COMPUTER FORENSICS LAB

London digital forensics & e-discovery · Established 2007

How to Draft an Electronic Disclosure Production Protocol

The Agreement That Decides Every Later Argument, Clause by Clause

Almost every production dispute this series has described: the wrong format, the stripped metadata, the broken families, the unusable load file, the redaction fight, the inadvertent-disclosure scramble: was decided months before it happened, by what a protocol said or failed to say. The production protocol is the parties' technical constitution: formats by document type, metadata fields, family and threading rules, load-file specifications, redaction standards, clawback machinery, and the exchange logistics that make two review platforms interoperate. PD 57AD's Disclosure Review Document invites exactly this agreement; too many matters complete it as boilerplate and discover the gaps at exchange. This guide is the drafting manual: what each clause must decide, the positions that favour each side, the defaults that serve both, model wording throughout, and the review pass that tests a draft against the disasters it exists to prevent.

⏱ Estimated reading time: 25 min read

§ ABOUT THE AUTHOR

PREPARED BY COMPUTER FORENSICS LAB E-DISCOVERY TEAM

Computer Forensics Lab is a London-based digital forensics and electronic disclosure practice established in 2007. Its eDiscovery arm, **e-discovery.uk**, drafts, negotiates and operates production protocols across the full run of matters this series describes: and receives the productions other parties' protocols produce, which is where the drafting lessons in this guide were learned. The technical clauses below are the ones its engineers are asked to rescue when they were never written.

ESTABLISHED 2007 · LONDON | ISO 17025-ALIGNED PROCEDURES | PROTOCOL DRAFTING & NEGOTIATION SUPPORT | PRODUCTION ENGINEERING | CPR PART 35 EXPERT REPORTS | FULL CHAIN-OF-CUSTODY DOCUMENTATION

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§ 0 1 · ORIENTATION

Executive summary

THE HEADLINE POINT: A PRODUCTION PROTOCOL IS THE CHEAP, EARLY AGREEMENT THAT PREVENTS THE EXPENSIVE, LATE DISPUTES: DRAFT IT WITH THE ENGINEERS IN THE ROOM, TEST IT AGAINST THE KNOWN DISASTERS, AND AGREE IT BEFORE THE FIRST TRANCHE IS BUILT

The protocol answers, in advance and in writing, every question two review platforms will otherwise fight about at exchange. **Formats (§4):** native as the working default per guide 88, spreadsheets always native, imaging only for stated cause, with a per-document-type schedule so nobody discovers at exchange that "documents" meant different things. **Data (§5):** the metadata field list (the guide 87 spine: dates, authors, containers, hashes), family preservation and parent-child links per guide 81, threading conventions per guide 83, deduplication disclosure per guide 82, and load-file specifications precise to the delimiter: interoperability drafted, not hoped. **Protections (§6):** redaction standards importing guide 93's engineering (burn-in, sanitisation, no obfuscation), privilege schedules and the clawback machinery of guides 91-92, and confidentiality tiers with ring terms where needed. **Operations (§7):** tranche timetables, correction and re-production mechanics, intake-audit windows, and a technical-dispute ladder that reaches engineers before it reaches the court. Drafted this way: with provider input, against this series' catalogue of failures: the protocol is a few pages of DRD Section 2 work that repays itself the first time either side would otherwise have written an angry letter about a load file.

- **Agree early:** at the DRD stage, before collection and processing decisions harden: the cheap window per §3.
- **Engineers draft the technical clauses:** lawyers set positions; providers make them precise and buildable.
- **Per-type schedules beat generalities:** "native except as follows" with a table: guide 88's logic, executed.
- **Protections are imported standards:** redaction, privilege and clawback clauses referencing the disciplines of guides 91-93.
- **Test the draft against disasters:** the §12 checklist run before signature: every known failure mode answered by a clause.

§ 0 2 · FIRST PRINCIPLES

The problem in plain English: the argument you have now or the ten you have later

Two parties running disclosure without a production protocol are two factories shipping parts to each other without agreeing measurements. Each side's platform has defaults; the defaults differ; and every difference surfaces as a dispute at the worst time: the production received in a format the pleaded analysis cannot use (guide 88 Example 1's spreadsheet as 4,100 pages), the metadata fields absent because nobody listed them, families arriving orphaned (guide 81 Example 3), redactions in markup that lifts off (guide 93 Example 1), the privileged escape with no clawback clause to invoke (guide 92's hard mode).

