

How to Protect Trade Secrets?

Trade secrets last as long as the commercially valuable information remains confidential, protected by reasonable measures to keep it secret. What is considered "reasonable" varies depending on the information, its value and other circumstances.

Some examples of measures include:

- marking the information as confidential;
- limiting access to the information, by placing physical and technological restrictions;
- entering into non-disclosure agreements with employees, suppliers and partners, prohibiting the recipient from making unauthorized use or disclosure of confidential information;
- reviewing periodically which employees "need to know" the trade secret information; and
- creating an employee culture that makes maintaining confidentiality a priority.

★**Expert tip** – Trade secret protection can be combined with other types of [intellectual property](#) (IP) protection. For example, while [patents](#) may protect a technical feature of a product, trade secrets may protect the specific settings that improve the product's performance. In addition, [copyrights](#) may protect the source code as well as texts and drawings in a user manual of the product, [industrial designs](#) may protect the aesthetic look and feel of the product, and [trademarks](#) may protect the logo associated with it.



Practical steps to implement a trade secret strategy

▼ Employees

Employees, often unintentionally, can be the biggest source of trade secret loss for companies. Being clear from the outset can reduce the risk.

Employment contracts should set clear obligation of employees, including an obligation of non-disclosure of confidential information without express authorization. Train employees on what information the company considers confidential, and on the steps to keep it secret.

When hiring new employees, companies can use an on-boarding checklist, requiring them to confirm their compliance with the confidentiality obligation with their former employer. This helps the companies to reduce the risk of illegitimate acquisition of trade secrets held by the former employer.

▼ Departing employees

An employee's departure is an important moment to safeguard the company's trade secrets. Require departing employees to return the company's confidential information and materials. Make sure to end employee's access to company's confidential information like emails, accounts, etc.

★ **Expert tip** – Many companies audit a departing employee's electronic resources towards the end of their employment. If you choose this path, be aware of local privacy laws.

One best practice is to conduct an exit interview with each departing employee. During the interview, remind the employee of ongoing obligations to the company and ask them to acknowledge this in writing.

While some laws put limitations on the use of non-compete agreements that restrict mobility of workers and prevent them from using the skills they learned in the previous employment, the duty to maintain confidentiality on the employer's secrets generally remains, at least for a certain period of time after the employee has departed from the company.

▼ Business partners

Enter into non-disclosure agreements with potential partners, including customers and suppliers. This can be done with a simple agreement at the beginning of a relationship. Make sure to revisit these obligations in any agreements with a third party and update them as needed.

▼ Competitive information gathering

Adopt a code of conducts and ethics that forbid unlawful and unethical practices to mitigate risks. For example, instruct employees and business partners not to use false identities to gain access to restricted material on websites, at restricted sessions at industry conferences, when ordering a competitor's product or when using a competitor's service.

Enforcement

Trade secrets protect their owners against unauthorized acquisition, disclosure, or use of confidential information by others. Proving that someone has used your trade secret illegitimately can be challenging, and, in some cases, reduce, or lose, the value of your trade secret in the process if, for example, it is not adequately protected against public disclosure during the court proceedings. The enforcement process, and what you have to prove, can vary from country to country.

Be prepared to act and have the documentation easily available to show you own a trade secret. If you suspect someone has stolen your trade secret or is using it without your permission, act quickly. You may be able to put a stop to the use to limit the damage through preliminary measures.

Remember, that trade secrets only protect their owner from unauthorized uses of its confidential information in a manner contrary to honest commercial practices. There is no protection if the same information is acquired by another through, for example, independent development or reverse engineering by others, or leakage of confidential information because the owner failed to take reasonable steps to keep it secret, or if the secret becomes generally known within the relevant industry circles.

★ **Expert tip** – The exact scope of behaviors you are protected against as a trade secret owner vary by country and by the contract you have in place with another party.

★ **Expert tip** – Self-help, through a quality trade secret protection program, may be the best preventative measure. Make sure confidentiality is front and center in any work you do with your employees and third parties.



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