



Protective Order

By  **Carlos Pedraza**

Main article: [Discovery](#)

See also: [Motion to Compel Discovery](#)

With a July 12, 2016, joint filing, both sides in the Axanar copyright lawsuit agreed to a **protective order** to govern how sensitive information is handled during the case's [discovery](#) phase.

Evidence formally submitted to the court, either at trial or for consideration by the judge, is generally eligible for public disclosure, unless parties successfully seek a protective order. The Federal Justice Center explains these orders' significance:

Parties now undertake discovery away from the court. Experience has proved confidentiality protective orders to grease the wheels of discovery in many cases. Parties are often more willing to produce requested discovery when they know that such production does not necessarily make the information public.¹⁾

The order in [this case](#), was agreed to by attorneys for the plaintiffs, [CBS](#) and [Paramount Pictures](#), and the defendants, *Axanar* producer [Alec Peters](#) and [Axanar Productions](#). Federal magistrate [Judge Charles F. Eick](#) approved the order the same day.

The order, filed in federal district court, defines the type of evidence each side agrees deserves protection, how it is labeled 'confidential,' and who gets to see it before trial. It also provides for challenges by either side about the confidentiality of the information, to be decided by [the judge](#), before going on to be disclosed publicly at trial or in support of pre-trial motions.

Such orders are intended to "expedite discovery, reduce costs, and protect the parties in the event of

Table of Contents

- [Seeking Protection](#)
 - [Any Information?](#)
 - [Public Domain](#)
 - [Qualified Persons](#)
 - ['Attorneys' Eyes Only'](#)
- [Challenging 'Confidential' Designation](#)
- [Using Confidential Information in Court](#)

inadvertent disclosure.”²⁾

Seeking Protection

In their proposed order, both sides stipulated to the type of information deserving confidential status, including:

- Private and highly sensitive financial information regarding revenues, expenses and profits from the motion picture works involved in the case. The intention here was to prevent competitors from obtaining such information.
- Drafts of scripts and other creative material, including unreleased portions of the films in dispute, in order to prevent competitive harm to the parties.
- Personal financial data of third parties, including writers, producers and directors not a party in the case.
- All confidential and proprietary business or commercial information or trade secrets.³⁾

Any Information?

Under the order, attorneys on either side may label any material as ‘confidential,’ (i.e., not for public disclosure) or ‘confidential – attorneys’ eyes only,’ meaning the information cannot even be shared with their clients.

That kind of information may appear in:

- Documents
- Written discovery responses
- Testimony, conversations, or presentations by the parties that might reveal confidential information.
- Deposition transcripts
- All other materials and information produced or furnished in connection with this case⁴⁾

Public Domain

Specifically exempted from the order, however, is any information already made public or that may become public while not violating the order, including becoming part of the public record through trial.

The order does provide that any depositions not designated confidential can be retroactively claimed so within 30 days of the receipt of transcripts, affecting specific pages and lines of the transcript.

Qualified Persons

The order strictly defines which person are qualified to view confidential information, including:

- “Qualified Persons”:
- Named parties to the suit and their respective officers

- Directors, partners, principals and employees assisting that party's counsel. On the plaintiffs' side, that includes companies affiliated with CBS and Paramount.
- Inside or outside counsel for either party, including such staff as paralegals, legal secretaries and law clerks
- Independent consultants or experts hired by either side to testify or prepare for trial or depositions.
- People deposed in the case, before, during and after their depositions
- The Court and its personnel.
- Court reporters or videographers selected by attorneys.
- Anyone who authored previously received confidential information.

'Attorneys' Eyes Only'

Some information may be so sensitive that attorneys may label it 'confidential – attorneys' eyes only,' which restricts the qualified persons to:

- Anyone who authored previously received the confidential information.
- Outside and inside counsel and their relevant staff.
- Independent consultants or experts hired by either side to testify or prepare for trial or depositions, so long as they are not competitors of any party.
- Some witnesses during depositions, providing for prior notice to opposing counsel with the opportunity to object.
- The Court and its personnel.
- Court reporters or videographers selected by attorneys.

Challenging 'Confidential' Designation

While either side can freely designate confidential material, the order provides for challenges of that designation. Attorneys may seek a court order declaring information doesn't deserve to remain confidential. Before seeking such an order, both sides agreed to confer to resolve such differences.

Using Confidential Information in Court

The order specifically deals with information as it is gathered during the [discovery](#) phase of the lawsuit, but actually bringing such information to a public trial requires a separate agreement or order.

Once the court determines certain confidential information is admissible as evidence at trial, it can become public unless another court order finds otherwise. "Generally courts will not permit protective orders to govern the trial-related use of this confidential information."⁵⁾

¹⁾

[Federal Justice Center: Confidential Discovery — A Pocket Guide on Protective Orders](#), (2012), p.1.

²⁾ ⁵⁾

["Confidentiality and Protective Orders,"](#) by Bailey King, et al., Smith Moore Leatherwood, DRIs for the Defense, 8/5/13.

³⁾

Proposed Stipulated Protective Order, "Good Cause Statement", p. 1, lines 15-27, 7/12/16.

⁴⁾

Proposed Stipulated Protective Order, "Good Cause Statement", p. 2, line 10-p. 3, line 28, 7/12/16.

From:

<http://blueserif.com/doku/> - **AxaMonitor**

Permanent link:

http://blueserif.com/doku/doku.php?id=protective_order

Last update: **2009/05/26 00:24**

