

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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Three Angels Broadcasting Network, an	)	
Illinois non-profit corporation,	)	
and	)	
Danny Lee Shelton, individually,	)	
	)	
Plaintiffs	)	
	)	C.A. No. 07-40098-RCL
vs.	)	
	)	
Gailon Arthur Joy	)	
and	)	
Robert Pickle	)	
	)	
Defendants	)	

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**ORDER FOR THE TRANSFER OF ELECTRONIC DISCOVERY**

An evidentiary hearing was held before Judge Hillman August 9, 2007 and Defendant Joy submits the following Memorandum and Proposed Order regarding the proper exchange of electronically stored Information.

Pursuant to 26(a) Defendants have already completed self discovery by providing a complete transfer of all hard copy documents, electronic documents and e-mails to the plaintiffs. Plaintiffs have not provided any electronic autodiscovery to defendants pursuant to 26(a).

Pursuant to the arguments given and the evidence taken and pursuant to the Sedona Principles adopted Dec 1, 2007, The Court orders the following regarding the production of electronic data and documents to all parties:

**Order**

1. Definitions

- a. Electronically Stored Information includes, but is not limited to, those documents which are kept in a computer, magnetic media such as disc or tape, solid state memory device, optical storage medium, or any other form which is typically not readable by an unaided human eye but must be made accessible or printed through the use of an electronically powered device.
- b. This information includes, but is not limited to, e-mails, web pages, word processing files, databases and electronic messaging.
- c. Data Files are those documents which are stored in electronic form and which are retrievable individually to satisfy a discovery request.
- d. A Data File is readable when it is placed on a medium which a computer device can access, interpret, and transform into a displayed or printed document.
- e. An Archival Copy is that made at a certain date, following the filing of this litigation by the plaintiffs or the receipt of the service of the Complaint by the defendants, containing all relevant data materials or the entire electronic record of the party, as the case may be.

2. Responding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information.

The responding parties shall produce all electronic data via CD or DVD in readable Microsoft, Adobe PDF or Linux format to the requesting party.

3. The producing party should determine the best and most reasonable way to locate and produce relevant information in discovery;
4. The requesting party has the burden on a motion to compel to show that the responding party's steps to preserve and produce relevant electronically stored information were inadequate.
5. Absent a showing of special need and relevance, a responding party should not be required to preserve, review, or produce deleted, shadowed, fragmented, or residual electronically stored information.
6. A responding party may satisfy its good faith obligation to preserve and produce relevant electronically stored information by using electronic tools and processes, such as data sampling, searching, or the use of selection criteria, to identify data reasonably likely to contain relevant information.
7. Absent party agreement or court order subsequent to a Motion from the Requesting Party specifying the form or forms of production, production should be made in the form or forms in which the information is ordinarily maintained or in a reasonably usable form, taking into account the need to produce reasonably accessible metadata that will enable the receiving party to have the same ability to access, search, and display the information as the producing party where appropriate or necessary in light of the nature of the information and the needs of the case either by CD or Jumper Drive.
8. Parties may make discovery requests which include information ordinarily stored in an electronic form. Electronic copies made in a customary manner which copy the data files onto generally readable media are deemed the normal response to a discovery request.

9. If a party claims that the response to a discovery request is not responsive and that the means to acquire an accurate response to the discovery request is by making direct copies of the electronic devices on which the Data Files are stored, the party may supplement the discovery request by specifying:
  - a. The data which are required to satisfy the discovery request
  - b. The electronic access which is contemplated.
10. The responding party will then specify the locations of the electronic information- which the Data Files are situated on, if this location is an Archival Copy, and if there are privileged materials associated with the electronic devices at this location.
  - a. If there are privileged data associated with or stored on electronic devices which a party is requesting, the responding party may, within 30 days, submit an Edited Copy of the respective electronic data, with the privileged information removed, to the Court for *in camera* review.
  - b. This Edited Copy will be in the format specified for electronic access, whether it is in the 'dd' format specified by the plaintiffs' expert during the hearing or other format.
  - c. A summary of the information that has been removed will be prepared for the use of the Court and *in camera* review.
  - d. The information that has been removed will be provided to the Court in a form which a skilled technician would be able to use to recreate an Archival Copy should the Court not uphold the claims of privilege.

