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Controlling Costs in Foreign Language Document Review

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Nearly all attorneys can agree that the potential cost of discovery is an ever-present issue that looms large in litigation matters. When foreign-language documents are involved, concerns about costs become amplified. It is also a time-consuming process and can negatively impact a matter if not done correctly. While technology is advancing and making foreign-language review less burdensome, attorneys still need to understand that practical solutions are not cheap, nor can they be performed quickly.

For this article, let's use the following example. In a litigation we are involved in, a client just provided 100,000 emails consisting of conversations between their U.S. and Japanese offices, with occasional correspondence with factories in South Korea, Vietnam, and Malaysia sprinkled in. The client has informed their attorneys that there was no standard language used in either communication or documentation. To respond to discovery requests and interrogatories, these documents must be analyzed and reviewed, but the client is also concerned about keeping expenditures under control.

Due to our global economy and supply chains, this type of scenario is more common than people realize. Although foreign-language review may appear daunting, there is some good news. Technology and planning can help guide a practical approach to the review and analysis of documents in a way that will keep costs proportional to the size of the matter without burning a hole in the client's wallet. Here are some practical tips to consider.

1. Engage Someone with Experience

One of the most common errors that attorneys make when dealing with foreign-language document review for the first time is not reaching out to colleagues with relevant experience. Firms hire attorneys who specialize in complex discovery issues, such as foreign-language review, and these attorneys will be invaluable in helping to formulate an optimal game plan. Vendors and consultants can also help to create a workflow while keeping cost concerns in mind.

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Given the large number of documents and multiple languages in our example, the case team will need to, at minimum, create search term sets in multiple languages, make sure any database used for discovery can recognize multiple languages, and determine whether machine translation or human reviewers will be better at identifying potential responsive documents. All of these concerns can overload even the most diligent attorney, especially given all the other work that comes up during the discovery process. Don't be afraid to reach out and consult with people with experience; they know how to develop a cost-effective plan and can make sure that things run smoothly.

2. Be Aware of Costs

Regardless of whether it's done via machine translation or human reviewers, foreign-language document review costs can add up quickly. Attorneys need to consider the expenses of translating potential search terms, performing due diligence on any potential review databases, and implementing review processes such as continuous active learning to figure out if the databases and processes can handle foreign languages. Anticipate these hidden costs, and plan accordingly. What might work for English-only matters might not be available for those involving foreign languages.

In our example, given the number of languages involved, the best course of action is to engage an expert who can gauge the potential costs to analyze the dataset and find the key documents. It is important to consider the entire process, including the hours needed for translating search terms, the costs of identifying the correct database to use for the review, the expenses associated with using machine translation, and the hourly rates of attorneys who will review the documents. Knowing these costs makes it much easier to develop a realistic workflow.

3. Create a Workflow for the Project

Creating a workflow for the review process is vital and should never be overlooked. The days of unlimited budgets for discovery are long gone, but dealing with foreign-language discovery is still extremely expensive. Machine language translation, for example, is not cheap, nor is hiring attorneys who are proficient in multiple languages. In some cases, it is better to use human reviewers for a first-level review than having the documents machine-translated only to be reviewed later by attorneys. In other cases, starting with machine translation could make more sense. It's extremely important to know when to use each resource based on the facts of a particular matter.

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Regardless of the approach, build in enough time for review and analysis. Translation requires extra steps in the review process, so a matter that normally takes two weeks to complete could stretch to three to four weeks when foreign languages are involved. This need for extra time can become an issue if not accounted for.

In our example, choosing how to analyze and review the 100,000 emails is key. If machine translation is used before human review, there is a high probability that resources will be used to translate documents that are potentially irrelevant. Once that money is spent, it is not recoverable. A better approach would be to have attorneys review a random sampling of the documents to figure out what is and isn't responsive, then work on search terms to find more potentially responsive documents. This way, when machine translation is employed, the number of documents will be reduced to a more manageable level, as will the costs. By creating a well-thought-out workflow, these potential issues can be addressed early.

By taking these three simple steps—engaging people with experience in foreign language review, investigating potential costs, and developing a workflow that is cost-effective—a foreign-language review during discovering becomes a much more manageable task.