



**KASALANA**  
Global. Ethical. Intelligent.

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**How accurate is our information?  
The issues around reporting due  
diligence data**



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## Introduction

In its 2009 report, *“Undue Diligence, How Banks Do Business with Corrupt Regimes”*, the non-governmental organisation *Global Witness* described in detail a number of allegedly corrupt relationships between international banks, politically-exposed people and investments in natural resources. The solution, declared *Global Witness* must start with a change of culture within organisations so that know-your-customer due diligence is not *“treated as a box-ticking exercise of finding the minimum information necessary to comply with the law”*.

It argued that finance firms *“must be properly regulated to force them to do their know your customer due diligence properly, so that if they cannot identify the ultimate beneficial owner of the funds... they must not accept the customer as client”*. Regulation and guidelines were too vague and allowed for too many loopholes, the report claimed – but after making a strong case for the need for focused, accurate and in-depth due diligence, *Global Witness* did very little to advise how that research should actually be undertaken.

Now jump forward six years to the publication of the *Dow Jones Risk & Compliance 2015 Anti-Corruption Survey* in April. The survey analyses results submitted by 259 compliance professionals worldwide and compares the results with those of previous years. This year’s submissions show that whilst *“confidence is increasing in due diligence information and processes, challenges remain”*. One of those challenges hindering confidence, according to the survey’s findings, is that compliance professionals experience *“difficulty accessing information and evaluating its credibility”*.

What is meant by ‘credible information’ and how does a compliance professional find it? One definition of ‘credibility’ used by academics is: *“The believability of a source or message, which is made up of two primary dimensions: trustworthiness and expertise”*.<sup>1</sup> According to a paper<sup>2</sup> by *Miriam J. Metzger* and *Andrew J. Flanagin* that focuses on information sought in the digital world and *“how information consumers make judgements about the accuracy of information they encounter online”*, it is harder than ever before for individuals to locate

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<sup>1</sup> *Digital Media, Youth and Credibility*, by Miriam J. Metzger, Andrew J. Flanagin, *Massachusetts Institute of Technology*, 2008

<sup>2</sup> *Credibility and trust of information in online environments: The use of cognitive heuristics* by Miriam J. Metzger, Andrew J. Flanagin, *University of California*, July 2013

information that they can trust when there has been such an explosion of multimedia sources. Company professionals need to do more than just ‘tick boxes’, as *Global Witness* points out; but they also need to base their business decisions on accurate information and make judgments founded on reliable and credible sources.

This White Paper explores the ways in which due diligence data can be collected, evaluated and analysed; and the usefulness and variations, as well as the limitations and pitfalls, of public records. We go on to discuss the complex issue of human-source intelligence, its interpretation, reliability and issues of confidentiality.

### Publicly Available Information

#### Collecting Data

As the US Central Intelligence Agency (CIA) notes, “*information does not have to be secret to be valuable... Open Source Intelligence plays an essential role in giving the national security community as a whole insight and context at a relatively low cost*”.<sup>3</sup> It goes on to emphasise that “*just because open source is ‘free’ or publicly available doesn’t mean it is easy*” to interpret or to evaluate correctly.

We believe - with some justice - that we are increasingly sophisticated retrievers of information. The advent of the internet and the wealth of source material available on it, even without the requirement of subscribing, makes the collection of data far more straightforward than in days gone by when legwork, specialist expertise and patience were key attributes for any researcher.

The collection of basic public record information in some countries is indeed a relatively uncomplicated matter of desktop, electronic database retrieval. Corporate documents can be pulled from Companies House in the UK or its equivalent registry elsewhere in the world; a property title deed from a land registry; records of births, marriages and deaths and so on, are available at the click of a button.

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<sup>3</sup> <https://www.cia.gov/news-information/featured-story-archive/2010-featured-story-archive/open-source-intelligence.html>

There are often limitations of course. In the UK, for example, one can search for directorships but not for an individual's shareholdings. It is not possible to search the UK Land Registry for all the properties an individual (or company) might own. Litigation records in England & Wales are available electronically, but only if they fulfil certain criteria and are held in certain courts of justice. Whilst some records are 'public' they are not necessarily easily accessible but require searches in dusty archives in court houses or at a microfiche machine in an institution's library.

