

E-Discovery in Cross-Border Litigation: Taking International Comity Seriously - *The International Dispute Resolution News*

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David N. Cinotti co-wrote the article, "E-Discovery in Cross-Border Litigation: Taking International Comity Seriously," with Edmund M. O'Toole.

With the possible exception of civil jury trials, no feature of the U.S. legal system is treated with as much apprehension abroad as pretrial document discovery. Most other national legal systems do not permit the kind of party-conducted and intrusive pretrial document discovery that U.S. litigators believe is essential to a full and fair settlement of disputes. Other countries restrict or prohibit parties from obtaining documents and often place pretrial investigation in the hands of judges. Differing fundamental views on the nature of state sovereignty and the proper balance of competing values in dispute resolution account for these differences in practice. The divergent value judgments have long been apparent in cases involving foreign litigants or witnesses in U.S. courts and have led foreign states to object to executing requests for documentary evidence for use in U.S. proceedings, sometimes frustrating the effective functioning of the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters. But the gulf between the United States and other countries when it comes to discovery practices has further widened with the rapid expansion of e-discovery in the United States.

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