



By Eric Elting
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Those who've experienced a DOJ investigation under the Foreign Corrupt Practices Act (FCPA) will attest to how daunting the process can be. Eric Elting, Director, Global Legal Business at TransPerfect, offers his insights on the current investigatory climate.

Q: What challenges will I face as in-house counsel in an FCPA investigation?

A: Well, in addition to reviewing, culling, and translating millions of words of foreign-language documentation, you must also cope with the financial ramifications on the back end. While obtaining a favorable resolution is your primary objective, securing expertise in data and cost management is equally crucial in order to protect your company's interests.

Q: What's at stake?

A: Quite a lot actually. In the first 8 months of 2010, the U.S. Government levied over \$1.5 billion in FCPA fines – the most ever in

its 33 year history. The writing is on the wall – be compliant and be prepared or else.

Q: I've just received notice from the DOJ that we're under investigation. Where do I start the process and what are my options?

A: The first step is to determine the total scope of the project: how large is the universe of documents? Which languages are involved and how quickly must this be reviewed and produced? The next step is to cull the data. The three most common methods are to deploy native-speaking contract attorneys for review, run foreign language search terms, or process data through machine translation (MT). Each option presents unique strengths and drawbacks.

Q: What are the relative merits of each method?

A: Native-speaking contract attorneys offer legal experience and are more affordable today than ever before. Though you will likely need a large number of attorneys, sufficient secure space, and clearly defined guidelines, these attorneys can decipher the data and offer an informed, intelligent opinion on what may be relevant.

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Running foreign language search terms is the least expensive option for a first round cull. However, because no two languages perfectly align, there is an inherent degree of subjectivity when attempting to replicate an English search in other languages. Therefore, effective foreign-language search demands linguists skilled in both translation and search syntax, as well as a thorough pre-flight process to create a vast and expansive set of English search terms that account for synonyms, misspellings and other search term permutations that can minimize under-inclusivity.

The last of the three primary options is machine translation (MT). MT usefulness is largely dependent on the quality of the source documents, the documents' literal and technical aspects, and the process used for converting the files into a workable for-

mat. It is imperative that any usage of MT is communicated to your DOJ counterpart to ensure processed documents attain a level of quality that meets their requirements, thus avoiding the risk of an eleventh-hour DOJ determination that your machine translated documents are unacceptable. As an added precaution, you should request that your MT provider produce a random sampling of side-by-side comparisons of MT and human translation documents. The quality of one document/language may differ greatly from the next.

Q: Will machine translation alone suffice?

A: MT is typically insufficient on its own - human translators should perform the next and final pass over translated language. It is commonly assumed that human translators can easily clean up MT for production. However, most linguists find this process arduous and often more difficult than simply translating from scratch where they are not constrained to a questionable existing structure.

Ultimately, the project's scope, time requirements, and your available resources will dictate the method you use, and frequently the final approach involves a blend of the methods.

Q: Any final words of advice?

A: Yes. The FCPA evolved out of Watergate as a response to the political climate at that time, but its message still resonates today: corruption does not pay. If your company is subject to an FCPA probe, having the right process and the right people on your team can help your bottom line and increase the likelihood that your organization's name will be cleared in a timely fashion. The one thing that does pay is being prepared. ■

Eric Elting is the Director of Global Legal Business Development for TransPerfect Translations. He regularly speaks on patent-filing issues at legal conferences around the world, such as the EPO Patent Information Conference, and gave a talk at the 43rd DIA Annual Meeting entitled "Strengthen and Secure your Global and Intellectual Assets." His articles have appeared in leading industry trade publications such as Executive Counsel and Patent World. Under his tutelage, TransPerfect Legal Solutions has provided services to all of the Am Law 200 and Global 100 law firms, as well as to virtually every Fortune 500 corporate legal department.