

**IN THE SUBORDINATE COURTS OF THE REPUBLIC OF
SINGAPORE**

ePRACTICE DIRECTION NO. 1 OF 2009

**DISCOVERY AND INSPECTION OF ELECTRONICALLY STORED
DOCUMENTS**

1. This practice direction introduces an opt-in framework for parties who wish to request and/or apply for discovery and inspection of electronically stored documents. A new Part IIIA setting out this framework is to be inserted into *The Subordinate Courts Practice Directions (2006 Ed.)*.
2. This Practice Direction will take effect on 1 October 2009 and may be applied to all discovery applications filed on or after this date.
3. A complete and updated version of *The Subordinate Courts Practice Directions (2006 Ed.)* may be downloaded in .PDF Adobe Acrobat format at the “Legislation and Directions” section of the Subordinate Courts website at <http://www.subcourts.gov.sg>.
4. For manual and loose-leaf updating, the specific new and amended paragraphs and the directions for amendments may also be downloaded at the “Legislation and Directions” section of the Subordinate Courts website at <http://www.subcourts.gov.sg>.

Dated this 1st day of September 2009.

HOO SHEAU PENG
REGISTRAR
SUBORDINATE COURTS

Directions for Amendments

- (1) The new Part IIIA of the Table of Contents should be inserted immediately after the existing Part III of the Table of Contents.
- (2) The existing Table of Contents from the pages containing Appendix A to be removed and the new amended pages of the Table of Contents substituted therefor.
- (3) The existing Appendix A to be removed and the new amended Appendix A substituted therefor.
- (4) The new Part IIIA should be inserted immediately after the existing Part III.
- (5) The new Appendix M should be inserted immediately after the existing Appendix L.

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PRACTICE DIRECTIONS ISSUED TO AMEND THE SUBORDINATE COURTS PRACTICE DIRECTIONS (2006 ED.)

As at 1 September 2009

The following Practice Directions are issued to amend The Subordinate Courts Practice Directions (2006 Ed.):

1. ePD 1 of 2006 Change to Mode of Commencement of Matrimonial Proceedings
2. ePD 2 of 2006 Amendment of Originating Processes, Pleadings and Documents
3. ePD3 of 2006 (1) Amendments to the Rules of Court
(2) Pre-action Protocol for Medical Negligence Claims
4. ePD1 of 2007 Interest on Judgments, Costs and under Order 30, Rule 6(2)
5. ePD2 of 2007 Request for Digital Audio Recording and Transcription Service
6. ePD3 of 2007 Service, Adjournment/Vacation, Attendance before Duty Registrar & Affidavits for Ancillary Matters Hearing
7. ePD4 of 2007 Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings, and Proceedings Pursuant to Section 17A(2) of the Supreme Court of Judicature Act (Cap. 322) to the District Court

8. ePD1 of 2008 (1) FIDREC Pre-action Protocol for the Management and Resolution of Low-value Non-Injury Motor Accident Claims
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9. ePD2 of 2008 Applications for Grants of Probate or Letters of Administration in respect of Deaths occurring on or after 15 February 2008
9. ePD1of 2009 Discovery and inspection of electronically stored documents

**PART IIIA
DISCOVERY AND INSPECTION OF ELECTRONICALLY STORED
DOCUMENTS**

26A. Introduction

- (1) This Part provides an opt-in framework for requests and applications for the giving of discovery and inspection of electronically stored documents, and the supply of electronic copies of such documents. A party that seeks to rely on this Part must cite the relevant paragraph(s) in any request or application made hereunder.

Location of electronically stored documents

- (2) Electronically stored documents may reside in storage management systems, folders or directories in storage locations, electronic media or recording devices, including folders or directories where temporarily deleted files are located (for example, the Recycle Bin folder or Trash folder). Electronically stored documents or parts thereof may also reside in the unallocated file space or file slack on an electronic medium or recording device as deleted files or file fragments which may be recovered through the use of computer forensic tools or techniques.

Definition of metadata information

- (3) Metadata information refers to the non-visible and not readily apparent information embedded in or associated with electronically stored documents and may include both application metadata, which is created by the application software used to create the electronic documents, and system metadata, which is created by the operating or storage system. Examples of application metadata include hidden columns or text, formatting and display codes, formulae, prior edits and editorial comments; examples of system metadata include data relating to creation, modification and access of the electronic document, its size, file format and storage location, and other document profile information like title, author, subject and keywords or tags. Metadata information may be stored internally within the electronically stored

document or externally in a separate file or database. Externally stored metadata information shall be discoverable as separate documents.

