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ELECTRONIC DISCOVERY WORKING GROUP

BEST PRACTICES FOR ELECTRONIC DISCOVERY  
OF MATERIALS PERTAINING TO WIRETAPS

September 2005  
U.S. Attorney's Office  
Western District of Washington

In order to comply with its obligations under Rule 16 of the Federal Rules of Criminal Procedure, and Rule 16 of the Local Criminal Rules of the Western District of Washington, in those cases in which the investigative agency provides wiretap evidence in electronic form,<sup>1</sup> the United States Attorney's Office will produce discovery following best practices described below:

1. We will provide copies of the documents, known as log sheets, line sheets or monitor summaries, in the same electronic format provided to the United States Attorney's Office. Among other things, these documents typically provide the date and time of the call, the telephone number of the tapped telephone as well as the other number involved in the call (if known), the names of the individual or individuals associated with those telephone numbers (if known), and a short summary of the conversation. To the extent possible, these electronic files will be produced in a format (such as .txt, .wpd .doc) that will allow for basic searches using software commonly available on most computers. For example, DEA and ICE commonly provide one electronic file for each intercepted telephone. That file contains summaries of each call, and each call is numbered. The entire file is searchable by key words, such as name, call number, phone number, etc.
2. Unless provided to us by the investigative agency in another format, we will produce the recordings of telephone calls in digital ".wav" files. These recordings can be played on a computer with a DVD or CD drive or comparable device. To the extent that the recordings are provided to us by the investigative agency in other than digital ".wav" files or standard audio tape recordings, the government will provide an explanation of the software used to produce the files.
3. For foreign language conversations, as an aid to counsel, the government will provide working copies of transcripts in translation once such transcripts are available, regardless of quality, if there is agreement from defense counsel that the quality of this initial

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<sup>1</sup> It should be understood that the hardware and software used to record wiretaps and produce the documents variously referred to as line sheets, log sheets or monitor summaries are chosen by the investigative agencies. For federal agencies, this choice is generally made by the agency's headquarters. Thus, an individual United States Attorney's Office cannot control the type of software used.

translation is not a basis for cross-examination. Prior to trial, the government will provide a final, quality-checked transcript which will be in .txt, .wpd, or .doc format to allow for key word searches. It is understood, however, that this is not to be construed as a commitment to translate and transcribe every call. The number of calls translated and transcribed in each investigation may vary widely based on the nature of the calls. This office will consider requests by defense counsel that particular calls (although not entire blocks of calls) be included in the calls to be transcribed.

4. With respect to all other forms of documentary evidence that are required to be produced under the rules of discovery, including affidavits for wiretaps, search warrants, documents obtained during the execution of search warrants, documents obtained pursuant to subpoenas from third parties, and reports of investigation, in accordance with Local Rule 16 and no later than the discovery conference, the U.S. Attorney's Office will discuss with all defense counsel whether electronic discovery of these documentary materials is appropriate in the case and, if so, what arrangements should be made. To the extent that a decision is made to produce discovery in electronic form, the production will be in accordance with the best practices for electronic discovery adopted by this Office.