SESSION II: ALTERNATIVE SCENARIOS - IMPROVING THE EXISTING LEGAL FRAMEWORK

Know-how protection and Big Data: ‘data protection for companies‘ in a networked economy

Dr Michael Dorner

GRUR meets Brussels Workshop | Brussels | 15 June 2016

Towards a connected Digital Single Market - what about a new ‘industrial data protection right’ for companies?
## Agenda

<table>
<thead>
<tr>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dominance of Know-How Protection in the Current Legal Framework</td>
</tr>
<tr>
<td>Is the EU Trade Secrets Directive Fit for (the Digital) Purpose?</td>
</tr>
<tr>
<td>Conclusions &amp; Challenges</td>
</tr>
</tbody>
</table>
Dominance of Know-How Protection in the Current Legal Framework

**Database/Software Law**
- Database Directive 96/9/EC

**Privacy Law**
- Data Protection Directive 95/46/EC
- ePrivacy Directive 2002/58/EC
- General Data Protection Regulation (Regulation (EU) 2016/679)

**Penal Law**
- Convention on Cybercrime

**Trade Secrets Directive**

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Trade Secrets Directive | Background & Objectives

EUROPEAN UNION

THE EUROPEAN PARLIAMENT

2013/0402 (COD)

Brussels, 26 April 2016
(OR. en)

THE COUNCIL

PE-CONS 76/15

PI 107
CODEC 1766

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure
Definition of "Trade Secret"

(Un-)Lawful Acquisition, Use and Disclosure

Confidentiality in Legal Proceedings

Measures, Procedures and Remedies
Trade Secrets Directive | Digital Business

Predictive Maintenance Scenario
"trade secret" means …

… information which is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

… has commercial value because it is secret;

… has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
Trade Secrets Directive | Pending Questions

- Scope of Application?
- Commercial Value?

- "reasonable steps"?
- "control"?

- Need for mandatory restrictions?

- Anonymization?
- "honest commercial practice"?
Know-how Protection and Digital Business Conclusions and Challenges

- No exclusive rights to information/data protected as a trade secret
- Increasing importance of know-how protection
- Legal concepts of an analog world for the challenges of the digital age
- Who to fill the gap - if also identified by an economic assessment?
- For the time being, market players to proactively implement safeguards to gain access to and to protect their most valuable assets (Data Compliance)
Many thanks for your attention!

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