

INTERNATIONAL CONFERENCE:

INTERNATIONAL CONFERENCE ON DIGITAL EVIDENCE

The Vintners' Hall, London 26 and 27 June 2008

Conference proceedings

Conference chaired by

Stephen Mason, Barrister

Judges

The Honourable Judge Francis M. Allegra, U.S. Court of Federal Claims (U.S.A.)

The Honourable Judge Dr. Ehab Elsonbaty, Senior Judge, Damanhour Court (Egypt)

The Honourable Judge Jumpol Pinyosinwat, Presiding Judge, Central Intellectual Property and International Trade Court (Thailand)

Honourable Justice J.E. (Ted) Scanlan, Supreme Court of Nova Scotia (Canada)

Senior Master Whitaker, Senior Master of the Supreme Court of England and Wales, Queen's Bench Division, Royal Courts of Justice & the Queens Remembrancer (England and Wales)

Speakers

Aswami Fadillah Mohd Ariffin, Head, Digital Forensics, CyberSecurity (Malaysia)

Jason R. Baron, Esq., Director of Litigation, U.S. National Archives and Records Administration (U.S.A.)

Philippe Bazin, Avocat, Emo Hébert & Associés, Mont-Saint-Aignan (France)

Ugo Bechini, Civil Law Notary, President, Comité Francoitalien du Notariat LP (Italy) and Chairman, International Verification Task Force, Brussels (Belgium)

Johnny Bengtsson, Engineer, National Laboratory of Forensic Science (Sweden)

Zdenek Blazek, Security Manager, IT Products Group Leader and Assistant Vice-President, Commerzbank AG (Czech Republic)

Michael Colao, Global CISO and Director Information Management, Dresdner Kleinwort Wasserstein (U.K.)

Janet Day, IT Director, Berwin Leighton Paisner (U.K.)

Thomas M. Dunlap, Managing Partner, Dunlap, Grubb & Weaver, PLLC (U.S.A.)

Dr Patrick J Galea, Advocate, Patrick J Galea &

Associates (Malta)

Esther George, Senior Policy Adviser, CPS HQ Policy Directorate (U.K.)

Izwan Iskandar Ishak, Senior Executive, Strategic Policy & Legal Research, CyberSecurity Malaysia (Malaysia)

Chen Jihong, Partner, Zhonglun W&D Law Firm (China)

Ismo Kallioniemi, Specialist Partner, Head of Corporate Criminal Liabilities Team, Hannes Snellman Attorneys at Law Limited, Helsinki (Finland)

Hironao Kaneko, Associate Professor, Tokyo Institute of Technology, Graduate School of Decision Science and Technology (Japan)

Mr Tejas Karia, Principal Associate, Amarchand & Mangaldas and Suresh A Shroff & Co (Advocates & Solicitors), New Delhi (India)

Charles Leacock, QC, Director of Public Prosecutions (Barbados)

Bogdan Manolea, Executive Director, Association for Technology and Internet (Romania)

Daniel W. Perry, an attorney, former judge, and a US civil-law notary (U.S.A.)

Dr. Henriette Picot, IT Practice Group, Bird & Bird, Munich (Germany)

Gunnar Þór Þórarinnsson, District Court Attorney (Iceland)

Romain Robert, Attorney, Dewolf & Partners, Brussels (Belgium)

Joseph J. Schwerha IV, TraceEvidence LLC and Schwerha & Associates, Associate Professor, Department of Business and Economics, California University of Pennsylvania (U.S.A.)

Andrew Sheldon, Director and Principal Consultant, Evidence Talks Limited (U.K.)

Peter Sommer, Visiting Professor, Information Risk and Security, Department of Management, London School of Economic and Political Science and Visiting Senior Research Fellow, Faculty of Mathematics, Computing and Technology, Open University (U.K.)

Professor John Walker, CTO, Secure-Bastion, Visiting Professor of Science and Technology, School of Computing and Informatics at Nottingham Trent University (U.K.)

Edward Wilding, Director, Data Genetics International Limited (U.K.)

