

Overview

- **The DTSA creates a federal, civil remedy for misappropriation of trade secrets.**
- **BSA supports** this bipartisan, bicameral legislation, which provides an important tool for protecting trade secrets—an essential form of intellectual property in the digital age.

ISSUE DISCUSSION

Trade secrets are an essential form of IP and are necessary for American companies to compete in the digital age. Today, the theft of a trade secret is a federal crime but, unlike owners of other forms of IP, trade secret owners do not have access to federal court for a civil remedy when their property is stolen. The Defend Trade Secrets Act (“DTSA”) fills this gap by creating a federal civil remedy for trade secret misappropriation. It will:

- *The DTSA will improve the efficiency of trade secret enforcement.* Trade secret theft used to be primarily an intrastate issue, so access to a state court remedy was generally adequate. But today, trade secret theft is more likely to cross state and even international borders. In interstate and international cases, federal courts can be more efficient in facilitating discovery, serving defendants and witnesses, and preventing a party from fleeing the jurisdiction.
- *The DTSA will prevent destruction of the secret.* The value of a trade secret can be destroyed if the secret is disclosed to third parties. If the thief plans to flee the country to sell the secret, which is often the case, the trade secret owner must be able to act swiftly to prevent the flight and the disclosure. The DTSA includes a narrow, but important remedy to seize the trade secret if the owner can clearly show that the thief would not comply with a court order not to disseminate or sell the secret.
- *The DTSA will not increase litigation.* A company that is the victim of trade secret theft is going to seek to protect its property and to recover for the harm caused by the misappropriation. Today, action in state court is the only option. A federal civil remedy recognized the increasingly interstate nature of trade secret misappropriation and will be more efficient, but it will not lead to more cases being filed. Further, because trade secret misappropriation requires a showing that the accused party obtained the secret through improper means, there is no threat of vague assertions or other abuses that have plagued the patent arena.



BSA POSITION

BSA supports the DTSA. Our members rely on trade secrets for their competitiveness and a federal civil remedy will make protection and enforcement more efficient.

- Complex global supply chains and ubiquitous digital technologies and connectivity are making trade secrets increasingly vulnerable to theft that crosses state and international boundaries. Our laws must keep pace.
- The Economic Espionage Act makes the theft of trade secrets used in interstate commerce a federal crime, but law enforcement does not have the resources to prosecute all cases of theft.
- A federal civil remedy will give trade secret owners the same ability to pursue a remedy in federal court as owners of other forms of intellectual property, which is appropriate given the importance of trade secrets to our economy.

BSA | The Software Alliance is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 60 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy.

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