

Reserve Your Rights: Always Ask for Native

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As the document production trend continues to move almost exclusively towards electronic formats, make sure you always indicate in your Request for Production of Documents the specific request that certain information may be requested in native format. This preserves your right to request documents that are not produced in a reasonable usable format to be produced later in a usable manner. Often times the most desirable, usable format is native especially if you anticipate Excel spreadsheets or drafts of contracts that may have hidden formulas or other information such as track changes.

Ohio Rule of Civil Procedure 34(B) provides in part, "The request may specify the form or forms in which electronically stored information is to be produced." Make sure you always put in the request a possible need for native because you never know when it may become crucial in a case. If you do not specify native format, opposing counsel can rely on Ohio Rule of Civil Procedure 34(B)(3) which states, "If a request does not specify the form or forms for producing electronically stored information, a responding party may produce the information in a form or forms in which the information is ordinarily maintained... or in any form that is reasonably usable."

Again, always specify the electronic format that you are most comfortable using when reviewing documents. However, beware of the opposing counsel who produces thousands of documents in the format you specify, but in a nearly unusable manner - like one gigantic PDF without document breaks of any kind, or single page TIFs that cannot be easily converted.