The protocol converts all of it into one negotiation, held early, when positions are cheap because no work has been done wrong yet. The negotiation is genuinely technical: which is the trap for legal teams who treat it as boilerplate and sign the other side's template, or their provider's, unread. The clauses allocate real advantage: format defaults decide whose analysis is easy; field lists decide what the other side's review can see; correction mechanics decide who pays for re-production. This guide walks the clauses in the order a draft should, with the positions named: so the protocol that gets signed is the one that was actually read.

§ 0 3 · THE FRAME

Where the protocol sits: the DRD, PD 57AD and when to agree it

- **The DRD's invitation:** PD 57AD's Disclosure Review Document, Section 2, is where the parties record how disclosure will technically be given: the protocol is that section done properly, whether embedded or annexed as a standalone agreement: with the CMC available to resolve what cooperation cannot.
- **Beyond the Business and Property Courts:** the same agreement serves under CPR 31/PD 31B (which expects discussion of format and metadata), in arbitration (where institutional rules leave production mechanics to the parties: the protocol matters more, not less), and in regulatory contexts shaped by the regulator's specifications.
- **Timing:** agreed alongside scope negotiations and before processing hardens: format and field decisions made at guide 81's processing stage are expensive to remake: the protocol drafted while everything is still a setting, not a rebuild.
- **Versioning and amendment:** matters evolve (new data types, new custodians, chat platforms discovered): the protocol carries an amendment mechanism and a version history, per the series' standing record discipline.
- **Proportionality throughout:** every clause scaled to the matter: a two-party £300k dispute needs two pages; a multi-party fraud needs the full apparatus: the schedule structure below compresses honestly.

§ 0 4 · FORMATS

The format clauses: natives, images, and the per-type schedule

- **The default rule:** native production as the baseline (guide 88's logic and PD 57AD's lean), stated as such, with departures only per the schedule: one sentence that prevents the silent-conversion class of dispute.
- **The per-type schedule:** a table: email (native container or per-message native with families), office documents (native), spreadsheets (native, always: guide 88 §4's forcing class, non-negotiable), presentations (native, notes included), images and media (native with metadata per guide 87), chat (structured export per guide 71's reproducibility), databases and structured data (per guide 72-74's targeted-extract method, specified per source).
- **Imaging for cause:** the stated grounds on which imaged formats substitute (redaction per guide 93, agreed fixity needs), with the native preserved and available: the route back drafted in.
- **Conversion flagging:** any produced item that is not the native original flagged as converted, with the original's availability stated: guide 88 Example 2's forgery-adjacent failure, made impossible by clause.
- **Exceptions and exotics:** the mechanism for formats the schedule missed: notify, propose, agree: so the CAD file or the proprietary system export becomes a paragraph of correspondence, not a hearing.

§ 0 5 · DATA

The data clauses: metadata fields, families, threading and load files

- **The field list:** the produced metadata enumerated: the guide 87 spine (sent/received/created/modified dates, authors and participants, filenames and paths, container sources, hash values) plus matter-specific fields: listed by name, because "standard fields" means whatever the producing platform exports.
- **Families and links:** parent-child relationships preserved and expressed in the load file (guide 81's family integrity), attachments produced with parents, and embedded-file policy stated: the orphaned-attachment dispute, pre-decided.
- **Threading and duplicates disclosed:** whether email threading is applied and how inclusiveness is handled (guide 83 §5's review-versus-production line), and the deduplication method with suppression disclosed per guide 82 §4's table: methods visible, not discovered.
- **Load-file specification:** the exchange format precise to encoding, delimiters, date formats and image-reference conventions: tested by a sample exchange before the first tranche (§7): the single cheapest clause in the document.
- **Text and OCR:** extracted text supplied per document, OCR quality obligations for imaged material (guide 86's disciplines), and the unOCRable population's handling stated: searchability as a produced deliverable, not an assumption.

