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INSTITUTE

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Congratulations to IMA member, Mark Grover of MPOL Group in Victoria who has been appointed an Australia Day Ambassador for life and who spent Australia Day 2008 in Kinglake, Victoria participating in community celebrations.

Mark was recognised as a leading corporate investigator and an individual who enjoys the trust of people across Australia who help to shape our business, communal and political landscape. Mark is a Board Member and Secretary of Variety - The Children’s Charity as well as a Board Member of the Victoria Police Blue Ribbon Day Council.

The Australia Day Ambassador Program in Victoria allows the community to meet inspirational Australian achievers who spend Australia Day participating in activities, assisting with the presentation of awards and delivering a short speech on what being Australian means to them.

On hearing of his appointment Mark said “As an Australian and someone that has a passion for our industry and our country, I am so proud to have been nominated as an Australia Day Ambassador and I will cherish this honour every year when assisting with hosting festivities in this great country of ours.”

“PRETEXT” identity-theft investigators indicted

The Seattle Times newspaper reports State and Federal agents have broken up a US wide “pretext” identity-theft scheme in which private investigators from Brooklyn to Houston hired a firm in Washington State to illegally obtain personal information on thousands of people - from medical records to tax returns - for law firms and other clients.

Ten people (including alleged ringleaders of the scheme, Emilo and Brandy Torrella and their office manager-researcher, Steven Berwick) were reportedly indicted by a Seattle federal grand jury in a case U.S. Attorney Jeff Sullivan said is only the second of its kind - the first being the 2005 Hewlett-Packard boardroom spy scandal, which involved attempts to obtain phone records of a few board members to determine who had been leaking information to the media.

The Torrellas and Berwick reportedly tried to obtain personal information of as many as 12,000 people, many of them involved in bankruptcies, lawsuits, divorces or collection efforts. The Torrellas, Berwick and others would allegedly pose on the telephone as the person whose information they were trying to obtain, often using sophisticated software to change the phone number they were dialling from as well as devices to disguise their voices.

After making such calls to government departments such as the Internal Revenue Service and the Social Security Administration, the accused would manipulate the public servants with make believe emergencies or hardships and often were able to obtain copies of actual tax returns or wage details. They also obtained medical records.

The indictments apparently may not end with the private investigators as Assistant U.S. Attorney Kathryn Frierson claims agents are “actively investigating” whether the lawyers and others who sought and paid for the information may also have committed crimes. Whilst Frierson wouldn’t identify the names of the individuals affected by the scheme she said their identities “are an indication that this is a nationwide and extensive practice.”

[Source: The Seattle Times - 6 December 2007]
COVERAGEFORCE delivers!

IMA member Scott Cook of NHN Investigations & Security and The Hunter Group recently contacted the AGENT to pass on his praise for the facilities established with Coverforce, the IMA’s endorsed provider of professional indemnity cover for the industry.

Scott advised he previously used another broker for his agency’s insurance needs of Professional Indemnity, Public Liability and Business Insurance but recently decided to check out Coverforce after noting their presence in the AGENT.

At Coverforce he dealt initially with Justine McDonald and in turn with specialist account executives Tracey Friedland and Nathan Brown in respect to risks to be covered. Coverforce was able to incorporate the security activities of NHN and the work of The Hunter Group in the same policy, something his other brokers couldn’t achieve and instead required him to take out a separate policy.

Impressed by their professional service Scott was elated to discover Coverforce covered exactly the same insurances, increased the contents cover and added security activities for almost 50% less than his previous year’s premiums!

His annual insurance costs dropped from $8000 to only about $4000 with Coverforce with the option of pay by the month instalments.

Scott advised: “This was a very significant saving for my business. I encourage all members of the IMA to contact Coverforce regarding their insurance needs”.

FCS Search upgraded

FCS Online announced in December 2007 the release of an updated version of FCS Search incorporating the new White Pages® DirectAccess search functionality which provides commercial grade electronic search access to the latest telephone data including reverse business searching. The enhancements in the release are expected to provide a more comprehensive tool to assist in location and verification processes.

John Wayne Betterman

John Betterman of Adelaide (formerly of Nancarrows Mercantile Agency, Broken Hill) passed away peacefully surrounded by family at home on 12 January 2008 after a long battle with cancer. He is survived by his wife Diane, their four children and ten grandchildren.

John who served as National Treasurer of the IMA from 1997 to 1998 was a very popular member with a positive attitude and willingness to engage others he came in contact with, without any trace of superiority - he accepted others and offered support and assistance without conditions. He will be missed.

Grahame (Gray) John O’Neill

Grahame O’Neill of Newtown passed away on 8 December 2007. He is survived by long time partner Allana.

Grahame was an active member of the IMA until leaving the investigation industry in the early 1990s. He is remembered affectionately as someone who stimulated IMA meetings and was always ready to put forward an alternate view. Grahame will be missed.

CAPI ACT review agreed to by Minister

In response to representations by the IMA on behalf of members, Mr David Campbell, NSW Minister for Police has agreed to initiate a review of the NSW Commercial Agents and Private Inquiry Agents Act 2004 [CAPI Act].

The IMA had communicated to the Minister the genuine concerns of members in respect of a number of issues with the Act including the excessive requirements of the training qualifications for each of the occupations in the industry and the conditions imposed under the grandfathering clause in respect to transition of licences to the 2004 Act.

