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Latest developments in trade secrets strategy and enforcement

Compliance burden or showstopper? Elon Musk moves to block California dataset disclosure on trade secret grounds

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Elon Musk's xAI is embroiled in a fresh trade secret dispute but this one has a twist. While previous suits filed by xAI have **accused** a former employee of stealing secrets and arch rival OpenAI of **poaching** talent (and thereby information), Musk's latest campaign is against a newly-minted Californian law. Now, the battle is constitutional.

xAI filed suit in the Central District of California on 29 December against the state's Attorney General over the "**Artificial Intelligence Training Data Transparency Act**" (AB 2013) just two days before the law's 1 January 2026 effective date, seeking declaratory and injunctive relief to block its implementation. xAI contends the statute is unconstitutional on multiple grounds, arguing it forces developers to give up their most valuable trade secrets and ultimately favours competitors over consumers.

California, which is home to more AI companies than any other state, has aggressively pushed new laws aimed at regulating AI tools and increasing transparency around data disclosure. AB 2013 is one of 18 AI-related bills the state enacted in 2024 alone, **according to** Crowell & Moring. The measure will impact major generative AI developers such as OpenAI, Anthropic, Google and Meta, requiring them to provide high-level summaries of the datasets used to train their models.

Moreover, if it reaches a decision, the case has the potential to shape how US states beyond California handle transparency requirements with machine learning model developers.

New year, new rules

Signed into law on 28 September 2024, AB 2013 requires generative AI developers in California to post "a high-level summary of the datasets used in the development of the system or service" online. Under the statute, individuals, corporations and government agencies must make these disclosures, with only narrow exemptions for systems used exclusively in cybersecurity, aviation or federal defence. The law applies retroactively to AI systems or services released or substantially modified on or after 1 January 2022.

Crucially, AB 2013 offers no exemption for trade secrets and fails to address potential conflicts between disclosure requirements and trade secret protection. For xAI, that is an unacceptable mandate.

"California has, at best, a minimal interest in forcing AI companies to disclose their valuable trade secrets for all the world to see," the complaint states. xAI argues the statute does not define "datasets" clearly enough, nor does it explain what qualifies as "high-level", leaving developers uncertain about the level of nuance required.

Some of the details the statute spells out is that developers must disclose whether datasets include copyrighted, trademarked or patented material, whether they were purchased or licensed, and whether they contain personal or aggregate consumer information. Additional requirements cover any cleaning, processing or modification of the data, the purpose of those steps, the collection timeframe and whether it is ongoing, as well as the dates the datasets were first used. Companies must also state if synthetic data generation was part of development.

xAI's core argument is that such level of detail exposes the very information and strategy that keep developers ahead of rivals. "Although billed as a consumer-transparency statute, AB 2013 is actually a trade-secrets-destroying disclosure regime that hands competitors a roadmap to learn how companies like xAI are developing and training their proprietary AI models," the company says.

xAI's lawsuit asserts four counts: a 'per se taking' under the Fifth and Fourteenth Amendments, arguing AB 2013 appropriates intangible property without compensation; a regulatory taking, claiming the law destroys investment-backed expectations and retroactively targets models released since 2022; and due process and free speech violations, contending the statute forces disclosure of specific content.

“The Supreme Court has long recognised that the First Amendment’s guarantee of free speech includes both the right to speak freely and the right to refrain from speaking at all,” the complaint states, citing *Wooley v Maynard* (1977) and *X Corp v Bonta* (2024).

Potential implications

Being the first state law requiring detailed disclosure of generative AI training data, AB 2013 has drawn mixed reactions, with some industry groups warning it could stifle innovation. The Business Software Alliance (BSA), a Washington-based trade group, **said** the reporting requirements go “well beyond current laws, including those in the European Union”.

While states such as Texas, Colorado, New York and Illinois have passed AI-related laws on bias, deepfakes and risk audits, California’s statute stands apart. For example, New York’s RAISE Act, signed in December 2025, will require large AI developers to publish training data summaries similar to AB 2013, but it takes effect in 2027 and uses narrower definitions. Colorado’s AI Act mandates risk assessments for “high-risk” systems but does not require public dataset disclosures.

Matthew D Kohel, partner at Saul Ewing law firm, where he focuses on AI governance, data privacy, regulatory and compliance issues, believes California’s AB 2013 is the “most aggressive” training data transparency statute in the US, although Maryland has introduced similar bills.

“While other states, like Colorado’s AI Act, tend to focus on high risk uses and algorithmic discrimination, a core risk of California’s law is competitive erosion by requiring companies to disclose specific data sources, collection timeframes, and "cleaning" processes,” Kohel tells IAM. This requirement, he adds, makes proprietary AI data labels vulnerable by handing a roadmap to rivals to replicate performance without the R&D cost.

Atlanta-based **David L Pardue**, a partner at Pierson Ferdinand, also thinks AB 2013 is the strictest US law on dataset disclosure. With several other states, including New York, advancing similar bills, industry anxiety is understandable.

