



Trade Secrets: Best Practices and Enforcement

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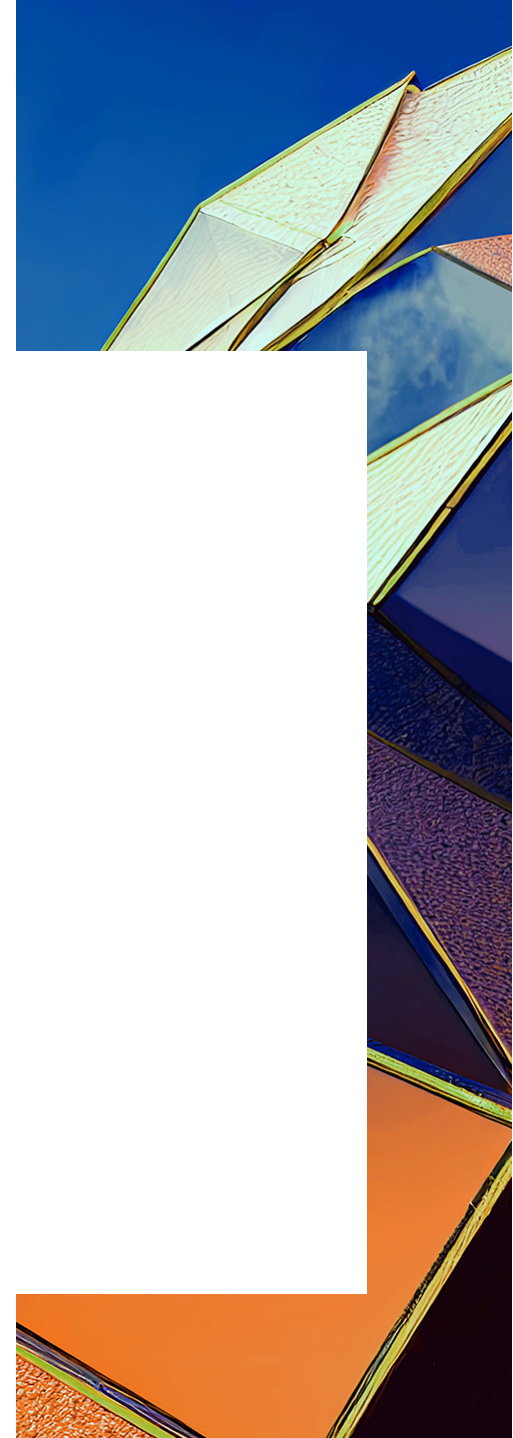


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Overview

- Statutory Overview
- Trade Secret Governance
- Trade Secret Security Examples
- Take Away



What is a Trade Secret?

- (1) **Information** that the owner has taken reasonable measures to keep secret; and (2) that has **independent economic value** from not being generally known
- Rights in trade secrets are provided under both federal and state law



Wis. Stat. § 134.90(1)(c) (Uniform Trade Secrets Act)

- Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process to which all of the following apply:
 1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use
 2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances

18 U.S.C. § 1839(3)

- “[T]rade secret” means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if —
 - A. The owner thereof has taken reasonable measures to keep such information secret; and
 - B. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information

Cause of Action: Wis. Stat. § 134.90(2)(b)

- Trade Secrets are Misappropriated, not Infringed
- No person...may misappropriate or threaten to misappropriate a trade secret by
 - A. Acquiring the trade secret of another by means that the person knows or has reason to know constitutes improper means.
 - B. Disclosing or using without express or implied consent a trade secret of another if the person
 - 1. Used improper means to acquire knowledge of the trade secret or
 - 2. At the time of disclosure or use, knew or had reason to know that he or she obtained knowledge of the trade secret by (a) Deriving it from or through a person who utilized improper means to acquire it; (b) Acquiring it under the circumstances giving rise to a duty to maintain its secrecy or limit its use; (c) Deriving it from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (d) Acquiring it by accident or mistake.

