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Congress once again is considering federal civil trade secret legislation. Trade secrets are an outlier among forms of intellectual property. The other common forms—patents, copyrights, and trademarks—all have federal civil causes of action as well as federal registration. Trade secrets, however, while the subject of a federal criminal statute, are protected civilly only at the state level. With the proposed Defend Trade Secrets Act of 2015 (“DTSA”) (S. 1890,<sup>1</sup> H.R. 3326<sup>2</sup>), Congress may change that. In this *White Paper*, we briefly address prior attempts at federal civil trade secret legislation, summarize the current proposal, compare the proposal to the Uniform Trade Secrets Act (“UTSA”) adopted by 47 states with a 48th state having a statute substantially similar, and discuss the potential impact should the DTSA be adopted.

## PREVIOUS ATTEMPTS AT FEDERAL LEGISLATION

The DTSA is not the first proposal to add federal civil causes of action for trade secret misappropriation. In 2013, the House considered the Private Right of Action Against Theft of Trade Secrets Act,<sup>3</sup> and the Senate considered the Future of American Innovation and Research Act.<sup>4</sup> The latter, however, addressed only claims of misappropriation by persons or entities while located outside the U.S. or misappropriation on behalf of, or for the benefit of, persons or entities outside the U.S. In 2014, the House introduced the Trade Secrets Protection Act,<sup>5</sup> and the Senate introduced the Defend Trade Secrets Act (2014 version).<sup>6</sup> While neither of these bills passed, they served as the model for the 2015 DTSA.

## SUMMARY OF THE DTSA

The House (H.R. 3326) and Senate (S. 1890) versions of the DTSA are identical. The DTSA amends chapter 90 of 18 U.S.C. (“Economic Espionage Act” or “EEA”), which relates to the protection of trade secrets but currently includes only criminal provisions. The DTSA amends § 1836, renamed as “Civil Proceedings,” to add forms of civil relief by replacing subsection (b) with new provisions under the heading “Private Civil Actions.” First, upon ex parte application, it provides for a seizure of property necessary to prevent the propagation or dissemination of the trade secret at issue. Second, it provides for an injunction or damages at the conclusion of the action. It then amends § 1839 (definitions) to add, most importantly, definitions for “misappropriation” and “improper means.” It concludes by providing for a biannual report by the Attorney General on the “theft” of trade

secrets outside the U.S. and by stating the “sense of Congress” that trade secret theft in the U.S. and around the world harms trade secret owners and their employees.<sup>7</sup>

A trade secret owner can bring a civil action under the DTSA “if the person is aggrieved by a misappropriation of a trade secret that is related to a product or service used in, or intended for use in, interstate or foreign commerce.”<sup>8</sup> The jurisdictional aspect of this provision recognizes that, like trademarks but unlike patents and copyrights, Congress’s power to pass the DTSA will come from the Commerce Clause<sup>9</sup> and not the Progress Clause.<sup>10</sup> To that end, there will be cases where the federal law cannot apply. The DTSA goes further, though, and explicitly does not preempt any law.<sup>11</sup> Thus, the DTSA will exist alongside existing state law, even for cases that may also be brought under the DTSA.

## EX PARTE SEIZURE

The most controversial aspect of the DTSA is the ex parte civil seizure provision. DTSA § 2(b)(2)(A) permits a court to issue an order providing for the seizure of property “necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action” based on an ex parte application when the court finds that it “clearly appears from specific facts” that:

- A temporary restraining order issued pursuant to Rule 65(b) of the Federal Rules of Civil Procedure would be inadequate;
- An immediate and irreparable injury will occur absent seizure;
- The harm to the applicant outweighs the harm of the one against whom seizure would be ordered (opponent) and significantly outweighs the harm to any third parties;
- The applicant is likely to show that (i) the information is a trade secret, (ii) the opponent misappropriated the trade secret by improper means or conspired to use improper means to do so, and (iii) the opponent possesses the trade secret;
- The application describes with reasonable particularity the matter to be seized and, to the extent reasonable under the circumstances, the location of the matter to be seized;
- The opponent or persons acting in concert therewith would destroy, hide, or otherwise make the matter inaccessible to the court if on notice; and
- The applicant has not publicized the requested seizure.<sup>12</sup>

