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## Buyers' Guide to In-House Tech

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# It's Time for Corporate Law Departments to Spend More on Tech

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► **Legal professionals require legal tech solutions designed to meet their needs.**

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One of the most valuable, yet largely overlooked, insights from the CLOC 2020 State of the Industry Survey was about technology spend in corporate law departments (CLDs). According to the survey, “large” CLDs (defined as having more than \$10 billion in revenue) spend an average of \$600k+ on technology per year.

If that sounds like a sizable amount to you, you're wrong. In fact, benchmarked against the best publicly available data, it appears woefully inadequate. Large CLDs spend, according to the CLOC survey, about \$61.4 million per year on law firms and other vendors, and about \$38.3 million on internal expenses (mostly salaries, probably), for a total of around \$99.7 million. That means they are spending only about 0.6 percent of total law department spend on tech. In contrast, the broader corporations' CLDs are part of spend, on average, according to Deloitte, 3.64 percent of total company revenue and up to 7.88 percent, in the case of banks – on technology. That is significantly greater than the 0.6 percent CLOC says CLDs spend, especially since the CLOC number is calculated as a percentage of spend. (The CLOC number would be much lower if calculated as a percentage of revenue.)

Defenders of corporate law departments might argue that, while the broader organizations spend more, that figure should not be used to suggest law departments are behind on technology. After all, the argument goes, what's important is how much technology the law department is using, not who pays for it. Often technology, like Microsoft Office, is paid for by IT or other departments, but legal is still using it. Therefore, CLDs are not the presumptive luddites

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**The C-suite demands CLDs become true leaders rather than experts to consult only when there is a problem.**

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that tech spend statistics might make them appear to be. Although a valid argument, it doesn't tell the whole story. More than 50 percent of technology spend now occurs in individual business units, versus the old model where it went through a centralized purchasing process. That means departments like finance, HR and marketing are spending more and more money on technology out of their own budget, giving them more “say” and increasing the likelihood the tech purchased meets their actual needs rather than the needs somebody else thinks they ought to have.

Legal should be right there with them. But per the numbers, legal isn't doing that. Legal is behind.

For the most part, it is nobody's fault, but the result of a complex constellation of inherited reasons that include the following:

- **Legal is small.** The global legal industry recently grew to over \$1 trillion in size, and thinks it is big. However, that is only about 1.3 percent of the world economy, compared to about 10.9 percent for medical. It's no surprise that money and talent prioritize markets that present the greatest opportunity, and where solutions can scale massively. Legal isn't particularly attractive in this regard.
- **Legal is viewed as a “one-off” function.** Unlike accounting, which operates on a monthly cadence that is highly routinized, legal is often viewed as a one-off. You only call legal when you have a legal problem. Now that legal



is getting more attention, it turns out more legal work can be routinized than originally believed. But that doesn't change the fact that, historically speaking, legal was viewed as a low ROI area in which to add process and technology. The industry is still suffering from that misapprehension.

- **Corporate law departments hire out of law firms designed to produce good lawyers, not necessarily good leaders or managers.** Many in-house folks come out of law firms. Law firms bill hourly and therefore make money every minute their attorneys are advising clients and typing up legal documents; in contrast, they “lose” money every minute spent managing. That mentality can carry over into the legal department when law firm professionals go in-house. Many of them continue to function as individual contributors, potentially unaware of the opportunities (like tech) that larger, systemic ways of thinking would uncover.
- **Solutions that don't meet expectations.** The last couple of years have seen a trend of legal technology companies hiring lawyers not to be part of their legal department, but to help with product design. This gives them an insider's perspective and lets those lawyers talk to clients and potential clients in a way that helps identify and solve client pain points quickly and easily. This is a great step but is relatively new in the industry. Many legal tech solutions brought to market have missed the mark on addressing law department needs, because they were driven by developers that don't understand the legal market. This has resulted in solutions that don't meet the department's needs, have low user adoption, and probably worst of all, reduce confidence in legal tech.

So, what is a corporate law department to do? As mentioned above, solutions are already underway. Despite

the market being relatively small, investment has flowed into legal tech in the last few years, in part because it is seen as a “blue ocean” where there is less competition per opportunity than in larger areas such as medical. The rise of legal operations is dispelling the myth that legal isn't susceptible to process and technology, and the C-suite increasingly demands that CLDs become true leaders and managers, rather than subject matter experts you only go to when there is a problem. Legal tech companies have started to recognize that they need to incorporate an insider's perspective to build truly relevant solutions.

The biggest thing CLDs can do is acknowledge the problem. The perception is that law CLDs do not operate like other parts of the business units in most organizations, and often times for good reason – but this is really an opportunity. Be a lawyer for yourself. Gather exhibits like the benchmarking data above and advocate for more resources. Show that technology and process can create a win/win for everybody, but further investment is needed to make that happen.

Only then will we see the technology investment percentage in legal rise to rival the tech spend of other business departments. ■



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# Is Your Early Case Assessment Process Hurting Your Case?

► **Early case assessment (ECA) is crucial to developing a winning strategy. Wendy Cole, product marketing director, legal tech with OpenText, explains how Axcelerate Investigation is helping organizations regain control of their ECA process and quickly assess the merits of their case.**

**CCBJ: ECA is a nebulous term that has been widely used to describe certain early-stage challenges and processes in e-discovery and investigations. Please describe those processes.**

**Wendy Cole:** The term ECA, or early case assessment, refers to the process of collecting and culling data and then taking a quick dive into that data to gain an understanding of the facts and evidence that will inform the case strategy. Ideally, you want to assess the strengths and weaknesses of the case quickly and decide how to proceed, whether the matter is related to a civil proceeding, or assessing potential liability related to a regulatory or other type of investigation.

In any early case assessment project or investigation, time is of the essence. But many projects, due to issues I'll talk about next, take many weeks if not months to get to the key facts that can inform case strategy or drive resolution.

**How have legal teams typically tackled challenges such as traditional approaches to ECA and investigations?**

Fundamentally, unlike a litigation document review, where critical facts are known and issues defined, in ECA or an investigation often there is little information to go on or none at all. Corporate legal teams facing massive volumes of electronically stored information and unknown unknowns are tasked with finding the key

evidence and getting to the truth of a matter under tight deadlines. More often than not, legal teams struggle to execute the right strategy and tools to zero in on key information quickly.

Many legal departments take a patchwork or ad hoc approach. Some use numerous point solutions for distinct parts of the process: one tool for collecting data, one for processing and culling, and a third for analytics. Those using a first-generation ECA platform for basic culling then need to use a separate analytics tool or import the data into an e-discovery review platform for analytics capabilities before they can gain any real insight into the data. There are a lot of steps involved, a lot of hands on the data and a lot handoff points. When multiple solutions and people are involved to "get the job done," this introduces delays, inefficiencies, risks and additional costs into the equation.

Other teams rely on their information technology (IT) teams to search for and send them personal storage table (PST) files for manual review, only to find they need more emails or data from other custodians. This is a slow and laborious process, and it risks missing potential evidence in other data sources within the organization.

Finally, to "get the job done," others gather PSTs and simply send them to a third-party vendor for the data to be processed for a full production-style review that is designed solely to separate the potentially responsive from the nonresponsive data. This can be unnecessarily time-consuming and drive up costs.

**How is today's environment driving trends that are pointing to new approaches?**

The salient theme of the past year is how to do more with less while optimizing results. Since the pandemic, legal





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## More often than not, legal teams struggle to execute the right strategy and tools to zero in on key information quickly.

teams have been struggling with an increase in workload – especially “unplanned work” like investigations – while having access to fewer resources. At the same time, data volumes are growing, exacerbated by a largely remote workforce relying more heavily on chat, ephemeral messaging and other types of communications to do their work. And there’s the intermingling of work and personal data, challenges related to bring your own device (BYOD) and growing data security concerns. So, you’ve got more data, greater risk, less time, fewer resources, and more work to be done. There are new challenges and there’s a learning curve.

