

Trade Secrets Model Guidance

SPONSORING COMMITTEE: Trade Secrets Committee

RESOLUTION: Presented on November 18, 2025

WHEREAS: the International Trademark Association (“INTA”) from time to time needs to analyze, comment on, and advocate with respect to national and regional trade secret laws, regulations, or directives;

WHEREAS: the International Trademark Association has no guidance on trade secret laws, regulations, or directives;

WHEREAS, the Trade Secrets Committee has recommended Trade Secrets Model Guidance to serve as a baseline standard by which INTA could analyze, comment on, and advocate for effective trade secret protection across jurisdictions;

WHEREAS: adoption of the Trade Secrets Model Guidance will also provide INTA with an authoritative framework to support potential advocacy, including submissions to policymakers and amicus filings before courts and tribunals;

WHEREAS: this Trade Secrets Model Guidance is limited to civil protections for trade secrets as an intellectual property right, and does not extend to criminal enforcement, national security, or other policy frameworks;

WHEREAS: trade secrets form an integral part of the intellectual property system and are essential to innovation, fair competition, and economic growth;

WHEREAS, the Trade Secrets Committee has drawn upon comparative analyses of national and regional frameworks, together with developments at the international level, to develop comprehensive guidance reflecting best practices in civil trade secret protection;

BE IT RESOLVED: that the International Trademark Association adopts the Trade Secrets Model Guidance attached hereto as Exhibit A to serve as a baseline standard for analyzing, commenting on, and advocating for national, regional, and international trade secret laws and regulations, including policy submissions and amicus filings.

BACKGROUND

Trade secrets are a critical form of intellectual property, protecting confidential business information that confers a competitive advantage. Inconsistent approaches among jurisdictions, however, create challenges for businesses, including INTA’s members, who rely on trade secret protection as part of their global IP strategies.

The Trade Secrets Committee developed the Trade Secrets Model Guidance (“Guidance”) to address these challenges and to propose clear, harmonized principles. These principles reflect INTA’s support for strong statutory definitions of trade secrets, effective enforcement mechanisms, adequate remedies, and appropriate procedural safeguards in litigation. The Guidance is intentionally limited in scope. It focuses on civil protections for trade secrets as an intellectual property right and does not address criminal enforcement, national security considerations, the protection of non-trade-secret confidential information, or overlaps with labor and employment law, data protection, individuals’ privacy rights (including publicity and personality rights), or competition law frameworks. These important topics involve distinct policy frameworks and their own separate treatment.

Guidance is intended to serve as a non-contentious and practical reference point, offering baseline standards for jurisdictions adopting or revising civil trade secret frameworks. It builds on comparative analyses of existing laws (including the TRIPS Agreement, the EU Trade Secrets Directive, U.S. Defend Trade Secrets Act, and other regional instruments) and draws on international norms.

In addition to establishing key principles, the Guidance highlights best practices in areas such as:

- definitions of trade secrets and lawful acquisition,
- burden of proof and evidentiary protections in court,
- remedies and damages,
- safeguarding confidential information in litigation while ensuring parties’ procedural rights, and
- international cooperation and enforcement.

The Guidance provides INTA with a structured framework for evaluating and commenting on legislative and regulatory proposals, and supports INTA’s broader goal of promoting harmonized, effective protection for trade secrets worldwide.

In addition, the Guidance provides INTA with a consistent building block to guide future advocacy, including policy submissions and amicus curiae filings.

The Trade Secrets Committee therefore recommends that the Board of Directors adopt the Trade Secrets Model Guidance.

Exhibit A

Trade Secrets Model Guidance

I. Introduction

The INTA Trade Secrets Committee has prepared this model guidance on trade secret protection to support greater consistency and understanding across jurisdictions. In doing so, the Committee has considered the current status of trade secret laws, regulations, directives, and common law protections in a range of legal systems, as well as opportunities for harmonization. These include potential convergence around standards for maintaining trade secret status, recognition of key differences among jurisdictions, and recent efforts at international norm-setting.

