14 produced documents at any time by notifying the receiving party in writing of the
15 assertion of privilege or protection. In addition, information that contains privileged
16 matter or attorney work product shall be returned if such information appears on its
17 face to have been inadvertently produced, or if requested.
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21 C. As the parties previously stipulated, communications between them and
22 their respective legal counsel need not be logged, even if responsive to a discovery
23 request, and may be withheld.
24

25 D. Activities undertaken in compliance with the duty to preserve
26 information are protected from discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).
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1 **VIII. MISCELLANEOUS PROVISIONS**

2 A. NO EFFECT ON COST SHIFTING. Nothing in this Agreement shall
3 affect, in any way, a producing party’s right to seek reimbursement for costs
4 associated with collection, review, and/or production of documents or ESI.
5

6 B. TIMING. Production of ESI shall commence on a rolling basis
7 promptly after the parties finalize custodian and search term lists.
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9 C. MODIFICATION. This Stipulated Order may be modified by a
10 Stipulated Order of the parties or by the Court for good cause shown. Any such
11 modified Stipulated Order will be titled sequentially as follows, “First Modified
12 Stipulated Order Regarding the Production of Electronically Stored Information,”
13 and each modified Stipulated Order will supersede the previous Stipulated Order.
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20 So ORDERED and SIGNED this 12th day of September, 2014.

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23 Hon. Nita L. Stormes
24 U.S. Magistrate Judge
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Appendix 1

A. Production Components. Productions shall include, in addition to single page TIFFs and Text Files, (a) an ASCII delimited metadata file (.txt, .dat, or .csv), and (b) an image load file that can be loaded into commercially acceptable production software (e.g., Concordance).

B. Image Load File shall contain the following comma-delimited fields: BEGBATES, VOLUME, IMAGE FILE PATH, DOCUMENT BREAK, FOLDER BREAK, BOX BREAK, PAGE COUNT

C. Metadata Load File shall be delimited according to the following characters:
o Delimiter = D(ASCII:0020)
o Text-Qualifier = þ (ASCII:00254)

D. The following **Metadata Fields** shall appear in the metadata load file:

Field Name	Field Description
BEBATES	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	Includes the individual (Custodian) from whom the documents originated and all Individual(s) whose documents de-duplicated out (De-Duped Custodian).
SUBJECT	Subject line of email
TITLE	Title from properties of document
DATESENT	Date email was sent (format: MM/DD/YYYY)
TO	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	All recipients that were included on the "CC" line of the email
BCC	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 only)
DATEMOD	Date an electronic document was last modified (format: MM/DD/YYYY) (Edoc only)
DATECREATED	Date the document was created (format: MM/DD/YYYY) (Edoc only)
NATIVELINK	Native File Link (Native Files only)