

**Trade Secret Law**

A trade secret is information that:

- is not generally known to the public;
- confers some sort of economic benefit on its holder;
- is the subject of reasonable efforts to maintain its secrecy.

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**What does trade secret protect?**

- typically “information” that might be in the form of a formula, pattern, compilation, program, device, method, technique or process  
 e.g. *formula* for Coca Cola but also the *methods* and *processes* by which ingredients are created and combined

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**What might be legally constitute reasonable measures to keep the information secret?**

- confidentiality and non-disclosure statements with employees and clients  
 - require marking by employees of all information to be kept confidential (documents, files, programs, etc) , logging of access, and regular audits of security measures

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**How long does trade secret last?**

- indefinite period of time (e.g. perpetual monopoly possible)  
... but no protection from independent discovery of the secret (e.g. reengineering is legal, chemical analysis of Coca Cola is legal)

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**Benefits of trade secrets**

- not limited in time duration,
- no formal registration or other formalities,
- immediate effect,
- no disclosure to the public

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**Limitations of trade secrets**

- burden to keep confidential,
- independent discovery may allow others to use,
- others may protect same secret through patent,
- more difficult to protect than through patent.

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As between *trademark in their brand* or *trade secret in their product*, which is more valuable to Coca Cola?

As between *patents* and *trade secrets*, what is more valuable to most private companies in protecting their market share or in gaining market position?

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**Do we now look primarily to state court precedents as opposed to federal court precedents for Trade Secret law interpretations?**

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**Kewanee Oil Co. v. Bicron Corp** (1974) – states freely develop their own trade secret laws (US Supreme Court)

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**Uniform Trade Secrets Act (1979)**

- 47 states have adopted in large part but some variations
- states cite each other's interpretations of identical language
- State Supreme courts may still interpret exact same language differently
- Maine Supreme court interpretations still control in Maine

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**Economic Espionage Act (EEA) (1996)**

- misappropriation of trade secret a federal crime
  - theft to benefit a foreign power
  - theft for commercial or economic purposes
- 2016 extended to allow civil actions for same acts brought previously only by U.S.

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**Defend Trade Secrets Act (DSTA) 2016**

- creates a federal cause of action for misappropriating trade secrets
  - private right of action for damages and injunction
  - civil action of injunction by U.S. Attorney General
- does not preempt or supplant state laws
- an additional cause of action

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Issue in contention involves:

**(a) State incorporation or adaptation of Uniform Trade Secrets Act?**

- Supreme Court rulings of individual states probably still controlling

**(b) Economic Espionage Act (EEA) or Defend Trade Secrets Act (DSTA)?**

- Federal court rulings probably the lead precedents

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