



President Obama recently announced the **Administration's Strategy on Mitigating the Theft of U.S. Trade Secrets** emphasizing the importance of protecting trade secrets. While the Strategy primarily involves government, there are important implications for the private sector. Specifically, the Strategy encourages the development of best practices by industry groups, improvements in domestic legislation review and increases in the resources available to small and medium businesses.

The Strategy cites research suggesting that "the pace of economic espionage and trade secret theft against U.S. corporations is accelerating." It then outlines a strategy to coordinate and improve U.S. Government efforts to stop the theft of trade secrets by foreign competitors or foreign governments by any means – cyber or otherwise, including these measures:

- Diplomatic engagement where there are high incidents of trade secret theft
- Support for industry-led efforts to develop best practices to protect trade secrets
- Prioritization of investigation and prosecution of trade secret theft by foreign competitors and governments and providing warnings and threat assessments to the private sector
- A review of laws to ensure effective protection of trade secrets
- Increased public awareness of the threats and risks posed by trade secret theft

VOLUNTARY BEST PRACTICES

First, and perhaps of most immediate interest, the Strategy outlines a plan to "Promote Voluntary Best Practices by Private Industry to Protect Trade Secrets." Specifically, the U.S. Intellectual Property Enforcement Coordinator (IPEC) will help facilitate efforts to develop best practices to protect trade secrets. The Strategy emphasizes that this will be industry-led and voluntary in nature. A concern is the potential implication for trade secret protection. For information to be considered a "trade secret" entitled to legal protection, a business generally must take "reasonable" measures to protect the secrecy of the information. Because the determination of what is "reasonable" is largely developed through case law, development and publication of industry standards may increase the lengths to which a company must go to ensure that its trade secrets will be entitled to legal protection. Further, legislators may adopt such standards and incorporate them into legislation. In short, the Strategy's emphasis on the voluntary nature of such best practices may amount to mere lip service. Businesses will likely need to increase trade secret protection efforts to ensure legal protection.

IMPROVE DOMESTIC LEGISLATION

A second area of interest to businesses is the Strategy's plan to "Improve Domestic Legislation." The IPEC will initiate and coordinate a review of existing federal laws to determine whether changes are needed to enhance enforcement against trade secret theft, with the initial review process to be completed within 120 days. Businesses can expect federal trade secret laws to evolve as a result.

PUBLIC AWARENESS

Third, the Strategy aims to promote "Public Awareness and Stakeholder Outreach" through the following:

- Leveraging Department of Commerce resources such as www.stopfakes.org to provide the private sector with information, such as country-specific toolkits with information on how to protect trade secrets in priority markets, developments in the laws and enforcement practices and webinars on trade secret theft awareness.
- Utilizing U.S. Patent and Trademark Office and International Trade Administration "road show" trainings to provide forums to educate the private sector, particularly small and medium sized businesses, regarding the economic implications of corporate and state sponsored trade secret theft.
- Continuing the FBI public awareness campaign on bringing public attention to the threat posed to the US from trade secret theft.

Businesses may have additional resources available to them as they act to protect their trade secret information.

The need for increased vigilance in protecting the trade secrets of American businesses is reflected in the Strategy. It highlights the need for small and medium sized businesses to proactively allocate resources to such protection efforts. As the Strategy is implemented, businesses can expect the development of industry-led best practices, evolution in the laws regarding protection of trade secrets and opportunities to increase awareness relating to trade secret protection. It is critical, however, for the business community to be aggressive in their efforts to protect their trade secrets. Do not forego this opportunity – conduct an asset protection analysis today!

Our Trade Secret and Non-Compete legal team is available to answer questions and would be pleased to conduct an Asset Protection Analysis to help you identify, protect and secure your valuable trade secret information and data.

For more information, please contact one of the attorneys listed below.



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