

# Safeguarding Trade Secrets in the Age of AI

By Steve Barham

Recently it was published that ChatGPT now processes daily more than 2.5 billion prompts worldwide, with 330 million from the U.S. alone. Further, ChatGPT now serves nearly three-quarters of a billion weekly active users. The question business owners should ask is, "How many of these users are my employees?" and "How many of them are using artificial intelligence (AI) in my business without me knowing it?" An additional question may be, "Should I care?" To answer these questions, business owners must understand how these large language model (LLM) AI sites work. Generally, the information input into the LLM becomes part of the LLM's knowledge. The risk to businesses is that a well-meaning but uninformed employee could risk your trade secrets and proprietary information by sharing this information with ChatGPT, Gemini, Grok, or other LLMs they are using to complete work tasks.

Businesses protect their trade secrets by taking reasonable measures to keep them secret. These trade secrets, be they financial, business, scientific, technical, economic, or other unique



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techniques and processes, risk losing their legal protection when the business fails to continuously enforce their reasonable measures to keep their information secret. If their trade secrets are put into an LLM AI, such as ChatGPT, Gemini, Claude, Grok, or others that are learning from their inputs, their trade secrets are at risk. Losing trade secret protections can create significant business harm!

How can businesses protect themselves? First, businesses need an AI Use Policy. Then, they need to educate their employees about AI and how it can be used within their workplace. Further, they need to make sure their employees understand what trade secrets and proprietary information are for their job and for your business to be certain they understand their obligation

to protect it from disclosure, even if the disclosure is to AI. Lastly, employers should take reasonable steps to enforce their AI Use Policy so that there are consequences for employees to reinforce compliance with the policy.

By establishing a clear policy and providing employee education, businesses strengthen their ability to show they have taken reasonable steps to safeguard trade secrets – helping ensure those secrets remain protected by the courts. While AI offers significant opportunities when applied thoughtfully, it also carries risks. Approaching its use with awareness and preparation can make the difference in protecting both your business and its valuable information.

If you have questions about AI and its impact on your business or need help with an AI Use Policy and employee education, please reach out to Chambliss for more information.

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