26B. Time to consider electronic discovery issues during general discovery

- (1) Parties are encouraged to collaborate in good faith and agree on issues relating to the discovery and inspection of electronically stored documents within the framework for discovery set forth in Order 24 of the Rules of Court. Such issues may include the scope and/or any limits on documents to be given in discovery, whether parties are prepared to make voluntary disclosures, and the giving of discovery in stages according to an agreed schedule, as well as the format and manner in which copies of discoverable documents shall be supplied.
- (2) Parties may, immediately after the close of pleadings, but within the time prescribed in Order 25, Rule 8(1)(a) of the Rules of Court, agree on an electronic discovery protocol which may take the form set forth in Appendix M Part 1. Parties may include the agreed electronic discovery protocol in the summons for directions. The Court shall consider the adequacy of the agreed electronic discovery protocol and may make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of the cause or matter. The agreed electronic discovery protocol, as amended by such order or direction of the Court as the case may be, shall form part of the order under the summons for directions to be extracted for the action.
- (3) If parties are unable to agree on an electronic discovery protocol, the party seeking discovery of electronically stored documents may apply for an order. The application must include a draft electronic discovery protocol and must be supported by affidavit providing an account of the parties' attempts to collaborate in good faith to reach agreement on an electronic discovery protocol.

26C. Requests and applications for the giving of discovery

Requests for discovery

- (1) A request for discovery of any electronically stored document or class of electronically stored documents may be made before the commencement of proceedings, or at any time to any party to a cause or matter, or any person who is not a party to the proceedings. Unless the request specifies that discovery of externally stored metadata information of the requested electronically stored documents is required, the party providing discovery shall not be required to discover externally stored metadata information.
- (2) A class of electronically stored documents may be described by specifying or describing a search term or phrase to be used in a reasonable search for electronically stored documents. A request for the giving of discovery by reasonable search must specify or describe limits on the scope of the search; such limits shall include at least the following:
 - (a) specifying or describing physical or logical storage locations, media or devices; and
 - (b) specifying the period during which the requested electronically stored documents were created, received or modified.
- (3) A request shall not be made for the discovery of deleted files or file fragments containing information which may be recovered through the use of computer forensic tools or techniques unless:
 - (a) a request is made for the discovery of the electronic medium or recording device on which a forensic inspection is to be conducted; and
 - (b) a request is made for inspection of the said electronic medium or recording device in compliance with paragraph 26F.

Applications for discovery

- (4) An application for discovery of any electronically stored document or class of electronically stored documents which includes externally stored metadata information must be supported by an affidavit showing that a request for externally stored metadata information of the requested electronically stored document or class of electronically stored documents had been made previously.
- (5) An application for discovery of any electronically stored document or class of electronically stored documents which specifies or describes a search term or phrase to be used in a reasonable search for electronically stored documents must specify or describe limits on the scope of the search to be conducted.
- (6) An application for the discovery of a computer database, electronic medium or recording device may be made together with an application for inspection of the said computer database, electronic medium or recording device in accordance with paragraph 26F.
- (7) Upon the hearing of an application for an order for discovery of electronically stored documents, the Court shall have regard to the matters set forth in paragraph 26D.
- (8) Nothing in this paragraph shall prevent the party giving discovery from reviewing the discoverable electronically stored documents or the results of any reasonable search for the purpose of identifying privileged documents. However, such review for the purpose of identifying privileged documents shall not extend to the deletion, removal or alteration of metadata information.

26D. Matters to which regard shall be had in determining whether discovery or inspection is necessary

(1) Order 24, Rules 7 and 13 of the Rules of Court states that an order for discovery and production of documents for inspection shall not be made unless such order is necessary either for disposing fairly of the cause or matter or for saving costs. The matters to which regard shall be had, in determining whether an application for discovery or inspection (including the supply of copies) of electronically stored documents is necessary either for disposing fairly of the cause or matter or for saving costs, shall include:

- (a) the number of electronic documents involved;
- (b) the nature of the case and complexity of the issues;
- (c) the value of the claim and the financial position of each party;
- (d) the ease and expense of retrieval of any particular electronically stored document or class of electronically stored documents, including—
 - (i) the accessibility, location and likelihood of locating any relevant documents,
 - (ii) the costs of recovering and giving discovery and inspection of any relevant documents,
 - (iii) the likelihood that any relevant documents will be materially altered in the course of recovery, or the giving of discovery or inspection; and
- (e) the significance of any particular electronically stored document or class of electronically stored documents which are likely to be located to the issues in dispute.

