

PROTECTING TRADE SECRETS IN THE DIGITAL AGE



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Protecting a trade secret has become more challenging in today's digital age. With the widespread use of digital technologies and the ease of sharing information online, trade secrets are at a greater risk of being compromised than ever before.

Trade secrets are valuable assets for businesses, providing them a competitive advantage and enabling them to differentiate themselves in the marketplace. As such, companies must take steps to safeguard their trade secrets from unauthorized access, use, or disclosure.

Understanding the importance of protecting trade secrets in the digital age is critical for businesses of all sizes and industries. Trade secrets are vital because they protect other forms of intellectual property.

While patents protect novel inventions, copyrights protect expression, and trademarks protect brands, trade secrets protect all these rights and do more.

This article will explore some key reasons why companies should protect their trade secrets in the digital age and provide practical tips and takeaways for safeguarding these valuable assets.

TRADE SECRETS PROTECTION: DEFINING TRADE SECRETS

Due to its uniqueness, a precise and widely accepted definition of a trade secret is unavailable.

In the European Union (EU), trade secrets are protected under the Trade Secrets Directive (2016/943/EU), adopted on June 8, 2016, and became effective on June 9, 2018. The Directive sets out minimum standards for protecting trade secrets throughout the EU. Before the Directive was introduced, the EU had no uniform law protecting trade secrets. Hence, Member States introduced laws at the national level to protect trade secrets and prosecute them in case of a breach.

Therefore, the objective of the EU Directive was to guarantee uniformity in the protection of trade secrets across all Member States, where a range of civil and criminal laws previously provided varying levels of security. However, as mentioned here, uniformity does not imply total harmonization; instead, it is of a minimalist nature. What this means is Member States may, in compliance with the Treaty on the Functioning of the European Union (TFEU) provisions, provide for more far-reaching protection against the unlawful acquisition, use, or disclosure of trade secrets than that required by this [Directive](#).

Under Article 2 of the Trade Secrets Directive, a trade secret is defined as any information that meets all of the following requirements:

- It is secret because it is not generally known or readily accessible to persons within the circles that typically deal with that kind of information.
- It has commercial value because it is secret.
- It has been subject to reasonable steps under the circumstances by the person lawfully controlling the information to keep it secret.

The definition of a trade secret is borrowed from *Article 39* of the [TRIPS Agreement](#). Trade-Related Aspects of Intellectual Property (TRIPS) provide legal protection for trade secrets as a form of intellectual property. It requires member countries to ensure that their domestic laws protect trade secrets against unauthorized acquisition, use, and disclosure.

Member countries must also provide civil and criminal remedies for the unlawful acquisition, use, and disclosure of trade secrets.

TRADE SECRETS PROTECTION: WHY PROTECT TRADE SECRETS

The trade secrets of any business serve as strategic and valuable assets. Protecting these trade secrets is, therefore, crucial for businesses. First, trade secrets give a company a competitive advantage over its rivals by providing valuable information that is not publicly available. These trade secrets may be an end product of significant investments in research and development, and protecting them helps to ensure that businesses can recoup those investments. Also, trade secrets can include sensitive information, such as customer lists or pricing strategies, which could harm a company's reputation or customer relationships if made public. Furthermore, trade secrets may be a critical factor in a company's ability to secure funding from investors or lenders, as they can demonstrate the potential for future profits.

To sum up the importance of trade secrets, trade secrets are valuable IPs that businesses can leverage in negotiations. Examples of trade secrets include but are not limited to, the following: algorithms, inventions, data of failed experiments, business strategies, your customer lists, patents that have not been published, etc.

Therefore, protecting these secrets is essential for maintaining a company's competitiveness, profitability, and overall success.

TRADE SECRETS PROTECTION: HOW BUSINESSES CAN PROTECT TRADE SECRETS

In today's digital world, cybercrimes and industrial espionage are some challenges companies face.

However, more is needed to serve as the ground for businesses to implement strategies to protect their trade secrets. A significant challenge for trade secrets is enforceability - it is complicated, time-consuming, and tough to prove ownership over a trade secret.

Therefore, businesses should avail themselves of the risk of losing their trade secrets by taking the following actions:

- ***Identify and classify trade secrets:*** You can't protect what you can't identify. Therefore, businesses need to know what information constitutes trade secrets and rank them based on their importance and level of sensitivity. Once the secrets are identified, record and time stamp them (in case you need to prove timely possession). Trade secrets may be found by answering the following questions: What does your company depend on? What is it that gives you an edge over your competitors? What is it that your customers like about your company?
- ***Limit access to trade secrets:*** Access to trade secrets should be limited to a few persons within the company. Only employees who need access to trade secrets to perform their job duties should be allowed access. Access should also be controlled and monitored.
- ***Use encryption and secure communication channels:*** Sensitive information should be encrypted when transmitted over the internet or stored on devices. For example, implement robust authentication protocols such as two-factor authentication, passwords, and biometric

authentication that would help ensure that only authorized individuals can access trade secrets.

- ***Conduct background checks on employees:*** Employers should perform background checks on employees to ensure they are trustworthy and do not have a history of stealing or disclosing sensitive information.
- ***Educate employees:*** Employees should know the importance of trade secrets and the consequences of misusing or disclosing them. Such education should include more than just a few employees. Everyone should be involved, and the training should be tailored to meet the level of each employee to facilitate their understanding.
- ***Have a comprehensive confidentiality agreement:*** All employees should sign a comprehensive confidentiality agreement outlining their responsibilities regarding protecting trade secrets.
- ***Monitor for breaches and have a response plan:*** Companies should monitor their systems and networks for any signs of breaches or unauthorized access to trade secrets. Once a violation is identified, the response plan should be activated.

KEY TAKEAWAYS: INCORPORATE TRADE SECRETS WITHIN YOUR COMPANY'S CULTURE.

As already pointed out, trade secrets are a valuable asset for any business, as they give a competitive advantage and provide unique insights that can drive innovation and growth.

It is, therefore, important for companies to incorporate trade secrets as a part of their culture. In addition, companies should recognize the value of trade secrets and implement policies to safeguard them. This includes

confidentiality agreements, limited access to sensitive information, and strict protocols for sharing and storing data.

In addition to protection, companies should also foster a culture of innovation and creativity, encouraging employees to develop new ideas and build upon existing knowledge. It may be achieved through regular brainstorming sessions, workshops, and team-building exercises. Training is vital, and businesses should invest in training and development programs that help employees understand the importance of trade secrets and how to identify and protect them.

Not only will training benefit the organization, but it will also equip employees with skills that can help them advance their careers.

It is also essential for companies to create an open and transparent environment where employees feel comfortable sharing their ideas and concerns. This can be achieved through regular communication and feedback sessions and by encouraging collaboration across different departments and teams.

Furthermore, businesses should recognize that it is paramount to adopt a proactive approach to trade secret management, regularly reviewing and updating their policies and procedures to stay ahead of potential threats and changes in the business landscape.

Finally, companies should recognize that trade secrets are not just about legal protection, but also about building trust with customers and stakeholders. By prioritizing the safety of trade secrets, companies can demonstrate their commitment to integrity, ethics, and responsible business practices.