§ 0 6 · PROTECTIONS

The protection clauses: redaction, privilege, clawback and confidentiality

- **Redaction standards:** guide 93 §11's paragraph imported: burn-in tooling, layer sanitisation, no obfuscation, consistency across instances, verification obligations, originals preserved: the clause that makes lift-off failures a breach, not a debate.
- **Privilege machinery:** schedule requirements (guide 91 §6's precision), the treatment of partly privileged documents (produce redacted, flag), and the review-methodology transparency the parties owe each other.
- **Clawback:** guide 91 §11's inadvertent-disclosure terms in full: notice, non-use, return or certified deletion, no automatic waiver: plus guide 93's extension treating failed redactions as inadvertent disclosures: the net drafted before anyone is on the wire.
- **Confidentiality tiers:** designation levels (confidential; confidential: ring only), ring membership and undertakings where the matter needs them (guide 91 §6's machinery), and the challenge mechanism for over-designation: protection with a governor.
- **Data protection:** the UK GDPR posture stated: minimisation applied, personal-data redaction categories agreed, processing and cross-border terms where platforms or parties sit abroad: the compliance layer written down once, relied on throughout.

§ 0 7 · OPERATIONS

The operations clauses: exchange, tranches, corrections and disputes

- **The sample exchange:** a small test production each way before the first tranche: load files parsed, fields verified, images opened: the £500 rehearsal that catches the £50,000 incompatibility, made mandatory by clause.
- **Tranches and timetable:** rolling production scheduled against the disclosure deadline, with per-tranche manifests (counts, ranges, hash totals) so completeness is arithmetic, not assertion: guide 81 §5's reconciliation, exchanged.
- **Intake and objection windows:** a stated period for the receiving party's technical audit (guide 88 §7's checks) with defects notified and particularised: late-discovered complaints losing their force by agreement, both ways.
- **Correction mechanics:** how defects are cured: re-production of corrected items with versioned control numbers, overlay files for metadata fixes, cost allocation for producing-party defects: the machinery that keeps corrections administrative.
- **The dispute ladder:** technical disagreements escalated first to the parties' providers directly (engineer to engineer, with authority to resolve specification issues), then to lawyers, then to the court: the ladder that keeps delimiter arguments out of hearing lists.

§ 0 8 · THE WIDER MAP

Source architecture: where else the evidence lives

Per this series' source-architecture discipline, applied to the agreement itself: a protocol governs well only if it was drafted against the estate it will carry, and its own records answer the disputes it cannot prevent. The drafting inputs live in: the data map (guide 3's censuses: which platforms, types and volumes the schedule must actually cover: the protocol drafted for the estate that exists, not the one imagined); the processing design (guide 81's settings, which the protocol's field and family clauses must match or expensively override); both sides' platform capabilities (what each review system can ingest and export: asked, not assumed); and this series' failure catalogue (the disasters of guides 81-93 as the test suite). The operating records live in: the signed protocol and its version history; the sample-exchange results; per-tranche manifests and reconciliations; defect notices and correction logs; and the correspondence applying the amendment mechanism. When a production dispute arrives anyway, it is decided from these records: what was agreed, what was delivered, what the manifests show: the protocol file as the §8 evidence base every operations clause quietly builds.

QUESTION	DATA MAP	PROCESSING DESIGN	PLATFORM CAPABILITIES	SIGNED PROTOCOL + VERSIONS	MANIFESTS + RECONCILIATIONS	DEFECT + CORRECTION LOG
Does the schedule fit the estate?	Y: the drafting input	Settings alignment	Ingest limits known	The answer recorded	n/a	n/a
What was agreed?	n/a	n/a	n/a	Y: version-controlled	n/a	Amendments in force
Was it delivered?	n/a	n/a	n/a	The yardstick	Y: counts + hashes	Cures applied
Who bears the defect?	n/a	Producing-side settings	Receiving-side limits	The allocation clauses	What arrived, provably	Y: the notice trail
Can the exotic be handled?	New sources surfacing	Extract methods	Both sides' options	The exceptions mechanism	n/a	Resolution precedents

Fallback strategy in one line: draft from the data map, test by sample exchange, and keep the manifests and defect log current: the protocol file decides disputes the protocol could not prevent.

