

1 THE HONORABLE RICARDO S. MARTINEZ

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 **IN RE AMAZON SUBSCRIPTION  
10 SERVICES LITIGATION**

CASE NO. 2:22-CV-00910-RSM

11 **JOINT PROPOSED ORDER  
12 REGARDING DISCOVERY OF  
13 ELECTRONICALLY STORED  
14 INFORMATION**

15 The parties hereby stipulate to the following provisions regarding the discovery of  
16 electronically stored information (“ESI”) in this matter:

17 **A. General Principles**

18 1. An attorney’s zealous representation of a client is not compromised by conducting  
19 discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate  
20 in facilitating and reasonably limiting discovery requests and responses raises litigation costs and  
21 contributes to the risk of sanctions.

22 2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P.  
23 26(b)(1) must be applied in each case when formulating a discovery plan. To further the  
24 application of the proportionality standard in discovery, requests for production of ESI and related

1 responses should be reasonably targeted, clear, and as specific as possible. The agreement does  
2 not supplant the parties' obligations to comply with Fed. R. Civ. P. 34.

3 **B. ESI Disclosures**

4 Within 45 days of entry of this Order, or at a later time if agreed to by the parties, each  
5 party shall disclose:

6 1. Custodians. The custodians most likely to have discoverable ESI in their  
7 possession, custody, or control. The custodians shall be identified by name, title, connection to  
8 the instant litigation, and the type of the information under the custodian's control.

9 2. Non-custodial Data Sources. A list of non-custodial data sources (*e.g.*, shared  
10 drives, servers), if any, likely to contain discoverable ESI.

11 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to  
12 contain discoverable ESI (*e.g.*, third-party email providers, mobile device providers, cloud  
13 storage) and, for each such source, the extent to which a party is (or is not) able to preserve  
14 information stored in the third-party data source.

15 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI  
16 (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the  
17 data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).

18 5. Foreign data privacy laws. Nothing in this Order is intended to prevent either party  
19 from complying with the requirements of a foreign country's data privacy laws, *e.g.*, the European  
20 Union's General Data Protection Regulation (GDPR) (EU) 2016/679. The parties agree to meet  
21 and confer before including custodians or data sources subject to such laws in response to any  
22 ESI or other discovery request.

23 **C. ESI Discovery Procedures**

1           1.     On-site inspection of electronic media. Such an inspection shall not be required  
2 absent a demonstration by the requesting party of specific need and good cause or by agreement  
3 of the parties.

4           2.     Search methodology. The parties shall timely confer to attempt to reach agreement  
5 on appropriate search terms and queries, file type and date restrictions, data sources (including  
6 custodians), and other appropriate computer- or technology-aided methodologies, before any such  
7 effort is undertaken. The parties shall continue to cooperate in revising the appropriateness of the  
8 search methodology.

9           a.     Prior to running searches:

10           i.     The producing party shall disclose the data sources (including  
11 custodians), search terms and queries, any file type and date restrictions, and any other  
12 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable  
13 information. The producing party may provide unique hit counts for each search query, including  
14 hit counts by custodian, providing that it can be done with minimal burden.

15           ii.    After disclosure, the parties will engage in a meet and confer  
16 process regarding additional terms sought by the non-producing party.

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18           iii.   The following provisions apply to search terms / queries of the  
19 requesting party. Focused terms and queries should be employed; broad terms or queries, such  
20 as product and company names, generally should be avoided. A conjunctive combination of  
21 multiple words or phrases (*e.g.*, “computer” and “system”) narrows the search and shall count as  
22 a single search term. A disjunctive combination of multiple words or phrases (*e.g.*, “computer”  
23 or “system”) broadens the search, and thus each word or phrase shall count as a separate search  
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1 term unless they are variants of the same word. The producing party may identify each search  
2 term or query returning overbroad results demonstrating the overbroad results and a counter  
3 proposal correcting the overbroad search or query.

4           b.       Upon reasonable request, a party shall disclose information relating to  
5 network design, the types of databases, database dictionaries, the access control list and security  
6 access logs and rights of individuals to access the system and specific files and applications, the  
7 ESI document retention policy, organizational chart for information systems personnel, or the  
8 backup and systems recovery routines, including, but not limited to, tape rotation and  
9 destruction/overwrite policy.

10           3.       Format.

