



PROTECT YOUR EDGE WITH A TRADE SECRET AUDIT

PROTECTING SENSITIVE BUSINESS INFORMATION

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Most business owners consider some information, formula, process or device to be worth keeping secret from their competition. There are a variety of federal and state laws designed to protect the owners of proprietary information and technology from misappropriation. Most of these laws, however, naturally depend upon the owner to: (1) realize the existence of a protectable interest, and (2) take affirmative steps to avail themselves of the protection offered. All laws make it necessary for the business owner, inventor or entrepreneur to take reasonable steps to keep privileged information reasonably secret. There is a great deal of confusion as to what is or is not a trade secret or protectable interest. What is or is not protectable may also periodically change for a business, as information becomes public or new methods or processes are developed.

Periodically, a business should identify those aspects of its business which might qualify as a trade secret or proprietary information which should be protected. A trade secret audit is essential to identify all sensitive information. Once that is accomplished, a specific written program to protect all of this information should be developed and monitored. This involves a team approach between management of the business and legal counsel. Failure to identify and protect often results in unnecessary loss of competitive advantage, or worse. Some of the areas of business worth investigating for the existence of trade secrets and a plan to protect them might include, but certainly not be limited to:

- ▶ **Research and development**
- ▶ **Technical information**
- ▶ **Production and process information**
- ▶ **Customer information**
- ▶ **Vendor information**
- ▶ **Supplier information**
- ▶ **Sales and marketing information**
- ▶ **Quality control techniques**

- ▶ **Product or service margins**
- ▶ **Combinations of public domain and proprietary information**
- ▶ **Strategies and forecasts**
- ▶ **Marketing and business plans**

Simple steps anyone can take to protect their sensitive information include limiting access to it in the first place, marking it "confidential" or "trade secret," keeping it locked up whenever possible, and keeping control of the copying of sensitive material. The newspapers are full of stories about companies who lost their secrets to the copying machine or allowed sensitive material to be routinely circulated to people who really didn't need to have free access to the information.

Noncompetition and nondisclosure agreements are enforceable in most jurisdictions if properly drafted and used. The office should have a written policy in place and its enforcement should be monitored as to staff access to and treatment of sensitive information. The cost of a document shredder is inexpensive insurance against the "accidental" loss of trade secrets out the back door.

There are many other steps the business owner can take. With most businesses rapidly increasing the volume and sensitivity of computerized information, this is becoming the biggest hole in the safety wall. If you want a real horror story, read "Takedown" by Tsutomu, dealing with a computer hacker sniffing out trade secrets and personal E-mail over the Internet. A little time with a computer security expert would be well spent initially, combined with periodic review. Hackers can routinely penetrate even many elaborately secured systems and leave "trap doors" to come back later and download your sensitive files or leave you a virus which can destroy your entire system. A little effort and monitoring can save your business.

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