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Trade Secrets Would Likely See Court Protection From GenAI

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"The advent of generative artificial intelligence has given rise to a debate about how this innovative technology will affect intellectual property rights and trade secret protections in particular.

There are open questions about, for example, whether prompt injection hacking can constitute trade secret misappropriation and, more ominously, predictions about the potential demise of trade secrets on the grounds that generative AI will render all trade secrets readily ascertainable.

Some observers opine that iconic trade secrets, like the recipe for a popular soft drink or a secret manufacturing process, could lose all protection if an advanced AI program replicates it.

Courts have not yet resolved these issues, and there are reasons to doubt the negative forecasts. Courts in the past have addressed the challenges of innovative technologies for trade secrets and, in so doing, have sided with trade secret owners. These cases offer a potential road map as to how courts might address trade secret protections in the context of generative AI."

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