International Conference on
Digital Evidence

26th- 27th June 2008, London – The Vintners' Hall, London
Reception & Dinner – The Honourable Society of Gray's Inn, London

Understanding the Law and the Technology: Best Practice & Principles for Judges, Lawyers, Litigants & Digital Evidence Specialists

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Chaired by:

- **Stephen Mason**, *Barrister, Editor*, **Digital Evidence and Electronic Signature Law Review** & *Associate Senior Research Fellow,* **Institute of Advanced Legal Studies, London (UK)**

Keynote Contributions from:

- **Senior Master Whitaker,** *Senior Master of the* **Supreme Court of England and Wales, Queen's Bench Division, Royal Courts of Justice & the Queens Remembrancer (UK)**
- **The Honourable Judge Francis M. Allegra, U.S. Court of Federal Claims (U.S.)**
- **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)**
- **Charles Leacock, QC, Director of Public Prosecutions (Barbados)**

Esteemed Speakers:

- **Esther George,** *Senior Policy adviser,* **CPS HQ Policy Directorate (UK)**
- **Andrew Sheldon,** *Director and Principal Consultant,* **Evidence Talks Limited (UK)**
- **Bogdan Manolea,** *Executive Director*, **Association for Technology and Internet (Romania)**
- **Chen Jihong,** *Partner,* **Zhonglun W&D Law Firm (China)**
- **Daniel W. Perry,** *an attorney*, former judge, and a US civil-law notary **(U.S.)**
- **Dr Patrick J Galea,** *Advocate,* **Patrick J Galea & Associates (Malta)**
- **Dr. Henriette Picot,** *IT Practice Group,* **Bird & Bird, Munich (Germany)**
- **Edward Wilding,** *Director,* **Data Genetics International Limited (UK)**
- **Gunnar Þór Þórarinsson,** *District Attorney,* **Attorneys at Hofdabakki (Iceland)**
- **Ismo Kallioniemi,** *Specialist Partner, Head of Corporate Criminal Liabilities Team,* **Hannes Snellman Attorneys at Law Limited, Helsinki (Finland)**
- **Izwan Iskandar Ishak,** *Senior Executive, Strategic Policy & Legal Research,* **CyberSecurity Malaysia** and **Aswami Fadillah Mohd Ariffin,** *Head, Digital Forensic,* **CyberSecurity (Malaysia)**
- **Janet Day,** *IT Director*, **Berwin Leighton Paisner (UK)**
- **Jason R. Baron, Esq**., *Director of Litigation,* **U.S. National Archives and Records Administration (U.S.)**
- **Johnny Bengtsson,** *Engineer,* **National Laboratory of Forensic Science, (Sweden)**
- **Joseph J. Schwerha IV, TraceEvidence LLC and Schwerha & Associates,** *Associate Professor,* **Department of Business and Economics, California University of Pennsylvania (U.S.)**
- **Michael Colao,** *Global CISO & Director Information Management,* **Dresdner Kleinwort Wasserstein (UK)**
- **Peter Sommer,** *Visiting Fellow, Information Risk and Security, Department of Information Systems,* **London School of Economic and Political Science (UK)**
- **Peter Warren, Freelance Journalist Specialising in Technology, Undercover Investigations & Science Issues**
- **Philippe Bazin,** *Avocat,* **Emo Hébert & Associés, Mont-Saint-Aigan (France)**
- **Romain Robert,** *Attorney,* **Dewolf & Partners, Brussels (Belgium)**

- **Ugo Bechini,** *Civil Law Notary, President*, **Comité Francoitalien du Notariat LP (Italy)** *& Chairman,* **International Verification Task Force, Brussels (Belgium)**
- **Zdenek Blazek,** *Security Manager, IT Products Group Leader and Assistant Vice-President,* **Commerzbank AG (Czech Republic)**
- **Thomas M. Dunlap,** *Managing Partner,* **Dunlap, Grubb & Weaver, PLLC (U.S)**

Conference Day One - Thursday 26th June 2008

08:30 **Coffee & Registration in the Drawing Room, The Vintners' Hall**

08:45 – 09:00 **Chairman's Introduction**

Stephen Mason, *Barrister & Editor*, **Digital Evidence and Electronic Signature Law Review &** *Associate Senior Research Fellow,* **Institute of Advanced Legal Studies**

Stephen is also a Visiting Research Fellow, Digital Evidence Research at the British Institute of International and Comparative Law, and a member of the IT Panel of the General Council of the Bar of England and Wales. Stephen was responsible for drafting the evidence part of the ISEB syllabus for the Certificate in IT Law Foundation, established in 2005. In 2007 he prepared a training film on electronic signatures for the Judicial Studies Board. Stephen is the general editor of *Electronic Evidence: Disclosure, Discovery & Admissibility* (LexisNexis Butterworths, 2007) and *Electronic Evidence* (British Institute of International and Comparative Law, 2008) and the author of *Electronic Signatures in Law* (Tottel, 2nd edn, 2007) and *E-Mail, Networks and the Internet: A Concise Guide to Compliance with the Law* (xpl publishing, 6th edn, 2006).

