

The State of the e-Discovery and Data Privacy Job Market: Pre and Post COVID-19, Part 1

This deep dive into the specific cause-and-effect paradigms impacting the data privacy and e-discovery verticals illustrates broader trends in the overall legal technology job market while simultaneously giving professionals in (or eager to be in) those disciplines a clear roadmap of where the legal technology, data privacy, and ESI job market was, is today, and where it will be in the future.

Part One of a Two-Part Article

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For the legal technology job market, the first half of 2020 is a tale of two realities. The undeniable momentum of job growth seen in 2019 has been shattered by the equally incontestable effect of the coronavirus and other recent socio-political events on the legal technology job market. The trends that propelled job acceleration in the bulk of the first quarter of 2020 have reconfigured since mid-March, creating new priorities for hiring managers and executive stakeholders and thus new, though perhaps not as voluminous, opportunities for some professionals in the space.

For many mid-market and middle management-level professionals and below, patience may be their greatest asset as the job market marinates and moves toward a bell curve of growth in the fourth quarter of this year. But, for seasoned professionals with depth of experience in their area of expertise, now is the time for them to consider a strategic move to an

organization aligned with their professional goals and cultural values. This deep dive into the specific cause-and-effect paradigms impacting the data privacy and e-discovery verticals illustrates broader trends in the overall legal technology job market while simultaneously giving professionals in (or eager to be in) those disciplines a clear roadmap of where the legal technology, data privacy, and ESI job market was, is today, and where it will be in the future.

The Great Pause

The best word to describe the end of March through the end of May is quite simply, stasis. For the most part, hiring managers from every vertical in every discipline within the legal technology ecosystem had new headcount approvals frozen. Offers that were extended and not yet accepted were often rescinded or placed on hold. On occasion, offers that were accepted were later rescinded. Many people in legal technology lost their jobs. Many are still looking for jobs. Neither the ESI nor privacy job

markets are hiring at the pace they were in 2019. Q2 2020 could be considered “The Great Pause” for hiring in legal technology — if not for June’s trends.

In June of 2020, 50% of offers extended and accepted through TRU were from searches that had been put on hold in late March. The proverbial “lights are coming back on” theory appears to have some truth to it, but the more likely reality for the duration of the third quarter is a consistent percolating of job search with drips of actual hiring and an inevitable surge of job opportunity in the fourth quarter of 2020. The reason for the slow churn in volume of job openings for the next three months is a result of companies thoughtfully making critical shifts in leadership and hiring profiles now that will affect downstream hiring in the fall.

Reflection and Recalibration

In 2019, 75% of job orders received by TRU were add-to-staff hires, while only 25% were replacement hires. In Q2 of 2020, 100% of fresh job orders

received by TRU were replacement hires. The coronavirus pandemic has given hiring managers and their stakeholders time and opportunity to reflect on their existing human capital infrastructure, to calculate the strategy for replacement of any attrition or reduction in force caused by the pandemic, and now to begin to reignite search efforts for key hires. Many employees demonstrated the ability to not only survive during the pandemic but thrive in the reconditioned world of remote employment. Others did not fare as well and are still struggling to balance availability, productivity, accountability, and professionalism in the new normal of virtual service delivery or corporate collaboration.

In Q3 of 2020, expect employers across legal technology to retool existing org charts to pivot and improve the business into the second half of the year. The broad acceptance that, at least for the duration of this calendar year, companies in legal technology, whether corporate legal departments, vendors, or law firms, will not be returning to work as it was in 2019 has created opportunity for hiring managers to rethink their current staffing choices, retool remotely with a broader array of available talent options, and drive innovation and business development through staffing augmentation, not just technology adoption. With increased uncertainty around the longevity of emerging talent demand for employers who are currently running

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lean at an operational level (which is most), hiring managers will turn to contract staffing augmentation as a primary staffing modus operandi in Q3 for non-executive hiring.

Contract, Contract, Contract

The ultimate downturn in headcount approvals nationwide certainly affected the amount of entry and middle-market hiring anticipated in legal technology in “April, May and June” and will likely continue to impact all organizations’ abilities to expand capabilities through full-time employee acquisition for the rest of 2020. However, as is the case in all economic downturns, employers are taking advantage of good talent being available and aggressively adopting contract and contract-to-hire staffing models to handle surges in support in customer service and delivery, namely project managers and analysts in e-discovery and privacy attorneys in data protection and compliance. Contract staffing augmentation is up 20% in Q2 for TRU from Q1 despite a dramatic deceleration of FTE hiring over the same period.

In January of 2020, TRU predicted the following: “Contract augmentation could reach 50% by 2021. For the last four years, 40% or more of job orders received from TRU were contract opportunities. By the end of this year, there may very well be as many professionals working on contracts in the legal tech space as there are working in full-time roles. Expect consistent contract talent utilization in 2020 but expect a surge if a recession occurs. TRU experienced a spike in net new contract hires in the fourth quarter of 2019, raising the question, ‘Are companies already preparing for a potential recession by augmenting their teams with contract resources now? Possibly.’”