In the midst of this pressure there’s still the tendency for a knee-jerk reaction: “We don’t have the resources to look at this data in-house. We need to get someone outside to find the critical data for us.”

The historic reliance on outside counsel for more mundane tasks such as the mechanics of ECA, investigations and document review, regardless of cost or budget, is shifting. We are seeing many legal departments increase spend on technology, amidst flat budgets, in order to reduce dependency on outside counsel and address capacity problems. This includes a focus on technology that incorporates emerging technologies such as machine learning to automate highly manual and inefficient processes.

Reliance on specialized providers won’t go away, but we’ll see better optimization of external expertise for tasks



such as managed document review and investigation SWOT teams. The key is to build a strategy incorporating technology, people and process that addresses the long-term pain points and inefficiencies to achieve better legal and business outcomes.

### **What are essential technology capabilities that legal teams should look for regarding ECA and investigations?**

First, general ECA tools usually have collection and broad culling capabilities. These are important but are like an axe; they’re not precise, and that’s exactly what’s needed in ECA and investigations.

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## Ideally, you want to assess what supports your case, what doesn't support your case, and what the truth actually is.

Finding the facts to support your case requires tools that operate with precision, like a scalpel. This is where analytics (both textual and conceptual) and machine learning are critical to an efficient and effective solution for zeroing in on the evidence quickly. When combined in a single tool with collection, processing and culling, analytics will maximize efficiency and minimize delay and cost.

**How are analytics being used to improve traditional approaches, and what are the benefits over traditional ways of conducting ECA and investigations?**

Analytics give you the ability to shave substantial time off an ECA project or investigation so you can get to the heart of the matter faster, and make decisions faster. You can do a deep dive into the data, reveal the patterns, surface the key information, surface outliers. Many times you're not looking for the everyday communications; you're looking for an outlier. Why is this person only communicating at this time of day? Or, they haven't communicated with this person in six months and suddenly there's this barrage of communication between two parties. Why? It's those tools that help you surface the patterns and find the evidence quickly. And that's critical to early case assessment.

Using analytics way earlier in the process may even avoid costs, because the organization may settle the matter or decide not to pursue it and avoid a complete review and production process, which will save them both money and time and allow them to go forward with their business.





**Tell us about OpenText's new product Accelerate Investigation, and what makes it unique.**

Accelerate Investigation is a single ECA and investigations platform that includes the analytics I just described. It incorporates traditional ECA tools – data connectors, processing and culling capabilities. But then it adds broad and deep analytics and machine learning capabilities. Because all functionality is integrated, collecting and culling is more efficient, and the team has substantially earlier access to the evidence. This helps teams shave weeks or even months off the usual time it may take to get to the facts.

Accelerate Investigation is intuitive and easy to use, and its advanced analytics, machine learning and visualization tools help reveal patterns. So, legal teams can quickly get up to speed and find the key data themselves. Because Accelerate Investigation's powerful analytic tools are front-loaded, Accelerate Investigation is exceptional at ferreting out the unknown unknowns, which is critical in an investigation where facts are not developed or not known.

With automated document summaries, teams can shortcut the fact-finding process by using the summaries to help them determine which documents they need to look at. Predictive search technology means that when a team finds a really good document, they can use the “find more like this” search technology to uncover similar documents quickly. Advanced sentiment analysis helps teams by automatically categorizing documents into negative, neutral and positive sentiments.

The product also offers teams flexibility. Legal departments

can install it on premise, or they can use it in the cloud on demand. When deployed on premise, teams can create central data repositories and reuse information for multiple matters, saving costly and time-consuming rework. With on-demand cloud deployment, legal teams can use the platform on an as-needed basis, without infrastructure, operational costs or IT to support them.

Flexible deployment options give teams early access to really advanced analytics in whatever way works for their particular circumstances and priorities. And that's the key point.

And if the team's analysis reveals that a full review and production is warranted, or if regulatory authorities are requesting full production of documents, the data and all analysis and work product conducted in Accelerate Investigation moves seamlessly to the Accelerate Review and Analysis cloud platform for full review of the data set for relevance and privilege. It's a single platform for all ECA and investigation needs and takes users seamlessly to full review, including advanced technology-assisted review, and production where required. So, it's a very efficient solution. ■



**Wendy Cole** is director, product marketing for OpenText Legal Tech solutions. After practicing civil litigation in Toronto for seven years, her focus shifted to legal technology and e-discovery. She has been involved in the development of e-discovery in Canada from both a technology and policy perspective for over a decade. At OpenText, Wendy is responsible for strategic product marketing of e-discovery solutions, including Accelerate Investigation. Reach her at [wcole@opentext.com](mailto:wcole@opentext.com).



# Evolving Technology Brings New Challenges, and New Solutions

► **Alex Chatzistamatis, senior principal enterprise architect with Nuix, discusses the ways that technological advancements like machine learning and artificial intelligence are shaping the future of e-discovery and other areas of the legal profession.**

**CCBJ: What are some of the most pressing challenges facing corporate legal teams at this stage of the COVID-19 crisis?**

**Alex Chatzistamatis:** If you take COVID-19 as a whole, obviously it has thrown a huge monkey wrench into many areas of litigation with an uptick in litigation itself – whether it's legal disputes, contractual issues, financing, employment, etc. When you get into the weeds about the challenges that ultimately underpin these things, the biggest issue that all corporate legal teams are facing is, remote employment.

I look at this from two facets. One is the remote employees. That's basically you and me and really everyone who is doing their day-to-day job from home, but there's also another aspect of that, which is the people who are tasked to collect and preserve electronically stored information (ESI) from the broader workforce. Generally, those are going to be investigators or any discovery practitioner within an organization that's tasked to do that work. It's actually pretty challenging when you think about it, especially with all of the various barriers and roadblocks that have presented themselves because of the whole work-from-home model that we've all been restricted to. Virtual private networks (VPNs) and other cloud-based firewall technologies often stand between the remote employee and the folks that are attempting to gather and collect that data. So that's a huge component. And in my role with Nuix, I interface with customers and clients of all shapes and sizes from the corporate world on a daily basis,

and I can tell you it's something that every single one of them wants to talk about almost nonstop every day.

The second facet of this is ultimately the data sources themselves – specifically, I mean modern cloud-based data sources, many of which don't even have a legal precedent yet. There are many philosophical debates about how to deal with some of these modern data sources, which quite frankly, the courts haven't addressed. So I would say those are really the two biggest challenges right now: remote employment and modern cloud-based data sources.

**What are some new sources of threats that corporate legal teams should be concerned about or have on their radar?**

This is really an extension of what I was talking about regarding the last question, but again, it's these modern data sources. We aren't talking about emails, Word documents and loose files anymore. Now we're dealing with more collaboration tools. Think about tools like Microsoft Teams, Slack or Zoom, where there are just these constant streams of chats and recordings – live streams, recordings, audio calls, you name it. These are technologies that corporate legal teams really haven't faced in the past, and it's challenging to figure out how to obtain this data, how to work with it, how to respond to it, and how to do it at scale.

Another type of data source to have on your radar is backup tools. There's been a trend in the last few years toward cloud-based backup solutions like Druva, for example. Some organizations are replacing traditional endpoint collection tools with something like Druva, and it's actually a pretty smart way to solve that problem. But of course, it also presents some challenges in terms of being able to then obtain that data, making sense of it and using it as part of a litigation.





