

End of Transparency: Paving the way for Trade Secrets in TTIP

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Fear struck communities in 2009 as the H1N1 influenza virus (commonly known as swine flu) erupted around the world. On the advice of the World Health Organisation (WHO), which swiftly defined the outbreak as a pandemic, governments in the European Union and abroad increased stockpiles of anti-viral medicines, including Roche's costly drug, Tamiflu (oseltamivir). As H1N1 spread, Tamiflu sales surged. But little did governments, health care providers and patients know that Tamiflu was only as effective as a simple painkiller in treating the virus. Roche had not shared all of its clinical data that showed this — and billions of euro from already strained health care budgets were wasted.

Tamiflu's inability to reduce hospitalisations from serious flu complications was only exposed because the Cochrane Collaboration fought long and hard to access Roche's clinical data. This crucial information enabled Cochrane's independent researchers to conduct an objective assessment of Tamiflu's safety and efficacy. Their findings, which were so crucial in exposing the poor therapeutic value of Tamiflu, demonstrated, beyond doubt, the need for full disclosure of corporate data and information when it benefits the public interest.

Companies, including those in the pharmaceutical sector, go to great lengths, however, to avoid disclosing important data that affects citizens' health and wellbeing. Chemical companies, for example, do not like to discuss what is in our plastics, clothing and cleaning products. And food companies prefer not to release full toxicological studies on their products. They contend that this information is "commercially confidential" and should be protected as "trade secrets". But if the public interest is at stake, industry's argument for trade secret protection should be thrown out.

Over the past year, industry has formed a powerful coalition in the EU and United States to lobby for harmonised domestic trade secret protection. Unfortunately, it appears the European Commission has given in to this pressure by proposing a worrisome EU trade secrets directive, which members of the European Parliament are debating.

The directive is of grave concern because it contains an incredibly broad definition of "trade secrets" — one that would enable a company to deem virtually anything commercially confidential. It will also give companies extensive legal powers to sue anyone who, in their view, unlawfully acquires, uses or discloses company-defined "trade secrets". This includes researchers, journalists and whistle-blowers, who try to expose dangerous corporate products or practices. EU workers could also be liable for damages if they take their skills and competences to a new employer.

The timing of the Commission's proposed directive is no coincidence. The EU and US are currently negotiating the Transatlantic Trade and Investment Partnership (TTIP). If members of the European Parliament vote in favour of the directive, trade secret protection will be included in the TTIP. As a result, unforeseen negative consequences that arise from trade secret protection will be nearly impossible for governments to repeal through democratic processes. A new global standard in trade secret protection will be set.

This push to harmonise the protection of "commercially confidential information" across the EU reinforces the idea that society benefits if innovations are kept secret. But this argument is easily debunked. The Human Genome Project, a fully open research project, is just one example of the benefits of open research and innovation. If the Commission's trade secrets directive passes, it will work against the current worldwide shift towards open research models and will hamper the creative energy of our knowledge economies.

Bottom line, the Commission's trade secrets directive needs radical change; otherwise, it will harm our health, environment, free speech and mobility as workers. The definition of what constitutes a "trade secret" must be limited and safeguards and exceptions to this definition must be strengthened. The right to freely use and disseminate information that is in the public interest should be the rule in the EU — and trade secret protection the exception.

Additional information on the impact of trade secret protection and the Commission's proposed trade secrets directive can be found in our [joint statement](#).

By [Tessel Mellema](#), policy advisor at Health Action International, and Sophie Bloemen, coordinator at Commons Network, on behalf of the multi-sectoral group of organisations that issued a joint statement on the trade secrets directive due to concerns about its impact on health, the environment, food safety, employee rights and free speech

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