

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

DEFAULT STANDARD FOR DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION (“E-DISCOVERY”)

1. **Introduction**. The court expects the parties to cooperatively reach agreement on the appropriate and proportional scope of e-discovery, including the identification, preservation, collection, processing, culling, review, and production of electronically stored information (“ESI”) how to conduct e-discovery. In the event that such agreement has not been reached by the time of the Fed. R. Civ. P. 16 scheduling conference, the following default standards shall apply until such time, ~~if ever,~~ as the parties reach agreement or until further order of the court and conduct e-discovery on a consensual basis.

2. **Discovery Conference**. Parties shall be prepared to discuss the parameters of their anticipated e-discovery at the Fed. R. Civ. P. 26(f) conference, as well as at the Fed. R. Civ. P. 16 scheduling conference with the court, consistent with the requirements ~~concerns~~ outlined below and shall provide notice of any problems reasonably anticipated to arise in connection with e-discovery. Such discussions should continue to occur, as needed, as the case and issues evolve. Provide notice of any problems reasonably anticipated to arise in connection with e-discovery.

—E-Discovery Parameters. By the time of

3. Prior to the Rule 26(f) conference, the parties shall be ready to discuss ~~exchange~~ the following information:

(a) Identification -

(i) Custodians - Each party shall draft Aa list of the most likely custodians of relevant ESI ~~electronically stored information~~ (“identified”

~~custodians”~~), including a brief description of each person’s title and responsibilities (see ¶ 7).

~~(ii) Data Sources - Each party shall identify all known custodial and non-custodial data sources believed to contain potentially relevant ESI. The parties should also include other pertinent information about their electronically stored information and whether any of that identified ESI electronically stored information is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B) of limited accessibility. ESI electronically stored information that is not reasonably accessible of limited accessibility may include, but is not limited to, anything stored on legacy systems or those created or used by electronic media of a format no longer in use, maintained in redundant electronic storage media, or for which retrieval involves substantial cost. Additionally, the parties shall mutually agree whether any specified data types will be excluded from the discovery process.~~

~~(a)(iii) Date Restriction - The parties shall work together to identify the overall relevant time-frame at issue in the case that is to be used throughout the e-discovery process.~~

~~(b) — A list of each relevant electronic system that has been in place at all relevant times<sup>+</sup> and a general description of each system, including the nature, scope, character, organization, and formats employed in each system. The parties should also include other pertinent information about their electronically stored information and whether that electronically stored information is of limited accessibility. Electronically stored information of limited accessibility may include~~

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<sup>+</sup>For instance, in a patent case, the relevant times for a patent holder may not only be the time of the alleged infringement, but may also be the date the patent(s) issued or the effective filing date of each patent in suit.

~~those created or used by electronic media no longer in use, maintained in redundant electronic storage media, or for which retrieval involves substantial cost.~~

~~(e)(b) Preservation - Each party acknowledges that it has an obligation to take reasonable and proportional steps to preserve potentially relevant ESI in the party's possession, custody, or control, including the original forensic integrity of the ESI, unless otherwise agreed-upon by the parties. Absent a showing of good cause by the requesting party, the parties shall not be required to modify the procedures used by them in the ordinary course of business to back-up and archive ESI; provided, however, the parties shall preserve non-duplicative potentially relevant ESI currently in their possession, custody, or control. The name of the individual designated by a party as being most knowledgeable regarding that party's electronic document retention policies ("the retention coordinator"), as well as a general description of the party's electronic document retention policies for the systems identified above (see ¶ 6).~~

~~(c) The name of the individual who shall serve as that party's "e-discovery coordinator" (see ¶ 3).~~ Processing - The parties shall disclose the manner of de-duplication employed, if any. The custodian identification for any de-duplicated ESI shall be tracked in a production custodian field. Additionally, the data shall be processed in UTC (Coordinated Universal Time) unless otherwise mutually agreed upon by the parties. The parties shall also discuss the handling and processing of any non-standard ESI (e.g. – structured data) or non-searchable ESI identified by the parties as well as the appropriateness and application of other initial data processing steps and the handling of related issues (e.g. – deNIST, embedded

objects, hidden content, multi-media files).

