



The ABCs of Global Legal Matters

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When the scope of your clients' business needs is subject to sudden and frequent change, adaptability is key. In some cases, bringing your practice in line with these fluctuating demands may be as simple as increasing your available resources for document production or due diligence review. Then comes the day when you get a call like this:

"We have documents in Spanish, French and German—possibly other languages. We're not sure how many we have or where they are in the electronic files, but they'll need to be reviewed as soon as possible."

Instantly, a new layer of complexity exists. Simple document translation isn't enough. Now you must cull and identify relevant documents before translation can even occur.

The process can seem daunting, but it doesn't have to be. The introduction of a foreign language component into your matter can be easily accommodated by breaking down the process and knowing the right queries to make. Using a hypothetical Foreign Corrupt Practices Act (FCPA) investigation scenario (below), we will address the factors pertinent to incorporating foreign language documents into your client matters. Consider the following:

ABC Pharmaceuticals, Inc. ("ABC") is publicly traded on NYSE and a member of the Fortune 500. Through an internal audit, ABC has identified some possible FCPA infractions—illegal payments for pharmaceutical contracts in the United Kingdom, South Korea, China, the United Arab Emirates, France, and Mexico.

In order to best counsel your client in this scenario, you first need to ascertain the extent of your language support needs, considering all relevant external deadlines. What volume of content do you anticipate will require translation? How many languages are there? What are they? In our scenario, for instance, there are six potential languages at play: English, Korean, Chinese, Arabic, French, and Spanish. Additionally, how much time will you have to complete the initial review?

If you have a preexisting relationship with a Language Service Provider (LSP), you would now engage their services to quickly and efficiently assess your upcoming needs.

Before any translation work can begin, however, the multilingual documents must first be processed and culled from the other documents. Next, an initial review of the data must be completed. For this step, you can opt to use either Machine Translation (MT) with keyword searching or bilingual reviewers who will perform on-site document identification. The choice you make for this step depends on the time available, the level of culling precision you require, and the quality standards set forth by the court or other governing body.

Generally, the U.S. Department of Justice (DOJ) does not accept documents that have been machine translated. However, a "first pass" MT is often beneficial to identify hot documents. You can then strategize and determine where you will need to spend the most time conducting interviews and depositions. MT can also show whether you will require interpretation for those client interviews or for any other depositions or negotiations that may occur later on in the process.

Determining the universe of your foreign language needs from the outset will maximize your likelihood of success. Further, if you do not already have a trusted translation partner, this step will help you negotiate the best possible pricing from your chosen LSP.

Keeping it in-house: Not as cost-effective as you may think

"If you think it's expensive to hire a professional to do the job, wait until you hire an amateur." – Red Adair

Assuming you don't have an LSP already in place, once you have determined the potential volume of your language needs, you will need to find the right translation partner—one with the capacity to handle your known (and potentially unknown) volume requirements while maintaining the prescribed trial calendar or other deadlines.

Initially, it may seem easier to pull from internal resources – such as local counsel, in-house resources, or even bilingual law students – to perform the language-related tasks. However, before taking this step, you should consider two important factors: cost and consistency. Professional translation services are invariably more cost-effective for your client. Accumulating billable hours on translation and thinning in-house resources that could be better applied to other aspects of the matter illustrate issues that can be avoided by using professional translation services.

But a larger problem when you opt out of using an LSP is that you will likely eliminate the quality control measures that are in place at LSPs to ensure the delivery of consistent material across the board—especially with regard to specialized terminology. Opting out of a professional service provider can drastically affect costs in the long term, as using an amateur translation resource dramatically increases the risk of introducing errors.

In addition, with six foreign countries in play for the ABC investigation, your resources are already likely to be stretched thin. DOJ and SEC production deadlines come up quickly and normally leave no room for error. And even the most well laid out production deadlines must often be scrapped at the last second because of a less-than-sympathetic investigator. As such, it's generally wiser to have the language aspects of the matter handled by a third-party provider who has the resources in place to accommodate high-volume, quick-turnaround projects at the drop of a hat.

That's great, but what's it gonna cost?

Every discussion on the subject of hiring an external resource must include a meaningful conversation about cost. Before you can engage in this dialogue, you must thoroughly understand your client's expectations and budget. As the scope of the project can change, or costs may need to be recalibrated as you sort the data and determine the volume of foreign language documents, you'll need to educate your client on the need to be flexible. It is also important to communicate with your LSP: be clear about pain points for you and your client with regard to cost, quality, and deadlines.

One important way to lower costs is to leverage your LSP's technology offerings. A tech-savvy LSP can easily employ tools such as glossaries and translation memories, or even streamline workflows with a centralized platform for requesting, receiving, and tracking translations.

Consolidation is another a key factor in lowering costs. By using a single-source solution, rather than several distributed providers, you can spend less time negotiating with multiple vendors with differing rates and more time focusing on streamlining workflows and analyzing the data uncovered in the investigation. You can then pass these cost savings from consolidation on to your client.

As demonstrated in the ABC hypothetical, the sheer volume of translation requests in FCPA cases generally dictates the necessity of an instituted file transfer plan with your LSP. This step will save you numerous internal paralegal hours and minimize the risk of any files being missed.

An integrated workflow that actually works

At this point, you have determined the foreign language needs of your matter and consolidated your workflow with one reliable, tech-savvy LSP. Now it's time to integrate the LSP's strategy with your internal processes to streamline the collaborative effort. You will need to work with your LSP to ensure that the process for submitting and delivering documents for translation is user-friendly and, most importantly, secure. Again, your chosen LSP should be able to provide options for the use of technology, such as a translation portal, to ensure a secure, seamless, and streamlined workflow.

Once you're ready to proceed, your LSP can either provide you with a review platform to upload files or, alternately, simply upload and host the files on your behalf. Otherwise, your workflow will involve a multi-step process with numerous points of contact: you notify a consultant, who contacts the e-discovery vendor, who in turn pulls and converts the files and then – finally – loads the files for review. Sound tedious? It is—each of these extra steps will increase the potential for error and miscommunication. However, by consolidating with an LSP who uses technology to streamline the case language requirements as a natural and integrated part of your workflow, you will cut down on the back-end process and any additional costs.

Time is on my side...or is it?

The ultimate time saver in an FCPA investigation, or any international document management scenario, comes at the hands of the technical staff you work with on a daily basis. Translation vendors who offer next-generation technical solutions can save associates, as well as internal and external litigation support resources, countless hours of duplicated effort. In our example, your firm should ideally look for a vendor that can deliver translations in the correct database format to enable them to perform a quick review and then produce the relevant documents for the DOJ or SEC. If your LSP lacks this capability, you will be forced to develop workaround processes that will include countless middleman steps (and headaches!) for everyone involved.

In short, the foreign language component of a case does not have to be conducted in isolation from the rest of the matter. Whether you are working on an international patent litigation or as counsel for a company like ABC that is facing potential FCPA violations, the same principles apply: Partner with a tech-savvy LSP to lay out a clear path early on in the litigation timeline. This arrangement will save both time and money in the long run for your client.



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