26E. Form of list

- (1) The following matters shall be included in any list of documents made pursuant to the giving of discovery in accordance with this Part in which electronic documents are enumerated:
 - (a) the name of the electronic file constituting or containing the electronic document; and
 - (b) the file format (and its version) of the electronic document.
- (2) Where the party giving discovery objects to the production of certain discoverable electronically stored documents solely on the ground that the internally stored metadata information is protected by privilege, he must state in the list of documents whether he objects to the production of the electronic documents without the internally stored metadata information. If he does not object to the production of the electronic documents without the internally stored metadata information, he must enumerate the electronic documents in Part 1 of Schedule 1 to the list of documents. In any event, he must enumerate such documents in a separate section in Part 2 of Schedule 1 to the list of documents and shall state that he objects to the production of the whole or part of the internally stored metadata information of these documents.
- (3) Reasonable efforts shall be made to remove duplicated documents from the list of documents. A document shall be considered a duplicate of another if the contents of both (including metadata information) are identical. The use of a hashing function to identify duplicates shall be deemed to be reasonable effort.
- (4) If copies of electronic documents are supplied in one or more read-only optical disc(s) or other storage medium, the party giving discovery shall provide a further list, at the time when such copies are supplied, stating the following:

- (a) the storage format (and its version) of the optical disc or storage medium; and
 - (b) if there are multiple optical discs or storage media, a list of electronic documents stored on each optical disc or storage medium.
- (5) An index of documents enumerated in a list of documents referred to in sub-paragraph (1) or (4) above shall be provided in an electronic, text searchable and structured format. In the absence of parties' agreement, this index or load file shall be provided in a delimited text file in the Comma Separated Value (or 'CSV') file format.

26F. Inspection of electronically stored documents

- (1) A party required to produce electronically stored documents for inspection under Order 24 of the Rules of Court shall provide reasonable means and assistance for the party entitled to inspection to inspect the electronically stored documents in their native format.
- (2) Where an inspection is carried out under Order 24, Rule 9, 10 or 11(1) of the Rules of Court and the inspecting party wishes to take copies of electronically stored documents produced for inspection, his request to take copies shall comply with the protocol set forth in paragraph 26G.

Inspection of computer databases and electronic media or recording devices

- (3) No request or application for the inspection of any computer database, electronic medium or recording device shall be made unless discovery of the computer database, electronic medium or recording device has been given.
- (4) A request may be made for the inspection of an electronic medium or recording device (for which discovery has been given) for the purpose of recovering deleted electronic documents through the conduct of a forensic

examination of the unallocated file space or file slack of the electronic medium or recording device using computer forensic tools or techniques.

- (5) Where an application under Order 24, Rule 11(2) is made for the inspection of computer databases, electronic media or recording devices for which discovery has been given, the party seeking inspection shall include in his application an inspection protocol, which may take the form found in Appendix M Part 2, in order to ensure that the party entitled to inspection has access only to electronic documents that are necessary and is not allowed to trawl through the entire database, electronic media or recording device.
- (6) Upon the hearing of an application for an order for the inspection of computer databases, electronic media or recording devices, the Court shall have regard to the matters set forth in paragraph 26D. The Court shall have the power to review the adequacy of an inspection protocol and may make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of the cause or matter.
- (7) Nothing in this paragraph shall prevent the party producing computer databases, electronic media or recording devices for inspection from reviewing the discoverable electronically stored documents or the results of any reasonable search for the purpose of identifying privileged documents. However, such review for the purpose of identifying privileged documents shall not extend to the deletion, removal or alteration of metadata information.

26G. Supply of copies of electronically stored documents

- (1) Copies of discoverable electronically stored documents shall generally be supplied in the native format in which the requested electronic documents are ordinarily maintained and in one or more read-only optical disc(s).