If these requirements are met, the court “may” issue an order.<sup>13</sup> The DTSA sets forth requirements for the seizure order itself, which include providing the narrowest seizure necessary, restricting (although not necessarily entirely) access by the applicant, setting a date for a hearing no later than seven days after the order issues, and requiring the party seeking seizure to provide security for the payment of damages resulting from wrongful or excessive seizure or attempted seizure.<sup>14</sup> The court also must protect the opponent from publicity about the order, secure the seized material from physical and electronic access, and order that service of the seizure order and the seizure be made by a federal, state, or local law-enforcement officer.<sup>15</sup>

At the seizure hearing, the party obtaining the order has the burden to prove that facts “necessary to support the order” are still in effect.<sup>16</sup> If the party cannot do so, the seizure order will be dissolved or modified appropriately.<sup>17</sup> The opponent may move the court at any time to dissolve or modify the order after giving notice to the obtaining party.<sup>18</sup>

A party who suffers damage by reason of a wrongful or excessive seizure has a cause of action against the obtaining party and is entitled to the same relief as provided under § 34(d)(1) of the Trademark Act of 1946 (the Lanham Act).<sup>19</sup> That section provides that the party is entitled to “relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the seizure was sought in bad faith, and, unless the court finds extenuating circumstances, to recover a reasonable attorney’s fee.”<sup>20</sup>

The DTSA provides a five-year statute of limitations from the date the misappropriation is discovered or should have been discovered through reasonable diligence.<sup>21</sup>

## REMEDIES

The DTSA provides for an injunction and damages. For ongoing harm, the default is an injunction. A court may grant an injunction to prevent any actual or threatened misappropriation, provided that it does not prevent a person from accepting an offer of employment on terms that avoid actual or threatened misappropriation.<sup>22</sup> In “exceptional circumstances that render an injunction inequitable,” a court may condition future use of the trade secrets upon the payment of a reasonable royalty.<sup>23</sup>

For past harm, the court may award damages for actual loss and any unjust enrichment not addressed in damages for actual loss.<sup>24</sup> In lieu of such damages, a court may award damages measured by a reasonable royalty for the unauthorized use.<sup>25</sup>

The DTSA also provides a court with specific authority to punish either side for egregious behavior, beyond a court’s existing authority to do so. If the trade secret is “willfully and maliciously misappropriated,” a court may award exemplary damages up to triple the amount of actual damages awarded and may award reasonable attorneys’ fees.<sup>26</sup> If a claim of misappropriation is made in bad faith, or a motion to terminate an injunction is made or opposed in bad faith, a court may also award reasonable attorneys’ fees to the prevailing party.<sup>27</sup>

## DEFINITIONS

To the existing definition of “trade secret” in 18 U.S.C. § 1839(3) (part of the EEA), the DTSA adds definitions for “misappropriation” and “improper means” (and “Trademark Act of 1946” because of the damages provision discussed above for a party victim to an improper seizure).<sup>28</sup>

The existing EEA definition for “trade secret” encompasses “all forms and types of” various categories of information, regardless of how stored, if

- (A) the owner thereof has taken reasonable measures to keep such information secret; and
- (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.<sup>29</sup>

“Misappropriation” encompasses acquisition of a trade secret by a person who has reason to know it was acquired by improper means, or the disclosure or use of a trade secret without consent under various circumstances involving improper acquisition or violation of a duty to maintain secrecy.<sup>30</sup> More specifically, the DTSA defines “misappropriation” as

- (A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

- (B) disclosure or use of a trade secret of another without express or implied consent by a person who—
- (i) used improper means to acquire knowledge of the trade secret;
  - (ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was—
    - (I) derived from or through a person who had used improper means to acquire the trade secret;
    - (II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or
    - (III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or
  - (iii) before a material change of the position of the person, knew or had reason to know that—
    - (I) the trade secret was a trade secret; and
    - (II) knowledge of the trade secret had been acquired by accident or mistake.<sup>31</sup>