Another limitation is the length of time for which a document or record is required to be kept. Many institutions destroy records older than seven years - often for practical, physical storage purposes as well as data-protection legislation. In the UK, there is a limit to the length of time expired bankrupts need to be kept on file, for instance, and the same is true for individuals disqualified from being a director of a company or regulatory position.

The *Dow Jones* survey found that compliance staff continue to find it difficult to access information in another country or in another language. However, it is not only linguistic challenges that can be problematic. A lack of familiarity with the types of record that might be available also means that promising lines of inquiry can be missed. There are so many variations of the types of material classified as 'public'. Property-ownership records are publicly available in the US, as are political donations.<sup>4</sup> Strict data-protection laws in Germany deny general access even to property-ownership records from the *Grundbuchamt* and political donations are only disclosed if the value exceeds €10,000 in one year.<sup>5</sup> Even in neighbouring countries that one would expect to behave in a similar fashion, the accessibility of material can be very different. For instance, in Norway and Denmark one cannot access information about a person's vehicle ownership or income-tax returns; in Sweden, both are matters of public record. For these reasons, the survey found that some compliance departments use their local affiliates or hire out the research to third parties.

Of course, in many parts of the world, legal or official documents are simply not accessible electronically, and may not even be physically available from the relevant official institution.

These are most often the same parts of the world that feature in the lower quartiles of

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<sup>4</sup> However, the way the material is searched across databases varies and in California, there are 'anti-celebrity' laws that do not show property ownership in electronic format and can be blocked by a local clerk on a case-by-case basis.

<sup>5</sup> <http://www.idea.int/political-finance/country.cfm?id=61> quoting the *GRECO (2009) Evaluation Report on Germany on Transparency of Party Funding (Theme II)*.

*Transparency International's* Corruption Perception Index – and where due diligence professionals are most often required to operate.

In these jurisdictions, information, even that in retrievable documents, cannot always be described as accurate. Files can be lost or 'out' of the archive; spellings of names and places lead to confusion; and registered information is seldom updated. In such places, human beings are often the only route to anything approaching meaningful data collection. Where desktop research fails, it becomes essential to conduct adequate due diligence through people on the ground.

This on-the-ground research can be as simple as a visit to the site of an alleged office or home. *Kasalana* often recommends a site visit to establish in the first instance the actual existence of a proposed business partner, with appropriate signage and expected volumes of staff or stock; as well as an assessment of the look and feel of the location. Is it in a prosperous part of town? What other companies are present? Is anyone in the office doing any work? Such quick reconnaissance of an office building or factory can commonly also identify other corporate links and business relationships which may be of interest or value to our clients.

### Evaluating Veracity

According to the *Anacapa* methodology of intelligence analysis, 'intelligence' can be viewed as information to which something has been added through the evaluation and analysis of that information.<sup>6</sup> The collection of volumes of information - documentary, pictorial, oral or otherwise - becomes useful only once it is effectively evaluated to enable the user to draw inferences and ultimately workable hypotheses for decision-making. Further information can then be added to support or dispute those inferences, or fill gaps in knowledge.

As already implied in the *Dow Jones* survey, it can be difficult for a compliance officer in one part of the world to interpret information retrieved elsewhere. The language barrier is an obvious shortcoming but cultural knowledge is critical. For instance, a 'red flag' to someone conducting due diligence on a company in the UK might be the discovery that the subject company had appeared on the *Health & Safety Executive's Register of Prosecutions and Notices*. In Brazil or Mexico, it might well not be a cause for concern if the company being

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<sup>6</sup> *Anacapa Sciences, Inc.*

researched had been involved in dozens of labour disputes in the local courts. To evaluate information effectively and accurately, it is vital that you are able to appreciate even the basic public data in the local commercial and cultural context.

The *Anacapa* model also evaluates information with the use of the ‘fivebyfive’ grading system. The first criteria is the reliability of a source, where ‘A’ is ‘Always Reliable’ and ‘E’ is ‘Untested’. A reliable source might be UK *Companies House* for example.<sup>7</sup> The second criterion is data validity where ‘1’ is ‘accurate without any reservation’ and ‘5’ is ‘suspected to be false’. An annual return submitted to *Companies House* could now be described as being graded A4: whilst the filing body is beyond reproach, it only requires information to be filed - it does not confirm the content of those filings independently and does not judge its validity.

