

CLIENT ALERT

Circuit Court Opinion Confirms Broad Scope of Federal Criminal Trade Secrets Statute

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The Seventh Circuit recently ruled on several issues illustrating the broad scope of the federal Economic Espionage Act (EEA), namely:

- The element requiring proof of intent to benefit someone other than the trade secret owner can be met even absent proof of intent to pass on stolen materials;
- Proof of potential injury to the owner of the trade secret can be based on factors other than traditional competitive harm; and
- The "independent economic value" prong of the definition of a trade secret can be satisfied even where the value of the information cannot be "monetized."

In *United States v. Jin*, the defendant was charged with criminal trade secrets theft under the EEA. Jin was a naturalized American citizen who had worked as a software engineer for Motorola. She spent a protracted period of time in China while on medical leave, and during that time sought employment with a Chinese company that develops telecommunications technology for the Chinese military. Upon her return to the United States, Jin purchased a one-way ticket back to China and a few days later downloaded thousands of internal Motorola documents pertaining to its iDEN cellular telecommunications system. She was apprehended at O'Hare International Airport with those documents and a large amount of U.S. currency in her possession. Jin was ultimately convicted of trade secrets theft and sentenced to four years in prison.

On appeal, Jin argued that the government had failed to prove several elements of the EEA. She contended that the government had failed to prove that she took the information for the purpose of conferring an "economic benefit [on] anyone other than the owner" of the trade secret, and that she had done so "intending or knowing that the offense [would] injure any owner of that trade secret." Jin also argued that the information she took did not meet the EEA's definition of a trade secret because it lacked "independent economic value."

The Seventh Circuit was not persuaded by Jin's argument that she had no intent to confer an economic benefit because there was no proof that she had any intention of showing the documents to anyone else. It was adequate, said the court, that she intended to study the documents, which would make her a "walking repository of knowledge about iDEN that she could communicate to any company or government agency" in China. The court added that the fact that she would enhance her own career prospects meant that she intended to convey an economic benefit to herself. This ruling illustrates that an intent to pass on documents or data containing trade secrets is not necessary to prove a violation of the EEA. Rather, it would appear that the mere intent to convey or use knowledge in an employee's head for her own or another's benefit can satisfy this element of the statute.

The Seventh Circuit also rejected Jin's argument that she did not intend or know that Motorola would be injured. This facet of the court's opinion is interesting because it did not rely solely on the traditional concept of competitive harm – that a Chinese

company could duplicate iDEN technology and lure away Motorola customers with a cheaper alternative. The court also cited the potential for other misuse of the technology that could cause harm to Motorola due to the danger that the Chinese government or others could hack into iDEN networks. That would cause injury, said the court, in the form of having to warn customers that the privacy of their communications could be compromised and taking countermeasures to secure iDEN networks. Further, the court noted that the "elaborate precautions" taken by Motorola to keep the technology secret showed that it "feared adverse consequences if the technology became public."

Finally, the Seventh Circuit rejected Jin's contention that iDEN technology lacked economic value because it was becoming obsolete. The court emphasized that only "potential" and not "actual" economic value need be shown, and that economic value can come in many forms even if the value "couldn't be monetized." The court also appears to have considered Motorola's "elaborate precautions ... to keep the iDEN technology secret" as proof that the information had economic value. Thus, a showing to meet one aspect of the EEA's definition of a trade secret – that the victim took "reasonable measures to keep such information secret" – may be useful as proof of another aspect of the definition – that "the information derives independent economic value, actual or potential, from not being generally known"

United States v. Jin is a reminder that the EEA remains a powerful tool for corporate victims of trade secret theft, even where proof of critical elements may at first blush seem to be lacking. As we have advised in [prior alerts](#), referral to law enforcement is always worth considering because the prospect of prison time is a powerful deterrent to those current or former employees who may be tempted to misuse company secrets, and a criminal prosecution provides potential tools and remedies that are unavailable in the civil context.

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