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Companies Are Turning to E-Discovery Technology for Global Compliance Investigations

From the Experts

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As nations intensify their enforcement of anticorruption laws, multinational corporations face enormous civil and criminal financial risk. The most painful reminder of this came in 2008, when Siemens agreed to pay fines totaling \$1.6 billion to settle bribery charges brought by U.S. and German authorities. Huge though that was, it was by no means an anomaly. As recently as February, telecom provider VimpelCom was required to pay \$795 million to resolve bribery charges brought by U.S. and Dutch regulators.

Even before any finding of wrongdoing, the cost of just defending against anticorruption charges can be huge. From 2012 to 2015, Wal-Mart Stores spent at least \$650 million simply responding to a Foreign Corrupt Practices Act investigation of its Mexico business by the U.S. Department of Justice, even though the investigation reportedly turned up no significant violations.

Given the stakes, it is little wonder that corporations are placing an urgent priority on compliance,

implementing measures to prevent FCPA problems from ever arising and to weed them out quickly when they do. "We are working aggressively to enhance our global compliance program and are committed to having a strong and effective program in every market in which we operate," a Wal-Mart spokesperson told BloombergBusiness in 2014.

Compliance is a multi-pronged effort. One key prong is prevention. Some of the ways corporations seek to prevent FCPA issues are legal and cultural training of their staffs in foreign countries, careful evaluation of their overseas business partners and monitoring and auditing payments.

But prevention is never perfect, so another key prong is responding—seeking to catch potential problems early in order to minimize risk. This means having in place systems to alert



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the company to suspected violations and then having the ability to quickly gather and triage the evidence to determine whether further action is warranted.

The process of triaging the evidence for compliance has many parallels to the process of sifting through evidence in pretrial discovery. For that reason, some companies are finding that the technology best suited to their compliance efforts was originally designed for e-discovery.

This makes sense when you think about why it can be so challenging—and so expensive—for companies to police themselves on anticorruption issues. The evidence of potential violations lies hidden in vast troves of emails, electronic documents and other data. This data might be stored in any number of disparate locations and in any mix of languages.

Turns out that the same technology that litigators use to quickly get to the core of a case is equally adept at helping in-house counsel and compliance staff get to the nub of an investigation. The same sophisticated search and analytics tools that let litigators explore documents, patterns and timelines can be used by compliance professionals to identify or rule out suspicious activity.

No Need to ‘Boil the Ocean’

Corporations conducting internal investigations need not “boil the ocean,” Leslie Caldwell, chief of the U.S. Department of Justice’s Criminal Division, said in a speech last year. “We expect companies to conduct appropriately tailored investigations designed to root out misconduct, identify wrongdoers and provide all available facts.”

Every case is different and so is the evidence a company may be looking for. For an FCPA matter, evidence could be explicit, such as an email offering a payment to a foreign government official, or it could be merely circumstantial, such as a document showing a questionable contribution to an unfamiliar non-governmental organization.

E-discovery software helps uncover evidence by providing sophisticated tools for searching and analyzing data. If a company has reason to suspect unlawful activity in a particular office, for example, it can collect all the emails and other electronic records for that office and then use these tools to zero in on possible evidence.

If the investigation turns up questionable activity warranting further inquiry, the company may deepen its probe or refer it to outside counsel. If the investigation turns up proof of unlawful activity, then the company should identify all culpable employees and executives and take corrective action, which may include notifying or cooperating with the DOJ.

A Case Study

One example of how this can work is a multinational medical device company that adopted e-discovery technology to streamline and standardize its process for investigating compliance tips from its offices in Asia, Europe and elsewhere. I can’t tell you the company’s name, but the scenario I describe is true.

The company has compliance staff in offices across its Asian and European regions. They regularly receive reports of potential anti-bribery violations through a hotline the company set up. They also initiate inquiries internally.

When a tip would come in, the company’s standard response was to collect the pertinent emails and other electronic files from the appropriate custodians and then search through it all for evidence

of suspicious activity. What the company lacked, however, was the right technology to do this efficiently and effectively. Its process for collecting and searching data was cumbersome and inefficient.

