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| Session 14: Practical Exercise  (Phase 3 - Evidentiary Hearing + Phase 4 - Judgement) | **Duration: 120 Minutes** |
| **Resources required:**   * Laptop or PC running an operating system with an office suite (capable of showing pptx) * Projector and display screen * Internet access (if available) * Whiteboard * Whiteboard pens (at least 2 each of blue, black, red and green) * 2 Flipcharts with adequate paper * Student notepaper and pens * Stapler, hole punch and scissors * Blu tack or a similar product to allow for paper to be affixed to the walls temporarily * Printer to print the leaflet * Files: Session 14 – Evidentiary Hearing and Judgement.pptx   **Resources required for an on-line delivery:**   * Laptop or PC for each trainee (if attending from home) or for a groups of trainees, depending on availability * A strong internet connection * An online tool should be provided that allows video conferencing and is specifically aimed at providing training. Due to the fact that the trainers have to stay in visual contact with the trainees, it is important that when the slides are shown, the trainers still see the trainees (in some online video conferencing tools only the slide can be seen). It is in any case also a plus to be able to provide online break-out rooms. * Files: Session 14 – Evidentiary Hearing and Judgement.pptx | |
| **Aim:**  This session is the grand finale of the specialized training. The aim is to bring together all the knowledge and insights gained during the training in a real court setting, in which the interaction between the defence, the prosecutor and the judges is provoked as realistically as possible in an evidentiary hearing regarding electronic evidence. | |
| **Objectives:**  At the end of this session, delegates will:   * have experienced at first-hand how a court hearing goes in a case where the digital evidence material is central. * have seen the role of the different players: prosecutors, lawyers and judges. * understand how the different actors within the court play their own role and have developed their own views on the evaluation of digital evidence material * be triggered to look at a case from a side they are not used to professionally as well * identify how the court reaches its verdict on the evidential value of the electronic evidence * be able to defend electronic evidence * be able to attack electronic evidence * be able to judge electronic evidence | |
| **Introduction**  This session consists of two parts, the evidentiary hearing and the judgement. Both parts are practical sessions. The evidentiary hearing is the grand finale which the participants have been preparing for. Recommendations regarding the organisation of the hearing are provided in the section below. | |
| **Practical Exercises**  The groups as set up in Session 13 will bring their case to court.  **Phase 1: Hearing**  The format of the evidentiary hearing will depend on the group formation selected, though in principle, the hearings will be similar irrespective of group formation.  If the participants are divided into prosecution, defence lawyer and judges teams, during the evidentiary hearing, two or three team leaders (depending on the results within the group, etc.) of the prosecution team will present their case and the electronic evidence. The team can also divide tasks, motions and statements at its own discretion. The defence team will have the possibility to file motions and present their arguments. Within the judges’ team, a president of the court has to be assigned who will be responsible for the order in court and the leading of the debates (the expert who guided/supported the judges team, can be a ‘judge assessor’). Throughout the evidentiary hearing phase, the judges team will steer very carefully and set out the debate and discussions in court to the point that every participant will end up with the right lessons learned. The expert witness (an IT expert/LE officer) can be questioned (cross examination is possible) in court by the judges, the defence team and the prosecution team.  If the participants are divided into teams each consisting of a judge, prosecutor, witness and defence counsel, each team member will have an opportunity to play each role.  Action and reaction is key in this phase.  In the development of the material, common law and civil law differences can and should be taken into account, but as said, a hybrid approach could be profitable for all participants.  For example: in a civil law system, the cross-examination of expert witnesses, or showing in court where the evidence was found in the device, is not really a common practise. However, any prosecutor or judge from a civil law country would be eager to benefit from the knowledge and expertise resulting from this exercise. Also, in civil law countries, more and more frequently, when requested to execute mutual legal assistance request, prosecutors and judges are requested to follow certain common law requirements in the gathering of the evidence to make sure that the evidence would also be admissible in a common law court.  The goal is that a natural realistic court situation will be created and that discussions and remarks will evolve as in real court situations. The experts are responsible to stimulate the participants to a fluent court discussion, action and reaction.  **Phase 2: Judgement/Ruling**  After all parties have been heard, the debates are closed and the case is taken into consideration by the court. The judge will not make any ruling on culpability but solely on the evidence after proper examination of the evidence.  Since the judges/judges’ team had the opportunity to anticipate on the arguments and make preparations throughout the trial preparation phase, they will be given +/- 45 minutes to come to a judgement.  If the participants are divided into prosecution, defence lawyer and judges teams, during the evidentiary hearing, during this deliberation, the prosecution team and the defence team will debrief the court proceedings for their respective teams and list up their observations.  The judge will come to a final judgement which they will present in plenary. This is basically also a sort of debriefing that is designed to put the evidentiary hearing experience into perspective. The judgement gives a summary of the motions and issues raised and a review of the arguments and legal issues which were brought in the pre-trial procedure. The possibility is left open for individual judges to explain any dissenting opinions that where not withheld by the majority of the judges. Given the time limitation, the judgement or ruling does not have to be formalistic, and could be in the form of a presentation or even bullet points covering the key issues related to electronic evidence. | |