How to Satisfy Cross-Border Data Preservation Duties

By Matthew Knouff

In order for legal counsel to put her or his case together, relevant data must be collected and analyzed effectively. There are times when the desired data is located outside the borders of the United States. According to Matthew Knouff, a New York-based attorney for Complete Discovery Source, those subject to U.S. data discovery obligations encounter issues, in part, because there is no uniform set of rules for both domestic and foreign discovery efforts. To further complicate cross-border discovery efforts, the concept of [preservation](http://en.wikipedia.org/wiki/Preservation) is non-existent in many jurisdictions outside the U.S. However, one can use existing laws to his or her advantage when trying to retrieve relevant data.   
  
Mexico’s Commercial Code contains an example of an existing preservation requirement that would assist an attorney or data discovery professional in accessing certain records that may be relevant to a matter in the U.S. Article 46 effectively states that a merchant is obliged to preserve her or his books of business for a minimum period of ten years. Counsel can leverage this rule when attempting to identify sources of potentially relevant information during the identification phase of the eDiscovery process. Such laws have the ancillary benefit of decreasing the risk that relevant data is being withheld or eliminated. Large portions of information can be secured by understanding similar laws of the nation where the target data resides.