

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Visuals Unlimited, Inc.

v.

Civil No. 11-cv-415-LM

John Wiley & Sons, Inc.

O R D E R

On January 10, 2012, a preliminary pretrial conference was held in this case. Attorneys Jennifer Beaudet and Maurice Harmon appeared for plaintiff Visuals Unlimited, Inc. ("VUI"); Attorneys Jamie Hage and Christopher Beall appeared for defendant John Wiley & Sons, Inc. ("Wiley"). The court approves the agreed-upon terms of the Proposed Discovery Plan (document no. 18) and resolves the disputes therein as follows:

**Interrogatories:** A maximum of 57 interrogatories by each party to any other party. This total is inclusive of any subparts; that is, a subpart is considered a separate question.

**Requests for Admission:** A maximum of 50 requests by each party to any other party. Should an amended complaint be filed, the court will entertain a reasonable request to extend this number.

**Electronic Discovery (Scope of Search):** The court heard arguments from counsel on their respective positions. The court finds VUI's proposal to be reasonable. Thus, Exhibit A to the Discovery Plan (doc. no. 18-1) is adopted by the court. Wiley proposed to limit the time frame of the post-

publication ESI search, or what the parties have labeled as "Email Search 2." After discussion the parties agreed, and the court orders, that Email Search 2 shall be limited to the following time frame: January 1, 2011, through December 1, 2011.

**Electronic Discovery (Format of Production):** The court heard arguments of counsel on their respective positions. The court finds Wiley's proposal reasonable. Accordingly, the parties shall produce ESI email communications in both pdf and native (.pst) formats, as described on page 8 of the Discovery Plan. That is, the producing party shall provide each email communication as a pdf with a bates-number located at the lower right-hand corner. The producing party is not required to add metadata to the native file, e.g., the bates number (or any other designation) that identifies the email communication.

**Protective Order:** The parties disagree with respect to a procedural provision in their proposed protective order. The parties' respective proposals are located at Doc. Nos. 18-3 and 18-4. A red-lined version detailing their disagreements is located at Doc. No. 18-5.

The question in dispute is as follows: In the event there is a dispute under the protective order regarding the designation of a document(s) as "confidential," who shall bear the burden of bringing the dispute before the court: the party designating the document(s) as confidential or the party who objects to the designation? The parties shall file memoranda addressing this question on or before January 25, 2012. The memoranda shall not exceed ten (10) pages in length.

**Informal (Resolution of Discovery Disputes):** With respect to any discovery dispute in the future that the parties are unable to resolve themselves, each party shall file with the court a letter explaining its position with respect to the dispute, and, after the submissions are received, the court shall schedule a telephone conference with the parties and resolve the dispute with an informal order, thereby obviating the need for formal litigation. If counsel prefer traditional discovery litigation to the conference-

call procedure set forth above, counsel should put the discovery dispute before the court in the form of a formal pleading rather than a letter.

The key deadlines in the discovery plan are summarized in the chart below.

<b>Scheduling Designation</b>	<b>Deadline</b>
<b>Experts and Experts' Written Reports</b>	June 15, 2012
• <b>Experts' Rebuttal Reports</b>	July 15, 2012
• <b>Supplementation under Rule 26(a)</b>	September 14, 2012
<b>Challenges to Expert Testimony</b>	August 17, 2012
<b>Joinder of Additional Parties</b>	March 30, 2012
<b>Third-Party Actions</b>	March 30, 2012
<b>Amendment of Pleadings</b>	March 30, 2012
<b>Dispositive Motions</b>	Dismiss: April 19, 2012 Summary Judgment: June 15, 2012
<b>Completion of Discovery</b>	August 17, 2012
<b>Trial Date</b>	Two-week period beginning October 16, 2012

SO ORDERED.



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Landya B. McCafferty  
United States Magistrate Judge

Date: January 10, 2012

cc: Christopher P. Beall, Esq.  
Jennifer Turco Beaudet, Esq.  
Kathleen A. Davidson, Esq.  
Jamie N. Hage, Esq.  
Maurice Harmon, Esq.  
Robert Penchina, Esq.