

The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEVEN FLOYD, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC., a Delaware corporation,  
and APPLE INC., a California corporation,

Defendants.

No. 2:22-cv-01599-KKE

**PROTOCOL REGARDING  
DISCOVERY OF ELECTRONICALLY  
STORED INFORMATION AND  
ORDER**

**A. General Principles**

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

2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible. When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties agree to meet and confer regarding the phasing and prioritization of productions.

3. This Order may be modified by a Stipulated Order of the parties or by the Court



1 for good cause shown. Any such modified Order will be titled sequentially as follows, “First  
2 Modified Order re: Discovery of Electronically Stored Information for Standard Litigation,” and  
3 each modified Order will supersede the previous Order.

4 4. Nothing in this Order precludes the parties from reaching further agreements on  
5 topics related to this Order, or if agreement cannot be reached, moving the Court for an  
6 appropriate discovery order.

7 **B. ESI Disclosures**

8 Within 60 days of any party’s first substantive responses to discovery requests, or at a  
9 later time if agreed to by the parties, each party shall disclose:

10 1. Custodians. The custodians most likely to have discoverable ESI in their  
11 possession, custody, or control. The custodians shall be identified by name, title, connection to  
12 the instant litigation, and the type of the information under the custodian’s control. The parties  
13 shall meet and confer to reach agreement on a reasonable list of custodians for purposes of  
14 collection, review and production of electronically stored information.

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

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

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

24 5. Foreign data privacy laws. Nothing in this Order is intended to prevent either party  
25 from complying with the requirements of a foreign country’s data privacy laws, *e.g.*, the European  
26 Union’s General Data Protection Regulation (GDPR) (EU) 2016/679. The parties agree to meet  
27

1 and confer before including custodians or data sources subject to such laws in any ESI or other  
2 discovery request.

3 **C. ESI Discovery Procedures**

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

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

12 a. Prior to running searches:

13 i. The producing party shall disclose the data sources (including  
14 custodians), search terms and queries, any file type and date restrictions, and any other  
15 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable  
16 information. The requesting party may request, and the producing party may provide, unique hit  
17 counts for each search query. To the extent any disputes arise regarding the provision of hit  
18 counts, the parties shall meet and confer in a good-faith effort to resolve the issue.

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

21 iii. The following provisions apply to search terms/queries of the  
22 requesting party. Focused terms and queries should be employed; broad terms or queries, such as  
23 product and company names, generally should be avoided. A conjunctive combination of multiple  
24 words or phrases (*e.g.*, “computer” and “system”) narrows the search and shall count as a single  
25 search term. A disjunctive combination of multiple words or phrases (*e.g.*, “computer” or  
26 “system”) broadens the search, and thus each word or phrase shall count as a separate search term  
27 unless they are variants of the same word. The producing party may identify each search term or

1 query returning overbroad results demonstrating the overbroad results and a counterproposal  
2 correcting the overbroad search or query. The parties will meet and confer to address concerns  
3 relating to overbroad search term results.

4 3. Format.<sup>1</sup>

5 a. ESI will be produced to the requesting party with searchable text to the  
6 extent it exists, in a format to be decided between the parties. The producing party shall include  
7 the files specified in Exhibit A with each production, to the extent they are reasonably accessible  
8 and non-privileged.

9 b. Unless otherwise agreed to by the parties, files that are not easily converted  
10 to image format, including but not limited to spreadsheet, database, audio, video, and drawing  
11 files, will be produced in native format.

12 c. Each document image file shall be named with a unique number (Bates  
13 Number). Documents produced in native format will be assigned a Bates Number and be  
14 produced with a corresponding load file. File names should not be more than twenty characters  
15 long or contain spaces.

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

18 e. The full text of each electronic document shall be extracted (“Extracted  
19 Text”) and produced in a text file. The Extracted Text shall be provided in searchable ASCII  
20 text format (or Unicode text format if the text is in a foreign language) and shall be named with  
21 a unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding  
22 production version of the document followed by its file extension).

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23  
24 <sup>1</sup> Documents that are not produced in the first instance in this litigation, i.e., documents that were  
25 previously produced in other matters, shall be produced pursuant to the ESI protocols governing  
26 the format of document productions in those other matters, provided that those re-productions are  
27 in a reasonably useful format and provided that the producing party informs all other parties,  
prior to or at the time of production, that the production will be in a nonconforming format. The  
parties reserve the right to object to a nonconforming format.

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

7           5.     Email Threading. The parties may use analytics technology to identify email  
8 threads and need only produce the unique most inclusive copy and related family members and  
9 may exclude lesser inclusive copies. Upon reasonable request, the producing party will produce  
10 a less inclusive copy or missing metadata, if, for example, a threaded email cuts off  
11 to/from/cc/subject line/date information.

12           6.     Metadata fields. If the requesting party seeks metadata, the parties agree that only  
13 the metadata fields identified in Exhibit B need be produced, and only to the extent they are  
14 reasonably accessible and non-privileged. The list of metadata included in Exhibit B is intended  
15 to be flexible and may be changed by agreement of the parties.

16           7.     Databases. Certain types of databases are dynamic in nature and may contain  
17 information that is neither relevant nor reasonably calculated to lead to the discovery of  
18 admissible evidence. The parties shall meet and confer regarding whether such databases must  
19 be produced and the appropriate format for productions from dynamic databases, including as to  
20 whether the data may be produced in an alternate form, such as a report, data table, or other  
21 static format. The parties agree to identify the specific databases, by name, that contain the  
22 relevant and responsive information that parties produce.

23           8.     Hard-Copy Documents. If the parties elect to produce hard-copy documents in an  
24 electronic format, the production of hard-copy documents will include a cross-reference file that  
25 indicates document breaks and sets forth the custodian or custodian/location associated with each  
26 produced document. Hard-copy documents will be scanned using Optical Character Recognition  
27 technology and searchable ASCII text files will be produced (or Unicode text format if the text is

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