09:00 – 09:30 **Opening Speech**

Keynote Speaker to be Announced

Digital Evidence: Integrity, Trustworthiness and Reliability (09:30 – 11:00 Sessions)

09:30 – 09:50 **Authenticity of E-Mail Correspondence in a Recent Icelandic Case**

In an Icelandic criminal case, which is likely to be concluded with the judgment of the Supreme Court at the date of the conference, charges were to a large extent based on e-mail correspondence, the authenticity of which was challenged by the defendants. The presentation will examine the technical details of the case and, hopefully, discuss the final judgment.

- Summary of the technical details of the case
- The police investigation, seizure and investigation of electronic evidence
- Proceedings before the Icelandic courts
- Challenging the authenticity of the electronic evidence
- The final judgment?

Gunnar Þór Þórarinsson, *District Attorney,* **Attorneys at Hofdabakki (Iceland)**

As an associate with Attorneys at Hofdabakki for six years, Gunnar was involved in high profile cases in Iceland as well as working in corporate law. He received his law degree in 2001 from the University of Iceland and is currently pursuing an LLM degree in the London School of Economics and Political Science. He has written articles on electronic evidence and electronic government in Iceland and abroad.

09:50 – 10:10 **The French Law of Digital Evidence**

Under the French law, digital evidence must fulfill two conditions: integrity of the document and identification of the author. A variety of questions can be considered, such as: What are the reference texts? Who drew up these regulations? What difficulties arise for their actual application? What is the Tribunals' response to digital evidence? In practice, three main issues arise in relation to digital evidence:

- The technical means to insure its reliability (the market supply)
- The legal standards to insure its trustworthiness (the legal demands, which are often disproportionate)
- How to preserve in a long term both previous requirements (digital archiving, the core issue in digital evidence)

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

Philippe Bazin, 55 years old, is a French lawyer, member of the Law Bar Association of Rouen and Le Havre, www.emo-hebert.com. He is also a member of the Association pour le Développement de l'informatique Juridique (Association for the development of computer laws), www.adij.fr where he conducts courses on digital archiving and digital evidence practices. He is the author of an e-learning module, devoted to digital evidence, www.lexbase.fr

10:10 – 10:30 Digital Evidence: Integrity and Probabative Value

The purpose behind this presentation is to assess how electronic evidence co-exists with the traditional rules of evidence, including the best evidence rule, and the rules avoiding superfluous materials. More importantly, the weight to be given to assessing digital evidence and the burden of proof within the context of the general rules of civil procedure.

- Brief overview of Malta's common law background in civil evidence
- The realities and practicalities of ensuring that civil digital evidence satisfies the criteria of quality and trustworthiness of evidence
- What weight and importance to attribute to civil digital evidence
- Burden of proof, moral certainties and balance of probabilities with digital evidence
- How civil digital evidence fits within the evolution of the well tried and tested traditional rules of civil evidence

Dr Patrick J Galea, *Advocate,* **Patrick J Galea & Associates (Malta)**

Patrick was admitted to practice in 1982. As is the case in most Continental Europe, the Advocate combines the two functions of pleading and audience before the Courts with advising and counseling. His main areas of activity include commercial litigation and arbitration, corporate work in all aspects, intellectual property and competition, and information technology, construction industry, planning regulation financial services with particular reference to the Banking sector, Leisure, travel, tourism and timeshare industry. The Firm is in constant and close collaboration with legal firms from the European capitals. He is a Head of the Civil Law Department at the University of Malta and lectures in Civil Law and Civil Procedure at the Faculty of Laws and also in the Faculty of Economics, Management and Accountancy at the University of Malta.

10:30 – 10:50 Cross-Border Electronic Notarial Documents

Electronic signature verification is a fine technological showpiece, but how can you really be sure that this document really comes from the person that is shown in the certificate? If the electronic document purports to be a notarial one, how can one be sure (in a court or elsewhere) that it comes from a notary that is lawfully in office in his or her own country? What if a document is signed with an expired certificate, but you can not be sure if the certificate had expired or when the document was executed? We asked ourselves such questions when we created the IVTF platform, and the (tentative) answers we gave is the subject of this presentation.

- Different electronic signature formats and legal frameworks
- Whether we need standards or tools
- E-Legalisation and e-Apostilles
- Are we building a new Tower of Babel?

