THE EVOLUTION OF
eDISCOVERY WORKFLOW
EXECUTIVE SUMMARY

The discipline of eDiscovery and the tools it requires are becoming more complex. Achieving accurate, timely and defensible results requires high levels of technical and legal knowledge. This combination of skills is rare and experienced practitioners are in very high demand. Many legal services providers—including litigation support vendors and law firms—struggle to recruit enough of these experts to meet their client workloads.

The complex realities of eDiscovery are driving up costs for legal services firms but their clients are looking to pay less. Pressure to complete larger volumes of work faster can lead to errors and rework.

In our experience, roughly one in five legal services providers has attempted to remedy this situation by creating standardized workflows, containing a repeatable series of steps for conducting eDiscovery processing tasks. Some have used custom or off-the-shelf software to automate these workflows. In doing so, they hoped to streamline their processes, empower less skilled staff to complete complex tasks and achieve more consistent outcomes with fewer errors.

This paper will examine two case studies of legal services providers that completed workflow and automation projects:

• Litigation support vendor Lighthouse eDiscovery in the United States
• A multinational law firm.

We will examine the processes these firms went through, the benefits they achieved and the lessons they learned along the way. This paper will also describe the capabilities of Nuix eDiscovery 5 and the Nuix Director web application for process automation and workflows.

This paper will show how legal services providers can, by codifying their workflows on paper or using an automation framework such as Nuix Director:

• Complete more work at a lower cost and with fewer errors
• Make their output more defensible
• Share work between teams and offices
• Reduce staffing and training costs
• Empower eDiscovery experts to deliver value higher up the chain.
CAN WORKFLOWS MAKE eDISCOVERY EASIER?

The increasing volume and complexity of data involved in eDiscovery are making it harder for law firms and litigation support vendors to deliver timely, error-free and profitable services. Can legal services providers change this equation by standardizing and automating their workflows?

WHY eDISCOVERY IS GETTING HARDER

In eDiscovery, every case has idiosyncrasies. There are few agreed standards other than the guidelines in each jurisdiction governing how to exchange evidence with the opposing side. Litigants are free to choose the methods that suit them to get to that point, while facing the possibility that the court or the other side will challenge those methods.

In addition, a broader range of evidence types is becoming discoverable. Data types which courts and legal teams once viewed as “too hard” are now commonplace. As a result, the tools used by legal services providers for eDiscovery are becoming more complex.

Achieving accurate, timely and defensible results requires the services of highly skilled professionals, who often have broader information technology skills as well as legal knowledge. People who have these skills are in very high demand, throughout the industry and within the companies they work for.

These skilled professionals must often complete large volumes of what they consider to be repetitive, low-value “grunt” work. They may feel frustrated because they cannot provide value higher up the chain.

At the same time, clients are increasingly cost conscious about their legal services. To meet deadlines and budgets, people may cut corners or try to find “creative” solutions to problems without ensuring this process is documented and repeatable. This increases the probability of errors, which can have dire consequences including:

- Having to redo the work
- Not being paid for the work
- Court sanctions, if a judge believes the error was a deliberate attempt to hide evidence
- Being at the wrong end of a knowledge gap, where the opposing side knows vital information that you do not
- Loss of reputation and loss of client business.

THE BENEFITS OF WORKFLOWS

Many businesses across any number of disciplines have recognized that standardizing workflows and automating them is a good way to minimize costs. In our experience of the eDiscovery market, approximately one fifth of firms have documented their best practices and built them into workflows that all of their staff could follow and repeat consistently. A smaller number have gone a step further and automated these workflows, using off-the-shelf or custom-developed applications to guide human operators through each step in the eDiscovery process.

