

CLIENT ALERT

The White House Shines a Spotlight on Trade Secret Theft

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In the wake of legislation strengthening U.S. federal trade secret statutes and a recent National Intelligence Estimate sounding the alarm on the economic costs of cyber-espionage, the White House on February 20 released a new "Administration Strategy to Mitigate the Theft of Trade Secrets." The report, produced by the U.S. Intellectual Property Enforcement Coordinator, Victoria Espinel, represents a new push to develop effective, coordinated public policy responses to the misappropriation of trade secrets.

In addition to structuring improved coordination among federal agencies engaged in intellectual property policy and enforcement, the Obama Administration is clearly looking to individual companies to develop, enhance, and share among themselves "best practices" for preventing misappropriation. For companies confronting risks associated with theft of trade secrets, the heightened political attention to this issue presents important opportunities to shape future policies and solidify interaction with government law enforcement entities.

The Administration Strategy focuses on five major elements:

- *Enhanced international engagement:* the strategy directs the Departments of State and Commerce and the Office of the U.S. Trade Representative to step up efforts through bilateral and multilateral economic diplomacy to counter state-sponsored trade secret theft and develop stronger international rules governing trade secret protection.
- *Voluntary best practices:* the strategy emphasizes the critical role that individual companies play in guarding against trade secret misappropriation by implementing procedures to minimize both cyber-based risks and more conventional theft by current or departing employees. The document places particular emphasis on the value of sharing "best practices" among companies facing similar threats.
- *Law enforcement operations:* the strategy outlines a number of steps to enhance federal law enforcement activity and criminal prosecutions with regard to trade secret theft, and to encourage a greater flow of threat information between law enforcement agencies and private companies.
- *Legislative recommendations:* the document builds on recent legislative amendments by identifying the need to explore additional enhancements to federal statutes governing economic espionage and trade secret theft.
- *Public awareness:* the Administration will step up its efforts to inform the public about the economic risks of trade secret theft, building on a campaign launched in mid-2012 by the FBI.

The full strategy document may be found [here](#).

The White House strategy coincides with the recent completion of a new National Intelligence Estimate (NIE) which frames cyber-espionage – notably as practiced by China – as a significant threat to U.S. economic competitiveness. Officials at the White House's launch event emphasized that China's government, state-owned companies, and private firms are developing increasingly sophisticated means of accessing U.S. corporate networks with a view to extracting economically valuable

information. While the NIE remains confidential, public reporting on its contents suggests that intelligence experts have identified the U.S. energy, finance, information technology, aerospace, and automotive industries as being heavily targeted by foreign cyber-spies, with economic losses totaling tens of billions of dollars annually. A problem once largely focused on defense-related industries is now clearly affecting a broad swath of critical U.S. economic activity.

In keynote remarks at the launch of the Administration Strategy, Attorney General Eric Holder emphasized the Justice Department's determination to continue stepping up criminal enforcement against trade secret theft, and Assistant Attorney General Lanny Breuer referred specifically to the Department's October 2012 indictment of individuals associated with Kolon, the Korean company against which Crowell attorneys had already secured a nearly \$1 billion civil judgment for theft of trade secrets owned by DuPont.

The growing political profile of trade secret theft reflects the explosion of cyber-espionage in recent years as well as growing alarm that existing legal and policy tools are inadequate to meet the challenge. The release of the White House strategy represents, more than anything, an urgent attempt on the part of policymakers to establish a much more extensive engagement with the companies directly threatened by the loss of economically and technologically valuable information. Policymakers within the Administration are signaling the need for companies to aggressively implement mitigation strategies; to share those strategies among themselves; and to help the government identify policy and legislative priorities for tackling what they regard as an increasingly serious threat to national economic security. The strategy also provides a path for those victims of cyberespionage or state-sponsored theft to avail themselves of a coordinated effort involving the State Department, trade representatives, the White House, and the Justice Department.

Against the backdrop of heightened political and policy attention to trade secret theft, Crowell & Moring continues to provide clients with excellence in risk management counseling, development of internal controls and procedures, and litigation support. Our trade secret team will be organizing an event in the near term to delve into more detail on the public policy issues – and opportunities -- highlighted in the Administration's strategy.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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