

Trade Secret



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Outline of presentation

- What information qualifies as a TS?
- What makes something a TS?
- When can you get court relief?
- How are TS lost or stolen?
- How to protect your TS?



What kind of information qualifies as a Trade Secret?





What is TS

information that has **commercial value** and that has been **scrupulously kept confidential** will be considered a trade secret



In simple words

TRADE

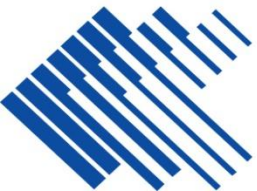


- provides competitive advantage
- potential to make money

SECRET



- kept confidential



**Financial
information**

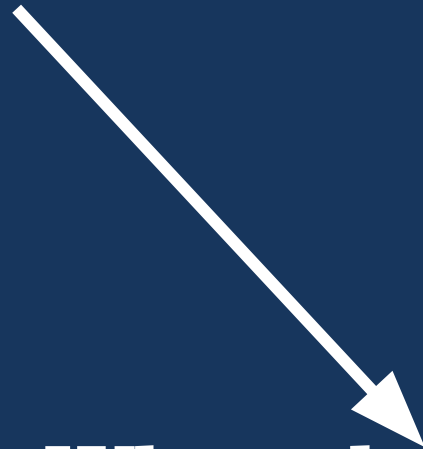
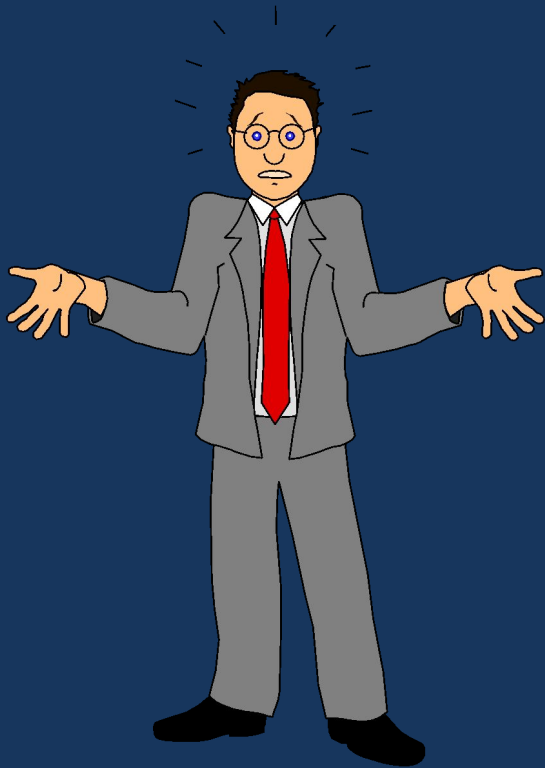
**Technical &
scientific
information**

**TRADE
SECRET**

**Commercial
information**

**Negative
information**

What makes something a Trade Secret?



When do you have legal protection?



SMTH → Trade Secret

Secret

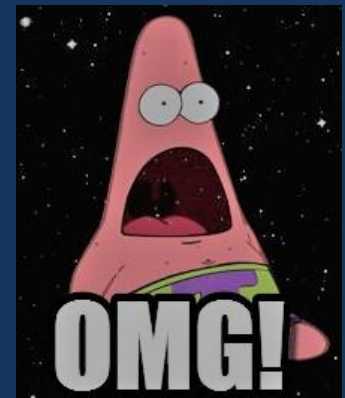
- not generally known among
- not required that be known only by one person

Commercial value

- confer economic benefit on the holder
- benefit must derive from the fact that it is not generally known

Reasonable steps

- you cannot have a TS unless you have taken reasonable precautions to keep the information confidential
- importance of proper TS management program



Who owns the TS?

- TS developed by employee
- TS developed by external contractor



To avoid disputes:

WRITTEN AGREEMENT

+

ASSIGN

**in advance all trade secrets developed during
employment or commission**



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When can you get court relief?



Court relief if

TS + THEFT



Only theft if wrongful !

**Courts will only grant relief if someone has improperly
acquired, disclosed or used the information**

- Confidentiality agreement
- Industrial espionage, theft, bribery, hacking



How are Trade Secrets lost or stolen?





80% of trade secret loss
< employees, contractors, trusted insiders!

- departing or disgruntled employees
- intentional (malicious)
- inevitable (knowledge acquired)
- by ignorance

F.E.