So in order to have faith in the accuracy of your collated data, a professional researcher needs to have the confidence that comes with cultural interpretation from the relevant country or industry, as well as an ability to weigh up the value of the information retrieved. This becomes even more important when gathering information from local sources (see below) and when reading media stories, blogs and social media websites.

### When Is a Story a Story?

An award-winning television advertisement for a UK newspaper in 1986 opened with a scene of a young ‘skinhead’ running, hands outstretched, at a smartly-dressed older man carrying a briefcase and the audience assume that he is a thug set on violence until the camera shows the scene from above, and the viewers realise that the young man is pushing the suited gentleman out of the way of a falling pallet of bricks, saving him from serious injury. The caption: ‘*The Guardian. The whole picture*’. Arguably not many media sources or newspapers around the world achieve - or even desire to achieve - such objectivity.

Many newspapers, and hence their websites, have declared political or social leanings which impact upon the way they pursue or interpret a story, as well as their inclination to include a story in their journal in the first place. Bias is not easily discernible, especially for an

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<sup>7</sup> Leaving aside typographical errors in the data and the fact that much of it is self-reported.



outsider. The question for an analyst is: what is true and accurate and what is published with ulterior motives?

The media has frequently been used to promote state propaganda, but now there is a blizzard of electronic media, digital communications, blogs and social media, providing information and disinformation. Former *CNN* Bureau Chief *Jill Dougherty* quotes *Dmitry Kiselev*, head of a new Russian government information agency, talking about the Russian-Ukraine conflict: “Previously, there was artillery preparation before an attack. Now it’s informational preparation”.<sup>8</sup>

*Ms. Dougherty* goes on to report that “the conflict in Ukraine is accelerating profound changes already under way in the Russian media: the centralization and mobilization of information resources in the hands of the state, providing the Kremlin—and President Vladimir Putin—the means to galvanize public opinion domestically and in the region, as well as forcefully assert Russia’s policies, views and—increasingly—values internationally.”

Russia is a good example of how difficult it is for an outsider to interpret media information over time. A significant majority of traditional media companies are now directly or indirectly controlled by President *Vladimir Putin*. As *The Economist* put it: “Mr Putin is well aware of the dangers of a free media”.<sup>9</sup>

In a country like Russia, where business interests can often be heavily intertwined with political relationships, the placement of a news story can carry more layers of meaning than might appear on the surface. Consider, for example, ‘kompromat’. The prevalent use of this confidential, or sometimes false, information in the Russian press in order to defame politicians and public figures adds another dimension to research. According to *Reporters Without Borders World Press Freedom Index 2015*, the year 2014 has seen a “drastic decline in freedom of information” causing difficulties for those journalists who *do* strive to be objective even in countries like Italy, Andorra and Iceland, where it can be a challenge to operate without “unjustified defamation suits”, “conflicts of interests” and “worsening relations between politicians and media”.<sup>10</sup>

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<sup>8</sup> *Everyone lies: The Ukraine Conflict and Russia’s Media Transformation*, Jill Dougherty, Joan Shorenstein Center, Harvard Kennedy School, July 2014

<sup>9</sup> “Dreams about Russia”, *The Economist*, 15th February 2014

<sup>10</sup> *World Press Freedom Index 2015: Decline on All Fronts*, Reporters Without Borders, 12 February 2015

As investigators, we take note of how free the media is in the subject country, and seek to establish which publications are seen as serious, reliable and trustworthy.

### Social Media

Increasing use of social media in developing and developed countries brings its own problems. Finding material - photographs, resumé, hobbies and interests - on a low-profile individual suddenly becomes surprisingly possible and extremely useful. However these sources are not subject to editorial control and inaccurate information can spread to the point where it gains traction and has the appearance of fact. The same item of 'info' can appear on a dozen different websites, but have the same source.