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

10:50 – 11:00 Any Further Questions

11:00 – 11:30 Morning Coffee Break in the Drawing Room

Please Select Parallel Sessions A or B
(11:30 – 13:00 Sessions)

Parallel Session A: The Role and Nature of the Digital Evidence Specialist

11:30 – 12:10 How "Expert" Can an Expert Witness Be?

Fingerprints are fingerprints. Science has improved investigation techniques but, fundamentally, it is the presence or absence of a specific print in a specific location that is the evidence. Something that is not so easy to do in the digital world. You do not expect a fingerprint expert to comment on ballistics, so how much should we expect from a 'computer forensics expert'?

- The rate of change in the digital domain is accelerating
- Can a single computer forensic expert keep up or be expected to know enough?
- Is it wise to rely on software tools that, inherently, are prone to error?
- How much of the process of forensic examination can be relied upon?
- How do we prepare for the future of digital forensics?

Andrew Sheldon, *Director and Principal Consultant,* **Evidence Talks Limited (UK)**

Andrew holds a Masters degree in Forensic Computing from the Royal Military College of Science at Cranfield University. He is a regular speaker at both domestic and international security, forensics and compliance conferences. He has specific expertise in computer forensics dating from 1993 coupled with an in depth knowledge of eDiscovery and eDisclosure issues, e-crime/cybercrime risk management and mitigation, password recovery and decryption, PC audit, compliance, desktop management, strategy development, desktop policy and procedures development/review, internet and PC abuse, risk assessment and analysis, security strategy analysis and development, and project management in civil and criminal computer abuse cases. His business sector experience covers copyright & IP protection, telecoms, financial, banking, insurance, IT, power generation, manufacturing, pharmaceutical, petrol-chemical, media, publishing, logistics, local government and various enforcement agencies.

12:10 – 12:50 Certification, Registration and Education of Digital Forensic Experts

- Expert roles in different jurisdictions
- Meetings between experts
- Novel scientific evidence issues
- Digital forensic examination, privilege and inextricable linking

Peter Sommer, *Visiting Professor, Information Risk and Security, Department of Management,* **London School of Economic and Political Science (UK)**

Peter Sommer is a Visiting Professor in the Information Systems Integrity Group in the Department of Management at the London School of Economics and also a Visiting Senior Research Fellow, Faculty of Mathematics, Computing and Technology, Open University. He is Joint Lead Assessor for the forensic computing specialism in the scheme run by the UK Council for the Registration of Forensic Practitioners. He has been instructed in many criminal and civil cases involving complex computer evidence since 1985; these have included charges of global attacks on US military sites, large-scale software piracy, paedophile rings, murder, fraud,

Parallel Session B: Some Practical Issues Faced by the Digital Evidence Specialist

11:30 – 12:00 Diving into Magnetic Stripe Card Skimming Devices

Millions of transactions take place at terminals based on magnetic stripe card readers, such as ATMs, POS terminals and petrol pumps. The lack of secure systems have opened up opportunities for skimming devices. This presentation will cast some light on forensic examinations of such cases.

- How magnetic stripe cards and skimmers work
- Examinations and analyses of skimming devices
- Possibilities, intelligence information, technical proof

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

Johnny Bengtsson belongs to the Computer group at the Swedish National Laboratory of Forensic Science. SKL. His role is to develop new methods within the field of computer forensics and to perform analyses of electronic devices with unknown functions.

12:00 – 12:30 Digital Forensics in Malaysia

Previously, evidence adduced in the court of law would be physical evidence, mostly documents tendered to support a case. In certain circumstances, the maker of the document will be called to testify on the authenticity of the documents. With the emergence of computers and the advancement of information technology, not only computer generated evidence is tendered, but the computer itself can be adduced as evidence in the court of law. In such circumstances, a digital evidence specialist is needed to provide expert opinion to the court with regards to the digital evidence adduced.

- The laws at present relating to admissibility of digital evidence in Malaysia
- The role of CyberSecurity Malaysia in facilitating the court with digital evidence

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

12:30 – 13:00 Misinterpretation and Misrepresentation: The Potential Misuse and Abuse of Digital Evidence

