



## Virtuoso Legal

Intellectual Property Specialists

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***“Intellectual Property lies at the centre of the modern company's economic success or failure”***

Lester Thurow : Economist

Trade marks & Brands

Patents & Inventions

Copyright

Designs

Database rights

Data Protection

Licensing and Franchising

Intellectual Property agreements

New Media Agreements such as directors and authors rights

Transactional Intellectual Property

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SRA number: 466530



## Our role in Data Recovery, Electronic Disclosure and as Supervising Solicitor

by Kirsten Toft 12/08/2008

Virtuoso Legal is one of the few law firms that specialises in obtaining and effecting search orders for the recovery of data from computer systems. We have a wealth of experience in this and in the related matter of electronic disclosure.

Today, nearly all businesses rely to a great extent on their computer and information technology (IT) systems. Consequently even small businesses have vast quantities of important data stored electronically.

Below is a brief look at typical issues which Virtuoso Legal has encountered and dealt with in this modern field of law.

### Recovery of Data

Many solicitors who are not technologically literate themselves are unable to access much of the IT which is now common in businesses. Where this happens the lawyer may not know how to marshal the thousands of documents that can be retrieved from an IT system in order to work out what electronic documents have been tampered with (i.e. accessed, printed, copied onto disc or USB sticks, sent by email or even deleted). Such intelligence is essential in many cases, for example where information is required to take forward a court case for theft of confidential information. These cases are increasingly common. There are automated systems which can be used to catalogue vast amounts of documents but these are often unable to sieve out the vital details. In situations such as these it pays to be very methodical and to know exactly how the IT systems have been set up and how the individuals working those systems have used the data. For example, by searching electronically created 'metadata' within documents saved on a computer, it can be seen when the document was last opened, by whom, and how it was changed. It is vitally important to appoint a solicitor with the relevant know-how to look at the recovered information to identify which haystack the needle is in and then to root it out!

Virtuoso Legal specialises in such expertise and has

applied it successfully on many occasions.

### Search and Freezing Applications and Orders

A business may apply to the Court for a search order which will allow premises to be searched in order to obtain certain documents. Applications for search orders are often made when a business finds itself in the situation where a member of staff has taken valuable information such as customer databases, business plans, drawings and pricing details. If left unchallenged, the consequences can be very damaging and may result in a new competitor entering the market ready armed with the company's confidential information.

The Court places a heavy onus on the Applicant to provide accurate and compelling evidence before it will grant a search order and/or an injunction. In order to obtain the relevant Court order the evidence must to be properly presented. The use of web-enabled e-mail and instant messaging (e.g. Hotmail or Yahoo accounts), PDAs, Blackberries and other electronic storage devices, make obtaining the correct evidence of theft or tampering with confidential information hugely challenging. In order to obtain the necessary evidence, data recovery by forensic analysis maybe required. In addition, surveillance of the potential Defendants may also be necessary.

Virtuoso Legal is experienced in preparing applications for a search orders and injunctions, particularly where large amounts of electronic data are involved. We regularly put together teams of surveillance people and properly qualified forensic IT professionals to ensure the correct recovery of electronic evidence.

### Effecting a Search Order - Role as Supervising Solicitor

Once a Court has granted a search order the next stage is to have it served on the respondent. This will require the instruction of a Supervising Solicitor who must facilitate a full and proper search of the relevant premises within the terms of the order, at the same time ensuring that rules are strictly followed. The role of Supervising Solicitor is an important one, but it is never an easy task: emotions often run high when respondents are served with a search order.

A search order often provides for a clone to be taken of all computer systems and electronic storage equipment owned (wherever it may be kept) by the



respondent. This results in the collection of huge amounts of electronic data.

Following the successful execution of a search order, the next major hurdle for a solicitor is reviewing the data (paper and electronic copy) obtained from the search in order to find the necessary evidence for litigation. This stage can involve an enormous amount of data which needs to be filtered and it is essential that all the relevant documents are reviewed in a methodical manner. In circumstances where there is a particularly large amount of data recovered, search terms and keywords maybe used to filter out only potentially relevant data electronically, but human oversight is also essential.

Virtuoso Legal has, on numerous occasions, acted as Supervising Solicitor to oversee search orders and recover stolen data. We can assist you to navigate what can be a complex and time-consuming process in a cost-effective and efficient way.

### **Electronic disclosure**

Virtuoso Legal has the technical know-how and experience to deal with the requirements of e-disclosure. On various occasions we have witnessed solicitors failing to deal with a large amount of electronic data because they lacked the necessary experience to carry out e-disclosure efficiently and effectively.

Electronic Disclosure is not needed for every case and neither is it necessarily an easier way of doing disclosure: it can be expensive and generate large upfront costs. Therefore, quick identification of what is a disclosable document is essential. The scope of disclosure should be defined early on in the process. However, the potential range of sources of documents, which nowadays almost always includes electronic documents, can be almost infinite. Sources may include such storage systems as servers and all the related backups, PDA's and metadata.

Ultimately a lack of experience in e-disclosure can lead to greater costs and a poor level of service for the client. We can assist other solicitors to ensure cost-effective and proportionate handling of e-disclosure.