Trade Secret Governance

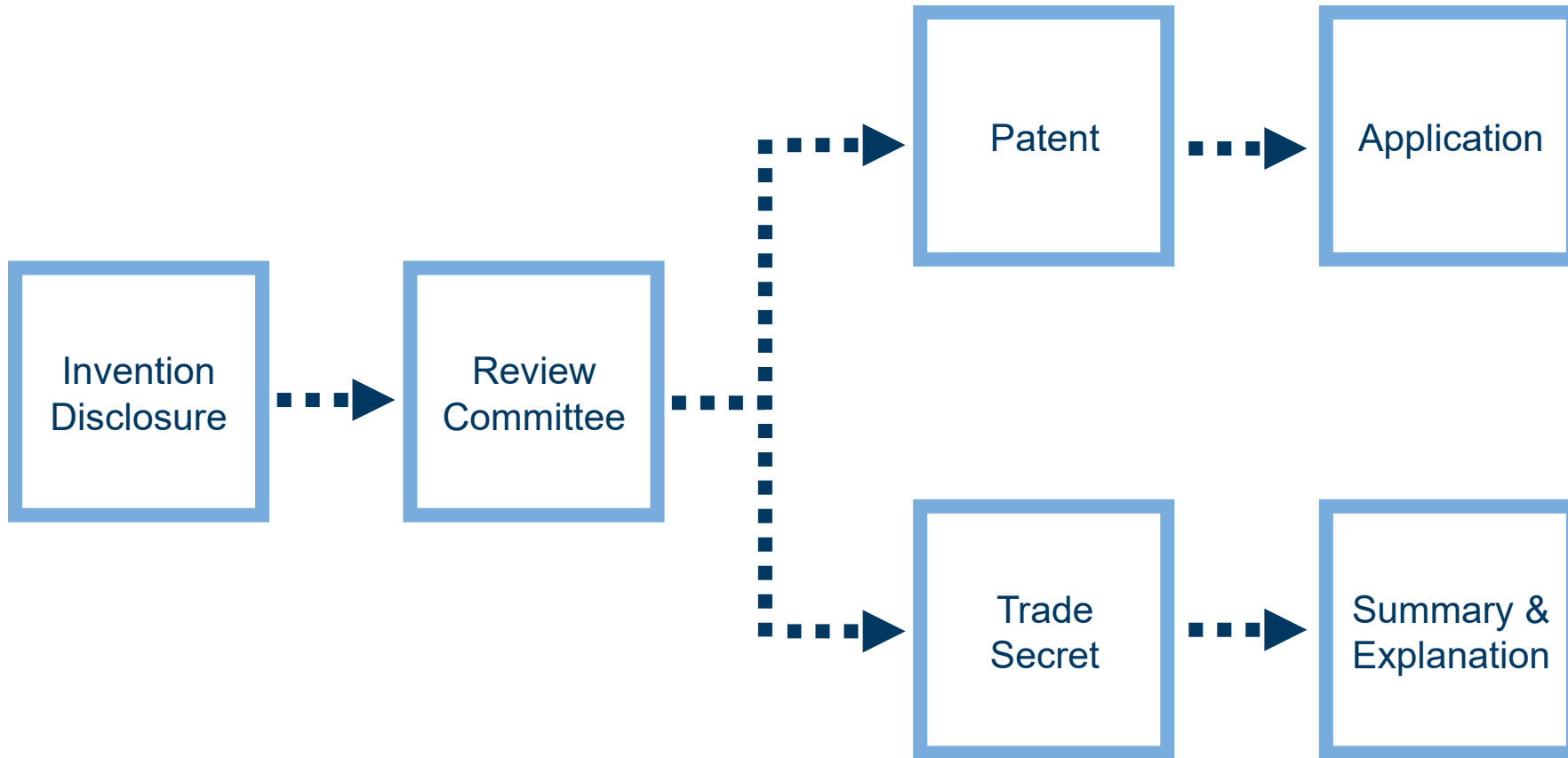
- Identify Opportunities for Trade Secrets
 - Specific technologies for patent or trade secret
 - General categories of confidential information
- Name Responsible Stakeholders
- Document Trade Secrets and Storage Locations
- Controls – evidencing that secrecy measures are “reasonable”
 - Procedures and policies limiting access and use
 - Training
 - Audit
 - Remedies, including discipline and enforcement



Who is Responsible for Trade Secrets?



Specific Asset: Identify and Protect



General Categories: Identify and Stakeholders

■ Categories (examples)

- Software
 - Source code, documentation
- Technology reports
 - Test results, lab notebooks, new product development reporting
- Commercial know-how
 - Customer lists, vendor lists, pricing
- Manufacturing processes
 - Standard operating procedures, quality procedures
- Secret sauce
 - Recipes, chemical formulas

■ Stakeholders

- Leader able to direct and enforce compliance
- Examples
 - Lead software developer
 - SVP, research and development
 - Director of new product development
 - Chief commercial officer
 - Facilities managers

Trade Secret Controls

▪ Electronic Records

- Limited access
- Ability to Monitor Access
- Ability to Audit Access
- Where are the electronic records?
 - Cloud
 - Where is the “cloud”?
 - Local devices
- Marking

▪ Physical Records & Facilities

- Access controls
 - Locks
 - Badge access
 - Ability to monitor
 - Ability to audit
 - Security cameras
 - Security guards
- Visitor NDA
- Marking

▪ Employees

- Employee NDA
 - Confidential Information Policy
 - Onboarding
 - Training
 - Exit Interviews
- ## ▪ Third Parties
- NDA
 - Commercial Agreements

How Secure is Confidential Information in the Office?