- (2) Metadata information internally stored in the native format of discoverable electronically stored documents shall not be deleted, removed or altered without the agreement of the parties or an order of Court. Where the party giving discovery objects to the production for inspection of certain discoverable electronically stored documents solely on the ground that the internally stored metadata information is protected by privilege, but does not object to the production of the electronic documents without the internally stored metadata information, copies of such documents may be supplied in a reasonably usable format with all or such of the metadata information over which privilege is claimed removed.

Requests for the supply of copies

- (3) A request for copies of discoverable electronically stored documents may specify the format and manner in which such copies are to be supplied. If the party giving discovery does not agree with the specified format or manner or both, he may either:
- (a) propose a reasonably usable format and/or storage medium and/or a reasonable manner in which he intends to supply copies of the requested electronic documents; or
 - (b) in default of agreement, supply copies of the requested electronic documents in accordance with sub-paragraph (1).
- (4) The party giving discovery shall not be required to supply copies of electronically stored documents in more than one format.
- (5) The file format versions set forth in Appendix M Part 3 shall be deemed to be reasonably usable formats for the purpose of this paragraph.

Applications for the supply of copies

- (6) Applications for the supply of copies of discoverable electronically stored documents shall specify the format and manner in which copies of such electronic documents are to be supplied.

26H. Restriction on use of privileged document, inspection of which has been inadvertently allowed

- (1) Order 24, Rule 19 of the Rules of Court applies to the giving of discovery or inspection of electronically stored documents, including the supply of copies, as it would to the giving of discovery or inspection of any other document.

26I. Costs

- (1) Except for orders made in respect of third party or pre-action discovery, the costs of complying with an order for the giving of discovery or inspection of electronically stored documents shall generally be borne by the party giving discovery; and disbursements incurred in providing copies shall be reimbursed by the party requesting for copies.
- (2) The Court may invoke its inherent powers under Order 92, Rules 4 and 5 of the Rules of Court to make or give such further orders or directions incidental or consequential to any order as may be necessary, to order the party entitled to discovery to bear the whole or a portion of the costs of compliance with such order for the giving of discovery or inspection of electronically stored documents, and the supply of copies, if such order is necessary to prevent injustice or to prevent an abuse of the process of the Court.

**APPENDIX M: DISCOVERY AND INSPECTION OF
ELECTRONIC DOCUMENTS**

Part 1. Agreed electronic discovery protocol

Part 2. Protocol for inspection of computer databases and electronic media
or recording devices

Part 3. Reasonably usable formats

APPENDIX M PART I

Part IIIA

AGREED ELECTRONIC DISCOVERY PROTOCOL

1. Scope of electronic discovery

- (a) General discovery of the following class or classes of electronically stored documents shall be given:
[eg Electronic mail, correspondence, letters, *etc.*]
- (b) The party giving discovery shall take reasonable steps to decrypt encrypted files or encrypted storage locations, media or devices in order to identify discoverable electronically stored documents. This may include taking reasonable steps to obtain the decryption code and/or using reasonable technical means to perform decryption of the encrypted files or encrypted storage locations, media or devices.
- (c) For the avoidance of doubt, electronically stored documents residing in folders or directories in storage locations, media or devices, including folders or directories where temporarily deleted files are located (for example the Recycle Bin folder or Trash folder) are within the scope of general discovery; deleted files or file fragments containing information which are recoverable through the use of computer forensic tools or techniques during a forensic inspection of the unallocated file space or file slack are **not** within the scope of general discovery.
- (d) **Reasonable search.** The search terms or phrases specified in the first column will be used in the conduct of a reasonable search for relevant electronically stored documents. The reasonable search will be limited by the scope described in the second column.

<i>Search term or phrase</i>	<i>Scope</i>
[Specify the keyword(s).]	[Describe the scope of the search by reference to physical or logical storage locations, media or devices, the period during which the requested electronically stored document was created, modified or received, <i>etc.</i>]

2. Format of list

The list of documents shall categorise and list electronically stored documents separately from documents in printed or other form. The list of documents enumerating electronically stored documents shall include the following columns:
[eg description of the electronically stored document, the name of the corresponding soft copy file, the file format (and its version) of the electronic document, the hash value of the file, *etc*]

An index of documents enumerated in the list of documents shall be provided in an electronic spreadsheet in the [eg Excel 2007 Binary (.xls), Comma Separated Value (.csv), *etc*] file format.

