

The Sedona Conference Commentary on the Governance and Management of Trade Secrets (July 2023)

This Commentary was written from both legal and business perspectives as a useful reference for the design and implementation of trade secret governance and protection programs in corporate environments. It can also provide insight to litigators and judges about the practical ways companies approach the “reasonable efforts” requirement in trade secret law. The central message is that programs to manage trade secrets, like other business processes, should align with business objectives in the context of the needs of the specific business. Ideally, trade secret management should be contextual and strategic, and not just a collection of “boilerplate” forms and protocols that may bear little relationship to the actual trade secrets and risk environment of a particular company.

While trade secret management demands strategic business thinking, it also has a legal dimension. The existence of a trade secret depends in part on whether the company has exercised “reasonable efforts” (or “reasonable measures”) directed at maintaining its secrecy. This standard corresponds to the relevant circumstances of each enterprise, so that there can be no “one size fits all.” In effect it suggests that the judge or jury apply the same kind of analysis; namely, an assessment of the value of, and risks to, specific trade secrets in the context of the company’s particular business and resources. We hope that this paper will help management formulate a proactive, tailored, and practical approach to managing trade secret assets that will address both business and legal requirements.

This *Commentary* presents four Principles for the governance and management of trade secrets:

- Principle 1** Trade secrets should be protected by efforts that are reasonable under the circumstances to maintain their secrecy and value. Absolute secrecy is neither possible nor required. There is no one-size-fits-all approach.
- Principle 2** A trade secret protection program should be actionable and achievable, rather than conceptual or aspirational. Once implemented, it should be periodically evaluated and adjusted as the company’s trade secrets, business, and risk environment evolve.
- Principle 3** A trade secret protection program should align with business goals and measurable objectives such as (1) securing and maintaining competitive advantage for the business; (2) leveraging trade secrets to commercialize new products and services; (3) supporting, generating, and incentivizing continued innovation; (4) extracting additional value from trade secrets through licensing, acquisitions, or secured financing; and (5) enforcing trade secret rights as necessary.



Principle 4 Trade secret governance generally requires an integrated enterprise approach that should accommodate and satisfy multiple and potentially conflicting corporate interests, including effective controls, information governance and data security, talent acquisition and retention, operational efficiency, disciplined budgets, reasonable return on investment, third-party information sharing demands, and legal enforceability.

The full text of *The Sedona Conference Commentary on the Governance and Management of Trade Secrets* (July 2023) is available free for individual download from The Sedona Conference website at:

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