The session will examine how data may be misconstrued or wrongfully presented in evidence. Notable in recent cases has been the tendency for experts to assert the theoretical functionality or interaction of software and hardware without actually testing the underlying materials, which has on occasions led to seriously misleading and erroneous

terrorism and Internet-based defamation. **12:50 – 13:00 Any Further Questions**	conclusions being represented as fact. ▪ Misleading the court: deliberately or inadvertently ▪ Flawed analysis: common failures in the analysis of digital evidence ▪ Breaks in the evidential chain ▪ Contamination of evidence ▪ Ground rules for admissible and probative evidence **Edward Wilding,** *Chief Technical Officer,* **Data Genetics International Limited (UK)** Mr. Wilding has investigated several hundred cases of computer fraud, sabotage and misuse in many jurisdictions. He has served as an expert witness for the prosecution and the defence in criminal cases, at employment tribunals, in civil litigation and at official hearings including the Hutton Inquiry into the death of Dr David Kelly CMG. His previous book, 'Computer Evidence: A Forensic Investigations Handbook', published by Sweet & Maxwell in 1996, was one of the first to discuss computer forensic investigations. In 2001 he co-founded Data Genetics International Limited (DGI), a company specialising in all aspects of computer crime investigation, incident response and forensic evidence. His latest book 'Information Risk and Security' was published by Gower in March 2006.

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

Searching for Evidence and Dealing With the Clashes That Accompany Digital Evidence
(14:00 – 15:15 Sessions)

14:00 – 14:30 The Incompleteness Problem in Searching For Relevant Electronic Evidence: Some Fuzzy Thoughts On Keywords and Their Limitations

In U.S. federal courts, an emerging litigation issue has become the extent to which parties can and should use specific forms of "search protocols," involving keywords, Boolean operators, and other forms of concept searching, as part of civil discovery. Drawing on the work of The Sedona Conference®, the speaker will highlight the limitations of existing search methods and will discuss current research on known alternatives.

- A need exists for lawyers to re-examine certain assumptions they make about the efficacy of existing search methods in finding relevant electronic evidence.
- Reliance on simple keywords as the sole means for searching through large electronic data stores has known limitations in producing hugely inefficient and inefficacious searches.
- The US Federal Rules of Civil Procedure are changing the manner in which lawyers are strategically approaching the search problem in litigation, including consideration of more collaborative approaches.
- New research in the area of text retrieval points to alternatives based on fuzzy logic, concept searches, and other forms of statistical techniques, that should be seriously considered for use in litigation involving a substantial volume of electronic evidence.

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

Mr. Baron is Director of Litigation at the U.S. National Archives and Records Administration, and a former trial attorney and senior counsel at the U.S. Department of Justice. He currently serves as Editor-in-Chief of the The Sedona Conference® Best Practices Commentary On the Use of Search and Information Retrieval Methods in E-Discovery. Mr. Baron also serves as an Adjunct Professor at the University of Maryland School of Information Studies, is an advisory board member of the Georgetown Law Center Advanced E-discovery Institute, and is a founding coordinator of the TREC Legal Track, a multi-year international research project evaluating text retrieval methods.

14:30 – 15:00 Digital Evidence and Employment Relationships in Belgium

The presentation will consider the legal value before Belgian courts of digital evidence where an employee, contrary to the prohibitions set out by the employer, uses information technology at work improperly, and where the digital evidence is collected in violation of the law of privacy.

- Applicable principles regarding privacy at work in Europe and in Belgium

- How too respect privacy law with regard to employment relationships
- How to collect digital evidence whilst respecting the privacy of the employee
- The legal value of evidence obtained against the privacy law in Belgium

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

Romain is specialised in Information Technology law and Intellectual Property related issues. A Member of the Brussels Bar since 2002, he deals with several IT matters such as : IT contract drafting, telecommunication law, internet law, electronic commerce, data protection, both in legal counselling and litigation. Romain is also a part-time researcher at the CRID ("Centre de Recherches Informatique et Droit" www.crid.be) at the University of Namur. He graduated from the Université Catholique de Louvain (UCL) in June 2001 and obtained a postgraduate degree in Information Technology Management and Law (www.dgtic.be) at the University of Namur.

15:00 – 15:15 Any Further Questions

15:15 - 15:40 Afternoon Tea Break

Please Select Parallel Sessions A or B (15:40 – 17:00 Sessions)

