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Insights

Michael Ng featured in IAM Magazine on AI Distillation and Trade Secret Law

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This past week, the White House declared adversarial, unauthorized and "industrial-scale" AI distillation a national security threat. "Distillation" describes a common AI development practice: using the outputs of one model to help develop another. But where distillation crosses the line into weaponized copying, it creates risks for innovators.

Kobre & Kim's Michael Ng spoke with IAM magazine about the practice, and protections under existing trade secret laws.

> [Ng] argues that providers are "not powerless" even when outputs are widely accessible … "technical feasibility alone does not make distillation lawful," he said.

He observes that existing legal tools are available to address distillation attacks:

> Contextual flexibility is a defining strength of trade secret law, particularly in how courts assess secrecy in real-world commercial settings. Recent US case law, according to Ng, confirms that scale alone does not defeat secrecy, provided disclosures occur within a framework of confidence supported by clear contractual and operational safeguards. Companies, he says, can reinforce their "reasonable measures" by explicitly prohibiting distillation in their terms of use, even where outputs are widely accessible.

Kobre & Kim works with clients and co-counsel around the world to help address threats to innovation, including through access to favorable judicial systems like United States courts. United States law allows even non-US parties to bring worldwide claims involving confidential information in its courts, providing access to powerful tools like broad discovery and strong monetary remedies including exemplary (punitive) damages.

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