As part of this process, the Committee reviewed trade secret laws and practices in multiple jurisdictions, as well as the framework established under the TRIPS Agreement.

This guidance focuses on civil protections for trade secrets, rather than on criminal enforcement mechanisms or national security-related considerations. That focus was chosen simply to maintain the scope of this proposal and does not reflect a view on the importance of those other mechanisms for protection.

The guidance also does not address the protection of confidential information—but non-trade secret—information, which may be protected by contract or other legal doctrines. Additionally, this guidance does not address labor or employment law doctrines related to employee mobility, or overlaps with data protection or competition law frameworks. These areas involve distinct policy considerations and legal frameworks that vary widely across jurisdictions and generally fall outside the scope of trade secret protection as an intellectual property right.

II. Approach To Trade Secret Protection

a. Proposal

Trade secrets should be protected as an intellectual property right through a statute, regulation, or written directive.

b. Rationale

As a rule, trade secrets are too important an intellectual property right to be left undefined and governed solely by judge-made law. They are among the most valuable assets of companies—often on par with patents, trademarks, and copyrights. Organizations must be able to rely on predictable and stable protections in order to innovate and compete effectively, and a well-defined statutory or other legal right can support this need. At the same time, parties outside those organizations must be able to understand what information is protected and what belongs to the public domain.

In many but not all countries that lack statutory or other defined legal protection for trade secrets, the resulting uncertainty around the scope of the legal protections arguably has undermined innovation and investment. Therefore, on the whole, trade secrets should be protected through a statute, regulation, or written directive. Ideally, such legal protections should be comprehensive and national or regional in scope, and not subject to competing or contradictory laws or regulations adopted by individual countries, states, provinces, or local jurisdictions. While that level of uniformity may be difficult to achieve under constitutional or legal frameworks of some countries or regions, it remains important to establish at least a baseline form of written protection that carries the force of law.

III. Definition Of Trade Secrets

a. Proposal

A statute or other source of written protection should clearly define what constitutes a trade secret. In particular, the definition should focus on protecting information that is not generally known or readily accessible to the public, derives independent commercial value from its secrecy, and has been subject to reasonable measures to maintain its confidentiality.

b. Rationale

A clear definition provides legal certainty and predictability for both rights holders and third parties. The essential element of any trade secret definition is secrecy: if the information in question is not secret, it cannot be protected as a trade secret.

Whether information has sufficient commercial value to qualify as a trade secret should turn on whether that value is derived from the information being kept secret, rather than from any proven commercial success or active use in the marketplace. In some cases, valuable trade secrets may not yet be implemented or monetized but still warrant protection.

The requirement that reasonable steps be taken to maintain secrecy is a flexible standard that should be assessed in light of industry norms and the specific context. Measures such as restricting access to the information, using nondisclosure or confidentiality agreements (including employment and license agreements), and implementing physical and digital safeguards are all relevant in determining whether the steps taken are adequate to preserve confidentiality.

IV. Types of Information Eligible for Trade Secret Protection

a. Proposal

The scope of information eligible for trade secret protection should be flexible and sufficiently broad to accommodate both established and emerging categories of information and technology. Legal frameworks should not limit protection to fixed categories, as innovation continuously gives rise to new forms of valuable, confidential information.

It is important to note that not all confidential information qualifies as a trade secret. However, the following non-exhaustive list identifies categories of information and know-how that are commonly protected, provided they meet the criteria for trade secret protection:

- **Manufacturing Processes & Techniques**
 - Proprietary methods for producing goods (e.g., unique chemical formulations, machining processes).
 - Industrial techniques that improve efficiency or quality.
 - Special equipment designs or engineering methods.
- **Formulas & Recipes**
 - Chemical formulas.
 - Food and beverage recipes.
 - Pharmaceutical compositions.
- **Software & Algorithms**
 - Proprietary source code.
 - Machine learning models and AI algorithms.
- Data processing methods or encryption techniques.
- **Business Strategies & Marketing Plans**
 - Pricing strategies, market research data, and business development plans.
 - Expansion or acquisition plans.
 - Customer acquisition and retention strategies.
- **Customer & Supplier Information**
 - Customer lists and preferences.
 - Supplier contracts and pricing agreements.

