UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., an Illinois non-profit corporation, and Danny Lee Shelton, individually,

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

Case No. 07-40098-FDS

ORDER GOVERNING PRODUCTION OF ELECTRONICALLY STORED INFORMATION

The above-entitled matter came on for hearing before the Honorable Timothy S. Hillman on Thursday, August 9, 2007 in consideration of the parties' dispute concerning the form of production for electronic and electronically-stored information. Based upon the files, records and proceedings herein, as well as the submissions of the parties and the testimony of expert witnesses taken at the hearing, this Court issues the following Order Governing Production of Electronically Stored Information:

ORDER

1. For purposes of this Order, "electronically stored information" includes, but is not be limited to, e-mails, webpages, word processing files, databases and electronic messaging stored (a) in the memory of computers (mainframe, desktop, laptop and palm), computer servers, PDA devices and cellular telephones, (b) stored on electronic, magnetic or digital backup, archive or legacy systems, (c) stored on magnetic disks (unattached computer hard drives and

floppy disks), (d) stored on optical disks (DVDs, CDs and CD-ROM) and (e) stored on flash memory devices (including "thumb," "flash" and "jump" drives).

2. All electronically stored information must be produced for the requesting party's inspection and forensic imaging in the native format in which it is ordinarily maintained.

3. When the native format of electronically stored information is in the form listed in paragraph 1(a) of this Order, the following protocol will govern the production of the information:

a. The parties will agree on a mutually convenient date and time for the device to be made available for inspection and forensic imaging.

b. On the day and time arranged for inspection and copying, a trained, experienced computer forensic examiner shall create a byte-by-byte duplicate image of the entire drive, which shall constitute an accurate representation of the device, including all system information, metadata, hidden text and "deleted" files.

c. The examiner shall not alter, rewrite or otherwise harm or change the data on the device.

d. The parties shall provide to the examiner a list of mutually agreeable search terms by which privileged, protected information can be isolated from all otherwise relevant, non-privileged information and will do so no later than 7 business days after the device is imaged by the examiner.

e. Using the parties' search terms, the examiner shall prepare two logs of the device, the first listing every relevant document on the hard drive with the document's file name, file extension, deletion status, data and time of creation, date of last access, date of last alteration, file size and hard drive location, and the second listing each

relevant e-mail, pooled from the first log, with the e-mail's sender, recipients, date and time of creation, subject line and the names of any attached files. The logs shall be provided to all counsel of record within 30 days of either the imagining of the device or the receipt of the parties' search terms, whichever is later.

f. The expert shall also provide the producing (not requesting) party with a copy of those documents listed in the two logs described in 3(e) from the device for examination as to privilege and work-product and shall provide those documents within 30 days of the imaging of the device.

g. Within 10 days of receiving the documents, counsel for the producing party must designate to the examiner those documents that should be withheld from production due to privilege or work-product protection.

h. Within 15 days of receiving the producing party's privilege designation, the examiner shall provide to the requesting party a copy of all documents containing search hits from the device not designated as privileged or work-product by the producing party.

4. When the native format of electronically stored information is in the form listed in paragraphs 1(b), 1(c), 1(d) or 1(e) of this Order, the following protocol will govern the production of the information:

a. The information device is to be produced for inspection and copying by sending the storage device, via U.S. mail or courier delivery service, directly to a trained, experienced computer forensic examiner, who shall create a duplicate image of the entire device, which shall constitute an accurate representation of the device, including all system information, metadata, hidden text and "deleted" files.

b. The examiner shall not alter, rewrite or otherwise harm or change the data on the device.

c. The parties shall provide to the examiner a list of mutually agreeable search terms by which privileged, protected information can be isolated from all otherwise relevant, non-privileged information and will do so no later than 7 business days after the device is imaged by the examiner.

d. Using the parties' search terms, the examiner shall prepare two logs of the device, the first listing every relevant document on the hard drive with the document's file name, file extension, deletion status, data and time of creation, date of last access, date of last alteration, file size and hard drive location, and the second listing each relevant e-mail, pooled from the first log, with the e-mail's sender, recipients, date and time of creation, subject line and the names of any attached files. The logs shall be provided to all counsel of record within 30 days of either the imagining of the device or the receipt of the parties' search terms, whichever is later.

e. The expert shall also provide the producing (not requesting) party with a copy of all documents listed in the two logs described in 4(d) from the device for examination as to privilege and work-product and shall provide those documents within 30 days of the imaging of the device.

f. Within 10 days of receiving the documents, counsel for the producing party must designate to the examiner those documents that should be withheld from production due to privilege or work-product protection.

g. Within 15 days of receiving the producing party's privilege designation, the examiner shall provide to the requesting party a copy of all documents containing

search hits from the device not designated as privileged or work-product by the producing party.

5. Any inadvertent disclosure of privileged or protected electronically stored information by a producing party is to be governed by the following protocol:

a. The party claiming inadvertent disclosure must timely serve upon the requesting/receiving party a written Notice of Inadvertent Disclosure, which Notice shall contain the following information:

i. A description of the disclosed information (e.g. letter, e-mail, memorandum, etc.);

ii. The grounds upon which the party claims the information is protected from disclosure (e.g., attorney-client privilege, attorney work product, etc.); and

iii. Relevant, specific information identifying the document or material disclosed (e.g., Bates number, document date, date of production, etc.).

b. A party receiving a Notice of Inadvertent Disclosure shall locate, assemble and sequester the disclosed information within 3 business days of receipt of the Notice.

c. Within 10 business days of receipt of a Notice of Inadvertent Disclosure, the requesting party must either return the inadvertently disclosed information to the producing party, including all copies thereof, or must serve upon the producing party a written challenge to the assertion of privilege.

d. If the parties are unable to resolve their inadvertent disclosure dispute, the party seeking to assert the privilege shall arrange for the disclosure dispute to be heard as a discovery dispute by the Magistrate Judge assigned to the matter.

e. If a challenge to the assertion of privilege is made, the disclosed information will remain sequestered until a determination has been made by the Court concerning the privilege and disclosure dispute. During the period of sequestration, no copies shall be made of the information, no person or persons shall be provided with access to the information other than counsel for the parties and there shall be no dissemination or publication of the information.

Dated:_____

By:_____
Timothy S. Hillman
United States Magistrate Judge

Respectfully submitted,
Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Lee Shelton,
By their attorneys,

Dated: August 23, 2007

/s/ J. Lizette Richards

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Certificate of Service

I, J. Lizette Richards, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on August 23, 2007.

Dated: August 23, 2007

/s/ J. Lizette Richards