

# WIPO SYMPOSIUM ON TRADE SECRETS AND INNOVATION

## Topic 5: Trade secrets in the value chain

World Intellectual Property Organization (WIPO)

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10.00 – 11.30

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# WIPO SYMPOSIUM ON TRADE SECRETS AND INNOVATION

## Trade secrets in the value chain - a European perspective Summary

1. Legal framework
2. The key steps to protect trade secrets
3. Keeping track of trade secrets




# 1. Legal framework

**Directive (EU) 2016/943 of 8 June 2016 on the protection of trade secrets against their unlawful acquisition, use and disclosure**

3 requirements to characterise a trade secret:

- **Secret information**
- **Commercial value**
- **Reasonable steps**

## 2. What are the **key steps** to protect trade secrets?



1.a. Identifying  
trade secrets

2.b. Implement  
physical,  
technical and  
organisational  
measures

3.c. Implement  
contractual  
measures

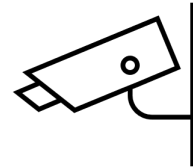
## 2. What are the key steps to protect trade secrets?

### a. Identifying trade secrets

- Identify and know the value of your trade secrets.
- Identify third party trade secrets (suppliers, customers, partners, competitors).

E.g. idea, unpatented invention, process, product, know-how, recipe, method, plans, data and commercial strategy...





## 2. What are the key steps to protect trade secrets?

### **b.b. Physical, technical and organisational measures**

Prevent unauthorised access or modification

Avoiding contact with unwanted third parties

Marking documents and materials as confidential

Providing protocol and guidelines for employees

Training and education programs: online training courses

Building access controls, security cameras

Security measures: IT security measures (password, VPN networks, encryption, firewalls) and verification systems



## 2. What are the key steps to protect trade secrets?

### c. Implement contractual measures

- **Non-disclosure agreements (NDA)** within employment contracts as well as trainees and any external provider operating on site
- **Non-solicitation agreement**
- **Material transfer agreements (MTA)**
- **R&D collaboration agreements**
- **Post-Contractual Non-Compete Agreement (NCA)**
- **Licence agreements:** a third party is authorised by the holder to access and use the trade secret information



## 2. What are the **key steps** to protect trade secrets?

- Protection measures will depend on the size of the structure
- Beware: there is often a discrepancy between the expected procedure and the one implemented
- Be careful with an overly sophisticated process...



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## 3. Keeping track of trade secrets

### a. Create a trade secret inventory

- Ensure that each right is protected to prove reasonable steps (as seen above)
- Know and follow-up all the agreements concluded within other companies

### b. Determine who owns the right in order to prove ownership

- Laboratory notebooks
- Electronic time stamping
- Digital archiving
- Blockchain
- Private filing with a ministerial officer (bailiff or notary)
- Sending a registered letter to oneself

## 3. Keeping track of trade secrets

### c. Be aware of competitors' trade secrets

- Track and pay attention to agreements with other companies
- Educate employees how to 'practice' under confidentiality clauses
- Keep an eye open on partners, suppliers and competitors
  - Manage the information shared with R&D collaboration agreement and joint developments
  - Plan ahead commercial negotiations



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