

# Managing Multilingual Litigation Efficiently

Law firms face many challenges when handling high-profile, high-value, multilingual litigation. Enhancing efficiency, providing greater value to clients, obtaining a successful outcome in the matter and minding clients' budgets are top of mind and are often directly linked to accurate foreign language document translations throughout the litigation process. Procuring high-quality translations from the beginning of the matter can make all the difference in addressing these challenges.

Firms that mismanage translations early on face the risk of poor-quality, inadmissible translations and costly last-minute services. Translation does not need to be a significant hurdle or detrimental cost within multilingual litigation. However, it does require firms to be proactive.

## Pitfalls of Handling Legal Translations In-House

From a myopic view, handling translations in-house can seem convenient. Firms may rely on associates, of counsel, or contractors with knowledge of a foreign language to perform the work of foreign language reviewers and professional translators. This is common when one or more associates at the firm are fluent in the foreign language and able to provide basic document translations and reviews. Yet the result can be inconsistently translated documents that miss important cultural distinctions and nuance – and that run the risk of being factually inaccurate.

Additional issues that can arise when relying on attorneys for translation services include:

- ☐ Lack of cultural awareness
- ☐ Claims of bias
- ☐ Significant workloads
- ☐ High costs
- ☐ Unexpected problems near deadlines

## A Complex, Nuanced Process

Translation is a complex and nuanced process requiring in-depth knowledge of a language and culture. Attorneys may lack the cultural insight necessary to translate the correct meaning of the document with all of its intended connotations or implications.

They also may lack experience in translating business-, technical-, and legal-specific terms. That being said, even

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when attorneys are fluent in a foreign language and have the necessary knowledge and skills to provide accurate translations, it is still in a firm's best interests to work with a translation service. Translating legal documents is a time-consuming process, and attorney-produced translations are not cost effective, as they can draw an attorney away from more value-add client responsibilities.

Other potential issues arising from attorney-translated documents are certification and claims of bias. For a translated document to be submitted to a court or a government agency without the fear of the opposing party claiming bias, it may need to be certified. Documents translated in-house may provide a firm with information, but they may not provide evidence to effectively use in court. Certification provides accountability for the translated document, and the contents of a certification document can vary depending on a firm's needs. Generally, certified translations are accompanied by a statement that provides the translator's name and qualifications, identifies the translated document(s) and language, and guarantees the translation is complete and accurate.

If a firm were to submit an in-house translation or use the uncovered information in court, one of the most significant risks is a claim of bias. By handling its own translations, other parties of the litigation may argue the attorneys were consciously or subconsciously influenced to translate a document in their client's favor. Claims of bias can be challenging to overcome and can lead to unnecessary setbacks in a case. The time and cost associated with unnecessary legal challenges are concerning, not to mention the potential reputational damage before a judge.

The disadvantages of in-house translations also may impact the firm's bottom line. When a firm relies on associates to provide translations services, it places a significant workload on their shoulders. These associates may then bill their hourly fee not on legal matters, but instead on translations. This can amount to hundreds of billable hours and potentially increase the cost of the litigation.

Furthermore, as associates spend weeks or months on the translation project, they are unable to handle legal matters associated with the case and those for the firm's other clients. While the multilingual case may be a central

matter for the firm, it is unlikely to be the firm's only client or case. By ensuring associates are not overwhelmed by translations, the firm ensures that other clients receive the attention they deserve.

While firms may be able to adapt to the challenges associated with in-house translations for a time, there is a significant risk of unexpected difficulties toward the end of a project. Firms may find the workload too great for their associates and miss a deadline. Or firms may suddenly find certain documents are highly relevant to the case and require certified translations to be used in court.

These unforeseen issues often lead to purchasing emergency legal translation services. When a firm commissions a legal translation service provider late in the project, it is disadvantageous, often pushing up against court deadlines and resulting in higher fees due to the demand for last-minute services.

## Why Partner with a Legal Translation Service?

To circumvent unnecessary challenges, partnering with an experienced legal translation service provider from the beginning of a matter is prudent. Doing so can provide firms with confidence that they will receive high-quality, accurate translations in a timely manner – resulting in the strongest possible foundation to pursue successful outcomes in their matters.