Designing and automating eDiscovery workflows can:

- Provide a repeatable series of steps so that staff do not have to reinvent the wheel with each new project
- Improve eDiscovery defensibility by enabling a legal services provider to explain to a client or court the exact series of steps it followed
- Codify the knowledge of experts, allowing less skilled staff to do the same job and achieve the same results
- Synchronize processes across multiple projects, teams or office locations
- Reduce the opportunities for staff to cut corners or attempt “creative solutions”
- Most importantly, achieve more consistent outcomes with fewer errors.

WORKFLOW DOCUMENT COMPONENTS

A typical workflow document might include:

- Step-by-step instructions or flowcharts for completing a particular eDiscovery task
- Locations to store original evidence and processed data
- Detailed settings and instructions for the software packages used in this task
- Numbering formats
- Forms or spreadsheets to record details of the process.

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EXPERIENCES WITH WORKFLOWS AND AUTOMATION

To better understand the experience of designing and automating workflows, we spoke to two firms that had undergone this process within the past two years:

- A multinational law firm with offices across the Asia-Pacific region and Europe
- Lighthouse eDiscovery, a leading provider of technology-enabled discovery services to Fortune 100 corporations across the United States.

A MULTINATIONAL LAW FIRM

In 2011, this law firm conducted a holistic review of its eDiscovery processes.

“We wanted to make sure we had in place a best-practice, defensible and efficient model that was also flexible so we could meet the changing needs of clients,” said the company’s eDiscovery Project Manager. “People had been doing the same things the same way for a long time, so we went right back to basics and documented all the steps and decision points.”

“A lot of people said documenting what we used to do was a waste of time, that we should go straight to designing a new process, but it was really important. It made us think through very carefully, ‘What do we do?’ Because we did that, it was easier to work out what was the best practice, the most efficient way of doing things.”

Documenting the processes also revealed considerable variations in procedures between the company’s offices in different states. “People had been working in silos and doing things a particular way so long, often they had forgotten why they did them that way,” the eDiscovery Project Manager explained.

Documenting and standardizing workflows

The firm took around three months to create a series of standardized workflows that were documented and defensible, clearly outlining the steps to take at each stage of the process. Over the following months, the firm worked with an external consultant to create a series of automation scripts for parts of the workflows.

“We have made sure that those scripts are documented and managed centrally and only a few people can modify them,” said the eDiscovery Project Manager. “They need a proper change management process to make sure the workflows stay consistent and documented.”

Increased throughput, consistency and defensibility

While the firm put considerable resources and time into standardizing its workflows and automation, it has seen tangible benefits since implementing them.

“We have definitely improved our efficiency and streamlined our work processes, and there’s a lot more confidence across the firm that our output is defensible,” said the eDiscovery Project Manager. “Now that we have standardized our workflows across offices, it’s easier to make sure we have the best resources to work on a job. If one office is busy, we can get someone else to do it.”

“It was very much seen as an investment in the eDiscovery capabilities of the firm, making sure we were a leading best practice, and that would bring in more business as well as being more efficient.”

“It’s been a very rewarding and valuable exercise for our team.”

MULTINATIONAL LAW FIRM

Multinational law firm with offices across the Asia-Pacific region and Europe

Key results of workflow and automation enhancements:

- Boosted efficiency through streamlined work processes
- Increased confidence in the defensibility of results
- Enabled offices to share work by standardizing processes

Standardizing workflows across offices, means its easier to make sure we have the best resources to work on a job
LIGHTHOUSE eDISCOVERY

Lighthouse eDiscovery sought to develop a comprehensive workflow system when it started using Nuix software in 2011. “We addressed the end-to-end workflow: ingesting, various techniques for culling and filtering, optical character recognition for PDFs and exporting,” explained Chris Dahl, Senior Director of Solutions and Technology at Lighthouse eDiscovery. “We already had workflows but this re-energized the push to create scalability, predictability and efficiency and to reduce errors.”

The firm is now developing an integrated process automation system to link all these workflows together.