Couple this emerging trend from 2019 with the current surge in availability of contract talent related to

pandemic RIFs and it is possible that there will be more contract professionals than FTEs employed in the legal technology ecosystem by 2021, specifically in ediscovery. e-Discovery, where jobs are mostly at vendors and law firms, is driven by litigation, and as providers and litigation support departments run lean for the rest of 2020, risk of burnout of existing staff during peak events will force employers to engage temporary resources as a retention strategy, if not a service delivery necessity. For privacy, where the jobs are mostly in corporations right now, the ability to explore diverse pools of talent with the removal of traditional geographic constraints caused by pandemic virtualization is the existing landscape. Privacy attorneys with niche expertise in policy writing, contract review, third-party vendor management, or product development are highly desired as part-time contract resources in corporate legal departments right now.

Privacy Trends, Pre and Post COVID-19

Heading into 2020, the privacy market was expected to flourish with middle-market opportunities (managers and directors of in-house privacy programs, first through fifth-year associates at firms, experienced consultants) and an increasing level of opportunity for entry-level candidates. The continued lack of federal legislation on privacy to unite the desperate conglomeration of privacy laws across all 50 U.S. states has been a job creator for lawyers. Simply staying on top of all the regulations has required more human capital, whether internal to corporate legal departments or externally by engaging outside counsel and/or consulting firms. Additionally, the expanding entrance of software and service companies into the data privacy niche increased the need for specialization and job creation with data privacy vendors. Finally, the role

of the Chief Privacy Officer was organically expanding past pure compliance and into business strategy, often owning the responsibility of measuring legal risk against business opportunity for their employers.

Here's What Changed

Thrust once again into the limelight by COVID-19, privacy-as-a-profession, healthcare concerns, consumer rights, and in many instances, human rights have meaningfully captured social consciousness and, in turn, captured corporate consciousness. The invention of contact-tracing applications, resulting proposed consent-based legislation, and the effectiveness of engaging the general population on a massive scale to participate in public health crisis prevention through data sharing has not only mobilized once dormant and passive corporate practitioners of privacy to invigorate their proactive efforts to monetize and build trust with customers but also inspired a broad segment of product creators to enter into the potential collection and processing of data related specifically to healthcare, data that would be protected under HIPAA.

Household brands that create products associated with the sharing of data related to something as robust as coronavirus level-three vaccine clinical trial information or as basic as smart home tech COVID-19 self-diagnosis tests must acutely measure the risks and rewards of gathering, using, and wielding this data. This has created some new technical healthcare product manager positions for exclusively dedicated privacy professionals with HIPAA expertise at large technology companies but, more meaningfully, the corporate shift to approaching privacy from a balancing of compliance and business opportunity mindset has changed the emerging job requirements and responsibilities for CPO-level searches being ignited or reignited post-COVID-19. Corporate

stakeholders are turning to privacy professionals for guidance and leadership in data strategy, including acquisition, monetization, associated risk, and much more.

The accelerated shift in corporate awareness of the value privacy professionals bring to brand propagation and customer retention has been a direct effect of the pandemic. This has created unexpected demand for experienced CPOs. As highly skilled CPOs exit one job for another, replacements are not only necessary; they are an organization's perceived opportunity to up-level and attract an even higher caliber of privacy pro to join their ranks. This pattern has created a unique and unanticipated demand for the elite of the corporate privacy community across the Fortune 1000. Now is a ripe time for the most experienced and seasoned CPO and Privacy Attorney talent in the U.S. (and often abroad as well) to explore the market. Everyone else may have to wait until Q4 and much of 2021 to see the next few tiers of opportunity emerge once new leaders are in place and established.

For privacy lawyers, the most middle-market hiring is still in companies with an AdTech focus. Law firms in the Am Law 200 remain vigilant about recruiting third to fifth-year associates but are hesitating to make any new hires. Partner movement has slowed if not stopped for marquee practitioners with a book of business. Software companies are beginning to meaningfully build their sales teams, and that has not wavered during the pandemic, though the employer scrutiny when evaluating business development pros has significantly intensified.

For those looking to move into privacy, now is the time to get skills and training. IAPP certifications like the CIPP/US, CIPP/E, CIPM, and CIPT are slowly shifting from competitive differentiators to necessary requirements for

many entry-level or sophomore-ranking privacy requisitions. Tool-specific certification is emerging as a viable differentiator as more jobs aim to capture talent with product-specific knowledge. The value of personal connectivity and relationship building within the privacy community is not to be underestimated. The privacy community is defined by a warm and welcoming culture of both inclusion and transparency, and hiring managers are always looking for opportunities to leverage the skills of someone in another discipline within their own privacy program. It is important to remember that many companies during this time may not have the ability to hire at all, and those employers are ones where privacy leaders will turn to existing staff to help contribute portions of their time to the privacy program. The best way to move into privacy is always to do so from within. This is especially true now, more than ever.

Next month, part two of "The State of the e-Discovery and Data Privacy Job Market: Pre and Post COVID-19" will dive deep into the ediscovery job market landscape as well as touch upon the effect additional social movements have had on the legal tech job market during the pandemic.



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