Parallel Session A: The In-House Conundrum, When To Call In An Outside Digital Evidence Specialist Or Call The Police	Parallel Session B: Civil Disclosure And Reasonableness, Sanctions For Deliberate Destruction And The Tests To Be Applied
15:40 – 16:20 Models of Investigation and Processing of Digital Evidence The presentation considers the range of problems that are unique to collecting evidence in cyberspace and deals with a number of possible investigative models and the subsequent processing of evidence. Consideration will be given to developing new standards for the collection and processing of digital evidence; data archiving and the storage of data and devices. ▪ Collecting evidence in cyberspace ▪ New methods of investigation ▪ Data archiving ▪ Storing of devices **Dr. Zdenek Blazek**, *Security Manager, IT Products Group Leader and Assistant Vice-President,* **Commerzbank AG (Czech Republic)** **16:20 – 17:00 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** When people abuse computers and computer networks, the victims are put in the unenviable position of trying to ascertain where they should look for help. In the United States, the victims usually have to choose between whether they should hire private consultants or go to the police to seek justice. This session will explore the practical and legal implications of their choices in the United States, whilst touching on international scenarios. ▪ Search and seizure v electronic discovery	**15:40 – 16:20 Key Contributions** **Senior Master Whitaker,** *Senior Master of the* **Supreme Court of England and Wales, Queen's Bench Division, Royal Courts of Justice & the Queens Remembrancer (UK)** A former barrister, Senior Master Whitaker manages the special list for mesothelioma and other asbestos related claims at the Royal Courts of Justice in London. He has been one of the judicial members of the Civil Procedure Rules Committee of England and Wales since 2002 and is also a member of one of the judicial advisory groups advising the Secretary of State on the use of Information Technology in the Civil and Family courts. He was trained as a Mediator by CEDR in 2003 and is an editor of Thomson's Civil Procedure (The White Book); He is a frequent speaker at conferences and seminars on e-disclosure, civil procedure and on the management of asbestos related claims. Master Whitaker is the Honorary President of the LiST Group. **16:20 – 17:00 Avoiding Disputes Regarding Electronic Evidence: A U.S. Perspective** Many disputes involving electronic evidence are easily avoided and involve evidence that, in the end, the requesting party might not find desirable to have. The latter situation often occurs where the requesting party asks for extensive information that proves useless or cannot economically be managed and searched. Generally, better electronic document requests are more targeted at focusing on a specific time period and communications involving individuals of particular interest. Consideration will be given to: ▪ The nature of the request ▪ Formulating narrowly-tailored requests ▪ Talking to the opposing side ▪ A party's willingness to engage in such discussions in good faith is likely to prove helpful even if disputes later arise **Judge Francis M. Allegra, United States Court of**

▪ United States evidentiary concerns ▪ International Cybercrime **Joseph J. Schwerha IV, M.S., J.D.,** *Associate Professor of Business Law; Owner,* **TraceEvidence, LLC (U.S.)** Mr. Schwerha has the unique experience of having served in both the private and public sectors for several years. His primary responsibilities lie with his position as an Associate Professor within the Department of Business and Economics at California University of Pennsylvania. He is responsible for instruction on all aspects of business law, as well as in the areas of privacy, cybercrime and information law. While not teaching, Mr. Schwerha concentrates on his computer forensics, privacy, and e-discovery consulting business, TraceEvidence, LLC. Before coming to academia, Mr. Schwerha served as a prosecutor for over eight years, where he was significantly involved with computer crime prosecution at both the state, national levels. In recent years, he taught for several organizations, including the: United States Department of Commerce, National District Attorneys Association, Federal Bureau of Investigation, National White Collar Crime Center, American Bar Association, and Federal Law Enforcement Training Center. Within Pennsylvania, he regularly advised all levels of law enforcement and civilians with regard to issues surrounding discovery, acquisition and use of digital evidence, as well as privacy issues with regard thereto.	**Federal Claims, Washington, D.C. (U.S.)** Judge Allegra was appointed Judge of the United States Court of Federal Claims on October 22, 1998. He graduated from Borromeo College of Ohio, receiving a B.A. degree in 1978; he then attended Cleveland State University, receiving a J.D. degree in 1981. Judge Allegra formerly was a Deputy Associate Attorney General at the Department Justice, 1994-1998. In his fourteen-year career at the Department of Justice he also served as Counselor to the Associate Attorney General, 1994; Counselor to the Assistant Attorney General of the Tax Division, 1990-1994; Special Assistant to the Assistant Attorney General of the Tax Division, 1989-1990; and Line Attorney, Appellate Section, Tax Division, 1984-1989; From 1982 through 1984, he was an associate at the Cleveland law firm of Squire, Sanders and Dempsey. In 1981, he was judicial clerk of the Chief Trial Judge Philip R. Miller at the United States Court of Claims. Judge Allegra is married to the former Regina Lynne Esposito. He is a member of numerous bars, including the Bar of the Supreme Court of Ohio, the Bar of the District of Columbia, and the Bar of the United States Supreme Court.

