

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”). 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 standard shall apply until such time as the parties reach agreement or until further order of the court.

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 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.

3. **E-Discovery Parameters.** By the time of the Rule 26(f) conference, the parties shall be ready to discuss the following information:

(a) Identification -

(i) Custodians - Each party shall draft a list of the most likely custodians of relevant ESI, including a brief description of each person’s title and responsibilities.

(ii) Data Sources - Each party shall identify all known custodial and non-custodial data sources believed to contain potentially relevant ESI. The parties

should include whether any of the identified ESI is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B). ESI that is not reasonably accessible may include, but is not limited to, anything stored on legacy systems or electronic media of a format no longer in use, maintained in redundant electronic storage, 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.

(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) 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.
- (c) 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.
- (f) 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. File 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.

4. E-Discovery Coordinator. In order to promote communication and cooperation between the parties, each party 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).

5. Timing and Phasing of E-Discovery. Discovery of relevant ESI 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.

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 that appears on its face to contain 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. 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, unless,~~ 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.

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.

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