11           a.       ESI will be produced to the requesting party with searchable text, in a  
12 format to be decided between the parties. Acceptable formats include, but are not limited to, native  
13 files, multi-page TIFFs (with a companion OCR or extracted text file), single page TIFFs (only  
14 with load files for e-discovery software that includes metadata fields identifying natural document  
15 breaks and also includes companion OCR and/or extracted text files), and searchable PDF.

16           b.       Unless otherwise agreed to by the parties, files that are not easily converted  
17 to image format, such as spreadsheet, database, audio, video, and drawing files, will be produced  
18 in native format.

19           c.       Each document image file shall be named with a unique number (Bates  
20 Number). Documents produced in native format will be assigned a Bates Number and be  
21 produced with a corresponding load file. File names should not be more than twenty characters  
22 long or contain spaces. When a text-searchable image file is produced, the producing party must

1 preserve the integrity of the underlying ESI, *i.e.*, the original formatting, the metadata (as noted  
2 below) and, where applicable, the revision history.

3 d. If a document is more than one page, the unitization of the document and  
4 any attachments and/or affixed notes shall be maintained as they existed in the original document.

5 e. The full text of each electronic document shall be extracted (“Extracted  
6 Text”) and produced in a text file. The Extracted Text shall be provided in searchable ASCII text  
7 format (or Unicode text format if the text is in a foreign language) and shall be named with a  
8 unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding  
9 production version of the document followed by its file extension). For any redacted documents  
10 that are produced as images, the Producing Party will also provide OCR text files for the non-  
11 redacted portions of those documents.

12 4. De-duplication. The parties may de-duplicate their ESI production across custodial  
13 and non-custodial data sources after disclosure to the requesting party, and the duplicate custodian  
14 information removed during the de-duplication process shall be tracked in a duplicate/other  
15 custodian field in the database load file. If processing and production is done on a rolling basis,  
16 an updated Duplicate Custodians field with additional values shall be provided in an overlay. The  
17 producing party shall identify whether the overlay replaces previously produced fields for a file  
18 or supplements them.

19 5. Email Threading. The parties may use analytics technology to identify email  
20 threads and need only produce the unique most inclusive copy and related family members and  
21 may exclude lesser inclusive copies. However, in all events the producing party shall produce all  
22 copies of emails or email threads with attachments, whether they are the unique most inclusive  
23 copy and related family members, or whether they are lesser inclusive copies. Upon reasonable  
24 request, the producing party will produce a less inclusive copy or, upon reasonable request,

1 missing metadata, if, for example, a threaded email cuts off to/from/cc/subject line/date  
2 information, or, upon reasonable request, both.

3           6.       Metadata fields. If the requesting party seeks metadata, the parties agree that  
4 only the following metadata fields need be produced, and only to the extent it is reasonably  
5 accessible and non-privileged: document type; custodian and duplicate custodians (or storage  
6 location if no custodian); author/from; recipient/to; cc and bcc; title/subject; email subject; file  
7 name; file size; file extension; original file path; date and time created, sent, modified and/or  
8 received; and hash value. The list of metadata type is intended to be flexible and may be  
9 changed by agreement of the parties, particularly n light of advances and changes in technology,  
10 vendor, and business practices.

11           7.       Hard-Copy Documents. If the parties elect to produce hard-copy documents in an  
12 electronic format, the production of hard-copy documents will include a cross-reference file that  
13 indicates document breaks and sets forth the custodian or custodian/location associated with  
14 each produced document. Hard-copy documents will be scanned using Optical Character  
15 Recognition technology and searchable ASCII text files will be produced (or Unicode text  
16 format if the text is in a foreign language), unless the producing party can show that the cost  
17 would outweigh the usefulness of scanning (for example, when the condition of the paper is not  
18 conducive to scanning and will not result in accurate or reasonably useable/searchable ESI).  
19 Each file will be named with unique Bates Number (*e.g.* the unique Bates Number of the first  
20 page of the corresponding production version of the document followed by its file extension).

#### 21 **D.       Preservation of ESI**

22           The parties acknowledge that they have a common law obligation, as expressed in Fed. R.  
23 Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information in  
24 the party's possession, custody, or control. With respect to preservation of ESI, the parties agree  
25 as follows:

1           1.       Absent a showing of good cause by the requesting party, the parties shall not be  
2 required to modify the procedures used by them in the ordinary course of business to back-up and  
3 archive data; provided, however, that the parties shall preserve all discoverable ESI in their  
4 possession, custody, or control.

