

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**ROCKSTAR CONSORTIUM US LP  
AND NETSTAR TECHNOLOGIES  
LLC,**

**Plaintiffs,**

**v.**

**GOOGLE INC.,**

**Defendant.**

**Civil Action No. 2:13-cv-893**

**JURY TRIAL DEMANDED**

**PROPOSED  
ORDER REGARDING E-DISCOVERY**

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. 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.
3. A party’s meaningful compliance with this order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.
4. Absent a showing of good cause, general ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure requirement of this Court,

shall not include metadata with the exception of the following: (a) BEGBATES, (b) ENDBATES, (c) BEGATTACH, (d) ENDATTACH, (e) CUSTODIAN, and (f) CONFIDENTIALITY DESIGNATION, which should be populated by the party or the party's vendor. However, fields showing the date and time that the document was sent and received, as well as the complete distribution list, shall generally be included in the production if such fields exist. The above also applies to hard copy documents. The parties will make reasonable efforts to ensure that metadata fields automatically extracted from the documents are correct, however, the parties acknowledge that such metadata may not always be accurate and might instead contain irrelevant or incorrect information generated during the collection process.

5. Absent agreement of the parties or further order of this court, the following parameters shall apply to ESI production:

- A. **General Document Image Format.** Each electronic document shall be produced in single-page Tagged Image File Format ("TIFF") format. TIFF files shall be single page and shall be named with a unique production number followed by the appropriate file extension. Single page Group IV TIFFs should be provided, at least 300 dots per inch (dpi). Each TIFF image shall be named according to a unique corresponding bates number associated with the document. Each image shall be branded according to the bates number and the appropriate confidentiality designation. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). 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.

Documents that exist only in hard copy format 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 a unique corresponding bates number associated with the document. Each image shall be branded according to the bates number and the agreed upon confidentiality designation. TIFFs shall show all text and images that would be visible to a user of the hard copy documents.

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

- B. **OCR.** A commercially acceptable technology for optical character recognition “OCR” shall be used for all scanned, hard copy documents. OCR text shall be provided as a single multi-page text file for each document, and the filename 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.** Productions shall include, in addition to single page TIFFs and Text Files, (a) an ASCII delimited data file (.txt, .dat, or .csv), and (b) an image load file that can be loaded into commercially acceptable production software (e.g., Concordance, Summation). The image load file shall contain the following comma-delimited fields: BEGBATES, VOLUME, IMAGE FILE PATH, DOCUMENT BREAK, FOLDER BREAK, PAGE COUNT. The metadata load file shall be delimited according to the following characters: Delimiter = D (ASCII: 0020); Text-Qualifer = þ (ASCII:00254). Each

TIFF in a production must be referenced in the corresponding 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. 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. **Footer.** Each document image shall contain a footer with a sequentially ascending bates number.
- E. **Native Files.** To the extent that the term "native" is used in this agreement, it means either in native or otherwise comparable format. Thus, for example, if a Google slide presentation is to be produced in native format, producing the document as a .ppt file would be appropriate. A party that receives a document produced in a format specified above may make a reasonable request to receive the document in its native format, and upon receipt of such a request, the producing party shall produce the document in its native format. Excel files and files failing to generate TIFF images (executables, multi-media, etc.) shall be produced in native file format. Each document produced in native format will have its production number and confidentiality designation identified in the file name of the native file, for example, bates\_designation.file extension (E.G. RSNETTX0000001\_HIGHLY\_CONFIDENTIAL\_OUTSIDE\_COUNSEL\_ONLY.xls). Any native files that are produced shall be produced with a link in the NativeLink field. 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.

- F. **Presentations.** The parties shall take reasonable efforts to process presentations (MS PowerPoint, Google Presently) with hidden slides and speaker's notes unhidden, and to show both the slide and the speaker's notes on the TIFF image.
- Spreadsheets.** TIFF images of spreadsheets (MS Excel, Google Trix) need not be produced unless redacted, in which instance, spreadsheets shall be produced in TIFF with OCR Text Files. Native copies of spreadsheets shall be produced with a link in the NativeLink field, along with extracted text and applicable metadata. 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.
- G. **Proprietary Software.** 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.
- H. **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. The parties agree that search terms will not be applied to source code.

- I. **No Backup Restoration Required.** Absent a showing of good cause, no party need restore any form of media upon which backup data is maintained in a party's normal or allowed processes, including but not limited to backup tapes, disks, SAN, and other forms of media, to comply with its discovery obligations in the present case.
- J. **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"), 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; (3) the bates number range of the materials contained on the Production Media; and (4) whether the media contains Designated Material under the Protective Order in this case.

6. **Data Processing**

- A. **Keyword Searching.** To the extent that keyword or other methodologies are used to identify the universe of potentially responsive documents to be processed for review, the parties shall meet and confer to try to develop a mutually agreeable list of search terms and protocols prior to the production of documents. Any search methodology employed must open compound and nested files and decompress archived files. The search utilities employed must support the use of stemmed searches (e.g. using ~ to include variations on a keyword), wildcard searches, Boolean searches, and proximity searching.