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 Large Pension Room, The Honourable Society of Gray's Inn

Conference Day Two: Friday 27th June 2008

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

09:00 **Chairman's Re-Opening**
Stephen Mason, *Barrister & Editor*, **Digital Evidence and Electronic Signature Law Review &** *Associate Senior Research Fellow,* **Institute of Advanced Legal Studies**

Obtaining Evidence in Other Jurisdictions: Practical Issues and Problems (Legal, HR, Data Protection, Cultural, Disclosure)
(09:10 – 11:00 Sessions)

09:10 – 09:35 **Evidentiary Issues in Finland**

Finland is an example of constrained operating environment when obtaining of evidence is considered. Due to strict privacy legislation, inappropriate procedures can subject a party obtaining evidence - even from his own systems - to criminal sanctions. The presentation discusses practical approaches, which can be used to obtain and preserve evidence while avoiding unnecessary liabilities in constrained environment. The presentation will cover:

- Fundamental issues
- Certain scandals
- Legislative framework
- Practical approach

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

Head of Corporate Criminal Liabilities Team, Ismo has advised clients in numerous criminal proceedings related to industrial espionage, copyright crimes, misappropriation and misuse of trade secrets, digital forgery and the like. Typically, these proceedings and related criminal investigations have involved massive amounts of digital evidence, such as source codes, logs, partially destroyed data and meta data.

09:35 – 10:00 **Multi-National Corporations And The Treatment Of Digital Evidence In Litigation In China**

- General principles for the admission of digital evidence created overseas
- Chinese rules of Civil Procedure regarding digital evidence
- The role of the digital evidence specialist in litigation proceedings
- The challenges to multi-national corporations in the information era

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

Mr. Chen, is also Co-Chairman of IT/High-Tech Law Committee under All China Lawyers Association. Mr. Chen graduated from Chicago-Kent College of Law with high honor. His practice mainly concentrates in e-Commerce, High-tech law, cyber space law and telecoms law.

10:00 – 10:25 **The Digital Economy - Where Is The Evidence? Theoretical And Practical Problems In Understanding Digital Evidence In Romania**

The present legal framework and digital economy in Romania may sound like a well-working system. But the lack of real and adequate implementation of the framework, IT-related expertise and fear from some legal experts to understand the digital evidence may transform any legal-related problem into a nightmare for most of the new economy representatives.

- The digital economy in Romania and the legal framework – a short overview
- Implementing the legislation: institutional and practical problems and difficulties
- Practical cases that highlight the main problems
- Relevant IT expertise: level of information necessary for a judge to know about digital evidences, lack of independent experts

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

10:25 – 10:50 Get it or Forget it - Digital Evidence in the US

Face it: we all are staring at our own digital incompetence. US attorneys, courts, and agencies are as much in the dark as you (maybe more so). This session will aim to expose the secrets of modern web services. The challenges and opportunities in digital evidence will be considered, including mobile technology bring. Consideration will be given to online storage and whether it will break the evidentiary chain for most web investigations.

- Five things you MUST know about e-discovery and admissibility in the US
- Hash or hack? Digital signatures, e-notarization, and software agents
- Who turned out the lights? Web 2.0, social networking, and user-centric identity
- The rise of rich internet applications

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

Daniel is an attorney, former Judge, and a US civil-law notary in the area of digital evidence and discovery, international computer contracts and technology agreements. He is a frequent speaker/writer on computer law, data protection and privacy issues. He is General Counsel to Identity Commons, Inc., an organisation for collaboration in digital identity metasystem.

10:50 – 11:00 Any Further Questions

11:00 – 11:30 Morning Coffee Break

Please Select Parallel Sessions A or B (11:30 – 13:00 Sessions)

Parallel Session A: Planning And Justifying The Search And Seizure Of Digital Evidence In Civil Proceedings	Parallel Session B: Planning And Justifying The Search And Seizure Of Digital Evidence In Criminal And Cartel Proceedings
11:30 – 11:55 Key Contribution In comparison to normal civil litigation, intellectual property matters tend to enjoy more pronounced measures that can ordinarily be used. Consideration will be given to the search and temporary seizure orders in respect of intellectual property matters, and Article 50 of the TRIPS Agreement will be considered, because intellectual property right holders often apply for search and temporary seizure orders to prevent infringement or to preserve relevant evidence under Article 50. The Thai Central IP&IT Court and outstanding procedures will be briefly outlined, as will the civil and criminal search order in the Thai Central IP&IT Court. Practical issues and statistics concerning search and seizure orders will be provided. ▪ Search and seizure of digital evidence in the Central IP&IT Court, Thailand ▪ Admissibility of digital evidence ▪ Search and temporary seizure orders to prevent infringement or preserve relevant evidence under Art. 50 of the TRIPS Agreement ▪ Some major procedures in the Central IP&IT Court ▪ Practical issues and statistics concerning search and seizure order **The Honourable Judge Jumpol Pinyosinwat,** *Presiding Judge*, **Central Intellectual Property and**	**11:30 – 11:55 Key Contributors** **Do the Differences Still Exist? A New Wave Of Legal Response!** With the crucial importance of regulating digital evidence, the classical differentiations between civil law and common law are under question. Digital evidence is a part of the evolving digital era in which a harmonized international legal approach is no longer an option. Planning and justifying the search and seizure of digital evidence in criminal matters needs not only creative legal approaches but also non – traditional concepts of cooperation between law enforcement entities and the judiciary. ▪ Whether digital evidence challenges the barriers and lines between civil and common law systems ▪ Very creative approaches of co-operation between the judiciary and law enforcement are needed, however, their legitimacy must be observed ▪ Egypt is an example of a civil law country; however, the Egyptian legal framework to regulate digital evidence in criminal matters has been influenced by the common law culture ▪ The Egyptian legal framework for digital evidence in criminal matters ▪ An overview of the practices of co-operation between the police and judiciary **His Honour Judge Dr. Ehab Elsonbaty, Senior**