“Improper means ... includes theft, bribery, misrepresentation, breach, or inducement of a breach to maintain secrecy, or espionage....”<sup>32</sup> It explicitly “does not include reverse engineering or independent derivation.”<sup>33</sup>

## BIANNUAL REPORT AND ADDRESSING FOREIGN TRADE SECRET THEFT

Section 3 of the DTSA requires the Attorney General to submit to the House and Senate Judiciary Committees a biannual report on trade secret theft of U.S. companies occurring outside the U.S. The report is to include recommendations of legislative and executive actions to reduce the threat and impact of theft occurring outside the U.S., educate U.S. companies regarding the threat of taking their trade secrets outside the U.S., and provide a mechanism for U.S. companies to report any theft occurring outside the U.S.

On a related point, the U.S. recently completed negotiations on the Trans-Pacific Partnership Agreement (“TPP”) with countries in North America, South America, East Asia, and Australia. The controversial treaty includes a chapter on intellectual property providing that persons (including companies) shall “have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others (including state-owned enterprises).”<sup>34</sup> Because Congress approved so-called “fast track” authority for TPP, once the TPP is submitted for review, Congress will have 90 days to accept or reject it wholesale. A vote is not expected until mid-2016.

## COMPARISON TO THE UTSA

The side-by-side chart below summarizes the key similarities and differences between the DTSA and the UTSA.

### Summary of Comparison of DTSA to UTSA

	DTSA	UTSA
Definitions	“Trade secret” not known by “other persons who can obtain economic value from its disclosure”	“Trade secret” not known by “the public”
	“Improper means” expressly excludes “reverse engineering” and “independent derivation”	No express exclusions, but comment states proper means include, e.g., reverse engineering and independent derivation
Ex Parte Seizure	Available to prevent propagation or dissemination of trade secret, provided TRO insufficient and other requirements met	Not addressed; permits court to compel “affirmative acts,” such as a return of items misappropriated
Injunctions	Employment protection	None
	No contemplation as to end of injunction	Ends once trade secret ceases to exist and after a reasonable time to eliminate commercial advantage of misappropriation
Ongoing Royalty	“Exceptional circumstances that render an injunction inequitable”	“Exceptional circumstances” such as “an overriding public interest” and where one obtained a trade secret in good faith and would be prejudiced
Monetary Damages	Damages for actual loss plus unjust enrichment not addressed in damages for actual loss, or reasonable royalty	Same as DTSA, but additionally precludes damages where “a material and prejudicial change of position ... renders a monetary recovery inequitable”
	Up to treble damages for willful and malicious misappropriation	Up to double damages for willful and malicious misappropriation
Attorneys’ fees	Bad faith claims, motion made or “opposed in bad faith,” or willful and malicious misappropriation	Bad faith claims, motion made or “resisted in bad faith,” or willful and malicious misappropriation
Statute of Limitations	Five years	Three years

## DEFINITIONS

The UTSA’s definitions for “trade secret,” “misappropriation,” and “improper means” are similar to the existing EEA federal definition of “trade secret” and the DTSA’s definitions for “misappropriation” and “improper means.”

While the UTSA and EEA describe the categories of information that can be a “trade secret” differently, both are expansive.<sup>35</sup> A difference in the otherwise similar definitions is that the UTSA defines a “trade secret” as information that derives independent economic value “from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure,” while the existing EEA definition refers to the trade

secret “not being generally known to, and not being readily ascertainable through proper means by, the public.”<sup>36</sup> The comment to the UTSA explains that its language “does not require that information be generally known to the public for trade secrets to be lost. If the principal persons who can obtain economic benefit from information are aware of it, there is no trade secret.”<sup>37</sup> Federal appeals courts have differed as to the significance of this distinction.<sup>38</sup>

Aside from slight wording differences, the DTSA defines “misappropriation” the same as the UTSA.<sup>39</sup>

The definitions of “improper means” include the same means, except that the DTSA expressly exempts reverse engineering

and independent derivation.<sup>40</sup> The UTSA, however, does note that reverse engineering and independent derivation are proper in the comment to the definitions section.<sup>41</sup>

