



In the end, it is up to the discretion of the court to summarize the damages. In Canada, a patentee need only prove lost sales and profits as a result of the infringement.

Trade Secrets

Because trade secrets are protected under state law in the U.S. there is a range of variation among states. "Trade secret law protects a company from the misappropriation of valuable confidential information. Misappropriation arises from either the unauthorized use or disclosure of the trade secret or its acquisition by improper means such as theft, misrepresentation or breach of a duty to maintain secrecy."⁷

Trade secrets are considered anything that gives a company a competitive advantage and has not been publicly disclosed. For example, in the software and multimedia development field any type of algorithms, logic diagrams or customer list may be a trade secret. In addition, those aspects of one's research that did not function properly and never developed into a commercial product would also be considered trade secrets.

To obtain a trade secret no formal procedures have to be followed. Instead, any information that may meet these loose subject matter requirements and which a company has taken reasonable steps to protect may be considered a trade secret. "Reasonable steps vary depending on the value of the information, but typically include the use of signed non-disclosure agreements from those who are given access to the secret information."⁸

Trade secret is the most fragile of all forms of protection, particularly to software. The reason is that reverse engineering of object-oriented code is not prohibited by trade secret law. To protect the code other forms of intellectual property law, such as copyright or patent should be invoked.

Trademark Law

The Lanham Act protects all trademarks used in interstate or foreign commerce in the United States. This is a broad reaching law and effects almost every business transaction but the most local of transactions. A federal registration is obtained when an individual

⁷ Noble, L. (1995) *Maximize Your Return on R&D: Protect Your Intellectual Property*, Software Publishers Association Market Watch, Spring, pp. 17-23.

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