- Who can see your screen?
- What is on your desk?
- Who can hear what you are saying?
- Do you lock out or log off your computer when you leave?
- Do you lock your drawers when you leave?
- Did you leave anything behind when hoteling?



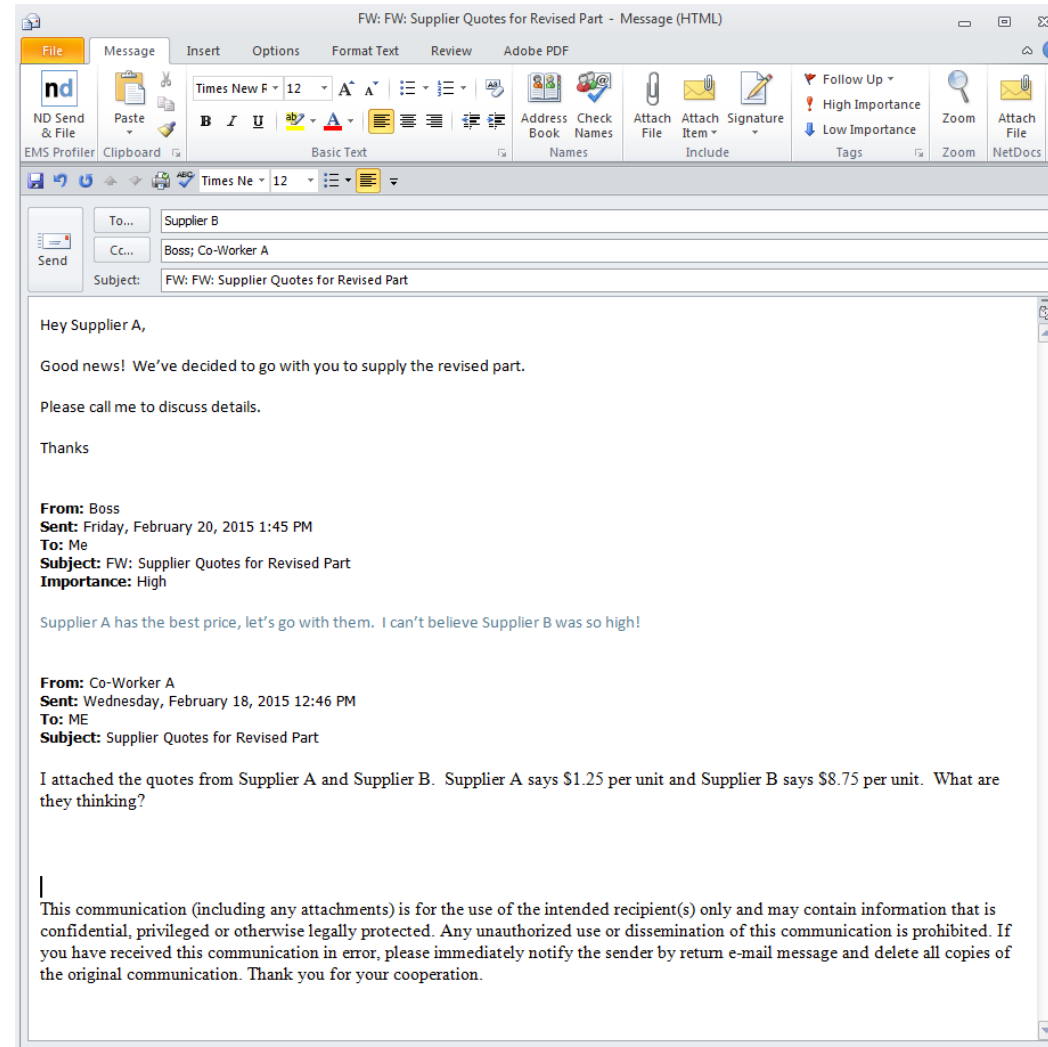
How Secure is Confidential Information at Meetings, Trade Shows, Travel, Public Spaces?

- Are there nonemployees in the room or on the call?
 - Onsite supplier reps?
- Are any notes left on the whiteboard?
- Are any handouts left behind?
- Who can see into the meeting room or listen in on call?
- Roll call for conference calls or video conference?
 - Who is that random dial-in on Teams?



How Secure is Confidential Information in Email?