Pointing out the need to strike an appropriate balance between the public interest and the needs of business and to ensure that regulations are workable, and acknowledging the nature of the industry has changed considerably in recent years and in particular the emergence of a large number of overseas and interstate agencies collecting debt in NSW has placed challenges upon both the regular and operator, Mr Campbell has advised his Government will undertake a comprehensive review of the CAPI Act in early 2008. The intention of the review being to identify the most appropriate legislative and regulatory arrangements for the collections and investigations industry in NSW to ensure agents are fairly regulated and consumers adequately protected.

The Minister has asked for and will receive the IMA’s assistance in the review process. Members will be notified when further details of the review are received.
A recent mid morning phone caller to my office in a rather quiet voice said “If you want some money come and see me at 10.00 pm tonight”. After a struggle, my Manager obtained the caller’s name and reviewed the particular debt file. The account for just over $5,000 was outstanding despite phone calls, a field visit and letters. Only $100 had been collected so far as the debtor didn’t have a bank account for automatic payments.

The debtor lived in an older inner city suburb and my Manager knew no one would be keen to make such a late night call but after trying to make a more suitable time or even to call out straight away, she was told “If you don’t want the money, don’t come - but if you do want it, I will see someone at 10.00 pm tonight”. My wife volunteered to come too - her karate skills were nonexistent but she could drive fast and scream loudly if required.

That night we found the street and as expected it was very narrow and creepily dark with several streetlights missing. The debtor’s house was a small, ancient, unpainted cottage with a pocket size front area covered by car wreck No 1. A single rutted driveway held car wreck No 2 and led to a ramshackle lean-to garage covering car wreck No 3! The house light was on, the door open and the radio blaring. The place was clean but there was junk everywhere. I knocked and knocked and knocked again (oh that was my knees the third knock!) - there was no response, so I tiptoed in, turned down the radio and knocked again.

Finally a scruffy male shuffled into the hallway. I confirmed he was the fellow who had called and explained I was there as he requested.

As is often the case with debtors, he then started a long tirade about the shortcomings of my client and asserted it was my client’s fault he owed the money! This diatribe wasn’t really a good sign but eventually he talked himself out and told me he would go and get some money.

After a long wait with me mentally resigning myself to perhaps only picking up $10 to my amazement the debtor returned to the doorway with a wad of $100 notes. He shoved the bundle into my hands and told me to count it - I cleared a spot on the nearby ironing board (that was another challenge in itself) and counted out 50 $100 notes, wrote out a receipt, quickly said thanks and left even more quickly. I don’t quite remember walking down the drive but getting into my car, my wife sensed I was anxious to leave so she booted the car in TV cop style and fishtailed down the road while I showed her the money!

Who says debt collection isn’t fun!

[Andrew Findlay is a director of Creditguard Debt Collection, Christchurch, NZ]
A long time ago I learned a good lesson about the art of being a good repo man.

Initially I thought being a repo man required good assertive negotiating skills, brawn and a lot of good luck but boy was I wrong. No, what was required was something a lot more aggressive, a lot more than a statement saying “I’m a Repo Man” - yes it was nothing more sophisticated than a pair of good old fashioned running shoes.

There I was on my first repossession. It was 1987 - I’d just left school and was scared of nothing. My boss at the time was a former part time cut lunch commando (ie an army reserve soldier) - he provided all my training which comprised of the following words:

“Son… this is a repossession of a truck. You simply go there, and say: ‘Mate, it’s the money or the box’. If he doesn’t pay up, hook it up and take it away. If you get stuck and he puts up a fuss, call me”.

“Riiiiight” I thought “Call you. How long does it take to get from North Sydney to Wetherill Park?” I wondered.

Looking at the paperwork I responded: “Yep. No drama. The money or the box. I hear ya, boss. Yes sir, boss, three bags full sir!”

I left the office excited my boss had given me a repossession - I was only 19 at the time (sounds like a song). I drove to the address situated in Wetherill Park, a suburb of Sydney. Sure enough, there was the truck sitting in the yard being unloaded.

“The experience gave me some lessons in being a Commercial Agent: keep it simple, treat people with respect and empathy and you’ll enjoy this wonderful industry”

I drove into the yard and up to the truck and asked the driver unloading it if he was the bloke who owned the truck. (You had to speak like the natives when dealing with the natives was another tip my fearless leader had given me.) This guy’s response was “No mate, he’s over in the shed with the boys having lunch. You can’t miss him - he’s the one with tattoos and a beard and no teeth!”

Over to the shed and there he was alright - but the only problem was there was more than one of them and they looked like a gathering of a motorcycle gang feasting on a raw cow! There were three blokes all with tattoos scribbled on their faces, arms, legs, ears - you name the body part, they had a tattoo. And beards - they looked like the Kelly Gang. There was one bloke however, with no teeth. He was of course the biggest of the lot. Boy was he ugly and mean looking. Great I thought: “thank god I’ve worn my runners”.

Being green behind the ears I really thought nothing of the danger. I walked in and simply said “who owns the truck out there with NSW rego Blah blah”. The response from one was: “Who’s asking?”

Now I’d learned from my boss that anyone who answers a question with a question is a fool but I didn’t think it appropriate to tell this fellow that so I simply replied, “I am”. Right about then, I remember my mum telling me if I didn’t study hard at school I would have to work harder for my money and I think I then knew what she meant!

Wondering what on earth I was doing in a shed with a bunch of blokes with tattoos, no teeth and eating raw meat and aware that I was about to rob them of their ability to earn an income, I said something like: “Mate, It’s the box and the box… I mean it’s the money or else the box… I mean are you going to kill me now or can you wait until I at least reach 21!”