- e. After the Court decides what claims of privilege are to be upheld, and if any are not upheld, the responding party will prepare an Edited Copy containing the information requested and any other information as to which privilege is ruled not to apply.
11. A party claiming privilege or a party desiring to resolve any other dispute may make application to the Court to resolve the issue.
12. A party making a discovery request that requires access to the operating computers, when agreed by the parties or ordered by the Court, may designate an examiner to make copies of the electronic data storage devices which are in the custody, control or possession of the responding party
- a. This examiner may not be an expert used by the requesting party for interpretation of electronic data or employed by the party, whether through counsel or otherwise. Should a dispute arise as to the qualifications and neutrality of the examiner the parties may appoint experts who will agree on a neutral examiner, and discovery may be had on the issue.
  - b. The parties may agree on a time and place for the copying of the electronic data, but in no case will the electronic device(s) or media be removed from the location specified for the copying, unless the parties agree on the extra costs involved for the responding party and appropriate payment is made.
  - c. A Search Copy will be made by a computer forensic examiner whose qualifications are acceptable to the parties or the Court. This examiner may create a duplicate image of the entire device, which shall constitute an

accurate representation of the device as accessible to the system for Data File retrieval.

- d. The examiner shall not alter, rewrite or otherwise harm or change the data on the device.
- e. The parties shall provide to the examiner a list of mutually agreeable search terms by which relevant, responsive information may be obtained from the electronic data thus obtained, as well as a list of search terms by which privileged, protected information can be isolated from any information made available to the requesting party. These terms are to be agreed by the parties or their counsel before the examiner is allowed any access to the electronic device or medium to make his Search Copy from.
- f. For each such Search Copy created, the Examiner will provide the producing (not requesting) party a copy of the information obtained, including the directory listings with information about every file on the device, such as its file name, parent directory name, dates of creation, access and modification, and other information as available, as well as any information obtained by the application of the Search Terms to the Search Copy.
- g. Should the party responding to the discovery request find that the information provided them in part f. above contains confidential information, that party will propose modifications to the search terms which, upon agreement of the requesting party, will be reapplied by the Examiner who will consequently provide a revised copy of the information obtained to the producing party, as in part f. above, who will then review the same as de-

scribed in this part g., and so on. The producing party may alternatively propose deletions to the information obtained in part f. and a privilege log to the requesting party, for agreement or to be submitted as redactions for *in camera* review by the Court, and following this agreement or review the result will be made available to the requesting party.

- h. The general directory listing of all Data Files on the computer device will not be made available to the requesting party without prior review by the party producing the information. A listing of "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" similarly will not be made available without prior review. However, this is not intended to prevent a party from requesting and obtaining such a listing of electronic messages whose existence is already known, together with the contents of the messages, by making a relevant requested, no matter how detailed.
- i. The examiner 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 making the respective Search Copy.
- j. Counsel for the producing party, or the party if unrepresented may designate to the examiner those documents that should be withheld from production due to privilege or work-product protection or for other reasons including confidentiality. This designation will be made within 10 days of receiving the documents, but should the number of documents or pages to

be produced exceed 10,000, at the end of every ten days following receipt the party may alternatively designate 10,000 documents or pages which have been reviewed and whether or not reasons exist for them to be withheld from the requesting party.

- k. 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.

13. 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 5 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.

So ordered.

Dated: \_\_\_\_\_

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Timothy S. Hillman,

United States Magistrate Judge

Respectfully submitted,

/s/ Gailon Arthur Joy

Gailon Arthur Joy, Pro Se