



HOW TO PROTECT YOUR TRADE SECRETS – LEGALLY AND TECHNICALLY – IN THE COVID ERA

Presented by Robert H. Sloss, Procopio LLP and Scott Krawitz, SAK Consulting

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How Safe Is Your Data?

What Is A Trade Secret?

- The law defines a trade secret as information that:
 - “Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use”; and
 - “Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”
- Cal. Civ. Code § 3426.1(d)



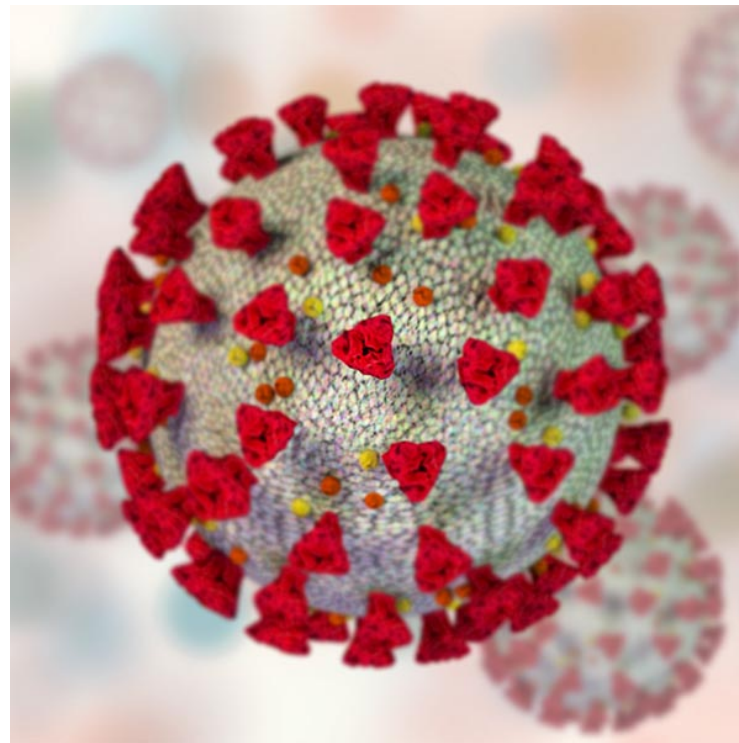
How Does Information Become A Trade Secret?

- Identify what information qualifies as a trade secret
- Keep a log of trade secrets
- Update the log on a periodic basis
- Where possible, label trade secret information as confidential and proprietary
- No need or mechanism to register trade secrets with a Federal or State agency

- Limit who has access to the information
 - Keep information in a secure area
- Require all employees to sign NDAs at the time of employment *and upon leaving the company*
 - Courts are suspicious of NDAs that define confidential information to include non-sensitive information
- When an employee leaves, image all of her devices; ensure she did not take any information with her
- Require all customers and vendors to sign NDAs

Has COVID Impacted The Risk Of Trade Secret Loss?

- Substantially more people are working remotely
 - Less control over the flow of information
 - Less control over devices
- More meetings conducted over the internet
 - Work conducted over unfamiliar platforms
 - Trade secret protection may be lost if platform's security features not used
 - *Smash Franchise Partners, LLC v. Kanda Holdings, Inc.*, (Del. 8/2020)



Legal Remedies To Protect Trade Secrets



- State and Federal statutes protect trade secrets
 - Uniform Trade Secrets Act
 - Defend Trade Secrets Act
- Can file lawsuit in State or Federal court
- Range of available remedies
 - Seizure of misappropriated trade secrets
 - Injunction barring use of trade secrets
 - Damages
 - Punitive damages in egregious cases

How Can I Identify Digital Trade Secret Assets?

- Trade secret log or gather
- Map to Systems, Sites, Sheets
- Audit mapped locations



Who Would Want To Exploit My Data?

- Disgruntled employees (past, present)
- Unscrupulous competitors
- “Hacktivists”
- Financially motivated hackers



How Do I Secure My Trade Secrets- Technically?

- Assess
- Remediate
- Monitor
- Train
- Mitigate



How Does COVID Change The Game?

- 'Distracted Computing'
- BYOD?
- Home Networks
- 'The Air Up There' (Cloud)



Thank you!

Questions? Please feel free to contact us any time for guidance.



Robert H. Sloss
Partner, Procopio LLP
robert.sloss@procopio.com
650.645.9024



Scott Krawitz
SAK Consulting
scott@sak.consulting
619.289.7299