To my relief, a roar of laughter began and they sat me down after I’d changed back to my normal colour and we chatted about the arrears situation with the borrower.

Naturally, his mates were stirring him up behind his back and heckling him about the repo man being on his back but really I think they were just happy they got more share of the raw meat whilst I was talking with the borrower!

At the end of the day, the fellow who owed the money drove me to the bank in another work car, drew out the cash for the arrears, paid me and shook my hand for having the guts to front him.

It was more a case of inexperience rather than guts let me tell you, but the experience gave me some lessons in being a Commercial & Private Inquiry Agent: keep it simple, treat people with respect and empathy and you’ll enjoy this wonderful industry we work in.

[Alex Caruara is a director of Express Mercantile in Sydney]
TIMES are changing

B elieving strongly in the prospects of the private investigation industry I look towards better conditions, recognition and training for the industry.

Supporting the work of the IMA leadership especially the ongoing lobbying efforts of National President David Cains & CEO Alan Harries in respect to a much needed urgent review of the NSW CAPI legislation, I’ve been involved with a colleague in working with NSW Police and the NSW Security Industry Registry & CAPI Unit to lobby for changes to attitudes held by the Police regarding private investigators. This includes lobbying for changes to the current NSW legislation so as to make the work of investigators more attractive to the consumer, less inviting to those who should not be in the industry and to open up new horizons for investigators and consumers of investigative services.

Help is needed to overcome the public and police perception of our industry members. TV shows such as Cheaters don’t help.

Many years ago I appeared in a documentary “Gumshoe” on the ABC and screened in cinemas around the world – it turned out to be a “mock-umentary”! Although expecting it would promote my business, in the long term such shows don’t further the cause of our industry. As reported in this AGENT, the NSW Police Minister has communicated an intention to undertake a review early this year of the NSW CAPI Act & Regulations.

Recently Peter Frisch (a former National President of the IMA) and I met with senior Police and Regulators at NSW Police Headquarters to discuss issues faced by investigators in the field. The main thrust of discussions was the continuance of a consultative group to keep dialogue open and to work together in sharing of information, the changes required to the new legislation, a better understanding and more cooperative approach by police in regards to the investigation industry and for the industry to understand the protocols police are bound by, their chains of command and how we might all work together for a common goal: the detection and prevention of crime.

Currently there are only 2,500 licensed private inquiry agents in NSW - a massive decline on past numbers and a direct reflection of the effect of the introduction to NSW licensing of competencies and mandatory fingerprinting. Coupled with the decline in personal injury insurance investigations, unless we promote ourselves in a broader sense the industry numbers are likely to decline even further. Some of the issues touched upon in Peter & my discussions include:

- Cross border licensing to allow operatives licensed in one state/territory to work on that license in another;
- A co-regulatory legislative model allowing for peak industry representative bodies such as is currently in place in the Security Industry to prevent those who ought not be involved in the industry from entering it or continuing in it;
- A method whereby operatives might easily and discreetly be contacted by police when a resident makes a complaint or observation that might affect the integrity of an investigation;
- A pathway through which investigators and police might work cooperatively in the solving of crimes; and
- Limited access to locator information.

Access to locator information won’t come easily as we will have to deal with the Privacy Commissioner here as well but if at first we can open up a one way street where investigators can provide timely intelligence to the Police, the one way street will fast become a busy two way highway!

The recent meeting was a great start towards open communication - please assist by letting me know the difficulties you experience day to day so I might pass those issues on. Don’t be frightened to make a suggestion; it may just turn out to be something good for us all.

[Warren Mallard is managing director of Lyonswood Investigations, Sydney]

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VOCATION or vacation...
the accessibility of technology has meant people are finding it increasingly hard to switch off from work while on holiday

Throughout the second half of the 20th century, the month of January stood apart as a summer reprieve from the daily grind that marked the balance of the year.

The advantage of the month leading up to Australia Day was that it allowed workers to position leave around public holidays so as to maximise time away from the workplace. But new work patterns and new technology are changing our relationship with the holiday month of January.

The family photograph albums of baby boomers are awash with happy snaps taken during 1960s summers at places like Port Macquarie, Tweed Heads and Mollymook. And the reason why is quite logical: this was when dad took or was allocated his annual holidays.

However, over the past decade the average household has changed: it is now more likely to comprise two breadwinners. Suddenly there is a need to coordinate the leave entitlements of two workers in different workplaces.

One week can usually be wangled but two weeks for two people can be problematic. The result is that holidays are now curtailed. Modern beach holidays can be odd creations fused by the melding of time off for some with the work commitments of others.

Mum, dad and the kids camp at The Entrance from Christmas Eve to New Year’s Day. But in the following week Dad commutes back to town Monday to Friday.

The sublime isolation of the 1960s beach holiday has been muddied by the workplace commitments of at least one breadwinner.

“Put down the Blackberry. Turn off the mobile. Don’t even think of turning on that laptop... you are not indispensable.”

Mobile phones weaselled their way into the holiday packing in the late 1990s. Mum and dad could laze away on a banana lounge and take work calls. Initially this was a bit of a status hit with neighbouring holidaymakers:

“I’m so important that my work needs me on call just in case an issue arises that no one is capable of fixing.”

Or this: “If I don’t take calls then work piles up because no one can do what I do.”

But these changes were really just the precursor to the shift that would shape workplace behaviour earlier this decade.

Enter the Blackberry

A truly insidious device that ingratiated itself with senior management around 2003 but which is now cascading down the workplace hierarchy.

