

# corporate organizations

## Should you in-source electronic discovery? If so, how do you do it?

Mid to large sized companies are becoming increasingly familiar with the costs and challenges of electronic discovery. Many face multiple litigation matters each year, as well as numerous compliance and regulatory actions. Often, with literally terabytes of unstructured information to wade through in order to find relevant information, eDiscovery has become an expensive headache!

Enterprises in highly regulated and litigation prone industries are leading the charge to bring eDiscovery in-house, inside the firewall. They are doing this to reduce costs, mitigate risk and regain control. For these firms, in-house eDiscovery not only makes financial sense, but also enables a controlled first review and an early case assessment which can be completed within hours or days instead of weeks or months.

However, in-house eDiscovery is not for everyone and is not without challenges. With up to 80 percent growth per year in the unstructured data volumes of many companies and with that data stored in multiple places and in a myriad of formats, it requires some planning and effort to bring eDiscovery in-house safely.

Unmanaged and unplanned-for eDiscovery increases both the risk and stress for legal departments, IT teams, business units and executives. This Nuix Insight Paper discusses four key elements that companies must address to achieve repeatable, defensible and measurable in-house eDiscovery.



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## 1. Is In-House eDiscovery Appropriate for You?

### To outsource or in-source – that is the question?

By understanding the characteristics of your company's litigation environment you can quickly work out whether it makes sense to outsource or in-source your eDiscovery.

Outsourcing all of your eDiscovery to expert firms makes sense if your data volumes are small, your litigation is infrequent, or it is a matter critical to the company's future.

If you are a serial litigant and operate in a heavily regulated environment then in-sourcing some of your eDiscovery makes good sense. Likewise, if you need to react in short timeframes, want to perform an early case assessment and want to increase your control, then these are all strong drivers for having an in-house eDiscovery capability.

If you in-source eDiscovery it will be quicker, cheaper and you'll have more control. If you outsource, it will be slower, more expensive and more intrusive. However, while these are all important motivators, your primary driver with electronic discovery must be that it is repeatable and defensible. Getting it right the first time (and every subsequent time) is crucial because once mistakes are exposed, you will have credibility problems.

Once you have decided that in-sourcing is a good idea there are three components that drive successful in-house eDiscovery. They are:

1. making sure you have the right resources;
2. putting in place appropriate policies and procedures; and
3. your choice of technology and technology partners.

If you make the right decisions on these three elements and implement correctly, in-house eDiscovery will give you back control, improve your litigation results and significantly reduce your costs.

## 2. Review Your Resources and Ensure you Have the Right Skills

If you come to the conclusion that in-sourcing is a viable alternative, then the next key issue is to understand the pool of internal and external resources which are available to you when an eDiscovery event occurs. Having the right resources and ensuring they are all credible and properly skilled is an important part of executing a defensible and credible electronic discovery process.

From an internal perspective, the most relevant parts of the organization are generally members of your legal department and IT teams as well as the records management group, information security personnel and senior management.

Your external experts can be just as important, starting with your law, consulting and forensic firms. Another critical resource is your eDiscovery solution provider.

As well as knowing who these business units, organizations and people are and having relationships with them, you need to take the time to understand their capabilities. For example, it may be critical for you to receive expert legal opinion at the collection and initial review stages. Can your law firm or their preferred litigation support organization provide overflow capacity or personnel? What is their track record in providing advice on eDiscovery as well as their ability to scale up to support you if required? Do you have a reputable computer forensic firm to image the hard drives of key custodians at short notice when required, as well as expert third party witnesses who can help out at critical points?

Both internal and external resources are important parts of your litigation ecosystem and any company that wants to successfully undertake in-house eDiscovery must clearly define each person's role, understand their capabilities and make the commitment to up-skill every member of the team.

The world's most advanced eDiscovery and electronic investigation software.

### 3. Implement Appropriate Policies and Procedures

If an eDiscovery request occurs without appropriate policies and procedures in place, your company will be severely disadvantaged, whether you in-source or outsource the activity. Lack of agreed policies and procedures reduces your ability to implement a defensible eDiscovery program, escalates cost and severely limits the time to assess the information you have gathered and undertake an early case assessment.

There are many eDiscovery policies which should be discussed and agreed before any event occurs. For example, who will be responsible for collections and at what times will you bring in external counsel for validation and/or direction? A considered eDiscovery policy will have guidelines and directives for the many different decisions which need to be made, rather than facing and debating them when an event is in progress.