## REMEDIES

The largest difference between the UTSA and DTSA is the DTSA's *ex parte* seizure provision. The UTSA does not provide for a seizure of assets, although the UTSA permits "affirmative acts ... compelled by court order" that may include a return of the items misappropriated.<sup>42</sup> In contrast, the DTSA dedicates a majority of the Act to the seizure of assets, including requirements for seizure, seizure hearings, and the posting of bonds to cover potential damages.<sup>43</sup>

Additionally, there are subtle differences between the UTSA and DTSA with respect to injunctions, monetary damages, and attorneys' fees. The UTSA and DTSA have similar sections regarding injunctions, including provisions for enjoining actual or threatened misappropriation, requiring affirmative action to protect trade secrets, and requiring payment of an ongoing royalty in exceptional circumstances (called a "royalty order injunction" in the comments and distinguished from a reasonable royalty as an alternative measure to damages<sup>44</sup>). There are, however, three notable differences between the two acts with respect to injunctions. First, the DTSA provides employment protection, requiring that an injunction "does not prevent a person from accepting an offer of employment under conditions that avoid actual or threatened misappropriation."<sup>45</sup> The UTSA does not mention employment protection. Second, the UTSA, but not the DTSA, contemplates an end to an injunction once a "trade secret has ceased to exist."<sup>46</sup> In particular, the UTSA provides that an injunction continues only for a reasonable period of time to eliminate any commercial advantage to those that misappropriated the trade secret.<sup>47</sup> For example, the injunction may last only for the time required "to discover trade secrets lawfully through either independent development or reverse engineering," and the UTSA commentary states the general principal that "an injunction should last for as long as is necessary, but no longer than is necessary, to eliminate the commercial advantage or 'lead time' with respect to good faith competitors."<sup>48</sup> Third, whereas both acts provide for an ongoing royalty in "exceptional circumstances," the UTSA lists examples of what constitutes an exceptional circumstance, whereas the DTSA states that it applies to "exceptional circumstances *that render an injunction inequitable*."<sup>49</sup>

While there is no way to know how the courts will apply the DTSA regarding when an injunction would be inequitable, it is possible that the courts will consider the UTSA examples, which include the "existence of an overriding public interest" and prejudice to a "good faith third party."<sup>50</sup>

With respect to monetary damages, the UTSA and DTSA diverge on two points. First, for willful and malicious misappropriation, the UTSA awards up to double damages, whereas the DTSA awards up to treble damages.<sup>51</sup> Second, the UTSA imposes an additional condition on the recovery of damages, namely that the damages must not be inequitable due to a material and prejudicial change of position prior to acquiring knowledge, or having a reason to know, of the misappropriation.<sup>52</sup>

Finally, both acts allow for reasonable attorneys' fees. The only difference between both acts is the use of the word "resisted" versus "opposed." In the UTSA, attorneys' fees may be awarded, among other reasons, if a motion to terminate an injunction is "resisted in bad faith," whereas in the DTSA it must be "opposed in bad faith."<sup>53</sup> It is unlikely that the difference in wording will lead to any distinction between the two standards.

## OTHER DIFFERENCES

### Protection of Trade Secrets

The UTSA contains a provision entitled "Preservation of Secrecy" that directs the court to "preserve the secrecy of an alleged trade secret by reasonable means," including "protective orders," "in-camera hearings," "sealing" of records, and "ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval."<sup>54</sup> In contrast, except for provisions relating to *ex parte* seizure,<sup>55</sup> the DTSA fails to provide any direction to the courts to ensure that the alleged trade secrets are protected.