- Special negotiated terms or exclusive relationships.
- **Product Designs & Prototypes**
 - Confidential designs for new products.
 - Technical blueprints and CAD models.
 - Unreleased innovations or prototypes.
- **Scientific Research & Development**
 - Proprietary lab research and experimental data.
 - Drug discovery methods.
 - Material compositions and nanotechnology advancements.
- **Financial Information & Cost Structures**
 - Internal financial projections and profit margins.
 - Cost structures and sourcing details.
 - Budgeting strategies.
- **Operational Procedures & Internal Policies**
 - Unique workflow processes.
 - Specialized training materials.
 - Security protocols and compliance strategies.

b. Rationale

While a statutory definition should be clear and precise, it is important that it not be exhaustive with respect to the categories of information it protects. This flexibility allows the law to adapt to evolving technologies, business practices, and forms of innovation without requiring constant legislative revision.

V. The Essence of Trade Secret Protection

a. Proposal

Trade secrets should be protected for as long as the information remains secret and subject to reasonable efforts to maintain its confidentiality. Unlike other forms of intellectual property, such as patents or copyrights, trade secret protection should not be limited by a fixed statutory duration. Similarly, there should be no requirement to register or record trade secrets, as their very existence is typically not intended to be publicly known.

b. Rationale

It is important to distinguish trade secrets from other forms of intellectual property, as they are protected not through public disclosure or formal registration, but through the maintenance of secrecy. The difference in the basis for protection explains why trade secrets are not subject to a fixed term or registration requirement, and why their protection depends on the continued application of reasonable measures to preserve confidentiality.

VI. Misappropriation As a Basis for Trade Secret Enforcement

a. Proposal

A cause of action or administrative recourse for the misappropriation of a trade secret shall be available when a person acquires, uses, or discloses a trade secret without authorization and in circumstances that meet the applicable legal standard for misappropriation. The terms “misappropriation,” “acquire,” “use,” and “disclose”

should be clearly defined in any statute, regulation, or directive. Acquisition constitutes misappropriation when it occurs through improper means, including, but not limited to, theft, bribery, misrepresentation, breach of a duty to maintain secrecy, or other unlawful conduct. Use or disclosure shall constitute misappropriation where the person knew, or ought reasonably to have known, that the trade secret had been acquired through improper means or in breach of a legal or contractual duty of confidence.

Liability for misappropriation may also arise where a person, who did not directly acquire the trade secret through improper means, **knew, or had reason to know**, that the information had been obtained or disclosed in violation of a duty or through unlawful conduct. Such liability should extend to the use or further disclosure of the trade secret by third parties in those circumstances.

Trade secret protections should also apply to cross-border misappropriation and misuse, including situations where a trade secret is acquired in one jurisdiction and used, disclosed, or exploited in another. The ability to bring such cross-border actions may be affected by existing laws, regulations, or directives governing jurisdiction and the legal basis for establishing causes of action, which may require amendment to ensure effective enforcement.

Jurisdictions are encouraged to adopt mechanisms for international cooperation, including the recognition and enforcement of foreign judgments and the availability of cross-border remedies such as preservation orders or injunctive relief. Legal frameworks should ensure that trade secret protections and remedies are available regardless of the nationality or residence of the right holder or the alleged wrongdoer.

b. Rationale

This proposal offers a neutral and adaptable framework for defining the misappropriation of trade secrets. It is designed to align with existing international obligations, including the TRIPS Agreement, and to reflect widely accepted legal principles concerning improper acquisition and use. The framework distinguishes between lawful and unlawful conduct, allowing for flexibility in national implementation while supporting legal clarity and predictability. By addressing both the initial acquisition of a trade secret and its subsequent misuse, the proposal aims to provide a foundation for coherent enforcement, particularly in cross-border and digital contexts.

