

Trade Secret Theft: The Need for a Federal Civil Remedy

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Trade secrets are an increasingly valuable asset to America's most innovative companies—a critical form of intellectual property that contributes not only to a company's competitive edge, but also the **global competitiveness of the U.S. economy**. Trade secrets are commercially valuable information not generally known or readily ascertainable to the public by proper means that are subject to reasonable measures to protect the confidentiality of the information. The prototypical example of a trade secret is the customer list, but trade secrets today may include high-tech manufacturing processes, industrial techniques, formulas, or complex data analytic algorithms.

Unfortunately, trade secret theft is a growing problem for American businesses. **Theft can come through cyberattack**, voluntary or involuntary disclosure by an employee, or misappropriation by a joint venture partner. Often the theft is state-sponsored. According to a 2014 report launched by PricewaterhouseCoopers LLP and the Center for Responsible Enterprise and Trade (CREATE.org), the cost of trade secret theft ranges from \$160-480 billion per year.

Unlike other forms of intellectual property – patents, trademarks, and copyrights – trade secrets are not currently protected with a federal civil remedy. Owners of these other forms of IP can protect what is rightfully theirs by taking action in federal court. While the Economic Espionage Act of 1996 (EEA) made trade secret theft a federal crime, the law does not provide for civil jurisdiction in federal court. Further, the civil trade secret laws that are in place originated at the state level, in an era when trade secret theft was largely a local matter. For modern, global companies that operate across state and national borders and have their trade secrets threatened by competitors around the globe, the patchwork of state laws is inefficient and inadequate to protect their intellectual property.

In the wake of increasing threats to American businesses' valuable trade secrets, the U.S. Senate is considering the Defend Trade Secrets Act (S. 2267), which will create a uniform federal civil remedy for trade secret misappropriation and provide a mechanism to obtain expedited relief when there is a threat that stolen U.S. trade secrets are about to be disclosed or evidence destroyed. Earlier this week, the House Judiciary Committee held a hearing that demonstrated the broad consensus for creating a balanced and effective federal civil remedy for trade secret misappropriation. A consistent, harmonized legal framework will provide a more efficient and effective legal structure to protect and promote U.S. global competitiveness and preserve high-quality U.S. jobs. It will also put trade secret protection in-line with the remedies available for owners of other forms of intellectual property.

U.S. businesses looking to protect their trade secrets should monitor the Defend Trade Secrets Act, which has received bipartisan support in the Senate, and the introduction of legislation creating a similar uniform system of protection in the House of Representatives. A federal civil remedy for trade-secret theft would provide an important addition to existing protections for trade secrets at the federal and state levels and could potentially bolster the American economy at no cost.

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