

THE LAWYERS WEEKLY

E-discovery challenges in China

Cultural differences can complicate negotiations

By Kevin Lo

April 16 2010 issue

A complicated international anti-dumping case brought several U.S. lawyers and a team of e-discovery experts to a large industrial town in northeast China. They had come to interview senior executives and conduct a search of paper and electronic records at a major pharmaceutical company.

During negotiations for the trip, the company said the team was more than welcome to speak with anyone they wished to meet and that access to records would be granted willingly. What transpired once the team arrived in China, however, was considerably different.

To begin with, their hosts seemed disinclined to get down to business. On the first day, they insisted on giving a tour of the large plant. It was long and far too detailed for the team's interests. Having everything translated only added to the ordeal.



After the tour ended, the hosts suggested everyone go to lunch. The lead lawyer politely declined, despite the urging of her translator to accept. The lawyer asked, instead, to begin the discovery process. "I would like to begin by taking a copy of your hard drive," she said to the company's CEO.

Although the CEO didn't say no outright, it was obvious this request made him quite upset. Rather than discuss the matter further, he changed the subject back to the luncheon invitation. "We can eat and have something to drink and get to know each other," he said.

"He's got something to hide," one of the lawyers said to his colleagues. Although he had made this observation in an aside, it was loud enough for the CEO's translator to hear.

There was a growing tension in the room, which was especially felt by a North American consultant the pharmaceutical had retained to assist with the discovery process. Fluent in Chinese, he suggested everyone take a break.

During the break the consultant explained that cultural differences were causing unnecessary conflict.

In China, he explained, most executives (and all employees, for that matter) use work computers also as personal computers. "The CEO's computer will have all his personal e-mails on it. Also, his banking and his children's homework — and who knows what else. When you asked to take a copy of it, to him, it was like asking for a key to his house and going into his home and looking around. Don't confuse his reluctance to just let you do this with evidence of guilt. That would be a big mistake."

"Doesn't he have his work e-mails on a different system than his personal ones?" the consultant was asked. "No," the consultant replied. "He uses a hotmail account for all his e-mails."

The consultant explained that in China, it's not uncommon — in fact, it's the norm — for people at all levels in a company to use hotmail, Yahoo and other free e-mail providers for business and personal correspondence.

It's typical, he added, for company computers to be shared by many people. As a result, it's much harder to identify who specifically might have sent an e-mail if it originated on a communal machine.

Because of the communal usage, passwords and other login features, as commonly seen in North America, might not even be employed. Or, if used, a password was likely known by everyone, rendering it meaningless. "People in China tend to work for the same company for many years, if not for life," he said. "They are far more of a family than what you encounter in a U.S. firm."

Additionally, many work computers could be infected with viruses or cookies that could allow hackers to gain access to the computers, even adding content if so desired. "That's because the computers are used for online games, accessing porn, going to gossip sites, who knows what," the consultant said.

"Could the company's head of IT not help us?" one of the lawyers asked.

"If they had one," the consultant replied. He explained that the "IT head" for the pharmaceutical was a long-term loyal employee. "He is also their electrician and the guy you call if you want a light bulb changed. He might be able to help you but he's not like the IT heads you're used to dealing with." Furthermore, most businesses in China lack a standard IT policy or protocol. In many cases, technologies are deployed with an ad-hoc approach.

Faced with these cultural challenges, the consultant suggested some solutions. First, go to lunch and maybe dinner and let the hosts entertain everyone. "Even if you don't like to drink, let the alcohol touch your lips," he said. "They need to establish trust with you. When that happens you'll get access to what you need. They want to help you."

He also noted that paper documents are still prevalent in China. "You will find most of what you want in the documents. It will just take you longer." The keyword when doing work in China, he said, is patience.

The lawyers followed the advice and found it to be accurate. They achieved their goals, just not as soon as they had hoped to.

Kevin Lo is a managing director at Froese Forensic Partners in Toronto, where he specializes in e-discovery and digital forensics.

 [Close](#)