Globalization can be a boon for businesses. For their corporate counsel, however, it can be a source of insomnia. Where the business goes, legal issues follow. And the more geographically, politically and culturally diverse those legal issues become, the greater the legal department’s challenge in managing them.

Nowhere is this more so than in e-discovery. When legal matters span multiple countries and languages and involve widely dispersed legal teams, corporate counsel shoulder Atlas-like burdens in managing them. Managing even one such case can be onerous, but the more typical scenario for large corporations is to be involved in multiple legal matters at the same time.

Not surprisingly, corporate counsel are turning to technology to help manage their global caseloads. Sophisticated technology tools enable them to gain greater control over all their e-discovery—no matter where the case is pending and where the data is located. And technology helps them reduce the cost and time involved in reviewing and producing the documents.

The Challenges to Legal Departments

Managing e-discovery is almost always a challenge for a large corporation. That said, the challenge only multiplies when litigation—particularly serial litigation—goes global. Consider how the global nature of a legal matter can complicate e-discovery:

- Document collections may be dispersed across any number of distant locations and custodians.
- Documents are almost certain to be in multiple languages—sometimes difficult languages to work with.
- Review teams may be located in far-away cities and require multilingual abilities.
- Host-country laws may prohibit data export to U.S.-based systems.

These factors combine to create two major concerns for corporate counsel. The most direct and dramatic concern is that costs can be significant. Litigating in foreign locations with foreign legal teams and non-English documents is far more expensive than litigating on a company’s home turf.

A second major concern is that global litigation can be a logistical and managerial nightmare. The more disperse the company’s legal matters, the harder for its legal department to track them all.

Technology to the Rescue

As corporate counsel seek ways to take control of the costs and logistics of global e-discovery, technology is a critical part of the solution. One major example of this is the use of centralized, multimatter legal repositories.
These systems enable corporate counsel to unify all their cases into a common platform accessed via the cloud. The systems provide them with the tools they need to manage cases and costs, while also providing their outside counsel with the tools they need to review and produce responsive documents.

Corporations’ use of these multimatter systems has grown in recent years. In October 2013, the eDJ Group, an e-discovery research and consulting firm, published a survey of discovery managers at global corporations. The survey asked them whether multimatter capability impacted their choice of e-discovery technology. Some 40 percent said that multimatter capability was an absolute requirement in an e-discovery platform, and another 33.3 percent said it was important.

A key benefit to corporations in using multimatter repositories is savings. This is particularly true for large corporations involved in multiple legal matters. For them, it is highly likely that many of the same documents and custodians will be used in multiple cases. With a multimatter repository, these documents are processed and stored only once, but are then available to be used in as many cases as needed. This eliminates duplicate costs otherwise incurred for each new case.

For global legal matters, a further advantage of a multimatter repository is the centralization of all e-discovery across all a company’s cases and for all its outside firms. This provides the legal department with global administration, tracking and reporting across all its legal matters. It enables outside firms to work within a common platform, no matter where in the world they are located. Mistakes are reduced by eliminating vendor hand-offs and enforcing standardization across cases.

One Fortune 20 technology company provides an example of how this can work. It has some 125 active patent, trademark and regulatory matters pending in forums that span the globe. These matters are being handled by outside counsel from 60 different law firms. At any one time, these matters involve more than 300 million electronic documents.

In order to manage all this, the company moved all its cases to a multimatter repository, and it requires all its outside firms to use this platform for review and production. For the company, key benefits have included consistency across all its cases, substantial time and cost savings, elimination of redundant effort and costs, assurance of best practices, and centralized control and monitoring.

Taking TAR Overseas

A second type of e-discovery technology that is proving critical to corporate counsel is technology-assisted review (TAR). Over the last few years, TAR has become a standard option in U.S. e-discovery for helping to reduce the costs and time of document review. Until recently, however, corporations and their counsel were reluctant to use TAR in cases involving data from other countries.

This reluctance stemmed from both the limitations of many first-generation TAR platforms and the common misconception that TAR can never be effective for certain languages, particularly the so-called CJK languages: Chinese, Japanese and Korean.

This misconception was founded in logic. TAR systems work by first creating indexes of all the words in all the documents in a collection. The system then applies mathematical algorithms to this index to identify relationships among the documents.

Of course, these systems do not actually understand words. Rather, they are programmed to recognize words by the spaces and punctuation that separate them. Because these groupings of letters and characters might not even be actual words, computer scientists instead call them "tokens."

The problem with CJK languages is that they do not use spaces between words. This leads to the incorrect conclusion that TAR cannot be used with these languages. After all, if the document contains no spaces that the computer can use to recognize words, how is it to compile the index?

The answer is to tokenize the document before feeding it to the TAR system. Tokenization software is programmed to recognize characters and words in specific languages. The software is able to segment the words within the document so that the computer is able to "see" and index them just as it would with English-language documents.

While it is true that some early TAR systems could not process Asian text, certain TAR systems on the market today include a text tokenizer and are able to analyze non-English documents as effectively as they do English documents.

Example: TAR for Japanese Documents

A recent case illustrates how a corporation can use TAR to reduce the time and cost of review in cases involving Asian-language documents.

The case involved a U.S. multinational embroiled in an international intellectual property dispute. Its Japan-based legal team faced a four-week deadline to review more than 15 million Japanese documents. Using a commercial e-discovery platform, the team was able to cull the collection considerably, but even then it was left with 3.5 million unique documents to review.

To further expedite the review, the team decided to use TAR. Japanese reviewers had already coded roughly 10,000 of the documents as relevant or not. These were used as seeds to train the TAR system. Then, the full collection was run through the system.

The result of the ranking was that the legal team was able to discard 83 percent of the remaining documents, yet still achieve a confidence level of 97 percent. That meant that they had to review only 17 percent of the documents, yet could be highly confident that they had found virtually all of the relevant ones.

Conclusion

As businesses and their legal matters go global, corporate counsel face greater pressure to control e-discovery costs and manage disparate e-discovery caseloads. By using technologies such as multimatter repositories and technology-assisted review, they are able to gain greater control and better manage costs, no matter where in the world their cases may be.