

# Understanding Trade Secret Law

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# Understanding Trade Secret Law

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*To Gail and Doug*

*J.G.S.*

*To my two best gals (but especially Alexis)*

*T.G.S.*



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# Preface

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As the American economy continues its transition to the information age, property rights in information are becoming more important. Terms like “patent,” “copyright,” and “trademark” have become part of public discourse. But one type of intellectual property—which protects everything from a proprietary recipe for fried chicken to the algorithm governing the world’s largest search engine—has remained relatively unknown until recently.

Trade secret law—which protects confidential information that is not readily ascertainable or generally known—has expanded to meet the needs of an era when raw information divorced from any physical form has significant value. This subject has evolved from a state common law doctrine into a field dominated by state and federal statutes. Almost all states have adopted statutes based on the Uniform Trade Secrets Act. And, more recently, the enactment of the Defend Trade Secrets Act has created a federal remedy for trade secret misappropriation.

Today trade secrets are more valuable than ever. Virtually every business relies on trade secrets, ranging from the largest tech company to the smallest florist. As the Congressional Research Service has noted, “the strength and competitiveness of domestic firms increasingly depends upon their know-how and intangible assets,” information protected as trade secrets.<sup>1</sup> As a result, trade secret litigation has increased exponentially.

The goal of this book is to explain trade secret law clearly and succinctly to students, attorneys, and judges, while being mindful of the ever-evolving policies and tensions that underlie the field. Trade secret doctrine seeks to promote commercial morality and incentivize innovation, while not unduly interfering with free competition and labor mobility. As a result, it reflects a balance of conflicting interests.

Many people helped us with this book. We are grateful to Gail Heckemeyer, Clark Kelso, Gregory Lantier, and Michael Vitiello who read parts of the book and provided useful suggestions. We also thank the National Conference of Commissioners on Uniform State Laws for permission to include the Uniform Trade Secrets Act (as amended in 1985) and its accompanying commentary as an appendix to the book.

This book contains our personal views on trade secret law. It does not necessarily reflect the views of the University of the Pacific or Wilmer Cutler Pickering Hale &

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1. Cong. Research Service, *The Role of Trade Secrets in Innovation Policy* 2 (2010).

Dorr LLP. And because the audience for this book is students, attorneys, and judges, it should not be used as a substitute for the advice of an attorney about a specific problem involving trade secret law.

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Thomas G. Sprankling

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