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## Unsupervised machine learning actually achieves better effectiveness than traditional supervised machine learning.

I would also say that this concept of “shadow IT” is another threat that corporate legal teams should be concerned about. And by shadow IT, I simply mean any type of platform that is external to the organization that employees might be working with. So, for example, if you think about apps like Facebook, iMessage, WhatsApp, those are all various types of backdoor channels. They might start out innocently. You might have workplace discussions going on behind the scenes – innocent conversations, at least at first, that ultimately could lead to workplace culture issues, or various other discussions that could potentially escalate into something like an insider threat.

### **What would you say are the most important innovations you’ve observed in e-discovery in recent years?**

There have been so many in the last few years, and I don’t know that I could even really pick one, because there’s a great deal of exciting developments these days. So, in no particular order, I would say, the growth in artificial intelligence (AI) and machine learning, specifically technology assisted review (TAR). These days, we call it CAL, continuous active learning. There are lots of studies out there that indicate that unsupervised machine learning actually achieves better efficiencies and effectiveness than traditional supervised machine learning, where you’ve got one or more humans basically sitting there and manually making decisions about a subset of the data. Those study results ultimately prove that there are superior results with less review efforts and less manual human interaction

with the data. In my opinion, that’s probably one of the biggest ones, and the fact that folks are finally starting to really embrace it, even though the technology has been around for some time – probably at least a decade or more at this point. But the fact that it’s really starting to gain traction and achieve wide acceptance is huge.

The next important innovation, I would say, is cloud computing. I’ve worked with plenty of organizations that really want to solve their problems, but at the end of the day, acquiring the hardware or other storage platforms is a huge hurdle. But cloud computing has really helped to reduce that barrier to entry, specifically for organizations that are looking to bring e-discovery or other kinds of ESI solutions in-house. And on the flip side, for software vendors, it has allowed them to build some really awesome, scalable solutions that they can easily deploy to their



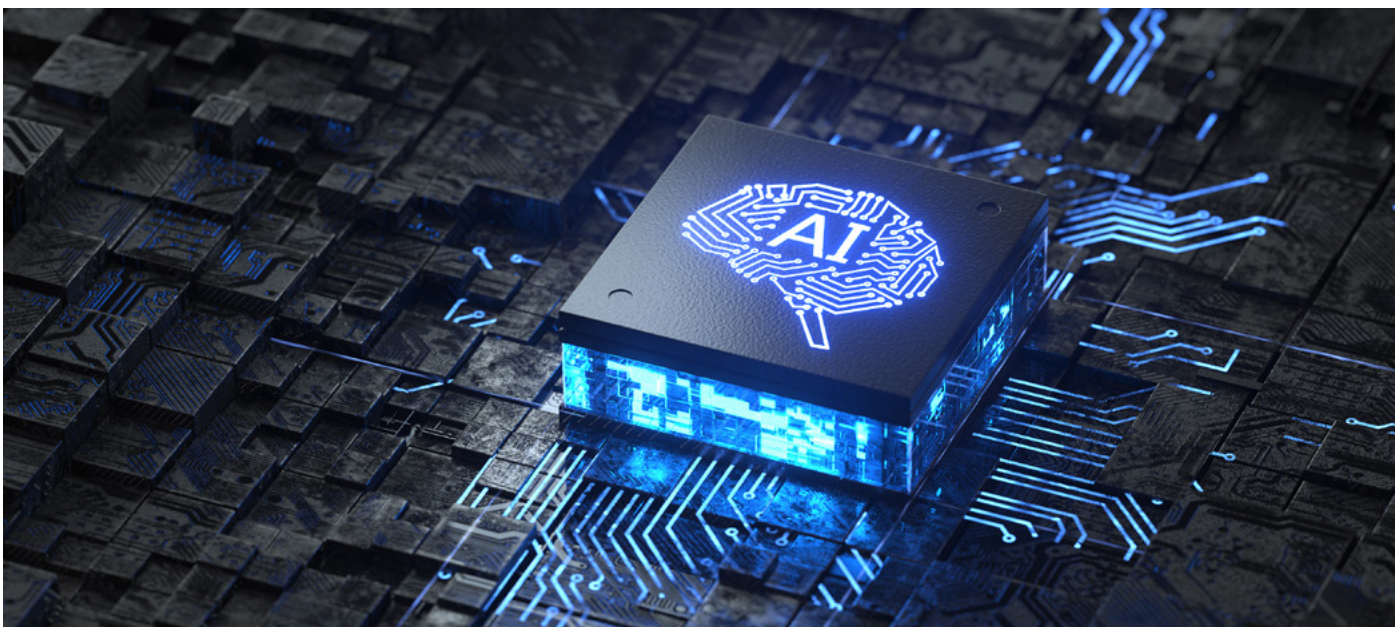
clients worldwide. Our chief data scientist, David Sitsky, is cooking up some really amazing things for Nuix using cloud services. It really is eye-opening when you see how powerful and easy it is to adopt and recognize benefits from cloud technologies.

But the one that's nearest and dearest to my heart is automation. In the last few years, we've seen an uptick in automation across all industries, but it's only in the last 12 months or so that I've really started to see it pick up significantly in our industry. Business process management (BPM) tools, robotic process automation (RPA) tools, like CAL, which I mentioned before, have been around for a while, but they're really starting to gain traction and enable organizations to automate various steps and activities between different tools – potentially even interfacing with non-traditional e-discovery tools, for example. Imagine the possibilities when interfacing with cloud-computing

environments, or other enterprise tools, and building a holistic approach to solving e-discovery challenges.

**How has the relationship between legal teams, information technology, and other areas within the enterprise evolved in recent years, especially as it relates to handling and using electronically stored information?**

Over the last few years, I've really seen an increase in the number of organizations that are unifying these areas and bringing these teams together – where technical teams are starting to work with nontechnical teams, laying out all of the business challenges, the technical challenges, the philosophical issues. So instead of continuing with the traditional siloed approach, where everyone has their own tools and is doing their own thing – whether it's worrying about e-discovery or investigative issues or data privacy or whatever it is – they're approaching





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## These collaboration tools are technology that corporate legal teams really haven't faced in the past.

these issues holistically. Because independently, there's only a certain amount that you can do, but if you group these different business units together, you start noticing, "Oh yeah, we've got those pain points. We have those same challenges. We solve these problems with X tool and we do it with Y tool." The relationships that are formed between those groups when you bring them together leads to a more collaborative, unified approach. And that ultimately leads to an organization being able to reduce the number of tools that it uses.

When you consolidate all of these groups, you end up leveraging much of the same technology and tools to solve the various data challenges, which are actually fundamentally similar. Then you can really start introducing automation, which, ideally, crosses different use cases or disciplines, such as e-discovery, cybersecurity investigations, etc. And that's ultimately where, if you do it right, you can create value and really make the organization shine. You can control outside costs; you can make faster, more informed decisions; you can simplify your workflows; you can respond more quickly to requests and challenges. And ultimately, that leads to improving your data security and protections.

### What are the highest priority technology considerations for corporate legal teams in 2021?

We can break this down into two areas. One of them is the AI and ML. I firmly believe that, across the board, this technology is still in its infancy, but especially the way it

is used in our industry. So beyond the traditional CAL approach that we've already talked about, I think we will see AI expand and rise into other areas, like privileged review, personal information detection and auto-redaction, and more. The ability to use unsupervised machine learning to dive into these different areas will be huge. And being able to do it at scale, very quickly, with little to no human interaction, will truly be a game changer for organizations.