Middle management, busy socialites, to say nothing of cutting edge working mums, can’t seem to survive without their daily (nay, hourly) hit of email action.

What email could they possibly be expecting that requires an hourly status check:

“Hi, we’re a Wall Street merchant bank and we’re so impressed with your work that we want to employ you on a multi-million dollar salary but you must answer immediately or we’ll have to look elsewhere.”

When that email arrived this January you may be assured that all Blackberry wielding Sydneysiders holidaying between Terrigal and Kiama would have been right on to it.

There is a higher proportion of Australians participating in the workforce now than at any time previously. If ever there was a time that we needed to disconnect from the workplace, it is now.

And yet, through social change leading to multi-breadwinner households as well as through the development of new communications technologies, we seem to be heading in precisely the opposite direction: more, not less, workplace engagement.

This may not be a problem for baby boomer senior management. They will see out their careers over the next decade using the holiday month of January as a go slow time.

But what of Generation Xers now in their 30s to say nothing of younger Gen Ys in the future? To be engaged in the workplace from the age of 30 to 60 means that for 30 years there will be no extended time in which workers are fully disconnected from the workplace.

January’s Blackberry checkers might think they are doing no more than merely monitoring email. But this means they never truly disconnect from work. An email sighted and considered, let alone a call taken, builds connection with the workplace.

What effect does 30 years of never disconnecting from the workplace have on body and soul?

Will this habit, which seems harmless enough now, build and irrevocably lead to a mass burn out of Gen X and Gen Y middle management in the early 2020s?

Put down the Blackberry. Turn off the mobile. Don’t even think of turning on that laptop. You are not indispensable at your workplace and if you think you are then you are truly deluded and are in need of an additional holiday.

Gen X and Gen Y: invest now in the healthy habit of annually disconnecting from the workplace for an extended time.

Do this and late next decade you will sail past your burnt-out peers who will spend this summer and future summers pathetically monitoring their every workplace call and email.

[Bernard Salt is a partner at KPMG]
PRODUCT REVIEW

IDENTI-CHECK®

Verifying the customers’ identity is a cornerstone requirement of the Anti-Money Laundering legislation - Identi-Check® is one solution for introducing Electronic Verification.

The recent IMA member advisory regarding Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF) outlined businesses involved in collections, debt buying, repossessions and field calls are potentially caught up in this legislation, meaning such companies need to put in place an action plan to meet their obligations as soon as possible.

“Identi-Check® can be implemented quickly and simply, to help you meet your AML/CTF obligations”

A major component of this legislation is verifying the customer’s identity using reliable independent source documents. The regulator allows the use of Electronic Verification (EV) for this verification. This can reduce inefficiencies in current identification processes and also improve customer experience. EV is a workable solution as:

- It is a highly cost effective way of complying with the identity verification component of Know Your Customer (KYC);
- It is one of the most reliable methods of identifying irregular particulars of suspect customers;
- It removes human error and provides a discrete separation between the customer facing staff and the due diligence application; and
- Technology minimises the inconvenience that may be caused if customers were forced to produce paper identification documents.

The AML/CTF Act has created the Electronic Verification Safe Harbour Principles, which dictate that where AML/CTF risk is low to medium, organisations can use EV as a means of identifying a customer. In addition, unlike the 100 point check, EV allows the organisation to provide an online or over-the-phone service without significant impact upon the business or customer.

Identi-Check® can be implemented quickly and simply, to help you meet your AML/CTF obligations
Are Electronic Verification solutions available today?

Yes, but as with all things, not all are as they seem. It’s a case of buyer beware. Some are based on old technology with limited capabilities and potentially using data that is at best, suspect and at worst, perhaps restricted by the Privacy Act.

EV customers should look for a provider that uses a number of independent data sources to verify customer identification. Users should look for a provider who ensures their EV platform is scalable enough to support the inclusion of new data sets as they are approved by regulators, such as the electoral roll. This will future-proof the organisation from having to make costly updates.

EV customers should ensure their provider is up-to-date on the AML/CTF Act and has sufficient broader knowledge of the Australian market.

Making EV cost effective to meet the needs of industry and AML/CTF compliance requires a provider to invest heavily in R&D and work with industry to break down the barriers and access additional trusted sources of data.

One provider, FCS OnLine has invested in its technology solution Identi-Check®, and developed methodologies supporting the technology and the business process surrounding electronic identity verification.

Identi-Check® can either be used as a manual solution through the web or integrated into your own systems, making verification seamless. It can be implemented quickly and simply, to help you meet your AML/CTF obligations.

Subscribers to the Identi-Check® service must be current reporting entities to Austrac, the AML/CTF regulators.

[Note: For further information contact 02 8912 1030]
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Plan to attend your
Sector session on
Wednesday 14 May
The Mercantile Credit Management IMA National Conference on the Gold Coast is a return to the popular blend of business and social activities.

The “Tourist Day” includes an option to join a group heading to Movie World and then later we will all regroup for the Conference Dinner, a great networking opportunity to catch up with friends and colleagues.

This year to give delegates sufficient time with individual exhibitors you will be able to book an appointment to review the exhibitor’s products and services and how they can be used in your own operation.

A conference brochure will be emailed to all members and added to the website during February - watch out for and take advantage of the Early Bird offers.

