

SafeGuard

Potter Clarkson

Trade Secrets Audit & Protection

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Audit. Protect. SafeGuard.

3 simple steps that will
maximise the commercial
value of your trade secrets

Today, intellectual property is one of a company's most valuable assets.

However, while businesses design increasingly sophisticated strategies to protect their patents and trade marks, recent studies show that, despite their value, many companies still do not afford their trade secrets the same degree of protection.

Sometimes this is because a business hasn't taken the time to identify the trade secrets they have. Sometimes it's because they feel they don't have any; that trade secrets are limited only to the recipes behind Coca Cola, WD40 or Kentucky Fried Chicken, or the technology behind Facebook or Google.

This is certainly not the case. All businesses have trade secrets. And all businesses must protect their trade secrets.

Moreover, the need to protect trade secrets actively and effectively has never been greater.

Trade secret laws are changing. This means loopholes are likely to be exposed, with the ever-increasing prevalence of this threat demonstrated by the corresponding increase in trade secret litigation every year.

The regulatory environment is changing too. Legal reforms are challenging the efficacy of other forms of IP and all over the world tax authorities are taking a greater interest in companies' intangible assets.

And the trading environment is changing, with greater emphasis being placed on innovation and outsourcing. Indeed, certain businesses are starting to display a worrying determination to disrupt or even start trade wars in certain sectors.

If that wasn't enough, there is also the higher staff churn, increased data security risks and changing working environment caused by Covid-19 to contend with.

All these factors only add to the level of risk to your trade secrets.

We have created SafeGuard to make tackling and minimising this risk as straightforward as possible by helping you to:

- > Identify and audit your trade secrets
- > Assess the current level of protection around your trade secrets
- > Create the legal and compliance framework required to protect your trade secrets
- > Implement a comprehensive compliance framework so your trade secrets are protected
- > Remain vigilant so you can address potential threats before they become an issue
- > Create an action plan so that you can take immediate action if your trade secrets are threatened

Should you be thinking about protecting your trade secrets?

While many businesses still think they don't have any trade secrets, the truth is if your business is built on information that:

- > Is kept secret
- > Has commercial value (now or in the future) because it is secret

you have trade secrets. But to ensure that your trade secrets are protected, you must take steps to identify and protect these valuable assets.

As we've said, trade secrets are not limited to recipes or the way a particular piece of tech works. A trade secret can be a formula, practice, process, design, instrument, pattern, a commercial method, or even a compilation of information.

They can be part of a business plan, raw or processed data, an algorithm, code, marketing information, client or supplier details, test results, competitor or market analysis or product roadmaps.

They can also be your non-patented inventions.

So, given how much of your most valuable intellectual property is likely to be held as trade secrets, what can you do to keep them safe?

As with your patents, trade marks and designs, your trade secrets can only continue to deliver value if they are managed properly and professionally.

Unfortunately, trade secrets are all too often the neglected step-child of IP. They are rarely mentioned in IP training, conferences, and seminars. Many advisors neglect to consider their value and in-house IP practitioners are often kept too busy dealing with the other major IP rights to find the time to address their trade secrets in a meaningful way.

Over time this could cause costly cracks in a business' IP portfolio.

Trade secrets may have the potential to be the most valuable IP your organisation possesses but they can only be secured - and, therefore, retain their commercial value - if they are kept a secret and steps are taken to protect them.

This means that it is absolutely essential you find an effective and cost-efficient way to identify, audit, protect, manage, and document your trade secrets.

This is where SafeGuard will help.



How does SafeGuard work?

While every project is different depending on your business and your particular assets, SafeGuard always follows our very straightforward 3-step process:

STAGE 1: AUDIT & EDUCATION

We begin by taking a deep dive into your business to work out exactly where you are, what you have, and where you need to be.

For a fixed price, we will conduct a review that will identify where your business currently stands in terms of awareness of the need to protect its trade secrets and compliance with the relevant legal provisions.

This will include:

- > A review of your team's knowledge of regulations and possible compliance issues
- > At least one interview with a key stakeholder in the business to determine your objectives
- > Delivery of educational material to your team, including a detailed presentation to senior management
- > Preparation of a report outlining the key issues and setting out a detailed action plan

STAGE 2: IMPLEMENTATION

Once we have a full assessment of your current situation and understand what you need to do to secure the long-term future of your trade secrets, we will work with you to deliver on the agreed action plan. Typically, this will include:

