



By Sabina Menschel

## Investigative Due Diligence: Beyond Google

Due diligence has become a standard component of most major business transactions. Anti-corruption laws, such as the US Foreign Corrupt Practices Act and the UK Bribery Act, and anti-money laundering laws, such as the US Patriot Act, place an onus on companies to know their customers, counterparties and agents. Failing to do so can lead to serious consequences, including successor liability, investigations and damage to reputation. Thorough due diligence can also inform complex business decisions, especially when companies are operating in risky jurisdictions where corruption is rampant.

But what exactly does “investigative due diligence” involve? In an age where anyone old enough to type can “research” via Google, what value is added by engaging professionals to conduct research? The answer is that—depending on the experience and creativity of the professional—the value add can be considerable. Trained researchers understand what information they’re looking for, know how to get it and are skilled at analyzing it. Further, because there is seemingly boundless information online, an investigator needs to know how to parse through it appropriately: who or what is the source? How reliable is it? Is it biased? A comprehensive due diligence investigation requires knowledge and sophistication.

Here we examine the three main components of investigative due diligence—desktop research, document retrieval and human intelligence gathering.

### Desktop Research

Conventional search engines such as Google are extremely powerful tools when used effectively, but there are limits to their coverage and reliability, and it can be difficult to wade through the abundance of information you can access.

For example, a Google search for “Wei Chen”—a fairly common ethnic Chinese name—yields more than 1.3 million results (not including searches for the many combinations of Chinese characters that correspond to the name). Among the numerous Wei Chens with an online footprint are a singer, an actor, a university professor, a prominent activist, a journalist, an artist, an Australian-Chinese gang member convicted of counterfeiting and theft, a US Department of Defense contractor who was indicted on charges related to theft of classified information and a former Chinese government official accused of stealing millions from the state and absconding to the US. It is evident that an investigator must have the ability to identify the correct subject and cut through irrelevant results.

Carefully chosen search terms enable an investigator to eliminate false positives, which are frighteningly common, as evidenced by a recent announcement by the Consumer Financial Protection Bureau that it is fining two background check providers \$13 million for failing to verify the accuracy of their information. These providers reportedly failed to match public records to the correct consumers, including reporting criminal records for individuals incorrectly in instances where names were similar.

Further, among Google's limitations is its inability to access information kept behind paywalls or contained in online documents or databases that are not accessible by law to the general public. These sources—such as corporate records, litigation filings, press archives and other specialized databases—often provide critical information.

It is also important to consider how information found online is exchanged and disseminated. In countries with high degrees of government censorship, such as Myanmar, the independent press may be run from abroad or through blogs and chat forums. The media in those countries may be pushing a hidden political or business agenda or have critical information scrubbed by government censors. In addition, communities—ethnic, linguistic, national or otherwise—communicate online in different ways and through different platforms. In the Russian-speaking world, some 70 million people use social networking site VK each day; to ignore this site when conducting due diligence in Russia is negligent. Similarly, a Chinese investigation would not be complete without a review of the social network Weibo, which has nearly 200 million regular users. Accordingly, one needs to know how to navigate these local and regional sites, and have the language skills to interpret them.

The importance of social media is not confined to foreign jurisdictions. Increasingly, younger generations worldwide communicate almost exclusively on social media, providing information on themselves and their relationships with others that would not be found through other online searches. These social media platforms provide unusual investigative avenues that were not available previously. For example, the geolocation data provided by photographs posted on Instagram can be a useful way of pinpointing someone's exact location on a specific date.

## Documents

Though it may not hold true for much longer, the majority of the world's population still has no access to the Internet, and for many more access is limited. Only a third of all people living in Asia are Internet users (and most are based in only a few countries). More than two-thirds of Indian companies do not have an online presence. Governments in these jurisdictions also tend to operate predominantly offline. In order to conduct due diligence under these circumstances, investigators must put their computers aside and visit government offices, archives and libraries in search of information.

Government records can be reliable and accurate sources of information, but public access to records varies drastically from one jurisdiction to another. The United States is at one end of the spectrum, with a considerable amount of information on people and companies available publicly. On the other end of the spectrum are countries like Nigeria and Saudi Arabia, which have limited, if any, information available. Making the most of public record retrieval hinges on knowledge of what information is available and how to legally retrieve it.

Law and practice do not always align when it comes to accessing information. In China, for instance, the government keeps detailed files on each household under its hukou system. Though accessing these files is illegal, some investigators obtain them through improper payments to government employees. In August 2013, an investigator living and working in China was arrested (and later convicted) of illegally obtaining Chinese citizens' data and selling it to others. This case underscores the importance of conducting investigations ethically and in accordance with local laws.

## The Human Dimension

Official records and online sources only provide a partial picture of a due diligence target. That picture is in many cases sufficient, but a third investigative dimension is often necessary to answer specific or sensitive questions, or to gather intelligence where there is a shortage of information in the public domain.

Potential sources can include current or former employees, business associates, clients and competitors, who in many cases can be identified through online searches. Once sources are identified, one needs to make a tactical decision about discretion: how important is it that discussions with human sources be completed without the subject's knowledge? Often, the sources who are the most informed are also most likely to alert those involved. More sensitive matters where discretion is critical are best approached through established sources known to the investigator and with whom discretion is assured.

There is no standard method for obtaining information from sources. A source's willingness to share information may be based on trust, flattery, self-interest or goodwill, among other things. Knowing which approach will resonate with an individual source requires contextual knowledge and experience. An investigator should have questions prepared, but be flexible and ready to pursue unanticipated lines of inquiry. In some cases it makes sense to approach an issue directly, while other times it is prudent to deflect attention from crucial questions by concentrating on tangential or irrelevant issues.

Though it often provides valuable insights, human intelligence is more susceptible to bias and conjecture than official records and media reports. In order to assess the value of a source's comments, one must consider their motivation, relationships and past reliability. It is also important to corroborate a source's comments with information that is provided by other sources and/or found in the public domain.

### Getting It Right

After information has been obtained from any source, it must be corroborated, analyzed and synthesized. A useful investigation is not a data dump and there is no such thing as a "democracy of facts"—not everything an investigator finds is important or even accurate. In fact, due diligence based on findings without context can be just as dangerous as having no information at all. Readily available search tools, such as Google, can be helpful but are no substitute for a thorough and effective due diligence investigation.

### About the author

Sabina Menschel is the firm's President & Chief Operating Officer and is based in the Washington, DC office. A graduate of Harvard College and the Harvard Business School, she has over 18 years experience leading domestic and international due diligence, litigation support, fraud and global asset recovery investigations on behalf of financial institutions, law firms and multinationals.

### About our firm

Nardello & Co. is a global investigations firm with experienced professionals handling a broad range of issues including the FCPA/UK Bribery Act and other corruption-related investigations, civil and white collar criminal litigation and arbitration support, asset tracing, strategic intelligence and political risk assessment, computer forensics and reputational due diligence. Our clients include the world's leading law firms and financial institutions, Fortune 500 and FTSE 100 companies, high-net-worth individuals and family offices, governments, NGOs, sports organizations and academic institutions. With offices in New York, London, Washington DC, Atlanta, Hong Kong, Tokyo, Milan and Dubai, Nardello & Co.'s professional staff includes former US federal prosecutors, US and international lawyers, former general counsels of multinational corporations, former law enforcement personnel and intelligence operatives, licensed investigators, research analysts, former journalists, financial crime specialists, forensic accountants and computer forensic experts.

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