International Trade Court (Thailand)

Jumpol Pinyosinwat is the Presiding Judge of the Central Intellectual Property and International Trade Court of Thailand. He is also the Director of the Intellectual Property Research Center, ECAP II. Judge Pinyosinwat is also the Honorable Advisor to the Committees on Independent Body Affairs of the Thai Parliament; Member of the Committee of the National Assembly on drafting various bills such as the Electronics Commerce Bill, Electronics Signature Bill, Computer Crime, Amendment of Code of Civil Procedure, etc. He is also an Adjunct Professor at the Law School of Golden Gate University, US and Adjunct Professor at the Law School of Bangkok University, Thailand.

11:55 - 12:20 Planning And Justifying The Search And Seizure Of Digital Evidence In Civil Proceedings

This session addresses the challenges faced when planning and justifying the search and seizure of electronic evidence. The session will particularly focus on the practical and legal issues arising in civil law jurisdictions, where the lack of discovery proceedings renders the search and seizure of electronic evidence even more complex than in common law jurisdictions.

- Planning the search and seizure of electronic evidence
- Precautionary measures in the advent of disputes
- Legal barriers arising from (limited) data storage requirements and privacy aspects
- Preliminary measures and enforcement
- Practical difficulties, experience and current trends

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

Henriette Picot specialises in IT and IP law, with a particular focus on IT agreements (licensing, distribution, e-commerce professional services etc.), data protection and general corporate commercial matters. Henriette studied law at the universities of Freiburg, Seville and Dresden.

12:20 – 12:45 Obtaining And Preserving Digital Evidence In United States Federal Courts: Before, During And After The Litigation

This presentation will provide an overview of the types of evidence; a brief review of the Federal Rules; a brief overview of various local rules (survey); a discussion of the decision in *Zubulake V;* the most recent guidelines review (from the ABA guidelines); and the position post-*Zublake V*.

Thomas M. Dunlap, *Managing Partner,* **Dunlap, Grubb & Weaver, PLLC**

Tom is the managing partner of Dunlap, Grubb & Weaver where his practice focuses on complex civil litigation in the areas of patent, copyright, trademark & commercial law in the United states Federal Courts. In addition to numerous seminars, serving as President of the Loudoun Bar Association and writing technical treatises, Tom was selected as one of twelve Top Northern Virginia Lawyers for his litigation experience in the 2006 June/ July edition of *Northern Virginia Magazine* and was peer selected for inclusion in the 2008 edition of *American Super Lawyers*.

12:45 – 13:00 Any Further Questions

Judge in Damanhour Court, Egypt

Judge Dr. Ehab Maher Elsonbaty is a senior judge and a member of the civil, criminal and commercial panel of the Damanhor Court. He lectures on cyber law topics and technology in litigation to the Arab Academy for Science and Technology and Private International Law. He is a consultant to the Council of Europe, UNODC and ITU.

11:55 - 12:20 Search And Seizure Of Digital Evidence: Thresholds And Minefields

Counsel and courts should be aware of the facts that there are unique factors that make dealing with digital evidence challenging. In many instances the information is located in databases that are contaminated with potentially privileged information. How does a litigant gain access to the relevant information without prejudicing their own case? Do the courts and litigants understand the effect of any orders of seizure on the operation of the recipient party? Do they appreciate the potential cost to the litigants, of identifying or retrieving the requested information? What about inter-jurisdictional issues for multinational companies? How does an applicant convince a court that search and seizure is appropriate and that the threshold has been met unless they can answer some of the questions as set out above?

