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Trade Secrets ^[1]

A trade secret is a form of [intellectual property](#) ^[2] that applies to business secrets. If a company or other organization creates or compiles information that gives it an economic advantage over its competitors, it can protect that information as a trade secret -- in a sense becoming the "owner" of the trade secret. To do so, however, a business must take reasonable precautions to keep the information secret, and it loses its property right when competitors or the public at large uncover the secret. Trade secrets law is governed by **state law**. However, most U.S. states have adopted their own slightly modified version of the [Uniform Trade Secret Act \(UTSA\)](#) ^[3], so there is a good deal of uniformity among state laws on the subject. For state-specific information, please see the [State Law: Trade Secrets](#) ^[4] section of this guide.

The main goal of trade secrets law is to provide a way for businesses to capitalize on their unique practices or knowledge created through their time and effort. Unlike [copyright](#) ^[5], trade secrets law protects ideas and facts, rather than just the form in which they are expressed. A trade secret can be any kind of information relating to a business -- formulas, plans, designs, patterns, supplier lists, customer lists, financial data, personnel information, physical devices, processes, computer software, and a catch-all category of "know-how." The most "well known" trade secret is the "secret formula" for Coca-Cola, which has been kept under wraps for more than 100 years.

By definition, trade secrets are not disclosed to the public. In this way, they are different from inventions and creative works that are copyrighted or patented. And, in contrast to copyrighted or patented information, trade secrets are not time-limited -- they last as long as the company manages to keep them secret. The company that creates them has the sole ability to exploit the secret as long as it manages to keep it from becoming public knowledge. The catch is that trade secrets can disappear without warning or any specific period of time passing. Once disclosed, they're gone. In addition, trade secrets law provides no protection against someone independently developing the owner's trade secret information or reverse engineering it from a finished product.

For the most part, trade secrets law is directed against industrial espionage and ex-employees sharing their former employers' proprietary information with new employers. You might justifiably ask, then, what all this has to do with citizen media and online publishing? Trade secrets law prohibits **publishing** someone else's trade secrets under certain circumstances, and businesses and other organizations sometimes look to trade secrets law as a way of stopping the traditional and non-traditional media from publishing valuable, sensitive, or damaging information. Many readers may recall Apple's dispute with [Think Secret](#) ^[6], [AppleInsider](#) ^[7], and [O'Grady's PowerPage](#) ^[8] over leaks of confidential information about unreleased Apple products before MacWorld 2005. Apple turned to trade secrets law to make out its case. Ultimately, the courts never decided the merits of Apple's trade secrets claims because Think Secret settled and ceased operations, and Apple voluntarily withdrew its lawsuit against the other sites after a California court upheld the website operators' right to protect the identity of their sources under the California shield law. For additional details on the lawsuits, see our database entries, [Apple v. DePlume](#) ^[9] and [Apple v. Does](#) ^[10]. Going back to 1999, Ford sued a website operator named Robert Lane for posting its confidential

documents and photographs on his site. Current and former Ford employees had provided Lane with secret materials in violation of their confidentiality agreements with the auto giant. The court found that Lane had likely violated the Michigan Trade Secrets Act, but held that the First Amendment to the U.S. Constitution did not permit the court to order Lane to remove the photographs and documents from the Internet. See [Ford Motor Company v. Lane](#) ^[11], 67 F. Supp. 2d 745 (E.D. Mich. 1999), for details.

If, like many people, your online activities are limited to synthesizing and commenting on materials you find online, then trade secrets law will not have any real impact on you. For a business to protect information under trade secrets law, **the information must be secret**. If you can find a piece of information by searching the Internet, then in all likelihood so can the company's competitors, and that information is not a trade secret. If, on the other hand, you engage in investigative reporting or regularly rely on [confidential sources](#) ^[12], you should familiarize yourself with trade secrets law in order to avoid potential liability and to stand up for yourself should someone send you a cease-and-desist letter. There are two scenarios where trade secrets problems are likely to come up; in legal terminology, this is when a court could find that you have "misappropriated" a trade secret.

Scenario One: You personally acquire a trade secret by improper means, such as theft, trespass, hacking, or breach of your own employment contract, even if you do not publish the trade secret. This type of conduct is outside the scope of this guide. If you are accused of engaging in such activities, we suggest that you seek immediate legal assistance. See the section on [Finding Legal Help](#) ^[13] for some suggestions.

Scenario Two: You publish secret information received from a source and you know that the source acquired it through theft, hacking, or some other improper means, or breached a duty of confidentiality by giving it to you. This later situation could easily come up if you rely on employee sources for information about a company. If you want to rely on insider sources or are simply curious about what qualifies as a trade secret and what activities may cause trade secret liability, please see [Basics of a Trade Secret Claim](#) ^[14].

If you are considering publishing information that might be considered a trade secret, don't be intimidated. Not every company document is a trade secret, and a business ordinarily cannot stop you from publishing embarrassing -- but not secret or economically valuable -- information. Even if you publish a bona fide trade secret, the First Amendment of the U.S. Constitution may protect you from having to take it down and even from paying damages, especially if you publish the trade secret in order to report or comment on a matter of public concern. To illustrate both points, imagine that a source inside the XYZ Tire Company provides you with a secret company memorandum revealing a hazardous defect in the company's tires; you may have a host of legal arguments why publishing that information is lawful, including that the information in the memorandum is not a trade secret and that the First Amendment protects your activity. Keep in mind, however, that the law is not clear in this area. If you are interested in the legal protections the law may offer your publishing activities, consult the [Publishing Trade Secrets](#) ^[15] section.

In the sections that follow, we lay out further specifics about the principles described above. This guide is not a full treatment of trade secrets law, but it does provide what we hope is a good understanding of the legal risks surrounding trade secrets.

Jurisdiction:

- [United States](#) ^[16]

Subject Area:

- Trade Secrets [17]



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