---

**Conference Program**

**Wednesday May 14**  
**Conference Day 1**

- **1.00 pm**  
  Forum of Members of Australian Collectors Association
  Forum of Members of Australian Investigators Association
  Forum of Members of Australian Mercantile Agents Association

- **4.00 pm**  
  IMA Annual General Meeting - all members welcome

- **6.00 pm**  
  Cocktail Party & Opening of Exhibition Hall

- **8.00 pm**  
  At leisure  
  Check out the local restaurants and catch up with your industry friends

**Thursday May 15**  
**Tourism Day**

- **9.30 am**  
  Movie World

- **2.30 pm**  
  IMA Executive Council Meeting (Division Presidents, National Board & Directors Emeritus)

- **2.30 - 6.00 pm**  
  Exhibitors available by appointment

- **6.30 pm**  
  Conference Dinner

- **9.30 pm**  
  At leisure  
  Catch up with industry friends

**Friday May 16**  
**Conference Day 2**

- **8.00 am**  
  Breakfast & Networking

- **9.00 am**  
  Conference Sessions

- **5.00 pm**  
  Conference Closes

---

**MARK YOUR DIARY TO ATTEND THIS GREAT INDUSTRY EVENT**

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**Field Agents - Mid North SA**  
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**Email:** nri@debtcollections.com.au
As the use of the Internet and other computer networks has grown rapidly in recent years, so has the opportunity for electronic crime. Unlawful activity can be committed or facilitated online. Criminals can trade and share information, mask their identity, identify and gather information on victims, and communicate with co-conspirators. Websites, electronic mail, chat rooms, and file sharing networks can all yield evidence in an investigation of computer-related crime.1

A recent online article2 raises an interesting issue amounting to an emerging demarcation of what is or isn’t investigation work for which a person should be licensed.

The article details recent steps in South Carolina to introduce legislation requiring the gathering of digital forensic evidence for use in a court in that state to be carried out by a licensed private investigator (PI) or through a licensed PI agency. Under the proposed legislation if digital evidence for use in South Carolina was collected by unlicensed practitioners then it would be excluded from that state’s criminal and civil cases and potentially those caught practising without a PI licence could face criminal prosecution. The statute proposes fines of up to $5,000 and a year in jail for practicing without a license.

South Carolina isn’t alone in seeking to restrict the practice of gathering digital forensics to licensed PIs with Georgia, New York, Nevada, North Carolina, Texas, Virginia and Washington pursuing a similar agenda.

The “global village” doesn’t follow the conventional geographic jurisdictions of states and nations. Similarly, those engaged in cyber-crime pay no heed to where their crime takes them as they surf the world wide net. As a consequence, those engaged in chasing down digital evidence and cyber-criminals must routinely surf beyond his or her own state borders.

The proposal for South Carolina has reportedly stirred up opinion both for and against the proposition.

IT specialists who pursue digital evidence argue the work is highly specialised & involves probing deep into computer hard drives, networks and server logs looking for signs of hacking and data theft and PIs generally will not have the necessary skill set and experience to undertake such work, given their areas of endeavour are more routinely confined to surveillance of cheating spouses, workers compensation fraud and missing persons.

Forensics in the digital age is in many respects an emerging science. Cyber-crime, identity theft, data leakage and the regulatory landscape around data protection are growing at an escalating rate - digital forensic specialists are very much learning on the run as they perform critical tasks ranging from identifying sources of data compromises and holes in security infrastructure, to collecting evidence for employee disciplinary actions, to testifying in criminal prosecutions.

Pis are keen to explore new market opportunities for their work however as the “evidence” is to be located on computers and handhelds some digital forensic experts argue placing such work in the hands of inexperienced PIs would bring the evolving and highly specialised field into disrepute.

Against this, others argue licensing laws in various US states already place the digital forensics work directly in the domain of PIs - Jimmie Mesis, respected publisher of the US based PI Magazine points out such licensing laws “essentially consider a PI to be anybody engaging in the business of securing evidence to be used in criminal or civil jurisdictions”.

Whilst the digital forensic experts may be upset the alternative
The investigator should be aware that criminals may use the Internet for numerous reasons, including:

- Trading/sharing information (e.g., documents, photographs, movies, sound files, text and graphic files, and software programs).
- Concealing their identity.
- Assuming another identity.
- Identifying and gathering information on victims.
- Communicating with co-conspirators.
- Distributing information or misinformation.
- Coordinating meetings, meeting sites, or parcel drops.

Investigations vary in scope and complexity. Evidence of the crime may reside on electronic devices in numerous jurisdictions and may encompass multiple suspects and victims.

Complex evidentiary issues are frequently encountered in Internet and network investigations. Sources of information needed to investigate the case may be located anywhere in the world and may not be readily available to the investigator, such as victims and suspects and their computers, data on workstations/servers/routers of third parties such as businesses, government entities, and educational institutions, and ISP records.

Digital evidence is fragile and can easily be lost. For example, it can change with usage, it can be maliciously and deliberately destroyed or altered, and it can be altered due to improper handling and storage.

For these reasons, evidence should be expeditiously retrieved and preserved. Also consider that when investigating offences involving the Internet, time, date, and time zone information may prove to be very important. Server and computer clocks may not be accurate or set to the local time zone. The investigator should seek other information to confirm the accuracy of time and date stamps.

At the scene, the best judgment of the investigator (based on training, experience, and available resources) will dictate the investigative approach. In some cases a forensic examination of the computer will be needed. The investigator should be aware that any action taken on the computer system might affect the integrity of the evidence.

Only in exigent circumstances (e.g., imminent threat of loss of life or serious physical injury) should an investigator attempt to gain information directly from a computer on the scene. Any action taken should be well documented.

In some cases it may be sufficient to collect information from the complainant (and computer), document the incident, and forego a forensic examination of the complainant’s computer. However, if a suspect’s computer is identified and recovered, in most situations it should be submitted for forensic examination to preserve the integrity of the evidence.