Then the second aspect of this is what has come to be known as data warehouses or "reusable litigation repositories." When you think about how e-discovery generally works, it's the same repetitive process. There is a great deal of time and resources wasted by having to manually go back to the well, so to speak, and basically grab the same data over and over and over again. A data warehouse will allow you to be able to use your pre-existing data sources to build a single repository that contains the data you need for your frequently litigated custodians, which you can instantly search for, at any time. Whether it's for discovery, or for an investigation or a regulatory response, there are many ways that you could leverage this type of solution. Having that always-on repository will allow you to find the answers you need faster and really show the full, complete picture to the teams that need it, instead of having to reinvent the wheel every single time. ■



**Alex Chatzistamatis** is a principal enterprise architect with Nuix. He works closely with corporate clients to solve some of the toughest unstructured data challenges. For the past seven years, Chatzistamatis has consulted on many projects involving investigations, e-discovery, information governance, email archives and cloud technologies. Reach him at [alex.chatzistamatis@nuix.com](mailto:alex.chatzistamatis@nuix.com).



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# Directing the Course of an Investigation With Database Discovery Tactics

► **Julian Ackert, managing director at iDiscovery Solutions, discusses the differences between structured and unstructured data and how database discovery can allow a legal team to conserve resources and get the best outcome for their client.**

**CCBJ: Databases have been a source of electronically stored information (ESI) for some time, and discovery of structured database content is not new. So, what is database discovery?**

**Julian Ackert:** Traditional discovery looks at and identifies information that resides in individual files – like word-processing documents, spreadsheets and PowerPoint presentations – as well as free-form communications such as emails. But database discovery also considers data points that exist in transactional database systems that can identify the behavior of individuals and help with other kinds of analyses.

What that means, for example, is that if a case revolves around where somebody was when they did something, you can look at the content of unstructured data to understand what was written about the question at hand, but you can also look at the context of structured data, which is essentially a record of their data footprints – where they were at a certain date and time, geolocation coordinates, anything related to that type of information. Content, such as what is written in the body of an email, is something that you would typically have a human being review, but the context can help you go beyond that. Database discovery is looking at both content and context together.

**What is the difference between structured data and unstructured data?**

Let's start with the definitions of "structured data" and "unstructured data." Unstructured data is the content of emails or documents or other individual files, as I was just describing, and structured data is what comes out of a transactional system. Generally, when we're looking at discovery and fact-finding, we look at the unstructured data, because that's the easiest for us to digest and understand. Structured data, on the other hand, is millions of rows inside a database, and it's not an easy exercise to understand what that data represents. One thing to note: all data is structured in some way, shape or form. So the difference between structured and unstructured data is a bit of a misnomer, but unstructured data generally has more free-flowing content that requires the eyes of an individual in order to understand its meaning.

For example, when someone writes an email, they're using natural language – and the words in that email are unstructured data. The natural language needs to be evaluated by someone to understand what is being said. Whereas if you're dealing with a product management system that is tracking a product from its source to its destination, each point that is recorded is stored in a structured data system, and the path that the product takes from point A to point B is structured data that's recorded in a structured database system – also known as a transactional system.

**How would you combine both structured data and unstructured data when performing a database discovery?**

First, let me say that we've come a long way in the discovery process, and this question highlights that fact. When I initially got involved with discovery, and really electronic discovery (although, from my experience, you can drop the word "electronic," because it's all discovery. Data, information and facts just happen to be recorded electronically in today's world). When I started in this world of

discovery, emails were just becoming a potentially relevant data source. And at that time, emails, which are considered unstructured data, were not very easy to deal with. They were difficult and complex. I remember some case teams saying, “Let’s not even get into emails.” And that was both sides saying, “Emails are not something we should get into.”

That was a long time ago. Emails are a ubiquitous component of discovery today. It’s actually one of the first places you look, which I think is fine. But there may be a better way to investigate facts – if we are able to review the emails and at the same time understand some of the context around them, we get a better, faster view into the facts.

As an example, let’s look at communication frequency to find parties of interest. Emails may have very high levels of communication frequency or a very low level of communication frequency – both of which can provide important context. For example, in a particular case two parties may be very critical to the facts, but I may have zero or very few emails within a particular timeframe for those parties. If so, that is an indication that emails may not be the preferred form of

communication between these parties. Or, on the flip side, it may be very interesting context if I have thousands of emails with a particular person in a particular timeframe. We’re taking unstructured data and evaluating it with the context of structure (frequency) to get a better sense of the facts in a matter. We can take this a step further and look even deeper at the structured data. Maybe even flip the scenario and start to look at the context of the structured data first, before we start looking at the content of unstructured emails.

For example, going back to the product life cycle, if I am analyzing a product life cycle through the use of structured data, I see trends and patterns in the product life cycle that tell me, from a fact perspective, that there are some interesting time frames of interest. Based on that analysis of structured data, I can now focus on time frames of key interest for the unstructured data.

**Databases often have millions or even billions of records. So analyzing that amount of unstructured documents seems like it would be a very expensive exercise. Won’t database discovery, then, be cost-prohibitive?**





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## Database discovery is looking at both content and context together.

This ties in nicely with what I was just talking about. The analysis of hundreds of thousands, millions or even billions of transactions does not equate to the review of that same number of documents. Unstructured content in documents is expensive to review because, predominantly, a human being is examining the content to decide whether and how it is relevant to the issues in scope (perhaps assisted with document technology assisted review). The costs are linearly proportionate to the volume - the more unstructured data you add, the more human review time you need. In contrast, analyses of structured data can be designed once and then applied to any number of records without a linear increase in cost.

It's very widely known that the most expensive part of the discovery process is the reviewing of documents. So spending some time and energy on analyzing structured data first can actually save you significant dollars - relative to the cost of discovery throughout the whole life cycle - because it allows you to hone in on the key points of interest related to the claims and defenses of the case.

I often ask, "What are the questions of fact that we're trying to answer?" Because if you understand what you're trying to answer, there are oftentimes very interesting structured data sources that can help you find those answers faster and cheaper than traditional unstructured document review.

### Databases are complicated. Is the juice worth the squeeze?

I often get this question, and I'll tell you that, in my experience, it all comes down to understanding the data sets of key importance. There could be thousands of databases related to a particular workflow or an issue. They may all

help answer the question of facts in a case. But not all data is created equal. Oftentimes, unless there's a good consultative exercise performed up front to focus on the structured data sets of highest value, the juice may not be worth the squeeze after all. A shotgun approach with respect to the structured databases of interest is not going to be the most effective approach. A consultative approach instead allows the case team to be surgical and analyze the databases that are most interesting. When a consultative approach is applied, in almost every case I've worked the juice is absolutely worth the squeeze.

### How would a legal team get started with this kind of analysis?

To get started, you need two things. First, you need a good consultant on your team that can understand the facts of the case and guide the team towards the potentially relevant structured data of key interest. There is not a "one-size-fits-all" solution for structured data analysis like we see with email. Second, you need technology that will allow you to analyze structured data content in an efficient manner such that your work product is forensically sound, your process is repeatable, and you leverage prior experience. One example of that technology is the xIOT® platform that is offered by iDS. ■



**Julian Ackert** is a managing director with iDiscovery Solutions in Washington, D.C. He has over 15 years of consulting and project management experience in the technology and litigation industries, and has extensive experience with forensic data collection and computer forensic analysis. Mr. Ackert has worked on several international projects involving complex data privacy, collection, and review challenges. Reach him at [jackert@idiscoverysolutions.com](mailto:jackert@idiscoverysolutions.com).

**iDS** provides innovative consultative solutions to law firms and corporations around the world, serving as a guide through the complex areas of digital forensics, eDiscovery/disclosure, structured data, cybersecurity, data privacy, and information governance. We have three offices in the US and one in the UK. Our proven processes remove factual uncertainty – providing valuable insight into the unknown, the unseen, and the undiscovered.



