



Theft of Intellectual Property

The theft of Intellectual Property is a growing problem for businesses of all sizes. The constantly expanding storage of proprietary information in electronic data form, and the ability of employees and outsiders to covertly access this information, can result in irreparable harm.

If theft or misappropriation of Intellectual Property is identified, it can be prosecuted under several federal and state statutes. Intellectual Property includes not only secret formulas and processes, but also more mundane proprietary information such as customer and price lists, sales figures, business plans, or any other confidential information that has a value to the business and would be potentially harmful if disclosed.

To prove theft it must be demonstrated that (1) the individual possessed information of value to the business, (2) the information was treated confidentially, and (3) that the individual took or used the information by breach of an agreement, confidential relationship, or other improper means.

It's critical to demonstrate that the information was treated confidentially, although absolute secrecy isn't a requirement. It's sufficient if the information was substantially undisclosed. Limited and controlled disclosure to people with a need to know or pursuant to confidentiality agreements won't void the information's confidential status. Methods of demonstrating that information was intended to be kept confidential include a written policy describing the information as proprietary or secret, strict limitations on distribution of the information, and physically securing the information to prevent unauthorized access and use.

The owners of the information also should enforce restrictive agreements and act promptly to remedy any inadvertent disclosures. Failure to do so might be construed as a waiver of confidentiality and make it impossible to prevent future use or disclosures.