### Statute of Limitation

The UTSA has a three-year statute of limitations, while the DTSA has a five-year statute.<sup>56</sup>

### Effect on Other Law

As previously stated, the DTSA does not preempt any law.<sup>57</sup> In contrast, the UTSA states that it "displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret."<sup>58</sup> However, the

UTSA states that it does not have any effect on contractual remedies, other civil remedies, or criminal remedies, “whether or not based upon misappropriation of a trade secret.”<sup>59</sup>

## POTENTIAL IMPACT OF THE DTSA

On the one hand, various organizations and companies support the DTSA, including the Business Software Alliance, Biotechnology Industry Organization, Medical Device Manufacturers Association, and National Association of Manufacturers.<sup>60</sup> On the other hand, in August 2014, 31 law professors wrote an open letter to the sponsors of the 2014 bills strongly opposing both then-pending bills.<sup>61</sup> Two of the professors wrote an article in January 2015.<sup>62</sup> In an August 2015 letter, those two professors reaffirmed that all of their prior concerns exist with the 2015 DTSA.<sup>63</sup>

Proponents of the DTSA argue that a federal trade secret statute would provide uniformity across the states. However, in their 2014 and 2015 letters, the law professors opined that the proposed bills would do the opposite, arguing that a “robust and uniform” body of state law already exists, and the UTSA has been adopted by almost every state.<sup>64</sup> They explain that states have more than 100 years of case law, but the federal judiciary will need to develop its own jurisprudence.<sup>65</sup> Also, even under a federal act, ancillary state law will still apply to issues such as the ownership of inventions, definitions and obligations of confidential relationships, and the enforceability of noncompete obligations.<sup>66</sup>

The ex parte seizure provisions are likely the most controversial provisions of the DTSA. Proponents, while not addressing the ex parte seizure explicitly, seem to support those provisions, noting that relying on state laws can require companies to seek multiple temporary restraining orders as a trade secrets theft suspect moves from state to state. On the other hand, the law professors are concerned that the seizure provisions

will be abused for anticompetitive purposes, leading to a rise of trade secret trolls, who would gain a powerful tool to significantly disrupt the business operations of a competitor.<sup>67</sup>

Finally, the DTSA would likely increase the number of trade secret law suits brought in federal courts. First, with the potential of treble damages and attorneys’ fees, a trade secret owner would be encouraged to file in federal court. In contrast, those states with laws based on the UTSA may provide for only double damages. Second, the DTSA’s statute of limitations is increased to five years from the three years in the UTSA, providing more time to file a complaint. Third, unlike the UTSA, the DTSA provides for the seizure of assets. For a trade secret owner protecting a product, the ability to seize a competitor’s product manufactured from a trade secret would be invaluable. Trade secret owners likely would take advantage of these benefits of the DTSA and file their complaints in federal court rather than state court. Of course, trade secret claims are already brought in federal court when joined with a federal cause of action (e.g., an action for copyright, patent, or trademark infringement) or when diversity jurisdiction exists.

## CONCLUSION

On July 29, 2015, the DTSA was introduced in the Senate and referred to the Committee on the Judiciary. On October 1, 2015, the DTSA was referred to the House Subcommittee on Courts, Intellectual Property, and the Internet. The bill has 10 co-sponsors in the Senate and 62 co-sponsors in the House. Last year, when the Senate and House considered differing bills, there was only one co-sponsor in the Senate and 23 co-sponsors in the House. While the momentum toward action appears to be growing, it remains to be seen whether 2015 will be the year that Congress passes federal trade secret legislation. Jones Day will continue to monitor the DTSA as it makes its way through the Senate and House and will report on further developments.



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## ENDNOTES

- 1 [S. 1890](#), 114th Cong. (2015).
- 2 [H.R. 3326](#), 114th Cong. (2015).
- 3 [H.R. 2466](#), 113th Cong. (2013).
- 4 [S. 1770](#), 113th Cong. (2013).
- 5 [H.R. 5233](#), 113th Cong. (2014).
- 6 [S. 2267](#), 113th Cong. (2014).
- 7 DTSA at § 4.
- 8 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(1).
- 9 U.S. Const., Art. I, § 8, cl. 3.
- 10 *Id.* at Art. I, § 8, cl. 8.
- 11 DTSA at § 2(f).
- 12 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(2)(A)(ii)(I)-(VII).
- 13 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(2)(A)(i).
- 14 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(2)(B)(i)-(v).
- 15 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(2)(C)-(E).
- 16 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(2)(F)(ii).
- 17 *Id.*
- 18 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(2)(B)(iv), (F)(iii)
- 19 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(2)(G)
- 20 15 U.S.C. § 1116(d)(11).
- 21 DTSA at § 2(a), amd. 18 U.S.C. § 1836(d)
- 22 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(3)(A)(i).
- 23 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(3)(A)(ii).
- 24 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(3)(B)(i)(I)-(II).
- 25 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(3)(B)(ii).
- 26 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(3)(C)-(D).
- 27 *Id.* at § 2(a), amd. 18 U.S.C. § 1836(b)(3)(D).
- 28 *Id.* at § 2(b), amd. 18 U.S.C. § 1839(5)-(7).
- 29 18 U.S.C. § 1839(3).
- 30 DTSA at § 2(b), amd. § 1839(5).