Chairs

Dr Stephen Castell, Chairman, CASTELL Consulting
Michael Colao, Global CISO & Director Information Management, Dresdner Kleinwort Wasserstein, London
Paul Hopkins, Head of Network Vulnerability Intelligence, e-Security Group, University of Warwick
Claire Lipworth, Partner, Peters & Peters, London
Iain G. Mitchell, QC, Murray Stable, Edinburgh
Steven Philipsohn, PCB Litigation LLP, London
John Ross, Chief Architect, Evidence Europe Limited
Peter Susman, QC, Henderson Chambers, London

Conference day one: Thursday 26th June 2008

08:30 Coffee and registration in the Drawing Room, The Vintners' Hall

08:45 – 09:30 Chairman's introduction and opening speech

09:30 – 11:00

Parallel Session A:

Digital evidence – integrity, trustworthiness and reliability

Authenticity of e-mail correspondence in a recent Icelandic case

Gunnar Þór Þórarinnsson, District Attorney, Attorneys at Hofdabakki, Iceland

Digital evidence: Integrity and probative value

Dr Patrick J Galea, Advocate, Patrick J Galea & Associates, Malta

Cross-border electronic Notarial documents

Dr. Ugo Bechini, Civil Law Notary, President, Comité Francoitalien du Notariat LP, Italy

Questions

Parallel Session B:

Digital evidence in three jurisdictions

The French law of digital evidence

Philippe Bazin, Avocat, Emo Hébert & Associés, Mont-Saint-Aignan, France

Digital evidence: an Indian perspective

Mr Tejas Karia, Principal Associate at Amarchand &

Mangaldas and Suresh A Shroff & Co (Advocates & Solicitors), New Delhi, India

Electronic evidence in Japanese civil proceedings

Hironao Kaneko, Associate Professor at Tokyo Institute of Technology, Graduate School of Decision Science and Technology, Japan

Questions

11:00 – 11:30 Morning coffee in the Drawing Room

11:30 – 13:00

Parallel Session A:

The role and nature of the digital evidence specialist

How “expert” can an expert witness be?

Andrew Sheldon, Director and Principal Consultant, Evidence Talks Limited, U.K.

Certification, registration and education of digital forensic experts

Peter Sommer, Visiting Professor, Information Risk and Security, Department of Management, London School of Economic and Political Science, U.K.

Questions

Parallel Session B:

Some practical issues faced by the digital evidence specialist

Diving into magnetic stripe card skimming devices

Johnny Bengtsson, Engineer, National Laboratory of Forensic Science, Sweden

Digital forensics in Malaysia

Aswami Fadillah Mohd Ariffin, Head, Digital Forensic, CyberSecurity Malaysia and Izwan Iskandar Ishak, Senior Executive, Strategic Policy & Legal Research, CyberSecurity, Malaysia

Misinterpretation and misrepresentation: the potential misuse and abuse of digital evidence

Edward Wilding, Chief Technical Officer, Data Genetics International Limited, U.K.

Questions

13:00 – 14:00 Lunch in the Drawing Room

14:00 – 15:15

Searching for evidence and dealing with the clashes that accompany digital evidence

The incompleteness problem in searching for relevant electronic evidence: some fuzzy thoughts on keywords and their limitations

Jason R. Baron, Esq., Director of Litigation, U.S.A.
National Archives and Records Administration, U.S.A.

Digital evidence and employment relationships in Belgium

Romain Robert, Attorney, Dewolf & Partners, Brussels, Belgium

Questions

15:15 - 15:40
Afternoon tea

15:40 – 17:00

Parallel Session A:

The in-house conundrum, when to call in an outside digital evidence specialist or call the police

Models of investigation and processing of digital evidence

Dr. Zdeněk Blažek, Security Manager, IT Products Group Leader and Assistant Vice-President, Commerzbank AG, Czech Republic

Caught in the middle: whether United States companies seek help through the private or public sectors when they find themselves as victims of information technology abuse

Joseph J. Schwerha IV, M.S., J.D., Associate Professor of Business Law; Owner, TraceEvidence, LLC, U.S.A.

Questions

Parallel Session B:

Civil disclosure and reasonableness, sanctions for deliberate destruction and the tests to be applied

Civil disclosure and reasonableness, sanctions for the deliberate destruction and the tests to be applied

Senior Master Whitaker, Senior Master of the Supreme Court of England and Wales, Queen's Bench Division, Royal Courts of Justice & the Queens Remembrancer, U.K.