- (d) Culling - In addition to the application of the agreed-upon date restriction identified above, the parties shall reach agreement on search terms to be applied to each party's universe of potentially relevant data, if any, prior to substantive review. The parties shall also reach agreement as to the timing and conditions of any supplemental searches which may become necessary in the normal course of discovery.
- (e) Review - The use of Technology Assisted Review (TAR) and other analytics technology (e.g. - email threading) shall be permitted, including to make final production decisions, provided the parties disclose its use prior to starting the process in earnest. If needed, the parties shall meet and confer to resolve any disagreements regarding the use of these analytics technology tools.
- (e) Production - The parties shall agree upon production specifications. If, however, the parties cannot agree as to the format for document production, ESI shall be produced in processed volumes with production Bates-stamped image files (e.g. - PDF or TIFF), an associated load file, text files, and metadata. Files types not easily converted into image format shall be produced in native format unless redactions are needed (e.g. - Microsoft Excel or other spreadsheet formats, Microsoft PowerPoint or other presentation formats, structured data exports or reports, non-image multi-media files, source code). For all other file types, a party must demonstrate a particularized need for production of any such files in native format. No party has an obligation to create or manually code information or fields that are not automatically generated by the processing of the ESI, that do not exist as part

of the original metadata of the document, or that would be unduly burdensome or costly to obtain. On-site inspections of electronic media under Fed. R. Civ. P. 34(b) shall not be permitted absent exceptional circumstances, where good cause and specific need have been demonstrated.~~Provide notice of any problems reasonably anticipated to arise in connection with e-discovery.~~

(f) ~~To the extent that the state of the pleadings does not permit a meaningful discussion of the above by the time of the Rule 26(f) conference, the parties shall either agree on a date by which this information will be mutually exchanged or submit the issue for resolution by the court at the Rule 16 scheduling conference.~~

**3.4. E-Discovery Coordinator.** In order to promote communication and cooperation between the parties, each party ~~to a ease~~ shall designate a single individual through which all e-discovery requests and responses are coordinated when necessary (“the e-discovery coordinator”). Regardless of whether the e-discovery coordinator is an attorney (in-house or outside counsel), a ~~third-~~party consultant, or an employee of the party, he or she must be:

- (a) Familiar with the party’s electronic systems and capabilities in order to explain these systems and answer relevant questions.
- (b) Knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues.
- (c) Prepared to participate in e-discovery dispute resolutions.

The Court notes that, at all times, the attorneys of record shall be responsible for responding to e-discovery requests. However, the e-discovery coordinators shall be responsible for organizing each party’s e-discovery efforts to ensure consistency and thoroughness and, generally, to

facilitate the e-discovery process. The ultimate responsibility for complying with e-discovery requests rests on the parties. Fed. R. Civ. P. 37(f).

**4.5. Timing and Phasing of eE-Discovery.** Discovery of relevant ESI~~electronically stored information~~ shall proceed in a sequenced fashion as described in Section 3 above. The parties shall endeavor to finalize the agreement regarding e-discovery as soon after the conclusion of the Fed. R. Civ. P 26(f) conference as is practicable, but in any event before the Fed. R. Civ. P. 16 scheduling conference, unless otherwise agreed-upon by the parties. The parties should consider if it is appropriate and beneficial to divide the handling of ESI into phases, whether prioritizing by custodian, ESI type, date range, or otherwise.

