



Native files refer to electronically stored information (ESI) stored in the format originally used by the fact witness or other custodian without conversion to TIFF, PDF or other paginated formats for review. Examples are Word, Excel and Powerpoint or Outlook email. Native file review offers many advantages but presents complications to be considered. This checklist for attorneys, litigation paralegals and legal technology professionals should help you out.

## Planning Issues

- ✓ **Determine File Types Needed** -- Determine the file types needed for your case. Other than Excel spreadsheets, presentations, CAD drawings, and other common file types that benefit from native review, are there any unusual native file types that might require near-native conversion or require specific applications to view?
- ✓ **Identify Review Software to Be Used** -- Consider the review technology system you will use. This will affect how specifically you will request native files for review. Not all software will enable full searchability of native files.
- ✓ **Utilize Meet and Confer Opportunities** -- FRCP 26(f) offers litigants the opportunity to meet and confer early in the case to facilitate e-Discovery. Consider utilizing “meet and confer” opportunities to understand what native file types your opponent has subject to discovery, how litigation holds have been implemented, how data will be collected, processed and produced; and if any special data types should be considered.
- ✓ **Engage an eDiscovery Technical Expert** -- If needed, engage a technical expert to consult with you on technical issues regarding the ESI you will be requesting. A technical expert can attend Rule 26 meetings, review requests for production language and help you understand technical responses from your opposition. They can provide information on updated eDiscovery industry best practices.

## Requesting Documents in Native Format

- ✓ **Consider An ESI Agreement or Order** -- Production format issues are best handled in properly drafted ESI orders and agreements. Specifics can include email and load file requirements and how redacted and privileged documents are handled. We provide a sample ESI order for your consideration on request.
- ✓ **Follow Rule 34 Requirements** -- FRCP 34 is very specific about how file format issues will be handled with specific outcomes depending on the request and response. Failure to follow this could result in waiver of your ability to receive your production in native format.

### **Request a Free Consultation**

Request a free project consultation from one of our eDiscovery Sales Consultants. Demo the Lexbe eDiscovery Platform for Native Review.

Call us today at 800.401.7809 x22,  
or email us at [sales@Lexbe.com](mailto:sales@Lexbe.com)



## Requesting Documents in Native Format (continued)

- ✓ **Consider Requesting a Loadfile** -- Requesting an industry-standard loadfile is a good idea even when already receiving files in native format. Some important file metadata resides on the operating system (e.g., MS Windows or MAC OS) and is not automatically transferred with the file in native format. This includes the file creator and date last modified. Even if metadata that you seek is included in the native file having it extracted and fielded in a loadfile makes it easier to access and review in a litigation review database.
- ✓ **Consider also Requesting a Paginated Version for Bates-Stamping** -- Native files by themselves cannot be Bates stamped at the page level. Many attorneys prefer this and request natives and paginated version (PDF or TIFF) for Bates numbering. The native version and the paginated version are associated in the loadfile. The Lexbe eDiscovery Platform utilizes text-based PDFs for this purpose as the size is small, color is retained and PDFs can be viewed outside of a litigation database.
- ✓ **Protocol for Redacted and Privileged Documents** -- Determine how redacted, privileged and work-product documents will be produced to you as native versions cannot be delivered. Litigation document review systems like the Lexbe eDiscovery Platform will withhold native versions of privileged and work-product documents and substitute paginated versions.
- ✓ **Exact Duplicate Removal** -- Consider if exact email duplicates will be removed to reduce reviewable ESI. If done between custodians (horizontal dedupe) consider requesting a tracking log of deduped documents.

## Other Issues

- ✓ **Be Ready to Address Proportionality** -- It's no longer good enough to make a document request and answer a challenge that the production would be relevant or lead to relevant evidence. Courts today require that the proponent carry the burden of proof of proportionality. The benefits of a discovery request must outweigh the costs and burdens, and the evidence should not be available through other less burdensome means.
- ✓ **Email Threading** -- Email threading can be very helpful to group related emails for review. For smaller productions date sorting may be sufficient. For larger productions near duplication identification may be helpful to better group and thread related emails.
- ✓ **Assuring Searchability** -- Native files without eDiscovery processing will only be partially searchable. This is because the some files will benefit from the application of optical character recognition (OCR) of converting a non-searchable native format to a searchable format. Preprocessing may be needed or use of an integrated approach like the Lexbe eDiscovery Platform that automatically processes image-based native files with OCR.

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