It is important to remember that a traditional investigative process must be followed: witnesses must be identified and interviewed, evidence must be collected, investigative processes should be documented, and chain-of-custody and the legal process must be followed.

In addition, the investigator should consider the following: Was a crime committed? Who has jurisdiction? What resources are needed to conduct the investigation? Are sufficient resources available to support the investigation? What other resources are available? Are there legal issues for discussion with the prosecutor?
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<td>All Types of Documents</td>
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cont’d from p15
view is that the proposed legislation is not necessarily aimed at
disadvantaging ethical and skilled forensic professionals but rather
seeks to protect and preserve the integrity of the evidence gathered.

As Radcliff\(^2\) reports, “defence attorneys routinely use lapses in
the chain-of-custody of evidence, poorly documented evidence
collection techniques and lack of credibility of forensic investigators
as means to have evidence thrown out of court cases”. Whilst some
will argue that many computer related cases succeed in prosecution
due to the naivety of defendants and their attorneys (some of
whom lack enough knowledge to challenge the validity of forensic
evidence), one thing is sure - if digital forensics is an emerging
science, then cyber-crime defence will be an emerging art!

A good and recent example of the issue of PI licensing for
digital forensic experts being raised by defence lawyers to exclude
evidence is the Sony case (see panel at right).

Whilst computer forensics are regularly used as an internal
investigatory tool, it is only when a case spills outside the
enterprise’s domain (beyond the firewall) to say a partner network
or an Internet Service Provider that the proposed or existing state
laws requiring PI licenses are likely to apply.

At risk from the proposed legislation are the many security
and network management service providers often conducting
investigations on behalf of clients, as they would be considered
PI firms and need licensing in a majority of US states. As
many organisations use consultants to do their digital forensic
processing, all digital evidence gathered for an organisation by a
consultant and which might end up in court is potentially called
into question.

Forensic practitioners contend that incomplete or bungled
evidence could also arise from a PI and speculate mistakes would
become more common if private eyes try to embark on or oversee
digital probes. They argue to become a good technician capable
of undertaking digital forensics requires many years of skills in
platforms, systems and forensic tools and is well beyond simply
holding a PI licence and undertaking a basic tuition in the use of
EnCase Forensic, the industry standard in computer forensic
investigation technology.

“If digital forensics is an
emerging science, then cyber-crime
defence will be an emerging art!”

Both camps agree quality control around digital forensics is
a crucial issue and claim they are worried about protecting the
evolving profession and looking for ways to institute measurable
quality controls.

Toby Finnie, executive officer of High Tech Crimes Consortium
(HTCC) believes “requiring digital forensic experts to obtain
PI licenses does not serve the public’s best interest, and
instead digital forensic examiners should be required to show
demonstrated levels of competencies, based on standards and
practices developed by peers”.

HTCC which is a law enforcement assistance network with more
than 1,800 members across 37 countries is presently drafting a
briefing paper to guide state legislators in their development of
practical regulatory controls for digital forensics.

“\text{The Sony Case}”

The Recording Industry Association of America (RIAA) in late
2007 settled a case against a grandmother in Texas accused of
sharing music over the KaZaA network. Both the RIAA
and Rhonda Crain, the Defendant, agreed to a stipulation
of judgment against Crain, but the record labels received nil
damages.

Crain, a grandmother displaced by 2005’s Hurricane Rita, was
sued for copyright infringement in September 2006 after the
RIAA’s investigators flagged user “kcrain@KaZaA” for sharing
572 tracks on the P2P network, including tracks by 50 Cent
and Usher. When Crain denied file-sharing and rejected RIAA’s
$4,500 pre-litigation settlement offer, the RIAA filed suit.

Lone Star Legal Aid for Crain counterclaimed the Plaintiff had
no evidence the Defendant had infringed the record label’s
copyrights other than her ISP’s linking of the IP address flagged
by SafeNet on KaZaA to her account, and accused the RIAA of
using investigators not licensed by the state of Texas in violation
of state law.

Although the counterclaims were dismissed, in late November
2007 the parties settled the case with a final judgment in favour
of RIAA but without Crain admitting to infringement herself.
She was permanently barred from copyright infringement and
was required to delete all of the recordings that the “Defendant
and/or any third party that has used the Internet connection and/
or computer equipment owned or controlled by the Defendant”
had downloaded.

Possibly the last stipulation explains RIAA’s decision to settle
without damages. The KaZaA user seen by the RIAA’s
investigators was signed on using the screen name kcrain@
KaZaA, possibly indicating one of the Defendant’s children or
grandchildren logged into KaZaA and the Defendant’s only
“crime” was paying for the Internet account used for file-sharing.

In the Sony case, RIAA didn’t believe the absence of a PI license
had any bearing on the admissibility and reliability of evidence
insisting state PI laws cannot stop the collection of public digital
evidence across cyberspace because it is “boundary-less”!
RIAA argues the information collected was being distributed in
cyberspace, which is larger than even Texas!

John Stoneham, an attorney with Lone Star Legal Aid maintains
the evidence presented should have been called into question
as he contends it was incomplete, consisting merely of records
taken over a public file-sharing system and did not investigate
the Defendant’s computer to establish if it had been infected
with a remote control program.

