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Dealings with vendors shouldn't expose trade secrets

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Companies that spend significant amounts implementing computer systems to thwart hackers and creating policies to prevent employees from stealing trade secrets are all too willing to disclose such secrets to vendors.

Here's the problem. Just as every human being possesses a unique genetic code, every company has its own methods and processes. These trade secrets are the result of years of research and trial and error, and they are constantly evolving and improving. They are what distinguishes one company from another.

When a well-meaning vendor enters a business to discuss its product, perform a demonstration or propose a joint-development agreement, the host company often grants the vendor access to areas where the general public can't go. It too readily shares details about products and systems. This could include customer information, manufacturing processes, or plans for future products. Compounding the problem, the host frequently signs a nondisclosure agreement, in which it agrees to keep confidential the vendor's product information. However, no agreement is reached concerning the host's sensitive information -- a vendor can walk out the door with trade secrets.

What starts as a harmless product demonstration can quickly become a legal battle over trade-secret theft that can cost both sides hundreds of thousands of dollars in legal fees. In one local case, the host company, after an extensive trial of the vendor's product, determined it was of little value and that its own plans for a similar product would achieve a much better result. When the host proceeded, the vendor sued. During two years of litigation, the parties fought over what

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was said during the demonstration and whether the host ripped off the vendor's idea or the vendor made improvements to its own product based on what it learned from the host.

The risk of such litigation can be greatly reduced by following these steps:

- Conduct a trade-secret audit. All companies should know what their most-valued business information is, information their competitors would love to obtain. Take time to document specifically this information. In the event there is ever litigation over the disclosure of trade secrets, this will serve a company well. Many a lawsuit has been thrown out because the plaintiff couldn't adequately identify its trade secrets.
- Improve the vendor-invitation process. Employees are often awed by new technology that promises to make their jobs easier, and they are quick to ask vendors to visit. Unfortunately, these employees fail to involve senior management, research and development departments, and the information technology staff to ensure a product fits in the company's big picture. Companies should designate one employee to coordinate vendor visits and product demonstrations, and this person should ensure appropriate departments are involved to help decide whether to have the demonstration and whether the product is a good fit.
- Do not maintain a public visitor's log. Otherwise, a vendor can see a list of all recent visitors. The list generally includes reasons for visits, allowing vendors to see what other products a company is evaluating and what the company is working on. The vendor can share this information when visiting your competitors.
- Be careful what you sign. Vendors often ask companies to sign nondisclosure agreements, which should always be reviewed by senior management and, if possible, in-house or outside counsel. Problems arise because the agreements tend to be too general. Some agreements say everything disclosed by the vendor is confidential, even if

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the rest of the world may already know it. By signing an overly broad agreement, companies take on far more obligations than they should and can accidentally restrict their own abilities to develop similar products. Senior management and attorneys can help make these agreements more specific and make sure appropriate exceptions are included for matters of general knowledge, information already known to the company, and plans that are already on the company's drawing board.

- Have your own nondisclosure agreement. Vendors often need to know some degree of a company's sensitive information to ensure their product is a good match. Why agree to keep a vendor's information secret if they are not willing to do the same for yours? Any nondisclosure agreement should be mutual, and it should describe the types of sensitive information to which the vendor is being granted access. Requiring the vendor to sign a nondisclosure agreement also imparts the message that trade secrets are a serious matter, further reducing the risk the vendor will disclose the information to others.
- Keep detailed records. Companies should keep track of each vendor visit, identifying employees the vendor met, and describe all communications.

These steps will reduce greatly the risk of further litigation. If such litigation does occur, these steps will greatly increase a company's chance of prevailing.



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