- Initial thresholds - a moving target, each case is different
- Privilege: an ongoing and over arching concern
- Factors to consider in crafting an order: costs, complexity, inter-jurisdictional concerns, risk of loss of relevant information
- Post seizure: why it is important to get back to court as soon as possible to have the courts direct future actions; failure to do so may be putting your case at risk

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

Appointed to the Nova Scotia Bar – 1980. Appointed Queens Counsel (Federal) – 1992. Appointed to the Supreme Court of Nova Scotia - 1993. Appointed Deputy Judge Nunavut Court of Justice – 2002. Chair of the Nova Scotia Supreme Court Data Base Committee. Chair of the Nova Scotia Supreme Court Semi-Annual Education Conference Committee. Member of Sedona Canada discussion and planning group. Member of Sedona Canada Editorial Board for Sedona Canada Principles.

12:20 – 12:45 The Search And Seizure Of Digital Evidence For Criminal Proceedings

This paper seeks to examine the emerging frontier of using digital evince in criminal proceedings. The use of digital evidence must be examined from its creation, storage, retrieval and use in criminal proceedings. The methods of obtaining digital evidence raise issues of privacy, human rights and rules of procedural fairness that must be balanced with the public interest in obtaining a fair trial. The categorization of digital evidence must relate to how such evidence is created and retrieved and not necessarily to how existing tools operate and investigations are conducted.

- procedural fairness

	▪ admissibility ▪ authenticity ▪ reliability ▪ acceptance **Charles Leacock, QC,** *Director of Public Prosecutions,* **Barbados** **12:45 – 13:00 Any Further Questions**

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

Please Rejoin Plenary Sessions in The Hall

How the Future Is Going To Shape The Way Lawyers Deal With Digital Evidence? (14:15 – 15:45 Panel session)

Janet Day, *IT Director,* **Berwin Leighton Paisner (UK)**

Janet is involved in setting the IT strategy for the firm and works closely with partners and fee earners in developing client-facing solutions. Janet qualified with the Institute of Personnel Management and completed an MBA specialising in competitive advantage in the legal profession. She established a legal consultancy in 1991 and lists many of the top 100 legal practices among her clients. Janet was also named BCS IT Director of the Year for 2004/5. Janet has extensive experience in all aspects of technology and its use by the legal profession. She is a regular conference speaker and has published a variety of articles on technology and the law. She is known for a more controversial approach to the use of IT and its love affair with the legal profession and believes people are more important than technology.

Michael Colao, *Global CISO & Director Information Management,* **Dresdner Kleinwort Wasserstein (UK)**

Michael has been with Dresdner Kleinwort Wasserstein since 1999. He is the Director of Information Management. This role means that Michael is both the Global Head of Information Security for the Bank as well as the Global Head of Data Protection and Privacy. He has a strong side-interest in computer forensics and in the management of digital evidence. He graduated from the Massachusetts Institute of Technology in 1987 where he studied Mathematics and Computer Science. He has since lived in three continents and has lectured globally on security technology issues. Since 1996 has been working in Financial Technology in London.

Esther George, *Senior Policy adviser*, **CPS HQ Policy Directorate (UK)**

Esther specialises in Internet and computer enabled crime, digital evidence and data protection. In January 2002 Esther became the project manager for the CPS High-Tec Crime Project. A Senior Crown Prosecutor at Casework Directorate for three years, Esther dealt with a varied casework portfolio including extraditions, mutual legal assistance, Internet and computer crime, police complaints, corporate manslaughter, and other serious cases. Esther has advised prosecutors at all levels within HQ and Area CPS offices, police and other Government bodies. Esther presently acts as a consultant to other prosecutors in high-tec crime cases. Esther has helped to develop and design the CPS national high-tec crime-training course for prosecutors as a result the CPS presently have over 120 high-tec crime specialist. Esther has designed an advanced prosecutor's course and designed and taught a course for caseworkers.

Peter Warren, Freelance Journalist Specialising in Technology, Undercover Investigations & Science Issues (UK)

Former technology editor of Scotland on Sunday & the Sunday Express and an associate producer for BBC2, Peter has worked across a variety of media, including the Guardian, the Daily Mirror, Evening Standard, the Sunday Times, the Sunday Express, Sunday Business, Channel 4, Sky News, the BBC & specialist magazines. He has also advised a number of PR agencies on their technology clients. In 1996 Peter was runner-up in the UK Press Gazette Business Awards for Technology Scoop of the Year. A guest speaker on Technology Ethics to the European Union's Information Society Technologies conference in Helsinki, Peter, who lives in Suffolk, is an acknowledged expert on computer security issues. In 2006, Peter won the BT IT Security News story of the year prize for his work exposing the practice of discarding computer had drives containing sensitive business and personal data. In 2007, Peter won the IT Security News story of the year prize again for work done with Future Intelligence showing that Chinese hackers had broken into the UK Houses of Parliament. Future Intelligence was created in January 2004 by two experienced journalists to provide technology news & features to the British media.

15:45 **Closing comments**

16:00 **Close of Conference**