“A bigger, more strategic notion was being able to drive efficiency across our clients’ entire litigation and investigation portfolios,” said Dahl. “A lot of our clients look to us to define the framework from which they can drive their eDiscovery work and workflows are a part of that. We can say to clients: ‘We can get your data in, save you money and offer more predictability in terms of how fast we can process your data.’”

Building the business case for workflows

Before embarking on this project, Lighthouse eDiscovery did not have an internal software development capability so the firm had to hire developers. This required justifying the value of spending so much time and resources on non-billable tasks.

“In building a business case, we showed the amount of time it would take to process data in a reactionary mode with a ‘willy nilly’ workflow and then how long it would take with an established workflow that could be executed by a junior tech,” said Dahl. “Part of that was a case study showing that the work we did in automating and streamlining workflows allowed us to handle twice as many cases and twice the data for the same cost.”

“You can’t just improve process for its own sake; you have to link it to ROI and improved profitability.”

Making errors a thing of the past

Another part of justifying the expense of the workflow project was rigorously tracking errors before and after its implementation.

“When we started tracking in earnest over three years ago, we were seeing an initial error rate of about 5%—now we’ve effectively got that down to zero,” said Dahl.

Automating and streamlining workflows allowed us to handle twice as many cases and twice the data for the same cost
ONE PROCESS OR MANY?

eDiscovery projects vary considerably depending on factors such as:
• The type of data
• The volume of data
• The numbering schemes and disclosure formats relevant to each client and jurisdiction
• The urgency of the job
• How much the client is willing to pay.

Is it possible to create and automate workflows that can be customized for each of these factors and still end up with an efficient and defensible process?

“In the past we thought we were flexible because we didn’t have standard processes,” said the law firm’s eDiscovery Project Manager. “Now we have a framework so we know where the decision points are. We can document what changes we have to make to be flexible and meet different clients’ requirements.”

CONFIGURATION VS CUSTOMIZATION

When clients have requirements that can’t be accommodated within existing workflows, Lighthouse eDiscovery can customize the process.

“It’s a matter of communicating to clients which projects fit within our existing configurable workflow and which are truly custom,” Dahl said. “If they agree, we dig into the data, understand the client’s requirements and define new modular components that fit into the workflow. This type of customization is done by our senior staff because it requires much higher levels of quality assurance and testing.”

CONTINUOUS IMPROVEMENT

For the law firm, workflows and automation are not a one-off project but an ongoing process.

“It is a work in progress; we’re constantly reviewing, assessing, updating and incorporating feedback,” said the eDiscovery Project Manager. “About every six months we take another look at our workflows and see what needs to change, what is best practice. We knew we wouldn’t get it 100% right the first time.”

MODULAR DESIGN

From the outset, Lighthouse eDiscovery designed its workflows to be modular.

“Our workflow amounts to 10 or more modular steps and we know what the inputs are for each step, such as a date range for date-based culling,” said Dahl. “It’s important to define the workflow with enough configuration options so we can adjust to client needs without having to start from square one every time.

“We can change the steps around, include or exclude them, to meet the needs of a client. Most of our junior techs can do that.”

TOP TIPS FOR CUSTOMIZING WORKFLOWS

While each case is different, the firms we interviewed for this paper made clear that they could design workflows to accommodate the requirements of different data types, clients and jurisdictions. They advised:
• Create a framework so you know where the decision points are for each stage of the process
• Document the inputs and outputs of each workflow stage
• Make your workflows as modular as possible so you can change the order of or omit steps to meet client needs
• Revise your workflows regularly to keep pace with best practices
• Understand when it is not possible to accommodate a client’s needs within your existing workflow and when you will have to customize the workflow.
KEY BENEFITS OF WORKFLOWS AND AUTOMATION

Standardizing and automating eDiscovery workflows have significant benefits, which in Nuix’s experience, are similar for firms of any size. The experiences of the two firms interviewed for this paper further confirm that workflows and automation can:

- Deliver higher throughput and greater certainty around project timeframes at a lower cost
- Minimize errors by standardizing settings and providing a clear set of steps to follow at each stage of the process
- Make outputs more defensible by documenting each step taken to achieve the result
- Enable firms to share work between teams and offices by synchronizing the processes they follow
- Reduce staffing and training costs by empowering analysts and technicians to complete complex eDiscovery tasks
- Lighten the load of repetitive “grunt” work on eDiscovery experts, freeing them to deliver value higher up the chain.