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[ftitechsales@fticonsulting.com](mailto:ftitechsales@fticonsulting.com)



# The General Counsel Report 2021: Rising to Today's Challenges and Building Resilience for the Future

► **FTI senior managing director, Wendy King, describes the evolution of the role of general counsel, especially in regards to the challenges met in 2020. In order to help their organizations navigate 2021, there are tasks to consider.**

In corporate legal departments, recent years have seen a steady rise in planning and establishing programs to mitigate anticipated risks. Alongside this focus on proactive risk management, the role of the general counsel evolved from the office of “no,” to one of significant strategic influence. Once largely viewed as a cost center, or barrier to corporate progress, the general counsel of today are business drivers in their own right.

This evolution for the general counsel came in the nick of time for the turmoil of 2020. In the 2007 best-seller, *The Black Swan: The Impact of the Highly Improbable*, by Nassim Nicholas Taleb, the author discussed the discovery of the first black swan in Australia – when the people of the “Old World” assumed with certainty that all swans were white – as a metaphor for the impact of rare and unpredictable events. Although Taleb has questioned whether the Black Swan is a metaphor for the COVID-19 pandemic alone, the idea of Black Swan incidents serves as an excellent guide for analyzing the sequence of unpredictable events that have shaped 2020, and changed the world of chief legal officers for 2021 and beyond. The pandemic, changing technology, increased risk, economic uncertainty, a social justice awakening and political unrest have combined to challenge beliefs on the Old World of the general counsel as these leaders build resilience for the future.

To better understand the current in-house environment, FTI Technology and Relativity engaged Ari Kaplan

Advisors to interview general counsel from a range of industries in a conversation about their role today. The study examined how corporate legal departments are responding to the pandemic, a shifting digital landscape, diversity, equity and inclusion, the technological competency of lawyers and the road ahead. In addition to providing new perspectives on current trends and future directions, this report also offers year-over-year comparisons to the findings of the previous study, *The General Counsel Report: Corporate Legal Departments in 2020*.

As much as the world is hoping for a quick recovery from the fallout of 2020, many of today's challenges will persist into 2021 and very likely beyond. The burden of maintaining business resiliency and stability in this environment will continue to fall on the GC's shoulders. To continue to rise to today's challenges, corporate legal departments must embrace the lessons learned from Black Swan events, expand their existing responsibilities and take ownership of their newly assigned roles. To help their organizations successfully navigate 2021, GCs are tasked with elevating their role in the following capacities:

### **Guardian Over Emerging Risk**

Counsel are navigating a minefield of both anticipated and unforeseen risks. Data protection, security and privacy, emerging data types and intellectual property loss were identified as top concerns that have intensified due to the events of 2020.

### **Chief Health Officer and Custodian of Employee Safety**

More than 80 percent of GCs surveyed said they are responsible for or primary decision makers in determining company policies for bringing employees back to in-person work and ensuring workplace health and safety.



### Mitigator of Skills Gaps and Outsourcing

Many GCs recognize skills gaps and bandwidth limitations among their in-house teams, which is driving specific needs for outsourcing to external experts, service providers and law firms.

### Advocate of Technology Proficiency

Corporate legal departments are adapting to remote workplace productivity tools and increasing overall technology proficiency. Confidence in technological capabilities increased by more than 15 percent since 2019.

### Champion of Technology Adoption

One third of in-house legal teams are now using artificial intelligence (AI) as part of their technology stack (a slight increase from 2019) and 70 percent use cloud or SaaS

systems. Some survey participants noted that their plans to modernize their legal departments were hampered when COVID-19 lockdowns went into effect.

### Steward of Inclusion and Diversity

With equity issues having reached the forefront of societal attention and debate, GCs today are likewise at the forefront of tackling diversity, equity and inclusion programs within their organizations.

### Mentor for the Legal Field

Survey respondents had a wide range of advice for their peers and their outside legal partners. Top takeaways included remembering to exercise empathy, remaining flexible and listening intently to colleagues and clients. ■



**Wendy King** is a senior managing director in the discovery practice within the technology segment at FTI Consulting. Based in Atlanta, she brings more than fifteen years of experience in e-discovery practice sport. Her focus is on helping law firms understand the costs and resources involved with e-discovery software. Reach her at [wendy.king@fticonsulting.com](mailto:wendy.king@fticonsulting.com).

# Minimizing Compliance Risks

► **Natalie De La Cruz Valdes, managing director with Computershare Governance Services, UK, discusses how corporate governance and regulations may affect risk and the role outsourcing plays in budget management.**

**CCBJ: Today's corporate governance and regulations have become more and more complex. How has this affected an organization's ability to manage its processes and minimize risk?**

**Natalie De La Cruz Valdes:** That's something we see many of our multinational clients grappling with. Most multinationals are struggling to keep on top of the changing regulatory landscape, where new compliance rules and requirements are introduced at an ever-increasing pace. It's particularly challenging to manage underlying processes and minimize risks in terms of clients showing their businesses are fully compliant across multiple countries. It's not an easy task, but it's a basic requirement for groups with international subsidiaries. It's almost always more expensive and time consuming to return to good compliance than it is to comply with the obligation in the first place.

And if we look at the actual requirements and take each one in isolation, they're not particularly complicated. But when clients have multiple entities spread across multiple territories, and you're looking at each country's specific obligations, deadlines, and the introduction of new requirements, very quickly it can become overwhelming. The pace is difficult for in-house teams to keep up with, and that's where you see the risk of compliance failures.

In recent times, subsidiary governance moved up the agenda linked the fair tax debate, tax transparency, and

associated reporting requirements from regulators. As a result it is no longer an option for multinationals to have inadequate controls and visibility over their subsidiary compliance status. This can result in four main categories of risk: legal, financial, reputational and operational risk. If we think about legal risk, that's where you've got the headache of trying to stay on top of changing regulations, from ongoing statutory obligations for subsidiaries to ad-hoc transactional requirements that crop up in the normal course of business. It also means staying on top of the processes required to implement those changes on the ground. This can be particularly challenging for organizations with a decentralized structure and often results in a lack of visibility and control.

Historically, legal risk has been considered in the context of corporate governance within the realm of the parent company, the boards, additional committee meetings, etc. But as globalization has increased, the corporate governance agenda, challenges and risks have also broadened in scope. The requirements for sound governance are now a must at the subsidiary level as well as the parent company level.

When we look at financial risk, to give an example, we see directors receiving threats of imprisonment for not filing financial statements on time, and local registries or regulators initiating actions against non-compliant companies. Historically, these have been theoretical risks, but now regulators and registries have become more aggressive in taking these actions. Penalties and fines can be levied against companies for non-compliance, which creates not only a financial but also a reputational risk. The penalties are typically nominal, however some fines accrue by the day until the company is put back in compliance and can therefore become more substantial. And if fines are happening on an ad-hoc basis, it adds an element of unpredictability to the budgeting process.





As previously mentioned, reputational risk is also linked to financial risk, because it can have a significant impact on an organization's bottom line. It's often overlooked when we talk about non-compliance, but reputational risk can affect things like new business opportunities and so it can have a disproportionate effect.

Operational risk is a pretty big one for multinational organizations. Relying on local resources to discharge compliance obligations is fraught with risk. Compliance activities are often deprioritized, which creates an operational risk to the business. There must be a robust Compliance and governance program in place if business disruptions are to be minimized and resources are able to focus on the right tasks. When organizations try to manage day-to-day subsidiary compliance in-house, it eats up a huge amount of time and distracts in-house resources from concentrating on higher value tasks. Legal functions are under increasing pressure to do more with fewer resources, and that's where competing priorities come

into play and create unsustainable situations. Whether it's a market lawyer with an appreciation for the importance of compliance, or someone from the local finance function who inherited compliance obligations as part of their job, in both scenarios the compliance burden is placed on busy individuals already wearing multiple hats at a local level. And typically, we see clients using spreadsheets or silo technology systems, which provide very little control around the quality of information, or the accuracy and maintenance of that data.

