

Legal Issues and Cyber Law (HUM 4747)

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Trade secrets

A type of intellectual property right that protects any valuable information that is not generally known and is subject to reasonable efforts to maintain its secrecy.

Difference from other IPRs

Trade secrets differ from other types of intellectual property rights, such as patents, trademarks, and copyrights.

- Trade secrets do not require registration or disclosure to obtain protection.
- Trade secrets have no fixed duration or expiration date as long as they remain secret.
- Trade secrets are protected by state laws, not federal laws, and may vary from state to state.

Criteria and conditions for trade secrets

- It must not be disclosed or misappropriated by others without the owner's consent.
- It must have commercial value or provide a competitive advantage by being secret.
- It must not be generally known or readily ascertainable by others who can benefit from it.
- It must be subject to reasonable efforts to maintain its secrecy by the owner.

Trade secret misappropriation

Trade secret misappropriation occurs when someone:

- Acquires the trade secret by improper means, such as theft, bribery, espionage, breach of contract, etc.
- Discloses or uses the trade secret without authorization or in violation of a duty of confidentiality.
- Knows or should have known that the trade secret was obtained by improper means or in breach of a duty of confidentiality.

Benefits of trade secrets

- They can protect any kind of information that has value, regardless of its novelty, inventiveness, or originality.
- They can protect information that is not eligible or suitable for other types of intellectual property rights, such as business methods, algorithms, formulas, etc.
- They can protect information indefinitely as long as it remains secret and valuable.
- They can avoid the costs and complexities of registration and disclosure required by other types of intellectual property rights

Challenges of trade secrets

- They can be lost or destroyed by accidental or intentional disclosure or discovery by others.
- They can be difficult to enforce or prove in case of misappropriation or infringement by others.
- They can be invalidated or preempted by independent invention or reverse engineering by others.
- They can be subject to different laws and regulations in different jurisdictions.

Governing Laws

- **Section 49 of the Patent and Designs Act, 1911**, which prevents disclosures of information about industrial designs in bad faith.
- **Section 73 of the Contract Act, 1872**, which entitles a party to claim compensation for breaches of contractual obligations, such as non-disclosure agreements or confidentiality agreements.
- **Section 405 of the Penal Code, 1860**, which defines the offence of criminal breach of trust, which can be applied to cases where a person dishonestly misappropriates or converts to his own use any property entrusted to him or any person by whom he is bound in any way to account for such property or to use it according to the directions of the person entrusting it.

Thanks