§ 0 9 · IN THE WILD

Worked examples

EXAMPLE 1 · THE TEMPLATE SIGNED UNREAD

A claimant firm accepted the defendant's "standard" protocol without technical review. The costs arrived on schedule: the field list omitted file paths and container sources, so the claimant's provenance analysis (central to an authenticity issue) had nothing to work with; threading was applied inclusive-only to the production, recreating guide 83 Example 3's defect with contractual cover; and the correction clause allocated re-production costs to the requesting party. Rescue took a CMC application arguing the protocol's terms produced disclosure short of PD 57AD's requirements: partially successful, wholly expensive, and avoidable at the drafting stage for the cost of an hour of provider review. The example's rule is the §2 trap named: a protocol is a technical instrument allocating advantage, and the side that reads it with engineers takes the advantage the other side signed away.

EXAMPLE 2 · THE SAMPLE EXCHANGE THAT PAID FOR THE YEAR

A multi-party matter's protocol mandated the §7 sample exchange: fifty documents each way before first tranches. The rehearsal caught, across four parties: one load file in an encoding two platforms mis-parsed (every date shifted a day: guide 87's nightmare, pre-empted); one party's images referenced by a path convention nobody else could resolve; and one deduplication approach suppressing family members contrary to the agreed clause. All three were specification fixes: settings changed, sample re-run clean, first tranches exchanged without incident: total cost, a fortnight of engineer correspondence. The counterfactual: three defective productions, cross-cutting defect notices, and the correction machinery running for months: had been priced by everyone's providers at the drafting stage, which is why the clause was mandatory. The cheapest clause in the document, performing exactly as drafted.

EXAMPLE 3 · THE DISPUTE LADDER THAT KEPT THE DELIMITER OUT OF COURT

Mid-matter, a receiving party's platform began rejecting tranches: a field's delimiter usage had drifted after the producing provider's software update. Under a protocol without §7's ladder, the correspondence would have escalated legally: defect allegations, completeness doubts, a hearing threatened. Under the ladder as drafted, the mandatory first step was provider-to-provider: the two engineering teams diagnosed the drift in a call, agreed a corrected specification, re-issued the affected tranche with versioned control numbers per the correction clause, and recorded the fix in the defect log: five days, no lawyers' letters beyond the notification the clause required. The §8 protocol file absorbed the whole incident. The example is the ladder's design argument: most production disputes are engineering disagreements wearing litigation costumes, and the clause that undresses them first is worth every other operations clause combined.

§ 10 · WHERE IT GOES WRONG

Common mistakes and technical limitations

Common mistakes

- **Boilerplate signed unread:** Example 1's template: advantage allocated to whoever drafted it.
- **No provider in the room:** lawyers agreeing specifications their platforms cannot deliver: buildability checked after signature.
- **"Standard fields":** the field list left generic: the §5 enumeration skipped, the provenance analysis starved later.
- **Spreadsheet silence:** the forcing class unaddressed: guide 88 Example 1 arriving with no clause to answer it.
- **No sample exchange:** Example 2's rehearsal skipped: the incompatibility discovered at tranche one, at tranche-one prices.
- **Clawback absent:** guide 92 arriving on a protocol that says nothing: the hard mode, chosen by omission.
- **No correction mechanics:** every defect negotiated from scratch: administrative cures priced as disputes.
- **Protocol never amended:** chat platforms and new data types handled off-protocol because the amendment clause was missing or ignored.

Technical limitations

- **Platforms differ irreducibly:** some capability gaps survive any drafting: found by the sample exchange, worked around by agreement, not resolved by wording.
- **Specifications drift:** software updates change behaviour mid-matter (Example 3): the ladder and defect log absorb what the signature could not freeze.
- **Exotic formats outrun schedules:** the exceptions mechanism is load-bearing because no table is complete: drafted as process, not prophecy.
- **Manifests prove delivery, not completeness of disclosure:** the protocol governs production mechanics; scope adequacy lives upstream in the DRD's other sections: the boundary kept clear.
- **Agreement binds the parties, not the estate:** third-party productions and regulator specifications arrive on their own terms: interfaces noted, not assumed away.