**With tight budgets and limited resources, how can outsourcing play into budget management for compliance initiatives?**

Typically, we ask our clients two key questions: Do they understand how much they're spending on subsidiary management today, and do they know what they've spent on subsidiary management in the last 12 to 24 months? Pretty much universally, the answer to both questions

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## It's more expensive to return to non-compliance than it is to comply in the first place.

is no. It's really difficult for clients to quantify spend, particularly when they're operating in a decentralized model. And the single most effective way to deal with that is through service provider consolidation and fixed fees.

That's the difference between a reactionary and a proactive model. Reactionary is the scenario where you have in-house teams to manage subsidiary compliance. It's not really their day job, it creates constant fire drill scenarios and it distracts them from what they should be doing.

The proactive model is typically the outsource model, where a trusted provider consolidates everything into a single vendor who can provide knowledge, methodologies and processes. It allows a clear line of sight of upcoming deadlines and obligations and a buffer to mitigate risks when potential issues occur. The proactive model removes the need for internal resources to spend hours triaging unexpected issues. There's also less reliance on the key individuals and thereby reduces the risk of business disruption if a team member leaves. In our experience, clients who consolidate down to a single service provider model can save upwards of 20 percent on standard compliance costs, as well as freeing up internal resources to focus on more strategic and value add activities.

### **What advice do you have for a corporation considering global enterprise legal management solutions?**

It is critical for multinational organization to have the right technology in place, as we move into an increasingly virtual world. But technology itself is not the solution. For

technology to be effective, it needs to be managed carefully and used thoughtfully with the right underlying processes and controls in place. Whether you're using a spreadsheet or a technology platform, knowing who's responsible for entering information into the system, and how the information is maintained is key to building the integrity of data as well as trust and confidence in the system.

Most multinationals struggle to achieve a robust and reliable single source of truth without the help of a trusted partner like Computershare, who have the knowledge and methodologies to help drive discipline into the system set-up and ongoing maintenance. This also enables organizations to benefit from best practice recommendations and critically to leverage the system to its full capability.

The deployment of global entity management software is no longer nice to have, but instead it has become a must for businesses where there's an expectation that technology is utilized across functions to mitigate risk, business disruption and create efficiencies. The production of meaningful MI and insights generated by effectively leveraging technology and data is also critical to achieving enhanced governance.

As one might expect, there has been an increase in the uptake of technology as a result of COVID-19. This has accelerated the existing trend to modernize governance and created a need for a platform that enables global governance activities to be dealt with remotely, as the need for transparency of subsidiary operations increases. In this context, the solution is therefore the considered use of the right technology platform, providing the ability to access accurate, real-time corporate data from anywhere at any time. In addition, having access to knowledge, insights and procedural requirements can help save internal teams time and aid faster decision-making. This can be taken one step further by leveraging technology to help turn insights into action, using that to report on and mitigate key risks.



There is also the trust element linked to the effective use of global entity management solutions. If there is a loss of faith in the integrity and accuracy of the data in a system, people will move away from relying on it as a trusted data source. This is often when organizations discover they have multiple siloed systems tracking the same information. For example, finance, tax, legal, all holding their own versions of the truth, rather than utilizing a single accurate data source. Having a single source of truth enables internal teams to work more efficiently and to share information with other functions and stakeholders across the business, safe in the knowledge that the data is accurate. It also reduces overall

costs of and time spent on compliance. As we know, a general lack of visibility of local requirements, which can often shift, is an ongoing problem for most multinationals. Therefore, having the ability to tap into procedural information in a single technology platform has potentially massive benefits for most organizations.

Another area where technology may be better leveraged is to provide greater transparency of spend patterns for compliance and corporate change activities. This is information that most organizations simply do not have access to, making budgeting more challenging than it needs to be.

The graphic features the Wolters Kluwer logo in the top left corner. In the center, four hexagons are arranged in a diamond pattern, each containing an icon and text: a folder icon for 'e-Billing & Matter Management' (blue), a document with a pencil icon for 'Contract Lifecycle Management' (green), a bar chart icon for 'Predictive Analytics' (dark grey), and a head with a gear icon for 'AI-Powered Legal Bill Review' (dark blue). The background is a blurred image of a laptop and a hand typing. At the bottom left, the website 'www.wkelmsolutions.com' and phone number '1 800 780-3681' are listed. A green banner at the bottom right contains the text 'ELM Solutions'.

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e-Billing & Matter Management

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Predictive Analytics

AI-Powered Legal Bill Review

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## For technology to be effective, it needs to be managed carefully and used thoughtfully.

In summary, working with a trusted partner to properly implement a global platform such as GEMS, can create many efficiencies, increase overall governance and visibility and provide meaningful data to mitigate risk and drive better decision making.

### **How you are anticipating the pandemic impacting compliance workflow and other issues with so many people working from home on personal devices?**

As the pandemic gathered pace, it's been necessary for organizations to contend with the swift adoption of remote working and all its associated challenges and disruption. For many it's probably exposed gaps or vulnerabilities in previous working practices. If we add that to the trend of increasing regulation, and the expectation for legal and secretariat teams to do more with less, it becomes the perfect storm. Now more than ever businesses have to focus on steps they can take to effectively manage their global substitute governance practices. How do they future proof the business to ensure good governance and compliance across those subsidiaries going forward?

Technology is critical. As we shift to working in a virtual environment, some big, credible companies have confirmed that their employees will have the ability to work from home in the long term. So, this is really a seismic shift and something we simply weren't used to before. Relying on having information in a filing cabinet by your desk, or being able to turn to a colleague to ask for information – how do you make that shift to working at home in an isolated environment and not have access to those resources?

Technology has to be the answer to that. Organizations need to look at their plans around technology. Have they got a robust platform in place? Can they consolidate? There are solutions out there and partners like Computershare that help clients and advise them on that. So, it's not something they necessarily need to do alone, organizations can bring in relevant expertise to support them.

With the pandemic, the goalposts have shifted. What we're seeing is that a blend of human and digital resources is critical to making sure organizations can achieve an effective governance program, and functions are fit not only to meet today's challenges, but future proofing and keeping pace with constant changes happening all around. The best way to do that is through technology and working with external partners that can help supplement internal resources.

So again, it comes down to consolidation outsourcing, and the governance and control piece. Making sure you have the relevant governance and controls in place as people are working remotely. Making sure they have access to the information you need, that you have consistent global processes and methodologies in place, and place less reliance on individual resources. Making sure you're thinking about potential risks from a business disruption perspective. It really is critical because the world has changed. And businesses and teams that are not mindful of that and don't have a plan in place to keep up with that change, well it's going to be very difficult for them. ■



**Natalie De La Cruz Valdes** is a managing director with Computershare Governance Services, UK. Natalie has an LLB in Law and a post-graduate Legal Diploma in Legal Practice, with 13 years' experience having led global managed service delivery teams at Eversheds and EY. She has acted as global client account director for a number of Fortune 500 and FTSE350 clients across a multitude of sectors. Reach her at [Natalie.DeLaCruzValdes@computershare.co.uk](mailto:Natalie.DeLaCruzValdes@computershare.co.uk).



