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**San Francisco Intellectual Property Law Association**

**Use Of Computer Forensics In Trade Secret  
Misappropriation Actions:  
The View From Inside And  
Outside The Computer**

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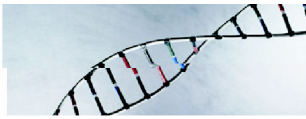
**LECG**

## Key Employees Defect – What Do You Do?

- **Conduct interviews**
- **Gather applicable agreements and exit interview forms**
- **Determine access to company databases**
- **Search e-mails on server or back-up tapes**
- **Locate but do not turn on computer used by departing employees**
- **Locate all PDA's, cell phones and other electronic storage devices used by departing employees.**

## Initial Forensic Inquiry

- **Take a Mirror Image of the Hard Drive**
  - Preserve Evidence
  - Chain of Custody
- **Examine Forensic Image of Computer**
  - Various Log Files
  - Removable Devices
  - Shortcuts
  - Personal Email Accounts
  - FTP usage



## E-Mail Fragment Found in Unallocated Cluster

\n\u003c/div>\n\u003cdiv>\u003c/div>\n\u003cdiv>**Bob Bluster**\u003cbr>\u003cbr>\u003c/div>\n\u003cdiv>\u003cspan>On 6/3/07, \u003cb>**Mark Moron**\u003c/b> &lt;\u003cahref\u003d\"mailto:[markmoron@comcast.net](mailto:markmoron@comcast.net)\" target\u003d\"\_blank\" onclick\u003d\"return top.js.OpenExtLink (window,event,this)\">**markmoron@comcast.net** \u003c/a>&gt; wrote:\u003c/span>\n\u003c blockquote style\u003d\"padding-left:1ex;border-left:#ccc 1px solid\">\n\u003cdiv>**Here&#39;s the nuts and bolts of our contract. Let me know if there&#39;s anything in here that is materially different from what we discussed over dinner.**\u003c/div>

,1,,\"sat **Apr 28 2007\_\_11:13 PM**\",\"On 4/28/07, **Mark Moron** \u003cmarkmoron@comcast.net \u003c/b> wrote:\",\"On 4/28/07, \u003cb class\u002dgmail\_sendername>**Mark Moron**\u003c/b>&lt;markmoron@comcast.net &gt; wrote:\",\"comcast.net\",\",\",\",\",0,,\"u003cBAD116F274578A4RG0000793820387676@dib.gbl> 193874620,,0, \"In reply to \"spreadsheet\"\",0] ,[mb,\"\",n/n/n >**I need you to fill in the attached spreadsheet with the information from the 06&financial database so that we can send it to Gary Greedy before Monday. Thanks. Date: Sat, 28 Apr 2007 23:13:29-0700** \",[ , \"Spreadsheet.xls,BLANK.xls,financials.xls\", \"112bc3e17cac7a18,0,

# DVD Log Files

The screenshot displays a Windows XP desktop environment. The primary window is a File Explorer window showing a directory tree on the left and a list of files and folders in the main pane. The list includes folders such as Benefits, Bitmap, Companies, demo, Docs, DPmir, HR, info, leads, Legal, Marketing, my eBooks, My Music, My Pictures, my videos, Oracle, paperwork, PDFS, Plummer, Presentation, and sales. The right pane shows a detailed view of the selected folder, listing items like CV, demo, Fax, fsa, HR, JDS, info, Journal, Marketing, leads, Legal, Marketing, My eBooks, My Music, and My Pictures with their respective sizes and modification dates.

Overlaid on the File Explorer is a Nero Express window titled "Disc Content". It shows a list of files and folders to be added to a disc, including folders like A\_DEMO\_TEST, Adobe, Benefits, Bitmap, Companies, and Competition, along with their sizes and modification dates.

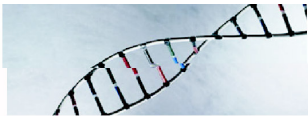
The taskbar at the bottom shows the Start button, several open applications including "Jim Vaughn - Inbox", "Microsoft PowerPoint", and "Exhibit\_A.doc - Micro...", and the system tray with the date and time "5:05 PM".

## Strategic / Legal Considerations

- **Notify New Employer?**
- **Seek TRO?**
  - Give notice to Defendants?
- **Type of Injunctive Relief:**
  - Preservation of hard drives or other media
    - Consider all sources that may contain trade secrets (*e.g.*, removable devices, CDs or DVDs, home computers, new company computers/networks)
  - Halt use of trade secrets
  - Stop competition

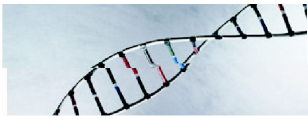
## Seeking a Forensic Examination of Opponent's Computer

- Courts rarely grant parties *carte blanche* to conduct forensic examinations of opponent's computer.
- **Key Inquiry:** What is the relationship between the computer and plaintiff's claims?
  - Did the defendant download trade secrets onto subject computer?
  - Did the defendant use the computer to receive or disseminate trade secrets?
  - Has the defendant been inconsistent in discovery responses?



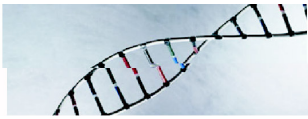
## Protocols for Forensic Review

- Who does it?
- How do you do it (search terms, date filtering, etc)?
- Where do you do it?
- A forensic analysis is an iterative process. Allow for multiple passes.
- Direct hire vs. neutral party (pros and cons). It is always easier to have your own expert do the analysis under your control, so that you preserve work product protection.
- Review of materials found



## **Proactive / Defensive Use of Computer Forensics**

- **Preserve forensic image of computer in question**
- **Stipulate to imaging/protocol for process**
- **Use computer forensic methods to prove that the document was not “copied”**
- **Once aware, take action to show good faith cooperation**



## Questions?

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