~~(a) — After receiving requests for document production, the parties shall search their documents, other than those identified as limited accessibility electronically stored information, and produce relevant responsive electronically stored information in accordance with Fed. R. Civ. P. 26(b)(2).~~

~~(b) — Electronic searches of documents identified as of limited accessibility shall not be conducted until the initial electronic document search has been completed. Requests for information expected to be found in limited accessibility documents must be narrowly focused with some basis in fact supporting the request.~~

~~(c) — On site inspections of electronic media under Fed. R. Civ. P. 34(b) shall not be permitted absent exceptional circumstances, where good cause and specific need have been demonstrated. To the extent that the state of the pleadings does not permit a meaningful discussion of the above by the time of the Rule 26(f) conference, the parties shall either agree on a date by which this information will be mutually exchanged or submit the issue for resolution by the court at the Rule 16 scheduling conference.~~

**5. — Search methodology.** If the parties intend to employ an electronic search to locate relevant

~~electronically stored information, the parties shall disclose any restrictions as to scope and method which might affect their ability to conduct a complete electronic search of the electronically stored information. The parties shall reach agreement as to the method of searching, and the words, terms, and phrases to be searched with the assistance of the respective e-discovery coordinators, who are charged with familiarity with the parties' respective systems. The parties also shall reach agreement as to the timing and conditions of any additional searches which may become necessary in the normal course of discovery. To minimize the expense, the parties may consider limiting the scope of the electronic search (e.g., time frames, fields, document types).~~

~~6. — **Format**. If, during the course of the Rule 26(f) conference, the parties cannot agree to the format for document production, electronically stored information shall be produced to the requesting party as image files (e.g., PDF or TIFF). When the image file is produced, the producing party must preserve the integrity of the electronic document's contents, i.e., the original formatting of the document, its metadata and, where applicable, its revision history. After initial production in image file format is complete, a party must demonstrate particularized need for production of electronically stored information in their native format.~~

~~7. — **Retention**. Within the first thirty (30) days of discovery, the parties should work toward an agreement (akin to the standard protective order) that outlines the steps each party shall take to segregate and preserve the integrity of all relevant electronically stored information. In order to avoid later accusations of spoliation, a Fed. R. Civ. P. 30(b)(6) deposition of each party's retention coordinator may be appropriate.~~

~~The retention coordinators shall:~~

~~(a) — Take steps to ensure that relevant e-mail of identified custodians shall not be permanently deleted in the ordinary course of business and that relevant electronically stored information~~

~~maintained by the individual custodians shall not be altered.~~

~~(b) — Provide notice as to the criteria used for spam and/or virus filtering of e-mail and attachments; e-mails and attachments filtered out by such systems shall be deemed non-responsive so long as the criteria underlying the filtering are reasonable.~~

~~Within seven (7) days of identifying the relevant document custodians, the retention coordinators shall implement the above procedures and each party's counsel shall file a statement of compliance as such with the court.~~

**8.6. Privilege.** ~~The parties shall agree on an appropriate non-waiver order under Fed. R. Evid. 502(d). Unless and until a non-waiver order is entered, whether as part of a protective order or otherwise, should any produced ESI~~Electronically stored information ~~that appears on its face to~~ contains ~~privileged information or attorney-work product~~ be detected by either the producing or receiving party, proper notification shall be given in writing that identifies the specific materials and the receiving party shall immediately sequester or destroy the privileged materials. Due to the nature of ESI, unless otherwise agreed-upon by the parties, the producing party shall produce, in accordance with the agreed-upon production specifications, — both a supplemental production volume overlay that contains only the replacement redacted documents or slip-sheets, as appropriate, as well as a full replacement production volume that contains the updated materials for each affected production. — shall be immediately returned if the documents appear on their face to have been inadvertently produced or if there is notice of the inadvertent production within thirty (30) days of such. —In all other circumstances, Fed. R. Civ. P. 26(b)(5)(B) shall apply. All -responsive documents that are withheld from production in full or in part under a claim of privilege or work product shall be entered onto a privilege log in compliance with Fed. R. Civ. P 26(b)(5)(A). However, absent a showing of good cause or as otherwise agreed-upon by



the parties, the privilege log may be fully populated using available non-privileged metadata plus the identification of the privilege asserted.

**9.7. Costs.** Generally, the costs of discovery shall be borne by each party. However, the amount and nature of the claims being made by either party, as well as the burdens associated with the proposed ESI preservation and discovery shall be considered and the court will apportion the costs of electronic discovery upon a showing of good cause.