

# Lost in translation

How best can law firms deal with e-disclosure where there are reams of multilingual documents? **Jérôme Torres Lozano** investigates

**T**he pressure on companies to deliver documents in a short timeframe for an international legal matter can create significant challenges when faced with vast volumes of multilingual electronic data. With the rise of international dealings in a digital environment, recruiting human translators to sift through masses of electronic data becomes an impossible task. Without the right resources, collecting, translating and delivering documents fast to comply with a disclosure request can become time-consuming and very expensive.



Ineffective translation of relevant documents can also potentially harm an organisation's standing in a legal or regulatory matter. For instance, if at the disclosure stage a company claims they have disclosed everything without taking adequate measures to search any foreign language documents, the repercussions can be serious when a further review reveals documents that are relevant but have not been disclosed. At best, it is a little embarrassing, but at worst it can look like the company is trying to hide something. Such an oversight can mean a regulator discards any sanctions and imposes heavier fines. Mistranslation in legal proceedings could even provoke more litigation.

Despite these potential repercussions, many organisations and legal professionals have no strategy in place for processing or reviewing non-English documents during litigation, arbitration or regulatory investigation. Law firms and their clients need to become increasingly aware that traditional translation methods alone simply will not work in a digital environment and can have serious financial and reputational consequences.

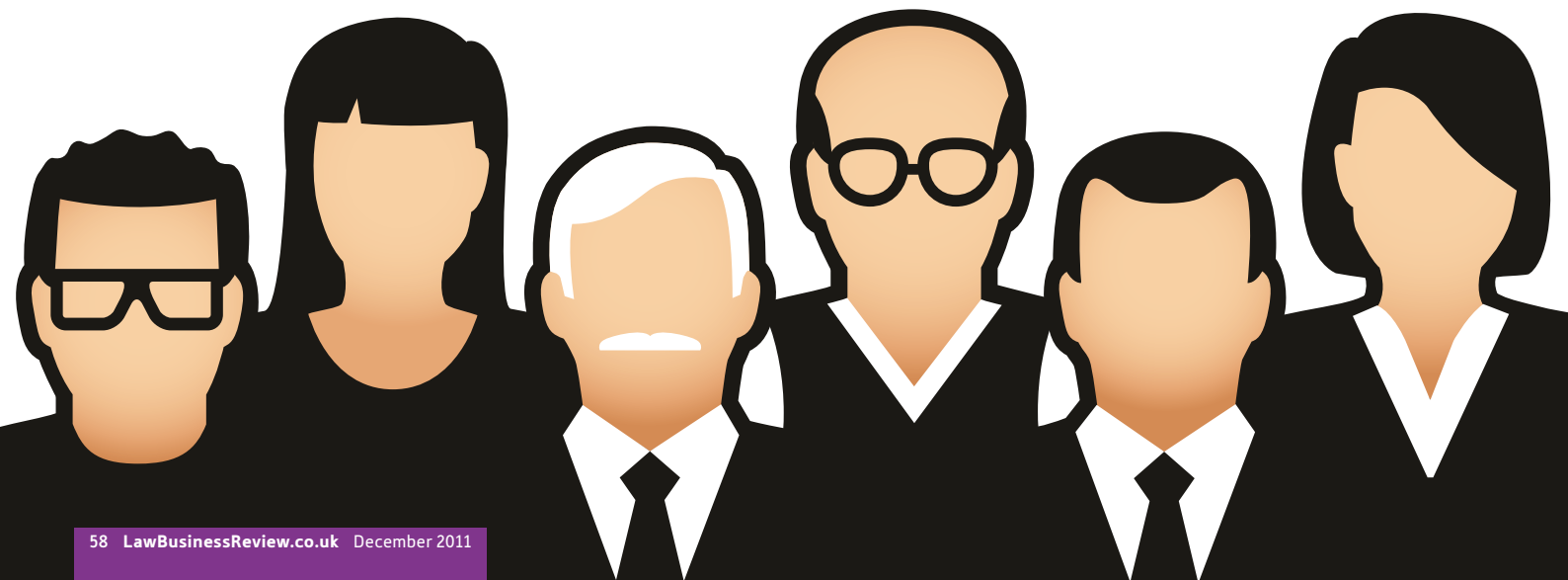
### Language and legal process

When it comes to a document review project, a lawyer's ability to understand and manage the languages relevant to their client's dealings is paramount. For example, legal translation often relies on culture-dependent terminology, which may not correspond in the target culture. The source language may also contain linguistic structures that have no direct equivalent in the target language, particularly when it comes to specific legal phrases. Finding ways to effectively interview the custodians of the documents, especially

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if they speak in a foreign language can also be a sensitive task, especially if it means going to that company's subsidiary in the non-English speaking country. This process requires taking time to explain to staff that the documents collected for review will be only those that are deemed relevant and reassure them that personal data like holiday photos, documents relating to personal health or other family correspondence will not be reviewed. If that company's subsidiary is in a country that has stricter privacy rules, such as France, Germany, Switzerland and Spain, express written permission must be obtained from staff members before any document on their computer systems are examined.