Footnotes
1. David W. Hagy, Deputy Assistant Attorney General, Office of Justice
Programs and Principal Deputy Director, National Institute of Justice
2. Article by Deb Radcliff (a writer and editor in North Carolina
specialising in computer-based crime and information security) at
www.baselinemag.com
3. U.S. Department of Justice, Office of Justice Programs & National
Institute of Justice Special Report: Investigations Involving the
Internet and Computer Networks, January 2007 p.2-3
4. SONY BMG MUSIC ENTERTAINMENT v RHONDA CRAIN in
the US District Court for the Eastern District Of Texas, Beaumont
Division - Civil Action 1:06 CV 0567
A working group of Australian Collectors Association comprising the larger and mostly national collection firms has been busy in recent months engaged on projects directly impacting upon their operations and coincidentally providing leadership and benefits to the wider Australian collection industry. Issues concerning the larger operators included:

- **Anti-Money Laundering legislation [AML/CTF]** - does it directly impact upon those engaged in third party collections and debt purchase and if so what obligations are imposed?
- **Privacy Reform** - ensuring a comprehensive response addressing collection industry issues was submitted to the Australian Law Reform Commission [ALRC] with respect to its Discussion Paper 72: Review of Privacy Laws.

- **CAPI Review** - assisting the IMA in its representations to the NSW Ministry for Police regarding the overly onerous 2004 CAPI Act & Regulations especially with respect to excessive training qualifications and the length of time taken to get a new applicant licensed.
- **Creating a forum for the specific issues affecting the larger and national collection firms to be discussed and actioned.**

Members of the working group have underwritten the various projects committing significant funds to allow the engagement of suitably qualified lawyers and consultants to assist in the various initiatives. As a consequence of this valuable support, assistance in the form of legal advice and representation for the Anti-Money Laundering issue and in drafting the ACA submission to the ALRC was possible. A copy of the ACA submission to the ALRC is available for members to review at [www.imal.com.au](http://www.imal.com.au)

The lawyers retained for AML/CTF have applied to the regulator AUSTRAC for a full exemption for all debt collectors from all provisions of the Act generally or in the alternative a full exemption from all provisions in relation to debt collection services performed on “inactive credit facilities”. The application is made on the basis it would be commercially impracticable or in some cases, impossible for collectors to comply with the AML/CTF regime.

The application details the nature of the debt collection industry is not conducive to the facilitation of money laundering or terrorism financing and an AML/CTF risk assessment of the “designated services” provided by members has concluded debt collection services constitute an extremely low risk activity from an AML/CTF perspective.

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Warren Mallard’s article “WHAT are we worth?” in the last edition I read with great interest. The issues raised not only applied to investigators but equally rang true for process servers.

“We need to move from the comfort of being “price takers” and be confident in becoming “price setters” for our services”

In 1991, when I started in this industry most process servers in Brisbane were charging $30 - $40 to serve a document. In 2008 some are still charging only $40 and this generally includes 3 attempts, an affidavit of service and all administration costs!

My own business currently charges $70 plus GST to serve in the Brisbane Metropolitan Area making us one of the more expensive agencies in Queensland - whilst we also serve for other agents as a favour at a lower rate we certainly make no money from such work.

The costs to run a professional process serving agency in 2008 are huge. Brisbane commercial rents are at an all time high ($600-$700 per square metre). Necessary expenditure like professional indemnity and other insurances increase every year. The costs of maintaining high quality computer systems, database programmes, photocopiers, scanners etc are substantial. The leading increasing expense is staff wages - with administration staff earning more than process servers if I am fortunate enough to find suitable people for administrative work.

We need to ask ourselves - what are we worth as professional process servers?

Last month a lawyer client at lunch commented: “I’ve always wondered how process servers make a living when they charge so little!” Although embarrassed by this client’s assessment, I knew what he said made sense.

Think about how little we charge compared to other professional industries and even tradesmen. A plumber the other day was only at my house for 15 minutes and yet his charge out fee was $110 excluding parts. Most process servers charge well under half of this and do three times as much work!

Then there’s the problem of recruiting process servers. With the cost of living soaring together with record high petrol prices how do you lure people into the industry? When I recently advised a job applicant of the rates to be paid to him per serve and what his commercial agent’s licence would cost, he candidly responded with: “Why would I bother when I can go to the mines and earn 100k?”

Why do the process serving firms bother? If we don’t then no one else will, but for us to continue something has to give!

Many believe the problem stems from the scale of fees charged by the bailiffs and sheriffs in the different States - for example, in Queensland the bailiff’s fee for service of a Magistrates Court Claim & Statement of Claim is only $35.

Occasionally when providing a quote over the phone, I’m met with the response: “What $70? But the bailiff only charges $35!” My reply is always: “With respect, please use the bailiff. We simply cannot serve a document for $35 and remain in business”.

A bailiff’s administrative costs are mostly covered by the Court to which the bailiff is attached - the prospective client often fails to understand this and the true value of using a private process server is based in the ever increasing expectation that everything needs to be done yesterday - an expectation bailiffs and sheriffs generally cannot meet satisfactorily or with any degree of certainty. Whatever happened to the adage “you get what you pay for”?

Have you ever reviewed a lawyer’s Bill of Costs for a litigated matter? If you have you will see the lawyer in sending out a simple letter of instructions to the process server will usually charge more than the process server does for actually getting out and serving the document!

To remain viable requires process servers to charge the user a fair and sustainable fee for service and to provide a premium superior service justifies a premium price.

Professional process servers like professional private investigators need to seriously start charging what they are worth and what is required to operate a business in 2008 as costs are only going to continue to rise. We need to move from the comfort of being “price takers” and be confident in becoming “price setters” for our services.