OVERCOMING OBJECTIONS

Despite the evident benefits of workflows and automation, the majority of legal services firms worldwide have not yet taken these important steps. Generally speaking, some larger firms have invested in workflows and automation while smaller ones have not. Here are some of the common objections that organizations encounter when trying to adopt workflows and automation, and responses based on the experiences of the firms interviewed in this paper.

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<th>OBJECTION</th>
<th>RESPONSE</th>
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<td>“We can’t divert our expert staff from paying client work to sit down and codify processes.”</td>
<td>The time invested in documenting processes is repaid quickly because the firm can then complete a larger volume of work at a lower cost.</td>
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<td>“We don’t have the technology skills to develop or customize software for automation.”</td>
<td>Documenting processes does not require software. Standardizing workflows provides a larger proportion of productivity gains than automating them.</td>
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<tr>
<td>“We can’t afford to pay consultants or software developers to map out our processes and write the software.”</td>
<td>Your eDiscovery practitioners most likely have all the skills required to document workflows. Nuix’s eDiscovery software provides a framework for automation without the need to write software.</td>
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<td>“Each case is different and the variations between clients, data sets and jurisdictions would override any benefits from standardizing our workflows.”</td>
<td>Designing workflows to be modular, with set inputs and outputs at each stage, can account for most variations. Some exceptional cases may require process customization rather than configuration.</td>
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<td>“Our skilled employees are worried they will lose their value to the company if we capture their unique knowledge and capabilities.”</td>
<td>Highly skilled practitioners become valuable resources who provide the knowledge that other staff members can follow. This frees them from “grunt” work for higher value tasks.</td>
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Despite the evident benefits of workflows and automation, the majority of legal services firms worldwide have not yet taken these important steps.
Nuix recognizes the value that templates and automation can bring a legal services provider. We also acknowledge that there are considerable barriers to entry for mid-sized and smaller firms that may not have the technical expertise or staff bandwidth to embark on custom development of workflow tools.

In Q4 2013, Nuix will launch Nuix Director, a web application that fits the eDiscovery process into automated, template-driven workflows. Nuix customers can use the built-in setting and workflows or create their own templates. Skilled eDiscovery practitioners can codify their knowledge into templates and workflows which analysts and technicians can use to complete difficult eDiscovery tasks and achieve consistent and defensible results.

Nuix Director harnesses the power of the Nuix Engine into consistent, repeatable and highly automated processes. It encapsulates our experience working with hundreds of law firms, litigation support vendors, regulators, government agencies and enterprises across tens of thousands of cases. It includes:

- **A web interface**—provide an easy-to-use interface for eDiscovery professionals and access for customers without having to install client software.

- **Process automation**—enforce workflows and settings to ensure each data source and item is treated consistently, minimizing the risk of human error.

- **Template-driven workflows**—adjust processing tasks and settings to suit different cases and customer requirements.

- **Comprehensive reports**—summarize each aspect of your eDiscovery workflow in comprehensive reports for customers, managers and courts.

- **An easy-to-read dashboard**—visualize the progress of your eDiscovery projects at a glance and drill down to reveal the intricate details.

**ABOUT NUIX**

Nuix enables people to make fact-based decisions from unstructured data. The patented Nuix Engine makes small work of large and complex human-generated data sets. Organizations around the world turn to Nuix software when they need fast, accurate answers for digital investigation, cybersecurity, eDiscovery, information governance, email migration, privacy and more.