



# Judgment in *TBD (Owen Holland) Ltd v Simons* [2020] EWCA Civ 1182

In an important decision potentially affecting any claim for copyright infringement or breach of confidence, the Court of Appeal has laid down guidance for obtaining an “imaging order”. Imaging orders permit forensic computer experts to take an electronic image of the storage media on the respondent’s electronic devices. Their purpose is to preserve evidence which might otherwise be destroyed, and they will only be granted where there is substantial evidence to show a risk of destruction. Imaging orders are less intrusive than search orders. However, imaging cannot discriminate between relevant evidence and privileged or irrelevant and confidential information. As a basic



safeguard for the respondent, the image must be kept by the expert and not searched by anyone until the court has given permission. The court may make an order permitting the applicant to search by keyword, but all keywords must be agreed by the parties or ordered by the court.

An image order will often make a traditional “Anton Piller” search order unnecessary. The Court made it clear that on any application for a search order, the court must consider



making an imaging order, and will only grant a search order where the court is satisfied that an imaging order will not protect the applicant. The Court called for the urgent development of a standard form imaging order.

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