### NEUTRAL, ACCURATE, HIGH-QUALITY TRANSLATIONS

A professional translator carefully crafts an accurate translation that considers the foreign language author's culture, which influences not only the understanding of individual words, but also the document as a whole. Like attorneys, translators have different areas and levels of expertise. Because of this, legal translation providers work with numerous freelance translators to ensure a firm's matter receives attention from a professional with the right knowledge and experience. Well-versed in business-, technical-, and legal-specific vocabulary, the right translator can discern the appropriate meaning of a word, sentence and the entire document. Their familiarity

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with legal, technical and business terms and their cultural knowledge ensures they identify underlying assumptions or coded messages. Moreover, by working with a professional translation team, firms can be confident that documents are translated consistently across the board. Firms should partner with a service provider that gives them access to the best possible translators and not choose a provider based on cost alone.

Yet another benefit is that professional translations are performed by a neutral third-party. This is particularly important in high-profile and high-value litigation. Having no stake in the outcome of the litigation protects firms against costly, time-consuming and damaging claims of bias. Such translations can be certified and avoid claims of bias in court. Whereas uncertified translations obtained in-house would require a second step of acquiring a professional certified translation, firms can immediately put third-party certified translations to use.

Working with a service that dedicates itself to providing neutral, accurate and high-quality document translations is cost-efficient. Professional translators working full time on a project administered by an experienced project manager will have a higher rate of output than associates inefficiently working through translations in-house. Firms also avoid unexpected costs by preventing emergencies, especially those that may arise toward the end of a project and require excessively fast, and therefore costly, professional translation services.

## A PARTNER THROUGH THE LITIGATION PROCESS

Hiring a legal translation service provider offers firms more than high-quality translations. Experience in project managing large legal translation projects is essential. A translation vendor has the ability to scale for large projects – a capability most law firms lack. It can take on such projects by employing additional translators, project managers and other essential staff who understand discovery and the various litigation stages.

Conversely, firm associates acting as in-house translators are apt to mismanage translation projects due to inexperience managing projects at this scale.

As any firm knows, litigation is rarely a straightforward or predictable process. A translation service must be responsive and flexible to a firm's evolving needs and routinely respond to unexpected changes and emergencies in litigation-related translation projects. Third-party translators typically become an integral part of the litigation team, appropriately organizing and managing the document translation, reviewing the project based on the firm's needs and taking responsibility for ongoing and timely results.

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What's more, longevity and cybersecurity are essential in modern litigation. Law firms benefit from translation vendors that utilize technology to track and store translated documents throughout the process and that archive translated documents and other relevant records – ensuring that translated documents are never lost.

## Machine Translation Is Not a Solution – Yet

Machine translation (MT) and neural machine translation (NMT) have advanced significantly in recent years. Computers now have a greater ability than ever to translate a document from one language to another. One day, the process may be as accurate as human-based translation. It may eventually become a time- and cost-efficient solution to multilingual litigation. However, MT has a long way to go before this is universally true.

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language, traditional human touch is necessary for high-quality legal translations. This is because translation is not a one-to-one task – an area in which computers are typically efficient. Many words do not have a reciprocal term in another language. Idioms, if literally translated, will make little sense in another language. Because of these factors, translation is as much an art form as it is a skill. It requires cultural understanding, training and experience to ensure that a translated document offers the same nuanced meaning as the original foreign language document.

Identifying a vendor that offers varied solutions, such as MT and NMT, to meet diverse circumstances is important; however, technology-based translations are appropriate in certain circumstances and not others. MT may be appropriate for culling high volumes of documents, though largescale, high-value litigation is likely not the place for inaccurate and uncertified machine translations.

## High-Quality Translations Are Key to Successful Multilingual Litigation

When law firms take on cases with a foreign language element, the need for legal translations is certain. In complex and high-value cases, this often equates to hundreds of thousands or millions of emails, business records, contracts and other content that must be accurately translated to determine their relevancy to the claim. Even smaller matters with less at stake can easily produce volumes of documents that require translation and that could impact the outcome of the case.

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A second option is to utilize MT. This can be useful in certain, specific situations, although machine translations are often too literal, inaccurate and of poor quality. These factors make MT translations inappropriate for litigation. If any portion of a machine-translated document is incorrect, it can impact an entire case.

The third option – working with an experienced legal translation service provider – is perhaps most reliable. Taking this route can ensure high-quality, accurate, certified translations while securing a partner throughout the years of litigation. □

**For more on how to effectively meet your language translation needs and manage successful multilingual litigation, visit Divergent Language Solutions at [divergentls.com](http://divergentls.com).**

**About Divergent Language Solutions:** Divergent is a legal and corporate translation company that provides certified document translation and interpretation in over 100 languages to global law firms and corporations. Divergent's client list includes over 90% of the Amlaw100 and many of the world's largest companies entrust their most sensitive translations to Divergent. Divergent supports all types of international litigation and arbitration matters, FCPA, cross-border M&A and other global cases with foreign language content.