

How to Handle a Global Multi-Lingual Investigation

Ed. Note-I recently visited with my colleague (and recovering screen writer) Jay Rosen about some of the complexities involved in a global FCPA/Bribery Act investigation where one or more foreign languages is involved. Jay was kind enough to walk me through his thoughts on best practices for such a task. I was so impressed that I asked him if he could spell some of these out in a Guest Post, which he graciously agreed to do. This is his Guest Post.

Global investigation

Let's take a look at a hypothetical multilingual investigation. Our client FIBLA, a pharmaceutical company, sells its products globally and has potential FCPA issues in France, Italy, Brazil (Portuguese) and Latin America (Spanish). They have engaged a global forensics firm to identify custodians and image hard drives as part of the initial collection effort. The audit committee has hired outside counsel to run the investigation and each organization hits the ground running. There's only one problem: No one has contemplated how to handle the *foreign language* component of this investigation.

As the first forensics team steps off the tarmac in Sao Paolo and speeds to FIBLA's headquarters to begin collecting documents, *they* should be considering a key question regarding the foreign language data they will uncover:

1. What do they need to know before they walk through that door?

The answers to this question could vary depending on one's role in the investigation—forensics company or outside counsel. I would like to focus on the best practices for managing the foreign language portion of this type of case. Though each foreign language matter possesses its own unique set of challenges, the common denominator is: ***“What is the most cost effective way to match the proper translation solution with the needs of the case?”***

Many clients consider translation to be something they can handle in-house because:

- “Rebecca down the hall speaks Spanish.”
- “I’ll use Google Translate.”
- “The associates in our Mexico City office can handle this.”
- “The forensic accountants in Paris or the document reviewers in Ecuador can translate this information on the fly.”

In certain circumstances, all of these options have some validity, but for a mission critical investigation where accuracy and deadlines are paramount, these are not the best choices.

Language filtering solutions

Multi-lingual FCPA investigations demand a different level of sophistication and execution. Faced with a large volume of foreign language documents and pending deadlines, the team should leverage language filtering solutions that will bring order to the document chaos while reducing the time and cost involved in discovering the content of documents that are key to the investigation. In other words, separate the wheat from the chaff. These solutions, offered by most language solutions providers (LSPs), include both technology and human based translation tools.

Tool #1: Language identification

A language identification tool analyzes a document and reports the language distribution as either an absolute value (e.g., English, Italian, Mixed, or unknown) or can deliver a percentage break down (e.g., 5% French, 95% English; 10% Portuguese, 10% Italian, 80% Spanish).

On a document level, the resultant breakdown allows for granular workflows. On a case level, this knowledge determines the appropriate allocation of native speaking document reviewers needed and the most efficient and cost effective use of these resources.

Tool #2: Foreign language key words

Key words are identified by the lawyers who then have them translated to allow searching within foreign language text. Such a translation must account for the nuances inherent in another language. For example, 20 English terms can easily become 100

foreign language terms. Filtering native language documents against key foreign language terms will increase the accuracy of the review and improve the results of responsive searches. A couple hundred dollars invested here can save thousands in attorney review costs.

Tool #3: Machine translation

Machine translation provides a “gisted” understanding of large volumes of electronic documents and can allow English speakers to more easily identify those that are relevant. Thousands of pages can be translated in a fraction of the time required by traditional methods which, in turn, yield significant time and cost savings. Machine translation quality typically correlates to the quality of the source document and how well it can be read by optical character recognition (OCR). If viable, this process is 1/100th the cost of human translations.

Technology-based filtering solutions help the internal team to efficiently identify “hot” documents while eliminating those with no relevance to the investigation. This ensures that only those documents that are absolutely necessary will be submitted for human translation. For example, in a recent Turkish FCPA matter, Merrill Brink’s filtering tools reduced the number of translated documents to 3,000 out of an initial universe of 1,000,000.

By leveraging these language technology solutions once the initial data has been collected, the review team is able to reduce the amount of potentially discoverable information that bilingual reviewers need to consider. Combining an LSP’s language based technology solutions with sophisticated tools offered by most eDiscovery platforms will help to identify duplicate and forwarded emails, streamline the review process, and result in a reduction of crucial time, resources, and costs.