Collecting the documents, filtering out irrelevant information by techniques such as keyword searching and undertaking a computer-based legal review of all remaining documents to confirm their relevance, requires a thorough understanding of language review. A lawyer's ability to comprehend the language of the document which he or she is looking for is of primary importance, as is the choice of keywords. Using English keywords, for instance, to search Spanish documents, won't deliver any results.



**Language translation checklist**

**1** Identify which languages are used in the company's business operations during the custodian interview stage.

Once all languages are identified, understand which languages can be supported by the company's law firm or legal process outsourcing (LPO) provider and find out whether there are sufficient resources available to deal with documents in each language.

**2**

**3** Filter relevant documents first through machine translation as identifying the key documents this way is cheap, fast and allows determination of relevant and/or privileged documents. It also ensures only relevant documents are translated.

Use translator services that are specialists in legal review, as well as business terms relevant to the client's industry. It is important to note that many LPO firms do not have the requisite resources to handle non-English language reviews, so local, European providers are recommended for multilingual matters.

**4**

**5** To translate confidently in a cost-effective way, find a provider who understands the processes and has the tools capable of delivering effective non-English processing, searching, language identification and machine translation services as part of the wider process.

If the organisation's or its subsidiary's jurisdiction prohibits the transfer of data, or requires that the data disclosure be limited to only specific classes of documents, employ a specialist collection and processing firm with facilities in that jurisdiction. Local knowledge is critical. It is also a good idea to partner with a vendor who has the ability to set up a temporary facility on the client's site or in the jurisdiction for that specific engagement. Using this type of considered arrangement can help where corporate clients are concerned about the security of trade secrets or other confidential data.

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In addition to this process, the need to consider privilege, data privacy and the impact on case issues. The production and disclosure to other parties or regulator should always be considered having a detailed understanding of the content of the relevant documents which are in a foreign language.

**Tradition and technology**

Before electronic communication, clients used their own multilingual staff or retained law firms with multilingual abilities who could undertake high volumes of human translation. Although human translation can mean a thorough translation of

each document, it is a slow and very expensive process, costing hundreds and thousands of pounds. In the digital age, this process is simply unachievable and most companies and their law firms do not have enough resources to keep up.

Even a pure translation of every document will not necessarily mean a client will know if it is relevant to the particular matter. Perhaps only 20% of the translated documents will be useful, and the rest of the translated documents could be a waste of time and money. In addition, most document collections contain mixed data, and having to get the right document in front of the right reviewer can still present problems.

# E-disclosure

Machine translation is cheap, fast and allows determination of relevant and/or privileged documents. It also ensures only relevant documents are translated. Automated language identification allows identification of foreign documents, for example, German, and directs them to German speaking reviewers. However machine translation is not as accurate or exact as its human counterpart. The power comes from combining both human and machine methods.

To combine both traditional and technological methods, contract lawyers who are fluent in the relevant languages can be used to run automated searches, determine relevance, apply issue tags, commentary and determine privileged documents prior to translation of the relevant material. This means only the relevant documents are then translated and given to the case team to review, effectively dealing with resource availability issues and controlling cost.

## Characters and codes

When a matter involves transferring non-Latin based characters to Latin-based systems, there is a risk of potentially relevant information becoming “lost in translation” due to improper handling. Legal practitioners in Europe for instance, may mistakenly assume certain software platforms are used internationally, unaware of platforms such as *Becky!* or *Hidemaru* are used in countries like Japan, realising too late that they lack the ability to meet their legal burden for extracting from these data sources. Worse yet, they could find out too late that they altered or missed entire volumes of potentially-relevant data during disclosure.

Another common assumption is that the Unicode standard for character encoding is the only character encoding format. “Unicode compliance” signifies an ability to accommodate data that has been encoded using Unicode, but signifies no ability to accommodate electronically-stored information that has been encoded using any other format. It is not universal, particularly when it comes to the East. In the Asia-Pacific regions, users often generate data using software applications designed for character encoding formats specific to language and character sets of their country. However they may also access or receive data that cannot be displayed

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correctly due to their machine or software not supporting the character encoding format employed to originally create that data.

Spoliation can be avoided by companies operating in both the East and West by effectively mapping data and employing the necessary measures for defensible preservation, collection, indexing, searching, and review. Litigation consulting specialists can help legal practitioners obtain an early and complete understanding of the software systems in use, how those formats can be correctly addressed, and how that data can most efficiently be indexed and searched before translation.

## The way forward

As business dealings evolve in the new age of digital communication, so too should strategies of document translation and review. More significantly, with increased corporate vigilance, the implications of incorrectly translating a document vital to a legal or regulatory matter could be catastrophic. The US Department of Justice, the European Commission and the UK Financial Services Authority are among the many international regulators now enforcing their power with more vigour during a litigation, arbitration or regulatory investigation.

It is therefore vital to take the time to invest in the latest, most accurate methods available and be aware of the benefits that new technology can provide. Within business dealings on an international level, not paying attention to every detail of collecting and accurately translating relevant documents can be a serious risk to take. Understanding the available resources and future trends in translation methods and non-English document review will help mitigate that risk.

Translation takes time, particularly if documents contain sensitive legal information. Leaving translation strategies to the last minute can mean inadequate compliance with a legal or regulatory request. Planning ahead, encompassing the latest translation resources and using a flexible document review system as early as possible can ensure a smooth, accurate and successful response to any request, big or small.

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