“Efforts to regulate new technology especially where companies are building machine learning models, that may contain a machine learning secret sauce, raise concerns about public disclosure of valuable, proprietary secrets that provide a competitive edge. This must be balanced with the claimed public concerns,” Pardue says. His advice is that AI companies have no choice but to have advisers that can monitor the legislative landscape and help advocate for their business.

California adopted such an expansive law largely because of its unique position as the epicentre of the US tech industry. With a high concentration of major AI developers and startups, the state faces intense public scrutiny. Legislators framed AB 2013 as a way to bolster consumer trust and address concerns over accountability in generative AI space.

Assembly member Jacqui Irwin, the primary sponsor of AB 2013, has **argued** that the measure will enable consumers to “better evaluate if they have confidence in the AI

system or service, compare competing systems and services, or put into place mitigation measures to address any shortcomings of the particular system or service".

However, California's business-friendly environment means the law must strike a careful balance – advancing responsible AI governance while safeguarding innovation – as the state sets a national benchmark in largely uncharted regulatory territory.

Observing the change closely, some in the industry are more receptive. **Vivek Ganti**, co-founder of San Francisco-based Tradelok, a platform for trade secret and IP risk management, says "there appears to be a lot of wiggle room for companies to do the minimum necessary to comply without divulging their trade secrets". For him, AB 2013 feels more like a "compliance burden than a showstopper" for companies like xAI.

He views the lawsuit as a signal that xAI will resist efforts to regulate AI development and a warning to lawmakers to expect pushback on future proposals. "Most AI companies are small and likely will not draw the attention of the Attorney General. The ones that should be more concerned are the larger AI companies who have been previously accused of training on copyrighted materials, specifically because the law requires disclosure of "whether the datasets include any data protected by copyright, trademark, or patent, or whether the datasets are entirely in the public domain"," Ganti elaborates.

It is interesting that AB 2013 leaves enforcement vague. No penalties or agency oversight are specified, and it remains unclear what consequences developers face for not publishing data summaries.

In the run-up to the law taking effect, major developers have remained cautious, opting to watch how compliance plays out before taking firm positions. Stability AI, Runway and OpenAI **told** California-based TechCrunch earlier they planned to comply with AB 2013.

As for xAI's chances, success will hinge on how courts weigh California's consumer-protection rationale against property and speech rights.

Precedent matters

This is not the first time a suit has been filed to stop the disclosure of non-public information, Kohel stresses. Musk's X Corp previously challenged California's AB 587 on First Amendment grounds – a law that would have required social media platforms to reveal content moderation practices. That case settled in 2025 after the Ninth Circuit enjoined the law. "The xAI lawsuit will be a good test of whether the Takings Clause protects AI-related trade secrets from state-mandated transparency," he says.

One of the precedents cited in xAI's complaint is *Ruckelshaus v Monsanto* (1984), where the US Supreme Court held that trade secrets qualify as protected property under the Fifth Amendment, making government-mandated disclosure a potential "taking".

Pardue sees the precedent as significant. "*Ruckelshaus v Monsanto* among other cases hold trade secrets are subject to Takings Clause analysis so it will be interesting to see how the state responds. It's very common to see companies suing states claiming new laws are unconstitutional," he says. Given the resources both sides have, he expects this litigation could ultimately reach the US Supreme Court.

Another factor is the White House executive order issued on 11 December 2025 to pre-empt state AI laws in certain cases. Executive Order 14365, titled “Ensuring a National Policy Framework for Artificial Intelligence”, also known as “Eliminating State Law Obstruction of National Artificial Intelligence Policy”, directs the Justice Department to create an AI Litigation Task Force to flag “onerous” state laws and deter conflicting regulations, aiming to challenge state-level rules that could hinder innovation.

Earlier, President Trump’s “One Big Beautiful Bill Act”, enacted on 4 July 2025, had already signalled growing federal interest in balancing trade secret protection with emerging AI disclosure mandates and introduced a temporary moratorium on new state AI laws that could conflict with national policy. Whether that moratorium becomes a flashpoint in the case remains to be seen, but it adds another layer of complexity to the legal battle.

For now, as the industry is waiting to see whether the federally proposed moratorium on state AI laws will pre-empt AB 2013, rightsholders are advised to take proactive steps to minimise compliance challenges.

Kohel says companies should understand the nuances of the law and audit their data practices. “AB 2013 requires the disclosure of "high-level" information, which is not defined, and companies are seemingly not required to reveal code or specifics, like how data is weighted by an AI model. Also, companies can adopt “compliance-by-design” workflows, documenting all datasets and cleaning and annotation processes since 2022,” he notes.

Goodwin Procter law firm has also **advised** clients from its webpage to establish standardised protocols for documenting and tracking dataset composition, usage, and updates, ensuring all relevant information required by the law is properly recorded, including ownership, licensing terms, collection methods, synthetic data use and the presence of personal or proprietary content.

Such granular internal documentation not only strengthens trade secret management and litigation readiness but also helps deliver the high-level disclosures required under California’s AI transparency law.

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