Trade secret protection would be incomplete without addressing the actions of third parties who knowingly benefit from misappropriated information. Third-party liability ensures that those who did not commit the initial misappropriation, but who later use, disclose, or profit from a trade secret with knowledge of its unlawful origin, can be held accountable. This reflects a standard of reasonable awareness, which is critical in complex commercial environments where information may change hands multiple times. This principle reinforces fairness and closes a potential loophole that could otherwise encourage indirect misuse.

In today's interconnected economy, trade secrets routinely move across borders—whether through international business collaborations, remote work arrangements, cloud-based systems, or global R&D networks. Misappropriation may occur in one country and be exploited in another, creating enforcement challenges. Including cross-

border provisions ensures that protections are not limited by geography and that rights holders can pursue remedies even when the parties or acts in question span multiple jurisdictions. Encouraging mutual legal assistance, recognition of judgments, and jurisdictionally flexible remedies also promotes consistency and discourages opportunities for bad faith conduct that seeks to exploit legal gaps between countries or regions.

VII. Legal Remedies for Trade Secret Misappropriation

a. Proposal

Courts or administrative bodies should be empowered to grant injunctive relief to prevent the unauthorized use, disclosure, or further dissemination of misappropriated trade secrets. This may include interim or preliminary injunctions where immediate action is necessary to prevent irreparable harm, as well as permanent injunctions following a determination on the merits. In appropriate cases, courts or administrative bodies should also be able to order corrective measures, such as requiring the return, deletion, or destruction of materials containing or derived from the misappropriated trade secret.

Rights holders should be entitled to monetary compensation for the economic harm suffered as a result of trade secret misappropriation. This may include actual damages, such as lost profits or increased costs, as well as an accounting of profits wrongfully gained by the misappropriating party. Where such losses are difficult to quantify, damages may be calculated based on a reasonable royalty that would have been agreed for lawful use under similar circumstances. Other forms of monetary relief, such as the award of exemplary or punitive damages and/or attorneys' fees and costs to the prevailing party, may be appropriate where such remedies are consistent with the legal principles and practices of the jurisdiction concerned.

To ensure effective enforcement, courts or administrative bodies should be authorized to issue **seizure or preservation orders** to prevent the destruction, concealment, or transfer of materials containing the trade secret. Such orders may be granted on an expedited or *ex parte* basis where there is a credible risk of irreparable harm or loss of evidence. Any such measures should be proportionate and subject to procedural safeguards, including prompt judicial review.

Legal frameworks should, where permitted and consistent with the principles of international comity, provide for remedies in cases of cross-border trade secret misappropriation. This may include the ability to seek injunctive relief or preservation orders with respect to conduct or data located outside the jurisdiction, particularly where the unauthorized use or disclosure has effects within it.

Jurisdictions are encouraged to adopt mechanisms, where appropriate, for the recognition and enforcement of foreign judgments related to trade secret protection. Remedies should also be available against foreign persons or entities who knowingly use or benefit from misappropriated trade secrets, subject to applicable jurisdictional standards.

In legal or administrative proceedings, **procedural safeguards should be available to protect the confidentiality of trade secrets at issue**. These may include holding hearings in closed session, sealing court or agency records, issuing protective orders to

limit access to sensitive materials, or using redacted versions of documents and decisions. Such measures are critical to ensuring that legal enforcement does not itself result in further disclosure or loss of the trade secret. Not all jurisdictions may currently permit such measures, and legislative or regulatory amendments may be necessary.

b. Rationale

Effective legal protection of trade secrets requires remedies that are not only responsive to past harm but also capable of preventing ongoing or future misuse. The remedies proposed are designed to address the unique nature of trade secret information, which can lose its value entirely once disclosed, and which may be difficult to restore through monetary compensation alone.