3. Review for privileged material

Nothing in this protocol shall prevent the party giving discovery from reviewing the documents in any list provided hereunder for the purpose of claiming privilege. If the party giving discovery claims privilege over any document or record, he shall list the electronic documents or class of electronic documents over which privilege is claimed in the list of documents.

4. Inspection and copies

(a) **Arrangements for inspection.** The place for inspection of discoverable electronic documents should be stated separately if it is different from the place for inspection of other discoverable documents. If the party entitled to inspect intends to inspect through or with the assistance of its appointed computer expert, such computer expert shall provide an undertaking of confidentiality to the party giving inspection before he commences his inspection.

(b) **Supply of copies.** During inspection, copies shall not be taken. If copies are required, a request should be made. Electronic copies of discoverable documents will be supplied in their native format and in read-only optical discs upon request. Electronic copies of discoverable documents where privilege is claimed only with respect to their internally stored metadata information will be supplied in the Tagged Image File Format (or TIFF) with privileged metadata information removed. For each of the read-only optical discs supplied, a further list stating the storage format (and its version) of the optical disc and enumerating the list of electronic documents stored therein shall be provided.

5. Inspection of computer databases and electronic media or recording devices

Parties agree that the protocol for inspection of computer databases and electronic media or recording devices (Appendix M Part 2) shall apply for the inspection of the following:

[List the computer databases, electronic media or recording devices]

6. Inadvertent disclosure of privileged documents

Notwithstanding compliance with the procedures in this protocol, nothing in this protocol is intended to be or shall be taken to amount to a waiver of privilege.

7. Discovery and production only if necessary

For the avoidance of doubt, nothing in this protocol shall compel any party to give discovery of any document or produce any document for inspection which is not otherwise discoverable under Order 24, Rules 7 or 13 of the Rules of Court.

APPENDIX M PART 2

PROTOCOL FOR INSPECTION OF COMPUTER DATABASES AND ELECTRONIC MEDIA OR RECORDING DEVICES

1. Appointment of computer experts

- (a) **Joint appointment.** The party producing the computer database, electronic medium or recording device for inspection (“**the Producing Party**”) and the party entitled to inspection of the computer database, electronic medium or recording device (“**the Inspecting Party**”), may jointly appoint a computer expert (“**the Joint Expert**”) for the purpose of making a forensic copy of such computer database, electronic medium or recording device (“**the Original Acquired Image**”). The Joint Expert’s role shall be restricted to the acquisition of the Original Acquired Image and the performance of a reasonable search on a copy of the Original Acquired Image in accordance with the terms of this protocol. Before the Joint Expert commences his appointment, he shall provide an undertaking of confidentiality to the Court and to all parties concerned in the inspection. He shall also procure a similar undertaking from each of his employees, representatives, agents or sub-contractors involved in the engagement.
- (b) **Costs and expenses of Joint Expert.** All costs and expenses relating to the appointment of the Joint Expert under this protocol shall initially be borne equally between the Producing Party and the Inspecting Party. Nothing in this protocol is intended to or shall be taken to prevent any party to the cause or matter from seeking the recovery of such costs and expenses in accordance with the Rules of Court.
- (c) **Individual appointments.** Nothing in this protocol shall prevent the Producing Party, the Inspecting Party and any other party concerned in the inspection from appointing his own computer expert.

2. Acquisition of the Original Acquired Image

- (a) **Where Joint Expert appointed.** The Joint Expert shall acquire the Original Acquired Image under the supervision of all parties concerned in the inspection, their representatives or computer experts. Sufficient copies of the Original Acquired Image shall be made as necessary in order that the Producing Party and each Inspecting Party may be supplied with an electronic copy of the Original Acquired Image. The Joint Expert shall provide sufficient information with the copy of the Original Acquired Image to enable the party’s computer expert to access the copy supplied.

The Original Acquired Image shall be sealed and delivered to the custody of the Producing Party, who shall enumerate it in a list of documents to be filed under Order 24 of the Rules of Court.
- (b) **Where Joint Expert not appointed.** The Producing Party’s computer expert shall be responsible for acquiring the Original Acquired Image

under the supervision of all parties concerned in the inspection, their representatives or computer experts. Sufficient copies of the Original Acquired Image shall be made as necessary for the purposes of inspection and reasonable search to be provided under this protocol. The Original Acquired Image shall be sealed and delivered to the custody of the Producing Party, who shall enumerate it in a list of documents to be filed under Order 24 of the Rules of Court.