Avoiding disputes regarding electronic evidence: a U.S. perspective

Judge Francis M. Allegra, United States Court of Federal Claims, Washington, D.C., U.S.A.

Questions

17:00 Summary and close of day one

18:30 – 19:30 Cocktail reception, The Large Pension Room, The Honourable Society of Gray's Inn

19:30 – 21:30 Dinner, The Hall, The Honourable Society of Gray's Inn

Conference day two: Friday 27th June 2008

08:30 Coffee in the Drawing Room

09:00 Chairman's re-opening

09:10 – 11:00

Obtaining evidence in other jurisdictions: practical issues and problems (Legal, HR, Data Protection, cultural, disclosure)

Evidentiary issues in Finland

Ismo Kallioniemi, Specialist Partner, Head of Corporate Criminal Liabilities Team, Hannes Snellman Attorneys at Law Limited, Helsinki, Finland

Multi-national corporations and the treatment of digital evidence in litigation in China

Chen Jihong, Partner, Zhong W & D Law Firm, Beijing, China

The digital economy - where is the evidence?

Theoretical and practical problems in understanding digital evidence in Romania

Bogdan Manolea, Executive Director, Association for Technology and Internet – APTI, Romania

Get it or forget it - digital evidence in the US

Daniel W. Perry, Attorney, Former Judge, and a U.S. Civil-Law Notary, U.S.A.

Questions

11:00 – 11:30 Morning coffee

11:30 – 13:00

Parallel Session A:

Planning and justifying the search and seizure of digital evidence in civil proceedings

Civil search and seizure of digital evidence: the example of the Thai Central IP & IT Court

The Honourable Judge Jumpol Pinyosinwat, Presiding Judge, Central Intellectual Property and International Trade Court, Thailand

Planning and justifying the search and seizure of digital evidence in civil proceedings

Dr. Henriette Picot, IT Practice Group, Bird & Bird, Munich, Germany

Obtaining and preserving digital evidence in United States Federal Courts: before, during and after the litigation

Thomas M. Dunlap, Managing Partner, Dunlap, Grubb & Weaver, PLLC, U.S.A.

Questions

Parallel Session B:

Planning and justifying the search and seizure of digital evidence in criminal and cartel proceedings**Do the differences still exist? A new wave of legal response!**

His Honour Judge Dr. Ehab Elsonbaty, Senior Judge in Damanhour Court, Egypt

Search and seizure of digital evidence: thresholds and minefields

Honourable Justice J.E. (Ted) Scanlan, Supreme Court of Nova Scotia, Canada

The search and seizure of digital evidence for criminal proceedings

Charles Leacock, QC, Director of Public Prosecutions, Barbados

Questions

13:00 – 14:15 Lunch in the Drawing Room

14:15 – 15:45

Panel session chaired by Stephen Mason

How the future is going to shape the way lawyers deal with digital evidence

Esther George, Senior Policy adviser, CPS HQ Policy Directorate

Janet Day, IT Director, Berwin Leighton Paisner

Michael Colao, Global CISO & Director Information Management, Dresdner Kleinwort Wasserstein

Professor John Walker, CTO, Secure-Bastion, Visiting

Professor of Science & Technology, School of Computing and Informatics at Nottingham Trent University, & Former Head of Operational Security, Experian
John Ross, Chief Architect, Evidence Europe Limited
Martin Nickel, Associate Director, Navigant Consulting (UK) Limited

15:45 Closing comments

16:00 Close of conference

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Toward a new jurisprudence of information retrieval:

What constitutes a “reasonable” search for digital evidence when using keywords? – Page 173

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eDiscovery implications, duties and consequences –

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A brief overview of Malta, a roman-civil law country, with common law adoption as rules of civil evidence –

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Chinese digital evidence law overview and suggestions for multinational enterprises – Page 207

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Justice J. E. (Ted) Scanlan, Justice of the Supreme Court of Nova Scotia and Deputy Judge of the Nunavut Court of Justice

Caught in the middle: whether to seek help when the organization is the subject of an information technology attack – Page 245

Joseph J. Schwerha IV, M.S., J.D.