# Looking Beyond Traditional Criteria To Select the Right Service Provider For Your Legal Tech

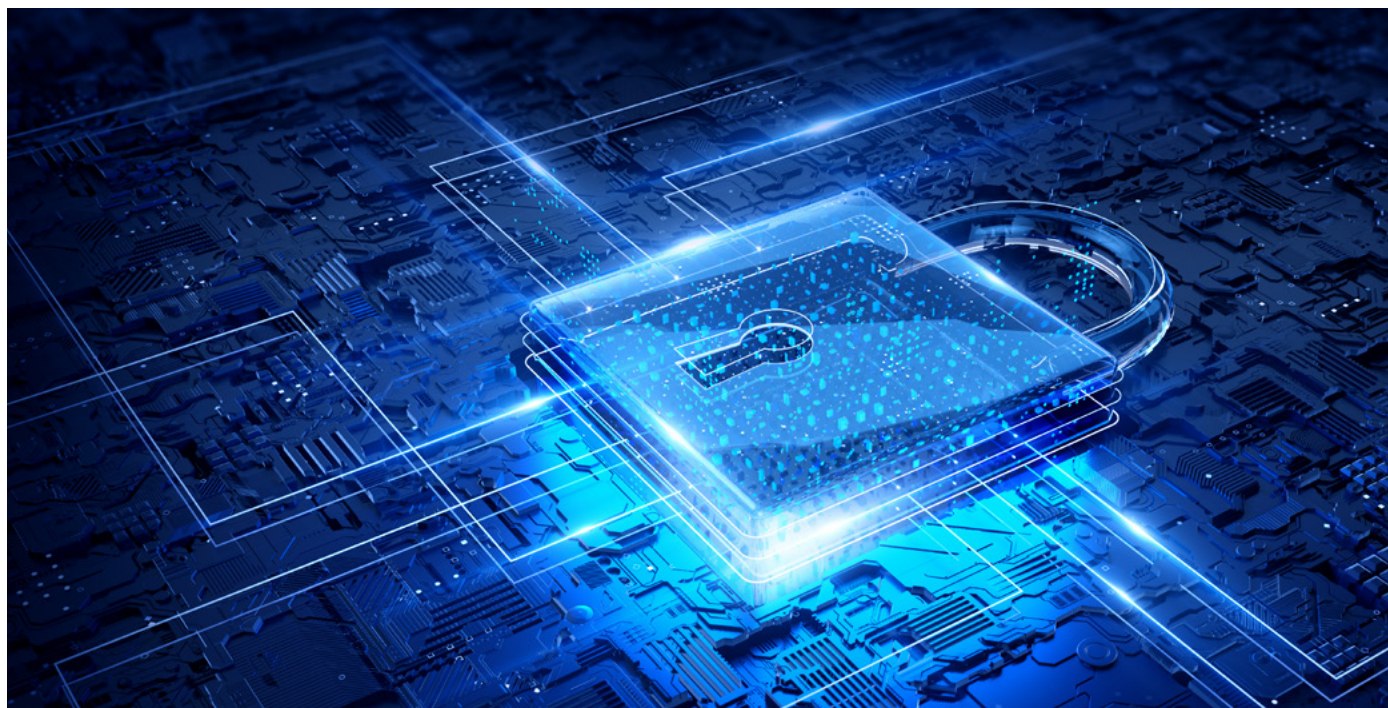
► **Ask these questions to cut through the marketing noise and ensure quality and longevity.**

Modern legal departments are adopting technology at a faster rate than ever before – to improve their ability to draw insights from case data, reduce costs within e-discovery tech stacks and create business growth opportunities. Decision makers are under immense pressure to select technology for their business that can most efficiently and accurately organize data, discover the truth and act on it. With so many legal technology solution providers in the market, selecting the one that will cater to the unique needs of your legal department and the long-term

objectives of your business requires that you look beyond traditional criteria and know how to cut through the marketing noise. By leveraging the key questions outlined here, you can go beyond typical business requirements and establish what really sets a legal tech service provider apart from its competition.

**What investments is the service provider making to ensure that they offer best-in-class security?**

Many legal technology solution providers will say that they have the most secure platform and the most comprehensive security programs, but it's important to determine if and how the provider is actually investing in the processes and technology that best protect your data. Is it investing in single or multifactor authentication, 24/7 monitoring,





encryption at rest and in transit, secure coding, penetration testing, vulnerability management, etc.? How well trained are their employees when it comes to security? One accidental click of a link in a phishing email could have major consequences, affecting the company's product, communications mechanisms, and ultimately its customers. Most important, has the provider invested in a fully integrated security team that works around the clock to anticipate threats, mitigate risks and stay ahead of adversaries?

## **Does the technology integrate seamlessly with the cloud?**

According to Flexera's "Cloud Computing Trends: 2020 State of the Cloud Report," by 2025, 51 percent of data will be in data centers and 49 percent will be in the public cloud. In addition, over 80 percent of large corporations will likely move some of their operations to the cloud by 2022, with cloud usage increasing dramatically across organizations. If your service provider isn't cloud native, you should verify that it has a plan for this transition. Will the company be prepared for it?

## **Is this solution flexible enough that it can handle multiple use cases, allowing access to teams across the company that can leverage it for their own functions?**

At Relativity, our users include not only legal professionals but also employees from human resources, compliance, information technology and other departments that handle things like internal investigations, legal holds, data subject access requests and more. It's worth asking if the solution includes integrations that can be tailored to best meet your unique data challenges in e-discovery and beyond. For example, Relativity's App Hub has 140 applications that customers can utilize and 104 developer partners building on top of Relativity's technology to further extend the platform and tackle data challenges. Have a



conversation with your service provider to ensure that the solution you're bringing on can be leveraged across your company and customized to meet your needs. This is also important to help you justify the spend.

## **What is the service provider's outlook and perspective on artificial intelligence (AI)?**

I'm not including AI simply because it has been and continues to be a hot topic. At Relativity, we believe that it's important for any technology service provider to have meaningfully and strategically thought about how the advent of AI will impact them and the way they do business. If they haven't thought about it, be wary of moving forward





with them. It's a likely indicator that the company lives too much in the present, without looking ahead.

### **What's the company culture like?**

High employee retention is one indicator of a strong company culture. Investing in a service provider's solution when the company has high employee turnover means that your account management team may change every few months – causing disruption and forcing your team to continually build new relationships and educate the account management team on your business. Ask what employee retention rates are like and what talent management processes they have in place that reflect the company's investment in its workforce and their future.

### **How does their company culture support inclusion, diversity and belonging?**

It's important to ask how the company is working to foster a culture of inclusion, diversity and belonging. What is the company doing to bring in more diverse job candidates? Do underrepresented groups and allies have a safe space to share experiences, celebrate differences, and connect in a more meaningful, personal way? Are there a diverse group of voices contributing to the decision-making process to ensure different perspectives are driving decisions? Fostering a culture of inclusion is not only the right thing to do – it's also beneficial for you as a customer to work with a company that embraces talent with diverse backgrounds.

### **Will you be just another client to them? Or will they view this as a true partnership?**

If you pick up the phone and call with an issue late in the night, will there be a person at the other end of the line? Will you get an email response back within 24 hours? Do they have someone on call 24/7?

### **What are the service provider's core values, and how will they carry over into the work they're doing for you?**

All companies should have a set of established core values that serve as the blueprint for where the company stands. At Relativity, our core values are woven into the work we do every day. A service provider's core values should be an important part of who they are and how they conduct their work. If they're unable to articulate what they value, you risk partnering with a company that lacks clear direction and a sense of responsibility to its customers and community.

