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**Digital  
Investigation**

## Legal commentary

# Why computer forensic professionals shouldn't be required to have private investigator licenses

Joseph J. Schwerha IV<sup>a,b</sup>

<sup>a</sup>Owner, TraceEvidence, LLC, Charleroi, PA 15022, United States

<sup>b</sup>Associate Professor of Business Law and Technology, California University of Pennsylvania, California PA 15419, United States

I am a lawyer. I wear different hats on different days – professor, consultant, forensic practitioner – but my primary professional training is as a lawyer.

It takes significant time and effort to obtain a license to practice law. First, you apply for law school. Then you attend law school. Finally, you graduate and take a bar examination for every state in which you intend to practice. If you pass, as I did, then you get the opportunity to pay your fees and get a license to practice law. As such, I am comfortable with reasonable licensing requirements.

Recently, in the United States there has been a push to require computer forensic professionals to become licensed as private investigators. In my humble opinion that is a very bad idea.

There are many reasons why computer forensic professionals should not be required to be licensed private investigators. Below, please find a few to which I would like to draw your attention.

Requiring licensure will limit the Field unnecessarily as there are too many potential jurisdictions to allow the average practitioner to be licensed in every jurisdiction. It appears that 8 states do not license private investigators. As late as April of this year only six states had specifically required computer forensic professionals to be licensed as private investigators (White and Micheletti, 2008). However, 42 states have laws on the books that are unclear on this subject.<sup>1</sup> If you accept the premise that you could potentially be asked to testify anywhere once you start a case (can you predict the future?), then any computer forensics investigator must be licensed to

all jurisdictions prior to doing any investigations, if he or she wants to be sure they can present evidence in court (Radcliff, 2008). That is unacceptable.

The requirements to become a private investigator largely are inapplicable to the practice of computer forensics. Very few of the states speaking to this area of the law have any requirements for being a private investigator that serve to raise the level of expertise of those practicing computer forensics.<sup>2</sup> Indeed, some of the State requirements serve to eliminate those highly skilled in the field because the requirements to be a private investigator contain restrictions that have nothing to do with computer forensics. For instance, in Vermont requires that an applicant work under a licensed private investigator for 2000 h; but, does not require any knowledge or experience in the area of computer forensics (Kessler, 2008).

There is no consistent, workable definition of a computer forensic professional upon which the States may depend to adequately regulate the field. Texas attempts to exempt those conducting mere computer repair from its prohibitions; but, the results have been far from clear (Texas Private Security Board, 2008). Michigan's Professional Investigator Licensure Act defines computer forensics as "the collection, investigation, analysis, and scientific examination of data held on, or retrieved from, computers, computer networks, computer storage media, electronic devices, electronic storage media, or electronic networks, or any combination thereof." Thus, computer repair technicians could be required to be licensed in one state and not in others, though both states are

E-mail address: [schwerha@cup.edu](mailto:schwerha@cup.edu)

<sup>1</sup> The numbers in White and Micheletti (2008) are very open to interpretation, however, with one observer even reporting that 43 states actually require as computer forensic professional to be licensed as of April 2007 (Manes et al., 2007). It now also appears that Michigan and South Carolina have changed or are in the process of changing their laws on this subject.

<sup>2</sup> Nevada and South Carolina appear to actually require some experience and level of competency in computer forensics (Radcliff, 2008).

attempting to license computer forensics professionals. This makes it very hard for both the regulators and the regulated to determine appropriate behavior.

Market forces and adverse legal actions should be depended upon to lessen incompetent practitioners. Some may argue that enforcing the bonding and certification requirements of a private investigator upon computer forensics professionals can only help the level of competency. However, why can't market forces and our legal system help with those requirements? If someone doesn't have insurance, isn't bonded and/or does not possess a certification, then let the market determine what that person's services are worth. If someone chooses to hire that person, then let the consumer have some responsibility for their actions. Moreover, I am sure that other lawyers will be happy enough to sue on behalf of aggrieved parties. We should not offer such draconian measures to protect the few consumers that could possibly benefit. If you want to regulate that area at all, do it under that state's consumer protection statute, not by prohibiting quality computer forensic professionals from practicing their craft. There has to be some balance.

At the very least, protect those who need it by certifying computer forensic professionals as computer forensics professionals, with detailed, appropriate requirements. This is the approach taken with other forensic disciplines and there are plenty of certifying bodies out there which could be used as baseline knowledge requirements, including: the International Society of Computer Examiners (providing the Certified Computer Examiner), the SANS Institute (providing the GIAC Certified Forensics Analyst) and the International Association of Computer Investigative Specialists (providing the Certified Forensic Computer Examiner). Indeed, the National Institute of Justice has been funding an effort in this area as the Digital

Forensics Certification Board, soon to be offering the Digital Evidence Practitioner Certification (<http://www.ncfs.org/dfcb>).

Requiring computer forensic professionals to be licensed private investigators is like to trying to drive a square peg into a round hole – it just does not work. If any protection is necessary beyond that which can be provided by the market and our legal system, then such protection should take the form of a special certification of computer forensic professionals with requirements limited to their field of expertise. There should be no requirement to be a licensed private investigator, which has little or no connection to the skill set necessary to be a high-quality computer forensic professional.

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