Any defensible, repeatable and measurable eDiscovery procedure should follow the industry's EDRM (Electronic Discovery Reference Model – [www.edrm.net](http://www.edrm.net)) stages, including Information Management, Identification, Preservation, Collection and Processing. You must be able to clearly document all of the actions and decisions taken under each of the EDRM stages. As well, you need an active and detailed issues register which documents anything that occurs outside of the ordinary, such as how you dealt with corrupted files or password protected documents.

Accurate documentation is critical in proving that the eDiscovery process undertaken was sufficiently thorough to identify all the potentially relevant evidence. It must demonstrate the credibility of how and why information was sourced and how and why it was reduced to a smaller group of potentially relevant documents.

For most companies, employing an eDiscovery expert or hiring the services of an experienced consultant can save you time and money in the long run. These experts can not only assist to develop the right policies and procedures, but can help to train staff and be an expert witness in court if required. They can also assist an organization just starting out on the in-sourcing journey to complete initial cases and be available thereafter to provide advice when required.

### 4. Choose the Right Technology Partner

Your technology partner is the critical factor in enabling you to leverage your eDiscovery process to its full potential, reduce the number of in-house resources required and simplify your whole workflow and process.

Your eDiscovery software solution should slot seamlessly into your process as opposed to being the process. To do this successfully, it must have a powerful range of capabilities that enable your team to undertake end-to-end eDiscovery rapidly and with certainty that it is accurate.

Your eDiscovery solution software must also be able to process large, diverse datasets very quickly. Your organization should not have to waste time deciding what to process, potentially excluding relevant data, because your solution is too slow, or takes too much preprocessing. You should be able to identify large pools of potentially relevant data from entire e-mail or file servers, collections of end user desktops or reams of data pulled from backup tapes and process it all with the same tool. In order to do this, you need to be able to scale from a few gigabytes of data up to terabytes – all with the same tool, and without building a new datacenter to house the systems.

In any litigation, time and access to information are critical. The ability to have access to indexed information and therefore answers to questions is paramount to success or failure. Make sure your eDiscovery solution provider has what it takes.

### Key features your technology solution should include are:

- Processing speeds of 40-50 GB per server per hour.
- Scale to the largest cases and datasets.
- Process a wide variety of data types directly without the need for “pre-processing” or complicated workflow methodologies. It must process individual email boxes and email servers as well as hard disks and forensic images of hard disks.
- Be 100% Unicode compliant and therefore able to process and search all languages and character sets.
- Identify all irregular files which have been processed, including corrupted, encrypted, deleted, non-searchable PDFs, files which may have had their extensions changed and manage images (e.g. detailed schematics) just as well as it deals with text files.
- Be able to search indexed data held both locally and remotely (including overseas where data privacy rules may prevent its distribution) contemporaneously for a coordinated search.
- Provide a list of every word in the dataset and its frequency in preparation for the meet and confer.
- Be user friendly so that the time it takes to install, set up a case, add additional evidence or complete basic user training is measured in minutes.
- Be integrated with a scalable review platform so that data, once culled, can easily be presented to either an in-built or external review platform.
- Export the end results into the load-file of your choice.
- Provide quality support – having access to competent, trained and empowered support staff that will get you out of trouble when things go wrong.



# Simple. Powerful. Precise.

- NuiX offers the fastest, most complete and most advanced enterprise-wide eDiscovery and investigation software. NuiX's speeds are legendary in the industry with full text indexing at up to 45 gigabytes per hour in a single server.
- NuiX's analysis and investigative capabilities were developed in conjunction with military, regulatory and investigative organizations over a nine year period and bring unmatched scale, speed and precision to corporate eDiscovery, compliance, regulatory and internal investigations.
- NuiX's eDiscovery and enterprise solutions provide indexing, analysis, scalable linear review and legal export capabilities – all integrated within one platform.
- NuiX processes all major Microsoft structures, including EDB files, as well as Lotus Notes, Groupwise and a myriad of other email formats and file structures.
- NuiX processes all languages, all metadata and all associated, attached and embedded files, regardless of depth of hierarchy, compression or naming conventions.

## ABOUT NUIX

NuiX has spent the past nine years developing and refining the world's most advanced eDiscovery and electronic investigation software. NuiX revolutionizes the way government and private organizations investigate electronic information, improving simplicity and accuracy and slashing the time and cost of investigations by more than 80%. NuiX customers include all major advisory firms, litigation support firms, state and federal government departments, regulatory and security agencies, police and anti-corruption bodies, financial institutions, corporations and law firms.

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