§ 11 · INTERROGATORIES & DRAFTING AIDS

Questions to ask · Suggested wording

Ask your client

- What does the data map say the schedule must cover: platforms, types, the exotics: before we draft for an imagined estate?
- Which analyses will the matter run: provenance, financial models, chronology: so the field list and native rules serve them?
- What confidentiality and personal-data postures does the business need drafted into §6's tiers?

Ask your opponent

- Please provide your proposed production protocol, or comments on the enclosed draft, including your platform's load-file specification and any capability constraints, in time for agreement before processing decisions are finalised.
- Please confirm agreement to a sample exchange of [50] documents each way, in the agreed specification, no later than [date], with defects notified and resolved before first tranches.
- Please identify any document types in your disclosure universe not covered by the per-type schedule, for agreement under the exceptions mechanism.

Ask your eDiscovery / forensic provider

- Is every clause of this draft buildable on our platform as configured: and what would each departure cost?
- What did the sample exchange return: and is the fix specification-level or clause-level?
- Which of this series' failure modes does the draft leave unanswered: run the §12 checklist against it.

SUGGESTED WORDING · CORE SKELETON FOR THE PROTOCOL

> "(1) Documents shall be produced in native format save as provided in Schedule A [per-type table], with any converted item flagged and its native original preserved and available on request. Spreadsheets shall in all cases be produced natively. (2) Each produced item shall be accompanied by the metadata fields listed in Schedule B and by extracted text; parent-child relationships shall be preserved and expressed in the load file, which shall conform to the specification in Schedule C. Deduplication and any threading shall be applied only as described in Schedule D, with suppressed-instance reporting. (3) Redactions, privilege claims and inadvertent disclosure shall be governed by paragraphs [X-Z] [importing the guide 91 and 93 standards]. (4) The parties shall complete a sample exchange by [date]; productions shall proceed in tranches per Schedule E with manifests stating counts and hash totals; defects shall be notified within [14] days of a tranche and resolved first between the parties' technical providers, then between solicitors, before any application. (5) This protocol may be amended in writing; a version history shall be maintained."

§ 12 · QUICK CONTROL

Checklist and red flags · When to involve a digital forensic expert

The protocol drafting checklist

- ☐ Drafted from the data map; provider review on every technical clause
- ☐ Native default stated; per-type schedule complete; spreadsheets native
- ☐ Imaging-for-cause grounds and conversion flagging drafted
- ☐ Metadata fields enumerated by name; families and links specified
- ☐ Threading and deduplication disclosed with suppression reporting
- ☐ Load-file specification precise; sample exchange mandatory
- ☐ Redaction standards imported (guide 93); clawback in full (guides 91-92)
- ☐ Confidentiality tiers and UK GDPR posture stated
- ☐ Tranches, manifests, intake windows and correction mechanics drafted
- ☐ Dispute ladder engineer-first; amendment mechanism and version history live

Red flags

- "Standard fields" and "usual format" anywhere in a draft.
- Templates offered for signature without platform review: Example 1's price.
- No sample-exchange clause on a multi-party matter.
- Spreadsheets, chat or structured data absent from the schedule despite the data map.
- Clawback or redaction standards missing: guides 92-93 arriving unarmed.
- Correction costs allocated against the receiving party by default.
- Mid-matter data types handled by improvisation because amendment was never drafted.

When to involve a digital forensic expert

At drafting, where the technical clauses are written against the data map and both platforms' real capabilities (§4-§7); at negotiation, where the other side's draft is read for the advantage it quietly allocates (Example 1's hour of review); at the sample exchange, where specifications meet reality (Example 2); through operations, where manifests, intake audits and the engineer-first ladder run (Example 3); and at disputes, where the §8 protocol file is read and evidenced under CPR Part 35. Through **e-discovery.uk**, protocol work spans the full arc: drafted by the people who will build to it, which is the only review that reliably finds the clause that cannot be built.

§ 13 · COMMON QUESTIONS

Frequently asked questions

Is a production protocol actually required?

Under PD 57AD the DRD requires the parties to address production format and related technical matters, and the court will resolve what they cannot agree: so the substance is required; the standalone document is simply the competent way to do it. Elsewhere (CPR 31 matters, arbitration), nothing mandates it and everything rewards it: the disputes it prevents arrive regardless of forum.

