

4 ESSENTIALS OF TRADE SECRETS

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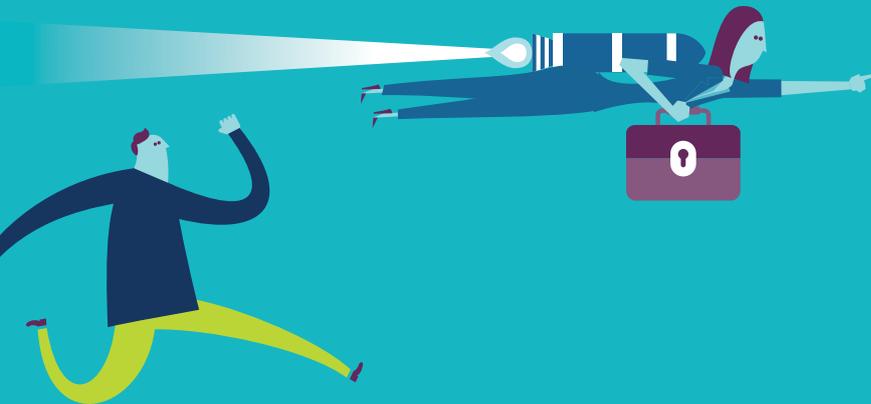


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4 ESSENTIALS OF TRADE SECRETS



- 1 - FIND OUT IF YOU HAVE SOMETHING WORTH KEEPING AS A TRADE SECRET
- 2 - WORK OUT WHAT YOU CAN DO TO PROTECT YOUR TRADE SECRET
- 3 - CONSIDER HOW YOUR TRADE SECRET MIGHT BE EXPOSED
- 4 - A TRADE SECRET'S STRATEGIC VALUE



Trade secrets are one of a number of tools – including patents, trademarks, designs and copyright widely – which protect ‘creations of the mind’. Companies, researchers, inventors and creators often hold economically valuable information. They often keep this secret to give them an advantage over their competitors.



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1 - FIND OUT IF YOU HAVE SOMETHING WORTH KEEPING AS A TRADE SECRET

You can protect things like algorithms, R&D information, recipes, methods, formulas, marketing plans, clients list, manufacturing or repair processes or data compilations as trade secrets



Trade secrets shouldn't be widely known or discoverable. And they should have commercial value for being secret

The duration of Trade Secret protection is (potentially) unlimited. It contrasts with the limited duration of other IPRs that protect know-how

The owner of a trade secret must be in control of keeping it secret



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2 - WORK OUT WHAT YOU CAN DO TO PROTECT YOUR TRADE SECRET

First, identify your trade secret

Make sure access to confidential information is on a need-to-know basis

Get things like non-disclosure agreements (NDAs) or restrictive covenants in place

Protecting a trade secret is the holder's responsibility. There's no official register

Trade secret holders are protected across the EU against four unlawful acts: the acquisition, use or disclosure of trade secrets without the consent of the trade secret holder and indirect infringement



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3 - CONSIDER HOW YOUR TRADE SECRET MIGHT BE EXPOSED

Trade secrets can be discovered fairly and honestly by reverse engineering or just creating them independently from scratch

Trade secrets can be acquired improperly

Secrecy is often part of a good strategy when it comes to protecting services (rather than physical products), innovation processes, or in markets with a strong price competition

Trade secrets can often be disclosed or reverse engineered, so they should be used with caution



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4 – A TRADE SECRET'S STRATEGIC VALUE

Improve your competitive advantage

Use both trade secrets and Intellectual Property (IP) rights to protect your business

Trade secrets can be commercialised directly by their holders, or through an assignment or business partnerships

Attracting venture capitalists and other funding can be challenging

Combination of trade secrets with other IP rights can greatly improve the strategic value to attract investors



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4iP Council is a European research council dedicated to developing high quality academic insight and empirical evidence on topics related to intellectual property and innovation. Our research is multi-industry, cross sector and technology focused. We work with academia, policy makers and regulators to facilitate a deeper understanding of the invention process and of technology investment decision-making.

Thank you to the following organisations for the valuable insights, engagement and support given to this project.



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IP Helpdesk

The protection strategies of European SMEs, involve additional protection measures, all based on secrecy, which are found to be strongly correlated with the use of formal IPRs (patents, trade marks and industrial designs). Firms frequently use a bundle of formal IPRs together with trade secrets or complementary assets to appropriate their intellectual assets. They may combine formal IPRs with confidentiality (42% of surveyed SMEs), complexity of product design (29%), a faster time-to-market (24%), or complementary assets (23%).

According to a study by the EPO-EUIPO, industries that make intensive use of IPRs pay significantly higher wages: on average 47% more than other sectors, with the figure rising.



Source: IPRs intensive industries and economic performance in the EU. Joint EPO-EUIPO study. 2019

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