



WIPO Symposium on Trade Secrets and Innovation

Lena Pauschenwein, Legal Officer
European Commission, DG GROW

*Panel I, Trade Secrets in Innovation
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Overview

1. Trade Secrets and Innovation
2. The EU legal and policy framework for the protection of trade secrets
3. Current projects relating to trade secrets and innovation
 1. Trade Secrets in the Data Economy / data sharing
 2. Preventing cyber-theft of trade secrets: awareness toolkit for SMEs

Trade Secrets and Innovation

- Both large and small businesses use confidentiality as a business & research innovation management tool
- Competitiveness by innovation is increasingly dependent on intangible assets such as know-how and trade secrets
 - Trade secrets are also used as a pre-Intellectual Property Rights (IPR) protection tool and are used to complement IPRs
- Openness in cooperation also requires protection
- At the same time, misappropriation of trade secrets is increasing
 - Estimates show that cyber-enabled theft of trade secrets currently account for nearly € 60 bn losses in economic growth in Europe and a consequent potential loss of 1.000.000 jobs.

The Trade Secrets Directive

(Directive (EU) 2016/943)

- Adopted in 2016 by the European Parliament and the Council
- On the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure
- Some of the most important contents:
 - The **definition** of a trade secret, holder, infringer and infringing goods
 - What constitutes **lawful/unlawful acquisition**, use and disclosure
 - Exceptions
 - **Minimum standards** for legal remedies, including injunctions and damages
 - **Confidentiality** during legal proceedings

The Commission's IP Action Plan (November 2020)

- A strategic tool to address key challenges

Effective use and deployment of IP

- Boost the uptake and use of IP, especially for SMEs



Better IP protection

- Improve the ways IPRs are protected



Fight against IP infringement

- Better enforcement and cooperation
- Awareness raising (cyber-theft)



Access and sharing of IP

- Facilitate licensing and diffusion of IP

Zooming in on...

Trade Secrets in the IP Action Plan

- Trade Secrets in the Data Economy
 - Promote data access and sharing, while safeguarding legitimate interests
 - Study soon completed on the legal protection of trade secrets in the context of the data economy
- Fighting IP infringement, in particular cyber theft of trade secrets
 - Reduction of the economic impact of cyber theft of trade secrets by promoting cybersecurity awareness and skillful IP management.
 - Development of Cyberawareness tools

Study on Trade Secrets in the Data Economy



- Study is in the final draft stage, validation workshop held in April
- Identifies the motivations of businesses for data sharing and obstacles encountered
- Legal clarity as to what data or datasets can qualify as a trade secret and how it can be safely shared are crucial for businesses
 - → important for internal IP strategies
- The recent Data Governance Act and Data Act proposal show the value and good timing of the project

Study on Trade Secrets in the Data Economy

- Built on a survey of about 80 companies and 50 interviews in key sectors for the data economy (health, automotive, energy and financial services)
- Some preliminary points from the surveys
 - Data sharing is considered highly significant across all sectors
 - But not too many companies know how to best take advantage of this – firms only recently began to consider the specific roles trade secrets could play in protecting shared CCV data
 - Protection through trade secrets is often used as a “additional layer of protection”, e.g. on top of contracts by the majority

The new cyber-theft toolkit



- Competitiveness through innovation is to a large extent dependent on intangible assets such as know-how and trade secrets which can be targeted by industrial espionage and theft through cyber means
- Estimates show that cyber-enabled theft of trade secrets currently account for nearly € 60 billion losses in economic growth in Europe and a consequent potential loss of 1.000.000 jobs.
- SMEs tend to underestimate the potential threats of cyber espionage and mistakenly believe risks only apply to nation states and large multinationals
- 2018 study: The scale and impact of industrial espionage and theft of trade secrets through cyber
 - Among the recommendations: need to enhance awareness

The new cyber-theft toolkit



- Goals: Set-up awareness raising tools to help EU SMEs and the research community to fight cyber theft, improving the resilience and enhance the level of awareness as well as the quality of response by SMEs, start-ups and research organizations to trade secret theft attempts
 - Development and upgrade of existing awareness raising tools
 - Development of educational resources, business guides and training modules
 - Recommendations for new and additional initiatives
- Next steps: Call for Tenders launched

Thank you



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