Injunctive relief is a foundational remedy because it allows courts or administrative bodies to halt the unauthorized use or disclosure of trade secrets before irreparable harm occurs. Trade secrets are inherently vulnerable to rapid dissemination—especially in digital form—and once secrecy is lost, the competitive advantage is typically irretrievable. Injunctions serve to preserve the status quo, prevent further harm, and reinforce the value of maintaining confidentiality.

Monetary damages ensure that rights holders are compensated for the actual economic harm they suffer as a result of misappropriation. This includes both direct losses, such as reduced sales or lost business opportunities, and indirect harm, such as diminished market position or reputational damage. Where these losses are difficult to quantify, damages may be calculated based on a reasonable royalty—reflecting the amount a willing licensee would have paid for lawful and authorized access. This approach provides a fair and predictable basis for redress when exact financial harm cannot be proven.

While not universally available, exemplary or punitive damages and the recovery of attorneys' fees and costs can serve important functions in jurisdictions where such remedies are permitted. Exemplary or punitive damages may be awarded in cases of willful, malicious, or particularly egregious misappropriation, with the goal of deterrence and reinforcing the seriousness of intentional wrongdoing. The ability to award attorneys' fees and costs to a prevailing party—whether to sanction bad-faith litigation or support prevailing parties—can enhance access to justice and discourage abusive or obstructive litigation tactics.

Seizure and preservation orders play a pivotal role in securing evidence and preventing the destruction, concealment, or unauthorized transfer of trade secret materials. These orders support timely and effective enforcement, particularly in digital environments where data can be copied and transmitted instantly. Provisional measures of this kind are essential to prevent irreparable harm and to preserve the integrity of the legal process. To be effective and fair, such orders must be proportionate, subject to procedural safeguards, and accompanied by prompt judicial review.

In a globalized economy, trade secrets are frequently transferred, stored, and misappropriated across borders, particularly in digital and technology-intensive sectors. Addressing cross-border misuse requires remedies that can operate beyond national or regional boundaries. At the same time, such measures must respect **jurisdictional**

limits and the principles of international comity. Striking this balance helps ensure the enforceability of trade secret protections across legal systems with differing legal traditions and procedural frameworks.

Finally, **confidentiality protections during litigation** or administrative proceedings are essential to preserving the very rights being enforced. Courts and administrative bodies must have the ability to hold closed hearings, seal records, and issue protective orders to limit disclosure of sensitive information. In some jurisdictions, such protections may be unavailable because of principles favoring public access. Addressing this challenge may require broader changes to how courts or administrative bodies conduct proceedings. Ultimately, these safeguards help strike a necessary balance between transparency in the legal process and the protection of confidential business information.

VIII. Defenses and Exceptions to Liability for Trade Secret Misappropriation

a. Proposal

Liability for the misappropriation of a trade secret should not arise where the information was acquired, used, or disclosed through lawful means. Lawful means may include, but are not limited to, independent development without access to the trade secret, reverse engineering of a lawfully acquired product, where reverse engineering is not contractually prohibited, or acquisition of the trade secret with the express consent of the rightful holder. Where lawful means are asserted, the burden should rest with the alleged user to demonstrate that the information was obtained independently or through other lawful means.

Information that has become generally known or readily accessible to the public through lawful disclosure, or through no fault of the person accused of misappropriation, should not be protected under applicable trade secret laws or regulations.

b. Rationale

The inclusion of exceptions to liability under applicable trade secret laws, directives, or regulations clarifies the limits of protection and helps ensure a fair balance between the rights of trade secret holders and the broader public interest. That interest, however, should be clearly defined in statutes, regulations, or directives to avoid undue public disclosure and to safeguard the legitimate expectations of trade secret holders.