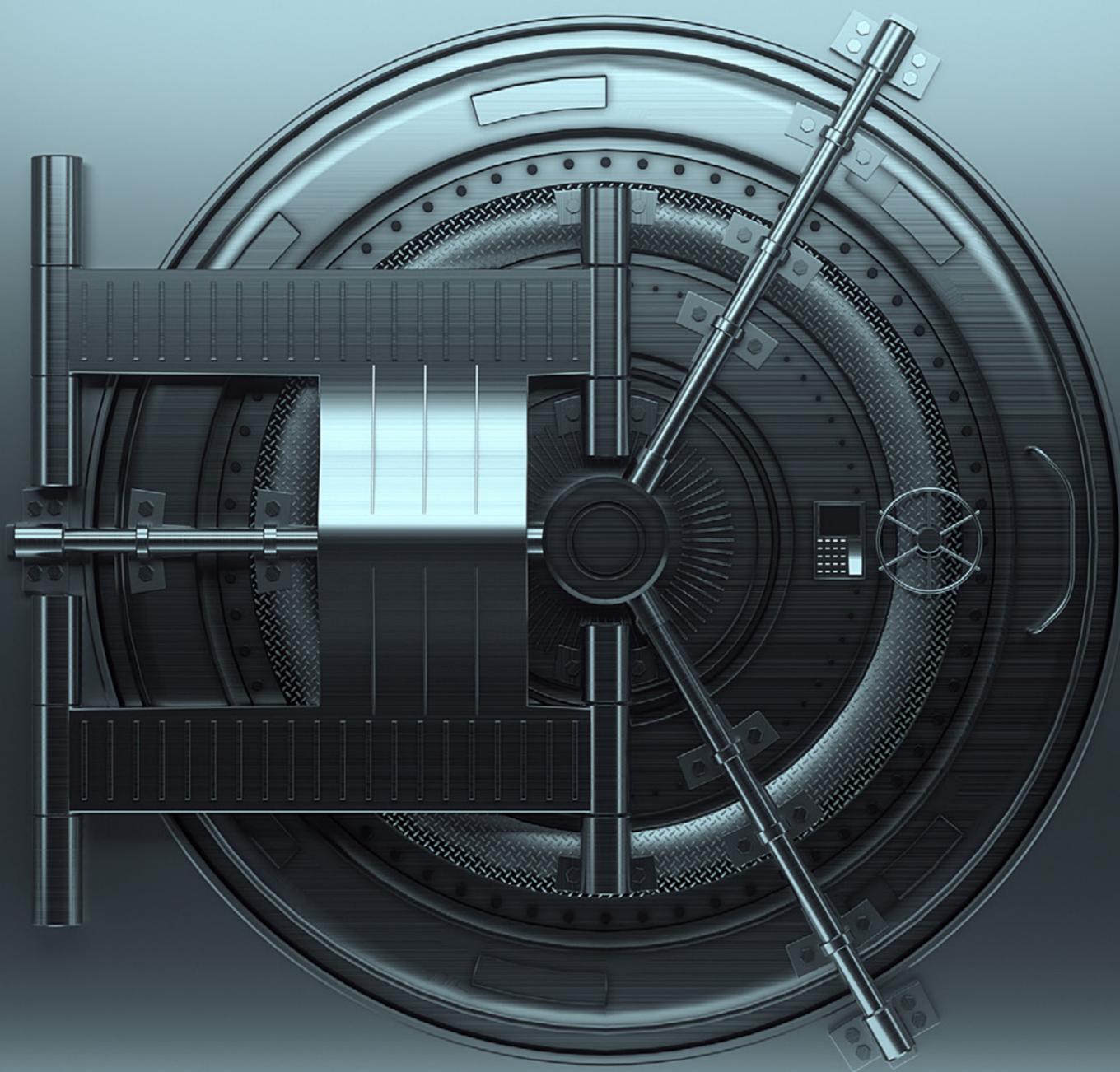
- > Developing and implementing a bespoke trade secrets compliance policy, to sit within the framework of your overall IP strategy
- > The review and, if necessary, amendment of relevant legal agreements

- > A review of your employment and supplier/contractor contracts
- > Implementing the use of a secure trade secret registry
- > Advice on other 3rd party services you may want to consider, e.g. specialist insurance

STAGE 3: COMPLIANCE & MONITORING

Depending on your specific requirements and your demand for ongoing support, we can arrange regular review meetings to ensure you are continuing to manage your trade secrets effectively and monitor all the potential sources of risk.

And in the event that your trade secrets are lost or stolen, we will be on hand to assist you in taking the required action.



What will SafeGuard do for your business?

The quick answer is SafeGuard will help you provide your trade secrets with the level of protection they deserve.

Given the vital contribution your trade secrets make to your commercial and financial success and how much they add to the value of your business, this should be reward enough for your efforts.

However, having effective and comprehensive trade secret protocols in place will also deliver a number of additional benefits including:

- > Providing you with a real-time view of your company's trade secret portfolio so you always know what assets you have, how they are being managed and which of your trade secrets can be de-classified
- > Reducing the likelihood of your trade secrets being misappropriated by your (ex) employees, directors, investors, suppliers, customers, partners, and competitors
- > Making sure you don't become a victim of the continuing increase in trade secret disputes
- > Giving you a clear road-map you can use to develop the strongest possible framework to manage your trade secrets rather than wasting unnecessary time and expense learning by trial and error
- > Ensuring you have taken every reasonable step to keep your trade secrets secret (including the marking of trade secret documents, introducing access management and administrative processes and technical and legal protection mechanisms, and logging and tracking any trade secret metadata)
- > Setting up a process to make sure your trade secrets receive regular reviews and maintenance, so their commercial value is upheld and they remain aligned with your company's commercial objectives



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