

Once Again, An Alleged International Trade Secrets Heist Draws A Federal Indictment

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October 6, 2011

As we have noted in prior blog posts, alleged thefts of trade secrets are generally handled through the civil court system, and rarely result in criminal prosecution. Nevertheless, where there is an international component to the case or where the magnitude of the alleged theft is particularly significant, the prosecuting authorities will step in, as recently happened in Chicago.

Last week, Chunlai Yang, a former senior software engineer for Chicago-based CME Group, Inc., was [indicted](#) in federal court in Chicago and charged with two counts of theft of trade secrets. In the indictment, the government alleges that Yang stole the global exchange operator's proprietary source code while pursuing, and in furtherance of, business plans to improve a chemical electronic trading exchange in China. Each count against Yang carries a maximum penalty of 10 years in prison and a \$250,000 fine. The government also seeks forfeiture of computers and equipment allegedly used by Yang as well as any property or proceeds derived from his alleged criminal actions. Yang pled not guilty earlier this week.

In a [press release](#), U.S. Attorney Patrick J. Fitzgerald stated: "This case is an excellent example of how law enforcement and corporations can work together to protect trade secrets. CME Group brought this matter to the attention of federal authorities and fully cooperated with the investigation. Economic espionage is a crime that effects [sic] both the interests of corporations and our national interest in protecting intellectual property. We will continue to working [sic] collaboratively with the private sector to investigate and prosecute trade secret theft."

Notwithstanding the government's willingness to step in to protect trade secrets in appropriate cases, private companies face a dilemma when deciding whether to bring in the government. On the one hand, government prosecution is much cheaper than civil litigation and such prosecutions send a strong message. On the other hand, the company loses control of the case when the government takes over. With that loss of control, the company also loses control over the information and the true trade secret nature of it comes under heightened scrutiny -- and not necessarily in a closed courtroom.