Where lawful acquisition or use is asserted, the burden should rest with the party accused of misappropriation. This reflects the principle that such facts are typically within that party's control.

Trade secret protection is intended to prevent the misappropriation of specific types of confidential commercial information, not to inhibit lawful competition or restrict the movement of legitimately acquired knowledge.

IX. Assignment And Licensing of Trade Secrets

a. Proposal

Legal frameworks for the protection of trade secrets should recognize that trade secrets may be transferred or licensed, in whole or in part, through contractual arrangements. These arrangements may include assignments of ownership, exclusive or non-exclusive

licenses, joint development agreements, or other forms of lawful use. This licensing does not include compulsory licensing of trade secret rights, which should not be permitted.

To ensure clarity and enforceability, legal systems should provide that the rights and obligations associated with a trade secret may be transferred or licensed under conditions agreed upon by the parties. The validity of such agreements should not be dependent on formal registration, as the existence of a trade secret should remain confidential.

Trade secret protections and obligations should remain enforceable against third parties who acquire or use the information in breach of the terms of an applicable license or assignment, or who otherwise act with knowledge of such an agreement.

b. Rationale

Trade secrets are often valuable business assets whose value depends not only on their secrecy but also on their **controlled dissemination and commercial use**. Assignments and licenses allow companies to **collaborate, outsource, and commercialize innovations** while maintaining confidentiality. Whether between business partners, within multinational groups, or through joint ventures and research alliances, licensing and assignment agreements are central to the modern use of trade secrets. However, because trade secrets are not granted by the state and derive their value from confidentiality, licensing should remain voluntary, and compulsory licensing of trade secrets is inappropriate.

X. Interplay Of Trade Secrets with Other Intellectual Property Rights

a. Proposal

Trade secret protection should be recognized as a distinct and complementary form of intellectual property (IP), capable of operating independently or alongside other IP rights.

Trade secrets may be used to protect valuable technical or commercial information that is not eligible for registration-based IP protection, such as inventions that are not patentable, proprietary algorithms, manufacturing know-how, business strategies, or undisclosed data. At the same time, the protection of confidential, but non-trade secret, information through contractual or other legal remedies remains unaffected by the principles governing trade secret protection.

Legal frameworks should acknowledge that the protection of trade secrets does not depend on formal registration, publication, or novelty requirements. Trade secrets may co-exist with other IP rights (such as patents, copyrights, or designs), but they retain independent legal value regardless of whether the same subject matter is, or could be, protected by another form of IP.

Jurisdictions should also ensure that the enforcement or disclosure of one IP right does not automatically extinguish or waive trade secret protection unless the information has been made public or disclosed by the trade secret holder in a manner inconsistent with confidentiality. Where appropriate, legal systems should support mechanisms that allow rights holders to manage transitions between trade secret protection and other IP strategies (e.g., filing for patent protection after maintaining secrecy during R&D).

b. Rationale

Trade secrets serve as a flexible and non-registrable form of protection for a wide variety of intellectual assets—especially those that derive value from secrecy, rather than from public disclosure. Unlike patents, which require publication and meet specific subject-matter and novelty criteria, trade secrets are protected based on confidentiality, value, and reasonable efforts to maintain secrecy. This allows trade secrets to fill important gaps in IP systems, particularly for early-stage research, proprietary processes, or internal business information.

In many cases, trade secrets complement other forms of IP. For example, a company may use trade secrets to protect pre-patent R&D, confidential implementation methods of a patented invention, or non-public datasets supporting a copyrighted work. However, trade secret protection is also critical as a standalone right—especially for innovations that do not meet the thresholds for patentability or where public disclosure would undermine commercial advantage.

Clarifying that trade secrets can exist independently of other IP rights encourages businesses to choose the most appropriate form of protection for their specific assets and strategies. It also reduces confusion about the overlap between rights, prevents inadvertent waivers of confidentiality, and promotes a more integrated approach to IP management across jurisdictions.