

6 KEY TAKEAWAYS

Criminal Trade Secret Theft

[Kilpatrick Townsend](#) partners [Adria Perez](#) and [Clay Wheeler](#) recently presented “Criminal Enforcement Trends in a Connected World” at the firm’s [Kilpatrick Townsend Intellectual Property Seminar \(KTIPS\)](#). KTIPS is an intensive, two-day patent strategy and protection seminar designed to provide insightful and in-depth training related to current developments in patent law, and how those impact patent procurement and enforcement strategies.

Ms. Perez and Mr. Wheeler presented on numerous topics specifically related to criminal enforcement laws and trends. Below are key takeaways from one of the more compelling issues discussed, “**Criminal Trade Secret Theft:**”

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Similar statutes with different purposes. Federal courts have explained that 18 U.S.C. § 1832 (“Theft of trade secrets”) is a general criminal trade secrets provision requiring that the benefit from the theft be economical, while 18 U.S.C. § 1831 (“Economic espionage”) is designed to apply when there is evidence of foreign government-sponsored or coordinated intelligence activity, and may involve any type of benefit.

Broad statutory scope. The scope of both statutes is broadened because they include the concepts of attempt and conspiracy. Further, both statutes can reach overseas conduct.

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Trade secret trafficking. Trafficking trade secrets is a violation.

- An employee can violate these statutes if the employee “conveys” the trade secret without the employer’s permission.
- It is unlawful to receive a trade secret with knowledge that it has been obtained or converted without authorization.

Negligence as a defense. Mere negligence can be a viable defense to criminal charges brought under either statute.

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National security issues. The U.S. government considers trade secret theft and economic espionage to be national security issues. Given U.S. Congress’ support for national security issues, the U.S. Department of Justice (“DOJ”) receives resources to prioritize these matters. The DOJ’s 2023 budget proposal includes “more than \$20 billion to expand the capacity of the Department’s law enforcement components.” Of that \$20 billion, \$10.80 billion is budgeted for the FBI and \$2.77 billion for the U.S. Attorney’s Offices to focus on, among other things, espionage. Additionally, DOJ’s National Security Division has an active supervisory role in these matters.

How to protect your institution and company. Institutions and companies need to make reasonable compliance efforts to identify and prevent trade secret theft and economic espionage, including:

- Internal controls that identify and protect trade secrets;
- Thorough conflict-of-interest disclosure procedures;
- Mandatory training for researchers and engineers to ensure they understand the consequences of trade secret theft and economic espionage;
- Data analytics that track and raise any anomalies concerning travel, expenses, and conflict-of-interest disclosures;
- Effective whistleblower and investigative programs; and
- Cybersecurity controls that meet federal government requirements and provide visibility into the internal copying and transfer of sensitive data, as well as access to such data from outside the institution or company.

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