The company’s Singapore office came up with the idea of adapting e-discovery technology to these internal compliance investigations. Legal staff there had used an e-discovery platform elsewhere and believed it could be an effective tool that would enable them to quickly load, search and analyze data related to alleged violations.

The platform worked so well in Singapore that regional offices in locations as disparate as Bulgaria, India, Japan, Spain and Thailand followed suit. In short order, the company adopted the e-discovery platform as the standard application to use for all its compliance investigations worldwide.

The platform enables quick-turnaround investigations, intended as a form of compliance triage, to determine whether the evidence warrants deeper inquiry or referral to outside counsel.

For each new investigation, the regional office involved sets up a new site within the e-discovery platform. A site can be up and running within an hour. Then, using the platform’s automatic loading and processing capabilities, custodian data specific to the country is exported from the company’s Exchange servers in the United States and loaded into the site. There, regional staff can use the platform’s search and analytics tools to look for evidence of the alleged impropriety. If the initial

search uncovers evidence warranting further inquiry, a local law firm is engaged to more thoroughly review the data and determine how to proceed.

For the company, a key feature of the e-discovery platform is the ability to control the process itself without having to wait for a third party to process and load data. An entire investigation—from when the initial tip is received to when it is either closed or referred out—often takes no more than two weeks.

What to Look for in a Platform

As this case study shows, the capabilities of advanced e-discovery platforms can be particularly well-suited to internal compliance investigations. Of course, not all e-discovery platforms are alike. To be most effective in facilitating internal investigations, a platform should include:

- automated case creation, so that the company can quickly set up new investigation sites as needed without requiring third-party involvement
- automated processing and loading, so that the company can load its own data into the platform and quickly get started with review
- robust and intuitive search capabilities, so that compliance staff can rapidly hone in on key information
- visual analytics such as timelines and relationship maps, enabling investigators to identify and explore patterns in email correspondence and other data

- integrated batching, export and production capabilities to easily deliver documents externally to outside counsel or government investigators.

Another capability that is critical for multinational corporations is the ability to handle documents regardless of the language in which they are written. Needless to say, when a company's operations and sales are global, then the emails and documents under scrutiny in an investigation could be in any of a range of languages or even have multiple languages within a single document. Thus, the platform should be able to process documents in multiple languages and, more importantly, search them in multiple languages.

One other consideration should be the location of the e-discovery vendor's servers. Certain cases may require that data be stored within the geographic region. Plus, regional proximity of servers may enhance the platform's overall speed.

What Will It Cost?

Pricing of e-discovery platforms typically reflects their use in litigation, where single sites are hosted for longer terms and can contain large volumes of data. When these platforms are used for compliance investigations, the workflow is just the opposite. There are a higher number of sites, but each site contains a relatively small volume of data and is active for only a short term.

For that reason, you should work with the e-discovery vendor to come up with a pricing scheme that is suited to this workflow. In

the case study above, for example, the company and the vendor agreed on a flat monthly rate that made sense for its workflow. The rate allows the company to have unlimited, all-inclusive use of the platform, including all processing and hosting.

The Right Tool for the Job

Violation of an anticorruption law can be costly for a corporation. Prevention is the best medicine for keeping government investigators at bay. But diligent monitoring of suspicious activity and rapid follow-up are equally important.

Compliance investigations are all about the data. They require the ability to quickly process relevant data and then to quickly search the data for evidence. To do this, there is no need to reinvent the wheel. As many companies have already realized, the same technology used for e-discovery in litigation is equally adept at discovering evidence in compliance matters.

John Tredennick is the founder and CEO of Catalyst, an international provider of multilingual document repositories and technology for electronic discovery and complex litigation. Formerly a nationally known trial lawyer, he was editor-in-chief of the best-selling book, "Winning with Computers: Trial Practice in the Twenty-First Century." He can be reached at jttredennick@catalystsecure.com.