- (c) **Original Acquired Image to be produced when ordered by Court.** The party to whose custody the sealed Original Acquired Image has been delivered shall not tamper with or break the seal, and shall produce the Original Acquired Image to the Court or such other person(s) as the Court may direct.

3. **Safeguards for reasonable search**

This paragraph applies in situations where a reasonable search is conducted on the contents of a copy of the Original Acquired Image.

Where Joint Expert appointed

- (a) **Conduct of reasonable search.** The Inspecting Party shall specify or describe the search terms or phrases to be used in a reasonable search to be conducted on the contents of a copy of the Original Acquired Image to the Producing Party and the Joint Expert.

If the Producing Party does not object to the search terms or phrases so specified or described, he shall communicate his consent to the Joint Expert and the Inspecting Party. The Joint Expert shall make arrangements for the conduct of the reasonable search on a copy of the Original Acquired Image under the supervision of all parties concerned in the inspection, their representatives or computer experts.

If the Producing Party objects to any or all of the search terms or phrases so specified or described, he shall forthwith inform the Joint Expert. The parties shall resolve such objections before any further steps are taken for the conduct of the reasonable search. The Joint Expert shall not take any further steps for the conduct of the reasonable search until:

- (i) he is informed by the Producing Party of his consent to the original search terms or phrases; or
- (ii) the Inspecting Party specifies or describes a new set of search terms or phrases and to which the Producing Party provides his consent in accordance with this sub-paragraph.

A copy of the documents or records that are the results of the reasonable search (“**the Search Results**”) shall be made and released to the Producing Party.

- (b) **Review for privileged material.** The Producing Party shall be at liberty to review the Search Results for the purpose of claiming privilege. If the Producing Party claims privilege over any document or record from the Search Results, he shall list the electronic documents or records over which privilege is claimed.

- (c) **Release for inspection.** Thereafter, the Joint Expert shall remove copies of any documents or records over which privilege is claimed from the Search Results (“**the Redacted Search Results**”). The Joint Expert may maintain a separate privilege log which records the documents or records which are thus removed and the reasons given for doing so. For the avoidance of doubt, the privilege log shall not be included in the Joint Expert’s report but the Joint Expert shall produce the privilege log to the Court if so directed by the Court.

The Redacted Search Results shall be released to the Inspecting Party for inspection together with the list of electronic documents or records over which privilege is claimed.

Where Joint Expert not appointed

- (a) **Conduct of reasonable search.** The Inspecting Party shall specify or describe the search terms or phrases to be used in a reasonable search to be conducted on the contents of a copy of the Original Acquired Image to the Producing Party. If the Producing Party objects to any or all of the search terms or phrases so specified or described, parties shall resolve such objections before any further steps are taken for the conduct of the reasonable search.

Upon resolution of any objections or if the Producing Party consents to the specified or described search terms or phrases, he shall make arrangements for his computer expert to conduct the requested reasonable search on a copy of the Original Acquired Image under the supervision of all parties concerned in the inspection, their representatives or computer experts.

- (b) **Review for privileged material.** The Producing Party shall be at liberty to review the Search Results for the purpose of claiming privilege. If the Producing Party claims privilege over any document or record from the Search Results, he shall list the electronic documents or records over which privilege is claimed.
- (c) **Release for inspection.** Thereafter, the Producing Party shall remove copies of any documents or records over which privilege is claimed from the Search Results. The Redacted Search Results shall be released to the Inspecting Party for inspection together with the list of electronic documents or records over which privilege is claimed.

4. Safeguards for forensic examination

This paragraph applies to the forensic examination of a copy of the Original Acquired Image for the purpose of identifying electronically stored documents thereon or for the recovery of deleted files or file fragments from the unallocated file space or file slack using computer forensic tools or techniques. A Joint Expert shall be appointed for the purpose of such forensic examination.