Ultimately, when selecting a legal technology solution provider, it should be about much more than finding a tool that simply gets the job done. Ask the hard questions to establish whether the company is forward-thinking, invested in its tech and its employees, dedicated to providing the level of support your company needs to achieve its goals, and infused with a strong company culture. At Relativity, we exemplify all of the above and go beyond the traditional criteria to bring our customers the best user experience possible. When you work with us, you join a thriving, passionate community of users and partners who are just waiting to jump in and help. We hope that you ask us about it. ■



**Karen Klein** is chief legal officer with Relativity. Since stepping into this role in June, 2020 she oversees all legal and regulatory compliance matters and provides strategic partnership to the rest of the executive team and the board of directors. Prior to joining Relativity, Klein was EVP and general counsel of Ticketmaster. Reach her at [karen.klein@relativity.com](mailto:karen.klein@relativity.com).



# The Nuix Data Warehouse: Future-proof your eDiscovery practice

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### AN ENDING TO "END-TO-END?"

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“By 2023, more than 70% of enterprise IT leaders will upgrade to end-to-end e-discovery software to reduce time and legal spend, up from 10% in 2019.”

Gartner Research, *Market Guide for E-Discovery Solutions*, 27 June 2019

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# Using the Right Artificial Intelligence Tools To Address Your Business Challenge

► In addition to having more data to manage, the expectation that companies will identify and protect sensitive data has also intensified, and the failure of any organization to maintain privacy protections could have devastating consequences.

Artificial intelligence (AI) and machine learning technologies have been used for years in support of discovery and litigation. But most in-house legal departments have other operational needs in addition to discovery and litigation, including general information governance activities, corporate investigations, data privacy and compliance, contract review, and the management of second requests to support mergers and acquisitions (M&A) and divestiture activities. With trends indicating a growing need for companies to seek more sophisticated and technologically advanced solutions, can AI be applied to address use cases in these other areas as well?

## First at the AI Bat: Responsive Review

Since 2012, when New York Magistrate Judge Andrew J. Peck approved the use of technology-assisted review (TAR) in the Da Silva Moore case, the use of AI-based technologies has become increasingly common in support of electronic discovery in litigation. Today, lawyers and legal professionals commonly train supervised machine learning algorithms to streamline the labor-intensive task of document review in litigation, saving time and expense, while often improving the accuracy of review – if the work is done correctly.

Although workflows associated with TAR are by now well established, experience has shown that TAR is not a magic bullet. It still takes considerable time, effort and expertise to use TAR tools successfully, with human

intelligence and intervention playing a significant role in the outcome. This is especially true when it comes to the inherent nuance of privilege review, which has essentially remained a manual effort. One hopeful sign is the increasing use of AI-based technologies for this function as well, which will accelerate the more laborious aspects of this time-consuming and costly process.

## AI Beyond Document Review

It is important to keep in mind that most AI use cases in the legal realm involve the analysis of textual content. Legal challenges related to information governance, data privacy, compliance, investigations, contract review and M&A all have in common the need for analytics tools that interrogate massive volumes of text. The use of AI in these endeavors – whether machine learning algorithms, data classifiers or otherwise – generally requires both linguistic and analytics expertise behind the tool for a successful result. And, as opposed to a TAR workflow, which is typically applied to sets of documents that have previously been identified and collected, other potential legal use cases need to contend with data in place.

AI technology is already being used regularly to automate the review of day-to-day business contracts. With a typical Fortune 1,000 company maintaining 20,000 to 40,000 active contracts at any given time, this can result in huge time and cost savings, while also improving accuracy.

Below, we consider some of the other trends that corporate legal departments now face and explain why both linguistic and data analytics expertise are necessary parts of the AI skill set.

**Information Governance:** To say that corporate legal departments have more data to manage than ever before would be a significant understatement. According to



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## Any response, AI-enabled or otherwise, must be supported by human expertise.

StatInvestor, data volumes in the world have grown from 0.1 zettabytes in 2005 (zettabyte = 1 trillion gigabytes) to 47 zettabytes in 2020 – a growth of 470 times in just 15 years.

Part of the reason for such growth is the expanded variety of data sources that today's corporations need to address. In addition to enterprise-wide systems that manage everything from accounting and customer relationships to email and work product generation, corporations need to account for data from mobile devices, social media and other cloud systems, collaboration apps like Slack and Microsoft Teams, and even (eventually) data from internet of things devices.

Aside from the costs associated with maintaining ever-growing data stores, the volume and complexity of this data presents a number of risks. With so much data to manage from so many different sources, much of which could (and likely should) be disposed of, the ability to analyze and assess data content has become a crucial corporate need. The challenge: How do you identify which data you can defensibly delete?

**Data Privacy:** The growing number of data privacy laws comprise another trend impacting legal operations today. With many states and countries taking steps to require the protection of personally identifiable information (PII), companies need to know what personal information they have in their possession and where that information is stored. In May 2018, Europe implemented the General Data Protection Regulation to protect the data privacy rights of European individuals, and California implemented the California Consumer Privacy Act in January 2020 to do the

same for California residents. (More resources can be found in the International Privacy Law Library.) Also, corporations are having to implement new workflows to respond to data subject access requests – i.e., requests from individuals about the way companies handle their personal data.

So, in addition to having more data to manage, the expectation that companies will identify and protect sensitive data has also intensified, and the failure of any organization to maintain privacy protections could have devastating consequences. The challenge: How do you identify data that needs to be protected?

**Corporate Investigations:** Corporate legal is also having to address an increase in corporate investigations. In the 2019 Corporate Investigations Survey (conducted by





H5 and Above the Law), nearly two-thirds (63 percent) of respondents involved with corporate investigations expected the number of investigations to increase over the next three years. Since the pandemic, those concerns have only increased. For example, in a September 2020 survey conducted by the Association of Certified Fraud Examiners, 74 percent of surveyed certified fraud examiners indicated that preventing, detecting and investigating fraud in the COVID-19 era has been even more challenging than it was before the pandemic. The challenge: How do you find potential evidence or indicia of criminal activity within massive data stores?

**Mergers, Acquisitions and Divestitures:** Corporate investment activities such as mergers and acquisitions are keeping corporate legal departments busier than ever. According to Deloitte's M&A trends 2020 survey, 63 percent of respondents expected M&A transaction activity to increase this year, with divestitures (driven by organizations seeking to cash in on high valuations and those aiming to reposition assets in advance of a downturn) potentially becoming more active. Those transactions may require closer scrutiny by the Federal Trade Commission for antitrust concerns, and corporations may be required to respond to a second request to provide more information about the transaction. These second requests often entail accelerated time frames. The challenge: How do you quickly identify responsive information for an impending HSR request?

### Addressing the Challenges

It should be clear from the trends and challenges identified above that evolving use cases throughout the enterprise cry out for a sophisticated technological response. Notably, because they are primarily driven by the requirement to interrogate text, AI in the form of machine learning algorithms, natural language processing, and data classification methodologies can play a major role.

Equally notable is that each challenge has a unique set of requirements to address. The application of AI solutions should be an iterative, methodical and scalable exercise. Any response, AI-enabled or otherwise, must be supported by human expertise – both in the analytical assessment of the requirements and the development of a solution. The maturity of the organization to handle advanced technologies is of no small consequence either, and the care and feeding of such systems is an ongoing requirement.

### Looking Forward

The consultancy firm McKinsey estimates that 22 percent of a lawyer's job and 35 percent of a law clerk or paralegal's job can be automated, enabling a focus on more vital and strategic work. There are plenty of opportunities to leverage AI technology to support that automation effort. The good news is that development of AI tools to use within the enterprise is a rapidly developing field. Without a solid foundation upon which to build AI capabilities, however, ad hoc applications of AI tools may fail to meet expectations. What is required is a strategic response that includes a prioritized assessment of the use cases to be addressed and an expert analysis of the best AI or advanced analytics tools for each use case. More good news is that the expertise to provide both the assessment and the potential solution is readily available in the legal services ecosystem. ■



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