

## *The Sedona Conference Commentary on the Use of Clean Rooms (March 2025)*

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A “Clean Room” is designed to limit or minimize legal liability risk and allegations of unlawful conduct if the development process was exposed to or influenced by certain protected information. Utilizing a Clean Room development process can be an effective way to develop new proprietary material while minimizing concerns about the material’s origin. The Clean Room method isolates a development environment, intentionally kept free from certain information, such as confidential or trade secret information.

By conducting a development process in a Clean Room, companies take steps to ensure their creations are not the result of copying preexisting works and that similarities between the created material and any preexisting material are coincidence. Use of a Clean Room can avoid or defend against claims of breach of a confidentiality agreement or trade secret misappropriation. Clean rooms may also be used to support (or refute) a defendant’s independent development or reverse engineering claim in trade secret litigation.

This *Commentary* first addresses what a Clean Room is and when one should be considered. Next, it describes how to design a clean room and who should be involved in the process including identifying the Clean Room’s purpose, what constitutes Outside Protected Information, and what are the proper roles for the people involved. Finally, the *Commentary* includes a Sample Clean Room Protocol.

A Clean Room’s effectiveness depends on its proper implementation and operation. But there is no one-size-fits-all approach for creating and implementing a Clean Room. As such, this *Commentary* makes recommendations regarding Clean Room design that are not intended to be mandatory in any or every situation; the failure to follow the recommendations set forth in this *Commentary* does not necessarily mean the Clean Room was ineffective, just as following every recommendation does not necessarily mean the Clean Room was effective. Nor should an organization’s following or failure to follow the recommendations set forth in this *Commentary* be dispositive on issues relating to, for example, reasonable efforts to maintain the secrecy of trade secrets.

- Principle 1: A Clean Room is an approach to reduce the risk of trade secret misappropriation, document independent development efforts, and/or protect innovation where the development process might otherwise be— or be alleged to have been—exposed to or influenced by Outside Protected Information.
- Principle 2: The Clean Room should take reasonable measures to avoid the use of Outside Protected Information.
- Principle 3: The Manager(s) of the Clean Room process must be sufficiently familiar with the underlying issues to be able to identify people to be involved or excluded.
- Principle 4: Counsel may be uniquely positioned to consult on the design of the Clean Room and whether the processes for the Clean Room are appropriate in view of the legal landscape, litigation concerns, or other legal concerns the company may have.
- Principle 5: When legal counsel is involved in a Clean Room development process, care should be taken to avoid inadvertent and unintended waiver of privilege or work product protections connected to the involvement of counsel or, if waiver is reasonably foreseeable, take measures to plan and define the scope of the intentional waiver.
- Principle 6: A Clean Room Protocol should clearly describe the restrictions put in place to prevent the Clean Team from using or incorporating Outside Protected Information in product development.

The full text of *The Sedona Conference Commentary on the Use of Clean*, March 2025, is available free for individual download from The Sedona Conference website at [\[https://thesedonaconference.org/sites/default/files/publications/Commentary\\_on\\_Use\\_of\\_Clean\\_Rooms\\_0.pdf\]](https://thesedonaconference.org/sites/default/files/publications/Commentary_on_Use_of_Clean_Rooms_0.pdf)

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