- (a) **Conduct of forensic examination.** The Inspecting Party shall specify or describe the search terms or phrases to be used in the forensic examination to be conducted on the contents of a copy of the Original Acquired Image

to the Joint Expert. The Joint Expert shall not at any time disclose to the Producing Party the search terms or phrases specified or described by the Inspecting Party and shall not include the search terms or phrases in his report. For the avoidance of doubt, the Joint Expert shall disclose the search terms or phrases to the Court if so directed by the Court. The Joint Expert shall make arrangements for the conduct of the forensic examination on a copy of the Original Acquired Image. Neither the Inspecting Party nor the Producing Party, or any of their solicitors, computer experts, employees, representatives or agents shall be present during the conduct of the forensic examination. A copy of the documents or records that are the results of the reasonable search (“**the Search Results**”) shall be made and released to the Producing Party. The Producing Party is not entitled to a copy, and shall not request the Joint Expert for a copy, of the search terms or phrases specified or described by the Inspecting Party.

- (b) **Review for privileged material.** The Joint Expert and the Producing Party shall jointly review the Search Results for the purpose of permitting the Producing Party to identify electronically stored documents, deleted files or file fragments over which he claims privilege. If the Producing Party claims privilege over any electronically stored documents, deleted files or file fragments from the Search Results, he shall identify them to the Joint Expert. The Producing Party shall list the electronic documents, deleted files or file fragments over which privilege is claimed.
- (c) **Release for inspection.** Thereafter, the Joint Expert shall remove copies of any electronic documents, deleted files or file fragments over which privilege is claimed from the Search Results (“**the Redacted Search Results**”). The Joint Expert may maintain a separate privilege log which records the electronic documents, deleted files or file fragments which are thus removed and the reasons provided for the removal. For the avoidance of doubt, the privilege log shall not be included in the Joint Expert’s report but the Joint Expert shall produce the privilege log to the Court if so directed by the Court.

The Redacted Search Results shall be released to the Inspecting Party for inspection together with the Producing Party’s list of electronic documents, deleted files or file fragments over which privilege is claimed.

5. Inadvertent disclosure of privileged documents

Notwithstanding compliance with the procedures in this protocol, nothing in this protocol is intended to be or shall be taken to amount to a waiver of privilege.

6. Discovery and production only if necessary

For the avoidance of doubt, nothing in this protocol shall compel any party to give discovery of any document or produce any document for inspection which is not otherwise discoverable under Order 24, Rules 7 or 13 of the Rules of Court.

APPENDIX M PART 3

REASONABLY USABLE FORMATS

File Format	Version
<i>Office documents</i>	
Hypertext Markup Language	HTML 4.01 or ISO/IEC 15445:2000
Extensible Hypertext Markup Language	XHTML 2.0
Rich Text Format (RTF)	RTF 1.9.1
Plaintext Format	ASCII or Unicode
Portable Document Format (PDF)	PDF 1.7 or ISO 32000-1:2008
Microsoft Office file formats	Word 97-2007 Binary File Format (.doc) Specification PowerPoint 97-2007 Binary File Format (.ppt) Specification Excel 97-2007 Binary File Format (.xls) Specification Excel 2007 Binary File Format (.xlsb) Specification Office Drawing 97-2007 Binary Format Specification
<i>Electronic Mail</i>	
Multipurpose Internet Mail Extension (MIME)	RFC 5322
.eml	Mozilla Thunderbird, Windows Mail and Microsoft Outlook Express e-mail messages
.msg	Microsoft Office Outlook e-mail messages
<i>Images</i>	
Joint Photographic Experts Group (JPEG)	ISO/IEC 10918-1
JPEG 2000	ISO/IEC 15444-1:2000
Portable Network Graphics (PNG)	ISO/IEC 15948:2004
Tagged Image File Format	TIFF or ISO 12639:1998
Portable Document Format (PDF)	PDF 1.7 or ISO 32000-1:2008

Audio

MPEG-1 Audio Layer 3 (MP3) ISO/IEC 11172-3
Advanced Audio Coding (AAC) ISO/IEC 14496-3:2001

Video

Moving Picture Experts Group ISO/IEC-11172
(MPEG-1)
H.264 ITU-T H.264
MPEG-4 Part 10 or MPEG-4 ISO/IEC 14496-10:2003
AVC (Advanced Video Coding)

Multimedia container formats

Audio Video Interleave
QuickTime File Format
MPEG-4 Part 14 ISO/IEC 14496-14:2003