Here Jay slipped back into his prior life as a screen writer to explain the following:

FADE IN:

When we last saw our heroes, a crack forensics team, “Boots on the Ground,” thudded onto the tarmac in Sao Paulo, piled into waiting black SUVs with tinted glass and sped to FIBLA’s headquarters to begin collecting documents. In a blistering high tech MONTAGE, we breathlessly see them collect, process and load the data into an

eDiscovery hosting tool. As the grunts fall back to secure the beachhead, the calvary, “Outside Counsel,” arrives in SUPER SLO-MO Quentin Tarantino blaze of slip-on loafers, broad cloth shirts and rep ties to begin a document review using contract attorneys...

FADE OUT:

Usually the law firm will perform a first- and second-level review, confirming which documents are “responsive” or “hot” and only then will they consider how to translate the documents. Some of the same ideas from Part 1 (Rebecca down the hall, Google Translate, The Mexico City associates, and Forensic accounts in Paris) may be proposed as viable solutions. Again, I would caution that it is far better to engage an LSP that is well versed in the translation intricacies of these internal and external investigations.

Bilingual review and translations involve different skill sets and different costs are associated with each service. For this reason, it is best to separate the two in most cases. Industry pricing for on-site review in the U.S. varies from \$70 to \$110 per hour, depending on the region. In many cases, these reviewers are bilingual attorneys who are trained to identify or translate information that is pertinent to the case.

Translation is typically charged by the word and completed off-site by linguists who are trained to understand terminology and context, and to ensure the results are accurately rendered from the source to the target language. The price per word will vary by language, subject matter, turnaround time, and volume.

Although in some cases it may be deemed expedient to have the bilingual reviewers perform the translation, this will usually result in a higher cost and slower delivery. The optimal solution would be to have the reviewers identify responsive documents and feed them to the off-site translators. This way, outside counsel will have a continuous workflow that will save precious time, match resources with their respective area of expertise, and manage the company’s costs.

Human translation solutions

Most LSPs will offer at least two or three levels of human translations, each of which plays a role in the filtering process we have discussed here.

Summary translations

If machine translation has not proved feasible (due to the quality of the source documents or the language not being an option for this solution), the next choice for filtering documents would be summary translations. This often takes the form of a few sentences or perhaps some coded fields which allow for a better understanding of the content of the document. Armed with this intelligence, a decision can be made about which documents need a more complete human translation. This is also an effective way to cull large volumes of documents and identify those which require full human translation.

Basic translations

Documents are translated by a native language linguist and reviewed by a project manager. Although not as polished as a full translations, basic translations enable outside counsel to ascertain the complete content of a document. These documents are used by the investigation team for internal use.

Full translations

Full service translation starts with the basic translation process as described above, but adds a formal editing stage by a second linguist and includes a thorough quality check. Documents that have gone through a full translation processes may be certified upon request and a Certificate of Accuracy (COA) will be issued and notarized. This certification is often required for documents being presented to governmental entities such as the courts, Department of Justice, or the Securities and Exchange Commission. Both technology and human translation solutions should be utilized to reduce the amount of data that requires full translation.

By knowing this information in advance, the team speeding to FIBLA's headquarters can concentrate on the job at hand—securing the location, collecting the data, and interviewing employees. After all the information is collected and an LSP is engaged, outside counsel can begin to leverage the above mentioned tools. Filtering processes are commenced to match appropriate translation solutions to each step of the investigation, contain the costs of human translations, and most importantly, produce the highest quality translations from professional linguists.

Jay Rosen is a Vice President, Language Solutions at Merrill Brink International, based in Los Angeles, where he advises corporations, forensic professionals and outside counsel on translation solutions for Cross-border and FCPA investigations, Compliance, Ethics, Code of Conduct and eLearning projects, M&A Due Diligence and Patent and IP matters. He can be reached via email at jay.rosen@merrillcorp.com and via phone at 310-729-6746.