- B. **Culling/Filtering.** Each party will use its best efforts to filter out common system files and application executable files by using a commercially reasonable hash identification process. Hash values that may be filtered out during this process are located in the National Software Reference Library (“NSRL”) NIST hash set list. Additional culling of system file types based on file extension may include, but are not limited to: WINNT, LOGS, DRVS, MP3, MP4, 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), Program Installers.
- C. **Deduplication.** A party is required to produce only a single copy of a responsive document and a 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

7. General ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure order of this court, shall not include e-mail or other forms of electronic correspondence (collectively “e-mail”). To obtain e-mail parties must propound specific e-mail production requests.

8. E-mail production requests shall be phased to occur timely after the parties have exchanged initial disclosures, a specific listing of likely custodians, a specific identification of the twenty most significant listed e-mail custodians in view of the pleaded claims and defenses,<sup>1</sup> infringement contentions and accompanying documents pursuant to P.R. 3-1 and 3-2, invalidity contentions and accompanying documents pursuant to P.R. 3-3 and 3-4, and preliminary information relevant to damages. The exchange of this information shall occur at the time required under the Federal Rules of Civil Procedure, Local Rules, or by order of the court. The parties shall provide the specific identification of the twenty most significant listed custodians on or before June 30, 2014.

9. E-mail production requests shall identify the custodian, search terms, and time frame of e-mail sought. The parties shall cooperate to identify the proper custodians, proper search terms, and proper time frame. Each requesting party shall limit its e-mail production requests to a total of twelve custodians per producing party for all such requests. The parties recognize that this proceeding is still in a preliminary stage and that discovery has not yet commenced. As such, the parties may jointly agree to modify this limit without the court’s leave. Accordingly, the parties agree to meet and confer in good faith about reasonable adjustments to any of the preceding

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<sup>1</sup> A “specific identification” requires a short description of why the custodian is believed to be significant.



limits as discovery progresses. Furthermore, to the extent the parties are unable to reach agreement, the court shall consider contested requests for additional or fewer custodians per producing party, upon showing a distinct need based on the size, complexity, and issues of this specific case.

10. Each requesting party shall limit its custodial production requests to a total of twenty search terms per custodian. The parties recognize that this proceeding is still in a preliminary stage and that discovery has not yet commenced. As such, the parties may jointly agree to modify this limit without the court's leave. Accordingly, the parties agree to meet and confer in good faith about reasonable adjustments to any of the preceding limits as discovery progresses. Furthermore, to the extent the parties are unable to reach agreement, the court shall consider contested requests for additional or fewer search terms, upon showing a distinct need based on the size, complexity, and issues of this specific case. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company's name or its product name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens the search, and thus each word or phrase shall count as a separate search term unless they are variants of the same word. Use of narrowing search criteria (e.g., "and," "but not," "w/x") is encouraged to limit the production and shall be considered when determining whether to shift costs for disproportionate discovery.

11. In response to the email production requests, the parties will search any e-mails, electronic files or folders, or other parts of media, including any internal and external hard drives

and other ESI venues (including, but not limited to, recordable optical media, media cards, thumb drives, non-volatile memory, floppy disks, work desktop and laptop computers, email servers, intranet servers, network shares, public data shares and/or database servers) for each identified custodian that the custodian reasonably anticipates may contain non-duplicative responsive e-mail.

12. The following sources will not be searched under any circumstances, and as such need not be preserved: automated disaster recovery backup systems and/or disaster recovery backup tapes; RAM or temporary files; temporary internet files; history, cache, cookies and other on-line access data; data in metadata fields that are updated automatically such as last-opened dates; server, system, or network logs. In addition, the parties agree that absent a showing of good cause, voicemails, PDAs, mobile phones, instant messages and instant messaging logs, and data remaining from systems no longer in use that is unintelligible on the systems in use, are deemed not reasonably accessible and need not be collected and preserved. In addition, the parties agree that only sent and received custodial emails as well as final versions of drafts of custodial emails that were not sent and received will be searched and that, with respect to documents that automatically saved, only the most recent version of such documents existing at the time of collection need be searched. 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 source. 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. The parties further agree that the parties to this action and their subsidiaries need not search documents or ESI created after the filing of the complaint.

13. The mere production of ESI in a litigation as part of a mass production shall not itself constitute a waiver for any purpose. A producing party may assert privilege or protection over produced documents at any time by notifying the receiving party in writing of the assertion of privilege protection. In addition, information that contains privileged matter or attorney work product shall be immediately returned if such information appears on its face to have been inadvertently produced pursuant to Fed. R. Evid. 502(b).

14. **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.
- B. The Issuing Party shall produce any documents obtained pursuant to a non-party subpoena to the opposing party.
- C. If the non-party production is not Bates-stamped, the Issuing Party will endorse the non-party production with unique prefixes and Bates numbers prior to producing them to the opposing party.
- D. Nothing in this stipulation is intended to or should be interpreted as narrowing, expanding, or otherwise affecting the rights of the parties or third-parties to object to a subpoena

15. Except as expressly stated, nothing in this order affects the parties' discovery obligations under the Federal or Local Rules.

16. 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.

17. 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.

**SIGNED this 24th day of June, 2014.**

  
ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE