

Security

Trade Secrets

Confidentiality  
Agreements

# Proprietary Information Audits

Safe-Guarding Your Trade Secrets and Confidential Information Through an Interdisciplinary Approach

## Trade Secret Theft is on the Rise

You know that you have created something worthwhile when someone tries to steal it. Unfortunately, when it comes to protecting a company's trade secrets and other proprietary information, you do not get to choose when that happens. In the moment of truth, the future of your business may well depend on what steps you took to protect your trade secrets and other proprietary information beforehand. For most companies, however, proactive planning to avoid losses and prepare for complex litigation due to theft of trade secrets is often overlooked.

In today's world, proprietary information is one of the most significant assets of any American business, yet the free flow of information and eroding attitudes among employees regarding the importance of confidentiality has put those assets at risk now more than ever.

*"Thieves respect property. They merely wish the property to become their property that they may more perfectly respect it."*

- G.K. Chesterton

According to a recent survey by Symantec:

- More than half of the employees surveyed that had lost their jobs in the last 12 months took confidential and proprietary corporate data with them upon departure.\*
- At least 40 percent of those surveyed stated that they planned to use that data in their new jobs.\*



According to a study from the White House:

- "Emerging trends indicate that the pace of economic espionage and trade secret theft against U.S. corporations is accelerating."\*\*
- "There are indications that U.S. companies, law firms, academia, and financial institutions are experiencing cyber intrusion activity against electronic repositories containing trade secret information."\*\*



\* [http://www.symantec.com/about/news/release/article.jsp?prid=20130206\\_01](http://www.symantec.com/about/news/release/article.jsp?prid=20130206_01)

\*\* [http://www.whitehouse.gov/sites/default/files/omb/IPEC/admin\\_strategy\\_on\\_mitigating\\_the\\_theft\\_of\\_u.s.\\_trade\\_secrets.pdf](http://www.whitehouse.gov/sites/default/files/omb/IPEC/admin_strategy_on_mitigating_the_theft_of_u.s._trade_secrets.pdf)



At Alston & Bird, we proactively work with our clients to identify what information warrants protection; institute appropriate policies, procedures and contractual restraints on the use and disclosure of proprietary information; educate the workforce regarding the importance of protecting the company's proprietary information; provide recommendations for physical and data security solutions; and take strategic steps in anticipation of possible litigation.

## PI Audits: An Interdisciplinary Approach to a Multifaceted Problem

Our PI Audit Team takes an interdisciplinary approach to performing PI Audits. Our PI Audit Team includes attorneys with subject matter expertise in intellectual property, labor and employment, data security, and litigation and dispute resolution, including attorneys with extensive experience litigating matters involving trade secrets misappropriation, breach of restrictive covenants, and a variety of related business torts. This breadth of expertise and experience allows us to provide you with well-considered, practical advice about how best to protect your trade secrets or other proprietary information from theft, and how to best position your company for victory in the event of litigation.



Our attorneys are well-versed in complex engagements in all of these practice areas, and they bring this experience to bear in counseling clients during a PI Audit:

- **Trial Counsel** for a major North American manufacturer in a substantial theft of trade secrets case featuring a five-week arbitration before the American Arbitration Association. The panel awarded our client approximately \$40 million in lump sum damages and an eight-year running royalty on sales.
- **Global Data Security** and **Privacy Counsel** for a leading global package transportation and logistics provider for more than 10 years.
- **Trial Counsel** for an international management consultancy in a series of related cases against former employees and a competitor who hired them away in violation of noncompetition agreements. The primary focus of the dispute was misappropriation of confidential business information in violation of employment agreements and trade secret law. Alston & Bird won a significant verdict in the first matter to be tried, which eventually led to global resolution of the dispute.

## An Audit Tailored to Your Company's Needs

The precise scope of a PI Audit will depend in large part on the nature of the trade secrets and other proprietary information at issue and the specific needs of the client. As the first step in a PI Audit, our team works with you to learn more about your business, and to identify your trade secrets and other proprietary information that warrant protection. We also work with you to understand any specific concerns you have regarding protection of your proprietary information, and any historical issues your company has had regarding potential theft of such information. Based on this initial part of the process, we then work with you to map out a PI Audit to meet your specific needs. PI Audits will typically include some or all of the following:



**Protective Agreements.** Our team will review your agreements with employees, independent contractors, vendors, suppliers, licensees, business partners, visitors and other third parties to ensure that they adequately protect your trade

secrets and other proprietary information. Such protections may include not only nondisclosure obligations, but also noncompetition and non-solicitation covenants, as well as invention disclosure and assignment and return of property obligations.

**Physical and Data Security.** Our team will assess and recommend improvements to your physical security efforts, as well as your data security policies and practices. This review will cover issues such as facility access and monitoring, network access and limitations, information technology and electronic data use, mobile computing and remote network access.



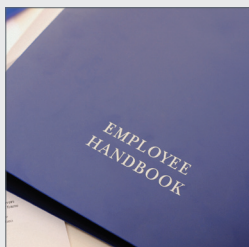
### Managing Mandatory and Voluntary Disclosures.

Many companies face inherent and unavoidable risks to their proprietary information when disclosures of confidential information are required to comply with industry regulations, obtain a permit, respond to a government investigation, or other legal requirements of doing business. Additionally, many companies find it necessary to engage in voluntary disclosures of certain confidential information to maintain good standing with politicians and the local community or for similar reasons. Whatever the need, our team will help evaluate the systems in place to limit the number and extent of such disclosures, as well as to help implement protections that mitigate the impact of any such disclosures on the protectability of your proprietary information.



### Employee Policies, Procedures and Training.

We will provide advice on revising and/or implementing appropriate employment policies and procedures that are critical for protection of trade secrets and other proprietary information, including policies and procedures relating to confidentiality, invention disclosure, employee privacy and employee departures. In addition, we also assist with developing appropriate training programs to create a culture of confidentiality and information protection within your company, and to ensure that employees are aware of physical and data security requirements, as well as their obligations to protect your company's trade secrets and proprietary information.



### Proactive Planning for Litigation.

Though no company desires to find itself embroiled in litigation over a theft of its trade secrets or proprietary information, there are steps that can be taken—in addition to proper protective measures—to maximize the chances of prevailing in the event of litigation. Our PI Audit Team will review and suggest improvements to your policies and procedures for tracking and documenting various types of information that can prove critical for the valuation of trade secrets or other proprietary information during litigation. We will also review various existing documents and information relating to valuation of trade secrets and proprietary information to assess their impact on potential future litigation.



## A Value-Add Proposition

When it comes to protecting your company's trade secrets and other proprietary information, the adage "an ounce of prevention is worth a pound of cure" is quite apt. That is, a relatively modest investment in upfront strategic planning regarding how best to protect proprietary information can yield substantial benefits in the future by both minimizing the likelihood of information theft or leakage and best positioning your company for victory in the event that litigation becomes necessary. Alston & Bird's PI Audit Team stands ready to assist you with this critical task.

## PI Audits: An Interdisciplinary Team with a Deep Bench

**Intellectual Property** – Recognized by *BTI* (2013) as one of the top three IP Litigation groups in the United States and an IP Litigation "Powerhouse," and by *Corporate Counsel* (2013) on a report of "Who Represents America's Biggest Companies" in the top three for IP Litigation and the top 10 for Patent Prosecution.

**Labor & Employment** – Recognized by *Chambers USA: America's Leading Lawyers for Business* (2014) as a leader in the field, with numerous partners recognized on an individual basis by *Chambers USA* and *The Best Lawyers in America*, and by *BTI* (2007) with positive endorsements of the Labor & Employment Group by general counsel and other consumers of legal services, propelling the firm to "Power Elite" status.

**Data Security** – Recognized by *Chambers USA: America's Leading Lawyers for Business* (2014) as one of the leading data security and privacy practices in the United States.

**Litigation and Dispute Resolution** – Recognized by *BTI Litigation Outlook* (2013) as one of the "Most Feared Litigation Firms" and by *The AmLaw Litigation Daily* (2010) for litigation prowess in an article titled "Secrets of Their Success: Three Reasons Why Alston & Bird Is Suddenly Everywhere You Look."



To learn more about Proprietary Information Audits, please contact one of our attorneys at:

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