*Metzger & Flanagin* note that when evaluating online (or indeed any) information for credibility, the user should check the accuracy, authority, objectivity, currency and scope of the information, and/or its source. However, when it comes to analysing material, the authors report that users will consider a source ultimately credible if they recognise the name of the author ("*taking advantage of a human tendency to believe that prestigious people cannot be wrong*"), are recommended to the site ("*a large quantity of endorsements from others regarding an unfamiliar online source or website can overcome people's initial scepticism about that source*"), and even if they have a personal tendency to agree with the views expressed on the site.<sup>11</sup> This extends even to the 'look' of a document or website - cognitive scientists note that if the overall design or layout of material appears professional and slick, people have a tendency to trust its content more readily than material which is badly laid out or mis-spelled.

Overall, research reveals, our process of validating source information is often superficial. If material has appeared on *Wikipedia*, users now tend to assume that it has been checked for accuracy and accept it without further research. We also tend to assume that "*consensus implies correctness*" and this is particularly applicable to social media sites.<sup>12</sup> The more followers a person has on *Twitter*; the more frequently read a blog might be; the more 'hits' a

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<sup>11</sup> *Journal of Pragmatics* 59 (2013), M.J. Metzger, A.J. Flanagin

<sup>12</sup> *Ibid.*

website has or 'links' to it on *Google*, then the more we tend to assume that the material is correct and if it is correct, then we also tend to leap to the conclusion that it is credible.

### Human Source Intelligence

Gathering human-source intelligence, assessing and disseminating it is not a straightforward business: just look at the UK's *Tony Blair* and the now discredited dossier on Iraq's alleged weapons of mass destruction.

Source enquiries, as they pertain to business intelligence and due diligence, can often be a valuable component of a project. However, we must remember again the importance of using local human sources, able to put public record findings into context, and to report additional, unrecorded facts and rumours which can highlight political and commercial linkages requiring further investigation.

### Risks

As discussed above, in-country knowledge or industry expertise can be an enormous help when interpreting publicly available information. It can also be critical to identifying basic details when there are simply no records available, or to corroborate data that has already been provided. In some cases reassurance that a company exists and is operating normally can be obtained through physical confirmation of its location, or a contact with a Chamber of Commerce. In other cases, more detailed research with those familiar with a target company or executive is required to ensure that a client really can claim that they 'know their customer' or, in some jurisdictions, simply to identify ownership and key executives.

There are obviously risks associated with making use of human source intelligence - for example, that news of the enquiry will get back to the subject under investigation. This is a hazard, but it should also be borne in mind that the process of obtaining some public record material also has the potential for finding its way back to the target entity (as can happen when requesting details of a professional qualification or membership of an organisation, for example).

It is not always possible to corroborate material provided by one source, be it documentary or verbal, and the accuracy, reliability and objectivity of each source needs to be assessed to

give its submissions relative weighting (such as the *Anacapa* model). In a recent judgment in the UK, *Mrs. Justice Andrews* found that it was valid for a company commissioning business intelligence to request job-role descriptions of each human source used - including industry and seniority within an organisation - in order for the reader to make reasonable inferences regarding the credibility of that source's information.<sup>13</sup>

Nonetheless, however carefully an analyst might sift material that has been collected, reaching the 'truth' can still be a matter of subjectivity. We can return to Russia again to illustrate this point. In the 1990s and 2000s, any business intelligence companies commissioned by clients wishing to invest in Russia, or to 'know their customer', were forced to admit to their clients that whilst shareholders of a firm were identified in a corporate registry, 'true' ownership of companies in Russia was known only to a small tight-knit group of executives. There was a well-known dichotomy between stated ownership and real ownership, and shareholders were hidden from public view.

Even between the hidden shareholders, there were differences of opinion as to the 'truth' of ownership, as was revealed in the prominent court case between *Boris Berezovsky* and *Roman Abramovich* over the ownership of *Sibneft*, a Russian oil company. Much of the evidence provided to the court was limited to witness statements reporting oral agreements between the two men (and others) about how ownership of *Sibneft* was divided. Written contracts were not made. For a business intelligence analyst attempting to answer the question "Who owns *Sibneft*", human source intelligence would have been the only means to attempt an accurate answer; but if your human source had been *Mr. Berezovsky*, an individual who, in the circumstances, should know exactly how the company's shares were divided, his information would still not have been accurate or credible. At least, he failed to persuade *Mrs. Justice Gloster* after several weeks of evidence-giving and cross-examination:

*"On my analysis of the entirety of the evidence, I found Mr. Berezovsky an unimpressive, and inherently unreliable, witness, who regarded truth as a transitory, flexible concept, which could be moulded to suit his current purposes. At times, the evidence which he gave was deliberately dishonest; sometimes he was clearly making his evidence up as he went along in response to the perceived difficulty in answering the questions in a manner consistent with*

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<sup>13</sup> *High Court of Justice, Queen's Bench Division, 29th June 2015*

*his case; at other times, I gained the impression that he was not necessarily being deliberately dishonest, but had deluded himself into believing his own version of events.”<sup>14</sup>*

### Confidentiality

Finally, a word on the confidentiality of information and the protection of sources. The *World Editors Forum (WEF)* was commissioned by UNESCO to research a paper on “*Protecting Journalism Source in the Digital Age*” (published 3 June 2015) as part of a wider UNESCO study into the protection of journalists’ sources in 121 countries around the world.<sup>15</sup> The WEF states that, although protection has been in place in many countries, the legislative framework is at risk due to anti-terrorism legislation and national security issues.

That said, *Mrs. Justice Andrews* ruled recently<sup>16</sup> in the High Court of Justice, Queen’s Bench Division in the UK on the matter of whether or not corporate intelligence companies should be “*required to identify the individuals from whom they obtained the information they used to compile the reports*”. Three investigation firms used by the mining conglomerate, *Rio Tinto*, claimed that the material was confidential and that any written material should be redacted to protect the identity of their sources. They further held that disclosing the names of some of those sources (who operated in Guinea) could potentially threaten their freedom and livelihoods. A witness for one of the firms told the court that their sources “*are only willing to carry out the research... on the basis that their identities will not be revealed and that this is a common, universally understood position in the business intelligence sector*”.

The judge made several points in her summing up. Among them, even if a corporate intelligence agency revealed the names of its sources to its contractual client, the client would still be bound by “*the same obligation of confidentiality*”. Secondly, that, as with journalists and their sources, “*it is in the public interest that [those sources used by the corporate intelligence companies] should not be discouraged from speaking out or from providing intelligence of this nature*”. The judge also noted that it would be a very serious breach of undertakings of confidentiality to reveal the identities of those sources. This is an important judgement which, as you might imagine, we welcome.

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<sup>14</sup> *High Court of Justice*, Queen’s Bench Division, 31st August 2012

<sup>15</sup> [http://blog.wan-ifra.org/sites/default/files/field\\_blog\\_entry\\_file/LEAFLET%20VERSION%202%20WEB.pdf](http://blog.wan-ifra.org/sites/default/files/field_blog_entry_file/LEAFLET%20VERSION%202%20WEB.pdf)

<sup>16</sup> *High Court of Justice*, Queen’s Bench Division, 29th June 2015

### Conclusion

In late July 2015 UK Prime Minister *David Cameron* vowed to expose the use of "*anonymous shell companies*" to buy luxury UK properties, declaring: "*London is not a place to stash your dodgy cash*". Such cash included "*plundered or laundered*" funds from overseas. Just days before, the UK's National Crime Agency warned that foreign criminals were pushing up house prices in the UK by laundering billions of pounds through the purchase of expensive properties.

The UK government is to publish Land Registry data later in 2015, setting out which foreign companies own land and property in England & Wales. It is also said to be considering forcing a foreign company bidding for a government contract to "*publicly state who really owns it*".

This latest episode again emphasises the need to throw light on our business partners and investors, and the challenge of getting at the truth. *Mr. Cameron* knows that UK Limited Liability Partnerships (LLPs) do not have to disclose their accounts, or the names of the people who have beneficial control over them, and partners are often based overseas in opaque jurisdictions such as the Caymans, Belize and the Seychelles.

*Mr. Cameron* may acknowledge the problem of 'phantom firms' to hide and launder ill-gotten funds, but the business of obscuring information for illegitimate reasons is alive and kicking, even in jurisdictions as supposedly transparent as the UK. As a result, the business of collecting data, evaluating it for veracity and accuracy and turning it into useful intelligence continues to need nurturing – so that corporate and compliance professionals can adequately safeguard the interests of their organisations and shareholders.