- Who is included in Reply All?
- What information is in the entire e-mail chain?
- Who did you send the e-mail to?
 - Did autocomplete send the e-mail to the wrong “Jeff”?



Real-World Example: How Secure is Confidential Information?

- An NBA player's agent tweeted a photo of a contract signing in front of a whiteboard listing the team's targets for possible trades and free agent signings.



USA v. Wang: Timeline of Events

March 2016

Wang joins Apple as an engineer and is “disclosed” into Titan, Apple’s secret self-driving car project. He becomes tech lead of computer vision development.

Nov. 2017

Wang secretly accepts a job offer to work at a competing Chinese company.

Apr. 16, 2018

On Wang’s last day at Apple, Apple notices that Wang had accessed large amounts of proprietary data.

May 2018

Apple reviewed access logs for its sensitive project databases and found Wang accessed large volumes of trade secret and IP data before leaving.

June 2018

Law enforcement raids Wang’s CA residence and seizes computer equipment containing large quantities of confidential data from Titan, including the project’s entire source code.

June 2018

After telling authorities he had no intention of traveling, Wang flees the country with a one-way ticket to China just before midnight.

Apr. 11, 2023

Wang is indicted for theft of trade secrets under the DTSA in the Northern District of California.

Prevent, Detect, and Address Theft of Trade Secrets

Prevent

Actions to prevent theft:

- Access control: Implement strict access controls to limit the number of employees that have access to sensitive content, and use multi-factor authentication and role-based access to restrict such access

Detect

Actions to detect theft:

- Monitoring and auditing: Automatically detect and report abnormal work activity and file access behavior
- Establish a mechanism for anonymous reporting of suspected theft (e.g., phone line, SMS, online portal, mobile applications)
- Strict exit procedures

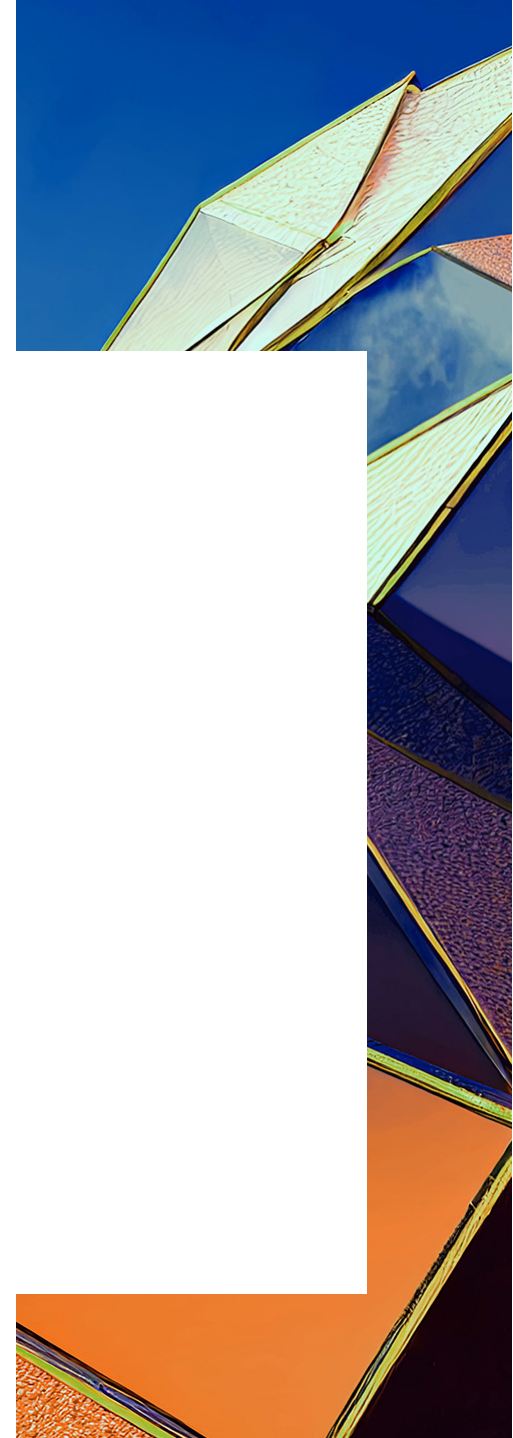
Address

Actions to address theft:

- Establish a cross-department SWAT team trained to execute a specific plan to address suspected theft

Take Aways

- Identify & Document Trade Secrets
 - Specific Assets
 - General Categories
 - Responsible Stakeholders
- Govern Trade Secrets
 - Procedures and Policies
 - Training
 - Audit
 - Remedies, including discipline and enforcement



Thank You

- Questions?

