

Sample Method a MA Court Might Use to Encourage Parties to Seek Relevant Digital Evidence “Early and Often” . . . and Appropriately!

PARTIES’ VOLUNTARY AND JOINT NOTIFICATIONS REGARDING DIGITAL EVIDENCE HELD BY ISPs

Though under no obligation to do so, the Parties hereby make the following disclosures at the request of this Honorable Court (_____, J.) about digital evidence that they have obtained from either electronic communication service providers or remote computing service providers (hereinafter jointly referred to simply as “ISPs”), as defined and recognized in both 18 USC § 2702 et seq. and M.G.L. Chapter 272, § 17B.

1. Pursuant to 18 USC § 2703 and M.G.L. Chapter 272, the Commonwealth has obtained via administrative subpoena the following digital evidence (e.g., cell phone data stored by cell phone provider; social networking data stored by Facebook; files stored by Dropbox; etcetera):

Type of Digital Evidence Sought by Admin. Subpoena	Identifier (e.g., screen name; URL; email address; etc.)	Storage Location	Defendant’s Comments
Basic Subscriber Information			
Basic Subscriber Information			
Basic Subscriber Information			

2. Pursuant to 18 USC § 2703 and M.G.L. Chapter 276, §§ 1 and 1B, the Commonwealth has obtained via search warrants the following digital evidence (e.g., cell phone data stored by cell phone provider; social networking data stored by Facebook; files stored by Dropbox; etcetera):

Type of Digital Evidence Sought by Search Warrant	Identifier (e.g., screen name; URL; email address; etc.)	Storage Location	Defendant’s Comments
All Content			
All Content			
All Content			

3. Pursuant to 18 USC § 2702, the Defense has obtained via letter request the following digital evidence (e.g., cell phone data stored by cell phone provider; social networking data stored by Facebook; files stored by Dropbox; etcetera):

Type of Digital	Identifier (e.g.,	Storage	Commonwealth’s
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Evidence Sought by Letter Request	screen name; URL; email address; etc.)	Location	Comments
Basic Subscriber Information			
Basic Subscriber Information			
Basic Subscriber Information			

4. Pursuant to 18 USC § 2702(b)(3), the Defense has obtained via the relevant subscriber’s consent the following digital evidence:

Type of Digital Evidence Sought	Identifier (e.g., screen name; URL; email address; etc.)	Storage Location	Commonwealth’s Comments
Basic Subscriber Information OR All Content (Defense to select the applicable one)			
Basic Subscriber Information OR All Content (Defense to select the applicable one)			
Basic Subscriber Information OR All Content (Defense to select the applicable one)			

5. The Defense intends to proffer evidence by _____, 20__ that the Defense will argue is material and relevant to the ongoing investigation of the alleged crime(s), and, thus, will ask the Commonwealth to issue an administrative subpoena, pursuant to 18 USC § 2703 and M.G.L. Chapter 272, to obtain from _____ [ISP’s name] the basic subscriber information of _____ [identifier] on _____ [dates/times, where applicable or required by ISP].

6. The Defense intends to proffer evidence by _____, 20__ that the Defense will argue is probable cause of the alleged crime(s), and, thus, will ask the Commonwealth to seek, obtain, and execute a search warrant, pursuant to 18 USC § 2703 and M.G.L. Chapter 276, §§ 1 and

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1B, to obtain from _____ [ISP’s name] all content of _____ [identifier].

7. The undersigned parties make these disclosures voluntarily.
8. The undersigned parties voluntarily may update the disclosures on this form, but are not required to do so.

MAY 3, 2013 CAVEAT FROM THE AJA ABOUT THIS FORM:
We do not represent that these rubrics apply
to any other state than Massachusetts.