5           2.       The parties will supplement their disclosures in accordance with Fed. R. Civ. P.  
6 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure  
7 where that data is created after a disclosure or response is made (unless excluded under Sections  
8 (D)(3) or (E)(1)-(2)).

9           3.       Absent a showing of good cause by the requesting party, the following categories  
10 of ESI need not be preserved:

- 11           a.       Deleted, slack, fragmented, or other data only accessible by forensics.
- 12           b.       Random access memory (RAM), temporary files, or other ephemeral data  
13           that are difficult to preserve without disabling the operating system.
- 14           c.       On-line access data such as temporary internet files, history, cache,  
15           cookies, and the like.
- 16           d.       Data in metadata fields that are frequently updated automatically, such as  
17           last-opened dates (see also Section (E)(5)).
- 18           e.       Back-up data that are duplicative of data that are more accessible  
19           elsewhere.
- 20           f.       Server, system or network logs.
- 21           g.       Data remaining from systems no longer in use that is unintelligible on the  
22           systems in use.
- 23           h.       Electronic data (*e.g.*, email, calendars, contact data, and notes) sent to or  
24           from mobile devices (*e.g.*, iPhone, iPad, Android devices), provided that  
25           a copy of all such electronic data is automatically saved in real time  
26           elsewhere (such as on a server, laptop, desktop computer, or “cloud”  
storage).
- i.       Defendants’ and Plaintiffs’ text messages, mobile devices, personal home  
computers, and personal email accounts. Defendants and Plaintiffs will

1 not be required to search custodians' or Plaintiffs' personal messages  
2 (*i.e.*, text messages) and personal email if Defendants confirm that those  
3 systems are not used for Defendants' work purposes in relation to the  
4 subject matter of the Complaint and Defendants' defenses and if  
5 Plaintiffs confirm that those systems are not used in relation to the subject  
6 matter of the Complaint and Plaintiffs' claims.

7 **E. Privilege**

8 1. A producing party shall create a privilege log of all documents or categories  
9 thereof fully withheld from production on the basis of a privilege or protection, unless otherwise  
10 agreed or excepted by this Agreement and Order. Privilege logs shall include a unique  
11 identification number for each document and the basis for the claim (attorney-client privileged or  
12 work-product protection). Attorneys shall be identified as such, including whether the attorney is  
13 outside counsel or in-house counsel. For ESI, the privilege log may be generated using available  
14 metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title; and date  
15 created. Should the available metadata and identification of attorneys provide insufficient  
16 information for the purpose of evaluating the privilege claim asserted, the producing party shall  
17 include such additional information as required by the Federal Rules of Civil Procedure. Privilege  
18 logs will be produced to all other parties no later than 30 days after delivering a production unless  
19 an earlier deadline is agreed to by the parties. Further, all privilege logs shall be delivered to all  
20 parties no later than 30 days before the deadline for filing motions related to discovery.

21 2. Redactions need not be logged so long as the basis for the redaction is clear on the  
22 face of the redacted document.

23 3. With respect to privileged or work-product information generated after the filing  
24 of their original complaints, parties are not required to include any such information in privilege  
25 logs.



1           4.       Activities undertaken in compliance with the duty to preserve information are  
2 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

3           5.       Pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically  
4 stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding  
5 shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute  
6 a waiver by the producing party of any privilege applicable to those documents, including the  
7 attorney-client privilege, attorney work-product protection, or any other privilege or protection  
8 recognized by law. This Order shall be interpreted to provide the maximum protection allowed  
9 by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained  
10 herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI  
11 or information (including metadata) for relevance, responsiveness and/or segregation of  
12 privileged and/or protected information before production. Information produced in discovery  
13 that is protected as privileged or work product shall be immediately returned to the producing  
14 party.

15 **F.       Non-Party Discovery**

16           1.       A party that issues a non-party subpoena (the "issuing party") shall include a  
17 copy of this Agreement Regarding Discovery of Electronically Stored Information with the  
18 subpoena.

19           2.       The issuing party shall be responsible for producing any documents obtained under  
20 a subpoena to all other parties.

21           3.       If the non-party production is not Bates-stamped, the issuing party shall endorse  
22 the non-party production with unique prefixes and Bates numbers prior to producing them to all  
23 other parties.

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**ORDER**

IT IS SO ORDERED.

DATED: November 22, 2024



**RICARDO S. MARTINEZ**  
**UNITED STATES DISTRICT JUDGE**