

Navigating complex cross-border document review

EY Forensic & Integrity Services
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The landscape of data privacy regulations is rapidly changing, with requirements varying widely across jurisdictions, both internationally and in the United States.

Consider these three questions as you design your privacy review workplan:

- 1. Who needs to be involved?**
- 2. Why are privacy reviews costly?**
- 3. What strategic steps can promote review efficiency?**

The US is swiftly enacting state-level privacy requirements, while more stringent standards have been implemented internationally. In response, companies are working to mature their data privacy and protection programs to comply with increasingly complex requirements. While leaders are investing in technology and resources to enhance their organizations' privacy capabilities, they will also need to consider the impact to litigation, investigations and other discovery needs.

Legal teams will need to take a more proactive, comprehensive approach to evaluate where their data resides and what laws apply. While lawyers may be aware of potential cross-border data transfers, they may not be contemplating additional challenges to protect potentially private data from a document review and production perspective.

In the aftermath of a data breach, the need to conduct a thorough and efficient privacy review may raise additional concerns based on urgency and reporting requirements. Privacy reviews entail the need to both accurately identify and appropriately safeguard individuals' protected private information, potentially under multiple regulatory frameworks.

Privacy reviews can be costly

- ▶ Training attorney document reviewers on multiple country and state standards, including local compliance review requirements
- ▶ Recruiting multilingual review resources for data sets in multiple languages
- ▶ Identifying and redacting personally identifiable information (PII), including customized workflows for anonymization
- ▶ Applying multiple redaction sets to conform with privacy requirements across various jurisdictions
- ▶ Analyzing potentially dense PII document types (e.g., medical forms, financial records)
- ▶ Implementing a robust quality control process in light of elevated risk and serious consequences, including sanctions
- ▶ Extending review timelines to account for additional review workflow complexity

The implementation of a strategic cross-border privacy analysis and review workflow plan can reduce risk and enhance efficiency through five key steps:

- 01** Coordinate proactively on tactical workflow planning with key stakeholders, including counsel, review managers, hosting/e-discovery managers and the client's data management team around review scope, reviewer/data location(s) and substantive review instructions as applicable to the relevant geographies/regions.
- 02** Integrate with privacy subject-matter experts in the applicable geographies to enhance knowledge of jurisdictional requirements.
- 03** Leverage automation and technology-driven solutions to enhance efficiency and drive down manual review cost, including:
 - ▶ Automated identification of privacy information
 - ▶ Targeted tools for both structured and unstructured data
 - ▶ Review prioritization to enhance speed and eliminate duplicative effort
- 04** Create a comprehensive list of pertinent privacy data types that require reviewer identification, identifying categories of overlap across geographies to streamline the review process.
- 05** Calibrate the review workflow plan for the possibility of future data requests in additional geographies.

Key takeaways

A proactive strategy-focused document review workflow is critical to adapting to the constantly evolving regulatory landscape of privacy law. Knowledge of the applicable laws; dedicated workflow planning; and proactive communication may mitigate the challenges and complexity of cross-border privacy considerations. Key stakeholders should be knowledgeable as to when and how technology enablement can facilitate even greater efficiency. Strategic technology integration, including the use of analytics and technology-assisted review, can facilitate the prioritization or even reduction of the review burden, potentially alleviating both the time and the cost of document review.

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