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Dawn raid shadow teams, judicial clearance needed to deal with cutting-edge agency technology - PaRR London Forum

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- Lawyer argues for third-party involvement to separate data
 - Authority keyword search list essential for firms' understanding
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An independent judge and comprehensive “shadow” teams are required to deal with agencies accessing masses of material during dawn raids, delegates told a *PaRR* forum in London yesterday (15 September).

A data specialist speaking at the PaRR Antitrust Forum 2016 said agencies have invested in cutting-edge technology and IT specialist teams, enabling them to gain access to large quantities of electronic data when they conduct raids.

Jose Lobo Moutinho, a partner at Portuguese law firm Servulo & Associados, told delegates that inclusion of an independent third party in the raid process could prevent officials from accessing data they are not authorised to see.

When an agency copies whole folders that contain too much information, it is “perhaps unavoidable” that officials will see information they neither needed nor intended to obtain, he added.

In a recent abuse of dominance case into **Irish Cement**, an Irish court banned the country’s competition authority from examining emails seized outside the scope of a search warrant to see whether they contained relevant information, in a judgment that has since been appealed by the regulator.

Today, the vast majority of dawn raids tends to focus on electronic data stored on desktops, platforms, tablets, smartphones, and cloud-based storage spaces, Mishcon de Reya partner Andrij Jurkiw said.

Companies in the digital age should be firm on exercising their legal rights during raids to prevent officials from accessing information they are not entitled to search, he stressed.

Unlimited access could prompt officials to look in places they would not normally, which might spawn entirely different investigations, Jurkiw continued. Companies must be able to explain to officials exactly how and where they store relevant data, instead of handing over the devices containing the documents, Jurkiw said.

Ensuring that information is stored properly and that any legally privileged data is properly classified is key to preparation for a raid, according to Moutinho.

He cited one case he knew of in which the authority had “mirrored” the data on an entire computer because the lack of coherent storage methodology made discerning the relevant data impossible.

Jurkiw highlighted that another crucial element in a dawn raid is to ensure a sufficient number of people is available to “shadow” the raiding officials.

He said it was important to have an equal number of people to shadow the officials carrying out the search, including an additional IT team to assist the regulator in determining the compatibility of software.

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Keywords that investigators use for searching electronic data should also always be disclosed in Portugal and certain other EU member states, in order for the shadow team to follow the inspectors effectively, Moutinho noted.

Regulators in the UK or EU are not obliged to disclose the list of search words.

Companies can, however, build a clearer picture of what exactly an agency is looking for by monitoring the information – including names of people, dates, locations, or products – that the agency is looking for, Jurkiw argued.

by Csilla Hevesi-Toth and Zsuzsi Toth in London