- 31 *Id.*
- 32 *Id.* at § 2(b), amd. 18 U.S.C. § 1839(6)(A).
- 33 *Id.* at § 2(b), amd. 18 U.S.C. § 1839(6)(B).
- 34 [Trans-Pacific Partnership Agreement](#), art. 18.78, pg. 18-54 (Oct. 5, 2015).
- 35 Compare 18 U.S.C. § 1839(3) with UTSA § 1(4).
- 36 Compare 18 U.S.C. § 1839(3) with UTSA § 1(4).
- 37 UTSA at § 1 cmt.
- 38 Bensen, *Bensen on the Economic Espionage Act & the Uniform Trade Secret Act*, 2012 Emerging Issues 6382 (Jun. 5, 2012).
- 39 Compare DTSA at § 2(b), amd. § 1839(5) with UTSA § 1(2).
- 40 Compare DTSA at § 2(b), amd. § 1839(6) with UTSA § 1(1).
- 41 UTSA § 1 cmt.
- 42 *Id.* at § 2(c), cmt.
- 43 DTSA at § 2(a), amd. 18 U.S.C. § 1836(b)(3)(A)
- 44 UTSA § 2 cmt.
- 45 Compare DTSA at § 2(a), amd. 18 U.S.C. § 1836(b)(3)(A)(i) with UTSA § 2(a).
- 46 UTSA § 2(a).
- 47 *Id.*
- 48 *Id.* at § 2 cmt.
- 49 Compare DTSA at § 2(a), amd. 18 U.S.C. § 1836(b)(3)(A)(iii) with UTSA § 2(b) (emphasis added).
- 50 See UTSA § 2 cmt.
- 51 Compare DTSA at § 2(a), amd. 18 U.S.C. § 1836(b)(3)(C) with UTSA § 3(b).
- 52 See UTSA § 3(a).
- 53 Compare DTSA at § 2(a), amd. 18 U.S.C. § 1836(b)(3)(D) with UTSA § 4.
- 54 UTSA § 5.
- 55 DTSA at § 2(a), amd. 18 U.S.C. § 1836(b)(2)(D), (H).
- 56 Compare DTSA at § 2(a), amd. 18 U.S.C. § 1836(d) with UTSA § 6.
- 57 DTSA at § 2(f).
- 58 UTSA § 7(a).
- 59 *Id.* at § 7(b).
- 60 See, e.g., [Letters from Assoc. of Global Automakers, Inc., et al. to Robert W. Goodlatte, John Conyers, Jr., Orrin Hatch, Christopher Coons and Jeff Flake](#) (Jul. 29, 2015).
- 61 Letter from Prof. Brook K. Baker, et al. to Members of the United States Congress, "[Professors' Letter in Opposition to the 'Defend Trade Secrets Act of 2014' \(S. 2267\) and the 'Trade Secrets Protection Act of 2014' \(H.R. 5233\)](#)" (Aug. 26, 2014) ("2014 Letter").
- 62 Levine et al., "[Here Come the Trade Secret Trolls](#)," 71 Wash. & Lee L. Rev. Online 230 (2015).
- 63 [Letter from David S. Levine and Sharon K. Sandeen to the sponsors of the revised Defend Trade Secrets Act](#) (Aug. 3, 2015) ("2015 Letter").
- 64 2014 Letter at 2-4.
- 65 *Id.* at 2; 2015 Letter at 2.
- 66 2014 Letter at 3.
- 67 2015 Letter at 3; Levine at 257.

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