When should the protocol be agreed?

Alongside scope negotiation and before processing decisions harden: format, field and family choices are settings at guide 81's stage and rebuilds afterwards: §3's cheap window. A protocol agreed after first productions is a treaty signed mid-battle: possible, and priced accordingly.

The other side sent their standard protocol. Can we just sign it?

Read it with your provider first: Example 1 is what "standard" can cost: field lists, threading rules and correction-cost clauses allocate real advantage, and an hour of technical review prices every departure before signature does. Most templates are fixable with a short markup; the unread ones are the expensive ones.

What belongs in the protocol versus the DRD's other sections?

The protocol governs production mechanics: formats, data, protections, operations: while scope, custodians, date ranges and search methodology live in the DRD's disclosure-model sections (guides 84-85's territory): the §10 boundary. Keeping them separate keeps a mechanics amendment from reopening scope, and vice versa.

What if a data type turns up that the protocol never contemplated?

The exceptions mechanism runs: notify, propose a format and method (this series' relevant guide usually supplies one), agree or escalate: process drafted precisely because no schedule is complete. Without the mechanism, the exotic becomes a satellite dispute; with it, correspondence.

How detailed should the load-file specification really be?

Precise to encoding, delimiters, date formats and reference conventions: the level at which platforms actually fail: then proven by the sample exchange rather than trusted. Example 2's day-shifted dates hid in exactly the detail lawyers consider beneath the agreement: the specification is technical because the failures are.

§ 14 · REFERENCE

Glossary

Amendment mechanism
The clause by which the protocol evolves on the record.

Dispute ladder
Escalation from engineers to lawyers to court, in that order.

Exceptions mechanism
The process for formats the schedule never listed.

Field list
The enumerated metadata produced with each item.

Imaging for cause
Stated grounds on which fixed renderings replace natives.

Load-file specification
The exchange format, precise to the delimiter.

Manifest
Per-tranche counts, ranges and hash totals proving delivery.

Overlay file
A correction file updating metadata without re-producing documents.

Per-type schedule
The table assigning a format to each document type.

Sample exchange
The mandatory small test production before first tranches.

Sources and authoritative references

The protocol-drafting disciplines in this guide draw on materials published by our laboratory and e-discovery practice, referenced here as sources:

- e-discovery.uk, EDRM Phase 06 · Production and Phase 04 · Processing (protocol operation, manifests, correction mechanics as practised): e-discovery.uk/edrm/production · e-discovery.uk/edrm/processing
- cflab.uk, digital forensics services (technical protocol review, dispute evidence, CPR Part 35 reporting): cflab.uk/digital-forensics-services · guides library: cflab.uk/guides
- e-discovery.uk, practice method and Knowledge Centre: e-discovery.uk · e-discovery.uk/knowledge
- PD 57AD and the Disclosure Review Document: justice.gov.uk, PD 57AD · CPR Part 31 and PD 31B: justice.gov.uk, Part 31
- CPR Part 35: justice.gov.uk, Part 35 · ICO, UK GDPR guidance: ico.org.uk · ISO/IEC 27037: iso.org, 27037

§ HOW A SPECIALIST LABORATORY CAN ASSIST

Working with Computer Forensics Lab

Protocol work at **e-discovery.uk** is drafted by the engineers who will operate it: technical clauses written against the data map and both platforms' verified capabilities, the other side's templates reviewed for the advantage they allocate (Example 1's hour, institutionalised), sample exchanges run and diagnosed (Example 2's fortnight), and the operations layer: manifests, intake audits, corrections, the engineer-first ladder: staffed for the matter's life, with the §8 protocol file maintained as the dispute-deciding record it is. The laboratory side evidences protocol disputes under CPR Part 35 where the ladder tops out. Conflicts checks, confidential scoping discussions and fixed-fee estimates are routine; and if the DRD is in negotiation now, the protocol is this fortnight's drafting: while every clause is still a setting, not a rebuild.

INSTRUCT THE LAB

Speak to a forensic examiner, not a salesperson.

Describe your matter in confidence and an examiner will respond the same working day. Conflicts checks and scoping calls with US counsel are routine.

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