

Trade Secrets

- **Defn** A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him/her an opportunity to obtain an advantage over competitors who do not know or use it. Examples: the ingredients or chemical composition of a product, the design of a machine, the details of a manufacturing process, methods of quality control, results of marketing surveys, financial projections, and lists of customers and suppliers.
- Companies have some rights with respect to trade secrets and other intellectual property, such as patents, copyrights, and trademarks.
- Employees have an obligation of confidentiality not to disclose or use information acquired during their employment.
- On the other hand, employees have the right to change jobs or to start up a business of their own using some of the skill and knowledge they have acquired while working for a former employer.
- Furthermore, companies have a right to use their own employees' skill and knowledge that have been legitimately acquired elsewhere and to gather legitimate competitor intelligence.
- The challenge for individuals and companies, as well as the law, is to balance all of these competing rights and obligations.
- Three major arguments for trade secret protection:

1. Trade secret as property

- Trade secrets, along with patents, copyrights, and trademarks, are commonly regarded in the law as intellectual property that can be said to belong to an owner.
 - **Drawback** A patent confers a legal monopoly for a fixed number of years, which raises the price that the public pays for the products of patent holders during that time.
- 1. **Advantages** Society generally benefits from the willingness of companies to innovate, but without the legal protection provided by patent and trade secret laws, companies would have less incentive to make the costly investments in research and development that innovation requires.
- 2. Patent and copyright laws encourage a free flow of information, which leads to additional benefits. Patent holders are granted a period of 20 years (In India) in which to capitalize on their discoveries, but even during the period of the patent, others can use the information in their research and perhaps make new discoveries.
- The question of who owns what becomes more complicated if the inventor is himself employed by a manufacturer of the product in question.
- As long as he gets his ideas while performing unrelated work - conducts the experiments on his own time using his own materials and facilities, it seems only right that he be recognized as the sole owner.
- If, on the other hand, he is hired as an inventor to develop improved methods of manufacture or if he does his creative work on his employer's time with the resources of his employer, then some or all the rights of ownership could reasonably be claimed to belong to the employer.
 - In many cases Companies require employees to sign an agreement turning over all patent rights to the employer.
 - Such agreements are morally objectionable when they give companies a claim on discoveries that are outside the scope of an employee's responsibilities and make no use of the employer's facilities and resources
 - But the bureaucracy is so powerful a lone inventor may lose all claim on his/her product.

2. Trade secrets as principles of fair competition.

- Protection of trade secrets help companies to have fair competition among competitors.
- Because of the difficulty of imposing legal restraints on employees after they leave, many companies require employees to sign a **non competition agreement** when they are hired. These agreements typically restrict an employee from working for a competitor for a certain period of time

3. Trade secrets as violation of confidentiality.

- The third argument for trade secret protection is that employees who disclose trade secrets to others or use them themselves are guilty of violating an obligation of confidentiality.
- This argument is based on the view that employees agree as a condition of employment to become agents of an employer and be bound by the duty that agents have to preserve the confidentiality of certain information.
- The key to protecting trade secrets lies in improved employee relations, in which both employers and employees respect the rights of the other and take their obligations seriously.
- Employers might find that treating employees fairly provides more protection for trade secrets than relying on the law.

Ethics in Competitor Intelligence Gathering

- Competitor intelligence collection is important for a company to grow, however ethical and legal limits one should not forget.
- Computers played an important role.
- The unethical methods for gathering competitor intelligence can be grouped under four headings.

1. Theft and Receipt of Unsolicited Information

- Could be done to take revenge, for money, taking it to new job.
- More controversial, however, are cases in which an employee inadvertently leaves a document where it can be seen or taken by a competitor or carelessly discloses information in casual conversation.

2. Misrepresentation

- To gain information under false pretences is a form of deception that violates the duty to be honest in all dealings.
- Posing as a customer to obtain information from a competitor.

- Under the guise of doing a study of the industry which might contain confidential technical information about the bidder's products.
- To get information some companies have advertised and conducted interviews for positions that do not exist, in the hope that some applicants would inadvertently reveal trade secrets of their present employer.

3. Improper Influence

- The employment relation is built on trust, and to induce an employee to reveal information through bribery or some other means is to undermine that trust.

4. Covert Surveillance

- Planting hidden microphones, can give race film example ;)
- Need to respect company's privacy.

Conflict of Interest

- Occurs when a personal interest interferes with a person's acting so as to promote the interests of another when the person has an obligation (i.e. agent (employee) has an obligation to act for principal (employer)) to act in that other person's interest .
- In conflict of interest: The duties of an agent are not determined solely by a list of moral rules but by the nature of the interests to be served

Conclusion: Trade secrets and conflict of interest involve a delicate balancing of the rights and interests of employers and employees, as well as the public at large

CSR - Corporate Social Responsibility

- "the responsibility of enterprises for their impacts on society".
- "the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large."
- They can take help from NGO's.
- The well known economist Milton Friedman writes, in Capitalism and Freedom, "Few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than making as much money for their stockholders as possible".
- Haves and have-nots
- Poverty and famine : caused by inefficient or corrupt political and business institutions

Examples

- Jeffrey Swartz (leader of company Timberland) launched "Path of Service" under which employees were to devote fixed number of company hours for community service, this was optional for employees but they were encouraged to do so for their favored causes.
- Taking advantage of an economic opportunity that is judged to be less profitable but more socially desirable than some alternatives (Starbucks coffee).
- Using corporate resources to operate a program that addresses some major social problem.

- Making contributions to civic and charitable organizations and nonprofit institutions.
- Providing benefits for employees and improving the quality of life.
- Coca-Cola recycling, thinking about environment (environment sustainability), helping water reach the poor in south africa (**eradicating hunger and poverty**).
 - In developing countries, around 6 million children die each year.
- Contributing to Prime Minister's relief fund and other such state and central funds.
- Promoting education.

Indian Context

- On the one hand, India has grown to be one of the largest economies in the world, and an increasingly important player in the emerging global order,
- on the other hand, it is still home to the largest number of people living in absolute poverty and the largest number of undernourished children.
- What emerges is a picture of uneven distribution of the benefits of growth.
- Social unrest.
- Many companies have been quick to sense this development, and have responded proactively while others have done so only when pushed.
- Governments as well as regulators have responded to this unrest and the CSR clause within the Companies Act, 2013 is the step towards regularity.

The Companies Act, 2013

- The CSR provisions within the Act is applicable to companies with:
 - an annual turnover of 1,000 crore INR and more,
 - or a net worth of 500 crore INR and more,
 - or a net profit of five crore INR and more.
- The Act encourages companies to spend at least 2% of their average net profit of past three years on CSR.
- Only CSR activities in India will be taken into consideration.
- Small And Medium Enterprises significantly contribute to economic's growth as they employ nearly 45% of India's workforce.
 - Their business activities are conducted in the close proximity of locals which enables them to develop CSR programs according to community needs.

Corporate social responsiveness

- It refers to the capacity of a corporation to respond to social pressures.
- Thus, a socially responsive corporation uses its resources to anticipate social issues and develop policies, programs, and other means of dealing with them.