“Prosecutors say a former Coca-Cola secretary took confidential documents from the beverage giant and samples of products that hadn't been launched with the aim of selling them to rival Pepsi.

Faces up to 10 years in prison if convicted of conspiracy.”

The Washington Post



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How to protect your trade secrets?



1. Identify trade secrets

- *Accurate record keeping is important*

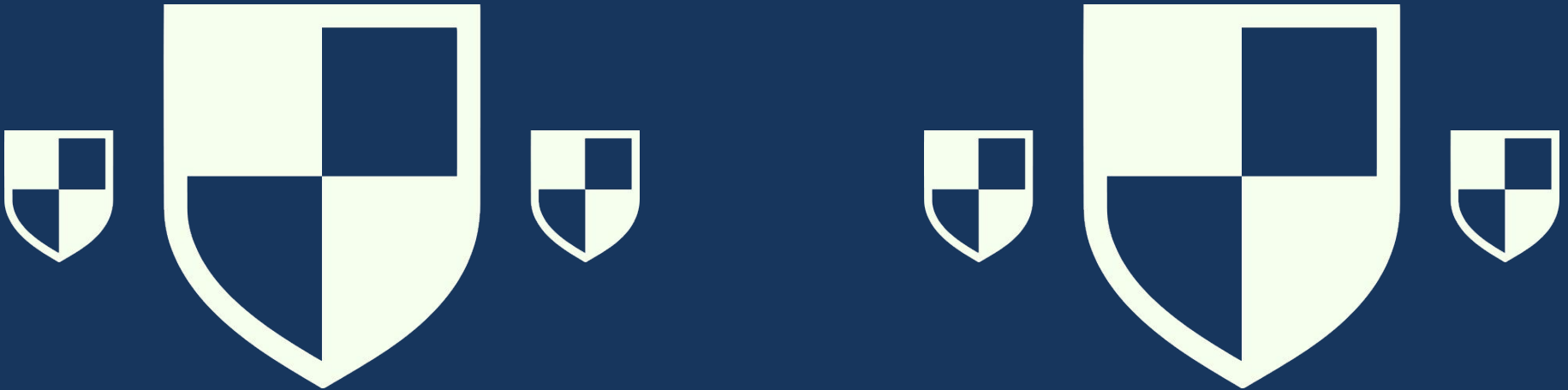
2. Develop a protection policy

- *Advantages of a written policy:*
 - *Clarity*
 - *Demonstrates commitment to protection (litigation)*



3. Restrict access

- to only those persons having a need to know the information



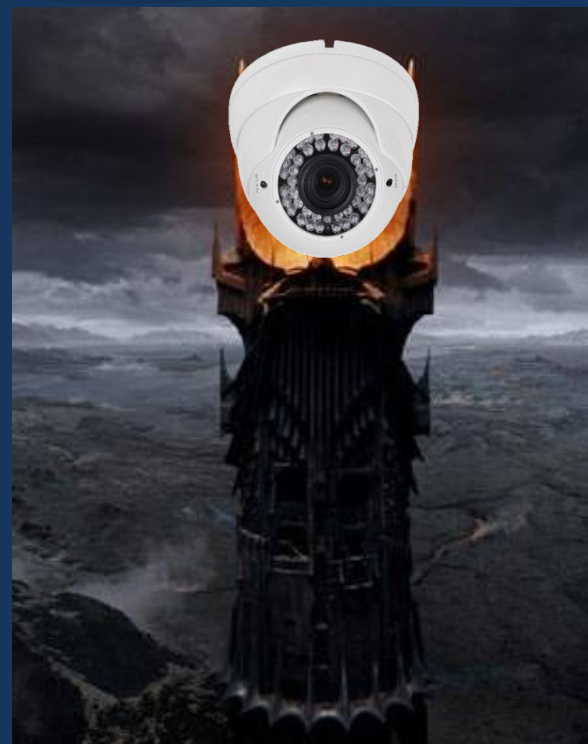
4. Mark documents

- help employees recognize TS
 - (prevents inadvertent disclosure)
- Uniform system of marking documents
 - paper based
 - electronic (e.g. 'confidential' button)



5. Physically isolate and protect

- Authorization
- Access control
 - log of access: person, document reviewed
- Surveillance of depository premises
 - guards, surveillance cameras





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