[Nick Wright is a Director of IDS Group, Brisbane and President of the Australian Mercantile Agents Association.]
NEW Year, new plans?

IMA President, David Cains reflects on change and opportunity.

As you read this column, New Year resolutions for 2008 and your agenda of personal goals for the next 12 months are well under way.

Unhappily, over the New Year period a number of our members lost loved ones and friends - for Alan and myself three in just one week. These losses often occurring in sudden and unexpected circumstances challenge us to better organise our work so as to maximise the time and opportunities to spend with family and friends.

This year we will also see a number of the older members retire causing further change in our industry demographics as the younger generations reorganise their work flows and priorities. In May 2008 I step down as National President and look back at 18 years in executive roles with the IMA - I can already feel the sense of relief for the prospect of a holiday from business issues.

The IMA as the umbrella organisation to our industry sectors has already looked at the many achievements of 2007 and acknowledged missed opportunities through a lack of manpower on the ground. This lack of resources appears to me to be a consequence of 10 years of substantial growth and positive aspects for the Australian economy which in turn saw large decreases in workflow across the sectors of our industry.

At a personal level, my own company is currently fine-tuning its goals this year with a view to responding with changes if the credit squeeze caused by increased costs of funds internationally does flow down to our clients who in turn may then need an increase in our services. How do you plan to respond to the opportunities?

In just 10 days in January, the Australian stock market lost $130 billion in value! As an industry we must be vigilant for opportunities to assist clients dealing with massive internal pressures as a result of higher capital costs. A projected $100 a week rise in average rents in Sydney and other capital cities during 2008 to bring investment properties back to realistic returns for investors will also cause further hardship across that section of the community who can ill afford to pay.

“Our members are doing a real and very important job assisting the community.”

The joint actions of the Banking and Insurance Ombudsmen in relation to hardship cases will further cause problems for clients with complaints rising and our members potentially in the middle of such disputes and prevailed upon to meet the costs of compliance and complaint handling which make a huge dent in dwindling profits.

In May this year the IMA heads back to the Gold Coast for the Mercantile Credit Management National Conference. Recent record rainfalls mean the Queensland dams will be full and we can return to the Sunshine State and enjoy a relaxed few days intermingled with informative guest speakers and our exhibitors showing further new products to make our business lives easier. Take advantage of the early bird discounts and the recently advertised very cheap airfares to Queensland to secure your place at the conference.

I look forward to seeing members throughout 2008 - please keep reviewing the IMA website for news and events and call the National Office if you need assistance from your association.

David Cains
President

AGM DATES

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<td>NATIONAL</td>
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GET the balance right

Workloads, intrusive technology and limited time challenge our priorities.

My year started sadly with the news of John Betterman losing his long battle against cancer. John had been a National Treasurer during the period Peter Collins and I were on the National Executive. Peter and I have vivid memories of John as a great contributor, ready to challenge the status quo by passionately advancing logical alternatives aimed at enhancing the benefits to members.

John had the well balanced and practical confidence of a fellow who had been around. Always positive and energetic with a “can do” attitude, John worked for many years as a mercantile agent in Broken Hill where he was immensely popular, contributing to the colour and spirit of that outback community. John will be sorely missed.

Soon after, another great friend met an untimely and very tragic end. These losses highlight our fragile and tenuous grip on life and the need to balance right work and our personal lives. This latter aspect is appropriately exposed in Bernard Salt’s article at page 9 of this edition.

Accounting and reporting

Back at the desk, work has been underway finalising the financial year end accounts to 31 December in readiness for the annual audit in February and preparation of the Annual Report to members in the lead up to the National Annual General Meeting (AGM).

The AGM will be held on Wednesday, 14 May 2008, immediately before the cocktail party of the Mercantile Credit Management National Conference at the Gold Coast International Hotel, Surfers Paradise. All members are welcome to attend the AGM.

Proactive Sector

A working party of the ACA group are demonstrating the value of cooperation in addressing common concerns – as detailed at p18 of this edition, this group has moved beyond just meeting and chatting and have committed significant funds to underwrite a proactive agenda to gather specialist advice and assistance on emerging legislation.

“Losses highlight our fragile and tenuous grip on life and the need to balance work and our personal lives.”

The AGENT

My thanks to the contributions of industry tales coming forward from members and enhancing the content of this magazine in recent editions. I’m confident from the feedback that you are enjoying this positive input from members. These snapshots of our work help to show to the wider readership of the magazine the real contribution our industry members make to the community. Speaking of community contributions congratulations to Mark Grover upon his appointment as an Australia Day Ambassador.

Annual General Meetings

During this month each of the Divisions and the Branch members hold their AGMs - I will be attending the Division AGMs and look forward to meeting and discussing with members our industry and the challenges ahead.

On behalf of the Board I thank those members who have served on executives during the past year - each of those roles are volunteer positions which required a commitment over and above membership in the IMA.

National Conference

My team are currently finalising plans for the Mercantile Credit Management National Conference where the central theme will be “Catch the wave of industry change”. The conference brochure will be emailed to members during February.

Cheers,

Alan Harries
Executive Director

Written nominations to the Executive Director are invited by 16 March 2008 for the following awards:

- Brian O’Meara Award to a member
- IMA Award of Excellence to any individual or firm (including any member) who have made an outstanding contribution in assisting the IMA to achieve its mission:
  - To represent the professional interests of those involved in Investigations, Debt Collection, Process Serving & Repossessions;
  - To foster a membership committed to the highest level of ethics, integrity and best business practice; and
  - To advance members’ interests nationally with government, business and the general community.
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